

# PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY

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## CONSTABLES' TRAINING BULLETIN

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### PROFESSIONAL LIABILITY INSURANCE

This issue of the Constables' Training Bulletin will focus on the professional liability insurance requirements of Section 2942 of Act 1994-44, the Constables' Education and Training Act.

As all constables should be aware, Section 2942(b) of Act 44 makes it mandatory that "Every constable and deputy constable must file with the clerk of courts proof that he has, currently in force, a policy of professional liability insurance covering each individual in the performance of his judicial duties with a minimum coverage of \$250,000 per incident and a minimum aggregate of \$500,000 per year."

In addition to requiring constables to have professional liability insurance and to file proof of insurance with the clerk of courts, the Act establishes that failure to accomplish those two mandates will result in the certification of the constable being revoked.

Section 2942(c) of Act 44 states: "Any constable or deputy constable who fails, neglects or refuses to maintain a current insurance policy as required by subsection (b) or to file proof thereof with the clerk of courts shall cease automatically to be certified to perform judicial duties upon the expiration of the policy of which proof has been filed with the clerk of courts."

As reported at the September 2000 meeting of the Board, staff of the Pennsylvania Commission on Crime and Delinquency (PCCD) had received reports of alleged problems with professional liability insurance for constables, which were identified as having two aspects: constables allegedly not having access to insurance; and, failure of the reporting system established to record the possession of insurance. This Bulletin will outline the results of two surveys recently completed by the Constables' Education and Training Board.

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## **Insurance Availability - Survey of Constables**

In late August 2000 the PCCD mailed a one-page survey to all 1,652 constables who were certified as of that date. The survey was designed to anonymously elicit information on insurance providers, the cost of insurance, types and amount of coverage included, and reporting to the clerks of courts. In addition, the survey requested voluntary submission of a copy of each individual's certificate of insurance. As of the September 30 deadline, a total of 599 survey forms were returned to the PCCD, a return rate of 36% of the 1,652 surveys mailed. At that level of return, the respondent population was more than sufficient to achieve a representative sampling of constables.

This review was similar to and the findings were consistent with the results of a review of insurance availability conducted in October 1994, prior to the December 1994 initiation of the insurance mandate. In summary, the survey found that while the number of insurance providers has decreased from eight to three since 1994, the insurance is still readily available. Further, the cost of insurance at \$250 to \$301 is lower than the range of cost reported in 1994, which was \$300 to \$500. Additional results of the survey are listed below. Please note that all reported percentages reflect the percentage of the total (599) responses received.

Survey results indicate that three companies are currently providing liability insurance to constables: Capitol Indemnity Corporation insures 246 (41%) of the respondents; Columbia Casualty insures 185 (31%), and, Hallmark Insurance Company insures 48 (8%). The remaining 120 (20%) respondents did not identify their insurance company.

A total of 481 (80%) respondents provided information on the cost of their insurance coverage. Although there was some minor variance in reported costs, the yearly cost of the professional liability insurance was reported as: \$250 for both Capital Indemnity and Hallmark, and \$301 for Columbia Casualty Company. The remaining 118 (20%) respondents provided no cost information for their insurance.

The majority of respondents, 401 (67%), obtain their liability insurance independently; 192 (32%) report that they purchase insurance through a constable association; and, six (1%) reported receiving insurance coverage through a municipality.

Respondents reported that all three of the insurance companies provide coverage for use of firearms and prisoner transports. The majority of respondents 245 (41%) reported having firearms and prisoner transports coverage with a deductible; 140 (23%) reported various combinations of coverage; 96 (16%) reported having firearms and prisoner transports coverage without a deductible; and, 118 (20%) reported nothing regarding type of coverage.

In reviewing the coverage limits on the policies, respondents reported that Capitol Indemnity and Hallmark have a total aggregate coverage greater than the required \$500,000 per year aggregate and coverage per incident greater than the required \$250,000 per incident. Columbia Casualty Company policy coverage meets the levels required by Act 1984-2, \$500,00 per year aggregate and \$250,000 per incident.

With the exception of Columbia Casualty with annual coverage dates of March 1 to April 30, respondents reported a wide range of policy start dates.

A total of 98 (16%) of respondents reported that they currently do not have proof of liability insurance on file with their clerks of courts. Of these, 62 (10%) respondents reported that they do not presently have a policy of professional liability insurance. The remaining 36 (6%) respondents reported that they presently have the professional liability insurance, but they don't have it on file with their clerks of courts.

416 (69%) respondents reported that their insurance carrier provided them with a certificate of liability insurance for filing with the clerks of courts and 183 (31%) reported that their insurance carrier did not provide such a document.

### **Insurance Reporting by Constables – Survey of Clerks of Courts**

In early September, PCCD staff mailed a listing by county, of constables who possessed current certification under Act 1994-44, to 66 county clerks of courts. The clerks of courts were asked to provide the following information for each constable listed for their county: is each person listed still a constable or deputy constable; do they have professional liability insurance on file with the clerk of courts for 2000; and, what is the expiration date of the insurance.

