

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 628

Session of
1987

INTRODUCED BY SWEET, LASHINGER, DeLUCA, PRESSMANN, FOX, FEE,
BORTNER, PETRARCA, LaGROTTA, HALUSKA, MELIO, STABACK,
COLAFELLA, KUKOVICH, LAUGHLIN, KASUNIC, WOGAN, VEON, STUBAN,
VAN HORNE, OLASZ, BLAUM, MICHLOVIC, GEIST, J. L. WRIGHT,
COHEN, BALDWIN, PRESTON, ROBBINS, SCHULER, COY, RYBAK,
MICOZZIE, HAGARTY, ANGSTADT, GODSHALL, CLYMER, ARTY, HONAMAN,
McCALL, MERRY, DORR, BOYES, TRELLO, SAURMAN, LEVDANSKY AND
CALTAGIRONE, MARCH 3, 1987

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
FEBRUARY 9, 1988

AN ACT

1 Amending ~~Titles~~ TITLE 42 (Judiciary and Judicial Procedure) and ~~and~~ <—
2 ~~75 (Vehicles)~~ of the Pennsylvania Consolidated Statutes,
3 adding provisions relating to constables.

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

6 Section 1. The definition of "officer enforcing orders" in
7 section 102 of Title 42 of the Pennsylvania Consolidated
8 Statutes is amended to read:

9 § 102. Definitions.

10 Subject to additional definitions contained in subsequent
11 provisions of this title which are applicable to specific
12 provisions of this title, the following words and phrases when
13 used in this title shall have, unless the context clearly
14 indicates otherwise, the meanings given to them in this section:

15 * * *

"Officer enforcing orders." Includes:

(1) A recorder of deeds when the order affects the ownership of an interest in property described or describable by a document which has been or may be filed or recorded in his office, or which relates to the indexing of documents filed or recorded in his office.

(2) A register of wills.

(3) A sheriff.

(4) A constable or deputy constable while actually engaged in the performance of judicial duties as defined in section 2941 (relating to definitions).

Section 2. Sections 2131 and 2132 of Title 42 are amended to read:

§ 2131. Minor Judiciary Education Board.

(a) General rule.--The Minor Judiciary Education Board shall consist of [seven] nine members selected as provided in this subchapter.

(b) Seal.--The Minor Judiciary Education Board shall have a seal engraved with its name and such other inscription as may be specified by general rule. A facsimile or preprinted seal may be used for all purposes in lieu of the original seal.

§ 2132. Composition of board.

(a) General rule.--The Minor Judiciary Education Board shall consist of the following appointed by the Governor [with the consent of a majority of the members elected to the Senate]:

(1) Three persons who shall be judges of the Pittsburgh Magistrates Court or the Traffic Court of Philadelphia or district justices.

(2) Three members of the bar of this Commonwealth.

(3) One lay elector.

1 shall have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Board." The Minor Judiciary Education Board established
4 pursuant to Subchapter D of Chapter 21 (relating to Minor
5 Judiciary Education Board).

6 "Clerk." The clerk of the courts, or other person holding a
7 similar office in counties that do not have a clerk of courts,
8 of common pleas of the judicial district in which the constable
9 or deputy constable was elected or appointed.

10 "Constable." Any person holding the elective office of
11 constable, whether by election or by appointment to fill a
12 vacancy in such elective office.

13 "Deputy constable." Any person holding the office of deputy
14 constable as a result of appointment by a constable as provided
15 by law.

16 "Judicial duties." Service, execution and return of court-
17 authorized process; levy of attachment, levy or execution;
18 presale and postsale control of property; sales and conveyances;
19 collection, custody and disposition of money; custody and
20 control of respondents, defendants and convicts; court-ordered
21 security; and preservation of official exhibits and papers.

22 "Program." The Constables' Education and Training Program
23 established pursuant to section 2943 (relating to
24 certification).

25 § 2942. Powers and duties.

26 (a) Certification required.--No constable or deputy
27 constable shall perform any judicial duties, nor receive any
28 compensation therefor, unless he is certified pursuant to
29 section 2943 (relating to certification).

