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# Wisconsin Legislative Council

## AMENDMENT MEMO

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### 2023 Senate Bill 28

### Senate Amendment 1

2023 Senate Bill 28 relates to the treatment of county jailers as protective occupation participants (“protectives”) under the Wisconsin Retirement System (WRS) and general municipal employees under the Municipal Employment Relations Act (MERA).

Very generally, the bill requires that county jailers be treated as protectives for purposes of benefits under WRS, unless a county jailer opts out of such a classification, and generally classifies county jailers as general municipal employees under MERA. Among other changes, the amendment clarifies definitions and establishes procedures that a county and jailer must follow if the county classified jailers as protectives and subsequently determined to classify them as general employees.

## BACKGROUND

### Protective Occupation Participants

Under Wisconsin law, a protective is treated differently than other general employees. Employers also contribute more into the WRS for employees who are protectives than for those who are not and pay the cost for protectives’ participation in the duty disability program.<sup>1</sup> As relevant to county jailers, state law defines a “protective occupation participant” as any WRS participant whose principal duties are determined by the employing county to involve “active law enforcement,” provided that the duties “require frequent exposure to a high degree of danger or peril and also require a high degree of physical conditioning.” By statute, the Legislature has expressly designated as protectives those who work in any of 22 enumerated position types and whose names are certified as protectives by their employers. Examples of those enumerated positions include police officers, fire fighters, sheriffs, and deputy sheriffs.<sup>2</sup>

Currently, county jailers are not included in this list. As was mentioned, however, state law authorizes WRS employers to designate additional positions (such as county jailers) as protectives if the employer determines that the position’s principal duties meet the statutory definition of protective occupation participant. WRS employers must notify ETF of the names of all employees classified as protectives; designations may be reviewed by ETF and appealed to the ETF Board.

### MERA

MERA provides greater collective bargaining rights to positions categorized as “public safety employees” than it does to those categorized as “general municipal employees.” General municipal employees may bargain with respect to base wages, but cannot bargain for an increase in wages above

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<sup>1</sup> The duty disability program provides a lifetime disability benefit for persons in state or local protective occupations who have a work-related permanent disability.

<sup>2</sup> A deputy sheriff is any officer or employee of a sheriff’s office unless the officer or employee meets certain exceptions, such as having the principal duties of a telephone operator, clerk, or mechanic.

any increase in the consumer price index, unless the increase is approved by referendum. In contrast, public safety employees may bargain regarding wages, hours, and conditions of employment.

State law defines a public safety employee in reference to the individual's status as a protective, and defines a general municipal employee as a municipal employee who is not a public safety employee or transit employee. Under MERA, a "public safety employee" includes any municipal employee who is employed in a position classified as a protective under the WRS or a comparable city or county retirement system in one of the following categories: (1) police officer; (2) fire fighter; (3) deputy sheriff; (4) county traffic police officer; or (5) employee of a combined protective services department. A public safety employee also includes a person who is employed as an emergency medical services (EMS) provider. Though "county jailer" is not expressly included in this list, Wisconsin courts have found that jailers in particular counties are protectives and, therefore, qualify as public safety employees.

## **2023 SENATE BILL 28**

### **Protective Occupation Participants**

2023 Senate Bill 28 classifies county jailers as protectives, but allows jailers to opt out of the classification. In order to opt out, a person currently employed as a county jailer must notify his or her employer in writing within 60 days of the bill's effective date. For newly hired county jailers, the county board must provide an option to elect not to be a protective at the time of hire.

Under the bill, county jailers who are treated as protectives are generally responsible for the additional employer costs resulting from their classification as protectives, including the employer's portion of WRS and duty disability benefits. County jailers who meet either of the following criteria, however, are not required to pay these additional employer costs: (1) classification as a protective before the bill's effective date;<sup>3</sup> or (2) hiring on or after the effective date in counties that classified county jailers as protectives on July 1, 2022. Newly hired county jailers must make these contributions on a pre-tax basis; current jailers must make the contributions post-tax.

As was mentioned, a county jailer may elect to not be treated as a protective. In order to opt out, a person currently employed as a county jailer must notify his or her employer in writing within 60 days of the bill's effective date. For newly hired county jailers, the county board must provide an option to elect not to be a protective at the time of hire.

### **MERA**

Under the bill, a county jailer is considered a general municipal employee, unless the person is employed by a county that treats a county jailer as a public safety employee on the bill's effective date. However, if a county that treats jailers as public safety employees raises a question concerning the appropriateness of including county jailers in a collective bargaining unit that includes public safety employees, the county may not treat any county jailer as a public safety employee.

## **SENATE AMENDMENT 1**

Senate Amendment 1 makes several changes to the bill, including the following. It amends the definition of "protective occupation participant"; clarifies the procedure for a jailer to decide whether to be classified as a protective; and establishes procedures that a county and jailer must follow if the

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<sup>3</sup> The bill takes effect on the January 1 after publication.

county classified jailers as protectives and subsequently determined to classify them as general employees.

The amendment clarifies that the definition of “protective occupation participant” includes only those individuals for whom ETF receives notification of the person’s name. For purposes of duty disability and death benefits, the term only includes county jailers who are categorized as protectives, not those who have opted out of such treatment.

The amendment also establishes procedures for counties and jailers in counties that classified jailers as protectives on the bill’s effective date and subsequently determines to classify them as general employees. In those counties that subsequently reclassify jailers as general employees, the county board must provide both current and newly hired jailers with the irrevocable option to not be a protective. For purposes of provisions such as payment of the employer’s portion of additional WRS contributions, county jailers who are employed in those counties and become protectives after the bill’s effective date are generally treated like jailers who are employed in counties that did not classify jailers as protectives and become protectives after the bill’s effective date. Jailers who elect to remain classified as protectives have contributions deducted on a post-tax basis, while newly hired jailers who elect to be classified as protectives have contributions made on a pre-tax basis.

In counties that make this determination, the county board must provide notice to county jailers of the board’s determination to classify jailers as general employees and of a jailer’s opportunity to remain a protective. The notice must be in writing, in a manner that the employer typically uses to provide notices to employees, and posted where notices to employees are customarily posted. Jailers have 60 days from the board’s determination or the date of hiring, whichever is applicable, to make their election.

The amendment also clarifies that the provision requiring county boards to provide newly hired jailers with the option of whether to be classified as a protective only applies in counties that did not classify jailers as protectives on the bill’s effective date. Similarly, it clarifies that the provision allowing current jailers to opt out of being treated as protectives only applies to county jailers who are not protectives on the bill’s effective date.

The bill also changes several references from July 1, 2022, to the bill’s effective date.

## **BILL HISTORY**

Senate Amendment 1 was offered by Senator Marklein on March 10, 2023. On March 16, 2023, the Senate Committee on Judiciary and Public Safety voted unanimously to recommend adoption of the amendment and passage of the bill, as amended.

For a full history of the bill, visit the Legislature’s [bill history page](#).

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