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**AMENDMENT TO THE AMENDMENT IN THE NA-  
TURE OF A SUBSTITUTE TO H.R. 2830, AS RE-  
PORTED**

**OFFERED BY SMITH, TX**

Add at the end the following:

**1 TITLE XII—ALIEN SMUGGLING**

**2 SEC. 1201. MARITIME LAW ENFORCEMENT.**

3 (a) PENALTIES.—Subsection (b) of section 2237 of  
4 title 18, United States Code, is amended to read as fol-  
5 lows:

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

10 “(2) If the offense—

11 “(A) is committed in the course of a violation  
12 of section 274 of the Immigration and Nationality  
13 Act (alien smuggling); chapter 77 (peonage, slavery,  
14 and trafficking in persons), section 111 (shipping),  
15 111A (interference with vessels), 113 (stolen prop-  
16 erty), or 117 (transportation for illegal sexual activ-  
17 ity) of this title; chapter 705 (maritime drug law en-  
18 forcement) of title 46, or title II of the Act of June

1 15, 1917 (Chapter 30; 40 Stat. 220), the offender  
2 shall be fined under this title or imprisoned for not  
3 more than 10 years, or both;

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

9 “(C) results in death or involves kidnaping, an  
10 attempt to kidnap, the conduct required for aggra-  
11 vated sexual abuse (as defined in section 2241 with-  
12 out regard to where it takes place), or an attempt  
13 to commit such abuse, or an attempt to kill, be fined  
14 under such title or imprisoned for any term of years  
15 or life, or both.”.

16 (b) LIMITATION ON NECESSITY DEFENSE.—Section  
17 2237(c) of title 18, United States Code, is amended—

18 (1) by inserting “(1)” after “(e)”;

19 (2) by adding at the end the following:

20 “(2) In a prosecution for a violation of this section,  
21 no defense based on necessity can be raised unless the de-  
22 fendant—

23 “(A) as soon as practicable upon reaching  
24 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:

1           “(5) the term ‘transportation under inhumane  
2           conditions’ means the transportation of persons in  
3           an engine compartment, storage compartment, or  
4           other confined space, transportation at an excessive  
5           speed, transportation of a number of persons in ex-  
6           cess of the rated capacity of the means of transpor-  
7           tation, or intentionally grounding a vessel in which  
8           persons are being transported.”.

9   **SEC. 1202. AMENDMENT TO THE SENTENCING GUIDELINES.**

10       (a) **IN GENERAL.**—Pursuant to its authority under  
11       section 994 of title 28, United States Code, and in accord-  
12       ance with this section, the United States Sentencing Com-  
13       mission shall review and, if appropriate, amend the sen-  
14       tencing guidelines and policy statements applicable to per-  
15       sons convicted of alien smuggling offenses and criminal  
16       failure to heave to or obstruction of boarding.

17       (b) **CONSIDERATIONS.**—In carrying out this sub-  
18       section, the Sentencing Commission, shall—

19           (1) consider providing sentencing enhancements  
20           or stiffening existing enhancements for those con-  
21           victed of offenses described in paragraph (1) of this  
22           subsection that—

23                (A) involve a pattern of continued and fla-  
24                grant 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.”.

