



Cite and Release in Texas

Criminal Justice Project

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INTRODUCTION¹

In 2007, the Texas Legislature amended the state Criminal Code to allow law enforcement to issue citations and release on certain Class A and B misdemeanor charges, rather than place individuals under arrest.² These offenses include possession of four ounces or less of real or synthetic marijuana, theft of property or service, graffiti, possession of contraband in a correctional facility, and driving without a valid license.³ Counties and municipalities may opt to cite-and-release for these offenses, but are not required to do so. Disqualifying circumstances for cite-and-release include lack of suitable identification; being a nonresident of the county in which the person was stopped; having existing warrants; or commission of another, non-eligible offense.⁴ Officers have discretion to arrest for other reasons as well, such as safety and lack of cooperation.

Issuing citations, rather than making an arrest, especially for low-level, non-violent offenses is crucial to reforming the criminal justice system. Cite-and-release policies reduce unnecessary exposure to detention and allows law enforcement to spend time addressing more serious and violent crimes, rather than booking individuals for minor offenses that will not be prosecuted.⁵ The practice of issuing citations can also relieve pressure on overcrowded jails. Although arrests for low-level offenses usually do not result in more than a few days in jail, arrests are also very frequent in some jurisdictions facing extreme challenges in jail capacity.⁶

Additionally, improved cite-and-release policies can help strengthen community relationships with law enforcement by increasing procedural fairness.⁷ Cite-and-release, as opposed to jail, can reduce the likelihood of future offending.⁸ To this end, policymakers should work to improve cite-and-release policies throughout the state by requiring in-depth data reporting, revisiting eligibility requirements, and studying policies throughout the state for the purpose of developing a model for cite-and-release implementation going forward.

KEY FACTS

- Cite-and-release policies have been unevenly adopted throughout the state, and there is a shortage of available data on its use.
- Where it has been implemented and studied, the findings show that cite-and-release policies save time and resources.⁹ In fact, one Texas county has seen a savings of roughly \$1.6 million annually in booking costs for each year its program has been in place.¹⁰
- Research shows even short jail stays result in loss of income, increased likelihood of guilty pleas, longer sentences, future criminal activity, and being pushed further into the system.¹¹ In fact, a person detained pretrial on a misdemeanor is 43% more likely to be sentenced to jail, while at the same time increasing the likelihood of receiving a longer sentence.¹²
- Strong cite-and-release policies offer an opportunity to correct racial bias in the criminal justice system. Low-income communities of color are more heavily policed, and people of color are more likely to be detained regardless of risk level or likelihood of reoffending.¹³
- The current law is ripe for reform because it exposes millions of Texans to arrest for otherwise citation-eligible offenses merely due to their place of employment.¹⁴ Over 40% of those employed in the six counties containing the most populous cities in Texas reside in a different county than the one in which they work.¹⁵

BACKGROUND

Policing agencies were initially slow to adopt cite-and-release policies, but the practice has gained support in recent years, especially with the increased interest in public safety reform and public health concerns arising from the pandemic. Though there are roughly over 1,000 law enforcement agencies in Texas to which cite-and-release would largely apply, only a handful have published cite-and-release policies.¹⁶ Even fewer agencies publish their cite-and-release data in an easily accessible format, making it difficult to determine the usage and effect of the policy in the jurisdiction.¹⁷

Where it has been implemented, cite-and-release has been recognized as saving taxpayer money, law enforcement resources, and alleviating unnecessary contact with the criminal justice system.¹⁸ In Bexar County, cite-and-release was implemented in July 2019 and expanded in response to the dangerous spread of COVID-19 in jails. Bexar County's program has successfully kept over 6,200 people out of jail since its implementation.¹⁹ In addition to the health and social benefits of keeping people charged with minor offenses out of jail, the program has saved Bexar County taxpayers an estimated \$4.7 million in booking costs, roughly \$1.6 million in savings per year the program has been in place.²⁰

Data on the San Antonio Police Department's use of cite-and-release also illustrates the time-saving effect that a cite-and-release policy can have in a single jurisdiction. Since its implementation, San Antonio's cite-and-release policy has saved a cumulative 8,806 hours of officer time.²¹ This is the time equivalent of two full-time police officer positions per year.²² Such time savings allows police departments to secure more officers without an increase in the budget, who can then dedicate their time to dealing with more serious crimes rather than minor offenses.

Statewide data on cite-and-release is unfortunately unavailable, however, as few agencies report their data on citations *and* bookings for citation-eligible offenses. San Antonio P.D. stands ahead of other agencies by releasing detailed quarterly reports and maintaining a "dashboard" with updated statistics on citations *and* bookings in its jurisdiction.²³ The available data is encouraging: 79.8% of eligible offenses during the reported period have ended in citation rather than booking.²⁴ This represents a remarkable 34.72% decrease in bookings for qualifying offenses.

