

**59.26 Sheriff; undersheriff; deputies. (1)** Within 10 days after entering upon the duties of the office of sheriff, the sheriff shall appoint some proper person, who is a resident of the county, undersheriff. However, in counties with a population of 500,000 or more the appointment of an undersheriff is optional. In counties where the sheriff's department is under civil service, the sheriff, in conformity with county ordinance, may, at the request of the affected deputy, grant a leave of absence to a deputy sheriff who the sheriff has appointed undersheriff, or to any other position in the sheriff's department, upon the deputy's acceptance of the appointment. Any deputy in a county under civil service granted leave of absence under this subsection upon completion of the appointive position shall immediately be returned to the position of deputy sheriff and shall continue therein without loss of any rights under the civil service law. The sheriff, however, may not grant such leave of absence to a deputy sheriff until the sheriff first secures the consent of the board by resolution duly adopted by the board. Within 10 days after entering upon the duties of the office of sheriff, the sheriff shall also appoint, subject to sub. (10), deputy sheriffs for the county as follows:

- (a) One for each city and village in the county that has 1,000 or more inhabitants.
- (b) One for each assembly district in the county, except the district in which the undersheriff resides, which contains a village having less than 1,000 inhabitants and does not contain a city or village having more than 1,000 inhabitants.
- (c) Each deputy shall reside in the city or village for which the deputy is appointed, or, if appointed for an assembly district, shall reside in the village in such district.

**(2)** Subject to sub. (10), the sheriff may appoint as many other deputies as the sheriff considers proper.

**(3)** Subject to sub. (10), the sheriff may fill vacancies in the office of any such appointee, and he or she may appoint a person to take the place of any undersheriff or deputy who becomes incapable of executing the duties of that office.

**(4)** A person who is appointed undersheriff or deputy for a regular term or to fill a vacancy or otherwise shall hold office during the pleasure of the sheriff.

**(5)** The sheriff or the undersheriff may also depute in writing other persons to perform particular acts.

**(6)** Every appointment of an undersheriff or deputy, except deputations to perform a particular act, and every revocation of such appointment shall be in writing and be filed and recorded in the office of the clerk of the circuit court.

**(7)** In case of a vacancy in the office of sheriff, the undersheriff shall in all things and with like liabilities and penalties execute the duties of the office of sheriff until the vacancy is filled as provided by law.

**(8)** (a) In any county with a population of less than 500,000, the board, by ordinance, may fix the number of deputy sheriffs to be appointed in that county at not less than that number required by sub. (1) (a) and (b) and may set the salary of those deputies. Subject to sub. (10), the board may provide by ordinance that deputy sheriff positions be filled by appointment by the sheriff from a list of all persons with the 3 highest scores for each position based on a competitive examination. Such competitive examinations may be by a county civil service commission or by the division of merit recruitment and selection in the office of state employment relations at the option of the board and it shall so provide by ordinance. The division of merit recruitment and selection in the office of state employment relations shall, upon request of the board, conduct such examination according to the methods used in examinations for the state civil service and shall certify an eligible list of the names of all persons with the 3 highest scores on that examination for each position to the sheriff of that county who shall, subject to sub. (10), make an appointment from that list to fill the position within 10 days after he or she receives the eligible list. The county for which such examination is conducted shall pay the cost of that examination. If a civil service commission is decided upon for the selection of deputy sheriffs, then ss. 63.01 to 63.17 shall apply so far as consistent with this subsection, except ss. 63.03, 63.04 and 63.15 and except the provision governing minimum compensation of the commissioners. The ordinance or an amending ordinance may provide for employee grievance procedures and disciplinary actions, for hours of work, for tours of

duty according to seniority and for other administrative regulations. Any board provision consistent with this paragraph and existing on July 25, 1951, is validated. If the sheriff fills a deputy sheriff position by promotion, the sheriff shall, subject to sub.

(10), make the appointment to the position from a list of 3 deputy sheriffs who receive the highest scores in a competitive examination. Such competitive examinations may be by a county civil service commission or by the division of merit recruitment and selection in the office of state employment relations at the option of the board and it shall so provide by ordinance.

