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MEMORANDUM

TO: Wayne County Police Chiefs; Pennsylvania State Police - Honesdale Barracks Station Commander; Pennsylvania Fish and Boat Commission; Pennsylvania Game Commission; Pennsylvania Park Rangers; Federal Park Rangers; Assistant District Attorneys; Wayne County Detectives; Wayne County Court Administrator; Wayne County Communications Center; Wayne County Constables; Preston Township Board of Supervisors; Damascus Township Supervisors

FROM: A.G. Howell, Wayne County District Attorney 

DATE: January 4, 2022

REF: Constables

This memo is in response to questions and concerns raised by most, if not all, of the above agencies regarding recent questionable activities and declarations by constables. I am providing memorandum to lend some guidance and direction for the reasons that follow, including the safety of all interested parties, the safety of the community, and to ensure legal and proper crime prevention, investigation, and prosecution.

Legal summaries, case law and statutory authority related to constables is included for your review. Should you have any questions or concerns, please contact:

Chief County Detective Peter Hower at (570) 253-5970, extension 2255.

The District Attorney is the Chief Law Enforcement Officer in Wayne County.ⁱ As District Attorney, it is my duty to represent the Commonwealth's interests in the enforcement of its criminal laws.ⁱⁱ It is well recognized that District Attorneys have the authority to conduct criminal litigation and prosecutions on behalf of the Commonwealth, and "***to decide whether and when to prosecute, and whether and when to continue or discontinue a case(s).***"ⁱⁱⁱ But the responsibility and authority of the District Attorney is not limited to the prosecution of

individuals accused of committing crimes. My responsibility must and does extend beyond that to include (among other things), the administration of justice. The District Attorney and Assistants must uphold and defend the rights of both defendants and victims, and also protect the interests of the public.^{iv}

In order for the Office of the District Attorney to effectively and efficiently fulfill its mission, the District Attorney now issues the following directives:

- Constables are NOT police officers. A “constable” is very generally defined as a “person currently serving as constable or deputy constable” by statute and more specifically by case law.^v A constable's duties are limited by statute, which includes such actions as preserving the peace at election sites, service of process, collection of taxes and arrests for breach of the peace. *Id.* With this in mind, a constable and deputy constable will not have the word “Police” on their uniforms, patches, insignia, vehicles or any other item.
- Only a police officer who is certified by MPOETC or the Commonwealth of Pennsylvania, currently employed by one of the enumerated departments^{vi} AND acting within the scope of that employment has the authority to investigate suspected violations of the Crimes Code (PA Title 18), Controlled Substance Act (35 P. S. § § 780-101—780-144), and/or Vehicle Code (PA Title 75).
- Only a police officer who is certified by MPOETC or the Commonwealth of Pennsylvania, currently employed by one of the enumerated departments AND is acting within the scope of that employment is authorized to initiate or conduct a “stop” and/or investigative detention of any vehicle and/or driver of said vehicle for a suspected violation of the Crimes Code, Controlled Substance Act, and/or Vehicle Code.
- A constable is authorized only to arrest for breaches of the peace or felonies committed in their presence.
 - If a constable should witness an accident and, upon checking to see if the driver and/or any passenger(s) need assistance, observe any obviously intoxicated driver, they may safely detain the individual in their personal vehicle^{vii} until a police officer with jurisdiction arrives to transport that individual and follow the policies and procedures already in place regarding the arrest and transport of individuals suspected of Driving Under the Influence.
 - Constables must immediately contact the Wayne County Communication Center immediately after safely detaining the individual to request a police officer with jurisdiction. The Communication Center shall immediately follow the policies and procedures already in place for contacting the police department and an on-call ADA.
 - If a constable is driving his or her personal vehicle and observes a person travelling in a manner that should cause them to suspect the person is intoxicated or violating any other provision of the Crimes Code, Controlled Substance Act, and/or Vehicle Code, the State Constable may NOT stop that vehicle or attempt to pull the vehicle over for the purpose of an “investigative detention.”

