

- SUBJECT:** Offense for hindering apprehension of fugitives sought under warrants
- COMMITTEE:** Criminal Jurisprudence — favorable, without amendment
- VOTE:** 7 ayes — Keel, Denny, Escobar, Hodge, Pena, Raymond, Reyna  
0 nays  
2 absent — Riddle, P. Moreno
- WITNESSES:** For — Rick Miller  
Against — None
- BACKGROUND:** Penal Code sec. 38.05 makes it a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) or a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) to perform certain actions with the intent to hinder the arrest, prosecution, conviction, or punishment of another person for an offense, or of a juvenile for conduct, that would constitute a felony crime. The illegal actions are harboring or concealing another, providing or aiding in providing another with means of avoiding arrest or escaping, or warning another of impending discovery or apprehension. The crime is a third-degree felony if the person charged with hindering apprehension knew that the person helped was under arrest for, charged with, or convicted of a felony.
- DIGEST:** HB 2104 would make hindering the arrest, prosecution, conviction, or punishment of someone under the authority of a warrant or *capias* an offense under the crime of hindering apprehension or arrest. The bill also would make hindering the apprehension of juveniles involved with misdemeanors an offense under the statute.  
  
The bill would take effect September 1, 2005, and apply only to offenses committed on or after that date.
- SUPPORTERS SAY:** HB 2104 is necessary to ensure that persons aiding fugitives being sought under a court order — no matter what the basis of the order — could be prosecuted for hindering apprehension or prosecution.

Currently, a person who hides a fugitive being sought by law enforcement officers under a warrant or *capias*, which is another type of court order, commits the offense of hindering apprehension if the fugitive is wanted for a criminal offense. However, sometimes magistrates order law enforcement officers to take into custody fugitives who have violated the terms of their probation. The current law on hindering apprehension applies only if the fugitive has committed an offense, and courts have ruled that probation violations cannot be considered offenses. In one case, when the employer of a person wanted under a court order for a probation violation helped the fugitive avoid apprehension, no charge could be brought against the employer.

HB 2104 would close this loophole and allow prosecution under the hindering apprehension statute if a person hid a fugitive wanted under a court order for a probation violation. The underlying reason for a court order to take someone into custody — a new offense or probation violation — should not be a factor in whether someone can be prosecuted for hindering the apprehension of a fugitive. In both situations, a court has considered the evidence and issued a warrant. The statute should not encourage individuals to make judgments about the appropriateness or seriousness of court orders by allowing hindering the apprehension of fugitives wanted for probation violations to be treated differently than other cases.

HB 2104 also would bring hindering the apprehension of juveniles wanted for misdemeanors, not just those wanted for felonies, under the statute. The underlying reason for a court ordering a juvenile to be taken into custody should not be a factor in whether someone can be charged with a crime for hindering the juvenile's apprehension. This would bring the portion of the law dealing with juveniles into line with the adult portion.

As under current law, prosecutors would use their discretion to charge persons with the offense of hindering apprehension only in appropriate situations. It would not be used against someone who had not attempted deliberately to hinder law enforcement officers because prosecutors must prove intent. For example, a prosecutor would not bring a case against a mother who did not know that a child in her house was evading arrest.

**OPPONENTS  
SAY:**

By broadening the definition of what constitutes hindering apprehension or arrest, HB 2104 unfairly could ensnare a person who provided aid to someone wanted for a non-criminal violation without understanding that

such an action was illegal. For example, while a person might agree to help a probationer sought by law enforcement for violating probation due to non-payment of probation fees, the same person might not be willing to help a fugitive who had committed a new criminal offense. Because non-payment of probation fees is not a criminal offense, the person helping the fugitive might not understand the seriousness of his or her actions, yet this bill would make that person subject to prosecution.

Including aid to juvenile fugitives wanted for misdemeanors under the definition of hindering apprehension also could create situations that did not rise to the appropriate level of seriousness to warrant prosecution. For example, a mother who helped her son avoid law enforcement officers over misdemeanor charges might not do the same if her son had been wanted for a serious felony.