

1-1 By: Guillen, et al. (Senate Sponsor - Flores) H.B. No. 2
 1-2 (In the Senate - Received from the House June 2, 2023;
 1-3 June 2, 2023, read first time and referred to Committee on Border
 1-4 Security; June 6, 2023, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 3, Nays 1,
 1-6 1 present not voting; June 6, 2023, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8 Birdwell	X			
1-9 Flores	X			
1-10 Blanco		X		
1-11 Hinojosa				X
1-12 King	X			

1-14 COMMITTEE SUBSTITUTE FOR H.B. No. 2 By: Flores

1-15 A BILL TO BE ENTITLED
 1-16 AN ACT

1-17 relating to the punishment for certain criminal conduct involving
 1-18 the smuggling of persons or the operation of a stash house;
 1-19 increasing criminal penalties.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. If H.B. No. 165, Acts of the 88th Legislature,
 1-22 Regular Session, 2023, becomes law, Section 3.03, Penal Code, as
 1-23 effective September 1, 2023, is amended by amending Subsection (a)
 1-24 and adding Subsections (d) and (e) to read as follows:

1-25 (a) When the accused is found guilty of more than one
 1-26 offense arising out of the same criminal episode prosecuted in a
 1-27 single criminal action, a sentence for each offense for which the
 1-28 accused has been found guilty shall be pronounced. Except as
 1-29 otherwise provided by this section [~~Subsections (b) and (c)~~], the
 1-30 sentences shall run concurrently.

1-31 (d)(1) This subsection applies only to a single criminal
 1-32 action in which the accused is found guilty of:

1-33 (A) an offense under Section 20.05(a)(2) or an
 1-34 offense under Section 20.06 involving conduct constituting an
 1-35 offense under Section 20.05(a)(2); and

1-36 (B) an offense punishable under Section
 1-37 22.01(b-4), 28.10, 30.02(c-2), 30.04(d)(3)(B), 30.05(d)(4), or
 1-38 38.04(b-1) that arises out of the same criminal episode as the
 1-39 offense described by Paragraph (A).

1-40 (2) The sentence for an offense described by
 1-41 Subdivision (1)(A) may run consecutively with each sentence for an
 1-42 offense described by Subdivision (1)(B).

1-43 (3) If the accused is found guilty of more than one
 1-44 offense described by Subdivision (1)(A), the sentences for those
 1-45 offenses must run concurrently with each other.

1-46 (e) Except as otherwise provided by this subsection, if in a
 1-47 single criminal action the accused is found guilty of more than one
 1-48 offense arising out of the same criminal episode, the sentences may
 1-49 run consecutively if each sentence is for a conviction of an offense
 1-50 for which a plea agreement was reached in a case in which the
 1-51 accused was charged with an offense described by Subsection
 1-52 (d)(1)(A) and an offense described by Subsection (d)(1)(B). If the
 1-53 accused is found guilty of more than one offense described by
 1-54 Subsection (d)(1)(A), the sentences for those offenses must run
 1-55 concurrently with each other.

1-56 SECTION 2. If H.B. No. 165, Acts of the 88th Legislature,
 1-57 Regular Session, 2023, does not become law, Section 3.03, Penal
 1-58 Code, is amended by amending Subsection (a) and adding Subsections
 1-59 (c) and (d) to read as follows:

1-60 (a) When the accused is found guilty of more than one
 1-61 offense arising out of the same criminal episode prosecuted in a

2-1 single criminal action, a sentence for each offense for which the
 2-2 accused ~~[he]~~ has been found guilty shall be pronounced. Except as
 2-3 otherwise provided by this section ~~[Subsection (b)]~~, the sentences
 2-4 shall run concurrently.

2-5 (c)(1) This subsection applies only to a single criminal
 2-6 action in which the accused is found guilty of:

2-7 (A) an offense under Section 20.05(a)(2) or an
 2-8 offense under Section 20.06 involving conduct constituting an
 2-9 offense under Section 20.05(a)(2); and

2-10 (B) an offense punishable under Section
 2-11 22.01(b-4), 28.10, 30.02(c-2), 30.04(d)(3)(B), 30.05(d)(4), or
 2-12 38.04(b-1) that arises out of the same criminal episode as the
 2-13 offense described by Paragraph (A).

2-14 (2) The sentence for an offense described by
 2-15 Subdivision (1)(A) may run consecutively with each sentence for an
 2-16 offense described by Subdivision (1)(B).