- Should this scenario arise, the constable will immediately contact the Wayne County Communication Center or 9-1-1, identify themselves and request the assistance of the police department with jurisdiction. In addition to notifying the police department with jurisdiction, the Communication Center shall also notify the on-call ADA.
 - If a constable is contacted by a person who is reporting a crime or incident, the Constable will immediately advise the person to contact 9-1-1 or the number for the local police department to report the crime or incident. The Constable will also contact 9-1-1.
- Any constable acting in their official capacity, who interacts with any person in Wayne County must identify themselves as a Constable and may NOT refer to themselves as a “police officer” or hold themselves out as a “police officer.”
- A constable’s identification as a “State Constable” is a misnomer. A constable is a locally elected, municipal official and does not hold any state position. Constables are independent contractors, belonging analytically to the executive branch of government. In re Act 147 of 1990, 528 Pa. 460, 598 A.2d 985 (1991). Constables are defined as “related staff” under the Judicial Code. Rosenwald v. Barbieri, 501 Pa. 563, 462 A.2d 644 (1983). Their jurisdiction is the local area of election, not statewide. As stated in statutes and case law, their Authority is dictated by statute – to be utilized for the good of their constituents OR by order of the court (warrant – writ, etc.). They then may act to go outside their jurisdiction and execute the orders of the court, based on Rule 307 of the Pennsylvania Rules of Civil Procedure, and that is all.
 - Per Title 44 Pa.C.S.A. Law and Justice § 7114 (b) **Procedure upon election --** Every person elected to the office of constable in a township shall appear in court on the first day of the next court of common pleas of the same county to accept or decline the office.
 - Per Title 44 Pa.C.S.A. Law and Justice § 7122 (a) **General rule --** Sole power to appoint deputy constables in a ward, borough or township is vested in the constable of the ward, borough or township, subject to approval of the court of common pleas under subsection (b). No person shall be appointed as a deputy constable unless, at the time of appointment, he is a bona fide resident of the ward, borough or township for which he is appointed and he continues to be a bona fide resident for the duration of the appointment.
 - Per Title 44 Pa.C.S.A. Law and Justice § 7122 (b) **Court approval and qualifications** — (1) Except as set forth in paragraph (2), no deputy shall be appointed, either by general or partial deputization, without approbation of the court of common pleas of the county, except for special appointments in a civil suit or proceeding, at the request and risk of the plaintiff or his agent. If a deputy no longer resides in, or ceases to be a qualified elector of, the ward in which he was appointed to serve, the court of common pleas may revoke the appointment of the deputy upon petition of five duly qualified electors of the ward and proof of facts requiring revocation.

- Constables may NOT be in possession of or utilize red and blue flashing lights or use sirens. Under PA Title 75 § 102, a constable or his private automobile does not fit within the definitions of an *Emergency Service Responder* OR of an *Emergency Vehicle*. It is not within that class of vehicles which may display flashing red or blue lights or use sirens, PA Title 75 § 4571 (d) - *Visual and audible signals on emergency vehicles - Vehicles prohibited from using signals - Except as otherwise specifically provided in this section, no vehicle other than an emergency vehicle may be equipped with revolving or flashing lights or audible warning systems identical or similar to those specified in subsections (a) and (b)*.
- According to the JNET Steering Committee in November 2019, it is the Commonwealth's policy that any information derived via JNET may NOT be disseminated to constables, regardless of the source, purpose or business objective for the sharing of that information. The dissemination of information obtained via JNET is considered a misuse of that information and will be subject to sanctions as per JNET policy.

This directive is based on the current legal and statutory authority. Police Officers that are certified by MPOETC or the Commonwealth of Pennsylvania and employed by one of the Police Departments identified in footnote V, clearly have the authority to conduct investigations and/or to “stop” or place in investigative detention a vehicle based on reasonable suspicion and/or probable cause depending on the alleged conduct. This is without question. The same cannot be said of constables.

Based on caselaw from the Pennsylvania Supreme Court, *which is binding and precedential on all other courts*, and is supported by statutory authority, constables are NOT authorized to enforce the Vehicle Code and their arrest authority is limited to in-presence felonies or “breaches of the peace.” This determination is consistent with the statutory authority and case law.

Our Courts have recognized that the term “breaches of the peace” is archaic, however, the Courts have clearly defined in more recent decisions and opinions. Our appellate courts have treated it as a fluid “concept” that is determined on a case-by-case basis.^{viii} Those cases where a constable's conduct is deemed to be improper, or the facts giving rise to action by a constable does not qualify as a “breach of the peace”, evidence may be suppressed and/or a conviction may be reversed. One of the variety of reasons for this directive is to avoid such an outcome.

Given the decision and opinions of our state appellate courts to define exactly what conduct does or does not constitute a “breach of the peace” or to provide guidance and understanding regarding the role and authority of constables within the Criminal Justice system, to the extent they even have any on a limited basis, the District Attorney's Office will neither condone nor approve any investigation and/or the stopping or placing in “investigative detention,” any vehicle within Wayne County by a constable or duly appointed deputy constable. To do otherwise would be flouting my duty and the commitment of my Assistants to seek justice while defending the rights of both the defendants and victims, and protecting the interests of the public.

