

No. 1990-147

AN ACT

SB 983

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the jurisdiction of the Philadelphia Municipal Court; and adding provisions relating to constables.

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

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

§ 102. Definitions.

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

* * *

"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 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. Section 1123(a)(8) and (a.1) of Title 42, amended July 11, 1990 (P.L.454, No.111), are amended to read:

§ 1123. Jurisdiction and venue.

(a) General rule.—Except as otherwise prescribed by any general rule adopted pursuant to section 503 (relating to reassignment of matters), the Philadelphia Municipal Court shall have jurisdiction of the following matters:

* * *

(8) Any action to enjoin a **[common law] public nuisance [or a nuisance which involves a violation of any city ordinance or code, or any penal statute]**. The action to enjoin may be brought by any person who resides or has a place of business within 500 feet of the location of the alleged nuisance.

(a.1) Appeal from contempt citation *or nuisance order*.—There shall be a right to appeal to the Court of Common Pleas of Philadelphia County of a contempt citation issued by a municipal court judge *or of an order issued by*

a municipal court judge in any action under subsection (a)(7) or (8), but the appeal shall be limited to a review of the record.

* * *

Section 3. 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]**. *Appointments made after the effective date of this amendatory act shall require* 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.

(4) *Two constables who are certified pursuant to section 2943 (relating to certification) and who shall be residents of different counties.*

(b) Terms of office.—The members of the board shall serve for terms of five years and until a successor has been appointed and qualified. A vacancy on the board shall be filled for the balance of the term.

(c) Compensation.—Members of the board shall receive such fees or salary as shall be fixed by the governing authority in the manner provided by section 503(b) (relating to procedures).

Section 4. Subchapter C of Chapter 29 of Title 42 is amended to read:

CHAPTER 29
OFFICERS SERVING PROCESS AND
ENFORCING ORDERS

* * *

SUBCHAPTER C
CONSTABLES
[(Reserved)]

Sec.

2941. Definitions.

2942. Powers and duties.

2943. Certification.

2944. Basic education.

2945. Continuing education.

2946. Firearms.

2947. Fees.

2948. Discipline.

§ 2941. 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:

“Board.” The Minor Judiciary Education Board established pursuant to Subchapter D of Chapter 21 (relating to Minor Judiciary Education Board).

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

“Constable.” Any person holding the elective office of constable, whether by election or by appointment to fill a vacancy in such elective office.

“Deputy constable.” Any person holding the office of deputy constable as a result of appointment by a constable as provided by law.

“Judicial duties.” Service, execution and return of court-authorized process; levy of attachment, levy or execution; presale and postsale control of property; sales and conveyances; collection, custody and disposition of money; custody and control of respondents, defendants and convicts; court-ordered security; and preservation of official exhibits and papers. Nothing in this definition shall be construed as expanding, modifying or diminishing the powers and duties of constables or deputy constables as conferred or imposed by law or rule of court.

“Program.” The Constables’ Education and Training Program established pursuant to section 2943 (relating to certification).

§ 2942. Powers and duties.

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

(b) Performance of duties.—The Supreme Court shall have the power to prescribe general rules governing practice, procedure and conduct of all officers serving process, or enforcing orders, judgments or decrees of any court or district justice. Constables and deputy constables may perform judicial duties if they are certified pursuant to section 2943 and, while doing so, shall be subject to the supervision of the president judge of the judicial district in which they were elected or appointed. The president judge may appoint a deputy court administrator for the purpose of assisting him in administering the constable system in the judicial district.

(c) Arrest powers.—A constable or deputy constable who is certified pursuant to section 2943 to perform judicial duties shall have the power of arrest without a warrant with respect to any person he observes committing any crime under 18 Pa.C.S. § 3503 (relating to criminal trespass) or 18 Pa.C.S. Ch. 25 (relating to criminal homicide), 27 (relating to assault) or 51 (relating to obstructing governmental operations) which directly interferes with or obstructs him in the performance of his judicial duties.

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

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

(1) Constables and deputy constables who are certified pursuant to section 2943 to perform judicial duties shall give priority to their judicial duties over their other constable functions.

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

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

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

§ 2943. Certification.

(a) Requirements.—Any constable or deputy constable shall become certified to perform judicial duties upon successfully completing the program established pursuant to section 2944 (relating to basic education) or, at the discretion of the board, upon submitting proof of completion of a prior program consisting of at least 80 hours completed prior to the effective date of this act, which is comparable to the program established under section 2944; filing a certificate attesting thereto with the clerk; and filing with the clerk proof that he has, currently in force, a policy of professional liability insurance covering him 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.

