

By: White, Thompson of Harris, Toth, Krause,
Coleman, et al.

H.B. No. 2754

A BILL TO BE ENTITLED

AN ACT

relating to a limitation on the authority to arrest a person for
certain misdemeanors punishable by fine only.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is
amended by adding Article 2.1308 to read as follows:

Art. 2.1308. CITE AND RELEASE POLICY. (a) In this article,
"law enforcement agency" means an agency of the state or an agency
of a political subdivision of the state that employs peace officers
who, in the routine performance of the officers' duties, conduct
custodial or noncustodial arrests of persons suspected of
committing criminal offenses.

(b) Each law enforcement agency, in consultation with
judges, prosecutors, commissioners courts, governing bodies of
municipalities, and residents located within the agency's
jurisdiction, shall adopt a written policy regarding the issuance
of citations for misdemeanor offenses, including traffic offenses,
that are punishable by fine only. The policy must provide a
procedure for a peace officer, on a person's presentation of
appropriate identification, to verify the person's identity and
issue a citation to the person. The policy must:

(1) comply with Articles 14.01, 14.03, and 14.06 of
this code and Sections 543.001 and 543.004, Transportation Code;
and

1 (2) ensure judicial efficiency, law enforcement
2 efficiency and effectiveness, and community safety.

3 SECTION 2. Article 14.01, Code of Criminal Procedure, is
4 amended by adding Subsection (c) to read as follows:

5 (c) Notwithstanding Subsection (a) or (b), a peace officer
6 or any other person may not, without a warrant, arrest an offender
7 who commits only one or more offenses punishable by fine only, other
8 than an offense under Section 21.17, 22.01(a)(2) or (3), or 49.02,
9 Penal Code, or Chapter 106, Alcoholic Beverage Code, unless the
10 offender fails to present appropriate identification or the officer
11 or person has probable cause to believe that:

12 (1) the failure to arrest the offender creates a clear
13 and immediate danger to the offender or the public;

14 (2) the failure to arrest the offender will allow a
15 continued breach of the public peace; or

16 (3) the offender will not appear in court in
17 accordance with the citation.

18 SECTION 3. Article 14.03, Code of Criminal Procedure, is
19 amended by adding Subsection (h) to read as follows:

20 (h) Notwithstanding Subsection (a), (d), or (g), a peace
21 officer may not, without a warrant, arrest a person who commits only
22 one or more offenses punishable by fine only, other than an offense
23 under Section 21.17, 22.01(a)(2) or (3), or 49.02, Penal Code, or
24 Chapter 106, Alcoholic Beverage Code, unless the person fails to
25 present appropriate identification or the officer has probable
26 cause as described by Article 14.01(c).

27 SECTION 4. Article 14.06, Code of Criminal Procedure, is

1 amended by amending Subsection (b) and adding Subsection (b-1) to
2 read as follows:

3 (b) A peace officer who is charging a person, including a
4 child, with committing an offense that is a [~~Class C~~] misdemeanor
5 punishable by fine only, other than an offense under Section 21.17,
6 22.01(a)(2) or (3), or 49.02, Penal Code, or Chapter 106, Alcoholic
7 Beverage Code, and other than circumstances under which the person
8 fails to present appropriate identification or the peace officer
9 has probable cause as described by Article 14.01(c), shall ~~may~~,
10 instead of taking the person before a magistrate, issue a citation
11 to the person that contains:

12 (1) written notice of the time and place the person
13 must appear before a magistrate;

14 (2) the name and address of the person charged;

15 (3) the offense charged;

16 (4) information regarding the alternatives to the full
17 payment of any fine or costs assessed against the person, if the
18 person is convicted of the offense and is unable to pay that amount;
19 and

20 (5) the following admonishment, in boldfaced or
21 underlined type or in capital letters:

22 "If you are convicted of a misdemeanor offense involving
23 violence where you are or were a spouse, intimate partner, parent,
24 or guardian of the victim or are or were involved in another,
25 similar relationship with the victim, it may be unlawful for you to
26 possess or purchase a firearm, including a handgun or long gun, or
27 ammunition, pursuant to federal law under 18 U.S.C. Section

1 922(g)(9) or Section 46.04(b), Texas Penal Code. If you have any
2 questions whether these laws make it illegal for you to possess or
3 purchase a firearm, you should consult an attorney."

4 (b-1) Notwithstanding Subsection (b), a peace officer who
5 is charging a person, including a child, with committing an offense
6 that is a misdemeanor punishable by fine only under Section 21.17 or
7 22.01(a)(2) or (3), Penal Code, or Chapter 106, Alcoholic Beverage
8 Code, may, instead of taking the person before a magistrate, issue
9 to the person a citation that contains all of the information
10 required for a citation issued under Subsection (b).

11 SECTION 5. Section 543.001, Transportation Code, is amended
12 to read as follows:

13 Sec. 543.001. ARREST WITHOUT WARRANT AUTHORIZED. Any peace
14 officer may arrest without warrant a person found committing a
15 violation of this subtitle, except that the officer may not arrest a
16 person found committing only one or more misdemeanors punishable by
17 fine only unless the person fails to present appropriate
18 identification or the officer has probable cause as described by
19 Article 14.01(c), Code of Criminal Procedure.

20 SECTION 6. Section 543.004(a), Transportation Code, is
21 amended to read as follows:

22 (a) Unless the officer is authorized to arrest the person
23 under Section 543.001, an [An] officer shall issue a written notice
24 to appear if:

25 (1) the offense charged is a misdemeanor under this
26 subtitle that is punishable by fine only[+]

27 [~~(A) speeding,~~

1 ~~[(B) the use of a wireless communication device~~
2 ~~under Section 545.4251; or~~

3 ~~[(C) a violation of the open container law,~~
4 ~~Section 49.031, Penal Code]; and~~

5 (2) the person makes a written promise to appear in
6 court as provided by Section 543.005.

7 SECTION 7. The changes in law made by this Act apply only to
8 an offense committed on or after the effective date of this Act. An
9 offense committed before the effective date of this Act is governed
10 by the law in effect on the date the offense was committed, and the
11 former law is continued in effect for that purpose. For purposes of
12 this section, an offense was committed before the effective date of
13 this Act if any element of the offense occurred before that date.

14 SECTION 8. Not later than January 1, 2020, each law
15 enforcement agency in this state shall adopt the policy required by
16 Article 2.1308(b), Code of Criminal Procedure, as added by this
17 Act.

18 SECTION 9. This Act takes effect September 1, 2019.