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## Law of the Jungle: Bringing the Laws That Govern Pennsylvania's Game Officers out of the Wilderness and into Modernity

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# Law of the Jungle: Bringing the Laws that Govern Pennsylvania’s Game Officers out of the Wilderness and into Modernity

Joshua G. Parsons\*

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## I. Introduction: Into the Jungle

In a recent hunting season, at least 850,000 licensed hunters pursued game in the state of Pennsylvania.<sup>1</sup> The state government likely considers regulating and controlling such a large body of hunters a daunting task.<sup>2</sup> It may, therefore, be understandable that the Commonwealth of Pennsylvania would implement special powers to control and police hunters, as well as other individuals engaged in outdoor activities. What is less understandable, however, is the peculiar patchwork of laws that today governs Pennsylvania’s Game Officers, the officials who enforce the Commonwealth’s Game Laws.<sup>3</sup>

This Comment addresses the two primary problems with the

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1. *Deer Hunting Forecast and Statistics*, [http://espn.go.com/outdoors/hunting/s/h\\_deer\\_forecast03\\_PA.html](http://espn.go.com/outdoors/hunting/s/h_deer_forecast03_PA.html) (last visited Jan. 15, 2006).

2. See *About the Pennsylvania Game Commission, Pennsylvania Game Commission website*, <http://www.pgc.state.pa.us/> (follow hyperlink for “About PGC”) (last visited Jan. 15, 2006). Full-time Game Officers are assigned a large territory to police, perhaps as much as 350 square miles. Thus, there could be hundreds or even thousands of hunters within each Game Officer’s assigned zone.

3. See, e.g., 34 PA. CONS. STAT. § 904 (Supp. 2004) and 34 PA. CONS. STAT. § 901 (Supp. 2002); see also *About the Pennsylvania Game Commission*, *supra* note 2. Pennsylvania’s Game Officers are also referred to as Wildlife Conservation officers or WCOs.

existing laws that govern Pennsylvania's Game Officers. First, some of the statutes governing Game Officers are vague and overbroad. They purport to confer powers that are not likely to withstand constitutional scrutiny by the courts. Second, in some ways the laws governing Game Officers unwisely limit the duties that Game Officers have.

Citizens may be unaware that Pennsylvania's Game Officers have powers that in some ways exceed those possessed by virtually any other law enforcement officer.<sup>4</sup> These expanded powers include the right to search and demand identification from not only hunters, but from virtually anyone with whom the Game Officer comes in contact while in the field.<sup>5</sup> The Pennsylvania General Assembly has given Game Officers broad, vague powers to safely regulate hunters.<sup>6</sup> However, because of the breadth of the powers conferred, some of Pennsylvania's Game Laws are seemingly vulnerable to constitutional challenge.<sup>7</sup>

Yet, equally surprising is that in other ways the powers of Pennsylvania's Game Officers are unwisely restricted.<sup>8</sup> For instance, if not acting within their purview as Wildlife Conservation Officers, Game Officers can run the risk of overstepping their powers.<sup>9</sup> If a Game Officer makes an arrest for a violation of the law that is outside of his traditional duties, that arrest may be subject to reversal by the judiciary.<sup>10</sup> For example, an armed, capable, and duly authorized Game Officer may be returning to his patrol route after having just arrested a dangerous poacher, and yet he may find himself unable to stop a drunk driver or investigate a drug offense. This state of affairs seems to defy common sense. It could also cause weakness in times of emergency when law enforcement agencies need to be able to depend on each other.<sup>11</sup>

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4. See, e.g., 34 PA. CONS. STAT. § 901. This section is entitled "Powers and duties of enforcement officers." It gives Game Officers the power to "[s]top and inspect or search, at any time, any means of transportation within this Commonwealth." *Id.*

5. See *id.*

6. See *id.*; see also Richard R. Palmer, *Powers and Duties of Pennsylvania Game Commission Enforcement Officers, Fish & Wildlife Laws in Pennsylvania—2005*, 3834 PA. B. INST. 349-52 (2004).

7. See *Commonwealth v. Ickes*, 798 A.2d 863 (Pa. Commw. Ct. 2002); *Commonwealth v. Ickes*, 873 A.2d 698 (Pa. 2005).

8. See, e.g., *Commonwealth v. Carlson*, 705 A.2d 468 (Pa. Super. Ct. 1998). The defendant argued that the Game Officers had no right to pull over his vehicle and arrest him for driving under the influence because they were outside the scope of their duties. The court agreed, finding that the arresting officers had not gathered enough information while within the scope of their duties to justify pulling over the defendant's vehicle and arresting him. *Id.*

9. See *id.*

10. See *id.*

11. See *Pennsylvania's Emergency Management Agency Website*, <http://www.pema.state.pa.us/pema/site/default.asp> (follow hyperlink for "[a]bout PEMA") (last visited Jan. 15, 2006). This agency's duty, as described in its mission

In a post-9/11 world, where more cooperation is required within the law enforcement community, and between the law enforcement community and other government agencies, limiting the enforcement capabilities of Game Officers in this manner is unwise.<sup>12</sup> Cooperation between agencies should allow for seamless integration between departments during national, state, or local crises.<sup>13</sup> Currently Game Officers cannot perform many of the duties that state or local police perform.<sup>14</sup> Thus, if called to execute an integrated mission with other law enforcement agencies, Game Officers lack the legal tools necessary to perform duties outside of their normal purview.<sup>15</sup>

The first major concern with the existing law is that the statutes that grant Pennsylvania's Game Officers with enforcement authority confer broad and imprecise powers.<sup>16</sup> There are two primary examples of this, 34 PA. CONS. STAT. § 904 and 34 PA. CONS. STAT. § 901.<sup>17</sup> Through these statutes, the Pennsylvania General Assembly has assigned Game Officers powers that go beyond those that Pennsylvania State Troopers, or other police, possess.<sup>18</sup> For instance, according to statutory authority, a Game Officer may demand identification from any person, at any time, without regard to a standard of suspicion.<sup>19</sup> Refusal to comply can result in arrest.<sup>20</sup> This law purports to apply equally to hunters as well as other citizens.<sup>21</sup> The only requirement is that the Game Officer must first inform the person being investigated that they are the subject of an

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statement, is to coordinate other state departments, such as law enforcement agencies, in time of emergency. Similar developments have been ongoing at the federal level and in other states because of the 9/11 attacks. The mission statement says:

The mission of the Pennsylvania Emergency Management Agency is to coordinate state agency response, including the Office of the State Fire Commissioner and Office of Homeland Security, to support county and local governments in the areas of civil defense, disaster mitigation and preparedness, planning, and response to and recovery from man-made or natural disasters.

*Id.*

12. *Id.*

13. *Id.*

14. *See Carlson*, 705 A.2d at 472-73.

15. *Id.*

16. *See* 34 PA. CONS. STAT. § 904 (Supp. 2004) and 34 PA. CONS. STAT. § 901 (Supp. 2002).

