

**2009 DRAFTING REQUEST**

**Bill**

Received: **09/18/2008**

Received By: **mshovers**

Wanted: **As time permits**

Identical to LRB:

For: **Ann Hraychuck (608) 267-2365**

By/Representing: **Stephanie**

This file may be shown to any legislator: **NO**

Drafter: **mshovers**

May Contact:

Addl. Drafters: **rryan  
jkuesel  
mkunkel  
agary**

Subject: **Local Gov't - counties  
Local Gov't - munis generally  
Transportation - other  
Education - miscellaneous  
State Govt - miscellaneous**

Extra Copies: **EVM**

Submit via email: **YES**

Requester's email: **Rep.Hraychuck@legis.wisconsin.gov**

Carbon copy (CC:) to:

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**Pre Topic:**

No specific pre topic given

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**Topic:**

Psychological evaluations for law enforcement personnel

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**Instructions:**

See attached. A candidate for law enforcement must be evaluated by a licensed psychologist (see s. 455.01 (4)); the report must be sent to the hiring authority.

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**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	mshovers 09/19/2008 rryan	wjackson 10/02/2008		_____ _____ _____			S&L



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/?	mshovers 09/19/2008 rryan	wjackson 10/02/2008		_____			S&L

Vers.      Drafted      Reviewed      Typed      Proofed      Submitted      Jacketed      Required

09/22/2008

agary

09/22/2008

mkunkel

09/24/2008

jkreye

09/24/2008

jkuesel

09/25/2008

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jfrantze

10/03/2008

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cduerst

10/03/2008

FE Sent For:

**<END>**

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1/?	mshovers	1 WLj 10/1		Jb [signature] 10/3			
11 MES 9/19				10/3			

**LRB-0299**

09/18/2008 03:13:56 PM

Page 2

FE Sent For:

<END>

**Shovers, Marc**

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**From:** Hilton, Stephanie  
**Sent:** Wednesday, September 17, 2008 3:12 PM  
**To:** Shovers, Marc  
**Subject:** Hraychuck Draft Requests

Good afternoon Marc,

Rep. Ann Hraychuck would like two bills from the 2007-08 session redrafted for introduction in the 2009-2010 legislative session:

2007 LRB 3292/2 (AB 787), relating to psychological evaluations for law enforcement

~~\_\_\_\_\_~~

Thank you!

-0299/1

2009

2007 ASSEMBLY BILL 787

stays FMNR

February 11, 2008 - Introduced by Representatives HRAYCHUCK, BIES, BLACK, GUNDERSON, HAHN, MURSAU, A. OTT, SHERIDAN, SINICKI, TURNER, VRUWINK, ZEPNICK and ZIEGELBAUER, cosponsored by Senators HANSEN, A. LASEE and LEHMAN. Referred to Committee on Corrections and Courts.

LPS: Please PWF

open

1 AN ACT to amend 16.84 (2), 23.10 (1) and 36.11 (2) (b); and to create 59.26 (1m),  
2 60.56 (3), 61.65 (1m), 61.66 (1m), 62.13 (4) (am), 62.50 (2m), 73.03 (64), 110.07  
3 (7), 111.91 (2) (t), 165.70 (5) and 165.85 (4) (g) of the statutes; relating to:  
4 psychological evaluations for law enforcement officers, providing an exemption  
5 from emergency rule procedures, and requiring the exercise of rule-making  
6 authority.

Analysis by the Legislative Reference Bureau

Under current law, the Law Enforcement Standards Board (board) establishes minimum qualification standards for law enforcement officers. The board may establish, in addition to education and training standards, qualification standards relating to the competence and reliability of a person to assume and discharge the responsibilities of a law enforcement officer.

