

REFERENCE TITLE: constable ethics standards and training

State of Arizona
Senate
Forty-eighth Legislature
First Regular Session
2007

SB 1085

Introduced by
Senator Verschoor: Representative Biggs

AN ACT

AMENDING SECTIONS 11-445, 22-131, 22-132 AND 22-136, ARIZONA REVISED STATUTES; AMENDING TITLE 22, CHAPTER 1, ARTICLE 3, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 22-137 AND 22-138; RELATING TO CONSTABLES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 11-445, Arizona Revised Statutes, is amended to
3 read:

4 11-445. Fees chargeable in civil actions by sheriffs,
5 constables and private process servers: authority of
6 private process servers: background investigation:
7 constables' logs

8 A. The sheriff shall receive the following fees in civil actions:

9 1. For serving each true copy of the original summons in a civil suit,
10 sixteen dollars, except that the sheriff shall not charge a fee for service
11 of any document pursuant to section 13-3602 or any injunction against
12 harassment pursuant to section 12-1809 if the court indicates the injunction
13 arises out of a dating relationship.

14 2. For summoning each witness, sixteen dollars.

15 3. For levying and returning each writ of attachment or claim and
16 delivery, forty-eight dollars.

17 4. For taking and approving each bond and returning it to the proper
18 court when necessary, twelve dollars.

19 5. For endorsing the forfeiture of any bond required to be endorsed by
20 him, twelve dollars.

21 6. For levying each execution, twenty-four dollars.

22 7. For returning each execution, sixteen dollars.

23 8. For executing and returning each writ of possession or restitution,
24 forty-eight dollars plus a rate of forty dollars per hour per deputy or
25 constable for the actual time spent in excess of three hours.

26 9. For posting the advertisement for sale under execution, or any
27 order of sale, twelve dollars.

28 10. For posting or serving any notice, process, writ, order, pleading
29 or paper required or permitted by law, not otherwise provided for, sixteen
30 dollars except that posting for a writ of restitution shall not exceed ten
31 dollars.

32 11. For executing a deed to each purchaser of real property under
33 execution or order of sale, twenty-four dollars.

34 12. For executing a bill of sale to each purchaser of real and personal
35 property under an execution or order of sale, when demanded by the purchaser,
36 sixteen dollars.

37 13. For services in designating a homestead or other exempt property,
38 twelve dollars.

39 14. For receiving and paying money on redemption and issuing a
40 certificate of redemption, twenty-four dollars.

41 15. For serving and returning each writ of garnishment and related
42 papers, forty dollars.

43 16. For the preparation, including notarization, of each affidavit of
44 service or other document pertaining to service, eight dollars.

1 17. For every writ served on behalf of a justice of the peace, a fee
2 established by the board of supervisors not to exceed five dollars per writ
3 ~~shall be established~~. Monies collected from the writ fees shall be deposited
4 in the constable ethics ~~committee~~ STANDARDS AND TRAINING fund established by
5 section ~~22-136~~ 22-138.

6 B. The sheriff shall also collect the appropriate recording fees if
7 applicable and other appropriate disbursements.

8 C. The sheriff may charge:

9 1. Fifty-six dollars plus disbursements for any skip tracing services
10 performed.

11 2. A reasonable fee for executing a civil arrest warrant ordered
12 pursuant to court rule by a judge or justice of the peace. The fee shall
13 only be charged to the party requesting the issuance of the civil arrest
14 warrant.

15 3. A reasonable fee for storing personal property levied on pursuant
16 to title 12, chapter 9.

17 D. For traveling to serve or on each attempt to serve civil process,
18 writs, orders, pleadings or papers, the sheriff shall receive two dollars
19 forty cents for each mile actually and necessarily traveled but, in any
20 event, not to exceed two hundred miles, nor to be less than sixteen
21 dollars. Mileage shall be charged one way only. For service made or
22 attempted at the same time and place, regardless of the number of parties or
23 the number of papers so served or attempted, only one charge for travel fees
24 shall be made for such service or attempted service.

