

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: SB 4-C

INTRODUCER: Senator Gruters

SUBJECT: Immigration

DATE: February 11, 2025

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Stokes	Sadberry	AP	Favorable

I. Summary:

SB 4-C directs the division of law to create ch. 811, F.S., to be entitled “Unauthorized Aliens, Nationality, and Immigration.” The bill creates the *crimes of illegal entry and illegal reentry* within this chapter. Each of these crimes exist in federal law, and some states, such as Texas, have passed similar legislation.

Unauthorized Aliens, Nationality, and Immigration

Crimes of Illegal Entry and Reentry

The bill creates s. 811.102, F.S., to create the crime of illegal entry by an adult unauthorized alien into this state. An adult unauthorized alien who knowingly enters or attempts to enter this state after entering the United States by eluding or avoiding examination or inspection by immigration officers commits a first degree misdemeanor. A person convicted of this offense must be sentenced to a mandatory minimum term of imprisonment of 9 months.

- A second violation is a third degree felony and requires a mandatory minimum term of imprisonment of one year and one day.
- A third or subsequent violation is a third degree felony and requires a mandatory minimum term of imprisonment of two years.

The bill provides for an affirmative defense, and that any person may not be arrested for this offense if he or she encountered law enforcement during the investigation of another crime that occurred in this state and the person witnessed or reported such crime or was a victim of such crime.

The bill creates s. 811.103, F.S., to create the crime of illegal reentry of an adult unauthorized alien. An adult unauthorized alien commits a third degree felony if he or she, after having been denied admission, excluded, deported, or removed or having departed the United States during the time an order of exclusion, deportation, or removal is outstanding, thereafter enters, attempts to enter, or is at any time found in this state. A person who is convicted of this crime must be

sentenced to a mandatory minimum term of imprisonment of one year and one day. The bill provides exceptions to this crime. An unauthorized alien who:

- Has three or more prior misdemeanor or felony convictions, other than a forcible felony, or an aggravated felony, and who commits the crime of illegal reentry, commits a third degree felony and must be sentenced to a mandatory minimum term of imprisonment of two years.
- Has a prior conviction for a forcible felony, or an aggravated felony and who commits the crime of illegal reentry commits a second degree felony and must be sentenced to a mandatory minimum term of imprisonment for five years.

The court must presume that no conditions of release can reasonably assure the presence of an unauthorized alien who is arrested for illegal reentry, and such person must be detained pending the disposition of his or her case.

Additionally, the bill provides that a person arrested for illegal entry or illegal reentry is not eligible for civil citation or various diversion programs, and requires law enforcement agencies to report such arrest to the federal government.

Death Penalty

The bill creates s. 921.1426, F.S., to provide that the court must sentence a defendant who is an unauthorized alien and who is convicted or adjudicated guilty of a capital felony to a sentence of death.

The bill may have a positive indeterminate impact on the Department of Corrections (DOC), and may have a negative fiscal impact on the State Courts. *See Section V. Fiscal Impact Statement.*

The bill is effective upon becoming law.

II. Present Situation:

Immigration Enforcement Encounters

Over the last four federal fiscal years (FFY),¹ the U.S. Border Patrol and Office of Field Operations has recorded close to 11.5 million enforcement encounters as described in the table below.² These actions refer to those involving individuals “encountered at ports of entry who are seeking lawful admission into the United States but 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.”³ The total also includes encounters that led to apprehensions or expulsions; apprehensions refer to individuals who were physically controlled or temporarily detained due to being unlawfully present in the United States.⁴

¹ U.S. Immigration and Customs Enforcement, Department of Homeland Security, Enforcement and Removal Operations, Mission, available at <https://www.ice.gov/about-ice/ero> (last visited January 23, 2025). The federal fiscal year is October 1 to September 30 of the next calendar year.

² U.S. Customs and Border Protection, Department of Homeland Security, *Total CBP Enforcement Actions*, available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics> (last visited January 23, 2025).