All 66 clerks of courts, in counties that have constables, responded to the survey. In the aggregate, results of the survey reveal that of the total 1,576 constables covered by the clerks of courts survey, 71.5% or 1,127 have proof of liability insurance on file with the clerks of courts. The remaining 28.5% or 449 do not have such proof filed. A table of the data reported by each county clerk of courts, who responded to the survey, is attached to this Bulletin.

#### **Follow-up County Analysis:**

In order to assess whether constables, who do not have liability insurance filed with the clerks of courts, are performing judicial duties and receiving payment for those duties, PCCD staff selected a sample of six counties for further review. Staff provided a list of the uninsured constables, as reported by the clerks of courts from each of the six counties, to the Administrative Office of Pennsylvania Courts (AOPC). The AOPC produced a print out for each county that showed each time a constable was paid thru the AOPC system and provided the following information: date, district court number, docket number, mileage paid, and fee paid. The results of this review are described below, in the aggregate.

The percentage and number of Certified constables who do not have professional liability insurance on file with the clerk of courts ranges from 19% (9 of 48) to 46% (15 of 32). The percentage and number of certified constables without professional liability insurance who have been paid for performing judicial duties within the past twelve months ranges from a low of 22% (9 of 48) to a high of 87% (13 of 15).

The highest number of payments made to a single constable who performed judicial duties while uninsured was 1,632 and the lowest number of payments made to a single constable who performed judicial duties while uninsured was one. The total fees paid to individual constables who performed judicial duties while uninsured during the twelve-month period range from a low of \$10 to a high of \$29,376.

## **Implications of Survey Results**

Overall, the results of these two surveys indicate that there is a problem with adherence to the professional liability insurance mandates of Act 1994-44. To reiterate the results, the surveys found that the percentage of constables who do not have insurance or do not have it on file with the clerks of courts is 16% (68 of 599 respondents) as reported by constables and 28.5% (449 of 1,576 constables) as reported by clerks of courts.

While the results of the two surveys differ slightly, the difference between 16% and 28.5% of constables not being insured or not reporting insurance may be attributable to the nature of the responses received. A number of phone calls received by PCCD staff concerning the survey indicate that a perception among constables without insurance was that it was not in their best interest to respond to the survey or to accurately report that they do not possess insurance. The lower rate of response to the constable survey and the lower rate of self-reported failure to possess insurance may be attributable to that perception.

It is likely that the results of the clerks of courts survey provide a more accurate picture of compliance with the professional liability insurance provisions of the Act; however, evidence received by staff may indicate that the 28.5% figure is not entirely accurate. The higher reported percentage of uninsured constables in the clerks of courts survey, in part, may reflect the fact that some clerks of courts are not keeping accurate records. PCCD staff spoke with a number of constables, whom clerks of courts listed as not having insurance, when the constables had filed with the clerks of courts as required and received a receipt of that filing. In addition, three clerks of courts readily stated that they do not have records of constable professional liability insurance.

Despite these potential difficulties in interpreting the surveys' results, the percentages reported from each survey establishes the possibility of a 16% to 28.5% range of uninsured constables. When that range is applied to the number of certified constables, 1,487 as of January 2001, it points to a potential for between 238 and 424 constables, who may not be in compliance with the insurance requirements of the Act. While perhaps not overwhelming in its extent, the problem is significant enough to warrant concern and action by the Board/PCCD.

As previously noted, Section 2942(b) of Act 44 mandates that constables and deputy constables must file with the clerk of courts proof that they have, currently in force, a policy of professional liability insurance covering each individual in the performance of his judicial duties. Section 2942 (c), further provides that any constable or deputy constable who fails, neglects or refuses to maintain a current insurance policy as required or fails to file proof of insurance with the clerk of courts shall cease automatically to be certified to perform judicial duties.

The findings of these two surveys potentially represent a significant problem for the Board in accurately reflecting the certification status of constables. The problem is created by assignment of responsibilities under Act 44, Section 2942. That section establishes the responsibility of individual constables to possess liability insurance and to file proof of insurance with the clerk of courts. It also establishes the responsibility of the clerk of courts of each county to keep records regarding constables' liability insurance.

While establishing a linkage between constables and clerks of courts, the Act does not require that the insurance information be reported to the Board, which is responsible for the certification of constables. This creates a gap in the accuracy of the Board's certification of constables, since the Board and the PCCD are unaware of constables who do not possess insurance and, as a result, should be decertified under Section 2942(c).

### **Actions to Rectify the Problem**

At its December 2000 meeting, the Board identified efforts that are presently being taken, within the structure of responsibilities established by Act 44, to correct the problems that exist in linking the possession/reporting of professional liability insurance to constable certifications. Among those efforts is the establishment of liaison with the Prothonotarys and Clerks of Courts Association and individual clerks of courts to enlist their assistance in reporting constable liability insurance to the PCCD.

