CHAPTER 165

DEPARTMENT OF JUSTICE

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, endorse 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 a 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 *parens patriae*. Estate of Sharp, 63 Wis. 2d 254, 217 N.W.2d 258 (1974).

The attorney general does not have authority to challenge the constitutionality of statutes. Any authority the attorney general has is found in the statutes. The attorney general's constitutional powers and statutory powers are one and the same. State v. City of Oak Creek, 2000 WI 9, 232 Wis. 2d 612, 605 N.W.2d 526, 97−2188.

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

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

(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.

History: 1995 a. 292; 2001 a. 16.

165.02 Federal appropriations adjustments. (1) In this section, "the schedule" means the schedule under s. 20.005 (3) as published in the biennial budget act for the first fiscal year of a fiscal biennium and as approved by the joint committee on finance under s. 20.004 (2) for the 2nd fiscal year of a fiscal biennium.

(2) (a) Subject to par. (b), annually by December 1 or within 30 days after the applicable federal appropriation bill for that federal fiscal year has been enacted, whichever is later, the attorney general shall submit to the joint committee on finance a plan identifying how the attorney general proposes to adjust the federal appropriations for the department of justice for that state fiscal year to reflect the most recent estimate of the amount of federal funds that the department of justice will be appropriated in that state fiscal year.

(b) The attorney general is required to submit a plan under par. (a) only if the most recent estimate of the amount of federal funds that the department of justice will be appropriated under s. 20.455 in the current state fiscal year is less than 95% or more than 105% of the amount of federal revenue shown in the schedule for the appropriations under s. 20.455 in that fiscal year.

(3) After receiving a plan under sub. (2) (a), the cochairpersons of the joint committee on finance jointly shall determine whether the plan is complete. If the joint committee on finance meets and either approves or modifies and approves a plan submitted under sub. (2) (a) within 14 days after the cochairpersons determine that the plan is complete, the attorney general shall implement the plan as approved by the committee. If the joint committee on finance does not meet and either approve or modify

and approve a plan submitted under sub. (2) (a) within 14 days after the cochairpersons determine that the plan is complete, the attorney general shall implement the proposed plan.

History: 1997 a. 86.

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.

(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; 2001 a. 16.

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 attention 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.

165.066 Assistant attorney general; unemployment insurance law enforcement. The attorney general shall assign at least 0.5 assistant attorney general position to assist in the investigation and prosecution of noncompliance with ch. 108.

History: 2005 a. 86.

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. Except as provided in s. 20.931 (7) (b), 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.

History: 2007 a. 20.

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 IN APPEALS AND ON REMAND. Except as provided in ss. 5.05 (2m) (a) and 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. Nothing in this subsection deprives or relieves the attorney general or the department of justice of any authority or duty under this chapter.

(1m) REPRESENT STATE IN OTHER MATTERS. If requested by the governor or either house of the legislature, appear for and represent the state, any state department, agency, official, employee 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. 562 to 569 or Indian gaming compacts entered into under s. 14.035 and defend any department, agency, official, employee or agent under subs. (1), (1m), (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 employee trust funds, together with any other services, including stenographic and investigational, as are necessarily connected with the legal work.

(ag) The department of justice shall furnish legal services upon request of the department of commerce under s. 167.35 (7).

(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. 91.68, 93.73, 100.171, 100.173, 100.174, 100.175, 100.177, 100.18, 100.182, 100.195, 100.20, 100.205, 100.207, 100.209, 100.21, 100.28, 100.37, 100.42, 100.50, 100.51, 100.55, and 846.45 and chs. 126,

136, 344, 704, 707, and 779, together with any other services as are necessarily connected to the legal services.

(as) The department of justice shall furnish legal services to the livestock facility siting review board in defending appeals under s. 93.90 (5) (e) of decisions of the board.

(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 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, employee, 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, employee, or agent for or on account of any act growing out of or committed in the lawful course of an officer's, employee'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 employees 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 injured patients and families 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, practitioners who provide services under s. 257.03, and health care facilities on whose behalf services are provided under s. 257.03 are, for the provision of those services, covered by this section and shall be considered agents of the department of health services for purposes of determining which agency head may request the attorney general to appear and defend them.

(c) Physicians under s. 251.07 or 252.04 (9) (b) are covered by this section and shall be considered agents of the department of health 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, employee 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), (1m), (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, employee or agent of such a corporation as a state official, employee or agent.

(8m) LOCAL EMERGENCY PLANNING COMMITTEES. In subs. (1), (1m), (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, employee or agent.

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

(10) REPORT ON RESTITUTION. Semiannually submit a report to the department of administration and the joint committee on finance regarding money received by the department of justice under a court order or a settlement agreement for providing restitution to victims. The report shall specify the amount of restitution received by the department of justice during the reporting period; the persons to whom the department of justice paid restitution and the amount that the department of justice paid to each recipient during the reporting period; and the department of justice's methodology for selecting recipients and determining the amount paid to each recipient.

(11) FALSE CLAIMS. Diligently investigate possible violations of s. 20.931, and, if the department determines that a person has committed an act that is punishable under s. 20.931, may bring a civil action against that person.

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; 1997 a. 27, 111; 2001 a. 16; 2003 a. 111, 235; 2005 a. 96, 458; 2007 a. 1; 2007 a. 20 ss. 2904, 9121 (6) (a); 2007 a. 76, 79, 96, 130, 225; 2009 a. 2, 28, 42.

For the attorney general to prosecute violations of the election, lobby, and ethics laws, there must be a specific statute authorizing the attorney general to independently initiate the prosecution of civil and criminal actions involving violations of those laws unless there is a referral to the attorney general by the government accountability board under s. 5.05 (2m) (c) 16. or unless the attorney general or an assistant attorney general has been appointed as special prosecutor in lieu of the district attorney. OAG 10−08.

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 department 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 secretary of administration and deposited in the appropriate fund.

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

History: 1995 a. 27; 2003 a. 33.

165.40 Acquisition of hospitals. (1) DEFINITIONS. In this section:

(a) "Acquisition" means the long−term leasing of a hospital or a system of hospitals, or the acquiring by a person of an ownership or controlling interest in a hospital or a system of hospitals that results in one of the following:

1. A change of at least 20% ownership or control.

2. Possession by the person of at least 50% ownership or control.

(am) "Department" means the department of health services.

(b) "Hospital" has the meaning given in s. 50.33 (2).

(c) "Local agency" means an agency of a county, city, village or town.

(d) "Nonprofit corporation" has the meaning given in s. 181.0103 (17).

(dm) "Office" means the office of the commissioner of insurance.

(e) "Person" means an individual, sole proprietorship, partnership, association, limited liability company, corporation or joint stock company, lessee, trustee or receiver.

