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HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 325

AN ACT TO AMEND TITLES 3, 5, 6, 7, 9, 10, 11, 16, 23, 29 AND 30 OF THE DELAWARE CODE RELATING TO
SHERIFFS AND SHERIFF DEPUTIES.

1 WHEREAS, the three county sheriffs and their deputies have assisted the State courts with service of process of
2 court papers and documents, sales of real property, and other specific duties authorized in the Delaware Code; and

3 WHEREAS, the county sheriffs and their deputies have not exercised arrest authority; and

4 WHEREAS, arrest authority has been specifically authorized in the Delaware Code to certain persons; and

5 WHEREAS, it is the intent of the General Assembly to specifically state the sheriffs and their deputies do not have
6 any arrest authority;

7 NOW, THEREFORE:

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

9 Section 1. Amend § 222, Chapter 2, Title 11, Delaware Code by making insertions as shown by underlining to
10 read as follows:

11 (15) "Law-enforcement officer" includes police officers, the Attorney General and the Attorney General's
12 deputies, ~~sheriffs and their regular deputies~~ agents of the State Division of Alcohol and Tobacco Enforcement, correctional
13 officers, state fire marshals, municipal fire marshals that are graduates of a Delaware Police Academy which is
14 accredited/authorized by the Council on Police Training, sworn members of the City of Wilmington Fire Department who
15 have graduated from a Delaware Police Academy which is authorized/accredited by the Council on Police Training,
16 environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control,
17 and constables.

18 Section 2. Amend § 1901(2), Chapter 19, Title 11, Delaware Code by making insertions as shown by underlining
19 to read as follows:

20 (2) "Peace officer" is any public officer authorized by law to make arrests in a criminal case. Sheriffs and
21 sheriff deputies are not authorized by law to make arrests in criminal cases.

Section 3. Amend § 1911, Chapter 19, Title 11, Delaware Code by adding a new subsection as shown by underlining to read as follows:

(i) "Police officer" as used in this code shall not include sheriffs and sheriff deputies.

Section 4. Amend § 1935, Chapter 19, Title 11, Delaware Code by making insertions as shown by underlining to read as follows:

§ 1935. Fresh pursuit by county, municipal, town and other peace units.

Any peace officer of a duly organized county, municipal, town, interstate bridge or university peace unit or a law enforcement officer of the Department of Natural Resources and Environmental Control, but not county sheriffs or their deputies, may carry out fresh pursuit of any person anywhere within this State, regardless of the original territorial jurisdiction of such officer, in order to arrest such person pursued, when there is reasonable grounds to suspect that a felony, misdemeanor, or violation of the Motor Vehicle Code has been committed in this State by such person.

Section 5. Amend § 8502, Chapter 85, Title 11, Delaware Code by making insertions as shown by underlining to read as follows:

(10) "Law-enforcement officer" shall include police officers, special investigators pursuant to § 9016 of Title 29, the Attorney General and the Attorney General's deputies, state fire marshals, municipal fire marshals that are graduates of a Delaware Police Academy which is accredited/authorized by the Council on Police Training, sworn members of the City of Wilmington Fire Department who have graduated from a Delaware Police Academy which is authorized/accredited by the Council on Police Training, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, sheriffs and their regular deputies, agents of the State Division of Alcohol and Tobacco Enforcement correctional officers and constables. For purposes of this subchapter, sheriffs and their regular deputies shall not have any arrest authority.

Section 6. Amend § 8544, Chapter 85, Title 11, Delaware Code by making insertions as shown by underlining to read as follows:

(a) Every ~~sheriff~~, constable, chief police officer, officer in charge, member of the State Police and other law-enforcement agency and officer of the State and of any local governmental unit shall immediately accept and act upon information on any missing child by police radio broadcasts and by causing missing child entries into DELJIS and NCIC and shall transmit information to the Clearinghouse, so far as available, on a missing child report concerning a missing child within 24 hours after receipt thereof. The investigating law-enforcement agency shall also notify the Delaware Information Analysis Center (DIAC) who shall assist the investigating law-enforcement agency in regard to the search and location of the missing child.

