



HOWARD MARKLEIN

STATE SENATOR • 17TH SENATE DISTRICT

March 14, 2023

Senate Committee on Judiciary and Public Safety Testimony on Senate Bill 28

Good Morning!

Thank you Chairman Wanggaard and committee members for taking the time to hear testimony on Senate Bill 28, which would allow county jailers to be classified as protected occupation participants under the Wisconsin Retirement System (WRS).

Currently, individuals whose principal duties involve active law enforcement, or fire suppression or prevention, and require frequent exposure to a high degree of danger are classified as protective occupation participants under the Wisconsin Retirement System.

Under current law, this classification is extended to state correctional officers and other law enforcement agents. However, it does not apply to all county jailers.

I would encourage you to talk to your local county sheriff and the men and women who go to work every day in your county jail and ask them if their job entails "a high degree of danger or peril." After visiting county jails and talking to my local sheriffs, the answer is a clear "yes."

Individuals who are incarcerated at a state prison first start by being detained at a county facility. Our county correctional officers see the most demanding and dangerous people in our correctional system at the most stressful time. On a daily basis they are tasked with handling people who are aggressive upon their arrest, under the influence of drugs or alcohol, or are suffering from a mental illness. Injuries to county jailers are not uncommon.

In addition to the physical dangers of their job, county jailers also face difficult mental and emotional challenges. In smaller rural communities, county correctional officers may know the victims that were affected by the actions of the criminals they must protect at work. This is not an easy profession.

SB 28 was carefully crafted so that it would not increase costs to county taxpayers. Under this proposal, the jailers would have to pay the additional costs of having protective status including both the employer's additional WRS contribution and duty disability costs. This means there is no increased cost to the county taxpayer. Considering that the cost would fall on the employee, the bill provides an opt-out option for jailers.

This bill was drafted with input and discussions between the Badger State Sheriffs' Association and the Wisconsin Counties Association. Both organizations support SB 28. The Wisconsin Sheriffs and Deputy Sheriffs Association has added their support for SB 28 as well.

The Assembly companion bill, AB 28, had a public hearing March 1, 2023 in the Assembly Committee on State Affairs. The committee adopted an amendment to the bill on a vote of 13-0. On March 8, 2023 the committee voted to recommend passage as amended on a 13-0 vote.

An identical amendment has been introduced in the Senate, it is Senate Amendment 1 to SB 28. The amendment makes several changes to the bill, but has three key provisions. It amends the definition of “protective occupation participant”; clarifies the procedure for a jailer to decide whether to be classified as a protective; and establishes procedures that a county and jailer must follow if the county classified jailers as protectives and subsequently determines to classify them as general employees.

A Legislative Council memo on the Assembly version of the amendment was prepared after the executive session, and a copy was handed out with my written testimony. I encourage the committee to adopt the senate amendment, when you consider SB 28 in executive session.

So far this proposal has received bi-partisan support in both houses of the Legislature. I would encourage you to support the bill as well.

Thank you for your time today, and I will take questions on SB 28.



MARK BORN

STATE REPRESENTATIVE • 39TH ASSEMBLY DISTRICT

Testimony on Senate Bill 28

Senate Committee on Judiciary and Public Safety

March 14, 2023

Good afternoon Chairman Wanggaard and members of the Senate Committee on Judiciary and Public Safety. Thank you for allowing me to testify in favor of Senate Bill (SB) 28 which would classify county jailers as protective occupation participants under the Wisconsin Retirement System (WRS).

Under current law, participants in the WRS whose primary duties include active law enforcement or fire suppression or prevention and frequent exposure to a high degree of danger are classified as protective occupation participants. Under protective status, the normal retirement age is lower and the percentage multiplier used to calculate retirement annuities is higher. Examples of individuals classified as protective occupation participants include state prison guards and other law enforcement professionals.

SB 28 will make an important change to recognize the challenges and dangers that county jailers experience on a regular basis. Every individual incarcerated in the state prison system was held at a county jail first. Upon arrival at a county jail, arrested individuals are frequently angry, aggressive and stressed, dealing with various mental health issues or are under the influence of alcohol or drugs. Regardless of the risk an individual poses upon arriving, county jailers are responsible for ensuring the safety and well-being of each inmate and all staff in their facility. State prison guards are tasked with very similar responsibilities, however, they are classified as protective occupation participants under the WRS and county jailers are not.

The concept of granting protective status to county jailers has been around for over 20 years and this bill reflects an agreement between the Badger State Sheriff's Association, Wisconsin Sheriffs and Deputy Sheriffs Association and the Wisconsin Counties Association.

