

Reforming Texas Human Smuggling Law

Recommendation: To give law enforcement more tools with which to fight the growing problem of human smuggling, update and strengthen state human smuggling law.

According to the United Nations (UN) Office on Drugs and Crime in its 2011 paper, “Smuggling of Migrants: A Global Review and Annotated Bibliography of Recent Publications”:

[I]n 1993 the United States Border Patrol started to implement a series of enforcement campaigns to bring the border under control... however, the consequence of these campaigns has been to change the nature of the problem along the Mexico-United States border from one of irregular immigration to one of smuggling of migrants. Although no comparative statistics are available, experts remark that smuggling of migrants was a relatively limited phenomenon before 1993, while recent publications assess that 80 percent of migrants use the services of smugglers...¹

The Scope of the Problem

Texas bears the brunt of securing our nation’s long border with Mexico—largely due to the state’s geography. The U.S.-Mexico border is 1,933 miles long, and 1,241 of those miles (over 64 percent) are between Texas and Mexico along the Rio Grande.² Out of the 414,397 persons apprehended on the Mexican border in 2013, 243,550 (about 58.8 percent) were apprehended within the Texas Border Patrol sectors.³

Approximately 900,000 undocumented migrants were apprehended on the Mexican border in 2003 and close to 1.5 million were apprehended in 2004 and 2005.⁴ In 2013, however, that number decreased to 414,397.⁵ The UN’s sources estimate that approximately 80 percent of these persons are being smuggled. According to the Executive Office for United States Attorneys, the number of convicted smugglers of migrants also rose significantly from 589 in 1995 to 2,457 in 2004.⁶ This likely represents a mere fraction of the persons actually involved in human smuggling.

¹ “Smuggling of Migrants,” United Nations Office on Drugs and Crime, 2011. http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Smuggling_of_Migrants_A_Global_Review.pdf

² U.S. Census Table 363. U.S.–Canada and U.S.–Mexico Border Lengths <https://www.census.gov/compendia/statab/2012/tables/12s0363.pdf>

³ U.S. Border Patrol Sector Profile, Fiscal Year 2013.

<http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202013%20Profile.pdf>

⁴ *Id.*

⁵ *Id.*

⁶ “Smuggling of Migrants,” United Nations Office on Drugs and Crime, 2011. http://www.unodc.org/documents/human-trafficking/Migrant-Smuggling/Smuggling_of_Migrants_A_Global_Review.pdf

Texas is currently dealing with an extraordinary influx of unaccompanied minors illegally crossing our long international border with Mexico. In the Texas Rio Grande Valley sector alone, the U.S. Border Patrol made more than 160,000 apprehensions between October 2013 and May 2014, an increase of 70 percent over the same period the year before.⁷ Nearly one-third of those detained were children traveling alone.⁸ Authorities arrested 47,017 unaccompanied minors illegally crossing the entire border between October and May, up 92 percent from the same period one year earlier.⁹ More than two-thirds of these arrests (33,470) were in the Rio Grande Valley sector.¹⁰ A draft Border Patrol memorandum estimates that number could reach 90,000 in the fiscal year ending September 30.¹¹

Almost three-fourths of the children apprehended are from Honduras, Guatemala or El Salvador—many of them fleeing organized crime and cartels in those nations.¹² Some reports suggest that some of the criminal organizations children are fleeing from may be involved in transporting these children to the United States.¹³ Organized crime and human smuggling play an insidious role in the movement of these young people.

⁷ "Border Patrol overwhelmed in South Texas," Christopher Sherman, *Associated Press*, *Washington Times*, May 30, 2014, <http://www.washingtontimes.com/news/2014/may/30/border-patrol-commander-to-address-immigrant-flow/>; see also: "New shelter to open in face of illegal immigration wave," Fernando del Valle, *Valley Morning Star*, http://www.themonitor.com/news/local/new-shelter-to-open-in-face-of-illegal-immigration-wave/article_36412260-f10c-11e3-a1d5-001a4bcf6878.html

⁸ *Id.*

⁹ See, e.g., "Groups allege abuse of child immigrants at border," Elliot Spagat, *Associated Press*, June 11, 2014, <http://bigstory.ap.org/article/groups-allege-abuse-child-immigrants-border>

