

SUBJECT: Limiting arrests for certain fine-only class C misdemeanors

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 6 ayes — Collier, Zedler, J. González, Hunter, Moody, Pacheco

3 nays — K. Bell, P. King, Murr

WITNESSES: For — Chas Moore, Austin Justice Coalition; Faith Bussey and Scott Henson, Just Liberty; CJ Grisham; (*Registered, but did not testify*: Nick Hudson, American Civil Liberties Union of Texas; Warren Burkley, Austin Justice Coalition; Kathleen Mitchell, Just Liberty; Mary Mergler, Texas Appleseed; Chris Kaiser, Texas Association Against Sexual Assault; Emily Gerrick, Texas Fair Defense Project; Lauren Oertel, Texas Inmate Families Association; Lonzo Kerr, Texas National Association for the Advancement of Colored People; Randy Petersen and Derek Cohen, Texas Public Policy Foundation; Nathaniel Castilleja, Texas Young Republican Federation; Jason Vaughn, Texas Young Republicans; and eight individuals)

Against — Chris Jones, Combined Law Enforcement Associations of Texas; (*Registered, but did not testify*: Justin Berry, Austin Police Association; Bill Kelly, City of Houston Mayor's Office; Frederick Frazier, Dallas Police Association, FOP 716, and state FOP; Matthew Williamson, Dallas Police Department; Clay Taylor, Department of Public Safety Officers Association; Jessica Anderson, Houston Police Department; Ray Hunt, Houston Police Officers Union; Christopher Lutton, San Antonio Police Department; John Chancellor, Texas Police Chiefs Association; Noel Johnson, Texas Municipal Police Association; Paul Raleeh; Chuck Ruckel)

On — Lynn Holt, Justices of the Peace and Constables Association of Texas; (*Registered, but did not testify*: Craig Schiebel)

BACKGROUND: Code of Criminal Procedure art. 14.01 allows a peace officer to arrest an offender without a warrant for any offense committed in the officer's

presence or within view. Art. 14.03 allows a peace officer to make a warrantless arrest if the officer has probable cause to believe a person committed or has been guilty of certain offenses.

Art. 14.06 allows a peace officer to issue a citation to a person for a class C misdemeanor (maximum fine of \$500) other than public intoxication instead of taking the person before a magistrate.

Transportation Code sec. 543.001 allows a peace officer to arrest without a warrant a person found committing certain traffic offenses. Sec. 543.004 requires an officer to issue a written notice to appear if the offense charged is speeding, the use of a wireless communication device, or a violation of the open container law and the person makes a written promise to appear in court.

**DIGEST:**

CSHB 2754 would prohibit a peace officer from arresting an offender without a warrant who committed only one or more offenses punishable by a fine only, unless the officer had probable cause to believe:

- the failure to arrest the offender would create a clear and immediate danger to the offender or the public or would allow a continued breach of public peace; or
- the offender would not appear in court in accordance with the citation.

The prohibition would apply to certain traffic offenses under Transportation Code ch. 543 but not to certain assault offenses, public intoxication, or alcohol-related offenses committed by minors.

The bill would revise the authority a peace officer has under Code of Criminal Procedure art. 14.06. The bill would require rather than allow the officer to issue a citation for a fine-only misdemeanor, except the officer could but would not be required to issue a citation for certain assault offenses or alcohol-related offenses committed by minors.

Law enforcement agencies would be required to adopt by January 1, 2020,

a written cite-and-release policy for fine-only misdemeanor offenses, including traffic offenses. The policy would have to provide a procedure for a peace officer to verify a person's identity and issue a citation, comply with requirements under the bill, and ensure judicial efficiency, law enforcement efficiency and effectiveness, and community safety.

Each agency would have to develop the policy in consultation with judges, prosecutors, commissioners courts, governing bodies of cities, and residents within the agency's jurisdiction.

The bill would take effect September 1, 2019, and would apply only to an offense committed on or after that date.

**SUPPORTERS  
SAY:**

CSHB 2754 would address concerns that thousands of people are arrested each year for class C misdemeanors that are not punishable by jail time but only a fine, unnecessarily expending resources while not significantly contributing to public safety.

In cases where the maximum penalty for an offense is a fine, being arrested constitutes a more severe punishment than anything intended under the law and can have a lasting impact on a person's life. Being arrested for a class C misdemeanor subjects a person to jail time, unnecessary arrest records, additional costs, and potential trauma, which could result in negative consequences, including lost employment, absence from school, and time away from family. Some have suggested that jailing class C misdemeanor defendants worsens recidivism prospects. Simply citing, releasing, and requiring a fine to be paid upon conviction would make the penalty proportional to the offense.

Class C misdemeanor arrests strain the criminal justice system and cost taxpayers money. The government pays hundreds of dollars for each person arrested. These costs include booking, jail intake processing, and housing individuals until their release, which can take hours or days. Reducing the number of people in jails would save resources and money.

Eliminating arrests for these minor offenses could reduce the possibility of

incidents, making interactions safer for all. Taking people into custody can be risky or escalate a situation, resulting in potential harm to an officer or the person arrested. Some law enforcement agencies already have adopted policies to limit class C misdemeanor arrests, and their experiences illustrate that such arrests can be reduced without harming public safety. Additionally, the broad range of conduct that falls into the category of fine-only misdemeanors and the current unbounded discretion given to law enforcement carries with it the potential for abuse.

The bill would not take a tool away from law enforcement. Officers would retain the ability to make arrests on more serious offenses and would have the discretion to make a class C arrest if the officer had probable cause to believe that doing so would be in the best interest of the public. Further, the Fourth Amendment provides law enforcement with the adequate framework to protect public safety and interdict crime. The bill is intended to protect people from arrest when a class C misdemeanor, like a traffic violation, was the only alleged offense.

OPPONENTS  
SAY:

CSHB 2754 would take away an important tool from law enforcement and impede police officers' duties to enforce the law and protect the public. Currently, an officer has the discretion to make an arrest on a fine-only class C misdemeanor if it is believed to be in the best interest of the public. These arrests often lead to breaks in investigating more serious offenses and are sometimes used to get an offender momentarily off the street while not imposing a more serious charge. This discretion is used with intent and purpose, not malice.

The bill would impose an unworkable standard on making such arrests. In addition to probable cause, an officer would have to make a determination of future events and find that the failure to arrest would create a clear and immediate danger to the offender or the public or would allow a continued breach of public peace or that the offender would not appear in court.

OTHER  
OPPONENTS  
SAY:

To allow them to remain neutral and detached, CSHB 2754 should not involve judges in the development of a law enforcement agency policy on the issuance of citations for fine-only misdemeanor offenses.

