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(FORM UPDATED: 08/11/2010)

## WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

### 2005-06

(session year)

### Assembly

(Assembly, Senate or Joint)

### Committee on Corrections and the Courts...

#### COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

#### INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
  - (**ab** = Assembly Bill)                      (**ar** = Assembly Resolution)                      (**ajr** = Assembly Joint Resolution)
  - (**sb** = Senate Bill)                              (**sr** = Senate Resolution)                              (**sjr** = Senate Joint Resolution)
- Miscellaneous ... **Misc**

## Assembly

### Record of Committee Proceedings

#### **Committee on Corrections and the Courts**

##### **Assembly Bill 599**

Relating to: payment of a 1st class city police officer's salary after discharge.

By Representatives Toles, Colon, Richards, A. Williams, Parisi, Grigsby, Fields, Berceau, Townsend, Wood, Jeskewitz and Wasserman; cosponsored by Senators Coggs, Grothman and Taylor.

August 09, 2005      Referred to Committee on Corrections and the Courts.

September 7, 2005      **PUBLIC HEARING HELD**

Present:    (10)    Representatives Bies, Gundrum, Underheim, Owens,  
Suder, LeMahieu, Pope-Roberts, Wasserman, Seidel,  
Parisi.

Absent:    (0)    None.

##### Appearances For

- Barbara Toles — Rep., 17th Assembly District
- Spencer Coggs — Sen., 6th Senate District
- Maria Monteaguno — City of Milwaukee
- Jennifer Gonda — City of Milwaukee

##### Appearances Against

- John Balczyzak — Milwaukee Police Association
- Jim Palmer — WI Professional Police Association

##### Appearances for Information Only

- Bruce Schrimpf — City of Milwaukee

##### Registrations For

- Pedro Colon — Rep., 8th Assembly District
- Polly Williams — Rep., 10th Assembly District

##### Registrations Against

- Jeff Plale — Sen., 7th Senate District
- Mark Honadel — Rep., 21st Assembly District

- William Ward — Milwaukee Police Association

November 30, 2005 **EXECUTIVE SESSION HELD**

Present: (10) Representatives Bies, Gundrum, Underheim, Owens, Suder, LeMahieu, Pope-Roberts, Wasserman, Seidel, Parisi.

Absent: (0) None.

Moved by Representative Parisi, seconded by Representative Seidel that **Assembly Bill 599** be recommended for passage.

Ayes: (4) Representatives Pope-Roberts, Wasserman, Seidel and Parisi.

Noes: (6) Representatives Bies, Gundrum, Underheim, Owens, Suder and LeMahieu.

PASSAGE NOT RECOMMENDED, Ayes 4, Noes 6

May 4, 2006

Failed to pass pursuant to Senate Joint Resolution 1.

Andrew Nowlan  
Committee Clerk

# Assembly Committee on Corrections and the Courts

DATE \_\_\_\_\_  
 Moved by Parisi Seconded by Seidel  
 AB 599 SB \_\_\_\_\_ Clearinghouse Rule \_\_\_\_\_  
 AJR \_\_\_\_\_ SJR \_\_\_\_\_  
 A \_\_\_\_\_ SR \_\_\_\_\_ Other \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_  
 A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_  
 A/S Amdt \_\_\_\_\_ to A/S Amdt \_\_\_\_\_ to A/S Sub Amdt \_\_\_\_\_

- Be recommended for:
- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Passage | <input type="checkbox"/> Indefinite Postponement |
| <input type="checkbox"/> Introduction       | <input type="checkbox"/> Tabling                 |
| <input type="checkbox"/> Adoption           | <input type="checkbox"/> Concurrence             |
| <input type="checkbox"/> Rejection          | <input type="checkbox"/> Nonconcurrence          |

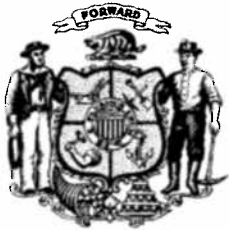
	Committee Member	Aye	No	Absent	Not voting
1.	Rep. Garey Bies, chair		1		
2.	Rep. Mark Gundrum, vice-chair		2		
3.	Rep. Greg Underheim		3		
4.	Rep. Carol Owens		4		
5.	Rep. Scott Suder		5		
6.	Rep. Daniel LeMahieu		6		
7.	Rep. SONDY POPE-ROBERTS	1			
8.	Rep. Sheldon Wasserman				
9.	Rep. Donna Seidel	2			
10.	Rep. Joe Parisi	3			
	Totals				

MOTION CARRIED

MOTION FAILED



# WISCONSIN STATE LEGISLATURE





WILLIE L. HINES, JR.

COMMON COUNCIL PRESIDENT  
ALDERMAN, 15TH DISTRICT

September 2, 2005

Honorable Barbara Toles  
State Representative  
Room 124 North  
State Capitol  
P.O. Box 8953  
Madison, WI 53708

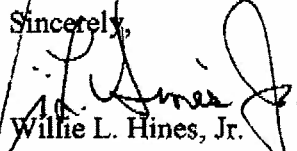
Dear Representative Toles,

On behalf of the City of Milwaukee Common Council, I am writing to express our collective support of 2005 Assembly Bill 599. The bill, which has bipartisan sponsorship, calls for the elimination of pay for discharged officers while they appeal their respective dismissal(s).

When law enforcement personnel fail to uphold the very laws they swore to preserve and abide by, the only recourse may be to relieve them of their duties. The current law allows fired officers to continue to receive pay while they appeal their discharge. This arrangement undermines the disciplinary accountability of offending officers, and potentially creates an incentive to unnecessarily draw out the appeals process.