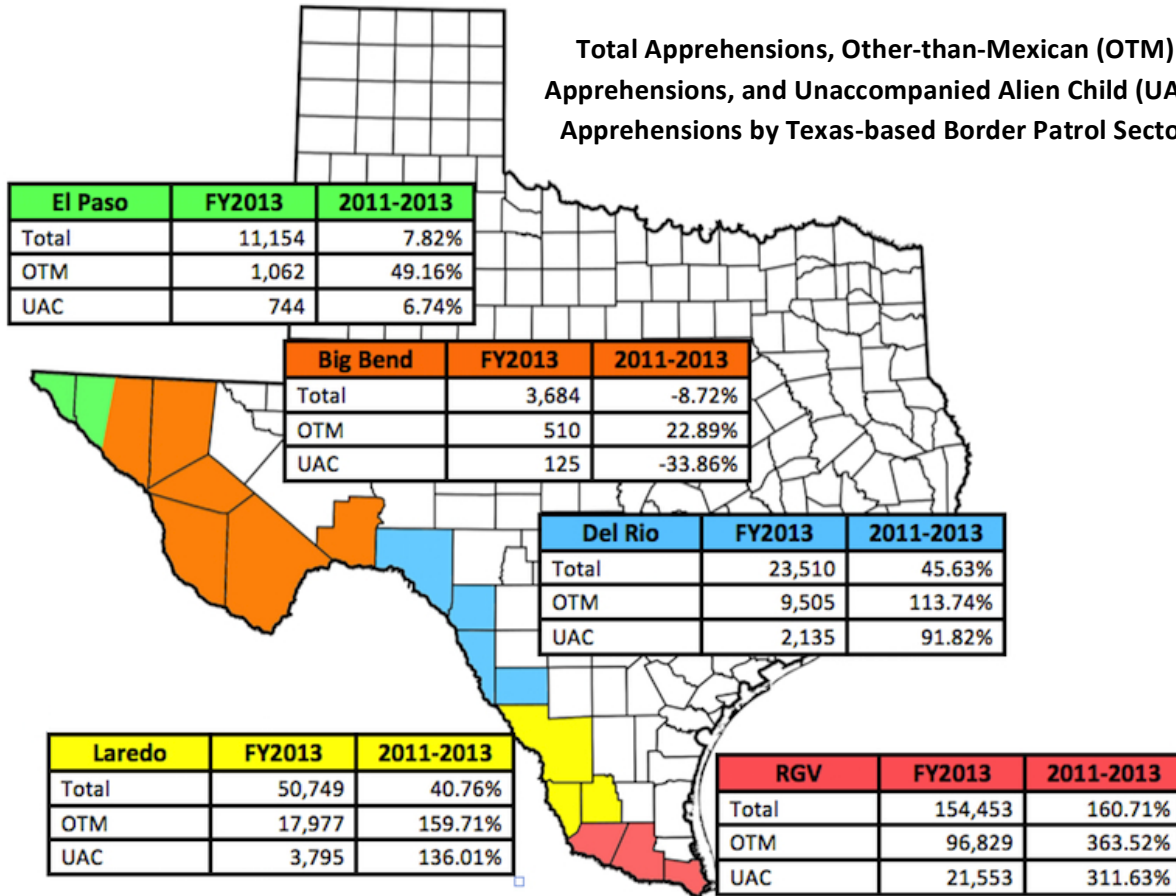
¹⁰ "Southwest Border Unaccompanied Alien Children," U.S. Customs and Border Protection, <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>

¹¹ "As many as 90,000 immigrant children could be caught trying to cross US border in 2014, official say," *Associated Press*, *Fox News*, <http://www.foxnews.com/us/2014/06/05/as-many-as-0000-immigrant-children-could-try-to-cross-us-border-by-themselves/>; see also: "Holder seeks legal team for children on border," Stephen Dinan, *Washington Times*, June 8, 2014, <http://www.washingtontimes.com/news/2014/jun/8/holder-seeks-legal-team-for-children-on-border/>

¹² "Child migrants driven to US by violence, poverty," Chris Sherman, *Associated Press*, June 2, 2014, <http://bigstory.ap.org/article/obama-child-migrants-urgent-humanitarian-issue>; see also: "5 answers: Why the surge in migrant children at border?," Bob Ortega, *AZ Central*, June 10, 2014, <http://www.azcentral.com/story/news/politics/immigration/2014/06/09/immigrant-children-arizona-border-answers/10246771/>

