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HOUSE BILL 2585: SHERIFF POWERS AND DUTIES

HOUSE LABOR RELATIONS COMMITTEE

Harrisburg, PA

Presented by  
Harry Forbes  
Pike County Commissioner  
September 13, 2010

Good morning. I am Harry Forbes, Pike County Commissioner, and Chairman of the Deputy Sheriffs Education and Training Board, an arm of the Pennsylvania Commission on Crime and Delinquency providing oversight of deputy sheriff training programs in PA. In my capacity I am uniquely qualified to speak to the issue of deputy sheriffs because of my 15 years of experience with that board. I am here today to speak on behalf of my county, and on behalf of the County Commissioners Association of Pennsylvania. CCAP is a non-profit, non-partisan association providing legislative, education, research, insurance, technology, and other services on behalf of all of the Commonwealth's 67 counties.

I am pleased to appear before you today to present our comments on HB 2585, providing for powers and duties of sheriffs in Pennsylvania.

I've been a proponent of the restoration of sheriff powers. In fact, when the sheriffs introduced HB 466 last session, a simple restoration of powers, I personally lobbied in favor of the bill, and personally met with Representative Thomas Caltagirone, sponsor of the bill and chairman of the House Judiciary Committee. I am still a strong supporter of that simple restoration, although an opponent of the current bill, which as I will explain, expands powers and deals with numerous additional issues beyond simple restoration.

By now, I am sure the testimony of others has touched on the various court cases that have created the current circumstances by partially rescinding sheriff arrest powers, bringing about the need for legislation. The *Leet*, *Kline*, *Kopko*, and *Dobbins* decisions have each dealt with the difficulty in defining the powers of sheriffs in Pennsylvania, considering the concepts of common law and concepts of government by specific legislative enactment.

Our Association has long fought the establishment of the law enforcement model of sheriff, common in most other states. Instead we have adhered to the settled, traditional -- and statutory -- role sheriffs have historically held in Pennsylvania as agents of the court. The *Leet* decision presented the most significant challenge to this position, but over time we accepted a tacit recognition of the sheriff arrest powers granted (or affirmed, depending on point of view) by the Court. This included acceptance of the notion that those arrest powers serve as the basis for law enforcement functions, although not granting that there was a concurrent duty or imperative to actively undertake those functions.

With the exception of some sheriffs and boards of commissioners at either end of the spectrum, this seemed to be an agreeable middle ground, particularly when qualified by the certification requirements of *Kline* and the increased training regimen mandated for deputies. *Kopko* threw this understanding into disarray by seeming to reconsider the extent and breadth of *Leet*'s common law arrest powers. Our membership reviewed the issue carefully, and came to the conclusion that on its face there were enough vagaries in *Kopko* to call into question even such long-accepted traditional roles of sheriffs as service of criminal warrants. From a broader public policy viewpoint, having become accustomed to some level of arrest capacity over the years since *Leet* and recognizing the absurdity of questioning whether a trained and uniformed deputy could perform such an arrest, we modified our public policy platform to "support clarification of sheriff powers in the wake of the *Kopko v. Miller* decision." The *Dobbins* decision sealed the need for legislative intervention.

Still, our members retain reservations about operation of the sheriff's office as a law enforcement agency, so our resolution qualifies the call for clarification of arrest powers "only to the extent necessary to restore powers generally accepted historically and only as supported by operating consensus in the years following the *Leet* and *Kline* decisions. The Association opposes any other, or any further, extension of police powers to sheriffs."

The question then is our position on HB 2585. The CCAP Courts and Corrections Committee reviewed HB 2585 and the issue of sheriff's powers at the Annual Conference held during the first week of August. The committee determined that HB 2585 represents an attempt to go beyond restoration of traditional sheriff's powers, and therefore CCAP opposes the bill. Per our members' action at our Annual Conference, existing policy in the Pennsylvania County Platform stands: we support simple restoration of powers, but CCAP will not support this attempt to expand the powers and duties of the sheriff's office.

At this meeting, the Courts and Corrections Committee heard from representatives from the Sheriffs Association to discuss their request for CCAP's support of HB 2585. During the meeting, the representatives were given substantial time to present their arguments in favor of the bill, which they claim to be simple restoration of powers of sheriff as they existed prior to the court ruling. After their presentation, the committee members conferred and determined unanimously that the current language in HB 2585 represents an expansion of sheriff powers, and cannot be interpreted as a simple restoration. Further, the committee reaffirmed its position in support of simple restoration, and urged the sheriffs to return to the language comparable to HB 466 from last session.

