

CHAPTER 12. CONSTABLE

Roles and Responsibilities

The role of town constable varies from town to town, and depends upon whether he or she is elected or appointed, and whether the voters have elected to limit his or her law enforcement powers. At one end of the spectrum, the town constable is the town's local law enforcement officer, with all powers of search, seizure, and arrest within the town. On the other end, the constable only has the power to serve civil process, assist the health officer in the discharge of his or her duties, destroy unlicensed dogs, kill injured deer, remove disorderly people from town meeting, and collect taxes if no tax collector is elected. As of July 1, 2012 all constables are now required to have training to exercise law enforcement authority.

- A town must elect a first constable and, if needed, a second at annual town meeting. Alternatively, a town may vote to authorize the selectboard to appoint a constable. 17 V.S.A. §§ 2646(7), 2651a. A constable's term of office is for one year unless a town votes to elect or appoint the constable for a two-year term. In addition, towns may vote to prohibit the constable from executing any law enforcement authority. As of July 1, 2012, all constables performing a law enforcement function are required to have criminal justice training. 24 V.S.A. § 1936a. Constables who exercise law enforcement powers are considered "law enforcement officers" and cannot exercise those powers before completing the basic training requirements prescribed by the Vermont Criminal Justice Council.
- The town may vote to pay the constable a salary and at town meeting fix the sum to be paid. 24 V.S.A. § 932. In addition, the constable may collect fees for service of civil process and for the transportation of juveniles, mental patients and prisoners. 32 V.S.A. §§ 1591, 1593. If the voters fix no salary, the selectboard may set a salary for the constable.
- A constable may act only when authorized by a specific statute.
- A constable who has law enforcement authority has the powers of search, seizure, and arrest within the town. V.R.Cr.P. 3, 41. Unlike other law enforcement officers, however, constables do not have statewide jurisdiction. Their jurisdiction is limited to the boundaries of the town. *State v. Hart*, 149 Vt. 104 (1987). However, a constable who has not been prohibited from exercising law enforcement authority may transport a person whom he or she has arrested for driving under the influence (DUI) to a police department outside the town for processing, and the constable may complete the processing if he or she has been certified to do so by the Vermont Criminal Justice Training Council. 24 V.S.A. § 1936a(c).
- All constables may serve civil and criminal process, destroy animals when required by law, kill injured deer in accordance with law, assist the health officer in the exercise of his or her duties, serve as a district court officer, remove disorderly people from town meeting, and collect taxes if no tax collector is elected. 24 V.S.A. § 1936a(b).
- The governor may employ constables and other law enforcement officers in the event of a state and/or national emergency. 20 V.S.A. § 2221.

History. The term constable comes from Medieval England, where the original constables were military officers in a knight's household and later law enforcement officers in local government. Like the sheriff (the shire reeve), the constable, in name and duties, came to America with the first English settlers. In Vermont, constables appeared by title in the first Constitution of the Republic of Vermont in 1777, but references to them were expunged when the document was amended in 1974. The office itself has suffered corresponding loss of both power and prestige.

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Election, Appointment and Removal of Constables. At present, towns may elect a first constable and, if needed, a second constable from among its legally qualified voters at annual town meeting. Alternatively, a town may vote by Australian ballot to authorize the selectboard to appoint a constable. An appointed constable does not have to be a resident of the town. 17 V.S.A. §§ 2646, 2651a. Upon petition of five percent of the voters of the municipality at least 15 days before the vote, a vote to authorize the selectboard to appoint a town constable must be approved by a two-thirds majority to be effective. Once adopted, the selectboard will continue to have the power to appoint a constable until this power is rescinded by the voters at an annual or special meeting of the town. 17 V.S.A. § 2651a.

An appointed constable may be removed for cause after notice is given to the constable and a hearing is held by the selectboard. 17 V.S.A. § 2651a. The town must explain its reasons for the dismissal, and the constable must be given an opportunity to defend him or herself, including bringing witnesses before the board. An elected constable may not be removed by the selectboard. A constable's term of office is for one year unless a town votes to elect or appoint the constable for a two-year term. 17 V.S.A. § 2646(7).

Oath and Bond Requirements. The constable must take an oath (24 V.S.A. § 831) and must be bonded prior to embarking on his or her duties. The amount of the bond is set by the selectboard, which may ask for a larger amount at any time if it sees fit. If the bond is not received within ten days from the time it is requested, the office of constable is vacant. 24 V.S.A. § 832. It will then be filled by the selectboard by appointment, which will last until the next annual or special town meeting. 24 V.S.A. §§ 961-963. However, if the selectboard fails to set an amount or request a bond from the constable, no vacancy is created. *Weston v. Sprague*, 54 Vt. 395 (1882).

Incompatible Offices. A first constable cannot serve as a selectboard member, school director, or auditor. Neither a spouse of a first constable nor anyone assisting the first constable in the discharge of official duties may be an auditor. An elected constable may not be town manager. 17 V.S.A. § 2647. These rules do not apply to towns having 25 or fewer legal voters. 17 V.S.A. § 2648.