Given the recent high incidence of police officer misconduct in the City of Milwaukee, safeguards ought to be in place to protect the security of the citizenry, and ensure officers are held accountable for their actions. Assembly Bill 599 would go a long way in making that happen. Thanks for your leadership, and that of your co-sponsoring colleagues, on this important matter.

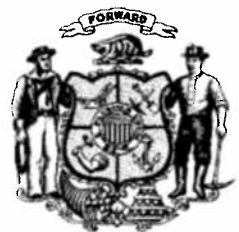
Sincerely,

  
Willie L. Hines, Jr.  
President, Common Council  
Alderman, 15<sup>th</sup> District

WLH:tlm



WISCONSIN STATE LEGISLATURE





**Tom Barrett**  
Mayor, City of Milwaukee

September 6, 2005

Representative Garey Bies, Chairman  
Committee on Corrections and the Courts  
State Capitol  
P.O. Box 8952  
Madison, WI 53708

Dear Chairman Bies:

Thank you for scheduling a hearing on Assembly Bill 588 which eliminates the requirement for Milwaukee to pay a police officer's salary after discharge. This requirement does not exist for other City employees and does not exist for any other police officer in the state. Based on our research, it does not exist in any other state.

Milwaukee values its police services. Given the recent surge in our homicide rate, I am increasingly concerned about our police strength. For every dollar we spend on an officer that appeals their discharge, we have one less dollar to spend putting officers on the street or providing other public services.

Milwaukee taxpayers are being deprived of police services and deprived of their tax dollars when they pay salaries and benefits for officers appealing their discharge. Some of these cases drag out for over a year – and one officer collected nearly \$120,000 in pay and benefits before his discharge was upheld. In many other cases, discharged officers drag out the appeal process only to retire or resign shortly before their trial. Since 1990, City of Milwaukee taxpayers have spent more than \$2 million on discharged officers who have not been reinstated.

Thank you for holding a public hearing to encourage a public debate about this unnecessary process. But, public debate won't solve this problem. The public wants this bill to pass, so please take the next step and schedule the bill for an executive session.

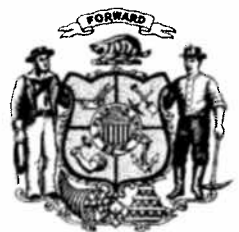
Sincerely,

Tom Barrett  
Mayor





WISCONSIN STATE LEGISLATURE



Sen. Spencer Coggs  
Senate District 6

Assembly Corrections and Courts Cmte. Public hearing  
SB 307/AB 599 "Fired-with-pay" bill  
Wednesday, Sept. 7, 2005

Thank you, Mr. Chair, and Committee Members:

I appreciate the opportunity for these bills, AB 599 and the Senate companion bill SB 307, to have their day in the "court of public opinion."

I believe a fair reading of this legislation, and a fair hearing will justify its intent and its passage.

We have a situation that exists only in the City of Milwaukee, and a situation that affects only one segment of our public workers.

This situation has called into question the use of taxpayer dollars and the integrity of our city's law enforcement system.

As we speak, former members of the Milwaukee Police Department, who have been fired for misconduct, are collecting taxpayer-funded pay and benefits.

I believe this is both a moral and economic issue.

Under state law, officers who appeal their firing continue to draw pay and benefits until their appeal can be heard by the city's Police and Fire Commission.

This "Fired-with-pay" law is 25-years old... a holdover from the days when Harold Breier was "chief for life" of the Milwaukee Police Department.

In effect, Harold Breier didn't answer to anyone or any group. He held an arbitrary power. And the police officers felt they needed protection.

However, Harold Breier is gone. And in the absence of "Chief for Life" Breier, this law itself is arbitrary and subject to manipulation.

For instance, what stops even the most serious offender from appealing his or her firing and living off taxpayer largesse?

Unfortunately, nothing.

This is morally wrong because no other public employee gets this benefit. This benefit is not available to any of their counterparts in other parts of the state.

This benefit is not provided to Milwaukee firefighters. Police in New York, St. Louis and Minneapolis do not have this benefit.

And, "John Q. Citizen" in the private sector doesn't get that kind of protection either at his or her job.

It's economically wrong because since 1994, taxpayers have paid more than \$2 million in pay and benefits to 30 fired officers, who were not reinstated. These are figures from the Milwaukee Journal Sentinel.

In a more recent study of this problem, the Milwaukee Fire and Police Commission found that going back to 1990, 81 officers were fired - and all but two filed appeals.

In each case the "clock was running," paychecks were cut for these officers, benefits were paid, and the process moved slowly forward.

In fact, because of workload and concerns about due process, the average appeal takes nearly 9 months.

And if the firings are upheld – and most are – those who have received thousands in pay and benefits don't have to repay the city.

This amounts to "playing the system," and the system has been "played" to the tune of more than \$2 million taxpayer dollars.

Currently, the cost for a mid-level officer (Level 3) on the Milwaukee Police Department is about \$51,000 in pay and benefits.

That's a lot. But it's a tough job.

In return, we, as taxpayers, hold high standards for our officers.

If they cannot live up to those standards and firing is necessary there should be no reason for Milwaukee taxpayers to continue to pay these individuals.

As you may know, this situation came to light after the firing of nine officers who allegedly took part in the beating of a man while the officers were off-duty.

The accused officers refused to testify against fellow officers and they were rightly fired.

Certainly it is their right to appeal.

But there is no reason for Milwaukee taxpayers to pay them for at least a nine-month vacation while the appeal proceeds.

I urge you to give this legislation your strong support.

This is an abuse of taxpayers' dollars that must be corrected.

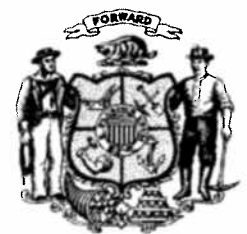
Your vote to support this bill will also help restore the public's confidence in our police department.

