

FLORIDA HOUSE OF REPRESENTATIVES BILL ANALYSIS

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BILL #: [HB 3C](#)

TITLE: Immigration

SPONSOR(S): McClure

COMPANION BILL: [SB 4-C](#) (Gruters)

LINKED BILLS: None

RELATED BILLS: None

Committee References

[Budget](#)

SUMMARY

Effect of the Bill:

The bill creates new criminal offenses related to the illegal entry and reentry of adult unauthorized aliens into the state. The bill provides penalties for such offenses, including mandatory minimum sentences. The bill further provides:

- Certain exceptions to the offenses;
- Affirmative defenses;
- Requirements concerning pretrial detention;
- Prohibitions regarding civil citations and diversion programs; and
- Notification requirements.

The bill requires a court to sentence a defendant who is an unauthorized alien and who is convicted or adjudicated guilty of a capital felony to a sentence of death.

Fiscal or Economic Impact:

The bill may have a positive impact on jail and prison beds by creating new misdemeanor and felony offenses related to the illegal entry and reentry of an adult unauthorized alien into the state, with accompanying mandatory minimum sentences, which may result in more jail and prison admissions. Additionally, the bill may have an indeterminate negative impact on state expenditures related to the incarceration and execution of an increased number of prisoners sentenced to death.

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ANALYSIS

EFFECT OF THE BILL:

Illegal Entry and Reentry

The bill creates ch. 811, F.S., relating to unauthorized aliens, nationality, and immigration. (Section [1](#))

The bill prohibits an unauthorized alien who is 18 years of age or older from knowingly entering or attempting to enter this state after entering the United States by eluding or avoiding examination or inspection by immigration officers. A first violation of the prohibition is a first degree misdemeanor¹ and the bill requires a court to sentence a person convicted of violating the prohibition to a mandatory minimum sentence of nine months in jail. (Section [3](#))

The bill provides enhanced criminal penalties for subsequent violations as follows:

- A second violation is a third degree felony² and carries a mandatory minimum prison sentence of one year and one day.

¹ A first degree misdemeanor is punishable by up to one year in jail and a \$1,000 fine. S. [775.082, F.S.](#), and [s. 775.083, F.S.](#)

² A third degree felony is punishable by up to five years' imprisonment and a \$5,000 fine. S. [775.082, F.S.](#), [s. 775.083, F.S.](#), or [s. 775.084, F.S.](#)

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- A third or subsequent violation is also a third degree felony and carries a mandatory minimum prison sentence of two years. (Section [3](#))

The bill prohibits law enforcement from arresting an unauthorized alien for a violation of illegal entry into the state if law enforcement encounters the unauthorized alien during the investigation of another crime that occurred in this state, where the unauthorized alien witnessed or reported that crime or was a victim of that crime. (Section [3](#))

Under the bill, a person charged with illegal entry into the state may raise the following affirmative defenses to a prosecution:

- The federal government has granted the unauthorized alien lawful presence in the United States or discretionary relief that authorizes the unauthorized alien to temporarily or permanently remain in the United States.
- The unauthorized alien is subject to relief under the Cuban Adjustment Act of 1966.
- The unauthorized alien did not enter the United States in violation of [8 U.S.C. s. 1325\(a\)](#), relating to improper entry by an unauthorized alien. (Section [3](#))

The bill also prohibits an unauthorized alien who is 18 years of age or older from entering, attempting to enter, or being present in this state after having been denied admission, excluded, deported, or removed from the United States, or having departed the United States while an order of exclusion, deportation, or removal is outstanding. The bill specifies that an unauthorized alien does not commit a violation of this prohibition if, prior to the unauthorized alien's reembarkation at a place outside the United States or his or her application for admission for legal entry, the unauthorized alien:

- Received express consent from the Attorney General of the United States to reapply for admission; or
- Established that he or she was not required to obtain such consent.

