

# Overview of Texas's Immigration Crimes (SB4)



*In 2024, Texas created new state immigration crimes and a deportation-like apparatus. This overview outlines the three major provisions of the legislation.*

## 1. THE ILLEGAL-ENTRY OFFENSE

A person who is an alien commits an offense if the person enters or attempts to enter this state directly from a foreign nation at any location other than a lawful port of entry.

Tex. Penal Code § 51.02(a). This is a Class B misdemeanor, except it's a state jail felony if the client has a prior conviction for the offense. Tex. Penal Code § 51.02(b). This crime is modeled after the federal illegal-entry statute, 8 U.S.C. § 1325.

## 2. THE ILLEGAL-REENTRY OFFENSE

A person who is an alien commits an offense if the person enters, attempts to enter, or is at any time found in this state after the person: (1) has been denied admission to or excluded, deported, or removed from the United States; or (2) has departed from the United States while an order of exclusion, deportation, or removal is outstanding.

Tex. Penal Code § 51.03(a). Generally, a Class A misdemeanor. Tex. Penal Code § 51.03(b). But certain prior convictions can turn it into a felony. See generally Tex. Penal Code § 51.03(b). This crime is modeled after the federal illegal reentry statute, 8 U.S.C. § 1326.

## 3. STATE RETURN-TO-MEXICO ORDER

There is a pre-conviction return-to-Mexico order. A person at magistration or after charges have been filed can request the order in lieu of prosecution. Tex. Code Crim. Proc. art. 5B.002(a), (b). The person must consent to the order. Tex. Code Crim. Proc. art. 5B.002(c)(1). The judge "may" enter the order. Tex. Code Crim. Proc. art. 5B.002(a), (b). A person cannot receive this order if they are charged with another offense "that is punishable as a Class A misdemeanor" or higher or if they have previously received a state return order, Tex. Code Crim. Proc. art. 5B.002(c)(2), (3). There is also a post-conviction order. Tex. Code Crim. Proc. art. 5B.002(d). A court "shall" enter a return-to-Mexico order for anyone convicted of illegal entry or reentry. Tex. Code Crim. Proc. art. 5B.002(d).