30 (b) Supervision.--Constables and deputy constables may

1 perform judicial duties if they are certified pursuant to
2 section 2943 and, while doing so, shall be subject to the
3 supervision of the president judge of the judicial district in
4 which they were elected or appointed.

5 (c) Arrest powers.--A constable or deputy constable who is
6 certified pursuant to section 2943 to perform judicial duties
7 shall have the power of arrest without a warrant with respect to
8 any person he observes committing any crime under 18 Pa.C.S. Ch.
9 25 (relating to criminal homicide), 27 (relating to assault) or
10 51 (relating to obstructing governmental operations) which
11 interferes with or obstructs him in the performance of his
12 judicial duties.

13 (d) Nonseverable provisions.--Notwithstanding the provisions
14 of this or any other law to the contrary, all constables and
15 deputy constables shall enjoy all of the rights and privileges
16 accorded to constables by section 10 of the act of October 4,
17 1978 (P.L.883, No.170), referred to as the Public Official and
18 Employee Ethics Law. This subsection is nonseverable from the
19 remainder of this subchapter. In the event that section 10 of
20 the Public Official and Employee Ethics Law or this subsection
21 is invalidated or suspended as to constables or deputy
22 constables, then this entire subchapter shall be deemed to be
23 likewise invalidated or suspended.

24 (e) Judicial duties.--Constables and deputy constables shall
25 continue to have all powers and to exercise all duties provided
26 by law, whether or not they become certified, except as provided
27 in subsection (a), and as follows:

28 (1) Constables and deputy constables who are certified
29 pursuant to section 2943 to perform judicial duties shall
30 give priority to their judicial duties over their other

1 constable functions.

2 (2) While a constable or deputy constable is performing
3 his judicial duties, he shall not simultaneously exercise any
4 of the other powers or perform any of the other duties of a
5 constable or deputy constable.

6 (3) While a constable or deputy constable is performing
7 duties other than judicial duties, regardless of whether or
8 not he is certified pursuant to section 2943, he shall not be
9 subject to the supervision of the president judge, nor shall
10 he in any manner hold himself out to be active as an agent,
11 employee or representative of any court, district justice or
12 judge, either by word, by the display of any badge, card,
13 decal, emblem, insignia, identification, marking, patch or
14 sign approved by the Administrative Office, or otherwise.

15 § 2943. Certification.

16 (a) Requirements.--Any constable or deputy constable shall
17 become certified to perform judicial duties upon successfully
18 completing the program established pursuant to this section,
19 filing a certificate attesting thereto with the clerk and filing
20 with the clerk proof that he has, currently in force, a policy
21 of professional liability insurance covering him in the
22 performance of his judicial duties with a minimum coverage of
23 \$250,000 per incident and a minimum aggregate of \$500,000 per
24 year.

25 (b) Completion of program.--Any person shall be deemed to
26 have completed the program if he successfully completes the
27 examination administered at the end of any such course. No one
28 who elects to exercise the benefit of this subsection and who
29 fails to achieve a passing score on the examination may
30 thereafter repeat the examination without attending the course

1 of study.

2 (c) Temporary certification.--Every constable or deputy
3 constable who is in office on the effective date of this
4 subchapter shall be deemed to be temporarily certified to
5 perform judicial duties for the balance of his current term of
6 office. As used in this subsection, the "current term of office"
7 of a deputy constable shall be coterminous with that of the
8 constable who appointed him, unless sooner revoked or
9 terminated. At the conclusion of the current term of office, no
10 such constables or deputy constables shall continue to be deemed
11 certified unless they have complied with the provisions of
12 subsection (a) or (b).

13 (d) Loss of certification.--Any constable or deputy
14 constable who fails, neglects or refuses to comply with any
15 continuing education and training regulations adopted by the
16 board shall cease automatically to be certified to perform
17 judicial duties as of the end of the period of time established
18 by the board, which shall not be less than one year, during
19 which such regulations were not complied with.

20 (e) Insurance required.--Any constable or deputy constable
21 who fails, neglects or refuses to maintain a current insurance
22 policy as required by subsection (a), or to file proof thereof
23 with the clerk, shall cease automatically to be certified to
24 perform judicial duties upon the expiration of the policy of
25 which proof has been filed with the clerk, and the clerk shall
26 so notify the Administrative Office.

