

## **BILL ANALYSIS**

Senate Research Center  
82R6144 NAJ-D

S.B. 843  
By: Patrick  
Criminal Justice  
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As Filed

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

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 the person. It is a Class B misdemeanor offense for a person to intentionally give a false or fictitious name, residential address, or date of birth to a peace officer who 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 the person. 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 United States 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 United States 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.

S.B. 843 would amend Section 38.02 (Failure to Identify), Penal Code, by creating an offense for a person who refused to identify himself or herself to a peace officer who lawfully detained them.

As proposed, S.B. 843 amends current law relating to the prosecution of the offense of failure to identify.

### **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 38.02(a), Penal Code, as follows:

- (a) Provides that a person commits an offense if the person intentionally refuses to give the person's name, residence address, or date of birth to a peace officer who has lawfully arrested or lawfully detained the person, and requested the information. Makes nonsubstantive changes.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2011.