

SUBJECT: Increasing penalties for smuggling of persons, operation of a stash house

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 9 ayes — Hunter, Dean, Geren, Guillen, Metcalf, Raymond, Slawson, Smithee, Spiller

3 nays — Anchía, S. Thompson, Turner

1 absent — Hernandez

SENATE VOTE: On final passage (October 12, 2023) — 29 - 2

WITNESSES: For — Paul Edinburgh, Jimmy Fullen, Galveston County Constable Pct. 2; Justin West, Galveston County Constable Precinct 4; Charles Maley, South Texans’ Property Rights Association; Carine Martinez, Texas Public Policy Foundation; Howard Barker (*Registered, but did not testify*: Sheena Rodriguez, Savannah Rodriguez, Alliance for a Safe Texas; Sheila Hemphill, Texas Right To Know)

Against — Andrew Hendrickson, ACLU of Texas; Rosa Avila, Irma Cruz, Samantha Singleton, Border Network For Human Rights; Esther Reyes, Childrens Defense Fund Texas; Jessie Fuentes, Eagle Pass Border Coalition; Bethany Carson, Sybil Sybille, Grassroots Leadership; Bob Libal, Human Rights Watch; Priscilla Lugo, LatinoJustice PRLDEF; Libby Goldman, Never Again Action ATX; Ana Gonzalez, Texas AFL-CIO; Roberto Lopez, Aron Thorn, Texas Civil Rights Project; Kristin Etter, Texas RioGrande Legal Aid; Ivonne Diaz; Nathan Perrow; Jaime Puente; Daniela Silva; Maggie Welch (*Registered, but did not testify*: Nora Mata, Maria Sanchez, Border Workers United/Frontera Texas; Elisa M. Tamayo, David Stout, El Paso County; Luis Figueroa, Every Texan; Anette Price, Grassroots Leadership; Gloria Leal, League of United Latin American Citizens; Jesus Perales, Texas AFL-CIO; Alejandro Pena, Texas American Federation of Teachers; Thomas Kennedy, Texas Building and Construction Trades Councils; Rocio Fierro Perez, Texas Freedom Network; Joshua Houston, Texas Impact; Daniela Hernandez,

Workers Defense Action Fund; and 12 individuals)

On — (*Registered, but did not testify*: Tonya Ahlschwede, Border Prosecution Unit; Steve McCraw, Texas Department of Public Safety)

DIGEST:

SB 4 would increase the offense for the operation of a stash house from a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) with a minimum term of imprisonment of five years. The offense would be considered a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) with a minimum term of imprisonment of five years if:

- the property involved in the operation of a stash house was used to commit or facilitate the commission of an offense of continuous smuggling of persons, continuous trafficking of persons, or compelling prostitution;
- it was shown on the trial of the offense that as a direct result of the commission of the offense, an individual became a victim of sexual assault or aggravated sexual assault; or
- it was shown on the trial of the offense that as a direct result of the commission of the offense, an individual suffered serious bodily injury or death.

The following offenses would be increased to a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if it was shown on the trial of the offense that the actor committed the offense while encouraging or inducing a person to enter or remain in the United States in violation of federal law by concealing, harboring, or shielding that person from detection:

- intentionally, knowingly, or recklessly causing bodily injury to another;
- arson, criminal mischief, or other property damage or destruction that was punishable as a misdemeanor or state-jail felony;
- burglary that occurred at a building other than a habitation;

- burglary of vehicles;
- criminal trespass; and
- evading arrest or detention.

SB also would increase the term of imprisonment for smuggling of persons and continuous smuggling of persons to a minimum of 10 years.

The bill would establish a minimum term of imprisonment of five years for the smuggling of persons if, at the punishment stage of a trial or at the time of entering a plea argument for an offense of smuggling of persons the attorney representing the state in the prosecution certified that the actor had provided significant cooperation to the state or law enforcement and described the manner of cooperation. “Significant cooperation” would include:

- testifying in a trial on behalf of the state against other parties to the offense;
- providing relevant information regarding the case and other parties to the offense;
- providing information that furthered the investigation of the charged offense and any other parties involved; or
- providing information that aided law enforcement.

If the actor proved by a preponderance of the evidence that the actor was related to the smuggled individual in the third degree of consanguinity or, at the time of the offense, in the third degree of affinity, the offense would be a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) with a minimum term of imprisonment of five years.

SB 4 would include the offenses of smuggling of persons, continuous smuggling of persons, and the operation of a stash house among the offenses for which the punishment is increased to the next higher category of offense if it was committed in a disaster or evacuated area. For these offenses, the minimum term of imprisonment would be 10 years. If such an offense for smuggling of persons or continuous smuggling of persons was punishable as a first-degree felony (life in prison or a sentence of five

to 99 years and an optional fine of up to \$10,000), the minimum term of imprisonment would be increased to 15 years, unless another applicable law provided for a minimum term of imprisonment of 15 years or more.

