

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2731 Session of
2010

INTRODUCED BY CALTAGIRONE, BRENNAN, D. COSTA, KULA, BELFANTI,
BRIGGS, CLYMER, GEIST, GINGRICH, GROVE, HARRIS, MAHONEY,
McGEEHAN, MILNE, MOUL, MUNDY, REICHLEY, SANTONI, SIPTROTH,
SOLOBAY, SWANGER AND BEYER, SEPTEMBER 15, 2010

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 15, 2010

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 44 (Law and
2 Justice) of the Pennsylvania Consolidated Statutes, further
3 providing for townships; providing for election of constables
4 and for bonds; further providing for deputy constables;
5 providing for political activity; further providing for
6 certification definitions and for certification program
7 establishment content; providing for discipline; further
8 providing for powers and duties, for service of process, for
9 collection of taxes, for arrest for forest law violations,
10 for executions, for returns and appearances, for arrests in
11 boroughs, for trespassing livestock, for returns, for certain
12 fees, for court returns and for taxes; and making a
13 conforming amendment.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Section 6106(b)(1) of Title 18 of the
17 Pennsylvania Consolidated Statutes is amended to read:

18 § 6106. Firearms not to be carried without a license.

19 * * *

20 (b) Exceptions.--The provisions of subsection (a) shall not
21 apply to:

22 (1) [Constables, sheriffs] Sheriffs, prison or jail

wardens, or their deputies, policemen of this Commonwealth or its political subdivisions, or other law-enforcement officers.

* * *

Section 2. Section 7114(c) of Title 44 is amended to read:

§ 7114. Townships.

* * *

[(c) Bond.--The bond given by a constable in a township shall be in a sum not less than \$500 nor more than \$3,000, as the court shall direct, and shall be taken by the clerk of the court in the name of the Commonwealth, with conditions for just and faithful discharge by the constable of the duties of office. The bond shall be held in trust for the use and benefit of persons who may sustain injury by reason of neglect of duty, and for the same purposes and uses as a sheriff's bond.]

Section 3. Title 44 is amended by adding sections to read:

§ 7115. Election of constables.

A candidate for the office must reside in the municipality in which the candidate seeks office for at least one year prior to filing a nomination petition or receiving an appointment under section 7121 (relating to constables) and, during the term of office, must remain a resident of the electoral district from which elected or appointed.

§ 7116. Bond.

The bond given by a constable in a township shall be in a sum not less than \$1,000 nor more than \$8,000, as the court shall direct, and shall be taken by the clerk of the court in the name of the Commonwealth, with conditions for just and faithful discharge by the constable of the duties of office. The bond shall be held in trust for the use and benefit of persons who

1 may sustain injury by reason of neglect of duty and for the same
2 purposes and uses as a sheriff's bond.

3 Section 4. Section 7122(b)(1) and (c) of Title 44 are
4 amended to read:

5 § 7122. Deputy constables.

6 * * *

7 (b) Court approval and qualifications.--

8 (1) Except as set forth in paragraph (2), no deputy
9 shall be appointed, either by general or partial
10 deputation, without approbation of the court of common
11 pleas of the county, except for special appointments in a
12 civil suit or proceeding, at the request and risk of the
13 plaintiff or his agent. To be appointed as a deputy, an
14 individual must have resided for at least one year in the
15 municipality where the individual will serve and remain a
16 resident of the electoral district from which the individual
17 was appointed during the term of appointment. If a deputy no
18 longer resides in, or ceases to be a qualified elector of,
19 the [ward] municipality in which he was appointed to serve,
20 the court of common pleas may revoke the appointment of the
21 deputy upon petition of five duly qualified electors of the
22 [ward] municipality and proof of facts requiring revocation.

23 * * *

24 [(c) Certain provisions relating to boroughs unaffected.--

25 This section does not affect the provisions of section 14 of the
26 act of June 28, 1923 (P.L.903, No.348), entitled "A supplement
27 to an act, approved the fourteenth day of May, one thousand nine
28 hundred and fifteen (Pamphlet Laws, three hundred and twelve),
29 entitled 'An act providing a system for government of boroughs,
30 and revising, amending, and consolidating the law relating to

1 boroughs'; so as to provide a system of government where a
2 borough now has annexed or hereafter shall annex land in an
3 adjoining county, including assessment of property, levying and
4 collection of taxes, making municipal improvements, and filing
5 and collecting of liens for the same; the jurisdiction of courts
6 for the enforcement of borough ordinances and State laws, and
7 primary, general, municipal, and special elections; and
8 repealing inconsistent laws."]

