

2013 DRAFTING REQUEST

Bill

Received: 7/12/2013 Received By: chanaman
 Wanted: As time permits Same as LRB:
 For: Garey Bies (608) 266-5350 By/Representing: Cory Bruce
 May Contact: Drafter: chanaman
 Subject: Criminal Law - law enforcement Addl. Drafters:
 Extra Copies:

Submit via email: YES
 Requester's email: Rep.Bies@legis.wisconsin.gov
 Carbon copy (CC) to:

Pre Topic:

No specific pre topic given

Topic:

Protocol for deaths involving officers

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	chanaman 8/8/2013	evinz 8/14/2013	rschluet 8/15/2013	_____	srose 7/16/2013		
/P2	chanaman 9/4/2013	evinz 9/4/2013	jmurphy 9/4/2013	_____	lparisi 8/15/2013		State S&L
/1				_____	srose 9/4/2013	srose 9/4/2013	State S&L

FE Sent For:

at
Intro

<END>

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/P1	chanaman 8/8/2013	evinz 8/14/2013	rschluet 8/15/2013	_____	srose 7/16/2013		

/P2				_____	lparisi 8/15/2013		State S&L
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FE Sent For:

11 evv
9/4/13

Jan
9/4

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Please
jacket
for
Assembly

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/P1	chanaman 7/16/2013	evinz 7/16/2013	jmurphy 7/16/2013	_____	srose 7/16/2013		

FE Sent For:

1p2 eev
8/14/13
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2/5/13
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/P1	chanaman 7/16/2013	pl eev 7/16/13	Jim 7/16	Jim JB 7/16			

FE Sent For:

<END>

Hanaman, Cathlene

From: Bruce, Cory
Sent: Monday, June 10, 2013 1:04 PM
To: Hanaman, Cathlene; Hurley, Peggy
Subject: Draft request: Protocol for officer involved deaths.docx
Attachments: Protocol for officer involved deaths.docx

Hi,

I'm not sure which one of you will want to tackle this, but I'm attaching instructions for a new bill draft.

I'm sure you're both aware of the very public story in Madison involving a police officer who shot and killed an unarmed man who had mistakenly entered a neighbor's house instead of his own. Prior to the incident in Madison, we were contacted by Michael Bell. His son was killed by a police officer in Sheboygan. Since his son's death, Michael has been working on this issue and established a campaign asking if fellow police officers are the appropriate group for investigating these incidents. We've been working with Michael, the UW, DOJ, and other legislators on what makes the most sense. Attached is our first attempt at establishing a protocol for investigating police involved deaths.

Please let us know if you have any questions.

Thanks,
Cory Bruce
Office of Rep. Bies

Protocol for officer involved deaths

This protocol has two elements. First-the investigation of the incidents; and the second the review of an appointed board of professionals.

Investigation Team:

1. Each Law enforcement agency should have a written policy setting forth the procedure for handling officer involved deaths
 - a. Training and Standards board will review and approve individual department policies
2. The investigative team shall be a minimum of 3 investigators. One maybe of the involved agency, but two must be from separate outside agencies. No two from the same agency unless the team is more than three. DCI should be considered if available.
3. Traffic deaths should use a certified Crash Reconstruction unit from another agency. State Patrol should be considered as first option.
4. Internal Investigation may be conducted simultaneous with the incident investigation as long as it doesn't interfere with the incident investigation
5. Compensation will be under guidelines used for Mutual aid.
6. Investigative team reports and consults with District Attorney of the county
7. Team releases no information except as guided by the District Attorney
8. Team will respond to Review Board when requested to
9. Investigators do investigation then Review Board will look at it and make recommendations to DA for action; also forward report to Police and Fire Commission for discipline

Review Board:

1. State Divided into 5 regions with one being Milwaukee County
2. Boards shall consist of 5 members with one member from each of the following:
 - a. Retired or reserve judge
 - b. Retired sheriff, Chief Deputy sheriff, Chief of Police, or Chief Deputy Chief of Police
 - c. Asst. Attorney General
 - d. Retired deputy sheriff, police officer, or state trooper with at least 20 years of service
 - e. Retired DA or ADA with at least 10 years of service
3. Attorney General appoints members
4. 4 year terms
 - a. First boards have staggered terms (i.e. 2 and 3 years), 4 years thereafter
5. Board reviews the investigation report and evidence to determine if all aspects of the incident were complete and answered
6. Board can only begin review after case is released by the DA
7. All board meetings shall be open to the public
 - a. Board meetings shall not be open to the public comment except as requested by a vote of the board member majority

8. Board may request the investigative team or lead investigator to appear before them for clarification or additional information as needed. Investigator shall comply with the board's request unless restricted by the DA because of an open case or court order
9. When Atty. General closes the case all written files shall be released to the public except information protected by state statute



Monday or Tues - 7/22 or 23 please

Leev

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SAJ
xref N/A

1 **AN ACT** ...; **relating to:** investigation of deaths involving a law enforcement
2 officer.

see act

Analysis by the Legislative Reference Bureau

✓ This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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

3 **SECTION 1.** 15.07 (1) (a) 6. of the statutes is created to read:

4 15.07 (1) (a) 6. The members of the board for review of officer-involved deaths
5 shall be appointed as provided in s. 15.255 (1m) (b).