(b) Completion of program.—Any person shall be deemed to have completed the program, with or without attendance at the course of study, if he successfully completes the examination administered at the end of any such course. No one who fails to achieve a passing score on the examination may thereafter repeat the examination without attending the course of study.

(c) Temporary certification.—Every constable or deputy constable who is in office on the effective date of this subchapter shall be deemed to be tem-

porarily certified to perform judicial duties for the balance of his current term of office. As used in this subsection, the "current term of office" of a deputy constable shall be coterminous with that of the constable who appointed him, unless sooner revoked or terminated. At the conclusion of the current term of office, no such constables or deputy constables shall continue to be deemed certified unless they have complied with the provisions of subsection (a).

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

(e) **Insurance required.**—Any constable or deputy constable who fails, neglects or refuses to maintain a current insurance policy as required by subsection (a), or to file proof thereof with the clerk, 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, and the clerk shall so notify the Administrative Office.

(f) **Recertification.**—Any constable or deputy constable who ceases to be certified to perform judicial duties as a result of the operation of subsection (e) may later be recertified immediately by filing with the clerk proof that such insurance has been in force continuously since the officer was last certified to perform judicial duties, and the clerk shall so notify the Administrative Office or, in the case of a violation of subsection (e), the individual may be recertified by complying with subsection (a).

§ 2944. Basic education.

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

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

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

(1) **First preference** shall be given to constables. Within this category, preference shall be given to those whose terms of office will expire sooner rather than later.

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

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

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

(d) Completion.—Every person who successfully completes the program shall receive from the board a certificate so stating.

§ 2945. Continuing education.

(a) General rule.—The board shall prescribe and approve a course of continuing education and training for constables and deputy constables and shall administer the course and shall conduct it at such times, at such places and in such manner as the regulations of the board may prescribe. The course shall be offered as frequently, and in as many locations throughout this Commonwealth, as available funds permit. If available funds permit, the course shall be offered on a regional basis, taking into account the density of population of constables and the accessibility of locations to such population. The course may be offered at one location on a full-time basis for a period not exceeding one week in duration. In all other locations, the course shall be offered on an evening and/or weekend basis and shall not exceed 40 hours in duration.

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

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

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

§ 2946. Firearms.

(a) General rule.—No constable or deputy constable may carry or use a firearm in the performance of judicial duties unless he has successfully completed a program of education and training, which has been approved by the board, in the proper use of firearms. For the purpose of this subsection, the firearms portion of the education and training program established pursuant to the act of June 18, 1974 (P.L.359, No.120), referred to as the Municipal Police Education and Training Law, shall be deemed to be a program approved by the board. Any person who has successfully completed the fire-

arms portion of the program established pursuant to the act of February 9, 1984 (P.L.3, No.2), known as the Deputy Sheriffs' Education and Training Act, may satisfy the requirements of this subsection by successfully completing a written firearms examination approved by the board.

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

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

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

(1) Any program approved pursuant to the Municipal Police Education and Training Law.

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

(3) The program established pursuant to the Deputy Sheriffs' Education and Training Act.

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

(e) **Temporary waiver.**—The requirements of this section shall be temporarily waived for every constable and deputy constable who is in office on the effective date of this subchapter for the balance of his current term of office, or until December 31, 1994, whichever is sooner. As used in this subsection, the "current term of office" of a deputy constable shall be coterminous with that of the constable who appointed him, unless sooner revoked or terminated. Upon the expiration of such temporary waiver, every constable and deputy constable must comply with the applicable provisions of this section.

§ 2947. Fees.

(a) **General rule.**—Constables and deputy constables shall be compensated for performing judicial duties by the payment of fees as set forth in this section and shall be paid according to law for performing other duties.

(b) **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 is by other than motor vehicle, reimbursement shall be for actual, vouchered travel expenses.

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

(d) **Additional persons.**—A constable or deputy constable, when he is transporting a prisoner, serving a warrant in a court case or serving a warrant on a defendant of the opposite sex, may be accompanied by a second constable or deputy constable who is certified pursuant to section 2943 (relating to certification) to perform judicial duties. In such cases, each officer shall

receive the fee set out in this section. In all other civil and criminal cases, the issuing authority may authorize such payment to a second such officer.

(e) Civil cases.—In civil cases, constable fees must be paid in advance for services desired to be performed. Such 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 which latter case the constable or deputy constable shall be paid for a nonforcible ejectment.

