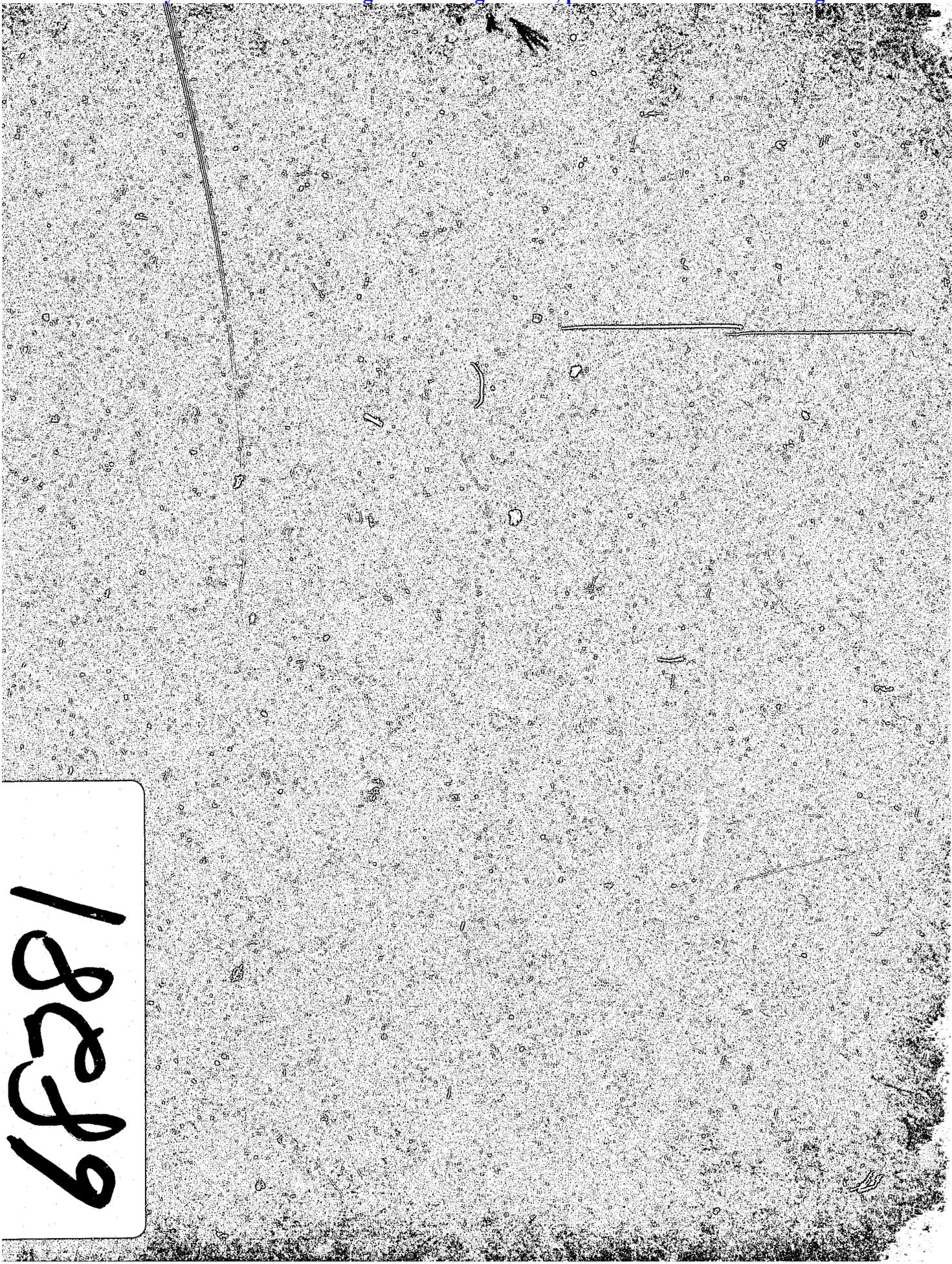


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CONSTABLES IN

MASSACHUSETTS

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Ask the average person what the function of a constable is, and the most common response will probably be that a constable serves summonses and subpoenas. What is oftentimes forgotten is that the office of constable was the first step in the evolution of the modern American police force, and that even today, constables possess extensive law enforcement powers. The focus of this report is on those law enforcement powers.

