

Commonwealth of Pennsylvania



PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY

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Chairman

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Subject: House Resolution 167 Task Force Reports

To: Virgil F. Puskarich
Executive Director
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From: James Thomas
Executive Director
Pennsylvania Commission on Crime and Delinquency

Mr. Thomas W. Corbett, Jr., Chairman of the Pennsylvania Commission on Crime and Delinquency (PCCD), has requested that I forward the enclosed reports to you. As requested, these reports, concerning the law enforcement powers of constables and the training of constables, are provided in preparation for the December 1997 House Resolution 167 Task Force meeting.

If you have any questions concerning these reports, please contact Steve Spangenberg, Manager of the PCCD's Civil and Criminal Training Division, at 787-1777, extension 3040.

Enclosures

CC: Thomas W. Corbett, Jr., Esquire

LAW ENFORCEMENT POWERS OF CONSTABLES AND DEPUTY CONSTABLES

Introduction

The Office of Constable in the Commonwealth of Pennsylvania derives from common law with a history dating to around 1066 A.D. in the British Isles. While constables were the basis of early American and Pennsylvania law enforcement, the duties and responsibilities of constables have varied among townships, wards, and boroughs. Over the years, the responsibilities of constables changed and, with the establishment of police forces in many municipalities in Pennsylvania, the law enforcement duties and powers of constables began to erode.

At present, constables' authority, duties and powers are scattered throughout Pennsylvania statutes and case law. A constable is an elected official who works with local government and the minor judiciary, but to a significant extent is independent, and carries out his duties according to the dictates of the laws and rules of procedure under which he operates. The constable is considered to be a peace officer with limited law enforcement powers, whose general duties have included the maintenance of the public peace. Constables are defined as peace officers in 16 P.S. § 1216; however, the peace officer duties have been largely supplanted by a focus on the constables' duties serving the minor judiciary: service of civil and criminal process, transportation of prisoners, and maintenance of court security.

Although constables most assuredly have an important role to play in the operation of the justice system, recent case law does not provide a sound basis for the utilization of constables, and their deputy constables, in the general provision of law enforcement services in Pennsylvania. There are a number of additional, practical issues related to the selection, supervision and administration of constables which would tend to make such utilization of constables an impractical, unwieldy task.

Statutory Reference to Enforcement Powers

By general rule at common law, peace officers were permitted to arrest without warrant for felonies and for offenses less than a felony, committed in their presence, when a breach of the peace was involved. As previously noted, constables are statutorily defined as peace officers in 16 P.S. § 1216. The arrest powers of constables are further defined in 13 Pa.C.S. § 45, "The policemen and constables of the several boroughs of this Commonwealth... shall and may, without warrant and upon view, arrest and commit for hearing any and all persons guilty of a breach of the peace, vagrancy, riotous or disorderly conduct or drunkenness, or may be engaged

in the commission of any unlawful act tending to imperil the personal security or endanger the property of the citizens, or violating any ordinance of said borough..." These statutes have been subject to review by the courts with varying results noted below.

In addition to these references, specific enforcement and arrest powers of constables are contained in other portions of Pennsylvania law, e.g., constables are empowered to arrest offenders against forest laws, 32 P.S. § 582; constables are empowered to maintain the public peace at polling places, 25 P.S., generally.

Case Law

Focusing specifically on the status of constables in the system of government, the Pennsylvania Supreme Court, ruling in In Re Act 147 of 1990, 528 Pa. 460, 598 A.2d 985 (1991), found that "Simply stated, a constable is a peace officer. A constable is a known officer charged with the conservation of the peace, and whose business it is to arrest those who have violated it. By statute in Pennsylvania, a constable may also serve process in some instances." The Court concluded that as a peace officer and a process server, a constable belongs analytically to the executive branch of government and, therefore, cannot be placed under the judiciary branch of government. While appearing to affirmatively define the status of constables in In Re Act 147 with this wording, the Court reiterated its previously established ruling which defined the status of constables in Pennsylvania government. "A constable is an independent contractor and is not an employee of the Commonwealth, the judiciary, the township, or the county in which he works." Rosenwald v. Barbieri, 501 Pa.563, 462 A.2d 644 (1983).

