

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 of the spectrum, 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. Although there is no requirement that a locally elected constable have criminal justice training, the voters may restrict law enforcement activities of those constables who are untrained. The voters may also restrict the authority of its trained constables.

- A town shall 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 or may require that the constable be trained prior to exercising law enforcement authority. 24 V.S.A. § 1936a.
- 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 mental patients and prisoners. 32 V.S.A. §§ 1591–1593. If no salary is fixed by the voters, 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, may destroy animals when required by law, may kill injured deer in accordance with law, may assist the health officer in the exercise of his or her duties, may serve as a district court officer, may remove disorderly people from town meeting, and may 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, and the office itself has suffered corresponding loss of both power and prestige.

Election, appointment and removal of constables. At present, towns may choose 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. Note that, 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, there is no vacancy 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. An elected constable is not generally required to have any special training to exercise the functions of the position. 20 V.S.A. § 2358(d). However, in response to a concern that locally elected constables who act without proper training could harm individuals or subject the municipality to liability, a statute was enacted that gives the voters discretion in this area. Towns may now vote to prohibit an *elected or appointed* constable from exercising any law enforcement authority, or may require the constable to complete a course of training offered or approved by the Criminal Justice Training Council, before the constable may exercise law enforcement authority. 24 V.S.A. § 1936(a). Such a vote would take effect immediately. This could be in the middle of a constable's two-year term.

In contrast, an *appointed* 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 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. The first part of the training involves an intensive 58-hour course at the police academy where the participants study topics which include the laws of arrest, search and seizure, criminal law, police liability, firearms, and the role of the police. At the end of this part of the training, the participants must pass an examination on the subjects covered during the course as well as a firearms qualification. After completing this part of the training, the participants receive a provisional certificate which entitles them to perform law enforcement functions under the direct control of a certified law enforcement officer for one year, during which time they may complete the last two parts of the required training. These parts include 50 hours of additional course work and 60 hours of supervised training with a field training officer. If the last two parts of the training are not completed by the end of the year, the constable must begin the training again by attending the week-long course at the police academy.

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. 23 V.S.A. § 1202(a).

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 does have the authority 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 it might be difficult to prove the case in court if challenged, without documentation of certification. The Criminal Justice Training Council also advises that if a constable will be issuing Vermont traffic citations, the town should be sure to 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.

For more information about the training opportunities for constables, call the Criminal Justice Training Council at 802-483-6228.

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).

Other duties and functions of the town constable. Whether or not a constable has had law enforcement training, he or she may perform the following functions. 24 V.S.A. § 1936a(b). 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 interests 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. Finally, 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.

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Duties that a constable may perform under Vermont statutes:

4 V.S.A. § 446	Serve as court officer.
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 <i>ex officio</i> .
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, 3745	Humanely destroy unlicensed dogs when a warrant has been issued.
21 V.S.A. § 263	Seize dangerous substances without warrant.
23 V.S.A. §§ 2084, 3831	Report theft or recovery of motor vehicles or motor boats.
24 V.S.A. § 296	Transport prisoners or mental patients.
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 appointed.
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.