

## MEMORANDUM

**TO:** Honorable Members of the Assembly Committee on State Affairs

**FROM:** Marcie Rainbolt, Government Affairs Associate

**DATE:** March 1, 2023

**SUBJECT:** Support of Assembly Bill 28

The Wisconsin Counties Association (WCA) supports AB 28 which classifies county jailers as protective occupation participants under the Wisconsin Retirement System (WRS) and mandates that employees pay the enhanced WRS contributions resulting from the classification. AB 28 represents a negotiated compromise between WCA, the Badger State Sheriffs Association, and the Wisconsin Sheriffs and Deputy Sheriffs Association that addresses the desires of county jailers and the need to attract and retain quality jail personnel without forcing additional costs on to county property taxpayers.

For years, discussions have been ongoing between WCA and the law enforcement community regarding protective status for county jailers. These discussions followed years of litigation surrounding protective status for jailers. Currently, 13 counties have their jailers classified as protective. Counties have historically been successful in litigation as the Department of Employee Trust Funds (ETF) has consistently found that county jailers are not entitled to WRS protective status because, among other things, a jailer's job is not considered "active law enforcement" under the law.

Following discussions with law enforcement associations, AB 28 was drafted which provides protective status to jailers without regard to their "active law enforcement" status and, therefore, allows jailers to receive duty disability insurance and early retirement. The legislation also clarifies that jailers are not designated as public safety employees for collective bargaining purposes (*i.e.*, they are general municipal employees and may bargain only over base wages) and jailers are responsible for all—employee and employer—additional WRS contributions associated with protective status.

County jailers are critical to ensuring safety in the jail for inmates, staff, and the general public. As such, AB 28 provides jailers with the additional benefits they desire while protecting local property taxpayers. It is anticipated that this legislation will bring an end to all litigation surrounding jailer protective status, thus providing legal certainty for 71 of our 72 counties with county jailers.

WCA respectfully requests that the Committee support AB 28.

county. The bill provides new and current jailers a onetime option to opt out of the protective status benefit if they so chose so. Based on figures from the Department of Employee Trust Funds, if this legislation was in effect for 2023, county jailers who do not opt out of protective status would need to pay 13.2% of their salary plus the rate for duty disability insurance. Duty disability insurance rates vary across the state based on each county's claims experience; in nearly all counties, it is less than 0.1% of an employee's salary.

While protective status will be offered in every county statewide, this bill provides for different circumstances to allow for more county-level flexibility. For instance, if counties currently pay for the additional cost to provide protective status to jailers, those counties are grandfathered in under the bill. A grandfathered county would have the ability in the future to not pay the additional costs if the county board so decides. In addition, if a county currently collectively bargains with public safety employees, newly hired county jailers will be able to bargain as public safety employees.

Using current data collected by BSSA, there are 2,088 jailers that would benefit from this bill should it become law. This number does not include jailers in the "grandfathered counties," who already have this benefit. It is our understanding that there are 13 counties that already provide protective status to jailers that would be "grandfathered counties."

Safety within the jail is the top priority. Without protective status, jailers must work longer careers, while facing the same physically dangerous aspects of the job. For a county jailer in their late 50s or early 60s, dealing with younger inmates can be a significant safety risk. The protective status benefit will afford jailers the opportunity to retire at 50, the same as state correctional officers, thus eliminating their exposure to injury later in their careers.

On a final note, it is important to recognize the collaboration on this legislation with the Wisconsin Counties Association. Our organizations have worked together with the bill's authors for years to ensure a balanced policy, providing county jailers with protective status without increasing county budgets.

We respectfully request you support this bill to give county jailers the protective status they deserve for the hard and dangerous work they do to keep Wisconsin safe. Thank you for your time and consideration.



To: Members, Assembly Committee on State Affairs  
From: Badger State Sheriffs' Association (BSSA)  
Wisconsin Sheriffs and Deputy Sheriffs Association (WS&DSA)  
Date: March 1, 2023  
**RE: Testimony in Support of Assembly Bill 28**  
**Provide Protective Status to County Jailers**

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Good morning, Chairman Swearingen and Members of the Committee. I am Dodge County Sheriff Dale Schmidt. I am the President of the Badger State Sheriffs' Association representing all of Wisconsin's 72 elected county sheriffs. I am also appearing on behalf of the Wisconsin Sheriffs and Deputy Sheriffs Association, which represents over 1,000 members, including sheriffs, deputies, and jail officers. Our organizations have a joint legislative committee and work closely on public safety issues of concern to our members.

We are here today to ask for your support for an important piece of legislation that will provide protective status to county jailers statewide. First, we want to thank Representative Born and Senator Marklein for authoring this bill, which has been many years in the making. In the 2019-20 session, this legislation was introduced but did not advance due to a technical issue flagged by the Department of Employee Trust Funds (ETF). Since then, our organizations worked with the authors, IRS, ETF, and tax attorneys to ensure the bill complies with all IRS regulations relating to post-tax contributions.

Protective occupation status allows employees to retire at an earlier age (50 years old) and receive duty disability benefits if they are injured in the line of duty. While the job responsibilities are the same, state correctional officers are considered protective status under the Wisconsin Retirement System (WRS), but county jailers are not.

