



2009 SENATE BILL 395

November 18, 2009 – Introduced by Senators HANSEN, HOLPERIN, A. LASEE, COGGS, SCHULTZ and TAYLOR, cosponsored by Representatives HRAYCHUCK, BIES, DANOU, GUNDERSON, YOUNG, ZEPNICK, SINICKI, VRUWINK, BROOKS, CULLEN, TOLES, BENEDICT, BERCEAU, TOWNSEND, RIPP and ZIEGELBAUER. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1 **AN ACT to amend** 16.84 (2), 23.10 (1) and 36.11 (2) (b); and **to create** 59.26 (1m),
2 60.56 (3), 61.65 (1m), 61.66 (1m), 62.13 (4) (am), 62.50 (2m), 73.03 (65), 110.07
3 (7), 111.91 (2) (t), 165.70 (5) and 165.85 (4) (g) of the statutes; **relating to:**
4 psychological evaluations for law enforcement officers, providing an exemption
5 from emergency rule procedures, and requiring the exercise of rule-making
6 authority.

Analysis by the Legislative Reference Bureau

Under current law, the Law Enforcement Standards Board (board) establishes minimum qualification standards for law enforcement officers. The board may establish, in addition to education and training standards, qualification standards relating to the competence and reliability of a person to assume and discharge the responsibilities of a law enforcement officer.

This bill provides that a candidate for a full-time law enforcement or tribal law enforcement officer position must submit to a psychological evaluation before being appointed as a full-time law enforcement or tribal law enforcement officer. This evaluation requirement applies to law enforcement or tribal law enforcement officers appointed on or after January 1, 2010. The bill also requires local law enforcement agencies, and state agencies that employ law enforcement officers, to review the psychological evaluation of a candidate for a law enforcement officer position before appointing the individual as a full-time law enforcement officer.

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Current law permits closure of access to public records concerning psychological evaluations under some circumstances. This bill specifies that all of the psychological evaluations provided for under the bill are confidential and not subject to inspection or copying under the public records access law.

The bill requires the board to promulgate rules for the content of a required psychological evaluation for full-time law enforcement and tribal law enforcement officers. The bill also requires the board to submit a report to the legislature by April 1, 2011, that evaluates the effect of the requirement for psychological evaluations for law enforcement officers, makes a recommendation as to whether psychological evaluations should be required for part-time or limited term law enforcement and tribal law enforcement officers, and makes a recommendation as to whether psychological evaluations should be required for officers appointed to serve on a special weapons and tactics unit. Finally, the bill makes the requirement for psychological evaluations for law enforcement officers a prohibited subject of bargaining under the State Employment Labor Relations Act.

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.** 16.84 (2) of the statutes is amended to read:

2 16.84 (2) Appoint such number of police officers as is necessary to safeguard
3 all public property placed by law in the department's charge, and provide, by
4 agreement with any other state agency, police and security services at buildings and
5 facilities owned, controlled, or occupied by the other state agency. The governor or
6 the department may, to the extent it is necessary, authorize police officers employed
7 by the department to safeguard state officers, state employees, or other persons. The
8 department shall not hire any individual to serve as a full-time police officer under
9 this subsection unless the department reviews any evaluation by a psychologist that
10 is required under s. 165.85 (4) (g). Notwithstanding s. 103.13, the department shall
11 keep confidential any record of an evaluation received or maintained under this
12 subsection and any such record is not open to public inspection or copying under s.
13 19.35. A police officer who is employed by the department and who is performing

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1 duties that are within the scope of his or her employment as a police officer has the
2 powers of a peace officer under s. 59.28, except that the officer has the arrest powers
3 of a law enforcement officer under s. 968.07 regardless of whether the violation is
4 punishable by forfeiture or criminal penalty. The officer may exercise the powers of
5 a peace officer and the arrest powers of a law enforcement officer while located
6 anywhere within this state. Nothing in this subsection limits or impairs the duty of
7 the chief and each police officer of the police force of the municipality in which the
8 property is located to arrest and take before the proper court or magistrate persons
9 found in a state of intoxication or engaged in any disturbance of the peace or violating
10 any state law in the municipality in which the property is located, as required by s.
11 62.09 (13).