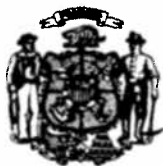
Thank you and I'd be happy to entertain any questions about this legislation.

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WISCONSIN STATE LEGISLATURE





# Pedro Colón

STATE REPRESENTATIVE

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## Testimony in Support of Assembly Bill 599

### Assembly Committee on Corrections and the Courts

Wednesday, September 7, 2005

10:00 a.m.

400 North East

By

Representative Pedro A. Colón

Good morning Chairman Bies and Committee members. Thank you for allowing me to testify today in support of Assembly Bill 599 (AB 599). This legislation simply seeks to remove a provision in current law that allows Milwaukee police officers to continue to receive a salary after they have been terminated.

In 1979, the Legislature passed Senate Bill 128 which was signed into law. This so called Officers Bill of Rights enumerated a number of important changes that allowed Milwaukee police officers the right to engage in political activity and addressed issues related to an officers rights while under investigation. While I support these aspects of the 1979 law change, there is one provision that stands out and is unique only to the Milwaukee police force. This provision states: "No member of the police force may be suspended or discharged under sub. (11) or (13) without pay or benefits until the matter that is the subject of the suspension or discharge is disposed of by the board or the time for appeal under sub. (13) passes without an appeal being made."

It is common practice for pubic employees through out state and local government to be suspended with pay while they are under disciplinary action or investigation. However, the idea that a person who has been terminated has a statutory right to continue to receive pay is unjust and a disservice to the taxpayers. According to figures compiled by the Milwaukee Journal Sentinel taxpayers of Milwaukee have paid \$2.1 million in pay and benefits to 30 fired officers since 1994.

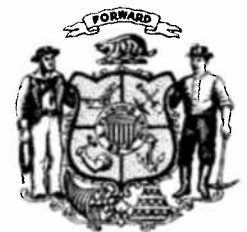
Proponents of maintaining current law will argue that this fair due to the fact that it takes the Milwaukee Fire and Police Commission an average of 9 months to resolve cases. While this may be the case, it is my firm belief that reforms need to take place at the City of Milwaukee Fire and Police Commission. It is simply unfair to make the taxpaying citizens of Milwaukee pay salaries and benefit of fired police officers. Under current law, these fired individuals have the right to sue for back pay if they are wrongfully terminated.

8th Assembly District

As a State Representative from Milwaukee, it is my duty to protect the citizens of Milwaukee and by eliminating this provision of state law I believe we are doing what is right for the taxpayers. This issue is not about any political vendettas toward the Milwaukee Police officers. In fact, I believe that I have had a good working relationship with their association and I am offering to work together with them in order to enact reforms at the city level with the Fire and Police Commission. However, I do not believe that this current policy of allowing terminated officers to collect salary and benefit serves the best interests of the citizens of Milwaukee.



WISCONSIN STATE LEGISLATURE





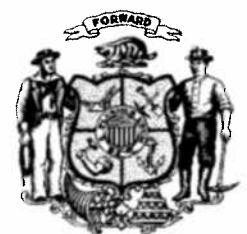
*Milwaukee*

09-07-05

My vote is NO in regards to police officers receiving pay when while there cases are being reviewed or pending investigations or suspensions.



# WISCONSIN STATE LEGISLATURE





Department of Administration  
Budget and Policy Division

Tom Barrett  
Mayor

Sharon Robinson  
Director of Administration

Sharon Cook  
Director of Intergovernmental Relations

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**Assembly Committee on Corrections and the Courts  
September 7, 2005**

**Testimony on Assembly Bill 599:  
Payment of a 1<sup>st</sup> class city police officer's salary after discharge.**

Thank you Chairman Bies and committee members for the opportunity to make a statement on behalf of Mayor Tom Barrett today. I am here to express the City of Milwaukee's support for Assembly Bill 599 and will be happy to answer any questions you may have.

This bill proposes to eliminate the requirement for Milwaukee to pay a police officer's salary while appealing their discharge, a requirement that does not exist for other City employees or any other police officer in the state. We acknowledge that our police officers face different challenges - but based on our research, this policy does not even exist in large police departments elsewhere in the United States.

Milwaukee values its police services. Given the recent surge in our homicide rate, Mayor Barrett is increasingly concerned about our police strength. For every dollar the City spends on an officer appealing their discharge, there is one less dollar to spend putting officers on the street.

You may have seen the recent Journal Sentinel article announcing that we will be moving our next Police recruit class up by two pay periods? Were we not still paying 15 discharged officers, we would have been able to afford moving it up even further.

Since 1990, city taxpayers have spent more than \$2 million on discharged officers who were never reinstated. In that time, 81 Milwaukee Police Officers were discharged and all but 2 appealed the Police Chief's action. The vast majority were not reinstated.

Some of these cases drag out for over a year, and one officer collected nearly \$120,000 in pay and benefits before his discharge was upheld. In many other cases, discharged officers drag out the appeal process only to retire or resign shortly before their trial. Milwaukee taxpayers are being deprived of police services and deprived of their tax dollars when these officers are on the payroll.

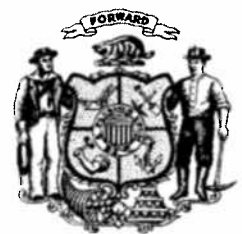
When this provision was passed more than 25 years ago, nobody could have foreseen the convergence of a rising homicide rate and numerous officer discharges that we now face in 2005. In addition, the state has asked local governments to limit tax increases, and we are still struggling to cover the rising costs of healthcare and now due to Hurricane Katrina, fuel costs. These recent events make the passage of this legislation even more urgent. Thank you for holding a public hearing to encourage public debate about this unnecessary process. We hope you will support this legislation.

