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# **SB 4/ HB4 Know Your Rights**

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# How to Use this Slide Deck

This slide deck was created by a coalition of organizers, activists, and attorneys in Texas to be publicly available for use as a resource when conducting know-your-rights presentations on Texas SB 4/ HB 4.

Community leaders, organizers, and activists are welcome to use this full slide deck as provided, or select the slides that are applicable to your presentation needs.

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# Important Disclaimers

This slide deck is intended to provide general information on Texas Special SB 4 and SB 4/HB 4, and is not intended to provide legal advice.

Additionally, laws and legal policy can change very quickly. Any information contained within this slide deck is subject to change and development without notice.

Consult with an attorney if you have any specific questions about how these legal matters may apply to an individual or organization.

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# SB 4 (Mandatory Minimum) Overview

- 10 year mandatory prison sentence for anyone convicted of smuggling
  - 15 year mandatory sentence if smuggling offense conviction in area where a disaster is declared
  - Reduced to 5 years for someone who cooperates with law enforcement or smuggles certain extended family members
- 5 year mandatory minimum for operation of a stash house
- NOT LIMITED TO THE BORDER REGION

## ***Family Defense: the trafficked person is:***

<b>Affirmative Defense [1st/2nd Degree]</b>	<b>5 year Mandatory Min. [3rd Degree]</b>	<b>10 year Mandatory Min. [4th Degree +]</b>
Son/Daughter	Great Grandfather/Mother	Cousin
Father/Mother	Great Grandchildren	Etc.
Husband/Wife	Uncle/Aunt	
Grandson/Granddaughter	Nephew/Niece	
Brother/Sister	Etc.	
Grandfather/Grandmother		
Brother/Sister-in-law		
Father/Mother-in-law		

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# Where is a disaster declared?

As of September 2023, 58 counties have signed on to Governor Abbott's disaster declaration.

1. Bee	16. Frio	31. La Salle	46. Schleicher
2. Brewster	17. Galveston	32. Lavaca	47. Sutton
3. Brooks	18. Goliad	33. Live Oak	48. Terrell
4. Caldwell	19. Gonzales	34. Mason	49. Throckmorton
5. Cameron	20. Hidalgo	35. Maverick	50. Uvalde
6. Chambers	21. Hudspeth	36. McCulloch	51. Val Verde
7. Colorado	22. Jackson	37. McMullen	52. Victoria
8. Crane	23. Jeff Davis	38. Medina	53. Webb
9. Crockett	24. Jim Hogg	39. Menard	54. Wharton
10. Culberson	25. Jim Wells	40. Midland	55. Wilbarger
11. DeWitt	26. Kene	41. Pecos	56. Wilson
12. Dimmit	27. Kerr	42. Presidio	57. Zapata
13. Duval	28. Kimble	43. Real	58. Zavala
14. Edwards	29. Kinney	44. Refugio	
15. El Paso	30. Kleberg	45. San Patricio	

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# What is smuggling of persons?

- Using any type of vehicle to transport anyone with an *intent* to conceal them or flee from law enforcement. Note that the statute does not require actual concealment and only requires an intent to conceal and that law enforcement has interpreted "intent to conceal" when a passenger is undocumented.
- Encouraging or inducing a person to enter or remain in this country in violation of federal law by concealing, harboring, or shielding that person from detection
- Assisting or guiding two or more individuals to enter or remain on agricultural land without the effective consent of the owner.

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# What is a stash house?

- Using, permitting, renting, or leasing any real estate, building, room, tent, vehicle, boat, or other property owned by the person or under the person's control to commit an offense or to facilitate the commission of an offense under:
  - Texas Penal Code §§ 20.05 (smuggling of persons) or 20.06 (continuous smuggling of persons)
  - Texas Penal Code §§ 20A.02 (trafficking of persons) or 20A.03 (continuous trafficking of persons)
  - Texas Penal Code §§ 43.04 (aggravated promotion of prostitution) or 43.05 (compelling prostitution)



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# SB 4/HB 4 (Illegal Entry) Overview

- Creates two new crimes that can only be committed by non-US citizens or nationals
- Illegal Entry from Foreign Nation:
  - Peace Officer may arrest or detain someone for illegal entry if there is probable cause to believe they are a non-citizen that entered Texas from a foreign nation at any location other than a port of entry
  - Defense to prosecution *if granted prior to arrest:*
    - Lawful presence
    - Asylum
    - DACA
  - It is not a defense and prosecution will not stop if an application was pending or could be initiated.

