

2013 DRAFTING REQUEST

Assembly Substitute Amendment (ASA-AB409)

Received: 1/14/2014 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: melissa.schmidt@legis.wisconsin.gov

Pre Topic:

No specific pre topic given

Topic:

Protocol for deaths involving officers; options

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 1/17/2014	csicilia 1/17/2014	rschluet 1/17/2014	_____	srose 1/16/2014		
/P2	chanaman 1/21/2014	scalvin 1/21/2014		_____	lparisi 1/17/2014		
/P3	chanaman 1/21/2014	scalvin 1/21/2014	jmurphy 1/21/2014	_____	srose 1/21/2014		
/1			jmurphy	_____	srose	srose	

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u> 1/21/2014	<u>Proofed</u> _____	<u>Submitted</u> 1/21/2014	<u>Jacketed</u> 1/21/2014	<u>Required</u>
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FE Sent For:

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/P2	chanaman 1/21/2014	scalvin 1/21/2014		_____	lparisi 1/17/2014		
/P3			jmurphy 1/21/2014	_____	srose 1/21/2014		

4 /1 sac 01/21/2014 /1 sac 01/21/2014 [Signature] 1/21

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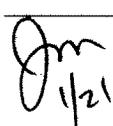
Protocol for deaths involving officers; options

Instructions:

See attached

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/P1	chanaman 1/17/2014	csicilia 1/17/2014	rschluet 1/17/2014	_____	rose 1/16/2014		
/P2		1 P3 SAC 01/21/2014	1 P3 SAC 01/21/2014	_____	lparisi 1/17/2014		

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/P1	chanaman 1/16/2014	csicilia 1/16/2014	rschluet 1/16/2014	_____	srose 1/16/2014		

FE Sent For:

p2 - gjs 1/17
14
S
1/24
JP
<END>

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/P1	chanaman	<i>[Handwritten: P1 GJ 1/16/14]</i>	<i>[Handwritten: 1/16/14]</i>	<i>[Handwritten: JF]</i>			

FE Sent For:

<END>

January 13, 2013

AB 409 – Sub amendment

These are changes to the sub amendment LRB 0212/p1. Drafted, but never introduced.

Section 1:

We want to take out the make-up of the board. Instead, a review board would be one remedy available to family members to have an independent review of the case.

At the end of the day what we'd like to do is provide options to the immediate family of a victim who dies from a Law Enforcement (LE) involved death. Included should be an order for which family members who can request a review. (Rep. Bies has the order as: spouse, parents, sibling, children, grandparent, in-law of victim. There may be a legal standard sequence for something similar, if so, please advise)

If a family member believes the independent investigation was not correct, complete or the DA decision was in error, the family member, in order of succession may request one of the following options:

1. Independent Review by an Appointed Committee
 - a. The chief judge of a Judicial District shall appoint a 5-member committee of LE professionals of the district.
 - i. Three members will be current LE officers with at least 10 years full time experience
 - ii. One member will be an active or retired DA or ADA (from another county with at least 10 years experience)
 - iii. One member will be a LE Educational Professional with preferably LE background
 - iv. Sheriffs and Police Dept. from the judicial district shall submit one or two names for the judge to draw from. Submissions should include a brief resume.
 - b. The Committee review is for completeness, accuracy and bias. Committee may request additional investigation to complete or clarify deficiencies. When reports are deemed complete they be sent back to the DA for further consideration.
 - c. DA shall turn over all reports, notes, statements and evidence to the committee for the incident being reviewed.
2. John Doe Hearing
 - a. Must demonstrate to a circuit court judge the investigation was faulty or decision was not well founded
 - b. Family member may be assisted by legal counsel
 - c. DA may not argue against request and should be available to provide information to the order of the investigation, evidence and their conclusion of the incident
3. Coroner Inquest
 - a. If DA will not request a Coroner's Inquest the family member may request one for the court of jurisdiction.
 - b. If the courts decides to proceed with the inquest, the court shall appoint a special prosecutor to conduct the inquest.
 - c. The DA shall provide all information and evidence of the case file. Special prosecutor will handle the prosecution of charges filed out of the coroner's inquest.

4. 968.02 (3)

- a. If DA refuses or is unavailable to issue a complaint, a family may petition the court under 968.02 (3). A circuit judge may permit the filing of a complaint, if the judge finds there is a probable cause to believe that the person to be charged has committed an offense after conducting a hearing.

