

HOUSE BILL REPORT

SHB 2567

As Passed Legislature

Title: An act relating to the courts open to all act.

Brief Description: Concerning open courts.

Sponsors: House Committee on Civil Rights & Judiciary (originally sponsored by Representatives Thai, Santos, Ryu, Valdez, Pollet, Davis, Wylie, Gregerson, Slatter, Lekanoff, Ortiz-Self, Frame, Mead and Kloba).

Brief History:

Committee Activity:

Civil Rights & Judiciary: 1/22/20, 2/5/20 [DPS].

Floor Activity:

Passed House: 2/17/20, 55-43.

Passed Senate: 3/4/20, 28-20.

Passed Legislature.

Brief Summary of Substitute Bill

- Prohibits civil arrests inside or near state court facilities, unless certain conditions apply.
- Except in certain circumstances, prohibits judges, court staff, court security personnel, and prosecutor's office staff from inquiring into or collecting immigration or citizenship status information.
- Except as provided by law, prohibits judges, court staff, court security personnel, and prosecutor's office staff from disclosing nonpublic personal information about an individual to immigration authorities.
- Establishes court processes in the event of state or federal law enforcement action at court facilities, including reporting requirements, and requires the Administrative Office of the Courts to publish collected information on a quarterly basis.

HOUSE COMMITTEE ON CIVIL RIGHTS & JUDICIARY

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.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Kilduff, Chair; Thai, Vice Chair; Goodman, Hansen, Kirby, Orwall, Peterson, Valdez and Walen.

Minority Report: Do not pass. Signed by 6 members: Representatives Irwin, Ranking Minority Member; Dufault, Assistant Ranking Minority Member; Graham, Klippert, Rude and Ybarra.

Staff: Ingrid Lewis (786-7289).

Background:

Common Law Civil Arrests.

A civil arrest is the arrest and detention of a defendant in a civil lawsuit. Rooted in English common law, litigants would commence a civil lawsuit by having a civil defendant arrested, usually in the context of debt collection. A writ of *capias ad respondendum*, according to *Black's Law Dictionary* (7th edition), is a court order that commanded a sheriff to imprison a defendant until bail was posted or the judgement was satisfied.

Washington State Civil Arrests.

The term civil arrest is not defined in statute. Presently, civil lawsuits are generally commenced by the filing of a complaint and issuance of a summons, and the common law practice of civil arrest is rarely used, although there are statutes that allow for a civil arrest warrant to be issued. For example, the court, in a family law proceeding to restrain a person from leaving the jurisdiction of the court, may order the arrest and detention of the obligor and/or require the posting of sufficient security to assure performance of any legal, equitable, or statutory obligation. In addition to ordering a debtor to appear in a supplemental proceeding after a monetary judgment is entered, a court may issue a bench warrant for the debtor's arrest if it appears from the affidavit of the creditor, agent, or attorney that there is a danger of the debtor absconding.

Immigration and Customs Enforcement.

Federal law prohibits any state or local law from restricting any government entity or official from sending or receiving information to Immigration and Customs Enforcement (ICE) regarding an individual's lawful or unlawful citizenship or immigration status. No person or agency may prohibit or restrict a federal, state, or local government entity from sending or requesting information from ICE about an individual's immigration status, or maintaining information exchanged with ICE, or exchanging information about an individual's immigration status with any other federal, state, or local entity.

Disclosure of Citizenship and Immigration Status in Washington.

State and local law enforcement agencies and school resource officers may not provide information to federal immigration authorities for civil immigration enforcement or provide nonpublic personal information about an individual to federal immigration authorities in noncriminal matters unless required by law. In addition, law enforcement agencies may not inquire into or collect information about an individual's immigration or citizenship status or place of birth, unless there is a connection between the information and a criminal investigation.

The restrictions placed on the disclosure of information by a state agency or department are not applicable if the disclosure of the information is: required to comply with state and federal law; in response to a court order; necessary to perform nonimmigration enforcement-related agency or department duties or functions; or required to comply with any requirement necessary to maintain funding.