25 E. For collecting money on an execution when it is made by sale, the
26 sheriff and the constable shall receive eight dollars for each one hundred
27 dollars or major portion thereof not to exceed a total of two thousand
28 dollars, but when money is collected by the sheriff without a sale, only
29 one-half of such fee shall be allowed. When satisfaction or partial
30 satisfaction of a judgment is received by the judgment creditor after the
31 sheriff or constable has received an execution on the judgment, the
32 commission is due the sheriff or constable and is established by an affidavit
33 of the judgment creditor filed with the officer. If the affidavit is not
34 lodged with the officer within thirty days of the request, the commission
35 shall be based on the total amount of judgment due as billed by the officer
36 and may be collected as any other debt by that officer.

37 F. The sheriff shall be allowed for all process issued from the
38 supreme court and served by the sheriff the same fees as are allowed the
39 sheriff for similar services ~~upon~~ ON process issued from the superior court.

40 G. The constable shall receive the same fees as the sheriff for
41 performing the same services in civil actions, except that mileage shall be
42 computed from the office of the justice of the peace originating the civil
43 action to the place of service.

44 H. Private process servers duly appointed or registered pursuant to
45 rules established by the supreme court may serve all process, writs, orders,

1 pleadings or papers required or permitted by law to be served ~~prior to~~
 2 **BEFORE**, during or independently of a court action, including all such as are
 3 required or permitted to be served by a sheriff or constable, except writs or
 4 orders requiring the service officer to sell, deliver or take into the
 5 officer's custody persons or property, or as may otherwise be limited by rule
 6 established by the supreme court. A private process server is an officer of
 7 the court. As a condition of registration, the supreme court shall require
 8 each private process server applicant to furnish a full set of fingerprints
 9 to enable a criminal background investigation to be conducted to determine
 10 the suitability of the applicant. The completed applicant fingerprint card
 11 shall be submitted with the fee prescribed in section 41-1750 to the
 12 department of public safety. The applicant shall bear the cost of obtaining
 13 the applicant's criminal history record information. The cost shall not
 14 exceed the actual cost of obtaining the applicant's criminal history record
 15 information. Applicant criminal history records checks shall be conducted
 16 pursuant to section 41-1750 and Public Law 92-544. The department of public
 17 safety is authorized to exchange the submitted applicant fingerprint card
 18 information with the federal bureau of investigation for a federal criminal
 19 records check. A private process server may charge such fees for services as
 20 may be agreed ~~upon~~ **ON** between the process server and the party engaging the
 21 process server.

22 I. Constables shall maintain a log of work related activities
 23 including a listing of all processes served and the number of processes
 24 attempted to be served by case number, the names of the plaintiffs and
 25 defendants, the names and addresses of the persons to be served except as
 26 otherwise precluded by law, the date of process and the daily mileage.

27 J. The log maintained in subsection I of this section is a public
 28 record and shall be made available by the constable at the constable's office
 29 during regular office hours. Copies of the log shall be filed monthly with
 30 the clerk of the justice court and with the clerk of the board of
 31 supervisors.

32 Sec. 2. Section 22-131, Arizona Revised Statutes, is amended to read:

33 22-131. Constables; powers and duties

34 A. Constables shall attend the courts of justices of the peace within
 35 their precincts when required, and within their counties execute, serve and
 36 return all processes and notices directed or delivered to them by a justice
 37 of the peace of the county or by competent authority. In addition to any
 38 other provision of law these duties may be enforced by the presiding judge of
 39 the superior court in the county, including the use of the power of contempt.

