

House Bill 260
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

SECTION 1. Section 20.05, Penal Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) An offense under this section is a [state jail] felony of the second degree.

SENATE VERSION

(Unless otherwise indicated, all SECTIONS below are from FA1)

SECTION 1. The heading to Chapter 20, Penal Code, is amended to read as follows:
CHAPTER 20. KIDNAPPING, ~~[AND]~~ UNLAWFUL RESTRAINT, AND
SMUGGLING OF PERSONS

SECTION 2. Section 20.05, Penal Code, is amended to read as follows:

Sec. 20.05. SMUGGLING OF PERSONS ~~[UNLAWFUL TRANSPORT]~~. (a) A person commits an offense if the person intentionally uses a motor vehicle, aircraft, or watercraft to transport an individual with the intent to:
(1) conceal the individual from a peace officer or special investigator; or
(2) flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor ~~[for pecuniary benefit transports an individual in a manner that;~~
~~[(1) is designed to conceal the individual from local, state, or federal law enforcement authorities; and~~
~~[(2) creates a substantial likelihood that the individual will suffer serious bodily injury or death].~~
(b) Except as provided by Subsection (c), an ~~[An]~~ offense under this section is a state jail felony.
(c) An offense under this section is a felony of the third degree if the actor commits the offense:
(1) for pecuniary benefit; or
(2) in a manner that creates a substantial likelihood that the transported individual will suffer serious bodily injury or

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(c) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections.

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death.

(d) It is an affirmative defense to prosecution under this section that the actor is related to the transported individual within the second degree of consanguinity or, at the time of the offense, within the second degree of affinity.

(e) If conduct constituting an offense under this section also constitutes an offense under another section of this code, the actor may be prosecuted under either section or under both sections. [FA2(1),(2)]

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

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

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

(2) any gambling offense punishable as a Class A misdemeanor;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of

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- firearms or prohibited weapons;
- (5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception;
 - (6) any unlawful wholesale promotion or possession of any obscene material or obscene device with the intent to wholesale promote the same;
 - (7) any offense under Subchapter B, Chapter 43, depicting or involving conduct by or directed toward a child younger than 18 years of age;
 - (8) any felony offense under Chapter 32;
 - (9) any offense under Chapter 36;
 - (10) any offense under Chapter 34 or 35;
 - (11) any offense under Section 37.11(a);
 - (12) any offense under Chapter 20A;
 - (13) any offense under Section 37.10; ~~[or]~~
 - (14) any offense under Section 38.06, 38.07, 38.09, or 38.11;
 - (15) ~~(14)~~ any offense under Section 42.10;
 - (16) ~~(14)~~ any offense under Section 46.06(a)(1) or 46.14; or
 - (17) any offense under Section 20.05.

SECTION 4. Article 13.12, Code of Criminal Procedure, is amended to read as follows:

Art. 13.12. FALSE IMPRISONMENT, ~~[AND]~~ KIDNAPPING, AND SMUGGLING OF PERSONS. Venue for false imprisonment, ~~[and]~~ kidnapping, and smuggling of persons is in either the county in which the offense was committed, or in any county through, into, or out of which the person falsely imprisoned, ~~[or]~~ kidnapped, or transported may

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have been taken.

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SECTION 5. Subdivision (2), Article 59.01, Code of Criminal Procedure, as amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, is reenacted and amended to read as follows:

(2) "Contraband" means property of any nature, including real, personal, tangible, or intangible, that is:

(A) used in the commission of:

- (i) any first or second degree felony under the Penal Code;
- (ii) any felony under Section 15.031(b), 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30, 31, 32, 33, 33A, or 35, Penal Code;
- (iii) any felony under The Securities Act (Article 581-1 et seq., Vernon's Texas Civil Statutes); or
- (iv) any offense under Chapter 49, Penal Code, that is punishable as a felony of the third degree or state jail felony, if the defendant has been previously convicted three times of an offense under that chapter;

(B) used or intended to be used in the commission of:

- (i) any felony under Chapter 481, Health and Safety Code (Texas Controlled Substances Act);
- (ii) any felony under Chapter 483, Health and Safety Code;
- (iii) a felony under Chapter 153, Finance Code;
- (iv) any felony under Chapter 34, Penal Code;
- (v) a Class A misdemeanor under Subchapter B, Chapter 365, Health and Safety Code, if the defendant has been previously convicted twice of an offense under that subchapter;
- (vi) any felony under Chapter 152, Finance Code;

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(vii) any felony under Chapter 32, Human Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that involves the state Medicaid program;

(viii) a Class B misdemeanor under Chapter 522, Business & Commerce Code;

(ix) a Class A misdemeanor under Section 306.051, Business & Commerce Code; ~~or~~

(x) any offense under Section 42.10, Penal Code;

(xi) ~~[(x)]~~ any offense under Section 46.06(a)(1) or 46.14, Penal Code;

(xii) ~~[(x)]~~ any offense under Chapter 71, Penal Code; or

(xiii) any offense under Section 20.05, Penal Code;

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

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

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

SECTION 2. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an

SECTION 6. The changes in law made by this Act in amending Sections 20.05 and 71.02, Penal Code, apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that

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offense was committed before the effective date of this Act if any element of the offense occurred before that date.	purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.	
No equivalent provision.	SECTION 7. The change in law made by this Act in amending Subdivision (2), Article 59.01, Code of Criminal Procedure, applies only to the forfeiture of property in relation to an offense committed on or after the effective date of this Act. Forfeiture of property in relation to an offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.	
No equivalent provision.	SECTION 8. To the extent of any conflict, this Act prevails over another Act of the 82nd Legislature, Regular Session, 2011, relating to nonsubstantive additions to and corrections in enacted codes.	
SECTION 3. This Act takes effect September 1, 2011.	SECTION 9. Same as House version.	