(f) "State agency" has the meaning given in s. 16.004 (12) (a), except that it includes the University of Wisconsin Hospitals and Clinics Authority.

(g) "Working day" has the meaning given in s. 227.01 (14).

(2) PROHIBITION; APPROVAL REQUIRED. (a) Except as provided in sub. (5), no person may engage in the acquisition of a hospital or a system of hospitals owned by any of the following unless the person has first received review and approval of an application concerning the acquisition under this section from the attorney general, the office and the department:

1. A nonprofit corporation.

2. A city.

3. A county.

4. The state.

5. The University of Wisconsin Hospitals and Clinics Authority.

(b) If the proposed acquisition under this subsection is for a system of hospitals, the person who proposes to engage in the acquisition shall provide notice of the impending acquisition to the attorney general, to the office and to the department at least 30 days before the offer to purchase or lease is made. The attorney general shall, within 5 days after receipt of the notice, determine and notify the person as to whether a single application for the system or an application for each hospital within the system shall be submitted for review. If the attorney general determines that an application for each hospital within the system shall be submitted, no submitted application is complete until all complete applications for the hospitals within the system are submitted to the attorney general, to the office and to the department.

(3) APPLICATION REVIEW BY THE ATTORNEY GENERAL, THE OFFICE AND THE DEPARTMENT; PROCEDURES. (a) An application for review by the attorney general, the office and the department that is required under sub. (2) shall, at the time the offer to purchase or lease is made, be submitted to the attorney general, to the office and to the department on a form that is provided by the attorney general. The application shall include all of the following:

1. The name of the seller or lessor.

2. The name of the purchaser or lessee and, if applicable, other parties to the acquisition.

3. The terms of the proposed agreement.

4. The sale price or rental charges.

5. A copy of the acquisition agreement.

6. A financial and economic analysis and report by an independent expert or consultant of the effect of the acquisition under the standards specified in sub. (4).

(b) An application and all documents related to the application, as specified in par. (a), are public records for the purposes of subch. II of ch. 19.

(c) 1. Within 5 working days after receipt of a completed application under par. (a), the attorney general shall do all of the following:

a. Have notice of the application published as a class 2 notice, under ch. 985, in a newspaper having general circulation in the community or communities in which the hospital or system of hospitals to be sold or leased is located.

b. Notify by 1st class mail any person who has requested that the attorney general provide notice of the filing of hospital acquisition review applications.

2. Notice or a notification under subd. 1. shall state all of the following:

a. That a hospital acquisition review application has been received.

b. The names of the parties to the acquisition.

c. The contents of the hospital acquisition review application.

d. The date by which a person may submit written comments about the hospital acquisition review application to the attorney general.

e. That a public meeting will be held on the acquisition proposed by the application, the time and location of the meeting and the fact that any person may file written comments or exhibits for the meeting or may appear and make a statement at the meeting.

(d) Not later than 30 days after receipt of a completed application under sub. (2) (a), or as soon as practicable but not more than 120 days after receipt of a completed application under sub. (2) (b), and after giving 10 working days' notice, the attorney general shall hold a public meeting at a location that, at a minimum, is in the community served by the hospital, on the acquisition proposed by the application. If the proposed acquisition is for a system of hospitals, a public meeting shall be held in each community served by the system. Any person may file written comments or exhibits for the meeting or may appear and make a statement at the meeting.

(e) The attorney general shall establish and maintain a summary of written and oral comments made for or at the public meeting, including all questions posed, and shall require answers of the appropriate parties. The attorney general shall in an expeditious manner provide the office and the department with a copy of the summary and answers. The summary and answers shall be filed

in the office of the attorney general and in the public library of the public library system for the community served by the hospital and a copy shall be available upon request to the attorney general.

(f) The attorney general may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions and use related discovery procedures for purposes of the meeting under par. (d) and otherwise during performance of a review under this subsection. The attorney general shall in an expeditious manner provide the office and the department with copies of any information obtained by the attorney general under this paragraph.

(g) The attorney general shall provide the office and the department with any information about the application that is in addition to that which the attorney general has previously provided the office and the department. Within 60 days after receipt of a completed application under sub. (2) (a) or as soon as practicable but not more than 150 days after receipt of a completed application under sub. (2) (b), the attorney general, the office and the department shall each independently review the application in accordance with the standards specified in sub. (4) and shall approve or disapprove the application. The attorney general, the office and the department may not make a decision under this paragraph based on any condition that is not directly related to the standards under sub. (4). The attorney general, the office and the department shall jointly agree on a single release date for the decisions each has made under this paragraph and shall release their decisions on that date.

(h) If the attorney general, the office or the department disapproves an application under par. (g), any of the following may bring an action in circuit court for a declaratory judgment under s. 806.04 as to whether the proposed acquisition meets the standards under sub. (4):

1. The applicant.

2. Any person who submitted comments under par. (d) and who has a legal interest in a hospital for which acquisition is proposed or in another hospital that has contracted for the provision of essential health services with the hospital for which acquisition is proposed.

(4) APPLICATION REVIEW BY THE ATTORNEY GENERAL, THE OFFICE AND THE DEPARTMENT; STANDARDS. The attorney general shall approve an application if he or she finds and the office and the department shall approve an application if the office or the department finds that the following standards are met:

(a) That the acquisition is permitted under ch. 181 or any other statute that governs nonprofit entities.

(b) That the hospital exercised due diligence in deciding to sell or lease, selecting the purchaser or lessee and negotiating the terms and conditions of the sale or lease.

(c) That the procedure used by the seller or lessor in making its decision to sell or lease was adequate, including whether the seller or lessor used appropriate expert assistance. The attorney general may employ, at the purchaser's or lessee's expense, reasonably necessary expert assistance in considering evidence under this paragraph.

(d) That conflict of interest was disclosed, including conflicts of interest related to members of the board of directors of, executives of or experts retained by the seller or lessor, the purchaser or lessee or other parties to the acquisition.

(e) That charitable funds are not placed at unreasonable risk, if the acquisition is a sale that is financed in part by the seller.

(f) That any management contract under the acquisition is for reasonably fair value.

(g) That the sale or rental proceeds will be used for appropriate charitable health care purposes, including health promotion, in the community affected by the acquisition and that the proceeds will be controlled as charitable funds independently of the purchaser or parties to the acquisition.

(h) That, if the hospital is sold, a right of first refusal is retained to repurchase the assets by a successor nonprofit corporation, by the city, county or state or by the University of Wisconsin Hospitals and Clinics Authority if the hospital is subsequently sold to, acquired by or merged with another entity.

