

BILL ANALYSIS

Senate Research Center
88S10078 JRR-D

S.B. 5
By: Flores
Border Security
6/2/2023
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the punishment 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.

S.B. 5 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.

As proposed, S.B. 5 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. Provides that if H.B. 165, Acts of the 88th Legislature, Regular Session, 2023, becomes law, Section 3.03, Penal Code, as effective September 1, 2023, is amended by amending Subsection (a) and adding Subsections (d) and (e), as follows:

(a) Requires that the sentences for more than one offense arising out of the same criminal episode, except as otherwise provided by Section 3.03 (Sentences for Offenses Arising Out of Same Criminal Episode), rather than Subsections (b) (relating to authorizing sentences to run concurrently or consecutively if each sentence is for a conviction of certain offenses) and (c), run concurrently.

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

(e) Provides that if in a single criminal action the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences are authorized 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), except as otherwise provided by this subsection. Requires that if the accused is found guilty of more than one offense described by Subsection (d)(1)(A), the sentences for those offenses run concurrently with each other.

SECTION 2. Provides that if H.B. 165, Acts of the 88th Legislature, Regular Session, 2023, does not become law, Section 3.03, Penal Code, is amended by amending Subsection (a) and adding Subsections (c) and (d), as follows:

(a) Requires that when the accused is found guilty of more than one offense arising out of the same criminal episode prosecuted in a single criminal action, a sentence for each offense for which the accused, rather than he, has been found guilty be pronounced. Requires the sentences, except as otherwise provided by this section, to run concurrently.

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

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

(d) Provides that if in a single criminal action the accused is found guilty of more than one offense arising out of the same criminal episode, the sentences are authorized 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), except as otherwise provided by this subsection. Requires that if the accused is found guilty of more than one offense described by Subsection (c)(1)(A), the sentences for 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 the punishment for an offense described by Subsection (b), subject to Subsections (c) and (d), 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 declaration of a state of disaster or an emergency evacuation order.

(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) Creates an exception under Subsection (d). Makes conforming and nonsubstantive changes.

(d) Provides that the minimum term of imprisonment for an offense listed under Subsection (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 Subsection (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 Subsection (b-1), as follows:

(b) Provides that an offense under this section, subject to Subsection (b-1), 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."

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 10 years.

(f) Provides that an offense under this section is a felony of the first degree with a minimum term 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 rents or leases any property to another, intending that the property be used for certain purposes) 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 a person intentionally, knowingly, or recklessly causing bodily injury to another, including a person's spouse) is a felony of the third degree, notwithstanding Subsection (b) (relating to increasing the penalty from a class A misdemeanor to a felony of the third degree for certain assaultive offenses) 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; and
- (3) the offense is a felony of the third degree if:
 - (A) makes nonsubstantive changes to this 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, subject to Subsection (d-3) (relating to providing that an offense under this section is a Class C misdemeanor in certain circumstances), an offense under Section 30.05 (Criminal Trespass) is:

- (1)-(3) creates exceptions under Subdivision (4) and makes 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 notwithstanding Subsection (b) (relating to providing that an offense under this section is a Class A misdemeanor, except in certain circumstances), an offense under Section 38.04 (Evading Arrest or Detention) 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.