17. *See* 34 PA. CONS. STAT. § 904 and 34 PA. CONS. STAT. § 901.

18. *See* 34 PA. CONS. STAT. § 904 and 34 PA. CONS. STAT. § 901.

19. *See* 34 PA. CONS. STAT. § 904. This section is entitled "[r]esisting or interfering with an officer." *Id.*

20. *See id.*

21. 34 PA. CONS. STAT. § 904 does not differentiate between hunters and non-hunters. It simply requires that an Officer be in the performance of any duty required by this title. Thus, although the primary purpose of Game Laws is to police hunters, the laws are broad enough to be used against anyone in Pennsylvania.

official investigation.<sup>22</sup> Prior to 2004, however, even that requirement did not exist.<sup>23</sup>

Title 34, section 904 of the Pennsylvania Consolidated Statutes is not the only statute giving far-reaching powers to Pennsylvania's Game Officers. Game Officers may also stop and search any means of transportation in the Commonwealth.<sup>24</sup> According to the wording of the Pennsylvania statute, these searches do not even require the articulation of a standard of suspicion.<sup>25</sup> Furthermore, an Officer may enter structures after simply presenting official identification.<sup>26</sup> Similarly, the Game Laws say that Game Officers may search any person whom they meet.<sup>27</sup>

It may seem strange that Pennsylvania's State Police and local municipal police, who normally work in more populated areas, and thus

22. *Id.* This section provides in pertinent part that "[a] person who refuses to provide identification upon demand of an officer whose duty it is to enforce this title after having been told by the officer that the person is the subject of an official investigation commits a summary offense of the fifth degree."

23. *See* Commonwealth v. Ickes, 873 A.2d 698, 700 (Pa. 2005). Prior to 2004, 34 PA. CONS. STAT. § 904 read as follows:

When an officer is in the performance of any duty required by this title, it is unlawful for any person to resist or interfere in any manner or to any degree or to refuse to produce identification upon request of the officer. A violation of this section is a summary offense of the first degree.

*Id.* After the Commonwealth Court's invalidation of that law in *Ickes* the legislature changed § 904. It has now been amended to read as follows:

(a) General Offense. When an officer is in the performance of any duty required by this title, it is unlawful for any person to interfere with or resist an arrest, inspection or investigation of the officer by threat, force, menace, flight or obstruction. A violation of this subsection is a summary offense of the first degree. (b) Failure to produce identification upon demand. (1) A person who refuses to provide identification upon demand of an officer whose duty it is to enforce this title after having been told by the officer that the person is the subject of an official investigation commits a summary offense of the fifth degree. (2) A person who provides false identification to an officer whose duty it is to enforce this title for the purpose of avoiding prosecution or hindering apprehension or obstructing an investigation commits a summary offense of the second degree.

*Id.*

24. 34 PA. CONS. STAT. § 901 (Supp. 2002).

25. *Id.*

26. *Id.* This section gives Game Officers the power to "search, at any time, any camp, tent, cabin, trailer or other means of transportation or its attachment being used when the officer presents official identification. . . ." *Id.*

27. *Id.* § 904. This section gives Game Officers the power to "search, at any time or place, any person . . . or any clothing worn by any person, or any bag, clothing or container. . . ." *Id.*

are more likely to require broad powers in the fight against crime, do not possess these powers, yet Game Officers do. Traditional police officers do not have such powers because the judiciary has normally prevented them from having these powers.<sup>28</sup> Most courts believe that to confer such powers goes further than the United States Constitution allows.<sup>29</sup> However, because Game Officers normally only come in contact with hunters, these issues seem to be rarely litigated. When hunters are cited for violations, they are unlikely to go to court.<sup>30</sup> Because the fines assessed in these cases are normally low, and the cost of litigation is prohibitively high, most hunters simply pay the fine.<sup>31</sup> Moreover,

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28. *See generally* Terry v. Ohio, 392 U.S. 1 (1968). The United States Supreme Court has defined the types of permissible contact between police and citizens.

29. *See id.*

30. *See* 34 PA. CONS. STAT. § 925 (Supp. 2004). Many Game Law violations are classified as misdemeanors and summary offenses. The most serious violations carry jail time; however, the majority of incidents result in a minor fine. Thus, most hunters likely pay the fine without litigating the issue.

31. *See id.*

(b) Fines and penalties for violations.—In addition to any other requirements of this title, the following fines and penalties shall be imposed for violations of this title:

- (1) Misdemeanor of the first degree, not less than \$2,000 nor more than \$10,000 and may be sentenced to imprisonment up to six months.
- (2) Misdemeanor of the second degree, not less than \$1,000 nor more than \$5,000 and may be sentenced to imprisonment up to six months.
- (3) Misdemeanor of the third degree, not less than \$500 nor more than \$2,500 and may be sentenced to imprisonment up to six months.
- (4) Summary offense of the first degree, not less than \$500 nor more than \$1,500.
- (5) Summary offense of the second degree, not less than \$300 nor more than \$800.
- (6) Summary offense of the third degree, not less than \$200 nor more than \$500.
- (7) Summary offense of the fourth degree, not less than \$100 nor more than \$300.
- (8) Summary offense of the fifth degree, not less than \$75 nor more than \$200.
- (9) Summary offense of the sixth degree, not less than \$50 nor more than \$100.
- (10) Summary offense of the seventh degree, not less than \$25 nor more than \$75.
- (11) Summary offense of the eighth degree, \$25.

In addition to the imposition of any fines, costs of prosecution shall also be assessed pursuant to 42 Pa.C.S. §§ 1725.1 (relating to costs) and 3571 (relating to Commonwealth portion of fines, etc.).

(c) Penalty for undesignated violations.—A person who violates any provision of this title for which a particular penalty is not applicable commits:

- (1) A misdemeanor of the third degree if the violation involves an endangered or threatened species and no more severe penalty is fixed.
- (2) A summary offense of the fifth degree for any other violation.

hunters are accustomed to being highly regulated and simply accept intrusions that other citizens would not.<sup>32</sup>

Yet, despite possessing some overly broad powers, Game Officers are also limited by statutes that deprive them of the general powers of other police officers.<sup>33</sup> The vague statement that Game Officers “must act within the scope of their duties” sometimes limits Game Officers.<sup>34</sup> It prevents Game Officers from performing potentially important duties when other law enforcement agencies call upon them for assistance.<sup>35</sup> Likewise, when confronted with a violation of the law that is outside of their traditional purview, Game Officers are normally forced to wait for Pennsylvania State Police or local police backup.<sup>36</sup> If the Game Officer

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(d) Second and subsequent offenses.—Where game or wildlife is taken, killed, wounded, possessed, transported, purchased, concealed or sold and the offense is a second or subsequent offense in a two-year period, one and one-half times the amount of fine shall be imposed.

