

# PENAL CODE

Selected Penal Code, CCP, and Gov't Code statutes amended effective March 5, 2024 by SB 4, Acts 2023, 88th Leg., 4th C.S., Ch. 1 (SB 4):

## 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.

Enacted effective March 5, 2024 (SB 4, 4th C.S., §2). Section 8 of SB 4 (4th C.S.) provides: "It is the intent of the legislature that every provision, section, subsection, sentence, clause, phrase, or word in this Act, and every application of the provisions in this Act to every person, group of persons, or circumstances, is severable from each other. If any application of any provision in this Act to any person, group of persons, or circumstances is found by a court to be invalid for any reason, the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected."

### 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).

Enacted effective March 5, 2024 (SB 4, 4th C.S., §2). See effective note following §51.01.

### 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.

Enacted effective March 5, 2024 (SB 4, 4th C.S., §2). See effective note following §51.01.

### 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.

Enacted effective March 5, 2024 (SB 4, 4th C.S., §2). See effective note following §51.01.

# 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.

Enacted effective March 5, 2024 (SB 4, 4th C.S., §1). See effective note following Penal Code §51.01.

### 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.

Enacted effective March 5, 2024 (SB 4, 4th C.S., §1). See effective note following Penal Code §51.01.

### 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.

Enacted effective March 5, 2024 (SB 4, 4th C.S., §1). See effective note following Penal Code §51.01.

## CHAPTER 42A. COMMUNITY SUPERVISION

### B. Placement on Community Supervision

#### ART. 42A.059. PLACEMENT ON COMMUNITY SUPERVISION PROHIBITED FOR CERTAIN OFFENSES INVOLVING ILLEGAL ENTRY INTO THIS STATE

Notwithstanding any other provision of this chapter, a defendant is not eligible for community supervision, including deferred adjudication community supervision, under this chapter if the defendant is charged with or convicted of an offense under Chapter 51, Penal Code.

Enacted effective March 5, 2024 (SB 4, 4th C.S., §4). See effective note following Penal Code §51.01.

CHAPTER 66. CRIMINAL HISTORY  
RECORD SYSTEM

*Subchapter C. Computerized Criminal History  
System*

**ART. 66.102. INFORMATION CONTAINED IN  
COMPUTERIZED CRIMINAL HISTORY SYSTEM**

- (a) In this article:
- (1) "Appeal" means the review of a decision of a lower court by a superior court other than by collateral attack.
  - (2) "Rejected case" means:
    - (A) a charge that, after the arrest of the offender, the prosecutor declines to include in an information or present to a grand jury; or
    - (B) an information or indictment that, after the arrest of the offender, the prosecutor refuses to prosecute.
- (b) Information in the computerized criminal history system relating to an offender must include the offender's:
- (1) name, including other names by which the offender is known;
  - (2) date of birth;
  - (3) physical description, including sex, weight, height, race, ethnicity, eye color, hair color, scars, marks, and tattoos; and
  - (4) state identification number.
- (c) Information in the computerized criminal history system relating to an arrest must include:
- (1) the offender's name;
  - (2) the offender's state identification number;
  - (3) the arresting law enforcement agency;
  - (4) the arrest charge, by offense code and incident number;
  - (5) whether the arrest charge is a misdemeanor or felony;
  - (6) the date of the arrest;
  - (7) for an offender released on bail, whether a warrant was issued for any subsequent failure of the offender to appear in court;
  - (8) the exact disposition of the case by a law enforcement agency following the arrest; and
  - (9) the date of disposition of the case by the law enforcement agency.
- (d) Information in the computerized criminal history system relating to a prosecution must include:
- (1) each charged offense, by offense code and incident number;
  - (2) the level of the offense charged or the degree of the offense charged for each offense in Subdivision (1); and
  - (3) for a rejected case:
    - (A) the date of rejection;
    - (B) the offense code;
    - (C) the incident number; and
    - (D) whether the rejection is a result of a successful pretrial diversion program.
- (e) Information in the computerized criminal history system relating to the disposition of a case other than a rejected case must include:
- (1) the final pleading to each charged offense and the level of the offense;
  - (2) a listing of each charged offense disposed of by the court and:
    - (A) the date of disposition;
    - (B) the offense code for the disposed charge and incident number; and

