

CHAPTER 165

DEPARTMENT OF JUSTICE

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165.015 Duties. The attorney general shall:

(1) **GIVE OPINION TO OFFICERS.** Give his or her opinion in writing, when required, without fee, upon all questions of law submitted to him or her by the legislature, either house thereof or the senate or assembly committee on organization, or by the head of any department of state government.

(2) **PROTECT TRUST FUNDS.** Examine all applications for loans from any of the trust funds, and furnish to the commissioners of public lands his or her opinion in writing as to the regularity of each such application, and also of the validity of any bonds or other securities purchased for the benefit of such funds.

(3) **CERTIFY BONDS.** Examine a certified copy of all proceedings preliminary to any issue of state bonds or notes, and, if found regular and valid, indorse on each bond or note his or her certificate of such examination and validity. The attorney general shall also make similar examinations and certificates respecting municipal bonds in the cases specified in s. 67.025.

(4) **KEEP STATEMENT OF FEES.** Keep a detailed statement of all fees, including his or her fees as commissioner of public lands, received by him or her during the preceding year, and file such statement with the department of administration on or before June 30 in each year.

(5) **REPORT TO LEGISLATURE.** Upon request of the legislature or either house thereof, submit a report upon any matters pertaining to the duties of his or her office to the chief clerk of each house of the legislature, for distribution to the legislature under s. 13.172 (2).

(6) **PERFORM OTHER DUTIES.** Perform all other duties imposed upon the attorney general by law.

History: 1971 c. 40 s. 93; 1971 c. 125; 1983 a. 36 s. 96 (2); 1987 a. 186; 1993 a. 482.

The attorney general, absent specific legislative grant of power, is devoid of the inherent power to initiate and prosecute litigation intended to protect or promote the interests of the state or its citizens and cannot act for the state as a *parens patriae*. *Estate of Sharp*, 63 W (2d) 254, 217 NW (2d) 258.

The powers of the attorney general in Wisconsin. *Van Alstyne, Roberts*, 1974 WLR 721.

165.017 Review of certain detentions or petitions for commitment. (1) The attorney general or his or her designee shall review and approve or disapprove all proposed emergency detentions or emergency detentions of individuals as specified under s. 51.15 (1) (c) 1.

(2) The attorney general or his or her designee shall review and approve or disapprove all proposed petitions or petitions for commitment of individuals as specified under s. 51.20 (1) (ad) 1.

(3) Subsection (1) does not apply if the attorney general makes a finding that a court of competent jurisdiction in this state, in a case in which the constitutionality of s. 51.15 (1) (a) 5. or of s. 51.20 (1) (a) 2. e. has been challenged, has upheld the constitutionality of s. 51.15 (1) (a) 5. or s. 51.20 (1) (a) 2. e.

(4) Subsection (2) does not apply if the attorney general makes a finding that a court of competent jurisdiction in this state, in a case in which the constitutionality of s. 51.20 (1) (a) 2. e. has been challenged, has upheld the constitutionality of s. 51.20 (1) (a) 2. e.

(5) This section does not apply after November 30, 2001.
History: 1995 a. 292.

165.055 Appointments. (1) The attorney general may appoint a deputy attorney general and assistants each of whom shall be an attorney at law admitted to practice in this state. Such appointments shall be made in writing and filed in the office of the secretary of state, and such appointees shall take and subscribe the constitutional oath of office which shall also be filed. Appointees shall perform such duties as the attorney general prescribes.

(2) The deputy attorney general shall give a bond to the state in the sum of \$5,000, with good and sufficient sureties, to be approved by the governor, conditioned for the faithful performance of the deputy attorney general's duties and the attorney general shall be responsible for all acts of the deputy attorney general.

(3) The attorney general may appoint in the unclassified service a director of research and information services.

(4) The attorney general shall appoint, in the unclassified service, the administrator of the legal services division subject to s. 230.08 (4) (a).

History: 1973 c. 90; 1975 c. 39; 1977 c. 29, 44, 418; 1987 a. 27; 1993 a. 482. See note to 801.11, citing 63 Atty. Gen. 467.

165.065 Assistant attorney generals; antitrust. (1) At least one assistant attorney general shall be assigned to the investigation and prosecution of violations arising under ch. 133 and shall carry out the duties imposed on the attorney general by ch. 133. All apparent violations of ch. 133 which come to the atten-

tion of any officer or agency of state government shall be reported to one of such assistant attorneys general. All officers and agencies shall cooperate with and assist the department of justice in the investigation and prosecution of such apparent violations.

(2) The assistant attorney general in charge of antitrust investigations and prosecutions is to cooperate actively with the antitrust division of the U.S. department of justice in everything that concerns monopolistic practices in Wisconsin, and also to cooperate actively with the department of agriculture, trade and consumer protection in the work which this agency is carrying on under s. 100.20 of the marketing law with regard to monopolistic practices in the field of agriculture and with the federal trade commission on matters arising in or affecting Wisconsin which pertain to its jurisdiction.

History: 1977 c. 29 s. 1650m (4); 1977 c. 260.

165.08 Power to compromise. Any civil action prosecuted by the department by direction of any officer, department, board or commission, shall be compromised or discontinued when so directed by such officer, department, board or commission. Any civil action prosecuted by the department on the initiative of the attorney general, or at the request of any individual may be compromised or discontinued with the approval of the governor. In any criminal action prosecuted by the attorney general, the department shall have the same powers with reference to such action as are vested in district attorneys.

165.09 Removal of barriers to trade or movement of dairy products. The attorney general may take such action as he or she deems necessary in order to contest or oppose existing statutes, ordinances, regulations, orders or other trade barriers which may restrict the sale in other states of milk or other dairy products produced in Wisconsin; study and investigate problems concerning the free movement of milk and other dairy products in interstate commerce and present the results thereof to such legislative and executive agencies of the federal government and the several states, such studies, investigations and presentations to executive and legislative agencies to be made either individually or jointly with others.

History: 1993 a. 482.

165.25 Duties of department of justice. The department of justice shall:

(1) REPRESENT STATE. Except as provided in s. 978.05 (5), appear for the state and prosecute or defend all actions and proceedings, civil or criminal, in the court of appeals and the supreme court, in which the state is interested or a party, and attend to and prosecute or defend all civil cases sent or remanded to any circuit court in which the state is a party; and, if requested by the governor or either house of the legislature, appear for and represent the state, any state department, agency, official, employe or agent, whether required to appear as a party or witness in any civil or criminal matter, and prosecute or defend in any court or before any officer, any cause or matter, civil or criminal, in which the state or the people of this state may be interested. The public service commission may request under s. 196.497 (7) that the attorney general intervene in federal proceedings. All expenses of the proceedings shall be paid from the appropriation under s. 20.455 (1) (d).

(2) PROSECUTE BREACHES OF BONDS AND CONTRACTS. Prosecute, at the request of the governor, or of the head of any department of the state government any official bond or any contract in which the state is interested, deposited with any of them, upon a breach thereof, and prosecute or defend for the state all actions, civil or criminal, relating to any matter connected with any of their departments except in those cases where other provision is made.

(3) ADVISE DISTRICT ATTORNEYS. Consult and advise with the district attorneys when requested by them in all matters pertaining to the duties of their office.

(3m) REVIEW OBSCENITY CASES. Review obscenity cases submitted to the department by district attorneys under s. 944.21 (7).

The attorney general shall determine whether a prosecution may be commenced.

(3r) AVOID CONFLICT OF INTEREST. Require that attorneys in different organizational subunits in the department prosecute violations of chs. 561 to 569 or Indian gaming compacts entered into under s. 14.035 and defend any department, agency, official, employe or agent under subs. (1), (4) (a) and (6).

(4) FURNISH LEGAL SERVICES; APPROPRIATION. (a) The department of justice shall furnish all legal services required by the investment board, the lottery division in the department of revenue, the public service commission, the department of transportation, the department of natural resources, the department of tourism and the department of employe trust funds, together with any other services, including stenographic and investigational, as are necessarily connected with the legal work.

(am) The department of justice shall furnish legal services to the department of regulation and licensing in all proceedings under s. 440.21 (3), together with any other services, including stenographic and investigational, as are necessarily connected with the legal services.

(ar) The department of justice shall furnish all legal services required by the department of agriculture, trade and consumer protection relating to the enforcement of ss. 100.18, 100.182, 100.20, 100.205, 100.207, 100.21, 100.28, 100.50, 134.22, 134.42, 134.68, 134.70, 134.74, 134.83 and 134.85 and chs. 136, 344, 704, 707 and 779, together with any other services as are necessarily connected to the legal services.

(b) The department of justice shall furnish bond counsel services to the building commission when the building commission contracts public debt under subch. I of ch. 18.

(bn) The department of justice shall provide legal services, other than those relating to civil actions or opinions, under ch. 150 to the department of health and family services.

(c) The department shall at the end of each fiscal year, except for programs financed out of the general fund and except for services required to be provided by statute other than this subsection, render to the respective agencies enumerated in this subsection an itemized statement of the total cost of the legal and other services including travel expenses and legal expenses enumerated in s. 20.455 (1) (d).

(d) Upon receipt of the statement, the respective agency head shall audit the statement and upon finding it to be correct shall certify the amount of the statement to the department of administration to be paid into the general fund out of the agency's proper appropriation.

(5) PREPARE FORMS. Whenever requested by the head of any department of the state government, the department of justice shall prepare proper drafts of forms for contracts and other writings which may be wanted for the use of the state.

(6) ATTORNEY FOR STATE. (a) At the request of the head of any department of state government, the attorney general may appear for and defend any state department, or any state officer, employe or agent of the department in any civil action or other matter brought before a court or an administrative agency which is brought against the state department, or officer, employe or agent for or on account of any act growing out of or committed in the lawful course of an officer's, employe's or agent's duties. Witness fees or other expenses determined by the attorney general to be reasonable and necessary to the defense in the action or proceeding shall be paid as provided for in s. 885.07. The attorney general may compromise and settle the action as the attorney general determines to be in the best interest of the state. Members, officers and employes of the Wisconsin state agencies building corporation and the Wisconsin state public building corporation are covered by this section. Members of the board of governors created under s. 619.04 (3), members of a committee or subcommittee of that board of governors, members of the patients compensation fund peer review council created under s. 655.275 (2) and persons consulting with that council under s. 655.275 (5) (b) are covered

by this section with respect to actions, claims or other matters arising before, on or after April 25, 1990. The attorney general may compromise and settle claims asserted before such actions or matters formally are brought or may delegate such authority to the department of administration. This paragraph may not be construed as a consent to sue the state or any department thereof or as a waiver of state sovereign immunity.

(b) Volunteer health care providers who provide services under s. 146.89 are, for the provision of those services, covered by this section and shall be considered agents of the department of health and family services for purposes of determining which agency head may request the attorney general to appear and defend them.

