

CODE OF CRIMINAL PROCEDURE

TITLE 1. CODE OF CRIMINAL PROCEDURE

CHAPTER 5B. PROCEDURES FOR CERTAIN OFFENSES INVOLVING ILLEGAL  
ENTRY INTO THIS STATE

Art. 5B.001. ENFORCEMENT PROHIBITED IN CERTAIN LOCATIONS. Notwithstanding any other law, a peace officer may not arrest or detain a person for purposes of enforcing a provision of Chapter 51, Penal Code, if the person is on the premises or grounds of:

(1) a public or private primary or secondary school for educational purposes;

(2) a church, synagogue, or other established place of religious worship;

(3) a health care facility, as defined by Section 161.471, Health and Safety Code, including a facility a state agency maintains or operates to provide health care, or the office of a health care provider, as defined by Section 161.471, Health and Safety Code, provided that the person is on the premises or grounds of the facility or office for the purpose of receiving medical treatment; or

(4) a SAFE-ready facility, as defined by Section 323.001, Health and Safety Code, or another facility that provides forensic medical examinations to sexual assault survivors in accordance with Chapter 323, Health and Safety Code, provided that the person is on the premises or grounds of the facility for purposes of obtaining a forensic medical examination and treatment. Added by Acts 2023, 88th Leg., 4th C.S., Ch. 1 (S.B. 4), Sec. 1, eff. March 5, 2024.

Art. 5B.002. ORDER TO RETURN TO FOREIGN NATION. (a) A magistrate during a person's appearance under Article 14.06 or 15.17 may, after making a determination that probable cause exists for arrest for an offense under Section 51.02 or 51.03, Penal Code, order the person released from custody and issue a written order in accordance with Subsection (c).

(b) The judge in a person's case at any time after the

person's appearance before a magistrate under Article 14.06 or 15.17 may, in lieu of continuing the prosecution of or entering an adjudication regarding an offense under Section 51.02 or 51.03, Penal Code, dismiss the charge pending against the person and issue a written order in accordance with Subsection (c).

(c) A written order authorized by Subsection (a) or (b) must discharge the person and require the person to return to the foreign nation from which the person entered or attempted to enter, and may be issued only if:

(1) the person agrees to the order;

(2) the person has not previously been convicted of an offense under Chapter 51, Penal Code, or previously obtained a discharge under an order described by Subsection (a) or (b);

(3) the person is not charged with another offense that is punishable as a Class A misdemeanor or any higher category of offense; and

(4) before the issuance of the order, the arresting law enforcement agency:

(A) collects all available identifying information of the person, which must include taking fingerprints from the person and using other applicable photographic and biometric measures to identify the person; and

(B) cross-references the collected information with:

(i) all relevant local, state, and federal criminal databases; and

(ii) federal lists or classifications used to identify a person as a threat or potential threat to national security.

(d) On a person's conviction of an offense under Chapter 51, Penal Code, the judge shall enter in the judgment in the case an order requiring the person to return to the foreign nation from which the person entered or attempted to enter. An order issued under this subsection takes effect on completion of the term of confinement or imprisonment imposed by the judgment.

(e) An order issued under this article must include:

(1) the manner of transportation of the person to a

port of entry, as defined by Section 51.01, Penal Code; and

(2) the law enforcement officer or state agency responsible for monitoring compliance with the order.

(f) An order issued under this article must be filed:

(1) with the county clerk of the county in which the person was arrested, for an order described by Subsection (a); or

(2) with the clerk of the court exercising jurisdiction in the case, for an order described by Subsection (b) or (d).

(g) Not later than the seventh day after the date an order is issued under this article, the law enforcement officer or state agency required to monitor compliance with the order shall report the issuance of the order to the Department of Public Safety for inclusion in the computerized criminal history system under Chapter 66.

Added by Acts 2023, 88th Leg., 4th C.S., Ch. 1 (S.B. 4), Sec. 1, eff. March 5, 2024.

Art. 5B.003. ABATEMENT OF PROSECUTION ON BASIS OF IMMIGRATION STATUS DETERMINATION PROHIBITED. A court may not abate the prosecution of an offense under Chapter 51, Penal Code, on the basis that a federal determination regarding the immigration status of the defendant is pending or will be initiated.

Added by Acts 2023, 88th Leg., 4th C.S., Ch. 1 (S.B. 4), Sec. 1, eff. March 5, 2024.