This bill provides that a candidate for a full-time law enforcement or tribal law enforcement officer position must submit to a psychological evaluation before being appointed as a full-time law enforcement or tribal law enforcement officer. This evaluation requirement applies to law enforcement or tribal law enforcement officers appointed on or after January 1, 2009. The bill also requires local law enforcement agencies, and state agencies that employ law enforcement officers, to review the psychological evaluation of a candidate for a law enforcement officer position before appointing the individual as a full-time law enforcement officer. This bill specifies

2010

closure of access to public records concerning psychological evaluations under some circumstances



**ASSEMBLY BILL 787**

that all of the psychological evaluations provided for under the bill are confidential and not subject to ~~public~~ inspection or copying under the ~~public~~ records law. <sup>public access</sup>

2011  
The bill requires the board to promulgate rules for the content of a required psychological evaluation for full-time law enforcement and tribal law enforcement officers. The bill also requires the board to submit a report to the legislature by April 1, ~~2010~~, that evaluates the effect of the requirement for psychological evaluations for law enforcement officers, makes a recommendation as to whether psychological evaluations should be required for part-time or limited term law enforcement and tribal law enforcement officers, and makes a recommendation as to whether psychological evaluations should be required for officers appointed to serve on a special weapons and tactics unit. Finally, the bill makes the requirement for psychological evaluations for law enforcement officers a prohibited subject of bargaining under the State Employment Labor Relations Act.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

SECTION 1. 16.84 (2) of the statutes is amended to read:

16.84 (2) Appoint such number of police officers as is necessary to safeguard all public property placed by law in the department's charge, and provide, by agreement with any other state agency, police and security services at buildings and facilities owned, controlled, or occupied by the other state agency. The governor or the department may, to the extent it is necessary, authorize police officers employed by the department to safeguard state officers, state employees, or other persons. The department ~~shall~~ not hire any individual to serve as a full-time police officer under this subsection unless the department reviews any evaluation by a psychologist that is required under s. 165.85 (4) (g). Notwithstanding s. 103.13, the department shall keep confidential any record of an evaluation received or maintained under this subsection and any such record is not open to public inspection or copying under s. 19.35. A police officer who is employed by the department and who is performing duties that are within the scope of his or her employment as a police officer has the

**ASSEMBLY BILL 787**

1 powers of a peace officer under s. 59.28, except that the officer has the arrest powers  
2 of a law enforcement officer under s. 968.07 regardless of whether the violation is  
3 punishable by forfeiture or criminal penalty. The officer may exercise the powers of  
4 a peace officer and the arrest powers of a law enforcement officer while located  
5 anywhere within this state. Nothing in this subsection limits or impairs the duty of  
6 the chief and each police officer of the police force of the municipality in which the  
7 property is located to arrest and take before the proper court or magistrate persons  
8 found in a state of intoxication or engaged in any disturbance of the peace or violating  
9 any state law in the municipality in which the property is located, as required by s.  
10 62.09 (13).

11 **SECTION 2.** 23.10 (1) of the statutes is amended to read:

12 23.10 (1) The department of natural resources shall secure the enforcement of  
13 all laws which it is required to administer and bring, or cause to be brought, actions  
14 and proceedings in the name of the state for that purpose. The persons appointed  
15 by said department to exercise and perform the powers and duties heretofore  
16 conferred and imposed upon deputy fish and game wardens, shall be known as  
17 conservation wardens and shall be subject to ch. 230. The department <sup>shall</sup> ~~may not~~  
18 appoint any individual to serve as a full-time conservation warden unless the  
19 department reviews any evaluation by a psychologist that is required under s. 165.85  
20 (4) (g). Notwithstanding s. 103.13, the department shall keep confidential any record  
21 of an evaluation received or maintained under this subsection and any such record  
22 is not open to public inspection or copying under s. 19.35.