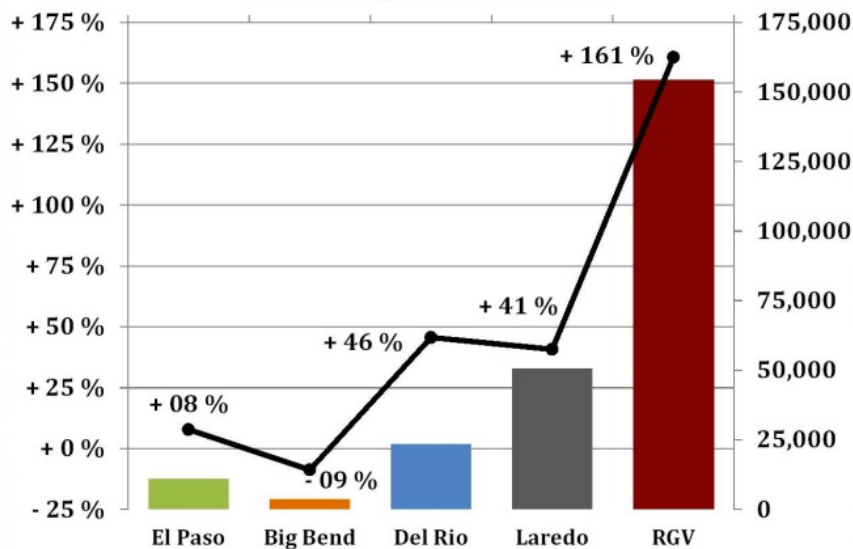
¹³ "Judge's order condemns how Obama promotes smuggling children across our border," Ernest Istook, *Washington Times*, June 10, 2014, <http://www.washingtontimes.com/news/2014/jun/10/istook-judges-order-condemns-how-obama-promotes-sm/#ixzz34RGURMt0>

Total Apprehensions, Other-than-Mexican (OTM) Apprehensions, and Unaccompanied Alien Child (UAC) Apprehensions by Texas-based Border Patrol Sector



14

**Total Apprehensions for FY 2013
With % Change From FY 2011-2013**



15

¹⁴ Source: United States Border Patrol Sector Profiles for Fiscal Years 2011 and 2013. <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202011%20Sector%20Profile.pdf>, <http://www.cbp.gov/sites/default/files/documents/U.S.%20Border%20Patrol%20Fiscal%20Year%202013%20Profile.pdf>

The Role of Organized Crime

The high number of unaccompanied children illegally crossing the border indicates smuggling is a significant problem and is perpetrated by the organized criminal element in Mexico, Central America and the United States. U.S. Senator Dianne Feinstein (D-CA) was recently quoted in the *Washington Post* as saying: “[a]fter engaging with the children and U.S. personnel, my staff learned that many of the children were smuggled across the border after hearing radio ads promising they would not be deported...”¹⁶ The report went on to indicate, “[o]ne Senate Democratic aide who has worked closely on the issue suggested that human-smuggling networks in Central America are falsely propagating the rumors to recruit clients, whose families pay large sums for the trip north.”¹⁷ Similarly, “[t]he Obama Administration says the wave of migration has been triggered by people smugglers who spread rumours [sic] that children were being given legal permits to stay in the US.”¹⁸

The Director of the Texas Department of Public Safety (DPS) recently testified that unaccompanied minors “are crossing the Rio Grande in South Texas with the assistance of Mexican drug cartels and other criminal gangs.”¹⁹ Mexican drug-trafficking organizations, also known as cartels, have been involved in the process, with the Director noting, “some of these children have also become victims of violent crime while traveling across Mexico... the Mexican Cartels are not responsible for the... crisis, but they do benefit from smuggling fees and the diversion of Border Patrol resources...”²⁰

Relatedly, a recent study by the University of Texas at El Paso discovered that a U.S. immigration policy calling for uniting those crossing illegally with U.S.-based family members ahead of immigration hearings “appears to be exploited by illegal alien smugglers and family members in the United States who wish to reunite with separated children.”²¹ A separate report by the United States Conference of Catholic Bishops found:

¹⁵ *Id.*

¹⁶ “Influx of minors across Texas border driven by belief that they will be allowed to stay in U.S.,” David Nakamura, *Washington Post*, June 13, 2014. http://www.washingtonpost.com/politics/influx-of-minors-across-texas-border-driven-by-belief-that-they-will-be-allowed-to-stay-in-us/2014/06/13/5406355e-f276-11e3-9ebc-2ee6f81ed217_story.html

