

- SUBJECT:** Venue for prosecuting escape and unauthorized absence
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Keel, Riddle, Ellis, Denny, Hodge, Pena, Talton
0 nays
2 absent — Dunnam, P. Moreno
- WITNESSES:** For — Stuart Messer, 100th Judicial District Attorney’s Office; Barry Macha
Against — None
- BACKGROUND:** Penal Code, sec. 38.06 establishes the offense of escape from custody and, depending on the circumstances, makes it a Class A misdemeanor (punishable by up to one year in jail and/or a maximum fine of \$4,000) or a felony of the first, second, or third degree (punishable by imprisonment and an optional fine of up to \$10,000).
- Under Penal Code, sec. 38.113, a person commits the offense of unauthorized absence from a community corrections facility, county correctional center, or community service assignment site if the person fails to report to or leaves the facility, center, or assignment site without the approval of the court, community supervision and corrections department, or director of the facility or center where the person is detained or treated. An offense under this statute is a state jail felony, punishable by 180 days to two years in a state jail and an optional fine of up to \$10,000.
- Under Code of Criminal Procedure, art. 13.18, if venue for an offense is not specified elsewhere in the code, the offense must be prosecuted in the county in which it was committed.
- DIGEST:** HB 42 would specify that an offense of escape and unauthorized absence may be prosecuted in the county in which that offense was committed or in the county in which the defendant committed the offense for which that person was placed in custody, detained, or required to submit to treatment.

This bill would take effect September 1, 2003, and apply only to offenses committed on or after that date.

**SUPPORTERS
SAY:**

HB 42 would establish an alternative venue for cases of escape or unauthorized absence. Instead of having to prosecute such a case in the county where the escape or unauthorized absence occurred, a prosecutor could bring charges in the county where the offense occurred for which the defendant initially was placed in custody, detained, or required to submit to treatment. Increasing the options for venue would facilitate prosecution of escape and unauthorized absence offenses and would improve public safety.

Unauthorized absence often occurs when a person on probation walks away from a restitution center. The county that prosecuted the underlying offense may file a motion to revoke probation. Under HB 42, that county also could prosecute the unauthorized absence. The county with jurisdiction over a defendant's underlying offense has a greater interest in charges of escape or unauthorized absence, because that county usually is where the victims live.

Counties such as Walker with large prisons, such as at Huntsville, generally have special prosecution units that handle escape cases. In cases of escape from a major correctional facility, however, the district attorney of the county of initial conviction must answer to victims within that venue and probably is more familiar with a repeat offender's criminal background. Also, those prosecutors must address concerns about convicted criminals returning to the area where the original crime occurred.

**OPPONENTS
SAY:**

HB 42 would seem to offer a reasonable alternative to prosecuting a jail escape or unauthorized absence if the charge involved simply leaving a facility in one county and going to a nearby county where the original offense occurred. In more extreme cases of escape — for example, from Huntsville — prosecution should remain limited to the county of the correctional facility, where the evidence was preserved. Moving venue across the state to prosecute an escape from Huntsville could add unnecessary expense and could jeopardize crucial evidence.

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NOTES: The companion bill, SB 958 by Duncan, has been referred to the Senate Criminal Justice Committee.