

WisACT 6

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1983 Assembly Bill 36

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## 1983 Wisconsin Act 6

AN ACT to repeal 59.22; to amend 19.01 (3); to repeal and recreate 895.46 (1) (b) and (c); and to create 895.46 (1) (d) of the statutes, relating to payment of judgments against sheriffs and deputy sheriffs.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

PREFATORY NOTE: Present section 895.46 (1) (a) of the statutes requires the state and its political subdivisions to pay civil judgments and taxable court costs on behalf of their officers and employees, including law enforcement officers, whenever the defendant has acted within the scope of his or her employment. However, present ss. 59.22 and 895.46 (1) (b) and (c), stats., treat county sheriffs, deputy sheriffs and other subordinates of the sheriff as a separate class, and do not insulate them from civil liability in the same manner as other law enforcement officers. The statutes also provide for a disparity of treatment among deputy sheriffs as a class, and different treatment between deputy sheriffs and other employees of the sheriff (undersheriffs and jailers).

This bill brings county sheriffs, their deputies and other subordinates under the mandatory payment of judgment provisions of s. 895.46 (1) (a), stats., with certain limitations. The bill also eliminates a number of the conflicting provisions in current law that provide different treatment for deputy sheriffs and other subordinates of the sheriff.

For a complete explanation of present law and the contents of the bill, see the detailed SECTION notes located in the body of the bill.

SECTION 1. 19.01 (3) of the statutes is amended to read:

19.01 (3) OFFICIAL DUTIES DEFINED. The official duties referred to in subs. (1) and (2) include performance to the best of his or her ability by the officer taking the oath or giving the bond of every official act required, and the nonperformance of every act forbidden, by law to be performed by ~~him~~ the officer; also, similar performance and nonperformance of every act required of or forbidden to ~~him~~ the officer in any other office which he or she may lawfully hold or exercise by virtue of ~~his~~ his incumbency of the office named in ~~his~~ the official oath or bond. ~~Except as provided otherwise by s. 59.22 (3) and (4) the~~ The duties mentioned in any such oath or bond include the faithful performance by all persons appointed or employed by ~~such~~ the officer either in his or her principal or ~~his said~~ subsidiary office, of their respective duties and trusts therein.

NOTE: SECTION 1 of this bill deletes an existing cross-reference to section 59.22 of the statutes, which is repealed under SECTION 2 of this bill.

SECTION 2. 59.22 of the statutes is repealed.

NOTE: Present s. 59.22, stats., imposes personal liability on county sheriffs for the acts of subordinates (undersheriffs, deputy sheriffs and jailers) who are directly appointed by the sheriff or who have acted "under the express direction of the sheriff". The sheriff may require subordinates to take out an official bond to cover any liability that the sheriff might incur due to the misconduct of subordinates.

Under s. 59.22, stats., the sheriff is not liable for the acts of deputies and jailers appointed under civil service and these employes are required to execute an official bond which, except in Milwaukee, must be paid for by the county. In lieu of furnishing bonds, the statute allows counties to take out blanket bonds or liability insurance contracts to cover the acts of deputies and jailers. The statute also contains a cross-reference to s. 895.46 and provides that civil actions against deputy sheriffs are governed by that section.

Originally enacted in 1849 when all subordinates were directly appointed by the sheriff, s. 59.22, stats., has become outmoded. Also, the provision has unduly complicated the law relating to the liability of deputy sheriffs and other subordinates of the sheriff because it provides different treatment for subordinates based on the type of appointment held, the size of the county and the authority under which the subordinate was acting.

Under this bill, s. 59.22, stats., is repealed and all statutory provisions relating to the payment of civil judgments against subordinates of the sheriff are set forth in section 895.46 of the statutes.

**SECTION 3.** 895.46 (1) (b) and (c) of the statutes are repealed and recreated to read:

895.46 (1) (b) Persons holding the office of county sheriff on the effective date of this paragraph (1983), are covered by this subsection. This subsection covers other county sheriffs who have:

1. Satisfactorily completed or are currently enrolled in the preparatory program of law enforcement training under s. 165.85 (4) (b), or have provided evidence of equivalent law enforcement training and experience as determined by the law enforcement standards board; or
2. At least 5 years of full-time employment as a law enforcement officer, as defined in s. 165.85 (2) (c).

(c) This subsection does not apply to any action or special proceeding brought by a county against its county sheriff if the action or proceeding is determined in favor of the county.

**NOTE:** Present section 895.46 (1) (a) of the statutes contains a general requirement that the state and its political subdivisions pay civil judgments and taxable costs against their officers and employes, including law enforcement officers, whenever a court or jury finds that the defendant was acting within the scope of his or her employment.