¹⁷ *Id.*

¹⁸ “‘Flee or die’: violence drives Central America’s child migrants to US border,” Jo Tuckman, *The Guardian*, July 9, 2014. <http://www.theguardian.com/world/2014/jul/09/central-america-child-migrants-us-border-crisis>

¹⁹ “DPS: Cartels helping immigrant children enter US illegally,” Marty Schladen, *El Paso Times*, July 2, 2014. http://www.elpasotimes.com/news/ci_26072707/dps-cartels-are-helping-immigra

²⁰ Field Hearing: Committee on Homeland Security, Crisis on the Texas Border: Surge of Unaccompanied Minors, Steven C. McCraw, July 3, 2014.

http://www.dps.texas.gov/director_staff/media_and_communications/2014/070314ComHomelandSecurity.pdf

²¹ Unaccompanied Alien Children Project, UTEP and the National Center for Border Security and Immigration, March 20, 2014. <http://ncbsi.utep.edu/documents/UAC%20Project%20Site%20Visits/UTEP%20NCBSI%20Final%20Report%20March%2020%20014.pdf>

[A] new trend is for coyotes [smugglers] to promise three attempts for the price of one, with families taking a mortgage out on their home to cover the cost of the coyote and then the coyote failing in order to gain the deed for the family's land with the coyote taking ownership of the land himself personally, or as part of a criminal enterprise.²²

According to some reports, smugglers charge for a range of services that may vary between \$3,000 and \$20,000 to cross the U.S.-Mexico border.²³

Organized crime is primarily responsible for the movement of these children and has had a real human toll. One Cameron County rancher recently reported smugglers ordered him to look the other way or face the consequences, causing him to fear for his safety.²⁴ A recent *Wall Street Journal* column noted:

The criminal networks being uncovered in Texas involve large groups of immigrants—and increasingly brazen smugglers. They often hold migrants hostage and threaten them with brutality if their friends or relatives don't produce extra money to release them, authorities said. Sometime, they kidnap migrants from rival smuggling gangs. Earlier this month, San Juan police found 43 people trapped inside one suspected stash house. The migrants claimed that their captors threatened to electrocute them if they tried to escape, according to a criminal complaint filed in federal court.²⁵

The mass migration of unaccompanied minors northward into the United States is not random—it has been motivated and directed by criminal smugglers who have derived pecuniary benefit and enacted terrible harm on some of the transported persons. Smuggling is not a victimless crime. As the April 2014 DPS human trafficking threat assessment noted:

In many cases, illegal aliens who voluntarily enter into an agreement with an alien smuggling organization (ASO) are ultimately kidnapped, moved or held against their will, assaulted, or otherwise exploited, and the ASOs are associated with gangs and Mexican cartels and engaged in other criminal enterprises, which renders the traditional smuggling-trafficking distinction misleading.²⁶

The State of Texas must ensure criminal statutes and laws against smuggling adequately deter those who would commit such actions.

²² "Mission to Central America: The Flight of Unaccompanied Children to the United States," Report of the Committee on Migration of the United States Conference of Catholic Bishops, November 2013. <http://www.usccb.org/about/migration-policy/upload/Mission-To-Central-America-FINAL-2.pdf>

²³ "Migrants Pay Up to \$20,000 to Cross US-Mexico Border," James Bargent, *InSight Crime*, July 9, 2013. [http://www.insightcrime.org/news-briefs/migrants-pay-up-to-\\$20000-to-cross-us-mexico-border](http://www.insightcrime.org/news-briefs/migrants-pay-up-to-$20000-to-cross-us-mexico-border)

²⁴ "Smugglers Threaten Landowners in Cameron County," *KGRV*, July 1, 2014. <http://www.krgv.com/news/smugglers-threaten-landowners-in-cameron-county/?test3>

²⁵ "Immigrant 'Stash Houses' Thrive Along Texas-Mexico Border," Ana Campoy, *Wall Street Journal*, June 26, 2014. <http://online.wsj.com/articles/immigrant-stash-houses-thrive-along-texas-mexico-border-1403715958>

²⁶ (U) *Assessing the Threat of Human Trafficking in Texas*. Texas Department of Public Safety, April 2014.

http://www.dps.texas.gov/director_staff/media_and_communications/2014/txHumanTraffickingAssessment.pdf

Current Law

Both federal and state laws provide criminal penalties for human smuggling. Notably, 8 U.S.C. 1324 – “Bringing in and harboring certain aliens” – provides for criminal penalties against those who:

1. Bring or attempt to bring a person into the U.S. in violation of U.S. law;
2. Encourage or induce an alien to come to, enter, or reside in the United States, knowing or in reckless violation of U.S. law;
3. Knowing or in reckless disregard of the fact that a person is in the U.S. in violation of U.S. law:
 - a. Transport, or move or attempts to transport or move such a person within the United States; or,
 - b. Conceal, harbor, or shield from detection, or attempt to conceal, harbor, or shield from detection, such a person.

