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ENGROSSED HOUSE BILL 1550

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State of Washington

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By Representatives Smith, Scott, Blanton, Benton, Campbell, Mielke, Huff, Lambert, Sheahan, Robertson, Carrell, McMahan, Padden, Delvin, Thompson and Kremen

Read first time 01/30/95. Referred to Committee on Law & Justice.

1 AN ACT Relating to authority of police to arrest without a warrant;  
2 reenacting and amending RCW 10.31.100; and providing an effective date.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 10.31.100 and 1993 c 209 s 1 and 1993 c 128 s 5 are  
5 each reenacted and amended to read as follows:

6 A police officer having probable cause to believe that a person has  
7 committed or is committing a felony shall have the authority to arrest  
8 the person without a warrant. A police officer may arrest a person  
9 without a warrant for committing a misdemeanor or gross misdemeanor  
10 only when the offense is committed in the presence of the officer,  
11 except as provided in subsections (1) through (10) of this section.

12 (1) Any police officer having probable cause to believe that a  
13 person has committed or is committing a misdemeanor or gross  
14 misdemeanor, involving physical harm or threats of harm to any person  
15 or property or the unlawful taking of property or involving the use or  
16 possession of cannabis, or involving the acquisition, possession, or  
17 consumption of alcohol by a person under the age of twenty-one years  
18 under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070  
19 or 9A.52.080, shall have the authority to arrest the person.

1 (2) A police officer shall arrest and take into custody, pending  
2 release on bail, personal recognizance, or court order, a person  
3 without a warrant when the officer has probable cause to believe that:

4 (a) An order has been issued of which the person has knowledge  
5 under RCW 10.99.040(2), 10.99.050, 26.09.060, 26.44.063, chapter 26.26  
6 RCW, or chapter 26.50 RCW restraining the person and the person has  
7 violated the terms of the order restraining the person from acts or  
8 threats of violence or excluding the person from a residence or, in the  
9 case of an order issued under RCW 26.44.063, imposing any other  
10 restrictions or conditions upon the person; or

11 (b) The person is eighteen years or older and within the preceding  
12 four hours has assaulted that person's spouse, former spouse, or a  
13 person eighteen years or older with whom the person resides or has  
14 formerly resided and the officer believes: (i) A felonious assault  
15 has occurred; (ii) an assault has occurred which has resulted in bodily  
16 injury to the victim, whether the injury is observable by the  
17 responding officer or not; or (iii) that any physical action has  
18 occurred which was intended to cause another person reasonably to fear  
19 imminent serious bodily injury or death. Bodily injury means physical  
20 pain, illness, or an impairment of physical condition. When the  
21 officer has probable cause to believe that spouses, former spouses, or  
22 other persons who reside together or formerly resided together have  
23 assaulted each other, the officer is not required to arrest both  
24 persons. The officer shall arrest the person whom the officer believes  
25 to be the primary physical aggressor. In making this determination,  
26 the officer shall make every reasonable effort to consider: (i) The  
27 intent to protect victims of domestic violence under RCW 10.99.010;  
28 (ii) the comparative extent of injuries inflicted or serious threats  
29 creating fear of physical injury; and (iii) the history of domestic  
30 violence between the persons involved.

31 (3) Any police officer having probable cause to believe that a  
32 person has committed or is committing a violation of any of the  
33 following traffic laws shall have the authority to arrest the person:

34 (a) RCW 46.52.010, relating to duty on striking an unattended car  
35 or other property;

36 (b) RCW 46.52.020, relating to duty in case of injury to or death  
37 of a person or damage to an attended vehicle;

38 (c) RCW 46.61.500 or 46.61.530, relating to reckless driving or  
39 racing of vehicles;

1 (d) RCW 46.61.502 or 46.61.504, relating to persons under the  
2 influence of intoxicating liquor or drugs;

3 (e) RCW 46.20.342, relating to driving a motor vehicle while  
4 operator's license is suspended or revoked;

5 (f) RCW 46.61.525, relating to operating a motor vehicle in a  
6 negligent manner.

7 (4) A law enforcement officer investigating at the scene of a motor  
8 vehicle accident may arrest the driver of a motor vehicle involved in  
9 the accident if the officer has probable cause to believe that the  
10 driver has committed in connection with the accident a violation of any  
11 traffic law or regulation.

12 (5) Any police officer having probable cause to believe that a  
13 person has committed or is committing a violation of RCW ((88.12.100))  
14 88.12.025 shall have the authority to arrest the person.

15 (6) An officer may act upon the request of a law enforcement  
16 officer in whose presence a traffic infraction was committed, to stop,  
17 detain, arrest, or issue a notice of traffic infraction to the driver  
18 who is believed to have committed the infraction. The request by the  
19 witnessing officer shall give an officer the authority to take  
20 appropriate action under the laws of the state of Washington.

21 (7) Any police officer having probable cause to believe that a  
22 person has committed or is committing any act of indecent exposure, as  
23 defined in RCW 9A.88.010, may arrest the person.

24 (8) A police officer may arrest and take into custody, pending  
25 release on bail, personal recognizance, or court order, a person  
26 without a warrant when the officer has probable cause to believe that  
27 an order has been issued of which the person has knowledge under  
28 chapter 10.14 RCW and the person has violated the terms of that order.

29 (9) Any police officer having probable cause to believe that a  
30 person has, within twenty-four hours of the alleged violation,  
31 committed a violation of RCW 9A.50.020 may arrest such person.

32 (10) A police officer having probable cause to believe that a  
33 person illegally possesses or illegally has possessed a firearm or  
34 other dangerous weapon on private or public elementary or secondary  
35 school premises shall have the authority to arrest the person.

36 For purposes of this subsection, the term "firearm" has the meaning  
37 defined in RCW 9.41.010 and the term "dangerous weapon" has the meaning  
38 defined in RCW 9.41.250 and 9.41.280(1) (c) through (e).

1 (11) Except as specifically provided in subsections (2), (3), (4),  
2 and (6) of this section, nothing in this section extends or otherwise  
3 affects the powers of arrest prescribed in Title 46 RCW.

4 (12) No police officer may be held criminally or civilly liable for  
5 making an arrest pursuant to RCW 10.31.100 (2) or (8) if the police  
6 officer acts in good faith and without malice.

7 NEW SECTION. **Sec. 2.** This act shall take effect January 1, 1996.  
8 Prior to that date, law enforcement agencies, prosecuting authorities,  
9 and local governments are encouraged to develop and adopt arrest and  
10 charging guidelines regarding criminal trespass.

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