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Senate Bill 1222 (as enrolled)
Sponsor: Senator Thaddeus G. McCotter
Senate Committee: Judiciary
House Committee: Criminal Law and Corrections

PUBLIC ACT 208 of 2000

Date Completed: 1-29-01

RATIONALE

Under the law, authority for a police officer to make an arrest without a warrant has generally been limited to situations in which the officer either witnesses an offense being committed or has reasonable cause to believe that a serious offense, such as a felony, has occurred. In order to improve school security and protect the well-being of children, some people suggested that peace officers' authority to make warrantless arrests should be extended to misdemeanors committed on school property. It also was suggested that peace officers should be authorized to make warrantless arrests for misdemeanors that are punishable by imprisonment for more than 92 days.

CONTENT

The bill amended the Code of Criminal Procedure to allow peace officers to arrest a person without a warrant for a misdemeanor committed on school property, and for a misdemeanor punishable by more than 92 days' imprisonment.

Under the Code the situations in which a peace officer may arrest a person, without a warrant, include the following:

- The officer has reasonable cause to believe that a felony has been committed and that the person committed it.
- The officer has received positive information broadcast from a recognized police or other governmental radio station, or teletype, that gives the officer reasonable cause to believe that a felony has been committed and that the person committed it.

The bill amended both of these provisions to refer to a felony or a misdemeanor punishable by imprisonment for more than 92 days.

The bill also allows the warrantless arrest of a person if a peace officer has reasonable cause to believe

that a misdemeanor has taken place or is taking place on school property and that the person committed or is committing the violation, regardless of whether the violation was committed in the peace officer's presence.

For purposes of the bill, "school property" is defined with reference to the definition in the Public Health Code's drug-free school zone provisions, i.e., "a building, playing field, or property used for school purposes to impart instruction to children in grades kindergarten through 12, when provided by a public, private, denominational, or parochial school, except those buildings used primarily for adult education or college extension courses" (MCL 333.7410).

The bill took effect August 21, 2000.

MCL 764.15

BACKGROUND

In addition to the circumstances described above, the Code of Criminal Procedure allows a peace officer to arrest a person without a warrant in any of the following situations:

- A felony, misdemeanor, or ordinance violation is committed in the officer's presence.
- The person has committed a felony, though not in the officer's presence.
- A felony in fact has been committed and the officer has reasonable cause to believe the person committed it.
- The officer has received positive information by written, telegraphic, radio, telephonic, electronic, or other authoritative source that another peace officer or a court holds a warrant for the person's arrest.
- The officer has reasonable cause to believe the person is an escaped convict, or has violated a condition of parole, probation, or a pardon.
- The officer has reasonable cause to believe that

the person was the operator of a motor vehicle, snowmobile, off-road vehicle, or water vessel involved in an accident and was under the influence of alcohol or a controlled substance.

- The person is found in the driver's seat of a vehicle stopped by, and intruding into, a roadway, and the officer has reasonable cause to believe the person was operating the vehicle under the influence.
- The officer has reasonable cause to believe that first- or second-degree retail fraud has taken or is taking place and the person committed or is committing the violation, regardless of whether it was committed in the officer's presence.

The law also allows warrantless arrests in domestic assault situations and for violations of domestic violence personal protection orders (MCL 764.15a & 764.15b).

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Schools should serve as a safe haven for children, and school property should be as secure from threats and violence as possible. This is not always the case, however, as shown by widely publicized incidents of schoolhouse violence and threats in Michigan and across the country. In order to enhance school safety, the bill extends warrantless arrest authority to situations in which an officer has reasonable cause to believe that a misdemeanor is occurring or has occurred on public or private school grounds. By providing for the expeditious removal of an individual who poses a threat to students and/or school personnel, the bill promotes the personal safety of schoolchildren and affords them a more secure learning environment.

In addition, the bill enhances the security of all citizens, by allowing warrantless arrests for misdemeanors punishable by more than 92 days' imprisonment.

Opposing Argument

Allowing warrantless arrests for misdemeanors represents a significant departure from the established standards for warrantless arrest, as well as a tremendous potential for abuse. Reportedly, over 700 misdemeanors are punishable by over 92 days in jail. In these cases, under the bill, the traditional check on police power, a warrant issued by a neutral judge, is rendered moot. Instead of having an arrest warrant or actually observing an offense being committed, an officer simply will have

to have a reasonable belief that a misdemeanor was committed and someone committed it. Not only will a warrant not be required for an arrest, but the law could be used to conduct an immediate search that otherwise would require a search warrant.

Response: Some law enforcement agencies, at least, are developing internal policies to regulate warrantless arrest practices. Reportedly, for example, the Ottawa County Sheriff's Department requires a supervisor's review and approval for any warrantless misdemeanor arrest.

Furthermore, police officers must exercise some discretion whenever they engage in law enforcement activity. The law already allowed warrantless arrests for misdemeanors in situations involving domestic violence, drunk driving, and second-degree retail fraud. This authority does not appear to have been abused.

Legislative Analyst: S. Lowe

FISCAL IMPACT

The bill will have no fiscal impact on State or local government.

Fiscal Analyst: B. Baker

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.