The penalties provided range from a term of imprisonment not to exceed five years to a term that may be as great as life in prison for an act of smuggling that results in the death of any person.

Violations of 8 U.S.C. 1324 constituted the lead charge in 1,634 of the 50,468 new immigration prosecutions in federal district court in the first six months of Fiscal Year 2013.²⁷ The top two federal districts for immigration prosecutions in that period were the Southern and Western Districts of Texas.²⁸

The Need to Reform Texas State Law

When compared to existing federal law, the text of the Texas law on point is weak. Texas Penal Code Sec. 20.05 could be strengthened in a number of ways. Currently, the term “smuggle” in the context of human smuggling is not clearly defined. The statute describes smuggling of persons as the intentional use of a motor vehicle, aircraft or watercraft to transport an individual with the intent of either concealing the smuggled individual from a peace officer or special investigator, or fleeing from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor. Texas should improve this definition by using the clearer and more specific provisions of federal law at 8 U.S.C. 1324 (“Bringing in and harboring certain aliens”).

Interestingly, Texas generally has a much stronger and better-developed approach to the problem of human trafficking than it has for human smuggling. Trafficking differs from smuggling primarily in that trafficking involves forced labor or sexual services and must be involuntary, while human smuggling may be voluntary. In addition, smuggling involves the violation of international immigration laws, while trafficking may be domestic. According to the U.S. Immigration and Customs Enforcement (ICE):

²⁷ “Southern District of Texas Leading in Record Year for Immigration Prosecutions,” TRAC Immigration. <http://trac.syr.edu/immigration/reports/318/>

²⁸ *Id.*

- Sex trafficking in which a commercial sex act is induced by force, fraud or coercion, or in which the person induced to perform such act has not attained 18 years of age; or
- Recruitment, harboring, transportation, provision or obtaining of a person for labor or services, through the use of force, fraud or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage or slavery.²⁹

In contrast:

Human smuggling centers on transportation and is generally defined as... [i]mportation of people into the United States involving deliberate evasion of immigration laws. This offense includes bringing illegal aliens into the country, as well as the unlawful transportation and harboring of aliens already in the United States.³⁰ [Emphasis in original].

Human trafficking is often referred to as a form of “modern-day slavery,”³¹ and both federal and Texas law have prioritized addressing this heinous crime. Federal law on point includes the 2000 Victims of Trafficking and Violence Protection Act and the 2003, 2005 and 2008 Trafficking Victims Protection Reauthorization Act.³² Texas law (Penal Code Chapter 20A) also addresses the issue. The crime constitutes, at a minimum, a second degree felony, and continuous trafficking offenses are first degree felonies punishable by a minimum term of 25 years and a maximum of life in prison.

Additionally, Texas’ Human Trafficking Prevention Task Force has provided a coordinated response to this crime. The task force’s 2011 report to the Texas Legislature identified 35 legislative recommendations supported unanimously by all 47 members,³³ and 32 out of the 35 were passed during the 82nd Legislative Session. The 2012 report to the Texas Legislature identified 13 legislative recommendations,³⁴ and 10 out of the 13 were passed during the 83rd Legislative Session.

The problem of human smuggling, however, has not received the same level of attention. Texas law on human smuggling must be reformed to ensure an effective law enforcement response.