More recent case law provides a somewhat schizophrenic view of the law enforcement role and powers of constables. Two cases from the Superior Court provide differing views of constables and law enforcement powers: Commonwealth v. Taylor, 450 Pa.Super. 583, 677 A.2d 846 (1996); and, Commonwealth v. Roose, No. 902 Pittsburgh 1995, 1997 Pa.Super. LEXIS 246 (1997). The Taylor and Roose decisions both comment on the arrest powers of constables defined in 13 Pa.C.S. § 45. While Taylor did not find 13 Pa.C.S. § 45 to be restrictive of the arrest powers of constables, Roose found that the powers of arrest under § 45 to be limited only to constables "of the several boroughs" of the Commonwealth.

In Taylor the Superior Court held that "...constables possess the common law powers to conduct warrantless arrests for felonies and breaches of the peace." However, in arriving at that conclusion, the Court also stated "...rather than enlarging the power of constables, our holding today merely recognizes that they possess a power exercised by private citizens since antiquity, the power to make warrantless arrest for felonies." Further, the Superior Court rejected the Commonwealth's assertion that constables possess the same authorities and duties as police officers, finding only that "the powers of constables and police officers are coextensive in matters 'relating to conservation of the peace'." Applying logic from In Re Act 147, the Court indicated that the Supreme Court's finding that constables are independent contractors "...clearly

indicates that the Court did not consider constables and police officers analogous for all purposes, since Pennsylvania law has never characterized police officers as independent contractors.”

In Roose the Superior Court found that “Although discussion of the common law authority of constables is historically interesting, it is of no legal significance. Since the 19th century the Legislature has defined the duties of the office of constable by statute, even eliminating this office in the city of Philadelphia. Thus, we conclude, given this legislative regulation, that constables possess no common law police or peace officer powers but can only exercise the authority granted by statute.” The Roose decision looked beyond the issue of law enforcement powers and, partially based on In Re Act 147, the Superior Court found practical concerns which limit the utilization of constables in a law enforcement role. “No one supervises constables in the way a police chief supervises police officers or a sheriff supervises deputies. No municipality is responsible for their actions...”

The Superior Court also reviewed the significant differences between police officers and constables in Roose. “Constables and deputy constables are required to have only 80 hours of basic training... Police officers are required to take a course of 520 hours... Also mandatory for police officers are minimum physical fitness standards, psychological evaluations and background investigations to determine suitability for employment...” Given these substantial differences, the Court concluded that “Enforcement of the Motor Vehicle and Crimes Codes and the serious responsibilities and challenges which it entails should not be delegated to those neither trained nor supervised for such work.”

Selection of Constables and Deputy Constables

As noted above, the Superior Court in Roose identified serious shortcomings in the selection of constables and their deputies in comparison to police officers. As provided by 13 Pa.C.S. § 1, 2 and 3, any “properly qualified person” may be elected to serve as constable. Under 13 Pa.C.S. § 11 and 12, a vacancy in the office of constable may be filled, respectively, by “a suitable person” or “some other respectable person” upon appointment by the court. Each constable may appoint one or more deputy constables, subject to approval by the court under 13 Pa.C.S. § 21 and 22. These sections require only that an appointed deputy must reside in the same district as the constable who appointed him/her.

In line with the view of the Superior Court in Roose, as noted above, these requirements for the office may be viewed by some as inadequate, especially when one considers that they are the basis for a person holding an office which has various powers to deprive citizens of their liberty and/or property. There are exceptions to these inadequate requirements in a very few counties. The President Judges of the Courts of Common Pleas in those counties require background investigations of constables and deputy constables who wish to serve the minor judiciary.

Training, Supervision and Administration

In considering the potential utilization of constables to provide law enforcement services in Pennsylvania, the disparities in training, supervision and administration which exist between police officers and constables must be considered. A police officer must successfully complete 520 hours of basic training, as mandated by Act 1974-120, prior to performing the duties of a police officer. A constable must successfully complete 80 hours of basic training, as mandated by Act 1994-44, prior to performing the judicial duties defined and enumerated by Act 44.

While both constables and police officers perform their respective duties within the framework provided by statutes, rules of procedure and case law, police officers must also operate under the administrative structure and direction of their police departments. Constables are defined as independent contractors and, although they receive nominal supervision by the courts they serve, unless subject to civil or criminal prosecution, constables are ultimately responsible only to themselves.

The training, supervision and administration of constables, or lack thereof, present practical problems in the utilization of constables to provide general law enforcement services in the Commonwealth. In addition to the practical problems in the ability to exercise law enforcement authority, such wide differences in training, supervision and administration present a distinct difference in the level and quality of service that could be delivered to, or expected by, the citizens and the justice system.

