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TITLE 44

LAW AND JUSTICE

Part

- I. Preliminary Provisions
- II. Pennsylvania State Police
- III. Incarceration
- IV. Other Officers

Enactment. Unless otherwise noted, the provisions of Title 44 were added November 30, 2004, P.L.1428, No.185, effective in 60 days.

PART I
PRELIMINARY PROVISIONS

Part Heading. The heading of Part I was amended September 24, 2014, P.L.2461, No.133, effective in 60 days.

CHAPTER 7
UNIFORM ELECTRONIC LEGAL MATERIAL ACT

Sec.

- 701. Short title of chapter.
- 702. Definitions.
- 703. Applicability.
- 704. Legal material in official electronic record.
- 705. Authentication of official electronic record.
- 706. Effect of authentication.
- 707. Preservation and security of legal material in official electronic record.
- 708. Public access to legal material in official electronic record.
- 709. Standards.
- 710. Uniformity of application and construction.
- 711. Relation to Electronic Signatures in Global and National Commerce Act.

Enactment. Chapter 7 was added September 24, 2014, P.L.2461, No.133, effective in 60 days.

§ 701. Short title of chapter.

This chapter shall be known and may be cited as the Uniform Electronic Legal Material Act.

§ 702. Definitions.

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

"Bureau." The Legislative Reference Bureau.

"Electronic." Relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities.

"Legal material." Whether or not in effect, any of the following:

(1) The Constitution of the Commonwealth of Pennsylvania.

(2) The Laws of Pennsylvania under 1 Pa.C.S. § 1103 (relating to preparation of statutes for printing).

(3) The Pennsylvania Code.

(4) A Commonwealth agency regulation that has or had the effect of law.

(5) (Reserved).

(6) Reported decisions of:

(i) the Supreme Court;

(ii) Superior Court; or

(iii) Commonwealth Court.

(7) Rules of court under 42 Pa.C.S. § 1722 (relating to adoption of administrative and procedural rules).

"Official publisher." As follows:

(1) For the Constitution of the Commonwealth of Pennsylvania, the bureau.

(2) For the Laws of Pennsylvania under 1 Pa.C.S. § 1105 (relating to editing statutes for printing), the bureau.

(3) For the Pennsylvania Code, the bureau.

(4) For a regulation published in the Pennsylvania Code, the bureau.

(5) (Reserved).

(6) (Reserved).

(7) For a State court decision included under paragraph (6) of the definition of "legal material," the prothonotary of the applicable court.

(8) For rules of court under 42 Pa.C.S. § 1722, the Administrative Office of Pennsylvania Courts.

(9) (Reserved).

"Publish." To display, present or release to the public, or cause to be displayed, presented or released to the public, by the official publisher.

"Record." Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

"State." A state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

§ 703. Applicability.

This chapter applies to all legal material in an electronic record that is designated as official under section 704 (relating to legal material in official electronic record).

§ 704. Legal material in official electronic record.

(a) **Exclusive electronic publication.**--If an official publisher publishes legal material only in an electronic record, the publisher shall:

(1) designate the electronic record as official; and

(2) comply with sections 705 (relating to authentication of official electronic record), 707 (relating to preservation and security of legal material in official electronic record) and 708 (relating to public access to legal material in official electronic record).

(b) **Multiple publication.**--An official publisher that publishes legal material in an electronic record and also publishes the material in a record other than an electronic record may designate the electronic record as official if the publisher complies with sections 705, 707 and 708.

Cross References. Section 704 is referred to in sections 703, 705, 707 of this title.

§ 705. Authentication of official electronic record.

An official publisher of legal material in an electronic record that is designated as official under section 704 (relating to legal material in official electronic record) shall authenticate the record. To authenticate an electronic record, the publisher must provide a method for a user to determine that the record received by the user from the publisher is unaltered from the official record published by the publisher.

Cross References. Section 705 is referred to in sections 704, 706 of this title.

§ 706. Effect of authentication.

(a) **Pennsylvania.**--Legal material in an electronic record that is authenticated under section 705 (relating to

authentication of official electronic record) is presumed to be an accurate copy of the legal material.

(b) Other states.--If another state has adopted a law substantially similar to this chapter, legal material in an electronic record that is designated as official and authenticated by the official publisher in that state is presumed to be an accurate copy of the legal material.

(c) Contest.--A party contesting the authentication of legal material in an electronic record authenticated under section 705 has the burden of proving by a preponderance of the evidence that the record is not authentic.

§ 707. Preservation and security of legal material in official electronic record.

(a) Duty.--An official publisher of legal material in an electronic record that is or was designated as official under section 704 (relating to legal material in official electronic record) shall provide for the preservation and security of the record in an electronic form or a form that is not electronic.

(b) Requirements.--If legal material is preserved under subsection (a) in an electronic record, the official publisher shall:

- (1) ensure the integrity of the record;
- (2) provide for backup and disaster recovery of the record; and
- (3) ensure the continuing usability of the material.

Cross References. Section 707 is referred to in sections 704, 708 of this title.

§ 708. Public access to legal material in official electronic record.

An official publisher of legal material in an electronic record that is required to be preserved under section 707 (relating to preservation and security of legal material in official electronic record) shall ensure that the material is reasonably available for use by the public on a permanent basis.

Cross References. Section 708 is referred to in section 704 of this title.

§ 709. Standards.

In implementing this chapter, an official publisher of legal material in an electronic record shall consider:

- (1) standards and practices of other jurisdictions;
- (2) the most recent standards regarding authentication of, preservation and security of and public access to, legal material in an electronic record and other electronic records, as promulgated by national standard-setting bodies;
- (3) the needs of users of legal material in an electronic record;
- (4) the views of governmental officials and entities and other interested persons; and
- (5) to the extent practicable, methods and technologies for the authentication of, preservation and security of and public access to, legal material which are compatible with the methods and technologies used by other official publishers in this Commonwealth and in other states that have adopted a law substantially similar to this chapter.

§ 710. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§ 711. Relation to Electronic Signatures in Global and National Commerce Act.

To the extent permitted by section 102 of the Electronic Signatures in Global and National Commerce Act (Public Law 106-229, 15 U.S.C. § 7002), this chapter may supersede provisions of that act.

PART II
PENNSYLVANIA STATE POLICE

Chapter

- 21. Preliminary Provisions (Reserved)
- 23. DNA Data and Testing

Enactment. Part II was added November 30, 2004, P.L.1428, No.185, effective in 60 days.

CHAPTER 21
PRELIMINARY PROVISIONS
(Reserved)

Enactment. Chapter 21 (Reserved) was added November 30, 2004, P.L.1428, No.185, effective in 60 days.

CHAPTER 23
DNA DATA AND TESTING

Subchapter

- A. Preliminary Provisions
- B. General Provisions
- C. Enforcement and Other Provisions

Enactment. Chapter 23 was added November 30, 2004, P.L.1428, No.185, effective in 60 days.

Continuation of Prior Law. Section 4 of Act 185 of 2004 provided that Chapter 23 is a continuation of the act of May 28, 1995 (1st Sp.Sess., P.L.1009, No.14), known as the DNA Detection of Sexual and Violent Offenders Act.

SUBCHAPTER A
PRELIMINARY PROVISIONS

Sec.

- 2301. Scope of chapter.
- 2302. Policy.
- 2303. Definitions.

§ 2301. Scope of chapter.

This chapter provides for DNA detection of sexual offenders and other offenders.

§ 2302. Policy.

The General Assembly finds and declares that:

(1) Forensic DNA testing is an important tool in criminal investigations, in excluding innocent individuals who are the subject of criminal investigations or prosecutions and in detecting and deterring repeated crimes by the same individual.

(2) Several states have enacted laws requiring persons convicted of certain crimes, especially sex offenses, to provide genetic samples for DNA profiling.

(3) Moreover, it is the policy of the Commonwealth to assist Federal, State and local criminal justice and law enforcement agencies in the identification and detection of individuals in criminal investigations.

(4) It is in the best interest of the Commonwealth to establish a DNA data base and a DNA data bank containing DNA samples submitted by individuals convicted of, adjudicated delinquent for or accepted into ARD for felony sex offenses and other specified offenses.

(5) It is in the best interest of the Commonwealth to authorize the State Police to use DNA analysis and to identify these individuals to a criminal justice agency in certain cases.

(Oct. 24, 2018, P.L.896, No.147, eff. 360 days)

§ 2303. Definitions.

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

"Accredited forensic DNA laboratory." A forensic DNA laboratory that has received accreditation by an accrediting body nationally recognized within the forensic science community in accordance with the FBI Quality Assurance Standards to perform forensic DNA testing and is in compliance with FBI Quality Assurance Standards.

"ARD." Accelerated Rehabilitative Disposition.

"CODIS." The Combined DNA Index System established and maintained by the Federal Bureau of Investigation.

"Commissioner." The Commissioner of the Pennsylvania State Police.

"Crime scene DNA profile." A DNA profile derived from a DNA sample recovered from a victim, crime scene or item linked to a crime, which may have originated from a perpetrator.

"Criminal justice agency." A criminal justice agency as defined in 18 Pa.C.S. § 9102 (relating to definitions).

"DNA." Deoxyribonucleic acid located in the chromosomes or mitochondria of a living organism's cells.

"DNA record." A forensic DNA profile and identification information stored in the State DNA Data Base or the Combined DNA Index System for the purpose of identification or supporting statistical interpretation of DNA test results.

"DNA sample." A sample of biological material suitable for forensic DNA testing.

"FBI." The Federal Bureau of Investigation.

"Felony sex offense." A felony offense or an attempt, conspiracy or solicitation to commit a felony offense under any of the following:

18 Pa.C.S. Ch. 31 (relating to sexual offenses).

18 Pa.C.S. § 4302 (relating to incest).

18 Pa.C.S. § 5902(c)(1)(iv) (relating to prostitution and related offenses).

18 Pa.C.S. § 5903(a) (relating to obscene and other sexual materials and performances) where the offense constitutes a felony.

Any offense graded as a felony requiring registration under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders).

"Forensic DNA laboratory." A laboratory that performs forensic DNA testing for the purposes of identification.

"Forensic DNA profile." The data set derived from forensic DNA testing.

"Forensic DNA testing." A test that applies techniques from molecular biology to analyze human deoxyribonucleic acid (DNA)

to identify data which meets the requirements for inclusion in CODIS and the national DNA identification index system administered by the FBI.

"Former DNA Act." The former act of May 28, 1995 (1st Sp.Sess., P.L.1009, No.14), known as the DNA Detection of Sexual and Violent Offenders Act.

"Fund." The DNA Detection Fund reestablished in section 2335 (relating to DNA Detection Fund).

"Human behavioral genetic research." The study of the possible genetic underpinnings of behaviors, including, but not limited to, aggression, substance abuse, social attitudes, mental abilities, sexual activity and eating habits.

"Law enforcement identification purposes." Assisting in the determination of the identity of an individual whose DNA is contained in a biological sample.