SB 4 also would establish the circumstances under which sentences would run concurrently or consecutively for offenses related to encouraging or inducing a person to enter or remain in the United States.

The bill would take effect December 1, 2023, if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after last day of the legislative session.

**SUPPORTERS
SAY:**

By establishing harsher penalties for those engaged in human smuggling and stash house operations, SB 4 would be an important step in deterring crime along the Texas-Mexico border and protecting innocent lives. As the percentage of border crossers using a smuggler has increased over the past few decades, cartels have exploited this demand, often endangering the lives of migrants. Additionally, the stash houses where migrants are taken, often occupied by dozens of captive people, are usually rented or leased, making the properties difficult for law enforcement to repossess. This increase in smuggling and cartel activity threatens not only the safety of migrants but also the safety of Texas citizens, particularly that of farmers, ranchers, and homeowners near the border.

Current penalties for the smuggling of persons and operation of a stash house are insufficient, as they have not effectively deterred individuals from engaging in these crimes. The penalties established under SB 4 would help to deter these crimes, as studies have shown that sentences of five years or more have led to decreased recidivism. The bill would further discourage criminal activity by increasing the punishment for other crimes committed while smuggling as well as for smugglers taking advantage of emergency situations by operating in areas under disaster declaration.

SB 4 would target bad actors, not families of migrants or those rendering aid, with the bill's main goal being to punish smugglers, not immigrants.

Provisions exist in current statute providing an affirmative defense for individuals acting under duress and a justification for individuals believing the conduct was necessary to avoid imminent harm, which could protect people attempting to provide aid. Additionally, while existing statute establishes an affirmative defense for individuals smuggling a family member within the second degree of consanguinity, the bill would allow for further leniency by authorizing lighter sentences for family members in the third degree of consanguinity as well as individuals willing to cooperate with law enforcement.

Current statutory language, which would be unchanged by SB 4, states that elements of knowledge and intent are necessary for a conviction and places the burden of proof for these elements on the prosecution. An individual convicted of human smuggling would have to be proven to have been aware of the illegality of the individual's actions and likely would be privy to information valuable to law enforcement.

SB 4 would not alter the existing statutory language of the criminal actions, and as such would not change the basis for traffic stops.

**CRITICS
SAY:**

SB 4 would not have the desired effect of reducing human smuggling, as it would not effectively target cartels or open additional pathways for legal entry. Currently, there are few legal pathways to enter the United States as an asylum seeker, causing more people to rely on smugglers to cross the border. In order to protect migrants from exploitation, state and federal governments should instead focus on immigration reform to increase the legal and humane pathways for migrants to enter the United States.

The mandatory minimum sentences under SB 4 would be too harsh as there is currently no federal minimum penalty for human smuggling and the average federal sentence is significantly shorter than the penalties proposed. Additionally, increasing penalties has not been historically effective in deterring immigration-related crimes. A mandatory minimum sentence would require a judge to determine a sentence based solely on a prosecutor's charging decision, which would transfer sentencing power from judges to prosecutors, undermining the court's ability to consider

individual circumstances and deliver justice fairly. Longer prison sentences also would increase the cost to taxpayers.

The broad nature of the bill could cause its provisions to be applied to those with noncriminal intent. The bill relies on a definition of "smuggler" that does not distinguish between criminal smuggling operations and people transporting migrants for other reasons. Many individuals currently incarcerated for smuggling are not gang or cartel members, but U.S. citizens who may not have realized the severity of the crime. These individuals, some of whom are teenagers, could be imprisoned for 10 years for the non-violent offense of driving migrants. Although individuals who cooperated with law enforcement could be granted a lighter sentence, this provision would be more likely to benefit individuals who were connected to criminal organizations rather than unaware individuals solicited by the cartel, who were less likely to have information that was useful to law enforcement.

SB 4 should more specifically target human trafficking in order to avoid persecuting families with mixed immigration statuses and individuals attempting to render aid. As the bill is written, a person could be charged for having an undocumented passenger in the vehicle if the police believed that the person intended to conceal the passenger. As such, a person taking an undocumented family member to the store, school, or a doctor's appointment could be at risk of arrest and imprisonment.

In addition, the bill could create an opportunity for racial profiling by law enforcement and increase the number of unjustified traffic stops.

OTHER
CRITICS
SAY:

The penalties for smuggling of persons and operation of a stash house under the bill should be further increased to more effectively deter smugglers.

NOTES:

The fiscal implications of the bill cannot be determined due to a lack of data about the prevalence of conduct that would be subject to the increased criminal penalties and increasing such penalties could result in unknown demands upon state correctional resources.

