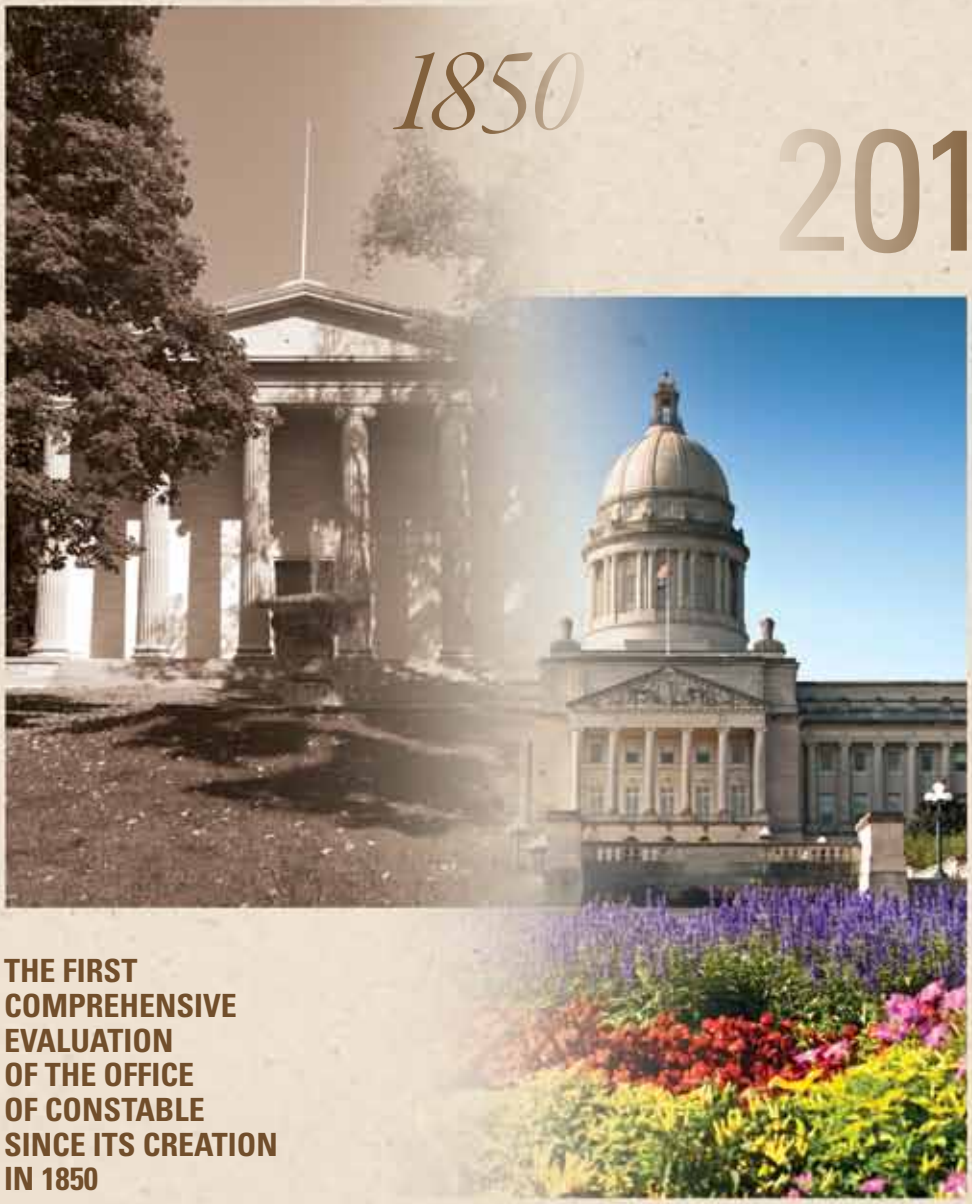
CONSTABLES IN KENTUCKY

CONTEMPORARY ISSUES AND FINDINGS SURROUNDING AN OUTDATED OFFICE



THE FIRST COMPREHENSIVE EVALUATION OF THE OFFICE OF CONSTABLE SINCE ITS CREATION IN 1850

November 2012

THE FIRST COMPREHENSIVE EVALUATION OF THE OFFICE OF CONSTABLE SINCE ITS CREATION IN 1850

Consequences of Outdated Laws

In 1803, the town of Rye, England, was one of many municipalities benefitting from a recently enacted law authorizing the appointment of officials to watch the English east coast, serving as an early warning lookout in anticipated of an invasion by Napoleon.

In 1940, while preparing to assign coast watchers again — this time to watch for a German invasion — it was discovered that Chummy Barton, a resident of Rye, already received an annual government salary for standing on the cliffs and vigilantly looking for Napoleon's invasion fleet — a position handed down from man-to-man since 1803.

The post, created to meet a genuine need 140 years ago, outlived its purpose, but continued to remain on the books.

— Milwaukee Sentinel, May 14, 1944

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Department of Criminal Justice Training
Justice & Public Safety Cabinet
Commonwealth of Kentucky

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JUSTICE AND PUBLIC SAFETY CABINET

Steven L. Beshear
Governor

125 Holmes Street
Frankfort, Kentucky 40601
(502) 564-7554
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J. Michael Brown
Secretary

October 22, 2012

John W. Bizzack, Commissioner
Department of Criminal Justice Training
Funderburk Building,
521 Lancaster Avenue
Richmond, KY 40475

Dear Commissioner Bizzack:

In April 2012 I directed your department to establish a working group for the purpose of examining whether the position of constable has an applicable law enforcement function in modern-day Kentucky.

I have reviewed the group's findings in its report, "Constables in Kentucky: Contemporary Issues and Findings Surrounding an Outdated Office," and commend the members of the working group for their diligence and commitment to this project. Their historical review and broad-based research exceeded my expectations.

The report outlines a thorough analysis of this issue, including six statewide surveys conducted with primary stakeholders and more than 1,400 responses received. The report also includes an historical perspective of constables in Kentucky, as well as other states' experiences with the office.

The findings convincingly demonstrate that the position of constable is outdated as an arm of law enforcement. Certified peace officers today meet rigorous pre-employment standards, are trained through empirically established curricula, and are regulated through multiple layers of oversight and public scrutiny. That standard is diluted when law enforcement powers are shared with individuals who lack the required training and accountability.

I look forward to discussing the findings with you in greater detail and determine the best course of action for disseminating this report.

Sincerely,

J. Michael Brown
Secretary

JUSTICE AND PUBLIC SAFETY CABINET

Steven L. Beshear
Governor

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J. Michael Brown
Secretary

John W. Bizzack, Ph.D
Commissioner

September 27, 2012

Secretary J. Michael Brown
Justice and Public Safety Cabinet
125 Holmes Street
Frankfort, KY 40601

Secretary Brown:

On behalf of the working group you appointed in April 2012, this letter serves to abridge the findings related to your question: "Is the position of constable, as a law enforcement function in modern society, essential to the Commonwealth of Kentucky?"

The answer is "No."

The constitutional office of constable has not been examined in detail nor in this context since the Kentucky Constitution of 1849. This working group has thoroughly examined the office and unanimously feels compelled to provide additional information to thoroughly answer your question.

Our six-month study determined an overwhelming majority of criminal justice officials in the Commonwealth agree the office of constable should be either abolished or limited in law enforcement functions. Statistical analysis demonstrates law enforcement by constables represents only ¼th of 1% of annual law enforcement work. Constables deliver insignificant law enforcement activity to the Commonwealth.

The office of constable is indeed a constitutional office; however, the law enforcement authority assigned to the office originates from the legislature — not the constitution.

Past efforts to address the constable issue have ranged from attempts to place abolition on the ballot to providing "some" training. Placing the question on the general election ballot has, in the past, proven problematic.

Offering a "quick fix" or offering "some" training has been another consideration in the past. In light of the findings of this first comprehensive study of the office of constable since its creation, appropriating expensive and unwarranted spending of already limited funding for the purpose of training legitimate Kentucky peace officers accomplishes nothing since constables do less than ¼th of 1% of the law enforcement work in Kentucky. We have an existing police corps in Kentucky — fully charged with the responsibility of rural and municipal law enforcement — and sheriffs required

by law to perform specific functions. All of whom, long ago, diminished any need for constables as law enforcement officers that might have existed in the 1800s.

From border to border, since the late 1990s, police officers in Kentucky are perhaps the nation's most vigorously selected, trained, most qualified and effective peace officers the Commonwealth has ever fielded. This was not accomplished by haphazard training or random hiring or abdicating to a "quick fix." Those who are held responsible for performing the vast genuine duties of policing must meet the requirements of the Peace Office Professional Standards Act of 1998 (POPS), which mandates standards for hiring and selection as well as a job task analysis-based training. Nothing about the POPS statute was created to serve as a quick fix.

The accompanying report underscores these facts, providing a realistically based compendium of legitimate research and statistical analysis. There is no unanimous support of the office of constable within the criminal justice community of the Commonwealth — not even from the offices of constables.

Sincerely,

John W. Bizzack, Commissioner
DOCJT

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Legislative Affairs Director
Kentucky League of Cities

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Kentucky Association of Counties
Kentucky Law Enforcement Council

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Sheriff Jerry Wagner
Executive Director
Kentucky Sheriffs' Association

Chief Bill Crider
President (2012-2013)
(Chief Rob Ratliff (2011-2012)
Kentucky Association of Chiefs of Police

Don Pendleton
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Sheriff Steve Sparrow
President
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Vice Chair / Representative of
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EXECUTIVE SUMMARY AND OVERVIEW OF THE REPORT

At the direction of Justice Secretary J. Michael Brown, a working group composed of Department of Criminal Justice Training, Kentucky State Police, Kentucky Association of Counties, Kentucky League of Cities, Kentucky Law Enforcement Council, Kentucky Association of Chiefs of Police and Kentucky Sheriffs Association assembled to review statutes, history, surveys, and media coverage concerning constables. The working group was charged with answering one basic research question:

Q: Is the position of constable as a law enforcement function in modern society essential to the Commonwealth of Kentucky?

A: The answer was determined to be: NO

METHOD: Six surveys were hosted statewide: **Judge Executives, County Attorneys, Chiefs of Police, Sheriffs and Kentucky State Police** were surveyed; over 1,400 responses were completed statewide with representation from all counties in the Commonwealth.

The overwhelming consensus of all surveyed was that the office of constable should be stripped of law enforcement authority; a majority of groups believed that the office should be abolished outright.

Constables were surveyed with the cooperation of the Kentucky Constables Association. There are 586 Constable/Magisterial Districts. 509 Constables occupied seats in 2011; 204 responded to the survey. Constables' responses were inconsistent with the other five groups surveyed. **Of the 202 constables who responded to the working group's survey, 137 indicate they are employed in a capacity other than being a constable. As for law enforcement functions, constables represent a statistically insignificant role according to existing records from the Kentucky State Police. While constables could represent as much as 5% of all officials with law enforcement authority in Kentucky, they perform only 0.02% of recorded law enforcement work.** For the most part, constables perform security guard functions, direct traffic at events, or serve civil process. As none of these functions require law enforcement authority, their authorized (and sometimes unauthorized) behavior creates liabilities and risks to counties.

BONDING: KRS70.130 requires a minimum of $10,000 surety bond for constables. Fiscal courts may choose to elevate this state minimum requirement to protect their county's interests against losses from actions that constables perform inadequately or inappropriately while acting in the color or authority of their office.

The broad consensus from Chiefs of Police, Sheriffs, Kentucky State Police, County Attorneys and Judge Executives: the office of Constable is a tenuous anachronism that should have been relegated to at least a role with **no law enforcement authority if not abolished outright** years ago. **The office of constable serves no value to Kentucky law enforcement, exposes the citizens of Kentucky to unnecessary risk of injury or violation of rights, but can be effectively neutered by legislation.** Constables that perform no law enforcement functions would not be affronted by this direction; counties that have not confronted the liabilities brought to them by constables performing law enforcement functions would be saved from considerable liability exposure from potential negligence claims.

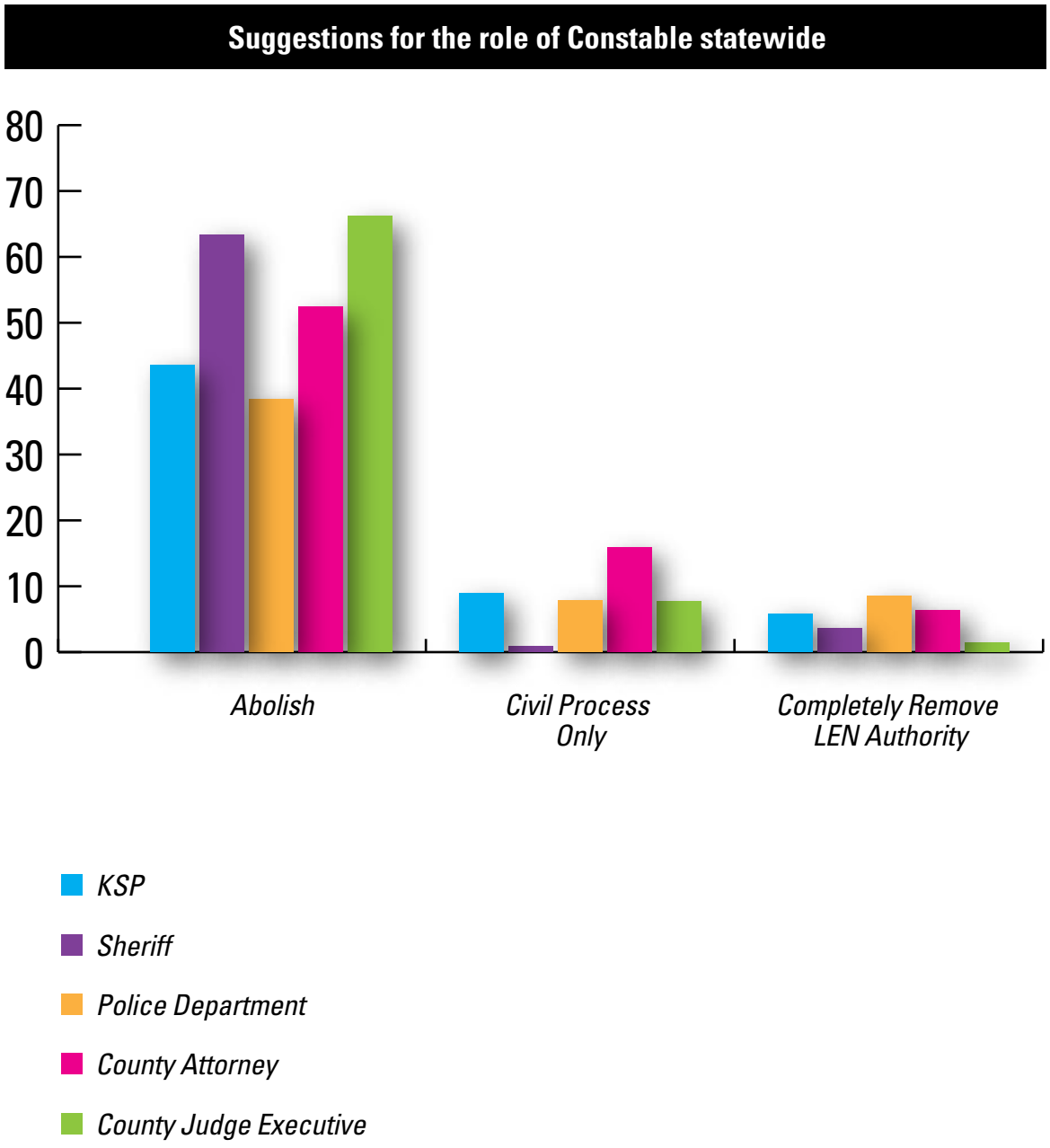
IN BRIEF

HISTORY: The office of constable is established in the Kentucky Constitution; originally the office appears in Kentucky's Third Constitution (1850). Authority for the office ***does not*** come from constitutional provisions; rather, law enforcement and other authority come from Kentucky Revised Statutes. As such, the General Assembly could remove or replace law enforcement authority of constables by legislation.

OTHER STATES: Most states have outright abolished the office of constable, have limited the functions of constables, imposed restrictions or obligations upon the office, or provided for local control to accomplish each of the preceding options. Kentucky is one of only 12 states that have left the office to persist.

LEGISLATION has been introduced that would abolish the office by constitutional amendment; other legislation has sought to restrict the office's functions, expand its authority and role, and place restrictions upon it. None have been successful.

MEDIA ATTENTION has for years consistently depicted constables in a negative light. Most recently, a constable in Jefferson County plead guilty for using deadly force in an altercation with a shoplifter. Another high profile case revolves around a former officer with the Kentucky Constables' Association who has allegedly had inappropriate contact with a female citizen in Franklin County and missed his own bail hearing.


Suggestions for the role of Constable statewide
80
70
60
50
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0
Abolish
Civil Process Only
Completely Remove LEN Authority
KSP
Sheriff
Police Department
County Attorney
County Judge Executive

INTRODUCTION

INTRODUCTION

Secretary J. Michael Brown of the Justice and Public Safety Cabinet directed the Department of Criminal Justice Training to coordinate the creation and operation of a working group composed of stakeholders in professional law enforcement. This group, created in April 2012, was directed (Appendix A) to explore the question :

Is the position of constable, as a law enforcement function in modern society, essential to the Commonwealth of Kentucky?

In order to answer the specific research question, commonly held assumptions required substantiation or refutation. A common theme revealed during the development of the working group appears to be emblematic of much of the consternation about constables: many individuals and groups have strongly held opinions, but few understand existing constitutional provisions, statutes, and other issues.

