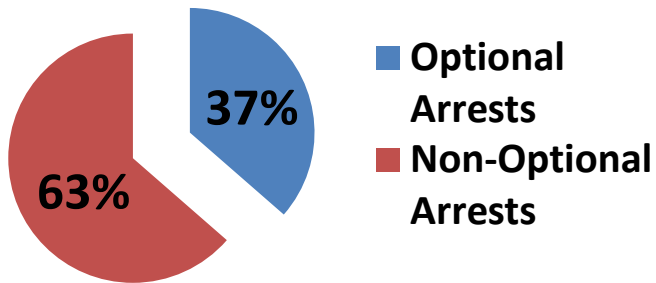


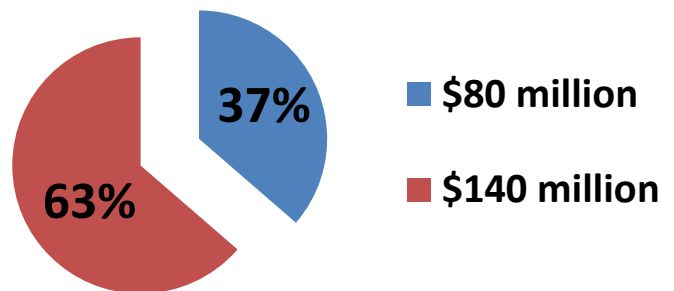
# Citation Not Taxation

Has funding become more important to the Austin Police Department than public safety?

APD Arrests 2007



APD Budget 2007-2008



The background of the page is a large, faded, light blue and white version of the Seal of the University of Texas at Austin. The seal features a central five-pointed red star on a white shield, surrounded by a blue field with a pattern of white stars. Above the shield is a scroll with the motto 'UT TEXAS SIT' and below it is a scroll with '1827'. The entire seal is encircled by a wreath and a banner at the bottom with the text 'THE UNIVERSITY OF TEXAS AT AUSTIN'.

Published July 2008

Written by Ann del Llano with editorial assistance from  
Debbie Russell, Matt Simpson, Laura Martin and Brian Rodgers.

**For more information visit: [www.KeepAustinSafe.org](http://www.KeepAustinSafe.org)**

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## What is the problem?

For many nonviolent misdemeanors, Texas peace officers have a choice when they charge you with a crime - they can issue a citation (the Citation Option) or they can place you under arrest.

### The Austin police chief allows APD to arrest and jail people who could receive a citation.

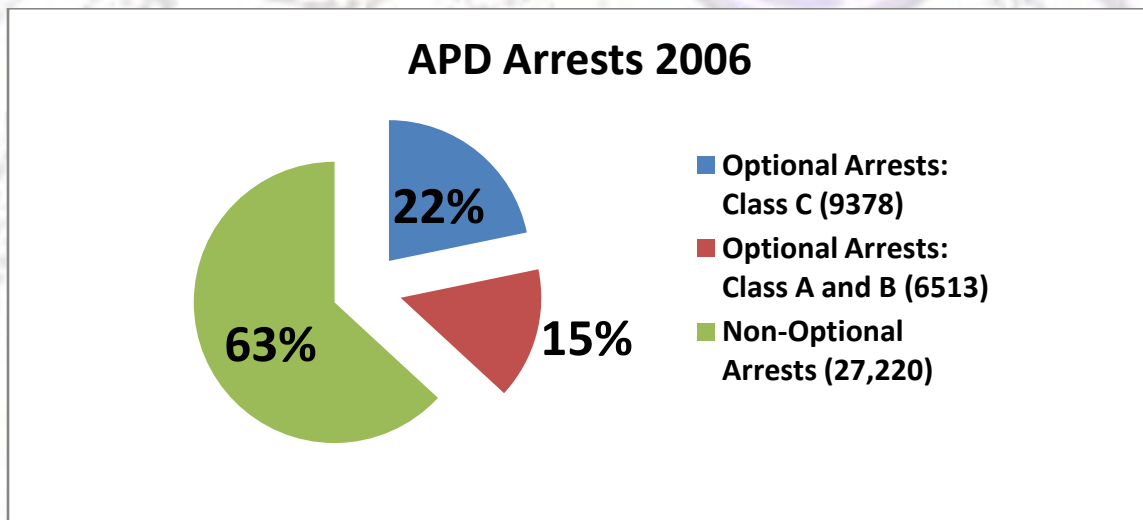
Before 2007, police only had authority to issue a citation in Class C misdemeanor cases. In 2007, the Texas legislature passed a new law which allows officers to issue a citation for certain Class A and B misdemeanors. (HB2391, 80(R); *Texas Code of Criminal Procedure*, Articles 14.06 and 15.17). Since September 1, 2007, Texas police have had authority to issue a citation for:

