State of Wisconsin

Date of enactment: **April 6, 2023**
2023 Assembly Bill 28 Date of publication*: **April 7, 2023**

2023 WISCONSIN ACT 4

AN ACT ***to renumber and amend*** 40.05 (2) (ar) and 40.73 (1) (am) 3.; ***to amend*** 40.02 (27), 40.02 (48) (b) 3., 40.02 (48) (c), 40.05 (1) (b) 1., 40.23 (3) (a) and 40.28 (1) (a) 2.; and ***to create*** 40.02 (17) (n), 40.02 (48) (am) 23., 40.02 (48) (b) 5., 40.05 (1) (a) 7., 40.05 (1) (b) 1a., 40.05 (2) (ap), 40.05 (2) (ar) 2., 40.23 (3) (c), 40.65 (4w), 40.73 (1) (am) 3. a. and b., 59.52 (8m) and 111.70 (4) (bn) of the statutes; **relating to:** classifying county jailers as protective occupation participants under the Wisconsin Retirement System and the treatment of county jailers under the Municipal Employment Relations Act.

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

SECTION 1. 40.02 (17) (n) of the statutes is created to read:

40.02 **(17)** (n) Notwithstanding par. (d), each participant who is a county jailer and who is classified as a protective occupation participant shall be granted creditable service as a protective occupation participant for all covered service as a county jailer that was earned on or after the effective date of this paragraph .... [LRB inserts date], but may not be granted creditable service as a protective occupation participant for any covered service as a county jailer that was earned before the effective date of this paragraph .... [LRB inserts date], unless that service was earned while the participant was classified under sub. (48) (a) and s. 40.06 (1) (d) as a protective occupation participant.

SECTION 2. 40.02 (27) of the statutes is amended to read:

40.02 **(27)** "Employee required contribution" means the contribution made by an employee under s. 40.05 (1) (a) 1. to 4. <u>and 7.</u>

SECTION 3. 40.02 (48) (am) 23. of the statutes is created to read:

40.02 **(48)** (am) 23. A county jailer.

SECTION 4. 40.02 (48) (b) 3. of the statutes is amended to read:

40.02 **(48)** (b) 3. A "deputy sheriff" or a "county traffic police officer" is any officer or employee of a sheriff's office or county traffic department, except one whose principal duties are those of a telephone operator, clerk, stenographer, machinist or mechanic and whose functions do not clearly fall within the scope of active law enforcement even though such an employee is subject to occasional call, or is occasionally called upon, to perform duties within the scope of active law enforcement. Deputy sheriff or county traffic police officer ~~includes~~ <u>does not include a county jailer, but does include</u> any person regularly employed and qualifying as a deputy sheriff or county traffic police officer, even if temporarily assigned to other duties.

SECTION 5. 40.02 (48) (b) 5. of the statutes is created to read:

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

40.02 **(48)** (b) 5. A "county jailer" is an employee of a county whose principal duties involve supervising, controlling, or maintaining a jail or the persons confined in a jail, as assigned by the sheriff under s. 59.27 (1), regardless of whether the employee has been sworn regarding his or her duties or whether the employee serves on a full–time basis, provided the department receives notification of the participant's name as provided in s. 40.06 (1) (d) and (dm). Notwithstanding par. (a), an employer may classify an employee who is a county jailer as a protective occupation participant under par. (am) 23. without making a determination that the principal duties of the employee involve active law enforcement or active fire suppression or prevention. A determination under this subdivision may not be appealed under s. 40.06 (1) (e) or (em). A county jailer is not a protective occupation participant if he or she so elects with the employer under s. 59.52 (8m) or 2023 Wisconsin Act .... (this act).

SECTION 6. 40.02 (48) (c) of the statutes is amended to read:

40.02 **(48)** (c) In s. 40.65, "protective occupation participant" means a participating employee who is a police officer, fire fighter, an individual determined by a participating employer under par. (a) or (bm) to be a protective occupation participant, county undersheriff, deputy sheriff, county jailer who is certified as a protective occupation participant, state probation and parole officer, county traffic police officer, conservation warden, state forest ranger, field conservation employee of the department of natural resources who is subject to call for forest fire control or warden duty, member of the state traffic patrol, state motor vehicle inspector, University of Wisconsin System full–time police officer, guard or any other employee whose principal duties are supervision and discipline of inmates at a state penal institution, excise tax investigator employed by the department of revenue, person employed under s. 60.553 (1), 61.66 (1), or 62.13 (2e) (a), or special criminal investigation agent employed by the department of justice.

