

### **Short Ballot Title**

An initiative requiring federal employees and officers obtain a sheriff's written consent to make an arrest.

### **Long Ballot Title**

An initiative relating to Sheriff's arrest authority; amending Chapter 22, Title 31, Idaho Code, by addition a new Section 31, that the Sheriff may prohibit a federal employee who is not designated by Idaho law as an Idaho peace officer from making an arrest, search, or seizure in this state without the written permission of the Sheriff or designee of the Sheriff. Providing for certain arrests to be made by federal employees or officers with the written consent of the Attorney General removing discretion from County Prosecutors and nullifying federal law.

### **Text of Initiative**

SECTION 1. SHORT TITLE. This act may be known and cited as the "Idaho state sheriff first act."

SECTION 2. LEGISLATIVE INTENT. The people of the state of Idaho intend to ensure maximum cooperation between federal employees and local law enforcement authorities; to ensure that federal agencies and employees who carry out arrests, searches, and seizures in this state receive the best local knowledge and expertise available; and to prevent misadventure affecting Idaho citizens and their constitutionally protected rights that result from lack of cooperation or communication between federal agencies and employees operating in Idaho and properly constituted local law enforcement authorities.

SECTION 3. DECLARATION. (a) The elected sheriff of each county is the senior law enforcement officer of that county and is the most authoritative law enforcement official in the county. The primary duties of the sheriff are to keep the peace in the county and to secure and protect the liberties and security of the residents of the county.

(b) Pursuant to the tenth amendment to the United States constitution and this state's compact with the other states, the legislature declares that any federal law purporting to give federal employees the authority of a county sheriff in this state is not recognized by and is specifically rejected by this state and is declared to be invalid in this state.

SECTION 4. That Chapter 22, Title 31, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 31-2230, Idaho Code, and to read as follows:

31-2230. ARREST AUTHORITY (1) The sheriff may prohibit a federal employee who is not designated by Idaho law as an Idaho peace officer from making 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 lawfully ceded to the United States of America by Idaho;

(b) The federal employee witnesses the commission of a crime the nature of which requires an immediate arrest as authorize by law;

(c) The arrest, search, or seizure is in fresh pursuit as described in Chapter 7, Title 19, Idaho Code;

(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

(e) The federal employee has probable cause to believe that the subject of the arrest, search, or seizure has close connections with the sheriff to the extent that such connections are more likely than not to result in the subject being informed of the impending arrest, search, or seizure.

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

(3) A federal agency or employee who desires to exercise a subsection (1)(d) exception shall obtain the written permission of the Idaho attorney general for the arrest, search, or seizure unless the resulting delay in obtaining the permission would probably cause serious harm to one or more individuals or to a community or would probably cause flight of the subject of the arrest, search, or seizure in order to avoid prosecution. The request for permission must include a written statement, under oath, describing the federal agency's or employee's probable cause that the elements of (1)(d) of this section are met. The attorney general may refuse the permission for any reason that the attorney general considers sufficient.

(4) A federal agency or employee who desires to exercise a subsection (1)(e) exception shall obtain the written permission of the Idaho attorney general for the arrest, search, or seizure unless the resulting delay in obtaining the permission would probably cause serious harm to one or more individuals or to a community or would probably cause flight of the subject of the arrest, search, or seizure in order to avoid prosecution. The request for permission must include a written statement, under oath, describing the federal agency's or employee's probable cause that the elements of (1)(e) of this section are met. The attorney general may refuse the request for any reason that the attorney general considers sufficient.

(5)(a) A permission request to the county sheriff or to the attorney general, as appropriate, must contain:

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

(ii) 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;

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

(iv) A statement of the date and time that the arrest, search, or seizure is to be attempted; and

(v) The address of location where the intended arrest, search, or seizure is to be attempted.

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

(6)(a) An arrest, search, or seizure or attempted arrest, or seizure in violation of this section is unlawful, and individuals involved must be prosecuted by the county prosecuting attorney for kidnapping if an arrest or attempted arrest occurred, for trespass if a search or attempted search occurred, for theft if a seizure or attempted seizure occurred, and for any applicable homicide

offense if loss of life occurred. The individuals involved must also be charged with any other applicable criminal offenses in Title 18, Idaho Code.

(b) The county prosecuting attorney has no discretion not to prosecute once a claim of violation of this section has been made by the county sheriff or designee of the sheriff if there exists substantial evidence supporting such a claim. Failure to abide by this mandate subjects the county prosecuting attorney to recall by the voters and to prosecution by the attorney general for official misconduct.

(c) Victims of crimes prosecutable under this section shall be entitled to independently pursue civil action against the perpetrators of these crimes.

(7) Any federal law, rule, order, or other act by the federal government violating the provisions of this section is hereby declared to be invalid in this state, is not recognized by and is specifically rejected by this state, and is considered null and void and of no effect in this state.

**SECTION 5. SEVERABILITY.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.