
Civil Rights & Judiciary Committee

HB 2567

Brief Description: Concerning open courts.

Sponsors: Representatives Thai, Santos, Ryu, Valdez, Pollet, Davis, Wylie, Gregerson, Slatter, Lekanoff, Ortiz-Self, Frame, Mead and Kloba.

Brief Summary of 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 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.

Hearing Date: 1/22/20

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.

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.

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 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 to ensure 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.

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.

Court security personnel or designated staff must inform the presiding judge or designee if a state or federal law enforcement officer is present in the facility with the intent of arresting or taking into custody a party or participant in a proceeding. State and federal law enforcement officers must present a court order authorizing any civil arrest to court security personnel or designated staff prior to making an arrest. If provided a court order authorizing a civil arrest, court security personnel or designated staff must transmit a copy of the court order to the presiding judge or designee prior to any arrest.

Court security personnel or designated staff are required to file a report for each law enforcement action taken by an on-duty state or federal law enforcement officer in or on a courthouse facility. The report must include the name of the law enforcement officer, agency, date, time, the specific law enforcement purpose, and the proposed law enforcement action. Reports must be immediately transmitted to the appropriate supervisor, superior court clerk, or court administrator. Reports are public record and must not include personally identifying information concerning the individual who was the target of the action. Courts are required to transmit the information collected to the Administrative Office of the Courts (AOC) monthly, and the AOC is required to publish the information quarterly on a dedicated website.

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: Not requested.

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