40 ~~B. The Arizona peace officer standards and training board shall~~
 41 ~~approve a mandatory training course for constables covering topics including~~
 42 ~~civil and criminal process, conflict resolution and firearm safety.~~
 43 ~~Constables shall be required to attend the mandatory training course within~~
 44 ~~six months after election. In subsequent years, constables shall annually~~
 45 ~~attend at least eight hours of additional training approved by the Arizona~~

1 ~~peace officer standards and training board. Copies of certificates of~~
2 ~~completion of the constable training shall be forwarded to the clerk of the~~
3 ~~justice court and the clerk of the board of supervisors within thirty days~~
4 ~~after completion.~~

5 B. CONSTABLES SHALL ATTEND THE TRAINING PRESCRIBED IN SECTION 22-137.

6 C. Constables, with the consent of and at salaries fixed by the board
7 of supervisors, may appoint deputies, stenographers, clerks and assistants
8 necessary to conduct the affairs of their offices. The appointments shall be
9 in writing and filed in the office of the county recorder.

10 D. The provisions of law relating to sheriffs, as far as applicable,
11 shall govern the powers, duties and liabilities of constables.

12 Sec. 3. Section 22-132, Arizona Revised Statutes, is amended to read:
13 22-132. Expenses

14 Constables shall be allowed by the board of supervisors, as a county
15 charge, the actual and necessary expenses incurred in training as required by
16 section ~~22-131~~ 22-137, pursuing defendants, transacting business relating to
17 civil and criminal matters, and serving notices and processes, except that
18 the allowable expenses for service of process in civil actions shall be as
19 provided in section 11-445.

20 Sec. 4. Section 22-136, Arizona Revised Statutes, is amended to read:
21 22-136. Constable ethics standards and training board

22 A. A constable ethics ~~committee~~ STANDARDS AND TRAINING BOARD is
23 established consisting of the following voting members:

24 1. Two constables from counties with a population of less than one
25 million persons who are appointed by the Arizona association of counties.

26 2. Two constables from counties with a population of one million or
27 more persons who are appointed by the Arizona association of counties.

28 3. One justice of the peace who is appointed by the chief justice of
29 the supreme court.

30 4. One county administrator or designee who is appointed by the county
31 supervisors association.

32 5. One sheriff who is appointed by the governor.

33 6. One member of the public who is appointed by the governor.

34 7. One board member of the Arizona multihousing association who is
35 appointed by the governor.

36 B. The ~~committee~~ BOARD shall annually elect a chairperson,
37 VICE-CHAIRPERSON AND SECRETARY from among its members. ~~The committee shall~~
38 ~~adopt a constable code of conduct that addresses attendance at mandatory~~
39 ~~training and rules of procedure.~~ THE CHAIRPERSON MAY ESTABLISH COMMITTEES TO
40 ASSIST AND ADVISE THE BOARD IN CARRYING OUT ITS RESPONSIBILITIES. A MAJORITY
41 OF THE BOARD CONSTITUTES A QUORUM AND A MAJORITY VOTE OF THE QUORUM IS
42 NECESSARY FOR THE BOARD TO TAKE ANY ACTION.

43 C. Terms of the ~~committee~~ BOARD members are four years, ~~except that~~
44 ~~the initial terms of two constables, the county administrator and the sheriff~~
45 ~~are two years.~~ If a member ceases to hold the position that qualified the

1 member for the appointment, the member's membership terminates and the
2 appointing authority pursuant to subsection A of this section fills the
3 vacancy for the unexpired term.

4 ~~D. The committee shall hear and investigate written complaints from~~
5 ~~any person involving a constable's ethical or personal conduct. The~~
6 ~~committee shall attempt to remedy a constable's inappropriate behavior by:~~

7 ~~1. Mediating.~~

8 ~~2. Issuing warnings, reprimands or admonishments.~~

9 ~~3. Instructing constables to take particular action to correct~~
10 ~~behavior or to take educational courses.~~

11 ~~4. Urging a constable to retire from office.~~

12 ~~E. If the committee is not satisfied with the remedies prescribed by~~
13 ~~subsection D of this section the committee shall submit a report to the~~
14 ~~county attorney's office in the county in which the conduct at issue~~
15 ~~occurred.~~