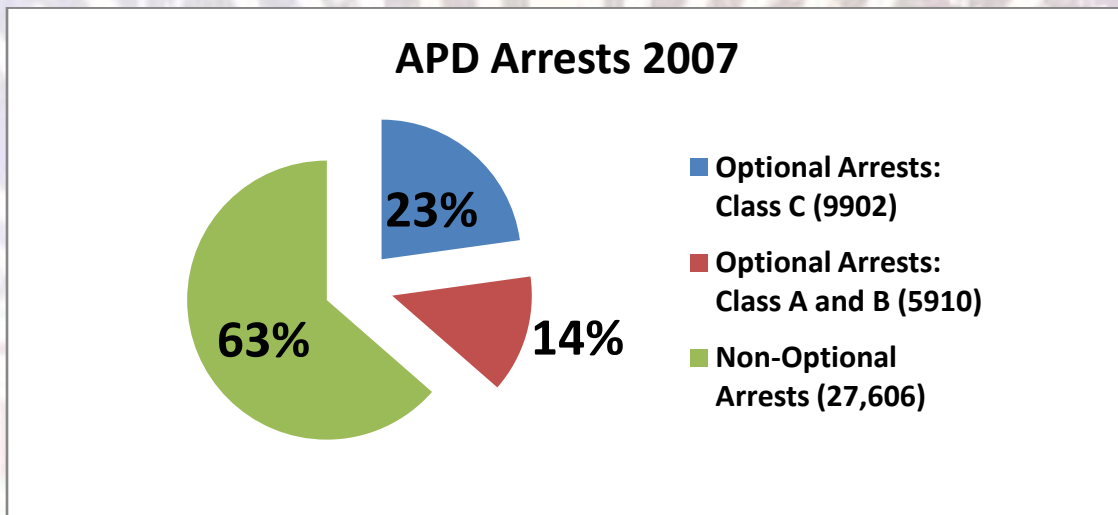
- driving without a valid license,
- possession of personal-use amounts of marijuana,
- criminal mischief, graffiti, and theft when the damage is less than \$500 (*does not include burglary of a home or car*), and
- Class B misdemeanor possession of contraband in jail.

Some of the problems with the Austin Police Department's (APD's) policy to arrest people who could be ticketed and released are outlined below.

## The Numbers

**37% - more than a third - of all of APD's arrests qualify for the Citation Option.**





Official City of Austin documents are inconsistent with regard to how many arrests APD makes each year. In the 2007-2008 budget, the city claims that APD made 58,759 arrests in the 2006-2007 fiscal year. (<http://www.ci.austin.tx.us/budget/07-08/downloads/ab0708v1.pdf>, see p. 204) In other official documents, the city claims that APD made 43,111 arrests in 2006 and 43,418 arrests in 2007 - a discrepancy of over 15,000 arrests in one year.

