

HB

171

<TARGET><BILL>HB 171</BILL><SUBJECT>HB
171</SUBJECT><COMM>HJUD27</COMM></TARGET>



REPRESENTATIVE CATHY MUÑOZ

MEMORANDUM

TO: Representative Carl Gatto
Judiciary Chair

CC: Sarah Munson
Judiciary Committee Aide

FROM: Representative Cathy Muñoz

DATE: March 9, 2011

RE: HB 171 Hearing Request



Please schedule HB 171 – Misdemeanor Arrests in House Judiciary for hearing at your earliest convenience.

Attached to this memo please find the following documents

- HB 171 – Misdemeanor Arrests
- Sponsor Statement
- Correspondence from Department of Law
- Legislative Research Report
- Support Letters
- Expected Testimony
 - Mark Mew, Chief of Police, Anchorage Police Department
 - Greg Browning, Chief of Police, Juneau Police Department
 - Laren Zager, Chief of Police, Fairbanks Police Department
 - Tom Clemons, Chief of Police, Seward Police & President of the State Chiefs
- Office Contact: Kendra Kloster, 465-4712, Kendra_kloster@legis.state.ak.us

Thank You.



REPRESENTATIVE CATHY MUÑOZ

HB171: Misdemeanor Arrest

Alaska law allows a peace officer to arrest for a felony without a warrant and to make mandatory arrests in any circumstance involving domestic violence, violation of a protective order and violations of conditions of release. However, not all criminal actions fit into these categories in which quick actions by peace officers are allowed.

Many scenarios surrounding criminal acts against a person, listed under AS 11.41 including assault and sexual assault, do not happen within sight of a peace officer. In the circumstance of a misdemeanor assault committed outside of the peace officer's presence where probable cause for an arrest is determined, an officer may not arrest without first obtaining a warrant from the district attorney. We trust peace officers to protect and serve the community, and in certain circumstances barriers are put forth which do not allow peace officers to remove individuals from the scene who bring immediate harm to others.

This legislation was brought to my attention at the request of the Juneau Police Department and has received support from police departments across the state. HB171 will expand the protections for individuals by allowing a peace officer to arrest for misdemeanor crimes against a person not committed in their presence if probable cause can be determined.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version HB171
 () Publish Date _____

Identifier (file name) HB171-DPS-DET-03-04-11 Dept. Affected Public Safety
 Title "An Act relating to arrests without warrants by peace officers
for certain misdemeanors." Appropriation Alaska State Troopers
 Allocation AST Detachments
 Sponsor Representative Munoz
 Requester House Judiciary OMB Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING		0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL		0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by Lt. Rodney Dial
 Division Alaska State Troopers
 Approved by Joseph Masters, Commissioner
Department of Public Safety

Phone (907) 247-4480
 Date/Time 3/7/11 3:00 PM
 Date 3/8/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB171

Analysis

This legislation would amend AS 12.25.030(b) by allowing a peace officer to arrest for a misdemeanor crime against a person listed under AS 11.41; not committed in their presence.

While this legislation will likely result in more arrests, it will not increase the number of reports generated, and / or referrals made to the department of law. Additionally, the increase in arrests may be offset by a decrease in the number of subpoenas and warrants served.

It is not estimated that this bill will significantly increase the workload of the division of Alaska State Troopers. There is no fiscal cost to the AST as a result of this legislation.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version HB171B
 () Publish Date _____

Identifier (file name) HB171-DOA-PDA-3-24-11 Dept. Affected Administration
 Title An Act relating to arrests without warrants by peace officers... Appropriation Legal and Advocacy Services
 Allocation Public Defender Agency
 Sponsor Representative Munoz by request
 Requester House Judicial OMB Component Number 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING	****	****	****	****	****	****	****	****

CAPITAL EXPENDITURES

CHANGE IN REVENUES								
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other (please identify)								
TOTAL	****	****	****	****	****	****	****	****

Estimate of any current year (FY2011) cost _____

POSITIONS

Full-time								
Part-time								
Temporary								

Why this fiscal note differs from previous version (if initial version, please note as such)

Prepared by Quinlan Steiner
 Division Public Defender Agency
 Approved by John Cramer, Deputy Commissioner
Department of Administration

Phone 907 334-4414
 Date/Time 3/24/11 10:45 AM
 Date 3/24/2011

FISCAL NOTE

**STATE OF ALASKA
2011 LEGISLATIVE SESSION**

BILL NO. HB171B

Analysis

This bill amends A.S. 12.25.030 to permit a warrantless arrest for all misdemeanor cases under A.S. 11.41. This bill is expected to impact the review and investigation preceding arrest decisions in these cases. It is anticipated that this will impact the number of arrests, though it is not possible to reliably predict the fiscal impact. The Agency, therefore, submits an indeterminate fiscal note.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
 Bill Version HB171
 () Publish Date 2/25/2011

Identifier (file name) HB171-DOC-OC-03-18-11 Dept. Affected DOC
 Title "An Act relating to arrests without warrants by peace officers for Appropriation Administration & Support
 Allocation Office of the Commissioner
 Sponsor Representative Munoz
 Requester House Judiciary Committee OMB Component Number 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2012	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES								
Personal Services								
Travel								
Services								
Commodities								
Capital Outlay								
Grants								
Miscellaneous								
TOTAL OPERATING	**	**	**	**	**	**	**	**

CAPITAL EXPENDITURES	0.0	0.0	0.0	0.0	0.0	0.0	0.0
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CHANGE IN REVENUES							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
TOTAL	**	**	**	**	**	**	**

Estimate of any current year (FY2011) cost 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Initial version; not applicable

Prepared by Leslie Houston, Director
 Division Dept. of Corrections - Administrative Services
 Approved by Joseph D. Schmidt, Commissioner
Dept. of Corrections

Phone 465-3339
 Date/Time 3/19/11 12:00 PM
 Date 3/19/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB171

Analysis

HB 171 amends AS 12.25.030(b) by allowing a peace officer to make an arrest for misdemeanor offenses against persons listed under AS 11.41; not committed in the presence of the peace officer.

Passage of this legislation would result in an increase in arrests and therefore an increase in booking and housing of individuals at Dept of Corrections pretrial facilities, community and regional jails.

Department of Corrections is unable to determine the fiscal impacts of the passage of this legislation, as we cannot estimate the total number of actual violations that will occur.

