

BILL ANALYSIS

Senate Research Center
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S.B. 662
By: West
Criminal Justice
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As Filed

DIGEST

Currently, the Fourth Amendment to the U.S. Constitution prohibits an officer from obtaining evidence through an illegal seizure. Courts have argued what constitutes an illegal seizure, using various doctrines to support their justification for determining a legal or illegal seizure. One doctrine, the “pretext doctrine,” provided that a seizure cannot be based on a person’s race, sex, religion, or other improper reason. However, the doctrine lost prominence in state and federal courts, and finally was eliminated by the supreme court because judges discerned that the mental state of a police officer based on subjective inquiry, rather than objective standards, proved to be too difficult to ascertain. Now, an officer may constitutionally seize a person based on race or sex, as long as other law permits the seizure. As a result of these seizure powers granted to an officer, a potential exists that an officer may abuse his or her power, which lacks reasonable suspicion or probable cause.

The doctrine can be reinstated if the state legislature authorizes a pretext doctrine supported by a “reasonable officer” test. The reasonable test offers an objective standard for the doctrine: a legal seizure is based not on whether an officer could have taken the action, but, whether under the same circumstances, a reasonable officer would have taken the same action in the absence of the invalid purpose. S.B. 662 would restore the pretext doctrine and authorize pretextual seizures under judicial review

PURPOSE

As proposed, S.B. 662 restores the pretext doctrine and brings pretextual seizures back under judicial review.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Article 38.23, Code of Criminal Procedure, by adding Subsection (c), to establish that evidence obtained as a result of a warrantless arrest or detention is validly obtained for purposes of this article only if a reasonable law enforcement officer under the same conditions would have arrested or detained the individual.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 1999.

SECTION 4. Emergency clause.