CONSEQUENCES OF PRETRIAL DETENTION

Even a short jail stay can have devastating consequences. Robust cite-and-release programs improve outcomes by sparing those accused of minor offenses from these effects. Being detained results in a higher likelihood of conviction due to guilty pleas, as many detained individuals plead guilty just to get out of jail, regardless of their actual guilt or innocence.²⁵ Pretrial detention is associated with a decrease in employment and more difficulty in obtaining benefits.²⁶ Those detained pretrial are more likely to receive a harsher sentence if convicted than those not detained.²⁷ And low-income people and people of color are more likely to be detained pretrial, regardless of risk level or likelihood of reoffending.²⁸ Incarceration also exposes people to higher risk of contracting communicable diseases, as shown by the increased spread of COVID-19 in jails and prisons during the early months of the pandemic.²⁹

Furthermore, pretrial detention may not actually accomplish the goal of discouraging crime. Those who are detained pretrial are more likely to commit future crimes.³⁰ The longer low-risk defendants are detained, the more likely they are to engage in new criminal activity pretrial.³¹ Since jail stays can also interfere with participation in the formal economy, those detained for low-level offenses may engage in the criminal economy to make ends meet. On the contrary, cite-and-release policies can have a preventative effect on criminal activity going forward.

CONSIDERING THE COUNTY CONUNDRUM

There is very little statewide data on cite-and-release programs, and these programs have been implemented unevenly throughout Texas. Most agencies across Texas do not regularly publish data on their cite-and-release programs, and only San Antonio publishes in-depth, case-level data. The limited data available shows that cite-and-release is largely underutilized in Texas. Reported data from Harris County and Houston show that only 521 people have received a citation in lieu of arrest for eligible offenses since 2020.³² The number of citation-eligible arrests, however, has not been reported.

Cite-and-release programs are still subject to institutional and structural racism. In fact, an internal analysis of citation-eligible arrests made in 2019 for a handful of jurisdictions show Black citizens are in fact being disproportionately arrested for citation-eligible offenses.³³ In San Antonio (where the data is reported by the Department), Black residents account for 16% of discretionary arrests for citation-eligible offenses, despite making up 6.8% of the population of San Antonio.³⁴ This pattern is repeated in other municipalities in Texas, where Black Texans make up 38.7% of citation-eligible arrests despite making up 20% of the combined population of those municipalities.³⁵

Finally, if a person is not a resident of the county in which they face an arrest, they are ineligible for cite-and-release, even if the county is adjacent to or near their home county.³⁶ This exposes many Texans to unnecessary arrest for eligible offenses based solely on where they are stopped. Over 40% of those employed in the six counties containing the most populous cities in Texas reside in a different county than the one in which they work.³⁷ This means that over 2.8 million Texans would be ineligible for cite-and-release merely because they were stopped in the county where they are employed.

RECOMMENDATIONS FOR REFORM

To improve the current state of cite-and-release policies across Texas — and ultimately the efficiency of law enforcement and the quality of the communities they serve — policymakers should **require thorough data reporting of cite-and-release implementation and publication of cite-and-release policies**. Only a handful of agencies published policies online, and fewer still consistently release their data on citations given in lieu of arrest or the arrests made that qualify for a citation. SAPD reports both. SAPD also reports demographics (age, sex, and race), location of arrest, date of arrest, and perhaps most beneficial, the reason for arrest over citation, which allows the Department to ensure that arrests for these offenses are only being made when it is absolutely warranted.

Given the level and timeliness of the data collected and reported by SAPD, policymakers should strongly consider using San Antonio's data dashboard as a model and encourage other agencies to provide similarly in-depth data. This data could, for example, be reported in a similar fashion within the Texas Commission on Law Enforcement's (TCOLE's) Racial Profiling Report(s), which cover the same police agencies which typically utilize cite-and-release.³⁸ This will ensure transparency in implementation of policies going forward.

Policymakers should also **revisit the disqualifying factors for cite-and-release**. As metropolitan areas in Texas continue to grow in population, cite-and-release policies should grow with them. Jurisdictions seeking a more uniform approach to cite-and-release in their region should be supported by **allowing these jurisdictions to enter into cite-and-release agreements** with one another and **by amending the code to allow for cite-and-release for residents of adjacent or nearby counties**. There are also a significant number of other non-violent misdemeanor offenses which should be studied for further inclusion in cite-and-release policies.

Finally, given the variation in (1) the adoption and use of cite-and-release policies; and (2) the availability/publication of these policies, policymakers should **commission a study of statewide cite-and-release policies for use in**

developing a model policy. By studying how policies vary and are being implemented across the state, the state can use a data-driven approach to develop an ideal model policy for agencies to adopt.

CONCLUSION

Cite-and-release is an important and underutilized step forward in reforming our criminal justice system. By implementing these common-sense reforms, we can ensure that the program is enacted fairly, transparently, and effectively. We can reduce the number of Texans harmed by exposure to detention and save Texas taxpayers money by ceasing to needlessly jail people accused of minor offenses. We can make the criminal justice system fairer by ensuring that Texans are not jailed for citation-eligible offenses merely because they commute between counties for work. We can improve relationships between communities and law enforcement by increasing perceptions of procedural justice. We can reduce pressure on strained county jail facilities by reducing the unnecessarily incarcerated population. These reforms are a simple way to strengthen and improve cite-and-release policies throughout Texas and to achieve their desirable effects.



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REFERENCES & ENDNOTES

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