The 2012 regular session of the General Assembly saw several bills introduced affecting constables. Floor amendments and committee actions were numerous compared to previous legislative sessions. Despite the heightened legislative activity, no bill became law in 2012 that directly affected constables.

A cursory review of media coverage of constables indicated little understanding of the office, despite a noticeably increased level of coverage.

MAKE-UP OF WORKING GROUP

Stakeholder participants in the working group each have a unique perspective on the role of constables. For the working group, stakeholders in professional law enforcement were named as:

Department of Criminal Justice Training: Kentucky Revised Statute 15A.070 (1) prescribes that the DOCJT shall establish, supervise and coordinate training programs and schools for law enforcement personnel, and any other justice or non-law-enforcement-

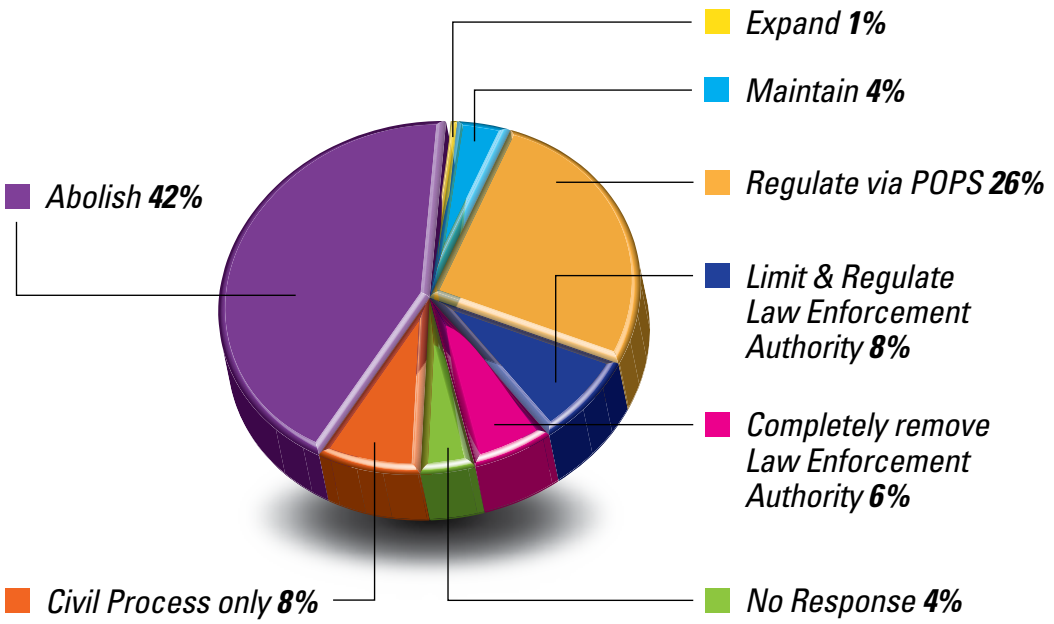
COMMENTS FROM SURVEYS

I really think in most cases they are a liability to Fiscal Court due to lack of training.

...commend them to the ash heap of history. It is an outdated feudal office whose usefulness waned from about the time cities went from town marshals to police departments.

KENTUCKY STATE POLICE: SURVEY ANALYSIS

Suggestions for the role of Constable statewide



WHAT'S THE PROBLEM? A Kentuckian's Experience

WPSD TV — PADUCAH
SEPTEMBER 19, 2012

"A late night trip home turned into sheer terror for a local family who say a constable in an unmarked car with no lights went way too far trying to pull them over.

A woman was behind the wheel with her two children and her mother in the car. They say a constable chased them, shined a blinding light in their rear view mirror, then cut in front of them and slammed on his brakes, forcing them to stop. Sheriff's deputies arrested constable Jeffery Burnett of Graves County on four counts of wanton endangerment. The Graves County Deputy Sheriff said Burnett's alleged actions could have killed an innocent family of four and could lead to mistrust of law enforcement everywhere.

Graves County deputies say Burnett could've killed the family he was trying to stop late Friday night. They were on their way home from a ballgame traveling along Kentucky 1748, Burnett told investigators the driver crossed the center line. The people in the car say he closely followed them, shined a blinding light in their rear view mirror, then got in front of them, slamming on his brakes, forcing them to stop. The family said they put their car in reverse to get away, but Burnett reversed his car too, then hopped out of his car with a bright light and a gun.

"It diminishes public trust in who's out there at night, who's trying to stop them with what's going on," Graves County Chief Deputy Davant Ramage said.

Ramage's office arrested Burnett and said if found he's guilty, he would no longer be allowed to serve as constable.

"We could've had four people seriously injured or even killed," Ramage said."

(1 of 3)

related personnel as prescribed by the secretary. (2) The Department of Criminal Justice Training shall conduct continuing research on criminal law and criminal justices subjects related to law enforcement training.

Kentucky State Police has more than 1,000 sworn law enforcement officers who cover all 120 counties in Kentucky and are the most visible law enforcement agency in the Commonwealth.

Kentucky Association of Chiefs of Police has a membership of more than 500 Kentucky law enforcement executives. The association was formed more than 40 years ago to represent the best interests of law enforcement in Kentucky.

Kentucky Sheriffs' Association was formed in 1929 to, among other things, continue the education of the various sheriffs and their deputies within the Commonwealth of Kentucky in all phases of law enforcement practice, procedure and technique; to resist the constant efforts to curtail the efforts of law enforcement officers to preserve law and order within the Commonwealth of Kentucky; to educate the public in the observance of law and order; and to do any and all things to promote the enforcement of law and order and the suppression of crime.

Kentucky Law Enforcement Council governs training for all of the state's law enforcement. The council is charged with certifying or approving law enforcement training schools, training instructors and curriculum, as well as administering the Peace Officer Professional Standards (POPS) certification process and monitoring the Kentucky Law Enforcement Foundation. Authorized by KRS in 1966, council members are appointed by the governor.

Kentucky Association of Counties has been representing the needs of county government in legislative matters and offering a variety of services to promote the progress of county government. KACo provides insurance, research and planning, legislative, and financial planning information to Kentucky's county governments. Insurance services underwritten by KACo have been a valuable

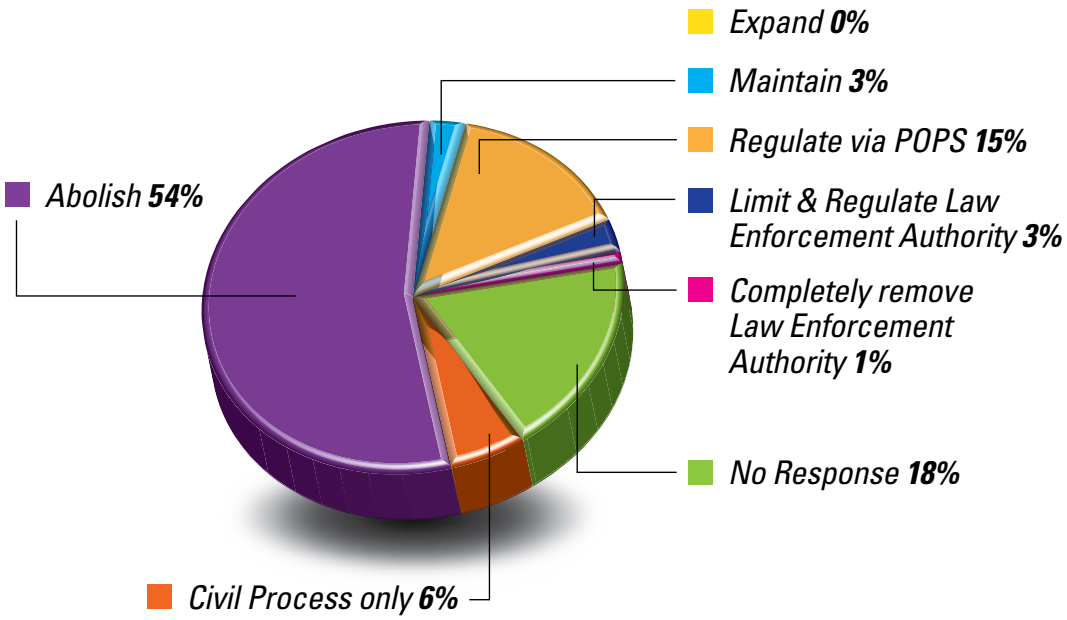
COMMENTS FROM SURVEYS

The best thing would be to abolish the position. If that is not possible, completely remove ALL law enforcement authority.

I have not really had interaction with the constables in this county.

JUDGE EXECUTIVES: SURVEY ANALYSIS

Suggestions for the role of Constable statewide



COMMENTS FROM SURVEYS

We don't need them!

Should be abolished if no POPS or basic training is in place for them.

force in promoting professional law enforcement services.

Kentucky League of Cities provides insurance, research and planning, legislative, and financial planning services to Kentucky's cities. KLC insurance services tangibly link law enforcement standards and professional training with interests of municipal government. KLC has been a steadfast advocate of efforts to professionalize law enforcement services through validated, job-based standards.

Collectively, representatives from these organizations were tasked with answering the research question by bringing to bear their collective understanding and experiences of the needs and challenges of modern law enforcement.

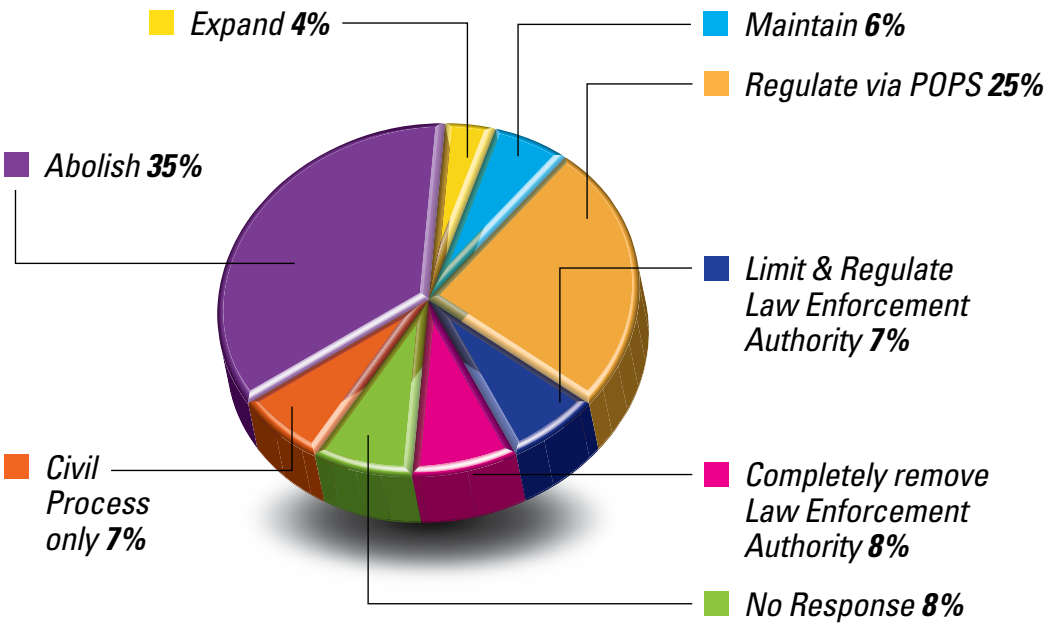
Pursuant to Secretary Brown's directive, DOCJT was responsible for administrative support to the working group in addition to serving as a stakeholder member. Support would come to include hosting the meetings of the working group, providing administrative support for meetings, conducting research prior to the initial meeting of the group, conducting survey research for the six identified populations, and development of a consensus report that would be submitted to the Secretary.

Completion of the report was slated for early autumn 2012. This was necessary for the report to have any contributory bearing on the deliberations of the 2013 General Assembly. In order to serve as guidance to any executive branch policy determination, the report would have to be available for dissemination in advance of the legislative session.

Accordingly, the working group agreed upon several meetings throughout the summer of 2012 to refine direction, digest progress of the surveys and consider policy approaches that revealed themselves. The working group met three times during the summer. Each of the meetings was held at DOCJT in Richmond. A final meeting of the working group was held on Sep. 27 to review the draft report. That draft would be formatted and finalized upon consensus agreement of the working group and

POLICE CHIEFS: SURVEY ANALYSIS

Suggestions for the role of Constable statewide



would authorize the production of this report to the Secretary.

Attitudinal surveys of law enforcement personnel, judge executives, and county attorneys were developed to elicit perceptions and descriptions of experiences with constables. As with the sheriffs and chiefs of police, professional associations were the primary contact for survey administration; each of the associations was enthusiastic in their cooperation with the surveys. Additionally, another survey directed towards constables was developed to provide constables with the opportunity to describe their activities, limitations, and perceptions of their relationships with law enforcement in their jurisdictions. As with the other surveys, the Kentucky Constable's Association was the through-put for contact; the association was helpful and cooperative throughout the process.

Additional preliminary work focused on:

- historical context
- legislative history, and
- review of other states' experiences and treatment of constables.

"Specifically, I'd like the (working) group to review and consider: Is the position of constable, as a law enforcement function in modern society, essential to the Commonwealth of Kentucky?"

J. MICHAEL BROWN —
SECRETARY / JUSTICE AND PUBLIC SAFETY CABINET

COMMENTS FROM SURVEYS

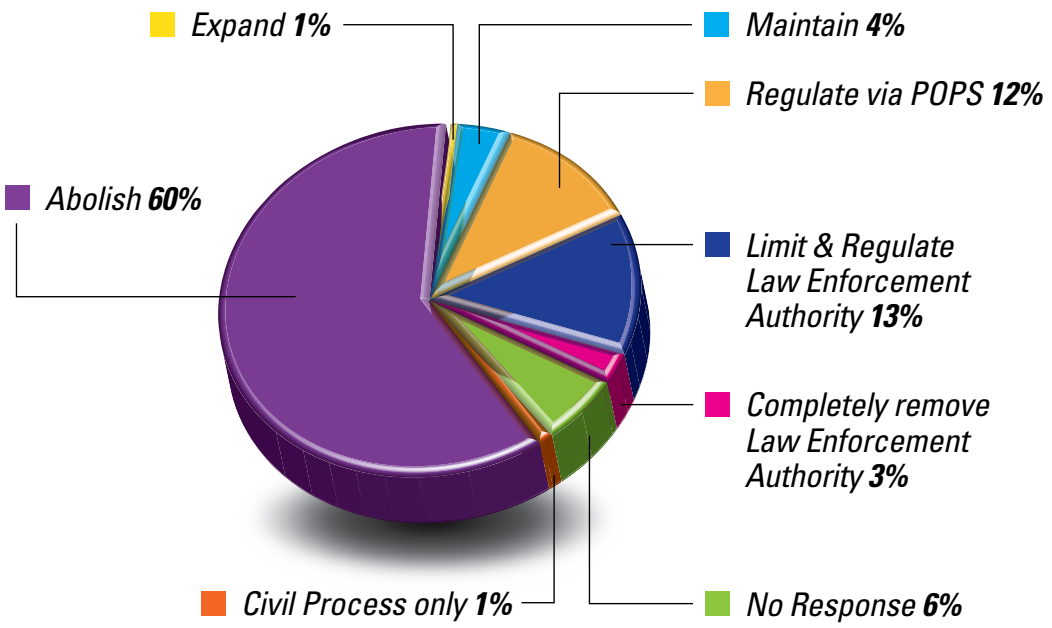
It is amazing the position still exists considering the limits the state goes to so we have trained law enforcement officers doing the work.

KENTUCKY 1849:
Less than 1 million population

KENTUCKY 2012:
Over 4 million population

SHERIFFS: SURVEY ANALYSIS

Suggestions for the role of Constable statewide



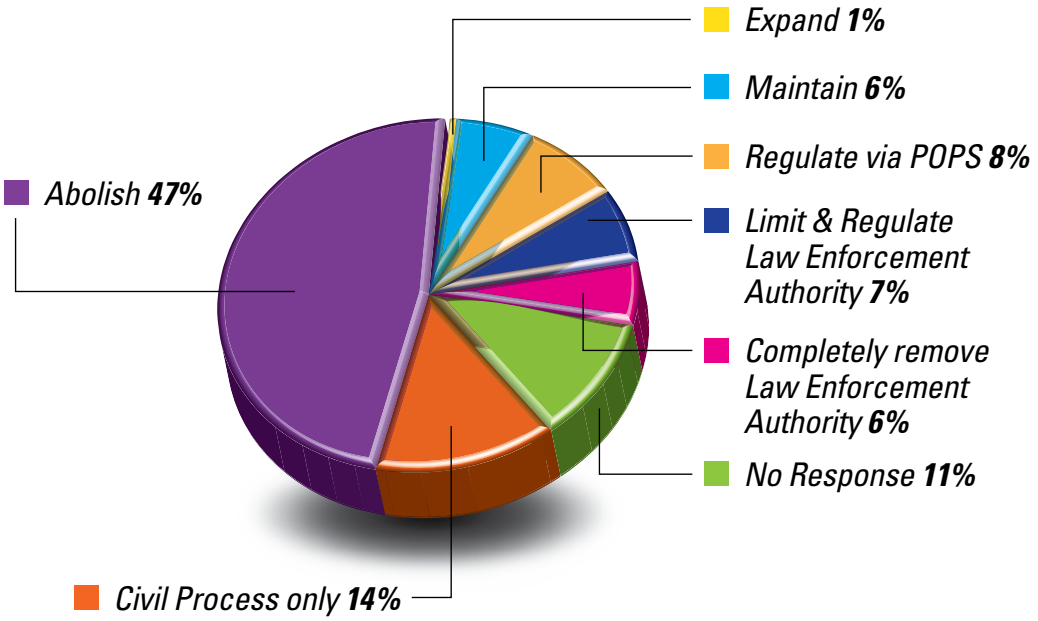
COMMENTS FROM SURVEYS

With my county it is only a title given to someone who wins the election. They have no training in any part of law enforcement and if they weren't here it wouldn't make a difference.

