

# SENATE BILL No. 127

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-33.

**Synopsis:** Arrests and searches by federal employees. Provides that a federal employee who is not designated by state law to act as a state law enforcement officer may not make an arrest, a search, or a seizure in Indiana without the written permission of the sheriff or the designee of the sheriff who has jurisdiction in the county in which the arrest, search, or seizure will occur. Provides certain exceptions. Provides that if an arrest, a search, or a seizure is made without the sheriff's written permission, the federal employee must be prosecuted under Indiana law and charged with an offense appropriate to the circumstances. Provides that under the Tenth Amendment of the Constitution of the United States and Indiana's compact with the other states, the general assembly declares that any federal law that purports to provide federal employees with the authority of a sheriff in Indiana is not recognized by and is specifically rejected by the state of Indiana and is invalid in Indiana. Makes conforming amendments.

**Effective:** July 1, 2013.

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January 7, 2013, read first time and referred to Committee on Rules and Legislative Procedure.

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First Regular Session 118th General Assembly (2013)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2012 Regular Session of the General Assembly.

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# SENATE BILL No. 127



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 35-33-1-1, AS AMENDED BY P.L.171-2011,  
2 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2013]: Sec. 1. ~~(a)~~ A law enforcement officer may arrest a  
4 person when the officer has:  
5 (1) a warrant commanding that the person be arrested;  
6 (2) probable cause to believe the person has committed or  
7 attempted to commit, or is committing or attempting to commit,  
8 a felony;  
9 (3) probable cause to believe the person has violated the  
10 provisions of IC 9-26-1-1(1), IC 9-26-1-1(2), IC 9-26-1-2(1),  
11 IC 9-26-1-2(2), IC 9-26-1-3, IC 9-26-1-4, or IC 9-30-5;  
12 (4) probable cause to believe the person is committing or  
13 attempting to commit a misdemeanor in the officer's presence;  
14 (5) probable cause to believe the person has committed a:  
15 (A) battery resulting in bodily injury under IC 35-42-2-1; or  
16 (B) domestic battery under IC 35-42-2-1.3.  
17 The officer may use an affidavit executed by an individual alleged



1 to have direct knowledge of the incident alleging the elements of  
2 the offense of battery to establish probable cause;

3 (6) probable cause to believe that the person violated  
4 IC 35-46-1-15.1 (invasion of privacy);

5 (7) probable cause to believe that the person violated  
6 IC 35-47-2-1 (carrying a handgun without a license) or  
7 IC 35-47-2-22 (counterfeit handgun license);

8 (8) probable cause to believe that the person is violating or has  
9 violated an order issued under IC 35-50-7;

10 (9) probable cause to believe that the person is violating or has  
11 violated IC 35-47-6-1.1 (undisclosed transport of a dangerous  
12 device);

13 (10) probable cause to believe that the person is:

14 (A) violating or has violated IC 35-45-2-5 (interference with  
15 the reporting of a crime); and

16 (B) interfering with or preventing the reporting of a crime  
17 involving domestic or family violence (as defined in  
18 IC 34-6-2-34.5);

19 (11) a removal order issued for the person by an immigration  
20 court;

21 (12) a detainer or notice of action for the person issued by the  
22 United States Department of Homeland Security; or

23 (13) probable cause to believe that the person has been indicted  
24 for or convicted of one (1) or more aggravated felonies (as  
25 defined in 8 U.S.C. 1101(a)(43)).

26 (b) A person who:

27 (1) is employed full time as a federal enforcement officer;

28 (2) is empowered to effect an arrest with or without warrant for a  
29 violation of the United States Code; and

30 (3) is authorized to carry firearms in the performance of the  
31 person's duties;

32 may act as an officer for the arrest of offenders against the laws of this  
33 state where the person reasonably believes that a felony has been or is  
34 about to be committed or attempted in the person's presence.

35 SECTION 2. IC 35-33-1.5 IS ADDED TO THE INDIANA CODE  
36 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
37 JULY 1, 2013]:

38 **Chapter 1.5. Arrests by Federal Employees**

39 **Sec. 1. (a) Except as provided in subsection (b), a federal**  
40 **employee who is not designated by state law to act as a state law**  
41 **enforcement officer may not make an arrest, a search, or a seizure**  
42 **in Indiana unless, before making the arrest, search, or seizure, the**

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1 federal employee obtains the written permission of the sheriff or  
 2 the designee of the sheriff who has jurisdiction in the county in  
 3 which the arrest, search, or seizure will occur.

4 (b) A federal employee described in subsection (a) may make an  
 5 arrest, a search, or a seizure without obtaining written permission  
 6 under subsection (a) under any of the following conditions:

7 (1) The:

8 (A) federal employee has the permission required under  
 9 section 2 of this chapter; and

10 (B) arrest, search, or seizure will take place on a federal  
 11 enclave for which jurisdiction has been ceded to the United  
 12 States under a state statute.

