CHAPTER 165

DEPARTMENT OF JUSTICE

SUBCHAPTER I

LEGAL SERVICES

165.015 Duties. The attorney general shall:

(1) GIVE OPINION TO OFFICERS. Give his opinion in writing, when required, without fee, upon all questions of law submitted to him by the legislature, either house thereof or the senate or assembly committee on organization, or by the head of any department of state government.

(2) PROTECT TRUST FUNDS. Examine all applications for loans from any of the trust funds, and furnish to the commissioners of public lands his opinion in writing as to the regularity of each such application, and also of the validity of any bonds or other securities purchased for the benefit of such funds.

(3) CERTIFY BONDS. Examine a certified copy of all proceedings preliminary to any issue of state bonds or notes, and, if found regular and valid, indorse on each bond or note his certificate of such examination and validity. The attorney general shall also make similar examinations and certificates respecting municipal bonds in the cases specified in s. 67.025.

(4) KEEP STATEMENT OF FEES. Keep a detailed statement of all fees, including his fees as commissioner of public lands, received by him during the preceding year, and file such statement with the department of administration on or before June 30 in each year.

(5) REPORT TO LEGISLATURE. Report to the legislature or either house thereof, when requested, upon any matters pertaining to the duties of his office.

(6) PERFORM OTHER DUTIES. Perform all other duties imposed upon him by law.

History: 1971 c. 40 s. 93; 1971 c. 125; 1983 a. 36 s. 96 (2).

The attorney general, absent specific legislative grant of power, is devoid of the inherent power to initiate and prosecute litigation intended to protect or promote the interests of the state or its citizens and cannot act for the state as a parens patriae. Estate of Sharp, 63 W (2d) 254, 217 NW (2d) 258.

The powers of the attorney general in Wisconsin. Van Alstyne, Roberts, 1974 WLR 721.

165.055 Appointments. (1) The attorney general may appoint a deputy attorney general and assistants each of whom shall be an attorney at law admitted to practice in this state. Such appointments shall be made in writing and filed in the office of the secretary of state, and such appointees shall take and subscribe the constitutional oath of office which shall also be filed. Appointees shall perform such duties as the attorney general prescribes.

(2) The deputy attorney general shall give a bond to the state in the sum of $5,000, with good and sufficient sureties, to be approved by the governor, conditioned for the faithful performance of his duties and the attorney general shall be responsible for all acts of his deputy.

(3) The attorney general may appoint in the unclassified service a director of research and information services, whose salary shall not exceed the maximum of range 15 in pay schedule 1 of the classified service.

(4) The attorney general shall appoint, in the unclassified service, the administrator of the legal services division subject to s. 230.08 (4) (a).

History: 1973 c. 90; 1975 c. 39; 1977 c. 29, 44, 418.
See note to 801.11, citing 63 Atty. Gen. 467.

165.065 Assistant attorney generals; antitrust. (1) At least one assistant attorney general shall be assigned to the investigation and prosecution of violations arising under ch. 133 and shall carry out the duties imposed on the attorney general by ch. 133. All apparent violations of ch. 133 which come to the attention of any officer or agency of state government shall be reported to one of such assistant attorneys general. All officers and agencies shall cooperate with and assist the department of justice in the investigation and prosecution of such apparent violations.

(2) The assistant attorney general in charge of antitrust investigations and prosecutions is to cooperate actively with the antitrust division of the U.S. department of justice in everything that concerns monopolistic practices in Wisconsin, and also to cooperate actively with the department of agriculture, trade and consumer protection in the work which this agency is carrying on under s. 100.20 of the marketing law with regard to monopolistic practices in the field of agriculture and with the federal trade commission on matters arising in or affecting Wisconsin which pertain to its jurisdiction.

History: 1977 c. 29 s. 1650m (4); 1977 c. 260.

165.07 Assistant attorney general—public intervenor. The attorney general shall designate an assistant attorney general on his staff as public intervenor. Written notices of all proceedings under chs. 30, 31, 144 and 147 shall be given to the public intervenor and to the administrators of divisions primarily assigned the departmental functions under chs. 29 and 144 by the agency head responsible for such proceedings. A copy of such notice shall also be given to the scientific areas preservation council. The public intervenor shall formally intervene in such proceedings when requested to do so by an administrator of a division primarily assigned the departmental functions under ch. 29 or 144. The public intervenor may, on his own initiative or upon request of any committee of the legislature, formally intervene in all such proceedings where such intervention is needed for the protection of "public rights" in water and other natural resources, as provided in chs. 30 and 31 and defined by the supreme court. Personnel of the department of natural resources shall upon the request of the public intervenor make such investigations, studies and reports as he may request in connection with such proceedings, either before or after formal intervention. Personnel of state agencies shall at his request provide information, serve as witnesses in such proceedings and otherwise cooperate in the carrying out of his intervention functions. Formal intervention shall be by filing a statement to that effect with the examiner or other person immediately in charge of the proceeding. Thereupon the public intervenor shall be deemed a party in interest with full power to present evidence, subpoena and cross-examine witnesses, submit proof, file briefs or do any other acts appropriate for a party to the proceedings. He may appeal from administrative rulings to the courts and in all administrative proceedings and judicial review proceedings he shall be identified as "public intervenor". This section does not preclude or prevent any division of the department of natural resources, or any other department or independent agency from appearing by its staff as a party in such proceedings.

History: 1973 c. 74.

165.075 Assistant attorney general; public intervenor; authority. In carrying out his or her duty to protect public rights in water and other natural resources, as defined by law under s. 165.07, the public intervenor has the authority to initiate actions and proceedings before any agency or court in order to raise issues, including issues concerning constitutionality, present evidence and testimony and make arguments.

History: 1983 a. 410.

