

Proposed Updates to 42 Pa.C.S.A. § 2950

Hello. I am Sandy Graffius, the Controller for the County of Berks. I want to thank Representative Tom Caltagirone and this Committee for inviting us here today to express our issues with current statute governing constable services and fee billing. With me today is Rick Miller, Internal Auditor from my office, and Barbara Crossley, Court Collections Manager with Court Administration in Berks County.

The Berks County Controller's Office spent hundreds of hours last year reviewing fees billed by constables serving in the County of Berks 18 Magisterial District Courts. We conducted our review based on concerns of inappropriate billings brought to our attention in January 2008.

In addition, in September 2008 a committee was established to review and update the constable manual used in the County of Berks. Members of the committee attended seven (7) meetings and have made revisions to the constable procedures manual as of February 1, 2009.

The Controller's Office has compiled our issues and proposed recommendations and presented them to Representative Caltagirone in his Berks County Office on Monday, January 12, 2009. We indicated that many sections in the current statute are vague; thus, open for interpretation by all the 67 counties. Clarification and simplicity of the fee bill would result in the uniformity to all counties in Pennsylvania.

Constable costs paid by the counties and never collected due to non-payment of the defendants or dispositions such as not guilty or dismissed, are the burden of all government levels. As defendants are attempting to pay the constable costs, state and county funds are not being paid. Counties are prepaying the constables' fees and defendants are being incarcerated in lieu of fines and costs, thus creating counties to not only pay to have the defendant incarcerated, but also not getting reimbursed for the constables' fees.

The following is the position of the Controller and not necessarily the position of the President Judge of Berks County.

Our issues are primarily concentrated in 42 Pa.C.S.A. Section 2950 (c), and (g):

42 Pa. C.S.A. Section 2950 (c): "Additional persons: A constable or deputy constable when he is transporting a prisoner, serving a felony or misdemeanor warrant or serving a warrant on a juvenile or a defendant of the opposite sex may at his discretion, be accompanied by a second constable or deputy constable who is certified under section 2947 (relating to certification) to perform judicial duties. In such cases, each officer shall receive the fee set out in this section. In all other civil, landlord-tenant and summary criminal cases, the issuing authority may authorize payment to a second officer."

In such cases, each officer shall receive the fee set out in this section. We understand the concern for constable safety, but in the County of Berks almost all prisoner transports are performed and billed by 2 constables. Based on this scenario, the defendants would be charged \$86.00 in server fees (\$43.00 each constable) in addition to fines and other court related costs.

Our issue is - Should the constables determine if a second constable is **necessary** or should the judge (issuing authority) that requested the constable's service? Since it is the constables, who would both be receiving payment for the service; it is in their financial interest to Always work as a pair.

Our recommended options would be

- a) **Set a limit to the number of services to be paid per constable (i.e. 3 warrants each as per the Chester County manual).**
- b) **Split warrants between the constables.**
- c) **Pay the constables for the warrants only issued to them.** Note: 2 constables may charge for transportation of a defendant such as conveyance, custody and commitment only. Transporting a defendant does not entitle 2 constables to bill for all outstanding warrants.

Implemented February 1, 2009 from the recommendation of the constable manual committee a new process with the Berks County Prison that requires all constables transporting prisoners to sign a form that is sent to the Controller's Office. If the form is not signed by the constables they would not be paid for the transport.

42 Pa. C.S.A. Section 2950 (g) "Criminal cases---Fees in criminal cases shall be as follows:"

"(1) For executing each warrant of arrest, or for effectuating the payment of fines and costs by attempting to execute each warrant of arrest, \$25 for each docket number and \$2.50 for each return of service, plus mileage."

Issue/recommendation – What does effectuating payment mean? How many Counties allow mailing a warrant card as effectuating payment for a defendant that comes into court by themselves to make a payment? Should the payment be for only that warrant card and not ALL outstanding warrants for that individual?

"(2) For taking custody of a defendant, \$5 per defendant."

Issue/recommendation - **custody** means being physically with the defendant at all times. This should be restated as "for taking and maintaining custody".

"(4) For attendance at arraignment or hearing, \$13."

Issue/recommendation - attendance means both the defendant and constable are in the same room/location (i.e. the constable attendance may be needed to protect the judge from the defendant). An Option would be a video conference where the defendant is incarcerated at another location away from the judge and the constable. The constable's attendance becomes unnecessary, and therefore, no payment would be made.

"(5) For executing discharge, \$5 per defendant."

Issue/recommendation - reworded as executing discharge (from) court by judge.

“(6) For executing commitment, \$5 per defendant.”

Issue/recommendation – commitment charge is appropriate only when constable physically commits or re-commits the defendant to jail on the case before the Magisterial District Judge and executes the appropriate forms with the prison.