6 **SECTION 2.** 15.07 (3) (bm) 7. of the statutes is created to read:

7 15.07 (3) (bm) 7. The board for review of officer-involved deaths shall meet as
8 necessary to perform its duties under s. 16.855 (5). 5

9 **SECTION 3.** 15.255 (1m) of the statutes is created to read:

1 15.255 (1m) BOARD FOR REVIEW OF OFFICER-INVOLVED DEATHS. (a) There is
2 created a board for review of officer-involved deaths that is attached to the
3 department of justice under s. 15.03. The board shall be composed of 5 members as
4 follows:

5 1. One retired or reserve judge.

6 2. A former sheriff, chief of police, chief deputy sheriff, or chief deputy chief of
7 police.

8 3. An assistant attorney general.

9 4. A former deputy sheriff, law enforcement officer, or state trooper with at least
10 20 years of service in law enforcement.

11 5. A former district attorney or assistant district attorney who served in that
12 capacity for at least 10 years.

13 (b) The members of the board under par. (a) shall be appointed by the attorney
14 general for staggered 4-year terms.

15 SECTION 4. 165.855 of the statutes is created to read:

16 **165.855 Review of deaths involving officers.** (1) Each law enforcement
17 agency shall have a written policy regarding the handling of deaths involving a law
18 enforcement officer. Each policy shall comply with this subsection and be subject to
19 the review and approval of the law enforcement standards board.

20 (2) (a) Each policy under sub. (1) must require a team of investigators
21 consisting of at least 3 individuals, including individuals from at least 2 different
22 agencies that do not employ a law enforcement officer involved in the death being
23 investigated.

1 (b) If the death being investigated is traffic related, the policy under sub. (1)
2 must require the investigative team to use a crash reconstruction unit from another
3 agency. The policy shall give preference to using ^{a unit from} the state traffic patrol.

4 (c) Each policy under sub. (1) may allow an internal investigation into the death
5 if the internal investigation does not interfere with the duties under this section of
6 the team of investigators under par. (a).

7 (3) Compensation for participation on a team under sub. (2) (a) shall be
8 determined in a manner consistent with mutual aid agreements under s. 175.46.

9 (4) (a) A team created under sub. (2) (a) shall consult and report to the district
10 attorney of the county in which the death occurred. Except as provided in this
11 subsection, the team shall keep confidential any material and information related
12 to the death and the investigation.

13 (b) When the report under par. (a) is complete the district attorney shall release
14 the report to the board for the review of officer-involved deaths.

15 (c) A team created under sub. (2) (a) shall respond to requests under sub. (5)
16 from the board for the review of officer-involved deaths unless the district attorney
17 restricts the team from a response due to a court order or because a response could
18 jeopardize the prosecution or investigation of an open case.

19 (5) (a) When the board for the review of officer-involved deaths receives a
20 report under sub. (4) (b), it shall review the report and evidence to determine if it
21 addresses all aspects of the death. The board for the review of officer-involved
22 deaths may request more information, clarification, or testimony from the
23 investigative team that prepared the report.

24 (b) When the board for the review of officer-involved deaths finishes its review
25 of the report, it may make recommendations to the district attorney of the county in

1 which the death occurred and forward the report to any person responsible for
2 disciplining an officer involved.

3 (c) Meetings of the board for the review of officer-involved deaths are open to
4 the public but public comment is closed unless the majority of the board votes to allow
5 public comment.

6 (6) When the board for the review of officer-involved deaths completes its
7 review of a report under sub. (5), the attorney general shall release the report and
8 any accompanying written files unless the information must be kept confidential by
9 statute.

10 **SECTION 5. Nonstatutory provisions.**

11 (1) Notwithstanding the length of terms of the members of the board for the
12 review of officer-involved death⁵ specified in section 15.255 (1m) of the statutes, as
13 created by this act, the initial members shall be appointed for the following terms:

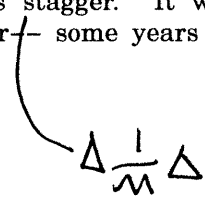
14 (a) Two members, as determined by the attorney general, for a term that
15 expires on the May 1 occurring at least ²two years after the initial appointment.

16 (b) Two members, as determined by the attorney general, for a term that
17 expires on the May 1 occurring at least ³three years after the initial appointment.

****NOTE: Please review how the initial terms stagger. It will result in
replacements of board members in an uneven manner - some years will see two
replacements, others none.

