

## Fact Sheets and Testimony 2016

# No Asset Forfeiture Without Criminal Conviction

## End small-time seizures that burden low-income families

### **Proposal:**

- Civil asset forfeiture should take place after the conclusion of a criminal case so that *only* people convicted of a crime lose the related cash or vehicle.
- Authorize participation in sharing agreements only if the funds are forfeited in accordance with state requirements.

### **Lots of forfeitures, few drug lords**

Existing data on asset forfeiture in Texas tells us very little about whether asset forfeiture laws are being used in the way they were originally intended – to freeze the assets of drug kingpins who are rarely touched by day-to-day narcotics interdiction strategies.

To understand the details of asset forfeiture in practice, the Texas Criminal Justice Coalition reviewed the case files for 151 asset forfeitures in Travis County, totaling nearly \$2 million. We found few drug lords and a lot of small-time drug possession cases. Some people subjected to asset forfeiture were probably not guilty of any crime at all.<sup>1</sup>

Civil forfeiture is not supposed to be an additional (and pretrial) punishment for drug offenses, but instead should be a way to dismantle financial networks around drug kingpins. Low dollar amount civil forfeitures of cash, or the seizure of a car from a driver on the mere allegation that it may have been used to transport contraband, are instead a significant hardship for the mostly low income families of people not yet convicted of any crime.

### **Conservative states and groups lead asset forfeiture reform**

The Texas Public Policy Foundation, the Institute for Justice, and Freedom Works are among the leading policy and research groups calling for asset forfeiture reform because civil forfeiture of property taken by the government is anathema to conservative values.<sup>2</sup>

New Mexico, Montana, and North Carolina all require conviction before assets can be forfeited. Although New Mexico passed a strong reform in 2015, innocent owners in some parts of the state continue to report seizures of cars and cash.<sup>3</sup> That may be due to the use of federal asset forfeiture authority. This end-run around state law can be limited by authorizing seizures through multi-jurisdictional task force arrangements only for major cases (involving more than \$50,000 in cash or other assets) and only if the task force conducts its forfeitures in accordance with state requirements.

### **IN SHORT**

- Of 151 cases reviewed, five forfeitures accounted for 48% of the assets seized, while 22% involved less than \$2,000.
- Travis County settles most cases if the owner of the property gets an attorney. The settlement gives a portion of the money back to the individual and occurs long before the criminal charges are adjudicated.
- People who do not get an attorney typically lose their money through a default judgement, usually within three months of seizure.
- Civil asset forfeiture cases were filed against cash and cars, but in many cases other items found (guns, gaming equipment, drugs) were seized and later forfeited under criminal seizure authority.

<sup>1</sup> [Reform Asset Forfeiture](#), Texas Criminal Justice Coalition, Spring 2016.

<sup>2</sup> [Without Due Process of Law: The Conservative Case for Civil Asset Forfeiture Reform](#), Texas Public Policy Foundation, Derek Cohen, September 2015.

<sup>3</sup> <http://www.npr.org/2016/06/07/481058641/new-mexico-ended-civil-asset-forfeiture-why-then-is-it-still-happening>, <http://ij.org/case/albuquerque-civil-forfeiture/>

## Comply Then Complain: Standardize the Complaint Process

*Texas' young drivers may comply more with officers if they understand and believe in the complaint process available to them later*

Currently, every Texas jurisdiction has its own process for driver complaints after perceived roadside mistreatment. Many of these processes were negotiated with police associations in “meet and confer.” It is impossible to produce a statewide curriculum for young drivers that outlines their right to complain about mistreatment. Texas needs statewide standards that facilitate complaints and that clearly demonstrate how seriously law enforcement will take reports from the public.

**Current complaint processes favor officers' rights.** While there are a wide range of driver complaint processes throughout the state, they generally tend to be onerous from the perspective of the complaining public. Most require a person to go to the police department and file a written statement in person, which many people find intimidating. While officers get notice and legal representation, members of the public can be left in the dark as to the progress of any investigation. Complainants may or may not get to see any audio or video from their interaction, and they may or may not be given an opportunity to provide additional evidence. They may never know the outcome. And they get no appeal.