²⁹ “Fact Sheet: Human Trafficking and Smuggling,” ICE, January 18, 2013. <http://www.ice.gov/news/library/factsheets/human-trafficking.htm>

³⁰ *Id.*

³¹ See, e.g., “Human Trafficking,” Polaris Project. <http://www.polarisproject.org/human-trafficking/overview>

³² “U.S. Laws on Trafficking of Persons,” U.S. Department of State. <http://www.state.gov/j/tip/laws/>

³³ The Texas Human Trafficking Prevention Task Force Report 2011, January 2011. https://www.texasattorneygeneral.gov/files/agency/human_trafficking.pdf

³⁴ The Texas Human Trafficking Prevention Task Force Report 2012, December 2012. https://www.texasattorneygeneral.gov/files/agency/20121912_htr_fin_3.pdf

Proposed Improvements to Texas Law

As noted above, ICE defines human smuggling as the “[i]mportation of people into the United States involving deliberate evasion of immigration laws.”³⁵ Current Texas statute reflects the element of transportation, but declines to address the deliberate evasion of immigration laws. Texas law should be changed to directly reflect federal law on point—specifically, Title 8 of the U.S. Code and such substantially similar law as may replace it. As will be demonstrated below, this is consistent with existing Texas laws that directly reflect or mirror governing or on-point federal law.

Relatedly, the requirement that human smuggling involve the use of a motor vehicle, aircraft, or watercraft is unnecessary and should be removed. Smuggling may occur without the use of such vehicles. For example, those illegally crossing the border have been known to evade detection by hiding in growths of the non-native and invasive plant species *Arundo Donax* (Carrizo cane), which is found in the Rio Grande Valley and commonly grows from nine to 27 feet tall.³⁶ Assisting an illegal crossing by hiding in the cane while traveling on foot would meet most common definitions of human smuggling, but not that of Penal Code Sec. 20.05, which requires the use of a vehicle.

An additional extraneous requirement for the offense of human smuggling under current Texas law includes the requirement that human smuggling must involve either concealing the smuggled individual from a peace officer or special investigator, or fleeing from a peace officer or special investigator. Instead, a requirement should be provided that smuggling involves transporting, concealing, or enticing a person to the United States knowingly in violation or in reckless disregard of federal immigration law.

The continued prevalence of human smuggling in Texas indicates the penalties for the practice are insufficient. Under current law, the base penalty is a state jail felony and a felony of the third degree where pecuniary benefit is involved. Penalties should be strengthened in the most egregious cases: those involving the smuggling of a minor and those involving the sexual assault, serious injury, or death of a participant. The recent humanitarian crisis involving the smuggling of minors across the Mexican border, which exposes the children being moved to potential physical or sexual abuse, shows the need for tougher penalties in these instances. Smuggling a minor should be a second-degree felony, and smuggling resulting in serious injury or death should be judged as a first-degree felony.

Another important change to existing law is removal of the affirmative defense available under Texas Penal Code Sec. 20.05(d) in instances where the smuggler is related to the transported individual within the second degree of consanguinity or affinity. It is inappropriate for a defense to be provided for a crime solely because the beneficiary of the offense is a relative of the offender. This provision should be removed from Texas law.

³⁵ *Id.*

³⁶ “CPB resumes carrizo pilot project,” *Laredo Morning Times*, April 16, 2009.

<http://www.lmtonline.com/articles/2009/04/16/front/news/doc49e7903d85e93365547656.txt>

Texas must also ensure higher penalties for those who are serial smugglers of persons. Notably, the Texas offense of trafficking of persons (Penal Code Sec. 20A.01) has a related offense of continuous trafficking of persons (Penal Code Sec. 20A.03), providing tougher penalties for a person who engages in conduct that constitutes trafficking a person twice or more in a thirty-day period.

Statutory language should be added to specifically penalize those involved in preparatory offenses under Title 15, such as solicitation, conspiracy, and attempt to commit the crime. Similarly, language should be added to penalize those who aid and abet human smuggling, by the incorporation of Texas Penal Code Sec. 7.02 governing the criminal responsibility of persons for offenses committed under this chapter by the conduct of another.

Similarly, Texas should create an entirely new offense, “continuous smuggling of persons,” for two or more instances of conduct within a thirty-day period not arising out of the same criminal action. All penalties should be raised by one degree for continuous smuggling from the general human smuggling offense. The first-degree penalty for smuggling resulting in serious injury or death should be escalated to a first-degree felony with a minimum sentence of 25 years. The resulting penalties are described in the table below.

A stronger Texas law stands to impact the human smuggling problem in a number of positive ways. By increasing the penalties for human smuggling and ensuring that the law is easier for Texas courts to apply, Texas can increase the risks to human smugglers, discouraging them from participating in these criminal activities. By arresting and successfully prosecuting more smugglers, the illicit business of criminal organizations involved in these operations will be reduced. Furthermore, the increased risk is likely to drive up the prices smugglers must charge for their illegal operations, which would reduce the number of persons employing smugglers to cross the border.

