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**The Texas Constable: A Vital Part of County Law Enforcement**

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**A Leadership White Paper  
Submitted in Partial Fulfillment  
Required for Graduation from the  
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## **ABSTRACT**

The office of constable is the oldest form of law enforcement within Texas and has a long and distinguished history. However, in recent years, a lack of knowledge and understanding by county commissioners, state legislators, and even the other law enforcement agencies regarding the constable's duties and responsibilities perpetuates the notion that constables are inferior to other types of law enforcement officers. This is the primary reason that constables are often considered expendable and targeted for abolition for budgetary reasons or because they are seen as having no useful purpose. It is through the education of county commissioners and state legislators about the duties, responsibilities, and versatility of the constable that misconceptions concerning the role of constable within county law enforcement can be addressed. The Texas Constitution and Statutes defines the qualifications, duties, and responsibilities of a Texas constable and it is through the examination of these documents, and an examination of the versatility of the modern constable's office, that the usefulness of the Texas Constable to county law enforcement will become clear.

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## INTRODUCTION

Originating from when Texas was nothing more than a territory, the office of the constable is the oldest form of law enforcement within Texas. Recent criticism, from both state and county politicians, charge that the office is antiquated, unnecessary, and a financial burden. The solution proposed is to either declare the office dormant or abolish it completely. This option does not take into account the overall value of the constable office to the either state or county law enforcement.

The constable's office fulfills a unique role in Texas law enforcement. The constables are one of only two law enforcement offices that are required to be established within a county according to the Texas Constitution. Constables and their deputies, by Texas statute, are required to have more training than any other peace officer because of their role in both criminal and civil law enforcement. The constable office has the ability to be one of the most versatile law enforcement agencies within a county because of their ability to mold to the needs of the community. This makes them a great asset to the county law enforcement community when given the financial ability to do so by commissioner's courts. In fact, it is the Texas constable and his closeness to the community that many law enforcement experts say embodies the community policing model (Hatley, 1999). It is because of this closeness to the community and the important role in county law enforcement that constables play that makes doing away with them within any county in the state a serious mistake.

A historical perspective is important to understand the assault of county commissioners and state lawmakers on the constable's office. In 1993, during the 73<sup>rd</sup> Texas Legislative Session (Texas Legislature, 1993a; Texas Legislature, 1993b), two

House Joint Resolutions (HJR) were introduced to abolish constables in Roberts (73(R) HJR-44) and Terry Counties (73(R) HJR-124) (Figure 1). Neither resolution was voted out of committee.



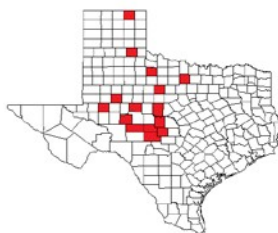
*Figure 1. Counties filing to abolish Constables during the 73rd Texas Legislative Session.*

In 1995, during the 74<sup>th</sup> Texas Legislative Session (Texas Legislature, 1995a; Texas Legislature, 1995b), two bills were again introduced. HJR 49 affecting Reagan County was never voted out of committee; however, the Texas House and Senate passed HJR 80. This bill proposed the amendment of the Texas Constitution to transfer all constable duties to the sheriff and abolish the office of constable in Mills, Reagan and Roberts Counties (Figure 2). In November 1995, the amendment was voted on by the citizens of Texas and passed, thus amending the Texas Constitution.



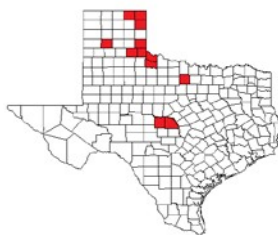
*Figure 2. Counties who abolished Constables in the 74th Texas Legislative Session.*

In 1997, during the 75<sup>th</sup> Texas Legislative Session (Texas Legislature, 1997a; Texas Legislature, 1997b), ten bills filed in the house and one in the senate wanted to abolish constables in Midland (75(R) HJR 7), Ochiltree (75(R) HJR 45), Hall (75(R) HJR 46), Coke and Irion (75(R) HJR 76), Shackelford (75(R) HJR 77), Coleman, Kimble, Mason, Menard, Schleicher and Shackelford (75(R) HJR 79), Howard (75(R) HJR 99), McCulloch (75(R) HJR 100), Jack (75(R) HJR 7 & SJR 47), and Knox counties (75(R) HJR 112) (Figure 3). None of the proposed bills were voted out of committee.



