



**Keeping Texans Safe and Free: Limiting Arrests for Nonjailable Offenses**

*Prepared by Derek M. Cohen, Ph.D.*

*November 5, 2020*

*Interim Charge 2: Study current practices and enforcement of criminal laws for non-violent Class C Misdemeanors. Examine the benefits of citations in lieu of arrests and fine-only offenses, the nexus between recidivism and "debtors' prisons," and all programs within the criminal justice system that levy fines, fees, and related penalties.*

Over the past two legislative sessions, several bills have been filed by Republicans and Democrats alike addressing the United States Supreme Court decision in *Atwater v Lago Vista* (2001). The Court's decision in this case affirmed that a custodial arrest for any offense, even a fine-only offense, is not a violation of the 4th Amendment. The offense in this particular case was a violation of seat belt laws which resulted in a custodial arrest. The tragic fate of Sandra Bland during a traffic stop 14 years later has prompted calls for a remedy.

During the 85<sup>th</sup> Legislature, a complete package addressing both the law enforcement and jail issues surrounding Ms. Bland's death were filed. Unfortunately, the law enforcement component—arguably the only element that could have guaranteed Ms. Bland's death could have been avoided—was stripped from the bill before final passage. The legislation still managed to enact certain best practices in short-term custody and pretrial detention but did not completely address the ambit of the problem it originally sought to solve.

Class C misdemeanors represent the lowest tier of criminal offense in Texas. These minor offenses include traffic violations, possessing an open container of alcohol, and low-level gambling. Categorically, those guilty of these offenses are eligible to receive a fine of no greater than \$500 and up to 180 days of deferred disposition. Should the violator be eligible to have their disposition deferred, satisfactorily meeting the conditions set forth by the court will result in the offense being thrown out. None of these low-level offenses are alone eligible for one day of sentenced jail time.

Consider a hypothetical scenario: an individual with no criminal history is pulled over for failing to signal a lane change on his way home Friday evening. He is in a hurry, which sours his interaction with the police officer. The officer not only decides to issue the citation for the Class C offense but also opts to take the traffic violator to jail. After booking, he is held 48 hours prior to seeing a magistrate regarding release, costing the county \$120.24. The magistrate conducts a risk assessment on the individual, and given his clean criminal history, sets a low bond at \$5,000, requiring him to pay a bail bondsman \$500 to put up the money. The individual shows up for his court date and is found guilty and given a fine of \$500.

Certainly, this individual should not have had a poor reaction to being stopped by the police. However, the fact that he had to pay an additional \$500 for bond—and the county had to foot an additional \$120.24—in addition to his sentenced \$500 did not make the public any safer

while taking an individual out of his community for 48 hours at added expense. This is anathema to the principles of liberty, as well as to sound fiscal governance. As such, allowing jailing for Class C misdemeanors should, in most cases, be prohibited.

### **Provide Exemptions to Allow Police Officers to Do Their Job**

When restricting arrests for nonjailable offenses, certain reasonable exemptions should be permitted in order for the police to provide public safety. It is critical to mention that none of the four items listed below constitute an expansion of arrest authority beyond which is permitted by the *status quo*.

Even for nonjailable offenses, law enforcement should be permitted to make an arrest if:

- **The failure to arrest the offender creates a clear and immediate danger to the offender or the public:** Officers do not have to allow a person who is a threat to themselves or others to simply leave; this exemption has a legitimate law enforcement interest.
- **The failure to arrest the offender will allow a continued breach of the public peace:** Officers do not need to allow a breach of the peace to continue in order to comply with this bill. Some offenders make it clear that an arrest is the only way that they will cease their criminal actions, and officers will remain able to restore peace through custodial arrest in these circumstances.
- **The offender will not appear in court in accordance with the citation:** Allowing an offender to leave knowing that he or she will never return to answer for the charge would not be in the service of justice; this exemption allows officers who have reason to believe a subject will not comply with a citation by appearing in court to use other measures to ensure the suspect's return.
- **The inability to identify the offender:** If an officer exhausts all reasonable means in attempting to identify an offender, then a custodial arrest and fingerprinting is reasonable to assure the offender's identity is known.