³ *Id.* at note 1.

⁴ *Id.* at notes 1 and 2.

Enforcement	FY 2020	FY 2021	FY 2022	FY 2023	FY 2024
Total Enforcement Encounters	646,822	1,956,519	2,766,582	3,201,144	2,901,142

In addition to the approximately 11.5 million enforcement encounters, the U.S. Customs and Border Protection has recorded roughly 2 million known “gotaways” since the beginning of FFY 2021, but the actual number of gotaways may be 20 percent greater.⁵ Gotaways are individuals who have evaded detection and attempts at verifying their identities or backgrounds.

Immigration Enforcement by States

On June 30, 2023, Florida prisons housed 4,682 confirmed alien inmates. This is 127 more than the previous year, which totaled 4,555 alien inmates. Approximately 79.2% of confirmed alien inmates are in prison for violent crimes, followed by 9.0% for property crimes, 7.5% for drug crimes, and 4.4% for other crimes.⁶

According to U.S. Customs and Border Protection the term “criminal noncitizens” refers to individuals who have been convicted of one or more crimes, whether in the United States or abroad, prior to interdiction by the U.S. Border Patrol. In 2024, there were 17,048 arrests of criminal noncitizens, almost 1,800 more arrests than the previous year. Of those arrests, 10,935 are for illegal re-entry after prior deportation.⁷

The Office of Homeland Security Statistics reported in 2022 that Florida had the third highest number of lawful permanent residents per million residents in the country, just behind New Jersey and New York.⁸

Texas Model

In a 2023 special session, Texas lawmakers passed SB 4 pertaining to illegal immigration. The bill created a Class B misdemeanor for a person who is an alien and enters or attempts to enter the state directly from a foreign nation anywhere other than a lawful port of entry and authorizes law enforcement to arrest such persons. Upon conviction, a judge must issue an order requiring the person to return to the foreign nation from which he or she entered or attempted to enter. The bill reclassifies the offense to a felony if it is shown the defendant has previously been convicted of such an offense. The bill also created a Class A misdemeanor for illegal reentry and

⁵ Homeland Security Committee Republicans, U.S. House of Representatives, *Border Crisis Startling Stats: Fiscal Year 2024 Ends With Nearly 3 Million Inadmissible Encounters Bringing Total Encounters to 10.8 Million Since FY2021*, (September 2024), available at <https://homeland.house.gov/wp-content/uploads/2024/10/September-24-Startling-Stats.pdf>. (last visited January 26, 2025).

⁶ Florida Department of Corrections, *2022-2023 Annual Report* (page 35), available at, https://fdc-media.ccplatform.net/content/download/3089/file/Annual_Report_22-23_V10.pdf (last visited February 3, 2025).

⁷ U.S. Customs and Border Protection, *Criminal Noncitizen Statistics*, available at <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics/criminal-noncitizen-statistics> (last visited February 3, 2025).

⁸ Office of Homeland Security Statistics, *State Immigration Statistics*, available at <https://ohss.dhs.gov/topics/immigration/state-immigration-data/state-immigration-statistics> (last visited February 3, 2025).

reclassified that crime to a felony upon certain circumstances. Additionally, the bill provided discretion in certain cases and civil immunity for state workers and law enforcement.⁹

The legislation was to go into effect March 2024, but legal challenges from the U.S. Justice Department and immigration advocacy organizations have prevented the law from going into effect, claiming the law encroaches on the federal government's sole authority over immigration.¹⁰

On February 29, 2024, the U.S. District Court for the Western District of Texas granted a motion for preliminary injunction to block the bill from going into effect while litigation is pending. The State of Texas appealed this decision.¹¹ On March 19, 2024, the U.S. Supreme Court issued an order allowing the state of Texas to enforce the legislation as challenges proceeded in the appeals court. Hours later, the Fifth Circuit Court of Appeals scheduled a hearing for oral arguments on the administrative stay and reinstated the district court's injunction, stopping the legislation from going into effect.¹²

