

INTERIM STUDY PROPOSAL 2009-206

State of Arkansas

87th General Assembly

Fiscal Session, 2010

A Bill

BPG/BPG

SENATE BILL

By: Senator Altes

Filed with: Arkansas Legislative Council
pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

AN ACT TO PROVIDE FOR JURISDICTIONAL COOPERATION
REGARDING ARRESTS, SEARCHES, AND SEIZURES BY
FEDERAL EMPLOYEES; AND FOR OTHER PURPOSES.

Subtitle

TO PROVIDE FOR JURISDICTIONAL
COOPERATION REGARDING ARRESTS, SEARCHES,
AND SEIZURES BY FEDERAL EMPLOYEES.

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

SECTION 1. Arkansas Code Title 12, Chapter 16 is amended to add a
subchapter to read as follows:

Subchapter 3 – Federal law enforcement personnel – Cooperation with
County sheriff.

12-16-301. Intent.

It is the intent of the General Assembly to:

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

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

(3) Prevent misadventure affecting Arkansas citizens and their
rights that results from lack of cooperation or communication between federal

1 employees operating in Arkansas and properly constituted local law
2 enforcement authorities.

3
4 12-16-302. County sheriff.

5 (a) The county sheriff of each county is the senior law enforcement
6 officer of that county and is the most authoritative law enforcement official
7 in the county.

8 (b) The primary duties of the county sheriff are to keep the peace in
9 the county and to secure and protect the liberties and security of the
10 residents of the county.

11
12 12-16-303. Federal employees.

13 (a) A federal employee who is not designated by state law as an
14 Arkansas peace officer may not make an arrest or conduct a search or seizure
15 in this state without the written permission of the county sheriff or
16 designee of the county in which the arrest, search, or seizure will occur
17 unless one (1) or more of the following circumstances exists:

18 (1) The arrest, search, or seizure will take place on a federal
19 enclave for which jurisdiction has been actively ceded to the United States
20 of America by state law;

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

23 (3) The arrest, search, or seizure is made pursuant to federal
24 or state customs or immigration laws;

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

28 (5) The federal employee has probable cause to believe that the
29 subject of the arrest, search, or seizure has close connections with the
30 county sheriff, and therefore the subject is likely to be informed of the
31 impending arrest, search, or seizure.

32 (b) The county sheriff or county sheriff's designee may refuse written
33 permission for any reason that the county sheriff or county sheriff's
34 designee considers sufficient.

35 (c) A federal employee who desires to exercise an arrest, search, or
36 seizure under subdivision (a)(4) of this section shall obtain the written

1 permission of the Attorney General for the arrest, search, or seizure unless
2 the resulting delay in obtaining the written permission would probably cause
3 serious harm to one (1) or more individuals or to a community or would
4 probably cause flight of the subject of the arrest, search, or seizure in
5 order to avoid prosecution. The Attorney General may refuse the permission
6 for any reason the Attorney General considers sufficient.

7 (d)(1) A federal employee who desires to exercise an arrest, search,
8 or seizure under subdivision (a)(5) of this section shall obtain the written
9 permission of the Attorney General.

10 (2) The request for permission shall include a written
11 statement, under oath, describing probable cause.

12 (3) The Attorney General may refuse the request for any reason
13 that the Attorney General considers sufficient.

14 (e)(1) A request to the county sheriff or Attorney General for written
15 permission under subsections (b), (c), and (d) of this section to exercise an
16 arrest, search, or seizure shall contain:

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

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

22 (C) A description of specific assets, if any, to be
23 searched for or seized;

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

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

28 (2) The request may be in letter form, either typed or
29 handwritten, but must be countersigned with the original signature of the
30 county sheriff or county sheriff's designee or by the Attorney General to
31 constitute valid permission.

32 (3) The permission is valid for forty-eight (48) hours after it
33 is signed.

34 (4) The sheriff or Attorney General shall keep a copy of the
35 permission request on file.

36

1 12-16-304. Prosecution.

2 (a) A federal employee who conducts an arrest, a search, or a seizure
3 or an attempted arrest, search, or seizure in violation of § 12-16-303 shall
4 be prosecuted by the prosecuting attorney of the county for violations of
5 state law as if the federal employee was acting as a private citizen.

6 (b) To the extent possible, any victim of a crime by a federal
7 employee acting in violation of § 12-16-303 may receive benefits available to
8 other victims of crime in this state including without limitation victims'
9 benefits from the Crime Victims Reparations Revolving Fund.

10 (c) The prosecuting attorney shall prosecute when a claim of violation
11 of § 12-16-303 has been made by the county sheriff, the county sheriff's
12 designee, or the Attorney General.

13
14 12-16-305. Declaration.

15 Pursuant to the Tenth Amendment to the United States Constitution and
16 this state's compact with other states, the General Assembly declares that
17 any federal law purporting to give federal employees the authority of a
18 county sheriff in this state is not recognized by and is specifically
19 rejected by this state and is declared to be invalid in this state.

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36 Filed Date: 01/26/2010 By: BPG\KSW