
PAFOC BRIEF

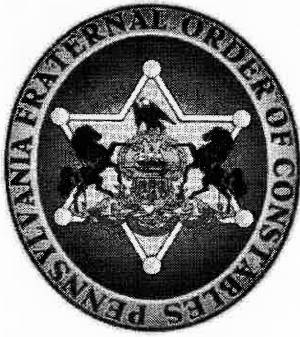
Pennsylvania Statutes

Title 18, Section 9102 – "Criminal justice agency." Any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function. Criminal justice agencies include, **but are not limited to:** organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards, the facilities and administrative offices of the Department of Public Welfare that provide care, guidance and control to adjudicated delinquents, and such agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the State and Federal Constitutions or both.

Referral:

Title 18, Sec. 9102. –

<https://www.legis.state.pa.us/cfdocs/legis/LI/consCheck.cfm?txtType=HTM&ttl=18&div=0&chpt=91&sctn=2&subsctn=0>



Pennsylvania Fraternal Order of Constables

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POLICE Defined

3/08/2018

Re: IPA NEC Constable Appeal

To whom it may concern,

It has come to my attention that there are those in region 13 that disagree with, and are appealing, Mr. Cushman's determination that Pennsylvania State Constables are police/LEO officers and that the Office of Constable is a "Criminal Justice Agency". Pennsylvania and U.S. statute and case law supports Mr. Cushman's decision and the purpose of this correspondence is to provide you with the information that reinforces this claim. First, before doing so, I would remind you that the term "police" in both state and federal statute is a rather generic term that generally means those with the responsibility to enforce the laws of the state or nation and have the power of arrest. There are many different types of "police" with many different responsibilities, authorities and jurisdictions. Some examples, which are by no means all encompassing, are state, municipal, school, transportation, fish and game, marshals, sheriffs, FBI, DEA, immigration, homeland security, treasury and yes, constables.

One of the reasons that we often hear in contradiction is that constables are not Act 120 certified. If that were the case then a majority of those that are currently considered police would not be, as they are not 120 certified either. The reason for this is that different forms of "police" and law enforcement are required to complete different types of training and certification as dictated by statute. It is not the specific type of training that determines if you are "police" but rather that you complete the specific requirements and certifications for your particular branch and that you have the authority to enforce the laws and to arrest as part of your job. I would equate this to an MDJ. All judges, besides magistrates, in Pa are required to have a law degree to hold their position. Statute does not require an MDJ to have a law degree but does require them to complete a specialized training which differs from other jurists before they can perform their duties. This however does not negate, nor should it, their ability to interpret the law from the bench and rule on guilt or innocence. They are a judges but fill a different role than others just as constables fill their unique role in the "police" community.

On to statutes and case law. I will begin with Pa. statutes, rules, and regulations that define us as police/LEO. Under **Pa Rules of Criminal Procedure Rule 103**, there are at least two pertinent definitions. The first is that of "Law Enforcement Officer," which states that a law enforcement officer is "any person who is by law given the power to enforce the law when acting within the scope of that person's employment," and the definition is that of "Police Officer," which states

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“any person who is by law given the power to arrest when acting within the scope of the person’s employment.” Under **Pa Rules of Juvenile Court Procedure Rule 120**, both of these definitions are reinforced with the exact same verbiage. A constable has both the power to enforce the law and the power to arrest. Under **Pa Rules of Juvenile Court Procedure Rule 213** and **Pa Rules Criminal Procedure Rule 515** —“Execution of Arrest Warrant”— the law states that “A warrant of arrest may be executed at any place within the Commonwealth” and “A police officer shall execute a warrant of arrest,” and “A warrant of arrest shall be executed by a police officer.” Constables have the authority to execute arrest warrants, and this is true only because Constables are within the definition of a police officer. Under **037 Pa Code (State Police Administration of the Lethal Weapon Training Act) Regulation 21.1**, a “Law Enforcement Officer” is defined as “A sheriff, deputy sheriff, constable, deputy constable, detective, police officer of this Commonwealth, or any political subdivision, school district, or municipal authority thereof.” Under the **Title 75 Pa. C.S. 102**, a “Police Officer” is defined as “A natural person authorized by law to make arrests for violations of law.” A constable is so authorized. Under **Title 3 P.S. § 459-102 (The Dog Law)**, police officers are defined as “Any person employed or elected by this Commonwealth, or by any municipality and whose duty it is to preserve peace or to make arrests or to enforce the law. The term includes constables and dog, game, fish and forest wardens.” And finally I direct your attention to **Title 18 Pa. C.S. § 6161** Carrying explosives on conveyances; under part (b) it states: “Powers of crew.—The conductor or person having charge and control of any railroad train, coach, or other conveyance for the carriage of freight or passengers, may arrest any person found violating the provisions of this section and detain such person until reaching some place, where such person may be delivered to a constable or other police authority.”