Section 7. Amend § 8584, Chapter 85, Title 11, Delaware Code by making insertions as shown by underlining to read as follows:

(e) "Law-enforcement officer" includes police officers, the Attorney General and the Attorney General's deputies, ~~sheriffs and their regular deputies~~, agents of the State Division of Alcohol and Tobacco Enforcement, correctional officers, state fire marshals, municipal fire marshals that are graduates of a Delaware Police Academy which is accredited/authorized by the Council on Police Training, sworn members of the City of Wilmington Fire Department who have graduated from a Delaware Police Academy which is authorized/accredited by the Council on Police Training, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, and constables. For purposes of this subchapter, "law-enforcement officer" also includes an employee of a federal governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and who has statutory powers of arrest.

Section 8. Amend § 1022(a), Chapter 10, Title 3, Delaware Code by making deletions as shown by strikethrough to read as follows:

§ 1022. General powers and duties; powers and duties within assigned district; duties of owners and lessees.

(a) State forest officers shall have police powers similar to ~~sheriffs~~, constables and other police officers throughout the State for the serving of warrants, summons, writs and other legal papers issued by any justice of the peace or court having jurisdiction in offenses against any law enacted for the protection of forest, brush, grass or wild lands, and they may arrest any person detected by them in the act of committing, or under such circumstances as warrant reasonable suspicion that such person is committing, or is about to commit an offense against any of the laws enacted for the protection of forest, brush, grass or wild lands in this State or any law, rule or regulation relating to the protection of any land, property, structure material or vegetation on lands under the administration or control of the Department. A state forest officer shall also have the power to make arrests of persons violating § 518 of Title 17 in the officer's presence or view or otherwise upon the issuance of an arrest warrant based on a showing of probable cause that the individual named in the warrant committed the violation.

Section 9. Amend § 7902, Chapter 79, Title 3, Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough to read as follows:

§ 7902. Enforcement of laws for protection of animals.

The ~~sheriffs and~~ constables of the several counties of this State, and the police force of the City of Wilmington, as well as all other places in the State where police organizations exist, shall, as occasion requires, assist the Kent County Society for the Prevention of Cruelty to Animals or The Delaware Society for the Prevention of Cruelty to Animals, their members or agents, in the enforcement of all laws which are enacted for the protection of dumb animals.

Section 10. Amend § 2906(d), Chapter 29, Title 5, Delaware Code by making deletions as shown by strikethrough to read as follows:

(d) If any person served with any such subpoena shall refuse to obey the same, and to give testimony, and to produce evidence as required thereby, the Commissioner may apply to any judge of the Superior Court for an attachment against such person, as for a contempt. The Court, upon satisfactory proof of such refusal, shall issue an attachment directed to any ~~sheriff~~, constable or police officer, for the arrest of such person, and upon the person being brought before the Court, proceed to a hearing of the case. The Court shall have power to enforce obedience to such subpoena, and the answering of any question, and the production of any evidence, that may be proper, by a fine not exceeding \$100, or by imprisonment for not more than 30 days, or by both fine and imprisonment, and to compel such witness to pay the costs of such proceeding as taxed by the Court.

Section 11. Amend § 5114, Chapter 51, Title 6, Delaware Code by making deletions as shown by strikethrough to read as follows:

§ 5114. Police powers; right of entry and stoppage.

With respect to the enforcement of this chapter and any other chapters dealing with weights and measures that the Secretary of Agriculture is, or may be, empowered to enforce, the Secretary of Agriculture is hereby vested with police powers, and shall have police powers similar to those of ~~sheriffs~~, constables and other police officers and may arrest any violator of the said chapters, and seize for use as evidence, incorrect or unsealed weights and measures or amounts or packages of commodity, found to be used, retained, offered or exposed for sale, or sold in violation of law. In the performance of official duties, the Secretary of Agriculture may enter and go into or upon, any structure or premises, and stop any person whatsoever and require that person to proceed, with or without any vehicle of which he or she may be in charge, to some place which the Secretary of Agriculture may specify.

