

## **BILL ANALYSIS**

Senate Research Center

H.B. 2  
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Border Security  
6/2/2023  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, the punishments for offenses such as smuggling of persons, operating a stash house, or evading an arrest or detention are too low. As such, offenders are likely to, and have continued to, reengage in this same criminal conduct.

H.B. 2 seeks to deter such criminal activities and their harmful effects on vulnerable populations and Texas citizens by increasing criminal penalties and establishing 10-year mandatory minimum sentences for certain criminal conduct involving the smuggling of persons, the operation of a stash house, or evading an arrest or detention.

H.B. 2 amends current law relating to the punishment for certain criminal conduct involving the smuggling of persons or the operation of a stash house and increases criminal penalties.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 3.03, Penal Code, as effective September 1, 2023, contingent upon passage of H.B. No. 165, Acts of the 88th Legislature, Regular Session, 2023, by amending Subsection (a) and adding Subsections (d) and (e), as follows:

(a) Creates an exception under Section 3.03 (Sentences for Offenses Arising Out of the Same Criminal Episode), rather than under certain subsections of that section.

(d)(1) Provides that this subsection applies only to a single criminal action in which the accused is found guilty of:

(A) an offense under Section 20.05(a)(2) (relating to providing that a person commits an offense if the person knowingly encourages or induces a person to enter or remain in this country in violation of federal law by concealing, harboring, or shielding that person from detection) or an offense under Section 20.06 (Continuous Smuggling of Persons) involving conduct constituting an offense under Section 20.05(a)(2); and

(B) an offense punishable under Section 22.01(b-4), 28.10, 30.02(c-2), 30.04(d)(3)(B), 30.05(d)(4), or 38.04(b-1) that arises out of the same criminal episode as the offense described by Paragraph (A).

(2) Authorizes the sentence for an offense described by Subdivision (1)(A) to run consecutively with each sentence for an offense described by Subdivision (1)(B).

(3) Requires that the sentences for the offenses described by Subdivision (1)(A), if the accused is found guilty of more than one of those offenses, run concurrently with each other.

(e) Authorizes the sentences, except as otherwise provided by this subsection, if in a single criminal action the accused is found guilty of more than one offense arising out of the same criminal episode, to run consecutively if each sentence is for a conviction of an offense for which a plea agreement was reached in a case in which the accused was charged with an offense described by Subsection (d)(1)(A) and an offense described by Subsection (d)(1)(B). Requires that the sentences for the offenses described by Subsection (d)(1)(A), if the accused is found guilty of more than one of those offenses, run concurrently with each other.

SECTION 2. Amends Section 3.03, Penal Code, if H.B. No. 165, Acts of the 88th Legislature, Regular Session, 2023, does not become law, by amending Subsection (a) and adding Subsections (c) and (d), as follows:

(a) Creates an exception under Section 3.03, rather than under Subsection (b) (relating to authorizing the sentences, if the accused is found guilty of more than one offense arising out of the same criminal episode, to run concurrently or consecutively if certain criteria are met). Makes a nonsubstantive change.

(c)(1) Provides that this subsection applies only to a single criminal action in which the accused is found guilty of:

(A) an offense under Section 20.05(a)(2) or an offense under Section 20.06 involving conduct constituting an offense under Section 20.05(a)(2); and

(B) an offense punishable under Section 22.01(b-4), 28.10, 30.02(c-2), 30.04(d)(3)(B), 30.05(d)(4), or 38.04(b-1) that arises out of the same criminal episode as the offense described by Paragraph (A).

(2) Authorizes the sentence for an offense described by Subdivision (1)(A) to run consecutively with each sentence for an offense described by Subdivision (1)(B).

(3) Requires that the sentences for the offenses described by Subdivision (1)(A), if the accused is found guilty of more than one of those offenses, run concurrently with each other.