(c) Physicians under s. 252.04 (9) (b) are covered by this section and shall be considered agents of the department of health and family services for purposes of determining which agency head may request the attorney general to appear and defend them.

(e) The department of justice may appear for and defend the state or any state department, agency, official or employee in any civil action arising out of or relating to the assessment or collection of costs concerning environmental cleanup or natural resources damages including actions brought under 42 USC 9607. The action may be compromised and settled in the same manner as provided in par. (a). At the request of the department of natural resources, the department of justice may provide legal representation to the state or to the department of natural resources in the same matter in which the department of justice provides defense counsel, if the attorneys representing those interests are assigned from different organizational units within the department of justice. This paragraph may not be construed as a consent to sue the state or any department, agency, official or employee of the state or as a waiver of sovereign immunity.

(6m) ATTORNEY FOR STATE WITNESSES. At the request of the head of any department or agency of state government, the attorney general may appear for and represent any state official, employe or agent who is required to appear as a witness in any administrative or civil matter.

(7) KEEP RECORD OF ACTIONS. The department shall keep a record of all actions and demands prosecuted or defended by the department on behalf of the state and all related proceedings. The department may dispose of public records in accordance with s. 16.61.

(8) HISTORICAL SOCIETY CONTRACTS. In subs. (1), (6) and (6m), treat any nonprofit corporation operating a museum under a lease agreement with the state historical society as a department of state government and any official, employe or agent of such a corporation as a state official, employe or agent.

(8m) LOCAL EMERGENCY PLANNING COMMITTEES. In subs. (1), (6) and (6m), treat any local emergency planning committee appointed by a county board under s. 59.54 (8) (a) as a department of state government and any member of such a committee as a state official, employe or agent.

(9) PERFORM OTHER DUTIES. The department of justice shall perform all other duties imposed upon the department by law.

History: 1971 c. 125 s. 522 (1); 1971 c. 215; 1973 c. 333; 1975 c. 81, 199; 1977 c. 29 s. 1656 (27); 1977 c. 187, 260, 273, 344; 1981 c. 20, 62, 96; 1983 a. 27; 1983 a. 36 s. 96 (2), (3), (4); 1983 a. 192; 1985 a. 29, 66; 1987 a. 416; 1989 a. 31, 115, 187, 206, 359; 1991 a. 25, 39, 269; 1993 a. 27, 28, 365; 1995 a. 27 ss. 4453 to 4454m, 9126 (19); 1995 a. 201.

State Emergency Response Board Committee and Local Emergency Planning Committee subcommittee members appointed by a county board are entitled to indemnity for damage liability under s. 895.46 and legal representation by the attorney general under s. 165.25. 81 Atty. Gen. 17.

The powers of the attorney general in Wisconsin. Van Alstyne, Roberts, 1974 WLR 721.

165.255 Representation in sexually violent person commitment proceedings. The department of justice may, at the request of an agency under s. 980.02 (1), represent the state in sexually violent person commitment proceedings under ch. 980.

History: 1993 a. 479.

165.26 Department of justice may have cases printed. In all state cases to be argued in the supreme court by the depart-

ment of justice, the department may require the printing by the state printer, when necessary, of the briefs and appendices of the department; and the account therefor shall be paid out of the state treasury and charged to the appropriation in s. 20.455 (1) (d).

History: 1971 c. 125 s. 522 (1); 1977 c. 29 s. 1656 (27); 1977 c. 187 s. 85; Stats. 1977 s. 165.26.

165.30 Collection of delinquent obligations. (1) DEFINITIONS. In this section:

(a) “Departments” has the meaning given in s. 16.002 (2).

(b) “Obligation” includes any amount payable to the state, including accounts, charges, claims, debts, fees, fines, forfeitures, interest, judgments, loans, penalties and taxes.

(2) BANKRUPTCY CASES. The department of justice shall monitor bankruptcy cases filed in bankruptcy courts in this state and other states, notify departments that may be affected by those bankruptcy cases, and represent the interests of the state in bankruptcy cases and related adversary proceedings.

(3) COLLECTION PROCEEDS. (a) All obligations collected by the department of justice under this section shall be paid to the state treasurer and deposited in the appropriate fund.

(b) From the amount of obligations collected by the department of justice under this section, the treasurer shall credit an amount equal to the reasonable and necessary expenses incurred by the department related to collecting those obligations to the appropriation account under s. 20.455 (1) (gs).

History: 1995 a. 27.

165.50 Criminal investigation. (1) The department of justice shall perform the following criminal investigatory functions for the state:

(a) Investigate crime that is statewide in nature, importance or influence.

(b) Conduct arson investigations.

(2) Special criminal investigation agents of the department shall have the same general police powers as are conferred upon peace officers.

(3) Except as provided in s. 20.001 (5), all moneys received as restitution payments reimbursing the department of justice for moneys expended in undercover investigations and operations shall be deposited as general purpose revenue — earned.

History: 1975 c. 39; 1985 a. 29; 1987 a. 27; 1993 a. 213.

165.51 State fire marshal. The attorney general shall designate an employe as the state fire marshal.

History: 1977 c. 260; 1985 a. 29.

165.55 Arson investigation. (1) The chief of the fire department or company of every city, village and town in which a fire department or company exists, and where no fire department or company exists, the city mayor, village president or town clerk shall investigate or cause to be investigated the cause, origin and circumstances of every fire occurring in his or her city, village or town by which property has been destroyed or damaged when the damage exceeds \$500, and on fires of unknown origin he or she shall especially investigate whether the fire was the result of negligence, accident or design. Where any investigation discloses that the fire may be of incendiary origin, he or she shall report the same to the state fire marshal.

(2) The department of justice shall supervise and direct the investigation of fires of incendiary origin when the state fire marshal deems the investigation expedient.

(3) When, in the opinion of the state fire marshal, investigation is necessary, he or she shall take or cause to be taken the testimony on oath of all persons supposed to be cognizant of any facts or to have any means of knowledge in relation to any case of damage to property by fire or explosives. If the state fire marshal is of the opinion that there is evidence sufficient to charge any person with a crime under s. 941.11, 943.01, 943.012, 943.013, 943.02, 943.03 or 943.04 or with an attempt to commit any of those crimes, he or she shall cause the person to be prosecuted, and

furnish the prosecuting attorney the names of all witnesses and all the information obtained by him or her, including a copy of all testimony taken in the investigation.

(4) The state fire marshal shall assign at least one deputy fire marshal exclusively to fire marshal duties for counties having a population of 500,000 or more.

(7) The state fire marshal and his or her subordinates shall each have the power to conduct investigations and hearings and take testimony regarding fires and the causes thereof, and compel the attendance of witnesses. The fees of witnesses shall be paid upon certificates signed by the officer before whom any witnesses shall have attended, and shall be charged to the appropriation for the state fire marshal.

(8) All investigations held by or under the direction of the state fire marshal, or his or her subordinates, may, in the fire marshal's discretion, be private, and persons other than those required to be present may be excluded from the place where such investigation is held, and witnesses may be kept apart from each other, and not allowed to communicate with each other until they have been examined.

(9) The state fire marshal and his or her subordinates may at all reasonable hours in performance of their duties enter upon and examine any building or premises where any fire has occurred and other buildings or premises near the same, and seize any evidence found as a result of such examination which in the opinion of the officer finding the same may be used in any criminal action which may result from such examination or otherwise, and retain it for a reasonable time or until it becomes an exhibit in the action.

(10) The state fire marshal, deputy state fire marshals or chiefs of fire departments shall apply for and obtain special inspection warrants prior to the inspection or investigation of personal or real properties which are not public buildings or for the inspection of portions of public buildings which are not open to the public for the purpose of determining the cause, origin and circumstances of fires either upon showing that consent to entry for inspection purposes has been refused or upon showing that it is impractical to obtain the consent. The warrant may be in the form set forth in s. 66.123. The definition of a public building under s. 101.01 (12) applies to this subsection. No special inspection warrant is required:

(a) In cases of emergency when a compelling need for official action can be shown and there is no time to secure a warrant;

(b) For investigations which occur during or immediately after the fire fighting process; or

(c) For searches of public buildings which are open to the public.

(10m) Any investigation or inspection authorized under sub. (10) shall be conducted by the state fire marshal, deputy state fire marshals or chiefs of fire departments or their designees.

(11) All officers who perform any service at the request of the state fire marshal or the state fire marshal's subordinates shall receive fees determined by the state fire marshal and such fees shall be charged to the appropriation for the department of justice.

(13) Any officer named in subs. (1) and (2) who neglects to comply with any of the requirements of this section shall be fined not less than \$25 nor more than \$200 for each neglect or violation.

(14) The state fire marshal, any deputy fire marshal or fire chief may require an insurer, including the state acting under ch. 619, to furnish any information in its possession relating to a fire loss involving property with respect to which a policy of insurance issued or serviced by the insurer may apply. Any insurer, including the state, may furnish to the state fire marshal, any deputy fire marshal or fire chief information in its possession relating to a fire loss to which insurance issued by it may apply. In the absence of fraud or malice, no insurer furnishing information under this subsection, state fire marshal, deputy fire marshal or fire chief, and no person acting on behalf of the insurer, state fire marshal, deputy fire marshal or fire chief, shall be liable in any civil or criminal

action on account of any statement made, material furnished or action taken in regard thereto. Information furnished by an insurer under this subsection shall be held in confidence by the state fire marshal, deputy fire marshal or fire chief and all subordinates until release or publication is required pursuant to a civil or criminal proceeding. Information obtained by the state fire marshal, any deputy fire marshal or fire chief during their investigations of fires determined to be the result of arson may be available to the insurer of the property involved.

History: 1973 c. 333; 1975 c. 224; 1977 c. 260, 341; 1979 c. 133; 1981 c. 318; 1983 a. 189 s. 329 (4); 1985 a. 29; 1987 a. 348; 1993 a. 50, 482; 1995 a. 27.

State fire marshal must establish proper discretionary reasons for exercising privilege of secrecy under (8). *Black v. General Electric Co.* 89 W (2d) 195, 278 NW (2d) 224 (Ct. App. 1979).

See note to Art. I, sec. 11, citing *State v. Monosso*, 103 W (2d) 368, 308 NW (2d) 891 (Ct. App. 1981).

Arson investigations under (9) and (10) are subject to search warrant requirements set forth in *Michigan v. Tyler*, 436 US 499 (1978). Consent to search discussed. 68 Atty. Gen. 225.

Warrantless search by arson investigators of defendant's fire-damaged home was unconstitutional. *Michigan v. Clifford*, 464 US 287 (1984).

165.60 Law enforcement. The department of justice is authorized to enforce ss. 101.123 (2), (5) and (8), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03 and 945.04 and is invested with the powers conferred by law upon sheriffs and municipal police officers in the performance of those duties. This section does not deprive or relieve sheriffs, constables and other local police officers of the power and duty to enforce those sections, and those officers shall likewise enforce those sections.