SECTION 7. 40.05 (1) (a) 7. of the statutes is created to read:

40.05 **(1)** (a) 7. For a county jailer covered under subd. 3., the percentage of earnings equal to the total actuarially required contribution rate, as approved by the board under s. 40.03 (1) (e), for a participating employee whose formula rate is determined under s. 40.23 (2m) (e) 3., less the contribution rate paid by the employer for a county jailer under sub. (2) (a). Contributions under this section for an employee who first becomes a participating employee as a county jailer in a county that did not classify county jailers as protective occupation participants on the effective date of this subdivision .... [LRB inserts date], and is certified as a protective occupation participant on or after the effective date of this subdivision .... [LRB inserts date], shall be made by a reduction in salary and, for tax purposes, shall be treated as employer contributions under section 414 (h) (2) of the Internal Revenue Code. Such a participating employee may not elect to have contributions required by sub. (2) (a) paid directly to the employee or make a cash or deferred election with respect to the contributions. Employees who are participating employees on the effective date of this subdivision .... [LRB inserts date], and who are first certified as protective occupation participants in a county jailer position on or after the effective date of this subdivision .... [LRB inserts date], in a county that did not classify county jailers as protective occupation participants on the effective date of this subdivision .... [LRB inserts date], shall make the contribution under this section on a post–tax basis. For employees who are employed as county jailers in a county that classified county jailers as protective occupation participants on the effective date of this subdivision .... [LRB inserts date], the county may at a subsequent date determine to categorize county jailers as general participating employees. In such instance, a county jailer who is employed by the county on the date the county determines to categorize county jailers as general participating employees may make a onetime irrevocable election to not be a protective occupation participant. A county jailer in such a county who opts to remain a protective occupation participant shall make the contribution under this section on a post–tax basis. A county jailer who is first hired as a county jailer by such a county after the date the county determines to categorize county jailers as general participating employees may make a onetime irrevocable election to not become a protective occupation participant. A county jailer who is first hired as a county jailer by such a county after the date the county determines to categorize county jailers as general participating employees and who opts to become a protective occupation participant shall make the contribution under this section on a pre–tax basis.

SECTION 8. 40.05 (1) (b) 1. of the statutes is amended to read:

40.05 **(1)** (b) 1. Except as otherwise provided in a collective bargaining agreement entered into under subch. IV or V of ch. 111 and except as provided in subd. 2., an employer may not pay, on behalf of a participating employee, any of the contributions required by par. (a). ~~The~~ Except as provided in subd. 1a., the contributions required by par. (a) shall be made by a reduction in salary and, for tax purposes, shall be considered employer contributions under section 414 (h) (2) of the Internal Revenue Code. A participating employee may not elect to have contributions required by par. (a) paid directly to the employee or make a cash or deferred election with respect to the contributions.

SECTION 9. 40.05 (1) (b) 1a. of the statutes is created to read:

40.05 **(1)** (b) 1a. Contributions under par. (a) 7. that are made by county jailers who are first certified as protective occupation participants on or after the effective date of this subdivision .... [LRB inserts date], and who are employed in a county that did not classify county jailers as protective occupation participants on July 1, 2022, shall be treated as employee contributions.

SECTION 10. 40.05 (2) (ap) of the statutes is created to read:

40.05 **(2)** (ap) The contributions under par. (a) that are required to be paid by a participating employer for a county jailer whose formula rate is determined under s. 40.23 (2m) (e) 3. shall be a percentage of earnings equal to one–half of the total actuarially required contribution rate, as approved by the board under s. 40.03 (1) (e), for an employee whose formula rate is determined under s. 40.23 (2m) (e) 1. This paragraph applies only to contributions paid for a county jailer who becomes a protective occupation participant on or after the effective date of this paragraph .... [LRB inserts date], and is one of the following:

1. Employed in a county that did not classify county jailers as protective occupation participants on the effective date of this subdivision .... [LRB inserts date].

2. Employed in a county that classified county jailers as protective occupation participants on the effective date of this subdivision .... [LRB inserts date], and the county subsequently determines to not classify county jailers as protective occupation participants and instead classify county jailers as general participating employees.

