

BILL ANALYSIS

Senate Research Center

H.B. 4
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Border Security
10/30/2023
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

According to data from U.S. Customs and Border Protection (CBP), there were nearly 2.4 million migrant encounters along the southern border of the United States in fiscal year 2022, a record-high figure. Data from CBP also indicates that over one million encounters were recorded in Texas sectors alone that year, as opposed to under 300,000 encounters in fiscal year 2020. Moreover, the U.S. Border Patrol has seen an increase in repeat border crossings as well. In fiscal year 2019, just seven percent of migrants were apprehended more than once within a fiscal year. According to CBP data, this recidivism rate increased in fiscal years 2020 and 2021 to 26 percent and 27 percent, respectively, meaning that more than a quarter of migrants attempted to illegally cross the border at least twice. Due in part to the influx of border encounters, the State of Texas launched Operation Lone Star in March 2021, deploying the Texas National Guard and the Department of Public Safety to help secure the southern border. H.B. 4 seeks to further address the issue of border security by creating criminal offenses related to illegal entry into or presence in the state by an alien that can be enforced by all law enforcement officials in Texas and by authorizing the removal of such aliens in lieu of arrest.

H.B. 4 amends current law relating to prohibitions on the illegal entry into or illegal presence in this state by a person who is an alien, the enforcement of those prohibitions, and authorizing under certain circumstances the removal of persons who violate certain of those prohibitions; and creates criminal offenses.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 10, Penal Code, by adding Chapter 51, as follows:

CHAPTER 51. ILLEGAL ENTRY INTO THIS STATE

Sec. 51.01. DEFINITIONS. Defines "alien," "child," and "port of entry."

Sec. 51.015. ENFORCEMENT PROHIBITED IN CERTAIN LOCATIONS. Prohibits a peace officer from arresting, removing, or otherwise detaining a person for purposes of enforcing a provision of this chapter, notwithstanding any other provision of this chapter, if the person is on the premises or grounds of:

- (1) a public or private primary or secondary school;
- (2) a church, synagogue, or other established place of religious worship; or
- (3) a hospital licensed under Chapter 241 (Hospitals), Health and Safety Code.

Sec. 51.016. ENFORCEMENT PROHIBITED IN CERTAIN LOCATIONS. Prohibits a peace officer from arresting, removing, or otherwise detaining a person for purposes of enforcing a provision of this chapter, notwithstanding any other provision of this chapter,

if, for purposes of obtaining a forensic medical examination and treatment, the person is on the premises or grounds of a SAFE-ready facility, as defined by Section 323.001 (Definitions), Health and Safety Code, or another facility that provides forensic medical examinations to sexual assault survivors in accordance with Chapter 323 (Emergency Services and Forensic Examination Programs For Survivors of Sexual Assault), Health and Safety Code.

Sec. 51.02. ILLEGAL ENTRY FROM FOREIGN NATION. (a) Provides that 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.

(b) Provides that an offense under this section is a Class B misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the defendant has been previously convicted of an offense under this section.

(c) Provides that it is an affirmative defense to prosecution under this section that:

(1) the federal government has granted the defendant:

(A) lawful presence in the United States; or

(B) asylum under 8 U.S.C. Section 1158;

(2) the defendant's conduct does not constitute a violation of 8 U.S.C. Section 1325(a); or

(3) the defendant was approved for benefits under the federal Deferred Action for Childhood Arrivals program between June 15, 2012, and July 16, 2021.

(d) Provides that the following federal programs do not provide an affirmative defense for purposes of Subsection (c)(1):

(1) the Deferred Action for Parents of Americans and Lawful Permanent Residents program; and

(2) any program not enacted by the United States Congress that is a successor to or materially similar to the program described by Subsection (c)(3) or Subdivision (1).

(e) Authorizes a peace officer who is charging a person detained for a violation of this section with committing an offense under this section, notwithstanding any other law, to, in lieu of arresting the person or taking the person before a magistrate, remove the person by:

(1) collecting available identifying information of the person, which may include the use of photographic and biometric measures that are cross-referenced with all relevant local, state, and federal criminal databases;

(2) transporting the person to a port of entry; and

(3) ordering the person to return to the foreign nation from which the person entered or attempted to enter.

(f) Prohibits a court from abating the prosecution of an offense under this section on the basis that a federal determination regarding the immigration status of the defendant is pending.

Sec. 51.03. ILLEGAL REENTRY BY CERTAIN ALIENS. (a) Provides that 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.

(b) Provides that an offense under this section is a Class A misdemeanor, except that the offense is:

(1) a felony of the third degree if:

(A) the defendant's removal was subsequent to a conviction for commission of two or more misdemeanors involving drugs, crimes against a person, or both;

(B) the defendant was excluded pursuant to 8 U.S.C. Section 1225(c) because the defendant was excludable under 8 U.S.C. Section 1182(a)(3)(B);

(C) the defendant was removed pursuant to the provisions of 8 U.S.C. Chapter 12, Subchapter V; or

(D) the defendant was removed pursuant to 8 U.S.C. Section 1231(a)(4)(B); or

(2) a felony of the second degree if the defendant was removed subsequent to a conviction for the commission of a felony.

