

Fact Sheet: Sheriffs in Wisconsin

What is a sheriff? What are the sheriff's duties?¹

A sheriff is the chief law enforcement officer for a county. The Wisconsin constitution identifies sheriffs as county officers who are elected every four years.² Vacancies in the sheriff's office are to be filled by appointment of the governor until a successor is elected and qualified.³

The duties of the sheriff are outlined in Wisconsin law.⁴ Among other duties, sheriffs shall:

- Take charge and custody of the county jail and keep a record of all prisoners committed to any county jail;
- Attend upon the circuit court and court of appeals held in the sheriff's county;
- Serve or execute all processes, writs, precepts, and orders delivered to the sheriff;
- Enforce in the county all general orders of the Department of Safety and Professional Services relating to the sale, transportation and storage of explosives;
- Conduct operations within the county and, when the county board so provides, in waters of which the county has jurisdiction for the rescue of human beings and for the recovery of human bodies;
- Keep and preserve the peace and quiet and suppress all affrays, routs, riots, unlawful assemblies, and insurrections;
- Enforce all city or village ordinances in a city or village in which the sheriff provides law enforcement services under a contract; and
- Assist other law enforcement agencies and request the assistance of other law enforcement agencies as necessary.

The Wisconsin Supreme Court has held that the state legislature may not take away the historic "principal and important duties" of the sheriff, but it may alter other duties as it sees fit.⁵

What is the relationship between sheriffs and other law enforcement such as local police departments?

Sheriffs and police departments have overlapping duties to provide law enforcement services in municipalities within a county.⁶ Sheriffs have "broad overall power with respect to law enforcement involving state statutes, county ordinances and keeping of the peace in the entire

¹ This fact sheet catalogs the relevant Wisconsin laws related to sheriffs' powers. It does not provide legal advice, and more research into the interpretation of these laws in a specific context or the interaction with other laws may be required. The position of sheriff existed prior to the founding of the United States and pre-dates the constitutions of many states; therefore, many of the original laws governing sheriffs may seem outdated and inconsistent with more modern rules governing the powers of law enforcement and the preservation of civil rights.

² [Wis. Const. art. VI, § 4\(1\)\(b\)](#).

³ [Wis. Const. art. VI, § 4\(6\)](#).

⁴ [Wis. Stat. Ann. §§ 59.27](#).

⁵ *Wis. Pro. Police Ass'n v. Dane County*, 316 N.W.2d 656, 660 (Wis. 1982).

⁶ [81 Ops. Att'y Gen. State Wis. 24, 25 \(1993\)](#).

county, regardless of municipal boundary lines.”⁷ Sheriffs typically coordinate with local police departments to carry out their duties most efficiently. A city may abolish its police department if it contracts with another municipality’s police department or with the county for the sheriff to provide law enforcement services.⁸ To do so, the city council (known in some places as the “common council”) must adopt a resolution requesting the provision of services from the sheriff.⁹

The Wisconsin State Patrol is primarily responsible for law enforcement “relating to the use or operation of vehicles upon the highway,” although State Patrol officers may assist county and local law enforcement.¹⁰

Can a sheriff deputize private individuals or summon a posse to assist in law enforcement duties? What are the limitations on this power?

Sheriffs retain the power to call a posse comitatus or summon a bystander to lend assistance, and Wisconsin law does not impose any formalities on the form of the request for assistance.¹¹ The sheriff has “broad discretion” in calling for a posse comitatus, but the circumstances must necessitate summoning assistance.¹² When a sheriff has called together a posse comitatus and posse members are acting under his or her authority, they generally may only exercise any authority possessed by the sheriff. Any personal resistance to the posse members is considered resistance to the sheriff.¹³

Individuals constituting a posse and aiding an officer by acting under the direction of their command are entitled to the same protection and immunity that extends to the officer personally.¹⁴ When a law enforcement officer “commands the private citizen to do what would otherwise be a negligent act,” the officer, not the private citizen, assumes liability for the act.¹⁵

How can the sheriff be removed from office?

In Wisconsin, the governor may remove a sheriff from office “for cause,” defined as “inefficiency, neglect of duty, official misconduct, or malfeasance in office.”¹⁶ Before removal, the governor must first give the sheriff a copy of the charges and an opportunity to be heard.¹⁷

Following the death of an inmate who was denied water for seven days in 2017, there were calls for the removal of Milwaukee County Sheriff David Clarke. Governor Scott Walker acknowledged that he had the authority to remove Clarke but decided not to pursue removal because the “historical practice has been to defer to voters.”¹⁸

⁷ [58 Ops. Att’y Gen. State Wis. 72, 73 \(1969\).](#)

⁸ [Wis. Stat. Ann. § 62.13\(2g\).](#)

⁹ [Wis. Stat. Ann. § 62.13\(2s\).](#)

¹⁰ [Wis. Stat. Ann. § 110.07; 56 Ops. Att’y Gen. State Wis. 98, 102-03 \(1967\).](#)

¹¹ [Wis. Stat. Ann. §§ 59.28; 68 Ops. Att’y Gen. State Wis. 209, 212 \(1979\).](#)

¹² [56 Ops. Att’y Gen. State Wis. 98, 102-03 \(1967\).](#)

¹³ *Bonnville v. State*, 11 N.W. 427, 430 (Wis. 1882).