For more information, please contact:

Jennifer Gonda, Legislative Fiscal Manager – Senior  
(414) 286-3492 or [jgonda@milwaukee.gov](mailto:jgonda@milwaukee.gov)



# WISCONSIN STATE LEGISLATURE





Department of Employee Relations

September 7, 2005

**Tom Barrett**  
Mayor

**Maria Monteagudo**  
Director

**David Heard**  
Fire and Police Commission  
Executive Director

**Michael Brady**  
Employee Benefits Director

**David Kwiatkowski**  
Labor Negotiator

Assembly Committee on Corrections and Courts

Re : Assembly Bill 599: Payment of a 1<sup>st</sup> class city police officer's salary after discharge

Dear Chairman and Committee Members:

Thank you for the opportunity to testify on behalf of the City of Milwaukee today. My name is Maria Monteagudo and I am the Director of the Department of Employee Relations for the City of Milwaukee. I am here to express my support for Assembly Bill 599. In doing so I would like to briefly touch on the four most important employment/human resources arguments in support of this Bill.

- (1) **Due Process and Just Cause Requirements** applicable to all public employees in the State of Wisconsin.
- (2) **Other Statutory Provisions** applicable to other general public employees in the State of Wisconsin.
- (3) **The record of the Fire and Police Commission** responsible for making final determinations in disciplinary matters.
- (4) Law enforcement personnel should be held to a **higher standard** and not be given an unfair advantage.

**(1) Due Process and Just Cause Requirements**

All regularly appointed public employees are entitled, by law, to due process when a given situation calls for the imposition of discipline, including discharge. The standard used in ensuring that employees receive fair and equal treatment whenever disciplinary action is under consideration is known as the "just cause standard". This standard requires the employer's decision to be characterized by fairness, honesty, good faith, and valid business reasons. It also requires the absence of arbitrary, capricious, or discriminatory actions.

All public employees in the state of Wisconsin, including firefighters, go off payroll when they are discharged from employment. In addition to the protection Police Officers receive under the rules of the Fire and Police Commission, state statute, and the respective collective bargaining agreements, they are afforded additional protection under the Law Enforcement Officers' Bill of Rights Chapter 164 Sub 2 of the State Statutes. This section provides that during an investigative process the officer has a right to be informed of the nature of the investigation, must be afforded the opportunity to be represented by a person of his/her choice, and precludes the use of evidence obtained in the course of interrogation from being used in other disciplinary proceeding.

Maintaining discharged officers "on payroll" pending a trial with the FPC seems excessive given all the protection they are afforded and has proven to be extremely costly for City of Milwaukee taxpayers.

**(2) Other Statutory Provisions applicable to general public employees.**

Chapter 111.335 of the State Statutes permits employers to suspend without pay individuals who are subject to a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of a the particular job. General City employees are subjected to this provision and do not continued to get paid pending the outcome of the criminal investigation.

On the other hand, law enforcement officers continue to receive salaries and fringe benefits throughout this process. This is a double standard.

Given a ruling by the 7<sup>th</sup> Circuit Court of Appeals (*Franklin v City of Evanston*), the Fire and Police Commission cannot force appellants to proceed to trial on disciplinary matters until completion of criminal proceedings. This results in significant delays in scheduling and hearing appeals when criminal charges are pending. A total of five cases are currently "on hold" pending criminal proceedings.

**(3) The record of the Fire and Police Commission on disciplinary matters since 1999.**

The Fire and Police Commission has the authority to hear disciplinary appeals per provisions of Chapter 62.50. The Board is responsible for making a determination as to whether the charges are sustained and the appropriateness of the level of discipline imposed by the Chief. The "just cause" standard is used in making such determinations.

Since 1999 there have been a total of 47 discharges of law enforcement personnel in the MPD. A total of 46 appeals have been received by the FPC. A total of 28 cases have been disposed of as presented below:

◇ 11 individuals resigned or retired before trial (total amount of compensation paid (\$282,824);

◇ 14 trials resulted in the FPC sustaining the charges and upholding the discharges (total amount of compensation paid \$417,473);

◇ 2 trials resulted in the FPC sustaining the charges but changing the discharges to suspensions and 3 discharges were amended to suspension by the Chief (total amount of compensation paid \$186,719);

◇ Two trials resulted in the reinstatement of police officer.

A total of 14 cases are currently pending trial. A total of 5 cases are "on hold" pending criminal charges (total amount of compensation paid \$97,091).

The imposition of discipline to law enforcement officers is a serious matter. The proportion of cases sustained by Commission action since 1999 supports the notion that the original determination for disciplinary action by the Chief of Police was not arbitrary and capricious and that the due process requirements and the just cause standard were met.

While the provisions of the current language in Chapter 62.50 (18) may have been created to protect officers from false accusations and unfair employment practices, it is evident that the vast majority of discharges that have gone to trial have been resulted in actions that support the termination of the employment relationship.

**(4) Law enforcement personnel should be held to higher standard and not be provided with an unfair advantage.**

Individuals enforcing the laws of the state should not be exempted from having to adhere to the same standards of conduct and behavior for which other municipal employees are held accountable. This is especially important when considering the opposition's argument that the nature of the job of law enforcement personnel is unique. Police Officers who violate departmental work rules should be treated to the same standard as other municipal employees. Some may argue that they should be held to a higher standard.

Since 1990 there have been a total of 81 discharges in the Milwaukee Police Department. The number of discharges since 1999 is 47. An analysis of the reasons for the discharge actions reveals that approximately 70% of the offenses since 1990 and since 1999 represent violations that are not "unique" to law enforcement personnel. They in fact represent the type of offenses for which general City of Milwaukee employees are suspended without pay and/or discharged.