Daily, county jailers are responsible for the safety of county jails and the safety of the facility's other inmates. Since every state inmate starts in a county jail, county jailers regularly deal in dangerous and stressful situations. Inmates initially admitted to the jail are often dealing with various issues, including mental health, alcohol and other drug abuse, and the stress from the crime they committed and potential incarceration. To prepare for their difficult job to work in strenuous conditions, county jailers undergo substantial training requirements.

Currently, individuals whose principal duties (51 percent or more) involve active law enforcement or fire suppression or prevention and require frequent exposure to a high degree of danger are classified as protective occupation participants under the WRS. For years, there has been variability across Wisconsin counties regarding whether protective status is provided to county jailers.

Under the bill, county jailers are classified as protective status under WRS without requiring that their principal duties involve active law enforcement. The additional cost associated with protective status, including duty disability, is paid for by the employee (county jailer), not the



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# HOWARD MARKLEIN

STATE SENATOR • 17<sup>TH</sup> SENATE DISTRICT

## March 1, 2023 Assembly Committee on State Affairs Testimony on Assembly Bill 28

Good Afternoon!

Thank you Chairman Swearingen and committee members for taking the time to hear testimony on Assembly Bill 28, which would allow county jailers to be classified as protected occupation participants under the Wisconsin Retirement System (WRS).

Currently, individuals whose principal duties involve active law enforcement, or fire suppression or prevention, and require frequent exposure to a high degree of danger are classified as protective occupation participants under the Wisconsin Retirement System.

Under current law, this classification is extended to state correctional officers and other law enforcement agents. However, it does not apply to all county jailers.

I would encourage you to talk to your local county sheriff and the men and women who go to work every day in your county jail and ask them if their job entails “a high degree of danger or peril.” After visiting county jails and talking to my local sheriffs, the answer is a clear “yes.”

Individuals who are incarcerated at a state prison first start by being detained at a county facility. Our county correctional officers see the most demanding and dangerous people in our correctional system at the most stressful time. On a daily basis they are tasked with handling people who are aggressive upon their arrest, under the influence of drugs or alcohol, or are suffering from a mental illness. Injuries to county jailers are not uncommon.

In addition to the physical dangers of their job, county jailers also face difficult mental and emotional challenges. In smaller rural communities, county correctional officers may know the victims that were affected by the actions of the criminals they must protect at work. This is not an easy profession.

AB 28 was carefully crafted so that it would not increase costs to county taxpayers. County jailers that are willing to chip in for these benefits should be allowed to do so. Considering that the cost would fall on the employee, the bill provides an opt-out option for officers.

This bill was drafted with input and discussions between the Badger State Sheriffs’ Association and the Wisconsin Counties Association. Both organizations support AB 28. The Wisconsin Sheriffs and Deputy Sheriffs Association has added their support for AB 28 as well.

So far this proposal has received bi-partisan support in both houses of the Legislature. I would encourage you to support the bill as well.



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# MARK BORN

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STATE REPRESENTATIVE • 39<sup>TH</sup> ASSEMBLY DISTRICT

**Testimony on Assembly Bill 28**  
*Assembly Committee on State Affairs*  
*March 1, 2023*

Good afternoon Chairman Swearingen and members of the Assembly Committee on State Affairs. Thank you for allowing me to testify in favor of Assembly Bill (AB) 28 which would classify county jailers as protective occupation participants under the Wisconsin Retirement System (WRS).

Under current law, participants in the WRS whose primary duties include active law enforcement or fire suppression or prevention and frequent exposure to a high degree of danger are classified as protective occupation participants. Under protective status, the normal retirement age is lower and the percentage multiplier used to calculate retirement annuities is higher. Examples of individuals classified as protective occupation participants include state prison guards and other law enforcement professionals.

AB 28 will make an important change to recognize the challenges and dangers that county jailers experience on a regular basis. Every individual incarcerated in the state prison system was held at a county jail first. Upon arrival at a county jail, arrested individuals are frequently angry, aggressive and stressed, dealing with various mental health issues or are under the influence of alcohol or drugs. Regardless of the risk an individual poses upon arriving, county jailers are responsible for ensuring the safety and well-being of each inmate and all staff in their facility. State prison guards are tasked with very similar responsibilities, however, they are classified as protective occupation participants under the WRS and county jailers are not.

The concept of granting protective status to county jailers has been around for over 20 years and this bill reflects an agreement between the Badger State Sheriff's Association, Wisconsin Sheriffs and Deputy Sheriffs Association and the Wisconsin Counties Association.

Under this proposal, county jailers would be classified as protective occupation participants and the employees (jailers) would have to pay the additional costs of having protective status including both the employer's additional WRS contribution and duty disability costs. This means that there is no increased cost to the county taxpayer. Current county jailers would have 60 days after enactment of this bill to opt out of receiving protective status and new jailers would have the opt-out option at the time they are hired. This decision is irrevocable. Some counties currently classify their jailers as protective occupation participants and pay for the additional costs for their employees. Counties with this policy will be grandfathered in under the bill, but those counties retain the ability to no longer pay the additional costs through an action of the county board in the future.

Thank you again for the opportunity to testify in favor of AB 28. I am now happy to answer any questions.