(b) 1. The persons appointed shall hold the office of deputy sheriff on good behavior. In any county operating under this subsection, but not under s. 59.52 (8), whenever the sheriff or undersheriff or a majority of the members of a civil service commission for the selection of deputy sheriffs believes that a deputy has acted so as to show the deputy to be incompetent to perform the duties of deputy sheriff or to have merited suspension, demotion or dismissal, the sheriff, undersheriff or civil service commission shall report in writing to the grievance committee setting forth specifically the complaint against the deputy, and, when the party filing the complaint is a sheriff or undersheriff, may suspend or demote the officer at the time such complaint is filed. The grievance committee shall be appointed in the same manner and at the same time as standing committees of the board are appointed. The committee may be made up of members of the board or other electors of the county, or both. Such members shall be paid in the same manner as members of other board committees.

2. The grievance committee shall immediately notify the accused officer of the filing of the charges and on request furnish the accused officer with a copy of the same.

3. The grievance committee shall, if the officer requests a hearing, appoint a time and place for the hearing of the charges, the time to be within 3 weeks after the filing of such request for a hearing and the committee shall notify the sheriff or undersheriff or the members of the civil service commission, whichever filed the complaint with the committee, and the accused of the time and

place of such hearing. If the accused officer makes no request to the grievance committee, then the committee may take whatever action it considers justifiable on the basis of the charges filed and shall issue an order in writing as provided in subd. 5. The committee may take testimony at the hearing, and any testimony taken shall be transcribed. The chairperson of the committee shall issue subpoenas for the attendance of such witnesses as may be requested by the accused.

4. At the hearing the chairperson of the committee may maintain order and enforce obedience to the chairperson's lawful requirements. If a person at the hearing acts in a disorderly manner and persists after notice from the chairperson, the chairperson may order the person to leave the hearing. If the order is refused the chairperson may order the sheriff or other person to take the disorderly person into custody until the hearing is adjourned for that day.

5. At the termination of the hearing the grievance committee shall determine in writing whether or not the charge is well-founded and shall take such action by way of suspension, demotion, discharge or reinstatement as it considers requisite and proper under the circumstances and file the same with the secretary of the committee.

5m. No deputy may be suspended, demoted or discharged by the grievance committee under subd. 3. or 5., based on charges filed by the sheriff, undersheriff or a majority of the members of the civil service commission for the selection of deputies unless the committee determines whether there is just cause, as described in this subdivision, to sustain the charges. In making its determination, the committee shall apply the following standards, to the extent applicable:

- a. Whether the deputy could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.
- b. Whether the rule or order that the deputy allegedly violated is reasonable.
- c. Whether the sheriff, before filing the charge against the deputy, made a reasonable effort to discover whether the deputy did in fact violate a rule or order.
- d. Whether the effort described under subd. 5m. c. was fair

and objective.

e. Whether the sheriff discovered substantial evidence that the deputy violated the rule or order as described in the charges filed against the deputy.

f. Whether the sheriff is applying the rule or order fairly and without discrimination to the deputy.

g. Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the deputy's record of service with the sheriff's department.

6. The accused may appeal from the order to the circuit court by serving written notice of the appeal on the secretary of the committee

within 10 days after the order is filed. Within 5 days after receiving written notice of the appeal, the board shall certify to the clerk of the circuit court the record of the proceedings, including all documents, testimony and minutes. The action shall then be at issue and shall have precedence over any other cause of a different nature pending in the court, which shall always be open to the trial thereof. The court shall upon application of the accused or of the board fix a date of trial, which shall not be later than 15 days after such application except by agreement. The trial shall be by the court and upon the return of the board, except that the court may require further return or the taking and return of further evidence by the board. The question to be determined by the court shall be: "Upon the evidence is there just cause, as described under subd. 5m., to sustain the charges against the accused?" No costs shall be allowed either party and the clerk's fees shall be paid by the county. If the order of the committee is reversed, the accused shall be forthwith reinstated and entitled to pay as though in continuous service. If the order of the committee is sustained it shall be final and conclusive.