These offenses/violations can be generally characterized as involving alcohol/drug use, falsification of reports, residency violations, sexual acts or sexual harassment, absence without leave (AWOL), unsatisfactory job performance, workplace harassment, and stealing or misusing property. Less than 30% of all cases since 1990 and 1999 represent behaviors that have resulted in discharge decisions "unique" to police officers such as domestic violence, excessive use of force, failure to protect, inappropriate use of gun, or obstruction of justice. A summary of such actions is presented below.

<b>Reason for Discharge</b>	<b>Number of Discharges Since 1990 (81)</b>	<b>%</b>	<b>Number of Discharges Since 1999 (47)</b>	<b>%</b>
Alcohol Use/Intoxication	11	13.5%	6	12.7%
Falsification of Reports	10	12.3%	9	19.1%
Residency	9	11.1%	1	2%
Domestic Violence *	7	8.6%	3	6%
Excessive Force *	7	8.6%	4	8.5%
Failure to investigate or protect *	7	8.6%	4	8.5%
Drug Use/Possession	6	7.4%	2	4.2%
Sexual Act on the Job	4	4.9%		
Battery	4	4.9%	5	10.6%
AWOL	4	4.9%	3	6.4%
Unsatisfactory Performance	3	3.7%	2	4.2%
Inappropriate Gun Use*	3	3.7%	2	4.2%
Stealing/Misuse of Property	2	2.5%	3	6.4%
Obstruction of Justice *	1	1.2%	1	2.1%
Sleeping on the Job	1	1.2%		
Harassment	1	1.2%	2	4.2%
Sexual Harassment	1	1.2%		



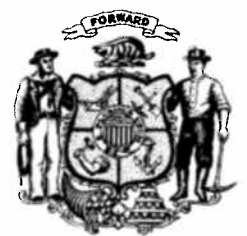
## DETERMINING JUST CAUSE

Pursuant to Section 62.50(17)(b)Wis. Stats, the Board must determine whether there is "just cause" to sustain the charges. In making its determination, the board shall apply the following standards, to the extent applicable:

1. Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
2. Whether the rule or order that the subordinate allegedly violated is reasonable.
3. Whether the chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate a rule or order.
4. Whether the effort described under subd. 3 was fair and objective.
5. Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.
6. Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.
7. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department.



# WISCONSIN STATE LEGISLATURE



**TESTIMONY OF STATE REPRESENTATIVE  
BARBARA TOLES**

In favor of Assembly Bill 599 – Police Pay After Termination

Assembly Committee on Corrections and the Courts  
September 7, 2005

Good morning Chairman Bies and members of the committee. I would like to thank you for holding this public hearing on Assembly Bill 599 and for allowing me to speak in favor.

In 1980, Wisconsin passed legislation known as the “Law Enforcement Officers’ Bill of Rights”. This measure included a number of protections for state officers, such as the right to have a union representative or lawyer present during interrogations into alleged misconduct, and the right to engage in political activity off the job. Those provisions apply to all police officers in the state.

However, the law also has a provision that grants payment of a 1<sup>st</sup> class city police officer’s salary after discharge, pending the outcome of an appeal. Milwaukee is the only 1<sup>st</sup> class city in Wisconsin, hence making Milwaukee police officers the only officers in the state eligible for this benefit. Milwaukee fire fighters are excluded. AB 599 would end this practice. It has the support of Mayor Tom Barrett, the Milwaukee Common Council, and the Milwaukee Journal Sentinel Editorial Board.

The current system is unfair and places an undue burden on Milwaukee taxpayers. According to the Fire and Police Commission, since 1994 there have been 55 terminations. 37 dismissals were upheld by the Commission, three officers were reinstated, and 15 cases are pending, which means “the meter is still running and taxpayers are being held responsible for the bill”.

Nine of the pending cases involve officers fired as a result of their actions in the severe beating of Frank Jude, Jr. last year. Three of those officers face felony charges. According to city records, it is estimated that those three officers will cost the city over \$160,000 in pay and benefits between May 24, when they were fired, and the scheduled start of their criminal trial next March. It is unconscionable that the tax dollars of hard working, law abiding Milwaukee residents are still paying the salaries of these fired officers.

Other examples of officer misconduct that led to termination include:

- Five police officers and a sergeant planned and went sledding while on duty. One officer was seriously injured during the sledding. The other officers, not wanting their on-duty activity to be discovered, moved the injured officer to the steps of a school and called in a false report of "officer down" and fabricated a story that he had been injured chasing a suspect. The injured officer also defrauded the City by filing a claim and receiving worker's compensation for his alleged "duty-related" injuries. Four officers involved were dismissed and appealed to the Fire and Police Commission. The sergeant resigned before charges were issued by the Department, and one officer was suspended but did not appeal. The cost to the City in wages while the dismissal appeals were pending was \$85,239.36.
- A police sergeant, while on patrol, came across a female performing a sex act on a male in a parked car. The sergeant later took the female in his squad car, parked in a secluded area, and engaged in sexual acts with her for about half an hour, ignoring a radio call for service. The sergeant appealed his dismissal to the Commission, which upheld the dismissal. The cost to the City in wages while the appeal was pending was approximately \$7,157.60.
- An off-duty detective was drinking while driving intoxicated, crossed the center island, and swerved into oncoming traffic, colliding with a vehicle and sending its three occupants to the hospital. He was charged criminally for the crash and was dismissed from the Department. He resigned from the Department four months after appealing his dismissal. The cost to the City in wages while the appeal was pending was \$13,973.43.
- An off-duty officer intentionally smoked marijuana and tested positive during a random drug test. His dismissal was upheld by the Commission. The cost to the City in wages while the appeal was pending was \$28,489.12.
- A detective removed money from the scene of an investigation and kept it for his own personal use. He then went to a restaurant and consumed an alcoholic beverage while on duty. In addition to being dismissed, he was charged criminally. The cost to the City was \$67,788.87.
- Several citizens observed a police officer pull a prisoner out of a squad car and beat him while the officer's partner was inside a fast food restaurant. The officer was dismissed and charged criminally. The cost to the City was \$36,346.79.