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

Fiscal Note Number _____
Bill Version HB171 \B
() Publish Date _____

Identifier (file name): HB171-LAW-CRIM-03-25-11
Title An act relating to arrests without warrants by peace officers for certain misdemeanors.
Sponsor REPRESENTATIVE(S) MUNOZ
Requester (H) JUD
Dept. Affected Law
Appropriation Criminal
Allocation Criminal Justice Litigation
OMB Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
		FY 2012	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
OPERATING EXPENDITURES							
Personal Services							
Travel							
Services							
Commodities							
Capital Outlay							
Grants							
Miscellaneous							
TOTAL OPERATING	***	***	***	***	***	***	***

CAPITAL EXPENDITURES							
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CHANGE IN REVENUES							
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other (please identify)							
TOTAL	***	***	***	***	***	***	***

Estimate of any current year (FY2011) cost ***

POSITIONS

Full-time							
Part-time							
Temporary							

Why this fiscal note differs from previous version (if initial version, please note as such)

Not applicable, initial version.

Prepared by Eileen Donahue, Division Operations Manager
Division Administrative Services
Approved by John J. Burns, Attorney General
Department of Law

Phone 465-5427
Date/Time 3/25/11 9:00 AM
Date 3/25/2011

FISCAL NOTE

STATE OF ALASKA
2011 LEGISLATIVE SESSION

BILL NO. HB171 1B

Analysis

HB 171 allows law enforcement officers to arrest persons with probable cause but without an arrest warrant for offenses against a person occurring outside their presence that are misdemeanors. For most misdemeanors, law enforcement must obtain an arrest warrant if the offense occurred outside their presence or summons the person to court. More debatable cases will proceed to court without being screened out by the court through the warrant process or by the DA through the summons process.

Thus, the fiscal impact is indeterminate to Department of Law.

STATE OF ALASKA

DEPARTMENT OF LAW CRIMINAL DIVISION

**SEAN PARNELL,
GOVERNOR**

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Juneau, AK 99811-0300
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February 7, 2011

Representative Cathy Muñoz
State Capitol, Room 409
Juneau, Alaska 99801

Dear Representative Muñoz:

I am writing in response to your request for “feedback” on a proposal to change Alaska statute AS 12.25.030 to allow police officers to arrest a person for a misdemeanor offense not occurring in an officer’s presence. I am also writing to make a suggestion for an alternative approach that may answer your concerns without making a fundamental change in Alaska law. Such a change, without additional limitations, would be a modification of the law existing in Alaska since the United States took legal jurisdiction over the territory of Alaska.

You request that the Department of Law comment on two scenarios – first, allowing peace officers in Alaska to make a warrantless arrest for the misdemeanor offense of disorderly conduct, when the conduct is not committed in the presence of the peace officer. The second scenario would allow peace officers to make a warrantless arrest for any misdemeanor not committed in the officer’s presence. Both scenarios assume that the peace officer believes that there is probable cause that the person to be arrested committed the misdemeanor. To address these scenarios it is necessary to review some principals of arrest law.

The Alaska and Federal Constitutions are the first places to look for arrest authority. Article I, Section 14 of the Alaska Constitution says:

The right of the people to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches and seizures, shall not be violated. No warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment to the Constitution of the United States reads exactly the same as Article I, Section 14 of the Alaska Constitution. The key words for the purpose of this analysis are “unreasonable ... seizures” and “no warrants shall issue, but upon probable cause...” A “seizure” is an arrest. An arrest occurs when the police use a show of

official authority such that a reasonable person would have believed he or she is not free to leave. *United States v. Edwards*, 242 F. 3d 928, 934 (10 Cir. 2001).

At first look, the language of the Fourth Amendment suggests there must be a warrant for an arrest for all criminal offenses without exception. However, the common law allows police officers to arrest a person for a felony offense without first obtaining a warrant if the officer had “reasonable grounds to believe” that a felony had been committed and that the person being arrested committed the felony. This “reasonable grounds” standard is the constitutional equivalent of the “probable cause” language from the constitution. *Henry v. United States*, 361 U.S. 98 (1959). The United States Supreme Court has said the common law rule of allowing felony arrests without a warrant based on “reasonable grounds” is essentially the same as what is needed for the issuance of an arrest warrant under the Fourth Amendment. The Supreme Court therefore concluded there need not be a warrant for a felony arrest based on probable cause, whether or not the felony occurred in the officer’s presence.

The common law, as it relates to misdemeanors, is different. A warrant is required before a person can be arrested on a misdemeanor unless the 1) misdemeanor occurred in the presence of a police officer; 2) the police officer had probable cause to believe a misdemeanor occurred; 3) the police officer had probable cause to believe the person being arrested committed the offense; and 4) the misdemeanor was a breach of the peace. “A breach of the peace” means in essence an act of violence. Over the years this rule has been changed by statutes in all the states including Alaska, by eliminating the requirement of a breach of the peace. Put another way, all states allow a police officer to arrest a person without a warrant for a misdemeanor where there is probable cause and the crime occurred in the officer’s presence. Several states have eliminated the “in the presence of the officer” requirement for special crimes or circumstances and five states have eliminated the distinction between felony and misdemeanor arrests.¹

¹ Connecticut Conn. Gen State § 54-1f(a), Illinois, Comp Stat. Ch 725 § (1)(c), Louisiana, La. Code Crim. Proc. Ann Art 213 (3), Montana Mont. Code Ann § 46-6-311(1) (1997), Wisconsin Wis. Stat. § 968.07 (1)(d). In your letter Oregon statute ORS 133.310 is quoted in a way that suggests Oregon has eliminated the distinction between felony and misdemeanors. Actually ORS 133.310 reads: Authority of peace officer to arrest without warrant (1) a peace officer may arrest a person without a warrant if the officer has probable cause to believe that the person has committed any of the following: (a) a felony, (b) an A misdemeanor (c) an unclassified offense for which the maximum penalty allowed by law is equal to or greater than the maximum penalty allowed for a Class C misdemeanor, (d) any other crime committed in the officer’s presence. This