History: 1975 c. 39; 1985 a. 29; 1989 a. 97.

165.70 Investigation of statewide crime. (1) The department of justice shall:

(a) Investigate crime which is statewide in nature, importance or influence;

(b) Enforce chs. 945 and 961 and ss. 940.20 (3), 941.25 to 941.27, 943.01 (2) (c), 943.27, 943.28, 943.30, 944.30, 944.31, 944.32, 944.33, 944.34, 946.65, 947.02 (3) and (4) and 948.08.

(d) Enforce and administer s. 165.55.

(e) Investigate violations of ch. 563 that are statewide in nature, importance or influence.

(2) The attorney general shall appoint, under the classified service, investigative personnel to achieve the purposes set out in sub. (1) who shall have the powers of a peace officer. As many as are deemed necessary of the investigators so appointed shall be trained in drugs and narcotics law enforcement, or shall receive such training within one year of their appointment, and they shall assist, when appropriate, local law enforcement agencies to help them meet their responsibilities in this area.

(3) It is the intention of this section to give the attorney general responsibility for devising programs to control crime statewide in nature, importance or influence, drugs and narcotics abuse, commercial gambling, prostitution, and arson. Nothing herein shall deprive or relieve local peace officers of the power and duty to enforce those provisions enumerated in sub. (1).

(3m) The attorney general shall establish a separate bureau in the division of criminal investigation in which all of the department's gaming law enforcement responsibilities under chs. 561 to 569 and 945 shall be performed.

(4) District attorneys, sheriffs and chiefs of police shall cooperate and assist the personnel of the department in the performance of their duties.

History: 1971 c. 40, 211, 307; 1973 c. 156; 1975 c. 39; 1977 c. 173 s. 168; 1977 c. 215, 260; 1977 c. 272 s. 98; 1985 a. 29; 1987 a. 332; 1989 a. 31; 1991 a. 269; 1993 a. 213; 1995 a. 448.

165.72 Controlled substances hotline and rewards.

(1) DEFINITIONS. In this section:

(a) "Department" means the department of justice.

(b) "Jail officer" has the meaning given in s. 165.85 (2) (bn).

(c) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

(d) “Law enforcement officer” has the meaning given in s. 165.85 (2) (c).

(e) “Secure detention officer” has the meaning given in s. 165.85 (2) (f).

(2) **HOTLINE.** The department of justice shall maintain a toll-free telephone number during normal retail business hours, as determined by departmental rule, for both of the following:

(a) For persons to anonymously provide tips regarding suspected controlled substances violations.

(b) For pharmacists to report suspected controlled substances violations.

(3) **REWARD PAYMENT PROGRAM.** The department shall administer a reward payment program. Under the program, the department may offer and pay rewards from the appropriation under s. 20.455 (2) (e) for information under sub. (2) (a) leading to the arrest and conviction of a person for a violation of ch. 961.

(4) **PAYMENT LIMITATIONS.** A reward under sub. (3) may not exceed \$1,000 for the arrest and conviction of any one person. The department may not make any reward payment to a law enforcement officer, jail officer, secure detention officer, pharmacist or department employee.

(5) **DEPARTMENT AUTHORITY.** If a reward is claimed, the department shall make the final determination regarding any payment. The department may pay portions of a reward to 2 or more persons. The payment of a reward is not subject to a contested case proceeding under ch. 227. The offer of a reward under sub. (3) does not create any liability on the department or the state.

(6) **RECORDS.** The department may withhold any record under this section from inspection or copying under s. 19.35.

(7) **PUBLICITY.** The department shall cooperate with the department of education in publicizing, in public schools, the use of the toll-free telephone number under sub. (2).

NOTE: Sub. (7) is shown as amended eff. 1–1–96 by 1995 Wis. Act 27. The treatment by Act 27 was held unconstitutional and declared void by the Supreme Court in *Thompson v. Craney*, case no. 95–2168–OA. Prior to Act 27 it read:

(7) **PUBLICITY.** The department shall cooperate with the department of public instruction in publicizing, in public schools, the use of the toll-free telephone number under sub. (2)

History: 1989 a. 122, 336; 1993 a. 16, 460; 1995 a. 27 ss. 4456, 4457, 9145 (1); 1995 a. 448.

165.75 Crime laboratories. (1) In this section and ss. 165.77 to 165.81:

(a) “Department” means the department of justice.

(b) “Employee” means any person in the service of the laboratories. “Employee” does not include any division administrator.

(c) “Laboratories” means the crime laboratories.

(2) The laboratories shall be located in the cities of Madison, Milwaukee and Wausau. The personnel of the laboratories shall consist of such employees as are authorized under s. 20.922. The laboratory in the city of Milwaukee is named the William J. McCauley crime laboratory.

(3) (a) The purpose of the laboratories is to establish, maintain and operate crime laboratories to provide technical assistance to local law enforcement officers in the various fields of scientific investigation in the aid of law enforcement. Without limitation because of enumeration the laboratories shall maintain services and employ the necessary specialists, technical and scientific employees for the recognition and proper preservation, marking and scientific analysis of evidence material in the investigation and prosecution of crimes in such fields as firearms identification, the comparison and identification of toolmarks, chemistry, identification of questioned documents, metallurgy, comparative microscopy, instrumental detection of deception, the identification of fingerprints, toxicology, serology and forensic photography.

(b) The employees are not peace officers and have no power of arrest or to serve or execute criminal process. They shall not be appointed as deputy sheriffs and shall not be given police powers by appointment or election to any office. Employees shall not

undertake investigation of criminal conduct except upon the request of a sheriff, coroner, medical examiner, district attorney, chief of police, warden or superintendent of any state prison, attorney general or governor. The head of any state agency may request investigations but in those cases the services shall be limited to the field of health, welfare and law enforcement responsibility which has by statute been vested in the particular state agency.

(c) Upon request under par. (b), the laboratories shall collaborate fully in the complete investigation of criminal conduct within their competence in the forensic sciences including field investigation at the scene of the crime and for this purpose may equip a mobile unit or units.

(d) The services of the laboratories available to such officer shall include appearances in court as expert witnesses.

(e) The department may decline to provide laboratory service in any case not involving a potential charge of felony.

(f) The services of the laboratories may be provided in civil cases in which the state or any department, bureau, agency or officer of the state is a party in an official capacity, when requested to do so by the attorney general.

(4) The operation of the laboratories shall conform to the rules and policies established by the attorney general.

(5) Except as provided in s. 20.001 (5), all moneys received as restitution payments reimbursing the department for moneys expended by the laboratories shall be deposited as general purpose revenue — earned.

History: 1973 c. 272; 1977 c. 260; 1981 c. 314; 1983 a. 189; 1985 a. 29 ss. 2000 to 2006, 3200 (35); 1987 a. 27; 1989 a. 65; 1991 a. 39; 1993 a. 16.

An evaluation of drug testing procedures. Stein, Laessig, Indriksons, 1973 WLR 727.

165.76 Submission of human biological specimen.

(1) Except as provided in sub. (3), a person shall comply with the requirements under this section if he or she meets any of the following criteria:

(a) Is in prison or a secured correctional facility, as defined in s. 938.02 (15m), or a secured child caring institution, as defined in s. 938.02 (15g) or on probation, parole, supervision or aftercare supervision on or after August 12, 1993, for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2) or 948.025.

(b) Is found not guilty or not responsible by reason of mental disease or defect on or after August 12, 1993, and committed under s. 51.20 or 971.17 for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2) or 948.025.

(c) Is in institutional care on or after August 12, 1993, for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2) or 948.025.

(d) Is found to be a sexually violent person under ch. 980 on or after June 2, 1994.

(e) Is on parole or probation in this state from another state under s. 304.13 or 304.135 on or after July 9, 1996, for a violation of the law of another state that the department of corrections determines, under s. 304.137, is comparable to a violation of s. 940.225 (1) or (2), 948.02 (1) or (2) or 948.025.

(2) (a) Except as provided in sub. (3), a person subject to sub. (1) shall provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(b) The person shall comply with par. (a) at the following applicable time:

1. If the person has been placed on probation or supervision, he or she shall provide the specimen under par. (a) at the office of a county sheriff as soon after the placement as practicable, as directed by his or her probation and parole agent or, if a child, the agency providing supervision for the child.

2. If the person has been sentenced to prison or placed in a secured correctional facility or a secured child caring institution, he or she shall provide the specimen under par. (a) at the office of a county sheriff as soon as practicable after release on parole or aftercare supervision, as directed by his or her probation and parole agent or aftercare agent, except that the department of

corrections may require the person to provide the specimen while he or she is in prison or in a secured correctional facility or a secured child caring institution.

3. If the person has been committed to the department of health and family services under s. 51.20 or 971.17 or found to be a sexually violent person under ch. 980, he or she shall provide the specimen under par. (a) as directed by the department of health and family services.

3m. If the person is on parole or probation in this state from another state under s. 304.13 or 304.135, he or she shall provide the specimen under par. (a) at the office of a county sheriff as soon as practicable after entering this state, as directed by his or her probation and parole agent.

4. If subs. 1. to 3m. do not apply, the department of justice shall specify in its order the time and procedure for the person to provide the specimen under par. (a).

NOTE: Subd. 4. is shown as created by 1995 Wis. Act 440. A previously existing version of subd. 4. existed at the time of the enactment of Act 440, which reads as shown below. Corrective legislation is pending.

4. If subs. 1. to 3. do not apply, the department of justice shall specify in its order the time and procedure for the person to provide the specimen under par. (a).

5. Notwithstanding subs. 1. to 3., for persons who are subject to sub. (1) and who are in prison, a secured correctional facility or a secured child caring institution or on probation, parole, supervision or aftercare supervision on August 12, 1993, the departments of justice, corrections and health and family services shall cooperate to have these persons provide specimens under par. (a) before July 1, 1998.

6. Notwithstanding subd. 3m., for a person who is subject to sub. (1) (e) and who is on parole or probation in this state from another state on July 9, 1996, the department of justice and the department of corrections shall cooperate to have these persons provide specimens under par. (a) before July 1, 2000.

(3) If a person is required to submit a biological specimen under s. 51.20 (13) (cr), 938.34 (15), 971.17 (1m) (a), 973.047 or 980.063, he or she shall comply with that requirement and is not required to comply with this section.

(4) The department of justice shall promulgate rules necessary to carry out its duties under this section.

(5) The departments of corrections and health and family services, county departments under ss. 46.215, 46.22 and 46.23 and county sheriffs shall cooperate with the department of justice in obtaining specimens under this section.

History: 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 77, 440.

DNA sampling under this section is constitutional. Shelton v. Grudman, 934 F Supp. 1048 (1996).

