

SENATE BILL NO. 391—SENATOR CANNIZZARO

MARCH 20, 2019

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to deputy marshals in certain courts. (BDR 1-69)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: No.

CONTAINS UNFUNDED MANDATE (§§ 1, 2)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to courts; revising provisions relating to deputy marshals in certain courts; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Based on the constitutional separation of powers, the judiciary has inherent authority to manage and control its employees, including their selection, appointment, promotion, discipline and termination, and if the other branches of government take any legislative or executive actions that directly interfere with the judiciary's personnel decisions, such interference violates the separation of powers doctrine because it unconstitutionally infringes on the judiciary's inherent authority to manage and control its employees. (*City of Sparks v. Sparks Mun. Court*, 129 Nev. 348, 362-66 (2013))

Under existing law, in each county whose population is 700,000 or more (currently Clark County), the judge of each district court and the justice of the peace of each justice court may appoint a deputy marshal for the court instead of a bailiff, and the deputy marshal serves at the pleasure of the judicial officer making the appointment. (NRS 3.310, 4.353; *State ex rel. Vogel v. Grierson*, No. 62225, 2014 WL 1226461 (Nev. Mar. 21, 2014) (explaining that deputy marshals "are more like employees than public officers because each 'deputy marshal serves at the pleasure of the judge he or she serves.'")) As a general rule, when a person serves at the pleasure of the appointing authority, the person is considered to be an at-will employee, and the appointing authority has the right to discharge the person for any reason, with or without cause, so long as the reason does not violate public policy. (*Nigro v. Nev. State Bd. of Cosmetology*, 103 Nev. 496, 497-98 (1987); *Wayment v. Holmes*, 112 Nev. 232, 235-36 (1996); *Dillard Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 376 (1999))

This bill revises existing law relating to deputy marshals in each county whose population is 700,000 or more (currently Clark County). First, this bill provides that



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the judge of each district court and the justice of the peace of each justice court shall appoint a deputy marshal for the court instead of a bailiff. However, this bill also provides that before such a judicial officer appoints a deputy marshal, the judicial officer must first consider whether there are any qualified and available county employees to serve in the position. Further, this bill provides that after the judicial officer appoints a deputy marshal, regardless of whether the person is a county employee when appointed, the deputy marshal shall be deemed to be a county employee, except that during his or her judicial service: (1) the deputy marshal serves at the pleasure of the judicial officer making the appointment; and (2) the rules and policies that apply to other county employees do not apply to the deputy marshal, unless otherwise provided by the judicial officer.

Finally, this bill provides that if the judicial officer ends the service of the deputy marshal in the court of that judicial officer for any reason that does not violate any applicable federal or state law or public policy governing such service, the deputy marshal has no right to serve in that court. However, the deputy marshal remains a county employee and his or her continued employment is subject to the rules and policies that apply to other county employees, including, without limitation, the rules and policies that govern reassignment, transfer, discharge, demotion or discipline.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 3.310 is hereby amended to read as follows:

3.310 1. Except as otherwise provided in ~~[this subsection,]~~
subsection 2, the judge of each district court may appoint a bailiff
for the court in counties polling 4,500 or more votes. In counties
polling less than 4,500 votes, the judge may appoint a bailiff with
the concurrence of the sheriff. *In each case, the bailiff serves at the
pleasure of the judge whom the bailiff serves.*

2. Subject to the provisions of subsections ~~[2, 4 and 10,]~~ 3, 5
and 11, in a county whose population is 700,000 or more ~~[, the]~~ :

(a) ~~The~~ judge of each district court ~~[may]~~ *shall* appoint a deputy
marshal for the court instead of a bailiff. ~~[In each case, the bailiff or]~~

(b) *Before the judge appoints a deputy marshal, the judge shall
first consider whether there are any qualified and available county
employees to serve in the position. After the judge appoints a
deputy marshal, regardless of whether the person is a county
employee when appointed, the deputy marshal shall be deemed to
be a county employee, except that:*

(1) *The* deputy marshal serves at the pleasure of the judge
~~[he or she serves.~~

~~—2.]~~ *whom the deputy marshal serves; and*

(2) *The rules and policies that apply to other county
employees do not apply to the deputy marshal during his or her
service, unless otherwise provided by the judge.*

(c) *If the judge ends the service of the deputy marshal in the
district court of that judge for any reason that does not violate any*



applicable federal or state law or public policy governing such service, the deputy marshal has no right to serve in that district court, but the deputy marshal remains a county employee and his or her continued employment is subject to the rules and policies that apply to other county employees, including, without limitation, the rules and policies that govern reassignment, transfer, discharge, demotion or discipline.

3. In all judicial districts where there is more than one judge, there may be a number of bailiffs or deputy marshals at least equal to the number of judges, and in any judicial district where a circuit judge has presided for more than 50 percent of the regular judicial days of the prior calendar year, there may be one additional bailiff or deputy marshal, each bailiff or deputy marshal to be appointed by the joint action of the judges ~~[]~~, *subject to the provisions of subsection 2 in a county whose population is 700,000 or more.* If the judges cannot agree upon the appointment of any bailiff or deputy marshal within 30 days after a vacancy occurs in the ~~[office]~~ *position* of bailiff or deputy marshal, then the appointment must be made by a majority of the board of county commissioners.