The United States Supreme Court has not given a definitive answer to the question of whether the Fourth Amendment requirement of an arrest warrant has the same exception for misdemeanors as for felonies. It is generally believed that the court will find the same exception when and if it decides this issue. *Atwater v. City of Lago Vista*, 532 U.S. 318 (2001), is a case where the misdemeanor of driving with children not using seatbelts occurred in the officer's presence and the mother was arrested. There were two issues before the court. The first issue was whether the "breach of the peace" element of arrest for misdemeanors at common law was required by the Fourth Amendment. The answer to this question is "no". The "no" answer was based on research which showed this element was probably not the common law at the time of the drafting of the Fourth Amendment and hence the authors of the Fourth Amendment would not have understood the "breach of the peace" requirement to be the law in the colonies. The court did not do the historical analysis of the "in the presence" requirement. However, it went out of its way to disclaim any "speculat[ion] whether the Fourth Amendment entails an 'in the presence' requirement for purposes of misdemeanor arrests". On the other hand the court also quoted Justice Whites' dissenting opinion in *Welsh v. Wisconsin*, 466 U.S. 756 (1984), for the proposition that "the requirement that a misdemeanor must have occurred in the officer's presence to justify a warrantless arrest is not grounded in the Fourth Amendment". Put-another way, the court suggested it could go either way on this issue. We can speculate that if directly addressed the U.S. Supreme Court will follow the dissent in the *Welsh* case. However, there is no case law on this issue by the Alaska courts so it is difficult to predict how our courts would rule.

This brings up the second issue in *Atwater*: that is, whether the arrest was "reasonable". In a five to four decision the answer to this question was "yes" because the misdemeanor clearly occurred "in the officer's presence." Like for felonies, "reasonableness" was equated to probable cause. This issue has never been addressed by an Alaska appellate court.

However, Alaska courts have not hesitated to suppress evidence when a search warrant under the Fourth Amendment or Article I, Section 14 of the Alaska Constitution has been found to be unreasonable. Additionally, the Alaska Constitution has a right of privacy, Article I, section 22, which the U.S. Constitution does not contain. Most people would think that the right to be left alone is more important than a property right and hence, the Alaska courts could conceivably require a broader showing of reasonableness than federal courts. If this were to happen, the proposed law change to allow arrests for

means that B misdemeanors like Disorderly Conduct require that the offense occur "in the officers presence" before there can be an arrest without a warrant.

misdemeanors as now exists for felonies, may result in hearings on whether officers acted “reasonably”. For example, the question of how much time it would have taken to get a misdemeanor warrant may become a common evidentiary issue to determine “reasonableness”. This would mean officers would be required to come to court on an issue that is not litigated today, taking time off the streets, there by, lessening public protection. Likewise, this would entail an increase in the budgets of all parts of the criminal justice system to litigate these issues.

In Alaska, a peace officer may arrest a person for a misdemeanor committed outside the officer’s presence without a warrant if there is statutory authority to do so. The legislature has authorized peace officers to make warrantless misdemeanor arrests for conduct outside their presence for several offenses. These include when an officer has probable cause to believe a person is driving under the influence of alcohol (AS 12.25.033); in circumstances where there is no judicial officer within 25 miles and personal or property damage is likely to occur if the arrest is not made immediately (AS 12.25.035); and in minor consuming alcohol cases (AS 12.25.030). In cases involving domestic violence the legislature mandates arrest (AS 18.65.530). These examples generally share a quality of urgency – either that the evidence will dissipate without an immediate arrest or a person is in immediate danger of further injury if an arrest is not made. In adopting these exceptions, the legislature has made a decision that it is “reasonable” to make an arrest because of particular circumstances connected with the offense. If a decision is made to change AS 12.25.030 along the lines of scenario one, the Department of Law strongly recommends that there be legislative findings as to how arrests for disorderly conduct have the same compelling necessity as are presented by other misdemeanors where statutes authorize warrantless arrest.

The second scenario that you describe would allow a peace officer to arrest for any misdemeanor with probable cause but without an arrest warrant. A small minority of states allow this. The vast majority of states, however, are like Alaska in that they allow warrantless arrests in circumstances set out in statute. In general, there are good reasons for the age-old requirement that for misdemeanors, a peace officer should obtain a warrant from a judicial officer before making an arrest for a crime committed outside the officer’s presence. These include the following:

- The warrant requirement encourages peace officers to conduct a more thorough investigation of the case before obtaining the warrant. This is important for several reasons. First, it acts as a screening mechanism to weed out weak cases. This screening saves the entire judicial, prosecution and corrections systems from gearing up for a case that will not be prosecuted. Second, and no

disparagement of peace officers is intended, it is simply human nature that an officer who arrests a person for a misdemeanor and takes the person to jail will have less incentive to interview witnesses and make other inquiries that are a part of a thorough investigation. And there are good reasons for this – an officer will likely have more serious felonies to investigate. A felony investigation by its very nature will take priority and it is understandable that a misdemeanor investigation where the defendant has been arrested would be placed nearer to the bottom of the priority list.

- An arrest in Alaska generally starts the running of the speedy trial rule. Criminal Rule 45 requires, with exceptions, that a person be brought to trial within 120 days of a charging document being served upon the defendant. A change in the arrest law may have three unintended consequences: 1) police will need to do more of their own charging documents; 2) there will be more dismissals of cases because of premature arrests; 3) more cases will be lost under the speedy trial rule. The state would strongly urge an amendment to Criminal Rule 45 which would allow a dismissal by the state of a charge until a police investigation is complete without time running against the 120 day rule to get the person to trial.
- Authorizing a warrantless arrest for all misdemeanors would significantly increase the cost every participant in the justice system. Bypassing judicial screening will guarantee that more cases will be screened out by the prosecuting authority, the courts, and ultimately juries. The costs of booking a person into jail and transporting them to an arraignment alone are significant and will increase.
- Other significant costs would result from making an arrest for a charge that the parties later resolve themselves. It is not uncommon for misdemeanors to be settled by the parties. When tempers fade people often conclude the matter informally, by civil means, or decide that the problem no longer justifies any response. For example, there are often civil compromises in cases where people fail to pay cab drivers their fare or a restaurant for a meal that did not come in the time expected. These civil resolutions will be less likely if a person is arrested.