23 **SECTION 3.** 36.11 (2) (b) of the statutes is amended to read:

24 36.11 (2) (b) The board may employ police for the institutions and chiefs to head  
25 such police, or contract for police, all of whom shall be deemed peace officers under

**ASSEMBLY BILL 787**

**SECTION 3**

2

1 s. 939.22 (22) under the supervision and control of the appropriate chancellor or the  
 2 chancellor's designees. Such police officers shall meet the minimum standards  
 3 established for other police officers by the law enforcement standards board or a  
 4 comparable agency, and the board may not employ an individual to serve as a  
 5 full-time police officer unless the board reviews any evaluation by a psychologist  
 6 that is required under s. 165.85 (4) (g). Notwithstanding s. 103.13, the board shall  
 7 keep confidential any record of an evaluation received or maintained under this  
 8 paragraph and any such record is not open to public inspection or copying under s.  
 9 19.35. Such police shall preserve the peace on all property described under par. (a),  
 10 enforce all rules promulgated under this chapter and all other laws, and for that  
 11 purpose the chancellor or the chancellor's designee may call for aid from such other  
 12 persons as is deemed necessary.

**SECTION 4.** 59.26 (1m) of the statutes is created to read:

14 59.26 (1m) A sheriff may not appoint any individual to serve as a full-time  
 15 deputy under this section unless the sheriff reviews any evaluation by a psychologist  
 16 that is required under s. 165.85 (4) (g). Notwithstanding s. 103.13, the sheriff and  
 17 the county shall keep confidential any record of an evaluation received or maintained  
 18 under this subsection and any such record is not open to public inspection or copying  
 19 under s. 19.35.

**SECTION 5.** 60.56 (3) of the statutes is created to read:

21 60.56 (3) EVALUATION OF PROSPECTIVE OFFICERS. If a town has or establishes a  
 22 town police department, or creates a joint police department, the town may not hire  
 23 any individual to serve as a full-time town or joint police officer unless the hiring  
 24 authority reviews any evaluation by a psychologist that is required under s. 165.85  
 25 (4) (g). Notwithstanding s. 103.13, the hiring authority and the town shall keep

**ASSEMBLY BILL 787**

1 confidential any record of an evaluation received or maintained under this  
2 subsection and any such record is not open to public inspection or copying under s.  
3 19.35.

4 **SECTION 6.** 61.65 (1m) of the statutes is created to read:

5 61.65 (1m) If a village has or establishes a village police department, or creates  
6 a joint police department, the village may not hire any individual to serve as a  
7 full-time village or joint police officer unless the hiring authority reviews any  
8 evaluation by a psychologist that is required under s. 165.85 (4) (g). Notwithstanding  
9 s. 103.13, the hiring authority and the village shall keep confidential any record of  
10 an evaluation received or maintained under this subsection and any such record is  
11 not open to public inspection or copying under s. 19.35.

12 **SECTION 7.** 61.66 (1m) of the statutes is created to read:

13 61.66 (1m) Section 61.65 (1m), to the extent that it applies to a prospective  
14 full-time officer of a village police department or a joint police department, applies  
15 to a full-time prospective employee of the village who may perform police protection  
16 duties pursuant to sub. (1).

17 **SECTION 8.** 62.13 (4) (am) of the statutes is created to read:

18 62.13 (4) (am) The chief of police may not appoint any individual as a full-time  
19 law enforcement officer under this <sup>sub</sup>section unless the chief and the board review any  
20 evaluation by a psychologist that is required under s. 165.85 (4) (g). Notwithstanding  
21 s. 103.13, the chief, the board, and the city shall keep confidential any record of an  
22 evaluation received or maintained under this paragraph and any such record is not  
23 open to public inspection or copying under s. 19.35.

24 **SECTION 9.** 62.50 (2m) of the statutes is created to read:

**ASSEMBLY BILL 787****SECTION 9**

1           62.50 **(2m)** EVALUATION OF PROSPECTIVE OFFICERS. No individual may be  
2 appointed as a full-time police officer under this section unless the chief of police and  
3 the board review any evaluation by a psychologist that is required under s. 165.85  
4 (4) (g). Notwithstanding s. 103.13, the chief, the board, and the city shall keep  
5 confidential any record of an evaluation received or maintained under this  
6 subsection and any such record is not open to public inspection or copying under s.  
7 19.35.