"Mitochondrial DNA analysis." A method that applies techniques from molecular biology to analyze DNA found in the mitochondria of cells for the purpose of identification.

"Other specified offense." Any of the following:

- (1) A felony offense, other than a felony sex offense.
- (2) (Reserved).
- (3) (Reserved).
- (4) An offense under 18 Pa.C.S. (relating to crimes and offenses) or 75 Pa.C.S. (relating to vehicles) that is graded as a misdemeanor of the first degree.
- (5) A misdemeanor offense requiring registration under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual offenders).
- (6) An offense graded as a misdemeanor of the second degree under any of the following:
 - 18 Pa.C.S. § 2701 (relating to simple assault).
 - 18 Pa.C.S. § 2903 (relating to false imprisonment).
 - 18 Pa.C.S. § 3127 (relating to indecent exposure).
 - 18 Pa.C.S. Ch. 39 (relating to theft and related offenses).
 - 18 Pa.C.S. § 4105 (relating to bad checks).
 - 18 Pa.C.S. § 4106 (relating to access device fraud).
 - 18 Pa.C.S. § 4952 (relating to intimidation of witnesses or victims).
 - 18 Pa.C.S. § 4953 (relating to retaliation against witness, victim or party).
 - 18 Pa.C.S. § 4958 (relating to intimidation, retaliation or obstruction in child abuse cases).
 - 18 Pa.C.S. § 5121 (relating to escape).
 - 18 Pa.C.S. § 5126 (relating to flight to avoid apprehension, trial or punishment).
 - 18 Pa.C.S. § 5131 (relating to recruiting criminal gang members).
 - 18 Pa.C.S. § 5510 (relating to abuse of corpse).
 - 18 Pa.C.S. Ch. 55 Subch. B (relating to cruelty to animals).
 - 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

"State Police." The Pennsylvania State Police.

"Y chromosome analysis." A method that applies techniques from molecular biology to examine DNA found on the Y chromosome. (Dec. 20, 2011, P.L.446, No.111, eff. one year; Oct. 24, 2018, P.L.896, No.147)

2018 Amendment. Act 147 amended the entire section, effective December 1, 2019, as to the addition of pars. (4) and

(6) of the def. of "other specified offense" and 360 days as to the remainder of the section.

Cross References. Section 2303 is referred to in section 2316 of this title.

SUBCHAPTER B GENERAL PROVISIONS

Sec.

- 2311. Powers and duties of State Police.
- 2312. State DNA Data Base.
- 2313. State DNA Data Bank.
- 2314. State Police recommendation of additional offenses and annual report.
- 2315. Procedural compatibility with FBI.
- 2316. DNA sample required upon conviction, delinquency adjudication and certain ARD cases.
- 2316.1. Collection from persons accepted from other jurisdictions.
- 2317. Procedures for collection and transmission of DNA samples.
- 2318. Procedures for conduct, disposition and use of DNA analysis.
- 2319. DNA data base exchange.
- 2320. Cancellation of authority to access or exchange DNA records.
- 2321. Expungement.
- 2322. Mandatory cost.
- 2323. Good faith.

§ 2311. Powers and duties of State Police.

In addition to any other powers and duties conferred by this chapter, the State Police shall:

(1) Be responsible for the policy management and administration of the State DNA identification record system to support law enforcement agencies and other criminal justice agencies.

(2) Promulgate, as necessary, rules, regulations and guidelines to carry out the provisions of this chapter.

(3) Provide for liaison with the FBI and other criminal justice agencies in regard to the Commonwealth's participation in CODIS or in any DNA data base designated by the State Police.

(Oct. 24, 2018, P.L.896, No. 147, eff. 360 days)

2018 Amendment. Act 147 amended par. (2).

§ 2312. State DNA Data Base.

A Statewide DNA Data Base is reestablished within the State Police to store forensic DNA profiles and records developed by or submitted to the State Police under the former DNA Act, the former provisions of 42 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this chapter, and to contribute forensic DNA profiles and records to CODIS and the national DNA identification index system. The State DNA Data Base shall have the capability provided by computer software and procedures administered by the State Police to store and maintain forensic DNA profiles and records related to:

- (1) forensic casework;
- (2) convicted or delinquency adjudicated offenders required to provide a DNA sample under this chapter; and

(3) anonymous DNA records used for statistical research on the frequency of DNA genotypes, quality control or the development of new DNA identification methods.

(Oct. 24, 2018, P.L.896, No.147, eff. 360 days)

§ 2313. State DNA Data Bank.

The State DNA Data Bank is reestablished. It shall serve as the repository of DNA samples collected under this chapter or under prior law.

(Oct. 24, 2018, P.L.896, No.147, eff. 360 days)

§ 2314. State Police recommendation of additional offenses and annual report.

(a) Recommendation.--The State Police may recommend to the General Assembly that it enact legislation for the inclusion of additional offenses for which DNA samples shall be taken and otherwise subjected to the provisions of this chapter. In determining whether to recommend additional offenses, the State Police shall consider those offenses for which DNA testing will have a substantial impact on the detection and identification of sex offenders and other offenders.

(b) Annual report.--No later than August 1 of each year, the commissioner shall submit to the Governor's Office, the chairperson and minority chairperson of the Judiciary Committee of the Senate and the chairperson and minority chairperson of the Judiciary Committee of the House of Representatives a written report containing information regarding the collection and testing of DNA samples under the provisions of this chapter. The report must include, but need not be limited to, the following information pertaining to the previous fiscal year:

(1) The age, race and sex of those convicted from whom DNA samples were submitted upon conviction.

(2) The fiscal impact on the State Police of collecting and testing DNA samples from persons convicted of or adjudicated delinquent for offenses.

(3) The average length of time between the receipt of DNA samples from those convicted of offenses and the completion of forensic DNA testing of each of those categories of DNA samples.

(4) Recommendations, if any, under this section for the inclusion of additional offenses for which DNA samples must be collected or recommendations for the removal of specific offenses from the categories requiring the collection of DNA samples from arrestees or persons convicted of crimes.

(Oct. 24, 2018, P.L.896, No.147, eff. 360 days)

§ 2315. Procedural compatibility with FBI.

The DNA identification system established by the State Police shall comply with the FBI Quality Assurance Standards for forensic DNA testing laboratories and DNA data basing laboratories and CODIS policies and procedures, including use of comparable test procedures, laboratory equipment, supplies and computer software.

(Oct. 24, 2018, P.L.896, No.147, eff. 360 days)

§ 2316. DNA sample required upon conviction, delinquency adjudication and certain ARD cases.

(a) General rule.--A person who is convicted or adjudicated delinquent for a felony sex offense or other specified offense or who is or remains incarcerated for a felony sex offense or other specified offense on or after the effective date of this chapter shall have a DNA sample collected as follows:

(1) A person who is sentenced or receives a delinquency disposition to a term of confinement for an offense covered by this subsection shall have a DNA sample collected upon intake to a prison, jail or juvenile detention facility or

any other detention facility or institution. If the person is already confined at the time of sentencing or adjudication, the person shall have a DNA sample collected immediately after the sentencing or adjudication. If a DNA sample is not timely collected in accordance with this section, the DNA sample may be collected any time thereafter by the prison, jail, juvenile detention facility, detention facility or institution.

(2) A person who is convicted or adjudicated delinquent for an offense covered by this subsection shall have a DNA sample collected as a condition for any sentence or adjudication which disposition will not involve an intake into a prison, jail, juvenile detention facility or any other detention facility or institution.

(3) Under no circumstances shall a person who is convicted or adjudicated delinquent for an offense covered by this subsection be released in any manner after such disposition unless and until a DNA sample and fingerprints have been collected.

(b) Condition of release, probation or parole.--

(1) A person who has been convicted or adjudicated delinquent for a felony sex offense or other specified offense and who serves a term of confinement in connection therewith after June 18, 2002, shall not be released in any manner unless and until a DNA sample has been collected.

(2) This chapter shall apply to incarcerated persons convicted or adjudicated delinquent for a felony sex offense or other specified offense prior to June 19, 2002.

(3) The following shall apply:

(i) Except as provided under subparagraph (ii), this chapter shall apply to incarcerated persons and persons on probation or parole who were convicted or adjudicated delinquent for a felony sex offense or other specified offenses prior to the effective date of this paragraph.

(ii) Subparagraph (i) shall not apply to persons convicted or adjudicated delinquent of an offense enumerated under paragraph (4) or (6) of the definition of "other specified offense" in section 2303 (relating to definitions).

(c) Certain ARD cases.--Acceptance into ARD as a result of a criminal charge for a felony sex offense or other specified offense, other than an offense enumerated under paragraph (4) or (6) of the definition of "other specified offense" in section 2303 filed after June 18, 2002, may be conditioned upon the collection of a DNA sample.

(d) Supervision of DNA samples.--All DNA samples collected pursuant to this section shall be collected in accordance with rules, regulations and guidelines promulgated by the State Police in consultation with the Department of Corrections.

(d.1) Mandatory submission.--The requirements of this chapter are mandatory and apply regardless of whether a court advises a person that a DNA sample must be provided to the State DNA Data Base and the State DNA Data Bank as a result of a conviction or adjudication of delinquency. A person who has been sentenced to death or life imprisonment without the possibility of parole or to any term of incarceration is not exempt from the requirements of this chapter. Any person subject to this chapter who has not provided a DNA sample for any reason, including because of an oversight or error, shall provide a DNA sample for inclusion in the State DNA Data Base and the State DNA Data Bank after being notified by authorized

law enforcement or corrections personnel. If a person provides a DNA sample which is not adequate for any reason, the person shall provide another DNA sample for inclusion in the State DNA Data Base and the State DNA Data Bank after being notified by authorized law enforcement or corrections personnel. The DNA sample may be collected under this chapter but shall not be required if the authorized law enforcement or corrections official confirms that a DNA sample from the person has already been validly collected and provided to the State DNA Data Bank and a DNA record for the person exists in the State DNA Data Base.

(e) Definition.--As used in this section, the term "released" means any release, parole, furlough, work release, prerelease or release in any other manner from a prison, jail, juvenile detention facility or any other place of confinement. (Oct. 24, 2018, P.L.896, No.147, eff. 360 days)

Cross References. Section 2316 is referred to in section 2317 of this title.

§ 2316.1. Collection from persons accepted from other jurisdictions.

(a) Conditional acceptance.--When a person is accepted into this Commonwealth for supervision from another jurisdiction under the Interstate Compact for Supervision of Adult Offenders, other reciprocal agreement with a Federal, state or county agency, or a provision of law, whether or not the person is confined or released, the acceptance shall be conditioned on the offender providing a DNA sample under this chapter and fingerprints if the offender has a past or present Federal, state or military court conviction or adjudication that is equivalent to a felony sex offense or other specified offense as determined by the Pennsylvania Board of Probation and Parole. Additional DNA samples may be collected but shall not be required if the supervising agency or place of confinement confirms that a DNA sample is currently on file with the State DNA Data Bank and a DNA record for the person exists in the State DNA Data Base.

