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HOUSE BILL 2713

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State of Washington                      61st Legislature                      2010 Regular Session

By Representatives Shea, Condotta, Kristiansen, Klippert, Haler, Taylor, McCune, Ross, Short, Kretz, Crouse, Hinkle, Johnson, Roach, Campbell, Warnick, and Angel

Read first time 01/12/10. Referred to Committee on Public Safety & Emergency Preparedness.

1            AN ACT Relating to adopting the Washington state sheriff first act  
2 of 2010 and regulating arrests, searches, and seizures by federal  
3 employees; adding new sections to chapter 36.28 RCW; adding new  
4 sections to chapter 10.79 RCW; and creating a new section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            NEW SECTION.    **Sec. 1.** This act may be known and cited as the  
7 Washington state sheriff first act of 2010.

8            NEW SECTION.    **Sec. 2.** The legislature intends to ensure maximum  
9 cooperation between federal agencies and employees and local law  
10 enforcement authorities; to ensure that federal agencies and employees  
11 who carry out arrests, searches, and seizures in this state receive the  
12 best local knowledge and expertise available; and to prevent  
13 misadventure affecting Washington citizens and their constitutionally  
14 protected rights that result from lack of cooperation or communication  
15 between federal agencies and employees operating in Washington and  
16 properly constituted local law enforcement authorities.

1        NEW SECTION.    **Sec. 3.**    (1) The sheriff may prohibit a federal  
2 employee who is not designated by Washington law as a Washington peace  
3 officer from making an arrest, search, or seizure in this state without  
4 the written permission of the sheriff of the county in which the  
5 arrest, search, or seizure will occur unless:

6        (a) The arrest, search, or seizure will take place on a federal  
7 enclave for which jurisdiction has been lawfully ceded to the United  
8 States of America by Washington state;

9        (b) The federal employee witnesses the commission of a crime the  
10 nature of which requires an immediate arrest as authorized by law;

11        (c) The arrest, search, or seizure is in fresh pursuit, as  
12 described in chapters 10.89 and 10.93 RCW;

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

16        (e) The federal employee has probable cause to believe that the  
17 subject of the arrest, search, or seizure has close connections with  
18 the sheriff to the extent that such connections are more likely than  
19 not to result in the subject being informed of the impending arrest,  
20 search, or seizure.

21        (2)(a) A permission request to the county sheriff or to the  
22 attorney general, as appropriate, must contain:

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

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

27        (iii) A description of specific assets, if any, to be searched for  
28 or seized;

29        (iv) A statement of the date and time that the arrest, search, or  
30 seizure is to be attempted; and

31        (v) The address or location where the intended arrest, search, or  
32 seizure is to be attempted.

33        (b) The request may be in letter form, either typed or handwritten,  
34 but must be countersigned with the original signature of the county  
35 sheriff or designee of the sheriff, or by the attorney general or  
36 designee of the attorney general, to constitute valid permission. The  
37 permission is valid for forty-eight hours after it is signed. The  
38 sheriff shall keep a copy of the permission request on file.

1 (3) The county sheriff or the attorney general, as appropriate, may  
2 refuse permission for any reason that he or she considers sufficient.

3 NEW SECTION. **Sec. 4.** (1) A federal agency or employee shall  
4 obtain the written permission of the attorney general for the arrest,  
5 search, or seizure of an employee of the sheriff's office or an elected  
6 county or state officer pursuant to section 3(1)(d) of this act unless  
7 the resulting delay in obtaining the permission would more likely than  
8 not cause serious harm to one or more individuals or to a community, or  
9 would more likely than not cause flight of the subject of the arrest,  
10 search, or seizure in order to avoid prosecution. The request for  
11 permission must include a written statement, under oath, describing the  
12 federal agency's or employee's probable cause that the elements of  
13 section 3(1)(d) of this act are met.

14 (2) A federal agency or employee shall obtain the written  
15 permission of the attorney general for the arrest, search, or seizure  
16 of a subject who has close connections with the sheriff pursuant to  
17 section 3(1)(e) of this act unless the resulting delay in obtaining the  
18 permission would more likely than not cause serious harm to one or more  
19 individuals or to a community, or would more likely than not cause  
20 flight of the subject of the arrest, search, or seizure in order to  
21 avoid prosecution. The request for permission must include a written  
22 statement, under oath, describing the federal agency's or employee's  
23 probable cause that the elements of section 3(1)(e) of this act are  
24 met.

25 NEW SECTION. **Sec. 5.** (1) An arrest, search, or seizure or  
26 attempted arrest, search, or seizure in violation of the provisions of  
27 this act is unlawful, and individuals involved must be charged with any  
28 applicable criminal offenses by the prosecuting attorney, if probable  
29 cause exists that such a violation has occurred.

30 (2) The prosecuting attorney has no discretion not to prosecute  
31 once a claim of violation of this act has been made by the county  
32 sheriff or the attorney general, as appropriate, and supported by  
33 probable cause.

34 NEW SECTION. **Sec. 6.** Any federal law, rule, order, or other act  
35 by the federal government violating the provisions of this act is

1 hereby declared to be invalid in this state, is not recognized by and  
2 is specifically rejected by this state, and is considered as null and  
3 void and of no effect in this state.

4 NEW SECTION. **Sec. 7.** If any provision of this act or its  
5 application to any person or circumstance is held invalid, the  
6 remainder of the act or the application of the provision to other  
7 persons or circumstances is not affected.

8 NEW SECTION. **Sec. 8.** Sections 3 and 6 of this act are each added  
9 to chapter 36.28 RCW.

10 NEW SECTION. **Sec. 9.** Sections 4 and 5 of this act are each added  
11 to chapter 10.79 RCW.

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