

BILL ANALYSIS

S.B. 4
By: Flores
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Currently, the punishments for offenses such as smuggling of persons or operating a stash house are too low to deter these crimes. For example, according to media reports by the Courthouse News Service, the average federal sentence is just 15 months for persons convicted of human smuggling. As such, offenders are likely and have continued to reengage in this same criminal conduct. The governor has called for the imposition of mandatory minimum sentences for persons smuggling persons into the state. S.B. 4 seeks to deter such criminal activities and their harmful effects on vulnerable populations and Texas citizens by increasing criminal penalties and establishing mandatory minimums for certain criminal conduct involving the smuggling of persons or the operation of a stash house.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 4 amends the Penal Code to include the offenses of smuggling of persons, continuous smuggling of persons, and operation of a stash house among the offenses for which the punishment 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, subject to an emergency evacuation order or a disaster declaration made by the U.S. president, the governor, or the presiding officer of the governing body of a political subdivision. The bill establishes a 10-year mandatory minimum term of imprisonment for the offenses of smuggling of persons, continuous smuggling of persons, and operation of a stash house if the penalty is so increased. The bill establishes a 15-year mandatory minimum term of imprisonment for the first degree felony offenses of smuggling of persons and continuous smuggling of persons if the penalty is so increased, unless another provision of law applicable to the offense provides for a minimum term of imprisonment of 15 years or more.

S.B. 4 establishes a 10-year mandatory minimum term of imprisonment for the offense of smuggling of persons, irrespective of whether punishable as a first, second, or third degree felony. However, the bill establishes that, if at the punishment stage of the trial or at the time of entering a plea agreement for an offense of smuggling of persons punishable as a third degree felony, the state's attorney 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 must be sealed

by the court, except that the certification may be accessed by the office of the state's attorney, the attorney representing the defendant, and the court. For this purpose, "significant cooperation" includes the following:

- 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 furthers the investigation of the charged offense and any other parties involved; or
- providing information that aids law enforcement.

Additionally, the bill authorizes the actor, at the punishment stage of a trial for an offense of smuggling of persons punishable as a third degree felony or for which the smuggled individual is a child younger than 18 years of age at the time of the offense, to 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 third degree felony with a five-year mandatory minimum term of imprisonment.

S.B. 4 establishes a 10-year mandatory minimum term of imprisonment for the second degree felony and first degree felony offenses of continuous smuggling of persons, except for the first degree felony offense of continuous smuggling of persons that is punishable under current law by imprisonment in the Texas Department of Criminal Justice for life or for any term of not more than 99 years or less than 25 years.

S.B. 4 increases the penalty for the offense of operation of a stash house from a Class A misdemeanor to a third degree felony with a five-year mandatory minimum term of imprisonment. The bill further enhances the penalty for that offense to a second degree felony with a five-year mandatory minimum term of imprisonment if either of the following conditions are satisfied:

- the offense is committed by a person who knowingly uses or permits another to use any real estate, building, room, tent, vehicle, boat, or other property owned by the person or under the person's control to commit an offense or to facilitate the commission of an offense of continuous smuggling of persons, continuous trafficking of persons, or compelling prostitution; or
- it is 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 suffered serious bodily injury or death.

S.B. 4 enhances the penalty for the following offenses to a third degree felony if it is shown on the trial of the applicable offense that the actor committed the offense in the course of committing an offense of smuggling of persons involving 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:

- assault in which the actor intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;
- burglary of a building other than a habitation;
- burglary of vehicles;
- criminal trespass; and
- evading arrest or detention.

S.B. 4 increases the punishment for an offense of arson, criminal mischief, reckless damage or destruction of property, interference with railroad property, or graffiti punishable as a misdemeanor or a state jail felony to the punishment for a third degree felony if it is shown on the trial of the offense that the actor committed the offense in the course of committing an offense of smuggling of persons involving 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.

S.B. 4 establishes that, if a person is found guilty in a single criminal action of more than one offense of smuggling of persons involving 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 or the continuous smuggling of persons involving such conduct, the sentences for those offenses must run concurrently with each other. The bill further establishes that the sentence for an offense of smuggling of persons or the continuous smuggling of persons involving that conduct may run consecutively with each sentence for any of the following additional offenses that arises out of that same criminal episode and for which the penalty is enhanced as provided by the bill:

- arson;
- assault in which the actor intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;
- burglary of a building other than a habitation;
- burglary of vehicles;
- criminal mischief;
- criminal trespass;
- evading arrest or detention;
- graffiti;
- interference with railroad property; or
- reckless damage or destruction of property.

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 person was charged with an offense of smuggling of persons involving 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 or the continuous smuggling of persons involving such conduct and one of the above listed offenses. If the accused is found guilty of more than one such smuggling of persons or continuous smuggling of persons offense, the sentences for those offenses must run concurrently with each other.

S.B. 4 applies only to an offense committed on or after the bill's effective date. An offense committed before the bill's effective date 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 these purposes, an offense was committed before the bill's effective date if any element of the offense was committed before that date.

EFFECTIVE DATE

December 1, 2023, or, if the bill does not receive the necessary vote, the 91st day after the last day of the legislative session.