As of January 31, 2025, the case will go to trial July 8, 2025.¹³

The Death Penalty

Under current Florida law, the term "capital felony" means a crime for which a person may be sentenced to death.¹⁴ Among these crimes are:

- The unlawful killing of a human being:
 - When perpetrated from a premeditated design to effect the death of the person killed or any human being;¹⁵
 - When committed by a person engaged in the perpetration of, or in the attempt to perpetrate, any specified offense;¹⁶ or
 - Which resulted from the unlawful distribution by a person 18 years of age or older of any specified substances, or mixture containing any specified substance, when such substance or mixture is proven to have caused, or is proven to have been a substantial factor in producing, the death of the user.
- Sexual battery, or in an attempt to commit sexual battery injures the sexual organs of, a person less than 12 years of age.¹⁷

⁹ LegiScan, State of Texas, *SB 4 enrolled*, available at <https://legiscan.com/TX/text/SB4/id/2851390/Texas-2023-SB4-Enrolled.html> (last visited February 7, 2025).

¹⁰ The Texas Tribune, *Texas Immigration Law: Here's What to Know About SB 4*, March 18, 2024, available at <https://www.texastribune.org/2024/03/18/texas-sb-4-immigration-arrest-law/> (last visited February 7, 2025).

¹¹ ACLU Texas, *Federal Court Blocks Extreme Texas Legislation That Would Overstep Federal Immigration Law*, February 29, 2024, available at <https://www.aclutx.org/en/press-releases/federal-court-blocks-extreme-texas-legislation-sb-4-would-overstep-federal> (last visited February 7, 2025).

¹² The Texas Tribune, *Texas' New Immigration Law is Blocked Again*, March 19, 2024, available at <https://www.texastribune.org/2024/03/19/texas-sb-4-illegal-immigration/> (last visited February 7, 2025).

¹³ Austin American-Statesman, *Challenge to Texas Immigration Law Will Head to Trial in July, Federal Judge orders*, January 31, 2025, available at <https://www.statesman.com/story/news/politics/2025/01/31/texas-immigration-deportation-law-sb4-heads-to-july-trial/78060545007/> (last visited February 7, 2025).

¹⁴ See Sections 921.141, 921.142, and 921.1425, F.S.

¹⁵ Section 782.04(1)(a)1., F.S.

¹⁶ Section 782.04(1)(a)2., F.S.

¹⁷ Section 794.011(2), F.S.

- Trafficking in specified controlled substances.¹⁸

While the above listed crimes are all capital offenses, the U.S. Supreme Court has held that capital punishment must ‘be limited to those offenders who commit a narrow category of the most serious crimes and whose extreme culpability makes them the most deserving of execution.’¹⁹

Under Florida capital crime sentencing statutes, the jury and the judge both play a role.²⁰ In a jury trial, if the defendant is found guilty of a capital crime by a unanimous jury vote, the court must conduct a separate sentencing proceeding to determine whether the defendant must be sentenced to death or life imprisonment.²¹

In the sentencing proceeding, evidence may be presented as to any matter that the court deems relevant to the nature of the crime and the character of the defendant and shall include matters relating to any specified aggravating factors or mitigating circumstances. Aggravating factors include, in part:

- The defendant was previously convicted of a capital felony or a felony involving the use or threat of violence.
- The defendant knowingly created a great risk of death to many persons.
- The capital felony was particularly heinous, atrocious, or cruel.
- The victim was a law enforcement officer in the performance of his or her duties.²²

Mitigating circumstances include, in part:

- The defendant has no significant history of prior criminal history.
- The defendant acted under extreme duress.
- The age of the defendant.
- The capacity of the defendant to appreciate his or her conduct.
- The capital felony was committed while the defendant was under extreme mental or emotional disturbance.²³

The state and the defendant, or the defendant's counsel, must be permitted to present argument for or against the sentence of death.²⁴

A unanimous jury must determine whether the state has proven at least one aggravating factor beyond a reasonable doubt.²⁵ If an aggravating factor is unanimously found to exist, the defendant is eligible for the death penalty and the jury must make a sentencing recommendation to the judge.²⁶

¹⁸ See s. 893.135, F.S.

