



by Nikki Pressley
*Texas State Director and Chief of
Staff, Right on Crime*

Non-Jailable Misdemeanors: The Unfinished Business of the Sandra Bland Act of 2017

Key Points

- Arrests for non-jailable Class C misdemeanors create a perverse situation in which those found guilty of the crime may face less punishment than those still presumed to be innocent.
- The Texas Commission on Law Enforcement reports tens of thousands of arrests for Class C misdemeanors in Texas each year.
- Texas spent over \$21 million from 2016 to 2020 on jailing individuals who were accused of Class C traffic offenses.
- A prohibition against arrests in these cases would decrease needless spending and enable law enforcement to increase its focus on serious, violent offenses that threaten public safety.

Introduction

In Texas, Class C misdemeanors are designated the lowest level of a criminal offense. Offenses such as minor traffic violations, illegal gambling, and having an open container of alcohol are examples of Class C misdemeanors. [Section 12.23](#) of the Texas Penal Code limits the sanction for those individuals found guilty of Class C misdemeanors to a maximum fine of \$500. While the use of incarceration as punishment for conviction of a Class C misdemeanor is not permitted under Texas law, law enforcement in Texas can arrest, book into jail, and cause a bail bond to be conditioned for release on any individual accused of a Class C misdemeanor. This gives law enforcement the power to enforce a more intense punishment pre-due process than is legally allowed post-adjudication.

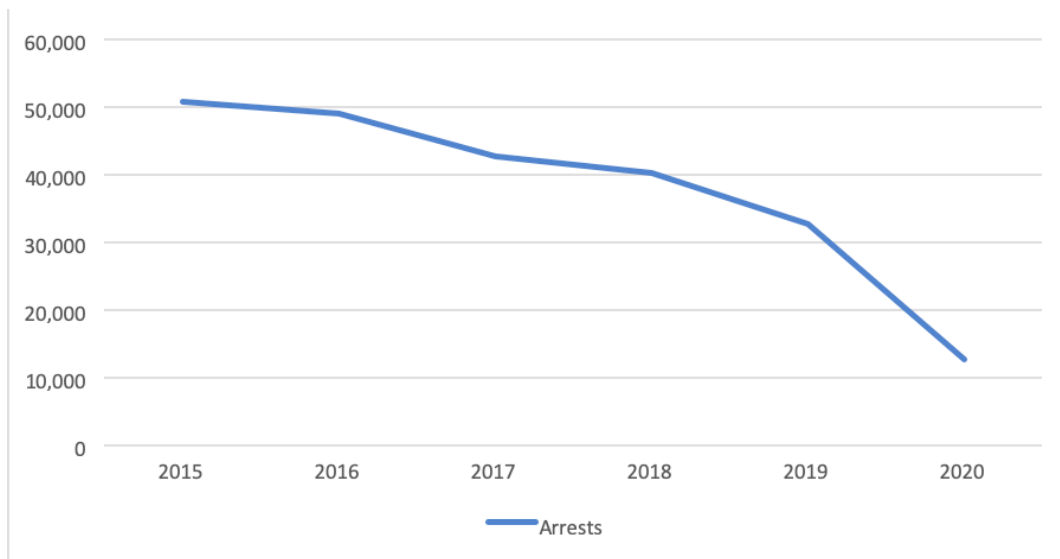
This practice was brought to the public's attention by the controversial arrest and death of a young woman, Sandra Bland, who took her own life in the Waller County Jail. In 2015, Bland was pulled over on her way to the grocery store for failing to signal a lane change. Cell phone and dashcam footage documented the traffic stop, showing the officer asking Bland to put out her cigarette; when Bland refused, the officer threatened to drag her out of the car and "light her up" ([WFAA-TV et al., 2019](#)). The officer claimed he believed his safety was threatened, leading to an arrest for assaulting a police officer; the officer was later fired from the Department of Public Safety.

In response to her tragic death, the Texas Legislature passed the Sandra Bland Act of 2017, raising standards for jails across the state, including improvements in early identification and screening of individuals with intellectual disabilities and mental health needs ([SB 1849, 2017](#)). Although the basis of the arrest and charge was for allegedly assaulting a police officer, the event sparked a broader conversation around the ability for officers to arrest individuals for non-jailable, Class C misdemeanors. Attempts to prohibit arrests for non-jailable offenses were made through filed legislation in 2019 and 2021; however, both pieces of legislation failed to pass ([HB 2754, 2019](#); [HB 830, 2021](#)).

Arrests for Non-Jailable Misdemeanors in Texas

Arrests made for non-jailable Class C misdemeanors create a perverse situation where the law enforcement response to these offenses can be more severe than if the individual was actually found guilty of the crime in court. Put another way, law enforcement can wield a bigger hammer against someone alleged to have committed a Class C misdemeanor than they can against someone guilty of a Class C misdemeanor. This practice directly opposes the fundamental principle of being innocent until proven guilty.

Figure 1
Number of Arrests for Class C Traffic Offenses in Texas*



Note. Data taken from *Crime Records Reports and Statistical Information*, “2021 – Arrest Stats by Offense (XLS),” and “2022 – Arrest Stats by Offense (XLS),” Texas Department of Public Safety, n.d. (<https://www.dps.texas.gov/section/crime-records/crime-records-reports-and-statistical-information>).