2-17 (3) If the accused is found guilty of more than one
 2-18 offense described by Subdivision (1)(A), the sentences for those
 2-19 offenses must run concurrently with each other.

2-20 (d) Except as otherwise provided by this subsection, if in a
 2-21 single criminal action the accused is found guilty of more than one
 2-22 offense arising out of the same criminal episode, the sentences may
 2-23 run consecutively if each sentence is for a conviction of an offense
 2-24 for which a plea agreement was reached in a case in which the
 2-25 accused was charged with an offense described by Subsection
 2-26 (c)(1)(A) and an offense described by Subsection (c)(1)(B). If the
 2-27 accused is found guilty of more than one offense described by
 2-28 Subsection (c)(1)(A), the sentences for those offenses must run
 2-29 concurrently with each other.

2-30 SECTION 3. Section 12.50, Penal Code, is amended by
 2-31 amending Subsections (a), (b), and (c) and adding Subsection (d) to
 2-32 read as follows:

2-33 (a) Subject to Subsections ~~[Subsection]~~ (c) and (d), the
 2-34 punishment for an offense described by Subsection (b) is increased
 2-35 to the punishment prescribed for the next higher category of
 2-36 offense if it is shown on the trial of the offense that the offense
 2-37 was committed in an area that was, at the time of the offense:

2-38 (1) subject to a declaration of a state of disaster
 2-39 made by:

2-40 (A) the president of the United States under the
 2-41 Robert T. Stafford Disaster Relief and Emergency Assistance Act (42
 2-42 U.S.C. Section 5121 et seq.);

2-43 (B) the governor under Section 418.014,
 2-44 Government Code; or

2-45 (C) the presiding officer of the governing body
 2-46 of a political subdivision under Section 418.108, Government Code;
 2-47 or

2-48 (2) subject to an emergency evacuation order.

2-49 (b) The increase in punishment authorized by this section
 2-50 applies only to an offense under:

2-51 (1) Section 20.05;

2-52 (2) Section 20.06;

2-53 (3) Section 20.07;

2-54 (4) Section 22.01;

2-55 (5) ~~[(2)]~~ Section 28.02;

2-56 (6) ~~[(3)]~~ Section 29.02;

2-57 (7) ~~[(4)]~~ Section 30.02;

2-58 (8) ~~[(5)]~~ Section 30.03;

2-59 (9) ~~[(6)]~~ Section 30.04;

2-60 (10) ~~[(7)]~~ Section 30.05; and

2-61 (11) ~~[(8)]~~ Section 31.03.

2-62 (c) If an offense listed under Subsection (b) ~~[(b)(1), (5),~~
 2-63 ~~(6), (7), or (8)]~~ is punishable as a Class A misdemeanor, the
 2-64 minimum term of confinement for the offense is increased to 180
 2-65 days. Except as provided by Subsection (d), if ~~[if]~~ an offense
 2-66 listed under Subsection (b) ~~[(b)(2), (4), or (8)]~~ is punishable as a
 2-67 felony of the first degree, the punishment for that offense may not
 2-68 be increased under this section.

2-69 (d) Except as otherwise provided by this subsection, the

3-1 minimum term of imprisonment for an offense listed under Subsection
 3-2 (b)(1), (2), or (3) for which punishment is increased under this
 3-3 section is 10 years. If an offense listed under Subsection (b)(1)
 3-4 or (2) is punishable as a felony of the first degree, the minimum
 3-5 term of imprisonment is increased to 15 years unless another
 3-6 provision of law applicable to the offense provides for a minimum
 3-7 term of imprisonment of 15 years or more.

3-8 SECTION 4. Section 20.05, Penal Code, is amended by
 3-9 amending Subsection (b) and adding Subsection (b-1) to read as
 3-10 follows:

3-11 (b) Subject to Subsection (b-1), an [An] offense under this
 3-12 section is a felony of the third degree with a term of imprisonment
 3-13 of 10 years, except that the offense is:

3-14 (1) a felony of the second degree with a minimum term
 3-15 of imprisonment of 10 years if:

3-16 (A) the actor commits the offense in a manner
 3-17 that creates a substantial likelihood that the smuggled individual
 3-18 will suffer serious bodily injury or death;

3-19 (B) the smuggled individual is a child younger
 3-20 than 18 years of age at the time of the offense;

3-21 (C) the offense was committed with the intent to
 3-22 obtain a pecuniary benefit;

