

SENATE BILL REPORT

SHB 2057

As of February 21, 2014

Title: An act relating to arrest without warrant.

Brief Description: Modifying arrest without warrant provisions.

Sponsors: House Committee on Public Safety (originally sponsored by Representatives Hayes, Hurst, Klippert, Holy, Van De Wege and Hope).

Brief History: Passed House: 2/12/14, 93-4.

Committee Activity: Law & Justice: 2/21/14.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Kelly Walsh (786-7755)

Background: In *State v. Ortega*, there was the question as to whether an officer has lawful authority to arrest a gross misdemeanor suspect based only on the observations of another officer and whether an officer who directs an arrest from a remote location is an arresting officer. Unless a statutory exception applies, an officer may arrest a misdemeanor suspect without a warrant only if the offense was committed in the officer's presence. In *Ortega*, a police officer positioned on the second floor of a building observed Mr. Ortega commit acts that gave the officer probable cause to believe he was engaged in drug-traffic loitering, a gross-misdemeanor offense. The observing officer described Mr. Ortega's actions to fellow officers on the street via radio and instructed them to arrest Mr. Ortega based on what he had observed. Mr. Ortega was searched incident to arrest. Officers located crack cocaine and cash on Mr. Ortega.

The trial court denied Mr. Ortega's motion to suppress the evidence located during the search on the basis of an invalid arrest. He was subsequently convicted of the felony crime of possession of cocaine with intent to deliver. The Court of Appeals affirmed the conviction. The Supreme Court of Washington (Court) reversed the Court of Appeals conviction. The Court held that the arrest was unlawful because the officer who arrested Mr. Ortega was not present when the gross misdemeanor occurred, and the record did not support a finding that the officer who observed the offense was an arresting officer. Out of concern for this result, the concurring opinion of the Court encouraged the Legislature to consider an amendment to the statute.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Summary of Bill: A police officer is authorized to arrest a person without a warrant when a misdemeanor or gross-misdemeanor offense is committed in the presence of a police officer, but not necessarily in the presence of the arresting officer.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: The *Ortega* case created a large issue for police by affecting their ability to utilize teamwork. The practice of surveillance that raised this issue in *Ortega* is used by law enforcement in many situations. Law enforcement already has the authority to use this practice with traffic offenses, felony offenses, and some misdemeanor offenses. Law enforcement needs the change represented by this bill to do their job effectively. This is a practical investigatory issue and does not have an adverse affect on civil rights. When there is surveillance for any investigation, prosecutors and police are much more comfortable if the arrest is made by uniform officers, rather than a plain clothes detective conducting surveillance or undercover work, because it has a tendency to deescalate the situation and not cause confusion. Additionally, without this change an undercover officer would have to blow their cover in order to arrest the offender in many situations. Police officers have always been taught that what one police officer knows, all police officers know.

Persons Testifying: PRO: Representative Hayes, prime sponsor; Tom McBride, WA Assn. of Prosecuting Attorneys; Don Pierce, WA Assn. of Sheriffs and Police Chiefs.