1	HOUSE BILL NO. 604		
2	INTRODUCED BY J. CARLSON, S. GUNDERSON, J. SCHILLINGER, C. KNUDSEN, S. GIST, B. LER, F		
3	MARSHALL, C. HINKLE, J. GILLETTE, B. USHER, M. NOLAND, C. GLIMM, K. BOGNER		
4			
5	A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING ARRESTS, SEARCHES, AND SEIZURES BY		
6	FEDERAL EMPLOYEES; PROVIDING THAT FEDERAL EMPLOYEES MUST OBTAIN THE COUNTY		
7	SHERIFF'S PERMISSION TO ARREST, SEARCH, AND SEIZE; PROVIDING EXCEPTIONS; PROVIDING		
8	FOR PROSECUTION OF FEDERAL EMPLOYEES VIOLATING THIS ACT; REJECTING FEDERAL LAWS		
9	PURPORTING TO GIVE FEDERAL EMPLOYEES THE AUTHORITY OF A COUNTY SHERIFF IN THIS		
10	STATE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."		
11			
12	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:		
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14	NEW SECTION. Section 1. Purpose. The purpose of [sections 1 and 2] is to:		
15	(1) ensure maximum cooperation between federal employees and local law enforcement		
16	authorities;		
17	(2) PROVIDE THE OPPORTUNITY FOR LAW ENFORCEMENT EVENT DECONFLICTION TO ENSURE OFFICER		
18	SAFETY AND TO SAFEGUARD CITIZENS;		
19	(2)(3) ensure that federal employees who carry out arrests, searches, and seizures in this state		
20	receive the best local knowledge and expertise available; and		
21	(3)(4) prevent misadventure affecting Montana citizens and their rights that results from lack of		
22	cooperation or communication between federal employees operating in Montana and local law enforcement		
23	authorities.		
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25	NEW SECTION. Section 2. County sheriff's permission for federal arrests, searches, and		
26	seizures exceptions. (1) A federal employee who is not designated by Montana law as a Montana peace		
27	officer may not make an arrest, search, or seizure in this state without the written permission of the sheriff or		
28	designee of the sheriff of the county in which the arrest, search, or seizure will occur unless:		



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- (a) 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 a Montana statute;
 - (b) the federal employee witnesses the commission of a crime the nature of which requires an immediate arrest;
 - (c) the arrest, search, or seizure is under the provisions of 46-6-411 or 46-6-412;
- 6 (d) the intended subject of the arrest, search, or seizure is an employee of the sheriff's office or is
 7 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, which connections are likely to result in the subject being informed of the impending arrest, search, or seizure; OR
 - (F) THE SHERIFF HAS NOT INVOKED THE AUTHORITY OF THIS SECTION PURSUANT TO SUBSECTION (6).
 - (2) The county sheriff or designee of the sheriff may refuse permission for any reason that the sheriff or designee considers sufficient.
 - (3) A federal employee who desires to exercise an exception under subsection (1)(d) shall obtain the written permission of the Montana 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 allow time for flight of the subject of the arrest, search, or seizure in order to avoid prosecution. The attorney general may refuse the permission for any reason that the attorney general considers sufficient.
 - (4) A federal employee who desires to exercise an exception under subsection (1)(e) shall obtain the written permission of the Montana attorney general. The request for permission must include a written statement, under oath, describing the federal employee's probable cause. 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 Montana attorney general must contain:
- (i) the name of the subject of the arrest, search, or seizure;
- 26 (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 the specific things to be searched for or seized;