9 Section 5. Title 44 is amended by adding a section to read:

10 § 7133. Political activity.

11 (a) Prohibition.--Except as set forth in subsection (b), a
12 constable may not engage in political activity.

13 (b) Exception.--Subsection (a) does not apply to a constable
14 during the election year in which the constable is a candidate
15 for reelection as a constable or to any other elective office
16 the constable holds, provided that the activity comports with
17 current law.

18 Section 6. The heading of Subchapter E of Chapter 71 of
19 Title 44 is amended to read:

20 SUBCHAPTER E

21 [TRAINING] CERTIFICATION

22 Section 7. The definition of "judicial duties" in section
23 7141 of Title 44 is amended to read:

24 § 7141. Definitions.

25 The following words and phrases when used in this subchapter
26 shall have the meanings given to them in this section unless the
27 context clearly indicates otherwise:

28 * * *

29 "Judicial duties." Those services specified in [section]
30 sections 7161 (relating to fees), 7161.1 (relating to specific

1 fees) and 7165 (relating to seizure fees).

2 * * *

3 Section 8. Sections 7144(9), 7145, 7147 and 7151 of Title 44
4 are amended to read:

5 § 7144. Program established.

6 The board, with the review and approval of the commission,
7 shall:

8 * * *

9 (9) Certify and issue appropriate certificates to
10 constables and deputy constables who [have] comply with all
11 of the following:

12 (i) Have no criminal record for an offense graded as
13 a felony or a misdemeanor of the first degree, as
14 determined by:

15 (A) a report under 18 Pa.C.S. Ch. 91 (relating
16 to criminal history record information); or

17 (B) a statement from the Pennsylvania State
18 Police that the State Police central repository
19 contains no criminal history of conviction of a
20 felony or misdemeanor of the first degree.

21 (ii) Undergo a psychological examination by a
22 Pennsylvania-licensed psychologist, for which the board
23 shall establish an acceptable range of scores on the
24 Minnesota Multiphasic Personality Inventory or other
25 accepted evaluative instrument, to determine whether the
26 constable is psychologically capable of exercising
27 appropriate judgment and restraint in performing the
28 duties of constable. The constable shall be responsible
29 for the costs of this evaluation.

30 (iii) Have satisfactorily completed the basic and

continuing education and training requirements of this
subchapter [and issue appropriate certificates to them].

* * *

§ 7145. Program [contents] content.

The Constables' Education and Training Program shall include
training for a total of no less than 80 hours, the content of
which shall be determined by regulation. The training shall
include instruction in the interpretation and application of the
fees provided for in section 7161 (relating to fees).

§ 7147. [(Reserved)] Discipline.

(a) Standards.--

(1) The Supreme Court may establish by rule standards
for the performance within the judicial districts of a
constable's judicial duties and related topics, including:

(i) A dress code and uniform and badge standards.

(ii) Billing forms and standards.

(iii) Vehicle standards as set forth in Title 75
(relating to vehicles).

(iv) Standards for the transport of prisoners, which
shall include at a minimum maintaining a vehicle in full
compliance with all general requirements of 75 Pa.C.S.
(relating to vehicles) for road worthiness which contains
a separate secure area of the vehicle for prisoner
transport, including driver controlled door and window
locks. No more than three prisoners may be transported in
a passenger vehicle. No more than six prisoners may be
transported in a van. At least two armed and certified
constables shall be present during any transport.

(v) A code of conduct.

1 (2) Standards under this subsection shall not contravene
2 or supersede this chapter.

3 (b) Sanctions.--A court of common pleas may, upon petition
4 of a person, suspend or revoke the certification under this
5 subchapter of a constable or deputy constable holding office
6 within the judicial district of the court or remove them from
7 office, if, after notice and hearing, the court finds by clear
8 and convincing evidence that the constable or deputy constable
9 has:

10 (1) engaged in misfeasance or malfeasance in office;

11 (2) been convicted while in office of a felony or an
12 offense, other than a felony, having falsification as an
13 element, or been convicted in another jurisdiction of an
14 offense which would constitute a felony or an offense, other
15 than a felony, having falsification as an element under the
16 laws of this Commonwealth;

17 (3) failed to comply with the standards established
18 under subsection (a); or

19 (4) during the term of office, engaged in:

20 (i) dishonest or immoral conduct; or

21 (ii) conduct tending to bring disrepute to the
22 office of constable, including any abuse of the authority
23 of the office or constable.

