



1997 ASSEMBLY BILL 944

March 24, 1998 - Introduced by Representatives KLUSMAN, DOBYNS, GREEN, JOHNSRUD, MUSSER, JESKEWITZ, PORTER, TRAVIS, TURNER, HANSON, KREIBICH and J. LEHMAN, cosponsored by Senators WELCH, BURKE, JAUCH, GROBSCHMIDT, FITZGERALD and HUELSMAN. Referred to Committee on Urban and Local Affairs.

1 **AN ACT to amend** 59.26 (8) (b) 6., 59.26 (9) (c), 59.52 (8) (c) and 62.13 (5) (i) of the
2 statutes; **relating to:** disciplinary procedures for certain local law enforcement
3 officers.

Analysis by the Legislative Reference Bureau

Generally, under current law, a law enforcement officer employed by a city, village, town or county (local law enforcement officer) may be disciplined by a police chief, sheriff, county board, civil service commission, grievance committee or board of police and fire commissioners, depending on the unit of government for which the officer works and whether the county for which the officer works has in effect a civil service system. Discipline, under current law, includes suspension, reduction in rank, suspension and reduction in rank and dismissal.

Also under current law, except with regard to police officers employed by a 1st class city (presently only Milwaukee), no local law enforcement officer may be suspended, reduced in rank, suspended and reduced in rank or dismissed by a grievance committee, civil service commission, county board or board of police and fire commissioners (tribunal) unless the tribunal determines that there is "just cause", as described in the statutes, to sustain the charges that have been brought against the local law enforcement officer. If the charges are sustained and the officer is disciplined under an order of the tribunal, he or she may appeal the order to the circuit court. The trial based on the appeal is before the court. The court must determine whether, upon the evidence and based on the statutory description of "just cause", to sustain the charges against the accused officer and the tribunal's order.

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If the charges and the tribunal's order are sustained, the tribunal's order is final and conclusive. If the court reverses the tribunal's order, the officer is reinstated and entitled to pay as though he or she was in continuous service. Similar procedures, other than the "just cause" standard, apply to police officers employed by a 1st class city.

Under this bill, if an accused officer is subject to the terms of a collective bargaining agreement that provides an alternative to the appeal process to a circuit court, the appeal process in the collective bargaining agreement applies to the accused officer and not the current law process that involves an appeal to a circuit court, unless the officer chooses to appeal the tribunal's decision to a circuit court. An accused officer who chooses to appeal the tribunal's decision through a collectively bargained alternative to the current law appeal process is considered to have waived his or her right to circuit court review of the tribunal's decision. The provisions of this bill do not apply to police officers employed by a 1st class city.

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

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

1 **SECTION 1.** 59.26 (8) (b) 6. of the statutes is amended to read:
2 59.26 (8) (b) 6. The accused may appeal from the order to the circuit court by
3 serving written notice of the appeal on the secretary of the committee within 10 days
4 after the order is filed. Within 5 days after receiving written notice of the appeal, the
5 board shall certify to the clerk of the circuit court the record of the proceedings,
6 including all documents, testimony and minutes. The action shall then be at issue
7 and shall have precedence over any other cause of a different nature pending in the
8 court, which shall always be open to the trial thereof. The court shall upon
9 application of the accused or of the board fix a date of trial, which shall not be later
10 than 15 days after such application except by agreement. The trial shall be by the
11 court and upon the return of the board, except that the court may require further
12 return or the taking and return of further evidence by the board. The question to be
13 determined by the court shall be: "Upon the evidence is there just cause, as described

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1 under subd. 5m., to sustain the charges against the accused?" No costs shall be
2 allowed either party and the clerk's fees shall be paid by the county. If the order of
3 the committee is reversed, the accused shall be forthwith reinstated and entitled to
4 pay as though in continuous service. If the order of the committee is sustained it shall
5 be final and conclusive. This subdivision does not apply to any deputy who is
6 suspended, demoted or discharged and who is subject to the terms of a collective
7 bargaining agreement entered into under subch. IV of ch. 111 that provides an
8 alternative to the appeals procedure specified in this subdivision. An accused deputy
9 who chooses to appeal the decision of the committee through a collectively bargained
10 alternative to the appeals procedure specified in this subdivision is considered to
11 have waived his or her right to circuit court review of the committee's decision.