(5) EXEMPTIONS. The acquisition, by one of the following, of a hospital or system of hospitals owned by a nonprofit corporation is exempt from the application of this section:

(a) A state agency.

(b) A local agency.

(c) Another nonprofit corporation, to which all of the following apply:

1. The nonprofit corporation has a charitable health care purpose that is substantially similar to the corporation that owns the hospital or system of hospitals.

2. The nonprofit corporation is an organization described in section 501 (c) (3) of the Internal Revenue Code that is exempt from federal income tax under section 501 (a) of the Internal Revenue Code.

3. The nonprofit corporation maintains on the board of directors of the acquired hospital or system of hospitals representation from the community affected by the acquisition.

(6) DENIAL, SUSPENSION OR REVOCATION OF CERTIFICATE OF APPROVAL. (a) No certificate of approval to maintain a hospital may be issued under s. 50.35 and a certificate of approval that has been issued under that section shall be suspended or revoked if any of the following occurs:

1. Acquisition of a hospital that is subject to sub. (2) is made without approval by the attorney general, the office or the department.

2. Acquisition of a hospital that is subject to sub. (2) is made after the attorney general, the office or the department has disapproved an application for the acquisition under sub. (4) and, if an action under s. 806.04 is brought, after a judicial determination is made under s. 806.04 that the proposed acquisition does not meet the standards specified in sub. (4) (a) to (h).

(b) If the attorney general or the office is aware that a violation of par. (a) 1. or 2. has occurred, the attorney general or the office shall notify the department for appropriate action under s. 50.35.

(7) ATTORNEY GENERAL; AUTHORITY. Nothing in this section or in s. 50.35 limits the authority of the attorney general to act with respect to an acquisition, including the authority of the attorney general to act under 15 USC 26, ch. 133 or other state law.

History: 1997 a. 93; 1999 a. 32; 2007 a. 20 s. 9121 (6) (a).

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 employee 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. 66.0119 (3). 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, any fire chief or his or her designee 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, any fire chief or designee 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, fire chief or designee, and no person acting on behalf of the insurer, state fire marshal, deputy fire marshal, fire chief or designee, 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, fire chief or designee 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, fire chief or designee during their investigations of fires determined to be the result of arson may be available to the insurer of the property involved.

(15) The state fire marshal, any deputy fire marshal, any fire chief, or his or her designee may obtain information relating to a juvenile from a law enforcement agency, a court assigned to exercise jurisdiction under chs. 48 and 938 or an agency, as defined in s. 938.78 (1), as provided in ss. 938.396 (1) (c) 8. and (2g) (j) and 938.78 (2) (b) 1. and may obtain information relating to a pupil from a public school as provided in ss. 118.125 (2) (ch) and (L) and 938.396 (1) (d).

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; 1997 a. 205; 1999 a. 150 s. 672; 2005 a. 344.

The state fire marshall must establish proper discretionary reasons for exercising the privilege of secrecy under sub. (8). Black v. General Electric Co. 89 Wis. 2d 195, 278 N.W.2d 224 (Ct. App. 1979).

Under *Michigan v. Tyler,* the warrantless search of an entire building on the morning after a localized fire was reasonable as it was the continuation of the prior night's investigation that had been interrupted by heat and nighttime circumstances. State v. Monosso, 103 Wis. 2d 368, 308 N.W.2d 891 (Ct. App. 1981).

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

A burning building clearly presents an exigency rendering a warrantless entry reasonable, and fire officials need no warrant to remain in a building for a reasonable time to investigate the cause of the fire after it is extinguished. Michigan v. Tyler, 436 U.S. 499 (1978)

165.60 Law enforcement. The department of justice is authorized to enforce ss. 101.123 (2), (2m), and (8), 944.30, 944.31, 944.33, 944.34, 945.02 (2), 945.03 (1m), and 945.04 (1m) and ch. 108 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; 2003 a. 33; 2005 a. 86; 2009 a. 12.

165.70 Investigation of statewide crime. (1) The department of justice shall do all of the following:

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

(b) Except as provided in sub. (1m), enforce chs. 945 and 961 and ss. 940.20 (3), 940.201, 941.25 to 941.27, 943.01 (2) (c), 943.011, 943.27, 943.28, 943.30, 944.30, 944.31, 944.32, 944.33, 944.34, 946.65, 947.02 (3) and (4), 948.075, and 948.08.

(d) Enforce and administer s. 165.55.

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

(1m) The department may not investigate violations of or otherwise enforce s. 945.03 (2m) or 945.04 (2m).

(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 other than what is described in s. 945.03 (2m) or 945.04 (2m), 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. 562 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; 1997 a. 27, 143; 1999 a. 83; 2001 a. 109; 2003 a. 33.

165.72 Controlled substances hotline and rewards for controlled substances tips. (1) DEFINITIONS. In this section:

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

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

(bt) "Juvenile detention officer" has the meaning given in s. 165.85 (2) (bt).

(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).

(2) HOTLINE. The department of justice shall maintain a single toll−free telephone number during normal retail business hours, as determined by departmental rule, for all 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) (m) 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, juvenile 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 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; 1997 a. 27; 2001 a. 16; 2003 a. 33; 2007 a. 20, 97.

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.

(g) Deoxyribonucleic acid testing ordered under s. 974.07 shall have priority, consistent with the right of a defendant or the state to a speedy trial and consistent with the right of a victim to the prompt disposition of a case.

(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; 2005 a. 60.

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

165.755 Crime laboratories and drug law enforcement surcharge. (1) (a) Except as provided in par. (b), a court shall impose under ch. 814 a crime laboratories and drug law enforcement surcharge of $13 if the court imposes a sentence, places a person on probation, or imposes a forfeiture for a violation of state law or for a violation of a municipal or county ordinance.

(b) A court may not impose the crime laboratories and drug law enforcement surcharge under par. (a) for a violation of s. 101.123 (2) or (2m)[,] for a financial responsibility violation under s. 344.62 (2), or for a violation of a state law or municipal or county ordinance involving a nonmoving traffic violation, a violation under s. 343.51 (1m) (b), or a safety belt use violation under s. 347.48 (2m).

NOTE: Par. (b) is shown as affected by 2009 Wis. Acts 12, 28, and 100, as merged by the legislative reference bureau under s. 13.92 (2) (i). A missing comma is shown in brackets.

(2) If the court under sub. (1) (a) imposes a sentence or forfeiture for multiple offenses or places a person on probation for multiple offenses, a separate crime laboratories and drug law enforcement surcharge shall be imposed under ch. 814 for each separate offense.

(3) Except as provided in sub. (4), after the court determines the amount due under sub. (1) (a), the clerk of the court shall collect and transmit the amount to the county treasurer under s. 59.40 (2) (m). The county treasurer shall then make payment to the secretary of administration under s. 59.25 (3) (f) 2.