*Id.* For minor crimes incarceration would normally only be incurred if the offender failed to pay his fine in a timely manner.

(f) Nonpayment of fines and costs.—Unless otherwise provided in this title, each person who fails to pay the fine imposed may, after hearing before a district justice, be imprisoned until the fine is paid in full. The court may imprison the person for a number of days equal to one day for each \$40 of the unpaid balance of the fine and costs not to exceed 120 days.

*Id.*

32. See *About the Pennsylvania Game Commission*, *supra* note 2 (follow hyperlink for “licenses” then hyperlink to “see the license fee/shipping schedule here”). This high degree of regulation comes from the fact that hunters are required to purchase a variety of licenses depending on what they plan to hunt. The standard Pennsylvania hunting license allows the hunter to pursue small game and one antlered whitetail deer. Separate licenses may be purchased to allow hunting of antlerless whitetail deer, waterfowl, migratory game birds, and furbearing animals. Separate licenses must also be obtained in order to hunt with different types of weapons such as bow and arrow, or muzzle loading firearm. To acquire any of these licenses a hunter must divulge substantial personal information about themselves. They must also read and understand the numerous regulations that govern hunting and the use of weapons in the Commonwealth of Pennsylvania. *Id.*

33. See 34 PA. CONS. STAT. § 901 (Supp. 2002). Pennsylvania’s Game Officers derive their powers from state statutes like this one. Thus, they have not been granted general police powers, but rather they have specific, listed statutory powers, the confines of which they must remain within.

34. See, e.g., *Commonwealth v. Schatzel*, 724 A.2d 362, 367-68 (Pa. Super. Ct. 1998). The Court had to determine whether Game Officers who arrested a suspect for driving under the influence were acting within the scope of their duties. Defendant’s appeal questioned the authority of Game Officers to stop and arrest him. *Id.*

35. See *id.* Individuals who have been arrested by Game Officers performing duties outside of their traditional purview may be able to argue that the arrest is invalid because the Officer was outside of his scope of duties.

36. See *Commonwealth v. Carlson*, 705 A.2d 468 (Pa. Super. Ct. 1998). In *Carlson*, Game Officers radioed for State Police support, but because the support was so far away they made the arrest themselves. The arrest was later overturned.

chooses not to wait, he risks judicial second-guessing of the arrest, and release of the suspect.<sup>37</sup>

The powers exercised by Game Officers are derived from statutes passed by the Pennsylvania General Assembly.<sup>38</sup> The average citizen's lack of knowledge about these powers is understandable. The spotlight of legal attention has rarely shone onto these laws. However, lack of attention does not equal sound public policy. Thus, the General Assembly should amend this unwieldy patchwork of statutes. Some of these laws are clearly too broad and vague. If attacked, they are unlikely to survive a challenge under the United States Constitution.<sup>39</sup> At the same time, other parts of the law should be reformed to eliminate unneeded restrictions that interfere with important law enforcement ends.<sup>40</sup> Preventing members of a law enforcement agency from making arrests for crimes that happen to be outside of their traditional scope of duties is contrary to commonsense and sound public policy. In short, the broad, confusing, and vague laws that regulate Pennsylvania's Game Officers should be brought out of the dark woods and into the sunlight of modernity.

## II. Background: The Woods, Dark and Deep

Pennsylvania's Game Officers trace their origins to the creation of the Game Commission. The Pennsylvania Game Commission was created in 1895 with the mission of managing Pennsylvania's wildlife resources.<sup>41</sup> Game Laws had been in effect for many years prior to the Commission's creation, but had not been enforced.<sup>42</sup> The Commission came about because of a need to, among other things, manage wildlife, and stop unregulated hunting.<sup>43</sup> The Game Commission accomplishes these ends through the creation and use of hunting and wildlife regulations.<sup>44</sup> With these regulations the Game Commission attempts to accomplish its statutory duty of "manag[ing]" Pennsylvania's hunters and wildlife.<sup>45</sup>

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37. *See id.*

38. *See* 34 PA. CONS. STAT. § 904 (Supp. 2004) and 34 PA. CONS. STAT. § 901.

39. *See* Commonwealth v. Ickes, 798 A.2d 863 (Pa. Commw. Ct. 2002); Commonwealth v. Ickes, 873 A.2d 698 (Pa. 2005).

40. *See, e.g.,* Carlson, 705 A.2d 468.

41. *See* *About the Pennsylvania Game Commission*, *supra* note 2.

42. *See id.*; *see also* Powers and Duties of Pennsylvania Game Commission Enforcement Officers, *Fish & Wildlife Laws in Pennsylvania—2005* at 349, *supra* note 6. The first laws date back as far as 1721.

43. *See* *About the Pennsylvania Game Commission*, *supra* note 2.

44. *Id.*

45. 34 PA. CONS. STAT. § 322 (1998). This is another broad section of the Game Code. Section 322 also provides for other general powers and duties beyond portions



Pennsylvania's Game Laws mandate how the Game Commission should be structured. The Commission is managed by an independent administrative board comprised of eight citizens who are appointed by the Governor with the advice and consent of two-thirds of the Pennsylvania Senate.<sup>46</sup> These members then have the duty to select a director of the Game Commission.<sup>47</sup> The director is the chief Game Officer of Pennsylvania, and also the chief administrative officer for the Pennsylvania Game Commission.<sup>48</sup> The director has the power to select persons to serve as Game Officers.<sup>49</sup> The Commission also appoints Deputy Game Officers who volunteer to serve without compensation, but have the same responsibilities as other Game Officers.<sup>50</sup>

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quoted in the text of this article. For example "[t]he commission has the power and duty to take all actions necessary for the administration and enforcement of this title." *Id.* It also has specific powers and duties. This commission shall fix and regulate seasons as well as manage and develop lands and waters for "prudent and proper use." *Id.* Moreover it may "[t]ake any necessary action to accomplish and assure the purposes of this title . . . [and] . . . [s]erve the interest of sportsmen by preserving and promoting our special heritage of recreational hunting and furtaking by providing adequate opportunity to hunt and trap the wildlife resources of this Commonwealth." *Id.*

46. 34 PA. CONS. STAT. § 301 (1998). This section provides that:

[t]he independent administrative commission known as the Pennsylvania Game Commission shall consist of eight competent citizens of this Commonwealth who shall be well informed on the subject of wildlife conservation and restoration and who shall be appointed by the Governor, by and with the advice and consent of two-thirds of the elected members of the Senate.

*Id.*

47. 34 PA. CONS. STAT. § 302 (1998). This section provides that "[t]he commission shall select a director. No member of the commission nor anyone who has served as a member of the commission within one year after service shall be eligible for selection as director. The director shall serve as such at the pleasure of the commission." *Id.*

48. *Id.* This section provides that:

[t]he director shall be the chief administrative officer of the commission and attend to its administrative work and have charge of all activities under the jurisdiction of the commission and this title. The director shall be the chief Game Commission officer and shall direct, supervise and control all employees of the commission and report to the commission any negligence, dereliction of duty or incompetence on the part of any employee, with the facts relevant thereto, and shall make any further reports as may be required by the commission.

