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H.B. No. 2

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the punishment for certain criminal conduct involving
3 the smuggling of persons or the operation of a stash house;
4 increasing criminal penalties.

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

6 SECTION 1. If H.B. No. 165, Acts of the 88th Legislature,
7 Regular Session, 2023, becomes law, Section 3.03, Penal Code, as
8 effective September 1, 2023, is amended by amending Subsection (a)
9 and adding Subsections (d) and (e) to read as follows:

10 (a) When the accused is found guilty of more than one
11 offense arising out of the same criminal episode prosecuted in a
12 single criminal action, a sentence for each offense for which the
13 accused has been found guilty shall be pronounced. Except as
14 otherwise provided by this section [~~Subsections (b) and (c)~~], the
15 sentences shall run concurrently.

16 (d)(1) This subsection applies only to a single criminal
17 action in which the accused is found guilty of:

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

21 (B) an offense punishable under Section
22 22.01(b-4), 28.10, 30.02(c-2), 30.04(d)(3)(B), 30.05(d)(4), or
23 38.04(b-1) that arises out of the same criminal episode as the
24 offense described by Paragraph (A).

1 (2) The sentence for an offense described by
2 Subdivision (1)(A) may run consecutively with each sentence for an
3 offense described by Subdivision (1)(B).

4 (3) If the accused is found guilty of more than one
5 offense described by Subdivision (1)(A), the sentences for those
6 offenses must run concurrently with each other.

7 (e) Except as otherwise provided by this subsection, if in a
8 single criminal action the accused is found guilty of more than one
9 offense arising out of the same criminal episode, the sentences may
10 run consecutively if each sentence is for a conviction of an offense
11 for which a plea agreement was reached in a case in which the
12 accused was charged with an offense described by Subsection
13 (d)(1)(A) and an offense described by Subsection (d)(1)(B). If the
14 accused is found guilty of more than one offense described by
15 Subsection (d)(1)(A), the sentences for those offenses must run
16 concurrently with each other.

17 SECTION 2. If H.B. No. 165, Acts of the 88th Legislature,
18 Regular Session, 2023, does not become law, Section 3.03, Penal
19 Code, is amended by amending Subsection (a) and adding Subsections
20 (c) and (d) to read as follows:

21 (a) When the accused is found guilty of more than one
22 offense arising out of the same criminal episode prosecuted in a
23 single criminal action, a sentence for each offense for which the
24 accused [~~he~~] has been found guilty shall be pronounced. Except as
25 otherwise provided by this section [~~Subsection (b)~~], the sentences
26 shall run concurrently.

27 (c)(1) This subsection applies only to a single criminal

1 action in which the accused is found guilty of:

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

5 (B) an offense punishable under Section
6 22.01(b-4), 28.10, 30.02(c-2), 30.04(d)(3)(B), 30.05(d)(4), or
7 38.04(b-1) that arises out of the same criminal episode as the
8 offense described by Paragraph (A).

9 (2) The sentence for an offense described by
10 Subdivision (1)(A) may run consecutively with each sentence for an
11 offense described by Subdivision (1)(B).

12 (3) If the accused is found guilty of more than one
13 offense described by Subdivision (1)(A), the sentences for those
14 offenses must run concurrently with each other.

15 (d) Except as otherwise provided by this subsection, if in a
16 single criminal action the accused is found guilty of more than one
17 offense arising out of the same criminal episode, the sentences may
18 run consecutively if each sentence is for a conviction of an offense
19 for which a plea agreement was reached in a case in which the
20 accused was charged with an offense described by Subsection
21 (c)(1)(A) and an offense described by Subsection (c)(1)(B). If the
22 accused is found guilty of more than one offense described by
23 Subsection (c)(1)(A), the sentences for those offenses must run
24 concurrently with each other.

25 SECTION 3. Section 12.50, Penal Code, is amended by
26 amending Subsections (a), (b), and (c) and adding Subsection (d) to
27 read as follows:

1 (a) Subject to Subsections [~~Subsection~~] (c) and (d), the
2 punishment for an offense described by Subsection (b) is increased
3 to the punishment prescribed for the next higher category of
4 offense if it is shown on the trial of the offense that the offense
5 was committed in an area that was, at the time of the offense:

6 (1) subject to a declaration of a state of disaster
7 made by:

8 (A) the president of the United States under the
9 Robert T. Stafford Disaster Relief and Emergency Assistance Act (42
10 U.S.C. Section 5121 et seq.);

11 (B) the governor under Section [418.014](#),
12 Government Code; or

13 (C) the presiding officer of the governing body
14 of a political subdivision under Section [418.108](#), Government Code;
15 or

16 (2) subject to an emergency evacuation order.

17 (b) The increase in punishment authorized by this section
18 applies only to an offense under:

19 (1) Section [20.05](#);

20 (2) Section [20.06](#);

21 (3) Section [20.07](#);

22 (4) Section [22.01](#);

23 (5) [~~(2)~~] Section [28.02](#);

24 (6) [~~(3)~~] Section [29.02](#);

25 (7) [~~(4)~~] Section [30.02](#);

26 (8) [~~(5)~~] Section [30.03](#);

27 (9) [~~(6)~~] Section [30.04](#);

1 (10) [~~(7)~~] Section 30.05; and

2 (11) [~~(8)~~] Section 31.03.

