



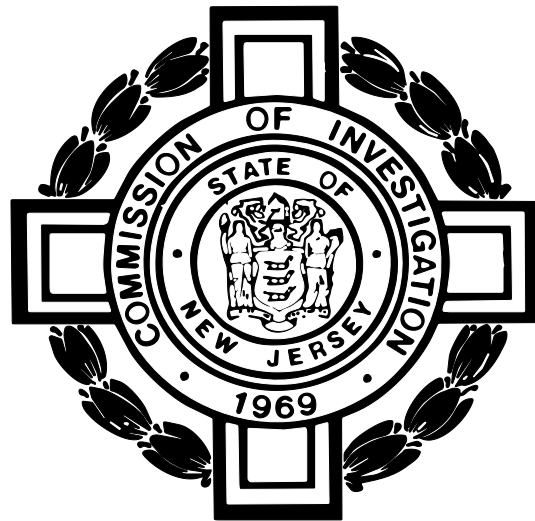
*State of New Jersey*  
*Commission of Investigation*

**ABUSING**  
**THE**  
**BADGE**

**A Report on the SCI's  
Investigation into  
Constables in New Jersey**

*December 2021*

*State of New Jersey  
Commission of Investigation*



**ABUSING  
THE  
BADGE**

**A Report on the SCI's  
Investigation into Constables  
in New Jersey**

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December 2021

Governor Phil Murphy

The President and Members of the Senate

The Speaker and Members of the General Assembly

The State Commission of Investigation, pursuant to N.J.S.A. 52:9M-1 to -20, herewith submits its final report of findings and recommendations stemming from an investigation into inconsistent practices and abuses related to the appointment of constables in New Jersey.

Respectfully,

Handwritten signature of Joseph F. Scancarella in black ink.

Joseph F. Scancarella

Chair

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Robert J. Burzichelli

Commissioner

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Rosemary Iannacone

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## Introduction

As local police exchanged gunfire with two suspects for hours during a deadly mass shooting event in Jersey City on Dec. 10, 2019, scores of professionally trained law enforcement personnel, including SWAT teams and other first responders sporting full tactical gear, arrived to provide backup.

Schools and hospitals in the surrounding neighborhood were locked down. Major roadways were closed. Police overseeing the situation undertook a strategic, methodical and coordinated response to seal off the entire area surrounding the kosher market where most of the shooting occurred. A half-block away, a phalanx of police assembled in support as other officers went door-to-door to usher residents and business owners safely away from the chaotic scene.

By the end of the day's violent rampage, six people – including a police officer and the two shooters armed with high-caliber assault weapons responsible for the mass shooting – would be dead. Authorities believe the shooters specifically engaged that day in a targeted attack against local Jewish residents and law enforcement in what remains in the long-storied history of Jersey City among the community's most traumatic moments of turmoil, confusion and terror.

Essex County Constable Andre Morton – founder of the County Constables Association of New Jersey – showed up at the scene in Hudson County by choice. It marked one of three times in his seven-year appointment as a volunteer constable that he would draw his own gun. He and a group of several other Essex County constables showed up that day without invitation or oversight by police scene commanders. The constables heard the events unfolding on police radios they monitored and took it upon themselves to show up and get involved.

Yet Morton testified before the State Commission of Investigation that prior to that moment, he and those who accompanied him had never received any type of training, guidance or oversight whatsoever as a constable, much less the kind of professional preparation needed to properly support law enforcement during the harrowing events that occurred in Jersey City. It is even questionable as to whether the constables held the legal authority to be on the scene or carry and – in some instances – draw their weapons that day.

Numerous professionally trained and credentialed law enforcers in New Jersey told the Commission that situations like the one that occurred on Dec. 10, 2019, are the last place untrained and unsupervised constables like Morton and his fellow constables should be involved. While they and the public were left unharmed by their actions that day, law enforcement leaders told the SCI that the events in Jersey City and in other questionable instances through the years discovered during the Commission's inquiry could have ended with horribly different outcomes. As importantly, they warned, the unchecked actions illustrate the considerable risk to police and public safety when constables – untrained, sometimes armed and largely unsupervised private citizens – insert themselves in policing matters, particularly ones involving dangerous and quickly unfolding situations.

Constables, along with watchmen, were the pioneers of law enforcement dating back to Colonial times when local townspeople were responsible for upholding law and order, long before the advent of modern policing. But despite the highly stratified and sophisticated law enforcement hierarchy in place today, numerous New Jersey municipalities still appoint constables – an obscure volunteer post that in some communities is nothing more than a ceremonial title doled out by local politicians, and in other places, empowers inexperienced civilians to perform certain low-level policing duties, often with little to no supervision. Further complicating the situation is that some constables have exploited the ambiguity of the vague, imprecise and outdated statutory language concerning the duties, responsibilities and powers of the position to their own advantage, and in some cases, personal profit.

The Commission initially launched an investigation into the statewide use, practices and oversight of constables after Essex County law enforcement authorities raised concerns to the SCI that several appointees there had not only engaged in policing activities far beyond the narrow scope of their locally-mandated responsibilities but that some had also intentionally misrepresented themselves as sworn law enforcement personnel. Authorities worried that such unauthorized acts and false representations by constables could confuse – or possibly even endanger – the public. Additionally, some law enforcement leaders said they worry about the possible legal liability associated with harm or damage caused by constables, not to mention the resultant costs it could pass on to taxpayers.

