



ARIZONA STATE SENATE

Fifty-Second Legislature, First Regular Session

FACT SHEET FOR S.B. 1384

federal search; seizure; sheriff; permission

Purpose

Creates protocol for federal employees to follow if they wish to make an arrest or conduct a search or seizure in Arizona.

Background

The U.S. Constitution defines the powers of the legislative, executive and judicial branches of the federal government and reserves certain rights and powers to the states and the people of the United States. The Tenth Amendment of the U. S. Constitution states that powers not explicitly given to the U.S., or prohibited to the states, are reserved for the states or people.

The position of sheriff is established in Article 12, Section 3, of the Arizona Constitution. Their duties and powers include general peacekeeping, arresting public offenders, protecting courts when danger is anticipated and operating and maintaining county jails (A.R.S. § 11-441). Sheriffs are elected by voters of their respective counties and they are the highest law enforcement officer of the county.

A.R.S. § 13-3875 requires each sheriff in the state to develop and adopt a cross-certification policy for federal peace officers who wish to conduct authorized business in the county, if the sheriff wishes to allow cross-certification at all. A cross-certified officer can exercise all law enforcement powers of a peace officer in Arizona if the federal officer submits: 1) a written request for certification; and 2) proof of federal certification and authorization to carry out appropriate actions. The Arizona Peace Officer Standards and Training Board (AzPOST) is responsible for maintaining records of certified federal peace officers.

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions

Sheriffs

1. Proclaims the county sheriff to be the senior and most authoritative law enforcement officer in the county whose primary duties are to preserve peace and protect the liberties of the county's residents.
2. Prohibits federal employees who are not cross-certified from making arrests or conducting searches or seizures in a county without written permission from the sheriff or the sheriff's designee unless:

- a) the arrest, search or seizure occurs on a federal enclave to which jurisdiction was ceded by Arizona to the U.S.;
 - b) the federal employee witnesses a crime that demands immediate arrest;
 - c) the federal employee enters the state in close pursuit of a person to make an arrest and brings the arrested person before a county magistrate for a hearing; or
 - d) the federal employee is a Customs and Border Protection or Immigration and Customs Enforcement officer.
3. Allows the sheriff or his designee to refuse permission to a federal employee for any reason the sheriff or designee considers sufficient.

Attorney General

4. Requires the federal employee to obtain written permission from the Attorney General instead of the county sheriff if the federal employee:
- a) intends to arrest, search or seize an elected county or state officer or a sheriff's office employee; or
 - b) has probable cause to believe the subject of the arrest, search or seizure (subject) has a close connection with the sheriff and would be warned of such an arrest, search or seizure.
5. Requires the request for written permission regarding a subject connected to the sheriff to include a written statement, under oath, describing the probable cause.
6. Excuses the federal employee from obtaining permission from the Attorney General regarding sheriff's employees, state or county officers if the delay in acquiring permission would probably cause:
- a) serious harm to an individual or community; or
 - b) the subject to flee in order to avoid prosecution.
7. Permits the Attorney General to refuse permission of such a request for any reason he considers sufficient.

Miscellaneous

8. Allows requests for permission to be in letter form, either typed or handwritten.
9. Stipulates that the written request from the federal employee to the sheriff or Attorney General must include:
- a) the name of the subject;
 - b) a clear statement of probable cause for the arrest, search or seizure or a federal arrest, search or seizure warrant that contains a clear statement of probable cause;
 - c) a description of assets intended for search or seizure, if any; and
 - d) the date, time and location of the intended arrest, search or seizure.
10. Specifies that the sheriff, a sheriff's designee or the Attorney General must countersign the permission request for it to be valid; it is valid for 48 hours after it is countersigned.

11. Requires the sheriff or the Attorney General to keep a copy of the permission request on file.
12. Requires the county attorney to prosecute a federal employee who does not follow these requirements for:
 - a) kidnapping, if an arrest or attempted arrest occurs;
 - b) trespassing, if a search or attempted search occurs;
 - c) theft, if a seizure or attempted seizure occurs;
 - d) an appropriate homicide offense, if loss of life occurs; or
 - e) any other applicable offenses in the criminal code.
13. Prohibits the county attorney from refusing to prosecute after the sheriff, or his designee, claims a violation has occurred.
14. Subjects the county attorney to a recall by the voters and prosecution by the Attorney General for official misconduct if the county attorney fails to prosecute in such a circumstance.
15. Declares that pursuant to the Tenth Amendment and Arizona's compact with other compacting states, any federal law purporting to give federal employees the authority of a county sheriff is not recognized, specifically rejected and declared null and void and of no effect in the State of Arizona.
16. Becomes effective on the general effective date.

Prepared by Senate Research

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