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# SB 4/HB 4 (Illegal Entry) Overview Continued

- Illegal Reentry by Certain individuals:
  - Peace Officers may arrest or detain someone for illegal reentry if there is probable cause to believe they are a non-citizen and are entering, attempting to enter or are found at any time in Texas after they were denied admission, deported or removed or departed Texas while having an outstanding order of deportation.
  - There is no defense allowed. This means that any person that was denied admission, deported or removed by federal or state government and was then found entering or found anywhere in Texas will be prosecuted and removed even if they have been granted some sort of lawful status.
- Creates a new crime for refusal to comply with order to return - up to 20 year sentence

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# SB 4/HB 4 (Illegal Reentry) Overview Continued



- Peace Officer may not arrest or detain a person at:
  - Public or private primary or secondary school
  - Churches or other established places of worship
  - Health Care Facilities (only if there to receive treatment)
  - SAFE-ready Facilities (only if there to receive treatment)
- **NOT LIMITED TO THE BORDER REGION**

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## 3 ways to be ordered to return to a foreign nation



- Pre-adjudication by a Magistrate Judge
  - Can order the person released and ordered to return to the foreign nation where the person entered if the person:
    - agrees to the order
    - has not previously been convicted of illegal entry or illegal reentry and
    - if the person is not charged with another offense punishable as a Class A misdemeanor or higher.
  - **It is crucial that you request to consult with a lawyer during your Magistration for Illegal Entry or Illegal Reentry if you do not want to be removed back to the foreign nation where you entered.**

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## 3 ways to be ordered to return to a foreign nation



- Pre-adjudication by a judge
  - A judge may at any time and in lieu of continuing the prosecution order the person to return to the foreign nation where the person entered if:
    - the person agrees to the order,
    - has not been previously convicted of Illegal Entry or Illegal Reentry and
    - if the person is not charged with another offense punishable as a Class A Misdemeanor or higher.

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## 3 ways to be ordered to return to a foreign nation

- Post Adjudication by a Judge
  - After conviction of Illegal Entry or Illegal Reentry, a judge is required to order the person to return to the foreign nation where the person entered.



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# Who is a Peace Officer in Texas?

Texas Code of Criminal Procedure Sec. 2.12 defines who is a peace officer. Some examples are:

- Police Officers/Sheriffs
- Parks and Wildlife Commission law enforcement officers
- Municipal park and recreational patrolment and security officers
- Fire Marshal
- Insurance Commissioner Investigators

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# Overview of Rights - REGARDLESS OF STATUS

## 4th Amendment

You do not have to consent to an unlawful search of your property, including your vehicle. The 4th amendment protects us from law enforcement searches without a judicial search warrant.

## 6th Amendment

You have a right to an attorney for criminal matters but not immigration matters

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# Overview of rights - REGARDLESS OF STATUS

## 5th Amendment

- You have a right to remain silent and not answer any question from a peace officer relating to your immigration status or how you entered the state of Texas.
- If you did enter Texas from a foreign country at a place other than a port of entry, do not answer questions relating to how you entered and ask for your lawyer



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## 5th Amendment continued

- The only questions you need to answer under the Texas Failure to Identify Law are:
  - If you were *arrested*: name, residence address, and date of birth
  - If you are *not* under arrest: No need to provide any information
  - If you are not driving, no need to show your ID or papers

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# Role as a Passenger in a Vehicle

- As a passenger, you do not need to show your identification to a Texas peace officer
- If you are a US citizen and are being questioned about your status, you may want to show proof of US citizenship.
- If you are not a US citizen:
  - Showing your foreign passport may subject you to an arrest for Illegal Entry if the passport does not show proof you entered Texas from a port of entry in the form of an I-94.
  - Because it is not required, the risks of providing foreign identification may outweigh any benefit and may subject you to arrest.

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## What do I say when...

- What do I say when a peace officer asks about my immigration status?
  - You can respond: **I do not wish to speak with you, answer your questions, or sign any documents based on my 5th amendment rights under the United States Constitution.**
- What do I say if a peace officer asks you to sign documents or answer additional questions?
  - You can respond: **I would like to speak with my attorney before answering any more questions or signing anything.**

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# If in ICE or CBP custody...

- Do not resist and follow the officer's commands, even if you think the commands are not fair.
- **Truthfully** answer an officer's questions about your **name**, the **address** where you live and your **birthdate**.
- **Say you wish to remain silent** regarding all other questions and **ask for a lawyer**. If you can't afford a lawyer, the government must provide one.
- Don't say anything, sign anything, or make any decisions without a lawyer.
- You have the right to make a local phone call. The police cannot listen if you call a lawyer.
- **Do NOT discuss** your immigration status with anyone but your lawyer.
- An immigration officer may visit you in jail. Do not answer questions or sign anything before talking to a lawyer.
- Read all papers fully. If you don't understand or cannot read the papers, say you need an interpreter.



