

CHAPTER 74, Laws of 1979

AN ACT to amend 59.22 (5) and 895.46 (1) of the statutes, relating to requiring counties to reimburse deputy sheriffs for attorney fees, costs and judgments in civil actions.

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

SECTION 1. 59.22 (5) of the statutes is amended to read:

59.22 (5) ~~Where~~ If a deputy sheriff is the defendant in any civil action, writ or special proceeding and ~~he~~ is proceeded against in his ~~or her~~ official capacity, ~~and the jury or the court finds that he acted in good faith, the judgment as to damages and costs entered against the officer or any claim made against said deputy sheriff may be paid by the county of which he is an officer if approved by the county board. The county may also provide legal counsel to the deputy sheriff or may provide for reasonable attorney's fees if such counsel is not otherwise provided for or is proceeded against as an individual because of acts committed while carrying out duties as an officer or employe, s. 895.46 applies to the civil action, writ or special proceeding.~~

SECTION 2. 895.46 (1) of the statutes is amended to read:

895.46 (1) (a) ~~Where~~ If the defendant in any action or special proceeding is a public officer or employe and is proceeded against in an official capacity or is proceeded against as an individual because of acts committed while carrying out duties as an officer or employe and the jury or the court finds that ~~such~~ the defendant was acting within the scope of employment the judgment as to damages and costs entered against the officer or employe in excess of any insurance applicable to ~~such~~ the officer or employe shall be paid by the state or political subdivision of which the defendant is an officer or employe. Agents of any department of the state shall be covered by this section while acting within the scope of any written agreement entered into prior to the occurrence of any act which results in any action or special proceeding. Regardless of the results of the litigation the governmental unit, ~~when~~ if it does not provide legal counsel to the defendant officer or employe, shall pay reasonable ~~attorney's attorney~~ fees and costs of defending the action, unless it is found by the court or jury that the defendant officer or employe did not act within the scope of employment. Failure by the officer or employe to give notice to his or her department head of action or special proceeding commenced against the defendant officer or employe as soon as reasonably possible ~~shall be~~ is a bar to recovery by the officer or employe from the state or political subdivision of reasonable ~~attorney's attorney~~ fees and costs of defending the action. ~~Such attorney's~~ The attorney fees and expenses shall not be recoverable if the state or political subdivision offers the officer or employe legal counsel and ~~such~~ the offer is refused by the defendant officer or employe.

(b) ~~Deputy sheriffs in those counties where they serve not at the will of the sheriff but on civil service basis shall be who are participants under subch. I of ch. 41 or who are appointed under s. 59.21 (8) are covered by this subsection, except that the provision relating to payment of the judgment shall be discretionary and not mandatory. In such counties the judgment as to damages and costs may be paid by the county. The county may make payments under this subsection for other deputy sheriffs, if the payments are approved by the county board. This paragraph does not apply after February 28, 1983.~~

(c) On and after March 1, 1983, all deputy sheriffs are covered by this subsection, except that the provision relating to payment of the judgment shall be discretionary and not mandatory. The judgment as to damages and costs may be paid by the county if approved by the county board.

(d) The legislative council shall study the provisions of pars. (b) and (c) and hold public hearings and collect information relating to payments for judgments against county sheriffs. The council shall evaluate the provisions considering the following information:

1. The number of actions brought against deputy sheriffs.
2. The number and amounts of judgments being made under par. (b).
3. The impact, if any, upon the conduct and morale of deputy sheriffs.

(e) The legislative council shall conduct the study under par. (d) and make findings and recommendations, including proposed legislation if appropriate, to the legislature when it convenes in 1983.
