

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman William Mason at 1:30 p.m. on March 16, 2004 in Room 313-S of the Capitol.

All members were present except:

Representative Ray Cox- excused
Representative Rick Rehorn- excused

Committee staff present:

Russell Mills, Legislative Research Department
Mary Torrence, Revisor of Statutes Office
Dennis Hodgins, Legislative Research Department
Rose Marie Glatt, Secretary

Conferees appearing before the committee:

Thomas A. Nunemaker, Asst. Special Agent in Charge, FBI, Kansas City Division
Kyle G. Smith, Asst. Attorney General, Kansas Bureau of Investigation
Ed Klumpp, Kansas Association of Chiefs of Police
Lieutenant Colonel Terry Maple, Kansas Highway Patrol

Others attending:

See Attached List

HB 2784 - Allowing federal law enforcement officers arrest powers in certain situations; deemed to be within the scope of their employment

Ms. Torrence, Revisor of Statutes Office, explained that the bill has been requested by the FBI and is patterned after Missouri statutes. It provides that a federal law enforcement officer could arrest a person in the state without a warrant. It specifies the circumstances in which it would apply.

Thomas A. Nunemaker, Asst. Special Agent in Charge, FBI, Kansas City Division appeared in support of **HB 2784 (Attachment 1)**. In the aftermath of September 11, 2001, and in the heightened security climate, their agents are being contacted on an increasing basis by Kansas Citizens and law enforcement officers to respond to a myriad of suspicious activities. The cooperation between local, state and federal law enforcement has never been as extensive as it is today.

HB 2784 would afford federal agents the authority to act as state law enforcement officers in very narrowly defined situations, which are:

1. When in the agent's presence, another individual asserts physical force or uses forcible compulsion which is likely to cause death or great bodily harm to another;
2. When in the agent's presence, an inherently dangerous felony is being committed;
3. When the agent is providing assistance at the request of a Kansas law enforcement officer; and
4. When the agent is providing assistance as part of an established task force in which Kansas law enforcement officers are participating.

The bill would benefit Kansas and would ensure that their agents are protected from potential civil liability. The bill does not confer general peace officer status to federal law enforcement agents.

He requested t

he following amendment: line 32 would be amended to include the phrase "*and assigned to the Federal Bureau of Investigation*" immediately following the words "*the United States government,*" so that definition of "*Federal law enforcement officer*" would mean a person employed by the United States government and assigned to the Federal Bureau of Investigation who is empowered to effect an arrest with or without a warrant for violation of the United States code and who is authorized to carry a firearm in the performance of person's official duties as a federal law enforcement officer.

Discussions followed regarding: rationale behind limiting this to FBI special agents only, national priority of

CONTINUATION SHEET

MINUTES OF THE HOUSE FEDERAL AND STATE AFFAIRS COMMITTEE at 1:30 p.m. on March 16, 2004 in Room 313-S of the Capitol.

all law enforcement agencies is prevention of crimes, hierarchy of power in law enforcement agencies and potential liability issues for agents and agencies. In response to a question regarding the rationale for limiting the scope of the bill to certain FBI agents, he stated that they had failed to get similar bills passed that had included all law enforcement agencies. They believed that if passed, this bill would give everyone an opportunity to monitor results, and in time it would be expanded to all major law enforcement agencies.

Kyle G. Smith, Asst. Attorney General, Kansas Bureau of Investigation, stressed that the need for cooperation between law enforcement agencies has never been greater, especially due to the limited numbers of law enforcement officers in Kansas (Attachment 2). Throughout the nation Kansas has become a model of cooperation between the federal, state and local law enforcement agencies. He cited an incidence where a criminal, arrested by a federal agent, was set free, because the agent did not have arrest authority for state violations in Kansas.

The advantage of HB 2784 is that it clarifies that federal officers assisting in such state cases are deemed to be acting within the scope of their employment for workers compensation and civil liability purposes.

Discussion followed regarding potential liability issues, interpretation and definitions of HB 2784.

Ed Klumpp, on behalf of the Kansas Association of Chiefs of Police, rose in support of the bill (Attachment 3). The bill provides federal law enforcement agents while in Kansas, the same protection and authority as other law enforcement officers. It is vital that local, state and federal law enforcement officers work closely together if they are to maximize their efficiencies and abilities to protect citizens.

In response to a question regarding Mr. Nunemaker's amendment, he responded that *some is better than nothing*, however the Association believed the bill should be extended to cover all law enforcement agencies.