*Id.*

49. 34 PA. CONS. STAT. § 303 (1998). This section provides that: "[t]he director shall select competent persons as Game Commission Officers, assigned to field, administrative or office duties, and other competent persons for other duties as may be necessary to fulfill the requirement of this title." *Id.*

50. 34 PA. CONS. STAT. § 304 (1998). This section provides that:

[t]he commission may appoint deputy Game Commission officers as necessary.

Currently Pennsylvania employs approximately 200 full-time Game Officers and some 700 Deputy Game Officers.<sup>51</sup> Each full-time Officer is responsible for roughly 350 square miles of territory, but they receive assistance from the Deputy Game Officers.<sup>52</sup> Full-time Officers are graduates of the Game Commission's Ross Leffler School of Conservation, which was established in 1936.<sup>53</sup> After graduation from training, new Game Officers are assigned to an area in the state where their primary job is to enforce the Commonwealth's Game Laws.<sup>54</sup> However, as is noted by Game Commission itself, Game Officers are sometimes called upon to come to the aid of state and local police.<sup>55</sup> This is especially true in the large tracts of rural area that are common in Pennsylvania outside of the Philadelphia and Pittsburgh metropolitan areas.<sup>56</sup>

As previously noted, Pennsylvania's Game Officers derive their powers from state statutes.<sup>57</sup> These statutes articulate the broad powers given to Game Officers.<sup>58</sup> The starting place for understanding these laws is 34 PA. CONS. STAT. § 901.<sup>59</sup> It reads in pertinent part:

(a) Powers.—Any officer whose duty it is to enforce this title or any officer investigating any alleged violation of this title shall have the power and duty to:

(1) Enforce all laws of this Commonwealth relating to game or wildlife and arrest any person who has violated any of the provisions of this title while in pursuit of that person immediately following the violation.<sup>60</sup>

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Except as otherwise provided, they shall possess the rights and powers given by law to game Commission officers and be subject to all the requirements and regulations, either of the law or of the commission, controlling the action of the game Commission officers.

*Id.*

51. *See About the Pennsylvania Game Commission, supra* note 2.

52. *Id.*

53. *Id.* The Game Commission's Ross Leffler School of Conservation was an innovation in that it was the first school of its kind in America. Its mission was, and still is, to train Game Officers. It has trained hundreds of Game Officers since it was established. *Id.*

54. *Id.*

55. *Id.*

56. *See About the Pennsylvania Game Commission, supra* note 2.

57. 34 PA. CONS. STAT. § 901 (Supp. 2002).

58. *Id.*

59. *Id.*

60. *Id.* This part of the statute also provides that Game Officers may "(2) Go upon any land or water outside of buildings, posted or otherwise, in the performance of the officer's duty." *Id.*

Thus, Game Officers have the power to go on any public or private property while performing their duties.<sup>61</sup> The statute goes on to give them the following powers:

- (6) Stop and inspect or search, at any time, any means of transportation within this Commonwealth. Any officer who stops any means of transportation shall be in uniform and present a badge or other means of official identification and state the purpose of the inspection or search.<sup>62</sup>

Therefore, Game Officers have the power to stop and search any means of transportation within the state.<sup>63</sup> Moreover, the statutes do not include any standard of suspicion requirement. Conversely, even the Pennsylvania Vehicle Code requires police officers to have reasonable suspicion that a law has been broken before stopping a motorist.<sup>64</sup> 34 PA. CONS. STAT. § 901 also describes other powers that Game Officers are given:

- (14) Demand and secure identification from any person.

- (15) Enforce all the laws of this Commonwealth and regulations promulgated thereunder relating to fish, boats, parks and forestry and other environmental matters, under the direction of those agencies

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61. *Id.*

62. 34 PA. CONS. STAT. § 901 (Supp. 2002). Additionally, the statute further provides that Game Officers may do the following:

- (7) Inspect and examine or search, at any time or place, any person or means of transportation or its attachment or occupants, or any clothing worn by any person, or any bag, clothing or container when the officer presents official identification and states the purpose of the inspection or search.

- (8) Inspect and examine or search, at any time, any camp, tent, cabin, trailer or any means of transportation or its attachment being used when the officer presents official identification to the person in charge and states the purpose of the inspection or search.

*Id.*

63. *Id.*

64. *See* 75 PA. CONS. STAT. ANN. § 6308 (2004). This section provides that:

[t]he operator of any vehicle or any pedestrian reasonably believed to have violated any provision of this title shall stop upon request or signal of any police officer and shall, upon request, exhibit a registration card, driver's license and information relating to financial responsibility, or other means of identification if a pedestrian or driver of a pedalcycle, and shall write their name in the presence of the police officer if so required for the purpose of establishing identity.

*Id.* *See also* Commonwealth v. Ickes, 873 A.2d 698, 703 (Pa. 2005) for a discussion about the analogy between Game laws and the Vehicle Code.

charged with the administration of these laws.

(16) Require the holder of any license or permit required by this title or by commission regulation to sign the holder's name on a separate piece of paper in the presence of the requesting officer.<sup>65</sup>

Thus, Game Officers may require any person in the state to produce identification.<sup>66</sup> This purportedly includes both hunters and non-hunters as the statute does not delineate between the two. 34 PA. CONS. STAT. § 904's language specifically requires citizens to comply with a Game Officer's demand for identification.<sup>67</sup> Individuals possessing a hunting license may also be required to sign their name on a piece of paper.<sup>68</sup> Together, these statutes provide vast, but poorly defined powers.

Somewhat ironically, the ambiguous nature of current laws governing the Game Commission also puts some restraints on Game Officers. When an arrest is challenged, courts must determine if an Officer was acting properly within the scope of his duties when making that arrest.<sup>69</sup> This requirement is a result of the phrasing that the General Assembly chose for the statutes.<sup>70</sup> 34 PA. CONS. STAT. § 904 contains an ambiguous requirement that a Game Officer must be "in the performance of any duty required by this title."<sup>71</sup> Similarly, 34 PA. CONS. STAT. § 901 gives power to an "officer whose duty it is to enforce this title or any officer investigating any alleged violation of this title."<sup>72</sup> Thus, although Pennsylvania's statutes normally give broad powers to Game Officers, they can also be used by a defendant against the government.<sup>73</sup>

In *Commonwealth v. Schatzel*, the defendant challenged whether Game Officers had the authority to arrest him for driving under the influence ("DUI") because the Officers were acting outside the scope of their duties.<sup>74</sup> Although the court upheld the conviction, it avoided ruling directly on the issue of whether Game Officers may make a DUI arrest. It did so by stating that the Game Officers had only placed the defendant

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65. 34 PA. CONS. STAT. § 901.