165.076 Assistant attorney general; public intervenor; advisory committee. The attorney general shall appoint a public intervenor advisory committee under s. 15.04 (1) (c). The public intervenor advisory committee shall consist of not less than 7 nor more than 9 members. The members shall have backgrounds in or demonstrated experience or records relating to environmental protection or natural resource conservation. At least one of the members shall have working knowledge in business. At least one of the members shall have working knowledge in agriculture. The public intervenor advisory committee shall advise the public intervenor consistent with his or her duty to protect public rights in water and other natural resources. The public intervenor advisory committee shall conduct meetings consistent with subch. IV of ch. 19 and shall permit public participation and public comment on public intervenor activities.

History: 1983 a. 410.

165.08 Power to compromise. Any civil action prosecuted by the department by direction

of any officer, department, board or commission, shall be compromised or discontinued when so directed by such officer, department, board or commission. Any civil action prosecuted by the department on the initiative of the attorney general, or at the request of any individual may be compromised or discontinued with the approval of the governor. In any criminal action prosecuted by the attorney general, the department shall have the same powers with reference to such action as are vested in district attorneys.

165.09 Removal of barriers to trade or movement of dairy products. The attorney general may take such action as he deems necessary in order to contest or oppose existing statutes, ordinances, regulations, orders or other trade barriers which may restrict the sale in other states of milk or other dairy products produced in Wisconsin; study and investigate problems concerning the free movement of milk and other dairy products in interstate commerce and present the results thereof to such legislative and executive agencies of the federal government and the several states, such studies, investigations and presentations to executive and legislative agencies to be made either individually or jointly with others.

165.25 Duties of department of justice. The department of justice shall:

(1) REPRESENT STATE. Except as provided in s. 59.47 (7), appear for the state and prosecute or defend all actions and proceedings, civil or criminal, in the court of appeals and the supreme court, in which the state is interested or a party, and attend to and prosecute or defend all civil cases sent or remanded to any circuit court in which the state is a party; and, if requested by the governor or either house of the legislature, appear for and represent the state, any state department, agency, official, employe or agent, whether required to appear as a party or witness in any civil or criminal matter, and prosecute or defend in any court or before any officer, any cause or matter, civil or criminal, in which the state or the people of this state may be interested. The radioactive waste review board may request under s. 16.08 (7) that the attorney general intervene in federal proceedings. All expenses of the proceedings shall be paid from the appropriation under s. 20.455 (1) (d).

(2) PROSECUTE BREACHES OF BONDS AND CONTRACTS. Prosecute, at the request of the governor, or of the head of any department of the state government any official bond or any contract in which the state is interested, deposited with any of them, upon a breach thereof, and prosecute or defend for the state all actions, civil or criminal, relating to any matter connected with any of their departments except in those cases where other provision is made.

(3) ADVISE DISTRICT ATTORNEYS. Consult and advise with the district attorneys when requested by them in all matters pertaining to the duties of their office.

(4) FURNISH LEGAL SERVICES; APPROPRIATION. (a) The department of justice shall furnish all legal services required by the investment board, the department of transportation, the department of natural resources and the department of employe trust funds, together with any other services, including stenographic and investigational, as are necessarily connected with the legal work.

(b) The department of justice shall furnish bond counsel services to the building commission when the building commission contracts public debt under subch. I of ch. 18.

(c) The department shall at the end of each fiscal year, except for programs financed out of the general fund and except for services required to be provided by statute other than this subsection, render to the respective departments enumerated in this subsection an itemized statement of the total cost of the legal and other services including travel expenses and legal expenses enumerated in s. 20.455 (1) (d).

(d) Upon receipt of the statement, the respective department head shall audit the same and upon finding it to be correct shall certify the amount of the statement to the department of administration to be paid into the general fund out of the department's proper appropriation.

(5) PREPARE FORMS. Whenever requested by the head of any department of the state government, the department of justice shall prepare proper drafts of forms for contracts and other writings which may be wanted for the use of the state.

(6) ATTORNEY FOR STATE. At the request of the head of any department of state government, the attorney general may appear for and defend any state department, or any state officer, employe or agent of the department in any civil action or other matter brought before a court or an administrative agency which is brought against the state department, or officer, employe or agent for or on account of any act growing out of or committed in the lawful course of an officer's, employe's or agent's duties. Witness fees or other expenses determined by the attorney general to be reasonable and necessary to the defense in the action or proceeding shall be paid as provided for in s. 885.07. The attorney general may compromise and settle the action as the attorney general

determines to be in the best interest of the state. Members, officers and employes of the Wisconsin state agencies building corporation and the Wisconsin state public building corporation are covered by this section. The attorney general may compromise and settle claims asserted before such actions or matters formally are brought or may delegate such authority to the department of administration. This subsection may not be construed as a consent to sue the state or any department thereof or as a waiver of state sovereign immunity.

(6m) ATTORNEY FOR STATE WITNESSES. At the request of the head of any department or agency of state government, the attorney general may appear for and represent any state official, employe or agent who is required to appear as a witness in any administrative or civil matter.

(7) KEEP RECORD OF ACTIONS. The department shall keep a record of all actions and demands prosecuted or defended by the department on behalf of the state and all related proceedings. The department may dispose of public records in accordance with s. 16.61.

(9) PERFORM OTHER DUTIES. The department of justice shall perform all other duties imposed upon the department by law.

History: 1971 c. 125 s. 522 (1); 1971 c. 215; 1973 c. 333; 1975 c. 81, 199; 1977 c. 29 s. 1656 (27); 1977 c. 187, 260, 273, 344; 1981 c. 20, 62, 96; 1983 a. 27; 1983 a. 36 s. 96 (2), (3), (4); 1983 a. 192.

The powers of the attorney general in Wisconsin. Van Alstyne, Roberts, 1974 WLR 721.

165.26 Department of justice may have cases printed. In all state cases to be argued in the supreme court by the department of justice, the department may require the printing by the state printer, when necessary, of the briefs and appendices of the department; and the account therefor shall be paid out of the state treasury and charged to the appropriation in s. 20.455 (1) (d).

History: 1971 c. 125 s. 522 (1); 1977 c. 29 s. 1656 (27); 1977 c. 187 s. 85.