165.765 Biological specimen; penalty and immunity.

(1) Whoever intentionally fails to comply with a requirement to submit a biological specimen under s. 165.76, 938.34 (15), 973.047 or 980.063 may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

(2) (a) Any physician, registered nurse, medical technologist, physician assistant or person acting under the direction of a physician who obtains a biological specimen under s. 165.76, 938.34 (15), 973.047 or 980.063 is immune from any civil or criminal liability for the act, except for civil liability for negligence in the performance of the act.

(b) Any employer of the physician, nurse, technologist, assistant or person under par. (a) or any hospital where blood is withdrawn by that physician, nurse, technologist, assistant or person has the same immunity from liability under par. (a).

History: 1993 a. 98; 1995 a. 77, 440.

165.77 Deoxyribonucleic acid analysis and data bank.

(1) In this section:

(a) "Health care professional" has the meaning given in s. 154.01 (3).

(b) "Law enforcement agency" means a governmental unit of one or more persons employed full time by the federal government, a state or a political subdivision of a state for the purpose of preventing and detecting crime and enforcing federal or state laws or local ordinances, employes of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(c) "Wisconsin law enforcement agency" means a governmental unit of one or more persons employed full time by this state or a political subdivision of this state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employes of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(2) (a) 1. If the laboratories receive a human biological specimen pursuant to any of the following requests, the laboratories shall analyze the deoxyribonucleic acid in the specimen:

a. A request from a law enforcement agency regarding an investigation.

b. A request, pursuant to a court order, from a defense attorney regarding his or her client's specimen.

c. A request, subject to the department's rules under sub. (8), from an individual regarding his or her own specimen.

2. The laboratories may compare the data obtained from the specimen with data obtained from other specimens. The laboratories may make data obtained from any analysis and comparison available to law enforcement agencies in connection with criminal or delinquency investigations and, upon request, to any prosecutor, defense attorney or subject of the data. The data may be used in criminal and delinquency actions and proceedings. In this state, the use is subject to s. 972.11 (5). The laboratories shall not include data obtained from deoxyribonucleic acid analysis of those specimens received under this paragraph in the data bank under sub. (3). The laboratories shall destroy specimens obtained under this paragraph after analysis has been completed and the applicable court proceedings have concluded.

(b) Paragraph (a) does not apply to specimens received under s. 51.20 (13) (cr), 165.76, 938.34 (15), 971.17 (1m) (a), 973.047 or 980.063.

(3) If the laboratories receive a human biological specimen under s. 51.20 (13) (cr), 165.76, 938.34 (15), 971.17 (1m) (a), 973.047 or 980.063, the laboratories shall analyze the deoxyribonucleic acid in the specimen. The laboratories shall maintain a data bank based on data obtained from deoxyribonucleic acid analysis of those specimens. The laboratories may compare the data obtained from one specimen with the data obtained from other specimens. The laboratories may make data obtained from any analysis and comparison available to law enforcement agencies in connection with criminal or delinquency investigations and, upon request, to any prosecutor, defense attorney or subject of the data. The data may be used in criminal and delinquency actions and proceedings. In this state, the use is subject to s. 972.11 (5). The laboratories shall destroy specimens obtained under this subsection after analysis has been completed and the applicable court proceedings have concluded.

(4) A person whose deoxyribonucleic acid analysis data has been included in the data bank under sub. (3) may request expungement on the grounds that his or her conviction or adjudication has been reversed, set aside or vacated. The laboratories shall purge all records and identifiable information in the data bank pertaining to the person and destroy all samples from the person if it receives all of the following:

(a) The person's written request for expungement.

(b) A certified copy of the court order reversing, setting aside or vacating the conviction or adjudication.

(5) Any person who intentionally disseminates a specimen received under this section or any information obtained as a result of analysis or comparison under this section or from the data bank

under sub. (3) in a manner not authorized under this section or the rules under sub. (8) may be fined not more than \$500 or imprisoned for not more than 30 days or both.

(6) Except as necessary to administer this section or as provided under the department's rules under sub. (8), the department shall deny access to any record kept under this section.

(7) Whenever a Wisconsin law enforcement agency or a health care professional collects evidence in a case of alleged or suspected sexual assault, the agency or professional shall follow the procedures specified in the department's rules under sub. (8). The laboratories shall perform deoxyribonucleic acid analysis of specimens provided by law enforcement agencies under sub. (2). The laboratories shall not include data obtained from deoxyribonucleic acid analysis of those specimens in the data bank under sub. (3).

(8) The department shall promulgate rules to administer this section.

History: 1993 a. 16, 98; 1995 a. 77, 440.

165.78 Information center; training activities. (1) The department shall act as a center for the clearance of information between law enforcement officers. In furtherance of this purpose it shall issue bulletins by mail or its telecommunication system. The department shall at all times collaborate and cooperate fully with the F.B.I. in exchange of information.

(2) The department shall cooperate and exchange information with other similar organizations in other states.

(3) The department may prepare and conduct informational and training activities for the benefit of law enforcement officers and professional groups.

History: 1977 c. 260; 1985 a. 29.

165.79 Evidence privileged. (1) Evidence, information and analyses of evidence obtained from law enforcement officers by the laboratories is privileged and not available to persons other than law enforcement officers nor is the defendant entitled to an inspection of information and evidence submitted to the laboratories by the state or of a laboratory's findings, or to examine laboratory personnel as witnesses concerning the same, prior to trial, except to the extent that the same is used by the state at a preliminary hearing and except as provided in s. 971.23. Upon request of a defendant in a felony action, approved by the presiding judge, the laboratories shall conduct analyses of evidence on behalf of the defendant. No prosecuting officer is entitled to an inspection of information and evidence submitted to the laboratories by the defendant, or of a laboratory's findings, or to examine laboratory personnel as witnesses concerning the same, prior to trial, except to the extent that the same is used by the accused at a preliminary hearing and except as provided in s. 971.23. Employees who made examinations or analyses of evidence shall attend the criminal trial as witnesses, without subpoena, upon reasonable written notice from either party requesting the attendance.

(2) Upon the termination or cessation of the criminal proceedings, the privilege of the findings obtained by a laboratory may be waived in writing by the department and the prosecutor involved in the proceedings. The employees may then be subpoenaed in civil actions in regard to any information and analysis of evidence previously obtained in the criminal investigation, but the laboratories shall not engage in any investigation requested solely for the preparation for trial of a civil matter. Upon appearance as a witness or receipt of a subpoena or notice to prepare for trial in a civil action, or appearance either with or without subpoena, the laboratories shall be compensated by the party at whose request the appearance or preparation was made in a reasonable amount to be determined by the trial judge, which fee shall be paid into the state treasury. In fixing the compensation the court may give consideration to the time spent in obtaining and analyzing the evidence for the purposes of criminal proceedings.

History: 1977 c. 260; 1979 c. 221; 1981 c. 20; 1983 a. 459; 1985 a. 29, 267; 1995 a. 387.

Whether to grant a defendant's request under sub. (1) that the Crime Lab perform tests on the defendant's behalf is a discretionary decision. *State v. Lee*, 192 W (2d) 260, 531 NW (2d) 351 (Ct. App. 1995). But see also *State v. Lee*, 197 W (2d) 960, 542 NW (2d) 143 (1996).

165.80 Cooperation with other state departments. For the purpose of coordinating the work of the crime laboratories with the research departments located in the university of Wisconsin, the attorney general and the university of Wisconsin may agree for the use of university laboratories and university physical facilities and the exchange and utilization of personnel between the crime laboratories and the university. The university and crime laboratories cooperation council shall act in an advisory capacity to the attorney general.

History: 1985 a. 29.

165.81 Disposal of evidence. (1) Whenever the department is informed by the submitting officer or agency that physical evidence in the possession of the laboratories is no longer needed the department may, unless otherwise provided by law, either destroy the same, retain it in the laboratories or turn it over to the university of Wisconsin upon the request of the head of any department. Whenever the department receives information from which it appears probable that the evidence is no longer needed, the department may give written notice to the submitting agency and the appropriate district attorney, by registered mail, of the intention to dispose of the evidence. If no objection is received within 20 days after the notice was mailed, it may dispose of the evidence.

(2) Any electric weapon, as defined in s. 941.295 (4), in the possession of the laboratories shall either be destroyed or turned over to an agency authorized to have electric weapons under s. 941.295 (2).

History: 1981 c. 348; 1985 a. 29 ss. 2012, 3200 (35).

165.82 Criminal history search fee. (1) Notwithstanding s. 19.35 (3), the department of justice shall impose the following fees for criminal history searches for purposes unrelated to criminal justice or to s. 175.35:

(a) For each record check, except a fingerprint card record check, requested by a nonprofit organization, \$2.

(ag) For each record check, except a fingerprint card record check, requested by a governmental agency, \$5.

(ar) For each fingerprint card record check requested by a governmental agency or nonprofit organization, \$10.

(b) For each record check by any other requester, \$13.

(2) Except as provided in s. 175.35, the department of justice shall not impose fees for criminal history searches for purposes related to criminal justice.

History: 1987 a. 27; 1989 a. 122; 1991 a. 11; 1995 a. 27.

165.827 Transaction information for the management of enforcement system; fees. The department of justice shall administer a transaction information for the management of enforcement system to provide access to information concerning law enforcement. The department of justice may impose fees on law enforcement agencies and tribal law enforcement agencies, as defined in s. 165.83 (1) (e), for rentals, use of terminals and related costs and services associated with the system. All moneys collected under this section shall be credited to the appropriation account under s. 20.455 (2) (h).

History: 1991 a. 39; 1993 a. 407; 1995 a. 27.

165.828 Transaction information for management of enforcement system; access plan. The department of justice shall submit to the joint committee on finance a resource allocation plan that sets limits and priorities for access to the transaction information for management of enforcement system if the average daily message volume for any 3-month period exceeds 100,000.

History: 1991 a. 39.

165.8285 Transaction information for management of enforcement system; department of corrections records. (1) The department of justice shall, through the transaction information for management of enforcement system, provide local law enforcement agencies with access to the registry of sex offenders maintained by the department of corrections under s. 301.45.

(2) The department of justice shall provide the department of corrections with access to the transaction information for management of enforcement system administrative message process.

(3) Beginning on July 9, 1996, the department of justice and the department of corrections shall cooperate in using the transaction information for management of enforcement system, and in developing or using any other computerized or direct electronic data transfer system, in anticipation of the transfer of the sex offender registry from the department of justice to the department of corrections under 1995 Wisconsin Act 440 and for the purpose of providing access to or disseminating information from the sex offender registry under s. 301.45.

History: 1995 a. 440.

165.829 Stalking and harassment information. (1) In this section:

(a) “Department” means the department of justice.

(b) “Law enforcement agency” has the meaning given in s. 165.83 (1) (b).