- There would likely be an increase in lawsuits claiming damages from police agencies alleging unlawful arrest.
- Losses will result that are not related to the prosecution itself. For example, a defendant's family will suffer financial loss at least for the time the defendant is in custody and may result in the loss of a job. If an arrest occurs the Office of Children's Services may need to step in to taking temporary custody of children. This is what occurred in the *Atwater* case where the mother was arrested for driving without seatbelts being buckled for the children. There will be social, as well as financial costs if this change occurs.
- Of major concern is the financial implication of a change in the arrest law for misdemeanors. Last fiscal year there were 31,713 misdemeanors offenses filed in Alaska state courts. Studies show that approximately 45% of all cases result in an immediate arrest.² This means that 55% of 31,713 misdemeanors can potentially be new arrests. The worst case would be 17,442 new arrests. Corrections estimate a cost of over \$100 for simply the booking process to enter a person into a correctional facility. This is an additional potential cost of \$1.74 million just for booking. Of greater concern to the Department of Law is whether the criminal prosecutions conducted by the municipalities of Anchorage and Juneau will be discontinued because of the additional costs of incarceration for these communities. Both Anchorage and Juneau have been responsible for prosecution under their city ordinances. However, the state has experienced the withdrawal of communities from the prosecution of criminal cases because of the cost of incarceration. For example, Fairbanks simply repealed all their criminal ordinances in order to save money. Both Anchorage and Juneau have considered ways of reducing correction costs. The City and Borough of Juneau removed from the police department's budget the cost of incarceration and placed the budget item in the municipal attorney's office. Concurrent with the movement of this budget item was the reduction from one million dollars to \$500,000

² The 45% arrest rate is from a 10 year old national study. Hence, its implications may not apply to Alaska. Also it is noted that there were 75,552 minor offenses filed in FY 2010. It is unknown how many of the minor offenses are violations compared to misdemeanors.

for the cost of incarceration. The police department had difficulty in operating within its budget. The municipal attorney's office through managing its caseload has kept within the reduced budget. If with this proposed change the city's budget again goes to one million dollars the city may consider repealing ordinances as was done by Fairbanks. This means a choice between no law enforcement or the state picking up the cost. Anchorage and the state have also had disputes over paying for cost of incarceration. This ended in litigation. If Anchorage and Juneau remove themselves from criminal prosecutions and the state picks up those cases there would need to be an increase in the Department of Law's budget of at least 15 attorneys, five law office assistants, and five paralegals given current municipal staffing. This would be a cost of \$3.5 million.

- The Department of Correction will bear the major increase in cost under these proposals and should be contacted for a cost estimate.

The first scenario you describe would allow a peace officer to make a warrantless arrest for disorderly conduct (AS 11.61.110). That statute covers a reasonably broad range of prohibited conduct – from fighting not in self-defense to making an unreasonably loud noise. The department assumes you are mainly concerned with fighting not in self-defense. We agree that there may be some urgency to make an arrest and you might consider making a statutory change to allow an officer to make an arrest without a warrant for fighting not in self-defense. This could be justified to a certain extent by the urgency of protecting the victim. However, it is important for law enforcement to remember that before a warrantless arrest for this offense, there must be probable cause that the person to be arrested was not acting in self-defense.

There are other considerations that would weigh on the side of waiting to obtain a warrant. The state is concerned that an “arrest them and sort it out later” attitude will grow with amending Alaska's misdemeanor arrest law, resulting in an increase in false arrest and civil litigation. We believe that unless there are special circumstances not described in your letter, on balance it would be better to require the peace officer to investigate the situation and then obtain a warrant from a judicial officer before making an arrest for fighting in violation of AS 11.61.110(a)(6). If a court has made a probable cause finding, officers will be absolved of civil liability.³

³ A simple hypothetical may be of help: The police are dispatched to a bar; they see two people fighting. They arrest both fighters. They remove the fighters from the bar and put them in separate patrol cars. Officers return to the bar to interview witnesses to

The other provisions of AS 11.61.110 also would, without other circumstances not described in your letter, be better served with an investigation and then a judicial warrant before an arrest – or possibly a citation rather than an arrest at all. For example, AS 12.61.110(a)(1) prohibits making an unreasonably loud noise with the intent to disturb the peace and privacy another person. It is probably better public policy to interview the victim and then either obtain an arrest warrant or cite the perpetrator. There is no urgency at that point that would justify an immediate arrest.

For all the reasons discussed above, the Department of Law has both legal and practical concerns in changing the law for either scenario.

We have, however, some suggestions for legislation that would help law enforcement officers perform their duties in a more efficient manner. The first is to consider the possibility of authorizing a law enforcement officer to obtain an arrest warrant from a judicial officer over the telephone, or by facsimile or over the Internet. This procedure was adopted in 2008 for search warrants (AS 12.35.015), and allows a peace officer to avoid a trip to the court house to obtain a search warrant. Another suggestion is to consider looking at specific misdemeanor offenses or circumstances that may pose an urgent need for an immediate arrest, and propose statutory authority for a peace officer to make an arrest without a warrant for that specific misdemeanor or under particular circumstances.

Another suggestion, although unrelated to the issue of arrest warrants, addresses a serious concern of the Department of Law, that is, the safety of law enforcement officers and other participants in the criminal justice system. It is to protect the personal information of these participants from being placed on the Internet. Arizona has a statute (A.R.S. §13-2401) that addresses this concern, and in pertinent part provides:

find that either no one is willing to speak or claim to have seen nothing. Unfortunately this is a common occurrence. Both fighters were arrested so they need to be provided their rights under Miranda. Both choose not to speak. What is the officer to do? There is no legal principal that allows for the two people to be un-arrested. There was no probable cause for this arrest because probable cause consists of two parts; did a crime occur- here it probably did. But the second part of the equation is not present, that is, did each person commit the crime. Here the officers have no idea. Was the fight in self-defense, if so, then only one of the two arrestees committed a crime while the other was a victim. Which one? If they were not fighting in self-defense, there is no evidence of this element.

A. It is unlawful for a person to knowingly make available on the world wide web the personal information of a peace officer, justice, judge, commissioner, public defender or prosecutor if the dissemination of the personal information poses an imminent and serious threat to the peace officer's, justice's, judge's, commissioner's, public defender's or prosecutor's safety or the safety of that person's immediate family and the threat is reasonably apparent to the person making the information available to the world wide web to be serious and imminent.

...

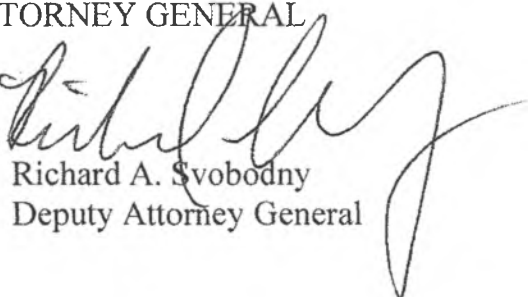
D.5 "Personal information" means a peace officer's, justice's, judge's, commissioner's, public defender's or prosecutor's home address, home telephone number, pager number, personal photograph, directions to the person's home or photographs of the person's home or vehicle.

