

1 AN ACT

2 relating to the prosecution and punishment of unlawful transport of
3 a person.

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

5 SECTION 1. The heading to Chapter 20, Penal Code, is amended
6 to read as follows:

7 CHAPTER 20. KIDNAPPING, ~~[AND]~~ UNLAWFUL RESTRAINT, AND
8 SMUGGLING OF PERSONS

9 SECTION 2. Section 20.05, Penal Code, is amended to read as
10 follows:

11 Sec. 20.05. SMUGGLING OF PERSONS [~~UNLAWFUL TRANSPORT~~].

12 (a) A person commits an offense if the person intentionally uses a
13 motor vehicle, aircraft, or watercraft to transport an individual
14 with the intent to:

15 (1) conceal the individual from a peace officer or
16 special investigator; or

17 (2) flee from a person the actor knows is a peace
18 officer or special investigator attempting to lawfully arrest or
19 detain the actor [~~for pecuniary benefit transports an individual in~~
20 ~~a manner that:~~

21 [~~(1) is designed to conceal the individual from local,~~
22 ~~state, or federal law enforcement authorities; and~~

23 [~~(2) creates a substantial likelihood that the~~
24 ~~individual will suffer serious bodily injury or death].~~

1 (b) Except as provided by Subsection (c), an [An] offense
2 under this section is a state jail felony.

3 (c) An offense under this section is a felony of the third
4 degree if the actor commits the offense:

5 (1) for pecuniary benefit; or

6 (2) in a manner that creates a substantial likelihood
7 that the transported individual will suffer serious bodily injury
8 or death.

9 (d) It is an affirmative defense to prosecution under this
10 section that the actor is related to the transported individual
11 within the second degree of consanguinity or, at the time of the
12 offense, within the second degree of affinity.

13 (e) If conduct constituting an offense under this section
14 also constitutes an offense under another section of this code, the
15 actor may be prosecuted under either section or under both
16 sections.

17 SECTION 3. Section 71.02(a), Penal Code, as amended by
18 Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357 (S.B. 554),
19 Acts of the 81st Legislature, Regular Session, 2009, is reenacted
20 and amended to read as follows:

21 (a) A person commits an offense if, with the intent to
22 establish, maintain, or participate in a combination or in the
23 profits of a combination or as a member of a criminal street gang,
24 the person commits or conspires to commit one or more of the
25 following:

26 (1) murder, capital murder, arson, aggravated
27 robbery, robbery, burglary, theft, aggravated kidnapping,

1 kidnapping, aggravated assault, aggravated sexual assault, sexual
2 assault, forgery, deadly conduct, assault punishable as a Class A
3 misdemeanor, burglary of a motor vehicle, or unauthorized use of a
4 motor vehicle;

5 (2) any gambling offense punishable as a Class A
6 misdemeanor;

7 (3) promotion of prostitution, aggravated promotion
8 of prostitution, or compelling prostitution;

9 (4) unlawful manufacture, transportation, repair, or
10 sale of firearms or prohibited weapons;

11 (5) unlawful manufacture, delivery, dispensation, or
12 distribution of a controlled substance or dangerous drug, or
13 unlawful possession of a controlled substance or dangerous drug
14 through forgery, fraud, misrepresentation, or deception;

15 (6) any unlawful wholesale promotion or possession of
16 any obscene material or obscene device with the intent to wholesale
17 promote the same;

18 (7) any offense under Subchapter B, Chapter 43,
19 depicting or involving conduct by or directed toward a child
20 younger than 18 years of age;

21 (8) any felony offense under Chapter 32;

22 (9) any offense under Chapter 36;

23 (10) any offense under Chapter 34 or 35;

24 (11) any offense under Section 37.11(a);

25 (12) any offense under Chapter 20A;

26 (13) any offense under Section 37.10; [~~or~~]

27 (14) any offense under Section 38.06, 38.07, 38.09, or

1 38.11;

2 (15) [~~(14)~~] any offense under Section 42.10;

3 (16) [~~(14)~~] any offense under Section 46.06(a)(1) or
4 46.14; or

5 (17) any offense under Section 20.05.

6 SECTION 4. Article 13.12, Code of Criminal Procedure, is
7 amended to read as follows:

8 Art. 13.12. FALSE IMPRISONMENT, ~~[AND]~~ KIDNAPPING, AND
9 SMUGGLING OF PERSONS. Venue for false imprisonment, ~~[and]~~
10 kidnapping, and smuggling of persons is in either the county in
11 which the offense was committed, or in any county through, into, or
12 out of which the person falsely imprisoned, ~~[or]~~ kidnapped, or
13 transported may have been taken.