A first violation of the prohibition is a third degree felony and carries a mandatory minimum prison sentence of one year and one day. (Section [4](#))

If an unauthorized alien commits a violation of the prohibition and was previously convicted for the commission of:

- Three or more misdemeanors or felonies, other than a forcible felony as defined in [s. 776.08, F.S.](#), or an aggravated felony defined in 8 U.S.C. s. 1101, the offense is a third degree felony and carries a mandatory minimum prison sentence of two years.
- A forcible felony as defined in [s. 776.08, F.S.](#), or an aggravated felony as defined in 8 U.S.C. s. 1101, the offense is a second degree felony³ and carries a mandatory minimum prison sentence of five years. (Section [4](#))

An unauthorized alien arrested for violating either prohibition against illegal entry or reentry into the state:

- Generally, must be detained pending disposition of his or her case.
- Is not eligible for a civil citation or participation in a pre-arrest or post-arrest diversion program, or other similar program. (Sections [3](#) and [4](#))

Under the bill, if a law enforcement agency arrests an unauthorized alien for violating either prohibition against illegal entry or reentry into the state, it must notify:

- United States Immigration and Customs Enforcement of the unauthorized alien's arrest and provide any known information relating to the unauthorized alien; and
- The Department of Law Enforcement of the unauthorized alien's arrest and provide specified information relating to the unauthorized alien including his or her fingerprints, photograph, and other biometric information. (Sections [3](#) and [4](#))

[Death Penalty](#)

³ A second degree felony is punishable by up to 15 years' imprisonment and a \$10,000 fine. S. [775.082, F.S.](#), [s. 775.083, F.S.](#), or [s. 775.084, F.S.](#)

The bill requires a court to sentence a defendant who is an unauthorized alien and who is convicted or adjudicated guilty of a capital felony to a sentence of death. As such, under the bill, an unauthorized alien who is convicted of a capital felony is no longer eligible for a sentence of mandatory life imprisonment. Under the bill, an “unauthorized alien” means a person who is unlawfully present in the United States according to the terms of the federal Immigration and Nationality Act, 8 U.S.C. ss. 1101 et seq., and must be interpreted consistently with any applicable federal statutes, rules, or regulations. (Section 5)

The bill provides an effective date of upon becoming a law. (Section 6)

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The bill may have a positive impact on prison beds by creating new felony offenses for the illegal entry and reentry of an adult unauthorized alien into the state, with accompanying mandatory minimum sentences, which may result in more prison admissions.

The bill may also have an indeterminate fiscal impact on state expenditures. To the extent the bill results in more death sentences being imposed, it may increase the number of inmates on death row and the costs associated with their incarceration and execution.

Additionally, it may increase the workload of the Florida Supreme Court related to reviewing death penalty cases. However, any increased workload would likely be absorbed within existing resources.

LOCAL GOVERNMENT:

The bill may have a positive impact on jail beds by creating new misdemeanor and felony offenses for the illegal entry and reentry of an adult unauthorized alien into the state, with accompanying mandatory minimum sentences, which may result in more jail admissions. Additionally, the bill requires an unauthorized alien who is arrested for a violation of the new offenses for illegal entry and reentry to be detained pending the disposition of his or her case, which may result in more unauthorized aliens being detained in jail pretrial.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Immigration Enforcement

The Federal Government has broad power over immigration and alien status, and has implemented an extensive set of rules governing alien admission, removal, and conditions for continued presence within the United States (U.S.).⁴ While the Federal Government’s authority over immigration is well established, the U.S. Supreme Court has recognized that not “every state enactment which in any way deals with aliens is a regulation of immigration and thus per se preempted” by the federal government.⁵

The federal Immigration and Nationality Act (INA) contains many of the most important provisions of immigration law.⁶ Immigration and Customs Enforcement (ICE), a federal law enforcement agency under the U.S. Department of Homeland Security (DHS), manages all aspects of the immigration enforcement process, including the identification, arrest, detention, and removal of aliens who are subject to removal or are unlawfully present in the U.S.⁷ U.S. Customs and Border Protection (CBP), another federal law enforcement agency under DHS, is responsible for securing the nation’s borders and facilitating international travel and trade.⁸

⁴ *Arizona v. U.S.*, 567 U.S. 387 (2012).

