

REFERENCE TITLE: federal search; seizure; sheriff; permission

State of Arizona
Senate
Fifty-first Legislature
Second Regular Session
2014

SB 1290

Introduced by

Senators Burges, Crandell, Farnsworth D; Representatives Borrelli, Forese, Gowan, Livingston, Seel, Smith, Stevens, Thorpe, Townsend; Senators Biggs, Griffin, Melvin, Murphy, Pierce, Reagan, Shooter, Ward; Representatives Barton, Boyer, Fann, Farnsworth E, Gray, Lesko, Lovas, Mitchell, Montenegro, Olson, Petersen, Ugenti

AN ACT

AMENDING TITLE 11, CHAPTER 3, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 11-453; RELATING TO COUNTY SHERIFFS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 11, chapter 3, article 2, Arizona Revised Statutes,
3 is amended by adding section 11-453, to read:

4 11-453. Required notice to county sheriff of federal law
5 enforcement actions

6 A. THE COUNTY SHERIFF IS THE SENIOR AND MOST AUTHORITATIVE LAW
7 ENFORCEMENT OFFICER IN THE COUNTY. THE PRIMARY DUTIES OF THE SHERIFF ARE TO
8 PRESERVE THE PEACE IN THE COUNTY AND TO PROTECT THE LIBERTIES OF THE COUNTY'S
9 RESIDENTS.

10 B. A FEDERAL EMPLOYEE WHO IS NOT CERTIFIED AS A PEACE OFFICER IN THIS
11 STATE PURSUANT TO SECTION 13-3875 MAY NOT MAKE AN ARREST, SEARCH OR SEIZURE
12 IN THIS STATE WITHOUT WRITTEN PERMISSION FROM THE SHERIFF OR SHERIFF'S
13 DESIGNEE OF THE COUNTY IN WHICH THE ARREST, SEARCH OR SEIZURE WILL OCCUR
14 UNLESS ANY OF THE FOLLOWING APPLIES:

15 1. THE ARREST, SEARCH OR SEIZURE TAKES PLACE ON A FEDERAL ENCLAVE FOR
16 WHICH THIS STATE HAS CEDED JURISDICTION TO THE UNITED STATES OF AMERICA.

17 2. THE FEDERAL EMPLOYEE WITNESSES THE COMMISSION OF A CRIME THE NATURE
18 OF WHICH REQUIRES AN IMMEDIATE ARREST.

19 3. THE FEDERAL EMPLOYEE ENTERS THIS STATE IN CLOSE PURSUIT OF A PERSON
20 IN ORDER TO ARREST THAT PERSON, AS LONG AS THE ARREST IS UNDER ANY
21 CIRCUMSTANCES SET FORTH IN SECTION 13-3833 AND THE FEDERAL EMPLOYEE BRINGS
22 THE PERSON ARRESTED BEFORE A MAGISTRATE FOR A HEARING.

23 4. THE FEDERAL EMPLOYEE IS A CUSTOMS AND BORDER PROTECTION OFFICER OR
24 AN IMMIGRATION AND CUSTOMS ENFORCEMENT OFFICER.

25 C. THE SHERIFF OR SHERIFF'S DESIGNEE MAY REFUSE PERMISSION FOR ANY
26 REASON THAT THE SHERIFF OR SHERIFF'S DESIGNEE CONSIDERS SUFFICIENT.

27 D. IF A FEDERAL EMPLOYEE INTENDS TO ARREST, SEARCH OR SEIZE AN
28 EMPLOYEE OF THE SHERIFF'S OFFICE OR AN ELECTED COUNTY OR STATE OFFICER, THE
29 FEDERAL EMPLOYEE SHALL OBTAIN WRITTEN PERMISSION FROM THE ATTORNEY GENERAL
30 INSTEAD OF FROM THE COUNTY SHERIFF. THE FEDERAL EMPLOYEE DOES NOT HAVE TO
31 REQUEST WRITTEN PERMISSION FROM THE ATTORNEY GENERAL IF THE RESULTING DELAY
32 IN OBTAINING THE PERMISSION WOULD PROBABLY CAUSE SERIOUS HARM TO AN
33 INDIVIDUAL OR TO A COMMUNITY, OR WOULD PROBABLY CAUSE THE INTENDED SUBJECT OF
34 THE ARREST, SEARCH OR SEIZURE TO FLEE IN ORDER TO AVOID PROSECUTION. THE
35 ATTORNEY GENERAL MAY REFUSE PERMISSION FOR ANY REASON THAT THE ATTORNEY
36 GENERAL CONSIDERS SUFFICIENT.

