

**House Bill 2**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SECTION 1. If H.B. No. 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) to read as follows:

(a) 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 has been found guilty shall be pronounced. Except as otherwise provided by this section [~~Subsections (b) and (e)~~], the sentences shall run concurrently.

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

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

(e) 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, the sentences may run consecutively if each sentence is for a conviction of an offense for which a plea agreement was

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

SECTION 2. If H.B. No. 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) to read as follows:

(a) 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 [he] has been found guilty shall be pronounced. Except as otherwise provided by this section [Subsection (b)], the sentences shall run concurrently.

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

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

(d) 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, 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 accused was charged with an offense described by Subsection (c)(1)(A) and an offense described by Subsection (c)(1)(B). If the accused is found guilty of more than one offense described by Subsection (c)(1)(A), the sentences for those offenses must run concurrently with each other.

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

(a) Subject to ~~Subsections~~ Subsection (c) and (d), the punishment for an offense described by Subsection (b) 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:

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

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

(B) the governor under Section 418.014, Government Code;  
or

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

(2) subject to an emergency evacuation order.

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

(1) Section 20.05;

(2) Section 20.06;

(3) Section 20.07;

(4) Section 22.01;

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

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

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

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

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

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

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

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

(d) Except as otherwise provided by this subsection, the minimum term of imprisonment for an offense listed under Subsection (b)(1), (2), or (3) for which punishment is increased under this section is 10 years. If an offense listed under Subsection (b)(1) or (2) is punishable as a felony of the first degree, the minimum term of imprisonment 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.

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

(b) Subject to Subsections (b-1) and (b-2), an [A~~n~~] offense under this section 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:

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

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

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

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

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

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

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

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

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SECTION 4. Section 20.05, Penal Code, is amended by amending Subsection (b) and adding Subsections (b-1) and (b-2) to read as follows: [FA1,3rd(1)]

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

[FA1,3rd(2)]

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

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

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

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

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

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

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

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

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

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(b-1) 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, the minimum term of imprisonment is five years. The certification is confidential and shall be sealed by the court, except that the certification may be accessed by the office of the attorney representing the state, the attorney representing the defendant, and the court. For purposes of this subsection, "significant cooperation" includes:

- (1) testifying in a trial on behalf of the state against other parties to the offense;
- (2) providing relevant information regarding the case and other parties to the offense;
- (3) providing information that furthers the investigation of the charged offense and any other parties involved; or
- (4) providing information that aids law enforcement.

(b-2) At the punishment stage of a trial of an offense under this section, other than an offense punishable under Subsection (b)(1)(A) or (b)(2), the actor may 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. If the actor proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the third degree with a minimum term of imprisonment of five years.

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(b-1) 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, the minimum term of imprisonment is five years. The certification is confidential and shall be sealed by the court, except that the certification may be accessed by the office of the attorney representing the state, the attorney representing the defendant, and the court. For purposes of this subsection, "significant cooperation" includes:

- (1) testifying in a trial on behalf of the state against other parties to the offense;
- (2) providing relevant information regarding the case and other parties to the offense;
- (3) providing information that furthers the investigation of the charged offense and any other parties involved; or
- (4) providing information that aids law enforcement.

(b-2) At the punishment stage of a trial of an offense under this section, other than an offense punishable under Subsection (b)(1)(A), (C), or (D) or (b)(2), the actor may raise the issue as to whether the actor is related to the smuggled individual in the third degree of consanguinity or, at the time of the offense, in the third degree of affinity. If the actor proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the third degree with a minimum term of imprisonment of five years. [FA1,3rd(3)]

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

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

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

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

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

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

(b) 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) 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, or 43.05; 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, or aggravated sexual assault, as defined by Section 22.021; or

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

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SECTION 5. Same as House version.

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

(b-4) Notwithstanding Subsection (b), an offense under Subsection (a)(1) 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 7. Same as House version.

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

Sec. 28.10. ENHANCED PENALTY FOR CERTAIN MISDEMEANORS OR STATE JAIL FELONIES. The punishment for an offense under this chapter 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 8. Same as House version.

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

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

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

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

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(c-2) An offense under this section 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. Section 30.04(d), Penal Code, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) the offense is committed:

(i) in a habitation or a shelter center;

(ii) on a Superfund site; or

(iii) on or in a critical infrastructure facility;

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

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

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

(C) the person carries a deadly weapon during the commission of the offense; or

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(D) the offense is committed on the property of or within a general residential operation operating as a residential treatment center; 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. Section 38.04, Penal Code, is amended by adding Subsection (b-1) to read as follows:

(b-1) Notwithstanding Subsection (b), an offense under this section 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. The changes in law made by this Act apply only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

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

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SECTION 12. Same as House version.

SECTION 13. Same as House version.

SECTION 14. Same as House version.

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