It is clear from these definitions, and others that I have not cited, that a Pa. Constable meets all the criteria of both a law enforcement and police officer in the Commonwealth of Pennsylvania. Incidentally, a constable is elected to their office as is a sheriff with powers that are almost identical (but constables hold statewide authority, as opposed to countywide authority and are granted statutorily recognized police powers of which sheriffs currently are not) to that of sheriffs, whom are generally accepted as police/LEO.

As an example of federal law, I direct you to **18 U.S.C. Section 926**, the “Law Enforcement Officers’ Safety Act,” in which constables are included with all other law enforcement officers in being able to carry a concealed weapon anywhere in the United States without need of a permit. This was reinforced by a case decided by the **Supreme Court of New York, People v. Rodriguez**, a 15-page decision in which it was determined that a Pa. Constable was not guilty of carrying a firearm illegally because, under the laws of Pennsylvania, a constable is considered a law enforcement officer and therefore is protected under **18 U.S.C. Section 926**.

Regarding case law, I would initially reference a federal case, **Jennifer Galluze v. William R. Miller**, in the United States District Court for the Western District of Pennsylvania, in which, after researching and citing the various statutes and case law for the Commonwealth, the Federal Court came to the conclusion that a Pa. Constable is a police officer. Also, as a matter of Pennsylvania state case law, the **Supreme Court of Pa** stated, in its 1991 decision (attached to this email and highlighted) entitled **In Re Act 147, Petition of Nancy Sobolevitch, Court Administrator of Pennsylvania**, that constables are “peace officers” and “police officers.” In addition to using both definitions, the Supreme Court also stated that “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,” and that “It is the constable's job to enforce the law and carry it out, just as the same is the job of district attorneys, sheriffs, and the police generally.”

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Next to address evidence supporting a constable's power of arrest. Initially I will again refer to the above mentioned **In Re Act 147 Supreme Court Decision**. Wherein they not only clearly define Constables as "police officers" and "peace officers" but state that it is their job to conserve the peace and arrest those that have violated it, and, to enforce the law and carry it out. It also points out that a Constable's job is the same as a DA's, sheriffs and police generally. In the **Stanley Appeal (204 Pa.Super.29 (1964))** decision the Superior Court stated that it is "A constable's authority to execute warrants of arrest, to arrest on sight for breach of the peace, vagrancy and drunkenness, to carry a deadly weapon concealed upon his person and to be present at the polling places in order to keep the peace is not conferred upon private citizens, including private detectives." The question then arises as to what exactly is a "breach of the peace"? The answer comes from the **Commonwealth v. Magaro (175 Pa.Super. 79 (1954))** decision in which the court defined a breach of the peace as "all indictable offenses". An indictable offense as defined by **Title 42 §102** is "An offense other than a summary offense".

The power of arrest is also supported by statute both current and historical. Before I address these statutes I would like to remind that when Title 44 was created it was intended to be a consolidation of constable law (which was not entirely successful) and was not intended to change or diminish the authorities of a constable from previous statute. The sole exception was the addition of training and certification requirements in order to do court work. That being said, **Title 44 Pa. C.S §7158** reads as follows "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." Which, I would note, reads almost identically to the powers of arrest granted to municipal police officers (ex-officio constables) in **Title 11 §12005**. Some would interpret this improperly to mean that only borough constables have the power of arrest. Again case law clarifies. In **Delaware Co CCP (Delaware Co Reports) Feb 7, 1944 In Re Borough High Constables**, which was cited in the **Re Act 147** decision in regards to a constables arrest authority, the court ruled "Constables are guardians of the peace within their jurisdiction and may apprehend all breakers of the law and bring them before the proper authorities to answer for their conduct. A constable is more than a township, borough or ward official. His legal acts in civil cases may be performed anywhere in the county and in criminal cases anywhere in the state. The duties of a constable are of a three-fold nature. (1) to enforce the criminal law, (2) to serve writs and other process in civil matters, (3) to perform the statutory and court duties peculiar to the office. High constables in boroughs have the power and authority of constables in townships, and are entitled to the same emoluments. It is the duty of a borough high constable to enforce the criminal laws and arrest or cause the arrest of all persons engaged in the commission of any unlawful act tending to imperil the personal security or to endanger the property of a citizen, or violating any ordinance of the borough." This ruling leaves no doubt that borough constables were never intended to have greater or different powers and authorities than other constables but were to have the SAME powers and authorities as other constables. Additionally, further constable arrest powers are outlined in **Title 44 C.S. §7155** which grants them the authority to arrest for offenders of forest laws.