“(7) For executing release, \$5 per defendant.”

Issue/recommendation – reworded as executing release (by) a law enforcement agency into the (custody of) a constable. This is not for release from the court. That is a discharge.

“(9) Transporting each nonincarcerated defendant to jail, \$17, plus mileage; transporting an incarcerated prisoner, \$38 per prisoner, plus an hourly rate of \$13 per hour, plus mileage. Computation of hourly rate apply after the expiration of the first hour per prisoner per hour, not to exceed \$26 per hour per prisoner.”

Issue/recommendation – redefine a transport of an incarcerated prisoner as a 2 way trip from the prison to magisterial district court and back to the prison. A transport is not a 1 way trip to court and/or a hand-off to another set of constables for an additional partial trip to another court. Remember the constables, who signed out that prisoner, have responsibility for custody and return of that individual back to prison.

“(10) Receipt of the fees for transporting a nonincarcerated defendant under paragraph (9) shall not exclude receipt of the fees under paragraphs (6) and (8) for that transport.”

“(11) Receipt of the fees for transporting an incarcerated prisoner under paragraph (9) shall exclude receipt of the fees under paragraphs (2), (3), (4) and (7) for that transport.”

Issue/recommendation – Explain that those fees are included in the \$38.00 fee.

Sections 9, 10 and 11 are very unclear and clarification and simplicity is needed.

“(13) For conveying defendants for fingerprinting...”

Issue/recommendation – same as paragraph (9). Responsibility for defendants is not to be handed-off to another law enforcement agency that completes fingerprinting. Remember the task is not complete until the defendant arrives at their final intended destination.

In looking at the overall fee bill, we think it is important to see in black and white exactly what the ramifications are. For this reason, examples are attached hereto of what exactly can be charged for service of warrants when 2 constables are working together. The attachment represents a few examples, and fees could vary depending on the situation. Additional fees, such as holding time could apply in some cases, as well as fingerprinting, etc.

In considering revisions, also please consider the time and staff it takes to monitor and review constable cost sheets for processing payments with multiple charges. For example, our sheriff who is mandated by statute, charges a single arrest fee and a fee for each warrant. Additional fees would be a commitment or discharge. Section (g) particularly is confusing by adding \$5 fees for custody, conveyance, etc. This sheriff fee schedule is easy to understand and calculate fees to defendants.

Attachment

Examples of the results of the fee bill as currently written:

\$155.00 (mileage not included) is the total charged to defendants for 2 constables executing 1 warrant on 1 defendant, conveying the defendant to court and after hearing, conveying the defendant to prison.

	Constable 1	Constable 2
Warrant	\$27.50	\$27.50
Custody	\$5.00	\$5.00
Convey to Court	\$5.00	\$5.00
Arraignment/Hearing	\$13.00	\$13.00
Conveyance to Jail	\$5.00	\$5.00
Transport Non-Incarcerated	\$17.00	\$17.00
Commitment	\$5.00	\$5.00
Mileage (if assessed)		
Totals	\$77.50	\$77.50

\$111.00 (mileage not included) is the total charged to defendants for 2 constables executing 1 warrant on 1 defendant, conveying the defendant to court and after hearing, discharging the defendant

	Constable 1	Constable 2
Warrant	\$27.50	\$27.50
Custody	\$5.00	\$5.00
Convey to Court	\$5.00	\$5.00
Arraignment/Hearing	\$13.00	\$13.00
Discharge	\$5.00	\$5.00
Mileage (if assessed)		
Totals	\$55.50	\$55.50

\$375.00 (mileage not included) is the total charged to defendants for 2 constables executing 5 warrants on 1 defendant, conveying the defendant to court and after hearing, conveying the defendant to prison.

	Constable 1	Constable 2
Warrant	\$27.50	\$27.50
4 Warrants @\$27.50	\$110.00	\$110.00
Custody	\$5.00	\$5.00
Convey to Court	\$5.00	\$5.00
Arraignment/Hearing	\$13.00	\$13.00
Transport Non-Incarcerated	\$17.00	\$17.00
Conveyance to Jail	\$5.00	\$5.00
Commitment	\$5.00	\$5.00
Mileage (if assessed)		
Totals	\$187.50	\$187.50

\$305.00 is the total charged to defendants for 2 constables executing 5 warrants on 1 defendant, conveying the defendant to court and after hearing, discharging the defendant

	Constable 1	Constable 2
Warrant	\$27.50	\$27.50
4 Warrants @\$27.50	\$110.00	\$110.00
Custody	\$5.00	\$5.00
Convey to Court	\$5.00	\$5.00
Arraignment/Hearing	\$13.00	\$13.00
Discharge	\$5.00	\$5.00
Mileage (if assessed)		
Totals	\$165.50	\$165.50