Independence of Office. An elected constable is an independent official who is not under the direction or control of the selectboard. However, a constable may not spend town money. This means that if a constable needs a uniform or equipment, the selectboard must agree to spend this money on behalf of the town. If a salary for the constable is not separately voted at town meeting, the selectboard may set the constable's salary, and may limit the number of hours of law enforcement activities the town will pay for in a given year.

First and second constables are independent from each other; neither acts as the supervisor of the other.

Training Requirements; Law Enforcement Authority. Previously, an elected constable was not generally required to have any special training to exercise the functions of the position. However, in response to a concern that locally elected constables who act without proper training could harm individuals or subject the municipality to liability, the legislature amended the law to require all constables, either elected or appointed, to complete a course of training offered or approved by the Criminal Justice Training Council before any constable may exercise law enforcement authority. This law went into effect on July 1, 2012. Towns may continue to vote to prohibit an elected or appointed constable from exercising any law enforcement authority, regardless of whether the official has had training. 24 V.S.A. § 1936a

A constable must complete basic training requirements if he or she is to exercise law enforcement authority. 20 V.S.A. § 2358. Therefore, if the voters have authorized the selectboard to appoint a constable and have not restricted the constable's law enforcement authority, the selectboard should ensure that its appointee has completed the required training course. (See below.) Alternatively, the selectboard

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could inform an *untrained* appointee that it is a violation of state law for him or her to undertake any law enforcement activity, and that such a violation will be cause for removal from office.

A constable is generally considered a part-time law enforcement officer, working fewer than 32 hours a week and 25 weeks or less a year. 20 V.S.A. § 2358(c). To become a *certified* part-time law enforcement officer, a town constable must complete a three-part training from the Criminal Justice Training Council (the “police academy”). To enroll in the police academy, the constable must be 18 years of age, have a high school diploma or a GED, and must pass a written examination, a physical examination, and a background check.

Under these rules, full-time constables (those employed for more than 32 hours per week and more than 25 weeks per year) must satisfactorily complete a minimum of 550 hours of training within six months of their date of appointment before exercising full law enforcement powers. Part-time constables must satisfactorily complete a minimum of 58 hours of classroom instruction in order to receive a provisional 12-month certification. This certificate allows part-time constables to exercise law enforcement powers, but only under the direct supervision and control of fully certified law enforcement officers. In order to exercise full law enforcement authority, part-time constables must complete an additional 110 hours of training during a 12-month period. Constables, whether full or part-time cannot exercise their law enforcement powers on a piecemeal basis subject to the satisfactory completion of only a portion of their training.

In addition to the general training requirements, some criminal justice functions require specialized training. For example, a constable who operates electronic equipment to enforce speed limits must first be certified in the use of such equipment by the Criminal Justice Training Council.

Certification is also required prior to obtaining a blood sample or using a breath testing device on a driver who is suspected of driving under the influence (23 V.S.A. § 1200(5)) and for VIN verification. A constable without this training is authorized to issue a ticket for speeding or gross negligence in the operation of a vehicle (V.R.Cr.P. Rule 3; 23 V.S.A. §§ 1081, 1091, 1097, 1128), but without documentation of certification, it might be difficult to prove the case in court if challenged. The Criminal Justice Training Council also advises that if a constable will be issuing Vermont traffic citations, the town should provide the Court Administrator’s Office with the constable’s name, officer’s number, and history of any law enforcement training or certification. This information is in turn provided to the traffic court judges since, if the citation is contested, the court will want to verify the constable’s authority and relevant training history. The Court Administrator’s Office issues ticket books and can provide the schedule of fines. The schedule of fines can also be found online at www.vermontjudiciary.org.

Scope of Authority. Unlike other law enforcement officers who have historically enjoyed wide implied law enforcement powers, the authority of town constables has been limited to only those powers and duties expressly granted by statute, and only those implied powers necessary to carry out the express duties. Op. Atty. Gen. No. 52-80 (Jan. 8, 1980). Thus, a constable may only act when authorized by a specific statute, and this power may not be extended by implication. See the table at the end of this chapter for a list of specific statutes under which constables may act.

A constable with law enforcement authority has the power of search, seizure, and arrest within the town. V.R.Cr.P. 3, 41. Unlike other law enforcement officers, however, constables do not have statewide jurisdiction. As mentioned above, their jurisdiction is limited to the boundaries of the town. *State v. Hart*, 149 Vt. 104 (1987). A constable who has not been prohibited from exercising law enforcement authority may transport a person whom he or she has arrested for driving under the influence (DUI) to a police department outside the town for processing, and the constable may complete the processing if he or she has been certified to do so by the Vermont Criminal Justice Training Council. 24 V.S.A. § 1936a(c).

