

1 S.140

2 Introduced by Senator Baruth

3 Referred to Committee on Judiciary

4 Date: April 21, 2021

5 Subject: Court procedure; civil arrest at courthouses; prohibition; private right
6 of action

7 Statement of purpose of bill as introduced: This bill proposes to prohibit civil
8 arrests at courthouses.

9 An act relating to prohibiting civil arrests at courthouses

10 It is hereby enacted by the General Assembly of the State of Vermont:

11 ~~Sec. 1. 12 V.S.A. § 3701 is added to read:~~

12 § 3701. PROHIBITION ON CIVIL ARREST AT COURTHOUSES

13 (a) Prohibition. Any person or family or household member of the person
14 who is attending a court proceeding in good faith as a party, juror, attorney, or
15 witness shall be privileged from civil arrest while traveling to, entering,
16 remaining at, or returning from the court proceeding.

17 (b) Exceptions. Subsection (a) of this section shall not apply to:

18 ~~(1) an arrest pursuant to a judicially issued warrant or a court order,~~

1 ~~(2) an arrest for contempt of the court where the proceeding is~~
2 occurring; or

3 ~~(3) an arrest to maintain order or safety in the court where the~~
4 proceeding is occurring.

5 (c) Penalties. A person who violates this section by executing or assisting
6 with an arrest prohibited by subsection (a) of this section shall be subject to
7 civil contempt proceedings pursuant to 12 V.S.A. chapter 5 and may be liable
8 for false imprisonment in an action brought under subsection (d) of this
9 section.

10 (d) Private right of action.

11 (1) A person who is arrested in violation of subsection (a) of this section
12 may bring a civil action in the Civil Division of the Superior Court against the
13 violator for damages, injunctive relief, punitive damages in the case of a
14 willful violation, and reasonable costs and attorney's fees.

15 (2) The Office of the Attorney General may bring an action under
16 subdivision (1) of this subsection on behalf of the State of Vermont if there is
17 reasonable cause to believe that a violation of subsection (a) of this section has
18 occurred or will occur.

19 (3) No action under this subsection shall be brought against the
20 Judiciary or any of its members or employees for actions taken to maintain
21 order or safety in the courts.

1 ~~(c) Definitions. As used in this section.~~

2 ~~(1) "Civil arrest" means an arrest for purposes of obtaining a person's~~
3 ~~presence or attendance at a civil proceeding, including an immigration~~
4 ~~proceeding.~~

5 ~~(2) "Household member" has the same meaning as in 15 V.S.A. § 1101.~~

6 Sec. 2. EFFECTIVE DATE

7 ~~This act shall take effect on passage.~~

~~Sec. 1. 12 V.S.A. § 3701 is added to read:~~

~~§ 3701. PROHIBITION ON CIVIL ARRESTS AT COURTHOUSES~~

~~(a) Prohibition. Any person or family or household member of the person who is attending a court proceeding in good faith as a party, juror, attorney, or witness shall be privileged from civil arrest while traveling to, entering, remaining at, or returning from the court proceeding.~~

~~(b) Exceptions. Subsection (a) of this section shall not apply to:~~

~~(1) an arrest pursuant to a judicially issued warrant or a court order;~~

~~(2) an arrest for contempt of the court where the proceeding is occurring; or~~

~~(3) an arrest to maintain order or safety in the court where the proceeding is occurring.~~

~~(c) Remedies.~~

~~(1) A person who violates this section by knowingly and willfully executing or assisting with an arrest prohibited by subsection (a) of this section shall be subject to civil contempt proceedings pursuant to chapter 5 of this title and may be liable in a civil action for false imprisonment.~~

~~(2) A person who is arrested in violation of subsection (a) of this section may bring a civil action against the violator for damages; injunctive, equitable, or declaratory relief; punitive damages; and reasonable costs and attorney's fees.~~

~~(3) The Office of the Attorney General may bring a civil action on behalf of the State of Vermont for appropriate injunctive, equitable, or~~

~~declaratory relief if there is reasonable cause to believe that a violation of subsection (a) of this section has occurred or will occur.~~