(2) For the 3–year period following December 25, 1993, the department shall gather and maintain information on arrests made and judgments of conviction entered regarding violations of s. 940.32 or 947.013. Annually, the department shall provide a detailed report on the information obtained under this subsection to the legislature under s. 13.172 (2). This section does not apply after October 1, 1997.

History: 1993 a. 96.

165.83 Criminal identification, records and statistics.

(1) DEFINITIONS. As used in this section and s. 165.84:

(b) “Law enforcement agency” means a governmental unit of one or more persons employed full time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(c) “Offense” means an act which is a felony, a misdemeanor or a violation of a city, county, village or town ordinance.

(d) “Reservation lands” has the meaning given in s. 165.92 (1) (a).

(e) “Tribal law enforcement agency” means an agency of a tribe that is established for the purpose of preventing and detecting crime on the reservation or trust lands of the tribe and enforcing the tribe’s laws or ordinances, that employs full time one or more persons who are granted law enforcement and arrest powers under s. 165.92 (2) (a) and that was created by a tribe that agrees that its law enforcement agency will perform the duties required of the agency under this section and s. 165.84.

(f) “Tribe” has the meaning given in s. 165.92 (1) (c).

(g) “Trust lands” has the meaning given in s. 165.92 (1) (d).

(2) The department shall:

(a) Obtain and file fingerprints, descriptions, photographs and any other available identifying data on persons who have been arrested or taken into custody in this state:

1. For an offense which is a felony.

2. For an offense which is a misdemeanor or a violation of an ordinance involving burglary tools, commercial gambling, dealing in gambling devices, contributing to the delinquency of a child, dealing in stolen property, controlled substances or controlled substance analogs under ch. 961, firearms, dangerous

weapons, explosives, pandering, prostitution, sex offenses where children are victims, or worthless checks.

3. For an offense charged as disorderly conduct but which relates to an act connected with one or more of the offenses under subd. 2.

4. As a fugitive from justice.

5. For any other offense designated by the attorney general.

(b) Accept for filing fingerprints and other identifying data, taken at the discretion of the law enforcement or tribal law enforcement agency involved, on persons arrested or taken into custody for offenses other than those listed in par. (a).

(c) Obtain and file fingerprints and other available identifying data on unidentified human corpses found in this state.

(d) Obtain and file information relating to identifiable stolen or lost property.

(e) Obtain and file a copy or detailed description of each arrest warrant issued in this state for the offenses under par. (a) or s. 800.03 (4) but not served because the whereabouts of the person named on the warrant is unknown or because that person has left the state. All available identifying data shall be obtained with the copy of the warrant, including any information indicating that the person named on the warrant may be armed, dangerous or possessed of suicidal tendencies.

(f) Collect information concerning the legal action taken in connection with offenses committed in this state from the inception of the complaint to the final discharge of the defendant and such other information as may be useful in the study of crime and the administration of justice. The department may determine any other information to be obtained regarding crime records.

(g) Furnish all reporting officials with forms and instructions which specify in detail the nature of the information required under pars. (a) to (f) and any other matters which facilitate collection.

(h) Cooperate with and assist all law enforcement and tribal law enforcement agencies in the state in the establishment of a state system of criminal identification and in obtaining fingerprints and other identifying data on all persons described in pars. (a), (b) and (c).

(i) Offer assistance and, when practicable, instructions to all local and tribal law enforcement agencies in establishing efficient local and tribal bureaus of identification and records systems.

(j) Compare the fingerprints and descriptions that are received from law enforcement and tribal law enforcement agencies with the fingerprints and descriptions already on file and, if the person arrested or taken into custody is a fugitive from justice or has a criminal record, immediately notify the law enforcement and tribal law enforcement agencies concerned and supply copies of the criminal record to these agencies.

(k) Make available all statistical information obtained to the governor and the legislature.

(m) Prepare and publish reports and releases, at least once a year, containing the statistical information gathered under this section and presenting an accurate picture of the operation of the agencies of criminal justice.

(n) Make available upon request, to all local, state and tribal law enforcement agencies in this state, to all federal law enforcement and criminal identification agencies, and to state law enforcement and criminal identification agencies in other states, any information in the law enforcement files of the department which will aid these agencies in the performance of their official duties. For this purpose the department shall operate on a 24–hour a day basis, 7 days a week. The information may also be made available to any other agency of this state or political subdivision of this state, and to any other federal agency, upon assurance by the agency concerned that the information is to be used for official purposes only.

(p) Cooperate with other agencies of this state, tribal law enforcement agencies and the national crime information center systems of the F.B.I. in developing and conducting an interstate, national and international system of criminal identification, records and statistics.

History: 1971 c. 219; 1983 a. 27, 535; 1985 a. 29; 1993 a. 407; 1995 a. 448.

NOTE: 1993 Wis. Act 407, which creates sub. (1) (d) to (g) and amends sub. (2), contains extensive explanatory notes.

Identification records should be made by local law enforcement agencies of juveniles arrested or taken into custody pursuant to (2) for confidential reporting to the department of justice. 62 Atty. Gen. 45.

165.84 Cooperation in criminal identification, records and statistics. (1) All persons in charge of law enforcement and tribal law enforcement agencies shall obtain, or cause to be obtained, the fingerprints in duplicate, according to the fingerprint system of identification established by the director of the F.B.I., full face, profile and full length photographs, and other available identifying data, of each person arrested or taken into custody for an offense of a type designated in s. 165.83 (2) (a), of all persons arrested or taken into custody as fugitives from justice, and fingerprints in duplicate and other identifying data of all unidentified human corpses in their jurisdictions, but photographs need not be taken if it is known that photographs of the type listed, taken within the previous year, are on file at the department. Fingerprints and other identifying data of persons arrested or taken into custody for offenses other than those designated in s. 165.83 (2) (a) may be taken at the discretion of the law enforcement or tribal law enforcement agency concerned. Any person arrested or taken into custody and subsequently released without charge, or cleared of the offense through court proceedings, shall have any fingerprint record taken in connection therewith returned upon request.

(2) Fingerprints and other identifying data required to be taken under sub. (1) shall be forwarded to the department within 24 hours after taking for filing and classification, but the period of 24 hours may be extended to cover any intervening holiday or weekend. Photographs taken shall be forwarded at the discretion of the law enforcement or tribal law enforcement agency concerned, but, if not forwarded, the fingerprint record shall be marked "Photo available" and the photographs shall be forwarded subsequently if the department so requests.

(3) All persons in charge of law enforcement and tribal law enforcement agencies shall forward to the department copies or detailed descriptions of the arrest warrants and the identifying data described in s. 165.83 (2) (e) immediately upon determination of the fact that the warrant cannot be served for the reasons stated. If the warrant is subsequently served or withdrawn, the law enforcement or tribal law enforcement agency concerned must immediately notify the department of the service or withdrawal. In any case, the law enforcement or tribal law enforcement agency concerned must annually, no later than January 31 of each year, confirm to the department all arrest warrants of this type which continue to be outstanding.

(4) All persons in charge of state penal and correctional institutions shall obtain fingerprints, according to the fingerprint system of identification established by the director of the F.B.I., and full face and profile photographs of all persons received on commitment to these institutions. The prints and photographs so taken shall be forwarded to the department, together with any other identifying data requested, within 10 days after the arrival at the institution of the person committed. Full length photographs in release dress shall be taken immediately prior to the release of these persons from these institutions. Immediately after release, these photographs shall be forwarded to the department.

(5) All persons in charge of law enforcement and tribal law enforcement agencies, all clerks of court, all municipal judges where they have no clerks, all persons in charge of state and county penal and correctional institutions, and all persons in charge of state and county probation and parole offices, shall supply the department with the information described in s. 165.83 (2)

(f) on the basis of the forms and instructions to be supplied by the department under s. 165.83 (2) (g).

(6) All persons in charge of law enforcement and tribal law enforcement agencies in this state shall furnish the department with any other identifying data required in accordance with guidelines established by the department. All law enforcement and tribal law enforcement agencies and penal and correctional institutions in this state having criminal identification files shall cooperate in providing to the department copies of such items in these files as will aid in establishing the nucleus of the state criminal identification file.

History: 1977 c. 305 s. 64; 1985 a. 29; 1993 a. 407.

165.85 Law enforcement standards board. (1) FINDINGS AND POLICY. The legislature finds that the administration of criminal justice is of statewide concern, and that law enforcement work is of vital importance to the health, safety and welfare of the people of this state and is of such a nature as to require training, education and the establishment of standards of a proper professional character. The public interest requires that these standards be established and that this training and education be made available to persons who seek to become law enforcement, tribal law enforcement, jail or secure detention officers, persons who are serving as these officers in a temporary or probationary capacity and persons already in regular service.

(2) DEFINITIONS. In this section and in s. 165.86:

(a) "Board" means the law enforcement standards board.

(bc) "Fiscal year" has the meaning given in s. 20.902.

(bg) "Jail" means a county jail, rehabilitation facility established by s. 59.53 (8) or county house of correction under s. 303.16.

(bn) "Jail officer" means any person employed by any political subdivision of the state for the purpose of supervising, controlling or maintaining a jail or the persons confined in a jail. "Jail officer" includes officers regardless of whether they have been sworn regarding their duties or whether they serve on a full-time basis.

(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 to enforce.

(d) "Political subdivision" means counties, cities, villages, towns, town sanitary districts and public inland lake protection and rehabilitation districts.

(e) "Secure detention facility" has the meaning given in s. 48.02 (16).

(f) "Secure detention officer" means any person employed by any political subdivision of the state to supervise, control or maintain a secure detention facility or the persons confined in a secure detention facility. "Secure detention officer" includes officers regardless of whether they have been sworn regarding their duties or whether they serve on a full-time basis.

(g) "Tribal law enforcement officer" means a person who is employed by a tribe for the purpose of detecting and preventing crime and enforcing the tribe's laws or ordinances, who is authorized by the tribe to make arrests of Indian persons for violations of the tribe's laws or ordinances and who agrees to accept the duties of law enforcement officers under the laws of this state.

(3) POWERS. The board may:

(a) Promulgate rules for the administration of this section including the authority to require the submission of reports and information pertaining to the administration of this section by law enforcement and tribal law enforcement agencies in this state.

(b) Establish minimum educational and training standards for admission to employment as a law enforcement or tribal law enforcement officer in permanent positions and in temporary, probationary or part-time status. Educational and training standards

for tribal law enforcement officers under this paragraph shall be identical to standards for other law enforcement officers.

(c) Certify persons as being qualified under this section to be law enforcement, tribal law enforcement, jail or secure detention officers. Prior to being certified under this paragraph, a tribal law enforcement officer shall agree to accept the duties of law enforcement officers under the laws of this state.

(cm) Decertify law enforcement, tribal law enforcement, jail or secure detention officers who terminate employment or are terminated or who violate or fail to comply with a rule or order of the board relating to curriculum or training. The board shall establish procedures for decertification in compliance with ch. 227.