Lieutenant Colonel Terry Maple, on behalf of Colonel William Seck and the Kansas Highway Patrol, recommended giving HB 2784 a favorable report (Attachment 4). He stated that the bill would clarify jurisdiction concerns, enhance Kansas and national security, and help ensure officer safety.

The Chairman closed the hearing on HB 2784. The meeting was adjourned at 3:05 p.m. The next meeting is March 17, 2004.



U.S. Department of Justice

Federal Bureau of Investigation

In Reply, Please Refer to
File No.

1300 Summit
Kansas City, Missouri 64105
March 16, 2004

Honorable William Mason, Chair
Federal and State Affairs Committee
House of Representatives

Re: Testimony in Support of House Bill No. 2784
by Thomas A. Nunemaker, Assistant Special Agent
in Charge, Federal Bureau of Investigation,
Kansas City Field Office

Honorable Chair and Distinguished Members of the Committee:

On behalf of the Federal Bureau of Investigation and the Special Agents of the Kansas City Field Office, thank you for this opportunity to allow me to provide testimony in support of House Bill No. 2784.

In the aftermath of the horrific acts on September 11, 2001, and in today's heightened security climate, our Agents are being contacted on an increasing basis by Kansas citizens and Kansas law enforcement officers to respond to a myriad of suspicious activities in the event such may be related to terrorist activities. Often, no federal violation has been committed. However, state criminal violations are likely present and in some instances our Agents have been placed in situations whereby limited action was or could have been required to assist Kansas law enforcement officers or control the scene until they arrived. Consequently, House Bill No. 2784 would afford federal Agents the authority to act as state law enforcement officers in very narrowly defined situations to the benefit of Kansas and to ensure that our Agents are protected from potential civil liability.

Presently, in the war on terror, our Agents are involved in numerous Joint Terrorism Task Forces in order to combine limited resources and promote mutual cooperation among all law enforcement. Recognizing that participating Kansas law enforcement officers may be called upon to act solely on a federal criminal matter or be requested to provide assistance outside their respective jurisdictions, we provide federal deputizations for these officers

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through the United States Marshal Service to ensure that they have the requisite authority to act as a law enforcement officer outside the State of Kansas and to provide related civil liability protection when performing in this capacity.

The cooperation between local, state and federal law enforcement has never been as extensive as it is today. For example, the Heart of America Joint Terrorism Task Force (HAJTTF), has federal and state officers stationed in Kansas City, Topeka, Wichita, and Garden City, Kansas. We also have the Heart of America Regional Computer Forensic Laboratory (HARCFL) which provides assistance to the entire state of Kansas. To complement the HARCFL, we have established a Cyber Crimes Task Force which is supported by several Kansas law enforcement agencies. Based upon these and other associations, our Agents are subject to being called to assist in matters where it is subsequently determined that no federal jurisdiction exists.

Under current Kansas law, situations may arise whereby our Agents are required to take law enforcement actions, yet would be considered to be acting as a private citizen where no federal violation is present. In these instances our Agents, with extensive law enforcement training and experience, may not be afforded various qualified immunity and good faith defenses normally provided to recognized law enforcement officers.

For example, an individual walks into a hotel and places a bag of a white powdery substance in the lobby and declares such to be anthrax. A description of the subject is relayed to law enforcement. Our Agents who are trained in dealing with biological and chemical weapons respond, and while en route locate the subject. The Agents are then informed that the substance is only baking flour. As no federal violation is present, the Agents would likely hold the subject and wait for local or state officers to arrive. But what if the subject resisted or took some action against a third party? Without the requested legislation in House Bill No. 2784, our Agents could be considered as acting in the same capacity as a citizen and not a law enforcement officer. Additionally, the absence of the requested legislation may result in our Agents being hesitant or reluctant to act, or not taking any action at all.

Recognizing the above, many states, such as California, Kentucky, Illinois, Iowa, Maryland, Minnesota, New Mexico, North Dakota, and South Dakota have already implemented legislation to provide limited authority and civil liability protection to federal officers who find themselves in those situations whereby they are required to take action to protect the public or prevent a crime and no federal criminal violation is readily apparent. For example, Missouri has passed such a law which we believe provides limited police authority while providing the requisite civil liability protection.

Missouri Revised Statute 70.820 provides in part:

A federal law enforcement officer may arrest on view, and without a warrant, at any place within the state, any person the officer sees asserting physical force or using forcible compulsion for the purpose of causing or creating a substantial risk of death or serious physical injury to any person or any person the officer sees committing a dangerous felony. Any such action shall be deemed to be within the scope of the federal officer's employment.