27 (f) Recertification.--Any constable or deputy constable who
28 ceases to be certified to perform judicial duties as a result of
29 the operation of subsection (d) or (e) may later be recertified
30 immediately by filing with the clerk proof that such insurance

1 has been in force continuously since the officer was last
2 certified to perform judicial duties, and the clerk shall so
3 notify the Administrative Office or, in the case of a violation
4 of subsection (e), the individual may be recertified by
5 complying with subsections (a) and (b).

6 § 2944. Basic education.

7 (a) Program--The board shall prescribe and approve the
8 subject matter and the examination for the program. The board
9 shall administer the program and conduct the examination at such
10 times, at such places and in such manner as the regulations of
11 the board may prescribe. The course shall be offered as
12 frequently, and in as many locations throughout this
13 Commonwealth, as available funds permit. If funds permit, the
14 course shall be offered on a regional basis, taking into account
15 the density of population of constables and the accessibility of
16 locations to such population. The course may be offered at one
17 location on a full-time basis for a period not exceeding two
18 weeks in duration. In all other locations, the course shall be
19 offered on an evening and/or weekend basis and shall not exceed
20 80 hours in duration.

21 (b) Eligibility.--Any person who is eligible to become a
22 constable or deputy constable may attend the course and/or take
23 the examination.

24 (c) Admission priority.--In the event that there are more
25 applications for admission to the program than can be
26 accommodated at a particular time and place, priority in
27 admission shall be granted as follows:

28 (1) First preference shall be given to constables.

29 Within this category, preference shall be given to those
30 whose terms of office will expire sooner rather than later.

1 (2) Second preference shall be given to deputy
2 constables. Within this category, preference shall be given
3 to those whose appointing constables are serving terms which
4 will expire sooner rather than later.

5 (3) Third preference shall be given to candidates for
6 the office of constable who have filed nomination papers or
7 petitions with their respective county boards of election or
8 who have received the nomination of a political body, party
9 or minor political party as such terms are defined in act of
10 June 3, 1937 (P.L.1333, No.320), known as the Pennsylvania
11 Election Code.

12 (4) Fourth preference shall be given to other interested
13 persons who are eligible to become constables or deputy
14 constables.

15 (d) Completion.--Every person who successfully completes the
16 program shall receive from the board a certificate so stating.
17 § 2945. Continuing education.

18 (a) General rule.--The board shall prescribe and approve a
19 course of continuing education and training for constables and
20 deputy constables and shall administer the course and shall
21 conduct it at such times, at such places and in such manner as
22 the regulations of the board may prescribe. The course shall be
23 offered as frequently, and in as many locations throughout this
24 Commonwealth, as available funds permit. If funds permit, the
25 course shall be offered on a regional basis, taking into account
26 the density of population of constables and the accessibility of
27 locations to such population. The course may be offered at one
28 location on a full-time basis for a period not exceeding one
29 week in duration. In all other locations, the course shall be
30 offered on an evening and/or weekend basis and shall not exceed

1 40 hours in duration.

2 (b) Admission open.--No constable or deputy constable who is
3 certified pursuant to section 2943 (relating to certification)
4 shall be denied admission to any such course.

5 (c) Requirement.--The board may require constables and
6 deputy constables, as a condition to their remaining certified
7 to perform judicial duties, to successfully complete such a
8 course no more than once in every year, or longer period of
9 time, subsequent to the year in which they were initially so
10 certified.

11 (d) Notice.--The board shall immediately notify the
12 Administrative Office and the clerk of any constable or deputy
13 constable who fails, neglects or refuses to successfully
14 complete any course of continuing education and training within
15 the time period required.

16 § 2946. Firearms.

17 (a) General rule.--No constable or deputy constable may
18 carry or use a firearm in the performance of judicial duties
19 unless he has successfully completed a program of education and
20 training, which has been approved by the board, in the proper
21 use of firearms. For the purpose of this subsection, the
22 firearms portion of the education and training program
23 established pursuant to the act of June 18, 1974 (P.L.359,
24 No.120), referred to as the Municipal Police Education and
25 Training Law, shall be deemed to be a program approved by the
26 board. Any person who has successfully completed the firearms
27 portion of the program established pursuant to the act of
28 February 9, 1984 (P.L.3, No.2), known as the Deputy Sheriffs'
29 Education and Training Act, may satisfy the requirements of this
30 subsection by successfully completing a written firearms

1 examination approved by the board.

