

HOUSE BILL 959

By Dunn

AN ACT to amend Tennessee Code Annotated, Title 38, Chapter 3, Part 1, relative to the authority of certain federal employees in this state.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 38-3-113, is amended by deleting the section in its entirety and substituting instead the following:

(a) A federal employee who is not designated by state law as a Tennessee peace officer may not make an arrest, search, or seizure in this state without the written permission of the sheriff or designee of the sheriff of the county in which the arrest, search, or seizure will occur unless:

(1) The arrest, search, or seizure will take place on a federal enclave for which jurisdiction has been expressly ceded to the United States by a Tennessee statute;

(2) The federal employee witnesses the commission of a crime the nature of which requires an immediate arrest;

(3) The arrest, search, or seizure is under title 40;

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

(5) The federal employee has probable cause to believe that the subject of the arrest, search, or seizure has close connections with the sheriff, which connections are likely to result in the subject being informed of the impending arrest, search, or seizure.

(b) The county sheriff or designee of the sheriff may refuse permission to make an arrest or conduct a search or seizure for any reason that the sheriff or designee considers sufficient.

(c) A federal employee who desires to make an arrest or conduct a search or seizure under subdivision (a)(4) shall obtain the written permission of the attorney general and reporter for the arrest, search, or seizure unless the resulting delay in obtaining permission would probably cause serious harm to one or more individuals or to a community or would probably allow time for flight of the subject of the arrest, search, or seizure in order to avoid prosecution. The attorney general and reporter may refuse the permission for any reason that the attorney general considers sufficient.

(d) A federal employee who desires to make an arrest or conduct a search or seizure under subdivision (a)(5) shall obtain the written permission of the attorney general and reporter. The request for permission must include a written statement, under oath, describing the federal employee's probable cause. The attorney general may refuse the request for any reason that the attorney general considers sufficient.

(e)

(1) A permission request to the county sheriff or attorney general and reporter must contain:

(A) The name of the subject of the arrest, search, or seizure;

(B) A clear statement of probable cause for the arrest, search, or seizure or a federal arrest, search, or seizure warrant that contains a clear statement of probable cause;

(C) A description of the specific things to be searched for or seized;

(D) A statement of the date and time that the arrest, search, or seizure is to occur; and

(E) The address or location where the intended arrest, search, or seizure will be attempted.

(2) The request may be in letter form, either typed or handwritten, but must be countersigned with the original signature of the county sheriff or designee of the sheriff or by the attorney general and reporter to constitute valid permission. The permission is valid forty-eight (48) hours after it is signed. The sheriff or attorney general and reporter shall keep a copy of the permission request on file.

(f) An arrest, search, or seizure or attempted arrest, search, or seizure in violation of subsection (a) is unlawful, and the persons involved shall be prosecuted by the county attorney for kidnapping if an arrest or attempted arrest occurred, for trespass if a search or attempted search occurred, for theft if a seizure or attempted seizure occurred, and for any applicable homicide offense if loss of life occurred. The persons involved shall also be charged with any other applicable criminal offense.

(g) The county attorney shall prosecute once a claim of violation of subsection (a) has been made by the county sheriff or designee of the sheriff, and failure to prosecute subjects the county attorney to recall by the voters and to prosecution by the attorney general for official misconduct.

SECTION 2. Tennessee Code Annotated, Title 38, Chapter 3, Part 1, is amended by adding the following as a new section:

38-3-124.

Pursuant to the tenth amendment to the United States constitution and this state's compacts with other states, the general assembly declares that any

federal law purporting to give federal employees 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.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.