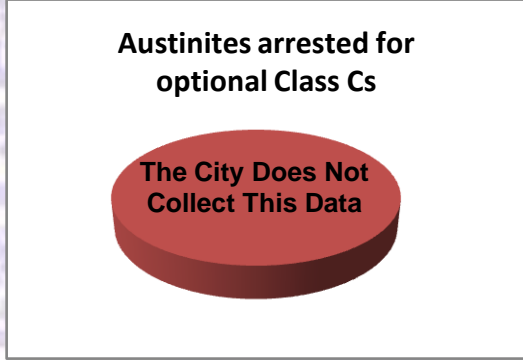
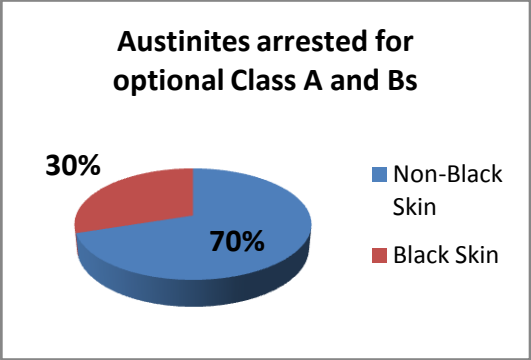
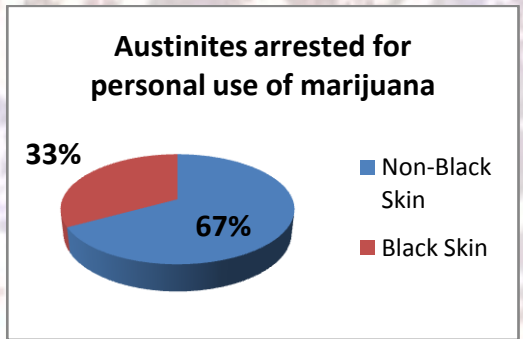
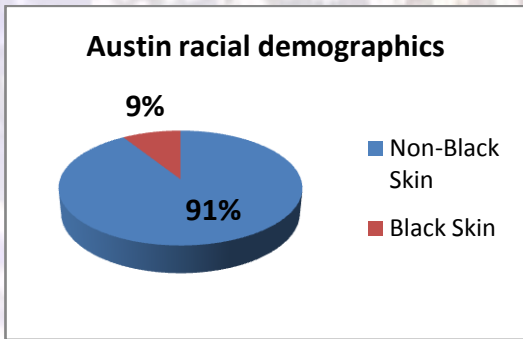
**When APD officers have a choice to cite or arrest, Blacks in Austin are more than 3 times as likely to be arrested and incarcerated than others.**

The information that the city collects about the racial breakdown of their arrests is incomplete with regard to Black people and even more incomplete with regard to Hispanic people. There have been widespread anecdotal accounts that APD has a practice of recording Hispanics as “White” in their paperwork. Because of these questions about the integrity of APD’s records with regard to Hispanic arrests, we did not analyze the Hispanic numbers for this report.

Class C arrest data is incomplete with regard to all races. Although Class C arrests are the most questionable arrests because the offense level is so low, and although Class C arrests make up almost one-quarter of all APD arrests, the City of Austin claims that it does not collect the racial breakdown of its Class C arrests (see “Is APD Violating Texas’ Racial Profiling Law?” on page 5).

For the optional Class A and B arrests, **Blacks are over 3 times more likely to be arrested than non-Blacks.**

Though Blacks and non-Blacks use marijuana at the same rate, **Black people in Austin are over 3.5 times more likely to be arrested for possession of a personal use quantity of marijuana.**



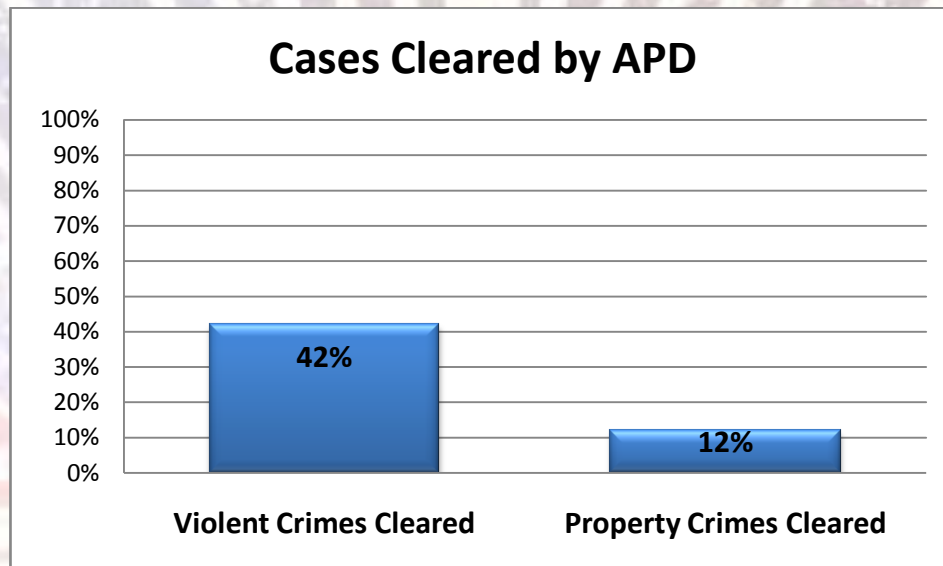
**Every day, Austin police choose to arrest four (4) adults in Austin and book them into jail for possession of small, personal use amounts of marijuana.**

Austin police officers fail to follow their own written policies when they discover a person in possession of a small quantity of marijuana for personal use. APD General Order B205 requires APD officers to cite and release a person discovered with a personal use quantity of marijuana, and charge him or her with Possession of Drug Paraphernalia. However, in both 2006 and 2007, APD reports arresting 1393 adults for possession of personal use quantities of marijuana.

