

# SENATE BILL REPORT

## SHB 2094

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As Reported By Senate Committee On:  
Judiciary, April 2, 2003

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

**Brief History:**

**Committee Activity:** Judiciary: 3/28/03, 4/2/03 [DPA].

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### SENATE COMMITTEE ON JUDICIARY

**Majority Report:** Do pass as amended.

Signed by Senators McCaslin, Chair; Esser, Vice Chair; Brandland, Hargrove, Haugen, Johnson, Kline, Roach and Thibaudeau.

**Staff:** Jinnah Rose-McFadden (786-7421)

**Background:** A person can be held criminally liable for unlawful imprisonment, by knowingly detaining another person. Unlawful imprisonment is a class C felony, ranked at level III.

Similarly, a person can be held civilly liable for false imprisonment, by intentionally confining or detaining another person in a bounded area. A person is not confined if there is a reasonable means of escape of which he or she is aware. However, if detained by threat of force, the person being detained is under no duty to resist the application of force or test the sincerity of threats of force when there is apparent ability to effectuate the threats.

In some circumstances, a defendant accused of detaining or confining another may assert an affirmative defense. Where a criminal or civil action is brought by a plaintiff who was detained on the premises of a mercantile establishment due to shoplifting allegations, those who confined or detained the plaintiff may assert that:

- the plaintiff was detained in a reasonable manner;
- the plaintiff 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
- a peace officer, owner, or owner's employee or agent had reasonable grounds to believe the plaintiff was shoplifting.

**Summary of Amended Bill:** A new affirmative defense is created. Where a criminal or civil action is brought by a plaintiff who was detained on or in the immediate premises of an outdoor music festival, or related campground, for the purpose of investigation by a law enforcement officer regarding the consumption of alcohol or illegal drugs, those who confined or restrained the plaintiff may assert an affirmative defense that:

- the plaintiff was detained in a reasonable manner;
- the plaintiff 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 plaintiff was committing or attempting to commit unlawful consumption or possession of 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.

**Amended Bill Compared to Original Bill:** The amended bill replaces the term "outdoor music venue" with "outdoor music festival," a term defined in statute as an assembly of persons gathered for live musical entertainment, where: (1) the predicted attendance is 2,000 people; and (2) the duration of the program is five hours or longer. However, the requirement that the program last five hours does not apply to this bill.

Additionally, the amended bill clarifies that the affirmative defense is available to the detaining person.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This bill was written mainly for the Gorge Amphitheater and campground. The Gorge is on private land and employs a private security firm for concert/event security; neither county nor city police officers patrol the area on a routine basis. Under current law, private security does not have the authority to arrest or detain a person for acts constituting misdemeanors. While private security may detain or arrest for violent behavior, there is no ability to pro-actively arrest or detain a person, without fear of civil or criminal action, for the improper use or consumption of alcohol or illegal drugs. Improper use of these substances can lead to violent occurrences. Allowing security to detain patrons who improperly use or consume alcohol or illegal drugs will protect the patrons of the Gorge.

**Testimony Against:** None.

**Testified:** PRO: Teddy Chow, Grant County Prosecutors Office; John Knodell, Grant County Prosecutors Office; Mike Shay, Grant County Sheriff Department.