3 (c) If an offense listed under Subsection (b) [~~(b)(1), (5),~~
4 ~~(6), (7), or (8)~~] is punishable as a Class A misdemeanor, the
5 minimum term of confinement for the offense is increased to 180
6 days. Except as provided by Subsection (d), if [~~If~~] an offense
7 listed under Subsection (b) [~~(b)(2), (4), or (8)~~] is punishable as a
8 felony of the first degree, the punishment for that offense may not
9 be increased under this section.

10 (d) Except as otherwise provided by this subsection, the
11 minimum term of imprisonment for an offense listed under Subsection
12 (b)(1), (2), or (3) for which punishment is increased under this
13 section is 10 years. If an offense listed under Subsection (b)(1)
14 or (2) is punishable as a felony of the first degree, the minimum
15 term of imprisonment is increased to 15 years unless another
16 provision of law applicable to the offense provides for a minimum
17 term of imprisonment of 15 years or more.

18 SECTION 4. Section 20.05, Penal Code, is amended by
19 amending Subsection (b) and adding Subsections (b-1) and (b-2) to
20 read as follows:

21 (b) Subject to Subsections (b-1) and (b-2), an [~~An~~] offense
22 under this section is a felony of the third degree with a term of
23 imprisonment of 10 years, except that the offense is:

24 (1) a felony of the second degree with a minimum term
25 of imprisonment of 10 years if:

26 (A) the actor commits the offense in a manner
27 that creates a substantial likelihood that the smuggled individual

1 will suffer serious bodily injury or death;

2 (B) the smuggled individual is a child younger
3 than 18 years of age at the time of the offense;

4 (C) the offense was committed with the intent to
5 obtain a pecuniary benefit;

6 (D) during the commission of the offense the
7 actor, another party to the offense, or an individual assisted,
8 guided, or directed by the actor knowingly possessed a firearm; or

9 (E) the actor commits the offense under
10 Subsection (a)(1)(B); or

11 (2) a felony of the first degree with a minimum term of
12 imprisonment of 10 years if:

13 (A) it is shown on the trial of the offense that,
14 as a direct result of the commission of the offense, the smuggled
15 individual became a victim of sexual assault, as defined by Section
16 22.011, or aggravated sexual assault, as defined by Section 22.021;
17 or

18 (B) the smuggled individual suffered serious
19 bodily injury or death.

20 (b-1) If at the punishment stage of the trial or at the time
21 of entering a plea agreement for an offense under this section
22 punishable as a felony of the third degree, the attorney
23 representing the state in the prosecution of the offense certifies
24 to the court in writing that the actor has provided significant
25 cooperation to the state or law enforcement, and describes the
26 manner of cooperation, the minimum term of imprisonment is five
27 years. The certification is confidential and shall be sealed by the

1 court, except that the certification may be accessed by the office
2 of the attorney representing the state, the attorney representing
3 the defendant, and the court. For purposes of this subsection,
4 "significant cooperation" includes:

5 (1) testifying in a trial on behalf of the state
6 against other parties to the offense;

7 (2) providing relevant information regarding the case
8 and other parties to the offense;

9 (3) providing information that furthers the
10 investigation of the charged offense and any other parties
11 involved; or

12 (4) providing information that aids law enforcement.

13 (b-2) At the punishment stage of a trial of an offense under
14 this section, other than an offense punishable under Subsection
15 (b)(1)(A) or (b)(2), the actor may raise the issue as to whether the
16 actor is related to the smuggled individual in the third or fourth
17 degree of consanguinity or, at the time of the offense, in the third
18 or fourth degree of affinity. If the actor proves the issue in the
19 affirmative by a preponderance of the evidence, the offense is a
20 felony of the third degree with a minimum term of imprisonment of
21 five years.

22 SECTION 5. Sections 20.06(e) and (f), Penal Code, are
23 amended to read as follows:

24 (e) Except as provided by Subsections (f) and (g), an
25 offense under this section is a felony of the second degree with a
26 minimum term of imprisonment of 10 years.

27 (f) An offense under this section is a felony of the first

1 degree with a minimum term of imprisonment of 10 years if:

2 (1) the conduct constituting an offense under Section
3 20.05 is conducted in a manner that creates a substantial
4 likelihood that the smuggled individual will suffer serious bodily
5 injury or death; or

6 (2) the smuggled individual is a child younger than 18
7 years of age at the time of the offense.