(4) If a municipal court imposes a forfeiture, after determining the amount due under sub. (1) (a) 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 secretary of administration as provided in s. 66.0114 (1) (bm).

(5) If any deposit of bail is made for a noncriminal offense to which sub. (1) (a) applies, the person making the deposit shall also deposit a sufficient amount to include the surcharge under sub. (1) (a) for forfeited bail. If bail is forfeited, the amount of the surcharge under sub. (1) (a) shall be transmitted monthly to the secretary of administration under this section. If bail is returned, the surcharge shall also be returned.

(6) If an inmate in a state prison or a person sentenced to a state prison has not paid the crime laboratories and drug law enforcement surcharge under sub. (1) (a), the department shall assess and collect the amount owed from the inmate's wages or other moneys. Any amount collected shall be transmitted to the secretary of administration.

(7) All moneys collected from crime laboratories and drug law enforcement surcharges under this section shall be deposited by the secretary of administration and used as specified in s. 20.455 (2) (kd) and (Lm).

History: 1997 a. 27; 1999 a. 9, 72; 1999 a. 150 s. 672; 2001 a. 16; 2003 a. 30, 33, 139, 268, 326, 327; 2005 a. 25, 455; 2009 a. 12, 28, 100, 276; s. 13.92 (2) (i).

165.76 Submission of human biological specimen. (1) A person shall provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis if he or she meets any of the following criteria:

(a) Is or was in a juvenile correctional facility, as defined in s. 938.02 (10p), or a secured residential care center for children and youth, as defined in s. 938.02 (15g), or on probation, extended supervision, 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), 948.025, or 948.085.

(ag) Is or was in prison on or after August 12, 1993, and before January 1, 2000, for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), or 948.025.

(ar) Is or was in prison on or after January 1, 2000, for a felony committed in this state.

(av) Is or was found guilty on or after January 1, 2000, of any felony or any violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

(b) Has been 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), 948.025, or 948.085.

(br) Has been found not guilty or not responsible by reason of mental disease or defect on or after January 1, 2000, and committed under s. 51.20 or 971.17, for any felony or a violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

(c) Is or was in institutional care on or after August 12, 1993, for any violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

(cr) Is or was in institutional care on or after January 1, 2000, for a felony or any violation of s. 165.765 (1), 940.225 (3m), 944.20, or 948.10.

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

(e) Is or was released on parole or extended supervision or placed on probation in another state before January 1, 2000, and is or was on parole, extended supervision, or probation in this state from the other state under s. 304.13 (1m), 304.135, or 304.16 on or after July 9, 1996, for a violation of the law of the other state that the department of corrections determines, under s. 304.137 (1), is comparable to a violation of s. 940.225 (1) or (2), 948.02 (1) or (2), 948.025, or 948.085.

(f) Is or was released on parole or extended supervision or placed on probation in another state on or after January 1, 2000, and is or was on parole, extended supervision, or probation in this state from the other state under s. 304.13 (1m), 304.135, or 304.16 for a violation of the law of the other state that the department of corrections determines, under s. 304.137 (2), would constitute a felony if committed by an adult in this state.

(g) Has been required by a court under s. 51.20 (13) (cr), 938.34 (15m), 971.17 (1m) (a), 973.047, or 980.063 to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(h) Is notified by the department of justice, the department of corrections, a district attorney, or a county sheriff under sub. (1m) that the person is required to provide a biological specimen.

(1m) If a person is required to provide a biological specimen under sub. (1) (a) to (g) and the department of justice does not have the data obtained from analysis of a biological specimen from the person that the department is required to maintain in the data bank under s. 165.77 (3), the department may require the person to provide a biological specimen, regardless of whether the person previously provided a biological specimen under this section or s. 51.20 (13) (cr), 938.34 (15), 971.17 (1m) (a), 973.047, or 980.63 [s. 980.063]. The department of justice, the department of corrections, a district attorney, or a county sheriff, shall notify any person whom the department of justice requires to provide a biological specimen under this subsection.

NOTE: The correct cross−reference is shown in brackets. Corrective legislation is pending.

(2m) Unless otherwise provided by rule under sub. (4), a person who is required to provide a biological specimen under sub. (1) shall provide the biological specimen at the following time and place:

(a) If the person has been placed on probation by a court in this state, as soon as practicable after placement at the office of a county sheriff, except, if directed otherwise by the person's probation, extended supervision, and parole agent, then as directed by the agent.

(b) If the person has been on probation, parole, or extended supervision in this state from another state and the department of corrections directs the person to provide a biological specimen, as soon as practicable after placement at the office of a county sher-

iff, except, if directed otherwise by the person's probation, extended supervision, and parole agent, then as directed by the agent.

(c) If the person has been placed on supervision as a juvenile, as soon as practicable after placement at the office of a county sheriff, except, if directed otherwise by the agency providing supervision, then as directed by the agency.

(d) If the person has been sentenced to prison, while in prison as directed by the department of corrections; and if the person does not provide the biological sample while in prison, then as soon as practicable after release from the prison at the office of a county sheriff, except, if directed otherwise by his or her probation, parole, and extended supervision agent, then as directed by the agent.

(e) If the person has been placed in a juvenile correctional facility or a secured residential care center for children and youth, while in the facility or center as directed by the department of corrections; and if the juvenile does not provide the biological specimen while in the facility or center, then as soon as practicable after release from the facility or center, at the office of a county sheriff, except, if directed otherwise by the agency providing supervision, then as directed by the agency.

(f) If the person has been sentenced to a county jail or county house of corrections, as directed by the office of the county sheriff as soon as practicable after sentencing; and if the person does not provide the biological specimen while in the county jail or county house of corrections, as soon after release from the county jail or county house of corrections as practicable, at the office of a county sheriff.

(g) If the person has been committed to the department of health services under s. 51.20 or 971.17 or found to be a sexually violent person under ch. 980, as directed by the department of health services.

(h) If pars. (a) to (g) do not apply, as soon as practicable after the obligation to provide a biological specimen accrues at the office of a county sheriff, except, if directed otherwise by the agent or agency providing supervision or having legal or physical custody of the person.

(2r) Failure by a person who is required to provide a biological specimen under sub. (1) to provide the biological specimen at the time and place provided under sub. (2m) does not relieve the person of the obligation to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis.

(3) Notwithstanding sub. (1), if a county sheriff, the department of corrections, or the department of health services determines that a person who is required to submit a biological specimen under sub. (1) has submitted a biological specimen and that data obtained from analysis of the person's biological specimen is included in the data bank under s. 165.77 (3), the person is not required to submit another biological specimen.

