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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

April 12, 2001

Mr. James Thomas, Executive Director
Pennsylvania Commission on Crime and Delinquency
3101 North Front Street
Harrisburg, PA 17108

Re: Regulation #35-28 (IRRC #2170)
Deputy Sheriffs' Education and Training Board
Deputy Sheriffs' Education and Training Board

Dear Mr. Thomas:

Enclosed are our Comments. They will soon be available on our website at www.irrc.state.pa.us.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director

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Enclosure

cc: Honorable Thomas P. Gannon, Majority Chairman, House Judiciary Committee
Honorable Kevin Blaum, Democratic Chairman, House Judiciary Committee
Honorable James W. Gerlach, Chairman, Senate Local Government Committee
Honorable Sean F. Logan, Minority Chairman, Senate Local Government Committee
Commander Carmen Deluca, Chair, Deputy Sheriffs' Education and Training Board

Comments of the Independent Regulatory Review Commission

on

Deputy Sheriffs' Education and Training Board Regulation No. 35-28

Deputy Sheriffs' Education and Training Board

April 12, 2001

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Deputy Sheriffs' Education and Training Board (Board) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by March 12, 2003, the regulation will be deemed withdrawn.

1. Section 421.1. Definitions. – Clarity.

Continuing education

The term “periodically” in this definition is vague. Section 2107(c) of the Deputy Sheriffs' Education and Training Act (Act) (71 P.S. §§ 2103 – 2108) requires deputy sheriffs with less than five years of experience to meet all the requirements of the Act within two years. As such, “periodically” should be replaced with “two years” in the final-form regulation.

2. Section 421.3. Training required. – Reasonableness; Clarity.

Subsection (a)

This subsection implements Section 5 of the Act (71 P.S. §§ 2105). Specifically, this section requires deputy sheriffs to undergo basic training “in the amount of hours established by the Board.” A 1998 amendment to Section 5 of the Act deleted the word “regulation” and allowed the Board to establish basic training requirements “subject to the review and approval of the Commission.”

The Board interprets this amendment as authorizing it to establish the required number of hours for the basic training program through a Statement of Policy (SOP). However, nothing in the amendment precludes the Board from promulgating regulations. Furthermore, requirements should be established through regulation since regulations establish binding norms and have the full force and effect of law. An SOP, by definition, provides guidance, not binding norms. Therefore, an SOP is subject to challenge by anyone who believes that specific requirements should be waived in their case. If it is the Board's intention to require compliance with the basic

training requirements in the SOP, these requirements should be contained in the final-form regulation.

Subsection (b)

The Board, in a similar vein, established the number of hours for continuing education in the SOP. For the reasons stated above, the hourly requirements for continuing education should be contained in the final-form regulation.

Subsection (c)

Under this subsection, "... a deputy sheriff shall attain at least a minimum score established by the Board...." To successfully complete basic training, however, the minimum score which must be attained is not specified in the regulation. For clarity, the final-form regulation should list the required minimum score.

3. Section 421.4. Waiver of training. – Reasonableness; Clarity.

Subsection (a)

This subsection states that the Board, "upon request and for cause shown may grant additional time for a newly hired deputy sheriff to fulfill basic training requirements." We have two concerns with this subsection. First, the phrase "for cause shown" is vague. The Board should include examples that would meet "for cause shown" in the final-form regulation.

Second, the phrase "additional time" is unclear. For clarity, the Board should replace this phrase with a maximum time period.

Subsection (b)

This subsection states that the Board will make a waiver determination "based upon... criteria set forth by the Board." The regulation does not list the criteria. Instead, they are set forth in Section 421.103 of the Board's SOP. Included in the criteria are training requirements that deputy sheriffs **must** meet relating to training and certification (37 Pa. Code § 421.103(3) and (4)). For the reasons stated in **Issue 2**, these requirements should be contained in the final-form regulation.

4. Section 421.12. Continuing education. – Clarity.

This subsection states that "Continuing education will consist of topics to be determined periodically by the Board." We have two concerns. First, the term "periodically" is vague and should be deleted.

Second, the regulation does not convey how continuing education topics are determined, and what those topics are. It is our understanding that continuing education is developed and administered as the result of outreach to deputy sheriffs and two request-for-proposal processes. Continuing education is then offered at locations throughout the state in a 20-hour block. Clarity would be improved by explaining the development and availability of continuing education in

the preamble to the final-form regulation. Additionally, this section of the final-form regulation should be amended to state where deputy sheriffs can obtain information on continuing education requirements.

5. Section 421.31. Reimbursement to counties. – Reasonableness; Clarity.

Subsection (c)

This subsection states “Reimbursement will be given only for attendance at a school as defined in this chapter. The revised language replaces “Section 421.1 (relating to definitions)” with “this chapter.” However, the reference to section 421.1 is clearer than the vague reference to “this chapter.” Retaining the existing language would improve clarity.

Subsection (d)

Under this subsection, the county may apply to the Commission on Crime and Delinquency for reimbursement "for each deputy sheriff who has attended the course." The term “course” is not defined in the regulations. However, the terms “basic training” and “continuing education” are defined in Section 421.1, relating to definitions. For clarity and consistency, the term “course” should be replaced with the defined terms “basic training” and “continuing education.”

Subsection (f)

This subsection allows the Commission’s executive director to notify the county and specify the reasons that an application and request for reimbursement do not meet the requirements of the Deputy Sheriffs’ Education and Training Act (71 P.S. §§ 2105 – 2106). We have two issues.

First, the regulation does not include time periods for the executive director to make this determination and notify the county. A specific time period should be included in the final-form regulation.

Second, this subsection deletes the existing provision that provides the executive director will notify the county of the determination in writing via certified mail, return receipt requested. As a result, the proposed regulation is silent on how notification will be made. The allowable means of notification should be included in the final-form regulation.

INDEPENDENT REGULATORY REVIEW COMMISSION

To: Cynthia Minnich
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From: Kristine M. Shomper
 Administrative Officer
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 Commission
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Date: April 12, 2001
of Pages: 5

Comments: We are submitting the Independent Regulatory Review Commission's comments on the Deputy Sherriffs' Education and Training Board's regulation #35-28. Upon receipt, please sign below and return to me immediately at our fax number 783-2664. We have sent the original through interdepartmental mail. You should expect delivery in a few days. Thank you.

Accepted by: Cynthia Minnich Date: 4/12/01