



TESTIMONY ON HB 466, SHERIFF POWERS AND DUTIES  
PRESENTED TO THE HOUSE STATE GOVERNMENT COMMITTEE

BY

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Good morning. I am Douglas E. Hill, Executive Director of the County Commissioners Association of Pennsylvania. The 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 466, clarifying the powers and duties of sheriffs.

House Bill 466, like similar legislation going back several sessions, is rooted in the need to address case law that has by turns established, and partially rescinded, sheriff arrest powers. The *Leet*, *Kline*, *Kopko*, and *Dobbins* decisions have each dealt with the ambiguity inherent in defining the powers accruing to sheriffs in Pennsylvania, parsing between concepts of common law and concepts of government by specific legislative enactment.

CCAP supports clarification of sheriff arrest powers called into question under these decisions, but believes the proposal needs further discussion to address a separate ambiguity it would create by its enactment in this form – that being whether plain-sight arrest powers are being statutorily and specifically restored (which we support) or whether it in fact goes farther and establishes sheriff departments as the equivalent of municipal police departments.

This is an important question, with potentially broad implications if intent and language are not clear. To state our position simply, the Association has long objected to 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 1994 Pennsylvania Supreme Court decision in *Commonwealth v Leet*, finding that sheriffs possessed a common law power of arrest, presented a challenge to this position. We acknowledged the Court's ruling, but in most counties' interpretation the practical effect of *Leet* is that those arrest powers serve as the basis for law enforcement functions, but do not establish 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 certification requirements established by the Court in its 1999 *PennDOT v Kline* decision and the subsequent increase in the training regimen mandated for deputies.

A subsequent Supreme Court decision, *Kopko v Miller* (2006), 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 following year another Supreme Court decision along the lines of *Kopko*, *Commonwealth v Dobbins* 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 466. We believe the bill certainly satisfies the requirements of the *Dobbins* decision by statutorily setting out the ability of sheriffs and deputies to perform arrests, and in the settings and circumstances we came to accept over time in the wake of *Leet*. As such, we support its consideration as a means to resolve the *Dobbins* dilemma.

The open question though is whether the bill goes beyond that and sanctions fashioning a sheriff’s department into a municipal-style law enforcement agency, either permissively or by duty. We concede that we do not have a clear view on that point, particularly given that the Court’s own changeable and, until recently, not altogether clear opinion on the matter fails to give us an indication of the scope of minimum language needed to address the issue. We are open to consideration of others’ suggestions for appropriate qualifying language that still meets the need of resolving basic arrest powers.

We have two related and 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 – in other words, permissive functions – are matters for budget negotiation. In the context of HB 466 then, it is important to us that the arrest powers be cast as permissive rather than duty, preserving the generally balanced relationship that developed post-*Leet*.

Second, we are emphatic that the issue of resolving *Kopko* and *Dobbins* be kept separate from the larger and distinct discussion of adequacy of police services generally, and creation of regional policing specifically. House Bill 466, and comparable legislation from prior sessions, was and is intended to address one particular problem, and should remain focused there.

By contrast, attempting to address the broader question of police services raises a complex set of issues, ones that must be considered in their own separate context. That said, our membership recognized the temptation to comingle 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. 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 466 proceeds to consideration, and to limit consideration of HB 466 to the single matter at hand – restoration of clear, concise, permissive arrest capability.

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