66. *Id.*

67. 34 PA. CONS. STAT. § 904 (Supp. 2004).

68. *Id.*

69. *See, e.g., Commonwealth v. Schatzel*, 724 A.2d 362, 367-68 (Pa. Super. Ct. 1998).

70. 34 PA. CONS. STAT. § 904.

71. *Id.*

72. 34 PA. CONS. STAT. § 901 (Supp. 2002).

73. *See, e.g., Schatzel*, 724 A.2d at 366-67.

74. *See id.* Schatzel was arrested after he encountered two Game Officers on a highway. His dump truck was parked diagonally across the road blocking traffic. Schatzel was glassy eyed and when ordered to move the truck he attempted to drive off, veering off the road. The Game Officers detained Schatzel, but had to call state troopers to make the actual arrest. *Id.*

in investigative detention until State Police Officers arrived.<sup>75</sup> Thus, because the court did not provide support for the actions taken by the Game Officers, this case gives encouragement to those defendants who argue that a Game Officer was outside his authorized scope of duties when the defendant was arrested. The defendant may have a winning argument even if he actually committed the crime. Such an unjust result should be prevented.

Another case limiting Game Officers is *Commonwealth v. Carlson*.<sup>76</sup> In this case the court held that Game Officers may arrest for misdemeanors and felonies when those crimes occur in their presence, but they must be acting within the scope of their employment.<sup>77</sup> In *Carlson*, two Game Officers were driving to state game lands when they observed a vehicle weaving in front of them.<sup>78</sup> Instead of going to their destination, the Game Officers followed, and then pulled over the vehicle.<sup>79</sup> The Game Officers then radioed for support from the State Police.<sup>80</sup> Because no State Police Officers were available, the Game Officers arrested the driver.<sup>81</sup>

On appeal to the Commonwealth Court, the defendant claimed that the Officers did not have the right to arrest him.<sup>82</sup> The court construed the scope of the Game Officers' employment narrowly and ruled in favor

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75. *Id.* at 365.

76. *Commonwealth v. Carlson*, 705 A.2d 468, 470-71 (Pa. Super. Ct. 1998).

77. *Id.*

78. *Id.* at 469. The Game Officer and his partner, a Deputy Game Officer, were transporting a dead deer that had been killed legally for causing crop damage. They were taking the carcass to a building located on state game lands. However, prior to reaching the game lands, the Officers encountered defendant's vehicle, which was weaving in front of them. Once they began to follow the defendant's vehicle, the Game Officers delayed taking the deer to its destination. Instead, they passed the point where they would normally turn into the state game lands and they continued to follow the defendant. After the defendant turned onto a side road, the Officers pulled his vehicle over. The Officers then radioed for State Police support so that State Troopers could make the arrest. However, the Game Officers were informed that it would be at least an hour until any State Troopers were available. The Game Officers therefore made the arrest themselves. *Id.*

79. *Id.*

80. *Id.*

81. *Carlson*, 705 A.2d at 470-71.

82. *Id.* The defendant argued that the Game Officers had no right to arrest him.

Appellant's sole issue on appeal raises a question of first impression in our Courts: What is the extent of the arrest powers of a wildlife conservation officer of the Pennsylvania Game Commission? The suppression court upheld the legality of [the Game Officer's] arrest of Appellant under these facts, and Appellant now challenges this conclusion.

*Id.*

of the defendant.<sup>83</sup> It stated that the Game Officers were in the scope of their duty when they first witnessed the defendant's vehicle, but went outside of it when they followed him instead of continuing to their destination.<sup>84</sup> The court was mindful of the language used by the General Assembly in writing § 901, and held that the "scope of the officer's employment" clause prevented Game Officers from making this type of arrest.<sup>85</sup>

Similarly, in a ruling that limits the broad powers of Game Officers, even when within the scope of their duties, *Commonwealth v. Palm* holds that Officers may stop a vehicle, but must have reasonable suspicion to do so.<sup>86</sup> Moreover, Game Officers must have probable cause to search a vehicle.<sup>87</sup> These requirements are greater than what the controlling statute requires.<sup>88</sup> In *Palm*, the Game Officers were within their scope of duties because they were investigating the illegal killing of a deer, yet the court imposed a higher threshold of suspicion than that required by the statute.<sup>89</sup> Thus, the statute and case law requirements conflict. The case law puts a significantly higher burden on the Game Officer than the wording of the statute. This ambiguity can create confusion in the field and litigation in the courtroom. Game Officers are likely to be more conversant with the statutes than with the evolving case law. This confusion should be eliminated.

The Pennsylvania Administrative Code attempts to provide some

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83. *Id.* at 471. The court found that the Game Officer, "did not possess sufficient information, while acting within the scope of his employment, to arrest for driving under the influence. Because [the Game Officer] developed the additional information regarding Appellant's driving only after he left the scope of his employment, his arrest should have been suppressed." *Id.*

84. *Id.* at 473. The court believed that Game Officer Brunst was clearly outside of the scope of his duties when he pulled over the defendant's vehicle and arrested him.

As noted previously, while discharging his duty, Brunst witnessed conduct which did not rise to the level of an articulable reasonable suspicion or probable cause that Appellant was committing the offense of driving under the influence. Therefore, Brunst was without authority to pursue and arrest Appellant. Brunst should have followed the dictates of the Regulations and forwarded the information he had lawfully gathered to the law enforcement agency having jurisdiction. Because Brunst exceeded his statutory authority, the arrest was illegal, and the fruits of that arrest should have been suppressed.

*Id.*

85. *Id.* at 472.

86. *Commonwealth v. Palm*, 462 A.2d 243, 245 (Pa. Super. Ct. 1983). *See also, Ickes*, 873 A.2d at 703 for a discussion of how the Pennsylvania Supreme Court construed *Palm*.

87. *Palm*, 462 A.2d at 245.

88. *Id.*

89. *Id.*

direction for implementation of the laws governing Game Officers, but it too lacks clarity.<sup>90</sup> 58 PA. CODE § 131.6, which regulates the powers and procedures of Pennsylvania's Game Officers, states that Officers may arrest for some general offenses, if they occur in the Game Officer's presence, but that the Game Officers must be acting within the scope of their duties.<sup>91</sup> The regulations also make it incumbent upon the Game Officer to notify the "appropriate" law enforcement agency.<sup>92</sup> Thus, even though the Game Commission itself recognizes that it may sometimes have to act outside of its normal sphere of operations, the governing regulations encourage officers to notify other agencies rather than take swift and independent action.<sup>93</sup>

Thus, although Game Officers have some broad and vague powers, they also have imprudent limits on the scope of their duties as seen in *Carlson* and other cases.<sup>94</sup> These limits prevent officers from effectively performing some valuable law enforcement duties.<sup>95</sup> Game Officers should have the same responsibilities that other officers have to protect the constitutional rights of the citizens of Pennsylvania. They should also have the same power to protect life and property. Clarification of powers will give Game Officers the ability to be full partners with all state and local law enforcement agencies. Such a change would permit all law enforcement agencies to be interchangeable in times of crisis or reduced work force. This change would benefit the people of Pennsylvania by providing them better protection and responsiveness. The mix of conflicting statutes and case law that currently constitutes Pennsylvania's Game Laws should be revised.