Under this proposal, county jailers would be classified as protective occupation participants and the employees (jailers) would have to pay the additional costs of having protective status including both the employer's additional WRS contribution and duty disability costs. This means that there is no increased cost to the county taxpayer. Current county jailers would have 60 days after enactment of this bill to opt out of receiving protective status and new jailers would have the opt-out option at the time they are hired. This decision is irrevocable. Some counties currently classify their jailers as protective occupation participants and pay for the additional costs for their employees. Counties with this policy will be grandfathered in under the bill, but those counties retain the ability to no longer pay the additional costs through an action of the county board in the future.

There is an amendment to this bill, which includes several technical changes including establishing procedures for counties that classified their jailers as protective occupation participants on July 1, 2022 and subsequently make the decision to classify county jailers as general employees in the future, clarifies the definition of "protective occupation participant" and clarifies the procedure for when a jailer is deciding to classify as a protective occupation participant.

Thank you again for the opportunity to testify in favor of SB 28. I am now happy to answer any questions.

Wisconsin Legislative Council

AMENDMENT MEMO



Memo published: March 13, 2023

Contact: Tom Koss, Staff Attorney

2023 Assembly Bill 28

Assembly Amendment 1

2023 Assembly Bill 28 relates to the treatment of county jailers as protective occupation participants (“protectives”) under the Wisconsin Retirement System (WRS) and general municipal employees under the Municipal Employment Relations Act (MERA).

Very generally, the bill requires that county jailers be treated as protectives for purposes of benefits under WRS, unless a county jailer opts out of such a classification, and generally classifies county jailers as general municipal employees under MERA. Among other changes, the amendment clarifies definitions and establishes procedures that a county and jailer must follow if the county classified jailers as protectives and subsequently determined to classify them as general employees.

BACKGROUND

Protective Occupation Participants

Under Wisconsin law, a protective is treated differently than other general employees. Employers also contribute more into the WRS for employees who are protectives than for those who are not and pay the cost for protectives’ participation in the duty disability program.¹ As relevant to county jailers, state law defines a “protective occupation participant” as any WRS participant whose principal duties are determined by the employing county to involve “active law enforcement,” provided that the duties “require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning.” By statute, the Legislature has expressly designated as protectives those who work in any of 22 enumerated position types and whose names are certified as protectives by their employers. Examples of those enumerated positions include police officers, fire fighters, sheriffs, and deputy sheriffs.²

Currently, county jailers are not included in this list. As was mentioned, however, state law authorizes WRS employers to designate additional positions (such as county jailers) as protectives if the employer determines that the position’s principal duties meet the statutory definition of protective occupation participant. WRS employers must notify ETF of the names of all employees classified as protectives; designations may be reviewed by ETF and appealed to the ETF Board.

MERA

MERA provides greater collective bargaining rights to positions categorized as “public safety employees” than it does to those categorized as “general municipal employees.” General municipal employees may bargain with respect to base wages, but cannot bargain for an increase in wages above

¹ The duty disability program provides a lifetime disability benefit for persons in state or local protective occupations who have a work-related permanent disability.

² A deputy sheriff is any officer or employee of a sheriff’s office unless the officer or employee meets certain exceptions, such as having the principal duties of a telephone operator, clerk, or mechanic.

any increase in the consumer price index, unless the increase is approved by referendum. In contrast, public safety employees may bargain regarding wages, hours, and conditions of employment.

State law defines a public safety employee in reference to the individual's status as a protective, and defines a general municipal employee as a municipal employee who is not a public safety employee or transit employee. Under MERA, a "public safety employee" includes any municipal employee who is employed in a position classified as a protective under the WRS or a comparable city or county retirement system in one of the following categories: (1) police officer; (2) fire fighter; (3) deputy sheriff; (4) county traffic police officer; or (5) employee of a combined protective services department. A public safety employee also includes a person who is employed as an emergency medical services (EMS) provider. Though "county jailer" is not expressly included in this list, Wisconsin courts have found that jailers in particular counties are protectives and, therefore, qualify as public safety employees.

2023 ASSEMBLY BILL 28

Protective Occupation Participants

2023 Assembly Bill 28 classifies county jailers as protectives, but allows jailers to opt out of the classification. In order to opt out, a person currently employed as a county jailer must notify his or her employer in writing within 60 days of the bill's effective date. For newly hired county jailers, the county board must provide an option to elect not to be a protective at the time of hire.

Under the bill, county jailers who are treated as protectives are generally responsible for the additional employer costs resulting from their classification as protectives, including the employer's portion of WRS and duty disability benefits. County jailers who meet either of the following criteria, however, are not required to pay these additional employer costs: (1) classification as a protective before the bill's effective date;³ or (2) hiring on or after the effective date in counties that classified county jailers as protectives on July 1, 2022. Newly hired county jailers must make these contributions on a pre-tax basis; current jailers must make the contributions post-tax.