24 § 7151. General imposition of duties and grant of powers.

25 (a) Authorization.--Constables shall perform all duties
26 authorized or imposed on them by statute or by court order.

27 (b) Limitation.--Constables have the power to arrest only in
28 accordance with an arrest warrant. When a judicial officer
29 issues an arrest warrant to a constable, the judicial officer
30 may provide the constable with a photograph and criminal

1 history, from any source to which the judicial officer has
2 authorized access, of the individual specified in the arrest
3 warrant. This information may be supplied in connection with the
4 service of other documents as needed or required for constable
5 safety.

6 (c) Official capacity.--

7 (1) If a constable is certified under section 7142(a)
8 (relating to conduct and insurance), the constable may do any
9 of the following:

10 (i) Represent himself as a constable or act in the
11 official capacity as a constable if engaged in the
12 performance of judicial duties. As used in this
13 subparagraph, the term "judicial duties" has the meaning
14 given in section 7141 (relating to definitions).

15 (ii) Carry a firearm under section 7148 (relating to
16 use of firearms.

17 (iii) Providing security, crowd control, educational
18 or similar services on behalf of and under contract to a
19 political subdivision.

20 (2) Regardless of certification under section 7142(a), a
21 constable may represent himself as a constable or act in the
22 official capacity as a constable if engaged in any of the
23 following activities:

24 (i) Performance of duties under section 7152
25 (relating to elections).

26 (ii) Service of judicial process on behalf of and
27 under contract to a party to a judicial proceeding.

28 (iii) Attendance at a meeting of an organization
29 constituting an association of constables.

30 (iv) Attendance at a meeting, hearing or function of

1 the Commonwealth or a political subdivision.

2 (v) Activity as authorized by law.

3 (3) Unless authorized under paragraph (1) or (2), a
4 constable may not represent himself as a constable or act in
5 the official capacity as a constable. This paragraph includes
6 wearing a uniform or badge.

7 Section 9. Sections 7153, 7154, 7155, 7156, 7157, 7158,
8 7159, 7159.1, 7162, 7164, 7166 and 7173 of Title 44 are
9 repealed:

10 [§ 7153. Service of process.

11 If no coroner is in commission to serve process in a suit
12 instituted in a court of this Commonwealth in which the sheriff
13 of a county may be a party, a constable in the county where the
14 process has been issued may serve as the coroner and perform the
15 authorized duties of the coroner.

16 § 7154. Collection of taxes.

17 (a) Bond.--It shall be unlawful for a tax collector to do
18 any of the following:

19 (1) Give a warrant against delinquent tax payers to a
20 constable unless the constable has given security by bond and
21 warrant, with two sufficient sureties and to the satisfaction
22 of the court of common pleas, in the sum of \$5,000.

23 (2) Give a constable, at any one time, warrants for a
24 greater amount of taxes than the amount of the bond required
25 under paragraph (1).

26 (b) Report and payment.--A constable shall make a report and
27 payment of all collections on warrants under subsection (a) at
28 least once in every week after the warrants have been issued.

29 (c) Interest.--In addition to any commissions that may be
30 imposed for the collection of taxes, all taxes remaining unpaid

1 on the first day of January after the year for which they were
2 assessed shall accrue interest until they are paid.

3 § 7155. Arrest of offenders against forest laws.

4 If a person is detected by a constable in the act of
5 trespassing upon any forest or timber land within this
6 Commonwealth, under circumstances as to warrant reasonable
7 suspicion that the person has, is or may commit an offense
8 against any law for the protection of forests and timber land,
9 the constable may, without first procuring a warrant, arrest the
10 person.

11 § 7156. Executions.

12 (a) Debt, interests and costs.--The debt, interest and costs
13 of a writ of execution delivered to a constable shall be entered
14 into the docket of a magisterial district court and on the back
15 of the writ of execution. A constable may not be discharged from
16 the writ of execution unless he provides to the magisterial
17 district judge on or before the return day of the writ of
18 execution the receipt of the plaintiff or any other legally
19 sufficient return.