- (C) the type of disposition; and
  - (3) for a conviction that is appealed, the final court decision and the final disposition of the offender's case on appeal.
- (f) Information in the computerized criminal history system relating to sentencing must include for each sentence:
- (1) the sentencing date;
  - (2) the sentence for each offense, by offense code and incident number;
  - (3) if the offender was sentenced to confinement:
    - (A) the agency that receives custody of the offender;
    - (B) the length of the sentence for each offense; and
    - (C) if multiple sentences were ordered, whether the sentences were ordered to be served consecutively or concurrently;
  - (4) if the offender was sentenced to pay a fine, the amount of the fine;
  - (5) if a sentence to pay a fine or to confinement was ordered but was deferred, probated, suspended, or otherwise not imposed:
    - (A) the length of the sentence or the amount of the fine that was deferred, probated, suspended, or otherwise not imposed; and
    - (B) the offender's name, offense code, and incident number;
  - (6) if a sentence other than a fine or confinement was ordered, a description of the sentence ordered; and
  - (7) whether the judgment imposing the sentence reflects an affirmative finding entered under Article 42.013 (Finding of Family Violence).
- (g) The Department of Public Safety shall maintain in the computerized criminal history system any information the department maintains in the central database under Article 62.005.
- (h) In addition to the information described by this article, information in the computerized criminal history system must include the age of the victim of the offense if the offender was arrested for or charged with an offense under the following provisions of the Penal Code:
- (1) Section 20.04(a)(4) (Aggravated Kidnapping), if the offender committed the offense with the intent to violate or abuse the victim sexually;
  - (2) Section 20A.02 (Trafficking of Persons), if the offender:
    - (A) trafficked a person with the intent or knowledge that the person would engage in sexual conduct, as defined by Section 43.25, Penal Code; or
    - (B) benefited from participating in a venture that involved a trafficked person engaging in sexual conduct, as defined by Section 43.25, Penal Code;
  - (3) Section 21.02 (Continuous Sexual Abuse of Young Child or Disabled Individual);
  - (4) Section 21.11 (Indecency with a Child);
  - (5) Section 22.011 (Sexual Assault) or 22.021 (Aggravated Sexual Assault);
  - (6) Section 30.02 (Burglary), if the offense is punishable under Subsection (d) of that section and the offender committed the offense with the intent to commit an offense described by Subdivision (1), (4), or (5);
  - (7) Section 43.05(a)(2) (Compelling Prostitution); or
  - (8) Section 43.25 (Sexual Performance by a Child).
- (i) In addition to the information described by this article, information in the computerized criminal history system must include any order issued under Article 5B.002.

Addition of (i) effective March 5, 2024 (SB 4, 4th C.S., §5). See effective note following Penal Code §51.01.

**CHAPTER 508. PAROLE AND  
MANDATORY SUPERVISION**

***Subchapter E. Parole and Mandatory  
Supervision; Release Procedures***

**SEC. 508.145. ELIGIBILITY FOR RELEASE ON  
PAROLE; COMPUTATION OF PAROLE ELIGIBILITY  
DATE**

(a) An inmate is not eligible for release on parole if the inmate is under sentence of death, serving a sentence of life imprisonment without parole, or serving a sentence for any of the following offenses under the Penal Code:

- (1) Section 20A.03, if the offense is based partly or wholly on conduct constituting an offense under Section 20A.02(a)(5), (6), (7), or (8);
- (2) Section 21.02; [✖]
- (3) Section 22.021, if the offense is punishable under Subsection (f) of that section; or
- (4) Section 51.03 or 51.04.

(b) An inmate serving a life sentence under Section 12.31(a)(1), Penal Code, for a capital felony is not eligible for release on parole until the actual calendar time the inmate has served, without consideration of good conduct time, equals 40 calendar years.

(c) An inmate serving a sentence under Section 12.42(c)(2), Penal Code, is not eligible for release on parole until the actual calendar time the inmate has served, without consideration of good conduct time, equals 35 calendar years.

(c-1)(1) Except as provided by Subdivision (2), an inmate serving a sentence for an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code, is not eligible for release on parole.

(2) An inmate serving a sentence for an offense described by Subdivision (1) for which the judgment in the case contains an affirmative finding under Article 42.01991, Code of Criminal Procedure, is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than two calendar years.

(d)(1) This subsection applies only to an inmate who is serving a sentence for:

- (A) an offense described by Article 42A.054(a), Code of Criminal Procedure, other than an offense under Section 19.03, Penal Code, or an offense under Chapter 20A, Penal Code, that is described by Subsection (a)(1) or (c-1)(1);
- (B) an offense for which the judgment contains an affirmative finding under Article 42A.054(c) or (d), Code of Criminal Procedure; or
- (C) an offense under Section 71.02 or 71.023, Penal Code.