~~[3-]~~ 4. Each bailiff or deputy marshal shall:

- (a) Preserve order in the court.
- (b) Attend upon the jury.
- (c) Open and close court.
- (d) Perform such other duties as may be required of him or her by the judge of the court.

~~[4-]~~ 5. The bailiff or deputy marshal must be a qualified elector of the county and shall give a bond, to be approved by the district judge, in the sum of \$2,000, conditioned for the faithful performance of his or her duty.

~~[5-]~~ 6. The compensation of each bailiff or deputy marshal for his or her services must be fixed by the board of county commissioners of the county and his or her salary paid by the county wherein he or she is appointed, the same as the salaries of other county officers *or employees* are paid.

~~[6-]~~ 7. The board of county commissioners of the respective counties shall allow the salary stated in subsection ~~[5]~~ 6 as other salaries are allowed to county officers ~~[]~~ *or employees*, and the county auditor shall draw his or her warrant for it, and the county treasurer shall pay it.

~~[7-]~~ 8. The provisions of this section do not:

- (a) Authorize the bailiff or deputy marshal to serve any civil or criminal process, except such orders of the court which are specially directed by the court or the presiding judge thereof to him or her for service.



(b) Except in a county whose population is 700,000 or more, relieve the sheriff of any duty required of him or her by law to maintain order in the courtroom.

~~{8-}~~ **9.** If a deputy marshal is appointed for a court pursuant to subsection 1, each session of the court must be attended by the deputy marshal.

~~{9-}~~ **10.** For good cause shown, a deputy marshal appointed for a court pursuant to subsection 1 may be assigned temporarily to assist other judicial departments or assist with court administration as needed.

~~{10-}~~ **11.** A person appointed to be a deputy marshal for a court pursuant to subsection 1 must be certified by the Peace Officers' Standards and Training Commission as a category I peace officer not later than 18 months after appointment.

Sec. 2. NRS 4.353 is hereby amended to read as follows:

4.353 1. Subject to the provisions of subsections 2, 4 and 10, in a county whose population is 700,000 or more ~~{,the}~~ :

(a) *The justice of the peace for each justice court ~~{may}~~ shall appoint a deputy marshal for the court instead of a bailiff.*

(b) *Before the justice of the peace appoints a deputy marshal, the justice of the peace shall first consider whether there are any qualified and available county employees to serve in the position. After the justice of the peace appoints a deputy marshal, regardless of whether the person is a county employee when appointed, the deputy marshal shall be deemed to be a county employee, except that:*

(1) *The deputy marshal serves at the pleasure of the justice of the peace ~~{that}~~ whom the deputy marshal serves ~~{-}~~ ; and*

(2) *The rules and policies that apply to other county employees do not apply to the deputy marshal during his or her service, unless otherwise provided by the justice of the peace.*

(c) *If the justice of the peace ends the service of the deputy marshal in the justice court of that justice of the peace for any reason that does not violate any applicable federal or state law or public policy governing such service, the deputy marshal has no right to serve in that justice court, but the deputy marshal remains a county employee and his or her continued employment is subject to the rules and policies that apply to other county employees, including, without limitation, the rules and policies that govern reassignment, transfer, discharge, demotion or discipline.*

2. In all townships where there is more than one justice of the peace, there may be a number of deputy marshals at least equal to the number of justices of the peace. If the justices of the peace cannot agree upon the appointment of any deputy marshal within 30 days after a vacancy occurs in the ~~{office}~~ position of deputy



1 marshal, the appointment must be made by a majority of the board
2 of county commissioners.

3 3. Each deputy marshal shall:

4 (a) Preserve order in the court.

5 (b) Open and close court.

6 (c) Perform other such duties as may be required of the deputy
7 marshal by the justice of the peace of the court.

8 4. The deputy marshal must be a qualified elector of the county
9 and shall give bond, to be approved by the justice of the peace, in
10 the sum of \$2,000, conditioned for the faithful performance of his or
11 her duty.

12 5. The compensation of each deputy marshal for his or her
13 services must be fixed by the board of county commissioners of the
14 county and the deputy marshal's salary paid by the county wherein
15 he or she is appointed, the same as the salaries of other county
16 officers *or employees* are paid.

17 6. The board of county commissioners of the respective
18 counties shall allow the salary stated in subsection 5 as other salaries
19 are allowed to county officers ~~§~~ *or employees*, and the county
20 auditor shall draw his or her warrant for it, and the county treasurer
21 shall pay it.

22 7. The provisions of this section do not authorize the deputy
23 marshal to serve any civil or criminal process, except such orders of
24 the court which are specially directed by the court or the presiding
25 justice of the peace thereof to the deputy marshal for service.

26 8. If a deputy marshal is appointed for a court pursuant to
27 subsection 1, each session of the court must be attended by the
28 deputy marshal.

29 9. For good cause shown, a deputy marshal appointed for a
30 court pursuant to subsection 1 may be assigned temporarily to assist
31 other justice courts or assist with court administration as needed.

32 10. A person appointed to be a deputy marshal pursuant to
33 subsection 1 must be certified by the Peace Officers' Standards and
34 Training Commission as a category I peace officer not later than 18
35 months after appointment.

36 **Sec. 3.** The provisions of NRS 354.599 do not apply to any
37 additional expenses of a local government that are related to the
38 provisions of this act.

39 **Sec. 4.** This act does not apply to any employment action
40 taken before the effective date of this act.

41 **Sec. 5.** This act becomes effective upon passage and approval.