⁵ *DeCanas v. Bica*, 424 U.S. 351, 355 (1976).

⁶ 8 U.S.C. §§ 1101-1778.

⁷ ICE, [Enforcement and Removal Operations](#), (last visited Feb. 9, 2025).

⁸ CBP, [About CBP](#), (last visited Feb. 9, 2025).

In Federal Fiscal Year (FFY) 2024,⁹ the number of total enforcement actions of the Office of Field Operations (OFO) and the U.S. Border Patrol (USBP), both federal law enforcement agencies under CBP, were 2,901,142, and are 392,960 to date in FFY 2025, including apprehensions, inadmissibles, and expulsions.^{10, 11}

Criminal noncitizens¹² encountered at the U.S. borders are a subset of the total inadmissibles encountered and USBP arrests of criminal noncitizens are a subset of total apprehensions. Encounters with and arrests of criminal noncitizens for the past five years at all land borders were:¹³

	FFY 2021	FFY 2022	FFY 2023	FFY 2024	FFY 2025 (to date)
Encounters	17,330	29,021	35,433	36,290	6,951
Arrests	10,763	12,028	15,267	17,048	3,113

Illegal Entry by an Alien

[Section 1325](#) of the INA¹⁴ prohibits an alien¹⁵ from:

- Entering or attempting to enter the U.S. at any time or place other than as designated by immigration officers;
- Eluding examination or inspection by immigration officers; or
- Attempting to enter or obtaining entry to the U.S. by a willfully false or misleading representation or the willful concealment of a material fact.

An alien who violates this prohibition must, for a first offense, be fined under Title 18 or imprisoned not more than six months, or both, and, for a subsequent offense, be fined under Title 18, or imprisoned not more than two years, or both.

Reentry of Removed Aliens

Section 1326 of the INA¹⁶ generally prohibits an alien that has been denied admission, excluded, deported, or removed or has departed the U.S. while an order of exclusion, deportation, or removal is outstanding from reentering or attempting to reenter the U.S., unless the alien has acquired express consent from the Attorney General prior to reentering.

An alien who violates this prohibition may be fined under Title 18, imprisoned for up to two years, or both.¹⁷

Convictions of criminal noncitizens for illegal entry or re-entry offenses for the past five years were:¹⁸

⁹ The federal fiscal year runs October 1 – September 30.

¹⁰ CBP, *CBP Enforcement Statistics*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics> (last visited Feb. 9, 2025).

¹¹ These figures include both Title 8 enforcement actions and Title 42 expulsions. Title 8 enforcement actions include apprehensions or inadmissibles. Inadmissibles refers to individuals encountered at ports of entry who are seeking lawful admission into the U.S. but who are determined to be inadmissible, individuals presenting themselves to seek humanitarian protection under our laws, and individuals who withdraw an application for admission and return to their countries of origin within a short timeframe. Apprehensions refers to the physical control or temporary detention of a person who is not lawfully in the U.S. which may or may not result in an arrest. Title 42 expulsions refers to individuals encountered by USBP or OFO and who are expelled to the country of last transit or home country in the interest of public health. CBP, *Nationwide Enforcement Encounters: Title 8 Enforcement Actions and Title 42 Expulsions Fiscal Year 2023*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/title-8-and-title-42-statistics> (last visited Feb. 9, 2025).

¹² “Criminal noncitizens” refers to noncitizens who have been convicted of a crime, whether in the U.S. or abroad, so long as the conviction is for conduct which is deemed criminal in the U.S. CBP, *supra* note 10.

¹³ CBP, *supra* at note 10; CBP, *Criminal Noncitizen Statistics*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-noncitizen-statistics> (last visited Feb. 9, 2025).

¹⁴ 8 U.S.C. §1325.

¹⁵ “Alien” means any person not a citizen or national of the United States. 8 U.S.C.A. §1101(a)(3).