*A significant decrease in 2020 arrests may be a result of the COVID-19 pandemic.

Indeed, situations like the one that led to Sandra Bland being arrested and jailed for an alleged traffic offense are not rare. The Texas Commission on Law Enforcement reports tens of thousands of arrests for Class C misdemeanors in Texas each year.

Figure 1 shows the number of arrests in Texas from 2015 to 2020 solely for Class C traffic offenses. Note, the number of arrests begins to decrease following the arrest of Sandra Bland in 2015.

Additionally, the practice of arresting and jailing minor, nonviolent misdemeanants costs taxpayers \$60 per day ([Office of Court Administration, n.d.](#)). Assuming that these individuals are detained for 48 hours prior to a bail hearing, that means Texas spent over \$21 million from 2016 to 2020 on jailing individuals who were accused of Class C traffic offenses.

Arresting and jailing individuals for traffic offenses also negatively impacts public safety. The time an officer spends arresting and booking someone for a non-jailable offense, which can take hours, is time they are not on the streets responding to serious criminal behavior that actually threatens the community and requires their attention ([Berman, n.d.](#)). This is a poor and risky use of limited law enforcement bandwidth.

Recommendations

- **Prohibit arrests for non-jailable Class C misdemeanors.** A prohibition against needless arrests would save valuable taxpayer dollars and free law enforcement to focus more on serious and violent offenses that threaten public safety.
- **Provide public safety-related exceptions to any prohibition.** The following limited exceptions would ensure that law enforcement officers could still conduct arrests when necessary to protect the public:
 - 1) The failure to arrest the individual creates a clear and immediate danger to the offender or the public;
 - 2) The failure to arrest the individual will allow a continued breach of the public peace; and
 - 3) The inability to identify the individual.

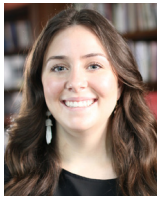
Conclusion

Outside of the presentation of clear and immediate danger, law enforcement should be prohibited from arresting and incarcerating a person for committing a minor offense requiring only a fine. Texas should move to prohibit arrests for non-jailable Class C misdemeanors in order to improve the efficiency and fairness of law enforcement as well as to prevent unnecessary strain on both jails and individuals. ★

References

- Berman, S. (n.d.). *What happens during booking?* Nolo. Retrieved August 31, 2022, from <https://www.nolo.com/legal-encyclopedia/what-happens-during-booking.html>
- HB 830. Engrossed. 87th Texas Legislature. Regular. (2021). <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=87R&Bill=HB830>
- HB 2754. Engrossed. 86th Texas Legislature. Regular. (2019). <https://capitol.texas.gov/BillLookup/History.aspx?LegSess=86R&Bill=HB2754>
- Office of Court Administration. (n.d.). *Legislative recommendations on pretrial release*. Retrieved August 31, 2022, from <https://www.txcourts.gov/media/1437088/criminal-justice-committee-one-pager.pdf>
- SB 1849. Enrolled. 85th Texas Legislature. Regular. (2017). <https://capitol.texas.gov/tlodocs/85R/billtext/pdf/SB01849E.pdf#navpanes=0>
- Texas Department of Public Safety. (n.d.). *Crime records and statistical information*. Retrieved August 31, 2022, from <https://www.dps.texas.gov/section/crime-records/crime-records-reports-and-statistical-information>
- WFAA-TV, Collister, B., & Moravec, E.R. (2019, May 6). *New cellphone video shows what Sandra Bland saw during arrest by Texas trooper*. Texas Tribune. <https://www.texastribune.org/2019/05/06/sandra-bland-shot-cell-phone-video-texas-trooper-arrest/>

ABOUT THE AUTHOR



Nikki Pressley is the Texas state director and chief of staff for Right on Crime. Her work focuses on criminal justice and juvenile justice policy.

While pursuing her graduate degree, she started as an intern for the Foundation, working on child and family policy. She earned a role as a policy analyst, focusing on various policy issues including child welfare, human trafficking, and juvenile justice.

Pressley graduated from the University of North Texas with an MS in educational psychology with a concentration in family policy and program administration and a BS in human development and family science with a concentration in family and community.

About Right On Crime

Right On Crime is a national initiative of the Texas Public Policy Foundation supporting conservative solutions for reducing crime, restoring victims, reforming offenders, and lowering taxpayer costs.

About Texas Public Policy Foundation

The Texas Public Policy Foundation is a 501(c)3 non-profit, non-partisan research institute. The Foundation promotes and defends liberty, personal responsibility, and free enterprise in Texas and the nation by educating and affecting policymakers and the Texas public policy debate with academically sound research and outreach.

Funded by thousands of individuals, foundations, and corporations, the Foundation does not accept government funds or contributions to influence the outcomes of its research.

The public is demanding a different direction for their government, and the Texas Public Policy Foundation is providing the ideas that enable policymakers to chart that new course.



**Texas Public Policy
Foundation**