Subsequent investigation by the Commission confirmed that certain constables have indeed portrayed themselves as *bona fide* law enforcement officers through their appearance and actions. Along with wearing regalia – often purchased by the constables themselves – that looks remarkably similar to those worn by police officers, some use walkie-talkies to communicate with fellow members or etch law enforcement mottos like “Protect and Serve” on their vehicles. Some have faced criminal charges for impersonating police officers, including a constable who allegedly pulled over a taxi driver and demanded production of his motor vehicle credentials after the two were involved in a July 2020 traffic dispute in Newark.

The Commission also uncovered numerous instances where constables monetized their local appointment and used it to promote their private business interests. To land jobs at private security firms, some constables tout their alleged law enforcement credentials, which they claimed helped them earn a higher hourly wage. Others work as process servers where their badges and uniforms provide an air of authority, according to an owner of a subpoena service company in Union County – a former constable himself. He told the Commission he pays the nearly two dozen constables working at his firm more than his other employees.

No statewide entity monitors or oversees constables, so there are no readily available statistics on how many actually exist in New Jersey. To obtain an estimate, the Commission surveyed more than half of the state’s 565 municipalities through a broad sampling covering all 21 counties. The limited survey identified 136 constables in seven counties, but the actual number is likely higher.<sup>1</sup> Approximately half of those operate in Essex County, where most of the questionable activity by constables uncovered during this inquiry occurred.

At times, the Commission’s efforts to collect information on constables were challenged by a general confusion present within many municipal administrative staffs about the position itself. Staff in numerous towns reported unfamiliarity with constables and required additional explanation before responding to the SCI’s inquiry. There was confusion even among those who confirmed the local governing entity had appointed constables. Many staff members were unsure of their duties and who, if anyone, provided supervision over their conduct and actions.

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<sup>1</sup> The Commission conducted surveys of the municipalities regarding the appointment of constables between 2018 and 2020. The survey revealed constables were active, at the time, in Atlantic, Bergen, Essex, Middlesex, Passaic, Sussex, and Union counties. A statewide constables’ organization claimed there were about 350 constables in 2018.

There is broad agreement among municipal staff interviewed that both the statutory references and local ordinances regarding constables are ambiguous, confusing and outdated.

Making this current fuzzy state-of-affairs perhaps more troubling is that there remains the very real potential for serious harm arising from actions by constables who lack requisite experience or training, hold themselves out as sworn police or choose to act on their own without professional supervision or accountability. The SCI's investigation found the vast majority of identified constables – more than 72 percent – legally own at least one firearm. Many hold court-approved permits enabling them to carry weapons only within the scope of their private employment as security guards when on duty. However, the Commission found some constables unlawfully carrying their weapons even when off-duty, as if they were police. Recently, several local constables faced criminal charges for wearing their firearms outside what is allowed under the legal dictates of their handgun permits.

For decades, legal authorities in New Jersey have recognized the ill-defined and nebulous nature of constables and questioned the contemporary relevancy of the locally appointed position. As far back as 1989, a state appellate court concluded a Burlington County constable did not improperly profit from private work done while serving in his public role, in part, because the “duties of the constable were so imprecise that it was impossible for someone appointed as a constable to be knowledgeable as to the scope of their official duties and responsibilities.” The court further found the office of constable “is an historical curiosity which does not fit within the modern concepts of law enforcement and judicial administration.”<sup>2</sup> More recently, in response to the Commission's findings, the County Prosecutors Association of New Jersey issued a written statement concluding the constable position is unnecessary and that “the use of Constables in this State has the significant potential to do more harm than good.”

These findings underscore the point that constables are outdated relics that have no place in the highly organized and sophisticated system of modern law enforcement. Rather than serving as a beneficial adjunct to police, the role instead far too frequently represents a potential hazard to the constables themselves, the police they claim to want to help and the public at large. The many questionable – and sometimes unlawful – actions carried out by constables detailed in

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<sup>2</sup> State v. Grimes, 235 N.J. Super. 75, 89 (App. Div. 1989)



this report, provide support for eliminating this unnecessary and outdated position before someone gets seriously injured or worse.

Along with abolishing the position at the local government level, the Commission recommends the removal of dozens of obsolete mentions of constables spread throughout antiquated sections of state law and used interchangeably or in combination with references to police. This action will ensure the statutory language is reflective of modern times and supportive of professional policing and oversight in 2021 and beyond.

## **History and Background**

The use of constables to perform rudimentary law enforcement services was a practice imported by the British to the United States colonies in the 1600s. In England, parish constables kept the peace, prevented crimes like trespassing and arrested criminal offenders in local districts. Constables were usually unpaid, untrained and performed their duties in addition to full-time day work as tradesmen, farmers or other jobs.

In New Jersey, constables served as law enforcers prior to the development of police departments in the mid-1800s. In the 1776 State Constitution adopted by New Jersey in declaration of its independence from Great Britain, townships chose constables for their district at their annual town meeting during the election of other officers for the local government units.<sup>3</sup>

The process remains largely the same today. Municipalities – typically through a vote by the mayor and local governing body – hold the sole authority to select, appoint and assign duties to constables. In some towns, a member of the local government will sponsor an individual to usher through the appointment process. State law provides only cursory guidance for the appointment of constables, such as requiring them to serve three-year terms and limiting each municipality to not less than two but no more than 50 constables per town.<sup>4</sup> State law requires constables to secure a bond to indemnify the local government from any potential legal claims arising from their appointment and take an oath before commencing any duties.<sup>5</sup> While

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<sup>3</sup> N.J. Const. of 1776 art. XIV

<sup>4</sup> N.J.S.A. 40A:9-120

<sup>5</sup> N.J.S.A. 40A:9-125

appointed locally, state law gives constables countywide authority, and they often identify themselves as county constables rather than from the municipality that appointed them.

