

By: White, et al.

H.B. No. 2754

Substitute the following for H.B. No. 2754:

By: Pacheco

C.S.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 authorized by law to employ peace officers.

(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

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

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

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

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

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

13 (3) the offender will not appear in court in
14 accordance with the citation.

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

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

23 SECTION 4. Article 14.06, Code of Criminal Procedure, is
24 amended by amending Subsection (b) and adding Subsection (b-1) to
25 read as follows:

26 (b) A peace officer who is charging a person, including a
27 child, with committing an offense that is a [~~Class C~~] misdemeanor

1 punishable by fine only, other than an offense under Section
2 22.01(a)(2) or (3) or 49.02, Penal Code, or Chapter 106, Alcoholic
3 Beverage Code, shall [~~may~~], instead of taking the person before a
4 magistrate, issue a citation to the person that contains:

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

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

8 (3) the offense charged;

9 (4) information regarding the alternatives to the full
10 payment of any fine or costs assessed against the person, if the
11 person is convicted of the offense and is unable to pay that amount;
12 and

13 (5) the following admonishment, in boldfaced or
14 underlined type or in capital letters:

15 "If you are convicted of a misdemeanor offense involving
16 violence where you are or were a spouse, intimate partner, parent,
17 or guardian of the victim or are or were involved in another,
18 similar relationship with the victim, it may be unlawful for you to
19 possess or purchase a firearm, including a handgun or long gun, or
20 ammunition, pursuant to federal law under 18 U.S.C. Section
21 922(g)(9) or Section 46.04(b), Texas Penal Code. If you have any
22 questions whether these laws make it illegal for you to possess or
23 purchase a firearm, you should consult an attorney."

24 (b-1) Notwithstanding Subsection (b), a peace officer who
25 is charging a person, including a child, with committing an offense
26 that is a misdemeanor punishable by fine only under Section
27 22.01(a)(2) or (3), Penal Code, or Chapter 106, Alcoholic Beverage

1 Code, may, instead of taking the person before a magistrate, issue
2 to the person a citation that contains all of the information
3 required for a citation issued under Subsection (b).

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

6 Sec. 543.001. ARREST WITHOUT WARRANT AUTHORIZED. Any peace
7 officer may arrest without warrant a person found committing a
8 violation of this subtitle, except that the officer may not arrest a
9 person found committing only one or more misdemeanors punishable by
10 fine only unless the officer has probable cause as described by
11 Article 14.01(c), Code of Criminal Procedure.

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

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

17 (1) the offense charged is a misdemeanor under this
18 subtitle that is punishable by fine only[+

19 [~~(A) speeding,~~

20 [~~(B) the use of a wireless communication device~~
21 ~~under Section 545.4251, or~~

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

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

26 SECTION 7. The changes in law made by this Act apply only to
27 an offense committed on or after the effective date of this Act. An

1 offense committed before the effective date of this Act is governed
2 by the law in effect on the date the offense was committed, and the
3 former law is continued in effect for that purpose. For purposes of
4 this section, an offense was committed before the effective date of
5 this Act if any element of the offense occurred before that date.

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

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