

Stricken language would be deleted from and underlined language would be added to present law.

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: H3/30/21 H4/8/21

A Bill

HOUSE BILL 1789

5 By: Representative Payton
6

For An Act To Be Entitled

8 AN ACT TO PROVIDE FOR JURISDICTIONAL COOPERATION
9 REGARDING ARRESTS, SEARCHES, AND SEIZURES BY FEDERAL
10 EMPLOYEES; AND FOR OTHER PURPOSES.
11

Subtitle

12
13
14 TO PROVIDE FOR JURISDICTIONAL COOPERATION
15 REGARDING ARRESTS, SEARCHES, AND SEIZURES
16 BY FEDERAL EMPLOYEES.
17

18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code Title 12, Chapter 16, is amended to add an
22 additional subchapter to read as follows:

23 Subchapter 3 – Federal Law Enforcement Personnel – Cooperation with
24 County Sheriffs.
25

26 12-16-301. Intent.

27 It is the intent of the General Assembly to:

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

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

33 (3) Prevent misadventure affecting Arkansas citizens and their
34 rights that results from lack of cooperation or communication between federal
35 employees operating in Arkansas and properly constituted local law
36 enforcement authorities.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

12-16-302. County sheriff.

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

(b) The primary duties of the county sheriff are to abide by the oath required under Arkansas Constitution, Article 19, § 20, which is to "solemnly swear (or affirm) that [he or she] will support the Constitution of the United States and the Constitution of the State of Arkansas, and that [he or she] will faithfully discharge the duties of the office of [county sheriff], upon which [he or she is] now about to enter", to keep the peace in the county, and to secure and protect the liberties and security of the residents of the county.

12-16-303. Federal employees.

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

(1) 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 state law;

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

(3) The arrest, search, or seizure is made under federal or state customs or immigration laws;

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

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

(b) The county sheriff or county sheriff's designee may refuse written permission for any reason that the county sheriff or county sheriff's

1 designee considers sufficient.

2 (c)(1) A federal employee who desires to exercise an arrest, search,
3 or seizure under subdivision (a)(4) of this section shall obtain the written
4 permission of the Attorney General for the arrest, search, or seizure unless
5 the resulting delay in obtaining the written permission would likely cause:

6 (A) Serious harm to one (1) or more individuals or to a
7 community; or

8 (B) Flight of the subject of the arrest, search, or
9 seizure in order to avoid prosecution.

10 (2) The Attorney General may refuse the permission for any
11 reason the Attorney General considers sufficient.

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

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

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

19 (e)(1) A request to the county sheriff or Attorney General for written
20 permission under subsections (b)-(d) of this section to exercise an arrest,
21 search, or seizure shall contain:

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

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

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

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

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

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

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

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

5 (f)(1)(A) A federal law enforcement agency may enter into an agreement
6 with a county sheriff that results in a memorandum of understanding between
7 the federal law enforcement agency and the county sheriff instead of
8 obtaining the required written permission as described in subsection (e) of
9 this section.

10 (B) For a memorandum of understanding to be valid,
11 notification must be given prior to an arrest, a search, or a seizure instead
12 of obtaining the required written permission as described in subsection (e)
13 of this section.

14 (2) A copy of the signed memorandum of understanding shall be
15 kept on file at the county sheriff's office and with the Attorney General.

16 (3) A memorandum of understanding under this subsection expires
17 at the end of each term served by a county sheriff.

18 (4) Failure to notify the county sheriff under this section and
19 as required by a memorandum of understanding immediately voids the memorandum
20 of understanding.

21
22 12-16-304. Prosecution.

23 (a) A federal employee who conducts an arrest, a search, or a seizure
24 or an attempted arrest, search, or seizure in violation of § 12-16-303 may be
25 prosecuted by the prosecuting attorney of the county for violations of state
26 law as if the federal employee were acting as a private citizen.

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

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

34
35 12-16-305. Declaration.

36 Under the Tenth Amendment to the United States Constitution and this

1 state's compact with other states, the General Assembly declares that any
2 federal law purporting to give a federal employee the authority of a county
3 sheriff in this state is not recognized by and is specifically rejected by
4 this state and is declared to be invalid in this state.

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36

/s/Payton