

HOUSE BILL NO. 274

INTRODUCED BY N. BALLANCE, B. BROWN, J. FIELDER, B. HARRIS, T. MANZELLA

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING COOPERATION AND COMMUNICATION BETWEEN FEDERAL LAW ENFORCEMENT OFFICERS AND COUNTY SHERIFFS; REGULATING ARRESTS, SEARCHES, AND SEIZURES BY FEDERAL EMPLOYEES; REQUIRING FEDERAL EMPLOYEES TO OBTAIN A COUNTY SHERIFF'S PERMISSION TO ARREST, SEARCH, AND SEIZE IF REQUIRED BY THE SHERIFF; PROVIDING EXCEPTIONS; PROVIDING FOR PROSECUTION OF FEDERAL EMPLOYEES FOR VIOLATIONS INCERTAINCASES; REJECTING FEDERAL LAWS PURPORTING TO GIVE FEDERAL EMPLOYEES THE AUTHORITY OF A COUNTY SHERIFF; PROVIDING THAT THE COUNTY SHERIFF IS THE CHIEF LAW ENFORCEMENT OFFICER OF THE COUNTY; AMENDING SECTION 7-32-2121, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Legislative findings.** The legislature finds and declares that:

(1) the supremacy clause of the United States constitution provides that federal laws are only supreme if the laws are made in pursuance of the enumerated powers delegated to congress through the United States constitution;

(2) in the dual sovereignty of federalism, the states have always retained the powers referred to as "police powers";

(3) federal laws that purport to give federal employees unrestricted and supreme police powers in this state are not laws made consistent with or in pursuance of the United States constitution; and

(4) the United States court of appeals for the ninth circuit has held that federal employees are not exempt from accountability under state criminal laws because a federal officer claims qualified immunity, because a federal employee is following orders, or because a federal employee is acting in the employee's official capacity.

NEW SECTION. **Section 2. Purpose.** It is the intent of the legislature to:

(1) ensure maximum cooperation between federal employees and local law enforcement authorities;

(2) ensure that federal employees who carry out arrests, searches, and seizures in this state receive the



1 best local knowledge and expertise available; and

2 (3) prevent misadventure affecting Montana citizens and their rights that results from lack of cooperation
3 or communication between federal employees operating in Montana and local law enforcement authorities.

4
5 **NEW SECTION. Section 3. County sheriff's permission for federal arrests, searches, and seizures**

6 -- **exceptions.** (1) A federal employee who is not designated by Montana law as a Montana peace officer may
7 not make an arrest, search, or seizure in this state without the written permission of the sheriff or designee of the
8 sheriff of the county in which the arrest, search, or seizure will occur unless:

9 (a) the arrest, search, or seizure will take place on a federal enclave for which jurisdiction has been
10 actively ceded to the United States of America by a Montana statute;

11 (b) the federal employee witnesses the commission of a crime the nature of which requires an immediate
12 arrest;

13 (c) the arrest, search, or seizure is under the provisions of 46-6-411 or 46-6-412;

14 (d) the intended subject of the arrest, search, or seizure is an employee of the sheriff's office or is an
15 elected county or state officer; ~~or~~

16 (e) the federal employee has probable cause to believe that the subject of the arrest, search, or seizure
17 has close connections with the sheriff that are likely to result in the subject being informed of the impending
18 arrest, search, or seizure; OR

19 (F) THE SHERIFF HAS NOT INVOKED THE AUTHORITY OF THIS SECTION PURSUANT TO SUBSECTION (6).

20 (2) The county sheriff or designee of the sheriff may refuse to grant permission for any reason that the
21 sheriff or designee considers sufficient.

22 (3) A federal employee who desires to exercise an exception under subsection (1)(d) shall obtain the
23 written permission of the Montana attorney general for the arrest, search, or seizure unless the resulting delay
24 in obtaining the permission would probably cause serious harm to one or more individuals or to a community or
25 would probably allow time for flight of the subject of the arrest, search, or seizure in order to avoid prosecution.
26 The attorney general may refuse to grant permission for any reason that the attorney general considers sufficient.

27 (4) A federal employee who desires to exercise an exception under subsection (1)(e) shall obtain the
28 written permission of the Montana attorney general. The request for permission must include a written statement,
29 under oath, describing the federal employee's probable cause. The attorney general may refuse to grant
30 permission for any reason that the attorney general considers sufficient.

1 (5) (a) A permission request to the county sheriff or Montana attorney general must contain:
 2 (i) the name of the subject of the arrest, search, or seizure;
 3 (ii) a clear statement of probable cause for the arrest, search, or seizure or a federal arrest, search, or
 4 seizure warrant that contains a clear statement of probable cause;
 5 (iii) a complete statement that particularly describes the place to be searched, the things to be searched
 6 for, and the persons or things to be seized;
 7 (iv) a statement of the date and time that the arrest, search, or seizure is to occur; and
 8 (v) the address or location where the intended arrest, search, or seizure will be attempted.
 9 (b) To constitute valid permission, the request may be in letter form, either typed or handwritten, but must
 10 be countersigned with the original signature of the county sheriff or designee of the sheriff or by the Montana
 11 attorney general. The written permission is valid for 48 hours after it is signed. The sheriff or attorney general shall
 12 keep a copy of the permission request on file.