### IN SHORT

- It is impossible to produce a curriculum to educate young people on their right to complain of mistreatment by officers because of wide variation in procedures.
- Procedures often favor the rights of officers over the rights of the general public.
- Studies of complaints find that they are rarely upheld.
- If we are to ask the public to simply “take” behavior from officers that they believe to be abusive and complain later, then the complaint process must be standardized, well understood, and fair.

**Most complaints are not upheld.** The *Austin American-Statesman* recently reviewed video evidence for all the racial profiling complaints filed against Texas Department of Public Safety officers. None of the complaints were upheld, although the videos presented compelling evidence that some officers treated innocent drivers with disrespect and conducted intrusive investigations at the borderline of constitutional limits.<sup>1</sup> Most national studies similarly find sustained complaints to be rare. A massive study of complaints against police officers in Chicago found that 96% of more than 56,000 allegations were not sustained.<sup>2</sup> In Austin, a recent audit found that only 5% of complaints from the public are sustained, that the process is difficult to navigate, and that some complaints are not properly reviewed.<sup>3</sup>

**Complaint processes should be both standardized and fair.** Complaint process standards should include:

- The ability to complain by phone, email, or webform, or in person;
- A standard 180-day timeframe for the investigation, with routine reporting back to the complainant and the officer on the progress of the investigation;
- Complainant access to any audio- or video-recorded evidence of the interaction; and
- Notice to the both parties of the outcome of the investigation, as well as an appeal process.

## Comply and Complain must be more than just “Comply”

<sup>1</sup> <http://projects.statesman.com/news/texas-dps-racial-profiling-claims/>

<sup>2</sup> <http://chicagoreporter.com/police-misconduct-complaints-by-whites-more-likely-to-be-upheld/>

<sup>3</sup> <http://www.austinmonitor.com/stories/2016/09/audit-points-out-in-flaws-apd-complaint-process/> (full audit report posted)

## End arrests for violations that do not have jail time as a punishment

**Proposal:** Require a citation instead of arrest for non-jailable violations, with exceptions for alcohol-related offenses where officers should take a person off the street.

### Harris County Study of Arrests for Fine-Only Charges

The Texas Criminal Justice Coalition reviewed all arrests in Harris County over a 16-week period from July 13, 2016, to October 5, 2016.<sup>1</sup> Of the 23,578 people arrested during this period, 2,567 (11%) were arrested for Class C misdemeanors punishable by a fine only. Of those, 763 people (30%) were arrested on a single Class C misdemeanor charge, mostly for a traffic violation. The remaining 1,804 people were arrested on a combination of fine-only charges, mostly a combination of registration, inspection, or other traffic infractions. If this data is representative of the state, then tens of thousands of Texans are arrested on traffic infractions each year.<sup>2</sup>

**Texas law already prohibits arrest for speeding.** Such an arrest constitutes officer misconduct.<sup>3</sup> And yet, among those arrested on a single traffic charge, this was the most common.

People arrested on a single *non-traffic*-related charge were most commonly picked up for violations of child support orders, public intoxication, theft under \$100, or the truancy of their children.

Most of the charges were Class C misdemeanors, but some were fine-only offenses with no specific classification; they fall in other parts of code and have fines as their set penalties. These include lack of safety belts, parking in privileged parking spaces, failure to show one's driver's license, and parents contributing to truancy.

### Pretext Stops: Why So Many Traffic Arrests?

Why do officers arrest some people at traffic stops and not others? In truth, the data doesn't tell us. We do know that if a driver does not consent to a search of his or her vehicle, the officer may still arrest the person on the original traffic charge (if no citation has yet been issued), then search the vehicle "incident to arrest." Finding nothing, the person can be booked on that original charge. We all pay for extra officer, booking, and jail time when roadside fishing expeditions turn up nothing.

### IN SHORT

- Thousands of Texans are arrested and spend time in jail each year for traffic violations that are not punishable by jail time
- SCOTUS has allowed this (*Atwater v. Lago Vista*)
- If a driver refuses to consent to a search of the vehicle, officers can arrest for the traffic violation then search "incident to arrest."

