

1-1 By: Flores S.B. No. 5  
1-2 (In the Senate - Filed May 30, 2023; June 2, 2023, read  
1-3 first time and referred to Committee on Border Security;  
1-4 June 6, 2023, reported favorably by the following vote: Yeas 4,  
1-5 Nays 1; June 6, 2023, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	Birdwell	X		
1-9	Flores	X		
1-10	Blanco		X	
1-11	Hinojosa	X		
1-12	King	X		

1-13 A BILL TO BE ENTITLED  
1-14 AN ACT

1-15 relating to the punishment for certain criminal conduct involving  
1-16 the smuggling of persons or the operation of a stash house;  
1-17 increasing criminal penalties.

1-18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-19 SECTION 1. If H.B. No. 165, Acts of the 88th Legislature,  
1-20 Regular Session, 2023, becomes law, Section 3.03, Penal Code, as  
1-21 effective September 1, 2023, is amended by amending Subsection (a)  
1-22 and adding Subsections (d) and (e) to read as follows:

1-23 (a) When the accused is found guilty of more than one  
1-24 offense arising out of the same criminal episode prosecuted in a  
1-25 single criminal action, a sentence for each offense for which the  
1-26 accused has been found guilty shall be pronounced. Except as  
1-27 otherwise provided by this section [~~Subsections (b) and (c)~~], the  
1-28 sentences shall run concurrently.

1-29 (d)(1) This subsection applies only to a single criminal  
1-30 action in which the accused is found guilty of:

1-31 (A) an offense under Section 20.05(a)(2) or an  
1-32 offense under Section 20.06 involving conduct constituting an  
1-33 offense under Section 20.05(a)(2); and

1-34 (B) an offense punishable under Section  
1-35 22.01(b-4), 28.10, 30.02(c-2), 30.04(d)(3)(B), 30.05(d)(4), or  
1-36 38.04(b-1) that arises out of the same criminal episode as the  
1-37 offense described by Paragraph (A).

1-38 (2) The sentence for an offense described by  
1-39 Subdivision (1)(A) may run consecutively with each sentence for an  
1-40 offense described by Subdivision (1)(B).

1-41 (3) If the accused is found guilty of more than one  
1-42 offense described by Subdivision (1)(A), the sentences for those  
1-43 offenses must run concurrently with each other.

1-44 (e) Except as otherwise provided by this subsection, if in a  
1-45 single criminal action the accused is found guilty of more than one  
1-46 offense arising out of the same criminal episode, the sentences may  
1-47 run consecutively if each sentence is for a conviction of an offense  
1-48 for which a plea agreement was reached in a case in which the  
1-49 accused was charged with an offense described by Subsection  
1-50 (d)(1)(A) and an offense described by Subsection (d)(1)(B). If the  
1-51 accused is found guilty of more than one offense described by  
1-52 Subsection (d)(1)(A), the sentences for those offenses must run  
1-53 concurrently with each other.

1-54 SECTION 2. If H.B. No. 165, Acts of the 88th Legislature,  
1-55 Regular Session, 2023, does not become law, Section 3.03, Penal  
1-56 Code, is amended by amending Subsection (a) and adding Subsections  
1-57 (c) and (d) to read as follows:

1-58 (a) When the accused is found guilty of more than one  
1-59 offense arising out of the same criminal episode prosecuted in a  
1-60 single criminal action, a sentence for each offense for which the  
1-61 accused [~~he~~] has been found guilty shall be pronounced. Except as  
1-62 otherwise provided by this section [~~Subsection (b)~~], the sentences

2-1 shall run concurrently.

2-2 (c)(1) This subsection applies only to a single criminal  
 2-3 action in which the accused is found guilty of:

2-4 (A) an offense under Section 20.05(a)(2) or an  
 2-5 offense under Section 20.06 involving conduct constituting an  
 2-6 offense under Section 20.05(a)(2); and

2-7 (B) an offense punishable under Section  
 2-8 22.01(b-4), 28.10, 30.02(c-2), 30.04(d)(3)(B), 30.05(d)(4), or  
 2-9 38.04(b-1) that arises out of the same criminal episode as the  
 2-10 offense described by Paragraph (A).

2-11 (2) The sentence for an offense described by  
 2-12 Subdivision (1)(A) may run consecutively with each sentence for an  
 2-13 offense described by Subdivision (1)(B).

2-14 (3) If the accused is found guilty of more than one  
 2-15 offense described by Subdivision (1)(A), the sentences for those  
 2-16 offenses must run concurrently with each other.

