

SUBJECT: Penalty for the offense of evading arrest or detention

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 9 ayes — Gallego, Fletcher, Hodge, Kent, Miklos, Moody, Pierson,  
Vaught, Vo

0 nays

2 absent — Christian, Riddle

WITNESSES: For — Terry Donovan; Chris Jones, Combined Law Enforcement  
Associations of Texas; (*Registered, but did not testify*: Laura Andersen,  
San Antonio Police Department; Sam Center, Texas Game Warden  
Association; Mark Clark, Houston Police Officers' Union, Dallas Police  
Association; Tom Gaylor, Texas Municipal Police Association; James  
Jones, Houston Police Department; Ginger MacMicking, The 100 Club of  
Central Texas; Sean Mannix, Austin Police Department; Bernadette Ruiz;  
Joe Saldana, San Antonio Police Officers Association)

Against — None

BACKGROUND: Under Penal Code, sec. 38.04, a person commits the offense of evading  
arrest or detention if he intentionally flees from a person he knows is a  
peace officer attempting lawfully to arrest or detain him.

An offense is a class B misdemeanor (up to 180 days in jail and/or a  
maximum fine of \$2,000) unless the actor uses a vehicle while the actor is  
in flight, and the actor has no previous conviction of evading arrest or  
detention, in which case it is a state-jail felony (180 days to two years in a  
state jail and an optional fine of up to \$10,000).

An offense is a third-degree felony (two to 10 years in prison and an  
optional fine of up to \$10,000) if the actor uses a vehicle, and has a  
previous conviction for evading arrest or detention, or if another suffers  
serious bodily injury as a direct result of an attempt by the pursuing officer  
to apprehend the actor while he is fleeing.

An offense is a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if another suffers death as a direct result of an attempt by the pursuing officer to apprehend the actor while he is fleeing.

**DIGEST:**

CSHB 2873 would establish the offense of evading felony arrest or detention. A person would commit an offense if he intentionally fled from a peace officer, and knew:

- the person from whom he was fleeing was a peace officer;
- the peace officer was attempting to lawfully arrest or detain him as a suspect for commission of an offense; and
- the offense of which he was suspected was punishable as a felony.

An offense would be a state jail felony if the offense of which the actor was suspected was a state jail felony, a third-degree felony if the suspected offense was a felony other than a state jail felony, and second-degree felony if another suffered death as a direct result of an attempt by the pursuing officer to apprehend the actor while he was fleeing.

The bill also would make the offense of evading arrest or detention a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) unless the actor had a previous conviction for evading arrest or detention, or the actor used a vehicle in flight and had no previous conviction for evading arrest or detention.

The bill would take effect September 1, 2009, and would apply only to offenses committed on or after this date.

**SUPPORTERS  
SAY:**

By enhancing the penalties for evading arrest or detention in certain cases, CSHB 2873 would deter offenders. Currently, a person engaged in the commission of a felony may find it advantageous to flee and risk the lesser charge of evading arrest or detention, rather than face punishment for the alleged felony. Enhanced penalties for a prior evading arrest or detention conviction would discourage repeat offenses.

Chasing a suspect is dangerous to the public and to peace officers. In fact, evading arrest can be just as dangerous as resisting arrest, if not more so. By discouraging this offense, CSHB 2873 would help protect those who risk their lives to enforce our laws.

OPPONENTS SAY: Enhancing the penalty for this offense would not be an effective deterrent. The cost of incarcerating offenders would be an additional financial burden on the state and would divert resources from other important efforts, such as the probation system, that could do more to reduce recidivism.

NOTES: The companion bill, SB 1176 by Patrick, has been referred to the Senate Criminal Justice Committee.