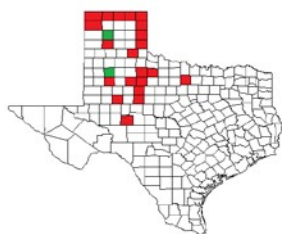
*Figure 3. Counties filing to abolish Constables during the 75th Texas Legislative Session.*

In 1999, during the 76<sup>th</sup> Texas Legislative Session (Texas Legislature, 1999a; Texas Legislature, 1999b), twelve bills were introduced in the house and one in the senate wanting to abolish constables in Collingsworth (76(R) HJR 6), Hemphill (76(R) HJR 33), Hall (76(R) HJR 34), Childress (76(R) HJR 35), Jack (76(R) HJR 41 & SJR 2), Lipscomb (76(R) HJR 47), McCullough (76(R) HJR 50), San Saba (76(R) HJR 55), Foard (76(R) HJR 67), Hardeman (76(R) HJR 68), Randall (76(R) HJR 82), and Ochiltree counties (76(R) HJR 89) (Figure 4). While Senate Joint Resolution 2 concerning Jack County was passed by the Senate, none of the proposed bills were voted out of the House committees.



**Figure 4. Counties filing to abolish Constables during the 76th Texas Legislative Session.**

In 2001, during the 77<sup>th</sup> Texas Legislative Session (Texas Legislature, 2001a; Texas Legislature, 2001b), lawmakers took a different tactic. They not only filed 21 bills to abolish the constables offices in all 21 counties (Figure 5, red counties), but they also filed bills in the House and Senate to allow the commissioners court to have the authority to call elections within counties to abolish constables offices within their counties (77(R) HJR 29 & 77(R) SJR 23). Two particular counties were targeted with bills containing the same type of language as HJR 29 and SJR 23 in an attempt to allow the commissioners courts of those counties to call for elections to abolish constables; Potter County (77(R) HJR 62) and Lubbock County (77(R) HJR 30 & 77(R) SJR 24) (Figure 5, green counties). This was an attempt by the counties to circumvent the need for a constitutional amendment in order to abolish constables. All 26 of these bills were left in committee and never voted on.

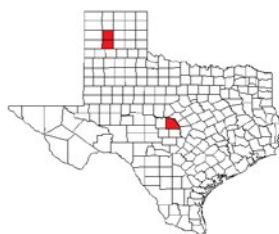


King (77(R) HJR 3), Howard (77(R) HJR 10), Dallam (77(R) HJR 33), Sherman (77(R) HJR 34), Hansford (77(R) HJR 35), Ochiltree (77(R) HJR 36), Lipscomb (77(R) HJR 37), Hemphill (77(R) HJR 38), Wheeler (77(R) HJR 39), Collingsworth (77(R) HJR 40), Hall (77(R) HJR 41), Hartley (77(R) HJR 42), Jack (77(R) HJR 50), Nolan (77(R) HJR 63), Lynn (77(R) HJR 68), Irion (77(R) HJR 70), Knox (77(R) HJR 83), Kent (77(R) HJR 84), Randall (77(R) HJR 90), Fisher (77(R) HJR 99), Stonewall (77(R) HJR 109)

**Figure 5. Counties filing to abolish Constables during the 77th Texas Legislative Session.**

It was during the 77<sup>th</sup> Texas Legislative Session (Texas Legislature, 2003a; Texas Legislature, 2003b) that the Justice of the Peace and Constables Association of Texas, Inc. (JPCA) worked out a compromise that was purposed by Representative Warren Chisum as HJR 2. The compromise consisted of a constitutional amendment that would change Article V, Section 18, which gives the commissioner's court the authority to declare a constable office dormant if it has not been occupied for seven consecutive years (77(R) HJR 2). While this did not abolish the office, it did have the effect of preventing elections for these offices unless the commissioner's court reactivates the office or an election occurs within the precinct allowing the voters to decide if the office should be reactivated. This measure passed the house and senate and was put on the ballot on November 5, 2002, and the voters approved it.