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# If you're taken into immigration (OR "ICE") Custody



- You have the right to a lawyer. If you don't have a lawyer, ask for a list of free or low-cost legal services.
- You have the right to contact your consulate or have an officer inform the consulate of your arrest. However if seeking asylum, this may not be advisable
- Tell the immigration officer you **wish to remain silent**. Do not discuss your immigration status with anyone but your lawyer.
- **Do NOT sign** anything without talking to the lawyer. If you sign, you may be giving up your opportunity to try to stay in the U.S.
- Know your immigration number ("A" number) and give it to your family. It will help them locate you.

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# Emergency Packet: Preparing for an Immigration bond



Packet containing all information your family/friends will need in order to prepare for bond or to give to an attorney. Any documents that are not in English will need a certified translation.

- Identification information (birth certificate, marriage certificate, ID)
- Tax returns/ proof of income
- Not a flight risk
  - Evidence of ties to the community in the US
    - Birth certificates of US born children
    - US Citizen or LPR family members birth certificates
    - Employment Letter
    - Property or assets in the US
    - Community or Church organization membership
    - Medical information for yourself or close family member you care for (if relevant)
    - Proof of marriage (if relevant)
    - Pending immigration application

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# Emergency Packet: Preparing for an Immigration bond, continued

Packet containing all information your family/friends will need in order to prepare for bond or to give to an attorney. Any documents that are not in English will need a certified translation.

- Not a danger to society
  - Evidence of no criminal history
    - If there is criminal history, evidence of rehabilitation
  - Good Moral Character Letters from friends and family
  - Certificates/awards
  - Involvement/membership with community organizations or churches



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# Family Preparedness Packet



- A “Power of Attorney” is a letter prepared with the help of an attorney, that gives another person authority to care for your children, manage your bank accounts, or act on your behalf in other ways, in case you are not able to.
- Compile important **phone numbers** and other information, such as **dates of birth, bank account numbers, passport numbers**, etc.
- Compile documentation that can be given to an attorney that shows:
  - Any criminal history & evidence of rehabilitation
  - Evidence of your good moral character and connection to your community in the U.S.
  - Evidence of the time you have lived in the U.S.
  - Information about any family in the U.S. who have status who depend on your care

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# Family Preparedness Resources

Important Information Worksheet & Checklists for your family:

**English:**

<https://tinyurl.com/Family-Worksheet>



**Español:**

<https://tinyurl.com/Hoja-Ejercicio-Familia>



These resources, created by the **Houston Immigration Legal Services Collaborative** and **BakerRipley** in Houston, TX can help you compile important information and documents for your family into one place.

- <https://www.houstonimmigration.org/>
- <https://bakerripley.org/programs-and-services/immigration-and-citizenship-services/>

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# More Information: Family Preparedness & Other Assets

If you have assets, like a bank account, a house, or a car, that you would like to make a plan for in case you are arrested or deported, these resources from **Texas Appleseed** can help you compile the information you need to do that.

## The Plan is to Have a Plan: How to Protect Yourself in Case of Deportation

English

<https://tinyurl.com/Plan-Family-Protection>



<https://tinyurl.com/Plan-Proteccion-Familia>



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# Family Preparedness & Other Assets, continued

## Protecting Assets & Child Custody in the Face of Deportation: A guide for Practitioners Assisting Immigrant Families

- Note: this resource is only in English, but has many checklists in both English and Spanish

<https://tinyurl.com/Protect-Children-Assets>



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# Family Preparedness, continued

Be sure to:

- Review your plan with your family and children
- Make sure everyone knows where important family documents are located
- Establish an emergency caretaker who can care for your children and make decisions for them in case you cannot
- If you do not have legal status, meet with an immigration attorney to find out if you are eligible to apply
- If you have Texas Driver's License, Texas ID, or Enhanced library card make sure to carry it with you at all times.



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# Domestic Violence / Sexual Assault Programs

Emergency shelters for survivors of domestic violence and programs that provide support to survivors of domestic violence and sexual assault are required by federal law to serve all survivors, regardless of their immigration status.

A survivor should not need to disclose their immigration status in order to enter a shelter or receive services, though some types of services and benefits may only be available to people with certain immigration status.

If you are denied access to shelter at a Domestic Violence program due to your immigration status, the National Domestic Violence Hotline may be able to provide you with information: 1-800-799-7233

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# Referrals

[Add your own local referrals]