(c) Provides that for purposes of Subsections (a) and (b), "removal" includes any agreement in which an alien stipulates to removal pursuant to a criminal proceeding under either federal or state law.

(d) Authorizes a peace officer who is charging a person detained for a violation of this section with committing an offense under this section, notwithstanding any other law, to, in lieu of arresting the person or taking the person before a magistrate, remove the person by:

(1) collecting available identifying information of the person, which may include the use of photographic and biometric measures that are cross-referenced with all relevant local, state, and federal criminal databases;

(2) transporting the person to a port of entry; and

(3) ordering the person to return to the foreign nation from which the person entered or attempted to enter.

(e) Prohibits a court from abating the prosecution of an offense under this section on the basis that a federal determination regarding the immigration status of the defendant is pending.

Sec. 51.04. REFUSAL TO COMPLY WITH ORDER TO RETURN TO FOREIGN NATION. (a) Provides that a person who is an alien commits an offense if, following a violation of Section 51.02 or 51.03, the person refuses to comply with a peace officer's order under Section 51.02(e) or 51.03(d) to return to the foreign nation from which the person entered or attempted to enter.

(b) Provides that an offense under this section is a felony of the second degree.

Sec. 51.05. CERTAIN ACTS PROHIBITED. Prohibits a peace officer enforcing Section 51.02 or 51.03 from pushing a child into water, denying a child access to drinking water, or denying a child urgent medical care.

SECTION 2. Amends Title 5, Civil Practice and Remedies Code, by adding Chapter 117, as follows:

CHAPTER 117. INDEMNIFICATION OF CERTAIN CLAIMS RELATING TO
ENFORCEMENT OF CERTAIN CRIMINAL OFFENSES INVOLVING ILLEGAL ENTRY
INTO THIS STATE

Sec. 117.001. DEFINITION. Provides that in this chapter, "damages" includes any and all damages, fines, fees, penalties, court costs, attorney's fees, or other assessments.

Sec. 117.002. LOCAL GOVERNMENT INDEMNIFICATION OF LOCAL GOVERNMENT OFFICIALS, EMPLOYEES, AND CONTRACTORS. (a) Requires a local government, unless the court or jury determines that the official, employee, or contractor acted in bad faith, with conscious indifference, or with recklessness, to indemnify an official, employee, or contractor of the local government for damages arising from a cause of action resulting from an action taken by the official, employee, or contractor to enforce Chapter 51, Penal Code, during the course and scope of the official's, employee's, or contractor's office, employment, or contractual performance for or service on behalf of the local government.

(b) Prohibits indemnification payments made under Subsection (a) by a local government from exceeding:

(1) \$100,000 to any one person or \$300,000 for any single occurrence in the case of personal injury or death; or

(2) \$10,000 for a single occurrence of property damage.

(c) Requires a local government to indemnify an official, employee, or contractor of the local government for reasonable attorney's fees incurred in defense of a criminal prosecution against the official, employee, or contractor for an action taken by the official, employee, or contractor to enforce Chapter 51, Penal Code, during the course and scope of the official's, employee's, or contractor's office, employment, or contractual performance for or service on behalf of the local government.

(d) Prohibits this section from being construed to waive any statutory limits on damages under state law.

Sec. 117.003. STATE INDEMNIFICATION OF STATE OFFICIALS, EMPLOYEES, AND CONTRACTORS; ATTORNEY GENERAL REPRESENTATION. (a) Requires the state, unless the court or jury determines that the state official, employee, or contractor acted in bad faith, with conscious indifference, or with recklessness, to indemnify an elected or appointed state official or a state employee or contractor for damages arising from a cause of action resulting from an action taken by the official, employee, or contractor to enforce Chapter 51, Penal Code, during the course and scope of the official's, employee's, or contractor's office, employment, or contractual performance for or service on behalf of the state.

(b) Provides that, notwithstanding any other law, indemnification under Subsection (a) is not subject to any indemnification limits under state law.

(c) Requires the state to indemnify a state official, employee, or contractor for reasonable attorney's fees incurred in defense of a criminal prosecution against the

official, employee, or contractor for an action taken by the official, employee, or contractor to enforce Chapter 51, Penal Code, during the course and scope of the official's, employee's, or contractor's office, employment, or contractual performance for or service on behalf of the state.

(d) Entitles a state official, employee, or contractor who may be entitled to indemnification under Subsection (a) to representation by the attorney general, subject to Chapter 104 (State Liability For Conduct of Public Servants), in an action in connection with which the official, employee, or contractor may be entitled to that indemnification.

(e) Prohibits this section from being construed to waive any statutory limits on damages under state law.

Sec. 117.004. APPEAL TO SUPREME COURT. Requires that an appeal be taken directly to the Supreme Court of Texas for a civil action brought against a person who may be entitled under Section 117.002 or 117.003 to indemnification for damages awarded against the person in the action.

Sec. 117.005. OTHER LAWS NOT AFFECTED. Provides that this chapter does not affect a defense, immunity, or jurisdictional bar available to the state or a local government or an official, employee, or contractor of the state or a local government.

SECTION 3. Severability clause.

SECTION 4. Effective date: upon passage or the 91st day after the last day of the legislative session.