

By: Huffman

S.B. No. 171

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the addition of an offense for the continuous smuggling
3 of persons.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 20.05, Texas Penal Code, is amended to
6 read as follows:

7 Sec. 20.05. SMUGGLING OF PERSONS.

8 (a) A person commits an offense if the person: ~~uses a motor~~
9 ~~vehicle, aircraft, or watercraft to transport an individual with~~
10 ~~the intent to:~~

11 ~~(1) conceal the individual from a peace officer or~~
12 ~~special investigator; or~~

13 ~~(2) flee from a person the actor knows is a peace~~
14 ~~officer or special investigator attempting to lawfully arrest or~~
15 ~~detain the actor;~~

16 (1) knowing or in reckless disregard of the fact that a
17 person has come to, entered, or remains in the United States in
18 violation of Title 8 of the U.S. Code, transports, or moves or
19 attempts to transport or move such person within the United States
20 by means of transportation or otherwise, in furtherance of such
21 violation of law;

22 (2) knowing or in reckless disregard of the fact that
23 the person has come to, entered, or remains in the United States in
24 violation of Title 8 of the U.S. Code, conceals, harbors, or shields

1 from detection, such person in any place, including any building or
2 any means of transportation or movement; or,

3 (3) by encouraging or inducing a person to come to,
4 enter, or reside in the United States, knowing or in reckless
5 disregard of the fact that such coming to, entry, or residence is or
6 will be in violation of Title 8 of the U.S. Code.

7 (b) Except as provided by Subsections (c), (d), and (e), an
8 offense under this section is a state jail felony.

9 (c) An offense under this section is a felony of the third
10 degree if the actor commits the offense:

11 (1) for pecuniary benefit, ~~or~~

12 (2)

13 (d) An offense under this section is a felony of the second
14 degree if the actor commits the offense in a manner that creates a
15 substantial likelihood that the ~~transported~~ individual smuggled
16 will suffer serious bodily injury or death, or if the individual
17 being smuggled was a child younger than 18 years of age.

18 (e) An offense under this section is a felony of the first
19 degree if the individual smuggled is a victim of sexual assault as
20 defined under Penal Code Sec. 22.011 or aggravated sexual assault
21 as defined under Penal Code Sec. 22.021, or if the individual
22 smuggled suffers serious bodily injury or death. ~~It is an~~
23 ~~affirmative defense to prosecution under this section that the~~
24 ~~actor is related to the transported individual within the second~~
25 ~~degree of consanguinity or, at the time of the offense, within the~~
26 ~~second degree of affinity.~~

27 (f) If conduct constituting an offense under this section

1 also constitutes an offense under another section of this code, the
2 actor may be prosecuted under either section or under both
3 sections.

4 (g) Texas Penal Code Chapter 15 shall apply to any offenses
5 including criminal attempt, criminal conspiracy, criminal
6 solicitation, and criminal solicitation of a minor committed
7 preparatory to the offense of smuggling of persons as defined in
8 this section.

9 (h) Texas Penal Code Sec. 7.02 shall act to govern the
10 criminal responsibility of a person for an offense committed under
11 this chapter by the conduct of another.

12 SECTION 2. Section 20.06, Texas Penal Code, is amended to
13 read as follows:

14 Sec. 20.06. CONTINUOUS SMUGGLING OF PERSONS. (a) A person
15 commits an offense if the person engages two or more times in
16 conduct that constitutes an offense under Section 20.05.

17 (b) If the victim of an offense under Subsection (a) is the
18 same victim as a victim of an offense under Section 20.05, a
19 defendant may not be convicted of the offense under Section 20A.02
20 in the same criminal action as the offense under Subsection (a),
21 unless the offense under Section 20.05:

22 (1) is charged in the alternative;

23 (2) occurred outside the period in which the offense
24 alleged under Subsection (a) was committed; or

25 (3) is considered by the trier of fact to be a lesser
26 included offense of the offense alleged under Subsection (a).

27 (c) A defendant may not be charged with more than one count

1 under Subsection (a) if all of the conduct that constitutes an
2 offense under Section 20.05 is alleged to have been committed
3 against the same victim.

4 (d) An offense under this section is a felony of the third
5 degree, except as provided under Subsections (e) and (f).

6 (e) If any of the conduct engaged in that constitutes an
7 offense under Section 20.05 was conducted in a manner that creates a
8 substantial likelihood that the transported individual smuggled
9 will suffer serious bodily injury or death, or if the individual
10 being smuggled was a child younger than 18 years of age, the offense
11 shall be a felony of the first degree.

12 (f) An offense under this section shall be a felony of the
13 first degree, punishable by imprisonment in the Texas Department of
14 Criminal Justice for life or for any term of not more than 99 years
15 or less than 25 years, if for any of the conduct engaged in that
16 constitutes an offense under Section 20.05 the individual smuggled
17 is a victim of sexual assault as defined under Penal Code Sec.
18 22.011 or aggravated sexual assault as defined under Penal Code
19 Sec. 22.021, or if the individual smuggled suffers serious bodily
20 injury or death.

21 (g) Texas Penal Code Chapter 15 shall apply to any offenses
22 including criminal attempt, criminal conspiracy, criminal
23 solicitation, and criminal solicitation of a minor committed
24 preparatory to the offense of continuous smuggling of persons as
25 defined in this section.

26 (h) Texas Penal Code Sec. 7.02 shall act to govern the
27 criminal responsibility of a person for an offense committed under

1 this chapter by the conduct of another.

2 SECTION 3. The change in law made by this Act applies only
3 to an offense committed on or after the effective date of this Act.
4 An offense committed before the effective date of this Act is
5 governed by the law in effect on the date the offense was committed,
6 and the former law is continued in effect for that purpose. For
7 purposes of this section an offense was committed before the
8 effective date of this Act if any element of the offense occurred
9 before that date.

10 SECTION 4. This Act takes effect September 1, 2015.