SUBCHAPTER II

DIVISION OF CRIMINAL INVESTIGATION

165.50 Division of criminal investigation. (1) The division of criminal investigation shall perform the following criminal investigatory functions for the state:

(a) Investigate crime that is state-wide in nature, importance or influence.

(b) Conduct arson investigations.

(2) The attorney general shall appoint an administrator of the division of criminal investigation. The investigators of the division shall have the same general police powers as are conferred upon peace officers.

History: 1975 c. 39.

165.51 Administrator. The administrator of the division of criminal investigation shall be the state fire marshal.

History: 1977 c. 260.

165.55 Arson investigation. (1) The chief of the fire department or company of every city, village and town in which a fire department or company exists, and where no fire department or company exists, the city mayor, village president or town clerk shall investigate or cause to be investigated the cause, origin and circumstances of every fire occurring in his city, village or town by which property has been destroyed or damaged when the damage exceeds $500, and on fires of unknown origin he shall especially investigate whether the fire was the result of negligence, accident or design. Where any investigation discloses that the fire may be of incendiary origin, he shall report the same to the state fire marshal.

(2) The division of criminal investigation shall supervise and direct the investigation of fires of incendiary origin when the state fire marshal deems such investigation expedient.

(3) When in the opinion of the state fire marshal investigation is necessary, he shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have any means of knowledge in relation to any case of damage to property by fire or explosives, and if he is of the opinion that there is evidence sufficient to charge any person with a crime under s. 941.11, 943.01, 943.02, 943.03 or 943.04 or with an attempt to commit any of those crimes, he shall cause such person to be prosecuted, and furnish the prosecuting attorney the names of all witnesses and all the information obtained by him, including a copy of all testimony taken in the investigation.

(4) The state fire marshal shall assign at least one deputy fire marshal exclusively to fire marshal duties for counties having a population of 500,000 or more.

(7) The state fire marshal and his subordinates shall each have the power to conduct investigations and hearings and take testimony regarding fires and the causes thereof, and compel the attendance of witnesses. The fees of witnesses shall be paid upon certificates signed by the officer before whom any witnesses shall have attended, and shall be charged to the appropriation for the state fire marshal.

(8) All investigations held by or under the direction of the state fire marshal, or his subordinates, may, in his discretion, be private, and

persons other than those required to be present may be excluded from the place where such investigation is held, and witnesses may be kept apart from each other, and not allowed to communicate with each other until they have been examined.

(9) The state fire marshal and his subordinates may at all reasonable hours in performance of their duties enter upon and examine any building or premises where any fire has occurred and other buildings or premises near the same, and seize any evidence found as a result of such examination which in the opinion of the officer finding the same may be used in any criminal action which may result from such examination or otherwise, and retain it for a reasonable time or until it becomes an exhibit in the action.

(10) The state fire marshal, deputy state fire marshals or chiefs of fire departments shall apply for and obtain special inspection warrants prior to the inspection or investigation of personal or real properties which are not public buildings or for the inspection of portions of public buildings which are not open to the public for the purpose of determining the cause, origin and circumstances of fires either upon showing that consent to entry for inspection purposes has been refused or upon showing that it is impractical to obtain the consent. The warrant may be in the form set forth in s. 66.123. The definition of a public building under s. 101.01 (2) (g) applies to this subsection. No special inspection warrant is required:

(a) In cases of emergency when a compelling need for official action can be shown and there is no time to secure a warrant;

(b) For investigations which occur during or immediately after the fire fighting process; or

(c) For searches of public buildings which are open to the public.

(10m) Any investigation or inspection authorized under sub. (10) shall be conducted by the state fire marshal, deputy state fire marshals or chiefs of fire departments or their designees.

(11) All officers who perform any service at the request of the state fire marshal or his subordinates shall receive fees determined by the state fire marshal and such fees shall be charged to the appropriation for the department of justice.

(13) Any officer named in subs. (1) and (2) who neglects to comply with any of the requirements of this section shall be fined not less than $25 nor more than $200 for each neglect or violation.

(14) The state fire marshal, any deputy fire marshal or fire chief may require an insurer, including the state acting under ch. 619, to furnish any information in its possession relating to a fire loss involving property with respect to which a policy of insurance issued or serviced by the insurer may apply. Any insurer, including the state, may furnish to the state fire marshal, any deputy fire marshal or fire chief information in its possession relating to a fire loss to which insurance issued by it may apply. In the absence of fraud or malice, no insurer furnishing information under this subsection, state fire marshal, deputy fire marshal or fire chief, and no person acting on behalf of the insurer, state fire marshal, deputy fire marshal or fire chief, shall be liable in any civil or criminal action on account of any statement made, material furnished or action taken in regard thereto. Information furnished by an insurer under this subsection shall be held in confidence by the state fire marshal, deputy fire marshal or fire chief and all subordinates until release or publication is required pursuant to a civil or criminal proceeding. Information obtained by the state fire marshal, any deputy fire marshal or fire chief during their investigations of fires determined to be the result of arson may be available to the insurer of the property involved.

History: 1973 c. 333; 1975 c. 224; 1977 c. 260, 341; 1979 c. 133; 1981 c. 318; 1983 a. 189 s. 329 (4)

State fire marshall must establish proper discretionary reasons for exercising privilege of secrecy under (8). Black v. General Electric Co. 89 W (2d) 195, 278 NW (2d) 224 (Ct. App. 1979)

See note to Art. I, sec. 11, citing State v. Monosso, 103 W (2d) 368, 308 NW (2d) 891 (Ct. App. 1981).

Arson investigations under (9) and (10) are subject to search warrant requirements set forth in Michigan v. Tyler, 436 US 499 (1978). Consent to search discussed. 68 Atty. Gen. 225.

165.60 Law enforcement. The division of criminal investigation is authorized to enforce ss. 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03 and 945.04 and shall be invested with the powers conferred by law upon sheriffs and municipal police officers in the performance of such duties. Nothing herein shall deprive or relieve sheriffs, constables and other local police officers of the power and duty to enforce said sections, and such officers shall likewise enforce said sections.