### III. Analysis of a New Trend: A Path Out of the Wilderness

Unclear laws create unnecessary confusion and litigation. As the laws exist now, the vague powers of Game Officers are vulnerable to constitutional attack.<sup>96</sup> This result may be disheartening to law enforcement officers who are on the front line of enforcement.

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90. 58 PA. CODE § 131.6 (2002).

91. *Id.*

92. *Id.*

93. *Id.*

94. *Commonwealth v. Carlson*, 705 A.2d 468, 470-71 (Pa. Super. Ct. 1998).

95. *Id.* See also *Powers and Duties of Pennsylvania Game Commission Enforcement Officers, Fish & Wildlife Laws in Pennsylvania—2005* at 359, *supra* note 6. It is interesting to note that certain Pennsylvania Game Officers may at times "utilize Federal credentials granted a U.S. Fish and Wildlife Deputy provided by a memorandum of understanding between the U.S. Fish and Wildlife Service and Pennsylvania Game Commission. . . ." *Id.* Thus, Game Officers sometimes have the power to stand in the place of Federal Agents, but normally not in the place of state or local police.

96. See *Carlson*, 705 A.2d at 470-71.

Moreover, in a post-9/11 world, where the duties of law enforcement agencies overlap and agencies are expected to rapidly support one another in time of crisis, Game Officers should not be limited to a narrow definition of duties.<sup>97</sup>

Some Pennsylvania courts have taken steps toward clarifying these laws. However, this incremental change is slow. The members of the General Assembly should take note. The legislature should take its proper place as leader and fix the law rather than let the courts slowly correct the problems. The General Assembly should revise the current set of Game Laws all at once. Until the General Assembly acts to make these changes, the courts will continue to sort out the law one issue at a time. That process has been ongoing for some time.

Hunters are those most often in contact with Game Officers. They are unlikely to go to court because most violations of the Game Laws that occur in the field are likely to be minor misdemeanors and summary offenses.<sup>98</sup> Therefore, it is easy for a hunter to pay the fine on the spot and avoid the courtroom and prohibitively high litigation costs. However, when a hunter or a non-hunting member of the general public who has had contact with a Game Officer does litigate an issue, courts are likely to try to bring some order to the chaotic Game Laws.<sup>99</sup> In recent legal history courts have sought to bring these statutes into compliance with traditional legal and constitutional norms.<sup>100</sup>

In the late 1980s, a prescient Union County Court of Common Pleas judge ruled that 34 PA. CONS. STAT. § 904 was unconstitutional.<sup>101</sup> In *Commonwealth v. Stahl*, Game Officers cited the defendant for failing to produce identification as required by statute.<sup>102</sup> The defendant challenged his citation on the grounds that the statute was unconstitutionally broad under the Fourteenth Amendment.<sup>103</sup> He also challenged the conviction on the grounds that this Game Law, § 904, violated his Fourth Amendment rights.<sup>104</sup> The court never reached the

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97. See *Pennsylvania's Emergency Management Agency Website*, *supra* note 11.

98. See 34 PA. CONS. STAT. § 925 (Supp. 2004).

99. See, e.g., *Commonwealth v. Ickes*, 798 A.2d 863 (Pa. Commw. Ct. 2002); *Commonwealth v. Ickes*, 873 A.2d 698 (Pa. 2005).

100. *Id.*

101. *Commonwealth v. Stahl*, 4 Pa. D & C.4th 321 (Pa. Com. Pl. 1989). See also *Ickes*, 873 A.2d at 700-701 (Justice Eakin discusses why the Union County decision written 15 years earlier was correctly decided).

102. *Stahl*, 4 Pa. D & C.4th at 322-23. The facts of the case show that Game Officers received reports of shots being fired at night. They also received a tip that Stahl might be involved and went to his home to investigate. The defendant came out of his house and Officers told him they were investigating a possible Game Law violation. They asked him to identify himself. He refused and the Officers cited him. *Id.*

103. *Id.* at 323-24; see also *Ickes*, 873 A.2d at 700-701.

104. *Stahl*, 4 Pa. D & C.4th 321 at 323-24.



latter issue because it found the statute unconstitutional under the former.<sup>105</sup> The court believed that the law failed to set “definitive compliance guidelines,” thus leaving too much discretion to law enforcement officers.<sup>106</sup> The court believed this overbroad discretion created the potential for selective enforcement of the law.<sup>107</sup> The law also gave Game Officers the right to stop any person at any time and demand identification.<sup>108</sup> This is a broader power than that possessed by virtually any other law enforcement officers.<sup>109</sup> Thus, the court held that the law was unconstitutionally vague.<sup>110</sup>

In what was perhaps a wise tactical maneuver by the Commonwealth, this case was never appealed.<sup>111</sup> Therefore, it had no statewide effects. If *Stahl* had gone to a higher court, the Commonwealth would have faced a difficult battle. It seems likely that the Commonwealth would not have prevailed.<sup>112</sup> Because the Commonwealth did not appeal the ruling, another decade passed before the courts faced this issue again.<sup>113</sup>

In *Commonwealth v. Palm*, the Superior Court also evidenced a desire to bring the Game Laws into line with traditional legal and Constitutional standards.<sup>114</sup> The *Palm* court found that Game Officers stopped and searched a vehicle because its occupants were suspected of illegally killing a deer.<sup>115</sup> As noted previously, 34 PA. CONS. STAT. § 901 gives Game Officers the right to search any vehicle in the state.<sup>116</sup> The statute does not even require that the Game Officers articulate a certain level of suspicion.<sup>117</sup> Despite the statutory language, the court found that “a condition precedent to the exercise of such power by game

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105. *Id.*

106. *Id.* at 326. *See also Ickes*, 873 A.2d 698, 700-701.

107. *Stahl*, 4 Pa. D & C.4th at 326.

108. *Id.* at 332.

109. *See Ickes*, 873 A.2d at 701.

110. *Stahl*, 4 Pa. D & C.4th at 332.

111. There is no appeal on record. Additionally, the Union County prothonotary had no record of further action on this case.

112. *See Commonwealth v. Ickes*, 798 A.2d 863 (Pa. Commw. Ct. 2002); *Ickes*, 873 A.2d 698. *Ickes* was the next important case to deal with the invalidation of this section on constitutional grounds. In that case, the Commonwealth Court did in fact invalidate the law, thus having statewide effects. The Pennsylvania Supreme Court upheld that invalidation. *Id.*

113. *See id.*

114. *See Commonwealth v. Palm*, 462 A.2d 243 (Pa. Super. Ct. 1983).

