

**TESTIMONY BEFORE THE
JUDICIARY COMMITTEE OF THE
PENNSYLVANIA HOUSE OF REPRESENTATIVES
ON PROPOSED LEGISLATION
AFFECTING THE POWERS AND DUTIES OF SHERIFFS**

HOUSE BILL NO. 466



**PRESENTED ON FEBRUARY 21, 2008 BY
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Good afternoon, Chairman Caltagirone, Chairman Marsico, and the distinguished members of the House Judiciary Committee. I am David Freed, the District Attorney of Cumberland County and a member of the Executive Committee of the Pennsylvania District Attorneys Association. Thank you for this opportunity to offer testimony on behalf of the PDAA concerning House Bill 466, which would amend Pennsylvania's Judiciary Code to greatly expand the powers and duties of sheriffs.

We in the law enforcement community appreciate the opportunity to give input on this bill and we also appreciate all of your past support of measures that help law enforcement, the criminal justice system and victims of crime. This bill has been the subject of a significant amount of discussion within our Executive Committee and within the full membership of our association. There is a diversity of opinion on sheriff's law enforcement powers that reflects the diversity of our Commonwealth. However, on the issue of full unfettered law enforcement powers for sheriffs, we conducted a vote of our full membership, and the result was that an overwhelming majority of

our members oppose giving Pennsylvania sheriffs full police powers.

Almost every state in our country has sheriffs, and the role of the sheriff varies from state to state. Even within our state, the role of the sheriff and deputy sheriffs varies from county to county. We are grateful to have dedicated and hard-working sheriffs and deputy sheriffs who keep our courthouses safe, diligently serve process, transport prisoners, and carry out court orders. Sheriffs are essential to the orderly functioning of our court system. Many survivors of domestic violence have benefitted from the hard work of sheriffs and the vital role that they perform in Protection from Abuse proceedings.

There have been appellate decisions in Pennsylvania that have recognized the sheriffs have common law powers to enforce vehicle code violations and summary offenses committed in their presence, and some counties rely on their sheriffs to help enforce those provisions.

District Attorneys' Offices are the only law enforcement agencies in Pennsylvania with county-wide jurisdiction, and besides the state police, our county detectives are the only law

enforcement officers with both county-wide jurisdiction and full police powers. Just as the responsibilities of sheriffs vary from county to county, so do the responsibilities of county detectives. For example, in addition to all of their other responsibilities, Montgomery County's county detectives also have primary responsibility to investigate all homicides that occur there. The Philadelphia District Attorney's Office has an investigations division in which prosecutors and county detectives investigate crimes by public officials, economic and cyber-crime, and narcotics. My county detectives in Cumberland County assist municipal departments with major cases, handle most of the complicated elder fraud matters and assist other departments as needed.

As the chief law enforcement officer in the county, the District Attorney must work with all law enforcement agencies in our jurisdiction. With as many as fifty, sixty, or seventy municipal police departments in our counties and the state police with county-wide jurisdiction, we must form a complex web of working agreements to manage potential conflicts and avoid turf wars in our jurisdictions. Our Supreme Court's decision in *Kopko v. Miller*, 892 A.2d 766 (2006) Kopko last year ended many of

these conflicts because it clarified the duties of our sheriffs departments.

Long ago, Pennsylvania legislators realized that there might arise a need for counties to have additional law enforcement officers with county-wide jurisdiction to deal with special law enforcement needs. To address those needs, the legislature enacted section 4441 of the County Code which allows District Attorneys to appoint special county detectives, confers upon them full police powers, and makes them subject to the direction of the District Attorney. Some District Attorneys have formed task forces and have elected to include municipal police officers, sheriffs and deputy sheriffs by cross-designating them as county detectives with full police powers. This type of cross-designation has worked remarkably well in the counties that have done it, and we believe that this process can help solve the problems that this bill seeks to address.

