

# State of Wisconsin



2021 Assembly Bill 190

Date of enactment: **November 5, 2021**

Date of publication\*: **November 6, 2021**

## 2021 WISCONSIN ACT 82

AN ACT *to renumber and amend* 165.85 (3) (cm); *to amend* 165.85 (2) (bv), 165.85 (2) (c), 165.85 (3) (a), 165.85 (3) (b) and 940.203 (1) (c); and *to create* 165.85 (2) (ap), 165.85 (2) (be), 165.85 (2) (fm), 165.85 (3) (am), 165.85 (3) (cm) 7., 165.85 (4) (em) and 175.65 of the statutes; **relating to:** the responsibilities of the Law Enforcement Standards Board and disclosure of employment files when recruiting former or current officers.

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

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

165.85 (2) (ap) "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.

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

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

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

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

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

165.85 (2) (c) "Law enforcement officer" means any person employed by the state or any political subdivision of the state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances that the person is employed and sworn to enforce. "Law enforcement officer" includes a university police officer, as defined in s. 175.42 (1) (b).

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

165.85 (2) (fm) "Tribal law enforcement agency" has the meaning given in s. 165.83 (1) (e).

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

165.85 (3) (a) Promulgate rules for the administration of this section including the authority to require the submission of reports and information pertaining to the

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\* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

administration of this section by law enforcement and agencies, tribal law enforcement agencies, jails, juvenile detention facilities, and schools approved by the board and operated by or for this state or any political subdivision of the state for the specific purpose of training law enforcement recruits, law enforcement officers, tribal law enforcement recruits, tribal law enforcement officers, jail officer recruits, jail officers, juvenile detention officer recruits, or juvenile detention officers in this state.

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

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

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

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

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

165.85 (3) (cm) (intro.) Decertify law enforcement, tribal law enforcement, jail, or juvenile detention officers who terminate employment do any of the following:

1. Resign employment in lieu of termination or are terminated, who violate for just cause under any applicable provision of law, unless the board determines under par. (cp) that decertification on this ground is not necessary.

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

3. Falsify information to obtain or maintain certified status, who are.

4. Are certified as the result of an administrative error, who are.

5. Are convicted of a felony or of any offense that, if committed in Wisconsin, could be punished as a felony,

who are. A law enforcement officer so convicted shall notify the board within 30 days of his or her conviction.

6. Are convicted of a misdemeanor crime of domestic violence, or who fail as defined in 18 USC 921 (a) (33), or are convicted of domestic abuse, as defined in s. 968.075 (1) (a), or the conviction is subject to the imposition of the domestic abuse surcharge under s. 973.055 (1), regardless of whether any part of the surcharge is waived by the court under s. 973.055 (4). A law enforcement officer so convicted shall notify the board within 30 days of his or her conviction.

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

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

**SECTION 10.** 165.85 (3) (cm) 7. of the statutes is created to read:

165.85 (3) (cm) 7. For any crime listed in subd. 5. or 6., enter into any of the following if the board determines that certification is not in the best interest of the public:

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

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

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

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

165.85 (4) (em) *Officer recruitment.* 1. When a law enforcement agency, tribal law enforcement agency, jail, or juvenile detention facility recruits for new officers, the interviewing agency shall require each candidate that it interviews for a law enforcement, tribal law enforcement, jail, or juvenile detention position, who is or has been employed by another law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency to execute a written

waiver that explicitly authorizes each law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or other government agency to disclose the candidate's employment files to the interviewing agency, and releases the interviewing agency and each law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency that employs or has employed the candidate from any liability related to the use and disclosure of the candidate's employment files.

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

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

4. The interviewing agency shall, at least 30 days prior to making its hiring decision, submit the waiver to each law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency that has employed the candidate. A law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency that receives a waiver shall make the requested employment files available to the interviewing agency not more than 21 days after receiving the waiver.

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

6. A law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency is not required to provide the candidate's employment records if the agency or facility is prohibited from

providing the employment records pursuant to a binding nondisclosure agreement to which the law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency is a party if the agreement was executed before the effective date of this subdivision .... [LRB inserts date].

7. No law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency may 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 this subdivision .... [LRB inserts date].

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

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

**175.65 Law enforcement agency employment files.** Each Wisconsin law enforcement agency, as defined in s. 165.85 (2) (bv), shall keep an employment file, as defined in s. 165.85 (2) (ap), for each person the agency employs.

**SECTION 13.** 940.203 (1) (c) of the statutes is amended to read:

940.203 (1) (c) "Law enforcement officer" ~~means any person who currently is or was employed by the state, by any political subdivision, or as a tribal law enforcement officer for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances the person is employed to enforce, whether that enforcement authority extends to all laws or ordinances or is limited to specific laws or ordinances~~ has the meaning given in s. 165.85 (2) (c) and includes a person who formerly was a law enforcement officer under that definition.