¹⁶ 8 U.S.C. §1326.

¹⁷ 8 U.S.C. §1326(a).

¹⁸ CBP, *Criminal Noncitizen Statistics*, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-noncitizen-statistics> (last visited Feb. 9, 2025).

FFY 2021	FFY 2022	FFY 2023	FFY 2024	FFY 2025 (to date)
6,160	6,797	8,790	10,935	1,824

Other States Prohibitions on Illegal Entry and Reentry of Aliens

Texas

In 2023, the Texas Legislature passed Senate Bill 4 (SB 4) that, among other things, created new criminal offenses prohibiting both illegal entry and reentry of an alien into the state of Texas. More specifically, SB 4:

- Prohibited an alien from entering or attempting to enter the state directly from a foreign nation at any location other than a lawful port of entry.
- Prohibited an alien from entering, attempting to enter, or being found in the state after the person:
 - Has been denied admission to or excluded, deported, or removed from the U.S.; or
 - Has departed from the U.S. while an order of exclusion, deportation, or removal is outstanding.¹⁹

SB 4 also provided affirmative defenses to the offense of illegal entry, including if:

- The federal government has granted the defendant:
 - Lawful presence in the U.S.; or
 - Asylum under 8 U.S.C. s. 1158;
- His or her conduct does not constitute a violation of 8 U.S.C. s. 1325(a) (federal civil offense for aliens entering or attempting to enter the U.S. at any time or place other than as designated by immigration officers); or
- He or she was approved for benefits under the federal Deferred Action for Childhood Arrivals program during a specified time period.²⁰

U.S. v. Texas

In 2024, the U.S. Fifth Circuit Court of Appeals, upheld a preliminary injunction on Texas SB 4 issued by the U.S. District Court of the West District of Texas, Austin Division.²¹ The district court issued the preliminary injunction prior to the effective date of SB 4, finding that its provisions were both field and conflict preempted.²²

The district court, relying in part on *Arizona v. U.S.*,²³ held that:

SB 4 directly challenges the federal government's long-held power to control immigration, naturalization, and removal. SB 4 extends federal immigration penalties by authorizing Texas state officials to detain, arrest, prosecute, and remove noncitizens without federal supervision. Supreme Court precedent squarely holds that SB 4's attempt to regulate the unlawful entry of noncitizens is field preempted. Field preemption "can be inferred" both from "a federal interest so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject" and from "a framework of regulation so pervasive that Congress left no room for the States to supplement it." Applied to the field of immigration, the federal government has both a dominant interest and a pervasive regulatory framework that preclude state regulation in the area.²⁴

Additionally, the court held that:

Even accepting for purposes of argument that SB 4 merely imposes state law penalties for existing federal crimes, "[p]ermitting the State to impose its own penalties for the federal offenses [] would conflict with the careful framework Congress adopted." . . . Field preemption reflects a congressional decision to foreclose any state regulation in the area, even if it is parallel to federal standards.²⁵

¹⁹ [Texas SB 4, 88th Legis., 4th Sess. \(Dec. 18, 2023\).](#)

²⁰ *Id.*

²¹ *U.S. v. Texas*, 97 F.4th 268 (5th Cir. 2024).

²² *U.S. v. Texas*, 719 F.Supp.3d 640 (W.D. Tex. 2024).

²³ 567 U.S. 387 (2012).

²⁴ *U.S. v. Texas*, 719 F.Supp.3d at 663.

²⁵ *Id.* at 667 (quoting *Arizona v. U.S.*, 567 U.S. 387, 402 (2012)).