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Other Duties and Functions. A constable, like a sheriff, may serve civil and criminal process – including complaints, summonses, subpoenas, writs, and restraining orders – anywhere in the state and returnable to any court. 12 V.S.A. § 691. In service of process, constables have the same powers and are subject to the same liabilities and penalties as sheriffs. 12 V.S.A. § 693. No constable is allowed to serve writs in cases in which he or she has a personal and/or financial interest in the debt involved. 12 V.S.A. § 694.

In addition, a constable is authorized to collect delinquent taxes, when ordered to do so by the tax collector, by seizing and selling the delinquent taxpayer's property by legal process. 32 V.S.A. § 5139. A constable will become tax collector if no specific officer by that title is elected at town meeting. 24 V.S.A. § 1529. A constable may be appointed as a court officer for district court (4 V.S.A. § 446), and may transport prisoners and mental patients (24 V.S.A. § 296). A constable is authorized to destroy unlicensed animals, following the requirements of 20 V.S.A. §§ 3621-3623, and may kill an injured deer in accordance with 10 V.S.A. § 4749. The constable may assist the health officer in the discharge of his or her duties. 18 V.S.A. § 617. During town meeting, the constable may be called upon by the moderator to remove a persistently disorderly person who is disturbing the meeting. 17 V.S.A. § 2659.

Twenty V.S.A. § 2221 states that the governor may employ constables and other law enforcement officers for the preservation of the public peace when, in his or her judgment, the public good requires it. This only authorizes the employment of additional constables (and law enforcement officers) using state funds. It does not enlarge the scope of their authority.

It is no longer possible for a town to appoint special constables. Instead, that need is answered in towns without a police force by the appointment of temporary police officers to work under the direction of the constable. 24 V.S.A. §§ 1931(a), 1936. The temporary police officers are required to have completed police training. 24 V.S.A. § 1936 (b).

Constables are not automatically authorized to enforce local ordinances in the town. Selectboards that have enacted civil ordinances can designate the officials who are authorized to enforce the civil ordinances by issuing tickets, and can designate those officials who may represent the town in the Judicial Bureau when a ticket is appealed. The designated individual may be the town constable, but the selectboard is not required to appoint the constable to these positions. If a municipality has retained some or all of its criminal ordinances, then a constable with law enforcement authority may enforce those ordinances.

Unorganized Towns and Gores. The constable's powers are given to the supervisor in all unorganized towns and gores. 24 V.S.A. § 1353.

For more information about the training opportunities for constables visit the Criminal Justice Training Council website at vcjtc.vermont.gov or call 802-483-6228.

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Duties that a Constable May Perform under Vermont Statutes:

7 V.S.A. §§ 104, 564, 571, 600, 659.....	Enforce alcohol laws.
10 V.S.A. §§ 4748, 4749.....	Deal with injured deer or dogs chasing deer.
13 V.S.A. § 901.....	Quell riots.
13 V.S.A. § 1812.....	Seize forged or counterfeit notes or coins and the instruments used for making them.
13 V.S.A. § 2137.....	Seize illegal gambling equipment.
13 V.S.A. § 3404.....	Arrest persons suspected of treason or related offenses.
13 V.S.A. § 3762.....	Search for remains of dead person that have been disinterred and concealed, as ordered by district court judge.
13 V.S.A. §§ 4947, 4953.....	Assist in extradition.
14 V.S.A. § 3005.....	Apprehend guardian who refuses to give up guardianship for a minor child.
15 V.S.A. § 714.....	Assist in enforcing liens in divorce, desertion, and support cases.
16 V.S.A. § 1125.....	Act as truant officer ex officio.
17 V.S.A. § 2659.....	Preserve order at meetings and elections.
18 V.S.A. § 7105.....	Arrest and return persons who have escaped from a state mental hospital or training school.
20 V.S.A. § 27.....	Be recruited as auxiliary state police in civil defense emergencies.
20 V.S.A. § 2221.....	Be employed by the governor to help preserve the public peace.
20 V.S.A. § 3134.....	Seize illegal fireworks and explosives.
20 V.S.A. §§ 3624.....	Humanely destroy unlicensed dogs when a warrant has been issued.
23 V.S.A. §§ 2084, 3831.....	Report theft or recovery of motor vehicles or motor boats.
24 V.S.A. § 296.....	Transport of prisoners.
24 V.S.A. § 301.....	Require a citizen to assist him or her in the execution of certain duties.
24 V.S.A. § 1529.....	Collect taxes if no tax collector is elected.
24 V.S.A. § 1937.....	Make reciprocal arrangements with police in neighboring states.
32 V.S.A. § 3109.....	Be hired by the state commissioner of taxes to collect taxes.
32 V.S.A. § 5079(d).....	Take possession of illegally moved mobile homes.
32 V.S.A. § 5139.....	Collect delinquent property tax.
V.R.Cr.P. Rule #3	Arrest without warrant, in certain circumstances, or issue a citation.
V.R.Cr.P. Rule #4	Request a summons or an arrest warrant.