NOTE: We don't know if under this new setup if we need to assign the Independent Review Committee to a particular agency? (State Courts, DOJ?) Of it they can be a temporary stand-alone board that is only established if requested and only for review of one particular incident.

Also, we'd like to put a limit on requesting one of these options. If a family member (as listed above) requests one of the options available than no other family member is able to request an additional option. (ex. if a wife asks for a john doe investigation, than that's it. A parent can't ask for a review by the board).

Section 4:

✓ (1) – we're okay with the definition of Officer-involved death (OID).

✓ (3) (a): Each policy must require a team of a minimum of 3 investigators. The lead investigator and at least one other investigator must be from an agency that does not employ the LE officer involved in the OID being investigated. The lead investigator will determine the total number of investigators needed to handle the incident.

{ (3) (b): Please add something to reflect the changes we made in the review committee process for traffic-related incidents. Something to the effect of: the review committee shall be appointed by the chief judge from a reconstruction team of another agency if a review is requested.

✓ (3) (d): Each policy must require a supervisor to report to the scene of the OID and take any appropriate action to assess the fitness of duty of any involved LE officer. Assessment may include blood test or opinion from a medical professional.)

✓ (5) (a): A team created under sub (3) (a) shall, in a timely manner, not to exceed 30 days unless granted an extension by the DA in the county where the OID occurred, provide a complete report to the DA. An extension should not exceed 15 days.

At the end of (5)(a) please add after "investigation" Only the DA or his/her appointee shall release information of any facts of the OID incident.

✓ (5)(b): Delete, and instead add "District Attorney may request a review by an appointed review board and request a board be established to handle that review."

✓ (5)(c): after the word "deaths" (line 4) please delete current language and add: for any additional requests for information from the board established to review the OID.

(6)(a): When the board for the review of OID receives a report, it shall review the report and evidence to determine if it addresses all aspects of the OID. The board for review of OID may request more information, clarification, or testimony from the investigative team that prepared the report.

Please add: Per the courts order, the DA is to turn over all reports and evidence from the investigation.

(6)(a): at the end, after "occurred" please add "for reconsideration".

Section 5:

Remove current language. Add something to the effect of:

Boards are appointed by request and per incident and remain intact until the conclusion of the review of that incident.

Note: what we're getting at here is if there is an OID and the family or DA asks for a review then that's when one of the boards is put together (by a chief judge in the corresponding Judicial District) and then it will disband at the conclusion of that incident.

Hanaman, Cathlene

From: Bruce, Cory
Sent: Tuesday, January 14, 2014 4:31 PM
To: Hanaman, Cathlene
Cc: Schmidt, Melissa
Subject: AB 409 - additional provision for Sub amendment
Attachments: 460.40 use of force policy.pdf

Cathlene,

We'd like to add a provision in the bill giving the City of Milwaukee an exemption from the requirements of the bill. After talks with them, he's satisfied that they have a reasonable policy in place. Attached is their ordinance. Garey would like to add something to the effect of: As long as the city maintains ordinance 460.40, they are exempt from the investigation requirements. However, the four options for additional review would still be available to the families.

Let me know if you have any questions.

Cory



Thru. morning please similar to 2/17/11 just PTA

ej's

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,**

TO ASSEMBLY BILL 409

~~NS~~

~~(b) law enforcement agency has the meaning given in s. 165.83(1)(b).
(c) law enforcement officer has the meaning given in s. 165.85(2).
(e).~~

sen act

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

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

3 SECTION 1. 175.47 of the statutes is created to read:

4 175.47 Review of deaths involving officers. (1) In this section:

5 (a) "Family member" means the spouse, parent, sibling, child, grandparent, or
6 parent of the spouse²¹ of the individual who dies in the officer-involved death.

7 (b) "Officer-involved death" means a death of an individual that results
8 directly from an action or an omission of a law enforcement officer while the law
9 enforcement officer is on duty or while the law enforcement officer is off duty but
10 performing activities that are consistent with his or her law enforcement duties.

Insert
1-7

domestic partner,

or

1 (2) (a) Except as provided in par. (b), each law enforcement agency shall have ✓
2 a written policy regarding the investigation of officer-involved deaths that involve
3 a law enforcement officer employed by the law enforcement agency.