The court further noted that SB 4 further conflicts with federal law by authorizing affirmative defenses for individuals who are “lawfully present” in the country, despite a federal ruling that “state judges may not make admissibility determinations due to the complexities of federal immigration law.”²⁶

Iowa, Louisiana, and Oklahoma

Several other state legislatures, including those in Iowa, Louisiana, and Oklahoma, have passed laws similar to those passed by Texas in SB 4 criminalizing illegal entry and reentry of aliens. However, those laws have either been enjoined or only become effective pending the resolution of *U.S. v. Texas*.²⁷

Pretrial Detention

Under the Florida Constitution, every person charged with a crime or violation of municipal or county ordinance is entitled to pretrial release on reasonable conditions, “[u]nless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great... [or if] no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.”²⁸

Death Penalty

Capital Sentencing

Section [775.082\(1\), F.S.](#), requires a person who has been convicted of a capital felony to be punished by death if a proceeding held to determine sentence under [s. 921.141, F.S.](#), results in a determination that such person shall be punished by death, otherwise the person shall be punished by life imprisonment and is not eligible for parole.

Under [s. 921.141, F.S.](#), to sentence a defendant to death when he or she has not waived the right to a sentencing proceeding by a jury, a jury must unanimously find the existence of at least one aggravating factor and find that any aggravating factors found to exist were proven beyond a reasonable doubt. If a jury makes such a finding, the jury must then make a recommendation to the court as to whether the defendant should be sentenced to death or life imprisonment.²⁹ The jury’s recommendation must be based on the following:

- Whether aggravating factors are sufficient to impose death;
- The aggravating factors outweigh the mitigating circumstances found to exist; and
- That, based on the prior considerations, the defendant should be sentenced to death.³⁰

If fewer than eight jurors determine that the defendant should be sentenced to death, the jury must recommend a sentence of life imprisonment without the possibility of parole and the court must impose a life sentence.³¹ If at least eight jurors determine that the defendant should be sentenced to death, the jury must recommend a sentence of death.³² Thereafter, the judge must consider each aggravating factor that was unanimously found to exist by the jury and all mitigating circumstances, and may impose a sentence of life imprisonment or a death sentence.³³ The aggravating factors a jury may consider are limited by statute. Section [921.141\(6\), F.S.](#), provides the following aggravating factors:

²⁶ *Id.* at 677 (citing *Villas at Parkside Partners v. City of Farmers Branch, Tex.*, 726 F.3d 524, 535-536 (5th Cir. 2013)); The district court further rejected Texas’s argument that federal laws do not apply because “Texas’s constitutional authority to defend and protect itself against an invasion is the supreme law of the land and supersedes any federal statutes to the contrary,” holding that “unauthorized immigration does not constitute an ‘invasion’ within the meaning of the U.S. Constitution.” *U.S. v. Texas*, 719 F.Supp.3d at 679. However, on January 20, 2025, President Trump issued a proclamation declaring that an invasion is ongoing at the southern border of the United States due to the influx of illegal aliens. Proclamation, *Guaranteeing the States Protection Against Invasion* (Jan. 20, 2025), <https://www.whitehouse.gov/presidential-actions/2025/01/guaranteeing-the-states-protection-against-invasion/> (last visited Feb. 9, 2025).

²⁷ [Iowa SB 2340, 90th Legis. \(April 10, 2024\)](#); *U.S. v. Iowa*, 737 F.Supp.3d 725 (S.D. Iowa 2024); [Oklahoma HB 4156, \(April 30, 2024\)](#); *U.S. v. Oklahoma*, 739 F.Supp.3d 985 (W.D. Oklahoma 2024); [Louisiana SB 388, \(June 15, 2023\)](#).

²⁸ Article I, s. 14, Fla. Const.

²⁹ [S. 921.141\(2\)\(b\), F.S.](#)

³⁰ *Id.*

³¹ [S. 921.141\(2\) and \(3\), F.S.](#)

³² [S. 921.141\(2\)\(c\), F.S.](#)

³³ [S. 921.141\(3\)\(a\)2., F.S.](#)