Anyone who is a “qualified voter” and resident of a municipality for three years prior to the appointment is eligible to become a constable under state law. Some municipalities have adopted stricter mandates, requiring criminal history background checks and disqualifying applicants with certain violent or drug-related convictions or a dishonorable discharge from the military. Yet others impose no more prerequisites outside of the minimal conditions set forth in state statute. Some local ordinances reviewed by the Commission included language that appeared unchanged from the colonial era, requiring appointees to meet antiquated and indefinable standards. In Paterson, the local ordinance bars individuals with certain criminal convictions, a history of drug use or for providing false information on the application. However, it also states that any individual who wants to be a constable must be “of sound mind and body,” and be “able to read and write English,” and be “of clean dress and person.”

Wide variability exists in the duties municipalities assign to constables. In some towns, the appointment is merely a ceremonial title with no responsibilities whatsoever. In contrast, in others, constables enforce noise ordinances, monitor activity at the polls during elections, patrol local parks and assist in crowd control at municipal functions. Aside from these tasks, local politicians sometimes ask constables to serve as voluntary workers or provide security services at community events.

Typically, constables are unpaid, but some municipalities offer a small stipend. In Wantage Township, the Sussex County municipality’s lone constable received approximately \$3,000 annually from 2015 to 2019 for issuing garbage summonses and parking tickets. Other towns pay constables to serve as security officers in municipal court. Hackensack was the only municipality found to have a full-time salaried constable. But the individual who holds the position there is also a trained Special Law Enforcement Officer, Class I (SLEO I) and responsible for more extensive duties than those typically assigned to constables, including jobs that sworn

full-time police officers are often too busy to do.<sup>6</sup> Those tasks include installing child safety seats, securing local parks at night and handling noise complaints.

## **A Lack of Standards, Training and Oversight**

Law enforcement in New Jersey has evolved into a complex and multi-layered system of career professionals. Today, the state has 531 law enforcement agencies employing 31,817 sworn police officers at government agencies at the local, county and state levels.<sup>7</sup> Constables exist outside this established law enforcement hierarchy. As such, they do not have any uniform training requirements, centralized oversight or coordination of their activities like those legally required for sworn personnel.

Sworn law enforcement officers are subject to several layers of strict qualifications, including backgrounding before hiring, rigorous training and education throughout their careers, a disciplinary process for infractions and formal oversight and supervisory structure. The Police Training Commission (PTC) in the New Jersey Department of Law and Public Safety sets educational and training standards and requirements for every municipal and county police organization and the Division of Criminal Justice (DCJ).

To become a municipal police officer, a candidate must undergo a selection process that includes a written examination, physical test, medical examination and background investigation. Candidates complete a basic police training course that averages 20 weeks in length and must be repeated following a three-year break in law enforcement service. This training includes coursework on firearms safety, the use of deadly force, weapons exercises at a shooting range and a firearms qualification test requiring a minimum score to pass. Additionally, all sworn officers who complete this training must submit to a supervisory hierarchy comprised of the municipal governing body, the county prosecutor's office and the Attorney General through the DCJ.

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<sup>6</sup> To become a Special Law Enforcement Officer, Class I, applicants must complete 80 hours of training through the Police Training Commission. The training teaches applicants about proper handcuffing techniques, defense tactics, disorderly person's offenses, first aid, use of force, patrol concepts and ethics.

<sup>7</sup> U.S. Bureau of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Division, 2018 Crime in the United States.

No such standards apply to constables. Constables are “peace officers,” a term not explicitly defined by state law but generally recognized as empowered to act as an officer for the detection, apprehension and arrest of offenders against the law. Even though constables may lawfully effect arrests, they receive no instruction, guidance or preparation in doing so. Still, the local governing body often equips constables with badges and enables them to purchase uniforms, items traditionally identified with sworn law enforcement personnel.<sup>8</sup> Some constables have taken further advantage of this privilege by designing and wearing uniforms nearly indistinguishable from those worn by law enforcement officers that feature shoulder patches with the words “constable police.”

Further, the Commission found there is little accountability and oversight for constables. The municipal and law enforcement personnel surveyed by the Commission repeatedly conveyed that constables in their communities had no meaningful supervision and reported to no one. In one town in South Jersey, the municipal clerk had no idea who oversaw the constables or if they had any official duties. With no local, county or state entity or personnel responsible for any meaningful oversight for the more than 20 constables in the community, a police director in Passaic County described them as being on an island of their own.

Even the most basic accountability mechanisms are routinely ignored. State law requires constables to submit monthly activity reports to the governing body that appointed them detailing their “official activities,” including the names and addresses of those contacted as well as the purpose of the interaction. The SCI found these state-mandated reports often were turned in late or not at all in many municipalities. A township administrator in an Atlantic County municipality informed SCI investigators he had never seen a constable report in nearly three decades of employment in that office. By law, a failure to submit reports for two consecutive months could result in the termination of the appointment. The Commission found local officials rarely enforced the provision. Among the rare exceptions to this finding was the Township of Irvington in Essex County, which terminated at least three constables over the years for failure to submit timely reports before adopting stricter requirements to become a constable that precluded many who had previously held the position.