Summary of Substitute Bill:

The Legislature makes findings on the following: the importance of keeping Washington courts open, accessible, and free from interruption; that civil arrests at court facilities create a climate of fear that deters residents from interacting with the justice system; and that it is imperative that all members of the community feel safe coming to, remaining at, and returning from court.

No person shall be subject to civil arrest while going to, remaining at, or returning from, a court facility. "Civil arrest" is defined as the arrest of a person for an alleged violation of civil law. A civil arrest is not an arrest for an alleged violation of criminal law, nor is it an arrest for contempt of the court in which a court proceeding is taking place or will be taking place. "Going to" and "returning from" a facility includes the area within one mile of the facility. Provisions do not apply to arrests made pursuant to a valid court order, or in the interests of imminent risk to public safety, or pursuant to a warrantless arrest permitted by state law. Prior to any civil arrest, a designated judicial officer shall review the court order authorizing the civil arrest to confirm compliance with the act.

Court processes are established in the event of state or federal law enforcement action at court facilities. "Law enforcement action" includes but is not limited to observation of court proceedings, investigation, questioning, and arrests by law enforcement agents acting in their official capacity.

The governmental entity responsible for the security of the court facility is required to collect information from all on-duty state and federal law enforcement officers, including plainclothes officers, entering court facilities. Law enforcement officers participating in a case or proceeding before the court are excluded from the information collection requirement. Information to be collected must include the name of the law enforcement officer, agency, date, time, the specific law enforcement purpose, and the proposed law enforcement action to be taken. The Administrative Office of the Courts (AOC) is required to develop a standard form to collect the information no later than July 1, 2020. Information collected must not include personally identifying information concerning the individual who was the target of the action. Completed forms must be transmitted to the AOC monthly, and the AOC is required to publish the information in a quarterly report beginning October 1, 2020. Designated court staff must immediately be notified if a law enforcement agent is present in the court for the purpose of conducting a civil arrest.

Disclosure of Citizenship and Immigration Status.

Judges, court staff, court security personnel, prosecutors, and prosecutor's office personnel are prohibited from inquiring into or collecting immigration or citizenship status information, or place of birth, unless there is a connection between the information and a criminal

investigation. A judge may make inquiries if necessary to adjudicate matters within his or her jurisdiction. The court may obtain limited disclosure of any information regarding immigration status as it deems appropriate to protect the liberty interests of participants in a proceeding.

Except as provided by law, judges, court staff, court security personnel, prosecutors, and prosecutor's office personnel are also prohibited from providing nonpublicly available personal information about an individual to Immigration and Customs Enforcement (ICE) for the purposes of civil immigration enforcement and are prohibited from notifying ICE of the presence of individuals attending proceedings or accessing court services in court facilities.

The act does not limit or prohibit any state or local agency or officer from sending to and receiving information from ICE; exchanging information with other federal, state, or local government agencies about the immigration or citizenship status of an individual; or complying with any other state or federal law.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill will improve access to justice in communities, ensure the smooth functioning of the judicial system, and help protect the rights and dignity of Washington residents.

There have been over 200 documented civil arrests at courthouses in at least 18 counties in the last two years. A nonprofit's statewide hotline has received over 100 calls reporting arrests in and around the courthouses in urban and rural communities, particularly in the areas of Othello, Moses Lake, and Ephrata. Plainclothes immigration enforcement agents are making civil arrests in and around courthouse grounds, creating an environment of fear and deterring people from coming to court.

Law enforcement has a vested interest in ensuring that all communities in our state feel safe and that people feel comfortable and safe accessing government services. When law enforcement is effectuating a criminal courthouse arrest it is done professionally. Arrests by federal agents have been unsafe and create a ripple effect, because agents use excessive force. An individual who went to a courthouse to renew a license plate was arrested by a plainclothes immigration officer and was detained for 48 hours. The individual was afraid to return to the courthouse to pay a traffic infraction fine after the incident. A defendant was arrested by immigration officials after a court appearance. It was a volatile event that caused significant disruption. Arrests are described as kidnappings because agents in plain clothes identify themselves after the fact, do not present a judicial warrant, and forcefully take people away in unmarked cars.