(c) The board of any county enacting the ordinance provided for in this subsection may provide that any deputy sheriff acting as such at the time of the enactment shall be eligible to such appointment without examination.

(cm) Any board may by a majority vote establish, by ordinance in connection with the enactment of an ordinance providing for civil service selection and tenure of deputy sheriffs under pars. (a)

and (b) or by amendment to such an ordinance previously enacted, a traffic division of the sheriff's department and fix the number of deputy sheriffs as traffic patrolmen and other employees in said division in which case s. 83.016 shall become inoperative as to that county. The board in such ordinance shall further provide that the personnel in such traffic division of the sheriff's department shall be appointed and hold their positions in the manner and under the conditions set forth in pars. (a) and (b). The board may also provide that traffic patrolmen who have been appointed under s. 83.016 and who are employed by the county at the time of the enactment of the ordinance under this subsection establishing a traffic division in the sheriff's department and providing civil service therefor shall be appointed to positions in such traffic division without examination.

(d) Enactment of the ordinances provided for by this subsection shall not preclude the board from thereafter amending or repealing such ordinances, but such amendment or repeal shall not be effective unless voted by the affirmative vote of three-fourths of the members-elect of such board. The civil service provisions of this section shall apply only to such deputies or traffic patrolmen who are regularly employed by the county or sheriff and shall not apply to honorary deputies. Notwithstanding the provisions of this subsection the board may enact a civil service ordinance for county employees under s. 59.52 (8) which civil service ordinance may include deputy sheriffs or traffic patrolmen, or both.

**(9)** (a) A deputy sheriff in any county may not be suspended or dismissed under sub. (8) or s. 59.52 (8) or 63.10 without pay or benefits, for any action taken that is within the scope of the deputy's employment, until the matter that is the subject of the suspension or dismissal is disposed of by the grievance committee or civil service commission or the time for appeal of that matter passes without an appeal being made.

(b) An ordinance of any county or a collective bargaining agreement may not diminish or abridge a right of a deputy sheriff that is granted under par. (a). An ordinance of such a county or a collective bargaining agreement may supplement and expand such a right in a manner that is not inconsistent with par. (a).

(c) If the matter that is the subject of the suspension or dismissal

is decided adversely to the deputy sheriff by the grievance committee or the civil service commission, the time for appeal passes without an appeal being made or the deputy's appeal to the circuit court is decided adversely to the deputy, all pay and benefits received by the deputy sheriff between the time of his or her suspension or dismissal and the latest of an adverse ruling by the committee, the commission or the court or the time for appeal passes shall be returned to the county.

**(10)** (a) Notwithstanding the provisions in subs. (1) (intro.), (2), (3), and (8) (a), and subject to par. (b), if a county provides law enforcement services to a city or village under ss. 59.03 (2) (e) and 62.13 (2s) and if the sheriff appoints additional deputies under sub. (2) to provide the services, the sheriff shall, to the greatest extent possible, fill the additional deputy positions from the ranks of former police officers who lost their positions when their department was abolished under s. 62.13 (2s) (a). With regard to each contract that is entered into under s. 59.03 (2) (e), this provision does not apply on or after the first day of the 25th month beginning after the contract takes effect in the county.

(b) Paragraph (a) applies only to the extent that it is not inconsistent with any collective bargaining agreement that is in effect between a county and its employees.

**History:** 1975 c. 198; 1977 c. 26; 1983 a. 27; 1983 a. 192 ss. 125, 303 (1); 1989 a. 221; 1991 a. 39, 316; 1993 a. 53; 1995 a. 201 s. 273; Stats. 1995 s. 59.26; 1995 a.

225 ss. 154, 155; 2001 a. 9, 107; 2003 a. 33 ss. 1523, 9160; 2005 a. 40. Upon reinstatement of an unreasonably suspended deputy sheriff, the amount of pay due is to be reduced by amounts earned in other employment during the period of suspension. *Klingler & Schilling v. Baird*, 56 Wis. 2d 460, 202 N.W.2d 31 (1972).

