



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-1946/1
MLJ:amn

2021 SENATE BILL 165

March 3, 2021 - Introduced by Senators TESTIN, L. TAYLOR, BALLWEG, BERNIER, COWLES, DARLING, FEYEN, JACQUE, MARKLEIN, NASS and WANGGAARD, cosponsored by Representatives TUSLER, CABRAL-GUEVARA, SORTWELL, BOWEN, GUNDRUM, KUGLITSCH, LOUDENBECK, MAGNAFICI, MOSES, MURSAU, PLUMER, ROZAR, SNYDER, SUBECK and THIESFELDT. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT to renumber and amend** 165.85 (3) (cm); **to amend** 165.85 (2) (bv),
2 165.85 (2) (c), 165.85 (3) (a), 165.85 (3) (b) and 940.203 (1) (c); and **to create**
3 165.85 (2) (ap), 165.85 (2) (be), 165.85 (2) (fm), 165.85 (3) (am), 165.85 (3) (cm)
4 6., 165.85 (4) (em) and 175.65 of the statutes; **relating to:** the responsibilities
5 of the Law Enforcement Standards Board and disclosure of employment files
6 when recruiting former or current officers.

Analysis by the Legislative Reference Bureau

This bill makes certain changes to the responsibilities of the Law Enforcement Standards Board. Under current law, the Law Enforcement Standards Board regulates the training of law enforcement officers. This bill requires the Law Enforcement Standards Board to also regulate jail and juvenile detention officer training standards, and to regulate recruitment standards for the recruiting of new law enforcement, jail, and juvenile detention officers.

The bill also requires each law enforcement agency to maintain an employment file for each employee. Under the bill, when a law enforcement agency, jail, or juvenile detention facility is recruiting for new officers, the agency, jail, or facility must require each candidate that is or has been employed by a different agency, jail, or facility to authorize that employer to disclose his or her employment files to the

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recruiting agency, jail, or facility and to release that employer from any liability related to the use and disclosure of the files.

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

1 **SECTION 1.** 165.85 (2) (ap) of the statutes is created to read:

2 165.85 (2) (ap) “Employment file” means all files relating to a person’s
3 employment, including performance reviews, files related to job performance,
4 internal affairs investigative files, administrative files, previous personnel
5 applications, personnel-related claims, disciplinary actions, and all substantiated
6 complaints and commendations, but does not include pay or benefit information,
7 similar administrative data or information that does not relate to performance or
8 conduct, or medical files unless the medical file relates to mental competency issues
9 bearing on the person’s suitability for a law enforcement, tribal law enforcement, jail,
10 or juvenile detention officer position.

11 **SECTION 2.** 165.85 (2) (be) of the statutes is created to read:

12 165.85 (2) (be) “Government agency” means any department, agency, or court
13 of this state, or of a city, village, town, or county in this state.

14 **SECTION 3.** 165.85 (2) (bv) of the statutes is amended to read:

15 165.85 (2) (bv) “Law enforcement agency” means a governmental unit of this
16 state or a political subdivision of this state that employs one or more law enforcement
17 officers, and includes the Marquette University police department.

18 **SECTION 4.** 165.85 (2) (c) of the statutes is amended to read:

19 165.85 (2) (c) “Law enforcement officer” means any person employed by the
20 state or any political subdivision of the state, for the purpose of detecting and
21 preventing crime and enforcing laws or ordinances and who is authorized to make

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1 arrests for violations of the laws or ordinances that the person is employed and sworn
2 to enforce. “Law enforcement officer” includes a university police officer, as defined
3 in s. 175.42 (1) (b).

4 **SECTION 5.** 165.85 (2) (fm) of the statutes is created to read:

5 165.85 (2) (fm) “Tribal law enforcement agency” has the meaning given in s.
6 165.83 (1) (e).

