

**SUBJECT:** Creating offense of obstruction of justice

**COMMITTEE:** Criminal Jurisprudence — favorable, without amendment

**VOTE:** 7 ayes — Place, Talton, Greenberg, Nixon, Pickett, Pitts, Solis  
0 nays  
2 absent — Farrar, Hudson

**SENATE VOTE:** On final passage, May 5 — voice vote

**WITNESSES:** No public hearing

**BACKGROUND:** Penal Code sec. 38.05(a), hindering apprehension or prosecution, makes it an offense for a person, with intent to hinder the arrest, prosecution, conviction, or punishment of another for an offense, to harbor or conceal the other, aid the other in avoiding arrest or warn the other of impending discovery or apprehension. The offense is a Class A misdemeanor, unless the person aided was under arrest for, charged with, or convicted of a felony and the person aiding the other knew that fact. In that case, the offense is a third-degree felony.

It is an offense under Penal Code, sec. 37.09, tampering with or fabricating physical evidence, for a person who knows that an investigation or official proceeding is pending or in progress to:

- alter, destroy, or conceal any record, document, or thing with intent to impair its verity, legibility, or availability as evidence; or
- make, present or use any record, document, or thing with knowledge of its falsity and with intent to affect the outcome of the investigation or proceeding.

**DIGEST:** SB 1582 would create an offense called obstruction of justice by amending the current offense of hindering apprehension or prosecution and would repeal the current offense of tampering with or fabricating physical evidence.

A person would commit an offense if

- ▶ with intent to hinder, delay, or prevent the discovery, detection, arrest, apprehension, detention, adjudication, prosecution, conviction, or punishment of another person, including a juvenile, for the commission of an offense other than an offense punishable by a fine only, the person:
  - harbors or conceals the other;
  - provides or aids in providing the other with money, transportation, a weapon, a disguise, or any other thing to be used in avoiding discovery, arrest, or effecting escape; or
  - warns the other of impending discovery or apprehension;
- ▶ with intent to hinder, delay, or prevent the discovery, detection, apprehension, detention, adjudication, prosecution, or conviction of any person, including a juvenile, for the commission of an offense other than an offense punishable by fine only, the person:
  - by force, intimidation, or deception, obstructs, hinders, or impairs anyone in the performance of any act which might aid in the discovery, detection, apprehension, detention, adjudication, prosecution, or conviction of another;
  - conceals, takes, destroy, or alters any physical evidence, record, document, or other thing; or
  - makes, presents or uses any record, document, or thing with knowledge of its falsity and with intent to effect the course of outcome of an investigation or official proceeding.

An offense under this section would be one category lower than the offense committed by the person who the offender intended to aid, unless the offense is a state jail felony, in which event the offense would be a Class A misdemeanor.

If conduct constitutes an offense under this section and another section, prosecution could be brought under either section.

SB 1582 would take effect September 1, 1995.

**SUPPORTERS  
SAY:**

The current laws on tampering with evidence and hindering apprehension only provide legal recourse against a person who aids a wrongdoer after the a law enforcement investigation has begun. This shortcoming in the law was particularly frustrating in a murder case in which a person watched a murder take place, then assisted the killer in hiding the body but because the investigation had not yet begun, the prosecutor had no meaningful legal recourse against the person who aided the murder. This bill would close that loophole.

The bill would toughen penalties for obstructing justice and clarify that the offense applies only to aiding persons committing felony offenses. SB 1582 would link the penalty for obstruction of justice to the severity of the offense committed by the person intended to be helped. Current law makes all offenses for hindering apprehension a Class A misdemeanor, unless the person aided is arrested, charged or convicted of a felony, in which case the offense is a third-degree felony. If SB 1582 is enacted, a person who hides evidence in a capital murder case would be guilty of a first-degree felony, instead of a third-degree felony under hindering apprehension.

**OPPONENTS  
SAY:**

SB 1582 could have unintended effects. For example, a mother who let her son or daughter in the house after commission of a capital murder could be charged with a first-degree felony. It would be hard for any parent to turn away a child at the door, no matter how heinous the crime. The intent requirement would not help the mother because she would likely automatically be found to have intentionally prevented the child's discovery. Simply letting the child stay at home, without doing anything more to help the child, should not be an offense.