16 ~~F. A constable ethics committee fund is established consisting of~~
17 ~~monies received from writ fees collected pursuant to section 11-445,~~
18 ~~subsection A, paragraph 17. The constable ethics committee shall administer~~
19 ~~the fund subject to legislative appropriation. On notice from the committee,~~
20 ~~the state treasurer shall invest and divest monies in the fund as provided in~~
21 ~~section 35-313, and monies earned from investment shall be credited to the~~
22 ~~fund. The fund is exempt from the provisions of section 35-190 relating to~~
23 ~~lapsing of appropriations. The committee shall use:~~

24 ~~1. Eighty per cent of the monies appropriated from the fund for~~
25 ~~constable training, equipment and related grants.~~

26 ~~2. Twenty per cent of the monies appropriated from the fund for~~
27 ~~operating expenses of the committee.~~

28 D. MEMBERS OF THE BOARD ARE NOT ELIGIBLE TO RECEIVE COMPENSATION BUT
29 ARE ELIGIBLE FOR REIMBURSEMENT OF EXPENSES PURSUANT TO TITLE 38, CHAPTER 4,
30 ARTICLE 2.

31 Sec. 5. Title 22, chapter 1, article 3, Arizona Revised Statutes, is
32 amended by adding sections 22-137 and 22-138, to read:

33 22-137. Constable ethics standards and training board; powers
34 and duties; constable training

35 A. THE CONSTABLE ETHICS STANDARDS AND TRAINING BOARD SHALL:

36 1. ADOPT RULES FOR THE ADMINISTRATION AND CONDUCT OF THE BOARD,
37 INCLUDING MEETING TIMES, MEETING PLACES AND MATTERS TO BE PLACED ON THE
38 AGENDA OF EACH MEETING, AND FOR THE DISTRIBUTION OF MONIES IN THE CONSTABLE
39 ETHICS STANDARDS AND TRAINING FUND PURSUANT TO SECTION 22-138.

40 2. ADOPT A CODE OF CONDUCT FOR CONSTABLES AND ADOPT RULES TO ENFORCE
41 THE CODE OF CONDUCT.

42 3. ESTABLISH PROCEDURES FOR CONDUCTING CONFIDENTIAL INVESTIGATIONS AND
43 HOLDING HEARINGS.

44 4. HEAR AND INVESTIGATE WRITTEN COMPLAINTS FROM ANY PERSON INVOLVING A
45 CONSTABLE'S ETHICAL CONDUCT.