The office of constable should be a thing of the past. They are no longer needed.

COUNTY ATTORNEYS: SURVEY ANALYSIS

Suggestions for the role of Constable statewide



INITIAL RESEARCH

Other than the somewhat common understanding that constables are constitutional officers elected in each magisterial district, there is little common understanding of the nuances of their role, relationship to other county officials, authority, or oversight. As such, DOCJT conducted research that began with the legal inception of constables.

COMMENTS FROM SURVEYS

If we continue to have Constables and not completely do away with the constitutional position, it is a must that they have the same training as any peace officer in the state. Period!!!

I feel the position of Constable is a big liability that potentially could get someone hurt.

HISTORY OF THE CONSTABLE IN KENTUCKY

The history of the office of constable in the Commonwealth dates as far back as Dec. 20, 1792, when an act was passed prescribing the duties of Constables and regulating their fees. Chapter LXII, *The Statute Law of Kentucky (Littell)*, p. 145-148.

> For serving a warrant for debt one shilling and six pence; summoning a witness in any case nine pence; for serving a peace or search warrant two shillings; for levying an attachment one shilling and six pence; summoning a garnishee nine pence; for carrying a criminal to jail two pence per mile in going to and returning. (Id. at p. 145.)

One might conclude that significantly dated historical material is out of context for a contemporaneous study and report. However, nothing is further from the truth; the original stipulations for constables persist today and the debates from 1849 underscore the issue that the General Assembly has had to confront in each effort regarding legislation.

In fact, the historical themes regarding constables thread throughout the open responses of surveyed present day county judge executives, county attorneys and law enforcement personnel. Even many of the constables argue the point that they are equal to sheriffs, coroners, and jailers; they argue their basis is constitutional, and they deserve to be treated accordingly. The context of Kentucky constables begins in 1792 with the first mention of them—constables received the following fees:

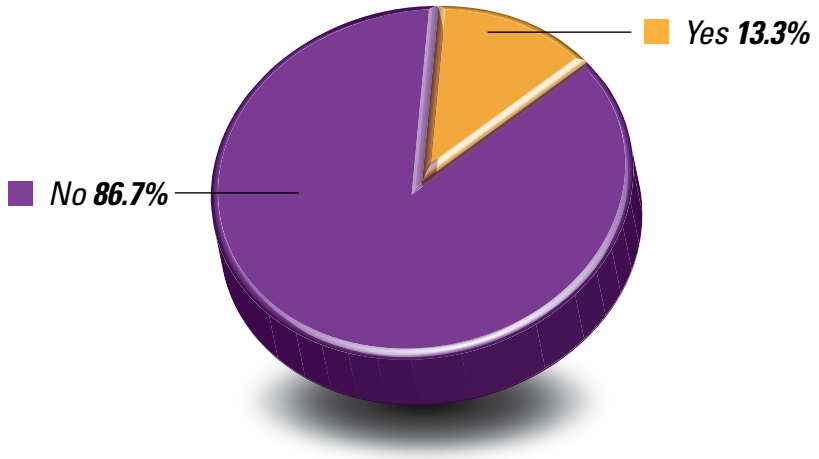
Despite this early history, the office of constable was not included in the First Constitution of Kentucky (1792), nor in the Second Constitution (1799), although both of those constitutions included in the office of sheriff[1], coroners[2], and justices of the peace[3]. It was not until the Commonwealth's Third Constitution (1850), that the office of constable was made a constitutional office.

There are few books containing the early statutes of Kentucky at the Supreme Court Library, but it appears that there was little change to the duties of the constable over the years leading up to the constitutional convention of 1849-50.

1 *Article VI, §1 (1792), Article III, §31 (1799).*
2 *Article VI, §1 (1792), Article IV, §8-9 (1799).*
3 *Article V, §6 (1792), Article IV, , §8-9 (1799).*

KENTUCKY STATE POLICE

Is the position of Constable, as a law enforcement function in modern society, essential to the Commonwealth of Kentucky?



During the constitutional convention of 1849-50, the office of constable was proposed for inclusion for the very first time in the Kentucky Constitution. William Preston, a Harvard-educated lawyer representing Jefferson County first raised the subject of the necessity of such inclusion:

> "I suggest to the chairman of this committee that this is not the appropriate place for regulating the jurisdiction of constables. It does not prevail in any other constitutions, nor does it in our's [sic]. I am perfectly willing that the legislature shall have full power to regulate their jurisdiction.[4]"

Squire Turner, a delegate from Madison County spoke in opposition to Preston's suggestion, stating:

> "I am opposed to striking out this provision…. We cannot always obtain the services of a sheriff in the remote parts of the county, and it is necessary that a constable shall be permitted to execute process; but if he has to stop and deliver up his authority to another, the criminal may in the meantime escape…. [I]t is right and proper, according to the views of the committee, that the constitution should declare that he is a county officer and can do business in any part of the county—that his jurisdiction is co-extensive with the county. If you strike out this provision, the legislature may, if they think proper, confine him to a single district. I desire that he shall be a county officer.[5]"

Preston responded to Mr. Turner in prophetic words:

> "There are a great many things that are right and proper in themselves, that nevertheless ought not to be inserted in the constitution…. There is not a constitution in any state in the union that prescribes the jurisdiction of a constable, and I do not believe that it should be done here. If such a provision be inserted, it will be beyond the power of the legislature to control the jurisdiction of a constable. I can see no propriety in encumbering the constitution with a provision of this kind.[6]"

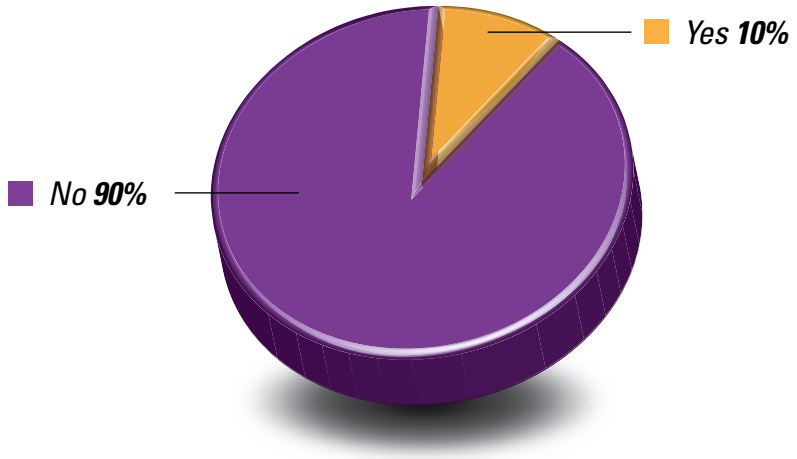
4 *Page 399, Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Kentucky, 1849*

5 *Id at Page 399.*

6 *Id at Page 399.*

JUDGE EXECUTIVES

Is the position of Constable, as a law enforcement function in modern society, essential to the Commonwealth of Kentucky?



COMMENTS FROM SURVEYS

We have good constables within our county and they work well with the Sheriff's Department.

KENTUCKY 1849:
Less than 10 municipal police departments; no state agencies

KENTUCKY 2012:
280 state, municipal and other full service law enforcement agencies

COMMENTS FROM SURVEYS

The position is antiquated. If the Commonwealth does keep the position, constables should have to be regulated by full POPS.

They may still have some use in civil matters. If they want to be cops, they should meet POPS.

Richard D. Gholson, a delegate from Ballard and McCracken counties, who would later serve as a territorial governor of Washington, expressed his view that a constable's jurisdiction should not just be limited to a district or the county, stating:

> "I think, sir, with all deference to the opinions of other gentlemen, that we should be pardoned for attaching some little importance to this matter. Now if a constable be restricted to his particular district, the people are deprived, to a great extent, of his services. So far from being restricted to the district, he should not even be confined to the county; but should be permitted to go to the very extremity of the state, in pursuit of a fugitive from justice.[7]"

Mr. Hamilton, agreeing with William Preston stated:

> "It does appear to me, that the regulation of this whole matter, in relation to the jurisdiction of a constable, properly belongs to the legislature. Under the present constitution, those who fill the office of constable discharge the duties of that office in any part of the county, and that is precisely as it should be; but if any change should hereafter be desired, it can be made by the legislature. It should not be done by constitutional provision.[8]"

William Preston further stated, "I do not [want or wish] to usurp every power that the legislature should hereafter exercise. All that I wish is that the constitution shall remain silent upon this subject."[9]

Squire Turner responded:

> "If you do not retain the provision the constructive effect will, in all probability, be that the constable will only have jurisdiction in the district in which he was elected. You make him a constitutional officer and the legislature will have no power to enlarge his jurisdiction, if there be no intimation contained in the constitution, as to its intent and meaning in regard to the jurisdiction of these officers."

William Johnson, another delegate stated:

> "I believe that this whole subject, about which we have been talking for some time, is an

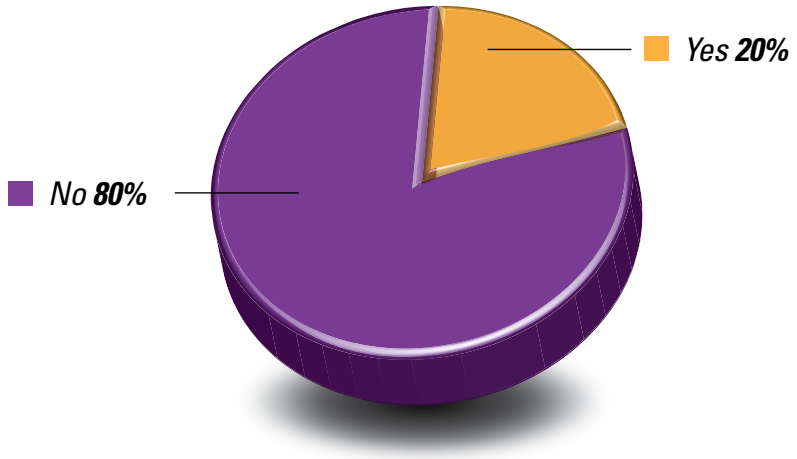
7 *Id at Page 400.*

8 *Id at Page 400.*

9 *Id at Page 400.*

POLICE CHIEFS

Is the position of Constable, as a law enforcement function in modern society, essential to the Commonwealth of Kentucky?



improper one for consideration here. I think that the legislature of the country can dispose of this matter of constable, and define how many each county shall have, and far better decide upon all those matters, from time to time, than could any fixed constitutional provision. They had this power under the old constitution, and I think they ought to be continued in its exercise. I should prefer some amendment declaring that the legislature may provide for the election of a suitable number of constables in each county in the state."

The debates over the office of constable continued on. Ultimately, the delegates to the 1849-1850 Constitutional convention voted to include the office of constable in the third Kentucky Constitution. The sections that address constables are as follows:

ARTICLE IV *Concerning the Judicial Department.*
§36 - Judges of the County Court and justices of the peace, county assessor, attorney for the county, and constables, shall be subject to indictment or presentment for malfeasance or misfeasance in office, or willful neglect in the discharge of their official duties, in such mode as may be prescribed by law, subject to appeal to the Court of Appeals, and upon conviction, their offices shall become vacant.

ARTICLE VI *Concerning Executive and Ministerial Officers of Counties and Districts.*
§2 - No person shall be eligible to the offices mentioned in this article, who is not at the time twenty-four years old (except Clerks of County and Circuit Courts, Sheriffs, Constables, and County Attorneys, who shall be eligible at the age of twenty-one years), a citizen of the United States, and who has not resided two years next preceding the election in the State, and one year in the county or district for which he is a candidate. No person shall be eligible to the office of Commonwealth's or County Attorney unless he shall have been a licensed practicing attorney for two years. No person shall be eligible to the office of Clerk unless he shall have procured from a Judge of the Court of Appeals, or a Judge of the Circuit Court, a certificate that he has been examined by the clerk of the court, under his supervision, and that he is qualified for the office for which he is a candidate.

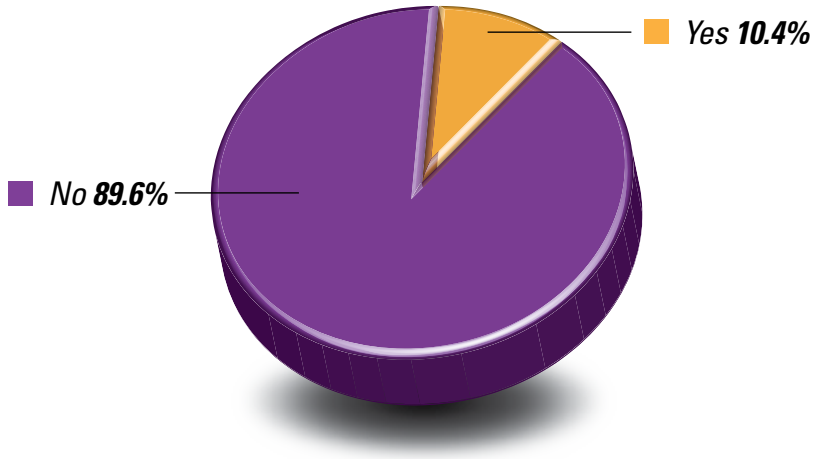
COMMENTS FROM SURVEYS

In general, the ones in Northern Kentucky would mark cars, obtain lights without permission from the Judge Executive Office, make traffic stops and yell at people.

In our county they are not needed and serve in name only.

SHERIFFS

Is the position of Constable, as a law enforcement function in modern society, essential to the Commonwealth of Kentucky?



COMMENTS FROM SURVEYS

Their position is not needed in the county for law enforcement. There is not a reason we need them.

I feel it is dangerous to allow untrained people to serve in a law enforcement capacity based solely on election results.

§5 - A Constable shall be elected in every Justice's district,[10] who shall be chosen for two years, at such time and place as may be provided by law, whose jurisdiction shall be co-extensive with the county in which he may reside.

§9 - Clerks, Sheriffs, Surveyors, Coroners, Constables, and Jailers, and such other officers as the General Assembly may, from time to time, require, shall, before they enter upon their duties of their respective offices, and as often thereafter as may be deemed proper, give such bond and security as shall be prescribed by law.

Compared to constitutional convention of 1849-50, the minutes of the 1890-91 convention indicate that there was little debate regarding the issue of whether the office of constable should or should not be in the Kentucky Constitution. The 1891 Constitution included some changes from the 1850 Constitution, including increasing the constables' term in office from two to four years and increasing the minimum age from 21 to 24 years of age. The sections that address constables, are as follows:

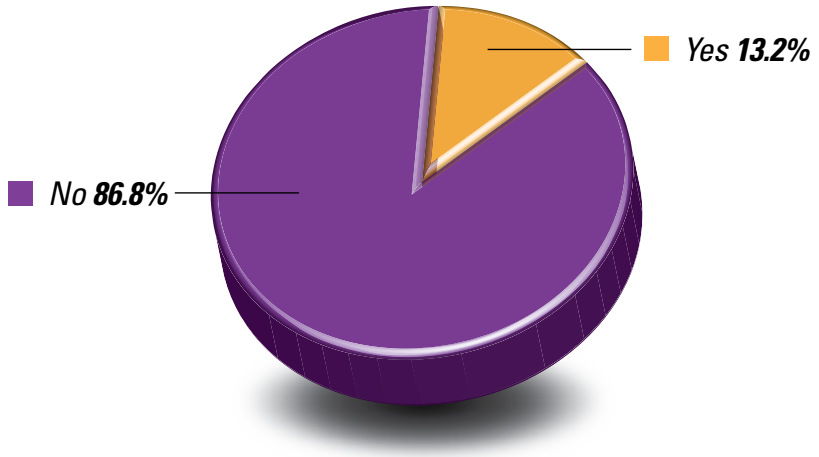
SECTION 99 *County officers, justices of the peace, and constables—Election—Term.*
At the regular election in eighteen hundred and ninety-eight and every four years thereafter, there shall be elected in each county a Judge of the County Court, a County Court Clerk, a County Attorney, Sheriff, Jailer, Coroner, Surveyor and Assessor, and in each Justice's District one Justice of the Peace and one Constable, who shall enter upon the discharge of the duties of their offices on the first Monday in January after their election, and who shall hold their offices four years until the election and qualification of their successors.

SECTION 101 *Qualifications and jurisdiction of constables.*
Constables shall possess the same qualifications as Sheriffs, and their jurisdictions shall be coextensive with the counties in which they reside. Constables now in office shall continue in office until their successors are elected and qualified.

10 Note: This provision refers to Article IV, §34, which directs that each county of the State be laid off into districts, with two justices of the peace being elected in each district, their jurisdiction being co-extensive with the county. The General Assembly was charged with the duty of establishing "districts of convenient size...."

COUNTY ATTORNEYS

Is the position of Constable, as a law enforcement function in modern society, essential to the Commonwealth of Kentucky?



SECTION 103 *Bonds of county officers and other officers.*
The Judges of County Courts, Clerks, Sheriffs, Surveyors, Coroners, Jailers, Constables, and such other officers as the General Assembly may, from time to time, require, shall before they enter upon the duties of their respective offices, and as often thereafter as may be deemed proper, give such bond and security as may be prescribed by law.

