

- SUBJECT:** Local policies for warrantless arrests for misdemeanor offenses
- COMMITTEE:** Law Enforcement —committee substitute recommended
- VOTE:** 5 ayes — Garza, Burnam, Davis, Hegar, Keel
1 nays — Driver
1 absent — Hupp
- SENATE VOTE:** On final passage, May 6— 31-0, on Local and Uncontested Calendar
- WITNESSES:** For — Will Harrell, American Civil Liberties Union, LULAC, and NAACP;
Pam Uhr, American Civil Liberties Union of Texas

Against — Tom Gaylor, Texas Municipal Police Association; Charley
Wilkison, Combined Law Enforcement Association of Texas

On — Chuck Noll, Harris County District Attorney’s Office
- BACKGROUND:** In *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001), the U.S. Supreme Court held that a warrantless arrest for a minor criminal offense, such as a misdemeanor seatbelt violation punishable only by a fine, does not violate Fourth Amendment protections against unreasonable search and seizure.

Transportation Code, sec 541.001 authorizes a peace officer to make a warrantless arrest for violations of traffic offenses, but an officer may issue a citation in lieu of arrest.

Code of Criminal Procedure (CCP), art. 38.23 requires that evidence obtained in violation of the U.S. or Texas constitutions or laws cannot be used against a person in a criminal trial.
- DIGEST:** CSSB 1597 would amend CCP, ch. 14 to require that all local enforcement agencies adopt a detailed written policy on the warrantless arrests for offenses, including traffic offenses, that are punishable only by fines.

The bill would require that the policy include:

- a description of the circumstances when a law officer could make a warrantless arrest of a person for a misdemeanor offense punishable only by a fine; and
- provisions for a review of any warrantless custodial arrest by the law enforcement officer's immediate supervisor.

CSSB 1597 would prevent suppression of evidence collected in a warrantless custodial arrest under CCP art. 38.23 if the arrest violated the local law enforcement agency's policy on such detentions.

The bill would take effect on September 1, 2003, and law enforcement agencies would be required to adopt the warrantless arrest policies no later than January 1, 2004.

**SUPPORTERS
SAY:**

CSSB 1597 would help prevent the arrest of citizens for minor crimes punishable only by fines. In March 1997, Gail Atwater of Lago Vista, near Austin, was handcuffed and dragged to jail in the presence of her terrified children for misdemeanor seatbelt violations. In another incident, in August of 2002 at a Houston K-Mart, police took 278 people into custody, the majority of whom were arrested for curfew and trespassing violations that are not punishable with jail time. Clearly, it is time for law enforcement agencies to adopt warrantless arrest policies to help ensure that officers respond to minor crimes with proportional measures.

Careful review of the policies on making warrantless arrests for misdemeanor offenses would reduce tensions between law enforcement agencies and citizens and would reduce the possibility that local governments would have to defend themselves from civil actions brought by those, including Ms. Atwater, arrested for crimes that carry no jail time.

This bill would not hinder street level law enforcement officers from exercising their discretion and would not prevent them from making a warrantless arrest on a misdemeanor charge. It only would require them to follow department policy and be accountable to their supervisors. These officers have a good working knowledge of the law and know what offenses are punishable only by fines and do not require the arrest of citizens.

The bill would not preclude warrantless arrests made to hold a suspect while other evidence was being collected. It would not, to take the example of a recent case, have prevented arresting the truck driver carrying illegal immigrants near Victoria on traffic charges while authorities investigated the deaths of 18 people in the truck. CSSB 1597 specifically would prevent the subsequent suppression of evidence collected during the warrantless arrest for violation of the local law enforcement agency's policy.

**OPPONENTS
SAY:**

CSSB 1597 would interfere with the exercise of a law enforcement officer's discretion to decide whether to take someone into custody on a traffic violation. The *Atwater* decision recognizes that the distinction between "jailable" and "fine-only" offenses is not easily determined. An officer cannot reasonably be expected to know the details of penalty schemes that often are complex. Penalties for ostensibly identical conduct can vary on account of facts difficult or impossible to determine at the scene of an arrest, according to the U.S. Supreme Court. If law enforcement officers abuse their discretion, they can be prosecuted, as was the Houston police supervisor in the K-Mart arrest case.

**OTHER
OPPONENTS
SAY:**

Asking law enforcement agencies to adopt warrantless arrest policies would not go far enough to prevent situations such as the *Atwater* case. The bill should be strengthened to provide a meaningful remedy for those being arrested for fine-only offenses.

NOTES:

The substitute added the provision that would prevent the suppression of evidence collected in violation of the law enforcement agency's policy on warrantless arrests.

The 77th Legislature enacted SB 730 by Harris, which included a provision that would have required a peace officer to issue a written citation, instead of making an arrest, for a traffic offense that carried a class C misdemeanor, punishable by a maximum fine of \$500. Gov. Perry vetoed SB 730, saying that police officers should be able to use their discretion to arrest for traffic violations.