To provide assistance to law enforcement officers, a federal law enforcement officer shall have the same authority as a law enforcement officer where:

(1) the federal law enforcement officer is rendering assistance at the request of any law enforcement officer of this state; or

(2) the federal law enforcement officer is effecting an arrest or providing assistance as part of a bona fide task force or joint investigation in which law enforcement officers of this state are participating.

The language in Kansas House Bill No. 2784 closely follows that of the legislation passed by Missouri as noted above, and is often much narrower in scope than similar legislation passed by other states. Under Kansas House Bill No. 2784, federal law enforcement officers would be authorized to act in only four (4) narrowly defined situations, which are:

1. When in the Agent's presence, another individual asserts physical force or uses forcible compulsion which is likely to cause death or great bodily harm to another;
2. When in the Agent's presence, an inherently dangerous felony is being committed;
3. When the Agent is providing assistance at the request of a Kansas law enforcement officer; and
4. When the Agent is providing assistance as part of an established task force in which Kansas law enforcement officers are participating.

As noted above, House Bill No. 2784 does NOT confer general peace officer status to federal law enforcement Agents. It

only authorizes Agents to provide assistance in the four situations described above. The legislation will simply provide protection to federal law enforcement Agents and supplement the work performed by local and state law enforcement officers, while eliminating many of the legal risks federal law enforcement officers confront when they are required to take emergency action in exclusively state law enforcement matters.

The legislation has been carefully drafted to protect the jurisdiction and authority of state and local law enforcement and the rights of citizens of the State of Kansas by the limited and confined nature of its scope. Only those federal Agents who possess federal arrest authority and who carry firearms fall within the proposed statute's authority, and then are authorized to take action in certain defined limited situations.

In 1998, Congress recognized the need to afford federal Agents legal protection when they are called upon to provide assistance in state law enforcement matters and enacted the Good Samaritan Act of 1998, codified at Title 28, United States Code, Section 2671. However, this legislation is an amendment to the Federal Tort Claims Act and merely ensures that the Agents will be represented by the Department of Justice should they be required to take law enforcement action to address a state crime of violence conducted in their presence, provide immediate assistance to an individual who has suffered or been threatened with bodily harm, or prevent the escape of an individual who has committed a crime of violence in the Agent's presence.

House Bill No. 2784 is merely an extension of the above federal legislation and complements such by ensuring that Agents will be determined to have been acting with law enforcement powers rather than as private citizens. The proposed legislation is the most effective means to provide federal law enforcement officers the same protections that Kansas officers possess in emergency situations.

Based upon the changing role and demands placed on law enforcement to protect the nation's security and the close mutual working relationship between local, state and federal agencies, the above requested civil liability protection would well serve our Agents who are called upon to address emergency situations or provide law enforcement assistance in the State of Kansas. The requested legislation would be a great benefit to the State as the majority of our Agents reside in Kansas.

As we are asking for this legislation on behalf of Special Agents of the Federal Bureau of Investigation, it is requested that line 32 of House Bill No. 2784 be amended to include the phrase "and assigned to the Federal Bureau of Investigation" immediately following the words "the United States government," so that definition of "Federal law enforcement officer" will mean a person

employed by the United States government and assigned to the Federal Bureau of Investigation who is empowered to effect an arrest with or without a warrant for violation of the United States code and who is authorized to carry a firearm in the performance of the person's official duties as a federal law enforcement officer.

Again, I appreciate the opportunity to address this Committee in support of House Bill No. 2784 and the benefits it will provide to the State of Kansas and the entire law enforcement community.

Thomas A. Nunemaker
Assistant Special Agent in Charge



Kansas Bureau of Investigation

Larry Welch
Director

Phill Kline
Attorney General

TESTIMONY
BEFORE THE HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS
KYLE G. SMITH, DIRECTOR OF PUBLIC & GOVERNMENTAL AFFAIRS
KANSAS BUREAU OF INVESTIGATION
IN SUPPORT OF HB 2784
MARCH 16, 2004

Chairman Mason and Members of the Committee:

On behalf of KBI Director Larry Welch and the men and women of the KBI, I appear in support of HB 2784. Kansas law enforcement has long been an outstanding example of cooperation between law enforcement agencies, local, state and federal. Such cooperation is a matter of necessity in a large rural state, no agency has the bodies and expertise to meet all the challenges that today's criminal create. But, it is also a tribute to the professionals in the various agencies that worry more about getting the job done than turf issues.