12 **SECTION 2.** 23.10 (1) of the statutes is amended to read:

13 23.10 (1) The department of natural resources shall secure the enforcement of
14 all laws which it is required to administer and bring, or cause to be brought, actions
15 and proceedings in the name of the state for that purpose. The persons appointed
16 by said department to exercise and perform the powers and duties heretofore
17 conferred and imposed upon deputy fish and game wardens, shall be known as
18 conservation wardens and shall be subject to ch. 230. The department shall not
19 appoint any individual to serve as a full-time conservation warden unless the
20 department reviews any evaluation by a psychologist that is required under s. 165.85
21 (4) (g). Notwithstanding s. 103.13, the department shall keep confidential any record
22 of an evaluation received or maintained under this subsection and any such record
23 is not open to public inspection or copying under s. 19.35.

24 **SECTION 3.** 36.11 (2) (b) of the statutes is amended to read:

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1 36.11 (2) (b) The board may employ police for the institutions and chiefs to head
2 such police, or contract for police, all of whom shall be deemed peace officers under
3 s. 939.22 (22) under the supervision and control of the appropriate chancellor or the
4 chancellor’s designees. Such police officers shall meet the minimum standards
5 established for other police officers by the law enforcement standards board or a
6 comparable agency, and the board may not employ an individual to serve as a
7 full-time police officer unless the board reviews any evaluation by a psychologist
8 that is required under s. 165.85 (4) (g). Notwithstanding s. 103.13, the board shall
9 keep confidential any record of an evaluation received or maintained under this
10 paragraph and any such record is not open to public inspection or copying under s.
11 19.35. Such police shall preserve the peace on all property described under par. (a),
12 enforce all rules promulgated under this chapter and all other laws, and for that
13 purpose the chancellor or the chancellor’s designee may call for aid from such other
14 persons as is deemed necessary.

15 **SECTION 4.** 59.26 (1m) of the statutes is created to read:

16 59.26 (1m) A sheriff may not appoint any individual to serve as a full-time
17 deputy under this section unless the sheriff reviews any evaluation by a psychologist
18 that is required under s. 165.85 (4) (g). Notwithstanding s. 103.13, the sheriff and
19 the county shall keep confidential any record of an evaluation received or maintained
20 under this subsection and any such record is not open to public inspection or copying
21 under s. 19.35.

22 **SECTION 5.** 60.56 (3) of the statutes is created to read:

23 60.56 (3) EVALUATION OF PROSPECTIVE OFFICERS. If a town has or establishes a
24 town police department, or creates a joint police department, the town may not hire
25 any individual to serve as a full-time town or joint police officer unless the hiring

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1 authority reviews any evaluation by a psychologist that is required under s. 165.85
2 (4) (g). Notwithstanding s. 103.13, the hiring authority and the town shall keep
3 confidential any record of an evaluation received or maintained under this
4 subsection and any such record is not open to public inspection or copying under s.
5 19.35.

6 **SECTION 6.** 61.65 (1m) of the statutes is created to read:

7 61.65 (1m) If a village has or establishes a village police department, or creates
8 a joint police department, the village may not hire any individual to serve as a
9 full-time village or joint police officer unless the hiring authority reviews any
10 evaluation by a psychologist that is required under s. 165.85 (4) (g). Notwithstanding
11 s. 103.13, the hiring authority and the village shall keep confidential any record of
12 an evaluation received or maintained under this subsection and any such record is
13 not open to public inspection or copying under s. 19.35.

14 **SECTION 7.** 61.66 (1m) of the statutes is created to read:

15 61.66 (1m) Section 61.65 (1m), to the extent that it applies to a prospective
16 full-time officer of a village police department or a joint police department, applies
17 to a full-time prospective employee of the village who may perform police protection
18 duties pursuant to sub. (1).

19 **SECTION 8.** 62.13 (4) (am) of the statutes is created to read:

20 62.13 (4) (am) The chief of police may not appoint any individual as a full-time
21 law enforcement officer under this subsection unless the chief and the board review
22 any evaluation by a psychologist that is required under s. 165.85 (4) (g).
23 Notwithstanding s. 103.13, the chief, the board, and the city shall keep confidential
24 any record of an evaluation received or maintained under this paragraph and any
25 such record is not open to public inspection or copying under s. 19.35.

SENATE BILL 395**SECTION 9**

1 **SECTION 9.** 62.50 (2m) of the statutes is created to read:

2 **62.50 (2m)** EVALUATION OF PROSPECTIVE OFFICERS. No individual may be
3 appointed as a full-time police officer under this section unless the chief of police and
4 the board review any evaluation by a psychologist that is required under s. 165.85
5 (4) (g). Notwithstanding s. 103.13, the chief, the board, and the city shall keep
6 confidential any record of an evaluation received or maintained under this
7 subsection and any such record is not open to public inspection or copying under s.
8 19.35.