(d) Authorizes the sentences, except as otherwise provided by this subsection, if in a single criminal action the accused is found guilty of more than one offense arising out of the same criminal episode, to run consecutively if each sentence is for a conviction of an offense for which a plea agreement was reached in a case in which the accused was charged with an offense described by Subsection (c)(1)(A) and an offense described by Subsection (c)(1)(B). Requires that the sentences for the offenses described by Subsection (c)(1)(A), if the accused is found guilty of more than one of those offenses, run concurrently with each other.

SECTION 3. Amends Section 12.50, Penal Code, by amending Subsections (a), (b), and (c) and adding Subsection (d), as follows:

(a) Provides that this subsection is subject to Subsections (c) and (d). Makes a nonsubstantive change.

(b) Provides that the increase in punishment authorized by Section 12.50 (Penalty if Offense Committed in Disaster Area or Evacuated Area) applies only to an offense under:

(1) Section 20.05 (Smuggling of Persons);

(2) Section 20.06;

(3) Section 20.07 (Operation of Stash House); and

(4)-(11) makes nonsubstantive changes to these subdivisions.

(c) Provides that the minimum term of confinement for an offense listed under Subsection (b), rather than under certain subdivisions, if the offense is punishable as a Class A misdemeanor, is increased to 180 days. Prohibits the punishment for an offense listed under Subsection (b), rather than under certain subdivisions, except as provided by Subsection (d), if the offense is punishable as a felony of the first degree, from being increased under this section. Makes a nonsubstantive change.

(d) Provides that the minimum term of imprisonment for an offense listed under Subsections (b)(1), (2), or (3) for which punishment is increased under this section, except as otherwise provided by this subsection, is 10 years. Provides that the minimum term of imprisonment, if an offense listed under Subsections (b)(1) or (2) is punishable as a felony of the first degree, is increased to 15 years unless another provision of law applicable to the offense provides for a minimum term of imprisonment of 15 years or more.

SECTION 4. Amends Section 20.05, Penal Code, by amending Subsection (b) and adding Subsections (b-1) and (b-2), as follows:

(b) Provides that an offense under this section, subject to Subsections (b-1) and (b-2), is a felony of the third degree with a term of imprisonment of 10 years, except that the offense is:

(1) a felony of the second degree with a minimum term of imprisonment of 10 years if certain criteria are met; or

(2) a felony of the first degree with a minimum term of imprisonment of 10 years if certain criteria are met.

(b-1) Provides that the minimum term of imprisonment, if at the punishment stage of the trial or at the time of entering a plea agreement for an offense under this section punishable as a felony of the third degree, the attorney representing the state in the prosecution of the offense certifies to the court in writing that the actor has provided significant cooperation to the state or law enforcement, and describes the manner of cooperation, is five years. Provides that the certification is confidential and is required to be sealed by the court, except that the certification is authorized to be accessed by the office of the attorney representing the state, the attorney representing the defendant, and the court. Defines "significant cooperation."

(b-2) Authorizes the actor, at the punishment stage of a trial of an offense under this section, other than an offense punishable under Subsection (b)(1)(A) (relating to providing that an offense under this section is a felony of the second degree with a minimum term of imprisonment of 10 years if the actor commits the offense in a manner that creates a substantial likelihood that the smuggled individual will suffer serious bodily injury or death) or (b)(2), to raise the issue as to whether the actor is related to the smuggled individual in the third or fourth degree of consanguinity or, at the time of the offense, in the third or fourth degree of affinity. Provides that the offense, if the actor proves the issue in the affirmative by a preponderance of the evidence, is a felony of the third degree with a minimum term of imprisonment of five years.

SECTION 5. Amends Sections 20.06(e) and (f), Penal Code, as follows:

(e) Provides that an offense under this section, except as provided by certain subsections, is a felony of the second degree with a minimum term of imprisonment of 10 years.

(f) Provides that an offense under this section is a felony of the first degree with a minimum term of imprisonment of 10 years if certain criteria are met.

