

SUBJECT: Penalties for fleeing from lawful arrest in motor vehicle

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 7 ayes — Place, Talton, Farrar, Greenberg, Nixon, Pitts, Solis

0 nays

2 absent — Hudson, Pickett

SENATE VOTE: On final passage, March 22 — voice vote

WITNESSES: (*On companion, HB 1253*):

For — John Silva, City of Houston, Houston Police Department; Mark Clark, CLEAT; Yolanda Romero Mendoza, the Romero Madrid family; Oscar Madrid, the Madrid Romero family; Bill Lewis, Mothers Against Drunk Driving

Against — None

BACKGROUND: It is a Class B misdemeanor (maximum penalty of 180 days in jail and a \$2,000 fine) to intentionally flee from a person the offender knows is a peace officer who is attempting lawfully to arrest or detain the offender. It is a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if the peace officer suffers serious bodily injury or death from any cause other than an assault or homicide as a direct result of the attempt by the officer to apprehend the offender while the offender is in flight.

DIGEST: CSSB 281 would create offenses related to use of a vehicle in fleeing a peace officer and would apply penalties to flight that causes the death or injury of any person, not just a peace officer. The bill would make evading arrest or detention a:

- Class A misdemeanor (maximum penalty of one year in jail and a \$4,000 fine) if the offender used a vehicle while in flight and did not have a previous conviction for evading arrest or detention;

- a state jail felony (penalty of 180 days to two years in state jail and an optional fine of up to \$10,000) if the offender used a vehicle while in flight and had a previous conviction for evading arrest or detention;
- a third-degree felony if another person suffered serious bodily injury as a direct result of an attempt by the officer to apprehend the offender while the offender is in flight; and
- a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000) if another person died as a direct result of an attempt by the officer to apprehend the offender while the offender is in flight.

The current third-degree felony offense if a peace officer suffers serious bodily injury or death would be eliminated. The current Class B misdemeanor offense for a person to intentionally flee from a police officer attempting to lawfully arrest or detain the person would be retained.

Persons subject to prosecution under evading arrest or detention or another law could be prosecuted under either or both laws.

CSSB 281 would add property used in the commission of a felony offense of evading arrest or detention to the definition of contraband that can be seized by a peace officer and forfeited.

CSSB 281 would subject to automatic driver's license suspension a person convicted of evading arrest or detention with the use of a motor vehicle. The bill would update Penal Code references to other offenses for which licenses must be automatically suspended.

CSSB 281 would take effect September 1, 1995.

**SUPPORTERS
SAY:**

CSSB 281 is necessary to clamp down on dangerous high-speed chases and to impose stiffer penalties on offenders who cause injuries to officers or innocent bystanders while fleeing arrest. CSSB 281 could help prevent tragedies like the 11 deaths and 62 injuries from police pursuits in Houston in 1994.

CSSB 281 would make it easier to hold fleeing suspects responsible for injuries or accidents to bystanders and police officers. Although current offenses can sometimes cover these situations, it can be difficult to prosecute someone for injuries caused when a person moved to get out of the way of a fleeing suspect or a police officer chasing the suspect.

Current penalties of a Class B misdemeanor for fleeing from a police officer and a third-degree felony if the officer suffers serious bodily injury or death are inadequate. The law does not make enough of a distinction between those fleeing officers on foot and those using a car. CSSB 281 would leave fleeing on foot a Class B misdemeanor, but raise to a Class A misdemeanor flight by first-time offenders using a motor vehicle. Repeat offenders would commit a state jail felony. This would recognize that leading police on a car chase is more dangerous than fleeing on foot yet punish first-time offenders with a possible jail sentence or fine. If anyone — including bystanders — was seriously injured or killed while a suspect was evading arrest it would be a serious felony offense that could result in a prison term. This would be in line with other penalties for similar offenses such as manslaughter.

Allowing vehicles used by fleeing suspects to be seized and forfeited and suspending fleeing suspects driver's licenses would give law enforcement authorities and the courts additional tools to deter this crime and punish offenders.

OPPONENTS
SAY:

There is no need to make it a specific offense to injure or kill someone while fleeing from a police officer. When the Penal Code was revised in 1993 the Legislature established broad categories of offenses and eliminated many special provisions. For example, the offenses described by this bill could fall under current Penal Code provisions for manslaughter that are second-degree felonies.

Enhancing a second offense for fleeing in a vehicle from a misdemeanor to a state jail felony is too big a step for a crime in which no one is hurt. Instead, the state should rely on general Penal Code provisions for repeat and habitual misdemeanor offenders that require persons convicted of a Class A misdemeanor who have a previous Class A misdemeanor conviction to be punished by a minimum of 90 days in jail.

NOTES:

The committee substitute changed the Senate-passed version to lower from a second-degree felony to a third-degree felony the penalty if bodily injury results and to lower from a first-degree felony to a second-degree felony the penalty if death occurs.

The companion bill, HB 1253 by Nixon et al., has been reported favorably by the House Criminal Jurisprudence Committee.