

HOUSE BILL NO. 604

INTRODUCED BY J. CARLSON, S. GUNDERSON, J. SCHILLINGER, C. KNUDSEN, S. GIST, B. LER, R. MARSHALL, C. HINKLE, J. GILLETTE, B. USHER, M. NOLAND, C. GLIMM, K. BOGNER

A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING ARRESTS, SEARCHES, AND SEIZURES BY FEDERAL EMPLOYEES; PROVIDING THAT FEDERAL EMPLOYEES MUST OBTAIN THE COUNTY SHERIFF'S PERMISSION TO ARREST, SEARCH, AND SEIZE; PROVIDING EXCEPTIONS; PROVIDING FOR PROSECUTION OF FEDERAL EMPLOYEES VIOLATING THIS ACT; REJECTING FEDERAL LAWS PURPORTING TO GIVE FEDERAL EMPLOYEES 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 purpose of [sections 1 and 2] is to:

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

~~(2)~~ PROVIDE THE OPPORTUNITY FOR LAW ENFORCEMENT EVENT DECONFLICTION TO ENSURE OFFICER SAFETY AND TO SAFEGUARD CITIZENS;

~~(2)(3)~~ ensure that federal employees who carry out arrests, searches, and seizures in this state receive the best local knowledge and expertise available; and

~~(3)(4)~~ prevent misadventure affecting Montana citizens and their rights that results from lack of cooperation or communication between federal employees operating in Montana and local law enforcement authorities.

NEW SECTION. **Section 2. County sheriff's permission for federal arrests, searches, and seizures -- exceptions.** (1) A federal employee who is not designated by Montana law as a Montana 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 (a) the arrest, search, or seizure will take place on a federal enclave for which jurisdiction has been  
2 actively ceded to the United States of America by a Montana statute;

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

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

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

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

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

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

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

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

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

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

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

28 (iii) a description of the specific things to be searched for or seized;

- 1 (iv) a statement of the date and time that the arrest, search, or seizure is to occur; and  
2 (v) the address or location where the intended arrest, search, or seizure will be attempted.  
3 (b) The request may be in letter form, either typed or handwritten, but must be countersigned with  
4 the original signature of the county sheriff or designee of the sheriff or by the Montana attorney general to  
5 constitute valid permission. The permission is valid for 48 hours after it is signed. The sheriff or attorney general  
6 shall keep a copy of the permission request on file.

7 (6) (A) AT THE SHERIFF'S DISCRETION, A SHERIFF MAY ELECT NOT TO IMPLEMENT THE PROVISIONS OF THIS  
8 SECTION OR MAY ELECT TO IMPLEMENT THE PROVISIONS OF THIS SECTION FOR ONE OR MORE SPECIFICALLY IDENTIFIED  
9 FEDERAL EMPLOYEES, ALL FEDERAL EMPLOYEES OF A SPECIFIED FEDERAL AGENCY, OR ALL FEDERAL EMPLOYEES. IF A  
10 SHERIFF ELECTS TO IMPLEMENT THE PROVISIONS OF THIS SECTION, THE SHERIFF SHALL PROVIDE NOTICE TO THE  
11 AFFECTED FEDERAL AGENCIES AND EMPLOYEES AS FOLLOWS:

- 12 (i) IN PERSON BY VERBAL NOTICE TO THE AFFECTED FEDERAL EMPLOYEE; OR  
13 (ii) IN WRITING BY CERTIFIED MAIL TO THE UNITED STATES ATTORNEY FOR THE DISTRICT OF MONTANA.  
14 (B) IF NOTICE IS PROVIDED IN PERSON TO THE AFFECTED FEDERAL EMPLOYEE, THE SHERIFF SHALL FILE

15 THE NOTICE WITH THE APPROPRIATE DISPATCH SERVICE AS SOON AS PRACTICABLE. THE NOTICE IS EFFECTIVE  
16 IMMEDIATELY AND CONTINUES UNTIL THE SHERIFF REVOKES THE NOTICE.

17 (C) IF NOTICE IS PROVIDED BY CERTIFIED MAIL TO THE UNITED STATES ATTORNEY FOR THE DISTRICT OF  
18 MONTANA, THE NOTICE IS EFFECTIVE 1 WEEK AFTER THE NOTICE IS POSTMARKED AND CONTINUES UNTIL THE SHERIFF  
19 REVOKES THE NOTICE.

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21 NEW SECTION. Section 3. — Remedies. (1) An arrest, search, or seizure or attempted arrest,  
22 search, or seizure in violation of [section 2] is unlawful, and the persons involved must be prosecuted by the  
23 county attorney for kidnapping if an arrest or attempted arrest occurred, for trespass if a search or attempted  
24 search occurred, for theft if a seizure or attempted seizure occurred, and for any applicable homicide offense if  
25 loss of life occurred. The persons involved must also be charged with any other applicable criminal offense in  
26 Title 45.

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