I would like to present some history to help the committee understand our position better. We have been negotiating with the Sheriffs Association for a couple years on the matter, and thought we had agreement on HB 466 from last session. We were surprised by the new draft which abandoned the basic principles of that bill. Several meetings were held to discuss the new language, and to present CCAP's objections. We expected to see revised language prior to introduction of a bill, and were even more surprised to learn that after commitments were made to work through commissioners' concerns, the original version was introduced and the Pennsylvania Sheriffs Association began to engage in advocacy in support of HB 2585.

We support simple restoration of the statutory powers as they existed pre-Dobbins, but we oppose expansion of powers any further, including placing in statute language to support specific local practices, believing traditional policing to be a matter between the state police and municipal governments.

House Bill 2585 goes much further than simple restoration. It includes language on contracting, hiring, sheriff qualifications, and other matters that in some respects differ from the existing provisions of the County Code and certainly go well beyond the practice pre-Dobbins. Importantly, by including the word "duties" it at minimum calls into question the permissive nature the sheriffs ascribe to the bill, and dependent on court interpretation could require counties to budget for full policing.

We have two important matters that must be taken into account as a part of the deliberations. The first is whether the arrest powers are cast as permissive or as a duty. While this may seem an arcane distinction, it is an important one in the relationship between commissioners and any of the row offices. The commissioners are by statute the county's chief financial administrators, and possess exclusive budgeting, taxation, and contracting authority for the county, powers they exercise on behalf of all of the row offices. Given that the row officers are independently elected, this creates a certain dynamic tension that the courts have resolved by holding the commissioners responsible for giving row offices resources sufficient to perform their duties. "Duties" is the operative word; tasks, projects, and functions that fall outside the statutory duties – permissive functions -- are matters for budget negotiation. In the context of HB 2585 then, it is important to us that the arrest powers be cast as permissive rather than duty, which is not the case as the bill is currently drafted.

Second, we are emphatic that the issue of resolving *Dobbins* be kept separate from the larger and distinct discussion of adequacy of police services generally, and creation of regional policing specifically. HB 2585 goes far beyond that single concern, as I have noted. We have supported and suggest that a return to

the language contained in House Bill 466 of last session would address this and CCAP's other concerns, keeping the focus to this one particular problem.

I understand the concern of some counties that are struggling with a lack of municipal police coverage, and I understand that reliance on the state police is not a complete solution. You may have heard from boards of commissioners who have adopted resolutions in support of the bill. The powers for policing lie within municipalities – townships and boroughs - and not within the counties. The local taxing authority of those governments allow for mechanisms to fund police services, where counties have only one source of taxation – the property tax. This bill is not an appropriate solution to that dilemma, and counties may not have the resources needed to pay for expansion, which would have to include funding for personnel, equipment, liability, pensions, and a myriad of other costs.

Since county property taxes are collected county-wide and not collected community by community, the only way to allow a single community to access sheriff personnel for law enforcement purposes would be through a contractual agreement for which the county would have to charge the municipality. Otherwise, all property tax payers in the county would be unfairly burdened and forced to support law enforcement services provided to certain municipalities and their citizens, resulting in property tax increases for everyone to the benefit of only a few. Contrary to arguments made by the sheriffs, utilizing sheriff personnel as a substitute for municipal police forces or in place of state police coverage is not a cost free or low cost alternative for taxpayers.

Even if we were to agree to traditional policing by sheriffs, there are many matters that need to be addressed that apply to municipal police officers – civil service, command and control, civilian review boards, and others.

