

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1426

SPONSOR: Criminal Justice Committee and Senator Garcia

SUBJECT: Illegal Smuggling of Aliens

DATE: March 4, 2002

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

The committee substitute creates a second degree felony for unlawful transportation of aliens into the United States and two aggravated offenses. It makes the unlawful transportation a first degree felony when the violator causes serious bodily injury or places in jeopardy the life of another person. It makes the unlawful transportation a capital felony when the violation results in the death of another person.

The CS also defines relevant terms.

The CS also provides that, in determining the appropriate sentence, the sentencing court is authorized, but not required, to consider federal penalties provided for federal offenses that are comparable to the Florida offenses.

Finally, to facilitate admission of testimony relevant to the new offenses, the CS provides that the videotaped, or otherwise audiovisually preserved, deposition of a witness to a violation of the new section who has been deported or otherwise expelled from the United States, or is otherwise unable to testify, may be admitted into evidence in an action brought for such violation if such witness was available for cross examination and the deposition otherwise complies with the Florida Rules of Evidence.

This CS creates a new and as yet unnumbered section of the Florida Statutes.

## II. Present Situation:

There is currently no Florida statute under which a person can be charged with the crime of "alien smuggling." The term "alien smuggling" is not used in the Florida Statutes, and appears to

be a term of general usage for describing certain criminal activities relating to the unlawful transportation or harboring of “aliens” into the United States.

Three federal laws have been described as applying to “alien smuggling”: 8 U.S.C. 1324; 8 U.S.C. 1327; and 8 U.S.C. 1328 (none of these three federal statutes specifically uses the term “alien smuggling”). Each of the federal laws prohibits different acts.

Most relevant to this CS, 8 U.S.C. 1324 (“Bringing in and Harboring Certain Aliens”) provides that it is unlawful for a person, knowing that a person is an alien, to bring or attempt to bring that person to the United States at a place other than a designated port of entry or place other than as designated by the Commissioner of the Immigration and Naturalization Service, regardless of whether that 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 that alien. The offense also covers conspiracy and aiding and abetting. For each alien in respect to whom a violation occurs, the offender shall be imprisoned for not more than 10 years, fined, or both. In the case of a violation during and in relation to which the offender causes serious bodily injury to, or places in jeopardy the life of, any other person, the offender shall be imprisoned for not more than 20 years, fined, or both. In the case of a violation resulting in the death of another person, for each alien in respect to whom a violation occurs, the offender shall be punished by death or imprisoned for a term of years or life, fined, or both. *See* 8 U.S.C. 1324(a)(1)(A)(i), (a)(1)A(v) (I and II), and (a)(1)(B)(i, iii, and iv).

The term “alien” is defined in 8 U.S.C. 1101(a)(3) as “any person not a citizen or national of the United States.” The term “national of the United States” is defined in 8 U.S.C. 1101(a)(22) as “a person who, though not a citizen of the United States, owes permanent allegiance to the United States.”

The Immigration and Naturalization Service (INS) “is the key agency tasked with enforcing the criminal statutes that prohibit alien smuggling.” *Alien Smuggling/Management and Operational Improvements Needed to Address Growing Problem*. United States General Accounting Office, GAO/GGD-00-103 (May 2000) (hereinafter cited as “GAO Report”) Other federal agencies involved in addressing alien smuggling include the FBI, the DEA, the U.S. Department of State’s Bureau of International Narcotics and Law Enforcement Affairs, the Coast Guard, the CIA’s Office of Transnational Issues, the U.S. Department of Defense’s National Security Agency, and the National Security Council’s Office of Transnational Threats Alien Smuggling Sub-Group. *Id.* Also, in February 2000, the U.S. Attorney General created the Alien Smuggling Task Force.