Contrary to the purported assertions, the Superior Court case Commonwealth v. Allen, 206 A.3d 1123, 2019 PA Super 88 (2019) does NOT give state constables the authority to investigate or make arrests for Vehicle Code violations. As stated *infra*, the facts regarding a potential “breach

of the peace” that occur in the presence of a constable are paramount in a broader discussion of Allen and any interpretation.

Accordingly, in light of the recent declarations by constables to the public and legitimate Police Departments and/or Barracks, I find it necessary to set forth these directives and procedures to ensure the administration of justice may strive to be fair, effective, and efficient. To be clear, based on precedence and statutory authority, constables do NOT have the authority to investigate and/or stop (investigatively detain or “pullover”) any vehicles and/or drivers of said vehicles for suspected violations of the Crimes Code, Controlled Substance Act and/or Vehicle Code.

These directives are necessary to uphold the integrity of crime prevention, investigation, and prosecutions. A constable and deputy constable can surely be helpful to keep Wayne County a great place to live, work and raise our families, however, their authority is limited and must be communicated and followed in an open and respectful manner amongst all stakeholders.

ⁱ71 P.S. § 732-206

ⁱⁱ Harris v. Pernsley, 820 F.2d 592 (3d Cir. 1987), *quoting* Commonwealth ex rel. Specter v. Bauer, 1261 A.2d 573, 575 (Pa. 1970). *See also* Commonwealth v. Bailey, 775 A.2d 881 (Pa.Cmwth. 2001); Mummau v. Ranck, 531 F.Supp. 402 (E.D.Pa. 1982).

ⁱⁱⁱ Commonwealth v. DiPasquale, 246, A.2d 430 (Pa. 1968). *See e.g.*, Carter v. City of Phila., 181 F.3d 339 (3d Cir. 1999); Com. ex rel. Specter v. Martin, 232 A.2d 729 (Pa. 1967); Commonwealth v. Clancy, 192 A.3d 44 (Pa.Super. 2018); Commonwealth v. Bailey, 775 A.2d 881 (Pa.Cmwth. 2001).

^{iv} Carter, *supra* (DA can have “a dual or hybrid status”; DA functions extend to decisions and policies regarding the implementation or use of investigative procedures and techniques); Coleman v. Kaye, 87 F.3d 1491 (3d Cir.1996) (DA’s may act to “execut[e] their sworn duties to enforce the law by making use of all the tools lawfully available to them to combat crime.”); N.N. v. Tunkhannock Area School Dist., 801 F.Supp.2d 312 (M.D.Pa. 2011) (DA’s responsibilities extend beyond prosecuting; can include “local policies relating to training, supervision and discipline,” as well as other administrative and policy-making powers); Bergdoll v. City of York, 2009 WL 3698023 (M.D.Pa. 2009) (DA was a county policymaker with regard to the function of advising police on complaints of police misconduct and the function of guiding training on the same).

^v 44 Pa C.S.A. § 7101 et seq.; In re Act 147 of 1990, 528 Pa. 460, 598 A.2d 985 (1991); Com. v. Murphy, 2021 WL 4520667 (PA Super. Ct. 2021); Com. v. Rodriguez, 2013 PA Super 302, 81 A.3d 103 (2013); Ward v. Com., Dept. of Transp., Bureau of Motor Vehicles, 65 A.3d 1078 (Pa. Commw. Ct. 2013); Explanatory Comment to Pa. R. J. A. No. 1907.2(a).

^{vi} Hawley Borough, Honesdale Borough, Lehigh Township, Waymart Borough, Pennsylvania State Police, Pennsylvania Fish and Boat Commission, Pennsylvania Game Commission, Pennsylvania Park Ranger, National Park Rangers and the Wayne County District Attorney’s Office - County Detectives. The Attorney General’s Office and federal agencies acting in Wayne County are not included in this guidance and directives as their statutory authority is clear. Nothing in this memo is to be construed as excluding or including them. This list is meant to **EXCLUDE** constables.

^{vii} All vehicles driven by a constable, regardless of any markings, lights, etc., that they choose to place on their vehicle, are “personal” vehicles as there is **no** “official” constable vehicle recognized by the Pennsylvania Department of Transportation.

^{viii} In Commonwealth v. Copenhaver, 229 A.3d 242 (Pa. 2020) the Court held “that – *for purposes of a deputy sheriff’s common law authority to enforce the Vehicle Code* – a breach of the peace arises from an act or circumstance that causes harm to persons or property, or has a reasonable potential to cause such harm, or otherwise to provoke violence, danger, or disruption to public order.” Unlike certain deputy sheriffs, who may have the proper training and statutory authority based on their jurisdiction, constables have no authority to enforce the Vehicle Code.