

BILL ANALYSIS

C.S.H.B. 574
By: Thompson, Senfronia
Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the practice of arresting people for minor violations that do not have jail time as a punishment uses a great deal of time and incarceration resources while not significantly contributing to the public's safety. C.S.H.B. 574 seeks to address this issue by prohibiting a peace officer or any other person from arresting an offender for most fine-only misdemeanors without a warrant, with certain exceptions, and requiring the Texas Commission on Law Enforcement and each law enforcement agency in Texas to adopt a cite and release policy.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 574 amends the Code of Criminal Procedure to prohibit a peace officer or any other person from arresting without a warrant an offender who commits only one or more fine-only offenses, other than a public intoxication offense, unless the officer or person has probable cause to believe that the failure to arrest the offender creates a clear and immediate danger to the offender or the public, that the failure to arrest the offender will allow a continued breach of the public peace, or that the offender will not appear in court in accordance with the citation. The bill specifies that, for purposes of establishing grounds for an arrest without warrant for an applicable offense, an unpaid fine arising from the commission of a fine-only rules of the road misdemeanor does not constitute probable cause to believe that the offender will fail to appear in court.

C.S.H.B. 574 requires the Texas Commission on Law Enforcement (TCOLE), not later than January 1, 2018, and in consultation with law enforcement agencies, law enforcement associations, law enforcement training experts, and community organizations engaged in the development of law enforcement policy, to adopt a written model policy regarding the issuance of citations for fine-only misdemeanor offenses, including traffic offenses. The bill requires the policy to 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 and requires the policy to comply with certain Code of Criminal Procedure and Transportation Code provisions relating to an arrest without warrant and with Transportation Code provisions relating to a written notice to appear for fine-only rules of the road misdemeanors.

C.S.H.B. 574 requires each law enforcement agency, not later than March 1, 2018, to adopt a

written policy regarding the issuance of citations for fine-only misdemeanor offenses, including traffic offenses, and requires the policy to meet the requirements for the model policy adopted by TCOLE under the bill's provisions. The bill authorizes a law enforcement agency to adopt the TCOLE model policy. The bill requires a law enforcement agency to maintain a record of a warrantless arrest for a fine-only misdemeanor offense, including a traffic offense, until at least the first anniversary of the date of the arrest and requires the record to include the arresting peace officer's justification for the arrest. The bill establishes that such an arrest record is not confidential and is subject to disclosure under state public information law unless otherwise provided by law.

C.S.H.B. 574 amends the Transportation Code to except a person found committing only one or more fine-only misdemeanors from the authorization for a peace officer to arrest without warrant a person found committing a rules of the road offense, unless the officer has probable cause as specified by the bill's Code of Criminal Procedure provisions relating to arrest without warrant. The bill expands the offenses for which an officer is required to issue a written notice to appear under provisions relating to the arrest and prosecution of violators of rules of the road, provided the person charged with the offense makes a written promise to appear in court, to include any fine-only rules of the road misdemeanor offense, but the bill excepts from that requirement an officer who has the appropriate probable cause for arrest without warrant.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 574 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Article 2.1386 to read as follows:

Art. 2.1386. 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.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.1386 and 2.1387 to read as follows:

Art. 2.1386. 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) The Texas Commission on Law Enforcement, in consultation with law enforcement agencies, law enforcement associations, law enforcement training experts, and community organizations engaged in the development of law enforcement policy, shall adopt a written model policy regarding the issuance of citations for misdemeanor offenses, including traffic offenses, that are punishable by a 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

(b) Each law enforcement agency shall adopt a written policy regarding the issuance of citations for misdemeanor offenses, including traffic offenses, that are punishable by a fine only. The policy must provide a procedure for a peace officer employed by the agency to verify a person's identity and issue a citation to a person who fails to present proof of identification.

SECTION 2. Article 14.01, Code of Criminal Procedure, is amended by adding Subsection (c) 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 for a misdemeanor punishable by a fine only, other than an offense under Section 49.02, Penal Code.

and issue a citation to the person. The policy must comply with Articles 14.01 and 14.03 of this code and Sections 543.001 and 543.004, Transportation Code.

