SUBJECT: Class C misdemeanor for failure to identify if lawfully detained

COMMITTEE: Law Enforcement — committee substitute recommended

VOTE: 6 ayes — Driver, Latham, Allen, Frost, Ortiz, West

0 nays

1 absent — Vo

WITNESSES: For — Chris Jones, Combined Law Enforcement Associations of Texas; Rick Miller; (*Registered, but did not testify:* Tom Gaylor Texas Municipal Police Association; Brian Hawthorne, Texas Department of Public Safety Officer Association)

Against — David Gonzalez, Texas Criminal Defense Lawyers Association; (*Registered, but did not testify*: Dominic Gonzales, Texas Criminal Justice Coalition)

BACKGROUND: Under Penal Code sec. 38.02(a), it is a class C misdemeanor (maximum fine of $500), under the offense of failure to identify, for people who have been lawfully arrested to refuse intentionally to give their names, addresses, or dates of birth to the arresting peace officer.

It also is an offense for people to intentionally give false or fictitious names, addresses, or birth dates to officers who either lawfully arrested or lawfully detained them or when the information is requested from a person whom the officer has good cause to believe was a witness to a criminal offense. This offense is a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $2,000).

The penalties for both offenses are increased one level if the person was a fugitive from justice at the time of the offense.

DIGEST: CSHB 855 would expand the offense of failure to identify to include those who have been lawfully detained by peace officers.

The bill would take effect September 1, 2007, and would apply only to offenses committed on or after that date.

SUPPORTERS SAY:

CSHB 855 would give law enforcement officers another constitutional tool to help them identify people they had detained based on reasonable suspicion. Currently, while it is an offense for people who have been arrested to fail to identify themselves, the offense does not apply to those detained but not arrested. However, it is an offense for someone lawfully detained or arrested to give a false answer about identity. CSHB 855 would address the confusion by including within the offense of failure to identify those who had been lawfully detained but failed to provide identifying information.

Officers often may need to identify those they have lawfully detained but not arrested. For example, officers may need quickly to identify someone when investigating domestic violence in order to make an arrest if they believe a domestic assault occurred because in certain domestic violence situations arrests would be required. Officers also may want to identify someone walking behind a store in the middle of the night after a burglar alarm has sounded to determine if the person lives nearby or has another legitimate reason to be in the area.

Concerns about terrorism and homeland security also could result in officers requiring people they have detained to identify themselves. For example, officers may encounter someone taking pictures of critical infrastructure, such as dams or water treatment facilities, and need to determine if the person is merely a tourist or should be questioned further.

Another scenario in which CSHB 855 could apply would be if a teacher reported an individual who had been lingering around a school yard for a couple of days making notes and taking photographs. A police officer could lawfully detain such an individual based on reasonable suspicion. However, if the individual refused to identify himself, the officer would not have probable cause to arrest him. With CSHB 855, the officer would be able to ascertain the person's name, address, and date of birth and determine if the person was a registered sex offender within a prohibited child safety zone or just a relative of one of the children or a nearby neighbor because otherwise the individual would be subject to arrest for failure to identify. Identification in this case would be the sole determining factor of whether the individual was committing an offense.

The lawful detentions described by CSHB 855 would have to be based on reasonable suspicion, just as they are now, and would have to follow U.S. Supreme Court decisions on so-called *Terry* stops. The term "Terry stop" comes from the U.S. Supreme Court decision in *Terry v. Ohio*, 392 U.S. 1 (1968), which established that law enforcement officers may make brief, investigatory stops when they have reasonable suspicion that a person may be involved in a crime. During these stops, officers try to develop information to determine if there is probable cause for an arrest, and identifying information almost always is needed. In a 2004 case, *Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County*, 542 U.S. 177, the U.S. Supreme Court confirmed that suspects may be required to disclose their names in the course of a *Terry* stop.

The information that would be required of those who were lawfully detained is minimal – name, address, and date of birth – and courts have ruled that information is non-incriminating. The object of CSHB 855 would not be to encourage officers to arrest people for failing to identify themselves but to create an incentive for people to identify themselves so officers could investigate potential crimes. In practice, officers would first tell people who were lawfully detained of their obligation to identify themselves and would not immediately arrest them. CSHB 855 would not result in jails being filled with those who refused to identify themselves because the penalty for the offense would remain a Class C misdemeanor.

To commit the offense of failure to identify, someone must *intentionally* refuse to give his or her name. This protects those who may not be able to answer an officer's request because of language or other difficulties. Officers are used to using interpreters and other means of communication if suspects do not understand their requests.

OPPONENTS SAY:

It would be unfair to create a new criminal offense for innocent behavior that an ordinary person would not consider a crime and that does not harm anyone. Although most people know when they have been arrested – for example, they may have been handcuffed and read their rights – they may not know when they have been detained legally because there is no bright line definition for this. Allowing detained people to be charged with a crime, even a misdemeanor, for not identifying themselves would give law enforcement authorities too much power to harass someone they could not arrest for another crime.

In general, the critical need to identify someone arises only once the person suspected of a crime has been arrested and taken into custody. This is true even in domestic violence situations and in cases involving lawful activity like photographing a public facility or walking in a certain area. If an assault has occurred, the suspect should be arrested regardless of the suspect's relationship with the victim, and if a person is violating another law, that person can be arrested. Current law gives officers plenty of authority to do quick investigations to determine whether there is probable cause for arrest.

CSHB 855 could be especially unfair to those who do not speak English or are otherwise unable to answer an officer's questions. They could be charged with an offense solely for not understanding their obligation to identify themselves when they have not committed another crime.

NOTES:

In adding failure to identify while under lawful detention to the failure to identify offense, the original version of the bill also would have made the offense a Class B misdemeanor. It also would have increased to a class A misdemeanor the penalty that would apply when a person arrested or detained was a fugitive from justice. The committee substitute would retain the Class C misdemeanor for the offense and add to the offense failure to identify while under lawful detention.