## **Austin is Less Safe**

**Meanwhile, Austin police are not solving our serious crimes. APD only clears 42% of Part 1 Violent Crimes and 12% of Part 1 Property Crimes that occur in Austin.**

Austin is a more dangerous city because APD refuses to implement the Citation Option. APD officers are not available to solve violent crimes or more serious property crimes because they are busy arresting and booking people for these low-level nonviolent misdemeanor Citation Option offenses.



**Unnecessary arrests erode trust and relationships in the community.**

APD breaks down trust between itself and the community it serves when it chooses to escalate over 15,000 encounters each year into an arrest and incarceration when the situation could have been handled with a ticket. When trust between the police and the community is broken, fewer people are willing to assist APD in clearing its cases by providing crucial evidence.

People of color often fear unequal treatment by the police, due to the realities that are reflected in the information provided by the city that is described on pages 2, 3 and 5.

The immigrant community, and all people of color who might be mistaken for immigrants at the Travis County Jail, and their families have more to lose. Immigrants fear not only the traumatic ramifications of arrest and incarceration for minor Citation Option offenses, but also fear the sharp increase in detentions and deportations from the Travis County Jail by U.S. Immigration and Customs Enforcement (ICE). Because of a recent change in policy, all arrestees regardless of the seriousness of the offense are screened by ICE at the jail, resulting in a 400% increase in detainees overnight.

Austin’s immigrant community, people of color, and their families are less willing to reach out to local police when they are victims or witnesses of crime when they fear that any interaction with law enforcement could result in arrest, incarceration and/or deportation.

**Neighborhoods can breed predators as people become too afraid to report domestic violence and other violent crime,** which undermines public safety for all Austinites.

## Is APD Violating Texas' Racial Profiling Law?

Racial discrimination in the Austin Police Department's enforcement of the criminal law has been the subject of numerous studies over the past ten years, all of which show unacceptable racial profiling and excessive force toward Black people. Because APD does not collect reliable statistics about their treatment of Hispanic people, it has never been possible to accurately monitor their behavior toward Hispanics in Austin. This study shows that not only does APD choose to arrest Blacks more often than others when they have the option, but it also raises serious questions about whether APD is in compliance with Texas' racial profiling law.

State law requires APD to compile and analyze the racial breakdown of all of its arrests: "A law enforcement agency shall compile and analyze ... race or ethnicity ... the traffic law or ordinance alleged to have been violated or the suspected offense ... and whether the officer made an arrest ...." (*Texas Code of Criminal Procedure*, Art. 2.133 and 2.134)

**APD does not collect the racial breakdown of its Class C arrests** even though they make up almost 25% of the department's arrests.

In response to our public information request, the city is charging \$474.00 for 20 hours of staff time to "determine in each case in which no entry was made in the classification field if the arrest was a Class C misdemeanor or not."

At this time it is unclear whether the information that the city has previously supplied about its Class C arrest numbers for 2006 and 2007 are complete, or if the 20 hours of staff time will result in discovery of additional Class C arrests in cases "in which no entry was made in the classification field."

## The Human Toll

### What difference does an arrest make?

**For people who are applying for employment, housing and other necessities, the difference between a citation and an arrest can be life-altering.**

There is no difference in the underlying offense or court process when an officer chooses to use the Citation Option. Whether the person was arrested or cited, the record will show that they were charged with and/or convicted of the same charge.

However, applications for employment and housing are now asking if we have been arrested for any misdemeanor or felony, instead of just asking if we have been convicted of a felony. Innocent people who are arrested and then prove their innocence will still have to admit that they were arrested. If the same people are issued a citation and then proven innocent, they can truthfully answer that they have not been arrested or convicted.

For example, the Housing Authority of the City of Austin bans residents who have an arrest record. APD's failure to use the Citation Option causes those who need subsidized housing in Austin, and who were arrested when they could have been cited, to be unable to find a home for their families.