115. *Id.* at 245-46. In *Palm*, Game Officers went to investigate the sound of gunshots. Upon approaching an area where it appeared a deer had been killed illegally, a van passed the officers. After investigating further, what the Officers believed to be the same van passed them again. The Game Officers gave chase, stopped the van, and searched it. *Id.*

116. 34 PA. CONS. STAT. § 901 (Supp. 2002).

117. *Id.*

protectors is the existence of reasonable suspicion to stop a vehicle and probable cause to search the vehicle.”<sup>118</sup> This ruling was a step toward bringing the Game Laws into compliance with generally accepted legal and constitutional principles that govern all other law enforcement activities.<sup>119</sup> The court seemed to indicate that the rules that apply to other types of law enforcement officers also apply to Game officers.<sup>120</sup> Again, this conflicts with the General Assembly’s current statutes that appear to grant Game Officers heightened powers.

In 2002, the Commonwealth Court ruled on an important case that also moved to bring Pennsylvania’s Game Laws into line with the practices of the rest of the law enforcement community.<sup>121</sup> In *Commonwealth v. Ickes*, the court invalidated 34 PA. CONS. STAT. § 904 on Fourth Amendment grounds.<sup>122</sup> In *Ickes*, two Game Officers were conducting an investigation into an incident that had occurred several months in the past.<sup>123</sup> The Game Officers sought out defendant Ickes, who did not possess a hunting license, at his rural home. When the Officers found him on his property building a fence they demanded identification from him as allowed by statute.<sup>124</sup> The Game Officers refused to tell him what they were investigating until he produced identification.<sup>125</sup> Ickes declined to give any identification to the Game

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118. *Palm*, 462 A.2d at 246.

119. *Id.* The court found that:

[w]hile the legality of the stop of the vehicle is justified by the specific facts of this case, it must be emphasized that any stop involves a balancing, on the one hand, of the interest of private citizens in being free from unreasonable searches and seizures with, on the other hand, the societal interests in providing for the enforcement of the law for the protection of the community.

*Id.* The court then went on to illustrate how Game Officers should be held to the same standards as other law enforcement officers. *Id.* at 247.

We believe that this Terry rational is applicable, as well, to other duly qualified law enforcement officials, including state game protectors. . . . Thus, a brief investigatory stop is allowable as an intermediate response when a game protector can demonstrate articulable facts and rational inferences from the facts which indicate that such a stop is appropriate.

*Id.*

120. *Id.*

121. *See Commonwealth v. Ickes*, 798 A.2d 863 (Pa. Commw. Ct. 2002).

122. *Id.* at 864.

123. *Id.* at 863-64. *See also Commonwealth v. Ickes*, 873 A.2d 698, 700-01 (Pa. 2005). The Game Officers were investigating a purported violation of 34 PA. CONS. STAT. § 2302 (1998). This section prohibits a person from interfering with hunters who are lawfully taking wildlife.

124. *Ickes*, 873 A.2d at 700-01.

125. *Id.*

Officers or even reveal his identity, although it seems the Game Officers knew it was in fact Ickes.<sup>126</sup> Instead, Ickes referred the officers to his attorney.<sup>127</sup> For his failure to produce identification on demand, the Game Officers cited him for violating 34 PA. CONS. STAT. § 904.<sup>128</sup>

Ickes contested the citation, but was found guilty by a district justice.<sup>129</sup> Ickes then appealed to the Court of Common Pleas of Bedford County, which also found him guilty after *de novo* review.<sup>130</sup> Ickes, not willing to give up, then appealed the issue to the Commonwealth Court.<sup>131</sup>

The Commonwealth Court reversed his conviction on Fourth Amendment grounds.<sup>132</sup> Here, finally, Ickes found vindication. The Commonwealth Court concluded that because the purported violation that the Game Officers were investigating occurred months prior to the encounter with Game Officers, the Game Officers had not conducted a *Terry* stop.<sup>133</sup> *Terry* stops are “necessarily swift action predicated upon the on-the-spot observations of the officer on the beat.”<sup>134</sup> They are meant to deal with current illegal conduct, which was not the case here.<sup>135</sup> Thus, the court concluded that the Game Officers had “no reasonable belief that Ickes was engaged in criminal activity,” so they could ask him questions, but he had a right not to answer.<sup>136</sup>

The Pennsylvania Supreme Court has defined the three forms of contact that police have with citizens.<sup>137</sup> These are a “mere encounter,” an “investigative detention,” and a “custodial detention.”<sup>138</sup> In *Ickes*, because the court determined a mere encounter had occurred between Game Officers and Ickes, the defendant did not have to answer the

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126. *Id.*

127. *Id.*

128. 34 PA. CONS. STAT. § 904 (Supp. 2004). *See also Ickes*, 873 A.2d 698, 700. The defendant was never actually found guilty of the original charge. The charge apparently stemmed from a report that Ickes had interfered with hunting by flying an aircraft over hunters for a period of time. *Id.*

129. *Commonwealth v. Ickes*, 798 A.2d 863, 864 (Pa. Commw. Ct. 2002); *Ickes*, 873 A.2d 698, 700-01.

130. *Ickes*, 798 A.2d at 864.

131. *Id.*

132. *Id.*

133. *Id.* at 865. *See also Terry v. Ohio*, 392 U.S. 1, (1968).

134. *Terry*, 392 U.S. at 20.

135. *Commonwealth v. Melendez*, 676 A.2d 226, 229 (Pa. 1996).

136. *Commonwealth v. Ickes*, 798 A.2d 863, 865 (Pa. Commw. Ct. 2002).

137. *Commonwealth v. Maxon*, 798 A.2d 761, 766 (Pa. Super. Ct. 2002). In this case the defendant was convicted of drug related offenses and resisting arrest. The Superior Court held that the defendant was subject to investigatory detention when police officers approached him with suspicions that he was dealing drugs and asked if he had any drugs on him. *Id.*

138. *Id.*

Officers' questions.<sup>139</sup> Nothing prevents Law Enforcement Officers from approaching citizens and asking questions, however, there is no penalty for the citizen who chooses not to answer.<sup>140</sup> Because 34 PA. CONS. STAT. § 904 criminalized this constitutionally acceptable behavior, the Commonwealth Court struck it down.<sup>141</sup> Thus, the law was invalidated across the state.<sup>142</sup>

The Pennsylvania Supreme Court affirmed the Commonwealth Court's ruling.<sup>143</sup> The result may have been different if the court had determined that the Game Officers had conducted a true *Terry* stop.<sup>144</sup> In a relatively new case, *Hiibel v. Sixth Judicial District Court of Nevada*, the United States Supreme Court ruled that it is permissible for states to enact a law that requires a person to identify himself when in the custody of a *Terry* stop.<sup>145</sup> "A state law requiring a suspect to disclose his name in the course of a valid *Terry* stop is consistent with Fourth Amendment prohibitions against unreasonable searches and seizures."<sup>146</sup>

Although *Hiibel* does not involve Game Officers or Game Law enforcement, as noted by the Pennsylvania Supreme Court, it is applicable to the current discussion.<sup>147</sup> Defendant *Hiibel* had argued that the Nevada law that was used to convict him circumvents probable cause requirements and allows an officer to arrest a person for acting suspicious.<sup>148</sup> The U.S. Supreme Court stated these concerns were unfounded because a *Terry* stop must be justified at its inception and related in scope to the circumstances that justified the initial stop.<sup>149</sup> Therefore, it is constitutional for a state to pass a law requiring a person detained within a *Terry* stop to identify himself.<sup>150</sup>

The Pennsylvania Supreme Court showed that 34 PA. CONS. STAT. § 904 in its prior form went further than the *Hiibel* standard would allow.<sup>151</sup> It required anyone, at any time, to not only identify himself

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139. *Ickes*, 798 A.2d at 864-65.