Attempting to address the broader question of police services raises a complex set of issues that must be considered in their own separate context. By way of example, our membership recognized the temptation to coningle the two issues, and in its policy statement notes “to the extent police powers are granted by the legislature, courts, or otherwise, legislation should be developed to:

- Provide for ultimate control by the county governing body;
- Specify that expanded powers are permissive but not a duty, making expansion of powers discretionary on a county-by-county basis, rather than requiring expansion statewide;
- Create a standardized procedure that could be followed in any county to delineate how decisions will be reached in the event an expanded scope of authority for a county sheriff's department is desired;
- Place review of the sheriff's department under some civilian review panel to assure immediate public accountability;
- Require training, with reimbursement for training costs on the same terms as municipal police officers;
- Place the sheriff's department under statutes applicable to municipal police;
- administration, including those relating to mutual response agreements, command and control, hot pursuit, civil service procedures and the like;
- Provide for liability and indemnification;
- If patrol and other police services are to be provided to municipalities in the county, name the county governing body as the contracting agent, with the ability to establish reimbursement for services, or special taxing authority for counties to cover costs;
- If patrol and other police services are to be undertaken within municipalities in the county, provide a mechanism requiring notice and municipal approval or acknowledgement;
- Preserve the integrity of the county governing body's ability and prerogatives to execute contracts and to establish the budget for the sheriff's department; and

- Clarify the role of sheriffs in the serving of criminal warrants.

I can expand on any of these points if members of the Committee wish. In particular, I need to clarify the point above as to training costs. Counties are currently reimbursed for the costs of training, and any new provisions must address the importance of assuring that every county has the same resources to guarantee consistent training of sheriff personnel in the event of any new law that may expand powers. I would like to comment as well on the issue of content of training. HB 2585 does not provide the same quality of training as exists under the current law, and transfers oversight to a newly created body without parity to the makeup of the current board under Act 2.

Suffice it to say that we are asking the members to give consideration to these points and the complex set of questions that would need to be addressed should they arise as HB 2585 proceeds to consideration, and urge that we return to consideration of a bill written like HB 466 of last session, addressing the single matter at hand as a result of the *Leet*, *Kline*, *Kopko*, and *Dobbins* decisions -- restoration of clear, concise, permissive arrest capability.

Thank you for your attention to these comments, and I will be pleased to answer your questions.

THE GENERAL ASSEMBLY OF PENNSYLVANIA

**HOUSE BILL**

**No. 466** Session of  
2007

INTRODUCED BY DALLY, BAKER, BARRAR, BELFANTI, BEYER, BUXTON, CAPPELLI, CAUSER, EVERETT, FABRIZIO, FAIRCHILD, GABIG, GIBBONS, GINGRICH, HARHAI, HARRIS, HENNESSEY, HUTCHINSON, KAUFFMAN, M. KELLER, KILLION, MACKERETH, McILHATTAN, METCALFE, MILLARD, PAYNE, PEIFER, PHILLIPS, RAPP, REED, ROHRER, SAINATO, SAYLOR, SCAVELLO, SIPTROTH, STERN, R. STEVENSON, TANGRETTI, WILLIAMS, YEWIC, HORNAMAN AND MARSHALL, FEBRUARY 26, 2007

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 26, 2007

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, further providing for  
3 powers and duties of sheriffs and deputy sheriffs relating to  
4 law enforcement.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Section 2921 of Title 42 of the Pennsylvania  
8 Consolidated Statutes is amended to read:

9 § 2921. Powers and duties of the sheriff.

10 (a) Court duties.--The sheriff, either personally or by  
11 deputy, shall serve process and execute orders directed to him  
12 pursuant to law.

13 (b) Law enforcement.--All sheriffs, and all deputy sheriffs  
14 who have successfully completed the same type of training as  
15 municipal police officers, including, but not limited to,  
16 training pursuant to the act of February 9, 1984 (P.L.3, No.2),

1 known as the Deputy Sheriffs' Education and Training Act, or 53  
2 Pa.C.S. Ch. 21 Subch. D (relating to municipal police education  
3 and training) shall have and may exercise the same powers as  
4 municipal police officers to make arrests, without warrants, for  
5 all crimes and offenses, including, but not limited to, all  
6 violations under 18 Pa.C.S. (relating to crimes and offenses),  
7 75 Pa.C.S. (relating to vehicles) and the act of April 14, 1972  
8 (P.L.233, No.64), known as The Controlled Substance, Drug,  
9 Device and Cosmetic Act, and without limiting the foregoing,  
10 every sheriff and deputy sheriff shall have the powers, duties,  
11 responsibilities and immunities conferred on municipal police  
12 officers generally and specifically under sections 8952  
13 (relating to primary municipal police jurisdiction) and 8953  
14 (relating to Statewide municipal police jurisdiction).

15 Section 2. This act shall take effect immediately.