I believe it is also unfair for Milwaukee police officers to get a special benefit that is not available to other law enforcement or public safety personnel anywhere else in the state. AB 599 will make the laws regarding discipline of police officers consistent and uniform throughout Wisconsin.

Finally, the practice of paying fired police officers while they appeal provides an incentive for officers to file frivolous appeals and drag out the process as long as possible. Since 1990, almost half the fired officers who initially appealed their terminations either resigned or retired before their cases came to trial. Even the President of the Milwaukee Police Association acknowledged that current law creates an opportunity for the system to be manipulated.

In contrast, Milwaukee fire fighters, who are not paid during the appeals process, try to settle their cases as quickly as possible. The average fire fighter case in Milwaukee is resolved in half the time it takes for police appeals. Since 2003, the longest fire fighter case took four months, or about 120 days. Police officer appeals during that same timeframe averaged 202 days.

AB 599 will have no effect on a number of other safeguards currently in place to protect police officers from arbitrary or capricious firings. The police chief must still have just cause to terminate an officer. Police officers will continue to receive pay and benefits if they have been suspended and their cases are under investigation. Officers who have been wrongly terminated and later reinstated would still be entitled to full back pay and benefits.

This legislation is not an attack on police officers in Milwaukee. It is a matter of economic fairness for City taxpayers and consistency with the laws that apply to all other law enforcement personnel throughout Wisconsin. I urge you to support Assembly Bill 599, and I thank you for your time this morning.

# MILWAUKEE JOURNAL SENTINEL

THE MILWAUKEE JO  
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ELIZABETH BRENNER

### QUICK HIT

As a parent, I grieve with Cindy Sheehan over the loss of her son in Iraq. Losing a child is a parent's worst nightmare. And I'm not unsympathetic to her arguments on the war. But when she uses the platform her grief has given her to disparage other grieving mothers who still support the war and to make snide comments about neocons and Jews, she only undermines her cause and her credibility. Maybe it's time to grieve in silence for a while.

Ernst-Ulrich Franzen, deputy editorial page editor



### QUO

"We are out here li  
have help."

The Rev. Issac C  
Center, wi  
comple  
not

## EDITORIALS

# No pay while on appeal

You almost have to admire John Balcerzak's use of hyperbole.

Almost.

Responding to a legislative proposal that would place Milwaukee police on the same level with other police officers around the state, Balcerzak, president of the Milwaukee Police

### FIRED OFFICERS

Association, called the measure an attack on police that would make the city's police chief "judge, jury and executioner."

Can we get serious? The legislative proposal is a fair-minded measure that would save money for Milwaukee taxpayers. Governments already waste enough money — often thanks to unfunded state mandates. This measure deserves swift passage.

The fact is that state law now accords to Milwaukee police a benefit no other police officer in the state receives. Nor do Milwaukee firefighters. Thanks to a 25-year-old law crafted just for officers in the Milwaukee department, officers who have been fired are paid until their appeals are exhausted with the city's Fire and Police Commission.

According to a new analysis, of 81 officers who have been fired since 1990, 79 appealed the dismissals. Eleven officers won their jobs back. The rest lost their appeals or retired or resigned before their appeal hearings.

Fifteen cases are still pending appeal.

This costs serious money. Since 1994, Milwaukee taxpayers have paid more than \$2.1 million in pay and benefits to 32 of the fired officers who were not reinstated, according to figures compiled in April by the Journal Sentinel. The officers were paid for an average of nine months as they appealed, the newspaper found.

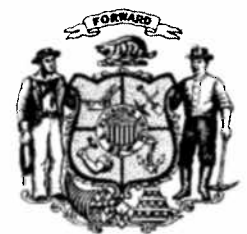
There was plenty of appropriate outrage — including by this Editorial Board — when it was discovered that taxpayer money was being used to pay the salaries of University of Wisconsin officials who had been fired from their jobs. Some were even being paid while in jail. Balcerzak should explain how this is any different.

Fired officers should certainly have the right to appeal their dismissals. Reinstated officers, unjustly fired, should receive back pay. But there is no good reason they — and only they among the state's police officers — should have the right to keep dipping into the taxpayers' pockets while not doing any work.

State Sen. Spencer Coggs (D-Milwaukee), author of the Senate version of the bill, got it right when he said, "This is both a moral and economic issue." And both morals and economics argue for removing a 25-year-old favor to the Milwaukee police union.



# WISCONSIN STATE LEGISLATURE



no date

GOOD AFTERNOON MR. CHAIRMAN AND COMMITTEE MEMBERS.

MY NAME IS JOHN BALCERZAK, AND I AM THE CURRENT PRESIDENT AND A LOBBYIST FOR THE MILWAUKEE POLICE ASSOCIATION. MORE IMPORTANT IS THAT I AM A CITY OF MILWAUKEE POLICE OFFICER.

I HAVE COME HERE TODAY TO VOICE MY OBJECTION TO THIS BILL.

THIS IS A LOCAL MATTER AND CHANGING A LAW SHOULD BE SOMETHING THAT IS DONE LAST AND NOT FIRST. THE CURRENT LAW, 62.50, WHICH SETS THE TIMETABLE FOR HEARINGS AND NOTIFICATIONS IS WORKING AND HAS BEEN WORKING SINCE IT WAS CREATED. WHAT IS NOT WORKING IS THAT THE CITY IS NOT ADHERING TO IT.

