

## BILL ANALYSIS

Senate Research Center  
81R7106 GCB-F

S.B. 1176  
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Criminal Justice  
3/20/2009  
As Filed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, Section 38.04 (Evading Arrest or Detention), Penal Code, provides that it is a Class B misdemeanor offense for a person to evade arrest or detention unless the person uses a vehicle while in flight, in which case the offense is a state jail felony.

There is no enhancement for persons who have committed the offense on multiple occurrences. It has become advantageous for persons committing offenses with penalties greater than a Class B misdemeanor to run and take the chance of getting away rather than face the offense for which the officer is attempting the arrest. Section 38.08 (Effect of Unlawful Custody), Penal Code, provides that it is a third degree felony for a person to escape if the crime for which the person was arrested or charged is a felony, while there is not a similar provision in the evading arrest statute.

As proposed, S.B. 1176 provides that the penalty for the offense of evading arrest or detention is a state jail felony if the actor had been previously convicted for evading arrest. The bill provides that a person commits an offense if they intentionally flee from a peace officer attempting to arrest or detain the person for a felony offense and that an offense would be a third degree felony unless another person dies during the commission of the offense in which case the offense would be a second degree felony.

### RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 38.04(b), Penal Code, provide that an offense under this section is a Class B misdemeanor, except that the offense is a state jail felony if the actor has been previously convicted under this section. Makes a nonsubstantive change.

SECTION 2. Amends Chapter 38, Penal Code, by adding Section 38.041, as follows:

Sec. 38.041. EVADING FELONY ARREST OR DETENTION. (a) Provides that a person commits an offense if the person intentionally flees form a peace officer and the person knows the person from whom the actor is fleeing is a peace officer, the peace officer is attempting lawfully to arrest or detain the actor as a suspect in the commission of an offense, and the offense the actor is suspected of committing is punishable as a felony.

(b) Provides that an offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if another suffers death as a direct result of an attempt by the officer from whom the actor is fleeing to apprehend the actor while the actor is in flight.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2009.