4 (b) Paragraph (a) does not apply to a law enforcement agency in a city of the ✓
5 1st class if the city maintains an ordinance that is substantially similar and no less
6 rigorous than the ordinance governing the investigation of officer-involved deaths
7 in effect on the effective date of this paragraph [LRB inserts date]. ✓

8 (3) (a) Each policy under sub. (2) (a) must require a team of at least 3
9 investigators ^{to be created to investigate an officer-involved death} and must require the lead investigator to determine whether to involve
10 more investigators. The lead investigator, and at least one other investigator, must
11 be from ^{a law enforcement} agency that does not employ a law enforcement officer involved in the ✓
12 officer-involved death being investigated.

13 (b) If the officer-involved death being investigated is traffic-related, the policy
14 under sub. (2) (a) must require the investigative team to use a crash reconstruction
15 unit from ^{a law enforcement} agency that does not employ a law enforcement officer involved in the
16 officer-involved death being investigated.

17 (c) Each policy under sub. (2) (a) may allow an internal investigation into the
18 officer-involved death if the internal investigation does not interfere with the duties
19 under this section of the team of investigators ^{created} under par. (a).

20 (d) Each policy under sub. (2) (a) must require a supervisor to report to the
21 scene of the officer-involved death and take any appropriate action to perform an
22 assessment of the fitness for duty of any involved law enforcement officer. An
23 assessment of the fitness for duty may involve any test the supervisor sees as
24 appropriate and may involve a blood test or an opinion from a medical professional.

created

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

3 (5) (a) A team created under sub. (3) (a) shall within 30 days, unless the district
4 attorney of the county in which the officer-involved death occurred grants an
5 extension of up to 15 additional days, provide a complete report to the district
6 attorney of the county in which the officer-involved death occurred. Except as
7 provided in this subsection, the team shall keep confidential any material and
8 information related to the officer-involved death and the investigation.

****NOTE: I took out "in a timely manner" since, once a deadline is established, I am not sure it adds anything. Ok? The district attorney is not prohibited from releasing facts so there is no need to give the DA permission to release facts. If we say "only the DA," one could think the provision limited the media or family members from releasing facts. OK? Please let me know if that does not capture your intent or if I am misunderstanding your intent.

9 (b) The district attorney may request that a review committee under sub. (6)
10 (a) be established to review the report provided under par. (a).

11 (c) A team created under sub. (3) (a) shall respond to any requests under sub.
12 (6) ~~(a)~~ from the appointed review committee.

13 (6) (a) Subject to par. (b), a family member who believes that an action or
14 inaction by the investigation team, or that any other investigation or action taken
15 regarding the officer-involved death, is inconsistent with this section or produced an
16 incorrect finding; who believes that an action or inaction by a law enforcement
17 agency in a city of the 1st class investigating the officer-involved death is
18 inconsistent with the city's ordinance or produced an incorrect finding; or who
19 believes an action or request inaction by the district attorney regarding the officer-involved
20 death was in error, may request one of the following options:

21 one review by an appointed review committee. If a family member requests
22 this review under this subdivision or the district attorney requests the

no 4

one

subdivision

paragraph

subsection

a

1 establishment of a review committee under sub. (5) (b), the chief judge of the judicial
 2 administrative district shall appoint a 5-member committee, to exist only as long as
 3 it takes to complete the duties ^{under} ~~in this subdivision~~ ^{subsection}, consisting of 3 current law
 4 enforcement officers, each with at least 10 years of full-time law enforcement
 5 experience, drawn from a list of names and brief resumes submitted by sheriffs and
 6 law enforcement departments in the judicial district; one current or retired district
 7 attorney, or assistant district attorney, with at least 10 years of experience in a
 8 county that is not the county in which the officer-involved death occurred; and one
 9 law enforcement educational professional, preferably with law enforcement
 10 experience. The district attorney for the county in which the officer-involved death
 11 occurred shall submit to the review committee the report provided under sub. (5) (a). ✓

12 The review committee shall review the report and evidence to determine if it
 13 addresses all aspects of the officer-involved death. The review committee may
 14 request more information, clarification, or testimony from the investigative team
 15 that prepared the report. When the review committee completes its review of the
 16 report, it shall forward for ~~the~~ ^{its} consideration its findings to the district attorney of the
 17 county in which the officer-involved death occurred.