(2) An inmate described by Subdivision (1) is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals one-half of the sentence or 30 calendar years, whichever is less, but in no event is the inmate eligible for release on parole in less than two calendar years.

(3) Notwithstanding Subdivision (2), an inmate who is serving a sentence for an offense under Section 22.021, Penal Code, is not eligible for release on parole if the inmate is serving a sen-

tence for an offense for which punishment was enhanced under Section 12.42(c)(4), Penal Code.

(d-1) Notwithstanding Subsection (d), for every 12 months that elapse between the date an arrest warrant is issued for the inmate following an indictment for the offense and the date the inmate is arrested for the offense, the earliest date on which an inmate is eligible for parole is delayed by three years from the date otherwise provided by Subsection (d), if the inmate is serving a sentence for an offense under Section 19.02, 22.011, or 22.021, Penal Code.

(e) An inmate serving a sentence for which the punishment is increased under Section 481.134, Health and Safety Code, is not eligible for release on parole until the inmate's actual calendar time served, without consideration of good conduct time, equals five years or the term to which the inmate was sentenced, whichever is less.

(f) Except as provided by Section 508.146, any other inmate is eligible for release on parole when the inmate's actual calendar time served plus good conduct time equals one-fourth of the sentence imposed or 15 years, whichever is less.

Addition of (a)(4) effective March 5, 2024 (SB 4, 4th C.S., §6). See effective note following Penal Code §51.01.

**SEC. 508.149. INMATES INELIGIBLE FOR  
MANDATORY SUPERVISION**

(a) An inmate may not be released to mandatory supervision if the inmate is serving a sentence for or has been previously convicted of:

- (1) an offense for which the judgment contains an affirmative finding under Article 42A.054(c) or (d), Code of Criminal Procedure;
- (2) a first degree felony or a second degree felony under Section 19.02, Penal Code;
- (3) a capital felony under Section 19.03, Penal Code;
- (4) a first degree felony or a second degree felony under Section 20.04, Penal Code;
- (5) an offense under Section 21.11, Penal Code;
- (6) a felony under Section 22.011, Penal Code;
- (7) a first degree felony or a second degree felony under Section 22.02, Penal Code;
- (8) a first degree felony under Section 22.021, Penal Code;
- (9) a first degree felony under Section 22.04, Penal Code;
- (10) a first degree felony under Section 28.02, Penal Code;
- (11) a second degree felony under Section 29.02, Penal Code;
- (12) a first degree felony under Section 29.03, Penal Code;
- (13) a first degree felony under Section 30.02, Penal Code;
- (14) a felony for which the punishment is increased under Section 481.134 or 481.140, Health and Safety Code;
- (15) an offense under Section 43.25, Penal Code;
- (16) an offense under Section 21.02, Penal Code;
- (17) a first degree felony under Section 15.03, Penal Code;
- (18) an offense under Section 43.05, Penal Code;
- (19) an offense under Section 20A.02, Penal Code; or
- (20) an offense under Section 20A.03, Penal Code;
- (21) a first degree felony under Section 71.02 or 71.023, Penal Code;
- (22) an offense under Section 481.1123, Health and Safety Code, punished under Subsection (d), (e), or (f) of that section;

- (23) a second degree felony under Section 22.01, Penal Code; or
- (24) an offense under Section 22.01, Penal Code, punished under Subsection (b)(2), (7), or (8) of that section.

(a-1) An inmate serving a sentence for an offense under Section 51.03 or 51.04, Penal Code, may not be released to mandatory supervision.

(b) An inmate may not be released to mandatory supervision if a parole panel determines that:

- (1) the inmate's accrued good conduct time is not an accurate reflection of the inmate's potential for rehabilitation; and
- (2) the inmate's release would endanger the public.

(c) A parole panel that makes a determination under Subsection (b) shall specify in writing the reasons for the determination.

(d) A determination under Subsection (b) is not subject to administrative or judicial review, except that the parole panel making the determination shall reconsider the inmate for release to mandatory supervision at least twice during the two years after the date of the determination.

Addition of (a-1) effective March 5, 2024 (SB 4, 4th C.S., §7). See effective note following Penal Code §51.01.