

By: White

H.B. No. 2754

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the issuance of a citation or notice to appear for
3 certain misdemeanors punishable by fine only and the court's
4 authority to order a defendant confined in jail for failure to pay a
5 fine or cost, for failure to appear, or for contempt.

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

7 SECTION 1. Article 14.06, Code of Criminal Procedure, is
8 amended by amending Subsection (b) and adding Subsections (b-1) and
9 (b-2) to read as follows:

10 (b) A peace officer who is charging a person, including a
11 child, with committing an offense that is a [~~Class C~~] misdemeanor
12 punishable by fine only, other than an offense under Section
13 22.01(a)(2) or (3) or Section 49.02, Penal Code, or an offense under
14 Chapter 106, Alcoholic Beverage Code, shall [~~may~~], instead of
15 taking the person before a magistrate, issue a citation to the
16 person that contains:

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

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

20 (3) the offense charged;

21 (4) information regarding the alternatives to the full
22 payment of any fine or costs assessed against the person, if the
23 person is convicted of the offense and is unable to pay that amount;
24 and

1 (5) the following admonishment, in boldfaced or
2 underlined type or in capital letters:

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

12 (b-1) Notwithstanding Subsection (b), a peace officer is
13 not required to issue a citation to a person as described by that
14 subsection if the person refuses to sign the citation or requests to
15 be taken immediately before a magistrate.

16 (b-2) A peace officer who is charging a person, including a
17 child, with committing an offense that is a misdemeanor punishable
18 by fine only under Section 22.01(a)(2) or (3), Penal Code, or
19 Chapter 106, Alcoholic Beverage Code, may, instead of taking the
20 person before a magistrate, issue to the person a citation that
21 contains written notice of the time and place the person must appear
22 before a magistrate, the name and address of the person charged, and
23 the offense charged.

24 SECTION 2. Article 45.014, Code of Criminal Procedure, is
25 amended by amending Subsection (e), as added by Chapter 1127 (S.B.
26 1913), Acts of the 85th Legislature, Regular Session, 2017, and
27 adding Subsection (e-1) to read as follows:

1 (e) A justice or judge may not issue an arrest warrant for
2 the defendant's failure to appear at the initial court setting for a
3 misdemeanor punishable by fine only other than an offense under
4 Section 22.01(a)(2) or (3), Penal Code.

5 (e-1) A justice or judge may not issue an arrest warrant for
6 the defendant's failure to appear at the initial court setting for
7 an offense under Section 22.01(a)(2) or (3), Penal Code [~~7~~
8 ~~including failure to appear as required by a citation issued under~~
9 ~~Article 14.06(b)]~~, unless:

10 (1) the justice or judge provides by telephone or
11 regular mail to the defendant notice that includes:

12 (A) a date and time, occurring within the 30-day
13 period following the date that notice is provided, when the
14 defendant must appear before the justice or judge;

15 (B) the name and address of the court with
16 jurisdiction in the case;

17 (C) information regarding alternatives to the
18 full payment of any fine or costs owed by the defendant, if the
19 defendant is unable to pay that amount; and

20 (D) an explanation of the consequences if the
21 defendant fails to appear before the justice or judge as required by
22 this article; and

23 (2) the defendant fails to appear before the justice
24 or judge as required by this article.

25 SECTION 3. Article 45.045, Code of Criminal Procedure, is
26 amended by adding Subsection (b-1) to read as follows:

27 (b-1) Notwithstanding Subsection (a), the court may not

1 issue a capias pro fine for:

2 (1) the defendant's failure to satisfy the judgment
3 according to its terms with respect to any misdemeanor punishable
4 by fine only other than an offense under Section 22.01(a)(2) or (3),
5 Penal Code; or

6 (2) contempt of a judgment entered for a misdemeanor
7 punishable by fine only other than an offense under Section
8 22.01(a)(2) or (3), Penal Code.

9 SECTION 4. Article 45.046(a), Code of Criminal Procedure,
10 is amended to read as follows:

11 (a) When a judgment and sentence have been entered against a
12 defendant for an offense under Section 22.01(a)(2) or (3), Penal
13 Code, and the defendant defaults in the discharge of the judgment,
14 the judge may order the defendant confined in jail until discharged
15 by law if the judge at a hearing makes a written determination that:

16 (1) the defendant is not indigent and has failed to
17 make a good faith effort to discharge the fine or costs; or

18 (2) the defendant is indigent and:

19 (A) has failed to make a good faith effort to
20 discharge the fine or costs under Article 45.049; and

21 (B) could have discharged the fine or costs under
22 Article 45.049 without experiencing any undue hardship.

23 SECTION 5. Subchapter B, Chapter 45, Code of Criminal
24 Procedure, is amended by adding Article 45.0465 to read as follows:

25 Art. 45.0465. CONFINEMENT FOR FAILURE TO SATISFY JUDGMENT
26 OR FOR CONTEMPT PROHIBITED. A justice or municipal court may not
27 order the confinement of a person for:

1 (1) the failure to pay all or any part of a fine or
2 costs imposed for the conviction of a misdemeanor punishable by
3 fine only other than an offense under Section 22.01(a)(2) or (3),
4 Penal Code; or

5 (2) contempt of a judgment entered for the conviction
6 of a misdemeanor punishable by fine only other than an offense under
7 Section 22.01(a)(2) or (3), Penal Code.