18 2. If the family member believes that the action or inaction constitutes a crime,
 19 file a complaint under s. 968.26 (2).

****NOTE: A John Doe hearing is to investigate a crime. Some of the actions under review may not be criminal but rather subject to internal discipline. Also, see how I amended the John Doe statute; current law does not impose a limit on who can file and how many times. Since the person can already file a complaint in a John Doe hearing, this provision, by limiting the person to one action and one filing, actually narrows the options and eliminates the right of nonfamily members to complain. Is that OK?

20 3. ^{Request} An inquest under s. 979.05, if the district attorney has not requested an
 21 inquest. The judge or circuit court commissioner that conducts the inquest shall

1 appoint a special prosecutor who shall prosecute any charges that are filed as a result
2 of the inquest.

3 4. If the family member believes that the action or inaction constitutes a crime,
4 file a complaint under s. 968.02.

****NOTE: Like a John Doe hearing, this process would need the action to constitute a crime. Some of the actions under review may not be criminal but rather subject to internal discipline. Also, see how I amended 968.02; current law does not impose a limit on who can file and how many times. Since this draft imposes a limit on who can file and how many times a person can file, this provision, by limiting the person to one option and one filing, actually narrows the options and eliminates the right of nonfamily members to file. Is that OK?

5 (b) 1. If a family member ~~exercises an option~~ ^{takes an action} under par. (a), no other family
6 member may ~~exercise an option~~ ^{take any action} under par. (a) and the family member ~~exercising an~~ ^{taking}
7 ~~option~~ ^{action} under par. (a) may not ~~exercise~~ ^{take} another ~~option~~ ^{action} under par. (a).

8 2. If there is a disagreement among family members as to which ~~option~~ ^{action} to
9 ~~exercise~~ ^{take} under par. (a), the preferences shall be considered in the order of the spouse,
10 a parent, a sibling, a child, a grandparent, and a parent of the spouse.

****NOTE: I am not sure how this will work on a practical level. If a parent requests a review by an appointed committee, let's say, does the chief judge have to check with the spouse to determine if he or she has a conflicting preference? What if the parents conflict or the siblings conflict?

11 SECTION 2. 968.02 (3) of the statutes is amended to read:

12 968.02 (3) If a district attorney refuses or is unavailable to issue a complaint,
13 a circuit judge may permit the filing of a complaint, if the judge finds there is probable
14 cause to believe that the person to be charged has committed an offense after
15 conducting a hearing, except that, if a person files a complaint regarding an
16 officer-involved death, as defined in s. 175.47 (1) (b), the judge may not permit the
17 filing if the person is not a family member, as defined in s. 175.47 (1) (a), or if any
18 family member, including the person filing the complaint, has ~~exercised an~~ ^{taken} ~~option~~ ^{action}
19 under s. 175.47 (6) (a) 1., 2., 3., or 4. If the district attorney has refused to issue a

1 complaint, he or she shall be informed of the hearing and may attend. The hearing
2 shall be ex parte without the right of cross-examination.

History: 1977 c. 449; 1991 a. 139; 1999 a. 185.

3 **SECTION 3. 968.26 (2) (am)** of the statutes is amended to read:

4 968.26 (2) (am) If a person who is not a district attorney complains to a judge
5 that he or she has reason to believe that a crime has been committed within the
6 judge's jurisdiction, the judge shall refer the complaint to the district attorney or, if
7 the complaint may relate to the conduct of the district attorney, to another prosecutor
8 under s. 978.045, except that, if a person files a complaint regarding an
9 officer-involved death, as defined in s. 175.47 (1) (b), the judge may dismiss the
10 complaint if the person is not a family member, as defined in s. 175.47 (1) (a), or if
11 any family member, including the person filing the complaint, has ^{taken} exercised an
12 ^{action} option under s. 175.47 (6) (a) 1., 2., 3., or 4.

History: 1989 a. 122; 1991 a. 88, 223, 315; 2009 a. 24.

13 **SECTION 4. Initial applicability.**

14 (1) This act first applies to officer-involved deaths occurring on the effective
15 date of this subsection.

16 (END)

WS
6-13

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0238/plins
CMH:.....

