

HOUSE BILL NO. 439

INTRODUCED BY L. DEMING, B. LER

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING ARRESTS, SEARCHES, AND SEIZURES BY FEDERAL EMPLOYEES; PROVIDING THAT FEDERAL EMPLOYEES AND OTHER AGENTS MUST OBTAIN THE COUNTY SHERIFF'S PERMISSION TO ARREST, SEARCH, AND SEIZE; PROVIDING EXCEPTIONS; PROVIDING FOR PROSECUTION OF FEDERAL EMPLOYEES AND OTHER AGENTS VIOLATING THIS ACT; REJECTING FEDERAL LAWS PURPORTING TO GIVE FEDERAL EMPLOYEES AND OTHER AGENTS THE AUTHORITY OF A COUNTY SHERIFF IN THIS STATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Purpose. The purposes of [sections 1 through 4] are to:

- (1) ensure maximum cooperation between federal employees, or other agents or individuals acting on behalf of the federal government, and local law enforcement;
- (2) provide the opportunity for law enforcement event deconfliction to ensure officer safety and to safeguard citizens;
- (3) ensure that federal employees or other agents or individuals acting on behalf of the federal government who carry out arrests, searches, and seizures in this state receive the best local knowledge and expertise available; and
- (4) prevent misadventure affecting Montana citizens and their rights that results from lack of cooperation or communication between federal employees, or other agents or individuals acting on behalf of the federal government operating in the state, and local law enforcement authorities.

NEW SECTION. Section 2. County sheriff's permission for federal arrests, searches, and seizures -- exceptions. (1) A federal employee or other agent or individual acting on behalf of the federal government who is not designated by state law as a Montana peace officer may not make an arrest, search, or

1 seizure in this state without the written permission of the sheriff or a designee of the sheriff of the county in
2 which the arrest, search, or seizure will occur unless:

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

5 (b) the federal employee or other agent or individual acting on behalf of the federal government
6 witnesses the commission of a crime the nature of which requires an immediate arrest;

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

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

10 (e) the federal employee or other agent or individual acting on behalf of the federal government
11 has probable cause to believe that the subject of the arrest, search, or seizure has close connections with the
12 sheriff and that the connections are likely to result in the subject being informed of the impending arrest, search,
13 or seizure; or

14 (f) the sheriff has not invoked the authority of this section pursuant to subsection (6).

15 (2) The county sheriff or designee of the sheriff may refuse permission for any reason that the
16 sheriff or designee considers sufficient.

17 (3) A federal employee or other agent or individual acting on behalf of the federal government who
18 desires to exercise an exception under subsection (1)(d) shall obtain the written permission of the state attorney
19 general for the arrest, search, or seizure unless the resulting delay in obtaining the permission would likely
20 cause serious harm to one or more individuals or to a community or would likely allow time for flight of the
21 subject of the arrest, search, or seizure in order to avoid prosecution. The attorney general may refuse the
22 permission for any reason that the attorney general considers sufficient.

23 (4) A federal employee or other agent or individual acting on behalf of the federal government who
24 desires to exercise an exception under subsection (1)(e) shall obtain the written permission of the state attorney
25 general. The request for permission must include a written statement, under oath, describing the probable
26 cause of a federal employee or other agent or individual acting on behalf of the federal government. The
27 attorney general may refuse the request for any reason that the attorney general considers sufficient.

28 (5) (a) A permission request to the county sheriff or state attorney general must contain:

- 1 (i) the name of the subject of the arrest, search, or seizure;
- 2 (ii) a clear statement of probable cause for the arrest, search, or seizure or a federal arrest,
- 3 search, or seizure warrant that contains a clear statement of probable cause;
- 4 (iii) a description of the specific things to be searched for or seized;
- 5 (iv) a statement of the date and time that the arrest, search, or seizure is to occur; and
- 6 (v) the address or location where the intended arrest, search, or seizure will be attempted.
- 7 (b) The request may be in letter form, either typed or handwritten, but must be countersigned with
- 8 the original signature of the county sheriff or designee of the sheriff or by the state attorney general to constitute
- 9 valid permission. The permission is valid for 48 hours after it is signed. The sheriff or attorney general shall
- 10 keep a copy of the permission request on file.
- 11 (6) (a) At the sheriff's discretion, a sheriff may elect not to implement the provisions of this section
- 12 or may elect to implement the provisions of this section for one or more specifically identified federal employees
- 13 or other agents or individuals acting on behalf of the federal government, all federal employees of a specific
- 14 federal agency, or all federal employees. If a sheriff elects to implement the provisions of this section, the sheriff
- 15 shall provide notice to the affected federal agencies and employees as follows:
- 16 (i) in person by verbal notice to the affected federal employee or other agent or individual acting
- 17 on behalf of the federal government; or
- 18 (ii) in writing by certified mail to the United States attorney for the district of Montana.
- 19 (b) If notice is provided in person to the affected federal employee, the sheriff shall file the notice
- 20 with the appropriate dispatch service as soon as practicable. The notice is effective immediately and continues
- 21 until the sheriff revokes the notice.
- 22 (c) If notice is provided by certified mail to the United States attorney for the district of Montana,
- 23 the notice is effective 1 week after the notice is postmarked and continues until the sheriff revokes the notice.

24

25 **NEW SECTION. Section 3. Remedy.** A federal employee or other agent or individual acting on

26 behalf of the federal government who violates or fails to comply with any provision of [section 2] is guilty of a

27 felony and is punishable as provided in 46-18-213.

28

NEW SECTION. **Section 4. Invalid federal laws.** Pursuant to the 10th amendment to the United States constitution and this state's compact with the other states, the legislature declares that any federal law purporting to give federal employees or other agents or individuals acting on behalf of the federal government the authority of a county sheriff in this state is not recognized by and is specifically rejected by this state and is declared to be invalid in this state.

NEW SECTION. Section 5. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 44, and the provisions of Title 44 apply to [sections 1 through 4].

NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

- END -