In addition to individual cases that may be worked in a joint effort, state and local officers participate in numerous joint task forces, such as the Heart of America Joint Terrorism Task Force and the FBI's Regional Computer Crime Forensic Laboratory, which provide Kansas with essential resources and coordination. HB 2784 is essential in furthering this joint cooperation.

I remember the shock I felt when reading a Kansas appellate court case that armed robbers had their convictions reversed because the officer, who heard their description on the radio, spotted the getaway car and who stopped them, happened to be a federal officer. The

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court held that since our statutory definition in K.S.A. 22-2202 was limited to persons who had authority to enforce Kansas law, the stop was invalid. I hate it when criminals go free, but I really am frustrated when it happens on technicalities. Sections (a) and (b) would give federal law enforcement officers limited authority to enforce serious Kansas law violations and resolve this problem.

The other advantage of HB 2784 is that it clarifies that federal officers assisting in such state cases are deemed to be acting within the scope of their employment for workers compensation and civil liability purposes. If a federal officer is injured helping a local agency, this should simplify and such proceedings.

On behalf of the KBI, we would encourage the Committee on Federal and State Affairs to assist federal and state affairs, by passing HB 2784 out favorably. I'd be happy to stand for questions.

TESTIMONY BEFORE THE
HOUSE COMMITTEE ON FEDERAL AND STATE AFFAIRS
IN SUPPORT OF HB 2784
CONCERNING ARREST POWERS OF FEDERAL LAW ENFORCEMENT OFFICERS
MARCH 17, 2004

PRESENTED BY
ED KLUMPP, CHIEF OF POLICE
TOPEKA POLICE DEPARTMENT
ON BEHALF OF THE
KANSAS ASSOCIATION OF CHIEFS OF POLICE

I appreciate the opportunity to provide testimony on HB 2784. This bill provides Federal Law Enforcement Agents the same protections and authority as other law enforcement officers while in the State of Kansas. In today's world, it is vital that local, state and federal law enforcement officers work closely together if we are to maximize our efficiencies and our ability to protect the citizens. Today there are many joint law enforcement operations involving local, state and federal officers. We have task forces with the Federal Bureau of Investigation, the Drug Enforcement Agency and with the Alcohol Tobacco and Firearms. The Joint Terrorism Task Forces involve working closely with other federal law enforcement agencies as well. These duties lead Federal Officers into an increasing number of situations that are not strictly within federal jurisdiction. It frequently places these federal officers into positions of assisting local and state law enforcement officers on investigations of local and state laws, and in defending the life and property of Kansas citizens. The provisions of this bill makes it clear that when taking such actions, the federal law enforcement officer is acting under the provisions provided for state certified law enforcement officers in Kansas. There is no fiscal cost to this bill. But clearly it provides for federal law enforcement officers to take action against crime in our communities. We need to enlist all of the assistance and cooperative support among law enforcement as possible. This bill enhances that cooperative atmosphere.

The Kansas Association of Chiefs of Police supports this bill and urges you to pass it favorably.

Ed Klumpp



K A N S A S

WILLIAM R. SECK, SUPERINTENDENT

KANSAS HIGHWAY PATROL

KATHLEEN SEBELIUS, GOVERNOR

**Testimony on HB 2784
to
House Federal and State Affairs Committee**

**Presented by
Lieutenant Colonel Terry Maple
Kansas Highway Patrol**

March 16, 2004

Good afternoon, Mr. Chairman and members of the committee. I am Lieutenant Colonel Terry Maple, and I am here before you on behalf of Colonel William Seck and the Kansas Highway Patrol to comment on HB 2784.

HB 2784 proposes to give federal law enforcement officers the power to make arrests without a warrant when they witness violent behavior or a dangerous felony. The bill would also give federal law enforcement officers the same authority as local and state officers when they are providing assistance that an officer has requested or that is part of a task force or joint investigation.

From experience I can tell you that law enforcement is a cooperative effort. And after September 11, 2001, Americans quickly realized how important it is for the law enforcement community to work together by sharing information and resources. Local, county, state, and federal agents are all part of the law enforcement community. HB 2784 would clarify jurisdiction concerns, enhance Kansas and national security, and help ensure officer safety.

The Kansas Highway Patrol appreciates the opportunity to address you today, and we recommend giving HB 2784 a favorable report. I will be happy to stand for any questions you might have.

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