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APPOINTMENT OF UNQUALIFIED DEPUTY SHERIFF: REPEAL

House Bill 4848 as introduced
First Analysis (2-13-02)

Sponsor: Rep. Tony Stamas
Committee: Criminal Justice

THE APPARENT PROBLEM:

Currently, the Michigan Penal Code prohibits a county sheriff from appointing an undersheriff or deputy sheriff unless the person appointed has lived in the state for at least one year. The law also specifies that a sheriff cannot appoint as undersheriff or deputy sheriff "for the purpose of assisting or performing duties in the area of labor disputes if that person has not been a resident of the county in which the appointment is made for at least three months," unless the person appointed is a bona fide public law enforcement officer. Some feel that these provisions are outdated. The law was, after all, enacted in 1931, and hiring practices have changed since then. Nowadays, applicants must undergo extensive background checks. In addition, new employees must be certified by the Michigan Commission on Law Enforcement Standards (MCOLES) which has the statutory responsibility for establishing selection and training standards for entry-level law enforcement officers. The commission sets these standards for all law enforcement agencies in the state, including county sheriff departments (See *Background Information* for additional details).

THE CONTENT OF THE BILL:

Currently, under Section 486 of the Michigan Penal Code, it is a misdemeanor offense for a sheriff to knowingly:

- Appoint a person as undersheriff or deputy sheriff who has not resided in the state for at least one year preceding the time of appointment; or,
- Appoint an undersheriff or deputy sheriff for the purpose of assisting or performing duties in the area of labor disputes if that person has not been a resident of the county in which the appointment is made for at least three months. The three-month residency requirement does not apply where the person appointed as undersheriff or deputy sheriff is a bona fide public law enforcement officer.

House Bill 4848 would amend the Michigan Penal Code by repealing Section 486.

MCL 750.486

BACKGROUND INFORMATION:

The Michigan Commission on Law Enforcement Standards (MCOLES). The following is a brief description of MCOLES, as described on its web site (www.micoles.org).

The Michigan Commission on Law Enforcement Standards (MCOLES) has statutory responsibilities assigned under two Michigan laws. Public Act 203 of 1965 requires that the commission prepare and publish mandatory minimum recruitment, selection and training standards for entry-level law enforcement officers in the state of Michigan. Public Act 203 also requires the commission to define categories and classifications of in-service training to be received by Michigan law enforcement officers. The commission sets these standards for traditional municipal, county, and state agencies, as well as a variety of specialized agencies, such as tribal, railroad, airport, and port police. More than 600 law enforcement agencies that employ over 23,000 officers operate under commission standards.

On August 30, 2001, under Executive Order 2001-5, Governor Engler created the "new Michigan Commission on Law Enforcement Standards." The Executive Order consolidates the services of the former Michigan Justice Training Commission, provided under the authority of Public Act 302 of 1982, with those of MCOLES, effectively joining standards setting with funding. There are two primary responsibilities that the commission will perform under Act 302. The act creates the Michigan Justice Training Fund, for which the legislature makes an annual appropriation. The commission is first charged with making annual distributions from this fund to eligible entities in what is referred to as the

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Law Enforcement Distribution. Second, the commission must annually distribute the balance of the fund, after administrative costs have been deducted, in a competitive grant process.

Executive Order 2001-5 also created the 15-member commission. The commission is composed of representatives from law enforcement, criminal prosecution, and criminal defense. Three members of the commission serve in an ex-officio capacity, holding their commission seats by virtue of their office. They are:

- the attorney general or her designated representative who is an attorney;
- the director of the Department of State Police or his designated representative who is a Michigan State Police Officer; and
- the chief of the police department located in a city with a population of more than 750,000, or the chief's designated representative who is a command officer with that department.

The remaining twelve members of the commission are appointed by the governor, with the advice and consent of the Senate, as follows:

- a. Three (3) individuals selected from a list of six (6) active voting members submitted by the Michigan Association of Chiefs of Police or its successor organization;
- b. Three (3) individuals selected from a list of six (6) elected sheriffs submitted by the Michigan Sheriffs' Association or its successor organization;
- c. One (1) individual selected from a list of three (3) individuals submitted by the Prosecuting Attorneys Association of Michigan or its successor organization;
- d. One (1) individual selected from a list of three (3) individuals submitted by the Criminal Defense Attorneys of Michigan or its successor organization;
- e. One (1) individual selected from a list of three (3) individuals submitted by the Michigan State Police Troopers Association, or its successor organization;
- f. One (1) individual selected from a list of three (3) individuals submitted by the Michigan Chapter of the Fraternal Order of Police, or its successor organization;

g. One (1) individual selected from a list of three (3) individuals submitted by the Police Officers Association of Michigan, or its successor organization; and

h. One (1) individual selected from a list of three (3) individuals submitted by the Detroit Police Officers Association, or its successor organization.

A staff of 27 full time employees and 3 adjunct employees, all located in Lansing offices, supports the commission. MCOLES is organizationally situated within the state government as a division of the Department of State Police. The commission meets on a regular schedule in various locations throughout the state. Members of the criminal justice community and the public are encouraged to attend. Public comment is welcome.

FISCAL IMPLICATIONS:

The House Fiscal Agency (HFA) estimates that the bill would have no impact on state funds (2-12-02)

ARGUMENTS:

For:

Under the bill, the hiring practices for deputy sheriffs and undersheriffs would be the same as for other law enforcement officers. Under current law, a county sheriff is prohibited from appointing a deputy or undersheriff unless the application has been a resident of the state for at least one year. The law was enacted in 1931, in response to the questionable conditions that existed at that time: as labor unrest increased during the 1930s, some of Michigan's sheriffs adopted the practice of hiring law enforcement officers from other states in large number. They would then quickly deputize these officers and employ them to control striking workers. In response, the provisions of Public Act 386 not only required a one-year residency in the state, the act also specified that an undersheriff or deputy sheriff could not be hired to work in the area of labor disputes unless the applicant had lived in the county for three months. Reportedly, this assured the community that the person being hired was someone they knew.

Against:

Rather than repeal the provisions of Public Act 328 of 1931, it would be better public policy to simply replace those provisions with the requirement that new employees undergo specific background checks, and that they be certified by the Michigan

Commission on Law Enforcement Standards
(MCOLES).

POSITIONS:

The Michigan Sheriffs' Association supports the bill
(2-12-02)

The Department of State Police is neutral on the bill.
(2-12-02)

Analyst: R. Young

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.