I look forward to discussing your ideas and these suggestions with you. I hope this information is helpful to you.

Sincerely,

JOHN J. BURNS
ATTORNEY GENERAL

By:


Richard A. Svobodny
Deputy Attorney General



LEGISLATIVE RESEARCH SERVICES

Alaska State Legislature
Division of Legal and Research Services
State Capitol, Juneau, AK 99801

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research@legis.state.ak.us

Memorandum

TO: Representative Cathy Muñoz
FROM: Chuck Burnham, Legislative Analyst
DATE: October 7, 2010
RE: Warrantless Arrests: Misdemeanors Committed Outside the Presence of Law Enforcement
LRS Report 11.051

You asked about warrantless arrests for misdemeanor crimes. Specifically, you wanted to know the misdemeanor offenses in other states for which an offender can be arrested without a warrant even when the crime is committed outside the presence of a law enforcement officer.

As you know, the 4th Amendment to the U.S. Constitution protects citizens from “unreasonable searches and seizures,” and requires that “probable cause” must be shown by law enforcement and recognized by a judicial officer through the issuance of warrant before an arrest can be made. Courts have recognized a number of exceptions to this requirement, including when a crime is being committed in the presence of a law enforcement officer, when there is a risk that not making an arrest will result in danger or damage to people or property, or when there is a substantial likelihood that an offender will escape arrest entirely unless action is taken immediately.

We identified 42 states that have relied on these exceptions to craft a variety of statutory exclusions to the requirement for an arrest warrant for misdemeanor offenses committed outside the presence of law enforcement.¹ Most commonly, states narrowly craft these statutes to be directed at crimes—particularly domestic violence of the violation or protective orders—where the risk of violence in the absence of an arrest is relatively high. However, a number of states have laws specifying that warrants are not required for shoplifting and other kinds of theft, when a driver in an accident is suspected of having been driving under the influence of alcohol or a controlled substance, and various other non-violent offenses. At least four states—Nevada, New York, Ohio, and South Dakota—allow warrantless arrests for the most serious misdemeanors. Three others—Colorado, Missouri, and New York—allow such arrests for any misdemeanor violation. Rhode Island statute permits warrantless arrests for any misdemeanor if the arresting officer has reason to believe that the offender poses a continued danger or could not be arrested at a later time.

The attached table provides statutory citations and summarizes the misdemeanors for which warrantless arrest are permitted in the 42 states with applicable statutes. We include copies of all of the statutes cited in the table as Attachment A.

We hope this information is helpful. If you have questions or need additional information, please let us know.

¹ We performed key-word searches of the Lexis database of state statutes to identify applicable laws. Our research did not include reviews of regulations or case law, which may significantly impact how these statutes are applied. Although we believe our research to be thorough, there are likely other statute sections on the topic that we did not locate due to variations in wording and construction. As a result, this report should not be viewed as exhaustive of all relevant statutes.

Warrantless Arrests: Misdemeanors Committed Outside the Presence of Law Enforcement

State	Citation	Domestic Violence	Battery	Warrant Issued but not in Possession	Escaped Convict / Parole Violation	Violating Court/ Protective Order	Theft / Shop-lifting	DUI - Related Violation	Other/Notes
Alabama	CA § 15-10-3	X		X		X			
Alaska	AS § 18.65.530	X			X	X			
Arizona	ARS § 13-3601	X							
	ARS § 25-315					X			
Arkansas	ACA § 16-81-106		X						<i>Evidence of bodily harm and danger of further violence must be present.</i>
	ACA § 16-81-113	X							<i>Arrest must be made within four hours, or 12 hours for cases involving physical injury.</i>
California	Cal Pen Code § 836	X				X			
	Cal Pen Code § 836.1		X						<i>Battery on Emergency Response Personnel.</i>
	Cal Pen Code § 836.3				X				
	Cal Pen Code § 13701	X				X			
Colorado	CRS § 16-3-102	X	X	X	X	X	X	X	Any offense.
	CRS § 18-6-803.6	X							
Connecticut	GSC § 46b-38b	X							

Warrantless Arrests: Misdemeanors Committed Outside the Presence of Law Enforcement (contd.)

State	Citation	Domestic Violence	Battery	Warrant Issued but not in Possession	Escaped Convict / Parole Violation	Violating Court/ Protective Order	Theft / Shop-lifting	DUI - Related Violation	Other/Notes
Delaware	DCA § 1904		X			X	X		Illegal sexual contact or attempt; and Any misdemeanor on school property.
Florida	FS § 741.29	X							
Georgia	OCGA § 17-4-20	X							Abuse of a vulnerable adult.
Hawaii	HRS § 709-906	X							
Idaho	IC § 19-603	X							
Illinois	§ 725 ILCS 5/112A-30								
Indiana	ICA § 35-33-1-1	X	X			X			Certain weapons violations; interference with reporting of certain crimes.
Iowa	IC § 236.12	X	X			X			Commission of crime aboard an aircraft.
Kansas	KSA § 22-2307	X							
	KSA § 22-2401								Any misdemeanor where an officer has probable cause to believe that an offender will not otherwise be apprehended, evidence will be lost, injury or damage has occurred or will occur.
Kentucky	KRS § 431.005	X			X	X		X	Failing to comply with sex offender registry.
Louisiana	LSA-RS § 46:2140	X							

Warrantless Arrests: Misdemeanors Committed Outside the Presence of Law Enforcement (contd.)

State	Citation	Domestic Violence	Battery	Warrant Issued but not in Possession	Escaped Convict / Parole Violation	Violating Court/ Protective Order	Theft / Shop-lifting	DUI - Related Violation	Other/Notes
Maine	MRSA 19-A, § 4012	X							
Maryland	ACM § 2-203 to 2-204	X			X	X			Giving false alarm of fire; indecent exposure; certain weapons violations; prostitution.
Mass.	ALM GL ch. 209A § 6	X				X			
	ALM GL ch. 276 § 28	X	X						
Michigan	MCL § 257.625m			X				X	DUI involving commercial vehicle.
	MCL § 764.15				X		X	X	Commission of a misdemeanor punishable by more than 92 days imprisonment; and misdemeanors on school property.
	MCL § 764.15a-b	X				X			
Mississippi	§ 99-3-7	X		X	X	X			
Missouri	§ 455.085 R.S.Mo.	X				X			
	§ 544.216 R.S.Mo.	X	X	X	X	X	X	X	Any violation of law.
Montana	MCA § 46-6-210			X					
	MCA § 46-6-311	X	X	X	X	X	X	X	Any violation of law (where circumstances require immediate arrest) .