### ARRESTS BY THE NUMBERS

- 2,567 people arrested on one or more Class C misdemeanor charges
- 763 of these arrested on just one Class C charge
- 406 of these cases were ordinary traffic violations
  - ✓ 95 speeding cases
  - ✓ 81 driver's license violations
  - ✓ 80 lack of insurance violations
  - ✓ 24 registration issues
  - ✓ 22 toll violations
  - ✓ 17 failure to stop at designated point/stop sign
  - ✓ 14 seat belt violations
  - ✓ Remainder: range of offenses (e.g., unsafe lane change, headlight off, failure to signal a turn, and similar minor traffic violations)
- The remaining cases:
  - ✓ 158 child support
  - ✓ 70 public intoxication
  - ✓ 39 theft
  - ✓ 18 parent/truancy
  - ✓ Remainder: range of offenses (e.g., fishing without license, failure to identify to a police officer, disregarding a police officer, minor altercations [fighting, hand grabbing], noise, trespassing, hitchhiking, littering, etc.)

<sup>1</sup> During this period a total of 23,578 people were arrested on 39,216 separate charges in Harris County, mostly for Class B misdemeanors or higher. About 11% were picked up on only Class C charge(s).

<sup>2</sup> DPS [reports](#) statewide arrests (829,000 in 2015) but does not report arrests on traffic charges.

<sup>3</sup> Transportation Code Art. 543.004 and 543.008.

# End Racial Profiling

## Strengthen reporting and provide accountability

**Proposal:** Amend Texas' racial profiling statute to:

1. strengthen the enforcement of the prohibition,
2. require agencies to report the most salient data using mathematically sound analysis, and
3. delete obsolete exceptions to reporting.

### **Data Supports Existence of Bias in Search Practices**

***(This data is collected but is not always reported)***

Professor Frank Baumgartner of the University of North Carolina recently conducted an analysis of all traffic stop data for the Texas Department of Public Safety (DPS) over five years. The huge dataset strongly supports the finding that DPS searches Black drivers at a significantly higher rate than other drivers, even after accounting for a variety of explanatory factors. According to Baumgartner, "targeting Black drivers for search is a very serious issue."<sup>1</sup>

#### **IN SHORT**

- Black and Hispanic drivers are subjected to "investigatory stop" tactics more frequently than white drivers, although contraband is found at lower rates.
- Years of reporting and analysis indicate problems with bias in stop and search practices, but the data cannot be used as evidence of racial profiling.
- Some jurisdictions are exempt from the reporting law because they qualified for one-time grant funds a decade ago.

Bias in stops and searches appears to be directly related to bias in "pretext" stops. The DPS analysis was based on millions of stops, enabling robust analysis of the stops based on race, gender, and the underlying traffic offense. The most minor offenses revealed the greatest bias: "Those speeding by just a small amount are more than 4 times as likely to be searched. Those speeding by more substantial amounts are much more likely simply to be given a ticket and put on their way." This variable is additive to other variables, leading to the clear targeting of certain Black drivers. "[A]n out-of-state Black male pulled over for speeding while going 68 MPH in a 65 MPH zone would have an extremely high likelihood of search," the researchers concluded.

Local Texas law enforcement data indicates the same problem with bias in stop and search practices. Where local jurisdictions include an analysis of roadside searches and contraband findings in their annual racial profiling reports, the data shows that Black drivers are searched at a higher rate and contraband is found at a lower rate.<sup>2</sup> After finding clear evidence of bias in searches in 2010, the Austin Police Department stopped publishing this analysis.<sup>3</sup> It is not currently among the information *required* to be reported to local officials under the statute [Code of Criminal Procedure, Art. 2.134].

### **Accountability is Lacking**

The University of North Carolina researchers found that a multi-year data analysis can help identify individual officers who show patterns of disproportionality in stops and searches. Texas statute prohibits racial profiling but also says racial profiling data cannot be used as "prima facie" evidence of racial profiling. Lawmakers can clarify that the data can be used in conjunction with other evidence to ensure that officers with patterns of bias can be identified, brought in for training, and even sanctioned if other methods do not improve the situation. Furthermore, lawmakers can delete outdated exceptions to reporting this data for agencies that previously qualified for grant funds for audio-video equipment.

<sup>1</sup> Baumgartner, Christiani and Roach, [Analyzing Racial Disparities in Traffic Stops Statistics from the Texas Department of Public Safety](#), September 2016. The data does not describe stops or searches of Hispanic drivers because they are not reliably identified.

