

PENAL CODE

TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

CHAPTER 51. ILLEGAL ENTRY INTO THIS STATE

Sec. 51.01. DEFINITIONS. In this chapter:

(1) "Alien" has the meaning assigned by 8 U.S.C. Section 1101, as that provision existed on January 1, 2023.

(2) "Port of entry" means a port of entry in the United States as designated by 19 C.F.R. Part 101.

Added by Acts 2023, 88th Leg., 4th C.S., Ch. 1 (S.B. 4), Sec. 2, eff. March 5, 2024.

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

Added by Acts 2023, 88th Leg., 4th C.S., Ch. 1 (S.B. 4), Sec. 2, eff. March 5, 2024.

Sec. 51.03. ILLEGAL REENTRY BY CERTAIN ALIENS. (a) 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) 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) For purposes of this section, "removal" includes an order issued under Article 5B.002, Code of Criminal Procedure, or any other agreement in which an alien stipulates to removal pursuant to a criminal proceeding under either federal or state law.

Added by Acts 2023, 88th Leg., 4th C.S., Ch. 1 (S.B. 4), Sec. 2, eff. March 5, 2024.

Sec. 51.04. REFUSAL TO COMPLY WITH ORDER TO RETURN TO FOREIGN NATION. (a) A person who is an alien commits an offense if:

(1) the person has been charged with or convicted of an offense under this chapter;

(2) a magistrate or judge, as applicable, has issued an order under Article 5B.002, Code of Criminal Procedure, for the person to return to the foreign nation from which the person entered or attempted to enter; and

(3) the person refuses to comply with the order.

(b) An offense under this section is a felony of the second degree.

Added by Acts 2023, 88th Leg., 4th C.S., Ch. 1 (S.B. 4), Sec. 2, eff. March 5, 2024.