- The capital felony was committed by a person previously convicted of a felony and under sentence of imprisonment or placed on community control or on felony probation.
- The defendant was previously convicted of another capital felony or of a felony involving the use or threat of violence to the person.
- The defendant knowingly created a great risk of death to many persons.
- The capital felony was committed while the defendant was engaged, or was an accomplice, in the commission of, or an attempt to commit, or flight after committing or attempting to commit, any: robbery; sexual battery; aggravated child abuse; abuse of an elderly person or disabled adult resulting in great bodily harm, permanent disability, or permanent disfigurement; arson; burglary; kidnapping; aircraft piracy; or unlawful throwing, placing, or discharging of a destructive device or bomb.
- The capital felony was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.
- The capital felony was committed for pecuniary gain.
- The capital felony was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.
- The capital felony was especially heinous, atrocious, or cruel.
- The capital felony was a homicide and was committed in a cold, calculated, and premeditated manner without any pretense of moral or legal justification.
- The victim of the capital felony was a law enforcement officer engaged in the performance of his or her official duties.
- The victim of the capital felony was an elected or appointed public official engaged in the performance of his or her official duties, if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.
- The victim of the capital felony was a person less than 12 years of age.
- The victim of the capital felony was particularly vulnerable due to advanced age or disability, or because the defendant stood in a position of familial or custodial authority over the victim.
- The capital felony was committed by a criminal gang member, as defined in [s. 874.03, F.S.](#)
- The capital felony was committed by a person designated as a sexual predator pursuant to [s. 775.21, F.S.](#), or a person previously designated as a sexual predator who had the sexual predator designation removed.
- The capital felony was committed by a person subject to specified injunctions or foreign protection orders and was committed against the petitioner who obtained the injunction or protection order or any spouse, child, sibling, or parent of the petitioner.

Mitigating circumstances are not limited by statute. Section [921.141\(7\), F.S.](#), specifies that mitigating circumstances for a capital offense include the following:

- The defendant has no significant history of prior criminal activity.
- The capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance.
- The victim was a participant in the defendant's conduct or consented to the act.
- The defendant was an accomplice in the capital felony committed by another person and his or her participation was relatively minor.
- The defendant acted under extreme duress or under the substantial domination of another person.
- The capacity of the defendant to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired.
- The age of the defendant at the time of the crime.
- The existence of any other factors in the defendant's background that would mitigate against imposition of the death penalty.

Mandatory Imposition of the Death Penalty

In *Woodson v. North Carolina*,³⁴ the U.S. Supreme Court determined that a North Carolina law that made the death penalty mandatory for a first degree murder conviction was unconstitutional. The Court held the law violated the Eighth and Fourteenth Amendments because evolving standards of decency require, prior to imposing the ultimate

³⁴ 428 U.S. 280 (1976).

punishment of death, consideration of the relevant facets of the character and record of the individual offender or the circumstances surrounding the offense.³⁵

Presidential Executive Order 14164- Restoring the Death Penalty and Protecting Public Safety

On January 20, 2025, President Trump issued Executive Order 14164, titled “Restoring the Death Penalty and Protecting Public Safety”.³⁶ The Executive Order (EO) states that capital punishment is an essential tool for deterring and punishing those who commit the most heinous crimes and acts of lethal violence against American citizens. The EO directs the U.S. Attorney General to pursue the death penalty for all crimes of a severity demanding its use. Further, the EO directs the U.S. Attorney General to:

- Where consistent with applicable law, pursue federal jurisdiction and seek the death penalty regardless of other factors for every federal capital crime involving the murder of a law enforcement officer or a capital crime committed by an alien who is illegally present in the U.S.
- Encourage state level attorneys general and state attorneys to bring state capital charges for all capital offenses, with special attention to crimes involving the murder of a law enforcement officer or capital crimes committed by aliens unlawfully present in the U.S.

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Budget Committee		2/10/2025	Pridgeon	Hall

³⁵ See also *Roberts v. Louisiana*, 428 U.S. 325 (1976).

³⁶ Federal Register, Executive Order 14164, *Restoring the Death Penalty and Protecting Public Safety*, <https://www.federalregister.gov/documents/2025/01/30/2025-02012/restoring-the-death-penalty-and-protecting-pub> (last visited Feb. 9, 2025).