Section 895.46 (1) (a) of the statutes has never been construed to require counties to pay civil judgments and court costs on behalf of county sheriffs because the Wisconsin constitution, in article VI, section 4 (3), provided that "... the county shall never be made responsible for the acts of the sheriff." As a result, the sheriff has always been personally responsible for his or her own conduct. However, at the April 6, 1982, spring election, the voters repealed this constitutional provision, thereby permitting the legislature to require by law that counties pay civil judgments against sheriffs.

**SECTION 3** of this bill requires counties to pay civil judgments and taxable costs on behalf of all incumbent county sheriffs pursuant to the mandatory payment provisions of present s. 895.46 (1) (a), stats. Other sheriffs will also be covered if they have:

1. Satisfactorily completed [or are currently enrolled in] the basic law enforcement training course established by the law enforcement standards board under s. 165.85 (4), stats., or have equivalent law enforcement training and experience as determined by the board; or
2. At least 5 years of full-time employment as a law enforcement officer.

On occasion, a legal dispute may occur between the county board, as the elected legislative body for the county, and the county sheriff, who is an independently elected county official. To avoid the unusual situation where the prevailing party in a lawsuit would be required to pay the losing party's legal expenses, a provision is included to clarify that the mandatory payment provisions of s. 895.46 (1) (a), stats., do not apply to actions by counties against the county sheriff when the matter is decided in the county's favor.

SECTION 4. 895.46 (1) (d) of the statutes is created to read:

895.46 (1) (d) On and after the effective date of this paragraph (1983), all persons employed as deputy sheriffs, as defined in s. 40.02 (48) (b) 3, are covered by this subsection. The county board shall adopt written policies for payments under this subsection on behalf of any other person, provided that person has satisfied the minimum standards of the law enforcement standards board, who serves at the discretion of the sheriff as a law enforcement officer as defined in s. 165.85 (2) (c), and the county may make the payments upon approval by the county board.

NOTE: Until 1979, section 895.46 of the statutes provided that judgments and costs against deputy sheriffs appointed under civil service may be paid by the county upon approval of the county board.

Laws of 1979, chapter 74, created present section 895.46 (1) (b) and (c) of the statutes which provides that:

1. Until February 28, 1983, civil service deputy sheriffs and deputies who participate in the Wisconsin retirement system (WRS) are covered by the mandatory payment of judgment requirements of s. 895.46 (1) (a), stats. For other deputy sheriffs, judgments may be paid if approved by the county board; and
2. On March 1, 1983, and thereafter, all deputy sheriffs are covered under s. 895.46 (1) (a), stats., except that the payment of judgments is discretionary, subject to county board approval.

SECTION 4 of this bill provides that all deputy sheriffs, as defined in section 40.02 (48) (b) 3 of the statutes, are covered by the mandatory payment provisions of s. 895.46 (1) (a), stats.

Section 40.02 (48) (b) 3 of the statutes defines a "deputy sheriff" for purposes of the state retirement system as "any officer or employe of a sheriff's office ... except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist or mechanic and whose functions do not clearly fall within the scope of active law enforcement even though such an employe is subject to occasional call ... to perform duties within the scope of active law enforcement." This definition of "deputy sheriff" is sufficiently broad to include persons serving as undersheriffs and jailers. However, it would exclude employes not serving in a law enforcement capacity even though those persons may occasionally be "deputized" to perform law enforcement duties.

This bill also requires counties to adopt written policies for the payment of judgments and legal expenses on behalf of persons who serve as law enforcement officers at the discretion of the sheriff, such as special deputies, honorary deputies and other limited or part-time appointees [provided that person has satisfied the minimum standards of the law enforcement standards board]. The county is authorized under this bill to make payments under s. 895.46 (1) (a), stats., on behalf of those persons, subject to approval by the county board.

**SECTION 5. Nonstatutory provisions; legislature.** The legislative council shall study the feasibility and desirability of creating a risk sharing plan under chapter 619 of the statutes to indemnify all law enforcement officers employed by the state and its political subdivisions against civil liability arising from acts committed in the discharge of their

official duties. The legislative council shall make findings and recommendations, including proposed legislation if appropriate, to the legislature when it convenes in 1985.

NOTE: SECTION 5 of this bill directs the legislative council to study the feasibility and desirability of creating a state and municipal risk sharing plan under chapter 619 of the statutes to indemnify all state and municipal law enforcement officers against civil liability arising from on-the-job conduct, and to report its findings and recommendations to the 1985 legislature.

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