SECTION 227 *Prosecution and removal of local officers for misfeasance, malfeasance, or neglect.*
Judges of the County Court, Justices of the Peace, Sheriffs, Coroners, Surveyors, Jailers, Assessors, County Attorneys and Constables shall be subject to indictment or prosecution for misfeasance or malfeasance in office, or willful neglect in discharge of official duties, in such mode as may be prescribed by law, and upon conviction his office shall become vacant, but such officer shall have the right to appeal to the Court of Appeals. Provided, also, that the General Assembly may, in addition to the indictment or prosecution above provided, by general law, provide other manner, method or mode for the vacation of office, or the removal from office of any sheriff, jailer, constable or peace officer for neglect of duty, and may provide the method, manner or mode of reinstatement of such officers.

Under the Constitution of 1891, a county court was established and served by the county sheriff who had countywide jurisdiction. Each county was composed of several districts, in which a Justice of the Peace was elected, and whom was served by the district constables, who also had countywide jurisdiction. In 1975, Section 109 of the Kentucky Constitution was amended to create a unified system of justice made up of the Supreme Court, Court of Appeals, circuit courts, and district courts, which took effect on Jan. 1, 1976. Unfortunately, in creating this unified court system, the General Assembly did not address constables. However, there are a number of statutes in KRS Chapter 64 addressing Justices of the Peace that the General Assembly has repealed, such as jurisdiction to examine criminal charges and fees and compensation.

COMMENTS FROM SURVEYS

They are nothing but a liability.

I feel that we have people trying to get into law enforcement through this who cannot get into it any other way and should not be in it.

Knox constable arrested for DUI

(Corbin) Times-Tribune
January 30, 2012

COMMENTS FROM SURVEYS

The Office of Sheriff is a fee office and those monies (service fees) go toward operating the office and revenue for the county. Sheriffs are required to conduct an audit of fees and tax collection. Constables are not required to answer to audits.

Prefer to abolish, but if not, remove law enforcement authority unless regulation by full POPS.

The office of constable has been addressed substantively a number of times by actions of the Kentucky General Assembly; none of these efforts has conclusively established the role or delegated the role statewide. Rather, existing statutes serve as the only guidance concerning the law enforcement capacity of constables. (Appendix B and C)

RECENT LEGISLATIVE ACTIVITY

Another element that required review involved the legislative branch's treatment of constables in recent legislative sessions.

There have been a number of bills introduced in the General Assembly that have restricted and expanded the authority of constables over the years. No legislation has yet prevailed that would allow for placement on a general election ballot an amendment that would outright abolish constables despite several legislative efforts to do so.

Conversely, there has been no legislative appetite for expansion of constables' authority or expansion of law enforcement authority.

Among these efforts, Senate Bill 6 was introduced as recently as 2008. With that bill, significant new expenses to state government were identified, and the bill never advanced beyond its first committee assignment.

Similar provisions were proposed during the 2011 legislative session occurring as floor amendments to filed bills (See SFA1 for SB30, 2012 Regular Session). Of particular note, the 2012 Session saw two separate bills introduced (SB30 and HB240) that would have placed a proposal to amend the state Constitution by abolishing the office of constable.

Ultimately, no legislation was passed by the General Assembly in 2012. Summaries of legislation proposed during 2008 to 2012 in the Kentucky General Assembly are included in Appendix B.

Heightened negative media attention of constables has been attributed as a primary cause of the increased legislative interest; examples of media exposure are illustrated throughout this document and in Appendix H.

Constable rejects plea deal for shooting a suspected shoplifter

The Courier-Journal
August 31, 2012

CONSTABLES ACROSS THE UNITED STATES

COMMENTS FROM SURVEYS

If they want to have lights and weapons they need to be trained before they can run for office.

Completely remove law enforcement authority, civil processes only.

HOW OTHER STATES ADDRESS CONSTABLES

Other states' experiences with constables were passively surveyed through online research. Follow-up research was conducted where warranted by direct contact with respective state agencies responsible for law enforcement standards and training. (Appendix D)

In short, a significant number of states (16) have eliminated constables outright; an equally significant number have removed law enforcement authority or have redirected the primary role of constables towards civil process. Sixteen states have established a threshold between civil process and law enforcement functions; constables that perform law enforcement functions must attend training.

"It is unimaginable that in today's society we have sworn officers with full police powers, no training and little accountability."

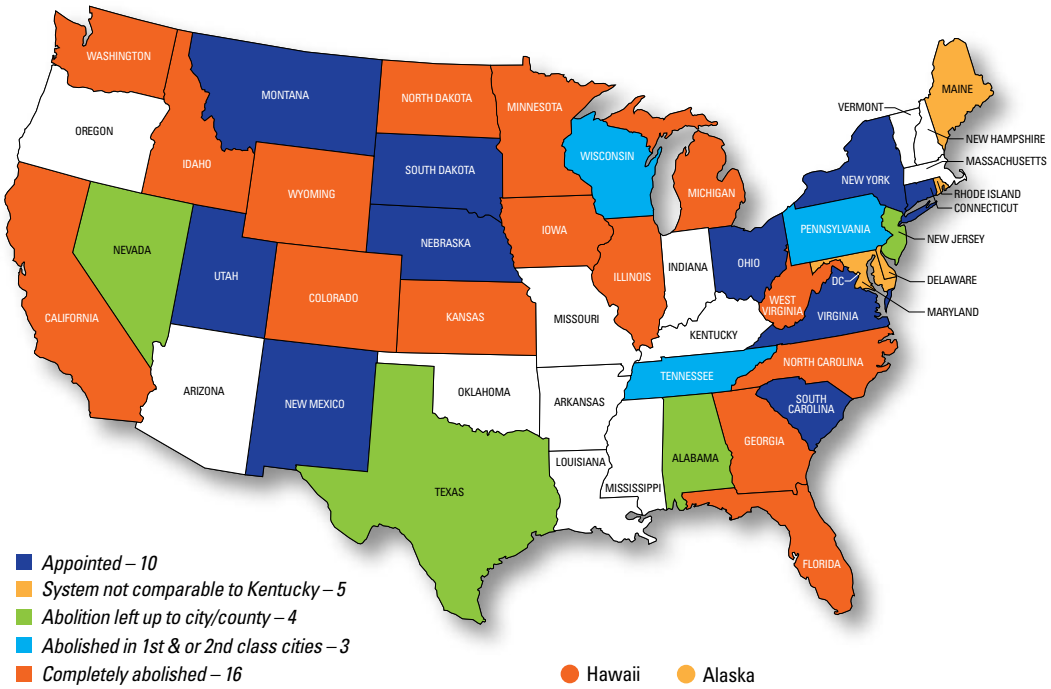
COMMISSIONER RODNEY BREWER —
KENTUCKY STATE POLICE

Forty-six percent of states have abolished the position of constable on some level. Some states have abolished the position completely; some have chosen to have the position only in first and second class cities, while others allow the local government entity to abolish the position.

Hawaii abolished the position more than 110 years ago while it was still a territory. In the 1890s and again in 2010 **Wyoming** amended its constitution. Other states that have eliminated the constable position include **California, Colorado, Florida, Georgia, Idaho, Illinois, Iowa, Kansas, Michigan, Minnesota, North Carolina, North Dakota, Washington,** and **West Virginia.**

Michigan abolished the office of constable as a statewide office in 1963. However local governments may elect a constable and have

Other States' Treatment of Constables



the authority to limit or restrict their duties. If the locally-elected constable is to perform law enforcement duties, he must be a certified officer through **Michigan** Commission on Law Enforcement Standards. Less than 10% of Michigan townships elect constables.

Article 7, Section 4 of the **Illinois** Constitution allows for the abolition of constables in each county. It would appear that each county has abolished the position of constable, thus eliminating the office from their state. No instances of constables can be found post-1900.

Georgia Code 15-10-100 repealed the office of constable in 1983. County governments may provide for an appointed constable and his salary.

Arkansas State Senator Sue Madison proposed Senate Joint Resolution 1 in 2011 that would have abolished constables. Madison explained, "I just feel it's time that Arkansas move on and realize it's time; we don't need constables. I feel like it is an archaic office. Now we have police departments for cities and towns, we have sheriffs' offices, they're trained, they have expertise in their area."

According to the information compiled by DOCJT staff, seven more states have chosen to abolish the position of constable in some other form in their state. **Tennessee**, **Wisconsin** and **Pennsylvania** have eliminated constables in first and second class cities by statute. **Nevada**, **Texas**, **Alabama** and **New Jersey** allow the position of constable to be eliminated through city or county governments.

Traffic stops by constable thrown out of court

COURT SYSTEM, FISCAL COURT TAKE ISSUE WITH CONSTABLE'S TRAINING, USE OF BLUE LIGHTS.

Richmond Register
July 28, 2012

COMMENTS FROM SURVEYS

I think that the constable should have criteria and requirements on being able to even run for the constable position. Once elected, they should have to take and pass some type of training.

KENTUCKY 1849:
No statewide law enforcement agency

KENTUCKY 2012:
Kentucky State Police with 1000+ sworn officers, 7 other state agencies with specialized functions and general enforcement training

COMMENTS FROM SURVEYS

The best move would probably be to abolish the position. However, this would take a vote of the citizenry and getting the General Assembly to place it on the ballot would be difficult.

People are elected, get a gun and badge and no training at all. Then there have been many cases of them doing something wrong or getting arrested themselves. They are a major liability. They do not serve for modern-day law enforcement.

CONSTABLES ACROSS AMERICA

In **Texas**, a few counties have the authority to eliminate or not fill the position of constable. In 1995 Texas voters passed a constitutional amendment to abolish constable offices in Reagan, Mills and Roberts counties and transfer their powers and duties to those counties' sheriffs. Since 1995 other counties have begun questioning their own need for the position of constable. (Dallas News, July 29, 2011 "Dallas County Needs to Abolish its Constable Offices")

Many states have a system that is not comparable to Kentucky's system of electing constables. In **Maryland**, constables are attached to the court system and most do civil process work only. However, if they are to perform law enforcement duties, the constable must have satisfactorily completed a training program from a police training school approved by the Maryland Police Training Commission. (Maryland § 2-606. Duties of constables)

Several states have been identified as appointing constables. These appointments come mainly from the municipal government, although **Delaware** appoints constables through a statewide board and **South Carolina's** constables are appointed by the governor. Ten states appoint constables (**Montana**, **Utah**, **New Mexico**, **South Dakota**, **Nebraska**, **Ohio**, **Virginia**, **South Carolina** , **New York** and **Connecticut**).

LaRue County constable charged with fleeing police

The Courier-Journal
June 7, 2012

Forty percent of the states researched require some sort of training for constables. Connecticut, **Maryland** and **Massachusetts** require extensive training if the constable performs law enforcement duties. For those constables who do not exercise law enforcement duties, no training is required. For example, in **Connecticut**, if constables perform law enforcement duties, they are subject to the state's Peace Officer Standards and Training rules and must complete a POST-approved law enforcement basic training, which is currently 818 hours. Many states place decision of the constable duties at the county level, leaving the sheriffs of those counties without constables accountable for civil processes, bailiff duties, and warrants.

Only four states have an equivalent to a training and ethics standards board for constables. The **Arizona** Constable Ethics Standards & Training Board ensures every constable is meeting their continuing education mandates and investigates citizen complaints on the constable. The **Pennsylvania** Constables' Education and Training Board require that each elected constable pass a firearms training course and attend an additional 80 hours of general training. **South Carolina** classifies constables into three groups which all must submit an application to the South Carolina Law Enforcement Division before becoming a constable. In **Delaware** constables are hired by a Board of Examiners that may require training and duties and can determine jurisdiction. Delaware utilizes three types of appointed constables: civil process servers, building security for private firms or court security officers/code enforcement officers.

There is no consensus in neighboring states regarding the office of constable. **Indiana** allows each township that has a small claims court to elect a constable who acts as a bailiff, makes arrests and serves papers. In **Ohio** the constable duties are similar to Kentucky's but in most cases, they must undergo police training. **Virginia** appoints constables, although most have been absorbed into sheriffs' offices. In **Tennessee**, constables have been abolished in first and second class cities, and in other counties the county commissioner can decide whether or not to utilize the position of constable and decide on the constable's policing powers. Forty-five percent of counties in Tennessee have either abolished the constable position or do not fill the office of constable. **West Virginia** abolished the office of constable in 1977.

COMMENTS FROM SURVEYS

They are not accountable to anyone except themselves. At times, could they perhaps get out of control because of this?

Constables shouldn't be allowed to have law enforcement authority similar to any sheriff or state police. They should assist in serving civil processes but not much more powers than that.

Constable disarmed, barred from contact with woman

(Frankfort) State-Journal
August 3, 2012

SURVEYS OF KENTUCKY LAW ENFORCEMENT

COMMENTS FROM SURVEYS

I feel that the authority of Constables should be regulated by the state so that each county is working under the same principles.

Abolish would be great, but I didn't want to sound mean.

SURVEYS CONDUCTED

Surveys were directed to Kentucky State Police, chiefs of police, and sheriffs initially. A second round of surveys included constables, county judge-executives, and county attorneys. Full texts of each of these surveys are included in Appendix F.

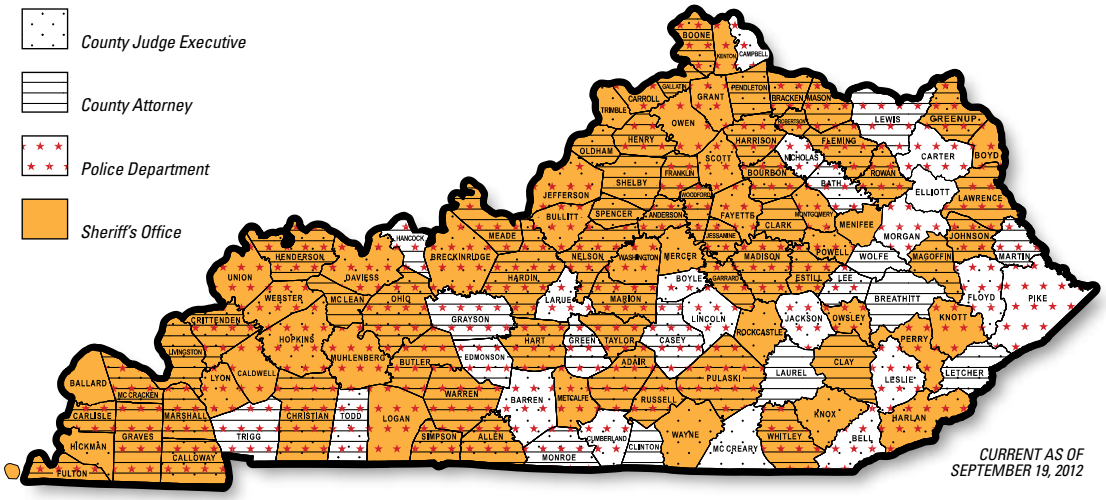
Kentucky State Police

The Kentucky State Police directed surveys to all sworn personnel; nearly 1,000 surveys were distributed electronically with an introduction of the survey from the office of the Commissioner. All communications regarding the survey were directed through channels from KSP. At the conclusion of the working group's reporting cycle, 754 valid responses from the Kentucky State Police were collected and analyzed.

Chiefs of Police

Chiefs of police were identified as a member of the working group and as a group that were clearly of interest for targeted surveys. The Kentucky Association of Chiefs of Police agreed to liaison and coordinate surveys of its members, while non-members were contacted by DOCJT personnel. With the assistance of KACP Executive Director Mike Bischoff, and presidents of the association, Chief Rob Ratliff (2011-12) and Chief Bill Crider (2012-2013), 178 chiefs representing 3,925 officers responded to the survey. These chiefs represent 48.5% of all law enforcement officers in Kentucky. While there is no formal relationship with constables, the interaction of constables with municipal officers significantly contributes to the research. Municipal agencies clearly have made significant strides over the years to professionalize services and training. They were one of the first law enforcement groups in Kentucky to self-regulate and impose standards for hiring and selection, promotion and internal controls that exceeded state minimum requirements.

RESPONSES FROM JUDGE EXECUTIVES, COUNTY ATTORNEYS, POLICE DEPARTMENTS, AND SHERIFFS' DEPARTMENTS



Surveys Combined

The following departments responded to the survey but are not able to be reflected on the map:
Campbell County PD, Knott County PD, Letcher County PD, Oldham County PD, Whitley County SO, Heritage Creek PD

Sheriffs

Sheriffs are likely the most visible local law enforcement officers in Kentucky and have responsibilities that include law enforcement, court security, taxation and civil matters. The Kentucky Sheriffs' Association leadership—Executive Director Jerry Wagner and President Steve Sparrow, Sheriff of Oldham County—committed considerable effort and resources to distribution and collection of surveys of their member sheriffs. Ultimately, 119 sheriffs provided valid responses to their survey.

Sheriffs have a unique relationship with constables as their jurisdictions are co-extensive. Historically there has been considerable antagonism between the two groups stemming from competition for limited resources, public confusion over differences between the two offices, and public misunderstanding of the roles and statutory regulations of the two different offices.

Judge Executives

Judge Executives represent the closest line of authority with constables on the county level. While county judge executives do not control constables, the county is fiscally liable for the actions of the elected constable. The fiscal court in each county has the authority to sanction certain actions of elected constables (i.e. the use of blue lights/sirens). Kentucky County Judge/Executive Association Executive Director Vince Lang assisted in the survey distribution. Seventy-nine county judge executives completed the survey.