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<sup>8</sup> N.J.S.A. 40A:9-122 Enables municipalities to supply each constable with a badge.

## Conflict with Law Enforcement

Among the most serious concerns of law enforcement leaders in the state is that constables who intentionally look like police officers – wearing uniforms, badges, patches or other gear that includes the word “police” – might confuse or potentially imperil the public. Imagine a citizen in crisis unknowingly approaching a constable to seek help, believing the untrained civilian is a sworn and trained law enforcement officer. A mistake like that could prove especially costly when the public has an immediate need for assistance, wasting precious moments in an emergency.

Citizens have the right to expect that individuals who represent themselves as police officers are specifically trained and authorized to serve in that capacity. The word police and certain symbols, like badges, are universally recognized by the public and should only be in possession of those who have that power, Wayne Fisher, a senior policy advisor for the Center on Policing at Rutgers University and former Deputy Director of the Division of Criminal Justice, told the Commission:

*Whether it be constables or other positions[,] I do not think it's in the public interest for the word police to be displayed on either the clothing, identification card or badge of someone who does not have police authority. I can only think of bad consequences of that practice, I can't think of any good consequences.*

Most of the coordinated efforts to make the civilian appointees look and operate more like sworn police personnel have been driven by locally based constable clubs. Primarily, the privately controlled and operated groups involved are Morton's Essex County-based County Constables Association of New Jersey, the Passaic County Constables and the Fraternal Order of Constables. These private groups each have their own uniforms, specialized gear and some wear patches with the words “constable police.” They operate under hierarchical structures similar to those used by police departments with internally appointed chiefs and other ranking officers. Some members of the constable groups drive privately owned vehicles outfitted with lights and sirens that look like police cars, communicate with fellow constables via walkie-talkies, wear bulletproof vests and have their own police radio frequencies.

Through the years, constables in general and these groups, in particular, have received conflicting communication from various legal authorities in New Jersey about the appropriateness of referring to themselves as police. A 1992 legal opinion from then-Essex County Prosecutor Clifford Minor found constables entitled to use the word police. “Use of the word ‘Police’ on a constable’s patch would not appear to be inherently misleading, so long as the individual constable does nothing to cause members of the public to believe he is a full time regular member of an organized police force,” he wrote.

Subsequent prosecutors in Essex and surrounding counties strongly disagreed with this opinion. In 2012, Acting Essex County Prosecutor Carolyn Murray sent a letter to Philip Fluker, an Essex County Constable and the self-appointed Chief of the Fraternal Order of Constables, rescinding Minor’s prior consent. As part of a campaign to stop Fluker and fellow constables from giving the public the false impression they were sworn law enforcement personnel, Murray and then-Union County Prosecutor Theodore Romankow sent letters demanding they cease putting the word police on their badges, hats, shirts and uniforms. The prosecutors also spoke out through the media, reminding constables they could face arrest for impersonating police officers if they continued to misrepresent themselves. Noting that sworn officers earned their right to the word police, Romankow said at the time, “It’s a symbol of security and safety and should not be threatened by these wannabes.”

## **Untrained, Unsupervised – and Armed with a Gun**

Until 1970, constables in New Jersey could legally carry weapons without a permit like police and other sworn law enforcement personnel. Nevertheless, they lost that exemption following the enactment of the Criminal Justice Act, which ushered in an era of new standards for accountability, coordination and the oversight of law enforcement entities and officers across the state.<sup>9</sup>

New Jersey has among the strictest gun laws in the nation. To carry a handgun legally, a constable – just like any other private citizen – must obtain a court-approved permit

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<sup>9</sup> N.J.S.A. 52:17B-97 to -236

demonstrating a “justifiable need.” For many constables, the pathway to securing a handgun-carrying permit is through their paid employment as armed security guards. In most cases, these limited-type permits only enable gun-carrying privileges for specific handguns and only for pre-approved purposes. However, the Commission found some constables either misunderstand or blatantly ignore the court-imposed limits on gun-carrying and wearing weapons while off-duty, or in certain instances, while performing defined – and sometimes undefined – public duties as constables.<sup>10</sup>

To work legally as an armed security guard in New Jersey, an individual must have a valid gun-carrying permit and a state-mandated Security Officer Registrations Act (SORA) license. Applicants for gun-carrying permits who work at private security firms, detective agencies or armored car companies must provide the State with a written certification or letter detailing their job-related need to carry a weapon along with their employer’s name and address.<sup>11</sup> Once approved by the local police chief or the Superintendent of the New Jersey State Police, a Superior Court Judge signs a court order authorizing the issuance of the permit. These documents explicitly state the holder only has gun-carrying privileges for a particular handgun they legally own and have registered with the State for employment with a specific company at a particular location. In some documents reviewed by the Commission, permit holders in certain jurisdictions were required by the court to have the permit, court order and letter-of-need in their possession anytime they are carrying a weapon. Individuals who carry their handguns beyond the court-approved times and duties are subject to arrest and prosecution.

The Commission’s review found more than half of the 71 constables in Essex and Passaic Counties hold valid permits to carry handguns under their SORA armed security guard licenses. In Essex County alone, two-thirds of constables have gun-carrying permits through their security work. Still, the Commission found some of these constables routinely carry their handguns

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<sup>10</sup> Constables who work as armed municipal court officers in Woodland Park have conditional permits enabling them to carry guns. These individuals are municipal employees and receive public salaries.