2 (b) Requalification.--No constable or deputy constable may
3 carry or use a firearm in the performance of judicial duties
4 unless he has requalified with his firearm as the board may
5 require, which requalification shall not be required more than
6 once a year after his initial qualification.

7 (c) Permitted use.--Any constable or deputy constable may
8 carry and use a firearm in the performance of judicial duties
9 provided that he has met the requirements of this section.

10 (d) Carrying firearms in performance of any official
11 duties.--A constable or deputy constable who is not certified
12 pursuant to section 2943 (relating to certification) may not
13 carry or use a firearm in the performance of any of his official
14 duties unless he has successfully completed the firearms portion
15 of one or more of the following:

16 (1) Any program approved pursuant to the act of June 18,
17 1974 (P.L.359, No.120), referred to as the Municipal Police
18 Education and Training Law.

19 (2) Any program approved pursuant to the act of October
20 10, 1974 (P.L.705, No.235), known as the Lethal Weapons
21 Training Act.

22 (3) The program established pursuant to the act of
23 February 9, 1984 (P.L.3, No.2), known as the Deputy Sheriffs'
24 Education and Training Act.

25 (4) Any program approved by the board pursuant to
26 subsection (a).

27 § 2947. Fees.

28 (a) General rule.--Constables and deputy constables shall be
29 compensated for performing judicial duties by the payment of
30 fees as set forth in this section and shall be paid according to

1 law for performing other duties.

2 (b) Travel or mileage.--Actual mileage for travel by motor
3 vehicle shall be reimbursed at a rate equal to the highest rate
4 allowed by the Internal Revenue Service. If travel is by other
5 than motor vehicle, reimbursement shall be for actual, vouchered
6 travel expenses.

7 (c) Apportionment.--If more than one defendant is
8 transported simultaneously, reimbursements shall be for actual
9 miles traveled, and the cost shall be divided between or among
10 the defendants.

11 (d) Additional persons.--A constable or deputy constable,
12 when he is transporting a prisoner, serving a warrant in a court
13 case or serving a warrant on a defendant of the opposite sex,
14 may be accompanied by a second constable or deputy constable who
15 is certified pursuant to section 2943 (relating to
16 certification) to perform judicial duties. In such cases, each
17 officer shall receive the fee set out in this section. In all
18 other civil and criminal cases, the issuing authority may
19 authorize such payment to a second such officer.

20 (e) Civil cases.--In civil cases, constable fees must be
21 paid in advance for services desired to be performed. Such fees
22 shall not be refundable to the plaintiff if a case is settled or
23 a debt is satisfied less than 48 hours prior to a scheduled sale
24 or ejectment, in which latter case the constable or deputy
25 constable shall be paid for a nonforcible ejectment.

26 (f) Payment.--Fees shall be paid as soon as possible and in
27 every case not more than 30 days after the latter of the
28 following occurs:

- 29 (1) the service is performed; and
30 (2) the request for payment is submitted.

(g) Specific fees.--Fees in civil cases shall be as follows:

(1) For serving complaint, summons or notice on suitor or tenant, either personally or by leaving a copy, \$10 plus \$5 for each additional defendant at the same address.

(2) For serving subpoenas, \$10 for the first witness plus \$2.50 for each additional witness at the same address.

(3) For levying goods, including schedule of property levied upon and set aside, \$35.

(4) For advertising personal property to public sale, \$5 per posting (maximum of \$15) plus actual cost of advertising.

(5) For selling goods levied, \$35.

(6) For clerk hired at sales, \$20.

(7) For making return of not found or nulla bona (no goods), \$10.

(8) For executing order of possession, \$10.

(9) For nonforcible ejectment on order of possession, \$35.

(10) For forcible ejectment, \$70.

(11) For making return of service, other than not found or nulla bona (no goods), \$2.50.

(12) For providing court-ordered security, \$10 per hour.

