

1993 Senate Bill 66

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## 1993 WISCONSIN ACT 53

AN ACT to *renumber and amend* 59.07 (20); to *amend* 59.21 (8) (b) 6, 62.13 (5) (c), 62.13 (5) (i), 62.13 (5m) (c) and 164.05; to *repeal and recreate* 164.01; and to *create* 59.07 (20) (b) and (c), 59.21 (8) (b) 5m and 62.13 (5) (em) of the statutes, **relating to**: changes in the law enforcement officers' bill of rights and disciplinary procedures affecting certain local governmental law enforcement employees.

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

**SECTION 1.** 59.07 (20) of the statutes is renumbered 59.07 (20) (a) and amended to read:

59.07 (20) (a) Establish a civil service system of selection, tenure and status, and the system may be made applicable to all county personnel, except the members of the board, constitutional officers and members of boards and commissions. The system may also include uniform provisions in respect to classification of positions and salary ranges, payroll certification, attendance, vacations, sick leave, competitive examinations, hours of work, tours of duty or assignments according to earned seniority, employe grievance procedure, disciplinary actions, layoffs and separations for just cause, as described in par. (b), subject to approval of a civil service commission or the board. The board may request the assistance of the department of administration and pay for such services, under s. 16.58.

**SECTION 2.** 59.07 (20) (b) and (c) of the statutes are created to read:

59.07 (20) (b) A law enforcement employe of the county may not be suspended, demoted, dismissed or suspended and demoted by the civil service commission or the board, based either on its own investigation or on charges filed by the sheriff, unless the commission or board determines whether there is just cause, as described in this paragraph, to sustain the charges. In making its

determination, the commission or the board shall apply the following standards, to the extent applicable:

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

(c) If a law enforcement employe of the county is dismissed, demoted, suspended or suspended and demoted by the civil service commission or the board under the system established under par. (a), the person dismissed, demoted, suspended or suspended and demoted may appeal from the order of the civil service commission or the board to the circuit court by serving written notice of the appeal on the secretary of the commission or the

board within 10 days after the order is filed. Within 5 days after receiving written notice of the appeal, the commission or the board shall certify to the clerk of the circuit court the record of the proceedings, including all documents, testimony and minutes. The action shall then be at issue and shall have precedence over any other cause of a different nature pending in the court, which shall always be open to the trial thereof. The court shall upon application of the accused or of the board or the commission fix a date of trial which shall not be later than 15 days after such application except by agreement. The trial shall be by the court and upon the return of the board or the commission, except that the court may require further return or the taking and return of further evidence by the board or the commission. The question to be determined by the court shall be: Upon the evidence is there just cause, as described in par. (b), to sustain the charges against the employee? No cost shall be allowed either party and the clerk's fees shall be paid by the county. If the order of the board or the commission is reversed, the accused shall be forthwith reinstated and entitled to pay as though in continuous service. If the order of the board or the commission is sustained, it shall be final and conclusive.

**SECTION 3.** 59.21 (8) (b) 5m of the statutes is created to read:

59.21 (8) (b) 5m. No deputy may be suspended, demoted or discharged by the grievance committee under subd. 3 or 5, based on charges filed by the sheriff, undersheriff or a majority of the members of the civil service commission for the selection of deputies unless the committee determines whether there is just cause, as described in this subdivision, to sustain the charges. In making its determination, the committee shall apply the following standards, to the extent applicable:

a. Whether the deputy could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.

b. Whether the rule or order that the deputy allegedly violated is reasonable.

c. Whether the sheriff, before filing the charge against the deputy, made a reasonable effort to discover whether the deputy did in fact violate a rule or order.

d. Whether the effort described under subd. 5m. c. was fair and objective.

e. Whether the sheriff discovered substantial evidence that the deputy violated the rule or order as described in the charges filed against the deputy.

f. Whether the sheriff is applying the rule or order fairly and without discrimination to the deputy.

g. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the deputy's record of service with the sheriff's department.