(b) Time period.--

(1) If the person accepted under subsection (a) is not confined, the DNA sample and fingerprints required under this chapter shall be provided within five calendar days after the person reports to the supervising agent or within five calendar days of notice to the person, whichever occurs first. The person shall appear and the DNA sample shall be collected in accordance with the provisions of this chapter.

(2) If the person accepted under subsection (a) is confined, the person shall provide the DNA sample and fingerprints required by this chapter within five calendar days after the person is received at a place of incarceration or confinement.

(Oct. 24, 2018, P.L.896, No.147, eff. 360 days)

2018 Amendment. Act 147 added section 2316.1.

Cross References. Section 2316.1 is referred to in section 2317 of this title.

§ 2317. Procedures for collection and transmission of DNA samples.

(a) Collection of DNA samples.--

(1) Each DNA sample required to be collected pursuant to sections 2316 (relating to DNA sample required upon conviction, delinquency adjudication and certain ARD cases)

and 2316.1 (relating to collection from persons accepted from other jurisdictions) shall be collected as follows:

(i) DNA samples from persons who are incarcerated or confined shall be collected at the place of incarceration or confinement as provided in section 2316 or 2316.1.

(ii) DNA samples from persons who are not ordered to be or are not currently incarcerated or confined shall be collected as provided in section 2316 or 2316.1 or at a prison, jail unit, juvenile facility or other facility specified by the court or supervising agency.

(iii) For DNA blood samples, only those individuals qualified to draw DNA blood samples in a medically approved manner shall draw a DNA blood sample to be submitted for DNA analysis.

(iv) DNA samples and the set of fingerprints provided for in paragraph (2) shall be delivered to the State Police within 48 hours of collecting the sample.

(2) In addition to the DNA sample, a full set of fingerprints shall be taken from the person from whom the DNA sample is being collected for the exclusive purpose of verifying the identity of such person.

(b) Limitation on liability.--Persons authorized to collect DNA samples under this section shall not be criminally liable for withdrawing a DNA sample and transmitting test results pursuant to this chapter if they perform these activities in good faith and shall not be civilly liable for such activities when the person acted in a reasonable manner according to generally accepted medical and other professional practices.

(c) Reasonable use of force.--Duly authorized law enforcement and corrections personnel may employ reasonable force in cases where an individual refuses to submit to DNA testing authorized under this chapter, and no such employee shall be criminally or civilly liable for the use of reasonable force.

(Oct. 24, 2018, P.L.896, No.147, eff. 360 days)

2018 Amendment. Act 147 amended the section heading and subsecs. (a) and (b).

§ 2318. Procedures for conduct, disposition and use of DNA analysis.

(a) Procedures.--

(1) The State Police shall promulgate, as necessary, rules, regulations and guidelines to implement this chapter, including procedures to be used in the collection, submission, identification, analysis, storage and disposition of DNA samples and forensic DNA profiles and records from DNA samples submitted under the former DNA Act, former provisions of 42 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this chapter.

(2) The results of forensic DNA testing shall be securely stored in the State DNA Data Base, and records of testing shall be retained on file with the State Police consistent with the procedures established by the FBI Quality Assurance Standards for forensic DNA testing laboratories and DNA data basing laboratories and CODIS policies and procedures.

(3) These procedures shall also include quality assurance guidelines for samples and forensic DNA profiles and records from accredited forensic DNA laboratories which submit DNA records to the State DNA Data Base.

(4) The rules, regulations and guidelines shall address the following:

(i) Verification of accreditation.

(ii) Compliance with FBI Quality Assurance Standards, including continuing education requirements for the personnel of forensics DNA testing laboratories.

(b) Contracting.--The State Police are authorized to contract with third parties for purposes of this chapter.

(c) Use of tests.--

(1) Except as otherwise provided in section 2319(c) (relating to DNA data base exchange), the tests to be performed on each DNA sample shall be used only for law enforcement identification purposes or to assist in the recovery or identification of human remains from disasters or for other humanitarian identification purposes, including identification of missing persons.

(2) A DNA sample or DNA record acquired under this chapter may not be used for human behavioral genetic research or for non-law enforcement or nonhumanitarian identification purposes.

(d) Restrictions and requirements on contracting party.--Any other party contracting to carry out the functions of this chapter shall be subject to the same restrictions and requirements of this chapter, insofar as applicable, as the State Police as well as any additional restrictions imposed by the State Police.

(Oct. 24, 2018, P.L.896, No.147, eff. 360 days)

2018 Amendment. Act 147 amended subsecs. (a) and (c).

Cross References. Section 2318 is referred to in section 2319 of this title.

§ 2319. DNA data base exchange.

(a) Receipt of DNA samples by State Police.--It shall be the duty of the State Police to:

(1) Receive and store DNA samples, to perform forensic DNA testing or to contract for testing with an accredited forensic DNA laboratory that meets the rules, regulations and guidelines under section 2318 (relating to procedures for conduct, disposition and use of DNA analysis) as established by the State Police.

(2) Store forensic DNA records from DNA samples submitted under the former DNA Act, former provisions of 42 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this chapter and to make such information available as provided in this section.

(a.1) Contracts.--The State Police may contract for DNA testing to an accredited forensic DNA laboratory that meets the rules, regulations and guidelines as established by the State Police under section 2318. DNA records in the State DNA Data Base shall be made available:

(1) to criminal justice agencies or CODIS-participating DNA laboratories which serve these agencies; or

(2) upon written or electronic request and in furtherance of an official investigation of a criminal offense or offender or suspected offender.

(b) Methods of obtaining information.--The State Police shall promulgate, as necessary, rules, regulations and guidelines governing the methods of obtaining information from the State DNA Data Base and CODIS and procedures for verification of the identity and authority of the requester.

(c) Population data base.--

(1) The State Police may establish a separate population data base comprised of forensic DNA profiles obtained under this chapter after all personal identification is removed.

(2) The State Police may share or disseminate the population data base with other criminal justice agencies or CODIS-participating DNA laboratories that serve to assist the State Police with statistical data bases.

(3) The population data base may be made available to and searched by other agencies participating in the CODIS system.

(Oct. 24, 2018, P.L.896, No.147, eff. 360 days)

Cross References. Section 2319 is referred to in section 2318 of this title.

§ 2320. Cancellation of authority to access or exchange DNA records.

The State Police shall be authorized, for good cause shown, to revoke or suspend the right of a forensic DNA laboratory within this Commonwealth to access or exchange DNA identification records with criminal justice agencies.

§ 2321. Expungement.

(a) General rule.--A person whose DNA sample, record or profile has been included in the State DNA Data Bank or the State DNA Data Base under the former DNA Act, former provisions of 42 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this chapter may have the DNA sample, record or profile expunged in accordance with this section.

(b) Removal by request.--A person whose DNA sample, record or profile has been included in the State DNA Data Bank or the State DNA Data Base under the former DNA Act, former provisions of 42 Pa.C.S. Ch. 47 or this chapter may file a written request with the State Police that the DNA sample, record or profile be removed on the grounds that the DNA sample, record or profile was included in the State DNA Data Bank or the State DNA Data Base by mistake. If the State Police grants the request, the request shall be processed at no cost and the State Police shall provide written notice of the removal to the person and his attorney of record, if any, within 60 days after destroying the DNA sample, record or profile. If the State Police denies the request, the person may request expungement of the DNA sample, record or profile under subsection (b.1).

(b.1) Expungement by court order.--The following shall apply:

(1) Except as provided under paragraph (2), a person may request the court of common pleas of the county where the original charges were filed to issue an order directing the expungement of the DNA sample, record or profile pertaining to the person in the State DNA Data Bank or the State DNA Data Base in the following instances:

(i) the conviction or delinquency adjudication for which the person's DNA sample was collected has been reversed and no appeal is pending;

(ii) the person was granted an unconditional pardon for the crime for which the DNA sample was taken; or

(iii) the DNA sample, record or profile was included in the State DNA Data Bank or State DNA Data Base by mistake and the State Police has erroneously refused to grant the person's request for removal under subsection (b).

(2) Paragraph (1) shall not apply if the person has been convicted or adjudicated delinquent for any other crime

for which a DNA sample is required to be collected under this chapter.

(3) The court shall give 10 days' prior notice to the district attorney of the county where the original charges were filed of an application for expungement under this subsection.

(4) Notwithstanding any other law or rule of court, the court shall have no authority to order the expungement of a DNA sample, record or profile in the State DNA Data Bank or the State DNA Data Base except as provided under this subsection.

(b.2) Expungement reporting.--The court shall forward a certified copy of an expungement order issued under subsection (b.1) to the State Police.

(b.3) Duties of State Police.--The following shall apply:

(1) Upon receipt of an expungement order issued under subsection (b.1), the State Police shall destroy the DNA sample, record or profile in the State DNA Data Bank and the State DNA Data Base pertaining to a person identified in an expungement order.

(2) The expungement shall be processed at no cost to the person from whom the DNA sample was taken.

(3) The State Police shall provide written notice of the expungement to the person and his attorney of record, if any, within 60 days after destroying the DNA sample, record or profile.

(4) The State Police shall publish information regarding the eligibility requirements for expungement under this section and the steps necessary to obtain an expungement under this section on the State Police's publicly accessible Internet website. The State Police shall publish the information in at least two commonly accessible formats, such as HyperText Markup Language and Portable Document Format.

(c) Limitations.--

(1) An incarcerated or previously incarcerated person may not seek expungement of a DNA sample, record or profile on the ground that that person was convicted or adjudicated delinquent for a felony sex offense prior to July 27, 1995.

(2) A person may not seek expungement of a DNA sample, record or profile on the ground that that person was convicted or adjudicated delinquent for one of the other specified offenses prior to the effective date of the former DNA Act or this chapter.

(d) Effect of expungement.--The expungement of a DNA sample, record or profile pursuant to this section shall have no effect on any data bank or data base match or partial match occurring prior to the expungement of the sample, record or profile.
(Oct. 24, 2018, P.L.896, No.147, eff. 360 days)

Cross References. Section 2321 is referred to in section 2323 of this title.

§ 2322. Mandatory cost.

Unless the court finds that undue hardship would result, a mandatory cost of \$250, which shall be in addition to any other costs imposed pursuant to statutory authority, shall automatically be assessed on any person convicted, adjudicated delinquent or granted ARD for a felony sex offense or other specified offense, and all proceeds derived from this section shall be transmitted to the fund.

Cross References. Section 2322 is referred to in section 2335 of this title.

§ 2323. Good faith.

A DNA sample obtained in good faith under this subchapter shall be deemed to have been obtained in accordance with the requirements of this subchapter, and its use in accordance with this chapter is authorized until an expungement is obtained pursuant to section 2321 (relating to expungement).

SUBCHAPTER C
ENFORCEMENT AND OTHER PROVISIONS

Sec.

- 2331. Prohibition on disclosure.
- 2332. Criminal penalties.
- 2333. Civil actions.
- 2334. Confidentiality of records.
- 2335. DNA Detection Fund.
- 2336. Authority of law enforcement officers.

§ 2331. Prohibition on disclosure.

