

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1170 Session of
2013

INTRODUCED BY D. COSTA, MILLARD, CALTAGIRONE, SWANGER, KOTIK,
DeLUCA, MAHONEY AND GINGRICH, APRIL 10, 2013

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 10, 2013

AN ACT

1 Amending Title 44 (Law and Justice) of the Pennsylvania
2 Consolidated Statutes, in constables, providing for drug
3 testing.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Title 44 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 § 7104. Drug testing.

9 (a) General rule.--The county sheriff shall perform a drug
10 test on a constable or deputy constable within 30 days of the
11 constable or deputy constable's being elected, reelected or
12 appointed to office.

13 (b) Random drug testing.--The county sheriff may randomly,
14 with or without probable cause, perform a drug test on a
15 constable or deputy constable.

16 (c) Removal.--A constable or deputy constable shall be
17 removed from office by a court of common pleas with competent
18 jurisdiction if:

1 (1) as a result of drug testing conducted pursuant to
2 this section, the constable or deputy constable tests
3 positive for a controlled substance;

4 (2) the court finds that the constable or deputy
5 constable has refused to be drug tested by the county sheriff
6 pursuant to this section; or

7 (3) the court finds that the constable or deputy
8 constable is unable to perform his duties as a result of a
9 prescribed controlled substance.

10 (d) Replacement.--Upon removal under subsection (c), the
11 court may appoint a suitable individual to fill the vacancy of
12 constable or deputy constable until a successor is elected or
13 appointed as provided in this chapter.

14 (e) Costs.--The cost of all drug testing of constables and
15 deputy constables in a county pursuant to this section shall be
16 paid for by the county court system of the county.

17 (f) Prescribed controlled substances.--

18 (1) If a constable takes a prescribed controlled
19 substance, a copy of the physician's order shall be provided
20 to his direct supervisor.

21 (2) If a deputy constable takes a prescribed controlled
22 substance, a copy of the physician's order shall be provided
23 to the constable and the constable's direct supervisor.

24 (3) The physician's order shall include the following
25 information:

26 (i) The type of controlled substance prescribed.

27 (ii) How often the controlled substance needs to be
28 taken.

29 (iii) How long the prescribed controlled substance
30 will need to be taken.

1 (iv) Whether the constable or deputy constable will
2 be able to perform his duties while on the prescribed
3 controlled substance.

4 (g) Direct supervisors.--

5 (1) (i) The direct supervisor of a constable shall
6 determine whether the constable or deputy constable who
7 takes a prescribed controlled substance is able to
8 continue performing his official duties and, if the
9 constable or deputy constable is unable to do so, the
10 direct supervisor shall order the constable or deputy
11 constable to take a leave of absence.

12 (ii) A constable shall have the same power as his
13 direct supervisor has under this paragraph to make such
14 determinations and orders for a deputy constable of whom
15 he is the direct supervisor.

16 (2) (i) The direct supervisor of a constable may
17 request the court of common pleas with competent
18 jurisdiction to remove the constable or deputy constable
19 from office because of his inability to perform his
20 official duties.

21 (ii) A constable shall have the same power as his
22 direct supervisor has under this paragraph to request
23 removal of a deputy constable of whom he is the direct
24 supervisor.

25 (h) Exceptions.--No constable or deputy constable may be
26 removed from office for testing positive for a controlled
27 substance if the controlled substance has been taken:

28 (1) In accordance with a valid prescription.

29 (2) With permission by the constable or constable's
30 direct supervisor to carry out his official duties while

1 under the effects of the prescribed controlled substance.

2 (i) Definitions.--The following words and phrases as used in
3 this section shall have the meaning given to them in this
4 subsection unless the context clearly indicates otherwise:

5 "Controlled substance." A drug, substance or immediate
6 precursor specified in schedules I, II, III and IV of section 4
7 of the act of April 14, 1972 (P.L.233, No.64), known as the
8 Controlled Substance, Drug, Device, and Cosmetic Act.

9 "Drug." Any of the following:

10 (1) A substance recognized in the official United States
11 Pharmacopeia, official National Formulary or any supplement
12 to either of them.

13 (2) A substance intended for use in the diagnosis, cure,
14 mitigation, treatment or prevention of disease in man or
15 other animals.

16 (3) A substance, other than food, intended to affect the
17 structure or any function of the human body or other animal
18 body.

19 (4) A substance intended for use as a component of any
20 article specified in paragraph (1), (2) or (3), but not
21 including any device or any component, part or accessory of a
22 device.

23 "Immediate precursor." A substance which the Secretary of
24 Health has found to be, and by regulation designates as being, a
25 principal compound commonly used or produced primarily for use,
26 and which is an immediate chemical intermediary used or likely
27 to be used in the manufacture of a controlled substance.

28 Section 2. This act shall take effect in 60 days.