

**STATE OF TENNESSEE**

OFFICE OF THE  
**ATTORNEY GENERAL**  
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April 24, 2003

Opinion No. 03-052

Constitutionality of H.B. 652

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**QUESTION**

Whether H.B. 652, an act to amend Tenn. Code Ann. §40-7-103(a), is constitutional.

**OPINION**

It is the opinion of this office that the proposed amendment to Tenn. Code Ann. §40-7-103(a), in H.B. 652, is constitutional.

**ANALYSIS**

Tenn. Code Ann. §40-7-103(a), as amended by H.B. 652, would read as follows

An officer may, without a warrant, arrest a person

(9) for a misdemeanor, if the officer has probable cause and the person accused does not offer satisfactory evidence of identification.

The Fourth Amendment to the United States Constitution and Article I, Section 7, of the Tennessee Constitution protect against unreasonable searches and seizures. *See Sneed v. State*, 423 S.W. 2d 857, 859 (Tenn. 1968). The United States Supreme Court has held that it does not violate the Fourth Amendment for an officer, who has probable cause, to arrest an offender who has committed only a very minor criminal offense in his presence. *Atwater v. City of Lago Vista*, 532 U.S. 318, 354, 121 S.Ct. 1536, 149 L.Ed. 2d 549 (2001).

While *Atwater* does not specifically address whether such arrests may be made when the offense is committed outside the presence of the peace officer, *see Atwater*, 532 U.S. at 341, n. 11, “every circuit [court] that has addressed the issue has held that the Fourth Amendment does not include an in-the-presence requirement for warrantless misdemeanor arrests.” *Knight v. Jacobson*, 300 F.3d 1212, 1276 (11th Cir. 2002)(citing *Pyles v. Raisor*, 60 F.3d 1211, 1215 (6th Cir. 1995)); *see also Welsh v. Wisconsin*, 466 U.S. 740, 756, 104 S.Ct. 2091, 80 L.Ed. 732 (1984).

The Tennessee Court of Criminal Appeals has likewise observed that the statutory limits on a police officer's authority to effect a warrantless arrest for a misdemeanor committed outside his presence is based on common law and "is not constitutionally required." *State v. Bryant*, 678 S.W. 2d 480, 483 (Tenn. Crim. App. 1984). Moreover, the proposed amendment does not remove such limitations entirely; it continues to limit the the authority to effect such arrests to situations where the "person accused does not offer satisfactory evidence of identification."

Accordingly, it is the opinion of this office that H.B. 652 is constitutional.

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Requested by:

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