(4) The department of justice may promulgate rules to implement this section.

(5) The departments of corrections and health 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.

(6) (a) If a person who is required to provide a biological specimen under sub. (1) refuses or fails to provide a biological specimen, a district attorney may file a petition with the circuit court for an order compelling the person to provide a biological specimen to the state crime laboratories for deoxyribonucleic acid analysis. A petition under this paragraph shall establish reasonable cause to believe that the person is required to provide a biological specimen under sub. (1) and that the person's biological specimen is not included in the data bank under s. 165.77 (3).

(b) If the court determines that a district attorney's petition satisfies the conditions under par. (a), the court shall issue an order requiring the person to appear in court at a specified time for a hearing to show cause why he or she is not required to provide a biological specimen under sub. (1) or, instead of appearing at the hearing, to provide a biological specimen at the office of the county sheriff before the time for which the hearing is scheduled. The hearing shall be scheduled for not less than 10 and not more than 45 days after the date the court enters the order. The order, together with a copy of the petition and any supporting material, shall be served upon the person in the manner provided for serving a summons under s. 801.11. The order shall be in substantially the following form:

STATE OF WISCONSIN
CIRCUIT COURT: .... County

STATE OF WISCONSIN File No. .....
vs. ORDER
A.B.
Address
City, State, Zip Code
, Respondent

THE STATE OF WISCONSIN, To the Respondent named above:

Unless you choose to contest this Order, by appearing at the time, date, and place set forth below, you are ordered to present yourself to the .... county sheriff, [ADDRESS], no later than ...., between the hours of .... and ...., for the collection of a biological specimen, obtained by buccal swab, for deoxyribonucleic acid (DNA) analysis and inclusion of the results of that analysis in the state crime laboratory's DNA database. YOU MUST BRING A COPY OF THIS ORDER WITH YOU. YOU MUST ALSO BRING TWO FORMS OF IDENTIFICATION, INCLUDING ONE FORM OF GOVERNMENT−ISSUED, PHOTOGRAPHIC IDENTIFICATION. A copy of the petition submitted to obtain this order is attached.

If you wish to contest this order, you may do so by appearing in person at the time, date, and place set forth below, at which time you will have the opportunity to show cause to the court why you should not be required to provide a biological specimen for DNA analysis:

[Court information]

If you do not appear in person to contest this order at the time, date, and place set forth above, and you do not present yourself for collection of a biological specimen as directed, all of the following apply:

1. You may be held in contempt of court and be subject to sanctions as provided in chapter 785 of the Wisconsin Statutes.

2. The court will issue an order to facilitate collection of a biological specimen which, in the court's discretion, may authorize arrest or detention or use of reasonable force against you to collect the biological specimen.

Dated: ...., ... (year)

By the Court signed: ....

This Order is entered under section 165.76 (6) of the Wisconsin Statutes. A copy of that section is attached.

(c) At a hearing on a petition under par. (a), the person has the burden of rebutting the matters established in the petition by demonstrating that he or she is not required to submit a biological specimen under sub. (1).

(d) If the court determines after the hearing under par. (c) that the person is required to submit a biological specimen under sub. (1) and that the person's specimen is not included in the data bank under s. 165.77 (3), the court shall issue an order to facilitate collection of a biological specimen from the person, which may

authorize arrest or detention of the person or use of reasonable force against the person to collect the biological specimen.

History: 1993 a. 16, 98, 227; 1995 a. 27 s. 9126 (19); 1995 a. 77, 440; 1997 a. 35, 283; 1999 a. 9; 2001 a. 96; 2005 a. 277, 344; 2007 a. 20 s. 9121 (6) (a); 2007 a. 97; 2009 a. 261.

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.
Cross−reference: See also ch. Jus 9, Wis. adm. code.

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, employees 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, employees 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. 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.

(2m) (b) If the laboratories analyze biological material pursuant to an order issued under s. 974.07 (8), the laboratories may compare the data obtained from the material 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. The laboratories shall not include data obtained from deoxyribonucleic acid analysis of material that is tested pursuant to an order under s. 974.07 (8) in the data bank under sub. (3).

(c) Paragraph (b) 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. 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; 2001 a. 16; 2005 a. 60.
Cross−reference: See also ch. Jus 9, Wis. adm. code.
The New Genetic World and the Law. Derse. Wis. Law. April 2001.

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.

165.785 Crime alert network. (1) In addition to its duties under ss. 165.50 and 165.78, the department may develop, administer, and maintain an integrated crime alert network to provide information regarding known or suspected criminal activity, crime prevention, and missing or endangered persons to state agencies, law enforcement officers, and members of the private sector.

(2) The department may charge a fee to members of the private sector who receive information under sub. (1).

(3) The department shall utilize only program revenue amounts credited and expended from the appropriation account under s. 20.455 (2) (gp) to develop, administer, and maintain the integrated crime alert network under sub. (1).

History: 2009 a. 358.

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 Wis. 2d 260, 531 N.W.2d 351 (Ct. App. 1995). But see also State v. Lee, 197 Wis. 2d 960, 542 N.W.2d 143 (1996).

Under the facts of the case, the privilege in sub. (1) did not prevent the defendant from obtaining evidence he was entitled to under s. 971.23 when he received the physical evidence that the state intended to offer at trial and a copy of the crime lab report and was granted permission to submit the evidence for testing by his own expert. The defendant was entitled to examine the crime lab analyst at trial but not at an evidentiary hearing. State v. Franszczak, 2002 WI App 141, 256 Wis. 2d 68, 647 N.W.2d 396, 01−1393.

Cross−examination of a highly qualified witness who is familiar with the procedures used in performing the tests whose results are offered as evidence, who supervises or reviews the work of the testing analyst, and who renders his or her own expert opinion is sufficient to protect a defendant's right to confrontation, despite the fact that the expert was not the person who performed the mechanics of the original tests. State v. Williams, 2002 WI 58, 253 Wis. 2d 99, 644 N.W.2d 919, 00−3065.

Under *Crawford*, 541 U.S. 36, analysts' affidavits that certified that evidence was in fact cocaine were testimonial statements, and the analysts were "witnesses" for purposes of the 6th amendment confrontation clause. Absent a showing that the analysts were unavailable to testify at trial and that petitioner had a prior opportunity to cross−examine them, petitioner was entitled to be confronted with the analysts at trial. Melendez−Diaz v. Massachusetts, 557 U.S. ___, 174 L. Ed. 2d 314, 129 S. Ct. 2527 (2009).

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.

History: 1985 a. 29; 1997 a. 27.