Section 12. Amend § 1313, Chapter 13, Title 7, Delaware Code by making deletions as shown by strikethrough to read as follows:

§ 1313. Peace officers ex officio Fish and Wildlife Agents.

All ~~sheriffs, deputy sheriffs~~, constables and police officers, and all other peace officers of this State, shall be ex officio Fish and Wildlife Agents.

Section 13. Amend § 4701(a)(8), Chapter 47, Title 7, Delaware Code by making deletions as shown by strikethrough to read as follows:

(8) Employ and fix the salaries of such personnel as it deems proper for the enforcement of its rules and regulations. Enforcement personnel may arrest with a warrant for any violation of the Department of Natural Resources and Environmental Control rules and regulations, or without a warrant for any such violation committed in their presence. Enforcement personnel, with respect to the enforcement of the Department of Natural Resources and Environmental

Control rules and regulations, shall have all the powers of investigation, detention and arrest conferred by law on peace officers, ~~sheriffs~~ or constables;

Section 14. Amend § 910(a), Chapter 9, Title 9, Delaware Code by making deletions as shown by strikethrough to read as follows:

§ 910. Dogs deemed personal property; theft; penalty.

(a) All dogs shall be deemed personal property and may be the subject of theft pursuant to Chapter 5 of Title 11. Any warrant of arrest or other process issued under or by virtue of the several laws in relation to the theft of such property may be directed to and executed by any ~~sheriff~~, police officer, constable, or dog warden.

Section 15. Amend § 917(c), Chapter 9, Title 9, Delaware Code by making deletions as shown by strikethrough to read as follows:

(c) For the purposes of this chapter, the term "animal control constable" shall have the meaning ascribed in Chapter 29 of Title 10. The term "dog warden" shall mean a person employed by the county or an animal control agency to enforce the dog control laws and ordinances of this State or county and any of its political subdivisions. In addition, all police officers, ~~sheriffs and their regular deputies~~ may enforce the dog control laws and ordinances of the county, this State and any of its political subdivisions.

Section 16. Amend § 2103, Chapter 21, Title 10, Delaware Code by making deletions as shown by strikethrough and making insertions as shown by underlining to read as follows:

~~§ 2103. Extra deputies in emergency; compensation.~~

~~In case an emergency makes it necessary for a sheriff to employ temporarily a greater number of deputies than provided in § 2102 of this title, for the preservation of peace and good order, the sheriff may be reimbursed by the Levy Court or County Council of his or her county for sums actually expended for the services of such deputies, upon rendering a detailed sworn statement of the occasion for the employment, the term thereof, and the amount paid to each deputy, and the names of such deputies.~~

§ 2103. Sheriffs and Regular Deputies.

Sheriffs and their regular deputies shall not have any arrest authority.

Section 17. Amend § 2114, Chapter 21, Title 10, Delaware Code by making deletions as shown by strikethrough to read as follows:

~~§ 2114. Fish and Wildlife Agent.~~

~~The sheriff ex officio shall be a Fish and Wildlife Agent.~~

Section 18. Amend § 1301(d), Chapter 13, Title 16, Delaware Code by making deletions as shown by strikethrough and insertions as shown by underlining to read as follows:

(d) In addition to the fine imposed under subsection (b) of this section, the Court shall issue an order for the abatement of the nuisance within 20 days after conviction. ~~The sheriff of the county~~ Any police officer authorized to make arrests in the jurisdiction in which the conviction takes place shall, under such order, unless the nuisance was abated before the expiration of the time allowed for its abatement, abate the same, and to this end shall enter on the premises from which the nuisance proceeded and arrest, stop and put an end to the business from the carrying on of which or in the process of which the nuisance was created and carried on.