Since the constitutional amendment was passed, there have been only two additional attempts to abolish constable's offices, and they both occurred in 2005, during the 79<sup>th</sup> Texas Legislative Session (Texas Legislature, 2005a; Texas Legislature, 2005b). The first was HJR 34 which was introduced to abolish the constable's offices in San Saba County (79 (R) HJR 34). The second was SJR 14 which looked to abolish the constable's offices in Potter and Randall Counties (79 (R) SJR 14) (Figure 6). Neither of these bills made it out of committee.



**Figure 6.** Counties filing to abolish Constables during the 79th Texas Legislative Session.



In the 80<sup>th</sup>, 81<sup>st</sup>, and 82<sup>nd</sup> Texas Legislative Sessions (Texas Legislature, 2007a; Texas Legislature, 2007b; Texas Legislature, 2009a; Texas Legislature, 2009b; Texas Legislature, 2011a; Texas Legislature, 2011b), there were no bills introduced to abolish constable's offices but the possibility remains. The threats to the office of constable will continue until county commissioners and state legislators understand that constables are an important part of county law enforcement. It is important to correct the misconceptions regarding the roles and responsibilities of constables. Educating commissioners and legislators on the distinguished history of constables, the laws and duties concerning constables within Texas law, the training requirements for constables, and their role within county law enforcement can do this.

## **POSITION**

When discussing the importance of constables within county law enforcement, the first thing to be considered is the content within the Texas Constitution. Under Section 18 (a), each county with a population under 18,000 should have between one and four constable precincts, each county with a population between 18,000 and 50,000 should have between two and eight constable precincts, and each county with a population of over 50,000 should have between four and eight constable precincts. The number of precincts shall be determined by the commissioner's court (Texas Constitution, 2009). Under this section, it also specifically states that a constable "shall be elected" for each precinct and that constable shall serve a four year term. In addition, it states that the constable will continue to serve as constable even after his term has expired until his replacement is sworn in (Texas Constitution, 2009).

The two exceptions to having constables within a county were discussed in greater detail earlier. The first was the amendment where Mills, Reagan, and Roberts counties constables were abolished and their duties turned over to the sheriff (Texas Constitution, 2009). The second is the method in which a commissioner's court of a county may elect to declare a constable's office dormant (Texas Constitution, 2009). These exceptions, however, do not negate the fact that constables are constitutionally mandated for all other counties (Texas Constitution, 2009).

The office of Constable is required in 251 of the 254 counties in Texas; it is advantageous to look into what the Texas statutes say regarding constables and their duties. The Texas Code of Criminal Procedure (CCP) Article 2.12 defines peace officers and delineates their duties. The constable is listed as the second one in the pages of peace officers defined within the CCP (Texas Code of Criminal Procedure, 2011). The CCP then goes on to define in clear and exact terms the duties and the powers of each peace officer within the state (Texas Code of Criminal Procedure, 2011). The CCP stated, "It is the duty of every peace officer to preserve the peace within the officer's jurisdiction" (Texas Code of Criminal Procedure, 2011). It goes on to say that it is the officer's duty to "prevent or suppress crime," "execute all lawful process," and to "arrest offenders...in order that they can be taken before a magistrate" (Texas Code of Criminal Procedure, 2011). It clearly stated that there is no difference between a constable, a sheriff, or any other peace officer's duty to use all means at their disposal to keep the peace and protect the public from those who want to violate the law.

The second place to look for duties of the constable is the Texas Local Government Code (LGC), Title 3, Subtitle B, Chapter 86, where additional responsibilities are established. This section states that it is the constable's duty to serve all civil or criminal process or warrants that are delivered to them. It goes on to state that service may be made by the constable anywhere within his precinct, his county, or any contiguous county (Texas Local Government Code, 2011). The only exception to this is when the constable "is a party to or interested in the outcome of a suit" (Texas Local Government Code, 2011). The last identified responsibility states, "The constable shall attend each justice court held in the precinct" (Texas Local Government Code, 2011).

It is through the examination of the law concerning the duties of a constable that it becomes clear that constables are multifaceted law enforcement officers. They are peace officers, so constables have the defined duty to deal with the criminal part of law enforcement. Constables can write tickets, answer calls for service, backup officers from other agencies, work accidents, and do investigations. It is the additional duties that a constable must perform that are spelled out in the LGC that make them different than most peace officers, including sheriffs (Texas Local Government Code, 2011). It is the premise that constables must have a very good understanding of both civil law and criminal law that makes them a valuable resource to the citizens of Texas.