2-17 (d) Except as otherwise provided by this subsection, if in a  
 2-18 single criminal action the accused is found guilty of more than one  
 2-19 offense arising out of the same criminal episode, the sentences may  
 2-20 run consecutively if each sentence is for a conviction of an offense  
 2-21 for which a plea agreement was reached in a case in which the  
 2-22 accused was charged with an offense described by Subsection  
 2-23 (c)(1)(A) and an offense described by Subsection (c)(1)(B). If the  
 2-24 accused is found guilty of more than one offense described by  
 2-25 Subsection (c)(1)(A), the sentences for those offenses must run  
 2-26 concurrently with each other.

2-27 SECTION 3. Section 12.50, Penal Code, is amended by  
 2-28 amending Subsections (a), (b), and (c) and adding Subsection (d) to  
 2-29 read as follows:

2-30 (a) Subject to Subsections ~~[Subsection]~~ (c) and (d), the  
 2-31 punishment for an offense described by Subsection (b) is increased  
 2-32 to the punishment prescribed for the next higher category of  
 2-33 offense if it is shown on the trial of the offense that the offense  
 2-34 was committed in an area that was, at the time of the offense:

2-35 (1) subject to a declaration of a state of disaster  
 2-36 made by:

2-37 (A) the president of the United States under the  
 2-38 Robert T. Stafford Disaster Relief and Emergency Assistance Act (42  
 2-39 U.S.C. Section 5121 et seq.);

2-40 (B) the governor under Section 418.014,  
 2-41 Government Code; or

2-42 (C) the presiding officer of the governing body  
 2-43 of a political subdivision under Section 418.108, Government Code;  
 2-44 or

2-45 (2) subject to an emergency evacuation order.

2-46 (b) The increase in punishment authorized by this section  
 2-47 applies only to an offense under:

2-48 (1) Section 20.05;  
 2-49 (2) Section 20.06;  
 2-50 (3) Section 20.07;  
 2-51 (4) Section 22.01;  
 2-52 (5) ~~[(2)]~~ Section 28.02;  
 2-53 (6) ~~[(3)]~~ Section 29.02;  
 2-54 (7) ~~[(4)]~~ Section 30.02;  
 2-55 (8) ~~[(5)]~~ Section 30.03;  
 2-56 (9) ~~[(6)]~~ Section 30.04;  
 2-57 (10) ~~[(7)]~~ Section 30.05; and  
 2-58 (11) ~~[(8)]~~ Section 31.03.

2-59 (c) If an offense listed under Subsection (b) ~~[(b)(1), (5),~~  
 2-60 ~~(6), (7), or (8)]~~ is punishable as a Class A misdemeanor, the  
 2-61 minimum term of confinement for the offense is increased to 180  
 2-62 days. Except as provided by Subsection (d), if ~~[(b)(2), (4), or (8)]~~ an offense  
 2-63 listed under Subsection (b) ~~[(b)(2), (4), or (8)]~~ is punishable as a  
 2-64 felony of the first degree, the punishment for that offense may not  
 2-65 be increased under this section.

2-66 (d) Except as otherwise provided by this subsection, the  
 2-67 minimum term of imprisonment for an offense listed under Subsection  
 2-68 (b)(1), (2), or (3) for which punishment is increased under this  
 2-69 section is 10 years. If an offense listed under Subsection (b)(1)

3-1 or (2) is punishable as a felony of the first degree, the minimum  
 3-2 term of imprisonment is increased to 15 years unless another  
 3-3 provision of law applicable to the offense provides for a minimum  
 3-4 term of imprisonment of 15 years or more.

3-5 SECTION 4. Section 20.05, Penal Code, is amended by  
 3-6 amending Subsection (b) and adding Subsection (b-1) to read as  
 3-7 follows:

3-8 (b) Subject to Subsection (b-1), an [An] offense under this  
 3-9 section is a felony of the third degree with a term of imprisonment  
 3-10 of 10 years, except that the offense is:

3-11 (1) a felony of the second degree with a minimum term  
 3-12 of imprisonment of 10 years if:

3-13 (A) the actor commits the offense in a manner  
 3-14 that creates a substantial likelihood that the smuggled individual  
 3-15 will suffer serious bodily injury or death;

3-16 (B) the smuggled individual is a child younger  
 3-17 than 18 years of age at the time of the offense;

3-18 (C) the offense was committed with the intent to  
 3-19 obtain a pecuniary benefit;