¹⁴ *See Krueger v. State*, 177 N.W. 917, 924 (Wis. 1920).

¹⁵ *Kagel v. Brugger*, 119 N.W.2d 394, 398 (Wis. 1963).

¹⁶ [Wis. Stat. Ann. §§ 17.09\(5\), 17.001.](#)

¹⁷ *See Wis. Const. art. VI, § 4(4).*

¹⁸ Cara Lombardo, *Wisconsin Gov. Walker: Won’t remove Sheriff over jail dehydration death*, Associated Press (Apr. 26, 2017), <https://apnews.com/article/0d1faff0077f418fb3d95469a9bc9048>.

Elected officials, including sheriffs, are also subject to a recall process. Sheriffs cannot be subject to recall until they have been in office for at least one year, and voters may file one recall petition against an elected official per term. The recall process involves filing a recall petition, collecting signatures of eligible voters in the county equaling at least 25 percent of all votes cast for governor in the county at the last election, and scheduling a recall election.¹⁹

What is the “constitutional sheriffs” movement? Are there sheriffs in Wisconsin who are part of this movement?

The “constitutional sheriffs” movement claims that “[t]he law enforcement powers held by the sheriff supersede those of any agent, officer, elected official or employee from any level of government when in the jurisdiction of the county.”²⁰ So-called “constitutional sheriffs” assert that they have the power to decide the constitutionality of the laws they are entrusted with enforcing and to refuse to enforce any law that they believe is unconstitutional. Although only a small fraction of the nation’s sheriffs is part of the movement, in recent years, they have refused to enforce a host of public safety laws, from COVID-19-related mask mandates to state and federal gun laws, and they have affirmatively sought to frustrate federal land management and other government programs. For further information about the “constitutional sheriffs” movement, please see [ICAP and States United Democracy Center’s Fact Sheet](#).²¹

There is some indication that the “constitutional sheriffs” movement is attempting to make inroads in Wisconsin. Recent media related to “constitutional sheriffs” in Wisconsin:

- [“Wisconsin sheriff says he will not enforce ATF’s rule on pistol braces,” Dryden Wire](#) (Jan. 21, 2023)
- [“The ‘constitutional sheriffs’ movement is planning to disrupt election day,” The New Republic](#) (Nov. 8, 2022)
- [“Conspiracy-promoting sheriffs claim vast election authority,” AP News](#) (July 22, 2022)
- [“Trump-aligned sheriffs target election officials,” Bolts Mag](#) (Apr. 19, 2022)
- [“5 Wisconsin sheriffs fighting Governor’s “Safer at Home” order, Patch](#) (Apr. 23, 2020)
- [“Why ‘constitutionalist sheriffs’ won’t enforce coronavirus restrictions,” Washington Post](#) (Apr. 23, 2020)
- [“Clark County sheriff won’t enforce new state law,” Marshfield News Herald](#) (May 2, 2015)

Do sheriffs in Wisconsin have any specific election administration authority? Who has authority for election administration in Wisconsin?

Recently, the Constitutional Sheriffs and Peace Officers Association (CSPOA), an organization which claims to represent “constitutional sheriffs” nationwide, has called on sheriffs to investigate disproven claims of fraud tied to the 2020 election and to insert themselves into election administration going forward.²² A second group, True the Vote, has echoed this call,

¹⁹ [Wis. Const. art. XIII, § 12](#).

²⁰ Const. Sheriffs & Peace Officers Ass’n, *About CSPOA*, CSPOA, <https://cspoa.org/about/> (last visited Oct. 22, 2023).

²¹ Institute for Constitutional Advocacy and Protection & States United Democracy Center, *Fact Sheet: “Constitutional Sheriffs” and Elections*, <https://www.law.georgetown.edu/icap/wp-content/uploads/sites/32/2022/09/Constitutional-Sheriffs-Fact-Sheet.pdf>.