Now that the duties and responsibilities of a constable have been identified, the next step is to look at the requirements to become a constable, as well as the training requirements mandated by state statute. To qualify to be a constable, a candidate must be a currently licensed law enforcement officer, be a special agent for a federal law

enforcement organization, a retired peace officer or have an associate's degree (Texas Local Government Code, 2011). In addition, if a constable is elected who does not have a peace officers license issued by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE), the new constable must receive a license and present it to the commissioner's court within 270 days of taking office (Texas Local Government Code, 2011). This is a much shorter time frame than is required for a sheriff, who has two years in order to get licensed.

A constable is required to have more training than any other law enforcement officer does. The constable is required under the Texas Occupation Code (TOC) 1701.3534(d) to complete the Newly Elected Constables Course that is taught at the Law Enforcement Management Institute of Texas (LEMIT) no later than the second anniversary of their appointment (Texas Occupation Code, 2011). This 40-hour course covers the basics of civil law and other topics needed to be successful in their new role. In addition, the constable must also complete a 40-hour course for continuing education sometime during every four year training cycle (Texas Occupation Code, 2011). This training is also conducted by LEMIT and consists of a more advanced look at civil process, as well as other classes designed to help constables in the performance of their duties. The TOC also addresses the mandatory training required for deputy constables. The code requires that every deputy constable attend a 20-hour course on civil process within each training cycle in order to ensure that each deputy is properly educated in the intricacies of working within civil law (Texas Occupation Code, 2011). All training outlined in the TOC is in addition to the training required by all other law enforcement officers.

Since the 1980's, constables have worked closely with TCLEOSE and the Texas Legislature to enact the statutes and rules that govern constable qualifications and education in an effort to ensure the professionalism of the office. The fact that constables are held to a higher standard for both qualification and education is a testament to the importance that the TCLEOSE and the legislature place on the office of the constable.

While the duties and qualifications of a constable are very important to understand, it is equally important to understand the role of the constables in county law enforcement. The role of the constable within the county can be very diverse. Hatley observed that, "Some constables just serve papers, some are involved in providing their constituents with a good measure of safety and protection and enforce the law" (Hatley, 1999, p. X). In a 2007 interview, Harris County Precinct 4 Constable Ron Hickman stated that constables "are one of the most flexible, utilitarian types of positions" (Babineck, 2007, para. 4). This statement is true. Constables are "very much a product of their own individuality" (Hatley, 1999, p. X). The duties that a constable undertakes depends greatly on the leadership and drive of the constable and what the constable perceives the community wants and needs from the office. Constables often act as a resource for other law enforcement agencies regarding civil law, a topic on which the average law enforcement officer has very little knowledge. In some counties, constables undertake drug interdiction, traffic enforcement, high-risk warrant service, litter abatement, clean air act enforcement, as well as many other duties. In fact, Cameron County abolished its Park Ranger Department and turned both personnel and duties over to the Constables Office to ensure public safety within the parks (Martinez,

2009). These are but a few of the roles that demonstrate how constables are one of the most versatile law enforcement agencies and how they have adapted to community needs.

The constables' office also has the ability to generate significant income for the county. For every civil citation, writ, or any other type of civil paper that a constable serves, there is a fee associated with it that is set by the county commissioners. Each time a constable arrests a person on a warrant issued by his justice of the peace or any other magistrate, there is a warrant fee payable to the constable's office associated with it. Even when a constable writes a ticket, there is a fine associated with it. Taking these fees and fines into consideration, it becomes apparent that the office of constable is one of the few law enforcement agencies that has the potential to defray a majority of the costs associated with its own operation.

### **COUNTER POSITION**

Since 1993, the office of constable has come under fire by county commissioners and state legislators for two primary reasons: budgetary constraints and overlapping of duties. In this age of budgetary constraints, it is thought that the office of constable within county government is unnecessary and a financial burden to the taxpayers of the county. It is also thought that the duties of the constable should be turned over to the sheriff's office because they, too, have the ability under law to handle civil process.

