

INTERIM JOINT COMMITTEE ON LOCAL GOVERNMENT

Minutes of the 2nd Meeting of the 2020 Interim

July 28, 2020

Call to Order and Roll Call

The second meeting of the Interim Joint Committee on Local Government was held on Tuesday, July 28, 2020, at 9:00 AM, in Room 171 of the Capitol Annex. Senator Wil Schroder, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Wil Schroder, Co-Chair; Representative Michael Meredith, Co-Chair; Senators Ralph Alvarado, Denise Harper Angel, Stan Humphries, Christian McDaniel, Morgan McGarvey, Robby Mills, Michael J. Nemes, and Damon Thayer; Representatives Danny Bentley, Randy Bridges, George Brown Jr, Jeffery Donohue, Deanna Frazier, Joe Graviss, Cluster Howard, Regina Huff, Kim King, Adam Koenig, Stan Lee, Jerry T. Miller, Brandon Reed, Rob Rothenburger, John Sims Jr, and Ashley Tackett Laferty.

Guests: Senator Robert Stivers, Senate President; Max Fuller and David Moore, Department of Housing, Buildings and Construction; Chief Art Ealum, Shawn Butler, Jeff Liles, Anthony Lucas, and Pat Crowley, Kentucky Association of Chiefs of Police; and Sheriff Keith Cain, Kentucky Sheriffs' Association.

LRC Staff: Mark Mitchell, John Ryan, Joe Pinczewski-Lee, and Cheryl Walters.

Approval of Minutes

Upon the motion of Representative Koenig, seconded by Senator Thayer, the minutes from the June 24, 2020 meeting were approved.

Consideration of Administrative Regulation

The committee considered referred Administrative Regulation, 815 KAR 020:191, promulgated by the Department of Housing, Buildings and Construction, which related to the Division of Plumbing's minimum fixture requirements. Deputy Commissioner Max Fuller, and David Moore, Director of the Division of Plumbing, represented the Department and discussed the proposed changes.

Law Enforcement Issues and Reform for the 2021 Session

Mr. Shawn Butler, Executive Director of the Kentucky Association of Chiefs of Police (KACP), told the Committee that in every legislative session, many bills dealing

with criminal justice are filed. Given the current situation with law enforcement issues in the state and around the nation, he and Chief Ealum were grateful to appear before the Committee to briefly discuss some of the issues and legislation that the General Assembly would likely be dealing with during the 2021 session.

Chief Art Ealum, Owensboro Police Department and President of the KACP, stated that he wanted to briefly mention the Association's positions and thoughts on various law enforcement issues and legislation that are likely to be considered and discussed during the 2021 legislative session.

Regarding the use of force and choke holds, national discussions have been going on since the situation involving George Floyd. The KACP believes that choke holds should be strictly banned in most situations. There are, however, times when an officer is fighting for his life and that is the only tool available to him. Choke holds should meet the continuum of deadly force and as such should be used only in a deadly force encounter.

When considering defunding the police and reallocating those resources, the KACP believes doing so takes away from the communities that they serve. Eighty percent of police department budgets are dedicated to personnel. Defunding efforts would mean either losing personnel or losing training. The KACP requests the General Assembly to dedicate more money to training.

The KACP has had discussions with the Kentucky Law Enforcement Council (KLEC) regarding strengthening existing decertification legislation that has been in effect since 2018. The KACP wishes to ensure that agencies hiring police officers who have been terminated from another department are aware of these officers' performance backgrounds so these departments may make sound hiring decisions.

In response to a question from Senator Schroder, Chief Ealum stated that no-knock warrants should not be used to recover property or in drug searches. No-knock warrants are rarely utilized in most agencies. Mr. Butler added that KACP supports everything Senator Stivers has discussed but reserves judgement until they actually see the legislation.

In response to a question from Representative Koenig, Chief Ealum said it would depend on the agencies. The Department of Criminal Justice Training (DOCJT) trains using krav maga and some jujitsu techniques. The Owensboro Police Department uses its own defensive tactics instructors. A neck restraint might be used to stop a combative person, but no technique would be used to compress the carotid artery. The Owensboro Police Department does not teach choke holds. Mr. Butler noted that a police officer has to justify the use of deadly force when employing a choke hold according to most police

department policies. Most police departments do not train in the use of this hold. Chief Ealum noted that most defensive tactics instructors will be certified through DOCJT. Officers will get additional training in different places. The problem is that police departments do not train enough to become mixed martial arts experts. The training has to consist of techniques the officers can practice and use. Departments have to eliminate holds that can cause injuries. Mr. Butler added that KACP accredited police departments cannot use choke holds and carotid artery restricting techniques.

Referring to untrained constables, Representative Koenig commented that since constables are not trained, their police powers should be eliminated in order for criminal justice reform to occur.

In response to a question from Senator Schroder, Chief Ealum replied that the training includes a 20-week academy, and most counties have in-house academies. Training is all inclusive, and includes physical fitness, target practice, de-escalation techniques, legal issues, and other subjects.

In response to a question from Representative King, Chief Ealum said that citizens can show support by being accessible and present. Citizens should talk to people that actually know the job when it comes to the issue of defunding the police.

