

By: Crockett

H.B. No. 2588

A BILL TO BE ENTITLED

AN ACT

relating to a limitation on the authority to arrest a person for certain misdemeanors.

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 shall adopt a written policy regarding the issuance of citations for misdemeanor offenses, other than violent misdemeanors as defined by Article 14.01. 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 comply with Articles 14.01, 14.03, and 14.06 of this code and Sections 543.001 and 543.004, Transportation Code.

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

(c) Notwithstanding Subsection (a) or (b), a peace officer or any other person may not, without a warrant, arrest an offender who commits only one or more misdemeanor offenses, other than a violent misdemeanor or an offense under Section 49.02, Penal Code,

1 unless the officer or person has probable cause to believe that:

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

4 (2) the failure to arrest the offender will allow a
5 continued breach of the public peace.

6 (d) For purposes of this section, "violent misdemeanor"
7 means an offense under the laws of this state that is punishable as
8 a misdemeanor and that has as an element the use, attempted use, or
9 threatened use of force against any person.

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

12 (h) Notwithstanding Subsection (a), (d), or (g), a peace
13 officer may not, without a warrant, arrest a person who commits only
14 one or more misdemeanor offenses, other than a violent misdemeanor
15 as defined by Article 14.01 or an offense under Section 49.02, Penal
16 Code, unless the officer has probable cause as described by Article
17 14.01(c).

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

21 (b) A peace officer who is charging a person, including a
22 child, with committing an offense that is a [~~Class C~~] misdemeanor,
23 other than a violent misdemeanor as defined by Article 14.01 or an
24 offense under Section 49.02, Penal Code, shall [~~may~~], instead of
25 taking the person before a magistrate, issue a citation to the
26 person that contains:

27 (1) written notice of the time and place the person

1 must appear before a magistrate;

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

3 (3) the offense charged;

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

8 (5) the following admonishment, in boldfaced or
9 underlined type or in capital letters:

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

19 (b-1) Notwithstanding Subsection (b), a peace officer who
20 is charging a person, including a child, with committing an offense
21 that is a violent misdemeanor as defined by Article 14.01 and that
22 is punishable by fine only may, instead of taking the person before
23 a magistrate, issue to the person a citation that contains all of
24 the information required for a citation issued under Subsection
25 (b).

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

1 Sec. 543.001. ARREST WITHOUT WARRANT AUTHORIZED. Any peace
2 officer may arrest without warrant a person found committing a
3 violation of this subtitle, except that the officer may not arrest a
4 person found committing only one or more misdemeanors, other than a
5 violent misdemeanor as defined by Article 14.01(d), Code of
6 Criminal Procedure, unless the officer has probable cause as
7 described by Article 14.01(c) of that code.

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

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

13 (1) the offense charged is a misdemeanor under this
14 subtitle[-

15 ~~[(A) speeding,~~

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

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

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

22 SECTION 7. Articles 14.06(c) and (d), Code of Criminal
23 Procedure, are repealed.

24 SECTION 8. The changes in law made by this Act apply only to
25 an offense committed on or after the effective date of this Act. An
26 offense committed before the effective date of this Act is governed
27 by the law in effect on the date the offense was committed, and the

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

4 SECTION 9. Not later than January 1, 2022, each law
5 enforcement agency in this state shall adopt the policy required by
6 Article 2.1308(b), Code of Criminal Procedure, as added by this
7 Act.

8 SECTION 10. This Act takes effect September 1, 2021.