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, except as provided in sub. (3) or unless otherwise provided by law, destroy the evidence, retain it in the laboratories, return it to the submitting officer or agency, or turn it over to the University of Wisconsin upon the request of the head of any department of the University of Wisconsin. If the department returns the evidence to the submitting officer or agency, any action taken by the officer or agency with respect to the evidence shall be in accordance with s. 968.20. Except as provided in sub. (3), 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).

(3) (a) In this subsection:

1. "Custody" has the meaning given in s. 968.205 (1) (a).

2. "Discharge date" has the meaning given in s. 968.205 (1) (b).

(b) Except as provided in par. (c), if physical evidence that is in the possession of the laboratories includes any biological material that was collected in connection with a criminal investigation that resulted in a criminal conviction, a delinquency adjudication, or commitment under s. 971.17 or 980.06 and the biological material is from a victim of the offense that was the subject of the criminal investigation or may reasonably be used to incriminate or exculpate any person for the offense, the laboratories shall preserve the physical evidence until every person in custody as a result of the conviction, adjudication, or commitment has reached his or her discharge date.

(bm) The laboratories shall retain evidence to which par. (b) applies in an amount and manner sufficient to develop a deoxyribonucleic acid profile, as defined in s. 939.74 (2d) (a), from the biological material contained in or included on the evidence.

(c) Subject to par. (e), the department may destroy evidence that includes biological material before the expiration of the time period specified in par. (b) if all of the following apply:

1. The department sends a notice of its intent to destroy the evidence to all persons who remain in custody as a result of the criminal conviction, delinquency adjudication, or commitment, and to either the attorney of record for each person in custody or the state public defender.

2. No person who is notified under subd. 1. does either of the following within 90 days after the date on which the person received the notice:

a. Files a motion for testing of the evidence under s. 974.07 (2).

b. Submits a written request for retention of the evidence to the department.

3. No other provision of federal or state law requires the department to retain the evidence.

(d) A notice provided under par. (c) 1. shall clearly inform the recipient that the evidence will be destroyed unless, within 90 days after the date on which the person receives the notice, either a motion for testing of the evidence is filed under s. 974.07 (2) or a written request for retention of the evidence is submitted to the department.

(e) If, after providing notice under par. (c) 1. of its intent to destroy evidence, the department receives a written request for retention of the evidence, the department shall retain the evidence until the discharge date of the person who made the request or on whose behalf the request was made, subject to a court order issued under s. 974.07 (7), (9) (a), or (10) (a) 5., unless the court orders destruction or transfer of the evidence under s. 974.07 (9) (b) or (10) (a) 5.

(f) Unless otherwise provided in a court order issued under s. 974.07 (9) (a) or (b) or (10) (a) 5., nothing in this subsection prohibits the laboratories from returning evidence that must be preserved under par. (b) or (e) to the agency that submitted the evidence to the laboratories. If the laboratories return evidence that must be preserved under par. (b) or (e) to a submitting agency, any action taken by the agency with respect to the evidence shall be in accordance with s. 968.205.

History: 1981 c. 348; 1985 a. 29 ss. 2012, 3200 (35); 2001 a. 16; 2005 a. 60.

165.82 Criminal history search fee. (1) Notwithstanding s. 19.35 (3), the department of justice shall impose the following fees, plus any surcharge required under sub. (1m), 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, or by a governmental agency, $7.

NOTE: Par. (a) is amended eff. 7−1−11 by 2009 Wis. Act 28 to read:

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

(am) For each record check, except a fingerprint card record check, requested by a governmental agency, $7.

NOTE: Par. (am) is created eff. 7−1−11 by 2009 Wis. Act 28.

(ar) For each fingerprint card record check requested by a governmental agency or nonprofit organization, $15.

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

(1m) The department of justice shall impose a $5 surcharge if a person requests a paper copy of the results of a criminal history search requested under sub. (1).

(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; 2003 a. 33; 2009 a. 28.

165.825 Information link; department of health services. The department of justice shall cooperate with the departments of regulation and licensing and health services in developing and maintaining a computer linkup to provide access to the information obtained from a criminal history search.

History: 1997 a. 27; 2007 a. 20 s. 9121 (6) (a).

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.

165.8287 Transaction information for management of enforcement system; department of transportation photographs. (1) In this section:

(a) "Administration of criminal justice" has the meaning given in 28 CFR 20.3 (b).

(b) "Federal law enforcement agency" has the meaning given in s. 343.237 (1) (ag).

(c) "Law enforcement agency of another state" has the meaning given in s. 343.237 (1) (ar).

(d) "Wisconsin law enforcement agency" has the meaning given in s. 175.46 (1) (f).

(2) Upon electronic request, the department of transportation shall make available to the department of justice, in a digital format, any photograph taken of an applicant under s. 343.14 (3) or 343.50 (4) that is maintained by the department of transportation. Updated photographs shall be available to the department of justice within 30 days of photograph capture.

(3) (a) The department of justice shall, through the transaction information for the management of enforcement system or another similar system operated by the department of justice, provide Wisconsin law enforcement agencies, federal law enforcement agencies, and law enforcement agencies of other states with electronic access to any photograph specified in sub. (2) for the administration of criminal justice and for traffic enforcement. Access to these photographs shall be available electronically if the law enforcement agency submits an electronic request bearing an electronic certification or other indicator of authenticity. For an electronic request made by a law enforcement agency of another state, the electronic certification or other indicator of authenticity shall include an electronic signature or verification of the agency making the request and a certification that the request is made for the purpose of administration of criminal justice or traffic enforcement.

(b) Any photograph electronically available under this subsection shall contain the notation: "This photograph is subject to the requirements and restrictions of section 165.8287 of the Wisconsin Statutes. The photograph shall not be used for any purpose other than the administration of criminal justice or traffic enforcement. Secondary dissemination is prohibited and the photograph shall be destroyed when no longer necessary for the purpose

requested. The photograph shall not be used as part of a photo lineup or photo array."

(c) The provisions of s. 343.237 (5), (8), (9), and (10) shall apply to any photograph obtained electronically by a law enforcement agency under this subsection. Any photograph obtained electronically by a law enforcement agency under this subsection may not be used for a photo lineup or photo array. For purposes of this paragraph, any photograph obtained electronically by a law enforcement agency under this subsection shall be considered a copy of a photograph obtained under s. 343.237 (3) or (4) with respect to s. 343.237 (5), (8), (9), and (10).

(d) The department of justice shall maintain a record, which may be electronic, of each request by a law enforcement agency for a photograph under this subsection and of the response to the request. Except as provided in s. 343.237 (9), the department of justice may not disclose any record or other information concerning or relating to the request to any person other than a court, district attorney, county corporation counsel, city, village, or town attorney, law enforcement agency, the applicant under s. 343.14 (3) or 343.50 (4), or, if the applicant is under 18 years of age, his or her parent or guardian. Records maintained under this paragraph shall be maintained for at least 12 months.