County Attorneys

County attorneys prosecute every criminal and misdemeanor case that is heard in district court. In addition to these prosecutorial duties, county attorneys serve as counsel to their counties' fiscal courts, districts, commissions, boards, and county officials in all legal issues (excluding Fayette County). Bill Patrick, executive director of the Kentucky County Attorney Association, assisted in the survey distribution and collection. Seventy-three county attorneys completed the survey.

REPRESENTATION

The five categories of county officials and law enforcement represent experiences and perceptions in 119 counties. In all but five counties, more than one response was received from these categories. In short, responses to these five surveys provide data that is representative of the experiences and perceptions of Kentucky; no geographic or other discernible portion of the state is significantly under-represented.

Constable receives DUI and other charges

SURFKY NEWS GROUP
MUHLENBERG COUNTY
NOVEMBER 14, 2011

COMMENTS FROM SURVEYS

They need some type of training. Back in my hometown they are just way out of line.

SURVEY OF KENTUCKY CONSTABLES

CONSTABLES AND STATE CONSTABLES ASSOCIATION PARTICIPATE IN STUDY AND COMMITTEE ACTIVITIES.
In addition to all constables requested to participate in the survey, the Kentucky Constables Association was invited to address the working group regarding its goals and objectives. Mr. Jason Rector, Adair County Constable and President of KCA, attended a working group meeting on August 22.
At that meeting, Rector provided a presentation and discussed training, liability, and other topics.

CONSTABLES' SURVEY RESPONSE

Constables' self-perceptions, and their views on the relationships between them and law enforcement in their respective communities, were important to the efforts of the working group. The Constable Survey was stylized and formatted similar to a survey of law enforcement agencies conducted periodically by DOCJT to allow for any applicable comparisons that might be fruitful to this inquiry. (Appendix E)

The Kentucky Constables' Association (KCA) President, Constable Jason Rector from Adair County, was forthcoming and more than willing to participate in the constable survey and coordinate logistics with other constables. Rector is an advocate of training and accountability; he acknowledged from the onset that KCA cannot speak for all constables much less direct the actions of all constables. The KCA is the only Kentucky association that is dedicated to the specific interests of constables.

RESULTS OF CONSTABLE SURVEY

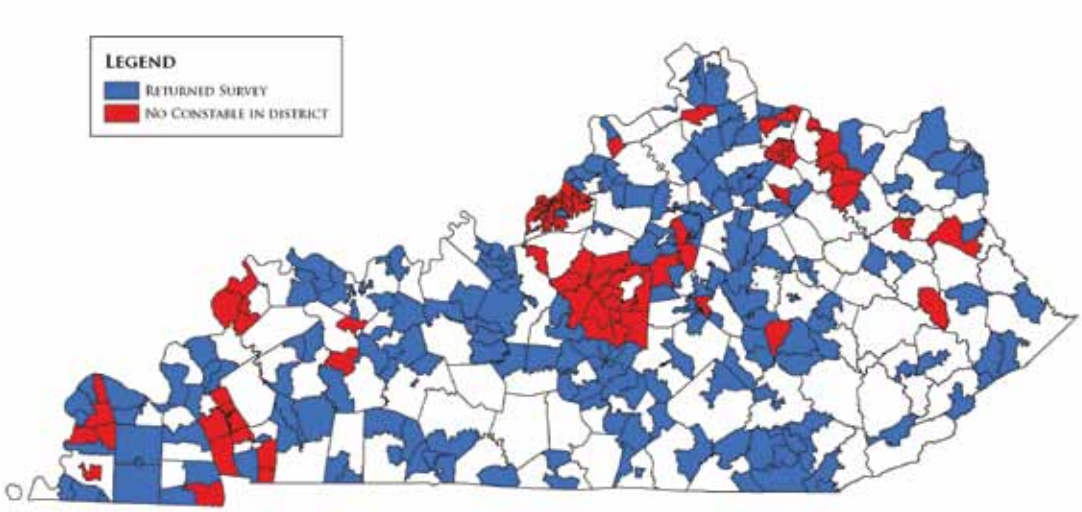
Summary

Upon reviewing the aggregated results of six independently run surveys, existing records of law enforcement activity for the past four years, opinions of attorneys general and media articles accumulated over the past several years, the working group reached several consensus declarations. Following this abbreviated list of declarations is a discussion of each relevant section or mode of inquiry.

Constables are not essential to Kentucky for law enforcement purposes.

- Constables perform only a negligible amount of law enforcement case work statewide.
- Constables that are active in law enforcement functions are rare; no guarantees of a continued performance of law enforcement role exists or can be compelled of the constable.

CONSTABLES — RETURNED SURVEY



Constables' Survey Responses by District

Of the 586 magisterial districts in Kentucky, 509 have constables in office. 202 constables responded to the survey for an overall response rate of 39.6%. Figure above, graphically depicts responses from constables by magisterial district.

Constables pose a liability hazard to counties and are a substantial officer safety issue for law enforcement officers.

- Constables are a concern to the Kentucky law enforcement community in terms of officer safety, legal liability, and public confusion between constables and law enforcement.

- Constables are widely regarded by judge executives and county attorneys as one of two polar extremes: a liability or as a non-issue. They are viewed as a liability typically where constables actively conduct law enforcement activities and a non-issue where constables do not perform law enforcement actions (or are inactive altogether).

Abolition of the office of constable is preferred but is not realistically the only option that should be pursued; rather, an appropriate goal should be restriction or elimination of law enforcement authority.

- Two out of every three responding judge executives see abolishing the office of constable as the most suitable outcome of the office.

- State police see the most palatable answers for constables as abolition of the office, removal of law enforcement authority, and then increased regulation. Only 3.88% of KSP responses suggested the current system be maintained. Less than that, only 1.39% of KSP recommended expanding the law enforcement duties of constables.

- Because KSP has fewer troopers than needed in rural areas and since many LEN executives agree they cannot afford more manpower; some troopers report they do welcome assistance from a constable when they are in need of assistance with no prospect of back up from a certified police officer. Some officers/troopers develop personal relationships with constables in the geographic areas due to relationships between families.

KENTUCKY 1849:
Sheriffs and constables; few if any deputies. (first and second class cities only)

KENTUCKY 2012:
120 Sheriffs departments; average number of POPS certified deputy sheriffs: 14.4 (1,733)

Trial date set for constable in assault case

The Courier-Journal
September 11, 2012

SURVEY RESULTS: LAW ENFORCEMENT

SURVEY RESULTS: LAW ENFORCEMENT

A majority of responses from each of the five groups other than constables surveyed—state police, sheriffs, chiefs, judge executives and county attorneys—agreed that constables should not have law enforcement authority. A common question was asked of each of these five groups: "What are your suggestions regarding the role of constables?"

Of 202 responses to the survey conducted with constables, 137 indicated they are employed in a capacity other than being a constable. As reported to the committee on July 18, 2012, by Jason Rector of the Kentucky Constables Association, this makes it impossible for them to attend regular training due to full-time employment commitments.

Two of the survey respondents indicated they have previous convictions; five indicated they do not have a high school diploma or GED certification.

Responses were aggregated from those categories that would in some form ultimately remove law enforcement authority; those response categories included: abolition of the office of constable outright, specifically removing law enforcement authority, and stipulating civil process only as an approved function. In each of the following tables, response categories are highlighted in orange; with each group, a majority favored removal of law enforcement functions and authority.

Breaking responses apart, abolition of the office of constable received at least a plurality if not a majority of preferred outcomes in these five groups. It is worth noting that open responses corresponding to this question indicated that a substantial number of respondents who opted for a response other than "abolish" explained they did not believe abolition would make it onto a general election ballot but it would be a preferred outcome. In this regard, removing law enforcement authority or confining constables to civil process only were essentially second-best choices.

Holding all things equal, the next most preferred recommendation for constables amongst these five categories was imposition of full Peace Officer Professional Standards (POPS) Act requirements. For purposes of this report, care should be taken not to read the responses to the surveys beyond only that which was said; in this case in particular, imposing POPS requirements on constables is not commenting on how this requirement would be imposed. As constables are constitutional offices, one cannot assume that they are suggesting that this requirement be accomplished by constitutional amendment or that there be a statutory provision that would compel compliance with POPS if an elected constable were to perform law enforcement functions.[11]

POPS would be particularly onerous to the existing cohort of constables.[12] POPS requires completion of a Kentucky Law Enforcement Council approved Basic Training Course within one year of employment as a peace officer, annual in-service training for incumbents in each year following completion of Basic Training, and 17 pre-employment standards.[13] The current Basic Training course approved by the KLEC at DOCJT is 18 weeks of resident hours and is predicated on rigorous entry-level requirements in terms of physical abilities, aptitude, reading level, and availability.

11 Other states have imposed this type of condition on constables; see previous section regarding other states' experiences and actions taken regarding constables on p. 12.

12 See green bar left.

13 Peace Officer Professional Standards Act (KRS15.380..400) pre-employment standards may be found at http://www.lrc.ky.gov/KRS/015-00/382.PDF

Kentucky State Police: Suggestions for constables' role

KENTUCKY STATE POLICE			
314	42%	Abolish	
42	6%	Completely Remove Law Enforcement Authority	
64	8%	Civil Process Only	56%
199	26%	Regulate by Full POPS	
64	8%	Limit and Regulate Law Enforcement Authority	
28	4%	Maintain Current System	
10	1%	Expand Law Enforcement Authority	
33	4%	No Response	
754	100%	Total	

Judge Executives: Suggestions for constables' role

JUDGE EXECUTIVES			
43	54%	Abolish	
1	1%	Completely Remove Law Enforcement Authority	
5	6%	Civil Process Only	62%
12	15%	Regulate by Full POPS	
2	3%	Limit and Regulate Law Enforcement Authority	
2	3%	Maintain Current System	
0	0%	Expand Law Enforcement Authority	
14	18%	No Response	
79	100%	Total	

Chiefs of Police: Suggestions for constables' role

POLICE CHIEFS			
63	35%	Abolish	
14	8%	Completely Remove Law Enforcement Authority	
13	7%	Civil Process Only	51%
44	25%	Regulate by Full POPS	
13	7%	Limit and Regulate Law Enforcement Authority	
10	6%	Maintain Current System	
7	4%	Expand Law Enforcement Authority	
14	8%	No Response	
178	100%	Total	

Sheriffs: Suggestions for constables' role

SHERIFFS			
71	60%	Abolish	
4	5%	Completely Remove Law Enforcement Authority	
1	1%	Civil Process Only	71%
14	12%	Regulate by Full POPS	
15	13%	Limit and Regulate Law Enforcement Authority	
5	3%	Maintain Current System	
1	1%	Expand Law Enforcement Authority	
6	6%	No Response	
118	100%	Total	

County Attorneys: Suggestions for constables' role

COUNTY ATTORNEYS			
34	47%	Abolish	
4	6%	Completely Remove Law Enforcement Authority	
10	14%	Civil Process Only	67%
6	8%	Regulate by Full POPS	
5	7%	Limit and Regulate Law Enforcement Authority	
4	6%	Maintain Current System	
1	1%	Expand Law Enforcement Authority	
8	11%	No Response	
72	100%	Total	

WHAT'S THE PROBLEM? A Kentuckian's Experience

Richmond Register
July 28, 2012

"RICHMOND — On a chilly January night last winter, Steve Kelly saw several cars intentionally doing snow "doughnuts," spinning in circles on the slick pavement, in the Hastings parking lot at Richmond Centre.

Kelly drove over to investigate, and he claims one of the cars hit a grass island, nearly hitting his vehicle.

Kelly turned on his blue lights and got out of his vehicle.

He walked up to the stopped car, driven by Abraham Drane, 35, and Drane attempted to drive away, Kelly said. Kelly then opened the car door and turned off the ignition.

"(Drane) punched me in the face," Kelly said. "… He was ready for war."

Kelly pulled Drane out of the vehicle and "at that point it was necessary to deploy my Tazer…" the incident report states. Kelly also doused Drane with pepper spray. Kelly reported that Drane had an unopened pocket knife in his hand.

Kelly is not a Richmond or Berea police officer, and he's not employed by the Madison County Sheriff's Department.

Kelly was elected as the constable of District 2 in 2010, and according to the state constitution, he has the same law arresting powers as a county sheriff.

However, Kelly is not required to have any law enforcement training, something that has led to him often being at odds with county officials and the local justice system… The case was dismissed with prejudice."

(2 of 3)

Open ended responses that corresponded to the question to which respondents indicated POPS compliance may reveal a more utilitarian understanding of the circumstances of constables in Kentucky than one might otherwise expect. A number of respondents who suggested POPS compliance also commented that law enforcement authority (following POPS) would not be available, that is, constables would not pass pre-employment standards or most constables would not be able to attend and pass Basic Training for 18 weeks.

Respondents preferring limiting of law enforcement authority to POPS compliance also appears to serve another purpose. Open-ended responses pointed to the non-law enforcement services that could be of benefit (i.e. civil process, event security, etc.); elimination of the office would also eliminate those services seen as beneficial by the survey respondents. POPS compliance for law enforcement authority would confine or eliminate the facet of constables that is most vexing to these respondents while preserving elements that are of little concern or are seen as somewhat beneficial.

Respondents suggesting maintaining the present system and practices marginally outpaced those who favored expansion of the law enforcement role of constables. Neither represents a significant portion of responses. Of those that did indicate this preference, open ended responses indicate in several cases that there is a personal relationship between the respondent and one or more constables in the respondent's jurisdiction.

"Constables are a state-wide issue that has not been properly addressed. Serious consideration of abolishing the office or at least removing law enforcement authority is warranted."

KEITH CAIN —
SHERIFF, DAVIESS COUNTY
CHAIRMAN, KENTUCKY LAW ENFORCEMENT COUNCIL

"In the past some have suggested a "special" constable course or training class ranging from 40 hours to 80 hours in length. By all logic, this is preposterous. There is no practical outcome of giving abbreviated training to constables to cause them to behave as if they had 18 weeks."

DR. JOHN W. BIZZACK —
COMMISSIONER / DEPARTMENT OF CRIMINAL JUSTICE TRAINING

Woman arrested after shoplifting, fight with constable

Lexington Herald-Leader
June 11, 2012

RESULTS OF SURVEY OF CONSTABLES

CONSTABLES' SURVEY RESPONSES

In the description of the constables' survey in the previous section, responses were plotted on a map indicating magisterial districts (p. 26.) The response rate of the constables provides context and, to some degree, limitations on findings and summaries of constables. It is difficult to generalize about all constables with short of 40% responding to the survey. Conversely, it may not be quantifiable, but the low response rate does lead one to reach suspicions if not conclusions about the incumbents' perceptions of their role.

Constables Survey
509 Recipients
202 Completed Survey
307 Not Responded
39.6% Answered

Constables' Survey Responses

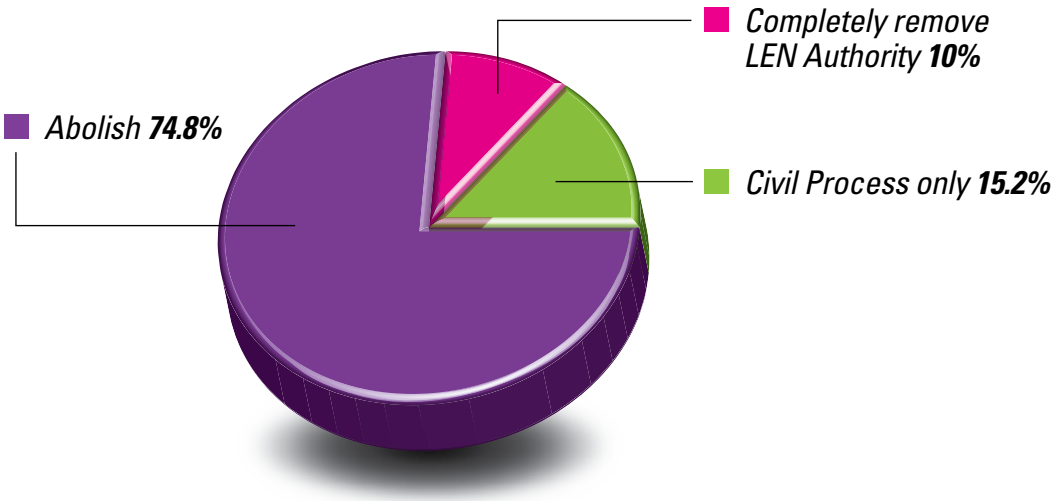
PREVIOUS LAW ENFORCEMENT EXPERIENCE AND TRAINING

A total of 73 respondents indicated previous law enforcement experience; DOCJT confirmed 14 of these 73 as graduates of basic training with DOCJT, KSP or out-of-state basic training.

- 14 were confirmed as having attended DOCJT Basic Training, KSP Basic Training or an out-of-state basic training that was KLEC approved. (1 out of state, 11 attended DOCJT training prior to inception of POPS, 2 attended DOCJT basic training after POPS)
- Seven cited military experience as law enforcement experience
- Two cited unverified out of state law enforcement experience

KENTUCKY STATE POLICE

Eliminate Law Enforcement Functions of Constables



- 12 constables cited experience with sheriff departments or police departments, but their experience was part-time, special deputy, auxiliary police or volunteer. In terms of in-service or incumbent officer training, sporadic training was noted; none attended regularly (yearly) and none attended a basic training class
- Two cited private security work
- Two were bailiffs / court security officers
- The remaining constables' information could not be verified.