Historical Note

The early colonists brought to America the legal traditions of their homelands. The English common law and the use of constables to keep the "King's peace" was quickly established as part of the colonial criminal justice system. In the first year of existence of the Massachusetts Bay Colony, the General Court provided for the appointment of constables. Constables were the "police officers" of their day, and they had broad law enforcement duties and responsibilities. As an indication of the colonial constables' broad arrest powers, the Colonial Laws of 1646 provided:

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...Every constable within our jurisdiction hath, by virtue of his office, full power to make, signe, and put forth pursuities, or hues and cries, after murtherers, manslayers, peace breakers, theeves, robbers, burglars, where no magistrate is at hand; also to apprehend without warrant such as are overtaken with drinke, swearing, breaking the saboth, lying, vagrant persons, night walkers, or any other that shall breake our laws, in any of these; provided, they be taken in the manner either by the sight of the constables themselves, or by present information from others...

As the population and the incidence of crime increased in the colonies, it became apparent that constables could not alone do the job of keeping the peace. Day and night patrols (the "watch and ward") were organized, and eventually became very formalized. In the mid-nineteenth century, they developed into what could be called police departments, with the office of policeman evolving from the office of constable. Even the current statute which sets forth the powers of police officers, G.L. c.41, s.98, provides that "The chief and other police officers of all cities and towns shall have all the powers and duties of constables except serving and executing civil process."

Powers and Duties

Although the office of policeman evolved from the office of constable, the office of constable has still maintained its separate existence. The common law powers and duties of constables have, however, been modified and limited by custom and statute. There is little doubt that the service of non-criminal papers (e.g. summonses, subpoenas, town meeting notices) makes up the major portion of a constable's job today. Nevertheless, the law enforcement powers and duties of a constable should not be underestimated.

As the Massachusetts Supreme Judicial Court stated in the case of Hartley v. Inhabitants of Granville, 216 Mass.38, 102 N.E. 942 (1913), the general duties of a constable "are to be vigilant to preserve the peace, to prevent the commission of crime, and to arrest all offenders in his town who might be arrested without warrant, and to procure warrants in other instances of crime committed." The Court went on to note that "the theory on which the office [of constable] now is based (apart from the functions of serving papers) is that a number of competent men scattered through the territory of each of the country towns, charged with such duties, is an important factor in making them safe for residence by law-abiding people."

The general duties of a constable as outlined in the Hartley case have been further defined in various Massachusetts statutes.

G.L. c.41, s.94 provides that constables may serve the civil process described in Section 92 and warrants and processes in criminal cases. They are required to serve all warrants and other processes directed to them by the selectmen of their town for notifying town meetings or for other purposes. They may also serve demands, notices and citations. They are required to take due notice of and prosecute all violations of law concerning the observance of the Lord's day, profane swearing and gaming, and they have all the powers of sheriffs to require aid in the execution of their duties. In connection with this, G.L. c.268, s.24 provides for the punishment of persons who neglect or refuse to assist a constable in the execution of his office in a criminal case, in the preservation of the peace, or in the apprehension or securing of a person for a breach of the

peace, or in a case of escape or rescue of persons arrested upon civil process.

