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MEMORANDUM

To: Chairman Brunk
Members of the House Committee on Federal and State Affairs

From: Jason B. Long, Senior Assistant Revisor

Date: February 5, 2015

Subject: HB 2007 – Questions concerning the bill

This memorandum addresses questions raised regarding HB 2007. First, the Committee has inquired as to how HB 2007 differs from existing law, namely K.S.A. 19-828, a copy of which is attached. K.S.A. 19-828 was first enacted in 1999 as part of a broader act aimed at enforcement of controlled substances laws. In that initial act the statute allowed for multijurisdictional agreements for the enforcement of drug and controlled substances laws. In 2004, the statute was amended in conference to extend the scope of the multijurisdictional agreements to include “the prevention, detection or investigation of any terroristic activity.” The law has not been amended since.

While both K.S.A. 19-828 and HB 2007 provide for a multijurisdictional law enforcement group to work in cooperation in enforcing the law, there are differences in how each procedurally establishes the law enforcement group. First, K.S.A. 19-828 requires the agreement of the sheriff and only applies to those counties that are physically located on the state borders. This geographical limitation applies to counties in bordering states as well. By contrast, HB 2007 authorizes the on-scene incident commander to request assistance from other jurisdictions. While those jurisdictions are not limited to border counties, they are limited to only those counties listed in the definition of law enforcement mutual aid region.

Second, K.S.A. 19-828 authorizes the multijurisdictional group be formed for two purposes: (1) Enforcement of drug and controlled substances laws; and (2) prevention, detection and investigation of terroristic activity. The term “terroristic activity” is not defined in the statute. There is also nothing in the legislative history of the 2004 amendment that would indicate the types of crimes the Legislature intended to be covered by “terroristic activity.” In

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such situations a court would generally apply a common understanding to the term and thus, eliminate any unreasonable applications. For example, driving under the influence would most likely not be deemed a terroristic activity. HB 2007 provides a broader scope of application because the definition of “critical incident.” A “critical incident” is one that could result in serious physical injury or loss of life. This definition could cover a wide range of criminal activity beyond the shooting incidents referenced at the hearing.

Finally, existing law allows for foreign law enforcement officers to be deputized if necessary, and bestows them with the same powers and immunities as Kansas law enforcement officers. HB 2007 takes a different approach. While authorizing foreign law enforcement officers to arrest or apprehend an offender, the bill expressly states that a responding law enforcement officer remains an employee of that officer’s responding law enforcement agency, and is not an employee of the law enforcement agency requesting assistance.

Questions have also been raised concerning liability issues that may arise out of a critical incident. The intent of both subsection (e) of HB 2007 and the balloon amendment to that subsection offered by Rep. Dove in his testimony is to clarify many of these liability issues. Under HB 2007 an officer responding to a request for assistance remains an employee of that officer’s law enforcement agency, and does not become an employee of the requesting law enforcement agency. The balloon amendment further clarifies this by providing that the Kansas Tort Claims Act and the Kansas Workers’ Compensation Act are to be interpreted so as to be consistent subsection (e) of HB 2007. This means that an officer and the officer’s law enforcement agency acting in response to a request for assistance under HB 2007, along with the political subdivision employing the officer would have the same liabilities as if the officer were acting within the officer’s own jurisdiction. It should be noted that the Missouri law contains a provision that is nearly identical to subsection (e), and thus, Missouri law treats responding officers in the same manner as proposed by HB 2007. These same provisions also apply to workers’ compensation claims made by officers injured while on duty.

Finally, litigation may arise out of a critical incident on either side of the state line and an officer or that officer’s law enforcement agency or political subdivision may be made a defendant in litigation brought in another state, or the officer may be subpoenaed to testify in litigation brought in another state. However, in cases where the lawsuit arises out of action taken pursuant to HB 2007, qualified immunity, sovereign immunity, official immunity, and the public duty rule will all apply in such cases.

19-828. Multijurisdictional law enforcement group. Any county in the state of Kansas which borders another state, with the agreement of the sheriff, may enter into agreement with the political subdivisions in such other state's contiguous county to form a multijurisdictional law enforcement group for the enforcement of drug and controlled substances laws or for the prevention, detection or investigation of any terroristic activity. Such other state's law enforcement officers may be deputized as officers of the counties of this state participating in such an agreement and shall be deemed to have met all requirements of law enforcement training and certification required under K.S.A. 74-5601 et seq., and amendments thereto, if such officers have satisfied the applicable law enforcement officer training and certification standards in force in such other state. Such other state's law enforcement officers shall have the same powers and immunities as law enforcement officers certified and commissioned in Kansas while conducting investigations to enforce drug and controlled substances laws or engaged in the prevention, detection or investigation of terroristic activity with the multijurisdictional enforcement group.

History: L. 1999, ch. 170, § 6; L. 2004, ch. 118, § 3; July 1.