DEPUTY CONSTABLES

Kentucky Revised Statutes 70.320 and 81.010 stipulate the conditions and parameters for the use of deputy constables. Fourteen constables indicated that they utilized deputy constables or other personnel. All but one county appeared to be in compliance with the statutory regulations dealing with deputy constables. One constable from a third class city indicated in his survey response that he employed six full time constables in apparent contradiction of KRS 70.320.

Fourteen constables in nine counties reported using of deputy constables:

Boyd (2)	Campbell
Christian (4)	Daviess
Fayette (2)	Kenton
Meade	Taylor[14]
Warren	

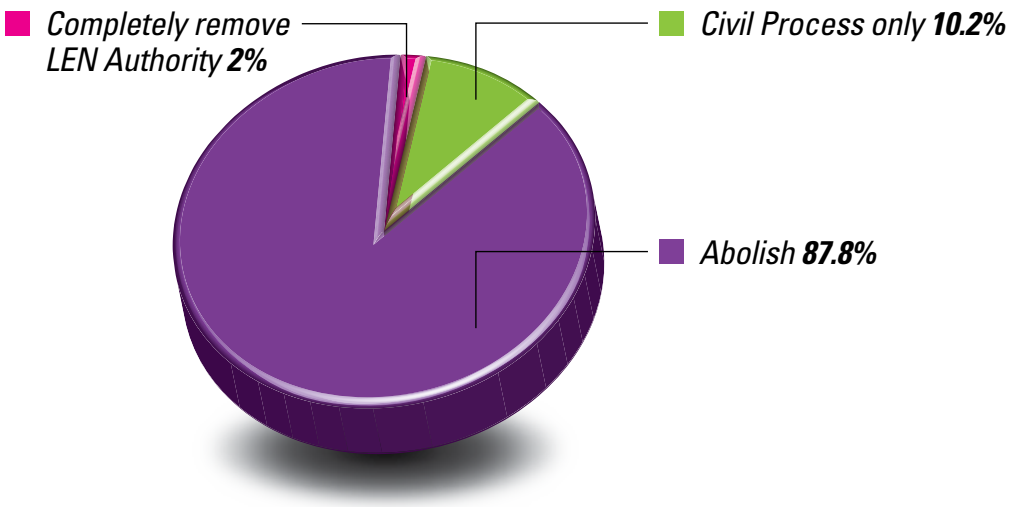
14 Taylor County does not have a first or second class city; this data is reported from constables' self-report survey.

KENTUCKY 1849:
No organized training for law enforcement

KENTUCKY 2012:
Empirically validated training for 8089 certified peace officers in 400 law enforcement agencies .

JUDGE EXECUTIVES

Eliminate Law Enforcement Functions of Constables



KRS 70.320 – Deputy Constables

70.320 Deputy constables in counties containing a city of the first or second class or a consolidated local government.

(1) The appointment of deputy constables shall be authorized only in counties containing a first or second class city or a consolidated local government. In counties containing a city of the first or second class or a consolidated local government, each constable may appoint one (1) or more deputies with the consent of the county judge/executive or the mayor, in a consolidated local government, as the case may be. The constable and his or her surety are liable on his or her bond for all the acts and omissions of his or her deputies.

(2) Deputy constables may be removed at any time for any cause deemed sufficient by the constable by order of the county judge/executive or the mayor in a consolidated local government, as the case may be, entered after filing of a written direction by the constable.

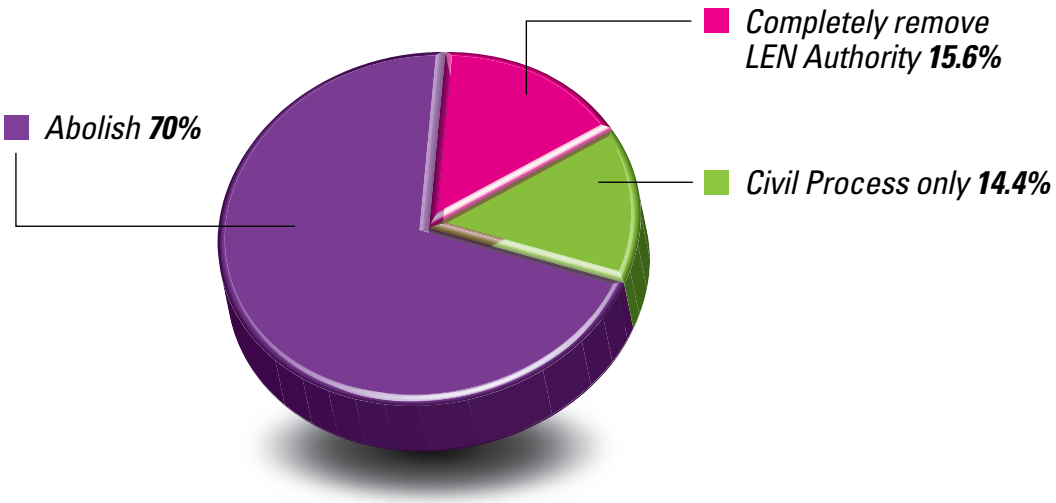
(3) Each deputy constable in counties containing a consolidated local government or city of the first class shall be compensated for his or her services by salary fixed by the consolidated local government or fiscal court, and paid out of the levy of the consolidated local government or county.

Effective: July 15, 2002

History: Amended 2002 Ky. Acts ch. 346, sec. 70, effective July 15, 2002. -- Amended 1978 Ky. Acts ch. 384, sec. 161, effective June 17, 1978. -- Amended 1968 Ky. Acts ch. 152, sec. 44. -- Amended 1960 Ky. Acts ch. 241, sec. 1. -- Amended 1954 Ky. Acts ch. 105, sec. 1. -- Amended 1952 Ky. Acts ch. 6, sec. 1. -- Amended 1946 Ky. Acts ch. 165, sec. 1. -- Amended 1942 Ky. Acts ch. 180, secs. 8 and 9. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. secs. 425, 1083a-9.

POLICE CHIEFS

Eliminate Law Enforcement Functions of Constables



Education Level

	Ky population	Responding Constables	DOCJT Basic Training Graduates 2012
Less than High School	19%	2.7%	0%
High School or equivalent	54%	74.7%	62.7%
Associate Degree	6.6%	13.7%	10.5%
Bachelor Degree	12.1%	8.8%	24.7%
Graduate Degree	8.2%	0%	1.8%

Comparison of General Population, Constables, and DOCJT Recruits Educational Levels[15]

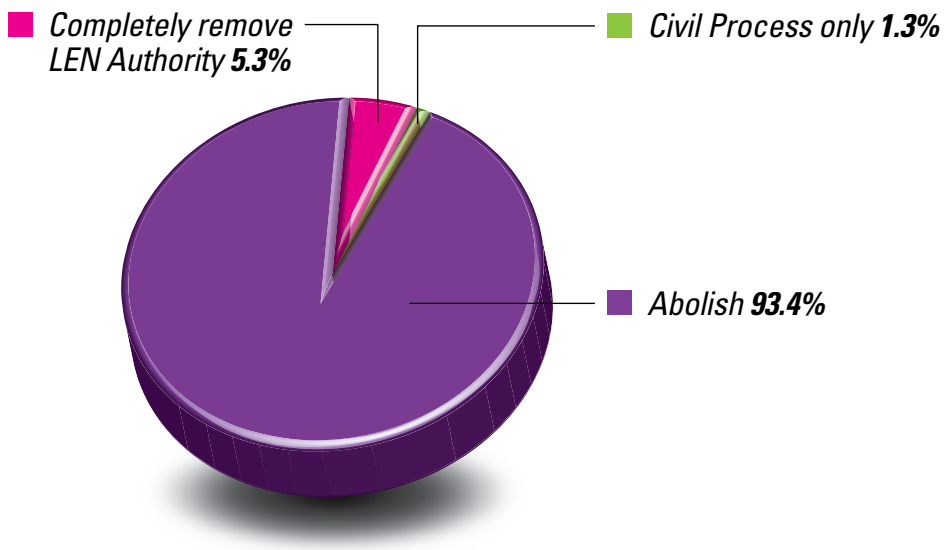
When comparing education levels of constables to education levels of other Kentucky law enforcement officers, several things stand out. More than one out of every four 2012 DOCJT Basic Training Graduates have at least a bachelor's degree, which is significantly higher than the state average, according to the 2010 Census Bureau information. In contrast, one out of approximately 12 constables has attained a bachelor's degree.

According to the reported constables data, five constables reported not having a high school or equivalent degree. Due to the POPS hiring standards, one does not find that in other areas of law enforcement.

15 *Taken from the United States Census Bureau (www.census.gov). Data compiled from the 2010 census. (Adults age 25 and over)*

SHERIFFS

Eliminate Law Enforcement Functions of Constables



AGE

The age range of constables who responded to the survey is 26 to 86, with a median of 53 and a mean of 52.6.

Age Ranges	
30 and under	8
31-40	21
41-50	54
51-60	55
61-70	46
71-80	8
Over 80	2

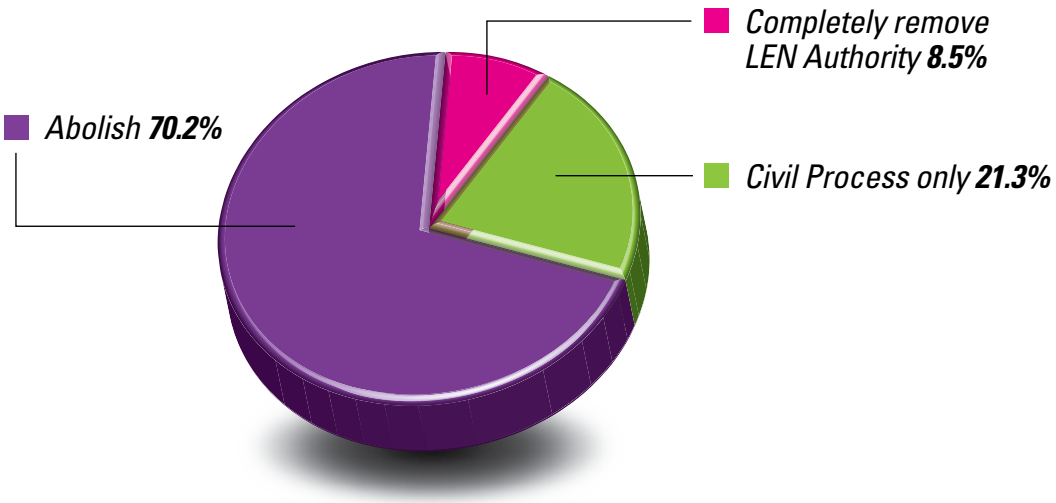
MILITARY EXPERIENCE

Twenty-seven percent of constables responding to the survey reported previous military experience, this is comparable to data that details almost 24% of DOCJT Basic Training graduates from 1999-2012 have previous military experience. This is higher than the statewide population. According to the U.S. Census Bureau, a little more than 10% of Kentucky's population (adults age 18 and over) have military experience.

Fifty-five constables out of the responding 202 constables reported that they had military experience in the form of Air Force, Army, Coast Guard, Marines, Navy, National Guard or Reserves. It should be noted that 11 of the 55 constables reported service with more than one branch of the military.

COUNTY ATTORNEYS

Eliminate Law Enforcement Functions of Constables



CONSTABLES AND LAW ENFORCEMENT

EXISTING RECORDS

A common assertion by constables is that they play a significant role in law enforcement services to Kentucky; other entities surveyed clearly disagree with this understanding. Another approach, then, to further answering the original research question is to look to existing records for more of an answer. **If constables are essential to law enforcement services in Kentucky at present, a commensurate level of official activity would be a matter of record**; claims that sheriffs, chiefs of police and KSP felt threatened by constables or resentful of their autonomy might make more sense if constables routinely engage and report criminal cases compared to other law enforcement actions.

At the onset of this inquiry, DOCJT research staff attempted to establish a threshold—an average or median level of activity for official acts and records from which comparisons and generalizations could be drawn. This proved to be an unnecessary exercise; the data speaks clearly for itself.

The Kentucky State Police are, by statute, the official records agent of Kentucky for criminal cases, traffic citations, and other official acts of law enforcement. KSP provided data accumulated over three full years (2009, 2010, 2011) and 2012 partial year that aggregated the official law enforcement activities of constables in each county. The full table and summary table are attached as Appendix G. Records from the yearly Crime in Kentucky[16] report produced by KSP were compared against the accumulated constable data; the **results of that comparison revealed a *statistically insignificant* impact on the part of constables in law enforcement operations in Kentucky.**

16 Current and previous year reports available at: http://www.kentuckystatepolice.org/data.htm#kyucr

Bell County constable, wife plead guilty in bingo theft

Kentucky.com
August 12, 2012

Kentucky State Police classify crime into categories. Part 1 crimes consist of murder, rape, robbery, aggravated assault, burglary, larceny theft, auto theft, and arson. Records show that in 2009 a statewide total of 119,785 Part 1 crimes were reported by law enforcement to KSP. Of those 119,785 crimes; only 1 case was filed by a constable. In 2010, law enforcement reported 121,287 Part 1 crimes; only 2, or 0.00002%, were reported by a constable. In 2011, the reporting process and nomenclature changes renamed Part 1 crimes to Group A crimes. Additional crimes such as kidnapping/abduction, drug/narcotic offenses, prostitution, and weapons law violations were included in the Group A category. In 2011, constables reported 15 Group A/Part 1 crimes, or .00007%, of the 198,889 total for the state. From 2009 to 2011, on average, constables worked approximately 9.75 Part 1 cases per year and an average of 23.6 of all cases per year.

"The committee's conclusion emphasizes that the caliber of today's law enforcement professionals bolstered by consistent, state-wide standards — effectively eliminates the need for constables as defined more than 150 years ago."

DR. JOHN W. BIZZACK — COMMISSIONER / DEPARTMENT OF CRIMINAL JUSTICE TRAINING

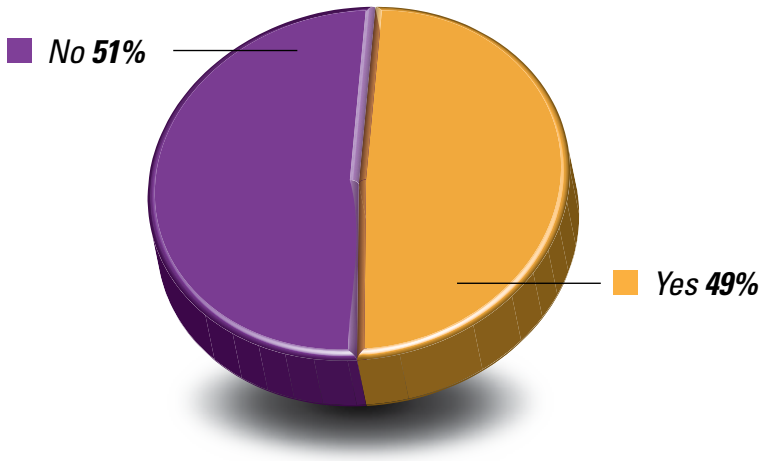
As of September 12, 2012, Kentucky had approximately 8,096 certified peace officers; this total includes deputy sheriffs, city police officers, Kentucky State Police troopers, airport police officers, university police officers, public school police officers, Fish and Wildlife Conservation officers, and other state officers.[17] As a means of comparison, there were approximately 509 constables statewide.[18]

17 DOCJT and KLEC records of active certified peace officers pursuant to KRS 15.380..400 (Peace Officer Professional Standards Act).

18 Kentucky Secretary of State

KENTUCKY STATE POLICE

Does the public in your community understand the current distinction between constables and local police, sheriff deputies and state police?



CONSTABLES AND LAW ENFORCEMENT

According to the KSP KyOPS database, in 2009 constables from 19 counties had reported activity that accounted for 197 reports statewide. Sixty-nine percent of those reports were citations. Fifteen of the counties reported only one activity leaving 84% of the counties reporting no activity from constables. Fifty of those cases are considered Part 1 Crimes which account for .0004% of all Part 1 crimes reported statewide. Additionally, only one constable per reporting county documented cases from 2009. (Appendix G)

In 2010, reported cases from constables came from 21 counties; in almost all cases, reporting indicated minimal activity (60% of those counties reported one report each for the calendar year). For the year, 83% of the constables statewide reported no activity. For 2010, a total of 120 cases were worked by constables while just 0.06% were Part 1 crimes and 76% of the total cases were indicated as citations.

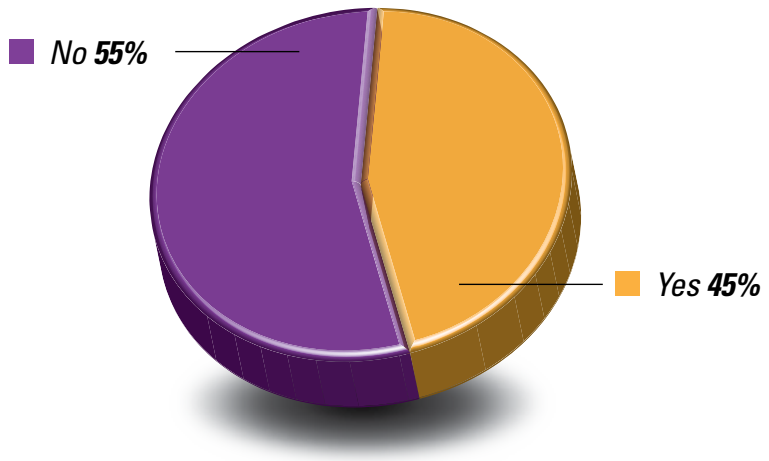
In 2011, constables from 25 different counties submitted reports to KyOPS for a total of 537 cases. Fifteen of those cases are classified as Part 1 crimes and 98% represented citations. Seventy-nine percent of the counties statewide recorded no activity.