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

(1) For executing a warrant, \$15 per warrant.

(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, \$5 per defendant.

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

- 1 (6) For executing commitment, \$5 per defendant
- 2 (7) For executing release, \$5 per defendant.
- 3 (8) For making returns to the court of process served or
4 non est inventus (not found), \$2.50.
- 5 (9) With the approval of the president judge, \$10 per
6 defendant per hour beyond the first half hour, assessed to
7 the court.
- 8 (10) For conveying defendants for fingerprinting, \$5 per
9 defendant.
- 10 (11) For overseeing the fingerprinting of defendants at
11 the direction of the district justice, \$5 per defendant plus
12 \$10 per defendant per hour beyond the first half hour.
- 13 (12) For providing court-ordered security, \$10 per hour.
- 14 (i) Similar fees.--For civil and criminal services not
15 specifically provided for, the court shall pay the same fees as
16 it pays for services that it determines to be similar to those
17 performed.
- 18 (j) Assessment by court.--In all criminal cases wherein the
19 defendant is discharged or indigent, or the case is otherwise
20 dismissed, the court shall assess to the county the fee and the
21 surcharge provided in subsection (1), except that, in cases of
22 private criminal complaints wherein the defendant is discharged
23 prior to the indictment or the filing of any information or the
24 case is otherwise dismissed at the summary offense hearing, the
25 court shall assess the fee and surcharge to the affiant.
- 26 (k) Adjustment of fees.--The Administrative Office may raise
27 the above fees and add new categories and fees from time to time
28 as it deems fair and just for the performance of judicial duties
29 provided by law.
- 30 (l) Surcharge.--There is hereby assessed a surcharge of \$2

1 on each fee payable for the performance of judicial duties to
2 every constable or deputy constable who is certified pursuant to
3 section 2943 to perform judicial duties. This surcharge is
4 imposed on each individual service for which a fee is provided,
5 including each hour for which an hourly rate is to be paid.
6 Moneys collected pursuant to this subsection shall be turned
7 over monthly by the issuing authority to the county treasurer of
8 the county in which the issuing authority serves.

9 (m) Special account.--There is hereby established a special
10 restricted receipts account within the General Fund of the State
11 Treasury, which shall be known as the Constables' Education and
12 Training Account, for the purpose of financing program expenses,
13 the costs of administering the program and all other costs
14 associated with the implementation of the program and continuing
15 education course established pursuant to this subchapter.

16 (n) Disposition of funds.--The moneys collected by county
17 treasurers under subsection (l) shall be forwarded monthly by
18 each county treasurer to the State Treasurer for deposit into
19 the account. None of these moneys shall be transferred by the
20 State Treasurer to another account or fund.

21 (o) Disbursements.--Disbursements from the account shall be
22 made only by the Administrative Office.

23 (p) Audit.--The Auditor General shall conduct an audit of
24 the account as he may deem necessary or advisable from time to
25 time.

26 § 2948. Discipline.

27 (a) Loss of certification.--A constable or deputy constable
28 who is convicted of or pleads guilty or nolo contendere to
29 murder or a felony or misdemeanor shall automatically cease to
30 be certified to perform judicial duties. A constable or deputy

1 constable who is convicted of murder or a felony or misdemeanor
2 shall be suspended from performing judicial duties by the
3 president judge of the judicial district in which the constable
4 or deputy constable was elected or appointed. After all appeals
5 are exhausted, if the conviction is affirmed, the president
6 judge shall revoke the certification of the person to perform
7 judicial duties. If the conviction is reversed, the president
8 judge shall immediately lift the suspension.

9 (b) Recertification.--A constable or deputy constable who
10 has been convicted of or pleads guilty or nolo contendere to
11 murder or a felony shall be forever barred from performing
12 judicial duties. A constable who has been convicted of or pleads
13 guilty or nolo contendere to a misdemeanor, and who has
14 subsequently been elected or reelected as constable, may then
15 seek recertification pursuant to section 2943(a) or (b)
16 (relating to certification). A deputy constable who has been
17 convicted of or pleads guilty or nolo contendere to a
18 misdemeanor may seek recertification to perform judicial duties
19 only after all of the following events have taken place in the
20 following order:

21 (1) He has resigned or been removed from the office of
22 deputy constable.