140. *Id.* See also *Maxon*, 798 A.2d at 766.

141. *Ickes*, 798 A.2d at 865.

142. *Id.*

143. See *Commonwealth v. Ickes*, 873 A.2d 698 (Pa. 2005).

144. *Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177 (2004). See also *Ickes*, 873 A.2d at 701.

145. See *Hiibel*, 542 U.S. at 187-88.

146. *Hiibel*, 542 U.S. at 187. The *Hiibel* Court was clear that "[t]he principles of *Terry* permit a State to require a suspect to disclose his name in the course of a *Terry* stop." *Id.*

147. *Ickes*, 873 A.2d at 701.

148. *Hiibel*, 542 U.S. at 187.

149. *Id.*

150. *Id.*

151. *Ickes*, 873 A.2d at 701-02.

verbally to a Game Officer, but also to produce identification.<sup>152</sup>

After the *Ickes* decision in the Commonwealth Court, the Pennsylvania General Assembly amended § 904.<sup>153</sup> The legislature changed the statute so that a Game Officer must tell a citizen that he is the subject of an official investigation prior to the demand for identification.<sup>154</sup> If, after the warning, the citizen refuses to produce the requested identification, he will be subject to a citation.<sup>155</sup> The new language reads, “[a] person who refuses to provide identification upon demand of an officer whose duty it is to enforce this title after having been told by the officer that the person is the subject of an official investigation commits a summary offense of the fifth degree.”<sup>156</sup>

Although the General Assembly has narrowed the law, it is likely still too overbroad to withstand a constitutional challenge. Any statute that may be applied to people not confined in a *Terry* stop is likely to be considered overbroad by the courts. The Pennsylvania Supreme Court did not consider the new language because the violation had occurred under the old language.<sup>157</sup> It is clear, however, that even given the powers recognized in *Hiibel*, an officer must premise a demand for identification on the reasonable suspicion required for a *Terry* stop.<sup>158</sup> The current law, despite amendment, is still subject to constitutional attack.

Although Pennsylvania courts will bring Game Laws into compliance with general legal principles as cases arise, the legislature should act to change them preemptively. This would provide a more effective solution, keep the power to formulate laws in the General Assembly, and cut down on unnecessary litigation.

#### IV. Conclusion: Into the Sunlight

The current inadequate statutes that govern Pennsylvania’s Game Officers should be updated by the General Assembly. Pennsylvania should leave its outmoded system of vague and unwieldy statutes, and instead give Game Officers the same general training, duties, and responsibilities as the Pennsylvania State Police. Game Officers should retain the special focus on wildlife management issues that has always

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152. See 34 PA. CONS. STAT. § 904 (Supp. 2004); see also note 23 for a description of the changes to this statute.

153. *Id.*

154. *Id.*

155. *Id.*

156. *Id.*

157. See generally, *Ickes*, 873 A.2d 698 (Pa. 2005). See also *Powers and Duties of Pennsylvania Game Commission Enforcement Officers, Fish & Wildlife Laws in Pennsylvania—2005* at 357, *supra* note 6.

158. *Hiibel v. Sixth Judicial District Court of Nevada*, 542 U.S. 177, 187-88 (2004).

been their trademark, but they should also be equipped to deal with the many other contingencies that arise in the modern world. The equipping of the modern Game Officer means not only physical gear, but clear, enforceable, and wise laws.

There are two primary problems with the existing Game laws. First, some of the statutes are vague and overbroad. They purport to confer powers that are not likely to withstand constitutional scrutiny by the courts. Although the cost of litigation and general desire of Pennsylvania's hunters to avoid the courtroom prevent these statutes from being frequently litigated, when they do come before the courts, the laws are likely to be struck down.<sup>159</sup>

Second, although the Game Laws are too vague and broad, they also unwisely limit the duties and responsibilities of Game Officers.<sup>160</sup> It is poor public policy in a post-9/11 environment to prevent Game Officers from working outside of their normal purview. This is especially true in times of crisis when state law enforcement agencies may need to rely on each other. Moreover, state law enforcement agencies should be in the habit of creating redundant capabilities. Thus, as major crime spreads to rural areas of the state, Game Officers will be prepared to combat it. Drugs and crime are not limited to the Philadelphia and Pittsburgh metropolitan areas. As this trend continues and crime becomes more prevalent in rural areas of the state, Game Officers should not be required to wait for State Police support to make an arrest. When Game Officers arrest for a crime that is outside of their traditional purview, that arrest should not be subject to judicial second-guessing over whether the Game Officer was acting within the scope of his duties. If Game Officers possess the same general powers that the Pennsylvania State Police possess, these problems will be avoided. At the same time, Game Officers will be held accountable to the same constitutional requirements for protecting individual rights to which all other law enforcement officers are held.

The General Assembly can cure both of these shortcomings. Instead of waiting for Pennsylvania's courts to strike down laws one at a time, the legislature should act to fix the Game Laws all at once. Currently, the General Assembly seems content to wait for the courts to strike down a statute, only to amend it such that the statute is as similar to the invalidated one in wording as possible.<sup>161</sup> Instead, the legislature should take a commonsense approach to law enforcement.

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159. See, e.g., *Ickes*, 798 A.2d 863 (Pa. Commw. Ct. 2002).

160. See *Commonwealth v. Carlson*, 705 A.2d 468 (Pa. Super. Ct. 1998).

161. See, e.g., 34 PA. CONS. STAT. § 904 (Supp. 2004); see also note 23 for a description of the changes to this statute.

Rewriting the laws governing Game Officers will open up a whole new front on the war on crime in Pennsylvania. Game Officers will no longer have to call for State Police support to make an arrest or worry that if they do not, the suspect will be released. The citizens of Pennsylvania deserve laws that make their law enforcement agencies responsive, flexible, and constitutionally sound. These proposed changes will make that a reality for the Pennsylvania Game Commission and bring the laws that govern Pennsylvania's Game Officers out of the wilderness and into modernity.