<sup>11</sup> N.J.S.A. 13:54-2.1 Gun carrying permit applicants must also provide three character references, undergo a criminal background check, consent to mental health search and certify they have no disabilities. Applicants must also complete a firearms safety course, submit handgun qualification scores and pass a test on the use of force.

beyond the limits of their permits despite the risk of being charged with unlawful weapons possession, a second-degree offense punishable by a 10-year prison sentence if convicted.

Chief of the Passaic County Constables, Robert Toledo, told the Commission he has continued to wear his weapon if he was going directly from his paid security officer job to a public function as a constable in Paterson. He testified, "...I'm not going to leave my firearm in the car. Anything can happen to it. I'm responsible for it." Under state guidelines, a handgun should be unloaded and safely stored in a lockbox anytime the permit holder is not authorized to carry it.

The question as to whether constables can legally carry firearms beyond their court-approved work hours is a "grey area," according to testimony from Andre Morton, the constable who led a coterie of constables to voluntarily backup police at the 2019 mass shooting in Jersey City. In Morton's mind, he and his fellow constables were on the job that day, and thus within their lawful authority as peace officers to travel with their weapons to a major crime scene in a neighboring county to assist other law enforcement personnel.

That cavalier approach to carrying his handgun ultimately caught up to Morton in May 2021 when police charged him with illegal weapons possession for bringing a loaded handgun into a law enforcement facility in West Orange without valid credentials. Even though Morton possessed a legal carry permit for the handgun, according to the arrest record, he lacked authorization to wear a weapon at that time or place. His arrest was among several others made recently by law enforcement personnel from different jurisdictions in North Jersey charging constables who carried handguns outside the limits of their permits with unlawful weapons possession.

## **Abuses of Authority**

Recent incidents of other questionable conduct by constables, including taking actions beyond the limits of their appointments or blatantly misrepresenting themselves as law enforcement officers, have also resulted in arrests and criminal charges against constables for various criminal offenses. The following are several examples of the abuses discovered by the Commission:



### ***Misleading Appearances***

It would be easy to have mistaken the man dressed in a standard-issue blue uniform and carrying a walkie-talkie at a Newark convenience store with a sworn police officer to the untrained eye. He stood inside the store outfitted in a ballistic body armor vest emblazoned with “County Officer” across the chest and back and sported a belt containing a canister of pepper spray, a holster and a handgun.

When officers with the Essex County Prosecutor’s Office first approached the man at the Ferry Avenue store in August 2021, they were investigating whether he was posing as a county officer. As it turned out, the man was not a sworn officer; he was an Essex County Constable, a fact he readily proved to police by presenting a valid constable identification card.

Although he was working a private security job at the 7-11 that had nothing to do with his position as a constable, the man wore law enforcement swag connected to his volunteer appointment in East Orange. Notwithstanding his misleading appearance, the *real* police later found the man had an illegal handgun in his possession filled with more bullets than armed security guards in New Jersey may legally carry.<sup>12</sup> While the constable possessed a legal permit to carry a weapon during his armed security shift, the police found it was not for the handgun he was wearing that day.<sup>13</sup> Following his arrest, the State Police suspended the constable’s SORA license.

### ***‘I am a Police Officer like You’***

When East Orange police pulled over the driver of dark blue Ford Crown Victoria outfitted with red and blue emergency lights on an evening in October 2016, it was because the car had dark tinted windows prohibited for most civilian vehicles in New Jersey. The vehicle – with its lights activated – had also been spotted by Newark Police at the scene of a triple shooting a few days prior.

Based on a police report from the incident, this is what occurred: As officers activated their lights and sirens to indicate they intended to stop the motorist, the driver began waving a

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<sup>12</sup> N.J.S.A. 2C:39-3j Possession of a High Capacity Magazine

<sup>13</sup> N.J.S.A. 2C:39-5b Unlawful Possession of a Weapon

gold-colored badge outside the vehicle. When the police approached the car and asked for his driving credentials, the motorist said, "... I am a police officer like you. I work in the City of Newark."

However, the driver could not provide the police officers any identification proving his employment with the Newark Police Department. When police looked inside the vehicle, they saw the man was wearing a full-duty rig belt containing two pairs of handcuffs, a gun holster and a double magazine pouch. He was also carrying a 9-millimeter weapon. Police then directed the driver to exit the vehicle so the officers could secure the weapon.

The driver ultimately confessed that he was not a police officer but instead an Essex County Constable. After producing his constable identification card and gun-carrying permit, the driver told police that he worked for a private security firm in Newark. Under the court-ordered parameters of his carrying permit, the constable only had authorization to wear his weapon while on the job as an armed security guard. When police reminded him of this rule, he reportedly told them he was aware of the requirement, but he continued to wear the firearm because he was just out running errands at the time.

Police subsequently arrested the constable and charged him with impersonating a police officer and illegal possession of a weapon. A jury later convicted the constable on both charges. He also received a summons for improper safety glass on his vehicle.

### ***Unlawfully Using Power to Pull Over Motorists***

On a street in the middle of downtown Newark in July 2020, an Essex County Constable and taxi driver came face-to-face in a traffic dispute that never should have happened in the first place.

The encounter began when the constable's car did not move after the light at the intersection of Ferry and Market streets turned green. According to a police report of the account, here is what happened next: Impatient, the taxi driver chose to go around the constable's vehicle to turn left. Simultaneously, the constable began to move his car, causing the two vehicles nearly to collide. The outraged constable then allegedly drove after the taxi, activating the police lights on his vehicle while yelling at the driver and ordering him to pull over.