THE MAYOR RECOGNIZES WHERE THE PROBLEM LIES. HE HAS ORDERED A BEST PRACTICES REVIEW OF THE FIRE AND POLICE COMMISSION WHICH IS CURRENTLY UNDERWAY, YET HE DOES NOT WANT TO WAIT FOR ITS RESULTS. THE CITY WOULD RATHER SHIFT THIS ISSUE TO THE STATE THEN HANDLE IT THEMSELVES. THE MAYOR HAS THE AUTHORITY UNDER THE CURRENT LAW TO APPOINT ADDITIONAL COMMISSION MEMBERS TO ADDRESS THE SCHEDULING CONFLICTS THAT LEAD TO DELAYED HEARINGS

A CHANGE TO THIS LAW WOULD PUT THE CITY OF MILWAUKEE POLICE OFFICERS BELOW THE LEVEL OF PROTECTIONS THAT ARE AFFORDED TO THE DEPUTIES OF MILWAUKEE COUNTY AND THE OFFICERS IN THE REST OF THE STATE.

THIS LAW AS IS ALLOWS OFFICERS THEIR DUE PROCESS RIGHTS IN FRONT OF AN INDEPENDENT COMMISSION BEFORE THEIR PAY AND BENEFITS ARE STOPPED.

IF THIS LAW WERE CHANGED WE WOULD RETURN TO A TIME WHEN THE CHIEF OF POLICE ABUSED HIS POWER. A TIME WHEN A CHIEF OF POLICE WOULD ORDER AN INVESTIGATION, REVIEW THE INVESTIGATION THAT HE HAD ORDERED AND ISSUE A DISCIPLINE. A TIME WHEN A CHIEF WOULD FIRE FIRST AND LET THE OFFICERS FIGHT TO GET THEIR JOBS BACK IF THEY COULD AFFORD TO DO SO. WHAT HAPPENED TO BEING INNOCENT UNTIL PROVEN GUILTY?

IN 1985 FORMER U.S. SUPREME COURT JUSTICE MARSHALL WROTE AN OPINION IN THE "CLEVELAND BOARD OF EDUCATION VS LOUDERMILL" CASE REGARDING THIS VERY MATTER. HIS OPINION IN PART STATED "THAT PUBLIC EMPLOYEES WHO MAY BE DISCHARGED ONLY FOR CAUSE ARE ENTITLED, UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT"



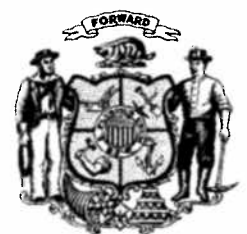
**"THAT BEFORE THE DECISION IS MADE TO TERMINATE AN EMPLOYEE'S WAGES, THE EMPLOYEE IS ENTITLED TO AN OPPORTUNITY TO TEST THE STRENGTH OF THE EVIDENCE BY CONFRONTING AND CROSS-EXAMINING ADVERSE WITNESSES AND BY PRESENTING WITNESSES ON HIS OWN BEHALF"**

**"THAT THESE DISRUPTIONS MIGHT FALL UPON A JUSTIFIABLY DISCHARGED EMPLOYEE IS UNFORTUNATE; THAT THEY MIGHT FALL UPON A WRONGFULLY DISCHARGED EMPLOYEE IS SIMPLY UNACCEPTABLE."**

SO IN CLOSING I ASK THIS COMMITTEE NOT TO SUPPORT THIS BILL BUT  
INSTEAD SEND THE CITY OF MILWAUKEE A MESSAGE TO CONFORM TO  
THE CURRENT LAW  
THANK YOU



# WISCONSIN STATE LEGISLATURE



## YOUR LETTERS

### Legislature restricts city of Milwaukee

A state legislative committee chaired by Rep. Garey Bies of the 1st Assembly District killed a bill Nov. 30 that called for an end to the practice of paying Milwaukee police officers after they have been fired. Rep. Bies maintains that the pay rules are a local issue and should be settled in Milwaukee, not Madison.

As a Milwaukee alderman for more than 16 years and chairman of the city's Finance and Personnel Committee, I agree that this matter is a local issue. But the city of Milwaukee cannot contravene a practice mandated by state law without first changing the governing statute.

Officers in Milwaukee who are fired remain on the payroll with full benefits while they appeal their termination to the city's Fire and Police Commission, a process that takes nine months on average, under a 25-year-old state law that applies only to Milwaukee police. Officers whose appeals fail do not have to repay the city the money and benefits received after their termination.

Yet police officers in all other areas of the state lose their pay immediately at the time of termination.

Since 1990, 81 Milwaukee police officers have been fired, and all but two filed appeals. Milwaukee paid about \$2.5 million in wages and benefits to those 79 officers after they were fired. Only 11 of those 79 officers won their jobs back on appeal.

As the Milwaukee Common Council struggled to pass a balanced, responsible 2006 city budget, the inequity of reducing non-police service levels was glaringly apparent. The \$2.5 million spent on fired

officers would have been sufficient to fund an additional police recruit class in 2006, minus fringe benefits.

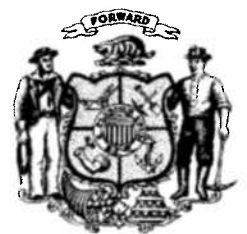
The city of Milwaukee recently revised its hiring guidelines for police recruits to include a psychological evaluation of each applicant, to help determine their fitness to be a police officer in a major city such as ours with a diverse population. Hopefully, this practice may weed out those persons who are not ideally suited for a career in law enforcement, thus reducing the number of potential officers who are more likely to be fired or to open the city to other liability.

The city of Milwaukee would like to end the state-imposed practice of rewarding fired police officers for bad behavior — if the state Legislature would only let us.