In addition to a constable's common law power to make an arrest without a warrant in the case of a felony upon probable cause, and in the case of a misdemeanor which is committed in his presence and which involves a continuing breach of the peace, a constable is also authorized to make warrantless arrests pursuant to the following statutes:

- G.L. c.56, s.57. A constable may arrest any person detected in the act of violating any provision of chapters 50 to 56 (elections).
- G.L. c.138, s.56. A constable may arrest any person whom he finds in the act of illegally manufacturing, selling, storing, or transporting alcoholic beverages.
- G.L. c.160, s.220. A constable may arrest any person whom he views riding upon parts of a train other than in the passenger section.
- G.L. c.266, s.120. A constable may arrest any person whom he finds committing a trespass.
- G.L. c.271, s.2. A constable may arrest any person whom he discovers in the act of gaming or betting in a public conveyance or public place or while trespassing in a private place.
- G.L. c.271, s.6. A constable may arrest persons whom he discovers in the act of gambling within one mile and during or within 12 hours of a cattle show.

- G.L. c.272, s.10. A constable authorized by c.272, s.9 to enter, search for and arrest a person in control of a place for prostitution may arrest any person whom he has reasonable cause to believe is violating any provision of c.272 (crimes against chastity, morality, decency and good order).
- G.L. c.272, s.65, 67, 69. A constable may arrest tramps, vagrants and vagabonds.

In connection with a constable's arrest powers, the keeper of a lockup is required to keep the lockup accessible at all reasonable hours to constables. If he neglects to do so, he is subject to a fine pursuant to G.L. c.41, s.37.

By statute, constables also have certain inspection and entry powers. G.L. c.138, s.30F authorizes constables to inspect the books, certificates and prescriptions of pharmacies. G.L. c.140, s.201 gives constables the right to enter at any time a billiard, pool or sippio room, bowling alley, skating rink, the licensed premises of a common victualler, or a grove for the purpose of enforcing any law.

Constables also have the specific authority to enforce the motor vehicle laws, provided that they display their badges conspicuously on the outside of their outer coats or garments.

Jurisdiction

The jurisdiction of a constable is generally limited to the municipality in which he is elected or appointed, but there are exceptions. G.L. c.41, s.95 provides as follows:

A constable, in the execution of a warrant or writ directed to him, may convey prisoners and property in his custody under such process beyond the limits of his town, either to the justice who issued it or to the jail or house of correction of his county. If a warrant is issued against a person for an alleged crime committed within any town, any constable thereof to whom the warrant is directed may apprehend him in any place in the commonwealth.

Election and Appointment

G.L. c.41, s.1 provides for the election of "one or more constables for a term of three years, unless the town by vote provides that they shall be appointed."

If constables are to be appointed, their terms may not exceed three years. In towns, the appointing authority is the board of selectmen; in cities, it is the mayor.

If a constable is to be appointed, he must meet certain statutory qualifications as to his good reputation and character. (This is not the case if a constable is to be elected.) The police chief is required to assist the appointing authority in making an investigation of an applicant for the office of constable. The applicable statute, G.L. c.41, s.91B provides as follows:

Constables shall not be appointed by mayors or selectmen under section ninety-one or ninety-one A except as hereinafter provided. A person desiring to be appointed as aforesaid shall make a written application therefor to the appointing authority stating his reasons for desiring such appointment and such information as may be reasonably required by said authority relative to his fitness for said office. Such application shall also contain a statement as to the moral character of the applicant signed by at least five reputable citizens of the city or town of his residence, one of whom shall be an attorney-at-law. The appointing authority shall also investigate the reputation and character of every applicant and his fitness for said office. The chief of police or other official having charge of the police shall upon request give the

appointing authority all possible assistance in making such investigation. The office of constable shall be filled only by appointment of an applicant hereunder who is found by the appointing authority, after investigation as aforesaid, to be a person of good repute and character and qualified to hold said office.

Conclusion

Although constables have broad law enforcement powers in many situations, they are not police officers, nor are they members of the police department. As the Supreme Judicial Court stated in Hartley v. Inhabitants of Granville, supra, constables "are not expected nor required to devote a considerable portion of their time to the work of their office. In this regard, they stand on a basis quite different from the members of an organized police force." Therefore, constables are not required to attend police training academies or receive "first responder" training, nor are they subject to the orders or regulations issued by the chief of police. By the same token, the chief of police would not be civilly liable for the misconduct of constables since they are not members of his department.