(a) Disclosure.--Any person who by virtue of employment or official position or any person contracting to carry out any functions under this chapter, including any officers, employees and agents of such contractor, who has possession of or access to individually identifiable DNA information contained in the State DNA Data Base or in the State DNA Data Bank shall not disclose it in any manner to any person or agency not authorized to receive it knowing that such person or agency is not authorized to receive it.

(b) Obtaining information.--No person shall obtain individually identifiable DNA information from the State DNA Data Base or the State DNA Data Bank without authorization to do so.

Cross References. Section 2331 is referred to in sections 2332, 2333 of this title.

§ 2332. Criminal penalties.

(a) Disclosure.--Any person who by virtue of employment or official position or any person contracting to carry out any functions under this chapter, including any officers, employees and agents of such contractor, who has possession of or access to individually identifiable DNA information contained in the State DNA Data Base or in the State DNA Data Bank and who for pecuniary gain for such person or for any other person discloses it in any manner to any person or agency not authorized to receive it commits a misdemeanor of the first degree.

(b) Obtaining information.--Any person who knowingly violates section 2331(b) (relating to prohibition on disclosure) commits a misdemeanor of the first degree.

§ 2333. Civil actions.

(a) Injunctions.--The State Police or any other aggrieved individual or agency may institute an action in a court of proper jurisdiction against any person, agency or organization to enjoin any criminal justice agency, noncriminal justice agency, organization or individual from violating the provisions of this chapter or to compel such agency, organization or person to comply with the provisions of this chapter.

(b) Action for damages.--

(1) Any person aggrieved by a knowing violation of section 2331 (relating to prohibition on disclosure) shall have the substantive right to bring an action for damages

by reason of such violation in a court of competent jurisdiction.

(2) A person found by the court to have been aggrieved by a knowing violation of section 2331 shall be entitled to actual and real damages of not less than \$100 for each violation and to reasonable costs of litigation and attorney fees. Exemplary and punitive damages of not less than \$1,000 nor more than \$10,000 shall be imposed for any violation of section 2331.

§ 2334. Confidentiality of records.

All DNA profiles and samples submitted to the State Police pursuant to the former DNA Act, former 42 Pa.C.S. Ch. 47 (relating to DNA data and testing) or this chapter shall be treated as confidential except as otherwise provided in this chapter.

§ 2335. DNA Detection Fund.

The DNA Detection Fund is reestablished in the State Treasury as a restricted fund. All costs collected under section 2322 (relating to mandatory cost) shall be paid into the fund. All moneys in the fund and the interest accruing thereon are hereby appropriated to the Pennsylvania State Police on a continuing basis to carry out the provisions of this chapter upon authorization of the Governor for each fiscal year.

Cross References. Section 2335 is referred to in section 2303 of this title.

§ 2336. Authority of law enforcement officers.

Nothing in this chapter shall limit or abrogate any existing authority of law enforcement officers to take, maintain, store and utilize DNA samples for law enforcement purposes.

**PART III
INCARCERATION**

Chapter

- 51. Preliminary Provisions (Reserved)
- 53. Recidivism Risk Reduction Incentive (Repealed)

Enactment. Part III was added September 25, 2008, P.L.1026, No.81, effective in 60 days.

**CHAPTER 51
PRELIMINARY PROVISIONS
(Reserved)**

Enactment. Chapter 51 (Reserved) was added September 25, 2008, P.L.1026, No.81, effective in 60 days.

**CHAPTER 53
RECIDIVISM RISK REDUCTION INCENTIVE
(Repealed)**

2009 Repeal. Chapter 53 (§§ 5301 - 5312) was added September 25, 2008, P.L.1026, No.81, and repealed Oct. 9, 2009, P.L.494, No.49, effective October 13, 2009.

**PART IV
OTHER OFFICERS**

Chapter

- 71. Constables
- 72. Mental Health Evaluations
- 73. Law Enforcement Background Investigations and Employment Information

Enactment. Part IV was added October 9, 2009, P.L.494, No.49, effective in 60 days.

CHAPTER 71 CONSTABLES

Subchapter

- A. Preliminary Provisions
- B. Election
- C. Appointment
- D. Conflicts
- E. Training
- F. Powers and Duties
- G. Compensation
- H. Penalties and Remedies

Enactment. Chapter 71 was added October 9, 2009, P.L.494, No.49, effective in 60 days.

Special Provisions in Appendix. See section 5 of Act 49 of 2009 in the appendix to this title for special provisions relating to legislative findings and declarations.

SUBCHAPTER A PRELIMINARY PROVISIONS

Sec.

- 7101. Scope of chapter.
- 7102. Definitions.
- 7103. Cities of the first class.

§ 7101. Scope of chapter.

This chapter relates to constables.

§ 7102. Definitions.

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

"Livestock." Cattle, horses, sheep, goats and swine of every age and sex.

§ 7103. Cities of the first class.

As of February 10, 1970, the office of constable is abolished in cities of the first class, and the terms of office of incumbents are terminated.

SUBCHAPTER B ELECTION

Sec.

- 7111. Term of office.
- 7112. Cities of the second and third classes.
- 7113. Boroughs.
- 7114. Townships.

§ 7111. Term of office.

The term of a constable in a city of the second class, city of the second class A, city of the third class, borough, incorporated town or township is six years.

§ 7112. Cities of the second and third classes.

The qualified voters of each ward in a city of the second or third class shall elect a properly qualified person for constable in each ward.

§ 7113. Boroughs.

(a) **General rule.**--Except as provided in subsection (b), the qualified voters of every borough shall vote for and elect a properly qualified person for constable.

(b) **Boroughs divided into wards.**--The qualified voters of every borough divided into wards shall vote for and elect a properly qualified person for constable in each ward and a properly constable for high constable in the borough.

§ 7114. Townships.

(a) **Election.**--The following shall apply:

(1) The qualified voters of every township shall vote for and elect a properly qualified person for constable.

(2) The qualified electors of each township of the first class may vote for and elect a properly qualified person to serve as constable, in addition to the constable elected under paragraph (1).

(b) **Procedure upon election; penalty.**--Every person elected to the office of constable in a township shall appear in court on the first day of the next court of common pleas of the same county to accept or decline the office. A person who neglects or refuses to appear, after having been duly notified of the election, shall forfeit to the township the sum of \$40 to be levied by order of the court.

(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.

**SUBCHAPTER C
APPOINTMENT**

Sec.

7121. Constables.

7122. Deputy constables.

§ 7121. Constables.

When a vacancy occurs in the office of constable, regardless of the reason for the vacancy, the court of common pleas of the county of the vacancy, upon petition of not less than ten qualified electors residing in the borough, city, ward or township of the vacancy, shall appoint a suitable person, who, upon being qualified as required by law, shall serve as the constable for the unexpired term of the vacancy.

§ 7122. Deputy constables.

(a) **General rule.**--Sole power to appoint deputy constables in a ward, borough or township is vested in the constable of the ward, borough or township, subject to approval of the court of common pleas under subsection (b). No person shall be appointed as a deputy constable unless, at the time of appointment, he is a bona fide resident of the ward, borough

or township for which he is appointed and he continues to be a bona fide resident for the duration of the appointment.

(b) Court approval and qualifications.--

(1) Except as set forth in paragraph (2), no deputy shall be appointed, either by general or partial deputization, without approbation of the court of common pleas of the county, except for special appointments in a civil suit or proceeding, at the request and risk of the plaintiff or his agent. If a deputy no longer resides in, or ceases to be a qualified elector of, the ward in which he was appointed to serve, the court of common pleas may revoke the appointment of the deputy upon petition of five duly qualified electors of the ward and proof of facts requiring revocation.

(2) In the event of a deputy's death or inability or refusal to act, the constable of a township may, with approbation of the court of common pleas of the county where the deputy served, appoint another deputy who shall have full authority to act until the next regular session of court. The constable and his surety shall be liable for acts of the deputy as in other cases. The constable shall file a written copy of the deputization in the office of the clerk of courts of the county where the constable serves.

(c) Certain provisions relating to boroughs

unaffected.--This section does not affect the provisions of section 14 of the act of June 28, 1923 (P.L.903, No.348), entitled "A supplement to an act, approved the fourteenth day of May, one thousand nine hundred and fifteen (Pamphlet Laws, three hundred and twelve), entitled 'An act providing a system for government of boroughs, and revising, amending, and consolidating the law relating to boroughs'; so as to provide a system of government where a borough now has annexed or hereafter shall annex land in an adjoining county, including assessment of property, levying and collection of taxes, making municipal improvements, and filing and collecting of liens for the same; the jurisdiction of courts for the enforcement of borough ordinances and State laws, and primary, general, municipal, and special elections; and repealing inconsistent laws."

References in Text. Section 14 of the act of June 28, 1923 (P.L.903, No.348), referred to in this section, was repealed by the act of October 9, 2009 (P.L.494, No.49). The subject matter is now contained in Chapter 71 of this title.

**SUBCHAPTER D
CONFLICTS**

Sec.

7131. Public office.

7132. Police officers.

§ 7131. Public office.

(a) General rule.--Except as set forth in subsection (b), it shall be unlawful for a constable to hold or exercise the office of magisterial district judge or alderman.

(b) Exceptions.--Nothing in this section or in any other law or court rule shall be construed to prohibit a constable from:

(1) being an officer of a political body or political party as those terms are defined in the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code;

- (2) holding the office of a national, State or county committee of a political party;
- (3) running for and holding an elective office; or
- (4) participating in election-day activities.

§ 7132. Police officers.

(a) Constable employed as policeman not to accept other fees in addition to salary.--Except for public rewards and legal mileage allowed to a constable for traveling expenses, and except as provided in subsection (b), it is unlawful for a constable who is also employed as a policeman to charge or accept a fee or other compensation, other than his salary as a policeman, for services rendered or performed pertaining to his office or duties as a policeman or constable.

(b) Exception.--Unless prevented from doing so by the operation of 8 Pa.C.S. Ch. 11 Subch. J (relating to civil service for police and fire apparatus operators), borough policemen who reside in the borough may hold and exercise the office of constable in the borough, or in any ward thereof, and receive all costs, fees and emoluments pertaining to such office.

(Apr. 18, 2014, P.L.432, No.37, eff. 60 days)

2014 Amendment. Act 37 amended subsec. (b).

SUBCHAPTER E
TRAINING

Sec.

- 7141. Definitions.
- 7142. Conduct and insurance.
- 7143. Board established.
- 7144. Program established.
- 7145. Program contents.
- 7146. Continuing education.
- 7147. (Reserved).
- 7148. Use of firearms.
- 7149. Restricted account.

§ 7141. Definitions.

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

"Account." The Constables' Education and Training Account established in section 7149 (relating to restricted account).

"Board." The Constables' Education and Training Board established in section 7143 (relating to board established).

"Commission." The Pennsylvania Commission on Crime and Delinquency of the Commonwealth.

"Court." The minor judiciary or any other court in this Commonwealth.

"Judicial duties." Those services specified in section 7161 (relating to fees).