**Michael Murphy**  
10th District Alderman  
Milwaukee



WISCONSIN STATE LEGISLATURE



# Bill aimed at ending pay to fired officers voted down

Milwaukee is only city where salaries continue

By JOHN DIEDRICH

jdiedrich@journal Sentinel.com

A state legislative committee on Wednesday killed a bill that called for an end to the practice of paying Milwaukee police officers after they've been fired.

The Assembly Committee on Corrections and the Courts voted 6-3 to defeat the bill. All the Democrats present voted for it and all Republicans voted against it, according to the chairman, Rep. Garey Bies, (R-Sister Bay).

Officers fired in Milwaukee remain on the payroll as they appeal their termination to the Fire and Police Commission under a 25-year-old state law

that applies only to Milwaukee police. Other police officers in the state lose pay at the time of termination. Elsewhere, however, local fire and police commissions, not chiefs, have the authority to fire officers.

Since 1990, 81 Milwaukee officers have been fired, and all but two filed appeals, according to figures from the commission. The city paid roughly \$2.5 million in wages and benefits to those 79 officers after they were fired, city officials said. Eleven won their jobs back on appeal. The officers whose appeals failed do not have to repay the city the money and benefits

Please see **PAY, 10A**

■ **Jude case:** Officers ask panel to recuse itself from appeals. **10A**

# Barrett criticizes bill's rejection

PAY, From 1A

they earned after termination.

In the past decade, appeals have taken an average of nine months, according to a Journal Sentinel analysis. Currently, 14 fired officers remain on the city payroll, including nine who were terminated in May for their alleged roles in the beating of Frank Jude Jr. The city expects to pay more than \$500,000 to fired officers this year, officials said.

"I am extremely disappointed with the committee's action," said Rep. Barbara Toles (D-Milwaukee), the bill's sponsor. "This is a matter of basic equity for Milwaukee taxpayers."

Mayor Tom Barrett said the city could hire a new class of 60 officers with the \$2.5 million it has paid to fired officers since 1990. There are more than 200 officer vacancies in Milwaukee.

"This state policy is preventing us from hiring more police

officers, and the Republicans should be ashamed of themselves," he said, noting that the bill had bipartisan support when it was introduced. "(Officers) are gaming the system. The taxpayers suffer, and public safety suffers. I don't know who would want fired police officers to continue to get paid except these legislators and (the police union)."

Milwaukee Police Association president John Balcerzak said the problem is the length of time it takes for the commission to handle an appeal.

"The problem is not with the law," he said. "It is with applying the law and holding to the timelines that the law allows."

The state law calls for the commission to hold a hearing within 15 days of filing the appeal and also gives each officer a "free" adjournment of up to 15 days. Because of the complexity of the cases, commission staff says it has to give both sides enough time — at least 100 days — to prepare for trial or risk the case being thrown back at them after a court appeal.

The city is studying how commissions in other cities operate.

## HOW THEY VOTED

**Voting against a bill** that would have ended the practice of paying Milwaukee police officers after they are fired were Reps. Garey Bies (R-Sister Bay), Mark Gundrum (R-New Berlin), Gregg Underheim (R-Oshkosh), Carol Owens (R-Oshkosh), Scott Suder (R-Abbotsford) and Daniel LeMahieu (R-Oostburg).

**Voting for the bill** were Reps. Sindy Pope-Roberts (D-Verona), Donna Seidel (D-Wausau) and Joe Parisi (D-Madison). Rep. Sheldon Wasserman (D-Milwaukee) was absent.

Balcerzak said that study may find ways to improve the process, but he stopped short of saying the appeals were taking too long.

Bies said he was concerned that Toles' bill was weighted against the officers and in the city's favor. If the state were to take away this protection from the officers, he suggested, then it should also take away the Milwaukee chief's firing authority, as is the case elsewhere in the state.

"If we aren't going to make it equal on both sides, I wasn't going to support it," Bies said.

Barrett said the city will not strip Chief Nannette Hegerty of her authority to fire.

"This is a big city police department," he said. "Somebody has to be in charge, and the police chief is in charge. To take that power from her would cause even more mayhem."

Bies said the pay rules are a local issue and should be settled in Milwaukee, not in Madison.

"The ball is back in Mayor Barrett's court," Bies said. "They can make it work without the state coming in and mandating."

Barrett agreed it is a local issue and never should have been legislated from Madison 25 years ago. But now it is a state issue, he said.

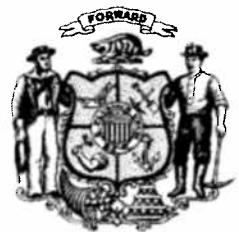
"It is a state law. How can you say it is not a state issue?" he said. "If it is not a state issue, take it off the books."

Toles said she has no plans to reintroduce the bill as long as the Assembly remains under Republican control.

"That's it," she said. "We don't have the votes."



# WISCONSIN STATE LEGISLATURE



AB 599-

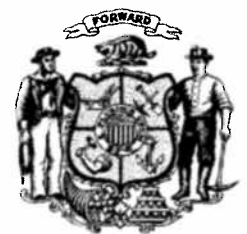
If terminated and case is heard a few days then due process is ok.

Pre-termination due process does not necessarily require a full hearing, but does require terminating authority and employee to have an opportunity to present their sides of the story.





# WISCONSIN STATE LEGISLATURE



599

Process?

Investigation then hearing with  
the accused officer able to  
cross-examine provide witnesses?

OR cross examination/witnesses  
only possible at appeals hearing?

599 - would only address a  
part of the statute that  
deals with the hearing/appeal  
and entire employment relations  
process.

In Milw. the appeals hearing is the first opportunity for officers to defend themselves.

Therefore the process for milw. police officers cannot be compared to other groups.