Summary

The present duties performed by, and the powers exercised by, constables are relatively commensurate with their status as independent contractors and their level of mandated training. Constables provide important, needed services which keep the civil and criminal justice systems operating. However, as noted in this report, recent case law does not provide a sound basis for the utilization of constables, and their deputy constables, in the general provision of law enforcement services in Pennsylvania. The utilization of constables to provide law enforcement services to Pennsylvania's citizens would seriously, and perhaps dangerously, stretch the capabilities of constables, their support mechanisms, and their training.

TRAINING AND CERTIFICATION OF CONSTABLES

Act 1994-44 established the Constables' Education and Training Board as an advisory board to the Pennsylvania Commission on Crime and Delinquency (PCCD). Act 44 empowered the Board to create and implement programs of mandatory training and certification for constables. The Board was initiated and began its work in September 1995, upon appointment by the Governor and confirmation by the Senate.

Initial Certification Programs

The training and certification requirements of Act 1994-44 are not mandatory for all constables. The Act requires that constables who want to perform judicial duties, as defined by the Act, must be certified in order to perform the judicial duties and to be paid for those services. The Board's 80-hour basic training and its waiver examination programs are established by Act 44 as the basis for the initial certification of constables.

The basic training program consisting of a total of ten topics, listed below, and has been operational for just over one year, since it was initiated in September 1996. In that time, the Board has held 61 courses at 22 locations in the Commonwealth, certifying 610 constables through those courses. The waiver examination has been presented in 46 sessions at 23 locations, with 591 constables certified based on their successful completion of the exam.

I. Introduction - 4 hours

- A. Constable Orientation
- B. Criminal Justice System Introduction

II. Professional Development - 8 hours

- A. Professional Conduct
- B. Formal Communications

III. Civil Law and Process - 20 hours

- A. Civil Process Overview
- B. Rules of Civil Procedure
- C. Domestic Matters

IV. Criminal Law and Process - 12 hours

- A. Constitutional Law
- B. Pennsylvania Crimes Code
- C. Criminal Process Overview
- D. Powers of Arrest
- E. Rules of Evidence
- F. Search and Seizure

V. Use of Force - 4 hours

- A. Lethal Versus Non-Lethal Force
- B. Use of Force Continuum
- C. Decision Making
- D. Legal Aspects

VI. Mechanics of Arrest - 4 hours

- A. Restraining Techniques
- B. Restraining Devices
- C. Handcuffing Procedures
- D. Search Procedures/Situations

VII. Defensive Tactics - 8 hours

- A. Unarmed Defense Techniques
- B. Weapon Retention
- C. Use of Force Options

VIII. Prisoner Transport/Custody - 8 hours

- A. Principles and Practices
- B. Prisoner Movement

IX. Courtroom Security - 4 hours

- A. Basic Courtroom Security

X. Crisis Intervention - 8 hours

- A. Assessing Persons & Situations

Continuing Education

In order to maintain their certification, Act 44 requires that constables annually complete up to a maximum of 40 hours of continuing education training. In September 1997 the Board implemented its first cycle of continuing education, consisting of five topics for a total of 20 hours of instruction, which will be offered through calendar year 1998.

Civil and Criminal Law Updates - reviews Pennsylvania's rules of civil and criminal procedure relevant to constables' duties, focusing on statutory changes and case law updates.

Basic Investigative Interviewing - includes instruction on the definitions and differences between an interview and an interrogation, how to formulate questions, the differences between and appropriate utilization of open-ended and closed-ended questions, the characteristics of an effective interviewer, and common myths of interviewing.

Ethics - an encapsulation of the ethics portion of the Professional Development topic from the basic training, intended as a timely review of that material, including ethical problems drawn from law enforcement situations.

Crisis Intervention - focusing on constable safety, with emphasis on levels of disruptive behavior and the constables' ability to match his or her reaction to that behavior, this instruction provides an in-depth look at control of fear and anxiety, methods to prevent physical violence, and the use of non-verbal and verbal control techniques.

Use of Force - includes the review and definition of the force continuum, aspects of resistance and control, the levels of actions against constables and the appropriate levels of response, use of force options, and the constables' obligation to document the use of force.

Firearm Training and Certification

In addition to the basic training and continuing education training programs, Act 44 required that constables who wish to carry a firearm in the performance of constable duties must complete a firearm training and certification program established by the Board. That program was initiated in October 1997 and has been established as an annual requirement. The course presently consists of 20 hours of instruction, including classroom and firing range instruction and a course of fire for qualification.