20 (b) Invalid returns.--If a constable makes a false return,
21 does not produce the plaintiff's receipt on the return day or
22 makes a return deemed insufficient by the magisterial district
23 judge, the magisterial district judge shall issue a summons to
24 the constable to appear on the designated day, which may not be
25 more than eight days from the date of issuance, to show cause
26 why a writ of execution should not be issued against the
27 constable for the amount of the writ of execution under
28 subsection (a). If the constable does not appear or does not
29 show sufficient cause why the writ of execution should not be
30 issued against him, the magisterial district judge shall enter

1 judgment against the constable for the amount of the writ of
2 execution under subsection (a) with costs. No stay may be
3 entered upon the writ of execution, and, upon application of the
4 plaintiff or his agent, the magisterial district judge shall
5 issue an execution against the constable for the amount of the
6 judgment, which may be directed to an authorized person. The
7 summons under this subsection shall be issued to an authorized
8 person to serve. If the summons is not served, that person shall
9 pay a fine of \$20. If an authorized person cannot be
10 conveniently found to serve the summons, the magisterial
11 district judge shall direct it to the supervisor of the highways
12 of the township, ward or district where the constable resides,
13 who shall serve the summons or pay a penalty of \$20.

14 (c) Insolvent debtors.--Nothing in this section shall affect
15 proceedings regarding insolvent debtors and their discharge on a
16 full surrender of their property.

17 § 7157. Returns and appearance.

18 (a) Returns.--In a county of the sixth, seventh or eighth
19 class, a constable is not required to make a return, if required
20 by law, to the court of common pleas if the constable has no
21 information to impart in the return.

22 (b) Appearance.--A court may summon a constable to appear
23 before it and direct the constable to investigate a complaint of
24 a violation of law or of a condition which a constable is
25 required to report to the court and to make a report of his
26 investigation.

27 § 7158. Arrest in boroughs.

28 In addition to any other powers granted under law, a
29 constable of a borough shall, without warrant and upon view,
30 arrest and commit for hearing any person who:

1 (1) Is guilty of a breach of the peace, vagrancy,
2 riotous or disorderly conduct or drunkenness.

3 (2) May be engaged in the commission of any unlawful act
4 tending to imperil the personal security or endanger the
5 property of the citizens.

6 (3) Violates any ordinance of the borough for which a
7 fine or penalty is imposed.

8 § 7159. Trespassing livestock.

9 (a) In general.--An owner or tenant of an enclosed or
10 unenclosed, improved land in this Commonwealth who discovers
11 trespassing livestock shall notify the constable of the
12 township, borough or ward in which the improved land lies. If
13 the constable of the township, borough or ward is unavailable or
14 unable to assist, the owner or tenant shall notify the constable
15 of the county. The following shall apply:

16 (1) The constable shall impound the livestock either
17 with the owner or tenant of the land if the owner, and the
18 tenant if one exists, agrees or with another individual or
19 entity that the constable may deem best situated to care for
20 the livestock.

21 (2) All reasonable costs of keeping the livestock shall
22 be part of the costs of care.

23 (b) Notification.--The owner of the livestock shall be
24 notified in the following manner:

25 (1) If the owner is known and resides within the county
26 where the trespass has been committed, the constable shall
27 give written notice to the owner that the livestock has been
28 impounded, the location of the livestock and the name of the
29 owner of the land where the livestock trespassed. Notice
30 shall be given within 24 hours of impounding in accordance

1 with the Pennsylvania Rules of Civil Procedure.

2 (2) If the owner is known but does not reside in the
3 county where the trespass has been committed, the constable
4 shall give written notice to the owner that the livestock has
5 been impounded, the location of the livestock and the name of
6 the owner of the land where the livestock trespassed. Notice
7 shall be served within 24 hours of impounding by registered
8 mail.

9 (c) Payment.--If, within four days of receiving notice, the
10 owner of the trespassing livestock pays for the cost of the
11 damage to the land, the costs of care and the fee for the
12 constable, the livestock shall be returned to the owner within
13 three days after receiving payment.

14 (d) Refusal.--If the owner fails to pay the costs and fees
15 within four days, the constable shall notify the magisterial
16 district judge of the county where the trespass was committed.
17 The magisterial district judge shall then direct three
18 disinterested owners of land in the locale where the damage
19 occurred to inspect the trespass, value and appraise the damage.
20 The three shall then consider the appraisal, value and costs of
21 care and make a report to the magisterial district judge within
22 five days.

23 § 7159.1. Sale of trespassing livestock.