A bodycam video filmed by one of several responding Newark police officers and reviewed by SCI investigators captured an officer's description of the account by the taxi driver involved that day:

*... He thought it was an officer cursing at him like that; he wanted to call internal affairs. So now we come to find out that it's a constable, and why's he pulling a car over? And then from what the guy said, he came up, he had some words...he cursed him out, told him to pull the car over, he turned the lights on in his truck, and then he opened the door and showed him his gun. He said I'm an officer. And then he said, I want your supervisor...*

Throughout the 30-minute video reviewed by the SCI, the officers demonstrated confusion and lack of knowledge about constables and their specific powers.

One officer asks, "What basically are their rules, what are they allowed to do?"

Another officer answers, "They're not allowed to do nothing..."

A third female officer tries to explain their authority, stating, "He can place me under arrest, but that's only when he's working in the favor of being at work. He can't just pull people over as constable and ask them for their credentials because he's upset."

On that day, the constable would find himself charged with impersonating a public servant or law enforcement officer.<sup>14</sup> Additionally, the constable was charged with making terroristic threats.<sup>15</sup> Police seized both his firearm and vehicle at the scene.

Video capturing the arrest shows the constable – who adamantly and repeatedly denied identifying himself as a police officer – outraged as he sat handcuffed in a police vehicle.

"...This is really f-----ed up you're treating another officer like this..." the constable is heard saying on the video. He goes on to tell police to read his identification card to see the statutes that apply to constables.

"Read the back of the ID also," he says on the video. "It tells you exactly the statutes and everything. But I'm in handcuffs. For impersonating a police officer. Which I never claimed to be a police officer. I'm a county officer...This is crazy."

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<sup>14</sup> N.J.S.A. 2C:28-8 Impersonating a Public Servant or Law Enforcement Officer

<sup>15</sup> N.J.S.A 2C:12-3A Terroristic Threats

This incident plainly shows that some constables view themselves as on equal footing with the police. It further illustrates the general sense of confusion in the community about the role and powers of the obscure and the little-known appointment, not to mention the challenges law enforcement face in the real world of upholding the vague and inconsistent rules and laws that apply to the volunteer role that some are choosing to abuse.

## **Cashing in on the Badge**

Even though constables are typically unpaid volunteers, some have found ways to personally profit from the appointment. The badge, credentials and other self-acquired accoutrements that come with the appointment have enabled constables to make themselves appear more grandiose and impressive than they really are given their lack of actual authority. The following are the main employment routes constables have taken to parlay their public credentials into paid employment in the private sector.

### ***Process Serving***

Philip Geron sought a constable appointment in Union Township in 1989 because he thought the badge that came with it would make it easier to do his job as a process server. More than thirty years later, the founder and president of Guaranteed Subpoena Service, Inc. in Union still prefers hiring constables to serve legal papers for his company.

In New Jersey, anyone over the age of 18 can legally serve process. It requires no specialized skills or aptitude. But Geron testified that when a constable wearing a badge and uniform delivers legal papers, their appearance commands a certain level of respect from the recipient.

*People open doors, okay, to people who have identification and show themselves to have some authority and it just makes the job a lot easier when you present yourself in front of a door and identify yourself with a badge, identification card, which is normally worn around the neck, and it makes it easier for us to serve the process and if they have a uniform on it [sic], when people open the door, they ask how can I help you instead of what do you want.*

Geron told the Commission in sworn testimony that all of the process servers who work for Guaranteed in New Jersey are either constables or members of the Constable Office of New

Jersey. Geron started the fraternal organization more than two decades ago, but it now mainly serves as a pipeline for workers to his company. Employees receive training on how to serve process and receive a specially created constable's officer patch and badge they can wear during their paid work. Uniforms are not mandatory but are preferred.

*We are spat upon, we are cursed at, things are thrown at us, my people are beat up in the streets when we serve process. A uniform helps us a lot. The badge, of course, is — people shy away from a badge and it isn't because we want to show the authority so much as we want to protect our own people.*

Constables who work at the international firm, which primarily serves law offices, receive a higher wage than Geron pays other employees. The business owner told the Commission he likes that his company is identifiable as the one that uses constables, noting the association is good for marketing purposes.

### ***Security Officers***

Some individuals told the Commission that their municipal appointments as local constables helped them secure paid security jobs and, in certain instances, enabled them to earn more money in those positions.

Background as a constable can give a security job applicant an edge over someone without it, according to sworn testimony from Robert Toledo, chief of the Passaic County Constables, who has worked as a security officer for the same private firm for more than a decade. Toledo began the security position around the same time he obtained his appointment as a Paterson constable.

*Q: So personally, you think the word constable does carry a little more weight when applying for a security – a private security job?*

*A: I would say so.*

Philip Fluker, former chief of the Fraternal Order of Constables, testified his constable appointment enabled him to make more money as a security officer than he would without it.

*Q: Was it easier to get jobs, or did you make more money?*

*A: Made more money.*

Much like Geron, Fluker used his membership organization as a pipeline for hiring employees at his now-shuttered security business, Senates Investigations. He told the Commission his policy was to hire only constables to work at his firm.