8 SECTION 6. Section 20.07(b), Penal Code, is amended to read
9 as follows:

10 (b) An offense under this section is a felony of the third
11 degree with a minimum term of imprisonment of five years, except
12 that the offense is a felony of the second degree with a minimum
13 term of imprisonment of five years if:

14 (1) the offense is committed under Subsection (a)(1)
15 and the property that is the subject of the offense is used to
16 commit or facilitate the commission of an offense under Section
17 20.06, 20A.03, or 43.05; or

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

20 (A) an individual became a victim of sexual
21 assault, as defined by Section 22.011, or aggravated sexual
22 assault, as defined by Section 22.021; or

23 (B) an individual suffered serious bodily injury
24 or death [~~Class A misdemeanor~~].

25 SECTION 7. Section 22.01, Penal Code, is amended by adding
26 Subsection (b-4) to read as follows:

27 (b-4) Notwithstanding Subsection (b), an offense under

1 Subsection (a)(1) is a felony of the third degree if it is shown on
2 the trial of the offense that the actor committed the offense in the
3 course of committing an offense under Section 20.05(a)(2).

4 SECTION 8. Chapter 28, Penal Code, is amended by adding
5 Section 28.10 to read as follows:

6 Sec. 28.10. ENHANCED PENALTY FOR CERTAIN MISDEMEANORS OR
7 STATE JAIL FELONIES. The punishment for an offense under this
8 chapter that is punishable as a misdemeanor or a state jail felony
9 is increased to the punishment for a felony of the third degree if
10 it is shown on the trial of the offense that the actor committed the
11 offense in the course of committing an offense under Section
12 20.05(a)(2).

13 SECTION 9. Section 30.02, Penal Code, is amended by
14 amending Subsection (c) and adding Subsection (c-2) to read as
15 follows:

16 (c) Except as provided in Subsection (c-1), (c-2), or (d),
17 an offense under this section is a:

18 (1) state jail felony if committed in a building other
19 than a habitation; or

20 (2) felony of the second degree if committed in a
21 habitation.

22 (c-2) An offense under this section is a felony of the third
23 degree if:

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

26 (2) it is shown on the trial of the offense that the
27 actor committed the offense in the course of committing an offense

1 under Section 20.05(a)(2).

2 SECTION 10. Section 30.04(d), Penal Code, is amended to
3 read as follows:

4 (d) An offense under this section is a Class A misdemeanor,
5 except that:

6 (1) the offense is a Class A misdemeanor with a minimum
7 term of confinement of six months if it is shown on the trial of the
8 offense that the defendant has been previously convicted of an
9 offense under this section;

10 (2) the offense is a state jail felony if:

11 (A) it is shown on the trial of the offense that
12 the defendant has been previously convicted two or more times of an
13 offense under this section; or

14 (B) the vehicle or part of the vehicle broken
15 into or entered is a rail car; and

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

17 (A) the vehicle broken into or entered is owned
18 or operated by a wholesale distributor of prescription drugs~~[+]~~ and

19 [~~(B)~~] the actor breaks into or enters that
20 vehicle with the intent to commit theft of a controlled substance;

21 or

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

25 SECTION 11. Section 30.05(d), Penal Code, is amended to
26 read as follows:

27 (d) Subject to Subsection (d-3), an offense under this

1 section is:

2 (1) a Class B misdemeanor, except as provided by
3 Subdivisions (2), ~~[and]~~ (3), and (4);

4 (2) a Class C misdemeanor, except as provided by
5 Subdivisions ~~[Subdivision]~~ (3) and (4), if the offense is
6 committed:

7 (A) on agricultural land and within 100 feet of
8 the boundary of the land; or

9 (B) on residential land and within 100 feet of a
10 protected freshwater area; ~~[and]~~

11 (3) a Class A misdemeanor, except as provided by
12 Subdivision (4), if:

13 (A) the offense is committed:

14 (i) in a habitation or a shelter center;

15 (ii) on a Superfund site; or

16 (iii) on or in a critical infrastructure
17 facility;

18 (B) the offense is committed on or in property of
19 an institution of higher education and it is shown on the trial of
20 the offense that the person has previously been convicted of:

21 (i) an offense under this section relating
22 to entering or remaining on or in property of an institution of
23 higher education; or

24 (ii) an offense under Section 51.204(b)(1),
25 Education Code, relating to trespassing on the grounds of an
26 institution of higher education;

27 (C) the person carries a deadly weapon during the

1 commission of the offense; or

2 (D) the offense is committed on the property of
3 or within a general residential operation operating as a
4 residential treatment center; and

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

8 SECTION 12. Section 38.04, Penal Code, is amended by adding
9 Subsection (b-1) to read as follows:

10 (b-1) Notwithstanding Subsection (b), an offense under this
11 section is a felony of the third degree if it is shown on the trial
12 of the offense that the actor committed the offense in the course of
13 committing an offense under Section 20.05(a)(2).

14 SECTION 13. The changes in law made by this Act apply only
15 to an offense committed on or after the effective date of this Act.
16 An offense committed before the effective date of this Act is
17 governed by the law in effect on the date the offense was committed,
18 and the former law is continued in effect for that purpose. For
19 purposes of this section, an offense was committed before the
20 effective date of this Act if any element of the offense was
21 committed before that date.

22 SECTION 14. This Act takes effect October 1, 2023.