## Arrests are the Wrong Measure of Success

**APD measures its officers' success by how many arrests they make.** APD uses [arrest numbers](#) as a “performance measure” in its [patrol](#), [traffic ticket](#), [narcotics](#), and [helicopter](#) divisions. (Each arrest costs over \$40,000.00 when APD uses its helicopter.)

For budgeting and funding purposes, APD uses these performance measures to encourage more arrests each year than the year before. Unfortunately, this measure is counter-productive:

- **The arrest-number “performance measure” measures failure** because in order to fulfill the goal of arresting more people each year, there must be more crime each year. If crime went down significantly, then police could not successfully increase their arrest numbers and they would fail to meet their own expectations.
- **The arrest-number measure provides an incentive to arrest people for petty crime** rather than for serious, dangerous crime because it takes longer to investigate a high-level criminal. Officers increase their arrest numbers by arresting people for the easier low-level petty offenses.
- **The rush for high arrest numbers can be motivated by a desire to increase funding.** Ironically, for many law enforcement funding programs, increased funding comes with increased arrest numbers even if those arrests are completely unnecessary. The result is a police force that has a perverse incentive to increase funding by arresting more people and making its jurisdiction appear more dangerous than it is.

The City of Austin cannot afford to continue to measure police officer success by asking them to make more and more petty, unnecessary arrests.

## Wasted Tax Dollars

**The cost to taxpayers of failure to implement the Citation Option cannot be accurately calculated because APD does not maintain the necessary data.**

Personnel costs make up 95% of APD's budget, but in order to calculate the staff time consumed by these unnecessary arrests, we would need to know how many personnel hours, on average, go into making an arrest and booking a person into jail.

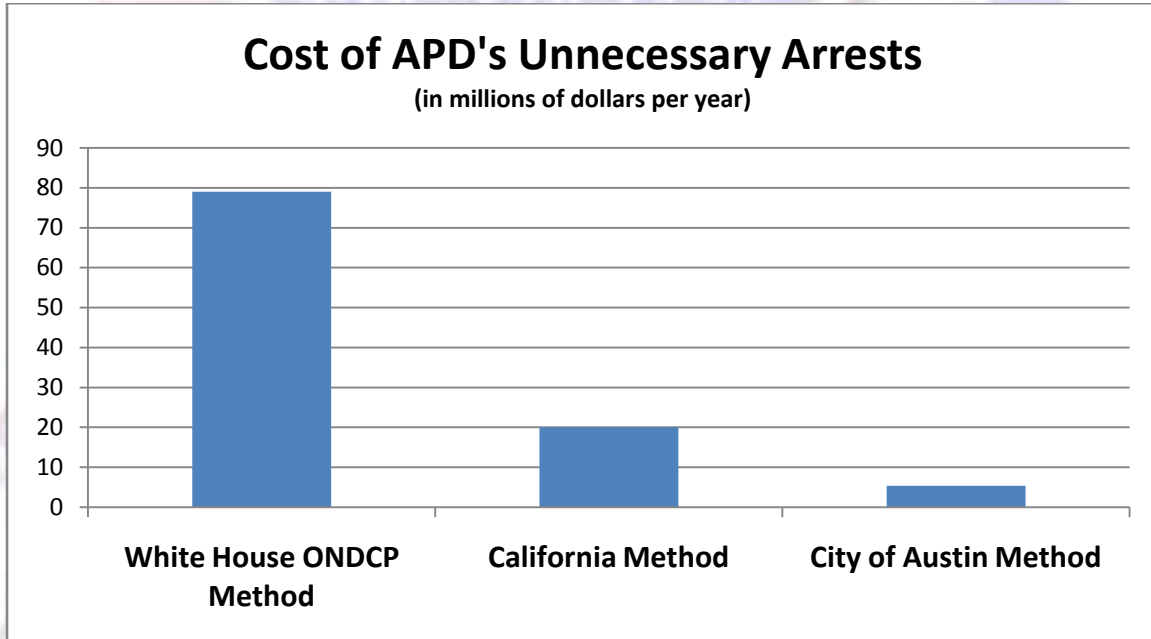
Unfortunately for the taxpayer, **APD does not know how many personnel hours go into an arrest.** In response to public information requests and City of Austin Public Safety Task Force requests, the City of Austin has admitted that it does not track how much officer time, or how many officers, are involved in making a typical arrest.

