

SENATE BILL REPORT

SHB 2567

As Passed Senate, March 4, 2020

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

Committee Activity: Law & Justice: 2/25/20, 2/27/20 [DP, w/oRec].

Floor Activity:

Passed Senate: 3/04/20, 28-20.

Brief Summary of Bill

- Prohibits civil arrests inside or near state court facilities unless a court order authorizes arrest; arrest is necessary for immediate safety of judges, court staff, or public; or circumstances justify a warrantless arrest.
- Prohibits judges, court staff, court security personnel, and prosecutor's office staff from inquiring into or collecting immigration or citizenship status information except in certain circumstances.
- Prohibits judges, court staff, court security personnel, and prosecutor's office staff from disclosing nonpublic personal information about an individual to immigration authorities except as provided by law.
- Requires recordkeeping and reporting for federal and state law enforcement action at court facilities, and directs the Administrative Office of the Courts to publish collected information each quarter.

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass.

Signed by Senators Pedersen, Chair; Dhingra, Vice Chair; Kuderer and Salomon.

Minority Report: That it be referred without recommendation.

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.

Signed by Senators Padden, Ranking Member; Holy and Wilson, L..

Staff: Melissa Burke-Cain (786-7755)

Background: Civil Arrest. Civil arrest is not a statutorily-defined term in Washington. Civil lawsuits are commenced by filing a summons and complaint with the court. A court may issue a civil arrest warrant in some circumstances. In a family law proceeding, a court may issue a restraining order prohibiting a person from leaving the court's jurisdiction or order a debtor to appear for a supplemental proceeding after entering a judgment for money owed.

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.

Disclosing 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. 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 disclosure restrictions for state agencies or departments do not apply 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 maintain funding.

Summary of Bill: Civil Arrest and Law Enforcement Actions at Court Facilities. State or federal law enforcement officers may not make a civil arrest when a person is going to, remaining at, or returning from, a court facility. "Civil arrest" means an arrest for an alleged violation of civil law. It excludes arrest for alleged criminal law violations, or arrest for contempt of court in a proceeding taking place. "Going to" and "returning from" a facility includes the area within one mile of the facility. Arrests are permitted pursuant to a valid court order, or for an imminent risk to public safety, or when circumstances authorize a warrantless arrest. Prior to a civil arrest, a judge must review a court order authorizing arrest and confirm compliance with the act.

Court security personnel must collect specific information about proposed state or federal law enforcement actions in court facilities. Security personnel must also collect information

about all on-duty law enforcement officers entering court facilities and must use the form developed by the Administrative Office of the Courts (AOC) for this purpose. Law enforcement officers participating in a case or proceeding before the court are excluded from the information collection requirement. "Law enforcement action" includes observation of court proceedings, investigation, questioning, and arrests by law enforcement agents acting in their official capacity. Information collected must not personally identify the target of the action. The courts must send the information forms to the AOC monthly. The AOC must publish a quarterly report beginning October 1, 2020. Designated court staff must be notified immediately if a law enforcement agent is present in the court facility to conduct a civil arrest.

Disclosure of Citizenship and Immigration Status. Judges, court staff, court security personnel, prosecutors, and prosecutor's office personnel must not inquire into or collect immigration or citizenship status information, or place of birth, unless the information is connected with a criminal investigation. A judge may inquire to the extent necessary to adjudicate matters within their jurisdiction. The court may obtain limited information regarding immigration status to protect the liberty interests of participants in a proceeding.

Unless authorized by law, judges, court staff, court security personnel, prosecutors, and prosecutor's office personnel must not provide nonpublic personal information about an individual to ICE for civil immigration enforcement or notify ICE of the presence of individuals attending proceedings or accessing court services in court facilities.

Any state or local agency or officer may send to and receive information from ICE and exchange information with other federal, state, or local government agencies about the immigration or citizenship status of an individual when necessary to comply with state or federal law.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony on Substitute House Bill: PRO: Our system is built on the promise of access to justice for all. Among other things, this bill is about trust. As a refugee it took me quite a while to overcome my fear of the police and the judicial system. In two years over 200 civil arrests have occurred in courthouses all across Washington. The bill does not apply to criminal offenses or civil traffic citations. It does not violate federal law. This type of law has been upheld in two separate cases. ICE issued a memo to minimize the effects of its actions on witnesses or parties. Courthouse arrests used to be rare. This bill would make them rare once more. Courthouse arrests have a chilling effect on immigrant crime victims who are afraid to go to court because of immigration enforcement in the courthouse. When crime victims are afraid to seek help from the courts, it creates a public safety problem. The bill does not violate the separation of powers. Just like public education is open to all students, documented or not, the courts should be open to all whether

documented or not. The courthouse arrests are a serious impediment to justice in many ways. We have a lack of statistics to show the effect because it is difficult to get statistics that prove a negative. I oppose private jails, oppose policies that create damage in communities, oppose civil immigration actions. Immigration reform must be addressed carefully, and not become a "get out of jail free" card for the small number of persons who are both immigrants and criminals. I hope that immigration reform does not cause future harm to the justice system. Warrantless arrests by ICE have an adverse effect on victims of serious crimes, and on those who have everyday needs for assistance from the courts in family law, landlord-tenant matters and the like. Witnesses are stopped from coming to court to testify. Sadly, it is a reflection of the times in which we live. This is an appropriately tailored bill to address the assault on our justice system. The use of courthouse arrests by ICE are a grave concern to the gender and justice commission, the interpreter commission, and the minority justice commission. Domestic violence prevention is effected. It is not a new issue, but ICE arrests target the persons these three commissions serve. These are among the most vulnerable because they may not speak English and they have very little information about their rights. Our duty is to protect the vulnerable. They are Washingtonians regardless of immigration status. The greater Spokane community is affected directly because Spokane has a large refugee population. We need to send a message that we value these people, they are members of our communities. We need to uphold the sanctity of the courthouse and the rule of law. Access to justice is necessary to democracy.

CON: All people should feel safe to seek help from the justice system, but the supremacy clause is important. We believe the civil arrest definition does impact our ability to impose civil infractions in or near the courthouse. This bill asks law enforcement to spy on other law enforcement officers coming and going to courts. This bill harms those who may be hate crime victims or qualify for visas designed to help special victims because the court personnel cannot ask and therefor cannot provide help to those who may qualify for help but are not aware they qualify.

Persons Testifying: PRO: Representative My-Linh Thai, Prime Sponsor; Jim Bamberger, Office of Civil Legal Aid; Faith Ireland, (Retired) Justice; Alex Kory, Northwest Justice Project; Enoka Herat, ACLU of Washington; Judge Marilyn Paja, Gender & Justice Commission; Monica Romero, Minority & Justice Commission, Interpreter Commission; Mary Calderon, Latino/a Law Students Association of Gonzaga Law School.

CON: James McMahan, Washington Association of Sheriffs and Police Chiefs; Paul Pastor, Pierce County Sheriff.

Persons Signed In To Testify But Not Testifying: No one.