3-20 (D) during the commission of the offense the  
 3-21 actor, another party to the offense, or an individual assisted,  
 3-22 guided, or directed by the actor knowingly possessed a firearm; or

3-23 (E) the actor commits the offense under  
 3-24 Subsection (a)(1)(B); or

3-25 (2) a felony of the first degree with a minimum term of  
 3-26 imprisonment of 10 years if:

3-27 (A) it is shown on the trial of the offense that,  
 3-28 as a direct result of the commission of the offense, the smuggled  
 3-29 individual became a victim of sexual assault, as defined by Section  
 3-30 22.011, or aggravated sexual assault, as defined by Section 22.021;  
 3-31 or

3-32 (B) the smuggled individual suffered serious  
 3-33 bodily injury or death.

3-34 (b-1) If at the punishment stage of the trial or at the time  
 3-35 of entering a plea agreement for an offense under this section  
 3-36 punishable as a felony of the third degree, the attorney  
 3-37 representing the state in the prosecution of the offense certifies  
 3-38 to the court in writing that the actor has provided significant  
 3-39 cooperation to the state or law enforcement, and describes the  
 3-40 manner of cooperation, the minimum term of imprisonment is five  
 3-41 years. The certification is confidential and shall be sealed by the  
 3-42 court, except that the certification may be accessed by the office  
 3-43 of the attorney representing the state, the attorney representing  
 3-44 the defendant, and the court. For purposes of this subsection,  
 3-45 "significant cooperation" includes:

3-46 (1) testifying in a trial on behalf of the state  
 3-47 against other parties to the offense;

3-48 (2) providing relevant information regarding the case  
 3-49 and other parties to the offense;

3-50 (3) providing information that furthers the  
 3-51 investigation of the charged offense and any other parties  
 3-52 involved; or

3-53 (4) providing information that aids law enforcement.

3-54 SECTION 5. Sections 20.06(e) and (f), Penal Code, are  
 3-55 amended to read as follows:

3-56 (e) Except as provided by Subsections (f) and (g), an  
 3-57 offense under this section is a felony of the second degree with a  
 3-58 minimum term of imprisonment of 10 years.

3-59 (f) An offense under this section is a felony of the first  
 3-60 degree with a minimum term of imprisonment of 10 years if:

3-61 (1) the conduct constituting an offense under Section  
 3-62 20.05 is conducted in a manner that creates a substantial  
 3-63 likelihood that the smuggled individual will suffer serious bodily  
 3-64 injury or death; or

3-65 (2) the smuggled individual is a child younger than 18  
 3-66 years of age at the time of the offense.

3-67 SECTION 6. Section 20.07(b), Penal Code, is amended to read  
 3-68 as follows:

3-69 (b) An offense under this section is a felony of the third

4-1 degree with a minimum term of imprisonment of five years, except  
4-2 that the offense is a felony of the second degree with a minimum  
4-3 term of imprisonment of five years if:

4-4 (1) the offense is committed under Subsection (a)(1)  
4-5 and the property that is the subject of the offense is used to  
4-6 commit or facilitate the commission of an offense under Section  
4-7 20.06, 20A.03, or 43.05; or

4-8 (2) it is shown on the trial of the offense that as a  
4-9 direct result of the commission of the offense:

4-10 (A) an individual became a victim of sexual  
4-11 assault, as defined by Section 22.011, or aggravated sexual  
4-12 assault, as defined by Section 22.021; or

4-13 (B) an individual suffered serious bodily injury  
4-14 or death [~~Class A misdemeanor~~].

4-15 SECTION 7. Section 22.01, Penal Code, is amended by adding  
4-16 Subsection (b-4) to read as follows:

4-17 (b-4) Notwithstanding Subsection (b), an offense under  
4-18 Subsection (a)(1) is a felony of the third degree if it is shown on  
4-19 the trial of the offense that the actor committed the offense in the  
4-20 course of committing an offense under Section 20.05(a)(2).

4-21 SECTION 8. Chapter 28, Penal Code, is amended by adding  
4-22 Section 28.10 to read as follows:

4-23 Sec. 28.10. ENHANCED PENALTY FOR CERTAIN MISDEMEANORS OR  
4-24 STATE JAIL FELONIES. The punishment for an offense under this  
4-25 chapter that is punishable as a misdemeanor or a state jail felony  
4-26 is increased to the punishment for a felony of the third degree if  
4-27 it is shown on the trial of the offense that the actor committed the  
4-28 offense in the course of committing an offense under Section  
4-29 20.05(a)(2).