¹⁹ *Kennedy v. Louisiana*, 554 U.S. 407 (2008).

²⁰ Section 921.141, F.S.

²¹ Section 921.141(1), F.S.

²² Section 921.141(6), F.S.

²³ Section 921.141(7), F.S.

²⁴ Section 921.141(1), F.S.

²⁵ Section 921.141(2), F.S.

²⁶ Section 921.141(2)(b)2., F.S.

Such recommendation must be based on weighing:²⁷

- Whether sufficient aggravating factors exist;
- Whether aggravating factors exist which outweigh the mitigating circumstances found to exist; and,
- Based on those considerations, determine whether the defendant should be sentenced to death or life imprisonment without parole.²⁸

If at least eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of death.²⁹

However, if at least eight jurors recommend a sentence of death, the judge, after considering each aggravating factor found unanimously by the jury and all mitigating circumstances, may impose a sentence of life imprisonment without the possibility of parole or a sentence of death.³⁰ If the court imposes a sentence of life after the jury has recommended a sentence of death, the court must enter a written order including the reasons for not accepting the jury's recommended sentence.³¹

If fewer than eight jurors determine that the defendant should be sentenced to death, the jury's recommendation to the court must be a sentence of life imprisonment without the possibility of parole, and the judge will impose that sentence.³²

In each case in which the court imposes a sentence of life imprisonment without the possibility of parole or death, the court must enter a written order addressing the aggravating factors, mitigating circumstances, whether there are sufficient aggravating factors to warrant the death penalty, and whether the aggravating factors outweigh the mitigating circumstances.³³

III. Effect of Proposed Changes:

Unauthorized Aliens, Nationality, and Immigration

The bill directs the division of law to create ch. 811, F.S., to be entitled "Unauthorized Aliens, Nationality, and Immigration." The bill creates the *crimes of illegal* entry and *illegal reentry* within this chapter.

²⁷ Section 921.141(2)(b), F.S.

²⁸ Section 921.141(2)(b), F.S.

²⁹ Section 921.141(2)(c), F.S.

³⁰ Section 921.141(3)(a)2., F.S.

³¹ Section 921.141(4), F.S.

³² Section 921.141(2) and (3)(a)1., F.S.

³³ Section 921.141(4), F.S.

Crimes of Illegal Entry and Reentry

The bill creates s. 811.102, F.S., to create the crime of illegal entry by an adult unauthorized alien³⁴ into this state. An adult unauthorized alien who knowingly enters or attempts to enter this state after entering the United States by eluding or avoiding examination or inspection by immigration officers commits a first degree misdemeanor.³⁵ A person convicted of this offense must be sentenced to a mandatory minimum term of imprisonment of 9 months.

- A second violation is a third degree felony³⁶ and requires a mandatory minimum term of imprisonment of one year and one day.
- A third or subsequent violation is a third degree felony and requires a mandatory minimum term of imprisonment of two years.

The bill provides it is an affirmative defense to the newly created crime if:

- The Federal Government has granted the unauthorized alien lawful presence in the United States or discretionary relief that authorizes the unauthorized alien to remain in the United States temporarily or permanently;
- The unauthorized alien is subject to relief under the Cuban Adjustment Act of 1966;³⁷ or
- The unauthorized alien's entry into the United States did not constitute a violation of 8 U.S.C. s. 1325(a).³⁸

Additionally, a person may not be arrested for this offense if he or she encountered law enforcement during the investigation of another crime that occurred in this state and the person witnessed or reported such crime or was a victim of such crime.