(c) Each law enforcement agency shall adopt a written policy regarding the issuance of citations for misdemeanor offenses, including traffic offenses, that are punishable by a fine only. The policy must meet the requirements for the model policy described by Subsection (b). A law enforcement agency may adopt the model policy adopted by the Texas Commission on Law Enforcement under Subsection (b).

Art. 2.1387. RECORD OF WARRANTLESS ARREST. (a) A law enforcement agency, as defined by Article 2.1386, shall maintain a record of a warrantless arrest for a misdemeanor offense, including a traffic offense, that is punishable by a fine only until at least the first anniversary of the date of the arrest. The record must include the arresting peace officer's justification for the arrest.

(b) Unless otherwise provided by law, an arrest record described by Subsection (a) is not confidential and is subject to disclosure under Chapter 552, Government 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 offenses punishable by a fine only, other than an offense under Section 49.02, Penal Code, unless the officer or person has probable cause to believe that:

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

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

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

(d) For purposes of Subsection (c)(3), an unpaid fine arising from the commission of a misdemeanor punishable by a fine only under Subtitle C, Title 7, Transportation Code, does not constitute probable cause to believe that the offender will fail to appear

in court.

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

(h) Notwithstanding Subsection (a), (d), or (g), a peace officer may not, without a warrant, arrest a person who only commits one or more offenses punishable by a fine only, other than an offense under Section 49.02, Penal Code.

SECTION 4. Article 14.06(b), Code of Criminal Procedure, is amended to read as follows:

(b) A peace officer who is charging a person, including a child, with committing an offense that is a [~~Class C~~] misdemeanor punishable by a fine only, other than an offense under Section 49.02, Penal Code, shall [~~may~~], instead of taking the person before a magistrate, issue a citation to the person that contains written notice of the time and place the person must appear before a magistrate, the name and address of the person charged, the offense charged, and the following admonishment, in boldfaced or underlined type or in capital letters:

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

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

Sec. 543.001. **ARREST WITHOUT WARRANT AUTHORIZED.** Any peace officer may arrest without warrant a person found committing a violation of this subtitle,

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

(h) Notwithstanding Subsection (a), (d), or (g), a peace officer may not, without a warrant, arrest a person who commits only one or more offenses punishable by a fine only, other than an offense under Section 49.02, Penal Code, unless the officer has probable cause as described by Articles 14.01(c) and (d).

No equivalent provision.

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

Sec. 543.001. **ARREST WITHOUT WARRANT AUTHORIZED.** Any peace officer may arrest without warrant a person found committing a violation of this subtitle,

other than a person found only committing one or more misdemeanors punishable by a fine only.

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

- (a) An officer shall issue a written notice to appear if:
- (1) the offense charged is [speeding or] a misdemeanor under this subtitle punishable by a fine only [~~violation of the open container law, Section 49.03, Penal Code~~]; and
 - (2) the person makes a written promise to appear in court as provided by Section 543.005.

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

No equivalent provision.

SECTION 8. This Act takes effect September 1, 2017.

except that the officer may not arrest a person found committing only one or more misdemeanors punishable by a fine only unless the officer has probable cause as described by Articles 14.01(c) and (d), Code of Criminal Procedure.

SECTION 5. Section 543.004(a), Transportation Code, is amended to read as follows:

- (a) Unless the officer is authorized to arrest the person under Section 543.001, an [An] officer shall issue a written notice to appear if:
- (1) the offense charged is [speeding or] a misdemeanor under this subtitle punishable by a fine only [~~violation of the open container law, Section 49.03, Penal Code~~]; and
 - (2) the person makes a written promise to appear in court as provided by Section 543.005.

SECTION 6. Same as introduced version.

SECTION 7. (a) Not later than January 1, 2018, the Texas Commission on Law Enforcement shall adopt the model policy required by Article 2.1386(b), Code of Criminal Procedure, as added by this Act. (b) Not later than March 1, 2018, each law enforcement agency in this state shall adopt the policy required by Article 2.1386(c), Code of Criminal Procedure, as added by this Act.

SECTION 8. Same as introduced version.