The Board hopes that during 2001 this increased liaison will result in the establishment of a recurring schedule of periodic reporting of the insurance status of constables. Once the Board is confident that it is receiving periodic and dependable reports from the county officials responsible under Act 44 for keeping liability insurance records of constables, it is the Board's intent to use those reports to enforce the insurance mandates of Act 1994-44. If a constable is reported to be without professional liability insurance, and/or has not reported that insurance to the clerk of courts, the Act 44 certification of that constable will be suspended until he or she provides proof of compliance with the requirements of the Act.

**To reiterate, this issue of the Constables' Training Bulletin is intended to serve as a means of reminding constables of the professional liability insurance mandates of the Act and their responsibility to report insurance to the clerks of courts. It is also intended as notice to constables that the link between professional liability insurance and certification as a constable will be enforced.**

**As the Board moves forward with this effort, it is anticipated that additional information on enforcement of this Section will be transmitted in future issues of the Constables' Training Bulletin and/or by letter to constables.**

## INSURANCE REPORTING BY CONSTABLES SURVEY OF CLERKS OF COURTS

County	Total Certified Constables	Certified Constables With Insurance		Certified Constables Without Insurance	
		Number	Percent	Number	Percent
Adams	12	5	41.7%	7	58.3%
Allegheny	235	156	66.4%	79	33.6%
Armstrong	26	18	69.2%	8	30.8%
Beaver	31	26	83.9%	5	16.1%
Bedford	3	3	100.0%	0	0.0%
Berks	68	64	94.1%	4	5.9%
Blair	24	20	83.3%	4	16.7%
Bradford	10	7	70.0%	3	30.0%
Bucks	63	59	93.7%	4	6.3%
Butler	20	11	55.0%	9	45.0%
Cambria	27	23	85.2%	4	14.8%
Cameron	2	2	100.0%	0	0.0%
Carbon	12	9	75.0%	3	25.0%
Centre	10	3	30.0%	7	70.0%
Chester	79	44	55.7%	35	44.3%
Clarion	9	3	33.3%	6	66.7%
Clearfield	17	12	70.6%	5	29.4%
Clinton	7	6	85.7%	1	14.3%
Columbia	9	5	55.6%	4	44.4%
Crawford	11	10	90.9%	1	9.1%
Cumberland	20	15	75.0%	5	25.0%
Dauphin	35	20	57.1%	15	42.9%
Delaware	64	58	90.6%	6	9.4%
Elk	3	3	100.0%	0	0.0%
Erie	35	31	88.6%	4	11.4%
Fayette	69	44	63.8%	25	36.2%
Forest	0	0	0.0%	0	0.0%
Franklin	11	8	72.7%	3	27.3%
Fulton	1	0	0.0%	1	100.0%
Greene	11	6	54.5%	5	45.5%
Huntingdon	4	2	50.0%	2	50.0%
Indiana	15	14	93.3%	1	6.7%

## INSURANCE REPORTING BY CONSTABLES SURVEY OF CLERKS OF COURTS

County	Total Certified Constables	Certified Constables With Insurance		Certified Constables Without Insurance	
		Number	Percent	Number	Percent
Jefferson	8	5	62.5%	3	37.5%
Juniata	0	0	0.0%	0	0.0%
Lackawanna	32	17	53.1%	15	46.9%
Lancaster	64	48	75.0%	16	25.0%
Lawrence	19	14	73.7%	5	26.3%
Lebanon	12	10	83.3%	2	16.7%
Lehigh	27	18	66.7%	9	33.3%
Luzerne	67	55	82.1%	12	17.9%
Lycoming	13	9	69.2%	4	30.8%
McKean	2	1	50.0%	1	50.0%
Mercer	20	14	70.0%	6	30.0%
Mifflin	4	3	75.0%	1	25.0%
Monroe	19	16	84.2%	3	15.8%
Montgomery	66	50	75.8%	16	24.2%
Montour	1	1	100.0%	0	0.0%
Northampton	37	30	81.1%	7	18.9%
Northumberland	11	7	63.6%	4	36.4%
Perry	11	5	45.5%	6	54.5%
Pike	12	7	58.3%	5	41.7%
Potter	6	6	100.0%	0	0.0%
Schuylkill	17	8	47.1%	9	52.9%
Snyder	3	1	33.3%	2	66.7%
Somerset	8	4	50.0%	4	50.0%
Sullivan	0	0	0.0%	0	0.0%
Susquehanna	13	8	61.5%	5	38.5%
Tioga	8	8	100.0%	0	0.0%
Union	7	5	71.4%	2	28.6%
Venango	7	7	100.0%	0	0.0%
Warren	6	2	33.3%	4	66.7%
Washington	65	27	41.5%	38	58.5%
Wayne	13	9	69.2%	4	30.8%
Westmoreland	55	45	81.8%	10	18.2%
Wyoming	9	5	55.6%	4	44.4%
York	48	39	81.3%	9	18.8%
<b>Total</b>	<b>1576</b>	<b>1127</b>	<b>71.5%</b>	<b>449</b>	<b>28.5%</b>