From the city's [budget](#), we learn that APD and other local law enforcement departments know precisely how long most of their average routine tasks take:

- APD takes 5.3 minutes to respond to a call
- APD takes 1 minute to process a 911 call
- APD takes 1 minute to dispatch a call
- APD takes an 40 minutes to clear a wreck on IH-35
- APD responds to 100% of its media calls within 15 minutes
- The airport police take 3 minutes to respond to calls
- The City Marshall responds to calls for transport in under 30 minutes
- The City Marshall spends just over 1 hour to transport and book an average APD arrestee

However, APD does not know how long it takes to arrest and book a person into jail – the most expensive and common activity of a patrol officer.

In the absence of actual data, there are several generally accepted methods used to estimate the cost of an arrest.



According to [the White House ONDCP method](#), APD's unnecessary arrests cost Austin taxpayers **\$80 million per year**.

The White House Office of National Drug Control Policy (ONDCP) estimates the cost of an arrest by using data published by the Bureau of Justice Statistics in the Sourcebook of Criminal Justice Statistics. The cost components are divided into numerous subcomponents and data for each of these components are refreshed. The total expenditures for police protection are then divided by the total number of arrests.

The total cost of police protection to the City of Austin is roughly \$220 million per year. If the total number of arrests in 2007 was 43,418, then the cost of the average arrest is \$5067.00. With 15,812

arrests in 2007 that qualify for the Citation Option, the total cost of unnecessary arrests is over \$80 million per year.

**According to [the California method](#), APD's unnecessary arrests cost Austin taxpayers \$20 million per year**

Many studies calculate the cost of arrest according to a [method designed by Post](#), a former legislative analyst (California Senate Select Committee) who determined that approximately one quarter of police time is devoted to the detection and apprehension of criminals, and therefore that arrest expenditures are approximately one quarter of all law enforcement expenditures.

The total cost of police protection to the City of Austin is roughly \$220 million per year and one quarter of that number is \$55 million. If the total number of arrests in 2007 was 43,418 then using this method the average arrest costs \$1267.00. With 15,812 arrests that qualify for the Citation Option, the total cost of unnecessary arrests is over \$20 million per year.

**According to the City of Austin method, APD's unnecessary arrests cost Austin taxpayers over \$5.4 million per year.**

The City of Austin budget office estimates the cost of arrest by attempting to isolate the cost of each component of the budget that is related to arrest and booking, and divide by the total number of arrests, although there are several missing components.

- **Conservative Officer Salary Estimate** A 3-year officer at straight time, without incentives or shift differential, makes \$86,782.00, but the average officer has been with APD longer than 3 years. An officer using *best practices* takes 3 hours to make an arrest [1 hour on-scene and transport + 2 hours identification and processing], but APD does not monitor for best practices. APD tends to use one or two officers per arrest so we *conservatively* calculate 4.5 hours/arrest.  $\$86,782/2000 = \$43.40$  per hour X 4.5 hours = **\$195.30 per arrest**
- **Fingerprinting and ID** City documents differ on this number, indicating \$10.56, \$11.10 and \$11.70. **\$11.10 per arrest**
- **Cost per Report Reviewed by Operational Staff** **\$14.64 per report**

### The Kenneth Stewart Story

**Kenneth Stewart would not have lost his life inside the Travis County jail if APD had implemented the Citation Option.**

On September 7, 2007, after many law enforcement departments in Texas had already implemented the Citation Option, Kenneth Stewart was charged with three misdemeanors that are all covered by the Citation Option: Class C drinking a beer at a bus stop, Class B possession of marijuana for less than half an ounce, and Class C possession of a small marijuana pipe.

Kenneth Stewart was arrested and incarcerated in the Travis County Jail, where he lost his life shortly after being jailed. The Travis County Medical Examiner's Office said it appeared that Stewart died of natural causes.

If APD had implemented the Citation Option and issued a citation to Kenneth Stewart instead of arresting him, he would not have died behind bars inside the Travis County Jail.

- **Booking Services** Based on the FY2007 booking agreement with Travis County divided by the actual City of Austin bookings for FY2007. **\$104.45 per arrest**
- **Cost of Magistration** Total cost of Austin magistration services in FY2007 was \$1,060,793.00, and the number of Travis County bookings was 60,807. **\$17.45 per person**
- **City Marshall Transportation** 2100 calls per year are made to the City Marshall to transport APD arrestees to booking. These costs were not included by the city.
- **Support Staff, Equipment and Supplies** These costs were not included by the city.
- **Incarceration** These costs are not tracked by the city, they are paid by Travis County.