Warrantless Arrests: Misdemeanors Committed Outside the Presence of Law Enforcement (contd.)

State	Citation	Domestic Violence	Battery	Warrant Issued but not in Possession	Escaped Convict / Parole Violation	Violating Court/ Protective Order	Theft / Shop-lifting	DUI - Related Violation	Other/Notes
Nebraska	RSN § 29-404.02	X							Any misdemeanor if the officer has reason to believe the offender could not be arrested later, poses a danger, or may destroy evidence.
Nevada	NRSA § 171.124	X	X	X	X	X	X	X	Any Gross Misdemeanor.
	NRSA § 171.137	X							
New Hampshire	RSA § 594:10	X				X			
New Jersey	NJSA § 2C:25-21	X				X			
New York	N.Y. Crim. Proc. Law § 140.10	X	X	X	X	X	X	X	Any crime committed within arresting police officer's jurisdiction.
North Carolina	GSNC § 15A-401	X					X	X	Trespassing in home of former domestic partner; pointing a firearm at a partner/family member; violating a quarantine order.
North Dakota	NDCC § 14-07.1-10	X							
Ohio	ORC § 2935.03	X	X	X	X	X	X	X	Any Class 1 misdemeanor within an officer's jurisdiction where pursuit of the offender has taken place without "unreasonable delay."
Oregon	ORS § 122.055	X							

Warrantless Arrests: Misdemeanors Committed Outside the Presence of Law Enforcement (contd.)

State	Citation	Domestic Violence	Battery	Warrant Issued but not in Possession	Escaped Convict / Parole Violation	Violating Court/ Protective Order	Theft / Shop-lifting	DUI - Related Violation	Other/Notes
Rhode Island	R.I. Gen. Laws § 12-7-3	X	X	X	X	X	X	X	Any misdemeanor if the officer has reason to believe the offender could not be arrested later or poses a danger.
	R.I. Gen. Laws § 12-29-3	X				X			
South Carolina	S.C. Code Ann. § 16-25-70	X							
South Dakota	SDCL § 23A-3-2	X	X	X	X	X	X	X	Any Class 1 misdemeanor.
Tennessee	TCA § 36-3-619	X							
	TCA § 40-7-103	X			X			X	
Utah	UCA § 77-36-2.2	X							
Virginia	Va. Code Ann. § 19.2-81		X	X			X	X	Carrying a weapon on school property; brandishing a firearm; and destruction of commercial property.
Washington	RCWA § 10.31.100	X	X			X	X	X	Theft; threats to people or property; possession of cannabis; minor consuming alcohol; criminal trespass; numerous traffic violations; indecent exposure; interference with a health care facility; and possession of dangerous weapon on school grounds.

Warrantless Arrests: Misdemeanors Committed Outside the Presence of Law Enforcement (contd.)

State	Citation	Domestic Violence	Battery	Warrant Issued but not in Possession	Escaped Convict / Parole Violation	Violating Court/ Protective Order	Theft / Shop-lifting	DUI - Related Violation	Other/Notes
Wisconsin	Wis. Stat. § 968.075	X							

Notes and Source: This table was compiled using key-word searches of the *Lexis* database of state statutes and should not be viewed as an exhaustive list of all laws on the topic. We did not review regulations or case law, both of which may impact the manner in which the statute sections listed are applied.



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.

City of Ketchikan



POLICE DEPARTMENT

361 Main Street
Ketchikan, Alaska 99901
Phone (907) 225-6631
Fax (907) 247-6631



January 27, 2011

Cathy Muñoz
Representative
District 4
State Capitol, Room 403
Juneau, AK 99801-1182

Dear Representative Muñoz:

I would like to take this opportunity to pledge my support for a bill you are sponsoring. The bill, which amends an Act relating to arrests without warrants by peace officers for certain misdemeanors, will greatly assist law enforcement agencies across our State. Having the ability to arrest an individual, who has committed a misdemeanor crime against a person as enumerated under Alaska Statute 11.41 without a warrant, greatly assists peace officers in their mission to protect the public. It has been my experience, in over twenty-three years as a police officer, that an on-scene arrest drastically reduces the chance that officers will respond multiple times to the same address and greatly reduces the likelihood that the victim will suffer any further injury.

I appreciate your willingness to help make our jobs in law enforcement easier. If there is any way I can assist you with the passage of this bill, please do not hesitate to contact me.

Sincerely,

Edward Talik
Chief of Police



Alaska Association of Chiefs of Police

12 January, 2011

Representative Kathy Muñoz
State Capitol Room 409
Juneau AK, 99801

RE: An Act relating to arrests without warrants by peace officer for certain misdemeanors

Dear Representative Muñoz,

For several years the membership of the Alaska Association of Chiefs of Police (AACOP) has been concerned with state statutes that severely limit the ability of a law enforcement officer (LEO) investigating a misdemeanor crime to make a 'probable cause' arrest. The restrictions have been demonstrated to place undue responsibility upon crime victims; cause officers, agencies, and prosecutors additional work and; result in inefficiencies in the administration of justice and the protection of our communities.

With the exception of the three incidents that current law allows, or mandates, LEOs to make a misdemeanor arrest based on probable cause, LEOs in Alaska have the same arrest power as citizens have. Here are some specific examples of how this impacts LEOs and their communities:

- If no punches are being thrown when officers arrive at a reported bar fight, they are not able to arrest anyone even though it may be advisable in order to temporarily keep the peace.
- We may respond to an assault in which the victim is uncooperative and the suspect runs from the scene. The responding officer(s) pursue and catch the suspect. However, any force they use to subdue and arrest the suspect will be subjected to serious legal review, as no immediate arrest can be made for the assault. In some communities officers are applying Tasers™ to fleeing suspects in this kind of scenario, only to remove the bars, get the suspect's name, dust him off, and tell him he'll be hearing from a prosecutor if a complaint is issued.
- Officers respond to a report of a prowler and find a man peeking into a bathroom window of a residence, masturbating. Unless there is a person under the age of 16 who is watching him, we cannot arrest him.