9 **SECTION 10.** 73.03 (65) of the statutes is created to read:

10 **73.03 (65)** To review any evaluation of an individual by a psychologist that is
11 required under s. 165.85 (4) (g) before appointing the individual to serve as a
12 full-time law enforcement officer, as defined in s. 165.85 (2) (c). Notwithstanding s.
13 103.13, the department shall keep confidential any record of an evaluation received
14 or maintained under this subsection and any such record is not open to public
15 inspection or copying under s. 19.35.

16 **SECTION 11.** 110.07 (7) of the statutes is created to read:

17 **110.07 (7)** The department may not employ any individual as a full-time officer
18 of the state traffic patrol under sub. (1) or as a full-time inspector under sub. (3)
19 unless the department reviews any evaluation by a psychologist that is required
20 under s. 165.85 (4) (g). The department shall keep confidential any evaluation
21 received or maintained under this subsection and any such evaluation is not open to
22 public inspection or copying under s. 19.35.

23 **SECTION 12.** 111.91 (2) (t) of the statutes is created to read:

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1 111.91 (2) (t) The requirements under ss. 16.84 (2), 23.10 (1), 36.11 (2) (b), 73.03
2 (65), 110.07 (7), and 165.70 (5) for state agencies to review a psychologist's evaluation
3 of an individual before hiring the individual as a full-time law enforcement officer.

4 **SECTION 13.** 165.70 (5) of the statutes is created to read:

5 165.70 (5) (a) The department of justice may not employ an individual to serve
6 as a full-time law enforcement officer, as defined in s. 165.85 (2) (c), unless the
7 department reviews any evaluation by a psychologist that is required under s. 165.85
8 (4) (g).

9 (b) Notwithstanding s. 103.13, the department shall keep confidential any
10 record of an evaluation received or maintained under par. (a) and any such record is
11 not open to public inspection or copying under s. 19.35.

12 **SECTION 14.** 165.85 (4) (g) of the statutes is created to read:

13 165.85 (4) (g) 1. No person may be appointed as a full-time law enforcement
14 or tribal law enforcement officer on or after January 1, 2010, unless the person
15 receives an evaluation by a licensed psychologist, as defined in s. 455.01 (4), and the
16 psychologist's report of the evaluation is submitted to the appointing authority.

17 2. The board shall promulgate rules regarding the content of the evaluation
18 required under subd. 1.

19 **SECTION 15. Nonstatutory provisions.**

20 (1) REPORT TO LEGISLATURE. The law enforcement standards board shall by April
21 1, 2011, submit a report to the legislature in the manner described under section
22 13.172 (2) of the statutes, on all the following:

23 (a) The effect of the requirement under this act that agencies review a
24 psychologist's evaluation of an individual before hiring the individual as a full-time
25 law enforcement officer or tribal law enforcement officer.

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1 (b) A recommendation as to whether the law enforcement standards board
2 should exercise its rule-making authority to require an evaluation by a licensed
3 psychologist of any individual who is appointed as a part-time or limited term law
4 enforcement or tribal law enforcement officer.

5 (c) A recommendation as to whether the law enforcement standards board
6 should exercise its rule-making authority to require an evaluation by a licensed
7 psychologist of any law enforcement or tribal law enforcement officer who is
8 appointed to serve on a special weapons and tactics unit.

9 (2) **EMERGENCY RULE-MAKING AUTHORITY.**

10 (a) The law enforcement standards board shall submit in proposed form the
11 rules required under section 165.85 (4) (g) 2. of the statutes, as created by this act,
12 to the legislative council staff under section 227.15 (1) of the statutes no later than
13 the first day of the 7th month beginning after the effective date of this paragraph.

14 (b) Using the procedure under section 227.24 of the statutes, the law
15 enforcement standards board may promulgate the rules required under section
16 165.85 (4) (g) 2. of the statutes, as created by this act, for the period before the
17 effective date of the permanent rules submitted under paragraph (a), but not to
18 exceed the period authorized under section 227.24 (1) (c) and (2) of the statutes.
19 Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the law
20 enforcement standards board is not required to provide evidence that promulgating
21 a rule under this paragraph as an emergency rule is necessary for the preservation
22 of the public peace, health, safety, or welfare and is not required to provide a finding
23 of emergency for a rule promulgated under this paragraph.

24 **SECTION 16. Initial applicability.**