**SECTION 4.** 59.21 (8) (b) 6. of the statutes is amended to read:

59.21 (8) (b) 6. The accused may appeal from the order to the circuit court by serving written notice ~~thereof of the appeal~~ on the secretary of the committee within 10 days after the order is filed. Within 5 days ~~thereafter~~ after receiving written notice of the appeal, the board shall certify to the clerk of the circuit court the record of the proceedings, including all documents, testimony and minutes. The action shall then be at issue and shall have precedence over any other cause of a different nature pending in the court, which shall always be open to the trial thereof. The court shall upon application of the accused or of the board fix a date of trial, which shall not be later than 15 days after such application except by agreement. The trial shall be by the court and upon the return of the board, except that the court may require further return or the taking and return of further evidence by the board. The question to be determined by the court shall be: Upon the evidence ~~was the order of the board reasonable~~ is there just cause, as described under subd. 5m. to sustain the charges against the accused? No costs shall be allowed either party and the clerk's fees shall be paid by the county. If the order of the committee is reversed, the accused shall be forthwith reinstated and entitled to pay as though in continuous service. If the order of the committee is sustained it shall be final and conclusive.

**SECTION 5.** 62.13 (5) (c) of the statutes is amended to read:

62.13 (5) (c) A subordinate may be suspended for just cause, as described in par. (em), by the chief or the board as a penalty. The chief shall file a report of such suspension with the commission immediately upon issuing the suspension. No hearing on such suspension shall be held unless requested by the suspended subordinate. If the subordinate suspended by the chief requests a hearing before the board, the chief shall be required to file charges with the board upon which such suspension was based.

**SECTION 6.** 62.13 (5) (em) of the statutes is created to read:

62.13 (5) (em) No subordinate may be suspended, reduced in rank, suspended and reduced in rank, or removed by the board under par. (e), based on charges filed by the board, members of the board, an aggrieved person or the chief under par. (b), unless the board determines whether there is just cause, as described in this paragraph, 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.

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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.

**SECTION 7.** 62.13 (5) (i) of the statutes is amended to read:

62.13 (5) (i) Any person suspended, reduced, suspended and reduced, or removed by the board may appeal from the order of the board to the circuit court by serving written notice ~~thereof of the appeal~~ on the secretary of the board within 10 days after the order is filed. Within 5 days ~~thereafter~~ after receiving written notice of the appeal, the board shall certify to the clerk of the circuit court the record of the proceedings, including all documents, testimony and minutes. The action shall then be at issue and shall have precedence over any other cause of a different nature pending in ~~said~~ the court, which shall always be open to the trial thereof. The court shall upon application of the accused or of the board fix a date of trial, which shall not be later than 15 days after such application except by agreement. The trial shall be by the court and upon the return of the board, except that the court may require further return or the taking and return of further evidence by the board. The question to be determined by the court shall be: Upon the evidence ~~was the order of the board reasonable~~ is there just cause, as

described under par. (em), to sustain the charges against the accused? No costs shall be allowed either party and the clerk's fees shall be paid by the city. If the order of the board is reversed, the accused shall be forthwith reinstated and entitled to pay as though in continuous service. If the order of the board is sustained it shall be final and conclusive.

**SECTION 8.** 62.13 (5m) (c) of the statutes is amended to read:

62.13 (5m) (c) The name of a subordinate dismissed for any just cause set forth in this section shall be left on an eligible reemployment list for a period of two years after date of dismissal, except that if the dismissal was for disciplinary reasons the subordinate may not be left on an eligible reemployment list. If any vacancy occurs, or if the number of subordinates is increased, in the department, such vacancy or new positions shall be filled by persons on such list in the inverse order of the dismissal of such persons.

**SECTION 9.** 164.01 of the statutes is repealed and recreated to read:

**164.01 Definition.** In this chapter, except in s. 164.06, "law enforcement officer" means any person employed by the state or by a city, village, town or county for the purpose of detecting and preventing crime and enforcing laws or ordinances, who is authorized to make arrests for violations of the laws or ordinances which he or she is employed to enforce.

**SECTION 10.** 164.05 of the statutes is amended to read:

**164.05 Applicability.** Sections 164.01 to 164.04 apply only to law enforcement officers employed by ~~1st class cities or counties having a population of 500,000 or more~~ a city, village, town or county.