SECTION 11. 40.05 (2) (ar) of the statutes is renumbered 40.05 (2) (ar) 1. and amended to read:

40.05 **(2)** (ar) 1. ~~Participating~~ Except as provided in subd. 2., participating employers of employees subject to s. 40.65 shall contribute an additional percentage or percentages of those employees' earnings based on the experience rates determined to be appropriate by the board with the advice of the actuary.

SECTION 12. 40.05 (2) (ar) 2. of the statutes is created to read:

40.05 **(2)** (ar) 2. County jailers who are first hired as protective occupation participants on or after the effective date of this subdivision .... [LRB inserts date], in a county that did not classify county jailers as protective occupation participants on the effective date of this subdivision .... [LRB inserts date], may make the contribution under subd. 1. on a pre–tax basis, in lieu of their employers making the contribution. County jailers who are first certified as protective occupation participants on or after the effective date of this subdivision .... [LRB inserts date], in a county that did not classify county jailers as protective occupation participants on the effective date of this subdivision .... [LRB inserts date], shall make the contribution under subd. 1. on a post–tax basis, in lieu of their employers making the contribution. For employees who are employed as county jailers in a county that classified county jailers as protective occupation participants on the effective date of this subdivision .... [LRB inserts date], the county may at a subsequent date determine to categorize county jailers as general participating employees. In such instance, a county jailer who is employed by the county on the date the county determines to categorize county jailers as general participating employees may make a onetime irrevocable election to not be a protective occupation participant. A county jailer in such a county who opts to remain a protective occupation participant shall make the contribution under subd. 1. on a post–tax basis. A county jailer who is first hired as a county jailer by such a county after the date the county determines to categorize county jailers as general participating employees may make a onetime irrevocable election to not become a protective occupation participant. A county jailer who is first hired as a county jailer by such a county after the date the county determines to categorize county jailers as general participating employees and who opts to become a protective occupation participant shall make the contribution under subd. 1. on a pre–tax basis.

SECTION 13. 40.23 (3) (a) of the statutes is amended to read:

40.23 **(3)** (a) Except as provided in ~~par.~~ pars. (b) and (c), the initial monthly amount of any retirement annuity in the normal form shall not be less than the money purchase annuity which can be provided by applying the sum of the participant's accumulated additional and required contributions, including interest credited to the accumulations, plus an amount from the employer accumulation reserve equal to the participant's accumulated required contributions, less any accumulated contributions to purchase other governmental service under s. 40.25 (7), 2001 stats., or s. 40.285 (2) (b) to fund the annuity in accordance with the actuarial tables in effect on the annuity effective date.

SECTION 14. 40.23 (3) (c) of the statutes is created to read:

40.23 **(3)** (c) Under par. (a), for a county jailer described in s. 40.02 (48) (am) 23., the amount to be paid from the employer accumulation reserve is equal to the employer required contributions, including interest, paid for a county jailer under s. 40.05 (2) (a). This paragraph applies only to a county jailer who becomes a protective occupation participant on or after the effective date of this paragraph .... [LRB inserts date], and is one of the following:

1. Employed in a county that did not classify county jailers as protective occupation participants on the effective date of this subdivision .... [LRB inserts date].

2. Employed in a county that classified county jailers as protective occupation participants on the effective date of this subdivision .... [LRB inserts date], and the county subsequently determines to not classify county jailers as

protective occupation participants and instead classify county jailers as general participating employees.

SECTION 15. 40.28 (1) (a) 2. of the statutes is amended to read:

40.28 **(1)** (a) 2. The amount equal to 200 percent of employee required contribution accumulations reserved for a variable annuity as of the date the annuity begins. Except, for a county jailer described in s. 40.02 (48) (am) 23., the amount equal to the employee required contributions and the employer required contributions paid for a county jailer under s. 40.05 (2) (a), including interest, reserved for a variable annuity on the date the annuity begins. The amount applicable for a county jailer applies only to a county jailer who becomes a protective occupation participant on or after the effective date of this subdivision .... [LRB inserts date], and who is either employed in a county that did not classify county jailers as protective occupation participants on the effective date of this subdivision .... [LRB inserts date], or employed in a county that classified county jailers as protective occupation participants on the effective date of this subdivision .... [LRB inserts date], and the county subsequently determines to not classify county jailers as protective occupation participants and instead classify county jailers as general participating employees; and

SECTION 16. 40.65 (4w) of the statutes is created to read:

40.65 **(4w)** A county jailer who becomes a protective occupation participant on or after the effective date of this subsection .... [LRB inserts date], is not entitled to a duty disability benefit under this section for an injury or disease occurring before the effective date of this subsection .... [LRB inserts date].