(e) The department of justice and the department of transportation shall ensure that, upon submission by law enforcement agencies of electronic requests meeting the requirements under this subsection, access to photographs under this subsection is promptly available to these requesting agencies.

NOTE: This section is created eff. 3−1−11 by 2009 Wis. Act 167.
History: 2009 a. 167.

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 any of the following:

1. An act that is committed by a person who has attained the age of 17 and that is a felony or a misdemeanor.

2. An act that is committed by a person who has attained the age of 10 but who has not attained the age of 17 and that would be a felony or misdemeanor if committed by an adult.

3. An act that is committed by any person and that is 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 any of the following:

1. 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.

2. The Great Lakes Indian Fish and Wildlife Commission, if the Great Lakes Indian Fish and Wildlife Commission agrees to perform the duties required 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 or which would be a felony if committed by an adult.

2. For an offense which is a misdemeanor, which would be a misdemeanor if committed by an adult or which is a violation of an ordinance, and the offense involves 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 or alleged 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. 346.63 (1) or (5) 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; 1997 a. 27; 2007 a. 27; 2009 a. 402.

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

Pursuant to sub. (2), identification records should be made by local law enforcement agencies of juveniles arrested or taken into custody 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, extended supervision 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; 1997 a. 283.

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 juvenile 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:

(ac) "Alzheimer's disease" has the meaning given in s. 46.87 (1) (a).

(ah) "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.

(br) "Juvenile detention facility" has the meaning given in s. 48.02 (10r).

(bt) "Juvenile detention officer" means any person employed by any political subdivision of the state or by any private entity contracting under s. 938.222 to supervise, control, or maintain a juvenile detention facility or the persons confined in a juvenile detention facility. "Juvenile detention 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.

(g) "Tribal law enforcement officer" means any of the following:

1. 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.

2. A conservation warden employed by the Great Lakes Indian Fish and Wildlife Commission 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) Except as provided under sub. (3m) (a), certify persons as being qualified under this section to be law enforcement, tribal law enforcement, jail or juvenile 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 juvenile detention officers who terminate employment or are terminated, who violate or fail to comply with a rule or order of the board relating to curriculum or training, who fail to pay court−ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse, or who fail to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings. The board shall establish procedures for decertification in compliance with ch. 227, except that decertification for failure to pay court−ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse or for failure to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings shall be done as provided under sub. (3m) (a).

(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, juvenile detention officer recruits, or juvenile detention officers in areas of knowledge and ability necessary to the attainment of effective performance as an officer, and ranging from subjects such as first aid, patrolling, statutory authority, techniques of arrest, protocols for official action by off−duty officers, firearms, and recording custodial interrogations 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 juvenile 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.

(3m) DUTIES RELATING TO SUPPORT ENFORCEMENT. The board shall do all of the following:

(a) As provided in a memorandum of understanding entered into with the department of children and families under s. 49.857, refuse certification to an individual who applies for certification under this section, refuse recertification to an individual certified under this section or decertify an individual certified under this section if the individual fails to pay court−ordered payments of child or family support, maintenance, birth expenses, medical expenses or other expenses related to the support of a child or former spouse or if the individual fails to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings.

(b) 1. Request that an individual provide the board with his or her social security number when he or she applies for certification or recertification under this section. Except as provided in subd. 2., if an individual who is requested by the board to provide his or her social security number under this paragraph does not comply with the board's request, the board shall deny the individual's application for certification or recertification. The board may disclose a social security number provided by an individual under this paragraph only to the department of children and families as provided in a memorandum of understanding entered into with the department of children and families under s. 49.857.

2. As a condition of applying for certification or recertification, an individual who does not have a social security number shall submit a statement made or subscribed under oath or affirmation to the board that he or she does not have a social security number. The form of the statement shall be prescribed by the department of children and families. A certification or recertification issued in reliance on a false statement submitted under this subdivision is invalid.

(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 juvenile detention officer. The failure of any such officer to fulfill those requirements does not make that officer 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 juvenile detention officer and remains certified as a juvenile 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 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 employee 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.

1d. Any training program developed under subd. 1. shall include all of the following:

a. An adequate amount of training to enable the person being trained to deal effectively with domestic abuse incidents, including training that addresses the emotional and psychological effect that domestic abuse has on victims.

b. Training on emergency detention standards and procedures under s. 51.15, emergency protective placement standards and procedures under s. 55.135, 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.

c. At least one hour of instruction on recognizing the symptoms of Alzheimer's disease or other related dementias and interacting with and assisting persons who have Alzheimer's disease or other related dementias.

d. Training on police pursuit standards, guidelines, and driving techniques established under par. (cm) 2. b.

e. Training on responding to an act of terrorism, as defined in s. 256.15 (1) (ag).

f. Training concerning cultural diversity, including sensitivity toward racial and ethnic differences. The training shall be designed to prevent the use of race, racial profiling, racial stereotyping, or other race−based discrimination or selection as a basis for detaining, searching, or arresting a person or for otherwise treating a person differently from persons of other races and shall emphasize the fact that the primary purposes of enforcement of traffic regulations are safety and equal and uniform enforcement under the law.

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 juvenile detention officer, except on a temporary or probationary basis, unless the person has satisfactorily completed a preparatory program of juvenile detention officer training approved by the board and has been certified by the board as being qualified to be a juvenile 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. Juvenile 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 fiscal year following the fiscal year in which he or she complies with par. (b) 1.

1m. Each officer who is subject to subd. 1. shall biennially complete at least 4 hours of training from curricula based upon model standards promulgated by the board under par. (cm) 2. b. Hours of training completed under this subdivision shall count toward the hours of training required under subd. 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 juvenile 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

juvenile 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 juvenile detention officers, and the board shall prescribe the means for presenting evidence of fulfillment of these requirements.

(cm) 1. In this paragraph, "police pursuit" has the meaning given in s. 85.07 (8) (a).

2. The board shall promulgate rules that do all of the following:

a. Establish model standards that could be used by any law enforcement agency to determine whether to initiate or continue police pursuit, to establish police pursuit driving techniques employed by that agency and to inform its officers of its written guidelines provided under s. 346.03 (6). The board shall review and, if considered appropriate by the board, revise the model standards established under this subd. 2. a. not later than June 30 of each even−numbered year thereafter. The rules promulgated under this subd. 2. a. are advisory only, are not required to be included as a law enforcement training standard under this subsection and are inadmissible as evidence, except to show compliance with this subd. 2. a.

b. Establish the preparatory program and annual recertification training curricula required under pars. (b) 1. and (bn) 1m., respectively, relating to police pursuit standards, guidelines and driving techniques.