18

(END)



*Change
comparisons to
NS: part*

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2678/P1dn

CMH:|:....

leev

date

Cory:

As you mentioned in your e-mail that this request was a "first attempt," I made this draft a preliminary draft. I anticipate you will have many changes.

Cathlene Hanaman
Deputy Chief
Phone: (608) 267-9810
E-mail: cathlene.hanaman@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-2678/P1dn
CMH:eev:jm

July 16, 2013

Cory:

As you mentioned in your e-mail that this request was a "first attempt," I made this draft a preliminary draft. I anticipate you will have many changes.

Cathlene Hanaman
Deputy Chief
Phone: (608) 267-9810
E-mail: cathlene.hanaman@legis.wisconsin.gov

Changes to LRB 2678/p1 draft:

Add following provisions:

1. Blood Samples

- Require officer or officers involved in officer-involved death to submit to a blood test that is held as evidence.
- Sample wouldn't be tested unless with the release and consent of the officer or by a court ordered search warrant.
- If sample isn't tested the blood would be destroyed with the courts consent at the conclusion of the investigation

2. Public Member of Board

Page 2, Section 3, line 10 – remove all language for 4th member and instead include the following: Public Member – require that the person be a professor or researcher affiliated with a Wisconsin university or college with expertise in the fields of criminal law or criminal justice



Stays

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

repeal car

1 **AN ACT** *to create* 15.07 (1) (a) 6., 15.07 (3) (bm) 7., 15.255 (1m) and 165.855 of
2 the statutes; **relating to:** investigation of deaths involving a law enforcement
3 officer.

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J
ANS
A

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9 necessary to perform its duties under s. 165.855 (5).

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5 follows:

- 6 1. One retired or reserve judge.
- 7 2. A former sheriff, chief of police, chief deputy sheriff, or chief deputy chief of
- 8 police.
- 9 3. An assistant attorney general. *l*

10 4. A former deputy sheriff, law enforcement officer, or state trooper with at least
11 20 years of service in law enforcement. *INS 2-11*

12 5. A former district attorney or assistant district attorney who served in that
13 capacity for at least 10 years.

14 (b) The members of the board under par. (a) shall be appointed by the attorney
15 general for staggered 4-year terms.

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17 **165.855 Review of deaths involving officers.** (1) Each law enforcement
18 agency shall have a written policy regarding the handling of deaths involving a law
19 enforcement officer *employed by the agency*. Each policy shall comply with this section and *is* be subject to the
20 review and approval of the law enforcement standards board.

21 (2) (a) Each policy under sub. (1) must require a team of investigators
22 consisting of at least 3 individuals, including individuals from at least 2 different
23 agencies that do not employ a law enforcement officer involved in the death being
24 investigated.

1 (b) If the death being investigated is traffic related, the policy under sub. (1)
 2 must require the investigative team to use a crash reconstruction unit from another
 3 agency. The policy shall give preference to using a unit from the state traffic patrol.

4 (c) Each policy under sub. (1) may allow an internal investigation into the death
 5 if the internal investigation does not interfere with the duties under this section of
 6 the team of investigators under par. (a).

7 (3) Compensation for participation on a team under sub. (2) (a) shall be
 8 determined in a manner consistent with mutual aid agreements under s. 175.46.

9 (4) (a) A team created under sub. (2) (a) shall consult and report to the district
 10 attorney of the county in which the death occurred. Except as provided in this
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 12 to the death and the investigation.

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 23 investigative team that prepared the report.

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****NOTE: Please review how the initial terms stagger. It will result in
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18 (END)

1 Insert A

This bill requires each law enforcement agency to have a written policy, subject to the approval of the law enforcement standards board, regarding the handling of deaths involving a law enforcement officer. The policy must require a team of investigators consisting of three individuals, two of whom must be from an agency that does not employ an officer involved in the death being investigated, to prepare a report and provide it to the district attorney of the county in which the death occurred. The district attorney must give the report to the board for the review of officer-involved deaths, which this bill creates and attaches to the Department of Justice. The board must review the report to ensure it addresses all aspects of the death and may request further information from the investigative team. The board may then submit recommendations to the district attorney and may forward the report to any person responsible for the discipline of a law enforcement officer involved in the death.✓

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

2

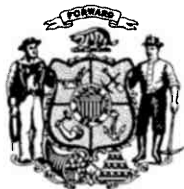
3 Insert 2-11

4 A professor or researcher affiliated with a Wisconsin university or college who
5 has expertise in the field of criminal law or criminal justice

6

7 Insert 3-7

8 (d) Each policy under sub. (1) must require any ^{law enforcement} officer involved in the death to
9 submit a blood sample. No person may perform any analysis or test on the blood
10 sample without either the permission of the officer who submitted the sample or a
11 search warrant. At the conclusion of the investigation of the death, the sample may
12 be destroyed if a court approves.



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today
place

no changes
except
removing
one
note p.5

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(END)