AACOP has reviewed the 11/24/10 Work Draft of your proposed legislation. We support the proposed change, as it would help resolve the three scenarios described above. However, because it will only expand arrest powers to the seven misdemeanors that are violations of AS 11.41, other restrictions will continue to hamper LEOs in protecting their communities. For example:

- Arrest of shoplifters

- A burglar is caught in the act by a citizen, just prior to actually making entry or completing a theft or other crime, the offense is now an A Misdemeanor. Once again, we dust off the burglar, take his name and send him on his way.

AACOP members would prefer that arrest powers also be extended to misdemeanors under AS 11.46 as well as AS 11.41. However, we will support your draft legislation and make members available to testify on its behalf.

Please feel free to contact me if you would like additional information or we can assist you in any way.

Respectfully,

A handwritten signature in black ink, appearing to read "Tom Clemons". The signature is fluid and cursive, with a long horizontal stroke at the end.

Chief Tom Clemons
President, AACOP



SOLDOTNA POLICE DEPARTMENT

44510 Sterling Highway
Soldotna, Alaska 99669



JOHN H. LUCKING, JR.
CHIEF OF POLICE

TEL: (907) 262-4455
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September 23, 2009

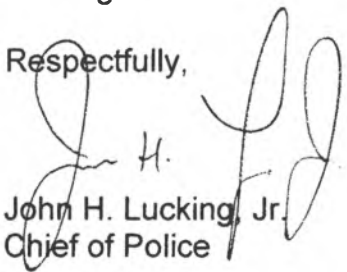
The Honorable Representative Cathy Muñoz
Alaska State Capitol Building, Room 409
Juneau, AK 99801

Dear Representative Muñoz,

I am writing this letter in support to your proposed legislation entitled "An act relating to arrests without warrants by peace officers for certain misdemeanors". It is an important step toward improving the abilities of police to expeditiously apprehend persons they have reason to believe have committed crimes. I would however, like to also ask that you consider strengthening the bill even more by not limiting the new arrest authority to crimes against persons, but rather to include all misdemeanor crimes. It seems unfair to make crimes against persons more important than other misconduct.

The legislation you propose will be of benefit to the police and citizens alike. It will serve to simplify the criminal code, and help police protect innocent victims by accelerating the process of misdemeanor arrest in cases where probable cause exists. Thank you for working to assist law enforcement in Alaska. We very much appreciate your efforts in that regard.

Respectfully,


John H. Lucking, Jr.
Chief of Police

Arrests for Misdemeanors Without a Warrant

Western States

Oregon

§ 133.310¹

Authority of peace officer to arrest without warrant

(1) A peace officer may arrest a person without a warrant if the officer has probable cause to believe that the person has committed any of the following:

- (a) A felony.
- (b) A misdemeanor.
- (c) An unclassified offense for which the maximum penalty allowed by law is equal to or greater than the maximum penalty allowed for a Class C misdemeanor.
- (d) Any other crime committed in the officer's presence.

Arizona

13-3883. Arrest by officer without warrant

A. A peace officer may, without a warrant, **arrest** a person if he has probable cause to believe:

1. A felony has been committed and probable cause to believe the person to be arrested has committed the felony.
2. A misdemeanor has been committed in his presence and probable cause to believe the person to be arrested has committed the offense.
3. The person to be arrested has been involved in a traffic accident and violated any criminal section of title 28, and that such violation occurred prior to or immediately following such traffic accident.
4. A misdemeanor or a petty offense has been committed and probable cause to believe the person to be arrested has committed the offense. A person arrested under this paragraph is eligible for release under section 13-3903.

B. A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation. A peace officer who serves a copy of the traffic complaint shall do so within a reasonable time of the alleged criminal or civil traffic violation.

Colorado

16-3-102 - Arrest by peace officer.

(1) A peace officer may arrest a person when:

- (a) He has a warrant commanding that such person be arrested; or
- (b) Any crime has been or is being committed by such person in his presence; or
- (c) He has probable cause to believe that an offense was committed and has probable cause to believe that the offense was committed by the person to be arrested.

Idaho

19-603.WHEN PEACE OFFICER MAY ARREST. A peace officer may make an arrest in obedience to a warrant delivered to him, or may, without a warrant, arrest a person:

1. For a public offense committed or attempted in his presence.
2. When a person arrested has committed a felony, although not in his presence.
3. When a felony has in fact been committed and he has reasonable cause for believing the person arrested to have committed it.
4. On a charge made, upon a reasonable cause, of the commission of a felony by the party arrested.
5. At night, when there is reasonable cause to believe that he has committed a felony.
6. When upon immediate response to a report of a commission of a crime there is probable cause to believe, that the person arrested has committed a violation of section 18-902 (assault), 18-903 (battery), 18-918 (domestic assault or battery), 18-7905 (first degree stalking), 18-7906 (second degree stalking), 39-6312 (violation of a protection order), or 18-920 (violation of a no contact order).
7. When there is reasonable cause to believe, based upon physical evidence observed by the officer or statements made in the presence of the officer upon immediate response to a report of a commission of a crime aboard an aircraft, that the person arrested has committed such a crime.

Washington

RCW 10.31.100

A police officer having probable cause to believe that a person has committed or is committing a felony shall have the authority to arrest the person without a warrant. A police officer may arrest a person without a warrant for committing a misdemeanor or gross misdemeanor only when the offense is committed in the presence of the officer, except as provided in subsections (1) through (10) of this section.

(1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor, involving physical harm or threats of harm to any person or property or the unlawful taking of property or involving the use or possession of cannabis, or involving the acquisition, possession, or consumption of alcohol by a person under the age of twenty-one years under RCW 66.44.270, or involving criminal trespass under RCW 9A.52.070 or 9A.52.080, shall have the authority to arrest the person.

California

836.1. When a person commits an assault or battery against the person of a firefighter, emergency medical technician, or mobile intensive care paramedic while that person is on duty engaged in the performance of his or her duties in violation of subdivision (b) of Section 241 or subdivision (b) of Section 243, a peace officer may, without a warrant, arrest the person who commits the assault or battery:

(a) Whenever the peace officer has reasonable cause to believe that the person to be arrested has committed the assault or battery, although the assault or battery was not committed in the peace officer's presence.

(b) Whenever the peace officer has reasonable cause to believe that the person to be arrested has committed the assault or battery, whether or not the assault or battery has in fact been committed.

Nevada

NRS 171.124 Arrest by peace officer or officer of Drug Enforcement Administration.

