

SUBJECT: Discretion to arrest for certain class A and class B misdemeanors

COMMITTEE: Criminal Jurisprudence — committee substitute recommended

VOTE: 5 ayes — Peña, Riddle, Escobar, Mallory Caraway, Pierson
0 nays
4 absent — Vaught, Hodge, Moreno, Talton

WITNESSES: *(on original version):*
For — Suzanna Hupp, Texans for Public Safety Solutions; Marc Levin, Texas Public Policy Foundation - Center for Effective Justice; *(Registered but did not testify):* David Fried, Texans for Public Safety Solutions; Talia Gaster, Travis County Commissioners Court; Dominic Gonzales, Texas Criminal Justice Coalition; David Gonzalez, Texas Criminal Defense Lawyers Association; Andrea Marsh, Texas Fair Defense Project; Michael Pichinson, Texas Conference of Urban Counties; Nicole Porter, ACLU of Texas)

Against — None

On — Marshall Shelsy, Judges of Harris County Criminal Courts at Law;

(on committee substitute):
For — Hans Marticiuc, Houston Police Officers Union; Brett Spicer, Travis County Sheriff's Law Enforcement Association and Texas State Lodge & Fraternal Order of Police; Jim Sylvester, Travis County Sheriff's Office; *(Registered, but did not testify):* Chris Jones, Combined Law Enforcement Associations of Texas)

BACKGROUND: Under current law, police officers must arrest a person whom they are charging with a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) or class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). The arrested person then is booked and placed in the county jail until the person can be brought before a magistrate for a hearing.

DIGEST:

CSHB 2391 would amend Code of Criminal Procedure, Art. 14.06 by adding subsec. (c) to give police officers discretion to cite and issue summons for class A and class B misdemeanors instead of arresting suspects and taking them to jail.

Police officers could issue a citation and summons only if the person charged resided in the county where the offense occurred and the offense was:

- possession of four ounces or less of marihuana (sec. 481.121(b)(1)-(2), Health & Safety Code);
- criminal mischief, where the value of damage done was \$50 or more but less than \$500 (sec. 28.03(b)(2), Penal Code);
- graffiti, where the value of the damage done was \$50 or more but less than \$500 (sec. 28.08(b)(1), Penal Code);
- theft, where the value of the property stolen was \$50 or more but less than \$500 or the value of property obtained by a hot check was \$20 or more less but less than \$500 (sec. 31.03(e)(2)(A), Penal Code);
- theft of a service, where the value of the service stolen was \$20 or more but less than \$500 (sec. 31.04 (e)(2), Penal Code);
- possession of contraband in a correctional facility, if the offense was punishable as a class B misdemeanor (sec. 38.114, Penal Code); or
- driving with an invalid license (sec. 521.457, Transportation Code).

CSHB 2391 would amend Code of Criminal Procedure, art. 15.17 to direct a magistrate who was processing a defendant issued a class A or B misdemeanor to perform required magisterial duties in the same manner as if the person had been arrested and brought before the magistrate by a peace officer. After the magistrate performed the normally required duties, the magistrate could release the person on personal recognizance bond, except when good cause was shown not to do so. If the defendant failed to appear, the magistrate would be required to issue a warrant for the arrest for the defendant.

The bill would take effect September 1, 2007, and would apply onto to an offense committed on or after the effective date. An offense is committed before the effective date if any element of the offense occurred before the effective date.

**SUPPORTERS
SAY:**

CSHB 2391 would grant cities and counties the option of determining their arrest policies and would allow local governments the flexibility to use their best judgment on how to use their jail facilities. Considering the overcrowded nature of county jails in Texas, granting local governments the choice and flexibility to reserve jail beds for violent offenders would be in the public's best interest.

Most class B misdemeanors are regulatory and do not pose an immediate threat to public safety, but current law requires officers to arrest people who have committed these misdemeanors. Arresting a person is a time-intensive process that can require three to four hours of an officer's time and can cost the public up to \$3,000. CSHB 2391 would help officers spend more time on the street patrolling, deterring crime, and tracking dangerous offenders.

The bill would not create an opportunity for misuse based on race. Texas already has laws to prevent racial profiling, and education is a better solution to that problem than mechanistic quotas or other legal solutions. Finally, police departments could address this problem by adopting written policies on which misdemeanors would provide a basis for arrest.

**OPPONENTS
SAY:**

CSHB 2391 would create an opportunity for misuse based on race or other immutable characteristics. CSHB 2391 would provide no direction for how police officers should use their discretion to issue a citation and a summons or to arrest the suspect for the enumerated crimes in the bill. Also, magistrates would not be given direction in deciding on whom release on a personal recognizance bond. CSHB 2391 would not provide measures to ensure equal protection.

**OTHER
OPPONENTS
SAY:**

CSHB 2391 would not go far enough. Texas has hundreds of regulatory class B misdemeanors, and the bill would grant police discretion to arrest for only a few of them. Even more tax dollars and man hours could be saved if police were granted discretion over more class B misdemeanors.

NOTES:

The original version of the bill would have applied to all class B misdemeanors, except: assault, enticing a child, impersonating a police officer, failure to identify yourself upon arrest, evading arrest or detention, disorderly conduct, riot, driving, flying, or boating while intoxicated, assembling or operating an amusement ride while intoxicated, disrupting activities on a campus or property of a school, and fleeing or attempting to

evade a police officer. The committee substitute added an enumerated list of offenses to which the discretion to arrest would apply.