

HOUSE BILL REPORT

SHB 2094

As Passed Legislature

Title: An act relating to detaining a person for the purpose of allowing a law enforcement investigation.

Brief Description: Allowing detention of persons at outdoor music venues for investigation of drug and alcohol violations.

Sponsors: By House Committee on Criminal Justice & Corrections (originally sponsored by Representatives Holmquist, O'Brien, Hinkle, Darneille, Lovick and Ahern).

Brief History:

Committee Activity:

Criminal Justice & Corrections: 3/4/03, 3/5/03 [DPS].

Floor Activity:

Passed House: 3/13/03, 84-12.

Senate Amended.

Passed Senate: 4/17/03, 41-4.

House Concurred.

Passed House: 4/22/03, 95-2.

Passed Legislature.

Brief Summary of Substitute Bill

- Provides a defense to a civil or criminal action brought by reason of a person being detained because he or she is suspected of consuming alcohol or drugs at an outdoor music festival.

HOUSE COMMITTEE ON CRIMINAL JUSTICE & CORRECTIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives O'Brien, Chair; Darneille, Vice Chair; Mielke, Ranking Minority Member; Ahern, Assistant Ranking Minority Member; Kagi, Lovick and Pearson.

Staff: Jim Morishima (786-7191).

Background:

A person who detains another person may be subject to both criminal and civil liability.

Criminal Liability

A person can be held criminally liable for detaining another person under a variety of circumstances. For example, a person who knowingly restrains another person is guilty of unlawful imprisonment. Unlawful imprisonment is a class C felony with a seriousness level of III.

In a criminal action brought by reason of a person having been detained on the premises of a mercantile establishment for the purposes of investigating whether the person shoplifted merchandise, it is a defense that:

- The person was detained in a reasonable manner;
- The person was detained no longer than a reasonable time to permit the investigation by a peace officer, the owner, or the owner's authorized employee or agent; and
- The peace officer, owner, or owner's employee or agent had reasonable grounds to believe the person was shoplifting.

Civil Liability

A person who detains another person can also be held civilly liable. For example, a person who intentionally confines or restrains another person in a bounded area can be held liable for false imprisonment. A person is not confined if there is a reasonable means of escape of which he or she is aware. However, if the person is being restrained by threat of force, the plaintiff is under no duty to resist the application of force or test the sincerity of threats of force when the defendant has the apparent ability to effectuate his or her threats.

In a civil action brought by reason of a person having been detained on the premises of a mercantile establishment for the purposes of investigating whether the person shoplifted merchandise, it is a defense that:

- The person was detained in a reasonable manner;
- The person was detained no longer than a reasonable time to permit the investigation by a peace officer, the owner, or the owner's authorized employee or agent; and
- The peace officer, owner, or owner's employee or agent had reasonable grounds to believe the person was shoplifting.

Summary of Substitute Bill:

Criminal Liability

In a criminal action brought against the detainer by reason of a person having been detained on or in the immediate premises of an outdoor music festival or related

campground for the purposes of pursuing an investigation or questioning by a law enforcement officer as to the lawfulness of the consumption of alcohol or illegal drugs, it is a defense that:

- The person was detained in a reasonable manner;
- The person was detained no longer than a reasonable time to permit the investigation or questioning by a law enforcement officer, (this time may not exceed one hour); and
- A peace officer, owner, operator, employee, or agent of the outdoor music festival had reasonable grounds to believe that the person was committing or attempting to unlawfully consume or possess alcohol or illegal drugs on the premises. Reasonable grounds include, but are not limited to, exhibiting the effects of having consumed liquor and exhibiting the effects of having consumed illegal drugs.

Outdoor music festival– is defined as an assembly of persons gathered primarily for outdoor live or recorded musical entertainment, where the predicted attendance is 2,000 persons or more. The definition does not apply to any regularly established permanent place of worship, stadium, athletic field, arena, auditorium, coliseum, or other similar permanently established places of assembly for assemblies that do not exceed, by more than 250 people, the maximum seating capacity of the structure where the assembly is held. The definition also does not apply to government sponsored fairs held on regularly established fairgrounds and assemblies required to be licensed under state laws or regulations other than chapter 70.108 RCW.

Civil Liability

In a civil action brought against the detainers by reason of a person having been detained on or in the immediate premises of an outdoor music festival or related campground for the purposes of pursuing an investigation or questioning by a law enforcement officer as to the lawfulness of the consumption of alcohol or illegal drugs, it is a defense that:

- The person was detained in a reasonable manner;
- The person was detained no longer than a reasonable time to permit the investigation or questioning by a law enforcement officer, (this time may not exceed one hour); and
- A peace officer, owner, operator, employee, or agent of the outdoor music festival had reasonable grounds to believe that the person was committing or attempting to unlawfully consume or possess alcohol or illegal drugs on the premises. Reasonable grounds include, but are not limited to, exhibiting the effects of having consumed liquor and exhibiting the effects of having consumed illegal drugs.

Outdoor music festival– is defined as an assembly of persons gathered primarily for outdoor live or recorded musical entertainment, where the predicted attendance is 2,000 persons or more. The definition does not apply to any regularly established permanent place of worship, stadium, athletic field, arena, auditorium, coliseum, or other similar permanently established places of assembly for assemblies that do not exceed, by more than 250 people, the maximum seating capacity of the structure where the assembly is held. The definition also does not apply to government sponsored fairs held on regularly

established fairgrounds and assemblies required to be licensed under state laws or regulations other than chapter 70.108 RCW.

Appropriation: None.

Fiscal Note: Not Requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Testimony For: Outdoor music venues like the Gorge can hold up to 35,000 people at a time. Security and law enforcement at these venues are facing a crisis. Some people come not for the concert, but for the party. There have been robberies, rapes, assaults, and even murders at outdoor music venues. Also, in some venues, limited road access makes quelling an incident involving civil unrest problematic. Property owners in surrounding areas have also had problems. Currently, security at these venues are unable to detain people illegally using drugs and alcohol and some venues are even facing civil lawsuits. This bill helps to ensure public safety and maintain the viability of the music venues by allowing security to remove drug and alcohol violators. The bill also protects the rights of the detainees by allowing detention only in a reasonable manner and for no more than two hours.

Testimony Against: None.

Testified: Representative Holmquist, prime sponsor; Teddy Chow and John Knodell Grant County Prosecuting Office; and Ken Kernan, Grant County Sheriffs Office.