12 **SECTION 2.** 59.26 (9) (c) of the statutes is amended to read:

13 59.26 (9) (c) If the matter that is the subject of the suspension or dismissal is
14 decided adversely to the deputy sheriff by the grievance committee or the civil service
15 commission, the time for appeal passes without an appeal being made or the deputy's
16 appeal ~~to the circuit court~~ under sub. (8) (b) 6. is decided adversely to the deputy, all
17 pay and benefits received by the deputy sheriff between the time of his or her
18 suspension or dismissal and the latest of an adverse ruling by the committee, the
19 commission or the court or the time for appeal passes shall be returned to the county.

20 **SECTION 3.** 59.52 (8) (c) of the statutes is amended to read:

21 59.52 (8) (c) If a law enforcement employe of the county is dismissed, demoted,
22 suspended or suspended and demoted by the civil service commission or the board
23 under the system established under par. (a), the person dismissed, demoted,
24 suspended or suspended and demoted may appeal from the order of the civil service
25 commission or the board to the circuit court by serving written notice of the appeal

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1 on the secretary of the commission or the board within 10 days after the order is filed.
2 Within 5 days after receiving written notice of the appeal, the commission or the
3 board shall certify to the clerk of the circuit court the record of the proceedings,
4 including all documents, testimony and minutes. The action shall then be at issue
5 and shall have precedence over any other cause of a different nature pending in the
6 court, which shall always be open to the trial thereof. The court shall upon
7 application of the accused or of the board or the commission fix a date of trial which
8 shall not be later than 15 days after the application except by agreement. The trial
9 shall be by the court and upon the return of the board or the commission, except that
10 the court may require further return or the taking and return of further evidence by
11 the board or the commission. The question to be determined by the court shall be:
12 Upon the evidence is there just cause, as described in par. (b), to sustain the charges
13 against the employee? No cost shall be allowed either party and the clerk's fees shall
14 be paid by the county. If the order of the board or the commission is reversed, the
15 accused shall be immediately reinstated and entitled to pay as though in continuous
16 service. If the order of the board or the commission is sustained, it shall be final and
17 conclusive. This paragraph does not apply to any law enforcement employe of the
18 county who is dismissed, demoted, suspended or suspended and demoted and who
19 is subject to the terms of a collective bargaining agreement entered into under subch.
20 IV of ch. 111 that provides an alternative to the appeals procedure specified in this
21 paragraph. An accused law enforcement employe of the county who chooses to
22 appeal the decision of the commission or board through a collectively bargained
23 alternative to the appeals procedure specified in this paragraph is considered to have
24 waived his or her right to circuit court review of the commission's or board's decision.

25 **SECTION 4.** 62.13 (5) (i) of the statutes is amended to read:

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1 62.13 (5) (i) Any person suspended, reduced, suspended and reduced, or
2 removed by the board may appeal from the order of the board to the circuit court by
3 serving written notice of the appeal on the secretary of the board within 10 days after
4 the order is filed. Within 5 days after receiving written notice of the appeal, the board
5 shall certify to the clerk of the circuit court the record of the proceedings, including
6 all documents, testimony and minutes. The action shall then be at issue and shall
7 have precedence over any other cause of a different nature pending in the court,
8 which shall always be open to the trial thereof. The court shall upon application of
9 the accused or of the board fix a date of trial, which shall not be later than 15 days
10 after such application except by agreement. The trial shall be by the court and upon
11 the return of the board, except that the court may require further return or the taking
12 and return of further evidence by the board. The question to be determined by the
13 court shall be: Upon the evidence is there just cause, as described under par. (em),
14 to sustain the charges against the accused? No costs shall be allowed either party
15 and the clerk's fees shall be paid by the city. If the order of the board is reversed, the
16 accused shall be forthwith reinstated and entitled to pay as though in continuous
17 service. If the order of the board is sustained it shall be final and conclusive. This
18 paragraph does not apply to any person who is suspended, reduced, suspended and
19 reduced, or removed by the board or by a committee or person acting under this
20 subsection in place of a board, and who is subject to the terms of a collective
21 bargaining agreement entered into under subch. IV of ch. 111 that provides an
22 alternative to the appeals procedure specified in this paragraph. An accused person
23 who chooses to appeal the decision of the board through a collectively bargained
24 alternative to the appeals procedure specified in this paragraph is considered to have
25 waived his or her right to circuit court review of the board decision.

