

1-1 By: Hinojosa S.B. No. 146
1-2 (In the Senate - Filed November 8, 2010; January 31, 2011,
1-3 read first time and referred to Committee on Criminal Justice;
1-4 May 2, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; May 2, 2011, sent
1-6 to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 146 By: Hinojosa

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the offense of smuggling of persons and unlawful
1-11 transport of an individual; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. The heading to Chapter 20, Penal Code, is amended
1-14 to read as follows:

1-15 CHAPTER 20. KIDNAPPING, ~~[AND]~~ UNLAWFUL RESTRAINT, AND
1-16 SMUGGLING OF PERSONS

1-17 SECTION 2. Section 20.05, Penal Code, is amended to read as
1-18 follows:

1-19 Sec. 20.05. SMUGGLING OF PERSONS ~~[UNLAWFUL TRANSPORT]~~.

1-20 (a) A person commits an offense if the person intentionally uses a
1-21 motor vehicle, aircraft, or watercraft to transport an individual
1-22 with the intent to conceal the individual from a peace officer or
1-23 special investigator and flees from a person the actor knows is a
1-24 peace officer or special investigator attempting to lawfully arrest
1-25 or detain the actor [for pecuniary benefit transports an individual
1-26 in a manner that:

1-27 [~~(1) is designed to conceal the individual from local,~~
1-28 ~~state, or federal law enforcement authorities; and~~

1-29 ~~[(2) creates a substantial likelihood that the~~
1-30 ~~individual will suffer serious bodily injury or death].~~

1-31 (b) Except as provided by Subsection (c), an [An] offense
1-32 under this section is a state jail felony.

1-33 (c) An offense under this section is a felony of the third
1-34 degree if the actor commits the offense:

1-35 (1) for pecuniary benefit; or

1-36 (2) in a manner that creates a substantial likelihood
1-37 that the transported individual will suffer serious bodily injury
1-38 or death.

1-39 (d) It is an affirmative defense to prosecution under this
1-40 section that the actor is related to the transported individual
1-41 within the third degree of consanguinity or, at the time of the
1-42 offense, within the third degree of affinity.

1-43 (e) If conduct constituting an offense under this section
1-44 also constitutes an offense under another section of this code, the
1-45 actor may be prosecuted under either section.

1-46 SECTION 3. Subsection (a), Section 71.02, Penal Code, as
1-47 amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357
1-48 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, is
1-49 reenacted and amended to read as follows:

1-50 (a) A person commits an offense if, with the intent to
1-51 establish, maintain, or participate in a combination or in the
1-52 profits of a combination or as a member of a criminal street gang,
1-53 the person commits or conspires to commit one or more of the
1-54 following:

1-55 (1) murder, capital murder, arson, aggravated
1-56 robbery, robbery, burglary, theft, aggravated kidnapping,
1-57 kidnapping, aggravated assault, aggravated sexual assault, sexual
1-58 assault, forgery, deadly conduct, assault punishable as a Class A
1-59 misdemeanor, burglary of a motor vehicle, or unauthorized use of a
1-60 motor vehicle;

1-61 (2) any gambling offense punishable as a Class A
1-62 misdemeanor;