8           **SECTION 10.** 73.03 (64) of the statutes is created to read:

9           73.03 **(64)** To review any evaluation of an individual by a psychologist that is  
10 required under s. 165.85 (4) (g) before appointing the individual to serve as a  
11 full-time law enforcement officer, as defined in s. 165.85 (1) (c). Notwithstanding s.  
12 103.13, the department shall keep confidential any record of an evaluation received  
13 or maintained under this subsection and any such record is not open to public  
14 inspection or copying under s. 19.35

15           **SECTION 11.** 110.07 (7) of the statutes is created to read:

16           110.07 **(7)** The department may not employ any individual as a full-time officer  
17 of the state traffic patrol under sub. (1) or as a full-time inspector under sub. (3)  
18 unless the department reviews any evaluation by a psychologist that is required  
19 under s. 165.85 (4) (g). The department shall keep confidential any evaluation  
20 received or maintained under this subsection and any such evaluation is not open to  
21 public inspection or copying under s. 19.35.

22           **SECTION 12.** 111.91 (2) (t) of the statutes is created to read:

23           111.91 **(2)** (t) The requirements under ss. 16.84 (2), 23.10 (1), 36.11 (2) (b), 73.03  
24 (64), 110.07 (7), and 165.70 (5) for state agencies to review a psychologist's evaluation  
25 of an individual before hiring the individual as a full-time law enforcement officer.

**ASSEMBLY BILL 787**

1           **SECTION 13.** 165.70 (5) of the statutes is created to read:

2           165.70 (5) (a) The department of justice may not employ an individual to serve  
3 as a full-time law enforcement officer, as defined in s. 165.85 (2) (c), unless the  
4 department reviews any evaluation by a psychologist that is required under s. 165.85  
5 (4) (g).

6           (b) Notwithstanding s. 103.13, the department shall keep confidential any  
7 record of an evaluation received or maintained under par. (a) and any such record is  
8 not open to public inspection or copying under s. 19.35.

9           **SECTION 14.** 165.85 (4) (g) of the statutes is created to read:

10           165.85 (4) (g) 1. No person may be appointed as a full-time law enforcement  
11 or tribal law enforcement officer on or after January 1, ~~2010~~<sup>2010</sup>, unless the person  
12 receives an evaluation by a licensed psychologist, as defined in s. 455.01 (4), and the  
13 psychologist's report of the evaluation is submitted to the appointing authority.

14           2. The board shall promulgate rules regarding the content of the evaluation  
15 required under subd. 1.

16           **SECTION 15. Nonstatutory provisions.**

17           (1) REPORT TO LEGISLATURE. The law enforcement standards board shall by April  
18 1, ~~2010~~<sup>2011</sup>, submit a report to the legislature in the manner described under section  
19 13.172 (2) of the statutes, on all the following:

20           (a) The effect of the requirement under this act that agencies review a  
21 psychologist's evaluation of an individual before hiring the individual as a full-time  
22 law enforcement officer or tribal law enforcement officer.

23           (b) A recommendation as to whether the law enforcement standards board  
24 should exercise its rule-making authority to require an evaluation by a licensed

1 psychologist of any individual who is appointed as a part-time or limited term law  
2 enforcement or tribal law enforcement officer.

3 (c) A recommendation as to whether the law enforcement standards board  
4 should exercise its rule-making authority to require an evaluation by a licensed  
5 psychologist of any law enforcement or tribal law enforcement officer who is  
6 appointed to serve on a special weapons and tactics unit.

7 (2) EMERGENCY RULE-MAKING AUTHORITY. (a) The law enforcement standards  
8 board shall submit in proposed form the rules required under section 165.85 (4) (g)  
9 2. of the statutes, as created by this act, to the legislative council staff under section  
10 227.15 (1) of the statutes no later than the first day of the 7th month beginning after  
11 the effective date of this ~~subsection~~ <sup>paragraph</sup>.