<sup>2</sup> Austin Police Department Racial Profiling Report, [2010](#).

<sup>3</sup> Austin Police Department Racial Profiling Report, [2014](#). In 2016 APD once again began publishing search and hit rate information, but does not currently collect data on searches that do not result in arrest. APD plans to start collecting that information in 2017.

## Apply Property Thresholds to Certain Forgery Cases & Facilitate Restitution

### Proposal

- Apply property thresholds to forgeries that involve faked checks and faked money orders.
- Facilitate the use of existing authority to resolve stolen or faked check cases through restitution, just as jurisdictions commonly do for theft by check.

Theft cases involving faked forms of direct payment (stolen checks, rewritten checks, stolen money orders) are currently classified as felonies, *regardless of the amount stolen*; this can involve prison time, where it is impossible to pay restitution to the victim. Meanwhile, theft by check (hot checks) is handled as a misdemeanor unless the amount stolen exceeds \$2,500, and theft by check victims (usually stores or banks) get restitution from the offender for the amount stolen.

### IN SHORT

- Small-value theft cases are still ending up in felony court because theft value thresholds do not apply to check forgery.
- People in prison cannot pay restitution and face a lifetime of lost job opportunities over small theft amounts.

### Check Restitution Could Provide More Money for Businesses and Other Victims

The penalty for committing theft in Texas is determined by the dollar amount of the property involved – called a monetary “threshold.” During Texas’ 2015 Legislative Session, policy-makers updated the state’s outdated thresholds to account for 22 years of inflation. So now, theft by check offenses fall under the newly updated thresholds, making many of them misdemeanors. However, the new thresholds do not yet apply to theft cases involving faked forms of direct payment. Instead, all faked checks, no matter how small, are punished as felonies.

Texas District Attorneys, mainly through their hot check divisions, returned an estimated \$18 million to the stores and service providers originally victimized last year by hot checks.<sup>1</sup> If property thresholds applied to check forgery cases and they were processed through hot check divisions, more victims would get restitution and fewer small theft cases would clog our felony courts.

### Most Check Forgery Cases Are at Misdemeanor Levels

The Texas Criminal Justice Coalition examined the case files for a random sampling of 182 forgery cases filed in Harris County and Travis County in 2015<sup>2</sup> and found that **the average amount stolen was \$1,479.82**. Only 24 cases involved felony amounts. A handful would have been Class C misdemeanors under the theft thresholds, and dozens would have been Class B. If the state applied the property thresholds used for other kinds of theft to these crimes, and used the hot check restitution systems to process them, the state would reduce expensive felony incarceration, reduce collateral consequences of a minor theft, and allow victims to get restitution more quickly.

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<sup>1</sup> The average value of a hot check case statewide is not available in existing datasets. This estimate is based on our review of other types of theft, including our study of fake check cases, which average \$1,480.

<sup>2</sup> We examined a total of 182 cases, but in many instances the value of the amount stolen was not noted in the case file because it is not currently a factor in determining or proving the charge. We based our analysis on the subset of 151 cases in which documentation of the amount stolen was included in the case file.



## End arrests for violations that do not have jail time as a punishment

**Proposal:** Require a citation instead of an arrest for non-jailable violations, with exceptions for alcohol-related offenses where officers should take a person off the street.

### Harris County Study of Arrests for Fine-Only Charges

The Texas Criminal Justice Coalition (TCJC) reviewed all arrests in Harris County over a 16-week period from July 13, 2016, to October 5, 2016.<sup>1</sup> Of the 23,578 people arrested during this period, 2,567 (11%) were arrested for Class C misdemeanors, which are punishable by a fine only. Of those, 763 people (30%) were arrested on a single Class C misdemeanor charge, mostly for a traffic violation. The remaining 1,804 people were arrested on a combination of fine-only charges, mostly for insurance violations combined with registration, inspection, or other vehicle violations. If this data is representative of the rest of the state, then tens of thousands of drivers are likely arrested for traffic infractions each year.

**Texas law already prohibits officers from arresting a person for speeding.** Such an arrest constitutes officer misconduct.<sup>2</sup> And yet, among those arrested on a single traffic charge, this was the most common.

