

Wm. E. Boharski

House BILL NO. 415

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INTRODUCED BY

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A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING ARRESTS, SEARCHES, AND SEIZURES BY FEDERAL EMPLOYEES; PROVIDING THAT FEDERAL EMPLOYEES SHALL OBTAIN THE COUNTY SHERIFF'S PERMISSION TO ARREST, SEARCH, AND SEIZE; 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."

Rehbein

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

NEW SECTION. Section 1. Purpose. It is the intent of the legislature to ensure maximum cooperation between federal employees and local law enforcement authorities; to ensure that federal employees who carry out arrests, searches, and seizures in this state receive the best local knowledge and expertise available; and to prevent misadventure affecting Montana citizens and their rights that results from lack of cooperation or communication between federal employees operating in Montana and properly constituted 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:

- (a) the arrest, search, or seizure will take place on a federal enclave for which jurisdiction has been actively ceded to the United States of America by a Montana statute;
- (b) the federal employee witnesses the commission of a crime the nature of which requires an immediate arrest;
- (c) the arrest, search, or seizure is under the provisions of 46-6-411 or 46-6-412;
- (d) 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

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

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

6 (3) A federal employee who desires to exercise a subsection (1)(d) exception shall obtain the
7 written permission of the Montana attorney general for the arrest, search, or seizure unless the resulting
8 delay in obtaining the permission would probably cause serious harm to one or more individuals or to a
9 community or would probably cause flight of the subject of the arrest, search, or seizure in order to avoid
10 prosecution. The attorney general may refuse the permission for any reason that the attorney general
11 considers sufficient.

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

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

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

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

20 (iii) a description of specific assets, if any, to be searched for or seized;

21 (iv) a statement of the date and time that the arrest, search, or seizure is to occur; and

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

23 (b) The request may be in letter form, either typed or handwritten, but must be countersigned with
24 the original signature of the county sheriff or designee of the sheriff or by the Montana attorney general,
25 to constitute valid permission. The permission is valid for 48 hours after it is signed. The sheriff or
26 attorney general shall keep a copy of the permission request on file.

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28 **NEW SECTION. Section 3. Remedies.** (1) An arrest, search, or seizure or attempted arrest,
29 search, or seizure in violation of [section 2] is unlawful, and individuals involved must be prosecuted by the
30 county attorney for kidnapping if an arrest or attempted arrest occurred, for trespass if a search or

1 attempted search occurred, for theft if a seizure or attempted seizure occurred, and for any applicable
2 homicide offense if loss of life occurred. The individuals involved must also be charged with any other
3 applicable criminal offenses in Title 45.

4 (2) To the extent possible, the victims' rights provisions of Title 46 must be extended to the victim
5 or victims by the justice system persons and entities involved in the prosecution.

6 (3) The county attorney has no discretion not to prosecute once a claim of violation of [section 2]
7 has been made by the county sheriff or designee of the sheriff, and failure to abide by this mandate
8 subjects the county attorney to recall by the voters and to prosecution by the attorney general for official
9 misconduct.

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

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16 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

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

22 -END-