The bill creates s. 811.103, F.S., to create the crime of illegal reentry of an adult unauthorized alien. An adult unauthorized alien commits a third degree felony if he or she, after having been denied admission, excluded, deported, or removed³⁹ or having departed the United States during the time an order of exclusion, deportation, or removal is outstanding, thereafter enters, attempts to enter, or is at any time found in this state.

A person who is convicted of this crime must be sentenced to a mandatory minimum term of imprisonment of one year and one day. The bill provides an unauthorized alien does not commit

³⁴ Section 908.111, F.S., the term "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.](#) The term shall be interpreted consistently with any applicable federal statutes, rules, or regulations.

³⁵ A first degree misdemeanor is punishable by up to 1 year in the county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

³⁶ A third degree felony is punishable by up to 5 years' incarceration and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

³⁷ U.S. Citizen and Immigration Services, Green Card for Cuban Citizen, available at, <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-a-cuban-native-or-citizen#:~:text=The%20Cuban%20Adjustment%20Act%20of%201966%20%28CAA%29%20allows.become%20lawful%20permanent%20residents%20%28get%20a%20Green%20Card%29> (last visited February 9, 2025). The Cuban Adjustment Act of 1966 (CAA) allows Cuban natives or citizens living in the United States who meet certain eligibility requirements to apply to become lawful permanent residents (get a Green Card).

³⁸ 8 U.S.C s. 1325 relates to unlawful entry by an alien.

³⁹ The definition of "removal," is provided in the bill and means the departure from the United States of an unauthorized alien after any proceeding under 8 U.S.C. ss. 1225, 1228, 1229, or 1229a or any agreement in which an unauthorized alien stipulates to his or her departure from the United States as part of a criminal proceeding under federal or state law.

a violation of this subsection if, before the unauthorized alien's reembarkation at a place outside the United States or his or her application for admission from a foreign contiguous territory:

- The Attorney General of the United States expressly consented to his or her reapplication for admission; or
- With respect to an unauthorized alien who was previously denied admission and removed, the unauthorized alien establishes that he or she was not required to obtain such advance consent under the Immigration and Nationality Act, as amended.

The penalties for this crime are increased if an unauthorized alien who:

- Has three or more prior misdemeanor or felony convictions, other than a forcible felony,⁴⁰ or an aggravated felony,⁴¹ and who commits the crime of illegal reentry, commits a third degree felony and must be sentenced to a mandatory minimum term of imprisonment of two years.
- Has a prior conviction for a forcible felony, or an aggravated felony and who commits the crime of illegal reentry commits a second degree felony and must be sentenced to a mandatory minimum term of imprisonment for five years.

The court must presume that no conditions of release can reasonably assure the presence of an unauthorized alien who is arrested for either crimes of illegal entry or illegal reentry, and such person must be detained pending the disposition of his or her case.

Additionally, the bill provides that a person arrested for illegal entry or illegal reentry is not eligible for civil citation or various diversion programs and requires law enforcement agencies to report such arrest to the federal government.

Section 811.101, F.S., is created to provide the definitions of the terms "removal" and "unauthorized alien."

Death Penalty

The bill creates s. 921.1426, F.S., to provide that the court must sentence a defendant who is an unauthorized alien and who is convicted or adjudicated guilty of a capital felony to a sentence of death.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴⁰ Section 776.08, F.S., provides that a forcible felony is treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; burglary; arson; kidnapping; aggravated assault; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; and any other felony which involves the use or threat of physical force or violence against any individual.

⁴¹ 8 U.S.C. s. 1101, provides the definition of aggravated felony.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

The crimes created in the bill and the mandatory sentencing scheme may be subject to future challenges. The crimes and sentencing scheme presented in this bill only apply to unauthorized aliens.