The people arrested on a single *non-traffic*-related charge were most commonly picked up for violations of child support orders, public intoxication, theft under \$100, or the truancy of their children.

Altogether, most of the charges reviewed were Class C (fine-only) misdemeanors, but some were fine-only offenses with no specific classification; they fall in other parts of code and have fines as their set penalties. These include lack of safety belts, parking in privileged parking spaces, failure to show one's driver's license, and parents contributing to truancy.

### Pretext Stops: Why Arrests are Occurring in the First Place

Why do officers arrest some people at traffic stops and not others? In truth, the data does not tell us. We do know that if a driver does not consent to a search of his or her vehicle, the officer may still arrest the person on the original traffic charge (if no citation has yet been issued), then search the vehicle "incident to arrest." If no contraband is found, the person can simply be booked on that original charge (again, speeding should be the exception). We all pay for extra officer, booking, and jail time when roadside fishing expeditions turn up nothing.

### IN SHORT

- Thousands of Texans are arrested and spend time in jail each year for traffic violations that are not punishable by jail time.
- SCOTUS has allowed this (*Atwater v. Lago Vista*).
- If a driver refuses to consent to a search of the vehicle, officers can arrest for the traffic violation then search "incident to arrest."
- Arrests in Harris County for fine-only violations disproportionately involve Black drivers.

### ARRESTS BY THE NUMBERS

- 2,567 people arrested on one or more Class C misdemeanor charges
- 763 of these arrested on just one Class C charge
- 406 of these cases were ordinary traffic violations
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### Disproportionate Racial Impact of Fine-Only Arrests

In the dataset reviewed by TCJC, Black people were arrested at high rates relative to their overall representation in the Harris County population, where they total approximately 20% of residents. Black drivers made up nearly half of all drivers arrested on a single non-jailable transportation offense, as well as 41.1% of all people jailed for other non-jailable offenses. While approximately 70% of Harris County's population is white, white drivers made up only 22.9% and 24.0% of the arrests for traffic and other non-jailable offenses, respectively.

#### Arrests for Traffic Violations<sup>3</sup> (406 total violations)

	Black	White	Hispanic	Other
<b>Car maintenance issues</b>	50.0%	0.0%	50.0%	0.0%
<b>Moving violations</b>	49.3%	26.7%	19.9%	4.1%
<b>Nonmoving violations</b>	41.7%	22.3%	32.0%	3.9%
<b>Parking</b>	40.0%	20.0%	40.0%	0.0%
<b>Seat belt</b>	61.9%	14.3%	14.3%	9.5%
<b>Toll</b>	59.1%	18.2%	18.2%	4.5%

#### Arrests for Other Non-Jailable Offenses<sup>4</sup> (357 total violations)

	Black	White	Hispanic	Other
<b>Assault</b>	36.8%	36.8%	26.3%	0.0%
<b>Child support</b>	46.8%	24.7%	26.6%	1.9%
<b>Disorderly conduct including Class C arson</b>	100.0%	0.0%	0.0%	0.0%
<b>Disregard police officer</b>	50.0%	50.0%	0.0%	0.0%
<b>Drug paraphernalia</b>	55.6%	33.3%	0.0%	11.1%
<b>Other</b>	35.0%	40.0%	25.0%	0.0%
<b>Public intoxication</b>	19.7%	47.9%	29.6%	2.8%
<b>Soliciting ride/employment</b>	33.3%	66.7%	0.0%	0.0%
<b>Theft</b>	53.8%	25.6%	20.5%	0.0%
<b>Trespassing</b>	37.5%	62.5%	0.0%	0.0%
<b>Truancy</b>	38.9%	11.1%	27.8%	22.2%

<sup>1</sup> During this period a total of 23,578 people were arrested on 39,216 separate charges in Harris County, mostly for Class B misdemeanors or higher.

<sup>2</sup> Transportation Code Art. 543.004 and 543.008.

<sup>3</sup> 406 people were arrested in Harris County for a single Class C traffic offense ranging from speeding to headlight and parking violations.

<sup>4</sup> 357 people were arrested in Harris County for non-jailable offenses ranging from possession of drug paraphernalia to contributing to a child's truancy.