In response to a question from Representative Graviss, Chief Ealum stated that his department has not considered studying cultural humility.

In response to a question from Senator Mills, Chief Ealum said the first thing police departments do when hiring officers from out of state is that they conduct an internet search on the applicant. Applicants get with the KLEC for reciprocity training evaluation. Most out of state police officers have reciprocity and have the same amount of training. Complete background checks are done and psychological tests are performed. Mr. Butler added that a seven-year review of the applicant's social media history is available from a vendor who performs these types of searches.

Representative Donohue commented that he supports getting more funds for police departments, because training is critical.

In response to a question from Representative Meredith, Mr. Butler replied that training in use of force can be different depending on the agency, but the training has to comply with state law. There can be small differences. Chief Ealum added that having policies can be great, but it is the application of the policy that is important.

In response to a question from Representative Miller, Chief Ealum said police officers are trained to aim their weapons for the center mass of the portion of the body they can see.

Representative Frazier commented that she reached out to DOCJT and about ten percent of the classroom scenario instruction they conduct is in de-escalation and bias training.

In response to a question from Representative Howard, Chief Ealum said that greater pay will attract more qualified police officer candidates. Regarding de-escalation training, there are many forms of this, such as crisis intervention training. Chief Elam noted that use of force is a response to resistance directed at the officer and is used to prevent the person from injuring themselves or other persons.

Daviess County Sheriff Keith Cain, representing the Kentucky Sheriffs Association (KSA), told the Committee that some have suggested that further restrictions on what is already a somewhat restricted procedure would take away a tool needed by law enforcement. Few, if any, of Kentucky's 120 sheriffs historically or currently utilize no-knock warrants. To his knowledge, the Daviess County Sheriff's Office has never asked a judge to issue a no-knock warrant, and in polling other sheriffs, not one was found who would endorse their use.

The risk to both officers and suspects, as well as to innocent bystanders, is so predictably high that they outweigh any perceived advantage of being authorized for forcible entry into someone's home without announcing the presence of police officers with a search warrant. The Castle Doctrine, which in Kentucky is set forth in KRS 503.055, recognizes that people have the right to defend themselves in their own homes and makes it even more critically important that police officers clearly identify themselves before forcibly entering a home. In the past there have been discussions about the risk of losing physical evidence if officers knock and announce their presence, but it is hard to imagine a case where that evidence is so crucial that it would make sense to ask for a no-knock warrant.

While there are conceivably some extreme scenarios in which applying for a no-knock search warrant might be justified, those exceptions can be carefully articulated in the bill that is currently being drafted. Concerning the bill, the issue of "qualified immunity" has also come under scrutiny. Some have said that "qualified immunity" is a license for law enforcement to get away with violating someone's rights and therefore that standard should be abandoned. The term "qualified immunity" is most commonly used in federal court cases brought against officers and their employing agencies, so it is not certain that "qualified immunity" is an issue for purview by the state legislature.

The issue of qualified immunity comes up in federal civil litigations. In the most simple of terms, qualified immunity means that a person bringing a lawsuit has to prove that the officer in question violated their constitutional rights and in doing so the officers knew, or should have known that they were violating that person's rights. Since each case

is decided upon its own merits, until a court case is decided regarding a particular kind of conduct or action occurs, there is no way for law enforcement agencies to be put on notice.

In a time when many communities have serious questions about whether people who are sworn to protect them will be held accountable when they violate that oath, it is incumbent upon law enforcement to answer those questions.

Senator Robert Stivers, Senate President, told the Committee that he is sponsoring a bill that would not allow no-knock search warrants to be used as a stand-alone tool by police. This is, of course, in response to the no-knock, stand-alone search warrant served at 1:00 a.m. in Louisville for the Breonna Taylor case. The federal government generally disallows the service under their rules and guidelines of any warrant after 10 pm and before 6 am absent exigent circumstances. There are times you do not want to knock prior to entry when serving an arrest warrant. But in a situation like that, you should also possess a secondary search warrant. The search warrant would allow the seizure of evidence when securing a space after entry. The no-knock search warrant would not be a standalone tool, but would be used as a secondary tool. No-knock warrants should be used by individuals who are trained in tactical situations. The obtaining of such a warrant should require that a supervisor sign off, and be taken before a judge. Forum shopping of the granting of these warrants should be controlled. There is the question of separation of powers between the legislative and judicial branches of government and as a result, what is allowed as evidence if proper procedure is not followed. There should be entity liability, but to what degree there should be individual liability is still under question. There is no attempt to broaden or remove qualified immunity. But where someone was willfully, wantonly, or grossly negligent in obtaining warrants, the person should be held individually liable. There must be more discussions with the judicial branch as to what may be introduced in a civil or criminal case when someone believes their rights to have been violated during the service of a no-knock warrant.

Another aspect of the proposal would be that police officers would have to seek advice before asking for a no-knock warrant, and the Commonwealth's Attorney or County Attorney would weigh in as well.

The circumstances which have brought about these discussions are the result of bad policing. But that in no way means that police are bad. They are a viable and integral part of our civilized society, and cannot be commended enough for what they do.

There being no further business, the meeting was adjourned at 9:55 a.m.