As the federal government has inadequately responded to the security crises on the Texas border, Texas has increasingly responded on its own, and the agency that has taken the lead in this process is the Department of Public Safety (DPS). Since DPS functions as Texas’ state police force, having a strong and clearly applicable state law on the books will give DPS officers clear jurisdiction to arrest and turn over for prosecution those violating Texas law. A strengthened state law on human smuggling is thus a key complement to state action securing the border.

Unlike human trafficking, which can be domestic, human smuggling always involves a person crossing an international boundary, which necessarily involves a federal interest. However, the reforms proposed here will provide state and local law enforcement options for tackling human smuggling offenses.

APPENDIX A:

Summary of Proposed Improvements to Texas Smuggling Law

1. Remove the requirement that human smuggling involve the use of a motor vehicle, aircraft, or watercraft.
2. Remove the requirement that human smuggling must involve either concealing the smuggled individual from a peace officer or special investigator, or fleeing from a peace officer or special investigator.
3. Provide a requirement that smuggling involve transporting, concealing, or enticing a person to the United States knowingly in violation or in reckless disregard of federal immigration law (Title 8 of the U.S. Code).
4. Remove the defense to prosecution that a close relative cannot be convicted of smuggling.
5. Provide an escalated penalty (felony of the second degree) for smuggling a minor. (The base penalty is state jail felony, with felony of the third degree where pecuniary benefit is involved.)
6. Provide an escalated penalty (felony of the first degree) for smuggling that results in sexual assault, serious injury, or death.
7. Incorporated Texas Penal Code Chapter 15 on offenses committed preparatory to human smuggling, including criminal attempt, criminal conspiracy, criminal solicitation, and criminal solicitation of a minor.
8. Incorporate Texas Penal Code Sec. 7.02 to govern the criminal responsibility of a person for an offense committed under this chapter by the conduct of another (aiding and abetting).
9. Add an entirely new offense, continuous smuggling of persons, for two or more instances of human smuggling conduct not arising out of the same criminal action.
 - a. Raise all penalties by one degree for continuous smuggling. Raise the first-degree penalty for smuggling that results in serious injury or death to a first degree felony with a minimum sentence of 25 years.

APPENDIX B:

| Table of Penalties for Human Smuggling Violations Under Current Law | |
|--|---------------------|
| Base Penalty | State Jail Felony |
| Pecuniary Benefit | Third Degree Felony |
| Smuggling of a Minor | State Jail Felony |
| Smuggling Leads to Substantial Likelihood of Serious Injury or Death | Third Degree Felony |
| Smuggling Leads to Sexual Assault, Serious Injury or Death | No Defined Offense |
| Continuous Smuggling of Persons | No Defined Offense |
| Preparatory Offenses Including Conspiracy, Attempt, Solicitation, and Solicitation of a Minor | No Defined Offense |
| Criminal Responsibility for an Offense Committed Under this Chapter by the Conduct of Another (Aiding and Abetting) | No Defined Offense |

| Table of Penalties for Human Smuggling Violations Under Proposed Amendments | | |
|--|--|---|
| | Smuggling of Persons | Continuous Smuggling of Persons |
| Base Penalty | State Jail Felony | Third Degree Felony |
| Pecuniary Benefit | Third Degree Felony | Second Degree Felony |
| Smuggling of a Minor | Second Degree Felony | First Degree Felony |
| Smuggling Leads to Substantial Likelihood of Serious Injury or Death | Second Degree Felony | First Degree Felony |
| Smuggling Leads to Sexual Assault, or Serious Injury or Death | First Degree Felony | First Degree Felony with a Minimum Sentence of 25 Years |
| Preparatory Offenses Including Conspiracy, Attempt, Solicitation, and Solicitation of a Minor | Incorporated Specifically Into Statute | Incorporated Specifically Into Statute |
| Criminal Responsibility for an Offense Committed Under this Chapter by the Conduct of Another (Aiding and Abetting) | Incorporated Specifically Into Statute | Incorporated Specifically Into Statute |

APPENDIX C:

Proposed Amendment to Texas Penal Code Sec. 20.05, and Proposed Addition of an Offense for the Continuous Smuggling of Persons, to be Numbered Texas Penal Code Sec. 20.06

Sec. 20.05. SMUGGLING OF PERSONS.