37 E. IF A FEDERAL EMPLOYEE HAS PROBABLE CAUSE TO BELIEVE THAT THE
38 SUBJECT OF AN ARREST, SEARCH OR SEIZURE HAS A CLOSE CONNECTION WITH THE
39 SHERIFF AND IS LIKELY TO BE INFORMED OF THE IMPENDING ARREST, SEARCH OR
40 SEIZURE, THE FEDERAL EMPLOYEE SHALL OBTAIN WRITTEN PERMISSION FROM THE
41 ATTORNEY GENERAL INSTEAD OF FROM THE COUNTY SHERIFF. THE REQUEST FOR WRITTEN
42 PERMISSION MUST INCLUDE A WRITTEN STATEMENT, UNDER OATH, DESCRIBING THE
43 FEDERAL EMPLOYEE'S PROBABLE CAUSE. THE ATTORNEY GENERAL MAY REFUSE
44 PERMISSION FOR ANY REASON THAT THE ATTORNEY GENERAL CONSIDERS SUFFICIENT.

1 F. A PERMISSION REQUEST TO THE SHERIFF OR ATTORNEY GENERAL MAY BE IN
2 LETTER FORM, EITHER TYPED OR HANDWRITTEN, AND MUST CONTAIN:
3 1. THE NAME OF THE SUBJECT OF THE ARREST, SEARCH OR SEIZURE.
4 2. A CLEAR STATEMENT OF PROBABLE CAUSE FOR THE ARREST, SEARCH OR
5 SEIZURE OR PROVIDE A FEDERAL ARREST, SEARCH OR SEIZURE WARRANT THAT CONTAINS
6 A CLEAR STATEMENT OF PROBABLE CAUSE.
7 3. A DESCRIPTION OF SPECIFIC ASSETS, IF ANY, THAT THE FEDERAL EMPLOYEE
8 INTENDS TO SEARCH OR SEIZE.
9 4. THE DATE, TIME AND LOCATION OF THE INTENDED ARREST, SEARCH OR
10 SEIZURE.
11 G. TO CONSTITUTE VALID WRITTEN PERMISSION, THE SHERIFF, SHERIFF'S
12 DESIGNEE OR ATTORNEY GENERAL MUST COUNTERSIGN THE PERMISSION REQUEST. THE
13 PERMISSION IS VALID FOR FORTY-EIGHT HOURS AFTER IT IS SIGNED. THE SHERIFF OR
14 ATTORNEY GENERAL SHALL KEEP A COPY OF THE PERMISSION REQUEST ON FILE.
15 H. THE COUNTY ATTORNEY SHALL PROSECUTE AN INDIVIDUAL WHO VIOLATES
16 SUBSECTION B OF THIS SECTION FOR:
17 1. KIDNAPPING, IF AN ARREST OR ATTEMPTED ARREST OCCURS.
18 2. TRESPASS, IF A SEARCH OR ATTEMPTED SEARCH OCCURS.
19 3. THEFT, IF A SEIZURE OR ATTEMPTED SEIZURE OCCURS.
20 4. AN APPLICABLE HOMICIDE OFFENSE, IF LOSS OF LIFE OCCURS.
21 5. ANY OTHER APPLICABLE CRIMINAL OFFENSE IN TITLE 13.
22 I. THE COUNTY ATTORNEY MAY NOT REFUSE TO PROSECUTE AFTER THE SHERIFF
23 OR SHERIFF'S DESIGNEE CLAIMS THAT A VIOLATION OF SUBSECTION B OF THIS SECTION
24 HAS OCCURRED. FAILURE TO ABIDE BY THIS MANDATE SUBJECTS THE COUNTY ATTORNEY
25 TO RECALL BY THE VOTERS AND TO PROSECUTION BY THE ATTORNEY GENERAL FOR
26 OFFICIAL MISCONDUCT.
27 J. PURSUANT TO THE TENTH AMENDMENT TO THE UNITED STATES CONSTITUTION
28 AND THIS STATE'S COMPACT WITH OTHER COMPACTING STATES, THE LEGISLATURE
29 DECLARES THAT ANY FEDERAL LAW PURPORTING TO GIVE FEDERAL EMPLOYEES THE
30 AUTHORITY OF A COUNTY SHERIFF IN THIS STATE IS NOT RECOGNIZED BY THIS STATE,
31 IS SPECIFICALLY REJECTED BY THIS STATE AND IS DECLARED TO BE NULL, VOID AND
32 OF NO EFFECT IN THIS STATE.