13 (6) (A) AT THE SHERIFF'S DISCRETION, A SHERIFF MAY ELECT NOT TO IMPLEMENT THE PROVISIONS OF THIS
 14 SECTION OR MAY ELECT TO IMPLEMENT THE PROVISIONS OF THIS SECTION FOR ONE OR MORE SPECIFICALLY IDENTIFIED
 15 FEDERAL EMPLOYEES, ALL FEDERAL EMPLOYEES OF A SPECIFIED FEDERAL AGENCY, OR ALL FEDERAL EMPLOYEES. IF A
 16 SHERIFF ELECTS TO IMPLEMENT THE PROVISIONS OF THIS SECTION, THE SHERIFF MUST PROVIDE NOTICE TO THE AFFECTED
 17 FEDERAL EMPLOYEES AS FOLLOWS:

18 (I) IN PERSON BY VERBAL NOTICE TO THE AFFECTED FEDERAL EMPLOYEE; OR

19 (II) IN WRITING BY CERTIFIED MAIL TO THE UNITED STATES ATTORNEY FOR THE DISTRICT OF MONTANA.

20 (B) IF NOTICE IS PROVIDED IN PERSON TO THE AFFECTED FEDERAL EMPLOYEE, THE SHERIFF SHALL FILE THE
 21 NOTICE WITH THE APPROPRIATE DISPATCH SERVICE AS SOON AS PRACTICABLE. THE NOTICE IS EFFECTIVE IMMEDIATELY
 22 AND CONTINUES UNTIL THE SHERIFF REVOKES THE NOTICE.

23 (C) IF NOTICE IS PROVIDED TO THE UNITED STATES ATTORNEY FOR THE DISTRICT OF MONTANA, THE NOTICE IS
 24 EFFECTIVE 1 WEEK AFTER THE NOTICE IS POSTMARKED AND CONTINUES UNTIL THE SHERIFF REVOKES THE NOTICE.

25
 26 **NEW SECTION. Section 4. Remedies.** (1) An arrest, search, or seizure or attempted arrest, search,
 27 or seizure in violation of [section 3] is unlawful, and the persons involved ~~must~~ MAY be prosecuted by the county
 28 attorney for kidnapping if an arrest or attempted arrest occurs, for trespass if a search or attempted search
 29 occurs, for theft if a seizure or attempted seizure occurs, and for any applicable homicide offense if loss of life
 30 occurred. The persons involved ~~must~~ MAY also be charged with any other applicable criminal offense in Title 45.

1 (2) To the extent possible, the victims' rights provisions of Title 46 must be extended to the victim or
2 victims by the persons and entities involved in a prosecution.

3 (3) The county attorney ~~shall~~ MAY prosecute once a claim of violation of [section 3] has been made by
4 the county sheriff or designee of the sheriff, ~~and failure to prosecute subjects the county attorney to recall by the~~
5 ~~voters and to prosecution by the attorney general for official misconduct.~~

6
7 **NEW SECTION. Section 5. Invalid federal laws.** Pursuant to the 10th amendment to the United States
8 constitution and this state's compact with the other states, the legislature declares that any federal law purporting
9 to give federal employees the authority of a county sheriff in this state is not recognized by and is specifically
10 rejected by this state and is declared to be invalid in this state.

11
12 **Section 6.** Section 7-32-2121, MCA, is amended to read:

13 **"7-32-2121. Duties of sheriff -- chief law enforcement officer.** The sheriff is the chief law enforcement
14 officer of the county in which the sheriff is elected and shall:

- 15 (1) preserve the peace;
- 16 (2) arrest and take before the nearest magistrate for examination all persons who attempt to commit or
17 have committed a public offense;
- 18 (3) prevent and suppress all affrays, breaches of the peace, riots, and insurrections that may come to
19 the sheriff's knowledge;
- 20 (4) perform the duties of a humane officer within the county with reference to the protection of animals;
- 21 (5) attend all courts, except municipal, justices', and city courts, at their respective terms or sessions held
22 within the county and obey their lawful orders and directions;
- 23 (6) command the aid of as many inhabitants of the county as are necessary in the execution of the
24 sheriff's duties;
- 25 (7) take charge of and keep the detention center and the inmates in the detention center, unless the
26 detention center is operated by a private party under an agreement entered into under 7-32-2201 or by a
27 detention center administrator or by another local government;
- 28 (8) endorse upon all notices and process the year, month, day, hour, and minute of receipt and issue
29 to the person delivering them, on payment of fees, a certificate showing the names of the parties, the title of the
30 paper, and the time of receipt;

1 (9) serve all process or notices in the manner prescribed by law;

2 (10) certify in writing upon the process or notices the manner and time of service or, if the sheriff fails to
3 make service, the reasons for this failure, and return the papers without delay;

4 (11) take charge of and supervise search and rescue units and their officers whenever search and rescue
5 units are called into service; and

6 (12) perform other duties that are required by law."
7

8 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 5] are intended to be codified
9 as an integral part of Title 44, and the provisions of Title 44 apply to [sections 1 through 5].
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11 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable
12 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
13 remains in effect in all valid applications that are severable from the invalid applications.
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15 **NEW SECTION. Section 9. Effective date.** [This act] is effective on passage and approval.
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