

**TESTIMONY ON HB 466, SHERIFF POWERS AND DUTIES**

**PRESENTED TO THE  
HOUSE JUDICIARY COMMITTEE**

By Douglas E. Hill, Executive Director

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Harrisburg, PA

Good afternoon. 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.

By this hour of the day you have doubtless heard the full recitation of case law that has by turns established, and partially rescinded, sheriff arrest powers and has brought about the need for consideration of this legislation. 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.

I will candidly concede that 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 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, and something you have likely heard from others today, 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 – 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 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 is intended to address one particular problem, and should remain focused there.

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 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.