~~(4) No action under this subsection shall be brought against the Judiciary or any of its members or employees for actions taken to maintain order or safety in the courts.~~

~~(d) Definitions. As used in this section:~~

~~(1) "Civil arrest" means an arrest for purposes of obtaining a person's presence or attendance at a civil proceeding, including an immigration proceeding.~~

~~(2) "Household member" has the same meaning as in 15 V.S.A. § 1101.~~

Sec. 2. EFFECTIVE DATE

~~This act shall take effect on passage.~~

Sec. 1. LEGISLATIVE INTENT

~~It is the intent of the General Assembly to ensure that every person in the State of Vermont retains the right to free and unfettered access to justice under the law. No person should be denied access to justice because they fear being subject to civil arrest when attending a court hearing or traveling to or from a courthouse. All persons should have the opportunity to use the court system to advocate for themselves and their interests. Prohibiting civil arrests at a courthouse prevents disruption of court proceedings, protects the proper functioning of courts, provides a safe and secure location for the resolution of disputes, and promotes public safety by ensuring that victims and witnesses are not discouraged from attending court proceedings. It is the intent of the General Assembly, consistent with long-established common law, to prohibit civil arrests of individuals at courthouses or traveling to and from a courthouse to uphold the principle set forth in Article 4 of the Vermont Constitution that provides, in part, that "every person within this state ought to find a certain remedy, by having recourse to our laws, for all injuries and wrongs," and that "every person ought to obtain [that] right freely . . . completely and without denial . . . [or] delay."~~

Sec. 2. 12 V.S.A. § 3577 is amended to read:

§ 3577. PRIVILEGE FROM ARREST

(a) The Governor, Lieutenant Governor, State Treasurer, Secretary of State, Auditor of Accounts, Attorney General, and members of the General Assembly and officers and witnesses whose duty it is to attend thereon, in all cases except treason, felony, and breach of the peace, shall be privileged from arrest and imprisonment during their necessary attendance on and in going to and returning from the General Assembly.

(b) A party or witness in a cause pending in any court in the State or before special masters, auditors, referees, or commissioners, and a witness in a criminal cause pending in any such court, shall not be arrested, imprisoned, or detained by virtue of civil process. Any witness summoned from outside the State in a criminal cause, pending in any court within the State, shall be privileged from the service of papers of any kind whatsoever, and from arrest for any cause while going to, attending at, or returning from such court or trial of such cause.

(c)(1) Prohibition. A person shall not be subject to civil arrest while traveling to, entering, remaining at, or returning from a court proceeding.

(2) Exceptions. Subdivision (1) of this subsection shall not apply to:

(A) an arrest pursuant to a judicially issued warrant or a court order;

(B) an arrest for contempt of the court where the proceeding is occurring; or

(C) an arrest to maintain order or safety in the court where the proceeding is occurring.

(3) Remedies.

(A) A person who violates this subsection by knowingly and willfully executing or assisting with an arrest prohibited by subdivision (1) of this subsection (c) shall be subject to contempt proceedings and may be liable in a civil action for false imprisonment.

(B) A person who is arrested in violation of subdivision (1) of this subsection (c) may bring a civil action against the violator for damages; injunctive, equitable, or declaratory relief; punitive damages; and reasonable costs and attorney's fees.

(C) The Office of the Attorney General may bring a civil action on behalf of the State of Vermont for appropriate injunctive, equitable, or declaratory relief if there is reasonable cause to believe that a violation of subdivision (1) of this subsection (c) has occurred or will occur.

(D) No action under this subsection shall be brought against the Judiciary or any of its members or employees for actions taken to maintain order or safety in the courts.

(E) This section shall not be construed to limit or infringe upon any right, privilege, or remedy available under common law or any other provision of law or rule.

(F) Notwithstanding section 3578 of this title, the protections and remedies afforded by this subsection apply irrespective of when the privilege against civil arrest is invoked.

(4) Definition. As used in this subsection, "civil arrest" means an arrest for purposes of obtaining a person's presence or attendance at a civil proceeding, including an immigration proceeding.

Sec. 3. EFFECTIVE DATE

This act shall take effect on passage.