Many historical statutes and documents also discuss the arrest powers of all constables including previous fee bills such as, but not restricted to, **Act 46 of 1987** which granted fees to

constables for arrest in "any borough, township or political sub-division". As to historical documents, I have attached to this email a copy of "The Powers and Duties of Constables in Pennsylvania", published in 1965 by the Department of Internal Affairs, which extensively lists over many pages the arrest powers of ALL Constables throughout the Commonwealth. It is clear from these decisions, statutes and documents that a Constable has the authority to arrest, on sight, for any violation of the law up to, and including, felonies.

I would also note that, as evidenced by the statutes listed below, other forms of LEO in Pa would not have the powers that they do if not granted the powers of a constable.

71 PS 252 PSP...empowered: (a) to make arrests, without warrant, for all violations of the law,... which they may witness,.. They shall have all the powers and prerogatives conferred by law upon members of the police force of cities of the first class, and upon **CONSTABLES** of the Commonwealth.

71 PS 1791 Police officers ...penal, corrections, mental hospitals...employees to act as police officers...shall have all the powers and prerogatives conferred by law upon **CONSTABLES** of the Commonwealth.

71 PS 1791.1 Police officers ...any building or installation owned by the Commonwealth...employees to act as police officers...shall have all the powers and prerogatives conferred by law upon **CONSTABLES** of the Commonwealth.

11 Pa. C.S. 12005 Powers of Policemen to arrest Third Class City Code (like Harrisburg) Policemen shall be **ex-officio CONSTABLES** of the city,...without warrant and upon view, arrest and commit...

53 PS 46121 (e) Police Borough Code
...as borough policemen, who shall be **ex-officio CONSTABLES** of the borough...without warrant and upon view, arrest and

53 PS 56403 Powers of Policemen First Class Township Code
Policemen shall be **ex-officio CONSTABLES** of the township and may, without warrant and upon view, arrest and commit...

16 PS 1440 County Detectives
(d) County detectives shall be general police officers and shall have the powers conferred on **CONSTABLES** by the laws of this Commonwealth, so far as they relate to criminal laws and procedure.

16 PS 1441 Special County Detectives
Such special detectives shall be general police officers and shall have all the powers conferred on **CONSTABLES** by the existing laws of this Commonwealth, so far as they relate to criminal laws and procedure.

Onto the issue of agency. I refer you to the definitions for agency and criminal justice agency in the PA Right to Know Law, The Pennsylvania Statutory Construction Act and CHRIA (Title 18).

The Pa RTKL defines Commonwealth agency as any of the following:

(1) Any office, department, authority, board, multistate agency or commission of the executive branch; an independent agency; and a State-affiliated entity. The term includes:

(i) The Governor's Office.

(ii) The Office of Attorney General, the Department of the Auditor General and the Treasury Department.

(iii) An organization established by the *Constitution of Pennsylvania, a statute or an executive order which performs or is intended to perform an essential governmental function.*

(2) The term does not include a judicial or legislative agency.

Local agency which is defined by the RTKL as any of the following:

(1) Any political subdivision, intermediate unit, charter school, cyber charter school or public trade or vocational school.

(2) Any local, intergovernmental, regional or municipal agency, authority, council, board, commission or **similar governmental entity**.

The Pa Statutory Construction Act defines a local agency as: "[a] government unit other than the Commonwealth government." 42 P.S. §8501.

A "government unit" is defined as "any government agency" which includes "any political subdivision, municipal authority and other local authority, or any officer or agency of any such political subdivision or local authority." 42 P.S. § 102. The Pennsylvania Supreme Court noted that "the Judicial Code does not define 'local authority,' but . . . the Statutory Construction Act describes it as 'a municipal authority or any other body corporate and political created by one or more political subdivisions pursuant to statute.'" *Sphere Drake Insurance Co. v. Philadelphia Gas Works*, 782 A.2d 510, 513 (Pa. 2001) (citing 1 P.S. § 1991).

And, CHRIA (Title 18) defines Criminal Justice Agency as follows:

"Criminal justice agency." Any court, including the minor judiciary, with criminal jurisdiction **or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function.** **Criminal justice agencies include, but are not limited to:** organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards, the facilities and administrative offices of the Department of Public Welfare that provide care, guidance and control to adjudicated delinquents, and such agencies or subunits thereof, as are declared by the Attorney General to be criminal justice agencies as determined by a review of applicable statutes and the State and Federal Constitutions or both.

There is no denying that the Office of Constable is an elected governmental office that has the sole or majority purpose of enforcing the laws of Pennsylvania and clearly fits into the definitions of both agency and criminal justice agency.

In summation, Mr. Cushman's determination that Pa Constables are police/LEO officers, and that the Office of Constable is a criminal justice agency is correct and is supported by a combination of common law, state and federal statute and case law.

Respectfully,

Ian Castaneira
Regional Director, PAFOC