23 (2) Another election for the office of constable has
24 taken place in the jurisdiction of the constable who had
25 appointed him.

26 (3) He has been reappointed as a deputy constable.

27 (c) Administration.--The Administrative Office shall
28 administer the constables and deputy constables who are
29 certified under section 2943 pursuant to the Pennsylvania Rules
30 of Judicial Administration as the governing authority may

1 direct.

2 (d) Judicial duties.--Upon petition of any person, supported
3 by affidavit, any president judge may issue, on any constable or
4 deputy constable who is elected or appointed within the judicial
5 district and who is certified to perform judicial duties, a rule
6 to show cause why his certification should not be suspended or
7 revoked for incompetence, neglect or violation of any rule of
8 court relating to the conduct of constables or deputy constables
9 in the performance of their judicial duties. The rule to show
10 cause shall set forth the grounds for the proposed suspension or
11 removal and shall be returnable to a judge other than the
12 president judge. After a hearing, the judge may suspend or
13 revoke the certification of the constable or deputy constable
14 for such cause.

15 (e) Suspension or restrictions.--Pending the outcome of a
16 final ruling on a petition presented pursuant to subsection (d),
17 the president judge may suspend or place restrictions upon the
18 certification to perform judicial duties of any constable or
19 deputy constable on an interim basis if facts alleged under oath
20 demonstrate that continued and/or unrestricted performance of
21 judicial duties by the officer would pose a clear and present
22 danger to the person or property of others. Such interim order
23 shall dissolve on the tenth day after it is signed unless one or
24 more of the following events take place within that ten-day
25 period:

26 (1) a hearing is held on the continuation of the interim
27 order and the court determines that the order shall remain in
28 effect;

29 (2) the constable or deputy constable requests and
30 receives a continuance of such hearing; or

1 (3) the constable or deputy constable fails to appear
2 for such hearing.

3 (f) Duration of order.--The hearing may be held before the
4 president judge or any other judge. The interim order provided
5 for in subsection (e) shall in all cases dissolve on the 30th
6 day after it is signed unless one or more of the following
7 events takes place within that 30-day period:

8 (1) the constable or deputy constable requests and
9 receives a continuance of the hearing provided for in
10 subsection (d);

11 (2) the constable or deputy constable fails to appear
12 for such hearing; or

13 (3) the interim order is sooner dissolved by the court.
14 No more than one interim suspension or restriction proceeding
15 may be initiated pursuant this subsection on the basis of the
16 same alleged facts.

17 (g) Other duties.--A constable or deputy constable whose
18 certification to perform judicial duties is suspended or revoked
19 may continue to serve as a constable or deputy constable
20 performing other duties unless removed from office as provided
21 by law.

22 ~~Section 4. The definition of "emergency vehicle" in section~~ <—
23 ~~102 of Title 75 is amended to read:~~

24 ~~§ 102. Definitions.~~

25 ~~Subject to additional definitions contained in subsequent~~
26 ~~provisions of this title which are applicable to specific~~
27 ~~provisions of this title, the following words and phrases when~~
28 ~~used in this title shall have, unless the context clearly~~
29 ~~indicates otherwise, the meanings given to them in this section:~~

30 * * *

~~"Emergency vehicle." A fire department vehicle, police vehicle, ambulance, blood delivery vehicle, armed forces emergency vehicle, one vehicle operated by a coroner or chief county medical examiner and one vehicle operated by a chief deputy coroner or deputy chief county medical examiner used for answering emergency calls, one private vehicle of a fire or police chief or assistant chief or, when a fire company has three or more fire vehicles, a second assistant chief, or fire police captain and fire police lieutenant or ambulance corps commander or assistant commander or of a river rescue commander or assistant commander or emergency management coordinator or fire marshal used for answering emergency calls, the vehicle of a constable or deputy constable who is certified pursuant to 42 Pa.C.S. § 2943 (relating to certification) or other vehicle designated by the State Police under section 6106 (relating to designation of emergency vehicles by Pennsylvania State Police).~~

~~* * *~~

Section 5 4. This act shall take effect immediately.

<—