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

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

~~(2) flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor;~~

(1) knowing or in reckless disregard of the fact that a person has come to, entered, or remains in the United States in violation of Title 8 of the U.S. Code, transports, or moves or attempts to transport or move such person within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(2) knowingly or in reckless disregard of the fact that the person has come to, entered, or remains in the United States in violation of Title 8 of the U.S. Code, conceals, harbors, or shields from detection, such person in any place, including any building or any means of transportation or movement; or,

(3) by encouraging or inducing a person to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of Title 8 of the U.S. Code.

(b) Except as provided by Subsections (c), (d), and (e), an offense under this section is a state jail felony.

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

~~(1) for pecuniary benefit; or~~

~~(2)~~

(d) An offense under this section is a felony of the second degree if the actor commits the offense in a manner that creates a substantial likelihood that the ~~transported~~ individual smuggled will suffer serious bodily injury or death, or if the individual being smuggled was a child younger than 18 years of age.

(e) An offense under this section is a felony of the first degree if the individual smuggled is a victim of sexual assault as defined under Penal Code Sec. 22.011 or aggravated sexual assault as defined under Penal Code Sec. 22.021, or if the individual smuggled suffers serious bodily injury or death.

~~It is an affirmative defense to prosecution under this section that the actor is related to the transported individual within the second degree of consanguinity or, at the time of the offense, within the second degree of affinity.~~

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

(g) Texas Penal Code Chapter 15 shall apply to any offenses including criminal attempt, criminal conspiracy, criminal solicitation, and criminal solicitation of a minor committed preparatory to the offense of smuggling of persons as defined in this section.

(h) Texas Penal Code Sec. 7.02 shall act to govern the criminal responsibility of a person for an offense committed under this chapter by the conduct of another.

Sec. 20.06. CONTINUOUS SMUGGLING OF PERSONS. (a) A person commits an offense if the person engages two or more times in conduct that constitutes an offense under Section 20.05.

(b) If the victim of an offense under Subsection (a) is the same victim as a victim of an offense under Section 20.05, a defendant may not be convicted of the offense under Section 20A.02 in the same criminal action as the offense under Subsection (a), unless the offense under Section 20.05:

(1) is charged in the alternative;

(2) occurred outside the period in which the offense alleged under Subsection (a) was committed; or

(3) is considered by the trier of fact to be a lesser included offense of the offense alleged under Subsection (a).

(c) A defendant may not be charged with more than one count under Subsection (a) if all of the conduct that constitutes an offense under Section 20.05 is alleged to have been committed against the same victim.

(d) An offense under this section is a felony of the third degree, except as provided under Subsections (e) and (f).

(e) If any of the conduct engaged in that constitutes an offense under Section 20.05 was conducted in a manner that creates a substantial likelihood that the transported individual smuggled will suffer serious bodily injury or death, or if the individual being smuggled was a child younger than 18 years of age, the offense shall be a felony of the first degree.

(f) An offense under this section shall be a felony of the first degree, punishable 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, if for any of the conduct engaged in that constitutes an offense under Section 20.05 the individual smuggled is a victim of sexual assault as defined under Penal Code Sec. 22.011 or aggravated sexual assault as defined under Penal Code Sec. 22.021, or if the individual smuggled suffers serious bodily injury or death.

(g) Texas Penal Code Chapter 15 shall apply to any offenses including criminal attempt, criminal conspiracy, criminal solicitation, and criminal solicitation of a minor committed preparatory to the offense of continuous smuggling of persons as defined in this section.

(h) Texas Penal Code Sec. 7.02 shall act to govern the criminal responsibility of a person for an offense committed under this chapter by the conduct of another.

APPENDIX D:

Current Federal Law Against Human Smuggling (8 U.S.C. 1324(a)(1)(A))

8 U.S.C. 1324 - Bringing in and harboring certain aliens

(a) Criminal penalties

(1)

(A) Any person who—

(i) knowing that a person is an alien, brings or attempts to bring to the United States in any manner whatsoever such person at a place other than a designated port of entry or place other than as designated by the Commissioner, regardless of whether such alien has received prior official authorization to come to, enter, or reside in the United States and regardless of any future official action which may be taken with respect to such alien;

(ii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, transports, or moves or attempts to transport or move such alien within the United States by means of transportation or otherwise, in furtherance of such violation of law;

(iii) knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals, harbors, or shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation;

(iv) encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law; or

(v)

(I) engages in any conspiracy to commit any of the preceding acts, or

(II) aids or abets the commission of any of the preceding acts,

shall be punished as provided in subparagraph (B).