13 (2) The federal employee:

14 (A) reasonably believes that a crime is about to be  
 15 committed in the federal employee's presence; or

16 (B) witnesses the commission of a crime;

17 the nature of which requires an immediate arrest.

18 (3) The intended subject of the arrest, search, or seizure is an  
 19 employee of the sheriff's office or is an elected county or state  
 20 official.

21 (4) The federal employee has:

22 (A) the permission required under section 3 of this  
 23 chapter; and

24 (B) probable cause to believe that the subject of the arrest,  
 25 search, or seizure has close connections with the sheriff  
 26 that are likely to result in the subject being informed of the  
 27 impending arrest, search, or seizure.

28 (c) A sheriff or a designee of the sheriff may refuse to provide  
 29 written permission under this section.

30 Sec. 2. (a) Before a federal employee may make an arrest, a  
 31 search, or a seizure under section 1(b)(1) of this chapter, the  
 32 federal employee must obtain the written permission of the  
 33 attorney general of Indiana unless the resulting delay to obtain the  
 34 permission would probably cause:

35 (1) serious harm to an individual or to a community; or

36 (2) the subject of the arrest, search, or seizure to flee in order  
 37 to avoid prosecution.

38 (b) The attorney general of Indiana may refuse to provide  
 39 written permission under this section.

40 Sec. 3. (a) Before a federal employee may make an arrest, a  
 41 search, or a seizure under section 1(b)(4) of this chapter, the  
 42 federal employee must obtain the written permission of the

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1 attorney general of Indiana.

2 (b) A request for permission under this section must include a  
3 written statement, made under oath, that describes the federal  
4 employee's probable cause to make the arrest, search, or seizure.

5 (c) The attorney general of Indiana may refuse to provide  
6 written permission under this section.

7 Sec. 4. (a) A request for written permission to make an arrest,  
8 a search, or a seizure that is submitted to a sheriff or the designee  
9 of the sheriff or to the attorney general under this chapter must  
10 contain the following information:

11 (1) The name of the subject of the arrest, search, or seizure.

12 (2) A:

13 (A) clear statement describing the probable cause for the  
14 arrest, search, or seizure; or

15 (B) copy of the federal arrest, search, or seizure warrant  
16 that contains a clear statement of probable cause.

17 (3) A description of specific assets, if any, to be searched for  
18 or seized.

19 (4) A statement of the date and time that the arrest, search, or  
20 seizure is to occur.

21 (5) The address or location where the intended arrest, search,  
22 or seizure will be attempted.

23 (b) The request must be:

24 (1) in letter form, either typed or handwritten; and

25 (2) countersigned with the original signature of the sheriff or  
26 designee of the sheriff or of the attorney general, as applicable  
27 under this chapter;

28 to constitute valid permission.

29 (c) Written permission is valid for forty-eight (48) hours after  
30 it is signed.

31 (d) The sheriff or attorney general shall keep a copy of the  
32 permission request on file.

33 Sec. 5. (a) An arrest, a search, or a seizure or an attempted  
34 arrest, search, or seizure made in violation of this chapter is  
35 unlawful, and the individuals involved must be prosecuted for:

36 (1) kidnapping or criminal confinement if an arrest or  
37 attempted arrest occurred;

38 (2) trespass if a search or attempted search occurred;

39 (3) theft if a seizure or attempted seizure occurred;

40 (4) murder, voluntary manslaughter, or any other applicable  
41 offense if loss of life occurred; and

42 (5) any other applicable criminal offenses.

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1           **(b) A prosecution under this section must be conducted by the**  
 2 **prosecuting attorney who has jurisdiction in the location where the**  
 3 **violation occurred.**  
 4           **(c) If:**  
 5           **(1) the claim of a violation of this chapter has been made by**  
 6           **a sheriff or a designee of the sheriff; and**  
 7           **(2) the prosecuting attorney does not initiate a prosecution**  
 8           **against the alleged violator;**  
 9 **the prosecuting attorney is subject to prosecution by the attorney**  
 10 **general of Indiana for official misconduct under IC 35-44.1-1-1.**  
 11 **The attorney general of Indiana has jurisdiction to prosecute a**  
 12 **prosecuting attorney under this subsection.**  
 13           **Sec. 6. Under the Tenth Amendment of the Constitution of the**  
 14 **United States and the state of Indiana's compact with the other**  
 15 **states, the general assembly declares that any federal law that**  
 16 **purports to provide federal employees with the authority of a**  
 17 **sheriff in Indiana is:**  
 18           **(1) not recognized by and specifically rejected by the state of**  
 19 **Indiana; and**  
 20           **(2) invalid in Indiana.**

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