

## **BILL ANALYSIS**

H.B. 2271  
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Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Currently, it is a Class C misdemeanor offense for a person to intentionally refuse to identify himself or herself to a peace officer who has lawfully arrested them. It is also a Class B misdemeanor offense for a person to intentionally give a false or fictitious name, residence address, or date of birth to a peace officer that has lawfully arrested the person or lawfully detained the person. Both offenses are enhanced if, at the time of the offense, the actor was a fugitive from justice.

It is not currently an offense for a person to refuse to identify himself or herself to a peace officer who has lawfully detained them. Police officers routinely investigate persons found in suspicious places and under suspicious circumstances. The law allows officers to detain these individuals for purposes of an investigation if the officer reasonably believes that the person may be engaged in criminal activity. These detentions are known as Terry stops, referring to the U.S. Supreme Court case *Terry v. Ohio*, 392 U. S. 1. Although it is well established that an officer may ask a suspect to identify himself during a Terry stop, see, e.g., *United States v. Hensley*, 469 U. S. 221, 229, it has been an open question whether the suspect can be arrested and prosecuted for refusal to answer. In 2004, the Supreme Court answered this question in the case of *Hiibel v. Sixth Judicial District Court of Nevada, Humboldt County, et al.* The *Hiibel* Court held that a State could prosecute a lawfully detained person who refused to identify himself or herself.

H.B. 2271 would amend Section 38.02, Penal Code, by creating an offense for a person who refused to identify himself or herself to a peace officer who lawfully detained them. The bill would also change the culpable mental state for the current and the proposed new offense from “intentionally” to “knowingly”.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

SECTION 1. Amends Section 38.01(5), Penal Code, defining “fugitive from justice” as a person for whom a valid arrest warrant, capias, commitment, attachment, or other instrument has been issued requiring a peace officer to take the person into custody.

SECTION 2. Amends Sections 38.02(a), (b), and (d), Penal Code, to provide that a person commits an offense if the person, on a request for the information, knowingly refuses to give the person’s name, residence address, or date of birth to a peace officer who has lawfully arrested the person or lawfully detained the person. The bill further provides that a person commits an offense if the person knowingly gives a false or fictitious name, residence address, or date of birth to a peace officer who has lawfully arrested the person, lawfully detained the person, or requested the information from a person that the peace officer has good cause to believe is a witness to a criminal offense. It also provides that if the defendant was a fugitive from justice at the time of the offense, the punishment prescribed for the offense is increased to the punishment prescribed for the next highest category of offense.

SECTION 3. Provides that the change in law made by this Act applies only to an offense committed on or after the effective date of the Act. An offense committed before the effective date of the Act is covered by the law in effect when the offense was committed. An offense is

committed before the effective date of the Act if any element of the offense occurs before the effective date.

SECTION 4. The Act takes effect September 1, 2005.

**EFFECTIVE DATE**

September 1, 2005.