*My line is that you can only do security work for me if I hired you as a constable, in your uniform as a constable if you're working for me.*

## **Constables No More**

During the past two decades, a handful of New Jersey municipalities eliminated the constable position after local leaders concluded the appointment brought more potential harm than good to their community. Concerns over the nebulous nature of their responsibilities, the belief that some were seeking the appointment simply to obtain a badge and other policing accoutrements and fears that actions by wayward constables could land the municipality in legal trouble prompted the eradication of the post.

Jersey City abolished the position in 2000 after local officials expressed trepidation about issuing a badge to someone who was not a sworn law enforcement representative, fearing it might mislead the public and possibly be dangerous. Even though there were no specific incidents involving constables, municipal authorities agreed the position was unnecessary and served no real purpose, according to testimony from Robert Byrne, who has been the City Clerk since 1989.

*There were no abuses. I just thought it was an archaic term, reminded me of some [O]ld [W]est show from the old [W]ild [W]est, and that no one in New Jersey would know what a constable was, and if someone pulled out a badge and said, I'm a constable, they might think they were actually law enforcement and could intimidate people.*

In Roselle Park, a borough in Union County, municipal officials stopped appointing constables in 2015 after the then-police chief urged abolishment of the position, concluding it served no legitimate purpose and only represented a potential liability to the municipality. Prior to eliminating the post, two constables received ceremonial titles with no duties in the borough.

The story was much different in Irvington, where the local constables, led by Philip Fluker, the self-appointed Chief of the Fraternal Order of Constables, built a contentious history with law

enforcement authorities. Fluker and the constables in his organization continued their controversial practices despite orders by former Essex County Prosecutor Carolyn Murray in 2012 that Fluker and his members stop using the word police on their clothing, hats and other gear.

More than four years after the county prosecutor's directive, the constables were still wearing uniforms that looked strikingly similar to those worn by law enforcement with patches – designed by Fluker – with the words “constable police” on them. They also sought to carry weapons while serving their public duties, a request rejected by Irvington Police Department officials.

Soon after that administrative-level rejection by the police department, the township council codified the decision by changing the local law, adopting an ordinance in 2017 explicitly prohibiting constables from carrying or displaying a firearm while performing any public duties in the municipality. Not only did it ban constables from wearing weapons while serving in their public capacity, but it also prohibited appointees from wearing their uniforms or other constable related-gear during their private security work. The ordinance also mandated criminal background checks for all constables, reduced their terms from three years to one, and put the police department in charge of constables.

Following those changes, most of the 15 then-existing constables – all with terms expiring on June 30, 2018 – did not seek reappointment. No constables were reappointed at that time or since in Irvington. However, that situation is likely to change soon in the Essex County municipality following a November 2021 vote by the City Council to overturn the local law restricting constables. Once the mayor signs the measure, the City will revert to following the imprecise state laws that govern constables.

As the Irvington example plainly illustrates, allowing local governing bodies to determine the best way to proceed with constables leaves efforts to establish controls on the position vulnerable to shifting political winds, rendering any reforms potentially changeable and easily reversed. Standalone decisions by municipalities to restrict or eliminate constables are laudable. Still, they are not enough to ensure that findings made in this report detailing abuses and questionable conduct associated with constables are confronted and resolved consistently and uniformly throughout New Jersey rather than piecemeal on a town-by-town basis.

The only way to effectively address the Commission's findings in a systematic, consistent and complete manner is to eliminate the constable position statewide, an action endorsed by law enforcement leaders throughout the state who share the opinion that constables are antiquated, irrelevant and no longer occupy a meaningful place within New Jersey's modern, professionalized law enforcement or judicial administration systems.

## **The Law Enforcement Community**

Statewide organizations representing leading law enforcement agencies throughout New Jersey share the opinion that constables are obsolete and do not fit in today's system of criminal justice. The County Prosecutors Association of New Jersey, the New Jersey State Association of Chiefs of Police and the New Jersey State Policemen's Benevolent Association set forth their positions in written statements urging the repeal of statutes that permit local governing bodies to appoint constables. Their statements include the following:

I am writing this letter on behalf of the County Prosecutors Association of New Jersey in support of the repeal of N.J.S.A. 40A:9-120 which authorizes the governing body of any municipality to appoint between two and fifty Constables. This statute is both outdated and unregulated, and as it currently stands, poses a threat to both citizens and sworn law enforcement officers.

Esther Suarez, Hudson County Prosecutor  
President, County Prosecutors Association of New Jersey

To end these ongoing abuses and resolve the uncertainties inherent in the position, we urge the repeal of the statutes that enable untrained and unsupervised individuals to receive municipal appointments as constables. Immediate action in this area is particularly critical at this time as legitimate law enforcement works to strengthen its relationship with the communities we serve. These incidents of highly questionable conduct by constables only serve to undermine those efforts.

Chief John Zebrowski  
President, New Jersey State Association of Chiefs of Police



We are proud that New Jersey law enforcement officers are the best trained officers in the nation. From the time an officer enters a police academy and throughout their long careers they are exposed to constant training and oversight led by the Office of the Attorney General. Every county and local government is patrolled and protected by experienced law enforcement officers or the New Jersey State Police. And our officers are governed by guidelines for their actions for use of force, internal affairs and countless other areas by Attorney General Directives and Guidelines.

It should therefore concern every resident of the State that the position of Constable remains in existence and operates well outside of these parameters and protections. Constables are a throwback to the 19<sup>th</sup> century when New Jersey was a rural state and policing was less than professional. But the idea that an ancient State law remains on the books, authorizing, in theory, thousands of untrained and unaccountable individuals to roam the streets in uniforms and vehicles that appear official is a recipe for disaster.