(d) Except as provided under sub. (3m) (a), 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 juvenile 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) Except as provided under sub. (3m) (a), and 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 juvenile 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 juvenile 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 juvenile 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 juvenile 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.

(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; 1997 a. 27, 88, 191; 1999 a. 9; 2001 a. 16, 109; 2005 a. 60, 264, 344, 414; 2007 a. 20, 27, 97, 130; 2009 a. 28, 180.

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

Cross−reference: See also ch. LES 1, Wis. adm. code.

A rule adopted under this section properly barred a nonpardoned felon from holding a police job. Law Enforcement Standards Board v. Lyndon Station, 101 Wis. 2d 472, 305 N.W.2d 89 (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 Wis. 2d 14, 548 N.W.2d 848 (Ct. App. 1996), 95−2948.

A police officer promoted to sergeant, subject to a one−year period of probation, could not be demoted without a just cause hearing under s. 62.13 (5) (em). An original appointment is on a probationary basis under sub. (4) (b). Once that period has passed, no promotion can be taken away without a hearing under s. 62.13 (5) (em). Antisdel v. City of Oak Creek Police and Fire Commission, 2000 WI 35, 234 Wis. 2d 154, 609 N.W.2d 464, 97−3818.

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).

A probationary police officer had no protected property interest in his job. Ratliff 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.

(c) Identify state agencies and political subdivisions that employ law enforcement officers in the state and notify the appropriate officials of the model law enforcement pursuit standards established by the board under s. 165.85 (4) (cm) 2. a.

(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 juvenile 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. 55.135, 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; 1997 a. 88; 2005 a. 264; 2007 a. 97.

165.89 Grants to certain counties for law enforcement programs. (1) From the appropriation under s. 20.455 (2) (kq), the department shall provide grants to counties to fund county law enforcement services. The department may make a grant to a county under this section only if all of the following apply:

(a) The county borders one or more federally recognized Indian reservations.

(b) The county has not established a cooperative county−tribal law enforcement program under s. 165.90 with each federally recognized Indian tribe or band that has a reservation bordering the county.

(c) The county demonstrates a need for the law enforcement services to be funded with the grant.

(d) The county submits an application for a grant and a proposed plan that shows how the county will use the grant moneys to fund law enforcement services.

(2) The department shall review an application and plan submitted under sub. (1) (d) to determine if the application and plan meet the requirements of sub. (1) (a) to (c) and the criteria established under sub. (3). The department may not award an annual grant in excess of $50,000 to any county under this section.

(3) The department shall develop criteria and procedures for use in administering this section. Notwithstanding s. 227.10 (1), the criteria and procedures need not be promulgated as rules under ch. 227.

(4) Notwithstanding subs. (1) and (2) and any criteria and procedures developed under sub. (3), the department shall allocate $300,000 to Forest County each fiscal year from the appropriation account under s. 20.455 (2) (kq) to fund law enforcement services.

History: 2005 a. 25 ss. 88b, 2086s; Stats. 2005 s. 165.89.

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 receive and administer aid and the method by which aid shall be disbursed. The joint program plan shall specify that either the tribe or the county shall receive and administer the full amount of the aid or that the tribe and the county each shall receive and administer specified portions of the aid.

(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) (kt). Prior to January 15 of the year for which funding is sought, the department shall distribute from the appropriations under s. 20.455 (2) (kt) to each eligible program the amount necessary to implement the plan. The department shall distribute the aid to the county, the tribe, or both, as specified in the joint program plan. Distribution of aid is subject to the following limitations:

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

(b) A program shall, prior to the receipt of funds under s. 20.455 (2) (kt) 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 special committee on state−tribal relations under s. 13.83 (3).

History: 1983 a. 523; 1987 a. 326; 1989 a. 31; 1995 a. 201; 1999 a. 9, 60; 2009 a. 74.

165.91 Grants to tribes for law enforcement programs. **(1)** In this section, "tribe" means a federally recognized American Indian tribe or band in this state.

(2) (a) From the appropriation under s. 20.455 (2) (kw), the department shall provide grants to tribes to fund tribal law enforcement operations. To be eligible for a grant under this subsection, a tribe must submit an application for a grant to the department that includes a proposed plan for expenditure of the grant moneys. The department shall review any application and plan submitted to determine whether that application and plan meet the criteria established under par. (b). The department shall review the use of grant money provided under this subsection to ensure that the money is used according to the approved plan.

(b) The department shall develop criteria and procedures for use in administering this subsection. The department may not consider the grant under sub. (4) when determining grant awards under this subsection. Notwithstanding s. 227.10 (1), the criteria and procedures need not be promulgated as rules under ch. 227.

(4) From the appropriation under s. 20.455 (2) (kw) the department shall annually award the Lac Courte Oreilles band of Lake Superior Chippewa Indians $80,000 for tribal law enforcement services.

History: 2005 a. 25 ss. 87t to 87v, 2088m; Stats. 2005 s. 165.91; 2007 a. 20.

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. Except as provided in s. 175.40 (6m) (c) 1. and 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 and omissions 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).

(3m) REQUIREMENTS. No tribal law enforcement officer may exercise or perform the powers or duties described under sub. (2) (a) unless all of the following apply:

(a) One of the following:

1. The governing body of the tribe that employs the officer adopts and has in effect a resolution that includes 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 sub. (3) or another resolution that the department of justice determines will reasonably allow the enforcement in the courts of this state of the tribe's liability under sub. (3).

2. The tribe or tribal law enforcement agency that employs the officer maintains liability insurance that does all of the following:

a. Covers the tribal law enforcement agency for its liability under sub. (2) and s. 66.0513.

b. Has a limit of coverage not less than $2,000,000 for any occurrence.

c. Provides that the insurer, in defending a claim against the policy, may not raise the defense of sovereign immunity of the insured up to the limits of the policy.

(b) The tribe or tribal law enforcement agency that employs the officer has provided to the department of justice a copy of the resolution under par. (a) 1. or proof of insurance under par. (a) 2., and the department of justice has posted either a copy of the document or notice of the document on the Internet site it maintains for exchanging information with law enforcement agencies.

(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; 2009 a. 232.

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, 948.085, 948.09 or 948.10.

(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.

(4) LIST OF ELIGIBLE ORGANIZATIONS. The department shall certify to the government accountability board, on a continuous basis, a list containing the name and address of each organization that is eligible to receive grants under sub. (2).

History: 1993 a. 16, 227; 1995 a. 225; 2005 a. 253, 277, 278; 2007 a. 1.

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 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 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 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 participate 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); 2007 a. 20 s. 9121 (6) (a).

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 facilities. 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.