1 Insert 1-7

2 (b) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

3 (c) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c). ✓

4

5 Insert 6-13 ✓ ^

the

6 SECTION 1. 950.04 (1v) (uc) of the statutes is created to read:

7 950.04 (1v) (uc) If the person is a victim of an officer-involved death, as defined

8 in s. 175.47 (1) (d), to have information about his or her right under s. 175.47 (6) to ✓

9 request a review by an appointed review committee, the process by which he or she

10 may file a complaint under s. 968.02 or 968.26 (2), and the process of an inquest under

11 s. 979.05. ✓

12 SECTION 2. 950.08 (2c) of the statutes is created to read:

13 950.08 (2c) DUTIES OF DEPARTMENT; INFORMATION FOR VICTIMS OF

14 OFFICER-INVOLVED DEATHS. The department shall provide a victim the information

15 required under s. 950.04 (1v) (uc). ✓

460.40

CRITICAL USE OF FORCE INCIDENTS

At the direction of the Chief of Police or designee, all incidents involving Department members that result in great bodily harm or death, or injury caused by a police member's use of a firearm, shall cause the activation of an inter-agency critical incident response team consisting of designated Department members, the Milwaukee County District Attorney, the Fire and Police Commission, and in the event of death, the Milwaukee County Medical Examiner. An internal investigation shall be conducted pursuant to SOP 450-Personnel Investigations immediately following the conclusion of the criminal investigation of the incident conducted by CIB, or as otherwise may be directed by the Chief of Police or designee.

Hanaman, Cathlene

From: Bruce, Cory
Sent: Friday, January 17, 2014 9:53 AM
To: Hanaman, Cathlene
Cc: Schmidt, Melissa
Subject: FW: 460.40 use of force policy
Attachments: 460.40 use of force policy.pdf

Cathlene,

I thought what I sent you for AB 409 was a city of Milwaukee Ordinance, but the city refer to it as "use of force policy". I have a call into them to clarify so that if we need to tweak that we can.

Thanks,
Cory

From: De Haan, Paulina [<mailto:PCDEHAA@milwaukee.gov>]
Sent: Tuesday, January 14, 2014 3:41 PM
To: Bruce, Cory
Subject: 460.40 use of force policy

Hi Cory:

Here's is an excerpt from the City of Milwaukee's use of force policy. I can provide you with the written policies of the other agencies by the end of next week (that would include Medical Examiner, DA's office, MPD).

Let me know if you need any more clarification. It was a pleasure meeting with Rep. Bies, and I'm sorry I didn't get a chance to connect with you.

Sincerely,

Paulina de Haan
Intergovernmental Relations Division
City of Milwaukee
(o) 414-286-3336
paulina.dehaan@milwaukee.gov

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Hanaman, Cathlene

From: Bruce, Cory
Sent: Friday, January 17, 2014 11:27 AM
To: Schmidt, Melissa; Hanaman, Cathlene
Subject: RE: 460.40 use of force policy

Melissa,

Just talked to Garey and he agrees. Cathlene – can you make that change too? Thank god it's Friday right?

Cory

From: Schmidt, Melissa
Sent: Friday, January 17, 2014 11:25 AM
To: Bruce, Cory; Hanaman, Cathlene
Subject: RE: 460.40 use of force policy

Cory,

I have one additional thought which is a policy question. Section 2 of the bill draft confers a "right" upon victims of officer-involved deaths but not upon all victims. I know this is what I suggested for drafting purposes, but if this is a concern, one alternative would be to just require the victim/witness unit to notify these victims. The statutes don't have to confer a statutory "right" if all you want to do is make sure that they receive the notice.

Melissa Schmidt

Senior Staff Attorney
Wisconsin Legislative Council
Ph: (608) 266-2298
Fax: (608) 266-3830

From: Bruce, Cory
Sent: Friday, January 17, 2014 11:14 AM
To: Hanaman, Cathlene
Cc: Schmidt, Melissa
Subject: RE: 460.40 use of force policy

Cathlene – one more fix. SO SORRY. Page 4, lines 4-7. The part relating to the 3 current law enforcement officers. Garey wants to clarify that they can't be from the agency that employees the officer(s) involved in the incident.

From: Hanaman, Cathlene
Sent: Friday, January 17, 2014 10:38 AM
To: Bruce, Cory
Subject: RE: 460.40 use of force policy

Thanks—it's a quick fix. Expect it soon.