# Texas Criminal Justice Coalition

## *Opioid Abuse in Texas*

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### LEGISLATIVE PROGRESS: OPIOID ABUSE AND OVERDOSE

Texas passed legislation (SB 1462, 84<sup>th</sup> Texas Legislature) authorizing access to lifesaving opioid antagonists. On August 1, 2016 the Texas Pharmacy Association issued a statewide “standing order” that will finally make the overdose cure generally available.<sup>1</sup> This is critical. In Austin, for example, where a group called the Texas Overdose Naloxone Initiative has been actively distributing naloxone, fentanyl-related overdose deaths declined significantly in the first six months of this year when compared to 2015.

There is still more to be done to save lives and reduce opioid abuse in Texas.

### THE PROBLEM OF OPIOID ABUSE IN TEXAS

Thanks to powerful pharmaceuticals prescribed for chronic pain but now available on the black market or cut into other black market drugs, the U.S. is in the midst of a drug overdose crisis,<sup>2</sup> and Texas is not immune.<sup>3</sup> Fentanyl is a synthetic opioid analgesic that is similar to morphine but is 50-100 times more potent. It is typically used to treat patients with severe pain or to manage pain after surgery. It is also sometimes used to treat patients with chronic pain who are physically tolerant to other opioids. In its prescription form, fentanyl is known by such names as Actiq®, Duragesic®, and Sublimaze®. Street names for fentanyl or for fentanyl-laced heroin include Apache, China Girl, China White, Dance Fever, Friend, Goodfella, Jackpot, Murder 8, TNT, and Tango and Cash.

The high potency of fentanyl greatly increases the risk of overdose, especially if a person who uses drugs is unaware that a powder or pill contains fentanyl. Last year the Centers for Disease Control and Prevention issued an emergency health advisory<sup>4</sup> calling for improved data collection and broad access to naloxone.

### PROPOSALS TO REDUCE OPIOID ABUSE AND SAVE LIVES IN TEXAS

**Reduce State Jail Felony Possession to a Class A Misdemeanor.** Possession of personal use amounts of opioid drugs is a state jail felony. State jails were created to provide drug treatment and other services but most people never receive those services. Instead, they serve their time and are released back into the community without support. Texas should reduce penalties to a Class A misdemeanor and strengthen supervision and drug treatment options at the county level. People can remain closer to home, get the treatment they need, and avoid a felony conviction that closes economic and housing opportunities.

**Pass Good Samaritan Legislation.** Texas can save lives by encouraging witnesses to help people who are in the midst of a drug overdose. Thirty-seven states and the District of Columbia have passed such legislation. HB 225 (84<sup>th</sup> Texas Legislature), a “good Samaritan” law, passed both chambers last session. It was ultimately vetoed by the Governor over concerns that it might protect drug dealers from prosecution if the dealer was also a “good Samaritan” and called 911 to save someone from an overdose. The best good Samaritan laws (from the perspective of saving lives) should provide a defense to prosecution to anyone who calls 911, stays to assist emergency personnel, and provides identification to officers. A more limited proposal could provide a defense to prosecution only on possession charges but not distribution charges.

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<sup>1</sup> <https://www.texastribune.org/2016/06/21/anti-overdose-drug-becomes-available-texas/>

<sup>2</sup> <http://www.nytimes.com/interactive/2016/01/07/us/drug-overdose-deaths-in-the-us.html>

<sup>3</sup> <http://www.kvue.com/news/local/several-deaths-from-fentanyl-overdoses-in-austin/183108274>

<sup>4</sup> <http://emergency.cdc.gov/han/han00384.asp>



# Texas Criminal Justice Coalition

## *Police Body Camera Policy in Texas*

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### LEGISLATIVE PROGRESS: BODY CAMERA IMPLEMENTATION

Texas passed legislation (SB 158, 84<sup>th</sup> Texas Legislature) authorizing body cameras for police officers and providing grant funding to support the purchase of camera systems. That law was a good first step. It created incentives for body camera adoption, and those incentives are working. The state's largest police agencies (Austin, San Antonio, Dallas) have moved forward with new body camera programs or have expanded existing programs (Houston). Smaller departments are also moving forward with grant applications. Even some school districts have moved to implement cameras.