The burden of establishing a lack of reasonable and diligent efforts by suspended deputy sheriffs to seek other employment and the availability of employment is on

the employer. *Schilling & Klingler v. Baird*, 65 Wis. 2d 394, 222 N.W.2d 666 (1974).

Under s. 59.21 [now s. 59.26] (8) (b) deputies have civil service protections and tenure beyond their initial term of appointment under sub. (4) and also have protections under collective bargaining agreements not in conflict with the statutes. *Heitkemper v. Wirsing*, 194 Wis. 2d 182, 533 N.W.2d 770 (1995). See also *Brown County Sheriff Dept. v. Employees Ass'n*, 194 Wis. 2d 266, 533 N.W.2d 766 (1995).

Section 165.85 (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. 59.26 (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.

The court of appeals lacks jurisdiction to hear an appeal of a circuit court order under sub. (8) (b) 6. *In Re Discipline of Bier*, 220 Wis. 2d 175, 582 N.W.2d 742 (Ct. App. 1998), 97-1621.

Under the Wisconsin constitution, the sheriff has certain powers and prerogatives derived from the common law that cannot be limited by collective bargaining agreements.

If a duty is one of those immemorial principal and important duties that characterized the office of sheriff at common law, the sheriff may choose the ways and means of performing the duty and cannot be limited by a collective bargaining agreement.

Internal management and administrative duties fall within the "mundane and

commonplace” duties not preserved at common law. *Dunn County v. Wisconsin Employment Relations Commission*, 2006 WI App 120, 293 Wis. 2d 637, 718 N.W.2d 138, 05–1917. A collective bargaining agreement provision confining the powers of deputies serving as court security officers to the county judicial center and giving the clerk of courts priority over the sheriff in the scheduling, directing, and supervision of those deputies interferes with the sheriff’s duty of attendance on the court, which is a duty preserved for the sheriff by the constitution. *Dunn County v. Wisconsin Employment Relations Commission*, 2006 WI App 120, \_\_\_ Wis. 2d \_\_\_, \_\_\_718N.W.2d 138, 05–1917. When a county has a civil service plan for deputy sheriffs, transfers may result in promotion, and such vacancies should be filled by examination and certification of 3 eligibles to the sheriff for appointment. 61 Atty. Gen. 10. In counties where deputy sheriffs are under civil service under s. 59.21 (8) [now 59.26 (8)], the county board may provide job classifications for deputy sheriff positions that would form the basis of selection of competent personnel who could, on appointment by the sheriff, be assigned to perform duties on a felony squad on a countywide basis. By reason of s. 59.24 (1) [now s. 59.28 (1)], or by means of a posse

comitatus, the sheriff could on a case–by–case basis assert leadership, direction, and control over the investigation of a crime in an area that has a police department, and it is the duty of local police to cooperate. 61 Atty. Gen. 79. Although a deputy sheriff must be a resident of the county for which appointed, a deputy may serve in an adjacent county upon a request for mutual assistance. 62 Atty. Gen. 250. A deputy sheriff appointed under s. 59.21 [now s. 59.26] (2) and (8) (a) must be a resident of the state and must, before qualifying and serving, be a resident of the county and must continue to maintain residency therein. 66 Atty. Gen. 315. Section 63.065 is incorporated by reference into s. 59.21 [now s. 59.26] (8) (a). 68 Atty. Gen. 124. This section does not affect a sheriff’s power to call a posse comitatus. 68 Atty. Gen. 334. In counties that have imposed no local residency requirement, only deputy sheriffs or undersheriffs appointed under s. 59.21 [now s. 59.26] (1) are required to be county residents at the time of initial employment. 80 Atty. Gen. 119. A sheriff represents the county when enforcing the law. Sovereign immunity for state officials under the 11th amendment to the U.S. constitution does not apply. *Abraham v. Piechowski*, 13 F. Supp. 2d 870 (1998).