(d) Establish minimum curriculum requirements for preparatory courses and programs, and recommend minimum curriculum requirements for recertification and advanced courses and programs, in schools 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, secure detention officer recruits or secure detention officers in areas of knowledge and ability necessary to the attainment of effective performance as an officer, and ranging from traditional subjects such as first aid, patrolling, statutory authority, techniques of arrest and firearms to subjects designed to provide a better understanding of ever-increasing complex problems in law enforcement such as human relations, civil rights, constitutional law and supervision, control and maintenance of a jail or secure detention facility. The board shall appoint a 13-member advisory curriculum committee consisting of 6 chiefs of police and 6 sheriffs to be appointed on a geographic basis of not more than one chief of police and one sheriff from any one of the 8 state administrative districts together with the director of training of the Wisconsin state patrol. This committee shall advise the board in the establishment of the curriculum requirements.

(e) Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies and with universities, colleges, the technical college system board and other institutions concerning the development of law enforcement training schools, degree programs or specialized courses of instruction.

(g) Conduct and stimulate research which is designed to improve law enforcement administration and performance.

(h) Make recommendations concerning any matter within its purview.

(i) Make such evaluations as are necessary to determine if participating governmental units are complying with this section.

(j) Adopt rules under ch. 227 for its internal management, control and administration.

(4) REQUIRED STANDARDS. (a) The following law enforcement and tribal law enforcement officers are not required to meet any requirement of pars. (b) 1. and (c) as a condition of tenure or continued employment. The failure of any such law enforcement or tribal law enforcement officer to fulfill those requirements does not make that officer ineligible for any promotional examination for which he or she is otherwise eligible. Those law enforcement and tribal law enforcement officers may voluntarily participate in this program.

1. Law enforcement and tribal law enforcement officers serving under permanent appointment prior to January 1, 1974.

2. Law enforcement and tribal law enforcement officers who are elected by popular vote.

(an) Except as provided in pars. (ap) and (ar), jail officers are required to meet the requirements of pars. (b) 2., (bn) 2. and (c) as a condition of tenure or continued employment regardless of the date of their appointment.

(ap) Jail officers serving under permanent appointment prior to July 2, 1983, are not required to meet any requirement of pars. (b) and (c) as a condition of tenure or continued employment as either a jail officer or a secure detention officer. The failure of any such officer to fulfill those requirements does not make that offi-

cer ineligible for any promotional examination for which he or she is otherwise eligible. Any such officer may voluntarily participate in programs to fulfill those requirements.

(ar) 1. A jail officer permanently appointed after July 1, 1983, and prior to July 1, 1988, including an officer who after July 1, 1983, and prior to July 1, 1988, completed a program of at least 80 hours of training that met the requirements of s. 165.85 (4) (b) 2., 1985 stats., shall meet the requirements under par. (b) 2. by June 30, 1993.

2. A jail officer who has completed at least 80 hours of preparatory training which met the requirements of s. 165.85 (4) (b) 2., 1985 stats., may meet the requirements of subd. 1. by completing a program of training approved by the board. The program shall devote at least 16 hours to methods of supervision of special needs inmates, including inmates who may be emotionally distressed, mentally ill, suicidal, developmentally disabled or alcohol or drug abusers.

(at) Any person certified as a jail officer on July 1, 1994, is certified as a secure detention officer and remains certified as a secure detention officer subject to annual recertification requirements under par. (bn) 3. and the board's decertification authority under sub. (3) (cm).

(b) 1. No person may be appointed as a law enforcement or tribal law enforcement officer, except on a temporary or probationary basis, unless the person has satisfactorily completed a preparatory program of law enforcement training approved by the board and has been certified by the board as being qualified to be a law enforcement or tribal law enforcement officer. The program shall include 400 hours of training, except the program for law enforcement officers who serve as rangers for the department of natural resources includes 240 hours of training. The board shall promulgate a rule under ch. 227 providing a specific curriculum for a 400-hour conventional program and a 240-hour ranger program. The rule shall ensure that there is an adequate amount of training for each program to enable the person to deal effectively with domestic abuse incidents. The training under this subdivision shall include training on emergency detention standards and procedures under s. 51.15, emergency protective placement standards and procedures under s. 55.06 (11) and information on mental health and developmental disabilities agencies and other resources that may be available to assist the officer in interpreting the emergency detention and emergency protective placement standards, making emergency detentions and emergency protective placements and locating appropriate facilities for the emergency detentions and emergency protective placements of persons. The period of temporary or probationary employment established at the time of initial employment shall not be extended by more than one year for an officer lacking the training qualifications required by the board. The total period during which a person may serve as a law enforcement and tribal law enforcement officer on a temporary or probationary basis without completing a preparatory program of law enforcement training approved by the board shall not exceed 2 years, except that the board shall permit part-time law enforcement and tribal law enforcement officers to serve on a temporary or probationary basis without completing a program of law enforcement training approved by the board to a period not exceeding 3 years. For purposes of this section, a part-time law enforcement or tribal law enforcement officer is a law enforcement or tribal law enforcement officer who routinely works not more than one-half the normal annual work hours of a full-time employe of the employing agency or unit of government. Law enforcement training programs including municipal, county and state programs meeting standards of the board are acceptable as meeting these training requirements.

2. No person may be appointed as a jail officer, except on a temporary or probationary basis, unless the person has satisfactorily completed a preparatory program of jail officer training approved by the board and has been certified by the board as being qualified to be a jail officer. The program shall include at least 120 hours of training. The training program shall devote at least 16

hours to methods of supervision of special needs inmates, including inmates who may be emotionally distressed, mentally ill, suicidal, developmentally disabled or alcohol or drug abusers. The period of temporary or probationary employment established at the time of initial employment shall not be extended by more than one year for an officer lacking the training qualifications required by the board. Jail officer training programs including municipal, county and state programs meeting standards of the board shall be acceptable as meeting these training requirements.

3. No person may be appointed as a secure detention officer, except on a temporary or probationary basis, unless the person has satisfactorily completed a preparatory program of secure detention officer training approved by the board and has been certified by the board as being qualified to be a secure detention officer. The program shall include at least 120 hours of training. The training program shall devote at least 16 hours to methods of supervision of special needs inmates, including inmates who may be emotionally distressed, mentally ill, suicidal, developmentally disabled or alcohol or drug abusers. The period of temporary or probationary employment established at the time of initial employment shall not be extended by more than one year for an officer lacking the training qualifications required by the board. Secure detention officer training programs including municipal, county and state programs meeting standards of the board shall be acceptable as meeting these training requirements.

(bn) 1. No person other than an officer elected by popular vote may continue as a law enforcement or tribal law enforcement officer, except on a temporary or probationary basis, unless that person completes annual recertification training. Any officer elected by popular vote who is also a certified officer must complete annual recertification training to maintain certification. Any officer who is subject to this subdivision shall complete at least 24 hours each fiscal year beginning in the later of the following:

a. Fiscal year 1990–91.

b. The fiscal year following the fiscal year in which he or she complies with par. (b) 1.

2. No person may continue as a jail officer, except on a temporary or probationary basis, unless that person completes annual recertification training. The officer shall complete at least 24 hours each fiscal year beginning in the later of the following:

a. Fiscal year 1990–91.

b. The fiscal year following the fiscal year in which he or she complies with par. (b) 2.

3. No person may continue as a secure detention officer, except on a temporary or probationary basis, unless that person completes annual recertification training. The officer shall complete at least 24 hours each fiscal year beginning in the later of the following:

a. Fiscal year 1993–94.

b. The fiscal year following the fiscal year in which he or she complies with par. (b) 3.

(c) In addition to the requirements of pars. (b) and (bn), the board may, by rule, fix such other minimum qualifications for the employment of law enforcement, tribal law enforcement, jail or secure detention officers as relate to the competence and reliability of persons to assume and discharge the responsibilities of law enforcement, tribal law enforcement, jail or secure detention officers, and the board shall prescribe the means for presenting evidence of fulfillment of these requirements.

(d) The board shall issue a certificate evidencing satisfaction of the requirements of pars. (b), (bn) and (c) to any applicant who presents such evidence, as is required by its rules, of satisfactory completion of requirements equivalent in content and quality to those fixed by the board under the board's authority as set out in pars. (b), (bn) and (c).

(dm) The board may provide, by rule, that parts of the jail officer preparatory training and the secure detention officer preparatory training are identical and count toward either training requirement.

(e) This section does not preclude any law enforcement or tribal law enforcement agency or sheriff from setting recruit training and employment standards which are higher than the minimum standards set by the board.

(f) In addition to certification procedures under pars. (a) to (d), the board may certify any person as being a tribal law enforcement officer on the basis of the person's completion of the training requirements for law enforcement officer certification prior to May 6, 1994. The officer must also meet the agreement requirements under sub. (3) (c) prior to certification as a tribal law enforcement officer.

(4m) TRAINING FOR CONSTABLES. The board shall establish a separate training program for those constables who are not required to complete training under sub. (4). Except as provided in s. 60.22 (4), a constable may voluntarily participate in the program under this subsection. Expenses incurred for this program are subject to reimbursement under sub. (5).

(5) SCHOOLS AND PROGRAMS; GRANTS. (a) The board may authorize and approve law enforcement, jail or secure detention officer training programs conducted by an agency of a political subdivision or an agency of the state when their programs meet the standards required by the board. No authority granted in this paragraph extends to the board selecting a site for a state police, jail or secure detention officer academy and expending funds thereon without further legislation.

(b) The board shall authorize the reimbursement to each political subdivision of approved expenses incurred by officers who satisfactorily complete training at schools certified by the board. Reimbursement of these expenses for law enforcement officer, jail officer and secure detention officer preparatory training shall be for approved tuition, living and travel expenses for the first 400 hours of law enforcement preparatory training and for the first 120 hours of jail or secure detention officer preparatory training. Reimbursement of approved expenses for completion of annual recertification training under sub. (4) (bn) shall include at least \$160 per officer thereafter. Funds may also be distributed for attendance at other training programs and courses or for training services on a priority basis to be decided by the department of justice.

(c) The board may provide grants as a reimbursement for actual expenses incurred by state agencies or political subdivisions for providing training programs to officers from other jurisdictions within the state.

(d) Any state agency which receives reimbursement for salary and fringe benefit costs under this subsection shall treat the reimbursement as revenue and deposit any such reimbursement in the appropriate program revenue account or segregated fund. If there is no such appropriate account or fund, the reimbursement shall be deposited as general purpose revenue—earned.

(5m) SUPPLEMENTAL PAYMENTS. (a) *General authority.* In addition to the reimbursement payments authorized under sub. (5) (b), the department shall request supplemental appropriations under s. 16.515 if required to do so under this subsection.