Recently, policies created by Texas cities under SB 158 were [rated and found wanting by The Leadership Conference](https://www.bwccscorecard.org) [https://www.bwccscorecard.org] on several fronts, in part thanks to practices either allowed or required by SB 158.

### PROPOSALS TO IMPROVE THE POLICIES GOVERNING BODY CAMERAS IN TEXAS

#### **When should officers get to see the video after a critical incident?**

Texas law *requires* that officers see all the video of critical incidents (like officer-involved shootings) prior to making a statement. While this is a popular idea among police officers, it is a poor investigative practice not used in other circumstances.

Police investigators do not generally share video evidence with suspects, witnesses, or civilians subjected to use-of-force before taking their statements. Why? Because research shows that seeing such evidence before making a statement can alter the memory of an event. Officers should, of course, be allowed to see the body camera video in accordance with best investigative practice: initial statement, video, additional statement(s). And officers should not be disciplined for giving a statement that contradicts a video absent evidence that they intentionally misstated the facts.

#### **When should the public get to see the video after a critical incident?**

Because body camera video creates a more complete record of the behavior of both civilians and officers, research has shown that it can improve police-civilian interactions. That improvement is based in part on the idea that the video will at some point be seen by the public. Texas law says camera video can be released for "law enforcement purposes." Jurisdictions are wrestling with what this means. If police can decide to release some videos but not others, the community will suspect the police of protecting their own interests at the expense of community safety, accountability, and respect.

The following improvements would clarify the framework created by SB 158:

- All critical incident video should be released to the public in a reasonable timeframe (for instance, within 30 days).
- Officers should tell people they are being recorded unless circumstances prevent it, and then they should provide notice as soon as reasonably possible.
- Local policies should create a clear framework for people to give consent to release of video from traffic stops or video taken in a private home. SB 158 requires consent, but it does not require police agencies to create a process for that consent to be granted. No major city body camera policy currently includes such a process.
- Before entering a private residence without a warrant or in non-exigent circumstances, the officer should seek consent to continue to record inside the residence. A body-worn camera should not be used to create an inventory of items in the residence.
- If an interview includes the collection of sensitive information about where a witness or victim lives or will be living, the body-worn camera should be turned off.



### **Options for Legislation to Reduce Officer Involved Shootings/Deadly Force**

1. Reduce tensions at traffic stops by ending the practice of arrest for non-jailable offenses.
2. Require departments to align their use of force policy with [new standards recently released by the Police Executive Research Forum](#) (PERF). This would include a new approach to interactions with people suffering from mental illness, people under the influence of narcotics, and people who are unarmed or armed with weapons other than firearms. A few of the suggested policies include recommendations to:
  - a. Respect the sanctity of all human life and set responsibility to render first aid.
  - b. Ensure that use of force is proportional to the threat and the least injurious option.
  - c. Adopt de-escalation as a formal department priority.
  - d. Adopt a “duty to intervene”: officers need to prevent other officers from using excessive force.
3. Strengthen disciplinary process by:
  - a. Extending time to investigate serious misconduct (currently investigation must be complete by the 180<sup>th</sup> day or no discipline can be issued).
  - b. Requiring that prior misconduct be considered in promotion decisions.
  - c. Requiring all departments to implement a standardized disciplinary matrix that clearly states the disciplinary action that will be applied to various misconduct. This ensures that officers who are fired are less likely to return to the force after their appeal.
  - d. Requiring disciplinary matrix to include clearly defined disciplinary action for misconduct related to body camera malfunction/nonfunction.
4. Improve officer training and encourage additional training by linking it to promotions.
  - a. Make de-escalation tactics a high priority in officer training and require officers to have completed additional de-escalation training as a condition of promotion.
  - b. Identify training programs based on adapting military tactics to domestic situations and require such programs to be evaluated against the PERF standards prior to approval as part of an officer training regimen.
  - c. Require increased training on interventions designed to de-escalate situations involving mental illness or the influence of narcotics.
  - d. Train officers to look and listen for signs that a person has a disability that might prevent them from responding to an order in the expected way.
5. Improve public information about critical incidents and use of force:
  - a. Require police agencies to release to the public information about all use of force incidents, not just those that result in a suspension.
  - b. Require a scheduled release of body camera and car camera footage/audio after a critical incident, first to the family and then to the public.
6. Require larger departments to re-evaluate its first responder approach to calls from people in mental health crisis, including training for 911 call takers and dispatchers, and initiate an alternative first response led by teams primarily staffed by mental health and health workers.

