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MEMORANDUM (2)(B)¹

TO: Statutory Revision Committee

FROM: Richard Sweetman, Office of Legislative Legal Services (OLLS)

DATE: August 11, 2017

SUBJECT: Deputy sheriffs without P.O.S.T. certification

Summary

Two existing statutory provisions require deputy sheriffs to be certified by the peace officer standards and training (P.O.S.T.) board; however, another statute allows a "noncertified deputy sheriff" to serve with such authority as a sheriff assigns to him or her. It is not clear whether the General Assembly intends to allow some deputy sheriffs to serve without P.O.S.T. certification.

Analysis

1. Sheriff's authority to appoint deputies.

Section 30-10-506, C.R.S., authorizes sheriffs to appoint deputy sheriffs. This provision does not mention P.O.S.T. certification or any other required training:

30-10-506. Deputies. Each sheriff may appoint as many deputies as the sheriff may think proper and may revoke such appointments at will; except that a sheriff shall adopt personnel policies, including policies for the review of revocation of appointments. Before revoking an appointment of a deputy, the

¹ This legal memorandum was prepared by the Office of Legislative Legal Services (OLLS) in the course of its statutory duty to provide staff assistance to the Statutory Revision Committee (SRC). It does not represent an official legal position of the OLLS, SRC, General Assembly, or the state of Colorado, and is not binding on the members of the SRC. This memorandum is intended for use in the legislative process and as information to assist the SRC in the performance of its legislative duties.

sheriff shall notify the deputy of the reason for the proposed revocation and shall give the deputy an opportunity to be heard by the sheriff. Persons may also be deputized by the sheriff or undersheriff in writing to do particular acts.

2. P.O.S.T. certification of deputies

Sections 16-2.5-102 and 16-2.5-103 (1), C.R.S., require deputy sheriffs to be P.O.S.T.-certified. However, section 16-2.5-103 (2) describes the authority of a "noncertified" deputy sheriff or detention officer:

16-2.5-102. Certified peace officer - P.O.S.T. certification required. The following peace officers shall meet all the standards imposed by law on a peace officer and shall be certified by the peace officers standards and training board, referred to in this article as the "P.O.S.T. board": A chief of police; a police officer; a sheriff; an undersheriff; **a deputy sheriff**; a Colorado state patrol officer; a town marshal; a deputy town marshal; a reserve police officer; a reserve deputy sheriff; a reserve deputy town marshal; a police officer or reserve police officer employed by a state institution of higher education; a Colorado wildlife officer; a Colorado parks and recreation officer; a Colorado police administrator or police officer employed by the Colorado mental health institute at Pueblo; an attorney general criminal investigator; a community parole officer; a public transit officer; a municipal court marshal; and the department of corrections inspector general. **(Emphases added)**

16-2.5-103. Sheriff - undersheriff - certified deputy sheriff - noncertified deputy sheriff. (1) A sheriff, an undersheriff, and a deputy sheriff are peace officers whose authority shall include the enforcement of all laws of the state of Colorado. A sheriff shall be certified by the P.O.S.T. board pursuant to section 30-10-501.6, C.R.S. **An undersheriff and a deputy sheriff shall be certified by the P.O.S.T. board. (Emphasis added)**

(2) A **noncertified deputy sheriff** or detention officer is a peace officer employed by a county or city and county whose authority is limited to the duties assigned by and while working under the direction of the chief of police, sheriff, an official who has the duties of a sheriff in a city and county, or chief executive of the employing law enforcement agency. **(Emphasis added)**

Statutory Charge²

Because sections 16-2.5-102 and 16-2.5-103 (1), C.R.S., appear to conflict with section 16-2.5-103 (2), C.R.S., regarding the P.O.S.T. certification of deputy sheriffs, this matter fits within the statutory charge of the Statutory Revision Committee.

Proposed Bill

If the Statutory Revision Committee directs OLLS to draft a bill to clarify that a sheriff may appoint noncertified deputy sheriffs, as contemplated by section 16-2.5-103 (2), C.R.S., that bill would amend sections 16-2.5-102 and 16-2.5-103 (1), C.R.S., by adding qualifying language such as "EXCEPT AS DESCRIBED IN SECTION 16-2.5-103 (2), . . ." and "EXCEPT AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION, . . .".

If the Statutory Revision Committee directs OLLS to draft a bill to clarify that a sheriff *may not* appoint noncertified deputy sheriffs, that bill would amend or repeal subsection (2) of section 16-2.5-103, C.R.S.

² The Statutory Revision Committee is charged with "[making] an ongoing examination of the statutes of the state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms" and recommending "legislation annually to effect such changes in the law as it deems necessary in order to modify or eliminate antiquated, redundant, or contradictory rules of law and to bring the law of this state into harmony with modern conditions". § 2-3-902 (1), C.R.S. In addition, the Committee "shall propose legislation only to streamline, reduce, or repeal provisions of the Colorado Revised Statutes." § 2-3-902 (3), C.R.S.

