

SUBJECT: Relating to custodial arrests for class C misdemeanor traffic offenses

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 6 ayes — B. Turner, Keel, Hupp, Isett, P. King, Villarreal

0 nays

3 absent — Berman, Driver, Gutierrez

WITNESSES: For — Gail Atwater; Connie Cortez; Robert DeCarli; William Harrell, ACLU, MALDEF, NCLR, LULAC, NAACP; Samuel Riggs

Against — Steve Lyons, Houston Police Department; Stephen Sanders, Texas State Lodge of Fraternal Order of Police

On — E.C. Sherman, Texas Department of Public Safety

BACKGROUND: Transportation Code, title 7, subtitle C authorizes a peace officer to arrest a citizen without a search or arrest warrant for any offense committed in the officer's presence or view. Current law gives an officer the discretion to decide whether to write a citation or arrest an offender and take him or her into custody. Traffic violations excepted from custodial arrest are speeding and violations of the open container law.

A decision in the case of *Gail Atwater v. City of Lago Vista*, which went before the U.S. Supreme Court last year, is expected soon. Ms. Atwater was arrested in 1997 for her and her children's failure to wear safety belts. Ms. Atwater brought an action against the city of Lago Vista alleging that her arrest was an unreasonable search and seizure under the Fourth Amendment. The 5th Circuit upheld the trial court's decision in favor of the city of Lago Vista, and Ms. Atwater appealed to the U.S. Supreme Court, where the decision still is pending.

Code of Criminal Procedure, art. 14.06 requires an arresting officer to take an offender before a magistrate without delay or to issue a citation containing written notice of the time and place the person must appear.

Transportation Code, ch. 703 sets forth the terms of the Nonresident Violator Compact of 1977, which governs the treatment of out-of-state motorists who are cited for traffic violations while in Texas.

**DIGEST:** CSHB 363 would amend the Transportation and Criminal Procedure Codes to require a peace officer to issue an offender (including a minor) a written notice to appear before a magistrate if the person has been charged with a class C (fine only) misdemeanor for a traffic violation, and he or she displays an unexpired driver's license or permit or an unexpired personal identification.

A nonresident who was cited with a class C traffic violation would continue to be governed by the terms of the nonresident violator compact of 1977.

The bill would take effect September 1, 2001 and only would apply to an offense committed on or after the effective date. An offense would be committed before the effective date of this act if any element of the offense occurred before September 1, 2001.

**SUPPORTERS SAY:** The Fourth Amendment to the U.S. Constitution was adopted to protect people from unlawful search and seizure. Officers currently are allowed to arrest persons for fine-only traffic misdemeanors, with the exception of speeding and open container violations. This gives members of the police force *carte blanche* to act as a one person officer, judge, and jury. Punishment should be decided by a judge and not by a peace officer.

Giving officers so much power has a disparate impact on communities of color, who often are targeted without probable cause by law enforcement. The American Civil Liberties Union (ACLU) receives numerous complaints of persons being offered the choice between forfeiting their Fourth Amendment rights or being arrested for a traffic violation.

CSHB 363 would apply to traffic violations only. This bill would not prevent an officer from making an arrest if there were a legitimate reason or probable cause that a more serious violation had occurred.

OPPONENTS  
SAY:

CSHB 363 would unnecessarily tie the hands of law enforcement because of a few incidents of abuse. It is too broad and would take away discretion from every peace officer in the state. Departments whose officers abuse this discretion should be required to undergo additional training and suffer serious disciplinary action.

Although generally peace officers do not choose custodial arrests for traffic violations due to time constraints and administrative needs, sometimes circumstances exist where an arrest should be allowed because an arrest could be the strongest deterrent against further violations. For example, in Houston, a high traffic area was used by minors for drag-racing on the weekends. Citations did not deter the youngsters, and after several fatalities, the Houston Police Department began arresting the violators. The situation has improved drastically since then.

NOTES:

The substitute added provisions to the Code of Criminal Procedure that if someone were cited for a Class C misdemeanor traffic offense and issued a written notice to appear before a magistrate, that person would have to display valid identification.

The companion bill, SB 112 by Moncrief, was referred to the Senate Jurisprudence Committee on January 11.