

**SUBJECT:** Dismissing prosecutions of certain misdemeanor traffic offenses

**COMMITTEE:** Criminal Jurisprudence — committee substitute recommended

**VOTE:** 7 ayes — Place, Talton, Farrar, Greenberg, Nixon, Pitts, Solis  
0 nays  
2 absent — Hudson, Pickett

**WITNESSES:** For — Michael L. O’Neal, Texas Municipal Courts Association.  
Against — none

**DIGEST:** CSHB 1395 would allow a justice of the peace or a municipal court judge to dismiss the prosecution of a traffic offense if the court had given at least five days advance notice of the trial to the prosecuting attorney, district, county or city attorney and the attorney failed to appear to announce an intention to prosecute. The bill would take effect immediately if approved by two-thirds of the membership of each house.

**SUPPORTERS SAY:** CSHB 1395 would clarify the authority of judges to dismiss minor traffic offenses on their own without the participation of a prosecutor. A judge’s responsibility is to promptly dispose of court business and act as an impartial judge. In the event a prosecuting attorney does not show up in court for a case, the judge must do one of two things: allow the case to sit on the docket or call the case to trial and prosecute the case.

Many local governments do not provide prosecuting attorneys for Class C misdemeanors in either a justice or municipal court. Judges should not be expected to act as prosecutors, but the only alternative when no prosecutor shows up is to find the defendant "not guilty" and thus end the case. Instead, a judge should be allowed to dismiss the case. A finding of not guilty ends the case because once acquitted a defendant cannot be placed in double jeopardy by being prosecuted twice for the same offense. Allowing judges to dismiss would mean that double jeopardy would not apply and prosecutors would retain the option of refiling charges against the defendant for two years as long as the dismissal occurred prior to swearing of any witnesses.

**OPPONENTS SAY:** No apparent opposition.

NOTES: The committee substitute added a reference to municipal court judges and substituted dismissal under specific conditions for dismissal for good cause.