



## WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

**2017 Senate Bill 403**

**Senate Amendment 1**

*Memo published:* February 9, 2018

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### **2017 SENATE BILL 403**

#### **Minimum Educational, Training, and Recruitment Standards**

Among the powers that the Law Enforcement Standards Board (LESB) has under **current law** is the authority to establish minimum educational and training standards for employment as a law enforcement officer or tribal law enforcement officer in permanent positions and in temporary, probationary, or part-time status. Current law provides that the educational and training standards for tribal law enforcement officers must be identical to the standards for other law enforcement officers.

2017 Senate Bill 403 authorizes LESB to also establish the following standards: (1) minimum **recruitment** standards for employment as a law enforcement, tribal law enforcement, jail, or juvenile detention officer; and (2) minimum qualification standards for **admission to preparatory** law enforcement or correctional officer training for preservice students and recruits. The bill also authorizes LESB to also establish minimum educational and training standards for jail or juvenile detention officers.

#### **Decertification of Law Enforcement Officers**

Under current law, LESB also has the authority to certify a person as being qualified to be a law enforcement, tribal law enforcement, jail, or juvenile detention officer. LESB also has the authority to decertify a law enforcement officer for certain reasons, including the conviction of a felony or a misdemeanor crime of domestic violence.

The bill authorizes LESB to also decertify a law enforcement, tribal law enforcement, jail, or juvenile detention officer if the officer enters into either of the following, if the board determines that certification is not in the best interest of the public: (1) deferred judgment and

sentencing agreement or deferred sentencing agreement, whether pending or successfully completed; or (2) a deferred prosecution agreement, whether pending or successfully completed.

### **Review of Prior Employment Files by Interviewing Agencies**

The bill creates a process for a law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency (hereinafter, "interviewing agency") to have access to each new candidate's employment files<sup>1</sup> from any law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency (hereinafter, "employer agency") that has employed the candidate. Specifically, this process provides the following:

- When an interviewing agency recruits for new officers, it must require each candidate that it interviews for a law enforcement, tribal law enforcement, jail, or juvenile detention position who has been employed by an employer agency to execute a written waiver that does both of the following:
  - Explicitly authorizes the disclosure of the candidate's employment files to the interviewing agency.
  - Releases the interviewing agency and each employer agency that employed the candidate from any liability related to the use and disclosure of the candidate's employment files.
- A candidate must not be considered for employment by the interviewing agency or considered for certification by LESB if the candidate refuses to execute the waiver described above.
- The interviewing agency must, at least 30 days prior to making its hiring decision, submit the waiver to each employer agency that has employed the candidate. An employer agency that receives a waiver must provide the requested employment files to the interviewing agency not more than 21 days after receiving the waiver.
- The interviewing agency may also conduct an official oral interview of individuals from the employer agency that employed the candidate.

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<sup>1</sup> Under the bill, an "employment file" means "all files relating to a person's employment, including performance reviews, files related to job performance, internal affairs investigative files, administrative files, previous personnel applications, personnel-related claims, disciplinary actions, and all substantiated complaints and commendations, but does not include pay or benefit information, similar administrative data or information that does not relate to performance or conduct, or medical files unless the medical file relates to mental competency issues bearing on the person's suitability for a law enforcement, tribal law enforcement, jail, or juvenile detention officer position."

- The candidate's employment files may be disclosed by either providing copies to the interviewing agency or allowing the interviewing agency to review the files at the employer agency's office.
- The employer agency is not required to provide the candidate's employment records if it is prohibited from providing the employment records pursuant to a binding nondisclosure agreement executed before the effective date of the bill.
- A law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency, may not enter into a nondisclosure agreement preventing an interviewing law enforcement agency, tribal law enforcement agency, jail, or juvenile detention facility from viewing employment files after the effective date of the bill.
- A law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency is immune from liability for complying with the provisions of the bill or for participating in an official oral interview with an investigator from the interviewing agency, regarding the candidate.

#### **Applicability of LESB Standards to the Marquette University Police Department**

The bill expands the definition of a "law enforcement agency" that is used in the statutes governing LESB, to include the Marquette University police department. Under the bill, any rule promulgated or standard established by LESB applicable to a law enforcement agency also applies to the Marquette University police department.

#### **SENATE AMENDMENT 1**

Senate Amendment 1 makes the following changes to the bill:

- Clarifies that the minimum qualifications for admission to preparatory training for preservice students and recruits does not apply to **Department of Corrections officers**. The amendment provides that LESB has the authority to establish minimum qualification standards for admission to preparatory training law enforcement, **jail, or juvenile detention officer** training for preservice students and recruits.
- Requires that the standards for admission to preparatory training for preservice students and recruits, and minimum educational, training, and recruitment standards for employment relate to the competence and reliability of a person to assume and discharge the responsibilities of a law enforcement, tribal law enforcement, jail, or juvenile detention officer. The amendment also requires LESB to prescribe the means for fulfillment of these standards.
- Clarifies that the provisions of the bill related to the review of prior employment files by an interviewing agency apply to a candidate who is either currently employed or has been employed by an employer agency.

- Requires each law enforcement agency to keep an employment file, as defined by the bill, for each person that the agency employs.
- Amends the crime of battery to a law enforcement officer to also apply to a Marquette University police officer.

### **BILL HISTORY**

Senator Testin offered Senate Amendment 1 to 2017 Senate Bill 403 on January 17, 2018. On January 30, 2018, the Senate Committee on Judiciary and Public Safety voted unanimously to recommend adoption of the amendment and passage of the bill, amended.

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