1	(iv)	a statement of the date and time that the arrest, search, or seizure is to occur; and	
2	(v)	the address or location where the intended arrest, search, or seizure will be attempted.	
3	(b)	The request may be in letter form, either typed or handwritten, but must be countersigned with	
4	the original sig	nature of the county sheriff or designee of the sheriff or by the Montana attorney general to	
5	constitute valid	permission. The permission is valid for 48 hours after it is signed. The sheriff or attorney general	
6	shall keep a co	ppy of the permission request on file.	
7	<u>(6)</u>	(A) AT THE SHERIFF'S DISCRETION, A SHERIFF MAY ELECT NOT TO IMPLEMENT THE PROVISIONS OF THIS	
8	SECTION OR MA	Y ELECT TO IMPLEMENT THE PROVISIONS OF THIS SECTION FOR ONE OR MORE SPECIFICALLY IDENTIFIED	
9	FEDERAL EMPLO	DYEES, ALL FEDERAL EMPLOYEES OF A SPECIFIED FEDERAL AGENCY, OR ALL FEDERAL EMPLOYEES. IF A	
10	SHERIFF ELECTS	S TO IMPLEMENT THE PROVISIONS OF THIS SECTION, THE SHERIFF SHALL PROVIDE NOTICE TO THE	
11	AFFECTED FEDE	RAL AGENCIES AND EMPLOYEES AS FOLLOWS:	
12	<u>(I)</u>	IN PERSON BY VERBAL NOTICE TO THE AFFECTED FEDERAL EMPLOYEE; OR	
13	<u>(II)</u>	IN WRITING BY CERTIFIED MAIL TO THE UNITED STATES ATTORNEY FOR THE DISTRICT OF MONTANA.	
14	<u>(B)</u>	IF NOTICE IS PROVIDED IN PERSON TO THE AFFECTED FEDERAL EMPLOYEE, THE SHERIFF SHALL FILE	
15	THE NOTICE WIT	TH THE APPROPRIATE DISPATCH SERVICE AS SOON AS PRACTICABLE. THE NOTICE IS EFFECTIVE	
16	IMMEDIATELY AND CONTINUES UNTIL THE SHERIFF REVOKES THE NOTICE.		
17	<u>(C)</u>	IF NOTICE IS PROVIDED BY CERTIFIED MAIL TO THE UNITED STATES ATTORNEY FOR THE DISTRICT OF	
18	MONTANA, THE	NOTICE IS EFFECTIVE 1 WEEK AFTER THE NOTICE IS POSTMARKED AND CONTINUES UNTIL THE SHERIFF	
19	REVOKES THE N	IOTICE.	
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21	NEW S	SECTION. Section 3. — Remedies. (1) An arrest, search, or seizure or attempted arrest,	
22	search, or seiz	ture in violation of [section 2] is unlawful, and the persons involved must be prosecuted by the	
23	county attorne	y for kidnapping if an arrest or attempted arrest occurred, for trespass if a search or attempted	
24	search occurre	ed, for theft if a seizure or attempted seizure occurred, and for any applicable homicide offense if	
25	loss of life occu	urred. The persons involved must also be charged with any other applicable criminal offense in	
26	Title 45.		
27	(2)	To the extent possible, the victims' rights provisions of Title 46 must be extended to the victim	
28	or victims by th	ne persons and entities involved in a prosecution.	



1	(3) The county attorney shall prosecute once a claim of violation of [section 2] has been made by
2	the county sheriff or designee of the sheriff, and failure to prosecute subjects the county attorney to recall by
3	the voters and to prosecution by the attorney general for official misconduct.
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5	NEW SECTION. SECTION 3. REMEDY. A FEDERAL EMPLOYEE WHO VIOLATES OR FAILS TO COMPLY WITH
6	ANY OF THE PROVISIONS OF [SECTION 2] IS GUILTY OF A MISDEMEANOR AND IS PUNISHABLE AS PROVIDED IN 46-18-212
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8	NEW SECTION. Section 4. Invalid federal laws. Pursuant to the 10th amendment to the United
9	States constitution and this state's compact with the other states, the legislature declares that any federal law
10	purporting to give federal employees the authority of a county sheriff in this state is not recognized by and is
11	specifically rejected by this state and is declared to be invalid in this state.
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13	NEW SECTION. Section 5. Codification instruction. [Sections 1 through 4] are intended to be
14	codified as an integral part of Title 44, and the provisions of Title 44 apply to [sections 1 through 4].
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16	NEW SECTION. Section 6. Severability. If a part of [this act] is invalid, all valid parts that are
17	severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications
18	the part remains in effect in all valid applications that are severable from the invalid applications.
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20	NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.
21	- END -