From: Bruce, Cory
Sent: Friday, January 17, 2014 9:53 AM
To: Hanaman, Cathlene

Cc: Schmidt, Melissa
Subject: FW: 460.40 use of force policy

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Hi Cory:

Here's is an excerpt from the City of Milwaukee's use of force policy. I can provide you with the written policies of the other agencies by the end of next week (that would include Medical Examiner, DA's office, MPD).

Let me know if you need any more clarification. It was a pleasure meeting with Rep. Bies, and I'm sorry I didn't get a chance to connect with you.

Sincerely,

Paulina de Haan
Intergovernmental Relations Division
City of Milwaukee
(o) 414-286-3336
paulina.dehaan@milwaukee.gov

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State of Wisconsin
2013 - 2014 LEGISLATURE



LRBs0238/HI
CMH:cjs:rs

P2

Today please only changes on p. 2, 3, 4 stars

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,
TO ASSEMBLY BILL 409

SN

Refer cat

1 **AN ACT to create** 175.47, 950.04 (1v) (uc) and 950.08 (2c) of the statutes; **relating**
2 **to:** investigation of deaths involving a law enforcement officer.

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

3 **SECTION 1.** 175.47 of the statutes is created to read:

4 **175.47 Review of deaths involving officers.** (1) In this section:

5 (a) "Family member" means the spouse, domestic partner, parent, sibling,
6 child, or grandparent of the individual who dies in the officer-involved death.

7 (b) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

8 (c) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

9 (d) "Officer-involved death" means a death of an individual that results
10 directly from an action or an omission of a law enforcement officer while the law

Critical Use of Force Incidents Policy that is

1 enforcement officer is on duty or while the law enforcement officer is off duty but
2 performing activities that are consistent with his or her law enforcement duties.

3 (2) (a) Except as provided in par. (b), each law enforcement agency shall have
4 a written policy regarding the investigation of officer-involved deaths that involve
5 a law enforcement officer employed by the law enforcement agency.

6 (b) Paragraph (a) does not apply to a law enforcement agency in a city of the
7 1st class if the city maintains an ordinance ^{a policy} that is substantially similar and no less
8 rigorous than the ordinance governing the investigation of officer-involved deaths
9 in effect on the effective date of this paragraph [LRB inserts date].

10 (3) (a) Each policy under sub. (2) (a) must require a team of at least 3
11 investigators to be created to investigate an officer-involved death and must require
12 the lead investigator to determine whether to involve more investigators. The lead
13 investigator, and at least one other investigator, must be from a law enforcement
14 agency that does not employ a law enforcement officer involved in the
15 officer-involved death being investigated.

16 (b) If the officer-involved death being investigated is traffic-related, the policy
17 under sub. (2) (a) must require the investigative team to use a crash reconstruction
18 unit from a law enforcement agency that does not employ a law enforcement officer
19 involved in the officer-involved death being investigated.

20 (c) Each policy under sub. (2) (a) may allow an internal investigation into the
21 officer-involved death if the internal investigation does not interfere with the duties
22 under this section of the team of investigators created under par. (a).

23 (d) Each policy under sub. (2) (a) must require a supervisor to report to the
24 scene of the officer-involved death and take any appropriate action to perform an
25 assessment of the fitness for duty of any involved law enforcement officer. An

1 assessment of the fitness for duty may involve any test the supervisor sees as
2 appropriate and may involve a blood test or an opinion from a medical professional.

3 (4) Compensation for participation on a team created under sub. (3) (a) may be
4 determined in a manner consistent with mutual aid agreements under s. 175.46.

5 (5) (a) A team created under sub. (3) (a) shall within 30 days, unless the district
6 attorney of the county in which the officer-involved death occurred grants an
7 extension of up to 15 additional days, provide a complete report to the district
8 attorney of the county in which the officer-involved death occurred. Except as
9 provided in this subsection, the team shall keep confidential any material and
10 information related to the officer-involved death and the investigation.

****NOTE: I took out "in a timely manner" since, once a deadline is established, I am not sure it adds anything. Ok? The district attorney is not prohibited from releasing facts so there is no need to give the DA permission to release facts. If we say "only the DA," one could think the provision limited the media or family members from releasing facts. OK? Please let me know if that does not capture your intent or if I am misunderstanding your intent.

11 (b) The district attorney may request that a review committee under sub. (6)
12 be established to review the report provided under par. (a).

13 (c) A team created under sub. (3) (a) shall respond to any requests under sub.
14 (6) from the appointed review committee.