3-23 (D) during the commission of the offense the
 3-24 actor, another party to the offense, or an individual assisted,
 3-25 guided, or directed by the actor knowingly possessed a firearm; or

3-26 (E) the actor commits the offense under
 3-27 Subsection (a)(1)(B); or

3-28 (2) a felony of the first degree with a minimum term of
 3-29 imprisonment of 10 years if:

3-30 (A) it is shown on the trial of the offense that,
 3-31 as a direct result of the commission of the offense, the smuggled
 3-32 individual became a victim of sexual assault, as defined by Section
 3-33 22.011, or aggravated sexual assault, as defined by Section 22.021;
 3-34 or

3-35 (B) the smuggled individual suffered serious
 3-36 bodily injury or death.

3-37 (b-1) If at the punishment stage of the trial or at the time
 3-38 of entering a plea agreement for an offense under this section
 3-39 punishable as a felony of the third degree, the attorney
 3-40 representing the state in the prosecution of the offense certifies
 3-41 to the court in writing that the actor has provided significant
 3-42 cooperation to the state or law enforcement, and describes the
 3-43 manner of cooperation, the minimum term of imprisonment is five
 3-44 years. The certification is confidential and shall be sealed by the
 3-45 court, except that the certification may be accessed by the office
 3-46 of the attorney representing the state, the attorney representing
 3-47 the defendant, and the court. For purposes of this subsection,
 3-48 "significant cooperation" includes:

3-49 (1) testifying in a trial on behalf of the state
 3-50 against other parties to the offense;

3-51 (2) providing relevant information regarding the case
 3-52 and other parties to the offense;

3-53 (3) providing information that furthers the
 3-54 investigation of the charged offense and any other parties
 3-55 involved; or

3-56 (4) providing information that aids law enforcement.

3-57 SECTION 5. Sections 20.06(e) and (f), Penal Code, are
 3-58 amended to read as follows:

3-59 (e) Except as provided by Subsections (f) and (g), an
 3-60 offense under this section is a felony of the second degree with a
 3-61 minimum term of imprisonment of 10 years.

3-62 (f) An offense under this section is a felony of the first
 3-63 degree with a minimum term of imprisonment of 10 years if:

3-64 (1) the conduct constituting an offense under Section
 3-65 20.05 is conducted in a manner that creates a substantial
 3-66 likelihood that the smuggled individual will suffer serious bodily
 3-67 injury or death; or

3-68 (2) the smuggled individual is a child younger than 18
 3-69 years of age at the time of the offense.

4-1 SECTION 6. Section 20.07(b), Penal Code, is amended to read
4-2 as follows:

4-3 (b) An offense under this section is a felony of the third
4-4 degree with a minimum term of imprisonment of five years, except
4-5 that the offense is a felony of the second degree with a minimum
4-6 term of imprisonment of five years if:

4-7 (1) the offense is committed under Subsection (a)(1)
4-8 and the property that is the subject of the offense is used to
4-9 commit or facilitate the commission of an offense under Section
4-10 20.06, 20A.03, or 43.05; or

4-11 (2) it is shown on the trial of the offense that as a
4-12 direct result of the commission of the offense:

4-13 (A) an individual became a victim of sexual
4-14 assault, as defined by Section 22.011, or aggravated sexual
4-15 assault, as defined by Section 22.021; or

4-16 (B) an individual suffered serious bodily injury
4-17 or death [Class A misdemeanor].

4-18 SECTION 7. Section 22.01, Penal Code, is amended by adding
4-19 Subsection (b-4) to read as follows:

4-20 (b-4) Notwithstanding Subsection (b), an offense under
4-21 Subsection (a)(1) is a felony of the third degree if it is shown on
4-22 the trial of the offense that the actor committed the offense in the
4-23 course of committing an offense under Section 20.05(a)(2).

4-24 SECTION 8. Chapter 28, Penal Code, is amended by adding
4-25 Section 28.10 to read as follows:

4-26 Sec. 28.10. ENHANCED PENALTY FOR CERTAIN MISDEMEANORS OR
4-27 STATE JAIL FELONIES. The punishment for an offense under this
4-28 chapter that is punishable as a misdemeanor or a state jail felony
4-29 is increased to the punishment for a felony of the third degree if
4-30 it is shown on the trial of the offense that the actor committed the
4-31 offense in the course of committing an offense under Section
4-32 20.05(a)(2).

