

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, 2016.¹ 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.²

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.³ 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.⁴ 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.

¹ 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).

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

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

⁴ 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>

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 4th 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.