History: 1975 c. 39

165.70 Investigation of state-wide crime. (1) The division of criminal investigation shall:

(a) Investigate crime which is state-wide in nature, importance or influence;

(b) Enforce chs. 161 and 945 and ss. 940.20 (3), 941.25 to 941.27, 943.01 (2) (c), 943.27, 943.28, 943.30, 944.30, 944.31, 944.32, 944.33, 944.34, 946.65 and 947.02 (3) and (4);

(d) Enforce and administer s. 165.55.

(e) Investigate violations of ch. 163 that are statewide in nature, importance or influence.

(2) The attorney general shall appoint, under the classified service, investigative personnel to achieve the purposes set out in sub. (1) who shall have the powers of a peace officer. As many as are deemed necessary of the investigators so appointed shall be trained in drugs and narcotics law enforcement, or shall receive such training within one year of their appointment, and they shall assist, when appropriate, local law enforcement agencies to help them meet their responsibilities in this area.

(3) It is the intention of this section to give the attorney general responsibility for devising programs to control crime state-wide in nature, importance or influence, drugs and narcotics abuse, commercial gambling, prostitution, and arson. Nothing herein shall deprive or relieve local peace officers of the power and duty to enforce those provisions enumerated in sub. (1).

(4) Local district attorneys, sheriffs and chiefs of police shall cooperate and assist the personnel of the division in the performance of their duties.

History: 1971 c. 40, 211, 307; 1973 c. 156; 1975 c. 39; 1977 c. 173 s. 168; 1977 c. 215, 260; 1977 c. 272 s. 98.

SUBCHAPTER III

DIVISION OF LAW ENFORCEMENT SERVICES

165.75 Crime laboratory. (1) In this section and ss. 165.78 to 165.81:

(a) "Administrator" means the administrator of the division of law enforcement services.

(b) "Employe" means any person in the service of the laboratory other than the administrator.

(c) "Laboratory" means the crime laboratory.

(2) The crime laboratory shall be located in the city of Madison. The personnel of the laboratory shall consist of such employes as are authorized under s. 20.922.

(3) (a) The purpose of the laboratory is to establish, maintain and operate a crime laboratory to provide technical assistance to local law enforcement officers in the various fields of scientific investigation in the aid of law enforcement. Without limitation because of enumeration the laboratory shall maintain services and employ the necessary specialists, technical and scientific employes for the recognition and proper preservation, marking and scientific analysis of evidence material in the investigation and prosecution of crimes in such fields as firearms identification, the comparison and identification of toolmarks, chemistry, identification of questioned documents, metallurgy, comparative microscopy, instrumental detection of deception, the identification of fingerprints, toxicology, serology and forensic photography.

(b) The administrator and employes of the division of law enforcement services are not peace officers and shall have no power of arrest or to serve or execute criminal process. They shall not be appointed as deputy sheriffs and shall not be given police powers by appointment or election to any office. Laboratory employes shall not undertake investigation of criminal conduct except upon the request of a sheriff, coroner, medical examiner, district attorney, chief of police, warden or superintendent of any state prison, attorney general or governor. The head of any state agency may request investigations but in such cases the services shall be limited to the field of health, welfare and law enforcement responsibility which has by statute been vested in the particular state agency.

(c) Upon such request the laboratory shall collaborate fully in the complete investigation of criminal conduct within its competence in the forensic sciences including field investigation at the scene of the crime and for this purpose may equip a mobile unit or units.

(d) The services of the laboratory available to such officer shall include appearances in court as expert witnesses.

(e) The administrator may decline to provide laboratory service in any case not involving a potential charge of felony.

(f) The services of the laboratory may be provided in civil cases in which the state or any department, bureau, agency or officer of the state is a party in an official capacity, when requested to do so by the attorney general.

(4) The operation of the laboratory shall conform to the rules and policies established by the attorney general.

History: 1973 c. 272; 1977 c. 260; 1981 c. 314; 1983 a. 189.

An evaluation of drug testing procedures. Stein, Laessig, Indriksons, 1973 WLR 727.

165.78 Information center; training activities. (1) The division of law enforcement services shall act as a center for the clearance of information between law enforcement officers. In furtherance of this purpose it shall issue bulletins by mail or its telecommunication system. The division shall at all times collaborate and cooperate fully with the F.B.I. in exchange of information.

(2) The division shall cooperate and exchange information with other similar organizations in other states.

(3) The division may prepare and conduct informational and training activities for the benefit of law enforcement officers and professional groups.

History: 1977 c. 260

165.79 Evidence privileged. (1) Evidence, information and analyses of evidence obtained from law enforcement officers by the laboratory is privileged and not available to persons other than law enforcement officers nor is the defendant entitled to an inspection of information and evidence submitted to the laboratory by the state or of the laboratory's findings, or to examine laboratory personnel as witnesses concerning the same, prior to trial, except to the extent that the same is used by the state at a preliminary hearing. Upon request of a defendant in a felony action, approved by the presiding judge, the laboratory shall conduct analyses of evidence upon behalf of such defendant. No prosecuting officer is entitled to an inspection of information and evidence submitted to the laboratory by the defendant, or of the laboratory's findings, or to examine laboratory personnel as witnesses concerning the same, prior to trial, except to the extent that the same is used by the accused at a preliminary hearing. Employes of the laboratory who made examinations or analyses of evidence shall attend the criminal trial as witnesses, without subpoena, upon reasonable written notice from either party requesting such attendance. Nothing in this section shall limit the right of a court to order the production of evidence or reports pursuant to s. 971.23 prior to trial.