Thus, according to the City of Austin method and numbers, the partial cost of each arrest is \$342.94 and the partial cost of all unnecessary arrests each year is over \$5.4 million. However, the City of Austin method leaves out: (1) the cost of the average police officer salary, (2) City Marshall costs for transporting APD arrestees, (3) costs of incarceration, (4) costs of the support staff required to support officer time on the street such as staff for payroll and accounting, press liaisons, janitorial and maintenance services, and other support, and (5) costs of equipment and supplies such as cars, radios, computers, helicopters and criminal record databases.

**If a new police officer cost taxpayers \$100,000.00, then \$80 million could fund 800 new officers, \$20 million could fund 200 new officers, and even the City's lowest partial estimate of \$5.4 million could fund 54 new full-time Austin police officers.**

## **Chief Acevedo Has Full Authority to Implement the Citation Option**

**Every day that Chief Acevedo refuses to fully implement the Citation Option in Austin, over 40 Austinites are unnecessarily arrested and incarcerated.**

APD Chief Art Acevedo has authority to make this choice for Austin - he does not need permission or legal authority from any outside person or entity.

**We need your help to change this - it's easy, fast and free!**

- [Ask Chief Acevedo to Implement the Citation Option](#)
- **Learn more:** [www.KeepAustinSafe.org](http://www.KeepAustinSafe.org)
- **Get updates and comment on the blog:** <http://www.KeepAustinSafe.blogspot.com/>
- [Join the List of Supporting Organizations](#)

## Supporting Organizations

These organizations have offered their support of the Citation Option in Austin:

- ACLU of Texas, Central Texas Chapter
- Austin Criminal Defense Lawyers Association
- Austin Immigrant Rights Coalition (a coalition of dozens of organizations)
- City of Austin Human Rights Commission
- Grits for Breakfast
- LULAC, District 7
- LULAC, District 12
- PODER
- Texas Civil Rights Project
- Texas Jail Project

During the 2007 Texas legislative session, these organizations officially supported the new statewide Citation Option law, HB2391:

- Combined Law Enforcement Associations of Texas (CLEAT)
- Travis County Commissioners Court
- Travis County Sheriff's Office
- Travis County Sheriff's Law Enforcement Association
- Houston Police Officers Union
- Texas State Lodge & Fraternal Order of Police
- Texas Conference of Urban Counties
- Texans for Public Safety Solutions
- Texas Public Policy Foundation, Center for Effective Justice
- Texas Criminal Justice Coalition
- Texas Criminal Defense Lawyers Association
- Texas Fair Defense Project
- American Civil Liberties Union of Texas



## **New Written Policy: APD General Orders**

APD officers are governed by written policies called General Orders. The General Orders regarding citation and arrest should be officially amended to reflect full implementation of the Citation Option. The new written policy should be:

1. Unless an officer is (a) removing the imminent threat of violence, (b) preventing a person from endangering themselves or others, or (c) cannot positively identify a violator after following the procedures in 2. below, an officer shall issue a citation to a person the officer charges with:
  - 1) a Class C misdemeanor;
  - 2) possession of four (4) ounces or less of marijuana;
  - 3) criminal mischief if the amount of pecuniary loss is less than \$500;
  - 4) graffiti if the amount of pecuniary loss is less than \$500;
  - 5) theft if the value of the property stolen is less than \$500;
  - 6) theft of service if the value of the service stolen is less than \$500;
  - 7) contraband in a correctional facility if the offense is punishable as a Class B misdemeanor;
  - 8) driving while license invalid; or
  - 9) the person is detained for Class B Shoplifting and meets the criteria for filing of "Attempted Class B Shoplifting/Theft" as set out in Department Policy B205 Misdemeanor Citations, section .04. [#9 is a continuation of current General Order language.]
2. Every effort should be made by the officer to positively identify the subject at the scene to avoid arrest. If an officer cannot identify a person who is charged with one of the above violations, the officer may arrest the person and shall take the person to the ID Section at the main booking station to verify the identity of the person, and then release the person with a citation and without booking the person into jail.
3. Officers shall clearly articulate the reason(s) for any arrest where state law provides for issuance of a citation instead of making an arrest.