Equal Protection

The Fourteenth Amendment to the U.S. Constitution is not confined to the protection of citizens. It says: “[n]or shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.”⁴² Because immigration status is not a protected class, it is likely that equal protection challenges to the statutes in the bill will be subject to the lower, rational basis standard. The U.S. Supreme Court (Court) has used a rational basis standard for determining that a state did not establish a sufficient rational basis for denying undocumented children access to public education that the state afforded other residents.⁴³

Due Process

The Court has long held that: “it must be concluded that all persons within the territory of the United States are entitled to the protection guaranteed by [the fifth and sixth] amendments, and that even aliens shall not be held to answer for a capital or other infamous crime, unless on a presentment or indictment of a grand jury, nor be deprived of life, liberty, or property without due process of law.”⁴⁴

The bill creates a capital crime sentencing statute that differs from Florida’s current law by imposing a mandatory death sentence without a capital sentencing procedure which only applies to unauthorized aliens. Although there was a time when states had “mandatory death sentence” laws, the Court has found such laws unconstitutional, stating “the history of mandatory death penalty statutes in the United States thus reveals that the

⁴² See *Plyer v. Doe*, 457 U.S. 202 (1982); *Wong Wing v. U.S.*, 163 U.S. 228 (1896).

⁴³ *Plyer v. Doe*, 457 U.S. 202 (1982).

⁴⁴ *Wong Wing v. U.S.*, 163 U.S. 228 (1896).

practice of sentencing to death all persons convicted of a particular offense has been rejected as unduly harsh and unworkably rigid.⁴⁵

Furthermore, the bill mandates the death penalty if an unauthorized alien is convicted of a capital offense. Under Florida law, a capital offense includes crimes such as trafficking in controlled substances, sexual battery upon a person less than 12, and crimes of homicide. It appears under the language in the bill that any unauthorized alien convicted of any capital offense must be sentenced to death. The Court has explained that capital punishment must ‘be limited to those offenders who commit a narrow category of the most serious crimes and whose extreme culpability makes them the most deserving of execution.’⁴⁶

Federal Preemption

The new crimes created in the bill related to illegal entry or illegal reentry may be subject to challenges for encroaching upon federal law. The Court has found that the Federal Government’s broad, undoubted power over immigration and alien status rests, in part on its constitutional power to “establish an uniform Rule of Naturalization,” and on its inherent sovereign power to control and conduct foreign relations.⁴⁷ Additionally, the Supremacy clause gives Congress the power to preempt state law, either by an express or inferred preemption. State laws are also preempted when they conflict with federal law.⁴⁸ The Court has stated that although “federal law permits state officers to ‘cooperate with the Attorney General in the identification, apprehension, detention, or removal of aliens not lawfully present in the United States,’ this does not encompass the unilateral decision to detain.”⁴⁹

Eighth Amendment

The Eighth Amendment to the U.S. Constitution provides protections against cruel and unusual punishment. The Court has held that the Eighth Amendment stands to assure that the State’s power to punish is “exercised within the limits of civilized standards.”⁵⁰ The Court held that North Carolina’s mandatory death penalty statute for first degree murder departed “markedly from contemporary standards respecting the imposition of the punishment of death” and could not be applied consistently with the Eighth Amendment.⁵¹

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁴⁵ *Woodson v. North Carolina*, 96 S.Ct. 2978 (1976)..

⁴⁶ *Kennedy v. Louisiana*, 554 U.S. 407 (2008).

⁴⁷ *Arizona v. U.S.*, 567 U.S. 387 (2012).

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Woodson v. North Carolina*, 96 S.Ct. 2978 (1976).

⁵¹ *Id.*

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a positive indeterminate fiscal impact on the DOC due to the creation of new crimes and the increased beds that may be needed to house unauthorized aliens who commit the crimes created in the bill.

Additionally, the bill may have a negative fiscal impact on the state courts due to the potential increase in death sentences due to the mandatory death penalty for unauthorized aliens.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 811.101, 811.102, 811.103, and 921.1426.

This bill creates an undesignated section of Florida Law.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.