Where constables are active, it is rarely sustained or consistent. Data from KSP suggests that there frequently occurs an initial zeal to provide services, but that effort frequently falls off sharply after the first or second year in office. It begs the question whether the public good is well served by having erratic application of the law that could well be described as haphazard and institutionally capricious.

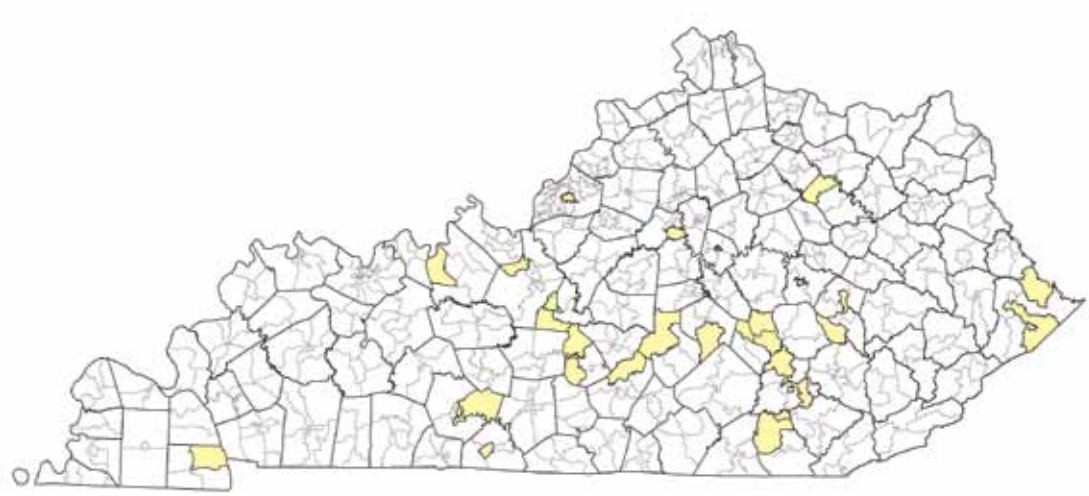
There is, apparently, occasionally more than waning interest that can explain significant variance in law enforcement services provided or undertaken by constables. In 2009, Muhlenberg County Constable District 5 reported 49 crimes to KyOPS; in 2010, six crimes; and in 2011 had zero crimes reported. As a matter of perspective, a total of 607 crimes were reported in 2009 by sworn officers from the Central City Police Department, Greenville Police Department, Powderly Police Department, Muhlenberg County Sheriff's Office, and KSP Post 2. There were 487 crimes in 2010, and 726 crimes in 2011 were recorded. Compared together, almost one percent of Part 1

JUDGE EXECUTIVES

Does the public in your community understand the current distinction between constables and local police, sheriff deputies and state police?



CONSTABLE ACTIVITY — 2011



Data compiled from KSP KyOPS

crimes in Muhlenberg County were reported by Constable District 5. When examining why the sharp decline in reported crimes, 2011 newspaper articles and KSP press releases were found noting the constable had been arrested in two separate incidents. The first arrest was for terroristic threatening, 3rd degree. One week later, the constable was arrested for operating a motor vehicle under the influence of Alcohol/Drugs, failure to produce proof of insurance, possession of a controlled substance in the second degree and tampering with physical evidence. The case is still pending.[19] In November 2010, a new constable was elected. From 2011-current, no activity has been documented to KyOPS from this district.

Each year the KSP publishes a report on *Kentucky Traffic Collision Facts* that provides statistical data based on comprehensive evaluation and analyses of fatal, injury, and property damage collisions. This publication along with the KyOPS reports indicate in the past three years, constables have reported a total 38, or .00008%, collision reports to the Kentucky State Police compared to the 443,413 reported by certified peace officers statewide (KSP Collision Facts Report 2009-2011.)[20]

The most recent full year of data collected, 2011, revealed only eight constables in 29 districts having performed law enforcement operations that resulted in a required submission to KyOps. Numerous constables issued citations outside of the county they represent, including: Breckenridge District 2 operating in Campbell County, Caldwell District 5 operating in Campbell County, Calloway District 1 operating in Campbell County, Rockcastle District 4 operating in Madison County, Jessamine District 1 operating in Bourbon County, Hardin District 8 operating in Logan County, Estill District 1 operating in Powell County, and Green District 4 operating in Taylor County.

1856
England abolishes office of constable.

1849
Kentucky establishes the office of constable.[1]

19 *http://surfky.com/index.php/hopkins/news/archive/6507-phillip-conway-receives-dui-and-other-charges?fontstyle=f-smaller, http://surfky.com/index.php/contact/archived-articles/4327-5th-district-constable-arrested-by-kentucky-state-police*

20 *Each year the KSP publishes a report on* Kentucky Traffic Collision Facts *that provides statistical data based on comprehensive evaluation and analyses of fatal, injury, and property damage collisions. This publication along with the KyOPS reports indicate in the past three years, constables have reported a total 38, or .00008%, collision reports to the Kentucky State Police compared to the 443,413 reported by certified peace officers statewide (KSP Collision Facts Report 2009-2011). (Traffic Collisions in Kentucky Annual Reports http://www.kentuckystatepolice.org/data.htm#taiky)*

1 *Committee on the Administration of Justice, Department of Justice, "Law Enforcement in Kentucky,"* Kentucky Law Journal*, 55, No. 1 (1963-64).*

To help reconcile apparent contradictions about constables' operational activity, a follow-up research question was posed: How many cases brought or carried by constable cases resulted in convictions?

According to the responses collected from the constable survey, constables indicated they had taken and submitted 36 traffic accidents in the past six months. Kentucky State Police KyOPS data shows only 4 collision reports have been submitted through KyOPS since the beginning of 2012. Constables self-reported 279 misdemeanor arrests by the constable or deputy constable in the past six months, and 137 felony arrests. **Kentucky State Police 2012 records show just 27 crime reports have been submitted by two individual constables statewide.**

An election year for constables, 2010 saw 509 out of 586 district positions were filled. Thirty-six districts reported cases to KyOPS leaving less than one percent of districts showing some activity.

FUNCTIONS PERFORMED BY CONSTABLES; LIMITS

To further discern the activity level of constables, questions were asked on each survey concerning specific functions constables performed in their respective jurisdictions. In the case of Judge Executives, questions were posed concerning the functions performed and the authority exercised by either the county's fiscal court or the judge executive concerning those functions.

For the constables, 202 respondents answered this question:

> **"List your duties as constable. Check all that apply."**

In addition to the following list of possible responses, an open response field was made available to provide an opportunity for clarification or elaboration. The list of possible responses was not intended to be mutually exclusive but was, rather, intended to cover all possible relationships that

Lawsuit claims constable acted illegally

AUGUST 12, 2010

might exist between constables, judge executives, and fiscal courts concerning the individual roles of constables; accordingly, totals do not equal 100%.

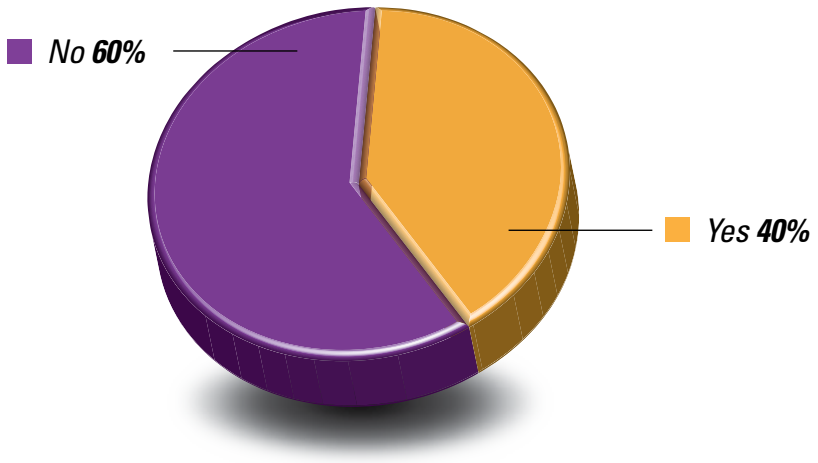
- **23.76 % General law enforcement duties directed by Judge-Executive/Fiscal Court**
- **66.34% General law enforcement duties, at discretion of the Constable**
- **14.85% Limited law enforcement duties; limited by Judge-Executive/Fiscal Court**
- **5.94% No law enforcement duties; limited by Judge-Executive/Fiscal Court**
- **3.96% No law enforcement duties; limited by Constable**
- **13.86% Non-law enforcement duties; at discretion of Constable[21]**
- **8.42% Non-law enforcement duties; agreements/contracts with private sector**

Overall, more than two out of three constables responded that they perform law enforcement duties under their own discretion; that is, they are not limited by another entity as to the content or scope of functions. However, more than 25% of the constables that reported performing law enforcement duties at their own discretion contradicted themselves as to what they do and who limits them. Out of the 133 that reported they perform law enforcement duties at their own discretion, **27** also reported they perform general law enforcement duties directed by the judge-executive/fiscal court, **seven** also reported performing limited law enforcement duties, limited by the fiscal court, and **three** also reported they performed no law enforcement duties, as limited by the fiscal court.

21 *These three categories are mutually exclusive responses amongst constables' responses; accordingly, the sum of these responses indicates the number of constables responding to the survey that do not perform law enforcement functions.*

POLICE CHIEFS

Does the public in your community understand the current distinction between constables and local police, sheriff deputies and state police?



CONSTABLES AND LAW ENFORCEMENT

Almost one in four constables responding reported they do not perform law enforcement duties either at their own discretion or as directed by their fiscal court.

Close to 15% of the constables responded that their law enforcement duties are limited by their fiscal court.

Looking at counties on an individual basis, one finds that 47 counties have constables that significantly differ among themselves as to their roles as constables. Additionally, in 17 counties judge executives and county constables report conflicting information on limitations as to the power of constables and/or who places those limitations on the office of constable.

This difference is compounded by comparing the understanding of judge executives of the role of constables compared to the constables themselves. Twenty-six county judge executives (out of the responding 79) report the fiscal court or judge executive places limits on constables. In many counties, constables' responses contradict or differ on what their duties are or who limits them.

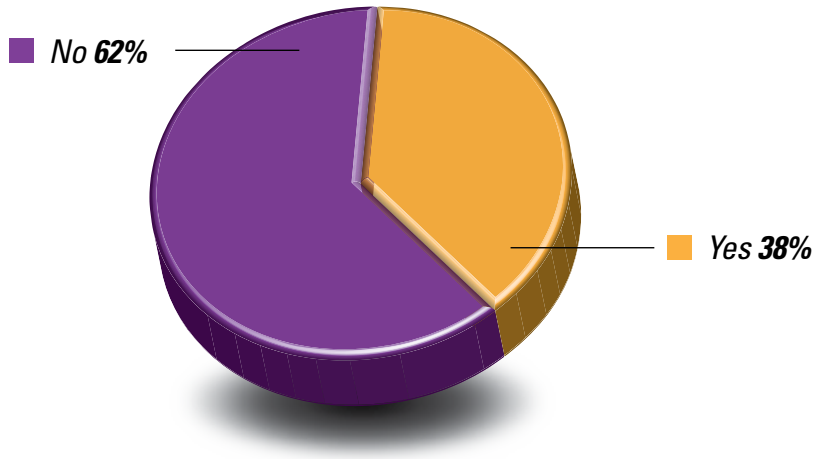
- When reviewing the constable responses, 45 counties have contradictory responses on what types of duties the constables perform, who places the limits on the constable's law enforcement duties or what those limits are.

- 33 Constables in 19 counties disagree with the county judge executive on who limits their duties. Many responded that they performed general law enforcement duties at their own discretion, while the county judge executive reported some type of limit placed on the constable by the fiscal court.

- 29 Constables in 15 counties disagree with the county judge executive on what type of duties the constable is able to perform.

SHERIFFS

Does the public in your community understand the current distinction between constables and local police, sheriff deputies and state police?



Quantifying contradictions noted between constables and judge executives and with other constables is confusing in and of itself. But the contradictions are present, moreover, the discretion afforded fiscal courts in authorizing constables on a case-by-case basis for various duties and authorities underscores the persistent perception of those surveyed that there is a significant misunderstanding of the general public about constables. This perception of misunderstanding conveys significant negative connotations when open ended responses are folded into the question.

Twenty-nine of the 79 responding county judge executives reported allowing constables to use blue lights, per KRS 189.950. Almost one third of the judge executives who do allow the constables in their county to utilize blue lights place some type of special circumstance on the use. Some of these contingencies include additional vehicle liability insurance, additional bonding requirements or a training requirement (either as a certified peace officer or other annual training).

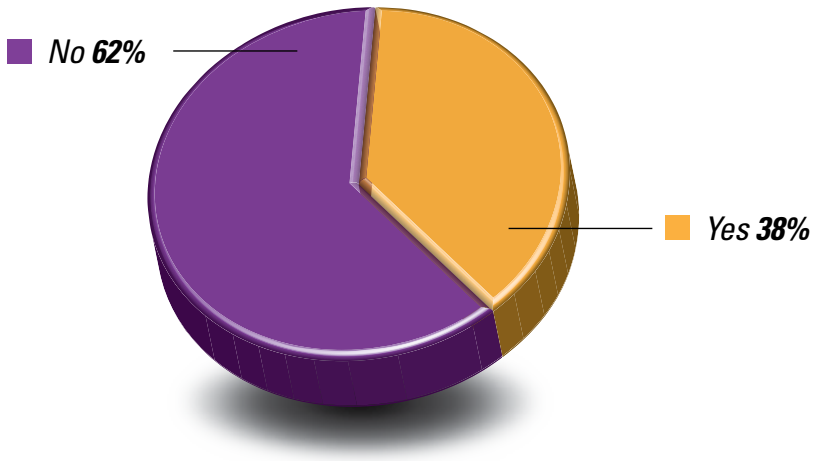
This is in contrast to the 111 constables in 64 counties who report they have blue lights and/or sirens on their vehicles. According to data collected, constables from 12 counties appear to be in direct conflict with KRS 189.950 when comparing constable's self-reported response and the county judge executive's self-reported response. Additionally, in five counties without a county judge executive response, the constables from the same county reported conflicting answers with each other. While it may be the case that fiscal court approves one constable but deny another in the same county for use of lights and sirens, the overall variance amongst the population of constables should underscore the confusion on the part of the public.

County fiscal courts' approval of blue lights is wholly discretionary. Whether a fiscal court incurs liability by approving the use of blue lights by constables remains an open question.

Liability does fall on the fiscal court for harm done by a constable if the action of the constable is directly attributable to the use of blue lights or siren and the fiscal court was negligent in approving the use.[1]

COUNTY ATTORNEYS

Does the public in your community understand the current distinction between constables and local police, sheriff deputies and state police?



1 *See OAG 86-67.*

EFFORTS TO REGULATE

COMPARISON OF HIRING/SELECTION CERTIFICATION STANDARDS

CONSTABLES

Qualifications

- 24 years of age
- Citizen of the state for 2 years
- Resident of county & district 1 year prior to election
- Execute minimum $10,000 bond (approved by fiscal court)
- 4 year term in office

DUTIES (KRS 70.310-.530)

(Optional not obligatory)

- Powers of arrest
- Serve processes

DEPUTY CONSTABLE

- Only authorized in 1st & 2nd Class cities or consolidated local government
- American citizen
- 21 years old
- Must reside in county for 2 years.
- Not been convicted of moral turpitude

BY THE NUMBERS

- 586 Magisterial/Constable Districts
- 509 filled seats (14% unfilled)
- 2 POPS Certified Constables
- 0 Constables trained under the 18 week curriculum
- 2 Constables trained since POPS (1998)
- 16 Constables trained prior to POPS

SHERIFFS

Qualifications

- 24 years of age
- Citizen of the state for 2 years
- Resident of county & district 1 year prior to election
- Execute minimum $10,000 bond (approved by fiscal court)
- 4 year term in office
- Must take constitutional oath of office

DUTIES (KRS 70.010-.284)

(Obligatory)

- Tax Collection
- Election duties
- Service to Courts
- Law Enforcement
- Under certain circumstances may absorb duties of the jailer
- Sells forfeiture property

DEPUTY SHERIFF

- Must meet all 17 POPS standards and physical fitness requirements

BY THE NUMBERS

- 120 Sheriffs
- No vacancies
- 76 POPS Certified Sheriffs
- 1733 POPS Certified Deputy Sheriffs

POPS

Qualifications

17 STATEWIDE STANDARDS

- Is a citizen of the United States
- Is at least twenty-one (21) years of age;
- Is a high school graduate or has successfully completed a General Education Development (G.E.D.) examination;
- Possesses a valid license to operate a motor vehicle;
- Has been fingerprinted for a criminal background check;
- Has not been convicted of a felony;
- Is not prohibited by federal or state law from possessing a firearm;
- Has been interviewed;
- Has undergone a background investigation;
- Has taken a polygraph examination;
- Has undergone psychological evaluation;
- Passes a drug screening test;
- Discharged under honorable conditions, if having served in the armed services;
- Has received and read the Kentucky Law Enforcement Officer's code of Ethics;
- Has passed a medical examination;
- Has not had certification as a peace officer revoked in another state;
- Meets 5 physical fitness standards and higher graduation standards:
  - Bench Press (% of body weight conversion)
  - Sit up Test (1 minute time limit)
  - 300 Meter Run
  - Push up Test (2 minute time limit)
  - 1.5 Mile Run

BY THE NUMBERS

- 400 law enforcement agencies required by statute to follow POPS Act
- 8089 POPS Certified Officers

EXISTING AND PREVIOUS EFFORTS TO REGULATE CONSTABLES

Bonding Requirements

Public official bonds are "... generally conditioned to guarantee the public officer's faithful performance of his duties." Officers whose "duties involve the receipt of disbursement of money, or the investment of public funds, or the seizure and disposition of property, or the arrest or detention of persons, or may otherwise bring them into conflict with the rights of citizens, are generally required by law to furnish bonds to protect those interested in or injured by the exercise of such powers."[22]

Bonds vary considerably in content and scope; fiscal courts should look carefully at bonds presented to them for approval. Examples within the range of bonding agreements include: "faithful performance bond," "fidelity bond," "public employee blanket bond," and "public employee dishonesty bond". Within these examples, the same act by a public official may be covered by one type of bond but excluded by another. For example, an act or omission could violate the terms of a faithful performance bond without violating a dishonesty bond.