1-63 (3) promotion of prostitution, aggravated promotion

2-1 of prostitution, or compelling prostitution;
 2-2 (4) unlawful manufacture, transportation, repair, or
 2-3 sale of firearms or prohibited weapons;
 2-4 (5) unlawful manufacture, delivery, dispensation, or
 2-5 distribution of a controlled substance or dangerous drug, or
 2-6 unlawful possession of a controlled substance or dangerous drug
 2-7 through forgery, fraud, misrepresentation, or deception;
 2-8 (6) any unlawful wholesale promotion or possession of
 2-9 any obscene material or obscene device with the intent to wholesale
 2-10 promote the same;
 2-11 (7) any offense under Subchapter B, Chapter 43,
 2-12 depicting or involving conduct by or directed toward a child
 2-13 younger than 18 years of age;
 2-14 (8) any felony offense under Chapter 32;
 2-15 (9) any offense under Chapter 36;
 2-16 (10) any offense under Chapter 34 or 35;
 2-17 (11) any offense under Section 37.11(a);
 2-18 (12) any offense under Chapter 20A;
 2-19 (13) any offense under Section 37.10; [~~or~~]
 2-20 (14) any offense under Section 38.06, 38.07, 38.09, or
 2-21 38.11;
 2-22 (15) [~~(14)~~] any offense under Section 42.10;
 2-23 (16) [~~(14)~~] any offense under Section 46.06(a)(1) or
 2-24 46.14; or
 2-25 (17) any offense under Section 20.05.
 2-26 SECTION 4. Article 13.12, Code of Criminal Procedure, is
 2-27 amended to read as follows:
 2-28 Art. 13.12. FALSE IMPRISONMENT, [~~AND~~] KIDNAPPING, AND
 2-29 SMUGGLING OF PERSONS
 2-30 Venue for false imprisonment, [~~and~~] kidnapping, and
 2-31 smuggling of persons is in either the county in which the offense
 2-32 was committed, or in any county through, into, or out of which the
 2-33 person falsely imprisoned, [~~or~~] kidnapped, or transported may have
 2-34 been taken.
 2-35 SECTION 5. Subdivision (2), Article 59.01, Code of Criminal
 2-36 Procedure, as amended by Chapters 153 (S.B. 2225), 1130 (H.B.
 2-37 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular
 2-38 Session, 2009, is reenacted and amended to read as follows:
 2-39 (2) "Contraband" means property of any nature,
 2-40 including real, personal, tangible, or intangible, that is:
 2-41 (A) used in the commission of:
 2-42 (i) any first or second degree felony under
 2-43 the Penal Code;
 2-44 (ii) any felony under Section 15.031(b),
 2-45 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
 2-46 31, 32, 33, 33A, or 35, Penal Code;
 2-47 (iii) any felony under The Securities Act
 2-48 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or
 2-49 (iv) any offense under Chapter 49, Penal
 2-50 Code, that is punishable as a felony of the third degree or state
 2-51 jail felony, if the defendant has been previously convicted three
 2-52 times of an offense under that chapter;
 2-53 (B) used or intended to be used in the commission
 2-54 of:
 2-55 (i) any felony under Chapter 481, Health
 2-56 and Safety Code (Texas Controlled Substances Act);
 2-57 (ii) any felony under Chapter 483, Health
 2-58 and Safety Code;
 2-59 (iii) a felony under Chapter 153, Finance
 2-60 Code;
 2-61 (iv) any felony under Chapter 34, Penal
 2-62 Code;
 2-63 (v) a Class A misdemeanor under Subchapter
 2-64 B, Chapter 365, Health and Safety Code, if the defendant has been
 2-65 previously convicted twice of an offense under that subchapter;
 2-66 (vi) any felony under Chapter 152, Finance
 2-67 Code;
 2-68 (vii) any felony under Chapter 32, Human
 2-69 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that

3-1 involves the state Medicaid program;
 3-2 (viii) a Class B misdemeanor under Chapter
 3-3 522, Business & Commerce Code;
 3-4 (ix) a Class A misdemeanor under Section
 3-5 306.051, Business & Commerce Code; ~~or~~
 3-6 (x) any offense under Section 42.10, Penal
 3-7 Code;
 3-8 (xi) ~~(x)~~ any offense under Section
 3-9 46.06(a)(1) or 46.14, Penal Code;
 3-10 (xii) ~~(x)~~ any offense under Chapter 71,
 3-11 Penal Code; or
 3-12 (xiii) any offense under Section 20.05,
 3-13 Penal Code;

3-14 (C) the proceeds gained from the commission of a
 3-15 felony listed in Paragraph (A) or (B) of this subdivision, a
 3-16 misdemeanor listed in Paragraph (B)(viii), ~~or~~ (x), (xi), or (xii)
 3-17 of this subdivision, or a crime of violence;

3-18 (D) acquired with proceeds gained from the
 3-19 commission of a felony listed in Paragraph (A) or (B) of this
 3-20 subdivision, a misdemeanor listed in Paragraph (B)(viii), ~~or~~ (x),
 3-21 (xi), or (xii) of this subdivision, or a crime of violence; or

3-22 (E) used to facilitate or intended to be used to
 3-23 facilitate the commission of a felony under Section 15.031 or
 3-24 43.25, Penal Code.

3-25 SECTION 6. The changes in law made by this Act in amending
 3-26 Sections 20.05 and 71.02, Penal Code, apply only to an offense
 3-27 committed on or after the effective date of this Act. An offense
 3-28 committed before the effective date of this Act is covered by the
 3-29 law in effect when the offense was committed, and the former law is
 3-30 continued in effect for that purpose. For purposes of this section,
 3-31 an offense was committed before the effective date of this Act if
 3-32 any element of the offense occurred before that date.

3-33 SECTION 7. The change in law made by this Act in amending
 3-34 Subdivision (2), Article 59.01, Code of Criminal Procedure, applies
 3-35 only to the forfeiture of property in relation to an offense
 3-36 committed on or after the effective date of this Act. Forfeiture of
 3-37 property in relation to an offense committed before the effective
 3-38 date of this Act is governed by the law in effect when the offense
 3-39 was committed, and the former law is continued in effect for that
 3-40 purpose. For purposes of this section, an offense was committed
 3-41 before the effective date of this Act if any element of the offense
 3-42 occurred before that date.

3-43 SECTION 8. To the extent of any conflict, this Act prevails
 3-44 over another Act of the 82nd Legislature, Regular Session, 2011,
 3-45 relating to nonsubstantive additions to and corrections in enacted
 3-46 codes.

3-47 SECTION 9. This Act takes effect September 1, 2011.

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