"Term of office of a deputy constable." The term of office of the constable who appointed him.

§ 7142. Conduct and insurance.

(a) Certification.--After the establishment, implementation and administration of the Constables' Education and Training Program created under sections 7144 (relating to program established) and 7145 (relating to program contents), no constable or deputy constable shall perform any judicial duties nor demand or receive any fee, surcharge or mileage provided

by this subchapter unless he has been certified under this subchapter.

(b) Liability insurance.--Every constable and deputy constable must file with the clerk of courts proof that he has, currently in force, a policy of professional liability insurance covering each individual in the performance of his judicial duties with a minimum coverage of \$250,000 per incident and a minimum aggregate of \$500,000 per year. The Constables' Education and Training Board shall immediately investigate and implement the most cost-effective method of achieving liability insurance for constables and deputy constables under this subsection.

(c) Loss of certification.--Any constable or deputy constable who fails, neglects or refuses to maintain a current insurance policy as required by subsection (b) or to file proof thereof with the clerk of courts shall cease automatically to be certified to perform judicial duties upon the expiration of the policy of which proof has been filed with the clerk of courts.

(d) Recertification.--Any constable or deputy constable who ceases to be certified to perform judicial duties as a result of the operation of subsection (c) may later be recertified immediately by filing with the clerk of courts proof that such insurance has been in force continuously since the officer was last certified to perform judicial duties. In the case of a violation of subsection (c), the individual may be recertified by complying with subsection (b).

(e) Limitations on liability.--The provisions of this subchapter shall not be deemed to impose respondeat superior liability on any county.

(f) Conduct.--While a constable or deputy constable is performing duties other than judicial duties, regardless of whether or not he is certified under this subchapter, he shall not in any manner hold himself out to be active as an agent, employee or representative of any court, magisterial district judge or judge.

Cross References. Section 7142 is referred to in section 7144 of this title.

§ 7143. Board established.

(a) Board created.--There is established within the commission an advisory board to be known as the Constables' Education and Training Board.

(b) Composition.--The board shall be composed of the Pennsylvania State Police Commissioner or his designee and six other members appointed by the Governor with the consent of a majority of the members of the Senate:

- (1) Three persons who shall be constables.
- (2) One person who shall be a magisterial district judge.
- (3) One person who shall be a court administrator.
- (4) One person who shall be a county commissioner.

(c) Appointments and terms.--Members shall serve for three-year terms and may be appointed for more than one additional consecutive term. If a member who serves by virtue of public office ceases to represent the class to which he was appointed, his membership in the commission shall terminate immediately, and a new member shall be appointed in the same manner as his predecessor to fill the unexpired portion of the term. No constable may be appointed, be reappointed or serve as a board member unless he is certified under this subchapter.

(d) Vacancy.--A member appointed to fill a vacancy created by any reason other than expiration of a term shall be appointed for the unexpired term of the member whom he is to succeed in the same manner as the original appointment.

(e) Expenses.--The members of the board shall serve without compensation but shall be reimbursed the necessary and actual expenses incurred in attending meetings of the board and in the performance of their duties under this subchapter.

(f) Removal.--Members of the board may be removed by the appointing authority for good cause upon written notice from the appointing authority specifically setting forth the cause for removal.

(g) Chairman elected.--The members of the board shall elect a chairman from among the members to serve for a period of one year. A chairman may be elected to serve successive terms. The Governor shall designate the first chairman for organizational purposes only.

(h) Meetings.--The board shall meet as often as it deems necessary but at least four times each year. Meetings may be called by the chairman of the board or by any four members thereof, in either case upon at least ten days' written notice to all members of the board. A quorum shall consist of four members.

Cross References. Section 7143 is referred to in section 7141 of this title.

§ 7144. Program established.

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

(1) Establish, implement and administer the Constables' Education and Training Program according to the minimum requirements set forth in this subchapter.

(2) Establish, implement and administer requirements for the minimum courses of study and training for constables and deputy constables.

(3) Establish, implement and administer requirements for courses of study and in-service training for constables and deputy constables.

(4) Establish, implement and administer requirements for a continuing education program for constables and deputy constables concerning subjects the board may deem necessary and appropriate for the continued education and training of constables and deputy constables.

(5) Approve or revoke the approval of any school which may be utilized for the educational and training requirements of this subchapter.

(6) Establish the minimum qualifications for instructors and certify instructors.

(7) Consult, cooperate and contract with universities, colleges, law schools, community colleges and institutes for the development of basic and continuing education courses for constables and deputy constables.

(8) Promote the most efficient and economical program for constable and deputy constable training by utilizing existing facilities, programs and qualified State and local personnel.

(9) Certify constables and deputy constables who have satisfactorily completed the basic and continuing education and training requirements of this subchapter and issue appropriate certificates to them.

(10) Make rules and regulations and perform other duties as may be reasonably necessary or appropriate to administer

the education and training program for constables and deputy constables.

(11) In consultation with the Insurance Commissioner, monitor the price and availability of the liability insurance required by section 7142(b) (relating to conduct and insurance) and, if deemed necessary by the board, provide information and coordination to assure the availability and competitive pricing of such insurance.

(12) Make an annual report to the Governor and to the General Assembly concerning:

- (i) The administration of the Constables' Education and Training Program.
- (ii) The activities of the board.
- (iii) The costs of the program.
- (iv) Proposed changes, if any, in this subchapter.

Cross References. Section 7144 is referred to in section 7142 of this title.

§ 7145. Program contents.

The Constables' Education and Training Program shall include training for a total of 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).

Cross References. Section 7145 is referred to in section 7142 of this title.

§ 7146. Continuing education.

The board, with the review and approval of the commission, shall establish a mandatory continuing education program for constables and deputy constables, which shall include no more than 40 hours per year, concerning subjects the board may deem necessary and appropriate for the continued education and training of constables and deputy constables.

Cross References. Section 7146 is referred to in section 7149 of this title.

§ 7147. (Reserved).

§ 7148. Use of firearms.

The Constables' Education and Training Board, with the review and approval of the Pennsylvania Commission on Crime and Delinquency, shall establish standards for the certification or qualification of constables and deputy constables to carry or use firearms in the performance of any duties.

§ 7149. Restricted account.

(a) **Account established.**--There is established a special restricted account within the General Fund, which shall be known as the Constables' Education and Training Account, for the purposes of financing training program expenses, the costs of administering the program and all other costs associated with the activities of the board and the implementation of this subchapter and as provided under subsection (f).

(b) **Surcharge.**--There is assessed as a cost in each case before a magisterial district judge a surcharge of \$5 per docket number in each criminal case and \$5 per named defendant in each civil case in which a constable or deputy constable performs a service provided in Subchapter G (relating to compensation), except that no county shall be required to pay this surcharge on behalf of any indigent or other defendant in a criminal case.

(c) **Disposition of funds.**--The surcharges collected under subsection (b), if collected by a constable or deputy constable, shall be turned over within one week to the issuing authority.

The issuing authority shall remit the same to the Department of Revenue for deposit into the account.

(d) Disbursements.--Disbursements from the account shall be made by the commission.

(e) Audit.--The Auditor General shall conduct an audit of the account as he may deem necessary or advisable, from time to time, but not less than once every three years.

(f) Fund surplus.--If account money are sufficient to meet the expenses and costs under subsection (a), the commission may allocate any surplus funds in the account to assist constables and deputy constables with costs associated with attendance at continuing education programs under section 7146 (relating to continuing education).

Cross References. Section 7149 is referred to in section 7141 of this title.

SUBCHAPTER F

POWERS AND DUTIES

Sec.

7151. General imposition of duties and grant of powers.

7152. Elections.

7153. Service of process.

7154. Collection of taxes.

7155. Arrest of offenders against forest laws.

7156. Executions.

7157. Returns and appearance.

7158. Arrest in boroughs.

7159. Trespassing livestock.

7159.1. Sale of trespassing livestock.

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

Constables shall perform all duties authorized or imposed on them by statute.

§ 7152. Elections.

The constable of a borough, township or ward, or his deputy, shall do all of the following:

(1) Be present at the polling place in each election district of the borough, township or ward at each election during the continuance of each election and while the votes are being counted, for the purpose of preserving the peace.

(2) Serve at all elections.

Cross References. Section 7152 is referred to in section 7163 of this title.

§ 7153. Service of process.

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

§ 7154. Collection of taxes.

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

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

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

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

(c) Interest.--In addition to any commissions that may be imposed for the collection of taxes, all taxes remaining unpaid on the first day of January after the year for which they were assessed shall accrue interest until they are paid.

§ 7155. Arrest of offenders against forest laws.

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

§ 7156. Executions.

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

(b) Invalid returns.--If a constable makes a false return, does not produce the plaintiff's receipt on the return day or makes a return deemed insufficient by the magisterial district judge, the magisterial district judge shall issue a summons to the constable to appear on the designated day, which may not be more than eight days from the date of issuance, to show cause why a writ of execution should not be issued against the constable for the amount of the writ of execution under subsection (a). If the constable does not appear or does not show sufficient cause why the writ of execution should not be issued against him, the magisterial district judge shall enter judgment against the constable for the amount of the writ of execution under subsection (a) with costs. No stay may be entered upon the writ of execution, and, upon application of the plaintiff or his agent, the magisterial district judge shall issue an execution against the constable for the amount of the judgment, which may be directed to an authorized person. The summons under this subsection shall be issued to an authorized person to serve. If the summons is not served, that person shall pay a fine of \$20. If an authorized person cannot be conveniently found to serve the summons, the magisterial district judge shall direct it to the supervisor of the highways of the township, ward or district where the constable resides, who shall serve the summons or pay a penalty of \$20.

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

§ 7157. Returns and appearance.

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

(b) Appearance.--A court may summon a constable to appear before it and direct the constable to investigate a complaint of a violation of law or of a condition which a constable is

required to report to the court and to make a report of his investigation.

§ 7158. Arrest in boroughs.

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

- (1) Is guilty of a breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness.
- (2) May be engaged in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens.
- (3) Violates any ordinance of the borough for which a fine or penalty is imposed.

§ 7159. Trespassing livestock.

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

- (1) The constable shall impound the livestock either with the owner or tenant of the land if the owner, and the tenant if one exists, agrees or with another individual or entity that the constable may deem best situated to care for the livestock.
- (2) All reasonable costs of keeping the livestock shall be part of the costs of care.

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

- (1) If the owner is known and resides within the county where the trespass has been committed, the constable shall give written notice to the owner that the livestock has been impounded, the location of the livestock and the name of the owner of the land where the livestock trespassed. Notice shall be given within 24 hours of impounding in accordance with the Pennsylvania Rules of Civil Procedure.
- (2) If the owner is known but does not reside in the county where the trespass has been committed, the constable shall give written notice to the owner that the livestock has been impounded, the location of the livestock and the name of the owner of the land where the livestock trespassed. Notice shall be served within 24 hours of impounding by registered mail.

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

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

Cross References. Section 7159 is referred to in section 7159.1 of this title.