As was mentioned, a county jailer may elect to not be treated as a protective. In order to opt out, a person currently employed as a county jailer must notify his or her employer in writing within 60 days of the bill's effective date. For newly hired county jailers, the county board must provide an option to elect not to be a protective at the time of hire.

MERA

Under the bill, a county jailer is considered a general municipal employee, unless the person is employed by a county that treats a county jailer as a public safety employee on the bill's effective date. However, if a county that treats jailers as public safety employees raises a question concerning the appropriateness of including county jailers in a collective bargaining unit that includes public safety employees, the county may not treat any county jailer as a public safety employee.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 makes several changes to the bill, including the following. It amends the definition of "protective occupation participant"; clarifies the procedure for a jailer to decide whether to be classified as a protective; and establishes procedures that a county and jailer must follow if the

³ The bill takes effect on the January 1 after publication.

county classified jailers as protectives and subsequently determined to classify them as general employees.

The amendment clarifies that the definition of “protective occupation participant” includes only those individuals for whom ETF receives notification of the person’s name. For purposes of duty disability and death benefits, the term only includes county jailers who are categorized as protectives, not those who have opted out of such treatment.

The amendment also establishes procedures for counties and jailers in counties that classified jailers as protectives on the bill’s effective date and subsequently determines to classify them as general employees. In those counties that subsequently reclassify jailers as general employees, the county board must provide both current and newly hired jailers with the irrevocable option to not be a protective. For purposes of provisions such as payment of the employer’s portion of additional WRS contributions, county jailers who are employed in those counties and become protectives after the bill’s effective date are generally treated like jailers who are employed in counties that did not classify jailers as protectives and become protectives after the bill’s effective date. Jailers who elect to remain classified as protectives have contributions deducted on a post-tax basis, while newly hired jailers who elect to be classified as protectives have contributions made on a pre-tax basis.

In counties that make this determination, the county board must provide notice to county jailers of the board’s determination to classify jailers as general employees and of a jailer’s opportunity to remain a protective. The notice must be in writing, in a manner that the employer typically uses to provide notices to employees, and posted where notices to employees are customarily posted. Jailers have 60 days from the board’s determination or the date of hiring, whichever is applicable, to make their election.

The amendment also clarifies that the provision requiring county boards to provide newly hired jailers with the option of whether to be classified as a protective only applies in counties that did not classify jailers as protectives on the bill’s effective date. Similarly, it clarifies that the provision allowing current jailers to opt out of being treated as protectives only applies to county jailers who are not protectives on the bill’s effective date.

The bill also changes several references from July 1, 2022, to the bill’s effective date.

BILL HISTORY

Representative Born offered Assembly Amendment 1 on March 7, 2023. On March 8, 2023, the Assembly Committee on State Affairs recommended adoption of Assembly Amendment 1 and passage of the bill, as amended, on a vote of Ayes, 13; Noes, 0.

For a full history of the bill, visit the Legislature’s [bill history page](#).

TK:ksm



To: Members, Senate Committee on Judiciary and Public Safety
From: Badger State Sheriffs' Association (BSSA)
Wisconsin Sheriffs and Deputy Sheriffs Association (WS&DSA)
Date: March 14, 2023
RE: Testimony in Support of Senate Bill 28
Provide Protective Status to County Jailers

Good morning, Chairman Wanggaard and Members of the Committee. I am Brown County Sheriff Todd Delain. I am the first Vice President and legislative co-chair of the Badger State Sheriffs' Association representing all of Wisconsin's 72 elected county sheriffs. Joining me is Sheriff Roger Brandner of Columbia County who is appearing on behalf of the Wisconsin Sheriffs and Deputy Sheriffs Association, which represents over 1,000 members, including sheriffs, deputies, and jail officers. Our organizations have a joint legislative committee and work closely on public safety issues of concern to our members.

We are here today to ask for your support for an important piece of legislation that will provide protective status to county jailers statewide. First, we want to thank Representative Born and Senator Marklein for authoring this bill, which has been many years in the making. In the 2019-20 session, this legislation was introduced but did not advance due to a technical issue flagged by the Department of Employee Trust Funds (ETF). Since then, our organizations worked with the authors, IRS, ETF, and tax attorneys to ensure the bill complies with all IRS regulations relating to post-tax contributions.