An additional burden of providing the funding needed for a constable's salary places strain on each counties budget. Prior to 1999, this was not much of a problem, especially for smaller counties who paid the constables one dollar a year for their service, which did not adversely affect the county's budget. In 1999, the Texas

Occupation Code and the Texas Local Government Code were changed, requiring constables to be licensed by TCLEOSE (Texas Local Government Code, 1999; Texas Occupation Code, 1999). Many of the constables who served for one dollar a year could no longer meet the requirements and were forced to vacate their offices. The Texas Constitution also changed in 1999 to reflect that constables must be paid on a salary basis (Texas Constitution, 2009). Some county commissioners today argue that because of the poor economy, they do not have the money within their budget to pay constables a fair wage and set them up with a budget necessary to do their job. Rep. David Swinford, R-Dumas, stated in a 2001 interview that the commissioners court is “having to cut salaries of commissioners and judges, and yet they have these constable positions on their books,” and he continued, “If somebody decides to run for this office, and they demand a salary, it may just bankrupt the county” (as cited in Daugherty, 2001b, para. 7). In this article, Swinford was talking about Potter County, but the same concept holds true for a lot of Texas counties. They have not had to budget for the office in the past and do not have the financial recourses to do so now. Lipscomb County Judge Willis Smith stated, “health insurance alone can cost up to \$400 a month...Combined with salary requirements, a car and expenses, a constable position could run to \$30,000 a year” (as cited in Daugherty, 2001a, para. 9). In 2012, these costs have increased significantly.

While the cost to the counties would be a burden, the fact of the matter is that the office of constable is mandated within the Texas Constitution. In his 1999 article, Wendel stated, “The questions regarding official conduct, ethics and costs incurred by the constable’s office are local issues and there are local solutions that can be utilized

to address them, such as through the budget process” (para. 6). County commissioners acknowledge the fact that they cannot block someone who wishes to run for the office. The commissioners are aware that if someone who is qualified to hold the office is elected, under Texas law they are required to pay that person a fair wage for the position they hold. That wage should take into consideration that the constable has duties that are mandated and the office of constable is a full time position. In 2001, Texas Attorney General’s Opinion, JC-0389, stated that “the specific amount that constitutes a reasonable salary is a fact question within the discretion of the commissioners court, subject to judicial review for abuse of discretion” (as cited in Cornyn, 2001, p. 1). This means that the commissioner’s court must set a salary that is in line with the duties and responsibilities of the office. If they do not set a fair salary, they may be held accountable by the legal system.

Hatley (1999) wrote in his book that “although the voters may elect the constables, the commissioner’s court can withhold any or all of their salary and operating funds, sometimes making it impossible for a constable to fulfill the oath of office” (p. X). Hatley (1999) also stated that “county-level political alliances, friendly ties, personality conflicts, and power struggles have a great impact on every constable’s performance” (p. X). Without a fair salary and an appropriate operating budget, constables face the real problem of being unable to fulfill their constitutional and statutory duties. Constables are faced with the choice to either neglect their duties and risk being sued or perform their duties without needed resources. Neither of these choices is acceptable, yet this is exactly the position in which commissioners courts



intentionally place their constables. For this reason, Cornyn (2001) quoted the ruling in *Vondy v. Commissioners Court of Uvalde County*, by stating:

The commissioners court may not 'attempt to restrict or abolish a constitutionally established office by refusing to reasonably compensate the holder of such office,' nor may it 'attempt to abolish or restrict the office of constable by refusing to allow or by preventing the elected official from performing those duties required of him.' p. 4

There is also the belief that the constable's office is not needed when there is a sheriff's office in each county that could do the same job. The Texas Constitution under Article V, Section 23 (2009) states that a sheriff shall be elected for each county and that he shall serve a four-year term. It goes on to say that any "duties, qualifications, perquisites, and fees of office, shall be prescribed by the Legislature" (Texas Constitution, 2009, para. 1). Under Article 2.12 of the CCP, sheriffs are peace officers, and under Article 2.13, they have the same duties and responsibilities as any other peace officer.

The Local Government Code, under Section 85.0011, states the qualification required to be a sheriff. According to the code, the candidate is required to have "a high school education or equivalency certificate" and be "eligible to be licensed under Sections 1701.309 and 1701.312, Occupations Code" (Texas Local Government Code, 2011, para. 1). (Section 1701.309 refers to the minimum age of 21 and Section 1701.312 refers to disqualification for felony conviction or community supervision.) Looking back at the Texas Local Government Code under Section 85.021(2011), it states that "the sheriff shall execute all process and precepts directed to the sheriff" (para. 1), thus giving the sheriff the same duties as the constable when it comes to civil process.