Warrantless civil arrests being conducted in and around courthouses have a direct and immediate chilling impact on the willingness of individuals to seek justice and safety through the courts. These include vulnerable and underserved members of society, including victims of domestic violence, sexual assault, human trafficking, and other crimes. Victims rely on access to the courts in order to obtain protection orders, divorces, and restrictive parenting plans to ensure their family's safety. The growing influence and enforcement activities in courts has resulted in significant numbers of people in immigrant communities being unwilling to use the court system for fear of getting separated. Domestic violence victims declined to file cases; abusers weaponize the fear of immigration enforcement in courts to prevent victims and witnesses from testifying; and people limit the remedies that they are seeking.

Also impacted are people who face civil legal problems such as eviction, debt collection, probate, and child welfare. It is no longer safe for people to resolve civil matters. People called to testify in criminal cases fail to appear due to the threat of civil arrest, which can result in the dismissal of criminal charges.

Warrantless civil arrests run contrary to public policy ensuring access to justice, protecting the rights of litigants and witnesses, and preserving the dignity and decorum in the courts. The state should promote and protect meaningful and unfettered access to justice, regardless of status. The concepts in the bill are a priority for the judicial branch. The former Chief Justice recently wrote to federal immigration enforcement agencies to express the paramount importance of everyone having access to courts.

This bill codifies the ancient writ of protection and writ of prohibition which have been recognized by both the United States (US) Supreme Court and Washington Supreme Court. The writs protect the rights of people to access the courts, prevent people from being arrested, and allows for the effective administration of justice in order for the courts to properly carry out their mission.

The US Supreme Court has also recognized that the unhindered functioning of our courts is part of the foundation of our constitutional democracy. States may adopt measures necessary and appropriate to safeguard the administration of justice by the courts. The Legislature and the judiciary have a joint responsibility to ensure the proper functioning of our state's justice system. While court administration and access to justice are inherent powers of the court, they are not exclusive to the courts. The Washington Supreme Court has permitted legislative oversight of administrative functions of the judiciary. This bill relates to the administrative, rather than the adjudicative, functions of courts and judges. Protecting access to justice and a functional judicial system are police powers of the state protected by the Tenth Amendment. This bill does not violate separation of powers, nor does it interfere with local law enforcement.

(Opposed) This is a separation of powers concern to the extent that it constrains judicial officers, personnel staff, and operations. These are matters most appropriately regulated in court rule. There are already court rules about when immigration status may or may not be inquired after, as well as rules pertaining to how information is disseminated consistent with the Constitution.

The bill misunderstands the staffing and resources available at most local courthouses. Many local courthouses do not have courthouse security staff or anyone to delegate the responsibilities contemplated for record collection and publication.

This bill affects both state and local law enforcement agencies. The definition of civil arrest in the one-mile range surrounding a courthouse may prevent a simple traffic stop.

Many city municipal courts are colocated within the same building as the police department, and every county sheriff's office is headquartered in a courthouse. This bill requires information collection every time a law enforcement officer comes in or out, which is inefficient and potentially dangerous. The notification would disrupt ongoing criminal investigations where an agency has undercover officers in plain clothes or whose operation includes the courthouse.

Most of this bill is aimed at the federal government. The supremacy clause makes the bill unenforceable, and communities will be given a false sense of security.

Persons Testifying: (In support) Representative Thai, prime sponsor; Eric Gonzalez; Carlos; Enoka Herat, American Civil Liberties Union of Washington; Patrick O'Connor, Thurston County Public Defender's Office; Vanessa Hernandez, Northwest Justice Project; Brenda Rodriguez-Lopez, Washington Immigrant Solidarity Network; Jim Bamberger, Office of Civil Legal Aid; and Annie Benson, Washington Defender Association.

(Opposed) Dory Nicpon, Board for Judicial Administration; and James McMahan, Washington Association of Sheriffs and Police Chiefs.

Persons Signed In To Testify But Not Testifying: None.