According to the Government Accounting Office’s 2000 report on alien smuggling:

... INS’ November 1999 INS Intelligence Assessment stated that illegal border-crossers have increasingly relied on alien smugglers to enhance their chances of successfully entering the United States. INS data indicate that the number of smuggled aliens apprehended attempting to enter the United States increased nearly 80 percent over 2 years, from about 138,000 in fiscal year 1997 to about 247,000 in fiscal year 1999. In fiscal year 1997, 9 percent of the 1.4 million illegal aliens apprehended by the Border Patrol were smuggled compared to 14 percent of the 1.6 million aliens apprehended in fiscal year 1999.

Another indication that alien smuggling is increasing may be the number and proportion of illegal aliens apprehended who are from countries other than Mexico. According to INS, aliens who are from countries other than Mexico rely more heavily on organized smugglers. In fiscal year 1997, 58,000, or almost 4 percent of all INS apprehensions, were illegal aliens from countries other than Mexico compared to about 81,000, or almost 5 percent, in fiscal year 1999. The Coast Guard intercepted over 4,800 aliens in fiscal year 1999, which was an increase of 118 percent from the 2,200 aliens intercepted in fiscal year 1997. . . .

*Id.* (footnotes omitted).

While INS investigates “all types of smuggling . . . more emphasis is placed on organized smuggling that is composed of both small and large rings. The smaller groups tend to smuggle mostly large numbers of Mexican nationals. The larger groups are active internationally, primarily smuggling nationals from countries other than Mexico, charging significantly higher fees, and are frequently involved in other criminal activities. . . .” (INS website) As of 1999, “. . . [t]he 11 source countries that, excluding Mexico, have the greatest number of INS apprehensions” were (in order of numbers apprehended): Honduras; El Salvador; the Dominican Republic; Cuba; Canada; China; Jamaica; Columbia; Haiti; and Nicaragua. *GAO Report, supra.*

According to INS, “[a]liens enter the United States illegally in one of two ways: on their own or they are smuggled or trafficked into this country. Smugglers or traffickers fit into two basic groups: (1) Friends, relatives or other interested people may assist illegal entry for personal reasons or for monetary gain; and (2) organized smuggling or trafficking rings. The latter generally exists to make money: either from the cost of the transporting smuggled or trafficked aliens; or by forcing the smuggled or trafficked persons to work as indentured servants. Frequently, the smugglers or traffickers transport the aliens with little or no concern for their welfare with devastating results, such as unnecessary injury or death of aliens. Other smuggled or trafficked aliens have been forced, under the threat of physical harm or being exposed to the INS, to live and work in miserable conditions, even being forced into prostitution.” (INS website)

According to INS, there are generally two types of smuggling organizations. The first, called “blue collar” smugglers, are small operations that smuggle mostly large numbers of Mexican nationals and operate out of a border area. The other type, called “white collar” organizations, smuggle nationals who are from countries other than Mexico, are international in scope, and charge significantly higher fees. According to INS reports, smuggling fees can range from a few hundred dollars to cross the U.S. border to up to \$50,000 to be smuggled from China to the United States. Organized crime groups contribute to alien smuggling and present a growing problem to INS. According to INS’ November 1999 Intelligence Assessment, Colombian; Nigerian; Albanian; and Russian organized crime groups all view the United States as fertile ground for a myriad of criminal activities. For example, a November 1999 INS Central Region intelligence report stated that Russian organized crime activities, including the suspected smuggling of Russian prostitutes, have expanded into a major midwestern metropolitan area.

According to INS intelligence reports, Chinese organized crime groups reportedly control the smuggling of PRC nationals.

*GAO Report, supra.* The GAO report further states that “[a]ccording to an October 1999 INS Western Region intelligence report, some ‘lower level’ drug smugglers are finding it more difficult to compete with the larger drug cartels and have turned to smuggling aliens exclusively. Another reason that drug smugglers may be turning to alien smuggling, according to the report, is lesser penalties for alien smuggling compared to drug smuggling.” *Id.* See “Crime Cartels Threaten U.S. Security,” NewsMax.com (December 16, 2000) (noting involvement of international criminal cartels in alien smuggling) and “INS Official on Efforts to Stop Migrant Smuggling,” Office of Informational Programs, U.S. Department of State (August 8, 2001) (noting smuggling fees as high as \$70,000 per person). “INS predicts that alien smuggling will become a more significant enforcement problem in the future. INS believes that alien smuggling organizations will become more sophisticated, complex, and organized and will use additional routes and methods to introduce illegal aliens into the United States.” *GAO Report, supra.*

