
|SENATE RULES COMMITTEE |

|Office of Senate Floor Analyses |

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| |
|327-4478 |

THIRD READING

Bill No: AB 1835
Author: Bates (R)
Amended: 2/25/02 in Assembly
Vote: 21

SENATE PUBLIC SAFETY COMMITTEE : 6-0, 6/11/02
AYES: McPherson, Burton, Margett, Polanco, Sher,
Vasconcellos

SENATE JUDICIARY COMMITTEE : 5-0, 8/6/02
AYES: Escutia, Ackerman, Kuehl, O'Connell, Sher

SENATE APPROPRIATIONS COMMITTEE : Senate Rule 28.8

ASSEMBLY FLOOR : 74-0, 4/22/02 (Passed on Consent) - See
last page for vote

SUBJECT : Peace officers: refusal to receive or arrest
charged person:
criminal or civil liability

SOURCE : California State Sheriffs Association

DIGEST : This bill extends the immunity from liability
given to peace officers for false arrest or false
imprisonment to arrests made pursuant to a citizen's
arrest. The bill would also exempt peace officers from
criminal liability for refusing to take persons into
custody pursuant to a citizen's arrest.

ANALYSIS : Existing law provides that any peace officer
CONTINUED

who has the authority to receive or arrest a person charged with a criminal offense who willfully refuses to receive or arrest that person is guilty of a felony.

Existing law, in the form of case law interpreting the Fourth Amendment of the U.S. Constitution, requires that an officer have probable cause to make an arrest. In addition, existing federal law makes the violation of an individual's constitutional rights actionable in federal court.

This bill would exempt arrests made pursuant to a citizen's arrest from the state statute requiring officers to receive a person charged with a criminal offense.

Existing law provides that there shall be no civil liability or cause of action against a peace officer acting within the scope of his or her authority for false arrest or false imprisonment if (a) the arrest was lawful or the officer had reasonable cause to believe the arrest was lawful, (b) the arrest was made pursuant to a charge that the person committed a felony, or (c) the arrest was made pursuant to certain statutes that require the officer to make an arrest.

Existing law, the Government Tort Claims Act, generally provides that a peace officer is liable to the same extent as a private person, except as otherwise provided in law.

Existing law provides that public employees may not be held liable for the exercise of discretion vested in him or her, whether or not such discretion is abused.

This bill would add arrests made pursuant to a citizen's arrest as one of the types of arrest for which an officer receives immunity for false arrest or false imprisonment.

FISCAL EFFECT : Appropriation: No Fiscal Com.:

Yes

Local: No

SUPPORT : (Verified 8/20/02)

California State Sheriffs' Association (source)
California District Attorneys Association

Civil Justice Association of California (CJAC)
San Bernardino Sheriff's Office
California Reserve Peace Officers Association
Los Angeles County Sheriff's Department
California Peace Officers' Association
Sacramento County Sheriff's Department
Riverside Sheriffs' Association
Los Angeles Police Protective League
Association for Los Angeles Deputy Sheriffs
Peace Officers Research Association of California
Santa Ana Police Officers Association

ARGUMENTS IN SUPPORT : This bill is sponsored by the California State Sheriffs' Association (CSSA), which writes that:

. . . current law requires that an officer must take receipt of an individual placed under citizen's arrest. The criminal penalties [provided in existing law] leave the officer no room to exercise his/her discretion in determining if a crime has occurred and if the person's civil rights would be violated if placed under arrest. [This] can create a significant conflict with the federal requirement that a peace officer must have probable cause before taking a person into custody. If an officer does not believe that a crime has been articulated by the private person, the officer is still obligated to accept custody . . . and can then release the person from custody pursuant to Penal Code Section 849(b)(1).

As a result, the author's office argues, when presented with a citizen's arrest, an officer is placed "in the proverbial 'Catch-22' situation" where refusal to take custody subjects the officer to possible criminal penalty but accepting custody subjects the officer to federal civil liability.

[Federal civil liability arises from case law interpreting the Fourth Amendment of the U.S. Constitution as requiring probable cause for arrests (see Atwater v. City of Lago Vista , 532 U.S. 318 (2001). As

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result, an arrest without probable cause is actionable under 42 U.S.C. 1983, which authorizes federal civil suits for violations of constitutional rights.]

The bill seeks to address this situation by exempting citizen's arrests from both the criminal penalty and civil liability provisions.

ASSEMBLY FLOOR :

AYES: Aanestad, Alquist, Aroner, Ashburn, Bates, Bogh, Briggs, Bill Campbell, John Campbell, Canciamilla, Cardenas, Chan, Chavez, Chu, Cogdill, Cohn, Corbett, Correa, Cox, Daucher, Diaz, Dickerson, Dutra, Firebaugh, Florez, Frommer, Goldberg, Harman, Hollingsworth, Horton, Jackson, Keeley, Kehoe, Kelley, Koretz, La Suer, Leach, Leonard, Leslie, Liu, Longville, Lowenthal, Maddox, Maldonado, Matthews, Migden, Mountjoy, Nakano, Nation, Negrete McLeod, Oropeza, Robert Pacheco, Rod Pacheco, Papan, Pavley, Pescetti, Reyes, Richman, Runner, Salinas, Shelley, Simitian, Steinberg, Strickland, Strom-Martin, Thomson, Vargas, Washington, Wiggins, Wright, Wyland, Wyman, Zettel, Wesson

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SUPPORT/OPPOSITION: SEE ABOVE

**** END ****