SECTION 17g. 40.73 (1) (am) 3. of the statutes is renumbered 40.73 (1) (am) 3. (intro.) and amended to read:

40.73 **(1)** (am) 3. (intro.) Twice the employee required contributions, after first subtracting the accumulations under subd. 2., including interest on the accumulations. Except, for a county jailer described in s. 40.02 (48) (am) 23., the amount equal to the employee required contributions and the employer required contributions paid for a county jailer under s. 40.05 (2) (a), after first subtracting the accumulations under subd. 2., including interest on the accumulations. The amount applicable for a county jailer applies only to a county jailer who becomes a protective occupation participant on or after the effective date of this subdivision .... [LRB inserts date], and who is one of the following:

SECTION 17r. 40.73 (1) (am) 3. a. and b. of the statutes are created to read:

40.73 **(1)** (am) 3. a. Employed in a county that did not classify county jailers as protective occupation participants on the effective date of this subd. 3. a. .... [LRB inserts date].

b. Employed in a county that classified county jailers as protective occupation participants on the effective date of this subd. 3. b. .... [LRB inserts date], and the county subsequently determines to not classify county jailers as protective occupation participants and instead classify county jailers as general participating employees.

SECTION 18. 59.52 (8m) of the statutes is created to read:

59.52 **(8m)** EMPLOYMENT OF COUNTY JAILERS. (a) The board of an employer that did not classify county jailers as protective occupation participants on the effective date of this paragraph .... [LRB inserts date], shall provide to an individual who is employed as a county jailer the irrevocable option to elect not to be a protective occupation participant under s. 40.02 (48) (b) 5. when hired after the effective date of this paragraph .... [LRB inserts date], as a county jailer for the employer. An individual shall make an election under this paragraph within 60 days of being hired, in writing and on a form provided by the board.

(b) The board of an employer that classified county jailers as protective occupation participants on the effective date of this paragraph .... [LRB inserts date], and that subsequent to that date determines to classify county jailers as general participating employees shall provide to an individual who is employed as a county jailer on the date the board of the employer determines to classify county jailers as general participating employees the irrevocable option to not be a protective occupation participant under s. 40.02 (48) (b) 5. Such a board shall provide notice to county jailers of the board's determination and a jailer's opportunity to remain a protective occupation participant in writing, in a manner that the employer typically uses to provide notices to employees, and shall post such a notice where notices to employees are customarily posted. An individual shall make an election under this paragraph within 60 days after the determination by the board of the employer to classify county jailers as general participating employees, in writing and on a form provided by the board.

(c) The board of an employer that classified county jailers as protective occupation participants on the effective date of this paragraph .... [LRB inserts date], and that subsequent to that date determines to classify county jailers as general participating employees shall provide to an individual who is hired as a county jailer after the date the board of the employer determines to classify county jailers as general participating employees the irrevocable option to elect to not become a protective occupation participant under s. 40.02 (48) (b) 5. An individual shall make an election under this paragraph within 60 days after being hired, in writing and on a form provided by the board.

SECTION 19. 111.70 (4) (bn) of the statutes is created to read:

111.70 **(4)** (bn) *Public safety employee determination regarding county jailers.* 1. Except as provided under subd. 2., a county jailer, as defined in s. 40.02 (48) (b) 5., is a general municipal employee.

2. A county that treats a county jailer as a public safety employee on the effective date of this subdivision .... [LRB inserts date], shall continue to treat any person it employs as a county jailer as a public safety employee except that, if the county raises a question concerning the appropriateness of including county jailers in a collective bargaining unit that includes public safety employees, no person it employs as a county jailer may be treated as a public safety employee.

SECTION 20. Nonstatutory provision.

(1) COUNTY JAILER OPT OUT FROM PROTECTIVE OCCUPATION PARTICIPANT STATUS UNDER WISCONSIN RETIREMENT SYSTEM. No later than 60 days after the effective date of this subsection, if an individual employed as a county jailer on the effective date of this subsection who is not a protective occupation participant on the effective date of this subsection does not want to be a protective occupation participant under the Wisconsin Retirement System, the individual shall notify his or her employer in writing on a form provided by the employer. An election not to be a protective occupation participant is irrevocable.

SECTION 21. Effective date.

(1) This act takes effect on the January 1 after publication.