Protective occupation status allows employees to retire at an earlier age (50 years old) and receive duty disability benefits if they are injured in the line of duty. While the job responsibilities are the same, state correctional officers are considered protective status under the Wisconsin Retirement System (WRS), but county jailers are not.

Daily, county jailers are responsible for the safety of county jails and the safety of the facility's other inmates. Since every state inmate starts in a county jail, county jailers regularly deal in dangerous and stressful situations. Inmates initially admitted to the jail are often dealing with various issues, including mental health, alcohol and other drug abuse, and the stress from the crime they committed and potential incarceration. To prepare for their difficult job to work in strenuous conditions, county jailers undergo substantial training requirements.

Currently, individuals whose principal duties (51 percent or more) involve active law enforcement or fire suppression or prevention and require frequent exposure to a high degree of danger are classified as protective occupation participants under the WRS. For years, there has been variability across Wisconsin counties regarding whether protective status is provided to county jailers.

Under the bill, county jailers are classified as protective status under WRS without requiring that their principal duties involve active law enforcement. The additional cost associated with

protective status, including duty disability, is paid for by the employee (county jailer), not the county. The bill provides new and current jailers a onetime option to opt out of the protective status benefit if they so chose so. Based on figures from the Department of Employee Trust Funds, if this legislation was in effect for 2023, county jailers who do not opt out of protective status would need to pay 13.2% of their salary plus the rate for duty disability insurance. Duty disability insurance rates vary across the state based on each county's claims experience; in nearly all counties, it is less than 0.1% of an employee's salary.

While protective status will be offered in every county statewide, this bill provides for different circumstances to allow for more county-level flexibility. For instance, if counties currently pay for the additional cost to provide protective status to jailers, those counties are grandfathered in under the bill. A grandfathered county would have the ability in the future to not pay the additional costs if the county board so decides. In addition, if a county currently collectively bargains with public safety employees, newly hired county jailers will be able to bargain as public safety employees.

Using current data collected by BSSA, there are 2,088 jailers that would benefit from this bill should it become law. This number does not include jailers in the "grandfathered counties," who already have this benefit. It is our understanding that there are 13 counties that already provide protective status to jailers that would be "grandfathered counties."

Safety within the jail is the top priority. Without protective status, jailers must work longer careers, while facing the same physically dangerous aspects of the job. For a county jailer in their late 50s or early 60s, dealing with younger inmates can be a significant safety risk. The protective status benefit will afford jailers the opportunity to retire at 50, the same as state correctional officers, thus eliminating their exposure to injury later in their careers.

On a final note, it is important to recognize the collaboration on this legislation with the Wisconsin Counties Association. Our organizations have worked together with the bill's authors for years to ensure a balanced policy, providing county jailers with protective status without increasing county budgets.

We respectfully request you support this bill to give county jailers the protective status they deserve for the hard and dangerous work they do to keep Wisconsin safe. Thank you for your time and consideration.

MEMORANDUM

TO: Honorable Members of the Senate Committee on Judiciary and Public Safety

FROM: Marcie Rainbolt, Government Affairs Associate

DATE: March 14, 2023

SUBJECT: Support of Senate Bill 28

The Wisconsin Counties Association (WCA) supports SB 28 which classifies county jailers as protective occupation participants under the Wisconsin Retirement System (WRS) and mandates that employees pay the enhanced WRS contributions resulting from the classification. SB 28 represents a negotiated compromise between WCA, the Badger State Sheriffs Association, and the Wisconsin Sheriffs and Deputy Sheriffs Association that addresses the desires of county jailers without forcing additional costs on to county property taxpayers.

In recent years, negotiations have been ongoing between WCA and the law enforcement community regarding protective status for county jailers. The negotiations followed years of litigation regarding protective status for jailers. Currently, 13 counties have their jailers as protective. Counties were successful in the litigation as the Department of Employee Trust Funds (ETF) found that county jailers are not entitled to WRS protective status because a jailer's job is not considered "active law enforcement" under the law.

Through discussions with law enforcement associations, SB 28 was drafted which provides protective status to jailers without regard to their "active law enforcement" status and, therefore, allows jailers to receive duty disability insurance and early retirement. The legislation also clarifies that jailers are not designated as public safety employees for collective bargaining purposes (*i.e.*, they are general municipal employees and may bargain only over base wages) and jailers are responsible for all—employee and employer—additional WRS contributions.

County jailers are critical to ensuring safety in the jail for inmates, staff, and the general public. As such, SB 28 provides jailers with the additional benefits they desire while protecting local property taxpayers. It is anticipated that this legislation will bring an end to all litigation surrounding jailer protective status, thus providing legal certainty for 70 of our 72 counties with county jailers.

WCA respectfully requests that the Committee support SB 28.