24 (a) Process.--If the owner of the livestock fails to pay for
25 the costs, damages and fees within one day of the filing of the
26 report of the appraisers, the livestock shall be sold at a
27 public sale. The following shall apply:

28 (1) The livestock must be described with particularity
29 in a printed or written advertisement. The following shall
30 apply:

1 (i) The advertisement must be posted at six of the
2 most public places in the locale of the damaged property.

3 (ii) The advertisement must set forth a place and
4 time of public sale of the livestock.

5 (2) At the named time and place, the livestock shall be
6 sold to the highest bidder unless at any time prior to the
7 sale the owner of the livestock shall pay all costs, damages
8 and fees or has begun an action for replevin against the
9 owner of the land.

10 (3) The constable shall remit a written report of the
11 sale and all money realized from the sale of the livestock to
12 the magisterial district judge. The following shall apply:

13 (i) The magisterial district judge shall pay the
14 costs and damages to the land owner.

15 (ii) Not less than three, nor more than four, months
16 after the sale, the magisterial district judge shall
17 remit any surplus to the county treasurer in the county
18 where the damage occurred.

19 (iii) The owner of the livestock shall have the
20 right to submit proof of ownership to the magisterial
21 district judge or the county treasurer at any time within
22 two years of the sale to claim any surplus of the sale.

23 (4) If the sale results in a deficit, the payment shall
24 be made as follows:

25 (i) First, the costs shall be paid in full or
26 divided pro rata among the constable, magisterial
27 district judge, the appraisers and the cost of care.

28 (ii) After the costs are paid in full, the remaining
29 amount shall be paid to the owner of the land for any
30 damage sustained.

1 (b) Redemption.--The owner of livestock impounded under this
2 section shall have the right, at any time before the livestock
3 are sold, to pay all the costs accrued and the amount of damages
4 awarded in the appraisal in section 7159 (relating to
5 trespassing livestock) and to recover the livestock.

6 (c) Replevin.--The owner may also recover the impounded
7 livestock, at any time before the livestock are sold, through a
8 successful action of replevin. The following shall apply:

9 (1) The action for replevin must be on the condition
10 that the owner of the livestock pay all damages and fees,
11 including:

12 (i) Amount of damages sustained by the land owner.

13 (ii) Costs of care.

14 (iii) Fees to the constable, magisterial district
15 judge and the three disinterested appraisers.

16 (2) The damages and fees shall be itemized by costs,
17 damages and fees.

18 (3) If a jury or the appraisers determine that the harm
19 to the owner of the livestock was greater than the harm to
20 the owner of the land, the owner of the livestock must still
21 pay the costs and fees, but not to the attorney for the owner
22 of the land.

23 (4) If a jury or the appraisers determine that the harm
24 to the owner of the land is greater than the harm to the
25 owner of the livestock, the court shall require the owner of
26 the livestock to pay a reasonable fee to the attorney for the
27 owner of the land.

28 § 7162. Returns.

29 The returns required by law to be made by constables to the
30 court of common pleas may, at the discretion of the court, be

abolished, or be made at times and relating to subjects as the court may require. No constable shall be entitled to fees or mileage for making a return, except as required by the court.

§ 7164. Impounding, selling and viewing fees.

(a) Impounding and selling.--The fees collected by the constable for impounding an animal shall be \$1 and \$2 for each animal sold, provided that the fees of the constable for impounding and selling amount to not more than \$4. The fees of the magisterial district judge shall be \$1 for each case, without regard to the number of animals impounded, for all cases where no sale is made and \$3 for all cases where a sale is made.

(b) Viewing.--The fees for each viewer appointed to assess the damages shall be \$1 for the first hour and \$.50 per hour for each hour necessarily engaged after the first hour.

§ 7166. Returns to court.

(a) Scope of section.--This section shall apply to counties of the sixth, seventh and eighth class.

(b) Requirements.--No compensation for making a return to court shall be paid to a constable unless he has appeared in court and presented his return containing information required by the court, at the regular time fixed by law for making the return.

§ 7173. Taxes.

If a constable defaults on remittance of collected tax pursuant to law, all of the following apply:

(1) The constable is no longer authorized to receive tax.

(2) The person that was entitled to the remittance shall publish, three times in three daily newspapers, notice of the loss of authority under paragraph (1).

1 (3) The constable may not draw compensation until the
2 default is cured.]
3 Section 10. This act shall take effect in 60 days.