4-30 SECTION 9. Section 30.02, Penal Code, is amended by  
4-31 amending Subsection (c) and adding Subsection (c-2) to read as  
4-32 follows:

4-33 (c) Except as provided in Subsection (c-1), (c-2), or (d),  
4-34 an offense under this section is a:

4-35 (1) state jail felony if committed in a building other  
4-36 than a habitation; or

4-37 (2) felony of the second degree if committed in a  
4-38 habitation.

4-39 (c-2) An offense under this section is a felony of the third  
4-40 degree if:

4-41 (1) the premises are a building other than a  
4-42 habitation; and

4-43 (2) it is shown on the trial of the offense that the  
4-44 actor committed the offense in the course of committing an offense  
4-45 under Section 20.05(a)(2).

4-46 SECTION 10. Section 30.04(d), Penal Code, is amended to  
4-47 read as follows:

4-48 (d) An offense under this section is a Class A misdemeanor,  
4-49 except that:

4-50 (1) the offense is a Class A misdemeanor with a minimum  
4-51 term of confinement of six months if it is shown on the trial of the  
4-52 offense that the defendant has been previously convicted of an  
4-53 offense under this section;

4-54 (2) the offense is a state jail felony if:

4-55 (A) it is shown on the trial of the offense that  
4-56 the defendant has been previously convicted two or more times of an  
4-57 offense under this section; or

4-58 (B) the vehicle or part of the vehicle broken  
4-59 into or entered is a rail car; and

4-60 (3) the offense is a felony of the third degree if:

4-61 (A) the vehicle broken into or entered is owned  
4-62 or operated by a wholesale distributor of prescription drugs[+] and  
4-63 [~~(B)~~] the actor breaks into or enters that  
4-64 vehicle with the intent to commit theft of a controlled substance;  
4-65 or

4-66 (B) it is shown on the trial of the offense that  
4-67 the actor committed the offense in the course of committing an  
4-68 offense under Section 20.05(a)(2).

4-69 SECTION 11. Section 30.05(d), Penal Code, is amended to



5-1 read as follows:

5-2 (d) Subject to Subsection (d-3), an offense under this  
5-3 section is:

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

5-6 (2) a Class C misdemeanor, except as provided by  
5-7 Subdivisions [Subdivision] (3) and (4), if the offense is  
5-8 committed:

5-9 (A) on agricultural land and within 100 feet of  
5-10 the boundary of the land; or

5-11 (B) on residential land and within 100 feet of a  
5-12 protected freshwater area; ~~and~~

5-13 (3) a Class A misdemeanor, except as provided by  
5-14 Subdivision (4), if:

5-15 (A) the offense is committed:  
5-16 (i) in a habitation or a shelter center;  
5-17 (ii) on a Superfund site; or  
5-18 (iii) on or in a critical infrastructure  
5-19 facility;

5-20 (B) the offense is committed on or in property of  
5-21 an institution of higher education and it is shown on the trial of  
5-22 the offense that the person has previously been convicted of:

5-23 (i) an offense under this section relating  
5-24 to entering or remaining on or in property of an institution of  
5-25 higher education; or

5-26 (ii) an offense under Section 51.204(b)(1),  
5-27 Education Code, relating to trespassing on the grounds of an  
5-28 institution of higher education;

5-29 (C) the person carries a deadly weapon during the  
5-30 commission of the offense; or

5-31 (D) the offense is committed on the property of  
5-32 or within a general residential operation operating as a  
5-33 residential treatment center; and

5-34 (4) a felony of the third degree if it is shown on the  
5-35 trial of the offense that the defendant committed the offense in the  
5-36 course of committing an offense under Section 20.05(a)(2).

5-37 SECTION 12. Section 38.04, Penal Code, is amended by adding  
5-38 Subsection (b-1) to read as follows:

5-39 (b-1) Notwithstanding Subsection (b), an offense under this  
5-40 section is a felony of the third degree if it is shown on the trial  
5-41 of the offense that the actor committed the offense in the course of  
5-42 committing an offense under Section 20.05(a)(2).

5-43 SECTION 13. The changes in law made by this Act apply only  
5-44 to an offense committed on or after the effective date of this Act.  
5-45 An offense committed before the effective date of this Act is  
5-46 governed by the law in effect on the date the offense was committed,  
5-47 and the former law is continued in effect for that purpose. For  
5-48 purposes of this section, an offense was committed before the  
5-49 effective date of this Act if any element of the offense was  
5-50 committed before that date.

5-51 SECTION 14. This Act takes effect October 1, 2023.

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