15 (6) A family member who believes that an action or inaction by the
16 investigation team, or that any other investigation or action taken regarding the
17 officer-involved death, is inconsistent with this section or produced an incorrect
18 finding; who believes that an action or inaction by a law enforcement agency in a city
19 of the 1st class investigating the officer-involved death is inconsistent with the city's
20 ordinance or produced an incorrect finding; or who believes an action or inaction by
21 the district attorney regarding the officer-involved death was in error, may request
22 one review by an appointed review committee. If a family member requests a review

who are not employed
by the law enforcement agency that
employs a law enforcement officer

is a
subject
of
the
investigation

1 under this subsection or the district attorney requests the establishment of a review
2 committee under sub. (5) (b), the chief judge of the judicial administrative district
3 shall appoint a 5-member committee, to exist only as long as it takes to complete the
4 duties under this subsection, consisting of 3 current law enforcement officers, each
5 with at least 10 years of full-time law enforcement experience, drawn from a list of
6 names and brief resumes submitted by sheriffs and law enforcement departments
7 in the judicial district; one current or retired district attorney, or assistant district
8 attorney, with at least 10 years of experience in a county that is not the county in
9 which the officer-involved death occurred; and one law enforcement educational
10 professional, preferably with law enforcement experience. The district attorney for
11 the county in which the officer-involved death occurred shall submit to the review
12 committee the report provided under sub. (5) (a). The review committee shall review
13 the report to determine if it addresses all aspects of the officer-involved death. The
14 review committee may request more information, clarification, or testimony from the
15 investigative team that prepared the report. When the review committee completes
16 its review of the report, it shall forward for consideration its findings to the district
17 attorney of the county in which the officer-involved death occurred.

18 SECTION 2. 950.04 (1v) (uc) of the statutes is created to read:

19 950.04 (1v) (uc) If the person is a victim of an officer-involved death, as defined
20 in s. 175.47 (1) (d), to have information about the ~~sub~~ process under s. 175.47 (6) to request
21 a review by an appointed review committee, the process by which he or she may file
22 a complaint under s. 968.02 or 968.26 (2), and the process of an inquest under s.
23 979.05.

24 SECTION 3. 950.08 (2c) of the statutes is created to read:

INS
5-2



P3

today please

tsac

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT,
TO ASSEMBLY BILL 409**

repeal

1 **AN ACT to create** 175.47 and 950.08 (2c) of the statutes; **relating to:**
2 investigation of deaths involving a law enforcement officer.

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

3 **SECTION 1.** 175.47 of the statutes is created to read:

4 **175.47 Review of deaths involving officers.** (1) In this section:

5 (a) "Family member" means the spouse, domestic partner, parent, sibling,
6 child, or grandparent of the individual who dies in the officer-involved death.

7 (b) "Law enforcement agency" has the meaning given in s. 165.83 (1) (b).

8 (c) "Law enforcement officer" has the meaning given in s. 165.85 (2) (c).

9 (d) "Officer-involved death" means a death of an individual that results
10 directly from an action or an omission of a law enforcement officer while the law

1 enforcement officer is on duty or while the law enforcement officer is off duty but
2 performing activities that are consistent with his or her law enforcement duties.

3 (2) (a) Except as provided in par. (b), each law enforcement agency shall have
4 a written policy regarding the investigation of officer-involved deaths that involve
5 a law enforcement officer employed by the law enforcement agency.

6 (b) Paragraph (a) does not apply to a law enforcement agency in a city of the
7 1st class if the city maintains a policy that is substantially similar and no less
8 rigorous than the "Critical Use of Force Incidents" policy that is in effect on the
9 effective date of this paragraph [LRB inserts date].

INS 2-10

10 (3) (a) Each policy under sub. (2) (a) must require a team of at least 3
11 investigators to be created to investigate an officer-involved death and must require
12 the lead investigator to determine whether to involve more investigators. The lead
13 investigator, and at least one other investigator, must be from a law enforcement
14 agency that does not employ a law enforcement officer involved in the
15 officer-involved death being investigated.

16 (b) If the officer-involved death being investigated is traffic-related, the policy
17 under sub. (2) (a) must require the investigative team ^{investigation} to use a crash reconstruction
18 unit from a law enforcement agency that does not employ a law enforcement officer
19 involved in the officer-involved death being investigated.