§ 7159.1. Sale of trespassing livestock.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) Costs of care.

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

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

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

(4) If a jury or the appraisers determine that the harm to the owner of the land is greater than the harm to the owner of the livestock, the court shall require the owner

of the livestock to pay a reasonable fee to the attorney for the owner of the land.

SUBCHAPTER G

COMPENSATION

Sec.

- 7161. Fees.
- 7161.1. Specific fees.
- 7162. Returns.
- 7163. Election services.
- 7164. Impounding, selling and viewing fees.
- 7165. Seizure fees.
- 7166. Returns to court.

Cross References. Subchapter G is referred to in section 7149 of this title.

§ 7161. Fees.

(a) Travel or mileage.--Actual mileage for travel by motor vehicle shall be reimbursed at a rate equal to the highest rate allowed by the Internal Revenue Service. If travel occurs by a mode other than motor vehicle, reimbursement shall be for the vouchered travel expenses.

(b) Apportionment.--If more than one defendant is transported simultaneously, reimbursements shall be for miles traveled, and the travel cost shall be divided between or among the defendants.

(c) Additional persons.--A constable or deputy constable when he is transporting a prisoner, serving a felony or misdemeanor warrant or serving a warrant on a juvenile or a defendant of the opposite sex may, at his discretion, be accompanied by a second constable or deputy constable who is certified under section 7147 (relating to automatic certification) to perform judicial duties. In those cases, each officer shall receive the fee set out in this section. In all other civil, landlord-tenant and summary criminal cases, the issuing authority may authorize payment to a second officer.

(d) Civil and landlord-tenant cases.--In civil and landlord-tenant cases, constable fees must be paid in advance to the court for services desired to be performed. These fees shall not be refundable to the plaintiff if a case is settled or a debt is satisfied less than 48 hours prior to a scheduled sale or ejectment. In the latter case, the constable or deputy constable shall be paid for holding the sale or carrying out an ejectment, respectively.

(e) Payment.--All civil, landlord-tenant and criminal fees shall be paid by the court to the constable as soon as possible and in no case not more than 15 days in civil and landlord-tenant cases and 30 days in criminal cases after the service is performed and a proper request for payment is submitted, provided that, in criminal cases where the books and accounts of the relevant county offices are payable on a monthly basis, payment shall be made not more than 15 days after the close of the month.

(f) Civil and landlord-tenant cases.--Fees in civil and landlord-tenant cases shall be as follows:

- (1) For serving complaint, summons or notice on suitor or tenant, either personally or by leaving a copy, \$13, plus \$5 for each additional defendant at the same address, \$2.50 for each return of service, plus mileage.

(2) For levying goods, including schedule of property levied upon and set aside, notice of levy and return of service, \$75, plus mileage.

(3) For advertising personal property for public sale, \$7 per posting, with a maximum \$21 fee, plus mileage, plus the cost of advertising.

(4) For selling goods levied, receipts and returns to court, \$85, plus mileage.

(5) For making return of not found, \$13, plus mileage. Payment shall be limited to three returns of not found.

(6) For executing order of possession, \$13, plus \$5 for each additional defendant at the same address, \$2.50 for each return of service, plus mileage.

(7) For ejectment, \$90, \$2.50 for each return of service, plus mileage.

(8) For making any return of service other than not found, \$2.50 each.

(9) For providing courtroom security as ordered, \$13 per hour, assessed against one or more parties as determined by the court.

(10) Actual mileage for travel by motor vehicle shall be reimbursed at the rate equal to the highest rate allowed by the Internal Revenue Service. If travel is by other than motor vehicle, reimbursement shall be for vouchered travel expenses.

(g) Criminal cases.--Fees in criminal cases shall be as follows:

(1) For executing each warrant of arrest or for effectuating the payment of fines and costs by attempting to execute each warrant of arrest, \$25 for each docket number and \$2.50 for each return of service, plus mileage.

(2) For taking custody of a defendant, \$5 per defendant.

(3) For conveyance of defendant to or from court, \$5 per defendant.

(4) For attendance at arraignment or hearing, \$13.

(5) For executing discharge, \$5 per defendant.

(6) For executing commitment, \$5 per defendant.

(7) For executing release, \$5 per defendant.

(8) For making returns to the court, \$2.50.

(9) Transporting each nonincarcerated defendant to jail, \$17, plus mileage; transporting an incarcerated prisoner, \$38 per prisoner, plus an hourly rate of \$13 per hour, plus mileage. Computation of hourly rate will apply after the expiration of the first hour per prisoner per hour, not to exceed \$26 per hour per constable.

(10) Receipt of the fees for transporting a nonincarcerated defendant under paragraph (9) shall not exclude receipt of the fees under paragraphs (6) and (8) for that transport.

(11) Receipt of the fees for transporting an incarcerated prisoner under paragraph (9) shall exclude receipt of the fees under paragraphs (2), (3), (4) and (7) for the transport.

(12) Actual mileage for travel by motor vehicle shall be reimbursed at the rate equal to the highest rate allowed by the Internal Revenue Service. If travel is by other than motor vehicle, reimbursement shall be for vouchered travel expenses.

(13) For conveying defendants for fingerprinting, \$17 per defendant, plus \$13 per hour beyond the first hour per defendant per hour, not to exceed \$26 per hour per constable, plus mileage.

(14) For holding one or more defendants at the office of a magisterial district judge, \$13 per hour per defendant beyond the first half hour.

(15) For courtroom security as ordered, \$13 per hour, assessed against one or more parties as determined by the court.

(16) In all criminal cases wherein the defendant is discharged or indigent or the case is otherwise dismissed, the court shall assess to the county the fee provided in this section, except that, in cases of private criminal complaints where the defendant is discharged prior to the indictment or the filing of any information or the case is otherwise dismissed at the summary offense hearing, the court shall assess the fee to the affiant.

(h) Subpoenas.--For serving district court-issued subpoenas for civil, landlord-tenant or criminal matters, \$13 for first witness, plus \$5 for each additional witness at the same address, \$2.50 return of service for each subpoena, plus mileage. The same fee shall be payable for attempting to serve a subpoena at a wrong address supplied by the party requesting the service.

(i) Similar fees.--For civil, landlord-tenant and criminal services not specifically provided for, the court shall pay the same fees as it pays for services that it determines to be similar to those performed.

References in Text. Section 7147, referred to in subsec. (c), is reserved.

Cross References. Section 7161 is referred to in sections 7141, 7145 of this title.

§ 7161.1. Specific fees.

(a) Court appearances and returns.--For attendance on court and making returns, the fees to be received by constables shall be \$2.50 per day.

(b) Notices of election.--For serving notices of their election upon township or borough officers, the fees to be received by constables shall be \$0.15 for each service.

(c) Juvenile matters.--Constables shall receive the same fees for serving writs in juvenile cases as they receive for similar services in criminal cases.

§ 7162. Returns.

The returns required by law to be made by constables to the 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.

§ 7163. Election services.

For services performed under section 7152 (relating to elections), the constables and deputies performing the services shall receive the same compensation payable to inspectors and clerks under section 412.2(a) of the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code. The compensation shall be paid by the county, and the sum shall include pay for serving notices in writing to persons elected at the election.

§ 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.

§ 7165. Seizure fees.

(a) Registration plates and cards.--If constables and deputy constables are delegated authority to seize registration plates and registration cards under 75 Pa.C.S. § 1376(b)(5) (relating to surrender of registration plates and cards upon suspension or revocation), they shall be compensated by the department at the rate of \$15 for each registration plate and card jointly seized, plus mileage. The department shall pay a constable or deputy constable within 30 days after a documented request for payment is submitted to it.

(b) Drivers' licenses.--If constables and deputy constables are delegated authority to seize drivers' licenses under 75 Pa.C.S. § 1540(c)(1)(v) (relating to surrender of license), they shall be compensated by the department at the rate of \$15 for each driver's license seized, plus mileage. The department shall pay a constable or deputy constable within 30 days after a documented request is submitted to it.

§ 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.

SUBCHAPTER H
PENALTIES AND REMEDIES

Sec.

7171. Election notice in certain areas.

7172. Incompetence.

7173. Taxes.

7174. Action against security.

7175. Criminal penalty.

7176. Compensation violation.

7177. Failure to execute process.

7178. Failure to serve in a township.

§ 7171. Election notice in certain areas.

(a) Scope of section.--This section applies to wards, townships and districts.

(b) Acting constables.--The acting constable shall, within six days after the election for a constable, give notice in writing to the elected individual of election to the office. An acting constable who violates this subsection shall pay a civil penalty of \$16 to the Commonwealth.

(c) Elected constables.--An individual elected and notified under subsection (b) shall appear on the next day that the court of common pleas of the applicable judicial district is in session and either decline or accept the office. A constable elect who violates this subsection shall pay a civil penalty of \$16 to the Commonwealth.

(d) Court.--The applicable court of common pleas has the authority to levy the penalty under subsection (b) or (c).

§ 7172. Incompetence.

(a) Inquiry.--A court of common pleas with competent jurisdiction may inquire into the official conduct of the constable if any of the following apply:

(1) A surety of the constable files a verified petition alleging that the constable is incompetent to discharge official duties because of intemperance or neglect of duty.

(2) Any person files a verified petition alleging that the constable is incompetent to discharge official duties for a reason other than intemperance or neglect of duty. This paragraph includes an act of oppression of a litigant or a witness.

(b) Determination.--If the court determines that the constable is incompetent to discharge official duties, the following apply:

(1) The court may:

(i) require additional security from the constable;

or

(ii) remove the constable from office.

(2) Upon removal under paragraph (1)(ii), the court may appoint a suitable individual to fill the vacancy until a successor is elected and qualified. The appointed individual must have a freehold estate with at least \$1,000 beyond incumbrance or furnish security.

§ 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).

(3) The constable may not draw compensation until the default is cured.

§ 7174. Action against security.

(a) Scope of section.--This section applies to a constable subject to all of the following:

(1) The constable has furnished security for the faithful performance of the duties of office.

(2) The constable fails to perform the duties of office.

(3) One of the following subparagraphs applies:

(i) The constable leaves the country before a judgment is entered on the failure under paragraph (2).

(ii) A judgment is entered against the constable for failure under paragraph (2), and the judgment cannot be paid.

(b) Procedure.--A court of competent jurisdiction may issue a writ of scire facias and proceed against the security.

(c) Appeal.--A surety and a constable may appeal from a judgment on a writ under subsection (b).

§ 7175. Criminal penalty.

A constable who neglects or refuses to perform the duties under the act of June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania Election Code, commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of \$500 or to imprisonment for not less than one month nor more than one year, or both.

§ 7176. Compensation violation.

A constable who violates the act of July 14, 1897 (P.L.206, No.209), entitled "An act to regulate the remuneration of policemen and constables employed as policemen throughout the Commonwealth of Pennsylvania, and prohibiting them from charging or accepting any fee or other compensation, in addition to their

salary, except as public rewards and mileage for traveling expenses," commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of \$50 or to imprisonment for not more than 30 days, or both.

