23

AMENDMENT TO THE AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.R. 2830, AS REPORTED

OFFERED BY SMITH, TX

Add at the end the following:

TITLE XII—ALIEN SMUGGLING

SEC. 1201. MARITIME LAW ENFORCEMENT.

(a) PENALTIES.—Subsection (b) of section 2237 of title 18, United States Code, is amended to read as follows:

"(b)(1) Whoever intentionally violates this section shall, unless the offense is described in paragraph (2), be fined under this title or imprisoned for not more than 5 years, or both.

"(2) If the offense—

"(A) is committed in the course of a violation of section 274 of the Immigration and Nationality Act (alien smuggling); chapter 77 (peonage, slavery, and trafficking in persons), section 111 (shipping), 111A (interference with vessels), 113 (stolen property), or 117 (transportation for illegal sexual activity) of this title; chapter 705 (maritime drug law enforcement) of title 46, or title II of the Act of June

15, 1917 (Chapter 30; 40 Stat. 220), the offender shall be fined under this title or imprisoned for not more than 10 years, or both;

"(B) results in serious bodily injury (as defined in section 1365 of this title) or transportation under inhumane conditions, the offender shall be fined under this title, imprisoned not more than 15 years, or both; or

"(C) results in death or involves kidnaping, an attempt to kidnap, the conduct required for aggravated sexual abuse (as defined in section 2241 without regard to where it takes place), or an attempt to commit such abuse, or an attempt to kill, be fined under such title or imprisoned for any term of years or life, or both.".

(b) LIMITATION ON NECESSITY DEFENSE.—Section 2237(c) of title 18, United States Code, is amended—

(1) by inserting "(1)" after "(c)";

(2) by adding at the end the following:

"(2) In a prosecution for a violation of this section, no defense based on necessity can be raised unless the defendant—

"(A) as soon as practicable upon reaching shore, delivered the person with respect to which the

1 necessity arose to emergency medical or law enforce-
2 ment personnel;
3 "(B) as soon as practicable, reported to the
4 Coast Guard the circumstances of the necessity re-
5 sulting giving rise to the defense; and
6 "(C) did not bring, attempt to bring, or in any
7 manner intentionally facilitate the entry of any alien,
8 as that term is defined in section 101(a)(3) of the
9 Immigration and Nationality Act (8 U.S.C. 1101
10 (a)(3)), into the land territory of the United States
11 without lawful authority, unless exigent cir-
12 cumstances existed that placed the life of that alien
13 in danger, in which case the reporting requirement
14 of subparagraph (B) is satisfied by notifying the
15 Coast Guard as soon as practicable after delivering
16 that person to emergency medical or law enforce-
17 ment personnel ashore.".
18 (c) DEFINITION.—Section 2237(e) of title 18, United
19 States Code, is amended—
20 (1) by striking "and" at the end of paragraph
21 (3);
22 (2) by striking the period at the end of para-
23 graph (4) and inserting "; and"; and
24 (3) by adding at the end the following:

"(5) the term 'transportation under inhumane conditions' means the transportation of persons in an engine compartment, storage compartment, or other confined space, transportation at an excessive speed, transportation of a number of persons in excess of the rated capacity of the means of transportation, or intentionally grounding a vessel in which persons are being transported.".

SEC. 1202. AMENDMENT TO THE SENTENCING GUIDELINES.

(a) IN GENERAL.—Pursuant to its authority under section 994 of title 28, United States Code, and in accordance with this section, the United States Sentencing Commission shall review and, if appropriate, amend the sentencing guidelines and policy statements applicable to persons convicted of alien smuggling offenses and criminal failure to heave to or obstruction of boarding.

(b) CONSIDERATIONS.—In carrying out this subsection, the Sentencing Commission, shall—

(1) consider providing sentencing enhancements or stiffening existing enhancements for those convicted of offenses described in paragraph (1) of this subsection that—

(A) involve a pattern of continued and flagrant violations;

1 (B) are part of an ongoing commercial or-
2 ganization or enterprise;
3 (C) involve aliens who were transported in
4 groups of 10 or more;
5 (D) involve the transportation or abandon-
6 ment of aliens in a manner that endangered
7 their lives; or
8 (E) involve the facilitation of terrorist ac-
9 tivity; and
10 (2) consider cross-references to the guidelines
11 for Criminal Sexual Abuse and Attempted Murder.
12 (c) EXPEDITED PROCEDURES.—The Commission
13 may promulgate the guidelines or amendments under this
14 subsection in accordance with the procedures set forth in
15 section 21(a) of the Sentencing Act of 1987, as though
16 the authority under that Act had not expired.

In the table of sections in section 2 of the bill add at the end the following:

"TITLE XII—ALIEN SMUGGLING

"Sec. 1201. Maritime law enforcement.
"Sec. 1202. Amendment to the sentencing guidelines.".