

Legislative Explainer: Texas Legislature Passes SB4, Creating State Crime for Illegal Entry and Re-Entry



What is the new SB4?

It is a recently passed law creating two new Texas state crimes: illegal *entry* and illegal *re-entry*. Some legal advocates believe these crimes are actually impossible to commit given how people enter Texas from Mexico, but one will have to raise this argument in court.

- **Illegal Entry**
 - Makes it a Texas state crime if someone crosses the border into Texas from Mexico and does not use a lawful point of entry.
 - Level of Crime:
 - Class B Misdemeanor: up to 180 days in jail and up to \$2,000 fine.
 - Affirmative defense if you have immigration status, including DACA.
- **Illegal Re-Entry**
 - Makes it a Texas state crime to enter, attempt to enter, or even be in Texas if the person has previously been denied admission to the U.S., been deported from the U.S., or left before a deportation order was executed.
 - Level of Crime:
 - Class A Misdemeanor: up to one year in jail and up to \$4,000 fine.
 - 2nd or 3rd degree felony depending on other factors.

What are the consequences?

If convicted, a State of Texas judge **can**:

- Order the individual convicted to return to Mexico—even if the individual is not Mexican.
- Dismiss the charges and require the individual to return to Mexico, if:
 - The individual agrees.
 - The individual does not have a previous offense of illegal entry.
 - The individual provides the State with their fingerprints and other applicable biometric information.
- Enter conviction and sentence to jail.
 - The judge must order jailtime; cannot receive alternative, such as community supervision.
- If convicted and sentenced, a judge can order the individual to return to Mexico after serving jail time.
 - If the individual refuses to comply, they can be charged with a 2nd Degree Felony.

Important Limitations:

- Being in federal immigration proceedings is not a defense or considered.
- Law cannot be enforced when individuals are within primary or secondary schools, places of worship, or health care facilities, including those providing forensic medical examinations to sexual assault survivors.
- State or local officials cannot be sued for enforcing the new law, including employees or contractors.

What are the law's legal problems and weaknesses?

Certain to be litigated. Although the law as it is written seems extreme and seems to have been written to scare people, the legal and advocacy community is already anticipating lawsuits will be filed to challenge it. Among several issues listed below, there is a convincing argument that it is impossible to commit the crimes created by the law.

- States have no authority to enforce federal immigration law under the pre-emption doctrine.
- It is overbroad—who can enforce the law?
- There is a very high probability this law will lead to racial profiling.
- If the federal government has granted the individual “lawful presence in the United States” that is a defense to illegal entry. Lawful presence is not defined in this law, nor does it have an equivalent in federal immigration law.
- Because the Rio Grande is international territory, it is arguably impossible to commit.
 - Crime of illegal entry requires entry into Texas “directly” from Mexico, but a person must cross the Rio Grande (international territory) to enter Texas from Mexico. Without the crime of illegal entry, there can be no crime of illegal re-entry.

How can you protect yourself?

They Can Ask, You Don’t Have to Tell: State of Texas law enforcement, including Harris County Sherriff or Constable, State Trooper, or Houston Police Department, can ask about your immigration status, but **you do not have to provide any information about your immigration status.** Do not answer and do not lie.



If pulled over while driving

- must provide your driver's license to officer

If arrested for some other crime, only need to say

- name
- address
- date of birth

NO NEED TO DISCLOSE YOUR IMMIGRATION STATUS TO OFFICER OR JUDGE

- Prosecutor must prove you are not U.S. citizen or have legal immigration status in U.S.

PLEASE NOTE:

- A Texas law enforcement officer should not stop a person in the street to ask their immigration status, unless there is other criminal conduct.
- It might be best to not carry any paperwork regarding your immigration status with you.
 - Make sure a trusted relative or friend has a copy of any immigration documents you may have. You **do not** have to provide a Texas law enforcement officer or prosecutor with paperwork demonstrating your status, including your passport.
- Get a [Harris County Enhanced Library Card](#), it has your photo, your full name and address. It can serve as a photo ID in many places.