SECTION 6. Amends Section 20.07(b), Penal Code, as follows:

(b) Provides that an offense under this section is a felony of the third degree with a minimum term of imprisonment of five years, except that the offense is a felony of the second degree with a minimum term of imprisonment of five years if:

(1) the offense is committed under Subsection (a)(1) (relating to providing that a person commits an offense if the person knowingly uses or permits another to use certain property to commit an offense or facilitate the commission of an offense under certain statutes) and the property that is the subject of the offense is used to commit or facilitate the commission of an offense under Section 20.06, 20A.03 (Continuous Trafficking of Persons), or 43.05 (Compelling Prostitution); or

(2) it is shown on the trial of the offense that as a direct result of the commission of the offense:

(A) an individual became a victim of sexual assault, as defined by Section 22.011 (Sexual Assault), or aggravated sexual assault, as defined by Section 22.021 (Aggravated Sexual Assault); or

(B) an individual suffered serious bodily injury or death.

Deletes existing text providing that an offense under this section is a Class A misdemeanor.

SECTION 7. Amends Section 22.01, Penal Code, by adding Subsection (b-4), as follows:

(b-4) Provides that an offense under Subsection (a)(1) (relating to providing that a person commits an offense if the person intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse), notwithstanding Subsection (b) (relating to providing that an offense under Subsection (a)(1) is a Class A misdemeanor, except that the offense is a felony of the third degree if the offense is committed against certain persons), is a felony of the third degree if it is shown on the trial of the offense that the actor committed the offense in the course of committing an offense under Section 20.05(a)(2).

SECTION 8. Amends Chapter 28, Penal Code, by adding Section 28.10, as follows:

Sec. 28.10. ENHANCED PENALTY FOR CERTAIN MISDEMEANORS OR STATE JAIL FELONIES. Provides that the punishment for an offense under Chapter 28 (Arson, Criminal Mischief, and Other Property Damage or Destruction) that is punishable as a misdemeanor or a state jail felony is increased to the punishment for a felony of the third degree if it is shown on the trial of the offense that the actor committed the offense in the course of committing an offense under Section 20.05(a)(2).

SECTION 9. Amends Section 30.02, Penal Code, by amending Subsection (c) and adding Subsection (c-2), as follows:

(c) Creates an exception under Subsection (c-2).

(c-2) Provides that an offense under Section 30.02 (Burglary) is a felony of the third degree if:

(1) the premises are a building other than a habitation; and

(2) it is shown on the trial of the offense that the actor committed the offense in the course of committing an offense under Section 20.05(a)(2).

SECTION 10. Amends Section 30.04(d), Penal Code, as follows:

(d) Provides that an offense under Section 30.04 (Burglary of Vehicles) is a Class A misdemeanor, except that:

(1)-(2) makes no changes to these subdivisions; or

(3) the offense is a felony of the third degree if:

(A) makes nonsubstantive changes to these paragraph; or

(B) it is shown on the trial of the offense that the actor committed the offense in the course of committing an offense under Section 20.05(a)(2).

SECTION 11. Amends Section 30.05(d), Penal Code, as follows:

(d) Provides that an offense under Section 30.05 (Criminal Trespass), subject to Subsection (d-3) (relating to providing that an offense under this section is a Class C misdemeanor punishable by a fine not to exceed \$200 if certain criteria are met), is:

(1)-(3) create exceptions under Subdivision (4) and make nonsubstantive changes; and

(4) a felony of the third degree if it is shown on the trial of the offense that the defendant committed the offense in the course of committing an offense under Section 20.05(a)(2).

SECTION 12. Amends Section 38.04, Penal Code, by adding Subsection (b-1), as follows:

(b-1) Provides that an offense under Section 38.04 (Evading Arrest or Detention), notwithstanding Subsection (b), is a felony of the third degree if it is shown on the trial of the offense that the actor committed the offense in the course of committing an offense under Section 20.05(a)(2).

SECTION 13. Makes application of this Act prospective.

SECTION 14. Effective date: October 1, 2023.