I would like to take a moment to explain how cross-designation works. A District Attorney can seek to cross-designate police officers, deputy sheriffs, or other law enforcement officers that he or she thinks would help address a short-term

need. The cross-designation can be full time, part time, or can be for a specific task such as a one-night sobriety check point or other specific investigation. Compensation for a deputy sheriff cross-designated as a county detective would have to be worked out between the District Attorney, sheriff, and county commissioners or other appropriate fiscal officers. This approach allows the District Attorney to meet the specific needs of his county for as long as a special law enforcement need exists.

Cross-designation solves many potential problems that our membership has identified with this bill. The first issue is training. Some deputy sheriffs have extensive law enforcement training, but many do not. Before making a decision to cross-designate a deputy sheriff as a county detective, District Attorneys can review their resume, background, and law enforcement training. For example, before granting someone full police powers, we might want to know whether the individual attended a police academy or has Municipal Police Office (MPO) or weapons training. By using a system of cross-designation, the District Attorney becomes the gate keeper to ensure that the most qualified people receive cross-designation in their county.

Civil lawsuits and civil liability are other concerns expressed by our membership. Civil lawsuits against police and other law enforcement officers are unfortunately all too common. Even when these suits are frivolous, they must still be defended. By using a cross-designation system, liability issues can be worked out in advance between the District Attorney, sheriff, county commissioners and other county officers. That way, the county knows what its potential liability might be and can budget and seek insurance accordingly.

I can speak from personal experience about the value of cross-designation. In Cumberland County, we have a County Drug Task Force. For my entire tenure as both an assistant and the District Attorney, Sheriff Tom Kline has dedicated one of his deputies **full time** to our task force. The value of this contribution cannot be overstated. The participation of municipal police departments, the State Police and the Attorney General's office in our task force varies according to their work loads. In the case of municipal police departments, participation in county activities is often subject to serious budget constraints or, regrettably, political

whim. Fortunately, we have always been able to count on Sheriff Kline to provide desperately needed manpower for our task force.

This strong cooperative relationship was reflected in my office's support of the Sheriff's Association as named plaintiffs in the *Kopko* case. In *Kopko*, we sought the ability to have a deputy who was cross-designated as a county detective certified to conduct consensual wiretaps. Notwithstanding the fact that following certification, I or one of my designees would still have to approve each intercept, the Supreme Court ruled that deputies could not be certified. The ability of deputies to assist law enforcement was further eroded by the recently decided *Commonwealth v. Dobbins*, 934 A.2d 1170 (2007) case. Although I understand the Court's reasoning in *Dobbins*, I urge you to read Justice Eakin's dissent for a reality check on what is really happening on the street.

The simple fact is that even in relatively affluent counties, such as Cumberland, we do not have sufficient law enforcement resources to combat the growing level of crime. Our sheriffs' office necessarily handle a broad variety of matters on a daily basis including crimes committed in their presence on county property.

Cross-designation of deputies puts another weapon in our arsenal. We need also to recognize the needs of smaller counties, where the combined effects of *Kopko* and *Dobbins* have given the criminals a leg up. Cross-designation is vital for smaller counties.

Our membership has also expressed concerns about the potential expenses associated with this bill, and we are concerned that there is no fiscal note incorporated into the bill to pay for the increased expenses to the counties. A county-wide law enforcement agency would be an expensive proposition with a need for police cars, increased training, increased supervisors, and of course, increased overtime for court appearances. We would hate to see the limited resources for current law enforcement programs be reduced even further to pay for the inevitable expenses associated with this bill.

Conclusion

Thank you for allowing me to speak to you today on the very important issue of sheriff's powers and duties. I appreciate that you are taking the time to gather information about the way that sheriffs function within our Commonwealth. The Pennsylvania

District Attorneys Association will continue to work with all members of the General Assembly and law enforcement community to fight crime, protect victims, and bring offenders to justice. We strongly urge you to consider a system of cross-designating sheriffs and deputy sheriffs as county detectives instead of moving this bill forward.