

charging an official duty or in retaliation or on account of an exercise of official power or performance of an official duty as a peace officer or judge.

(d) It is no offense to detain or move another under this section when it is for the purpose of effecting a lawful arrest or detaining an individual lawfully arrested.

(e) It is an affirmative defense to prosecution under this section that:

- (1) the person restrained was a child who is 14 years of age or older and younger than 17 years of age;
- (2) the actor does not restrain the child by force, intimidation, or deception; and
- (3) the actor is not more than three years older than the child.

SEC. 20.03. KIDNAPPING

(a) A person commits an offense if he intentionally or knowingly abducts another person.

(b) It is an affirmative defense to prosecution under this section that:

- (1) the abduction was not coupled with intent to use or to threaten to use deadly force;
- (2) the actor was a relative of the person abducted; and
- (3) the actor's sole intent was to assume lawful control of the victim.

(c) An offense under this section is a felony of the third degree.

SEC. 20.04. AGGRAVATED KIDNAPPING

(a) A person commits an offense if he intentionally or knowingly abducts another person with the intent to:

- (1) hold him for ransom or reward;
- (2) use him as a shield or hostage;
- (3) facilitate the commission of a felony or the flight after the attempt or commission of a felony;
- (4) inflict bodily injury on him or violate or abuse him sexually;
- (5) terrorize him or a third person; or
- (6) interfere with the performance of any governmental or political function.

(b) A person commits an offense if the person intentionally or knowingly abducts another person and uses or exhibits a deadly weapon during the commission of the offense.

(c) Except as provided by Subsection (d), an offense under this section is a felony of the first degree.

(d) At the punishment stage of a trial, the defendant may raise the issue as to whether he voluntarily released the victim in a safe place. If the defendant proves the issue in the affirmative by a preponderance of the evidence, the offense is a felony of the second degree.

SEC. 20.05. SMUGGLING OF PERSONS

(a) A person commits an offense if the person knowingly:

- (1) uses a motor vehicle, aircraft, watercraft, or other means of conveyance to transport an individual with the intent to:
 - (A) conceal the individual from a peace officer or special investigator; or
 - (B) flee from a person the actor knows is a peace officer or special investigator attempting to lawfully arrest or detain the actor;
- (2) 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; or
- (3) assists, guides, or directs two or more individuals to enter or remain on agricultural land without the effective consent of the owner.

(b) Subject to Subsections (b-1) and (b-2), an offense under this

section is a felony of the third degree with a term of imprisonment of 10 years, except that the offense is:

(1) a felony of the second degree with a minimum term of imprisonment of 10 years if:

(A) the actor commits the offense in a manner that creates a substantial likelihood that the smuggled individual will suffer serious bodily injury or death;

(B) the smuggled individual is a child younger than 18 years of age at the time of the offense;

(C) the offense was committed with the intent to obtain a pecuniary benefit;

(D) 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

(E) the actor commits the offense under Subsection (a)(1)(B); or

(2) a felony of the first degree with a minimum term of imprisonment of 10 years if:

(A) it is shown on the trial of the offense that, as a direct result of the commission of the offense, the smuggled individual became a victim of sexual assault, as defined by Section 22.011, or aggravated sexual assault, as defined by Section 22.021; or

(B) the smuggled individual suffered serious bodily injury or death.

(b-1) If at the punishment stage of the trial or at the time of entering a plea agreement for an offense under this section punishable as a felony of the third degree, the attorney representing the state in the prosecution of the offense 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 shall be sealed by the court, except that the certification may be accessed by the office of the attorney representing the state, the attorney representing the defendant, and the court. For purposes of this subsection, "significant cooperation" includes:

(1) testifying in a trial on behalf of the state against other parties to the offense;

(2) providing relevant information regarding the case and other parties to the offense;

(3) providing information that furthers the investigation of the charged offense and any other parties involved; or

(4) providing information that aids law enforcement.

(b-2) At the punishment stage of a trial of an offense under this section, other than an offense punishable under Subsection (b)(1)(A), (C), (D), or (E) or (b)(2), the actor may 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 felony of the third degree with a minimum term of imprisonment of five years..

(c) It is an affirmative defense to prosecution of an offense under this section, other than an offense punishable under Subsection (b)(1)(A) or (b)(2), that the actor is related to the smuggled individual within the second degree of consanguinity or, at the time of the offense, within the second degree of affinity.

(d) 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.