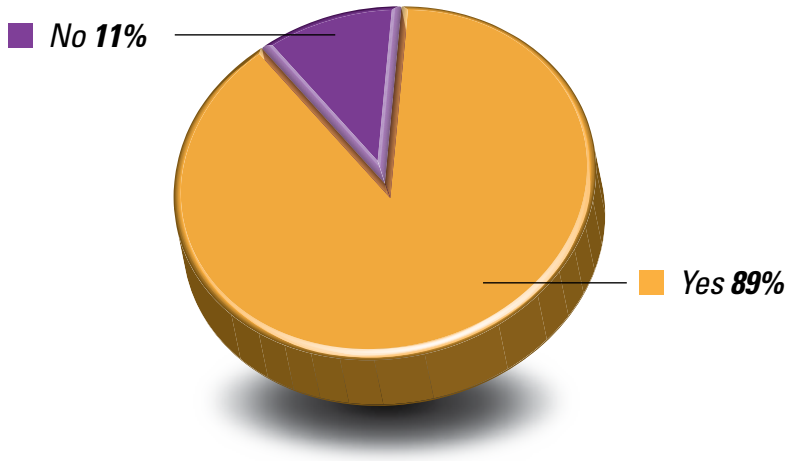
If an act or omission by the principal (Constable) violates the terms of the bond and a loss is incurred, the surety would pay the loss up to the amount of the bond and then pursue repayment. A surety bond is not insurance; rather it is a method of guaranteeing the recovery of losses incurred.

Arguably, the precise language of the bond should serve to alert the fiscal court to its obligation to discover a violation of the terms guaranteed by the bond. Typical language for public official bond documents for constables includes a promise to "well, truly, and faithfully perform" the duties of office. Worth noting also is the duty of the fiscal court to investigate the bond company before accepting a corporate surety bond.

22 27 West's Legal Forms, Specialized Forms s 6:111(4th ed.) Public Official Bond

JUDGE EXECUTIVES

Are you aware of the financial liabilities associated with constable?



KRS 70.310 requires a minimum $10,000 surety bond be secured by constables prior to being sworn and prior to undertaking the duties of office. This minimum bond amount may be raised by fiscal court action. The bond must be renewed biennially, must be recorded by the fiscal court with the county clerk, and the fiscal court's approval of the sureties must be entered in the records of the fiscal court. The only statutory procedural requirement is ten days' notice. Because the fiscal court sets the amount of the bond and approves the sureties, implicitly the fiscal court incurs a duty of diligence to investigate an appropriate amount for the bond and the soundness of the bonding company as a guarantor of the amount of the bond. Because the fiscal court must record the acceptance of the bond and the bond must be posted prior to a constable undertaking his duties of office, it is implicitly the duty of the fiscal court to monitor the posting of the bond prior to both the swearing in and the assumption of the role of office of the constable.

Based upon preliminary research and subsequent discussions among the work group, further review of media and additional legal research, several discussions have focused on the ability of any individual county to safeguard against losses by establishing higher bond requirements for constables. It is important to note that while the minimum bond required is $10,000, there is no ceiling imposed by statute and, aside from a minimum of ten days' notice, KRS 70.310 imposes no hearing or other procedural requirements before the fiscal court may raise the bond required.

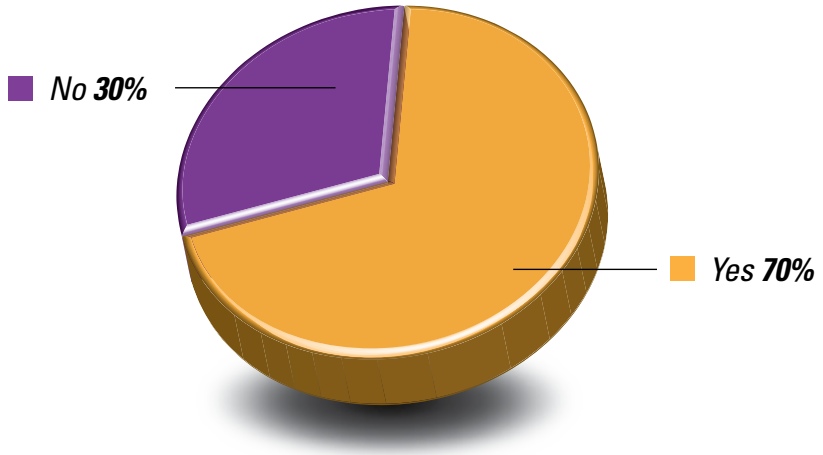
SURVEY RESULTS, COMPARISON

Despite concrete statutory requirements, a striking incongruity within individual counties often emerged upon review of the survey responses relative to the bond requirements imposed on constables. First, among an individual county's constables there was often disagreement. Also, when comparing the responses of constables against those of the same county's other survey respondents, a concerning lack of agreement emerged as well. Additionally, it appears that many respondents regard a surety bond as a mere formality and not worthy of attention.

For example, 93% of constables answered yes to the question "Does your county require a bond?" Per KRS 70.310 all constables are required to have a minimum of $10,000 surety bond; the seven percent of responding constables indicating "no" to this question are apparently unaware of the requirement.

COUNTY ATTORNEYS

Are you aware of the financial liabilities associated with constable?



Nineteen constables from 17 counties reported their county requires a higher bond than the statutory minimum of $10,000. However, there was no consensus among the responses of the county judge executives, who, through their fiscal court, would be the entity that requires this higher amount. Eight of the county judge executives did not agree with the response of their own county's constable.

Does your county require a bond higher than the state minimum for constables? (KRS 70.310)

Answer Options	Response Percent	Response Count
No	90.5%	58
Yes. What is the amount?	9.5%	6
	answered question	64
	skipped question	15

As an example of this incongruity, only one county judge/executive affirmed the higher bonding amount that was reported by a constable. Pendleton County constables from districts one and three, and the Pendleton County Judge Executive all reported the same amount ($50,000) that was higher than the state minimum. Two Pendleton County constables reported the same surety bond amount while one responded that he only was required to have the state minimum bond. This was a theme throughout the survey—constables from the same county rarely responded with the same information.

RULINGS AND OPINIONS

An opinion of the attorney general (95-11) discusses and answers a series of specific questions posed from Boyd County. In this opinion, the attorney general elaborates on the autonomy of county fiscal courts in regards to directing the fiscal affairs of counties. Further, OAG 95-11 clearly opines that fiscal courts are in no way obligated to pay the fees for surety bonds of constables in the county.

County Constable among 83 arrested in massive drug roundup

WLEX-TV, LEXINGTON
NOVEMBER 9, 2010

In an unpublished opinion, Brumley v. Nelson County Fiscal Court et al[23] the Court of Appeals' analysis leaves considerable latitude to the fiscal court to determine a reasonable bond requirement. The Brumley court placed the burden on a party claiming a bond is unreasonable. Further, under the reasoning in Brumley, even if confronted with a challenge to the reasonableness of the bond amount, a minimal showing would be required. Again, pursuant to KRS 70.310, the only requirement imposed upon fiscal court prior to raising the bond amount is ten days' notice.

POTENTIAL RAMIFICATIONS

The fiscal court is not required to state its intention or reasoning for raising the bond amount and no process or hearing is required by statute. Therefore, the intent behind the decision to raise the bond amount in those counties whose fiscal courts have elected to increase the amount is not of record, is not required to be of record, and will not be assumed or inferred here. However, it is noteworthy that if a fiscal court deems that the office of constable poses a risk of loss, the fiscal court has at its disposal the option of increasing the bond with ten days' notice. Even in the face of a challenge to a bond amount above the statutory minimum, a fiscal court would only be required to produce a minimal showing of reasonableness.

The natural consequences of an increased bond amount include an increase in the cost of posting a cash bond or premiums for corporate surety bonds; therefore some individuals would be unable to meet the bond requirement. Again, Constables must secure a surety bond that satisfies the county's requirements prior to being sworn-in and before undertaking the duties of office.[24]

If constables performing law enforcement operations are perceived by fiscal courts to increase the risk of losses to a third party while non-law enforcement functions are viewed as lower risk, a bifurcated approach could be utilized. This recommendation would allow a fiscal court to establish bonding requirements based upon the authorized, official behavior of each constable;

23 Brumley v. Nelson County Fiscal Court et al (Ky. App. 2004) 2002-CA-002243-MR (unpublished).
24 See Bowen v. Commonwealth, ex re Stidham (Ky. 1994) 887 SW2d 350; KRS62.050(1) and (2).

Johnson County constable pleads guilty to charges of doctor shopping

Office of the Attorney General
August 10, 2010

WHAT'S THE PROBLEM? A Kentuckian's Experience

Central Kentucky News
August 14, 2003

"Shannon Bucknell saw no identification Monday morning, only a car with white lights on top that followed her from Cottonwood subdivision north of Harrodsburg until she finally stopped her car on Tapp Road with her two young children inside.

She got out of her car and went back to find out who he was. He had Rice written on his T-shirt and some kind of badge on his belt. He said he had stopped her because she had made an improper lane change and was speeding and he was concerned about the safety of her and her children.

"I was just trying to take my kids to school," Bucknell said. She said he got on his cell phone and made her think he was calling the police. She asked him who he was calling and he would not tell her. "I was upset and crying and my children were in the car, and I found out he was talking to his wife."

Rice told her she should have pulled over a long time before she did. In a telephone interview, he said he has a radar gun, but he is not certified to use it. He is confident the speedometer on his car is correct. He also has no proof the radar gun is calibrated.

Bucknell said he was on the road when he started following her; she knew because she passed him. Nevertheless, his actions left her less than comfortable that he was looking out for her safety. She stopped on Tapp Road because she did not want him following her up the drive to Mercer County Elementary School…

"I panicked, I was scared and mad and embarrassed. I was a mess. I think he takes his power a little too far," Bucknell said."

(3 of 3)

those who perform or intend to perform law enforcement functions would be obligated to secure a higher bond while those who confine themselves to non-law enforcement functions could have a less onerous bonding obligation.

Again, a surety bond is not and does not replace professional liability insurance, vehicular liability insurance, errors and omissions insurance, honesty policies, or other indemnification. Requirements, best practices, and utility of policies for constables are not addressed here.

County officials should always seek appropriate counsel concerning liability, bonding and insurance. In sum, it appears that these issues have not been addressed in the Commonwealth of Kentucky at the state level or in any substantial or uniform manner at the county level.

"Virtually all constables are untrained in the proficiencies of modern, professional law enforcement. Their amateurish approach endangers citizens, law enforcement officers and even the constables themselves. This isn't a game."

JERRY WAGNER —
EXECUTIVE DIRECTOR
KENTUCKY SHERIFFS' ASSOCIATION

REMOVING LAW ENFORCEMENT AUTHORITY FROM CONSTABLES

The Kentucky Constitution does not describe what powers or functions that constables are to perform. Open responses to survey questions posed to constables and dialogues related from law enforcement officers indicate that some constables suggest that their law enforcement authority emanates from the constitution. Likely this is a misinterpretation of Section 101 that directs that constables "shall possess the same qualifications as Sheriffs..."[25] Qualifications clearly relate to the conditions that an individual must meet or qualify to hold office.

Constables derive their law enforcement authority from statutory provision, not the Kentucky Constitution. Law enforcement authority is functionally established by association in statute. In part, KRS 446.010 describes:

> (31) "Peace officer" includes sheriffs, constables, coroners, jailers, metropolitan and urban-county government correctional officers, marshals, policemen, and other persons with similar authority to make arrests;[26]

Abolition of statutory law enforcement authority would leave only negligible statutory functions. The Kentucky judiciary has taken issue with constitutional offices being legislatively (statutorily) reduced to little or no function.[27] Constables without the statutory provision of law enforcement authority could be construed as an empty shell. While there is no definition offered by the courts as to what precisely constitutes an empty shell, the charge to this working group warrants only this remonstration for future policy considerations. However, if other functions could be assigned statutorily to the office of constable, an empty shell argument could be effectively averted.

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25 *Kentucky Constitution, Section 101.*

26 *See KRS 4460.010(31) at http://www.lrc.ky.gov/KRS/446-00/CHAPTER.HTM*

27 *See Covington Bridge Commission v. City of Covington, 257 Ky. 813, 79 S.W. 2d 216(1935). Here, the court cordoned off constitutional offices from the reach of legislative action that would remove the original constitutional functions of the office. But shortly later, in Johnson v. Commonwealth, 291 Ky. 829, 165 S.W. 2d 820,829(1942), the court allowed for legislative action to provide and constrain the functions of a constitutional office provided that the ultimate result of such action was not the effectual creation of an empty shell.*

PREVIOUS EFFORTS

2010 Special Populations Report to KLEC

A review of perceptions of law enforcement associations' perceptions of constables in 2010 reached similar conclusions as this report. The review was requested by the Kentucky Law Enforcement Council and was intended as preliminary research in anticipation of potential legislation or other action that would change the relationship between certified law enforcement and "special populations" on the periphery of law enforcement; one of the groups reviewed was constables.

Of particular note, there was no articulable appetite for providing law enforcement training to constables other than training available now. Likewise, the 2010 report discussed a layered system of peace officer certification whereby constables and others could, presumably, be fitted into the existing law enforcement community with various reduced requirements or training standards. No appetite was discovered by any of the professional associations canvassed for that report for such an initiative in Kentucky. Likewise, no proposal from constables or their association rose to a substantive level sufficient to further dialogue.

2007 KENTUCKY LAW ENFORCEMENT SYMPOSIUM

A 2007 study by the Department of Criminal Justice Training on the Future of Law Enforcement in Kentucky identified several issues of concern for Kentucky law enforcement professionals and the general public. Noted alongside high profile issues such as recruitment, retention, training standards, were constables.

Clark constable resigns amid hubbub over lights

The Winchester Sun
February 11, 2011

As a part of that research, two public symposiums were conducted; an 18-member panel presided over open forums, creating a dialog between law enforcement professionals, elected officials and the general public, including a vigorous discussion about proposed legislation to allow constables to hire deputies based on population (a proposal eventually tabled by the legislature) and train those deputies for only one week.

The proposal "sets law enforcement back in Kentucky considerably," said Martin Scott, then-president of the Kentucky Fraternal Order of Police. "We fought to raise the bar, raise the standards and raise the training, and anything that would set the requirements back for law enforcement, I think, hurts everyone in Kentucky."[28]

MEDIA

Over the past decade there has been no lack of constables in the headlines of Kentucky's media. Although care should be taken not to paint all with the same brush, constables who have been accused/convicted of crimes create a perception by the public that affects all law enforcement. The public, according to those surveyed, generally does not understand the difference between constables and certified peace officers. Headlines of concern are sprinkled through this document; published articles are available in Appendix H.

28 *See the 2007 special edition of the Kentucky Law Enforcement News: https://docjt.ky.gov///Magazines/SpecialEditionF2007/SpecialEditionF2007.asp (Appendix I)*

Confrontation with constable caught on tape

WKYT-TV, Lexington
September 3, 2008

RECOMMENDATIONS/ DISPOSITION

Randomly interviewing one individual from the five groups surveyed during the course of this project, one would have the greatest chances of finding a:

- Judge Executive who regards constables as a liability to their county and likely does not believe that they should exist as a county officer,
- County attorney who will likely not prosecute their cases (if any are brought to them at all) and are highly concerned about the liability to which they potentially expose the county,
- Sheriff who adamantly wants them excised from the Constitution and worries that the general public will confuse them with the sheriff's deputies,
- Chief of Police who has little contact or little regard for them, and
- State Police trooper who thinks they are a nuisance; a potentially dangerous one.

And constables have appeared in less than glowing terms in media articles and stories over the past several years. The General Assembly has seen more bills and more substantial bills introduced that would restrict or outright abolish constables in the past several years than ever before.

Ordinarily, a broad consensus from these groups would be sufficient to carry the day with legislative proposals and popular direction. But constables persist.

Kentucky finds itself in the same situation that was described during the constitutional convention of 1849 by William Preston, quoted previously. The Constitution provides for constables; the General Assembly has the authority to define their roles by statute. The consensus of the Kentucky law enforcement community and parallel orientation from Judge Executives and County Attorneys would eliminate law enforcement functions of constables if not the office altogether.

But to the point of the original research question, the working group confines itself to the question of law enforcement and the utility of constables in this domain.

By acclamation, the working group concludes that the constable is far from essential to modern law enforcement in the Commonwealth of Kentucky. The working group commends these recommendations to its constituent members and to the Secretary such that a conclusive voice is clearly articulated.