7 **SECTION 6.** 165.85 (3) (a) of the statutes is amended to read:

8 165.85 (3) (a) Promulgate rules for the administration of this section including
9 the authority to require the submission of reports and information pertaining to the
10 administration of this section by law enforcement and agencies, tribal law
11 enforcement agencies, jails, juvenile detention facilities, and schools approved by the
12 board and operated by or for this state or any political subdivision of the state for the
13 specific purpose of training law enforcement recruits, law enforcement officers,
14 tribal law enforcement recruits, tribal law enforcement officers, jail officer recruits,
15 jail officers, juvenile detention officer recruits, or juvenile detention officers in this
16 state.

17 **SECTION 7.** 165.85 (3) (am) of the statutes is created to read:

18 165.85 (3) (am) Establish minimum qualification standards for admission to
19 preparatory law enforcement, jail, or juvenile detention officer training for
20 preservice students and recruits, but not for department of corrections correctional
21 officers. The standards shall relate to the competence and reliability of persons to
22 assume and discharge the responsibilities of law enforcement, tribal law
23 enforcement, jail, or juvenile detention officers. The board shall prescribe the means
24 for presenting evidence of fulfillment of these requirements.

25 **SECTION 8.** 165.85 (3) (b) of the statutes is amended to read:

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1 165.85 (3) (b) Establish minimum educational ~~and, training, and recruitment~~
2 standards for admission to employment as a law enforcement ~~or, tribal law~~
3 enforcement, ~~jail, or juvenile detention~~ officer in permanent positions and in
4 temporary, probationary or part-time status. The standards shall relate to the
5 competence and reliability of persons to assume and discharge the responsibilities
6 of law enforcement, tribal law enforcement, jail, or juvenile detention officers.
7 Educational and training standards for tribal law enforcement officers under this
8 paragraph shall be identical to standards for other law enforcement officers. The
9 board shall prescribe the means for presenting evidence of fulfillment of these
10 requirements.

11 **SECTION 9.** 165.85 (3) (cm) of the statutes is renumbered 165.85 (3) (cm) (intro.)
12 and amended to read:

13 165.85 (3) (cm) (intro.) Decertify law enforcement, tribal law enforcement, jail,
14 or juvenile detention officers who ~~terminate employment or are terminated, who~~
15 ~~violate~~ do one of the following:

16 1. Violate or fail to comply with a rule, policy, or order of the board relating to
17 curriculum ~~or, training, who falsify, or recruitment.~~

18 2. Falsify information to obtain or maintain certified status, ~~who are,~~

19 3. Are certified as the result of an administrative error, ~~who are,~~

20 4. Are convicted of a felony or of any offense that, if committed in Wisconsin,
21 could be punished as a felony, ~~who are,~~

22 5. Are convicted of a misdemeanor crime of domestic violence, ~~or who fail as~~ as
23 defined in 18 USC 921 (a) (33), or are convicted of domestic abuse, as defined in s.
24 968.075 (1) (a), or the conviction is subject to the imposition of the domestic abuse

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1 surcharge under s. 973.055 (1), regardless of whether any part of the surcharge is
2 waived by the court under s. 973.055 (4).

3 7. Fail to pay court-ordered payments of child or family support, maintenance,
4 birth expenses, medical expenses, or other expenses related to the support of a child
5 or former spouse, or who fail to comply, after appropriate notice, with a subpoena or
6 warrant issued by the department of children and families or a county child support
7 agency under s. 59.53 (5) and related to paternity or child support proceedings.

8 (cp) The board shall establish procedures for decertification under par. (cm) in
9 compliance with ch. 227, except that decertification for failure to pay court-ordered
10 payments of child or family support, maintenance, birth expenses, medical expenses,
11 or other expenses related to the support of a child or former spouse or for failure to
12 comply, after appropriate notice, with a subpoena or warrant issued by the
13 department of children and families or a county child support agency under s. 59.53
14 (5) and related to paternity or child support proceedings an action described under
15 par. (cm) 7. shall be done as provided under sub. (3m) (a).