²² Const. Sheriffs & Peace Officers Ass’n, *CSPOA Strongly Encourages Sheriffs and Local Law Enforcement to Investigate Alleged Election Fraud in Their Jurisdictions*, CSPOA (May 24, 2022), <https://cspoa.org/elections/> (last visited Nov. 1, 2023).

distributing a “Sheriff’s Toolkit” in an attempt to persuade sheriffs to intervene in local election administration.²³

Sheriffs in Wisconsin do not appear to have any specific authority with respect to election administration. Instead, the Wisconsin Elections Commission has primary authority for administering elections within the state.²⁴ The commission has the authority to investigate claims of alleged violations of election laws and may prosecute civil violations directly or through referral to the district attorney or the attorney general.²⁵ If the commission finds probable cause of a criminal violation, it may refer matters involving residents to the district attorney of the county where the alleged violator resides and matters involving non-residents to the district attorney of the county where the alleged matter arises.²⁶ If a district attorney declines to prosecute, the elections commission may refer the matter to the attorney general.²⁷

Municipal clerks are responsible for supervising elections within their municipality.²⁸ In cities with a population over 500,000 and counties with a population over 750,000, a board of election commissioners is established and is responsible for supervising elections within the municipality or county.²⁹ The mayor, president, board chairperson, or board of election commissioners of each municipality appoints election inspectors to supervise polling places.³⁰ Election inspectors may order any law enforcement officer to remove a person who is refusing to obey the lawful commands of an election inspector or is disturbing the proceedings.³¹

Have sheriffs in Wisconsin expressed interest in overseeing or investigating election-related activity?

Racine County Sheriff Christopher Schmaling, “has tried to charge statewide election officials with violating the law by temporarily suspending election oversight work in nursing homes.” Sheriff Schmaling claimed he found eight instances of potential voter fraud and issued criminal referrals for members of the Wisconsin Elections Commission, “recommending that the district attorneys in the counties where they live charge them with crimes including felonies.”³² Three of the five district attorneys publicly declined to file charges.³³ The remaining district attorneys do not appear to have filed charges.

Sheriff Schmaling also claimed that the Wisconsin online platform for requesting absentee ballots is “particularly vulnerable to election fraud.”³⁴ The Wisconsin Election Commission,

²³ True the Vote, *Sheriff’s Toolkit*, <https://www.trueethevote.org/sheriffs-toolkit/> (last visited Nov. 2, 2023).

²⁴ [Wis. Stat. Ann. § 5.05\(1\)](#).

²⁵ [Id. § 5.05\(2m\)\(c\)\(14\)](#).

²⁶ [Id. § 5.05\(2m\)\(c\)\(11\)](#).

²⁷ See [id. § 5.05\(2m\)\(c\)\(16\)](#).

²⁸ [Id. § 7.15](#).

²⁹ [Id. §§ 7.20-21](#).

³⁰ See [id. § 7.30](#).

³¹ [Id. § 7.37](#).

³² Alexandra Berzon & Nick Corasaniti, *2020 Election Deniers Seek Out Powerful Allies: County Sheriffs*, N.Y. Times (July 25, 2022), <https://www.nytimes.com/2022/07/25/us/politics/election-sheriffs-voting-trump.html>.

³³ Adam Rogan, *A third district attorney declines to file charges against state election commissioners*, Kenosha News (Mar. 17, 2022), https://www.kenoshanews.com/news/local/a-third-district-attorney-declines-to-file-charges-against-state-elections-commissioners/article_9ffa1c04-c014-5776-b747-ed5972297254.html.

³⁴ Nick Viviani, *Wisconsin election board rejects Racine sheriff’s latest accusations*, WMTV (July 28, 2022), <https://www.nbc15.com/2022/07/28/wisconsin-election-board-rejects-racine-sheriffs-latest-accusations/>; see also

however, rejected his accusations, stating that there is no indication of vulnerability within the platform and the claim that it is more vulnerable to fraud is false.³⁵

What do I do if I think a county sheriff is acting outside their authority?

Election officials and voters who are concerned about overreach by a sheriff should seek clarification of the sheriff's role and authority from the county or city attorney, local district attorney, or Wisconsin attorney general. In cases of overreach, attorneys (state, county, municipal, or district) should intervene using legal options available under state law, in order to protect election integrity and the right to vote. And, in appropriate circumstances, as noted above, there are procedures available for seeking to remove or recall a sheriff.

This Fact Sheet was prepared by the Institute for Constitutional Advocacy and Protection (ICAP) at Georgetown University Law Center in January 2024. ICAP's mission is to use the power of the courts to defend American constitutional rights and values. Visit us at www.law.georgetown.edu/icap/. Contact us at reachICAP@georgetown.edu.

Matthew Chapman, *Far-right sheriffs are now getting in on the 'Stop the Steal' movement—here's the danger it poses*, Rawstory (Aug. 1, 2022), <https://www.rawstory.com/sheriffs-voting-rights/>.

³⁵ Viviani, *supra*.