(2) Upon the termination or cessation of the criminal proceedings, the privilege of the findings obtained by the laboratory may be waived in writing by the administrator and the prosecutor involved in the proceedings. The employes of the laboratory may then be subpoenaed in civil actions in regard to any information and analysis of evidence previously obtained in such criminal investigation, but the laboratory shall not engage in any investigation requested solely for the preparation for trial of a civil matter. Upon appearance as a witness or receipt of a subpoena or notice to prepare for trial in a civil action, or appearance either with or without subpoena, the laboratory shall be compensated by the party at whose request the appearance or preparation was made in a reasonable amount to be determined by the trial judge, which fee shall be paid into the state treasury. In fixing such compensation the court may give consideration to the time spent in obtaining and analyzing the evidence for the purposes of criminal proceedings.

(3) (a) In this paragraph, "local health department" means a city, county, city-county or multicounty health department.

(b) At any preliminary examination, a report of the laboratory's, state laboratory of hygiene's or local health department's findings with reference to all or any part of the evidence submitted, certified as correct by the administrator, the director of the state laboratory of hygiene, the head of the local health department or a person designated by any of them, shall, when offered by the state or the accused, be received as evidence of the facts and findings stated, if relevant. The expert who made the findings need not be called as a witness.

History: 1977 c. 260; 1979 c. 221; 1981 c. 20; 1983 a. 459

165.80 Cooperation with other state departments. For the purpose of coordinating the work of the laboratory with the research departments located in the university of Wisconsin, the attorney general and the university of Wisconsin may agree for the use of laboratories and physical facilities in the university and the exchange and utilization of personnel between the laboratory and the university. The university and crime laboratory cooperation council shall act in an advisory capacity to the attorney general.

165.81 Disposal of evidence. (1) Whenever the administrator is informed by the submitting officer or agency that physical evidence in the possession of the laboratory is no longer needed the administrator may, unless otherwise provided by law, either destroy the same, retain it in the laboratory or turn it over to the university of Wisconsin upon the request of the head of any department. Whenever the administrator received information from which it appears probable that such evidence is no longer needed, he may give written notice to the submitting agency and the appropriate district attorney, by registered mail, of his intention to dispose of the evidence and if no objection is received within 20 days after such notice was mailed he may dispose of such evidence.

(2) Any electric weapon, as defined in s. 941.295 (4), in the possession of the laboratory shall either be destroyed or turned over to an agency authorized to have electric weapons under s. 941.295 (2).

History: 1981 c. 348

165.83 Criminal identification, records and statistics. (1) DEFINITIONS. As used in this section and s. 165.84:

(a) "Division" means the division of law enforcement services.

(b) "Law enforcement agency" means a governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employes of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(c) "Offense" means an act which is a felony, a misdemeanor or a violation of a city, county, village or town ordinance.

(2) The division shall:

(a) Obtain and file fingerprints, descriptions, photographs and any other available identifying data on persons who have been arrested or taken into custody in this state:

1. For an offense which is a felony.

2. For an offense which is a misdemeanor or a violation of an ordinance involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, controlled substances under ch. 161, firearms, dangerous weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks.

3. For an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under subd. 2.

4. As a fugitive from justice.

5. For any other offense designated by the attorney general.

(b) Accept for filing fingerprints and other identifying data, taken at the discretion of the law enforcement agency involved, on persons arrested or taken into custody for offenses other than those listed in par. (a).

(c) Obtain and file fingerprints and other available identifying data on unidentified human corpses found in this state.

(d) Obtain and file information relating to identifiable stolen or lost property.

(e) Obtain and file a copy or detailed description of each arrest warrant issued in this state for the offenses under par. (a) or s. 800.03 (4) but not served because the whereabouts of the person named on the warrant is unknown or because that person has left the state. All available identifying data shall be obtained with the copy of the warrant, including any information indicating that the person named on the warrant may be armed, dangerous or possessed of suicidal tendencies.

(f) Collect information concerning the legal action taken in connection with offenses committed in this state from the inception of the complaint to the final discharge of the defendant and such other information as may be useful in the study of crime and the administration of justice. The administrator of the division may determine any other information to be obtained regarding crime records.

(g) Furnish all reporting officials with forms and instructions which specify in detail the nature of the information required under pars. (a) to (f) and any other matters which facilitate collection.

(h) Cooperate with and assist all law enforcement agencies in the state in the establishment of a state system of criminal identification and in obtaining fingerprints and other identifying data on all persons described in pars. (a), (b) and (c).

(i) Offer assistance and, when practicable, instructions to all local law enforcement agencies in establishing efficient local bureaus of identification and records systems.

(j) Compare the fingerprints and descriptions that are received from law enforcement agencies with the fingerprints and descriptions already on file and, if the person arrested or taken into custody is a fugitive from justice or has a criminal record, immediately notify the law enforcement agencies concerned and supply copies of the criminal record to these agencies.

(k) Make available all statistical information obtained to the governor and the legislature.

(m) Prepare and publish reports and releases, at least once a year, containing the statistical information gathered under this section and presenting an accurate picture of the operation of the agencies of criminal justice.

(n) Make available upon request, to all local and state law enforcement agencies in this state, to all federal law enforcement and criminal identification agencies, and to state law enforcement and criminal identification agencies in other states, any information in the files of the division which will aid these agencies in the performance of their official duties. For this purpose the division shall operate on a 24-hour a day basis, 7 days a week. Such information may also be made available to any other agency of this state or political subdivision of this state, and to any other federal agency, upon assurance by the agency concerned that the information is to be used for official purposes only.

(p) Cooperate with other agencies of this state and the national crime information center systems of the F.B.I. in developing and conducting an interstate, national and international system of criminal identification, records and statistics.

History: 1971 c. 219; 1983 a. 27, 535.

Identification records should be made by local law enforcement agencies of juveniles arrested or taken into custody pursuant to (2) for confidential reporting to the department of justice. 62 Atty. Gen. 45.