16 **SECTION 10.** 165.85 (3) (cm) 6. of the statutes is created to read:

17 165.85 (3) (cm) 6. For any crime listed in subd. 4. or 5., enter into any of the
18 following if the board determines that certification is not in the best interest of the
19 public:

20 a. A deferred judgment and sentencing agreement or deferred sentencing
21 agreement, whether pending or successfully completed.

22 b. A deferred prosecution agreement, whether pending or successfully
23 completed.

24 c. A pretrial diversion agreement, whether pending or successfully completed.

25 **SECTION 11.** 165.85 (4) (em) of the statutes is created to read:

SENATE BILL 165**SECTION 11**

1 165.85 (4) (em) *Officer recruitment*. 1. When a law enforcement agency, tribal
2 law enforcement agency, jail, or juvenile detention facility recruits for new officers,
3 the interviewing agency shall require each candidate that it interviews for a law
4 enforcement, tribal law enforcement, jail, or juvenile detention position, who is or
5 has been employed by another law enforcement agency, tribal law enforcement
6 agency, jail, juvenile detention facility, or government agency to execute a written
7 waiver that explicitly authorizes each law enforcement agency, tribal law
8 enforcement agency, jail, juvenile detention facility, or other government agency to
9 disclose the candidate's employment files to the interviewing agency, and releases
10 the interviewing agency and each law enforcement agency, tribal law enforcement
11 agency, jail, juvenile detention facility, or government agency that employs or has
12 employed the candidate from any liability related to the use and disclosure of the
13 candidate's employment files.

14 2. A law enforcement agency, tribal law enforcement agency, jail, juvenile
15 detention facility, or government agency may disclose a candidate's employment files
16 by either providing copies to the interviewing agency or allowing the interviewing
17 agency to review the files at the offices of the law enforcement agency, tribal law
18 enforcement agency, jail, juvenile detention facility, or government agency that
19 employed the candidate.

20 3. A candidate who refuses to execute the waiver shall not be considered for
21 employment by the interviewing agency or considered for certification by the board.

22 4. The interviewing agency shall, at least 30 days prior to making its hiring
23 decision, submit the waiver to each law enforcement agency, tribal law enforcement
24 agency, jail, juvenile detention facility, or government agency that has employed the
25 candidate. A law enforcement agency, tribal law enforcement agency, jail, juvenile

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1 detention facility, or government agency that receives a waiver shall make the
2 requested employment files available to the interviewing agency not more than 21
3 days after receiving the waiver.

4 5. The interviewing agency may also conduct an official oral interview of
5 individuals from the law enforcement agency, tribal law enforcement agency, jail,
6 juvenile detention facility, or government agency that employed the candidate.

7 6. A law enforcement agency, tribal law enforcement agency, jail, juvenile
8 detention facility, or government agency is not required to provide the candidate's
9 employment records if the agency or facility is prohibited from providing the
10 employment records pursuant to a binding nondisclosure agreement to which the
11 law enforcement agency, tribal law enforcement agency, jail, juvenile detention
12 facility, or government agency is a party if the agreement was executed before the
13 effective date of this subdivision [LRB inserts date].

14 7. No law enforcement agency, tribal law enforcement agency, jail, juvenile
15 detention facility, or government agency may enter into a nondisclosure agreement
16 preventing an interviewing law enforcement agency, tribal law enforcement agency,
17 jail, or juvenile detention facility from viewing employment files after the effective
18 date of this subdivision [LRB inserts date].

19 8. A law enforcement agency, tribal law enforcement agency, jail, juvenile
20 detention facility, or government agency is not liable for complying with the
21 provisions of this paragraph or participating in an official oral interview with an
22 investigator from the interviewing agency, regarding the candidate.

23 **SECTION 12.** 175.65 of the statutes is created to read:

