



Office of the Attorney General State of Texas

Opinion No. JM-751

A number of states have enacted statutes authorizing peace officers to make warrantless arrests for misdemeanors committed outside their presence. See, e.g., D.C.Code Ann. s 23-581; Fla.Stat. s 901.15(6) (warrantless arrest if there is probable cause to believe the person has committed an act of domestic violence in violation of injunction); Kan.Code Crim.Proc. s 22-2401; Md.Code Ann. s 27.594(B); Ohio Code Ann. s 2935.03; Wash.Rev.Code Ann. 10.31.100. The courts of some states have dealt with the validity of a warrantless arrest of an individual by a peace officer for a misdemeanor committed outside of his presence. See, e.g., *State v. Presley*, 458 So.2d 847 (Fla.Dist.Ct.App.1984) (test for warrantless arrest in misdemeanor is whether the officer has a substantial reason to believe arrestee is guilty of a crime); *LeBlanc v. State*, 382 So.2d 299 (Fla.1980) (provision for warrantless arrest for battery committed upon spouse does not violate equal protection clause); *Wilson v. Hunk*, 367 N.E.2d 478 (Ill.App.Ct.1977) (warrantless arrest for misdemeanor not committed in officer's presence is not illegal arrest); *Lurie v. District Attorney of Kings County*, 288 N.Y.S.2d 256 (Sup.Ct.Special Term 1968) (arrest for a misdemeanor not committed in officer's presence violates no state or federal constitutional standard); *City of Columbus v. Herrell*, 247 N.E.2d 770 (Ohio Ct.App.1969) (statute authorizing peace officer to arrest without a warrant any person he has reasonable cause to believe is guilty of assault and battery, a misdemeanor, does not violate Fourth Amendment); *State v. Bryant*, 678 S.W.2d 480 (Tenn.Crim.App.1984), cert. denied, 469 U.S. 1192 (1985) (the rule that a police officer has no authority to make misdemeanor arrest for offense committed outside his presence is a common law rule and not constitutionally required). In *Kelley v. State*, 676 S.W.2d 646 (Tex.App.--Houston [1st Dist.] 1984, pet. ref'd) the court determined that a search was invalid because it was made pursuant to an invalid arrest for a felony. The court stated that the Fourth Amendment of the United States Constitution requires the police to have probable cause to arrest a suspect, and since there was probable cause the federal constitution was not violated in this case. 676 S.W.2d at 648. However, since Texas has imposed greater restraints on police conduct than the federal constitution requires, the arrest was invalid because it violated Texas law. The court reviewed statutes authorizing warrantless arrest, including the provision now codified as article 14.03(a)(2) of the Code of Criminal Procedure, but did not comment on its validity. 676 S.W.2d at 649.

Finally, in *Gonzales v. City of Peoria*, 722 F.2d 468 (9th Cir.1983), the court determined that Arizona law enforcement officers could arrest for violations of the Immigration and Nationality Act under the following state provision:

A peace officer may, without a warrant, arrest a person:

....

4. When he has probable cause to believe a misdemeanor has been committed and probable cause to believe the person to be arrested has committed the offense....

Ariz.Rev.Stat.Ann. s 13-3883 (1978).

Thus, there is federal and state case law, as well as legal scholarship, which supports the constitutionality of the arrest provisions you inquire about. We should moreover presume that this legislation is constitutional. See *United States v. Watson*, supra. We therefore do not believe subsections (a)(2) or (a)(3) of article 14.03 are facially unconstitutional.