1 5. REMEDY A CONSTABLE'S INAPPROPRIATE BEHAVIOR BY:
2 (a) MEDIATING.
3 (b) ISSUING WARNINGS, REPRIMANDS OR ADMONISHMENTS.
4 (c) INSTRUCTING CONSTABLES TO TAKE A PARTICULAR ACTION OR TO TAKE
5 EDUCATIONAL CLASSES.
6 (d) URGING A CONSTABLE TO RETIRE FROM OFFICE.
7 B. THE BOARD MAY:
8 1. EMPLOY AN EXECUTIVE DIRECTOR AND OTHER STAFF NECESSARY TO FULFILL
9 THE POWERS AND DUTIES OF THE BOARD.
10 2. ENTER INTO CONTRACTS AND INTERAGENCY AGREEMENTS TO CARRY OUT ITS
11 POWERS AND DUTIES.
12 3. CERTIFY ORGANIZATIONS TO PROVIDE TRAINING AND SUPPORT PROGRAMS FOR
13 CONSTABLES.
14 4. PROVIDE SUPPORT GRANTS TO CONSTABLES FOR LOCAL OR STATEWIDE
15 TRAINING PROGRAMS.
16 5. TAKE AND HEAR EVIDENCE, ADMINISTER OATHS AND AFFIRMATIONS AND
17 COMPEL BY SUBPOENA THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF BOOKS,
18 PAPERS, RECORDS, DOCUMENTS AND OTHER INFORMATION RELATING TO ANY
19 INVESTIGATION OR HEARING.
20 C. IF THE BOARD IS NOT SATISFIED WITH THE REMEDIES PRESCRIBED IN
21 SUBSECTION A, PARAGRAPH 5 THE BOARD SHALL SUBMIT A REPORT TO THE COUNTY
22 ATTORNEY'S OFFICE IN THE COUNTY IN WHICH THE CONDUCT AT ISSUE OCCURRED.
23 D. THE ARIZONA PEACE OFFICER STANDARDS AND TRAINING BOARD SHALL
24 APPROVE A MANDATORY BASIC TRAINING COURSE FOR NEWLY ELECTED CONSTABLES
25 COVERING TOPICS INCLUDING CIVIL AND CRIMINAL PROCESS, CONFLICT RESOLUTION AND
26 FIREARM SAFETY. CONSTABLES MUST ATTEND THE MANDATORY TRAINING COURSE WITHIN
27 SIX MONTHS AFTER ELECTION. IN SUBSEQUENT YEARS, CONSTABLES MUST ANNUALLY
28 ATTEND AT LEAST EIGHT HOURS OF ADDITIONAL TRAINING APPROVED BY THE ARIZONA
29 PEACE OFFICER STANDARDS AND TRAINING BOARD. COPIES OF CERTIFICATES OF
30 COMPLETION OF THE CONSTABLE TRAINING SHALL BE FORWARDED TO THE CONSTABLE
31 ETHICS STANDARDS AND TRAINING BOARD WITHIN THIRTY DAYS AFTER COMPLETION.
32 E. THIS SECTION DOES NOT CREATE A CAUSE OF ACTION OR A RIGHT TO BRING
33 AN ACTION AGAINST THE BOARD.
34 22-138. Constable ethics standards and training fund; budget
35 A. A CONSTABLE ETHICS STANDARDS AND TRAINING FUND IS ESTABLISHED
36 CONSISTING OF MONIES RECEIVED FROM WRIT FEES COLLECTED PURSUANT TO SECTION
37 11-445, SUBSECTION A, PARAGRAPH 17. THE CONSTABLE ETHICS STANDARDS AND
38 TRAINING BOARD SHALL ADMINISTER THE FUND. ON NOTICE FROM THE BOARD, THE
39 STATE TREASURER SHALL INVEST AND DIVEST MONIES IN THE FUND PURSUANT TO
40 SECTION 35-313, AND MONIES EARNED FROM INVESTMENT SHALL BE CREDITED TO THE
41 FUND. MONIES IN THE FUND ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190
42 RELATING TO LAPSING OF APPROPRIATIONS AND ARE CONTINUOUSLY APPROPRIATED TO
43 THE BOARD FOR THE PURPOSES OF THIS SECTION.

- 1 B. THE CONSTABLE ETHICS STANDARDS AND TRAINING BOARD SHALL USE:
2 1. EIGHTY PER CENT OF THE MONIES APPROPRIATED FROM THE FUND FOR
3 CONSTABLE TRAINING, EQUIPMENT AND RELATED GRANTS.
4 2. TWENTY PER CENT OF THE MONIES APPROPRIATED FROM THE FUND FOR
5 OPERATING EXPENSES OF THE BOARD.
6 C. ON OR BEFORE JULY 1 OF EACH YEAR, THE BOARD SHALL ADOPT A BUDGET.
7 THE BUDGET IS EFFECTIVE ON THE APPROVAL OF THE BOARD.

8 Sec. 6. Transfer of fund monies

9 On the effective date of this act, all monies in the constable ethics
10 committee fund established by section 22-136, Arizona Revised Statutes, are
11 transferred to the constable ethics standards and training board fund
12 established by section 22-138, Arizona Revised Statutes, as added by this
13 act.

14 Sec. 7. Retention of members

15 All persons serving as members of the constable ethics committee on the
16 effective date of this act may continue to serve on the constable ethics
17 standards and training board established by this act until the expiration of
18 their normal terms. The appointing authority shall make all subsequent
19 appointments as prescribed by statute.