(b) *Political subdivision supplemental base.* In fiscal year 1990–91, the department shall determine the supplemental base amount for each political subdivision in the following manner:

1. Determine the total reimbursement payments made to the political subdivision under s. 20.455 (2) (j) in fiscal years 1987–88 and 1988–89.

2. Divide the amount under subd. 1. by 2.

3. Determine the amount of reimbursement in fiscal year 1990–91 to be authorized under sub. (5) (b).

4. Subtract the amount under subd. 2. from the amount under subd. 3.

5. Determine a supplemental base amount for the political subdivision. If the amount under subd. 4. is \$300 or less or a negative amount, the supplemental base amount for the political subdivision is zero. If the amount under subd. 4. is greater than \$300,

the supplemental base amount for the political subdivision is the amount under subd. 4.

(c) *Statewide supplemental base.* In fiscal year 1990–91, the department shall determine a statewide supplemental base amount by adding all the political subdivision supplemental base amounts under par. (b) 5.

(d) *Estimated cash surplus.* In fiscal year 1990–91, the department shall determine the cash surplus in the following manner:

1. Estimate what the total cash balance in the appropriation account under s. 20.455 (2) (i) will be at the end of the 1990–91 fiscal year.

2. Estimate the portion of the total cash balance that must be carried over to the 1991–92 fiscal year to support the expenditures in the 1991–92 fiscal year under s. 20.455 (2) (j), (ja) and (jb).

3. Determine the estimated cash surplus, if any, by subtracting the amount under subd. 2. from the amount under subd. 1.

(e) *Request for supplemental appropriation.* If the amounts under pars. (c) and (d) 3 are both greater than zero, the department shall request a supplemental appropriation under s. 16.515, not to exceed the amount under par. (c) or the amount under par. (d) 3., whichever is less. If a supplemental appropriation is made, each political subdivision shall receive its supplemental base amount under par. (b) 5. If the supplemental appropriation is insufficient to provide full payments, each political subdivision shall receive a prorated amount.

(5x) Notwithstanding sub. (5), in each fiscal year, the department of justice shall determine the amount of additional costs, including but not limited to tuition, lodging, travel, meals, salaries and fringe benefits, to each political subdivision as a result of the enactment of 1993 Wisconsin Act 460. In each fiscal year, the department shall pay each political subdivision the amount determined under this subsection for that political subdivision from the appropriation under s. 20.455 (2) (am), subject to the limitations under s. 20.455 (2) (am).

(6) FINANCES. The board may accept for any of its purposes and functions under this section any and all donations, both real and personal, and grants of money from any governmental unit or public agency, or from any institution or person, and may receive and utilize the same. Any arrangements pursuant to this subsection shall be detailed in any report of the board submitted under s. 15.07 (6), which shall include the identity of the donor, the nature of the transaction, and the conditions, if any.

History: 1973 c. 90, 333; 1975 c. 94 s. 91 (11); 1977 c. 29, 418; 1979 c. 111; 1981 c. 20; 1983 a. 27; 1985 a. 29, 260; 1987 a. 237, 366, 394; 1989 a. 31, 291; 1991 a. 39; 1993 a. 16, 167, 213, 399, 407, 460, 482, 491; 1995 a. 201, 225, 349.

NOTE: 1993 Wis. Act 407, which creates subs. (2) (e) and (4) (f) and amends subs. (1), (3) and (4), contains extensive explanatory notes.

Rule adopted under this section properly barred this nonpardoned felon from holding police job. *Law Enforce. Stds. Bd. v. Lyndon Station*, 101 W (2d) 472, 305 NW (2d) 89 (1981).

See note to 62.13, citing *Kaiser v. Bd. of Police & Fire Comms.* 104 W (2d) 498, 311 NW (2d) 646 (1981).

Sub. (4) (b) governs the terms of employment of a probationary sheriff's deputy so that the discipline procedures under s. 59.21 (8) (b) (now s. 59.28 (8) (b)) do not apply and an applicable collective bargaining agreement controls. *Hussey v. Outagamie County*, 201 W (2d) 14, 548 NW (2d) 848 (Ct. App. 1996).

Sub. (4) (b) 2 does not preclude temporary assignment of uncertified persons to fill in as jail officers when necessary as a result of sickness, vacations or scheduling conflicts. 78 *Atty. Gen.* 146.

Chief of police was entitled to hearing meeting due process requirements prior to discharge from office. *Jessen v. Village of Lyndon Station*, 519 F Supp. 1183 (1981).

Probationary police officer had no protected property interest in job. *Ratloff v. City of Milwaukee*, 608 F Supp. 1109 (1985).

165.86 Law enforcement training. The department shall:

(1) (a) Supply the staffing needs of the law enforcement standards board.

(b) Identify state agencies and political subdivisions that employ law enforcement officers in the state, notify the appropriate officials of the standards of employment and preparatory and recertification training established by the board, and develop appropriate procedures whereby acceptable evidence of compliance with the board's employment and preparatory and recertification training standards may be submitted.

(2) (a) Identify and coordinate all preparatory and recertification training activities in law enforcement in the state, and expand the coordinated program to the extent necessary to supply the training required for all recruits in the state under the preparatory training standards and time limits set by the board and for law enforcement officers, jail officers and secure detention officers in this state.

(b) Organize a program of training, which shall encourage utilization of existing facilities and programs through cooperation with federal, state and local agencies and institutions presently active in this field. Priority shall be given to the establishment of the statewide preparatory and recertification training programs described in sub. (1), but the department shall cooperate in the creation and operation of other advanced and special courses, including courses relating to emergency detention of persons under s. 51.15 and emergency protective placement under s. 55.06 (11), that meet the curriculum standards recommended by the board. The department may satisfy the requirement for cooperating in the development of special courses relating to emergency detention and emergency protective placement by cooperating with county departments of community programs in the development of these courses under s. 51.42 (3) (ar) 4. d. The department shall keep appropriate records of all such training courses given in the state and the results thereof in terms of persons attending, agencies represented, and, where applicable, individual grades given.

History: 1985 a. 29; 1987 a. 366; 1989 a. 31; 1993 a. 460.

165.87 Law enforcement training fund. (1) FUND. (a) Twenty-seven fifty-fifths of all moneys collected from penalty assessments under this section shall be credited to the appropriation account under s. 20.455 (2) (i) and utilized in accordance with ss. 20.455 (2) and 165.85 (5) and (5m). The moneys credited to the appropriation account under s. 20.455 (2) (i), except for the moneys transferred to s. 20.455 (2) (jb), constitute the law enforcement training fund.

(b) One-eleventh of all moneys collected from penalty assessments under this section shall be credited to the appropriation account under s. 20.410 (1) (jp) and utilized in accordance with s. 301.28.

(bn) Five twenty-seconds of all moneys collected from penalty assessments under this section shall be credited to the appropriation account under and utilized in accordance with s. 20.505 (6) (g), except for moneys transferred to ss. 20.435 (3) (jk) [20.410 (3) (jk)] and 20.505 (6) (h). In regard to any grant to any local unit of government for which the state is providing matching funds from moneys under this paragraph, the local unit of government shall provide matching funds equal to at least 10%.

NOTE: The bracketed language indicates the correct cross-reference. Corrective legislation is pending.

(bp) One twenty-second of all moneys collected from penalty assessments under this section shall be credited to the appropriation account under s. 20.455 (2) (hm) and utilized in accordance with ss. 20.455 (2) (hn) and (ho) and 165.90.

(br) One one-hundred-tenth of all moneys collected from penalty assessments under this section shall be credited to the appropriation account under and utilized in accordance with s. 20.550 (1) (j).

(c) Of the balance of the moneys collected from penalty assessments under this section, 62.2% shall be credited to the appropriation account under s. 20.255 (2) (g) and the remainder shall be credited to the appropriation account under s. 20.255 (1) (hr).

(2) LEVY OF PENALTY ASSESSMENT. (a) Whenever a court imposes a fine or forfeiture for a violation of state law or for a violation of a municipal or county ordinance except for a violation of s. 101.123 (2) (a), (am) 1. or (bm) or (5) or state laws or municipal or county ordinances involving nonmoving traffic violations or safety belt use violations under s. 347.48 (2m), there shall be imposed in addition a penalty assessment in an amount of 23% of the fine or forfeiture imposed. If multiple offenses are involved, the penalty assessment shall be based upon the total fine or forfei-

ture for all offenses. When a fine or forfeiture is suspended in whole or in part, the penalty assessment shall be reduced in proportion to the suspension.

(b) If a fine or forfeiture is imposed by a court of record, after a determination by the court of the amount due, the clerk of the court shall collect and transmit such amount to the county treasurer as provided in s. 59.40 (2) (m). The county treasurer shall then make payment to the state treasurer as provided in s. 59.25 (3) (f) 2.

(c) If a fine or forfeiture is imposed by a municipal court, after a determination by the court of the amount due, the court shall collect and transmit such amount to the treasurer of the county, city, town or village, and that treasurer shall make payment to the state treasurer as provided in s. 66.12 (1) (b).

(d) If any deposit of bail is made for a noncriminal offense to which this section applies, the person making the deposit shall also deposit a sufficient amount to include the assessment prescribed in this section for forfeited bail. If bail is forfeited, the amount of the assessment shall be transmitted monthly to the state treasurer under this section. If bail is returned, the assessment shall also be returned.

History: 1977 c. 29, 418; 1979 c. 331; 1981 c. 20; 1983 a. 27; 1987 a. 27, 326; 1989 a. 22, 31, 56, 97, 359; 1991 a. 26, 39, 130; 1993 a. 16, 313; 1995 a. 27, 201; s. 13.93 (2) (c).

As used in 165.87 (2) the words “nonmoving traffic violations” apply only to violations of ordinances adopted under ss. 349.13 and 349.14 and violations of ss. 346.50 through 346.55. 66 Atty. Gen. 308.

165.90 County–tribal law enforcement programs.

(1) Any county that has one or more federally recognized Indian reservations within or partially within its boundaries may enter into an agreement in accordance with s. 59.54 (12) with an Indian tribe located in the county to establish a cooperative county–tribal law enforcement program. To be eligible to receive aid under this section, a county and tribe shall develop and annually submit a joint program plan, by December 1 of the year prior to the year for which funding is sought, to the department of justice for approval. If funding is sought for the 2nd or any subsequent year of the program, the county and tribe shall submit the report required under sub. (4) (b) together with the plan.

(2) The joint program plan shall identify all of the following:

(a) A description of the proposed cooperative county–tribal law enforcement program for which funding is sought, including information on the population and geographic area or areas to be served by the program.

(b) The program’s need for funding under this section and the amount of funding requested.

(c) The governmental unit that shall administer aid received and the method by which aid shall be disbursed.

(d) The types of law enforcement services to be performed on the reservation and the persons who shall perform those services.

(e) The person who shall exercise daily supervision and control over law enforcement officers participating in the program.

(f) The method by which county and tribal input into program planning and implementation shall be assured.