165.84 Cooperation in criminal identification, records and statistics. (1) All persons in charge of law enforcement agencies shall obtain, or cause to be obtained, the fingerprints in duplicate, according to the fingerprint system of identification established by the director of the F.B.I., full face, profile and full length photographs, and other available identifying data, of each person arrested or taken into custody for an offense of a type designated in s. 165.83 (2) (a), of all persons arrested or taken into custody as fugitives from justice, and fingerprints in duplicate and other identifying data of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed, taken within the previous year, are on file at the division. Fingerprints and other identifying data of persons arrested or taken into custody for offenses other than those designated in s. 165.83 (2) (a) may be taken at the discretion of the law enforcement agency concerned. Any person arrested or taken into custody and subsequently released without charge, or cleared of the offense through court proceedings, shall have any fingerprint record taken in connection therewith returned upon request.

(2) Fingerprints and other identifying data required to be taken under sub. (1) shall be forwarded to the division within 24 hours after taking for filing and classification, but the period of 24 hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the law enforcement agency concerned, but, if not forwarded, the fingerprint record shall be marked "Photo available" and the photographs shall be forwarded subsequently if the division so requests.

(3) All persons in charge of law enforcement agencies shall forward to the division copies or detailed descriptions of the arrest warrants and the identifying data described in s. 165.83 (2) (e) immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If the warrant is subsequently served or withdrawn, the law enforcement agency concerned must immediately notify the division of such service or withdrawal. In any case, the law enforcement agency concerned must annually, no later than January 31 of each year, confirm to the division all arrest warrants of this type which continue to be outstanding.

(4) All persons in charge of state penal and correctional institutions shall obtain fingerprints, according to the fingerprint system of identification established by the director of the F.B.I., and full face and profile photographs of all persons received on commitment to these institutions. The prints and photographs so taken shall be forwarded to the division, together with any other identifying data requested, within 10 days after the arrival at the institution of the person committed. Full length photographs in release dress shall be taken immediately prior to the release of such persons from these institutions. Immediately after release, these photographs shall be forwarded to the division.

(5) All persons in charge of law enforcement agencies, all clerks of court, all municipal judges where they have no clerks, all persons in charge of state and county penal and correctional institutions, and all persons in charge of state and county probation and parole offices, shall supply the division with the information described in s. 165.83 (2) (f) on the basis of the forms and instructions to be supplied by the division under s. 165.83 (2) (g).

(6) All persons in charge of law enforcement agencies in this state shall furnish the division with any other identifying data required in accordance with guidelines established by the division. All law enforcement agencies and penal and correctional institutions in this state having criminal identification files shall cooperate in providing to the division copies of such items in these files as will aid in establishing the nucleus of the state criminal identification file.

History: 1977 c. 305 s. 64.

165.85 Law enforcement standards board. (1) FINDINGS AND POLICY. The legislature finds that the administration of criminal justice is of statewide concern, and that law enforcement work is of vital importance to the health, safety and welfare of the people of this state and is of such a nature as to require training, education and the establishment of standards of a proper professional character. The public interest requires that these standards be established and that this training and education be made available to persons who seek to become law enforcement or jail officers, persons who are serving as these officers in a temporary or probationary capacity and persons already in regular service.

(2) DEFINITIONS. In this section and in s. 165.86:

(a) "Board" means the law enforcement standards board.

(b) "Division" means the division of law enforcement services.

(bg) "Jail" means a county jail, rehabilitation facility established by s. 59.07 (76), county house of correction under s. 56.16 or secure detention facility as defined in s. 48.02 (16).

(bn) "Jail officer" means any person employed by any political subdivision of the state

for the purpose of supervising, controlling or maintaining a jail or the persons confined in a jail. "Jail officer" includes officers regardless of whether they have been sworn regarding their duties or whether they serve on a full-time basis.

(c) "Law enforcement officer" means any person employed by the state or any political subdivision of the state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances he is employed to enforce.

(d) "Political subdivision" means counties, cities, villages and towns.

(3) POWERS. The board may:

(a) Promulgate rules for the administration of this section including the authority to require the submission of reports and information pertaining to the administration of this section by law enforcement agencies in this state.

(b) Establish minimum educational and training standards for admission to employment as a law enforcement officer: 1) in permanent positions, and 2) in temporary, probationary or part-time status.

(c) Certify persons as being qualified under this section to be law enforcement or jail officers.

(d) Establish minimum curriculum requirements for preparatory courses and programs, and recommend minimum curriculum requirements for in-service and advanced courses and programs, in schools operated by or for this state or any political subdivision thereof for the specific purpose of training law enforcement recruits, law enforcement officers, jail officer recruits or jail officers in areas of knowledge and ability necessary to the attainment of effective performance as an officer, and ranging from traditional subjects such as first aid, patrolling, statutory authority, techniques of arrest and firearms to subjects designed to provide a better understanding of ever-increasing complex problems in law enforcement such as human relations, civil rights, constitutional law and supervision, control and maintenance of a jail. The board shall appoint a 13-member advisory curriculum committee consisting of 6 chiefs of police and 6 sheriffs to be appointed on a geographic basis of not more than one chief of police and one sheriff from any one of the 8 state administrative districts together with the director of training of the Wisconsin state patrol. This committee will act in an advisory capacity in the establishment of the curriculum requirements.

(e) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies and with universities, colleges, the board of vocational, technical and adult education and other institutions concerning the development of law enforcement training schools, degree programs or specialized courses of instruction.

(g) Conduct and stimulate research which is designed to improve law enforcement administration and performance.

(h) Make recommendations concerning any matter within its purview.

(i) Make such evaluations as are necessary to determine if participating governmental units are complying with this section.

(j) Adopt rules under ch. 227 for its internal management, control and administration.

(4) REQUIRED STANDARDS. (a) The following law enforcement officers are not required to meet any requirement of pars. (b) 1 and (c) as a condition of tenure or continued employment. The failure of any such law enforcement officer to fulfill those requirements does not make that officer ineligible for any promotional examination for which he or she is otherwise eligible. Those law enforcement officers may voluntarily participate in this program.

1. Law enforcement officers serving under permanent appointment prior to January 1, 1974.

2. Law enforcement officers who are elected by popular vote.

(an) Except as provided in par. (ap), jail officers are required to meet the requirements of pars. (b) 2 and (c) as a condition of tenure or continued employment regardless of the date of their appointment.

