

SUBJECT: Modifying the offense of smuggling of persons and criminal penalties

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 13 ayes — Paddie, Hernandez, Deshotel, Harless, Howard, Hunter,  
P. King, Lucio, Metcalf, Raymond, Shaheen, Slawson, Smithee

0 nays

SENATE VOTE: On final passage, May 5 — 31-0, on Local and Uncontested Calendar

WITNESSES: For — John Hubert, Kleberg and Kenedy Counties District Attorney's Office (*Registered, but did not testify*: James Parnell, Dallas Police Association; David Sinclair, Game Warden Peace Officers Association; Ray Hunt, HPOU; Tom Maddox, Sheriffs' Association of Texas; Charles Maley, South Texans Property Rights Association; Jeremy Fuchs, Texas and Southwestern Cattle Raisers Association; Harold Stone, Texas Farm Bureau; John Wilkerson, Texas Municipal Police Association; Robert Howard)

Against — Nick Hudson, American Civil Liberties Union of Texas; (*Registered, but did not testify*: Fatima Menendez, Mexican American Legal Defense and Educational Fund; Chloe Goodman, Workers Defense Action Fund)

BACKGROUND: Penal Code sec. 20.05 establishes that a person commits a third-degree felony if the person, with the intent to obtain a pecuniary benefit, knowingly:

- uses a motor vehicle, aircraft, watercraft, or other means of conveyance to transport an individual with the intent to conceal the individual from a peace officer or special investigator or flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor; or
- encourages or induces a person to enter or remain in this country in violation of federal law by concealing, harboring, or shielding that

person from detection.

The section also provides for the enhancement of the criminal penalty to a second-degree felony or first-degree felony under specified conditions.

Concerns have been raised that the current definition of and criminal penalties for the smuggling of persons are inadequate to deter the activity, which places both migrants and local communities in harm's way.

**DIGEST:**

SB 576 would remove the intent to obtain pecuniary benefit from the conditions for the offense of smuggling of persons, and would establish that a person committed that offense if the person knowingly assisted, guided, or directed two or more individuals to enter or remain on agricultural land without the owner's consent.

The bill also would enhance the offense of smuggling of persons from a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) to second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if:

- the offense was committed with the intent to obtain a pecuniary benefit;
- 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
- the actor, while transporting an individual, knowingly fled from a peace officer or special investigator attempting to lawfully arrest or detain the actor.

The bill would take effect September 1, 2021, and would apply only to an offense committed entirely on or after that date.

**NOTES:**

The House companion bill, HB 687 by Lozano, was considered in a public hearing of the Criminal Jurisprudence Committee on April 12, reported favorably on April 29, and set on the General State Calendar for May 13.