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

- (1) the service is performed; and
- (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.

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

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

(8) For making returns to the court of process served or non est inventus (not found), \$2.50.

(9) Pursuant to a policy established by the president judge, \$10 per defendant per hour beyond the first half hour, assessed to the court.

(10) For conveying defendants for fingerprinting, \$5 per defendant.

(11) For overseeing the fingerprinting of defendants at the direction of the district justice, \$5 per defendant plus \$10 per defendant per hour beyond the first half hour.

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

(i) Similar fees.—For civil 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.

(j) Assessment by court.—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 and the surcharge provided in subsection (l), except that, in cases of private criminal complaints wherein 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 and surcharge to the affiant.

(k) Adjustment of fees.—The Administrative Office may raise the above fees and add new categories and fees from time to time as it deems fair and just for the performance of judicial duties provided by law.

(l) Surcharge.—There is hereby assessed a surcharge of \$2 on each fee payable for the performance of judicial duties to every constable or deputy constable who is certified pursuant to section 2943 to perform judicial duties. This surcharge is imposed on each individual service for which a fee is provided, including each hour for which an hourly rate is to be paid. Moneys collected pursuant to this subsection shall be turned over monthly by the issuing authority to the county treasurer of the county in which the issuing authority serves.

(m) Special account.—There is hereby established a special restricted receipts account within the General Fund of the State Treasury, which shall be known as the Constables' Education and Training Account, for the purpose of financing expenses and costs of administration by the board and other direct costs associated with the program and continuing education courses established pursuant to this subchapter. No funds from this special account shall be used except for costs associated with the program and continuing education courses established pursuant to this subchapter and in no event shall be used by the court administrator or the Administrative Office of the Pennsylvania Courts for any purpose whatsoever.

(n) Disposition of funds.—The moneys collected by county treasurers under subsection (l) shall be forwarded monthly by each county treasurer to the Department of Revenue for deposit into the special account. None of these moneys shall be transferred by the State Treasurer to another account or fund.

(o) Appropriations.—

(1) For the 1990-1991 fiscal year, all moneys deposited in the special account established under subsection (m) are hereby appropriated to the Court Administrator of Pennsylvania to be used for the constable education and training program as set forth in subsection (m).

(2) For the fiscal year beginning July 1, 1991, and each year thereafter, the General Assembly shall appropriate to the Court Administrator of Pennsylvania from the special account established under subsection (m) such funds as may be necessary to carry out the provisions of this act.

(p) Disbursements.—Disbursements from the account shall be made only by the Administrative Office.

(q) Audit.—The Auditor General shall conduct an audit of the account as he may deem necessary or advisable from time to time.

§ 2948. Discipline.

(a) Loss of certification.—A constable or deputy constable who is convicted of or pleads guilty or nolo contendere to murder or a felony or misdemeanor shall automatically cease to be certified to perform judicial duties and shall be suspended from performing judicial duties by the president judge of the judicial district in which the constable or deputy constable was elected or appointed. After all appeals are exhausted, if the conviction is affirmed, the president judge shall revoke the certification of the person to perform judicial duties. If the conviction is reversed, the president judge shall immediately lift the suspension.

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

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

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

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

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

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

(e) Suspension or restrictions.—Pending a final ruling pursuant to subsection (d), the president judge may suspend or place restrictions upon the certification to perform judicial duties of any constable or deputy constable on an interim basis if facts alleged under oath demonstrate that continued

and/or unrestricted performance of judicial duties by the officer would pose a clear and present danger to the person or property of others.

(f) Duration of order.—

(1) The interim order provided for in subsection (e) shall dissolve on the tenth day after it is signed unless one or more of the following events take place within that ten-day period:

(i) A hearing is held on the continuation of the interim order and the court determines that the order shall remain in effect.

(ii) The constable or deputy constable requests and receives a continuance of such hearing.

(iii) The constable or deputy constable fails to appear for such hearing.

(2) The interim order provided for in subsection (e) shall in all cases dissolve on the 30th day after it is signed unless one or more of the following events takes place within that 30-day period:

(i) The constable or deputy constable requests and receives a continuance of the hearing provided for in subsection (d).

(ii) The constable or deputy constable fails to appear for such hearing.

(3) The interim order is sooner dissolved by the court.

No more than one interim suspension or restriction proceeding may be initiated pursuant to this subsection on the basis of the same alleged facts.

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

Section 5. This act shall take effect in 60 days.

APPROVED—The 29th day of November, A. D. 1990.

ROBERT P. CASEY