12 (b) Using the procedure under section 227.24 of the statutes, the law  
13 enforcement standards board may promulgate the rules required under section  
14 165.85 (4) (g) 2. of the statutes, as created by this act, for the period before the  
15 effective date of the permanent rules submitted under paragraph (a), but not to  
16 exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes.  
17 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the law  
18 enforcement standards board is not required to provide evidence that promulgating  
19 a rule under this paragraph as an emergency rule is necessary for the preservation  
20 of the public peace, health, safety, or welfare and is not required to provide a finding  
21 of emergency for a rule promulgated under this paragraph.

22 **SECTION 16. Initial applicability.**

23 (1) REQUIRED EVALUATIONS. The treatment of sections 16.84 (2), 23.10 (1), 36.11  
24 (2) (b), 59.26 (1m), 60.56 (3), 61.65 (1m), 61.66 (1m), 62.13 (4) (am), 62.50 (2m), 73.03

ASSEMBLY BILL 787

1 (64), 110.07 (7), and 165.70 (5) of the statutes first applies to appointments of law  
2 enforcement or tribal law enforcement officers that are made on January 1, 2009

2010

3 (2) COLLECTIVE BARGAINING AGREEMENTS. The treatment of section 111.91 (2) (t)  
4 of the statutes first applies to collective bargaining agreements entered into,  
5 extended, modified, or renewed, whichever occurs first, on the effective date of this  
6 subsection.

7 (END)

NOTE  
Date

Rep. Traychack  
Are the date changes in the bill OK? Also, if the bill is not enacted before the end of 2009, the dates in the bill will have to be advanced one year.  
MEL

LPS:  
see attached note



DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

-0299/1dn  
LRB-3292/P2dn  
JTK:wlj:pg

December 11, 2007

Representative Hraychuck:

Regarding the closure of records of psychological examinations, current law permits closure of these kinds of records under some circumstances. In addition, an employee or former employee (but not an unsuccessful applicant) may have access to his or her own records, subject to a number of exceptions, under s. 103.13, stats. ~~POL 900~~

~~the draft~~ this draft closes all access to these records without exception. It is possible that an applicant who is prejudiced by the examination results may want to have access to the results to correct potentially erroneous information. It is also possible that a representative of the public, such as a district attorney or corporation counsel, may want to access the examination results if the applicant later becomes involved in a civil or criminal proceeding in which the applicant's mental health is at issue. While records of these results are not considered to be mental health treatment records, the statute that governs access to these records [s. 51.30 (4) (b), stats.] contains a number of exceptions to confidentiality, some of which may be relevant in this context.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-0299/1dn  
MES&JTK:wlj:jf

October 3, 2008

Rep. Hraychuck:

Are the date changes in the bill OK? Also, if the bill is not enacted before the end of 2009, the dates in the bill will have to be advanced one year.

Marc E. Shovers  
Senior Legislative Attorney  
Phone: (608) 266-0129  
E-mail: marc.shovers@legis.wisconsin.gov

Regarding the closure of records of psychological examinations, current law permits closure of these kinds of records under some circumstances. In addition, an employee or former employee (but not an unsuccessful applicant) may have access to his or her own records, subject to a number of exceptions, under s. 103.13, stats. This draft closes all access to these records without exception. It is possible that an applicant who is prejudiced by the examination results may want to have access to the results to correct potentially erroneous information. It is also possible that a representative of the public, such as a district attorney or corporation counsel, may want to access the examination results if the applicant later becomes involved in a civil or criminal proceeding in which the applicant's mental health is at issue. While records of these results are not considered to be mental health treatment records, the statute that governs access to these records [s. 51.30 (4) (b), stats.] contains a number of exceptions to confidentiality, some of which may be relevant in this context.

Jeffery T. Kuesel  
Managing Attorney  
Phone: (608) 266-6778

**Parisi, Lori**

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**From:** Rep.Hraychuck  
**Sent:** Tuesday, October 20, 2009 11:59 AM  
**To:** LRB.Legal  
**Subject:** Draft Review: LRB 09-0299/1 Topic: Psychological evaluations for law enforcement personnel

Please Jacket LRB 09-0299/1 for the ASSEMBLY.  
Rep. Ann Hraychuck  
6 North