Patrick Colligan  
State President, New Jersey State PBA

## Recommendations

Constables represent an outmoded form of law enforcement that is unnecessary, incompatible and has not kept pace with the advancements and principles of modern policing. Given the highly trained, well-ordered and coordinated law enforcement apparatus now in place and the trend toward greater accountability, oversight and transparency of such activities, it is an anomaly that New Jersey municipalities still empower untrained and unsupervised private citizens to serve as constables.

The Commission recommends the immediate repeal of statutes authorizing municipal governing bodies to appoint and empower constables in New Jersey. The elimination of the position statewide is the only way to effectively stamp out the widespread abuses of power by constables revealed in this report. It is difficult to reassure the public that these abuses will not persist without sweeping action to abolish the position altogether. Left to their own devices, only a handful of municipalities eliminated the constables' position in the past twenty years despite appointees' questionable and sometimes unlawful behavior. Some local units still appoint constables despite grave concerns raised by sworn law enforcement leaders about constables who deliberately look like or blatantly misrepresent themselves as police.

In addition to abolishing the position, the Commission also recommends the removal of references to constables, often used in combination with or used interchangeably with police, contained in dozens of New Jersey statutes. Many of these antiquated portions of law have little to no relevance to how the present-day law enforcement and judicial administration systems function and should be updated accordingly.

Finally, the Commission recognizes that some municipalities have found constables provide meaningful public service by performing specific duties deemed beneficial to the community or relieving the burden from sworn law enforcement personnel. These duties include installing child car seats, locking up local parks at nighttime and enforcing noise ordinances. Further, these services are delivered at little to no cost to the municipality. Some of the menial tasks now done by constables could easily be assigned to part-time employees hired by the municipality and paid at an hourly rate or with a small stipend. The municipal clerk or another department head could supervise the employees depending on the specific type of work

performed. For low-level police-related duties, municipalities also have the option to hire certain part-time employees who receive certification from the Police Training Commission to perform this type of work under the supervision of the local police department. Although hiring part-time employees will cost more than unpaid volunteers, these types of arrangements still represent viable low-cost options to municipalities without any of the potential abuses, liabilities or other concerns related to constables found during the Commission's inquiry.

# APPENDIX





**N.J.S.A. 52:9M-12.2 provides that:**

- a. The Commission shall make a good faith effort to notify any person whose conduct it intends to criticize in a proposed report.*
- b. The notice required under subsection a. of this section shall describe the general nature and the context of the criticism, but need not include any portion of the proposed report or any testimony or evidence upon which the report is based.*
- c. Any person receiving notice under subsection a. of this section shall have 15 days to submit a response, signed by that person under oath or affirmation. Thereafter the Commission shall consider the response and shall include the response in the report together with any relevant evidence submitted by that person; except that the Commission may redact from the response any discussion or reference to a person who has not received notice under subsection a. of this section.*
- d. Nothing in this section shall be construed to prevent the Commission from granting such further rights and privileges, as it may determine, to any person whose conduct it intends to criticize in a proposed report.*
- e. Notwithstanding the provisions of R.S. 1:1-2, nothing in this section shall be deemed to apply to any entity other than a natural person.*

The following material was submitted pursuant to those statutory requirements.



# Guaranteed Subpoena Service, Inc.

"If we don't serve it, you don't pay it"®

November 22, 2021

TU, NOV 30 2021 PM12:36

State of New Jersey  
Commission of Investigation  
50 West State Street  
P.O. Box 045  
Trenton, NJ 08625

RE: Notice of Proposed Report  
# 21-11-002

Dear Sir/Madam,

I am in receipt of the above referenced proposed report. I disagree with none of its content or context. The obvious however was not contained there in and must be pointed out:

No litigation anywhere in the world can begin without the documents being properly served. With the sometimes rare exception of improper service, service can be achieved simply by 1) responding or 2) completing an acknowledgement of service. Because no one wants to be served, one is validated as a result of ignorance of the law and the other because services cannot be avoided. In any event the methods employed by process servers is the most just way of getting documents served.

Personal service is required. The proof is in the form of an affidavit. The affidavit is a sworn court document which opens the server to three causes of criminal action. The falsification of an affidavit will lead to arrest for contempt, fraud and perjury. Without this, the Rule of Law will be abused, no one that does not want to be served will ever be served and our judicial system will become a victim of chaos.

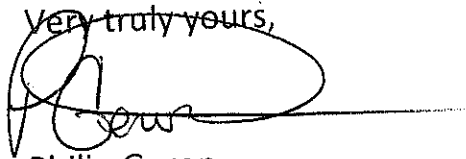
At Guaranteed we supplement the affidavit with AXON Technology. We video each service and no served. Every instrument including the badge help us to



maintain the "Rule of Law". We need that which we use to get our job done. Our judicial system is well aware of what we do and how we get it done. It has been said that nothing would move in our court system if it were not that we (Guaranteed) serves almost seventy – 70% of the process in New Jersey. We believe this to be true.

Harm the system and you will harm the court. Until another method is developed, this one should stay in place. No authority, no Rule of Law. If you respect the law, then respect the dirty work we do.

Very truly yours,

A handwritten signature in black ink, appearing to read "Philip Geron", written over a horizontal line.

Philip Geron

President



*State of New Jersey  
Commission of Investigation*