Section 19. Amend § 2118(b), Chapter 21, Title 23, Delaware Code by making deletions as shown by strikethrough to read as follows:

(b) The Department shall assign a Boating Administrator who shall be qualified by training and experience to perform the duties of office. The Boating Administrator shall train and maintain a staff of Fish and Wildlife Agents who are capable of insuring compliance with state law and Department regulations of all vessels using, moored or anchored on state waters. The Boating Administrator shall train and maintain a clerical staff to operate the boating safety office and all boat registration offices. For the purpose of carrying out this subchapter, Fish and Wildlife Agents shall have all the powers of investigation, detention and arrest conferred by law on peace officers, ~~sheriffs~~ and constables. Such officers shall have the right to arrest with a warrant for violations or without a warrant for violations of such regulations committed in their presence.

Section 20. Amend § 8003A(b), Chapter 80, Title 29, Delaware Code by making deletions as shown by strikethrough to read as follows:

(b) Law-enforcement officers of the Department of Natural Resources and Environmental Control shall have police powers similar to those of ~~sheriffs~~, constables, peace officers and other police officers when enforcing the laws, regulations, rules, permits, licenses, orders and program requirements of the Department of Natural Resources and Environmental Control. Such police powers shall include, but not be limited to, powers of investigation, search, seizure, detention and arrest conferred by law on ~~sheriffs~~, constables, peace officers and other police officers.

Section 21. Amend § 9016(b), Chapter 90, Title 29, Delaware Code by making deletions as shown by strikethrough to read as follows:

(b) Special investigators appointed under this section may conduct investigations of child abuse, neglect, or risk of maltreatment anywhere in this State as directed by the Director of the Division of Family Services and shall have the power to make arrests and serve writs anywhere in this State. Special investigators shall have statewide powers as enumerated under § 1911 of Title 11 and such other powers as conferred by law on police officers, ~~sheriffs~~, constables and other law enforcement personnel. Notwithstanding the above, special investigators pursuant to this section shall not have the authority to take custody of a child unless pursuant to an order from the Family Court or in conjunction with the law enforcement agency charged with jurisdiction over the case. To the extent possible, special investigators pursuant to this

179 section shall consult with the police agency of jurisdiction and the Director or the Director's designee prior to making an
180 arrest and shall do so in all cases after making any such arrest.

181 Section 22. Amend § 2118(a), Chapter 21, Title 30, Delaware Code by making deletions as shown by
182 strikethrough to read as follows:

183 § 2118. Officers to enforce license laws; penalties.

184 (a) Every justice of the peace, ~~sheriff, deputy sheriff~~ and constable, within such officer's respective county,
185 whenever such officer has knowledge that any individual, copartnership, firm or corporation or any other association of
186 persons acting as a unit is or are engaged in prosecuting, following or carrying on or practicing or conducting any business,
187 trade, pursuit or occupation mentioned and enumerated in this part without having first obtained a license therefor as
188 required in this part, shall make complaint or cause complaint to be made thereof to the Department of Finance, which shall
189 thereupon proceed according to the provisions of this chapter relative thereto, and the jurisdiction of justices of the peace,
190 ~~sheriffs, deputy sheriffs~~ and constables relative to misdemeanors and offenses shall extend and apply to misdemeanors and
191 offenses created by this part. Every individual, copartnership, firm or corporation or any other association of persons acting
192 as a unit engaged in prosecuting, following or carrying on or practicing or conducting any business, trade, pursuit or
193 occupation mentioned and enumerated in this part, shall, on demand of any officer of the Department of Finance or of any
194 justice of the peace, ~~sheriff, deputy sheriff~~ or constable or on demand of any citizen of this State, produce the license
195 therefor; and unless he, she or they shall so do, it shall be presumptive evidence that he, she or they, as the case may be, has
196 or have no license.

SYNOPSIS

This bill makes the Delaware law clear that the county sheriffs and their deputies do not have arrest authority. Historically the sheriffs and deputies have not exercised arrest authority and the Attorney General's office has given an opinion that the sheriff's "power to arrest is no greater than that shared by any citizen."