(ap) Jail officers serving under permanent appointment prior to July 2, 1983, are not required to meet any requirement of pars. (b) 2 and (c) as a condition of tenure or continued employment. The failure of any such jail officer to fulfill those requirements does not make that officer ineligible for any promotional examination for which he or she is otherwise eligible. Those jail officers may voluntarily participate in this program.

(b) 1. No person may be appointed as a law enforcement officer, except on a temporary or probationary basis, unless the person has satisfactorily completed a preparatory program of law enforcement training approved by the board and has been certified by the board as being qualified to be a law enforcement officer. The program shall include at least 240 hours of training. The board shall promulgate a rule under ch. 227 providing a specific curriculum for a conventional 240-hour preparatory program and a competency-based variation of the program which may not exceed 320 hours. The rule shall ensure that there is an adequate amount of training to enable the person to deal effectively with domestic abuse incidents. The

period of temporary or probationary employment established at the time of initial employment shall not be extended by more than one year for an officer lacking the training qualifications required by the board. The total period during which a person may serve as a law enforcement officer on a temporary or probationary basis without completing a preparatory program of law enforcement training approved by the board shall not exceed 2 years, except that the board shall permit part-time law enforcement officers to serve on a temporary or probationary basis without completing a program of law enforcement training approved by the board to a period not exceeding 6 years. For purposes of this section, a part-time law enforcement officer is a law enforcement officer who routinely works not more than one-half the normal annual work hours of a full-time employe of the employing agency or unit of government. Law enforcement training programs including municipal, county and state programs meeting standards of the board shall be acceptable as meeting these training requirements.

2. No person may be appointed as a jail officer, except on a temporary or probationary basis, unless the person has satisfactorily completed a preparatory program of jail officer training approved by the board and has been certified by the board as being qualified to be a jail officer. The program shall include at least 80 hours of training. The period of temporary or probationary employment established at the time of initial employment shall not be extended by more than one year for an officer lacking the training qualifications required by the board. Jail officer training programs including municipal, county and state programs meeting standards of the board shall be acceptable as meeting these training requirements.

(c) In addition to the requirements of par. (b), the board may, by rule, fix such other minimum qualifications for the employment of law enforcement or jail officers as relate to the competence and reliability of persons to assume and discharge the responsibilities of law enforcement or jail officers, and the board shall prescribe the means for presenting evidence of fulfillment of these requirements.

(d) The board shall issue a certificate evidencing satisfaction of the requirements of pars. (b) and (c) to any applicant who presents such evidence as is required by its rules, of satisfactory completion or requirements in another jurisdiction equivalent in content and quality to those fixed by the board under the board's authority as set out in pars. (b) and (c).

(e) This section does not preclude any law enforcement agency or sheriff from setting recruit training and employment standards which are higher than the minimum standards set by the board.

(5) SCHOOLS AND PROGRAMS; GRANTS. (a) The board may authorize and approve law enforcement or jail officer training programs conducted by an agency of a political subdivision or an agency of the state when their programs meet the standards required by the board. No authority granted in this paragraph extends to the board selecting a site for a state police or jail officer academy and expending funds thereon without further legislation.

(b) The board shall authorize the reimbursement to each political subdivision of the salary and of the allowable tuition, living and travel expenses incurred by officers who satisfactorily complete training at schools approved by the board. Reimbursement of these expenses shall be 100% for the first 240 hours of conventional or competency-based law enforcement recruit training, 60% for additional conventional law enforcement recruit training up to 320 hours or 100% for additional competency-based law enforcement recruit training up to 320 hours and 100% for the first 80 hours of conventional or competency-based jail officer training. After June 30, 1985, if the claims under this paragraph exceed the moneys available for reimbursement, the department shall prorate the reimbursement of salary expenses under this paragraph. Funds may also be distributed for attendance at other training programs and courses or for training services on a priority basis to be decided by the department of justice.

(c) The board may provide grants as a reimbursement for actual expenses incurred by state agencies or political subdivisions for providing training programs to officers from other jurisdictions within the state.

(6) FINANCES. The board may accept for any of its purposes and functions under this section any and all donations, both real and personal, and grants of money from any governmental unit or public agency, or from any institution or person, and may receive and utilize the same. Any arrangements pursuant to this subsection shall be detailed in any report of the board submitted under s. 15.07 (6), which shall include the identity of the donor, the nature of the transaction, and the conditions, if any.

History: 1973 c. 90, 333; 1975 c. 94 s. 91 (11); 1977 c. 29, 418; 1979 c. 111; 1981 c. 20; 1983 a. 27.

Rule adopted under this section properly barred this nonpardoned felon from holding police job. Law Enforce. Stds. Bd. v. Lyndon Station, 101 W (2d) 472, 305 NW (2d) 89 (1981).

See note to 62.13, citing Kaiser v. Bd. of Police & Fire Commrs. 104 W (2d) 498, 311 NW (2d) 646 (1981).

Chief of police was entitled to hearing meeting due process requirements prior to discharge from office. Jessen v. Village of Lyndon Station, 519 F Supp. 1183 (1981).

165.86 Law enforcement services. The division of law enforcement services shall:

(1) (a) Supply the staffing needs of the law enforcement standards board.

(b) Identify state agencies and political subdivisions which employ law enforcement officers in the state, notify the appropriate officials of the standards of employment and preparatory training established by the board, and develop appropriate procedures whereby acceptable evidence of compliance with the board's employment and preparatory training standards may be submitted.

(2) (a) Identify and coordinate all presently existing preparatory training activities in law enforcement in the state, and expand the coordinated program to the extent necessary to supply the training required for all recruits in the state under the preparatory training standards and time limits set by the board.

(b) Organize a program of training, which shall encourage utilization of existing facilities and programs through cooperation with federal, state and local agencies and institutions presently active in this field. Priority shall be given to the establishment of the state-wide preparatory training program described in sub. (1), but the division shall cooperate in the creation and operation of in-service, advanced and special courses which meet the curriculum standards recommended by the board. The division shall keep appropriate records of all such training courses given in the state and the results thereof in terms of persons attending, agencies represented, and, where applicable, individual grades given.