14 SECTION 5. Article 59.01(2), Code of Criminal Procedure, as
15 amended by Chapters 153 (S.B. 2225), 1130 (H.B. 2086), and 1357
16 (S.B. 554), Acts of the 81st Legislature, Regular Session, 2009, is
17 reenacted and amended to read as follows:

18 (2) "Contraband" means property of any nature,
19 including real, personal, tangible, or intangible, that is:

20 (A) used in the commission of:

21 (i) any first or second degree felony under
22 the Penal Code;

23 (ii) any felony under Section 15.031(b),
24 20.05, 21.11, 38.04, Subchapter B of Chapter 43, or Chapter 29, 30,
25 31, 32, 33, 33A, or 35, Penal Code;

26 (iii) any felony under The Securities Act
27 (Article 581-1 et seq., Vernon's Texas Civil Statutes); or

1 (iv) any offense under Chapter 49, Penal
2 Code, that is punishable as a felony of the third degree or state
3 jail felony, if the defendant has been previously convicted three
4 times of an offense under that chapter;

5 (B) used or intended to be used in the commission
6 of:

7 (i) any felony under Chapter 481, Health
8 and Safety Code (Texas Controlled Substances Act);

9 (ii) any felony under Chapter 483, Health
10 and Safety Code;

11 (iii) a felony under Chapter 153, Finance
12 Code;

13 (iv) any felony under Chapter 34, Penal
14 Code;

15 (v) a Class A misdemeanor under Subchapter
16 B, Chapter 365, Health and Safety Code, if the defendant has been
17 previously convicted twice of an offense under that subchapter;

18 (vi) any felony under Chapter 152, Finance
19 Code;

20 (vii) any felony under Chapter 32, Human
21 Resources Code, or Chapter 31, 32, 35A, or 37, Penal Code, that
22 involves the state Medicaid program;

23 (viii) a Class B misdemeanor under Chapter
24 522, Business & Commerce Code;

25 (ix) a Class A misdemeanor under Section
26 306.051, Business & Commerce Code; ~~[ex]~~

27 (x) any offense under Section 42.10, Penal

1 Code;

2 (xi) [~~(*)~~] any offense under Section
3 46.06(a)(1) or 46.14, Penal Code;

4 (xii) [~~(*)~~] any offense under Chapter 71,
5 Penal Code; or

6 (xiii) any offense under Section 20.05,
7 Penal Code;

8 (C) the proceeds gained from the commission of a
9 felony listed in Paragraph (A) or (B) of this subdivision, a
10 misdemeanor listed in Paragraph (B)(viii), ~~(x)~~, (xi), or (xii)
11 of this subdivision, or a crime of violence;

12 (D) acquired with proceeds gained from the
13 commission of a felony listed in Paragraph (A) or (B) of this
14 subdivision, a misdemeanor listed in Paragraph (B)(viii), ~~(x)~~,
15 (xi), or (xii) of this subdivision, or a crime of violence; or

16 (E) used to facilitate or intended to be used to
17 facilitate the commission of a felony under Section 15.031 or
18 43.25, Penal Code.

19 SECTION 6. The changes in law made by this Act in amending
20 Sections 20.05 and 71.02, Penal Code, apply only to an offense
21 committed on or after the effective date of this Act. An offense
22 committed before the effective date of this Act is covered by the
23 law in effect when the offense was committed, and the former law is
24 continued in effect for that purpose. For purposes of this section,
25 an offense was committed before the effective date of this Act if
26 any element of the offense occurred before that date.

27 SECTION 7. The change in law made by this Act in amending

1 Article 59.01(2), Code of Criminal Procedure, applies only to the
2 forfeiture of property in relation to an offense committed on or
3 after the effective date of this Act. Forfeiture of property in
4 relation to an offense committed before the effective date of this
5 Act is governed by the law in effect when the offense was committed,
6 and the former law is continued in effect for that purpose. For
7 purposes of this section, an offense was committed before the
8 effective date of this Act if any element of the offense occurred
9 before that date.

10 SECTION 8. To the extent of any conflict, this Act prevails
11 over another Act of the 82nd Legislature, Regular Session, 2011,
12 relating to nonsubstantive additions to and corrections in enacted
13 codes.

14 SECTION 9. This Act takes effect September 1, 2011.

David Suhrust

President of the Senate

Joe Straus

Speaker of the House

I certify that H.B. No. 260 was passed by the House on April 21, 2011, by the following vote: Yeas 148, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 260 on May 23, 2011, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

Robert Haney

Chief Clerk of the House

I certify that H.B. No. 260 was passed by the Senate, with amendments, on May 19, 2011, by the following vote: Yeas 31, Nays 0.

Patsy Spaw

Secretary of the Senate

APPROVED: 17 JUN '11

Date

Rick Perry

Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE

4:00 P.M. O'CLOCK

JUN 17 2011

Hope Radtke

Secretary of State