1. Except as otherwise provided in subsection 3 and NRS 33.070 and 33.320, a peace officer or an officer of the Drug Enforcement Administration designated by the Attorney General of the United States for that purpose may make an arrest in obedience to a warrant delivered to him or her, or may, without a warrant, arrest a person:

(a) For a public offense committed or attempted in the officer's presence.

(b) When a person arrested has committed a felony or gross misdemeanor, although not in the officer's presence.

(c) When a felony or gross misdemeanor has in fact been committed, and the officer has reasonable cause for believing the person arrested to have committed it.

(d) On a charge made, upon a reasonable cause, of the commission of a felony or gross misdemeanor by the person arrested.

(e) When a warrant has in fact been issued in this State for the arrest of a named or described person for a public offense, and the officer has reasonable cause to believe that the person arrested is the person so named or described.

2. A peace officer or an officer of the Drug Enforcement Administration designated by the Attorney General of the United States for that purpose may also, at night, without a warrant, arrest any person whom the officer has reasonable cause for believing to have committed a felony or gross misdemeanor, and is justified in making the arrest, though it afterward appears that a felony or gross misdemeanor has not been committed.

3. An officer of the Drug Enforcement Administration may only make an arrest pursuant to subsections 1 and 2 for a violation of chapter 453 of NRS.

Utah

77-7-2. Arrest by peace officers.

A peace officer may make an arrest under authority of a warrant or may, without warrant, arrest a person:

(1) (a) for any public offense committed or attempted in the presence of any peace officer; and

(b) as used in this Subsection (1), "presence" includes all of the physical senses or any device that enhances the acuity, sensitivity, or range of any physical sense, or records the observations of any of the physical senses;

(2) when the peace officer has reasonable cause to believe a felony or a class A misdemeanor has been committed and has reasonable cause to believe that the person arrested has committed it;

(3) when the peace officer has reasonable cause to believe the person has committed a public offense, and there is reasonable cause for believing the person may:

(a) flee or conceal himself to avoid arrest;

(b) destroy or conceal evidence of the commission of the offense; or

(c) injure another person or damage property belonging to another person; or

(4) when the peace officer has reasonable cause to believe the person has committed the offense of failure to disclose identity under Section **76-8-301.5**.

Mid-Western States

Wisconsin

968.07 Arrest by a law enforcement officer.

(1) A law enforcement officer may arrest a person when:

(a) The law enforcement officer has a warrant commanding that such person be arrested; or

(b) The law enforcement officer believes, on reasonable grounds, that a warrant for the person's arrest has been issued in this state; or

(c) The law enforcement officer believes, on reasonable grounds, that a felony warrant for the person's arrest has been issued in another state; or

(d) There are reasonable grounds to believe that the person is committing or has committed a crime.

Illinois

A police officer may make an arrest without a warrant if the officer witnesses a crime being committed. Police may also make an arrest without a warrant if there is **probable cause** that an offense occurred and that the person who would be taken into custody committed the crime. Unless it is an emergency, however, a police officer cannot enter a person's home without a warrant to make an arrest. When a person is arrested, he or she is not necessarily charged with a crime. Some people who are arrested are taken into custody, questioned, possibly put into a lineup, and then released without being charged with an offense.

Michigan

764.9c Arrest without warrant for misdemeanor or ordinance violation; issuance and service of appearance ticket by police officer or specially authorized public servant; exceptions.

Sec. 9c.

(1) Except as provided in subsection (3), if a police officer has arrested a person without a warrant for a misdemeanor or ordinance violation for which the maximum permissible penalty does not exceed 93 days in jail or a fine, or both, instead of taking the person before a magistrate and promptly filing a complaint as provided in section 13 of this chapter, the officer may issue to and serve upon the person an appearance ticket as defined in section 9f of this chapter and release the person from custody.

(2) A public servant other than a police officer, who is specially authorized by law or ordinance to issue and serve appearance tickets with respect to a particular class of offenses of less than felony grade, may issue and serve upon a person an appearance ticket if the public servant has reasonable cause to believe that the person has committed an offense.

(3) An appearance ticket shall not be issued to any of the following:

(a) A person arrested for a violation of section 81 or 81a of the Michigan penal code, 1931 PA 328, MCL 750.81 and 750.81a, or a local ordinance substantially corresponding to section 81 of the Michigan penal code, 1931 PA 328, MCL 750.81, if the victim of the assault is the offender's spouse, former spouse, an individual who has had a child in common with the offender, an individual who has or has had a dating relationship with the offender, or an individual residing or having resided in the same household as the offender. As used in this subdivision, "dating relationship" means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context.

(b) A person subject to detainment for violating a personal protection order.

(c) A person subject to a mandatory period of confinement, condition of bond, or other condition of release until he or she has served that period of confinement or meets that requirement of bond or other condition of release.

Constitutionality Issue

U.S. Supreme Court - "...as long as probable cause exists, arrest warrants are unnecessary, even where there is time to obtain them." *Laasch v Wis.*, 84 Wis.2d 587, 591 (1978) and *Sanders v Wis.*, 69 Wis.2d 242, 255 (1975).]

Amendment #1

A Conceptual Amendment
Page 2, line 5

following "AS 11.41":

Insert "and there is
reasonable cause to believe arrest
without warrant is a practical necessity
to prevent imminent physical harm to
the public"

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE HOLMES

TO: HB 171

1 Page 1, lines 1 - 2:

2 Delete "**certain misdemeanors**"

3 Insert "**assault in the fourth degree under certain circumstances**"

4

5 Page 2, lines 3 - 5:

6 Delete all material and insert:

7 "(D) committed assault in the fourth degree under AS 11.41.230

8 and the officer has reasonable cause to believe arrest without a warrant is a

9 practical necessity to prevent imminent physical harm to a person;"

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE HOLMES

TO: HB 171

1 Page 1, lines 1 – 2:

2 Delete “**certain misdemeanors**”

3 Insert “**assault in the fourth degree or an ordinance with elements similar to assault in the**
4 **fourth degree under certain circumstances**”

5

6 Page 2, lines 3 – 5:

7 Delete all material and insert:

8 “**(D) committed assault in the fourth degree under AS 11.41.230 or an**
9 **ordinance with elements similar to assault in the fourth degree under AS 11.41.230 and the**
10 **officer has reasonable cause to believe arrest without warrant is necessary to prevent**
11 **imminent physical harm to a person;**”