4-33 SECTION 9. Section 30.02, Penal Code, is amended by
4-34 amending Subsection (c) and adding Subsection (c-2) to read as
4-35 follows:

4-36 (c) Except as provided in Subsection (c-1), (c-2), or (d),
4-37 an offense under this section is a:

4-38 (1) state jail felony if committed in a building other
4-39 than a habitation; or

4-40 (2) felony of the second degree if committed in a
4-41 habitation.

4-42 (c-2) An offense under this section is a felony of the third
4-43 degree if:

4-44 (1) the premises are a building other than a
4-45 habitation; and

4-46 (2) it is shown on the trial of the offense that the
4-47 actor committed the offense in the course of committing an offense
4-48 under Section 20.05(a)(2).

4-49 SECTION 10. Section 30.04(d), Penal Code, is amended to
4-50 read as follows:

4-51 (d) An offense under this section is a Class A misdemeanor,
4-52 except that:

4-53 (1) the offense is a Class A misdemeanor with a minimum
4-54 term of confinement of six months if it is shown on the trial of the
4-55 offense that the defendant has been previously convicted of an
4-56 offense under this section;

4-57 (2) the offense is a state jail felony if:

4-58 (A) it is shown on the trial of the offense that
4-59 the defendant has been previously convicted two or more times of an
4-60 offense under this section; or

4-61 (B) the vehicle or part of the vehicle broken
4-62 into or entered is a rail car; and

4-63 (3) the offense is a felony of the third degree if:

4-64 (A) the vehicle broken into or entered is owned
4-65 or operated by a wholesale distributor of prescription drugs[+] and

4-66 [(-B)] the actor breaks into or enters that
4-67 vehicle with the intent to commit theft of a controlled substance;
4-68 or

4-69 (B) it is shown on the trial of the offense that

5-1 the actor committed the offense in the course of committing an
5-2 offense under Section 20.05(a)(2).

5-3 SECTION 11. Section 30.05(d), Penal Code, is amended to
5-4 read as follows:

5-5 (d) Subject to Subsection (d-3), an offense under this
5-6 section is:

5-7 (1) a Class B misdemeanor, except as provided by
5-8 Subdivisions (2), ~~[and]~~ (3), and (4);

5-9 (2) a Class C misdemeanor, except as provided by
5-10 Subdivisions [Subdivision] (3) and (4), if the offense is
5-11 committed:

5-12 (A) on agricultural land and within 100 feet of
5-13 the boundary of the land; or

5-14 (B) on residential land and within 100 feet of a
5-15 protected freshwater area; ~~[and]~~

5-16 (3) a Class A misdemeanor, except as provided by
5-17 Subdivision (4), if:

5-18 (A) the offense is committed:

5-19 (i) in a habitation or a shelter center;

5-20 (ii) on a Superfund site; or

5-21 (iii) on or in a critical infrastructure
5-22 facility;

5-23 (B) the offense is committed on or in property of
5-24 an institution of higher education and it is shown on the trial of
5-25 the offense that the person has previously been convicted of:

5-26 (i) an offense under this section relating
5-27 to entering or remaining on or in property of an institution of
5-28 higher education; or

5-29 (ii) an offense under Section 51.204(b)(1),
5-30 Education Code, relating to trespassing on the grounds of an
5-31 institution of higher education;

5-32 (C) the person carries a deadly weapon during the
5-33 commission of the offense; or

5-34 (D) the offense is committed on the property of
5-35 or within a general residential operation operating as a
5-36 residential treatment center; and

5-37 (4) a felony of the third degree if it is shown on the
5-38 trial of the offense that the defendant committed the offense in the
5-39 course of committing an offense under Section 20.05(a)(2).

5-40 SECTION 12. Section 38.04, Penal Code, is amended by adding
5-41 Subsection (b-1) to read as follows:

5-42 (b-1) Notwithstanding Subsection (b), an offense under this
5-43 section is a felony of the third degree if it is shown on the trial
5-44 of the offense that the actor committed the offense in the course of
5-45 committing an offense under Section 20.05(a)(2).

5-46 SECTION 13. The changes in law made by this Act apply only

5-47 to an offense committed on or after the effective date of this Act.

5-48 An offense committed before the effective date of this Act is

5-49 governed by the law in effect on the date the offense was committed,

5-50 and the former law is continued in effect for that purpose. For

5-51 purposes of this section, an offense was committed before the

5-52 effective date of this Act if any element of the offense was

5-53 committed before that date.

5-54 SECTION 14. This Act takes effect October 1, 2023.

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