## YES on SB 271: End arrests for violations that do not have jail time as a punishment

**Proposal:** Require a citation instead of arrest for non-jailable violations, with some limited exceptions for alcohol-related offenses.

### Harris County Study of Arrests for Fine-Only Charges

The Texas Criminal Justice Coalition reviewed all arrests in Harris County over a 16-week period from July 13, 2016, to October 5, 2016.<sup>1</sup> Of the 23,578 people arrested during this period, 2,567 (11%) were arrested for Class C misdemeanors punishable by a fine only. Of those, 763 people (30%) were arrested on a single Class C misdemeanor charge, mostly for a traffic violation. The remaining 1,804 people were arrested on a combination of fine-only charges, mostly a combination of registration, inspection, or other traffic infractions. If this data is representative of the state, then tens of thousands of Texans are arrested on traffic infractions each year.<sup>2</sup>

When soccer mom Gail Atwater took the City of Lago Vista to the Supreme Court over her arrest on a seat belt violation, the dissent in the 2001 decision (4-5) noted: “A broad range of conduct falls into the category of fine-only misdemeanors... Such unbounded discretion [given to law enforcement] carries with it grave potential for abuse. *The majority takes comfort in the lack of evidence of ‘an epidemic of unnecessary minor-offense arrests.’*” Fifteen years later, we face that epidemic.

### Wasted Public Safety Resources, Less Safety

A recent study found that officers spend four times longer on an arrest than they do issuing a citation.<sup>3</sup> In addition, taxpayers pay more to process that person into jail. None of that investment is making anyone any safer. Meanwhile, when an officer moves to arrest a driver for a minor traffic offense, many Texans believe this is a violation of their rights and question the officer’s authority to do so. Resistance can make the encounter less safe for everyone.

### Other State Limits on Arrests for Non-Jailable Offenses

Ohio, Maryland, and Kentucky have created a presumption of citation instead of arrest for non-jailable offenses with certain exceptions.<sup>4</sup> Some states do specifically exempt from the citation requirement arrests for non-compliance with an officer’s order regardless of the nature of the underlying offense (i.e., traffic infraction), but this undermines the goal of safer and more peaceful traffic stops.

#### IN SHORT

- Thousands of Texans are arrested and spend time in jail each year for traffic violations that are not punishable by jail time.
- SCOTUS has allowed this (*Atwater v. Lago Vista*).
- If a driver refuses to consent to a search of the vehicle, officers can arrest for the traffic violation then search “incident to arrest.” This makes a mockery of the 4<sup>th</sup> Amendment.

#### BIPARTISAN SUPPORT FOR REFORM

- Texas Public Policy Foundation
- ACLU of Texas
- Texas Criminal Justice Coalition
- Austin Justice Coalition
- Texans for Accountable Government
- Restore Justice USA, a project of Empower Texans
- Just Liberty
- Texas Fair Defense

#### The platform of the Republican Party of Texas directs lawmakers as follows:

Restricting Arrest Powers-Republican Party of Texas calls upon the Texas Legislature to authorize the arrest and jailing of individuals only for offenses for which jail is a punishment or to prevent family violence.

<sup>1</sup> During this period a total of 23,578 people were arrested on 39,216 separate charges in Harris County, mostly for Class B misdemeanors or higher. About 11% were picked up on only Class C charge(s).

<sup>2</sup> DPS [reports](#) statewide arrests (829,000 in 2015) but does not report arrests on traffic charges.

<sup>3</sup> [Citation in Lieu of Arrest](#): Examining Law Enforcement’s use of Citation Across the United States, April 2016.

<sup>4</sup> Ohio § 2935.26: <http://codes.ohio.gov/orc/2935.26>, Kentucky § 431.015: <http://www.lrc.ky.gov/Statutes/statute.aspx?id=45226>, Maryland Cr. Pr. Law § 4-101: <http://www.ncsl.org/portals/1/documents/cj/pretrial/maryland.pdf>