Now that the duties of the sheriff have been examined, the training requirements for sheriff must also be examined. According to the Texas Local Government Code, Section 85.0025(a) (2011), TCLEOSE “may require each county sheriff, who is not a commissioned peace officer, to attend not more than 40-hours of instruction in law enforcement” (para. 1). It goes on to state that the sheriff has “at least two but not more than four years after the date on which the sheriff assumes office to complete the hours of instruction” and that the county must pay for the classes (Texas Local Government Code, 2011, para. 1). If the sheriff is a licensed peace officer, he must attend the same mandated training that all peace officers are required to attend (Texas Local Government Code, 2011).

While it has been established that sheriff’s and constables have similar duties when it comes to both criminal and civil, the requirement for obtaining the office and the training requirements for keeping the job need to be looked at carefully. The difference in the requirements for being eligible to hold the office is obvious. The constable cannot serve unless he is either a special investigator, a retired peace officer or has an associate’s degree, while the sheriff is only required to have a high school diploma or equivalent (Texas Local Government Code, 2011). The sheriff is given two years to obtain his peace officer license after being elected; the constable has 270 days (Texas Local Government Code, 2011). The sheriff is required to take 40-hours of general law enforcement training if he is not licensed upon taking office. If he is licensed, he is not required to take any training other than the mandated training that all officers must attend during a training cycle (Texas Local Government Code, 2011). A constable must attend the 40-hour Newly Elected Constable School before their second anniversary

and must attend the 40-hour Continuing Education for Constables class once every cycle as part of their mandated training (Texas Commission on Law Enforcement Standards and Education, 2011b). Even the deputy constables are mandated to have 20-hours of civil process training each cycle (Texas Local Government Code, 2011). To further illustrate the point, the TCLEOSE License and Certification publication only lists police chiefs and constables under the Chief Administrators section (Texas Commission on Law Enforcement Standards and Education, 2011a). The requirements for office, the training requirements, and the fact that a constable poses less liability for the taxpayers make him a much better choice to serve civil process within the county.

## **CONCLUSION**

The office of the constable within Texas has a long and proud tradition of service, yet there are those who are constantly trying to abolish the office. Hatley (1999) summed up the plight of the constable by stating:

Unrealistically small budgets, a hostile courthouse, unnecessary competition among law enforcement agencies can destroy the usefulness of the position of constable just as surely as the election or appointment of an unqualified individual, but most of these problems can be solved if ego and power-seeking are minimized and a common goal is understood. The abolition of the office of constable in Texas, which some have proposed, would not significantly reduce the overall cost of government. Yet it might well increase the costs of other law enforcement agencies, concentrate police power in a small elite group, slow the court process, and take some very qualified peace officers off the street. (p. XIV)

The office of the constable is one of two law enforcement professions that are provided for within the Texas Constitution. Its officers are recognized as peace officers under the Code of Criminal Procedure, and their duties are spelled out in both the Code of Criminal Procedure and the Local Government Code. Constables have a higher requirement to hold office than any other form of law enforcement. Constables and their

deputies are required to undergo more training than any other peace officer within the State of Texas. They play a valuable role in county law enforcement by providing both criminal and civil law expertise to the citizens within their precinct. These requirements and knowledge translate into a reduced liability risk for the county. The Texas Constitution makes it clear that commissioner's courts do not have the option of dissolving the office of constable. This office is mandated, and it is up to the commissioners to find the money to pay for resources needed and provide a fair wage for this position.

The job of constable "is one of the most satisfying law-enforcement jobs in Texas, assuming a competent justice of the peace and a working relationship with the sheriff and the county commissioner's court" (Hatley, 1999, p. XIV). Constables today are highly trained professionals who provide a valuable service, and the position should not be abolished because of petty personality differences, budgetary problems or the perception of duplication of duties. Hatley (1999) stated, "It is in the county precinct or local community where constables could and should make their greatest contributions today" (p. XII). It is at this precinct level that constables have the ability to "truly seek justice, while providing a real measure of safety and tranquility to his constituents" (Hatley, 1999, p. XIV). Constables are a vital part of county law enforcement.

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