

BILL ANALYSIS

H.B. 2
By: Guillen
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, the punishment for offenses such as smuggling of persons, operating a stash house, or evading an arrest or detention are too low to deter these crimes. For example, according to media reports by the Courthouse News Service, the average federal sentence is just 15 months for persons convicted of human smuggling. As such, offenders are likely and have continued to reengage in this same criminal conduct. The governor has called for the imposition of mandatory minimum sentences for persons smuggling persons into the state. 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 minimums for certain criminal conduct involving the smuggling of persons, the operation of a stash house, or evading an arrest or detention.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 2 amends the Penal Code to set out and revise provisions relating to the prosecution and punishment of certain criminal conduct involving the smuggling of persons, the operation of a stash house, or evading an arrest or detention.

H.B. 2 establishes a 10-year mandatory minimum term of imprisonment for the following offenses:

- the offense of smuggling of persons, irrespective of whether punishable as a first, second, or third degree felony; and
- the offense of continuous smuggling of persons, irrespective of whether punishable as a first or second degree felony.

However, the bill establishes that, if at the punishment stage of the trial or at the time of entering a plea agreement for an offense of smuggling of persons punishable as a third degree felony, the state's attorney 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, the minimum term of imprisonment is instead five years. The certification is confidential and must be sealed by the court, except that the certification may be accessed by the state's attorney's office, the attorney representing the defendant, and the court. For this purpose, "significant cooperation" includes:

- testifying in a trial on behalf of the state against other parties to the offense;
- providing relevant information regarding the case and other parties to the offense;

- providing information that furthers the investigation of the charged offense and any other parties involved; or
- providing information that aids law enforcement.

H.B. 2 increases the penalty for the offense of operating a stash house from a Class A misdemeanor to a third degree felony with a five-year mandatory minimum term of imprisonment. The bill further enhances the penalty for that offense to a second degree felony with a five-year mandatory minimum term of imprisonment if either of the following conditions are satisfied:

- the offense is committed by a person who uses or permits another to use any real estate, building, room, tent, vehicle, boat, or other property owned by the person or under the person's control to commit an offense or to facilitate the commission of an offense of continuous smuggling of persons, continuous trafficking of persons, or compelling prostitution; or
- it is shown on the trial of the offense that as a direct result of the commission of the offense an individual became a victim of sexual assault or aggravated sexual assault or suffered serious bodily injury or death.

H.B. 2 includes the offenses of smuggling of persons, continuous smuggling of persons, and operation of a stash house among the offenses for which the punishment is increased to the punishment prescribed for the next higher category of offense if it is shown on the trial of the offense that the offense was committed in an area that was, at the time of the offense, subject to a disaster declaration or an emergency evacuation order. The bill establishes a 10-year mandatory minimum term of imprisonment for the operation of a stash house if the penalty is so increased. The bill establishes a 15-year mandatory minimum term of imprisonment for the first degree felony offenses of smuggling of persons and continuous smuggling of persons if the penalty is so increased, unless another provision of law applicable to the offense provides for a minimum term of imprisonment of 15 years or more.

H.B. 2 enhances the penalty for the following offenses to a third degree felony if it is shown on the trial of the applicable offense that the actor committed the offense in the course of committing an offense of smuggling of persons by encouraging or inducing a person to enter or remain in the United States in violation of federal law by concealing, harboring, or shielding that person from detection:

- assault in which the actor intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;
- burglary committed on the premises of a building other than a habitation;
- burglary of vehicles;
- criminal trespass; and
- evading arrest or detention.

H.B. 2 enhances the punishment for an offense of arson, criminal mischief, reckless damage or destruction of property, interference with railroad property, or graffiti punishable as a misdemeanor or a state jail felony to a third degree felony if it is shown on the trial of the offense that the actor committed the offense in the course of committing an offense of smuggling of persons involving encouraging or inducing a person to enter or remain in the United States in violation of federal law by concealing, harboring, or shielding that person from detection.

H.B. 2 establishes that, if a person is found guilty of more than one offense of smuggling of persons involving the encouraging or inducing of a person to enter or remain in the United States in violation of federal law by concealing, harboring, or shielding that person from detection or the continuous smuggling of persons involving such conduct, the sentences for those offenses must run concurrently with each other. The bill further establishes that the sentence for an offense of smuggling of persons or the continuous smuggling of persons involving that conduct may run consecutively with each sentence for any of the following additional offenses that arises

from that same, single criminal episode and for which the penalty is enhanced as provided by the bill:

- arson;
- assault in which the actor intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;
- burglary committed on the premises of a building other than a habitation;
- burglary of vehicles;
- criminal mischief;
- criminal trespass;
- evading arrest or detention;
- graffiti;
- interference with railroad property; or
- reckless damage or destruction of property.

If in a single criminal action a person is found guilty of more than one offense arising out of the same criminal episode, the sentences may 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 person was charged with an offense of smuggling of persons involving the encouraging or inducing of a person to enter or remain in the United States in violation of federal law by concealing, harboring, or shielding that person from detection or the continuous smuggling of persons involving such conduct and one of the above listed offenses. If the person is found guilty of more than one such smuggling of persons or continuous smuggling of persons offense, the sentences for those offenses must run concurrently with each other.

H.B. 2 applies only to an offense committed on or after the bill's effective date. The bill provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date.

EFFECTIVE DATE

October 1, 2023.