The murder of an “alien” could be addressed under Florida’s laws proscribing manslaughter or murder. Forcibly holding any “alien” against his or her will could be addressed under Florida’s laws proscribing false imprisonment and kidnapping. Finally, all of the federal laws regarding “alien smuggling” could be prosecuted by a State Attorney or the Statewide Prosecutor (multijurisdictional crimes) under Florida’s RICO law (racketeering law) and money laundering law. Florida’s RICO law and money laundering law include all federal crimes specified in the federal RICO law. The three federal alien smuggling offenses previously described are included in the federal RICO law.

### **III. Effect of Proposed Changes:**

The committee substitute creates a second degree felony for unlawful transportation of aliens into the United States. This offense is similar to an offense found in 8 U.S.C. 1324.

The CS also creates aggravated offenses. It makes the unlawful transportation a first degree felony when the violator causes serious bodily injury or places in jeopardy the life of another person. It makes the unlawful transportation a capital felony when the violation results in the death of another person. These aggravated offenses are similar to aggravated offenses found in 8 U.S.C. 1324.

The CS defines “alien” and “national of the United States.” These definitions track the federal definitions of those terms found in 8 U.S.C. 1101.

Penalties under federal law cannot be exactly duplicated. Section 775.082, F.S., in conjunction with the scoring system under the Criminal Punishment Code, determines the range for sentencing and the maximum allowable penalty for felony degree. The federal penalty scheme is not comparable to Florida law. Accordingly, in determining the appropriate sentence, the sentencing court is authorized, but not required, to consider federal penalties provided for federal offenses that are comparable to the Florida offenses. *Federal penalties do not exceed Florida penalties.*

Finally, to facilitate admission of testimony relevant to the new offenses, the CS provides that the videotaped, or otherwise audiovisually preserved, deposition of a witness to a violation of the new section who has been deported or otherwise expelled from the United States, or is otherwise unable to testify, may be admitted into evidence in an action brought for such violation if such witness was available for cross examination and the deposition otherwise complies with the Florida Rules of Evidence. Except for referencing the Florida Rules of Evidence, this provision mirrors a provision in 8 U.S.C. 1324.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The CS creates offenses that are second degree felonies and first degree felonies. The offenses are unranked in the offense severity ranking chart of the Criminal Punishment Code, therefore default to levels 4 and 7 respectively. The Criminal Justice Impact Conference has not yet determined the prison bed impact of this bill, but staff does not expect that this CS will have a significant prison bed impact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

There have been a number of profiled incidences of alien smuggling in South Florida over the last several years. *See* “Accused Cuban smugglers won’t face death penalty,” South Florida Sun-Sentinel.com (January 22, 2002); “FBI helping Cuba in murder investigation,” Naples Daily

News (January 18, 2002); “30 Cubans feared dead off Key West,” St. Petersburg Times (November 21, 2001); “U.S. Probes Deaths of Smuggled Cubans,” NewsMax.com (March 10, 2001); “Nine charged in smuggling of Cubans,” Miami Herald (August 2, 2000); “Lawmakers Demand Probe in Cuban deaths,” Miami Herald (October 23, 1999); and “INS dismantles ‘flesh cartel’ people-smuggling ring,” CNN.com (November 20, 1998).

Alien smuggling has been profiled in the context of international terrorism. According to testimony by Mr. Steve Emerson, Executive Director of Terrorism Newswire, Inc., before the House Subcommittee on Immigration and Claims (Hearing on International Terrorism and Immigration Policy, January 25, 2000), “alien terrorists use established smuggling pipelines across both the U.S.-Mexico and U.S.-Canada border. Maritime smuggling along the coasts, particularly via the Caribbean as well as East and West Coast seaports, occurs.”

### **VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill’s sponsor or the Florida Senate.

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