

SUBJECT: Warrantless arrests for alcohol offenses outside an officer's jurisdiction

COMMITTEE: Law Enforcement —committee substitute recommended

VOTE: 6 ayes — Driver, Burnam, Y. Davis, Hegar, Hupp, Keel

0 nays

1 absent — Garza

SENATE VOTE: On final passage, April 10 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion bill, HB 2144:*)

For — Dave Barber, Texas Police Chiefs Association/Harris County Area Chiefs of Police Association

Against — None

BACKGROUND: The 74th Legislature in 1995 enacted HB 2614 by Oakley, providing that every peace officer's duty is to preserve the peace within the entire state and not just in the officer's jurisdiction.

Code of Criminal Procedure, art. 14.03 allows peace officers outside their jurisdictions to arrest someone without a warrant if that person commits a felony, public intoxication, or disorderly conduct or breach of peace in the officers' presence or view.

The peace officer must, as soon as practical after making the arrest, notify a law enforcement agency that has jurisdiction where the offense occurred, which must take the person into custody and take him or her before a magistrate.

HB 2614 amended art. 14.03(g) to limit the authority of peace officers, other than Department of Public Safety (DPS) rangers and troopers, to make warrantless arrests for traffic violations outside their home jurisdictions.

In *Brother v. State*, 85 S.W. 3d 377 (Tex. App.-Fort Worth 2002), prompted by the arrest of a man for drunk driving in North Richland Hills by a Hurst police officer, the Fort Worth Court of Appeals held that the Code of Criminal Procedure does not define a peace officer's jurisdiction. The court also noted that the Court of Criminal Appeals and other intermediate courts have held that the jurisdiction of a municipal police officer is countywide, but other courts have found that jurisdiction is restricted to the city limits because the current version of the statute no longer defines the geographical scope of a city police officer's jurisdiction.

DIGEST: SB 840 would allow peace officers outside their jurisdictions to make warrantless arrests for any violations of Penal Code, Ch. 49 offenses involving intoxication and alcoholic beverage offenses, including:

- public intoxication;
- possession of alcoholic beverage in motor vehicle;
- driving while intoxicated;
- assembling or operating an amusement ride while intoxicated;
- intoxication assault; and
- intoxication manslaughter.

The bill would take effect September 1, 2003.

SUPPORTERS SAY: SB 840 would permit a common sense approach to combating driving while intoxicated (DWI) offenses and clarify current law about the limits of police jurisdiction. Texas cities, particularly within Harris, Travis, and Bexar counties and the Dallas-Fort Worth metroplex, have grown so close geographically that municipal police departments find themselves frequently crossing jurisdictional lines. Law enforcement agencies typically back each other up on service calls and may cross into another jurisdiction to follow suspicious persons or on routine patrol. These officers would be remiss if they ignored DWI offenders they encountered outside their jurisdictions. The law should be made clear that peace officers have the authority to stop and arrest intoxicated drivers no matter where they were.

The bill also would clarify the uncertainty created when HB 2614 granted only DPS statewide authority for traffic enforcement. The *Brother* decision held that the jurisdiction of certain municipalities is countywide, but conceded

that not all appellate courts accept that standard. The Legislature should establish the *Brother* standard in statute to make it clear that police have jurisdiction for DWI arrests outside of their own municipalities, and avoid conflicting interpretations in different regions of the state.

SB 840 would provide only a limited change in current law allowing warrantless arrests. Existing safeguards on these kinds of arrests would be unchanged. It is common practice for law enforcement agencies to work closely with each other on DWI enforcement, particularly on streets and highways crossing several jurisdictions. District and county attorney's offices are willing to file and prosecute DWI cases where a law enforcement agency stops and arrests a motorist in another city.

Even a symbolic action by the Legislature could have a profound effect on public behavior. Changing attitudes towards drunk driving has been a decades-long struggle, and today these offenses appropriately are viewed and treated as serious crimes. However, Texas still has a serious problem with DWI offenders. This bill would give law enforcement officers and prosecutors more tools to protect public safety and encourage them to uphold existing laws more forcefully.

OPPONENTS
SAY:

Allowing peace officers to arrest out of their jurisdiction even for DWI offenses might create confusion or cause conflict among different law enforcement agencies. Advances in technology facilitate communication among different law enforcement agencies, and a police officer easily can alert the other jurisdiction about the possible DWI offender without being the one to make the actual arrest.

OTHER
OPPONENTS
SAY:

The Legislature should adopt SB 840 as passed by the Senate that would have allowed law enforcement agencies to make warrantless arrests for any traffic offenses they observed in other jurisdictions. Municipal police departments could be given countywide jurisdictions for traffic offenses without interfering with DPS's authority to enforce traffic laws on a statewide basis. Traffic stops can be an effective law enforcement tool to make drug arrests or to apprehend fugitives wanted for other offenses.

NOTES:

The committee substitute removed provisions in SB 840 as engrossed that would have allowed a peace officer to make arrests for traffic offenses in the

county or counties where the political subdivision employing the peace officer was located. It also deleted provisions allowing only DPS rangers and troopers to arrest a person for traffic offenses.

The identical companion bill, HB 2144 by Gattis, was left pending in the House Local Government Committee on March 31, following a public hearing.