§ 7177. Failure to execute process.

(a) Scope of section.--This section applies to a constable subject to all of the following:

(1) The constable is entrusted with the execution of a process for the collection of money.

(2) The constable, by neglect of duty, fails to collect the money.

(3) The constable's security is used to pay the money.

(b) Equitable interest.--The person that pays the security under subsection (a) (3):

(1) has an equitable interest in the judgment; and

(2) may collect the judgment in the name of the party that won the judgment.

§ 7178. Failure to serve in a township.

(a) Scope of section.--This section applies to an individual in a township if all of the following circumstances exist:

(1) The individual is elected or appointed a constable.

(2) The individual has a freehold estate worth at least \$1,000.

(3) The individual fails to:

(i) serve; or

(ii) appoint a deputy to serve.

(b) Fine.--Except as set forth in subsection (c), an individual under subsection (a) shall be fined \$40 for the use of the appropriate township.

(c) Exception.--Subsection (b) shall not apply to an individual who:

(1) has served personally or by deputy in the office of constable of the same township within 15 years of election or appointment; or

(2) has paid a fine under subsection (b) within 15 years of election or appointment.

CHAPTER 72

MENTAL HEALTH EVALUATIONS

Subchapter

A. Preliminary Provisions

B. General Provisions

Enactment. Chapter 72 was added July 14, 2020, P.L.624, No.59, effective immediately, unless otherwise noted.

SUBCHAPTER A

PRELIMINARY PROVISIONS

Sec.

7201. Scope of chapter.

7202. Definitions.

§ 7201. Scope of chapter.

This chapter relates to mental health evaluations for law enforcement officers.

Effective Date. Section 4(2) of Act 59 of 2020 provided that section 7201 shall take effect in one year.

§ 7202. Definitions.

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

"Administrative duty." An administrative law enforcement duty that is designed to limit a law enforcement officer's day-to-day work-related interactions with the public.

"Law enforcement agency." Any of the following:

(1) A police department of a county, city, borough, incorporated town or township.

(2) A county district attorney's office.

"Law enforcement officer." An individual employed by a law enforcement agency who is required to be trained under 53 Pa.C.S. Ch. 21 Subch. D (relating to municipal police education and training).

"Post-traumatic stress disorder." A post-traumatic stress disorder as defined by the American Psychiatric Association and documented in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders, 5th edition.

Effective Date. Section 4(2) of Act 59 of 2020 provided that section 7202 shall take effect in one year.

SUBCHAPTER B GENERAL PROVISIONS

Sec.

7203. Mental health evaluations for law enforcement officers.

7204. Regulations.

§ 7203. Mental health evaluations for law enforcement officers.

(a) Evaluations.--As a condition of continued employment, and without cost to the law enforcement officer, a law enforcement agency shall provide a law enforcement officer with a mental health evaluation for post-traumatic stress disorder by a licensed mental health professional:

(1) upon request of the law enforcement officer;

(2) upon recommendation of a police chief or other supervising law enforcement officer; or

(3) within 30 days of an incident of the use of lethal force during the course of law enforcement duties.

(b) Treatment.--If a licensed mental health professional determines during the mental health evaluation under subsection (a) that a law enforcement officer has symptoms of post-traumatic stress disorder, the law enforcement officer shall be provided with treatment under a licensed physician's care until the licensed physician determines in writing that the law enforcement officer is able to resume full duties.

(c) Administrative duty.--A law enforcement officer shall be assigned to administrative duty if the law enforcement officer:

(1) fails to undergo a mental health evaluation for post-traumatic stress disorder when required under subsection (a); or

(2) is experiencing symptoms of post-traumatic stress disorder as determined by a licensed mental health professional under subsection (a) and whom the licensed physician has not yet determined is able to resume full duties under subsection (b).

Effective Date. Section 4(2) of Act 59 of 2020 provided that section 7203 shall take effect in one year.

§ 7204. Regulations.

(a) Temporary regulations.--In order to facilitate the prompt implementation of this chapter, the commission shall promulgate temporary regulations within six months of the effective date of this section that shall expire not later than two years following the publication of the temporary regulations. The commission shall promulgate temporary regulations not subject to:

(1) Sections 201, 202, 203, 204 and 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

(2) Sections 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.

(3) The act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(b) Publication.--The commission shall transmit temporary regulations to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin no later than six months after the effective date of this section.

(c) Promulgation.--The commission shall, by regulation, including temporary regulation, establish procedures to guarantee the following:

(1) Confidentiality of requests or recommendations for mental health evaluations.

(2) Confidentiality of mental health records produced by operation of this chapter.

(3) Any other procedure deemed necessary by the commission for implementation of this chapter.

Effective Date. Section 4(1)(iii) of Act 59 of 2020 provided that section 7204 shall take effect in 60 days.

CHAPTER 73

LAW ENFORCEMENT BACKGROUND INVESTIGATIONS AND EMPLOYMENT INFORMATION

Sec.

7301. Scope of chapter.

7302. Definitions.

7303. Background investigation required.

7304. Disclosure of employment information.

7305. Refusal to disclose employment information.

7306. Immunity.

7307. Confidentiality agreements and nondisclosure.

7308. Maintenance of records.

7309. Reporting.

7310. Disclosure of separation.

7311. Hiring report.

7312. Regulations.

Enactment. Chapter 73 was added July 14, 2020, P.L.613, No.57, effective in one year, unless otherwise noted.

§ 7301. Scope of chapter.

This chapter relates to law enforcement background investigations and employment information for law enforcement officers.

§ 7302. Definitions.

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

"Applicant." A person applying for employment as a law enforcement officer or for a position leading to employment as a law enforcement officer.

"Commission." The Municipal Police Officers' Education and Training Commission.

"Employment information." Written information in connection with job applications, performance evaluations, attendance records, disciplinary actions and eligibility for rehire.

"Final and binding disciplinary action." Disciplinary action in which a law enforcement officer voluntarily accepts discipline or, in the case of appeal by the disciplined officer, disciplinary action in which the appeal has been exhausted or resolved by settlement agreement, arbitration or other dispute resolution mechanism.

"Law enforcement agency." A law enforcement agency in this Commonwealth that is the employer of a law enforcement officer.

"Law enforcement officer." The term shall have the same meaning as the term "peace officer" under 18 Pa.C.S. § 501 (relating to definitions).

"Prospective employing law enforcement agency." A law enforcement agency in this Commonwealth that is considering employing a law enforcement officer.

"Separation records." Records required to be maintained under section 7308 (relating to maintenance of records).

§ 7303. Background investigation required.

(a) **General rule.**--A prospective employing law enforcement agency shall conduct a thorough background investigation on an applicant, including a review of the applicant's employment information and separation records, if applicable, in accordance with this chapter, before the applicant may be employed. The background investigation shall determine at a minimum whether the applicant meets the standards established by the commission.

(b) **Higher standards not precluded.**--The required background investigation does not prevent a law enforcement agency from establishing higher standards for law enforcement employees if those standards are not contrary to applicable law.

§ 7304. Disclosure of employment information.

Upon request of a prospective employing law enforcement agency, a law enforcement agency shall disclose or otherwise make available for inspection employment information of an applicant who is the subject of a background investigation under this chapter. The request for disclosure of employment information must be:

- (1) in writing;
- (2) accompanied by an original authorization and release signed by the applicant; and
- (3) signed by the chief of police or other authorized representative of the prospective employing law enforcement agency conducting the background investigation.

§ 7305. Refusal to disclose employment information.

If a law enforcement agency refuses to disclose employment information to a prospective employing law enforcement agency in accordance with this chapter, the prospective employing law enforcement agency may petition Commonwealth Court to issue an order directing the disclosure of the employment information. The petition must include a copy of the original request for disclosure and the authorization and release signed by the applicant.

§ 7306. Immunity.

(a) **General rule.**--In the absence of fraud or malice, a law enforcement agency is immune from civil liability for employment information released to a prospective employing law enforcement

agency in accordance with this chapter or for any subsequent publication made by the prospective employing law enforcement agency or the applicant of employment information released to a law enforcement agency under this chapter.

(b) Release in violation of chapter.--

(1) A law enforcement agency is not immune from civil liability for employment information released in violation of this chapter.

(2) An applicant adversely affected by the release of employment information in violation of this chapter may seek declarative and injunctive relief and actual and punitive damages attributable to the violation in an appropriate court.

(3) The court shall award reasonable expenses, including attorney fees, court costs and compensation for loss of income, to the applicant adversely affected if an action under paragraph (2) results in:

(i) a final determination by a court in favor of the law enforcement officer adversely affected; or

(ii) rescission of the challenged release of information after suit has been filed under paragraph (2) but prior to a final determination by a court.

§ 7307. Confidentiality agreements and nondisclosure.

(a) When agreement exists.--If employment information is subject to a confidentiality agreement between the applicant and a law enforcement agency, the applicant shall disclose to the prospective employing law enforcement agency the fact that a confidentiality agreement exists.

(b) When agreement is absent and applicant authorizes release.--If the applicant has authorized the release of employment information without regard to a previous agreement to the contrary, the law enforcement agency may disclose the employment information in accordance with this chapter.

(c) Employment information sealed or subject to court order.--If employment information is sealed or otherwise subject to a nondisclosure order by a court of competent jurisdiction, the law enforcement agency shall disclose to the prospective employing law enforcement agency the fact that a nondisclosure order exists, along with information identifying the court and case number.

§ 7308. Maintenance of records.

(a) General rule.--In addition to any other employment information required to be maintained under current law and regulation, a law enforcement agency shall maintain the following separation records:

(1) Records of the reason or reasons for, and circumstances surrounding, a separation of service for a law enforcement officer on a form developed by the commission and made available on its publicly accessible Internet website.

(2) Records of all criminal charges filed against a law enforcement officer.

(3) Records of all civil or ethical complaints made against a law enforcement officer.

(4) Records of the disposition of all charges and complaints, including final and binding disciplinary actions, taken by the law enforcement agency against a law enforcement officer, including imposition of probationary or other conditions related to employment.

(b) Review of separation records.--A law enforcement officer may review a separation record upon the request of the law enforcement officer on a form developed by the commission and

made available on the law enforcement agency's publicly accessible Internet website.

(c) Disagreement with record accuracy.--

(1) If a law enforcement officer disagrees with the accuracy of the contents of a separation record, the law enforcement officer may request the correction or removal of the portion of the record believed to be incorrect. The request must be made in writing using a form developed by the commission and available on the commission's publicly accessible Internet website. The law enforcement agency shall provide written reasons for correction or removal of a portion of the record, or of the refusal to do so.

(2) If the law enforcement agency and the law enforcement officer cannot reach an agreement on the contents of the record, the law enforcement officer may submit a written statement explaining the law enforcement officer's position and the basis for the disagreement. The statement shall be kept with and part of the separation records required under this section and provided with the rest of the contents of the separation records as required under section 7310 (relating to disclosure of separation).

§ 7309. Reporting.

(a) Electronic database.--

(1) The commission shall establish and maintain an electronic database containing the separation records.

