

SUBJECT: Allowing disposition of misdemeanor cases in the county of arrest

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 5 ayes — Hinojosa, Talton, Garcia, Kitchen, Shields

1 nay — Keel

3 absent — Dunnam, Green, Martinez Fischer

SENATE VOTE: On final passage, February 21 — voice vote

WITNESSES: (*On House companion bill, HB 624:*)

For — Patricia Ott, Justice of the Peace and Constables Association of Texas; *Registered but did not testify*: Bill Freeman and John H. Williams, Justice of the Peace and Constables Association of Texas

Against — None

BACKGROUND: Code of Criminal Procedure (CCP), art. 4.12 requires that a misdemeanor case in a justice court be tried:

- ! in the precinct in which the offense was committed;
- ! in the precinct in which the defendant or any of the defendants live; or
- ! with the written consent of the state and of each defendant or of the defendant's attorney, in any other precinct within the county.

When no qualified justice court is available in a precinct in which the offense was committed, the trial must be held in the next adjacent precinct in the same county that has a qualified justice court, or in the precinct in which the defendant may live. If each justice of the peace in the precinct where the offense was committed is disqualified for any reason, the case may be tried in the next adjoining precinct in the same county that has a qualified justice of the peace.

Under CCP, art. 15.18, a person arrested under a warrant issued in another county must be taken before a magistrate of the county of arrest, who must

take bail, if allowed by law, and immediately transmit the bond to the court having jurisdiction over the offense.

**DIGEST:** SB 219 would allow a defendant taken before a magistrate in accordance with CCP, art. 15.18 to waive trial by jury and enter a written plea of guilty or nolo contendere.

In the case of a person arrested under warrant for an offense punishable by fine only, the magistrate in the county of arrest could accept a written plea of guilty or nolo contendere. For these fine-only misdemeanor defendants, the magistrate would have to set a fine, determine costs, accept payment of the fine and costs, give credit for jail time served, determine indigence, or, on satisfaction of the judgment, discharge the defendant, as the case might indicate.

Before the 11th business day after the date a magistrate accepted a written plea of guilty or nolo contendere in this type of case, the magistrate would have to transmit to the court with jurisdiction of the offense the written plea, any orders entered in the case, and any fine or costs collected in the case.

The bill would take effect September 1, 2001.

**SUPPORTERS SAY:** SB 219 would save local courts time and money. Often, the transportation costs of moving a Class C misdemeanor defendant from the county of arrest to the county of jurisdiction exceed the maximum \$200 to \$500 fine that could be collected.

For example, a student who attended college in Lubbock might receive a speeding ticket in her hometown of Beaumont and then neglect to pay it. If she ignored the ticket long enough, a warrant for her arrest would be issued. If she were pulled over for speeding in Lubbock at 10 p.m. on Thursday, she would be arrested and taken to jail. A Lubbock County magistrate might see her in court the next morning at 8 a.m. She would be credited with two days in jail, at a \$100 credit toward her fine per day in jail. Because her maximum fine for speeding would be \$200, the student would owe only court costs.

In this case, the Lubbock County magistrate could take bail and save the cost of transporting the student back to Beaumont. If she could not afford to make

bail, however, Lubbock County would have to transport her the 574 miles to Jefferson County. In addition to the cost of keeping her in jail, the county would have to pay for transportation and accompanying law enforcement officers. Also, the county could be exposed to a lawsuit for incarcerating the student on a non-jailable offense. Jefferson County would have to reimburse the arresting county for jail and transportation costs. The court costs Jefferson County would recoup from the student would not begin to pay for the expense to the county.

This bill would save counties money by allowing the magistrate in the arresting county to let the Class C misdemeanor defendant plead guilty or nolo contendere and to set any fine and discharge the defendant once the judgment was satisfied.

SB 219 would help misdemeanor defendants. If these defendants were allowed to discharge their Class C misdemeanor in the county of arrest, they could be saved considerable time by not having to travel back to the county where they had committed the offense. Also, any time waiting in jail to go before a magistrate would be reduced, benefitting both the defendant and the arresting county.

Justice of the peace organizations support SB 219, which would apply only to Class C misdemeanor cases, punishable by a fine only. By the time the county with jurisdiction pays the arresting county for jail and transportation costs, the justice of the peace cannot fine the defendant enough to cover the costs. It would make better sense to allow the arresting county to discharge the case.

**OPPONENTS  
SAY:**

SB 219 would be a significant departure from traditional Texas law because it would remove, for the first time, discretion over a case from the magistrate in the county where a warrant originates and would allow a magistrate in the arresting county to determine a fine, without any input from the magistrate with jurisdiction. If this bill were enacted, people who had warrants out for them in one county could go to another county where they knew they would have a friendly forum with a magistrate who might issue a nominal fine. No remedy would exist for the county that issued the warrant.

**NOTES:**

The companion bill, HB 624 by Carter, was reported favorably, without

amendment, by the House Criminal Jurisprudence Committee on March 27.

A similar bill in the 76th Legislature, HB 2130 by Carter, passed both the House and the Senate, but died in conference committee in the final days of the session.