165.87 Law enforcement training fund. (1) FUND. On or after July 2, 1983:

(a) Eleven-fifteenths of all moneys collected from penalty assessments under this section shall be deposited in s. 20.455 (2) (i) and utilized in accordance with s. 165.85 (5). The moneys deposited in s. 20.455 (2) (i) constitute the law enforcement training fund.

(b) Two-fifteenths of all moneys collected from penalty assessments under this section shall be deposited in s. 20.435 (3) (jp) and utilized in accordance with s. 46.057.

(c) Of the balance of the moneys collected from penalty assessments under this section on or after July 1, 1980, 62.2% shall be deposited under s. 20.255 (2) (g) and the remainder shall be deposited under s. 20.255 (1) (hr).

(2) LEVY OF PENALTY ASSESSMENT. (a) On or after July 2, 1983, whenever a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance except for state laws or municipal or county ordinances involving nonmoving traffic violations, there shall be imposed in addition a penalty assessment in an amount of 15% of the fine or forfeiture imposed. If multiple offenses are involved, the penalty assessment shall be based upon the total fine or forfeiture for all offenses. When a fine or forfeiture is suspended in whole or in part, the penalty assessment shall be reduced in proportion to the suspension.

(b) If a fine or forfeiture is imposed by a court of record, after a determination by the court of the amount due, the clerk of the court shall collect and transmit such amount to the county treasurer as provided in s. 59.395 (5). The county treasurer shall then make payment to the state treasurer as provided in s. 59.20 (5) (b).

(c) If a fine or forfeiture is imposed by a municipal court, after a determination by the court of the amount due, the court shall collect and transmit such amount to the treasurer of the county, city, town or village, and that treasurer shall make payment to the state treasurer as provided in s. 66.12 (1) (b).

(d) If any deposit of bail is made for a noncriminal offense to which this section applies, the person making the deposit shall also deposit a sufficient amount to include the assessment prescribed in this section for forfeited bail. If bail is forfeited, the amount of the assessment shall be transmitted monthly to the state treasurer under this section. If bail is returned, the assessment shall also be returned.

History: 1977 c. 29, 418; 1979 c. 331; 1981 c. 20; 1983 a. 27.

As used in 165.87 (2) the words "nonmoving traffic violations" apply only to violations of ordinances adopted under ss. 349.13 and 349.14 and violations of ss. 346.50 through 346.55. 66 Atty. Gen. 308.

165.90 Law enforcement aid to counties with Indian reservations. Any county which has a federally recognized Indian reservation within or partially within its boundaries may make annual application in accordance with s. 59.07 (141) to the department of justice to receive aid in the amount of $7,500 per state fiscal year from the appropriation under s. 20.455 (2) (d) for the purpose of defraying the expense of performing additional law enforcement duties of sheriffs arising by reason of federal legislation transferring jurisdiction over Indian criminal law matters to the state. The county shall obtain the advice of the tribal council as to specific law enforcement needs on the reservation. The application shall include a statement of the tribal council's advice on law enforcement needs and shall specify the proposed law enforcement activities on the reservation for the state fiscal year for which aid is sought. Upon review of the application and, if relevant, an evaluation of the extent to which the proposed

law enforcement activities were performed in the previous fiscal year, the department may annually certify a county as eligible to receive funds under s. 20.455 (2) (d). In August of each year, the county board for each county receiving funds under s. 20.455 (2) (d) shall submit a report to the department regarding the performance of the proposed law enforcement activities. A county may receive funds under s. 20.455 (2) (d) in any fiscal year in which any program within the county receives funds under s. 20.455 (2) (e).

History: 1983 a. 523

165.91 Cooperative county-tribal law enforcement programs. (1) Except as provided in sub. (4), any county which contains a tax-exempt Indian reservation within its boundaries may enter into an agreement, in accordance with s. 59.07 (142), with an Indian tribe located in the county to establish a cooperative county-tribal law enforcement program. The purposes of providing funding to cooperative county-tribal law enforcement programs under this section are to support cooperative efforts of counties and tribes to improve the quality of law enforcement services which counties are obligated to perform on Indian reservations and to provide models for other counties and tribes in the state which are seeking to improve the provision of law enforcement services on Indian reservations.

(2) To receive aid under this section, a county and tribe shall develop and submit a joint program plan to the department of justice for approval. Upon request, the department shall provide technical assistance to counties and tribes in formulating a program plan. The plan shall identify all of the following:

(a) The background of the cooperative county-tribal law enforcement program for which funding is sought.

(b) The program's need for funding under this section.

(c) The governmental unit which shall administer aid received, the method by which aid shall be disbursed and the source of any matching funds provided.

(d) The types of law enforcement services to be performed on the reservation and the persons who shall perform those services.

(e) The method by which county and tribal input into program planning and implementation shall be assured.

(f) The program policies regarding deputization, training and insurance of law enforcement officers.

(g) The recordkeeping procedures and types of data to be collected by the program.

(h) Any other information required by the department or deemed relevant by the county and tribe submitting the plan.

(3) Upon approval of the plan, the department shall certify the program as eligible to receive aid under s. 20.455 (2) (e) in an amount not to exceed $20,000 per fiscal year for a period not to exceed 3 consecutive fiscal years. The department shall distribute moneys to an approved program in a fiscal year only if $5,000 of nonstate moneys are expended in that fiscal year for the program. Annually, on or before January 15, the department shall report to the legislature and the governor on the performance of cooperative county-tribal law enforcement programs receiving aid under this section and on the applicability and value of those programs for other counties and tribes.

(4) A county and tribe are eligible to receive aid under this section only if they had a county-tribal law enforcement program in effect on January 1, 1983, which included provisions for deputization, training, insurance and oversight of law enforcement officers.

(5) This section does not apply after July 1, 1986.

History: 1983 a. 27.