(g) The program’s policies regarding deputization, training and insurance of law enforcement officers.

(h) The record–keeping procedures and types of data to be collected by the program.

(i) Any other information required by the department or deemed relevant by the county and tribe submitting the plan.

(3) Upon request, the department shall provide technical assistance to a county and tribe in formulating a joint program plan.

(3m) In determining whether to approve a program plan and, if approved, how much aid the program shall receive, the department shall consider the following factors:

(a) The population of the reservation area to be served by the program.

(b) The complexity of the law enforcement problems that the program proposes to address.

(c) The range of services that the program proposes to provide.

(4) If the department approves a plan, the department shall certify the program as eligible to receive aid under s. 20.455 (2) (d) and (hn). Prior to January 15, of the year for which funding is sought, the department shall distribute from the appropriations under s. 20.455 (2) (d) and (hn) to each eligible program the amount necessary to implement the plan, subject to the following limitations:

(a) A program may use funds received under s. 20.455 (2) (d) or (hn) only for law enforcement operations.

(b) A program shall, prior to the receipt of funds under s. 20.455 (2) (d) or (hn) for the 2nd and any subsequent year, submit a report to the department regarding the performance of law enforcement activities on the reservation in the previous fiscal year.

(5) Annually, on or before January 15, the department shall report on the performance of cooperative county–tribal law enforcement programs receiving aid under this section to each of the following:

(a) The chief clerk of each house of the legislature for distribution to the legislature under s. 13.172 (2).

(b) The governor.

(c) The American Indian study committee under s. 13.83 (3).

History: 1983 a. 523; 1987 a. 326; 1989 a. 31; 1995 a. 201.

165.92 Tribal law enforcement officers; powers and duties. (1) DEFINITIONS. In this section:

(a) “Reservation lands” means all lands within the exterior boundaries of an Indian reservation in this state.

(b) “Tribal law enforcement officer” means a person who is employed by a tribe for the purpose of detecting and preventing crime and enforcing the tribe’s laws or ordinances and who is authorized by the tribe to make arrests of Indian persons for violations of the tribe’s laws or ordinances.

(c) “Tribe” means a federally recognized Indian tribe or band in this state.

(d) “Trust lands” means any lands in this state held in trust by the United States government for the benefit of a tribe or a member of a tribe.

(2) POWERS AND DUTIES. (a) A tribal law enforcement officer who meets the requirements of s. 165.85 (4) (b) 1., (bn) 1. and (c) shall have the same powers to enforce the laws of the state and to make arrests for violations of such laws that sheriffs have, including powers granted to sheriffs under ss. 59.27 and 59.28 and under the common law, and shall perform the duties accepted under s. 165.85 (3) (c).

(b) Except as provided in par. (c) and s. 175.40, the powers and duties described under par. (a) may be exercised or performed by a tribal law enforcement officer only on the reservation of the tribe or on trust lands held for the tribe or for a member of the tribe that employs the officer.

(c) Any tribal law enforcement officer making an arrest under the authority of this subsection may transport the arrested person to the jail or other detention facility of the county in which the arrest took place or to another jail or detention facility agreed upon by the tribe and the county in which the arrest took place.

(3) LIABILITY. (a) Unless otherwise provided in a joint program plan under s. 165.90 (2) or an agreement between a political subdivision of this state and a tribe, the tribe that employs a tribal law enforcement officer is liable for all acts of the officer while acting within the scope of his or her employment and neither the state nor any political subdivision of the state may be held liable for any action of the officer taken under the authority of sub. (2) (a).

(b) 1. No tribal law enforcement officer may exercise or perform the powers or duties described under sub. (2) (a) unless the

governing body of the tribe that employs the officer adopts and has in effect a resolution under this paragraph. Except as provided in subd. 2., a resolution under this paragraph shall include a statement that the tribe waives its sovereign immunity to the extent necessary to allow the enforcement in the courts of this state of its liability under par. (a).

2. A resolution that does not include the statement required in subd. 1. shall meet the requirements of this paragraph if the department of justice determines that the resolution will reasonably allow the enforcement in the courts of this state of the tribe's liability under par. (a).

(4) DEPUTIZATION BY SHERIFF. Nothing in this section limits the authority of a county sheriff to depute a tribal law enforcement officer under s. 59.26 (5), including the authority to grant law enforcement and arrest powers outside the territory described in sub. (2) (b). Deputization of a tribal law enforcement officer by a sheriff shall not limit the powers and duties granted to the officer by sub. (2).

History: 1993 a. 407; 1995 a. 201.

NOTE: 1993 Wis. Act 407, which creates this section, contains extensive explanatory notes.

165.93 Sexual assault victim services; grants.

(1) DEFINITIONS. In this section:

- (a) "Department" means the department of justice.
- (b) "Sexual assault" means conduct that is in violation of s. 940.225, 948.02, 948.025, 948.03, 948.055, 948.06, 948.07, 948.08, 948.09 or 948.10.
- (c) "Sexual contact" has the meaning given in s. 939.22 (34).
- (d) "Sexual intercourse" has the meaning given in s. 939.22 (36).
- (e) "Victim" means an individual who has been sexually assaulted, regardless of whether the sexual assault has been reported to any governmental agency.

(2) GRANTS. (a) Beginning on January 1, 1995, the department shall provide grants to eligible organizations from the appropriation under s. 20.455 (5) (gc) to provide services for sexual assault victims.

(b) An organization is eligible to apply for and receive a grant under this section if the organization meets all of the following criteria:

1. The organization is a nonprofit corporation or a public agency.
2. The organization provides or proposes to provide, either directly or through a contract, subcontract, service agreement or collaborative agreement with other organizations, entities or individuals, all of the following for sexual assault victims:
 - a. Advocacy and counseling services.
 - b. Crisis telephone line services on a 24 hours per day and 7 days per week basis.
 - c. Professional education about intervention for sexual assault victims and community education programs for the prevention of sexual assault.
 - d. Services for persons living in rural areas, men, children, elderly persons, physically disabled persons, minority groups and other groups of victims that have special needs. This subdivision does not require the applicant to provide services to any group of persons that does not reside in the applicant's service area.
3. The organization does not receive more than 70% of its operating budget from grants under this section.
4. The organization does not provide all of its services under subd. 2. a. to d. by contract, subcontract, service agreement or collaborative agreement with other organizations, entities or individuals.

(c) Whenever the department reviews applications for grants under this section, the department shall consider all of the following:

1. The need for sexual assault victim services in the community in which the applicant provides services or proposes to provide services.

2. The degree to which the applicant's services or proposed services are coordinated with other resources in the community and state.

3. The needs of urban and rural communities.

4. The needs of existing and proposed programs and services.

(3) REPORTING REQUIREMENTS. An organization that receives a grant under this section shall report all of the following information to the department for each fiscal year covered by the grant:

(a) The total expenditures that the organization made on sexual assault victim services in the period for which the grant was provided during that fiscal year.

(b) The number of persons served by general type of sexual assault victim services provided in the period for which the grant was provided during that fiscal year. The department shall identify for organizations the general types of sexual assault services provided.

(c) The number of persons who requested sexual assault victim services in the period for which the grant was provided during that fiscal year but who did not receive the sexual assault victim services that they requested.

History: 1993 a. 16, 227; 1995 a. 225.

165.982 Weed and seed project grants. (1)

The department of justice may award grants from the appropriation under s. 20.455 (2) (dg) to any eligible city whose plan for the expenditure of funds is approved. The grant shall be used to carry out a comprehensive, multi-agency "weed and seed" project to restore safety and vitality to a targeted neighborhood that suffers from high levels of violent and drug-related crime. The grant moneys that a city receives under this section may not supplant existing local resources. A plan submitted for approval shall specify a strategy to achieve the goals of the grant and must include a concerted law enforcement effort to curb drug trafficking and related crime, a decentralized law enforcement and crime prevention effort in a targeted neighborhood, and a coordinated, community-based effort to strengthen the neighborhood's social base and revitalize the neighborhood. The department of justice, with the concurrence of the department of health and family services, shall develop criteria which, notwithstanding s. 227.10 (1), need not be promulgated as rules under ch. 227, for use in awarding grants under this section. The department of justice and department of health and family services shall jointly review any proposed plan and approve those plans that meet the criteria.

(2) To be eligible for the grant, a plan shall include all of the following:

(a) Oversight of the project by the mayor's office or by a steering committee appointed by the mayor.

(b) Written support by the chief of police and the superintendent of the school district.

(c) A law enforcement coordinating committee and a neighborhood revitalization coordinating committee to plan and implement project activities.

(3) The proposed site for the use of a grant shall be an identifiable neighborhood with high violent crime and drug arrest rates. The neighborhood shall have experience in neighborhood planning and organizing or, in lieu thereof, evidence shall be provided that such planning and organizing efforts would be supported by, and would be effective in, the neighborhood.

(4) Grant recipients shall provide a 25% match in funds or in-kind services. Grants shall be awarded for 3-year periods.

(5) The department of justice and the department of health and family services shall provide training and technical assistance to grant recipients. Both departments shall work with the steering committees and coordinating committees of the projects and par-

ticipate in planning and implementing project initiatives as appropriate.

(6) A city shall submit a proposed plan for a grant under this section so that the plan is received by the department of justice on or before July 15, 1994.

History: 1993 a. 193; 1995 a. 27 s. 9126 (19).

165.983 Law enforcement technology grants. The department of justice shall establish policies and procedures for the distribution of grants from the appropriation under s. 20.455 (2) (dg) to law enforcement agencies in cities with high levels of violent and drug-related crime to acquire law enforcement technology. Notwithstanding s. 227.10 (1), the department need not promulgate the required policies and procedures as rules under ch. 227. A law enforcement agency receiving a grant under this section shall provide matching funds equal to 50% of the grant awarded. The grant shall be used to acquire technology that is innovative to the applicant law enforcement agency and consistent with the technology, resources and operational procedures of the applicant law enforcement agency. A grant may not be used for the expansion or replacement of existing equipment or facili-

ties. A law enforcement agency may apply to the department for a grant under this section and shall include a proposed plan of expenditure of the grant moneys. The department shall review each application and plan and may provide a grant to an eligible law enforcement agency.

History: 1993 a. 193.

165.984 Community policing. The department of justice shall establish policies and procedures for the distribution of grants from the appropriation under s. 20.455 (2) (dq) to the city of Milwaukee for activities related to decentralized law enforcement and crime prevention in targeted neighborhoods that suffer from high levels of violent and drug-related crime. Notwithstanding s. 227.10 (1), the department need not promulgate the required policies and procedures as rules under ch. 227. The city of Milwaukee may apply to the department for a grant under this section and shall include a proposed plan of expenditure of the grant moneys. The department shall review the application and plan and shall provide the grant to the city of Milwaukee if the application and plan meet the requirements under this section.

History: 1993 a. 193.