8 SECTION 6. Article 45.048(a), Code of Criminal Procedure,
9 is amended to read as follows:

10 (a) A defendant confined [~~placed~~] in jail [~~on account of~~
11 ~~failure to pay the fine and costs~~] shall be discharged on habeas
12 corpus by showing that the defendant was confined in jail:

13 (1) in violation of Article 45.014, 45.045, 45.0465,
14 or 45.050(b) [is too poor to pay the fine and costs]; [or]

15 (2) for failure to pay the fine or costs imposed by a
16 judgment entered for the conviction of a misdemeanor punishable by
17 fine only other than an offense under Section 22.01(a)(2) or (3),
18 Penal Code; or

19 (3) for contempt of a judgment described by
20 Subdivision (2) or, if the defendant is a child, contempt of an
21 order of a justice or municipal court [has remained in jail a
22 sufficient length of time to satisfy the fine and costs, at the rate
23 of not less than \$100 for each period served, as specified by the
24 convicting court in the judgment in the case].

25 SECTION 7. Section 21.002(c), Government Code, is amended
26 to read as follows:

27 (c) Subject to Articles 45.045(b-1), 45.0465, and

1 45.050(b), Code of Criminal Procedure, the ~~[The]~~ punishment for
2 contempt of a justice court or municipal court is a fine of not more
3 than \$100 or confinement in the county or municipal ~~[city]~~ jail for
4 not more than three days, or both such a fine and confinement in
5 jail.

6 SECTION 8. Section 543.004(a), Transportation Code, is
7 amended to read as follows:

8 (a) An officer shall issue a written notice to appear if:

9 (1) the offense charged is a misdemeanor under this
10 subtitle that is punishable by fine only~~[-~~

11 ~~[(A) speeding,~~

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

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

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

18 SECTION 9. Subchapter A, Chapter 543, Transportation Code,
19 is amended by adding Section 543.0045 to read as follows:

20 Sec. 543.0045. NOTIFICATION REQUIRED DURING TRAFFIC STOP.

21 (a) An officer who stops a motor vehicle as a result of a person's
22 alleged commission of a misdemeanor under this subtitle that is
23 punishable by fine only shall promptly notify the person that:

24 (1) the alleged offense is a misdemeanor under this
25 subtitle that is punishable by fine only; and

26 (2) the officer may not arrest a person solely on the
27 basis of that offense.

1 (b) The Texas Commission on Law Enforcement by rule shall
2 specify the language that is required to be included in the
3 notification described by Subsection (a).

4 SECTION 10. Article 45.014(e), Code of Criminal Procedure,
5 as added by Chapter 977 (H.B. 351), Acts of the 85th Legislature,
6 Regular Session, 2017, is repealed.

7 SECTION 11. (a) Except as provided by Subsection (b) of
8 this section, Articles 45.045(b-1) and 45.0465, Code of Criminal
9 Procedure, as added by this Act, and Article 45.046(a), Code of
10 Criminal Procedure, as amended by this Act, apply only to a judgment
11 that has not been discharged before the effective date of this Act
12 and a judgment entered on or after the effective date of this Act.

13 (b) Not later than September 2, 2019, a county or municipal
14 jail shall release each person who, on the effective date of this
15 Act, is confined in the county or municipal jail for:

16 (1) the failure to pay all or any part of a fine or
17 costs imposed for the conviction of an offense punishable by fine
18 only other than an offense under Section 22.01(a)(2) or (3), Penal
19 Code, including confinement ordered under Article 45.046, Code of
20 Criminal Procedure, as that article existed before the effective
21 date of this Act;

22 (2) a failure to appear at the initial court setting
23 for a misdemeanor punishable by fine only other than an offense
24 under Section 22.01(a)(2) or (3), Penal Code; or

25 (3) contempt of a judgment entered for the conviction
26 of an offense punishable by fine only other than an offense under
27 Section 22.01(a)(2) or (3), Penal Code.

1 SECTION 12. Articles 14.06 and 45.014, Code of Criminal
2 Procedure, as amended by this Act, and Section 543.004(a),
3 Transportation Code, as amended by this Act, and Section 543.0045,
4 Transportation Code, as added by this Act, apply only to an offense
5 committed on or after the effective date of this Act. An offense
6 committed before the effective date of this Act is governed by the
7 law in effect on the date the offense was committed, and the former
8 law is continued in effect for that purpose. For purposes of this
9 section, an offense was committed before the effective date of this
10 Act if any element of the offense occurred before that date.

11 SECTION 13. The Texas Commission on Law Enforcement shall
12 adopt the rules required by Section 543.0045(b), Transportation
13 Code, as added by this Act, not later than December 1, 2019.

14 SECTION 14. (a) Except as provided by Subsection (b) of
15 this section, this Act takes effect September 1, 2019.

16 (b) Section 543.0045, Transportation Code, as added by this
17 Act, takes effect January 1, 2020.