(2) The database shall be accessible to all law enforcement agencies in this Commonwealth.

(3) Except as provided under section 7311(c) (relating to hiring report), separation records maintained in the database shall be exempt from disclosure under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

(b) Procedure.--The commission shall establish a procedure by which a law enforcement agency may request and review separation records in the database for the purpose of employing an applicant.

(c) Request log.--The commission shall log all requests from law enforcement agencies for separation records and may not disclose the name of any law enforcement officer subject to a request for separation records to the public. The information provided to a law enforcement agency, including a law enforcement agency outside of this Commonwealth, shall be exempt from disclosure under the Right-to-Know Law.

(d) Time period to submit.--Upon the separation of an officer from a law enforcement agency, the law enforcement agency shall submit the separation records to the commission within 15 days of separation.

(e) Good faith immunity.--

(1) A former employing law enforcement agency that submits a separation record to the database in good faith is immune from civil liability for the subsequent disclosure of that record from the database.

(2) A law enforcement agency is presumed to be acting in good faith at the time of a disclosure under this chapter unless a preponderance of the evidence establishes one or more of the following:

(i) the law enforcement agency knew that the separation record was false or misleading;

(ii) the law enforcement agency submitted the separation record with a reckless disregard for the truth; or

(iii) submission of the separation record was specifically prohibited by a Federal or State law.

Cross References. Section 7309 is referred to in section 7302 of this title.

§ 7310. Disclosure of separation.

(a) Waiver required.--

(1) An applicant shall provide to the prospective employing law enforcement agency, upon an offer of employment, a signed waiver under this section.

(2) The waiver shall expressly allow the prospective employing law enforcement agency to contact the commission to seek a copy of any separation record.

(3) The waiver shall consist of a form developed by the commission and made available on the commission's publicly accessible Internet website.

(4) The prospective employing law enforcement agency shall provide the signed waiver to the commission.

(5) Upon receipt of the signed waiver, the commission shall, within seven days, provide a copy of any separation record relating to the applicant to the prospective employing law enforcement agency or certify that no separation record is in the database.

(b) Record of separation condition of hiring.--A prospective employing law enforcement agency may not hire an applicant until the prospective employing law enforcement agency receives a copy of the separation record or certification of no separation record from the commission.

Cross References. Section 7310 is referred to in section 7308 of this title.

§ 7311. Hiring report.

(a) Information required to be reported.--If a prospective employing law enforcement agency hires an applicant whose separation records includes any of the following, the law enforcement agency shall file a report with the commission that indicates the prospective employing law enforcement agency's reasoning and rationale for hiring the applicant:

(1) Final and binding disciplinary action based on any of the following:

- (i) excessive force;
- (ii) harassment;
- (iii) theft;
- (iv) discrimination;
- (v) sexual abuse;
- (vi) sexual misconduct;
- (vii) domestic violence;
- (viii) coercion of a false confession;
- (ix) filing a false report; or
- (x) a judicial finding of dishonesty.

(2) A criminal conviction relating to conduct described in paragraph (1).

(b) Electronic database of commission.--

(1) The hiring report shall be included in the commission's electronic database.

(2) The hiring report shall be on a form developed by the commission and made available on the commission's publicly accessible Internet website.

(c) Subject to disclosure.--The hiring report shall be subject to disclosure under the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

Cross References. Section 7311 is referred to in sections 7309, 7312 of this title.

§ 7312. Regulations.

(a) Temporary regulations.--In order to facilitate the prompt implementation of this chapter, the commission shall promulgate temporary regulations within six months of the effective date of this section that shall expire no later than two years following the publication of the temporary regulations. The commission shall promulgate temporary regulations not subject to:

(1) Section 612 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(2) Sections 201, 202, 203, 204 and 205 of the act of July 31, 1968 (P.L.769, No.240), referred to as the Commonwealth Documents Law.

(3) Sections 204(b) and 301(10) of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act.

(4) The act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

(b) Publication.--The commission shall transmit the temporary regulations to the Legislative Reference Bureau for publication in the Pennsylvania Bulletin no later than six months after the effective date of this section.

(c) Contents.--The commission shall, by regulation, including temporary regulation, establish the following:

(1) Procedures to guarantee the confidentiality of employment information and separation records.

(2) Procedures to guarantee the security of the database established under this chapter.

(3) Reportable disciplinary actions and criminal conduct falling within the scope of section 7311 (relating to hiring report).

(4) Any other procedure deemed necessary by the commission for implementation of this chapter.

Effective Date. Section 2(2) of Act 57 of 2020 provided that section 7312 shall take effect in 60 days.

**APPENDIX TO TITLE 44
LAW AND JUSTICE**

Supplementary Provisions of Amendatory Statutes

2009, OCTOBER 9, P.L.494, NO.49

§ 5. Legislative findings and declarations.

The General Assembly finds and declares as follows:

(1) This act consolidates a major title of the Pennsylvania Consolidated Statutes.

(2) In order to further the process of statutory consolidation, it is necessary to eliminate obsolete provisions in every title of the Pennsylvania Consolidated Statutes.

(3) The repeal of 44 Pa.C.S. Ch. 53 is necessary because the chapter became obsolete when it was replaced by 61 Pa.C.S. Ch. 45 in the act of August 11, 2009 (P.L.147,

No.33), entitled "An act amending Title 42 (Judiciary and Judicial Procedure) and codifying Title 61 (Penal and Correctional Institutions) of the Pennsylvania Consolidated Statutes, further providing for adoption of guidelines for resentencing, for adoption of guidelines for parole and for adoption of recommitment ranges following revocation of parole by board; providing for temporary release from county correctional institution; further providing for sentence of total confinement; providing for parole without board supervision, for judicial power to release inmates and for transfers of inmates in need of medical treatment; further providing for State intermediate punishment; providing for other criminal provisions; amending the heading of Title 61; adding definitions, provisions relating to general administration of correctional institutions, State correctional institutions, county correctional institutions, house of detention for untried inmates and witnesses, inmate labor, medical services, visitation, inmate prerelease plans, motivational boot camp, execution procedure and method, recidivism risk reduction incentive, miscellaneous matters relating thereto, probation and parole generally, the Pennsylvania Board of Probation and Parole, County Probation and Parole Officers' Firearm Education and Training and correctional institution interstate compacts; and making conforming amendments, editorial changes and repeals relating to codification."

(4) The addition of 44 Pa.C.S. Ch. 71 Subchs. A, B, C, D, F, G and H is a continuation of the statutory provisions repealed in section 4(2) of this act. The following apply:

(i) Except as otherwise provided in 44 Pa.C.S. Ch. 71, all activities initiated under the statutory provisions repealed in section 4(2) of this act shall continue and remain in full force and effect and may be completed under 44 Pa.C.S. Ch. 71. Orders, regulations, rules and decisions which were made under the statutory provisions set forth in section 4(2) of this act and which are in effect on the effective date of 4(2) of this act shall remain in full force and effect until revoked, vacated or modified under 44 Pa.C.S. Ch. 71. Contracts, obligations and collective bargaining agreements entered into under the statutory provisions repealed in section 4(2) of this act are not affected nor impaired by the repeal in section 4(2) of this act.

(ii) Except as set forth in subparagraph (iii), any difference in language between 44 Pa.C.S. Ch. 71 Subchs. A, B, C, D, F and G and the statutory provisions repealed in section 4(2) of this act is intended only to conform to the style of the Pennsylvania Consolidated Statutes and is not intended to change or affect the legislative intent, judicial construction or administration and implementation of the statutory provisions repealed in section 4(2) of this act.

(iii) Subparagraph (ii) does not apply to any of the following provisions of Title 44:

- (A) Section 7112.
- (B) Section 7113.
- (C) Section 7114(a).
- (D) Section 7143(h).
- (E) Section 7148(b).
- (F) Section 7149(b).
- (G) Section 7151.

(5) The provisions on constable training have been transferred from former 42 Pa.C.S. §§ 2941 through 2949 to 44 Pa.C.S. Ch. 71 Subch. E. Revisions have been made in 44 Pa.C.S. §§ 7143(h), 7148(b) and 7149(b). Except as otherwise provided in 44 Pa.C.S. Ch. 71, all activities initiated under former 42 Pa.C.S. §§ 2941 through 2949 shall continue and remain in full force and effect and may be completed under 44 Pa.C.S. Ch. 71 Subch. E. Orders, regulations, rules and decisions which were made under former 42 Pa.C.S. §§ 2941 through 2949 and which are in effect on the effective date of section 1 (42 Pa.C.S. §§ 2941 through 2949) of this act shall remain in full force and effect until revoked, vacated or modified under 44 Pa.C.S. Ch. 71 Subch. E. Contracts, obligations and collective bargaining agreements entered into under former 42 Pa.C.S. §§ 2941 through 2949 and which are in effect on the effective date of section 1 (42 Pa.C.S. §§ 2941 through 2949) of this act are not affected nor impaired by section 1 (42 Pa.C.S. §§ 2941 through 2949) of this act.

(6) Provisions on constable fees have been transferred from 42 Pa.C.S. § 2950 to 44 Pa.C.S. § 7161. Except as otherwise provided in 44 Pa.C.S. § 7161, all activities initiated under former 42 Pa.C.S. § 2950 shall continue and remain in full force and effect and may be completed under 44 Pa.C.S. § 7161. Orders, regulations, rules and decisions which were made under former 42 Pa.C.S. § 2950 and which are in effect on the effective date of section 1 (42 Pa.C.S. § 2950) of this act shall remain in full force and effect until revoked, vacated or modified under 44 Pa.C.S. § 7161. Contracts, obligations and collective bargaining agreements entered into under former 42 Pa.C.S. § 2950 and which are in effect on the effective date of section 1 (42 Pa.C.S. § 2950) of this act are not affected nor impaired by section 1 (42 Pa.C.S. § 2950) of this act.

(7) This act deals with fees and funds affecting the judicial branch of State government, including fees which may be charged by constables in civil and criminal cases and additional fees and surcharges on the initiation of legal proceedings and on the filing of legal documents. In order to further the process of statutory consolidation, it is necessary to maintain and continue the coordination of fees and funding affecting any branch of State government.

Explanatory Note. Act 49 added or repealed Chapter 53 and Part IV of Title 44, amended, added or repealed Subchapter C of Chapter 29 and sections 3733 and 3733.1 of Title 42 and amended sections 1376 and 1540 of Title 75.

2018, OCTOBER 24, P.L.896, NO.147

Preamble

The General Assembly finds and declares as follows:

(1) Postconviction DNA testing has exonerated wrongfully convicted individuals and identified real perpetrators of crimes.

(2) To the extent possible, DNA testing of evidence before trial is encouraged to help prevent wrongful convictions and to lead to earlier detection and conviction of actual perpetrators.

Explanatory Note. Act 147 amended section 9543.1 of Title 42 and amended or added sections 2302, 2303, 2311, 2312, 2313, 2314, 2315, 2316, 2316.1, 2317, 2318, 2319 and 2321 of Title 44.