20 (c) Each policy under sub. (2) (a) may allow an internal investigation into the
21 officer-involved death if the internal investigation does not interfere with the duties
22 under this section of the team of investigators created ^{investigation conducted} under par. (a).

23 (d) Each policy under sub. (2) (a) must require a supervisor to report to the
24 scene of the officer-involved death and take any appropriate action to perform an
25 assessment of the fitness for duty of any involved law enforcement officer. An

1 assessment of the fitness for duty may involve any test the supervisor sees as
2 appropriate and may involve a blood test or an opinion from a medical professional.

3 (4) Compensation for participation on a team created ^{in an investigation} under sub. (3) (a) may be
4 determined in a manner consistent with mutual aid agreements under s. 175.46.

5 (5) (a) A team created ^{The agency or division conducting the investigation} under sub. (3) (a) shall within 30 days, unless the district
6 attorney of the county in which the officer-involved death occurred grants an
7 extension of up to 15 additional days, provide a complete report to the district
8 attorney of the county in which the officer-involved death occurred. Except as ^{investigation}
9 provided in this subsection, ^{the agency or division conducting the investigation} the team shall keep confidential any material and
10 information related to the officer-involved death and the investigation.

11 (b) The district attorney may request that a review committee under sub. (6)
12 be established to review the report provided under par. (a).

13 (c) A team created under sub. (3) (a) shall respond to any requests under sub.
14 (6) from the appointed review committee.

15 (6) A family member who believes that an action or inaction by the
16 investigation team, or that any other investigation or action taken regarding the
17 officer-involved death, is inconsistent with this section or produced an incorrect
18 finding; who believes that an action or inaction by a law enforcement agency in a city
19 of the 1st class investigating the officer-involved death is inconsistent with the city's
20 ordinance or produced an incorrect finding; or who believes an action or inaction by
21 the district attorney regarding the officer-involved death was in error, may request
22 one review by an appointed review committee. If a family member requests a review
23 under this subsection or the district attorney requests the establishment of a review
24 committee under sub. (5) (b), the chief judge of the judicial administrative district
25 shall appoint a 5-member committee, to exist only as long as it takes to complete the

1 duties under this subsection, consisting of 3 current law enforcement officers who are
 2 not employed by the law enforcement agency that employs a law enforcement officer
 3 who is a subject of the investigation, each with at least 10 years of full-time law
 4 enforcement experience, drawn from a list of names and brief resumes submitted by
 5 sheriffs and law enforcement departments in the judicial district; one current or
 6 retired district attorney, or assistant district attorney, with at least 10 years of
 7 experience in a county that is not the county in which the officer-involved death
 8 occurred; and one law enforcement educational professional, preferably with law
 9 enforcement experience. The district attorney for the county in which the
 10 officer-involved death occurred shall submit to the review committee the report
 11 provided under sub. (5) (a). The review committee shall review the report to
 12 determine if it addresses all aspects of the officer-involved death. The review
 13 committee may request more information, clarification, or testimony from the
 14 investigative team that prepared the report. When the review committee completes
 15 its review of the report, it shall forward for consideration its findings to the district
 16 attorney of the county in which the officer-involved death occurred.

17 **SECTION 2.** 950.08 (2c) of the statutes is created to read:

18 950.08 (2c) DUTIES OF DEPARTMENT; INFORMATION FOR VICTIMS OF
 19 OFFICER-INVOLVED DEATHS. The department shall provide a victim of an
 20 officer-involved death, as defined in s. 175.47 (1) (d), information about the process
 21 under s. 175.47 (6) to request a review by an appointed review committee, the process
 22 by which he or she may file a complaint under s. 968.02 or 968.26 (2) and the process
 23 of an inquest under s. 979.05.

24 **SECTION 3. Initial applicability.**

about

2013-2014 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBs0238/p3ins
CMH:.....

INS 2-10

not

- 1 an investigation conducted by one of the following:
- 2 1. A law enforcement agency that is located in a county that is not the county
- 3 in which the officer-involved death occurred.
- 4 2. The division of criminal investigation in the department of justice.

Hanaman, Cathlene

From: Schmidt, Melissa
Sent: Tuesday, January 21, 2014 2:31 PM
To: Hanaman, Cathlene; Bruce, Cory; Rep.Bies
Subject: FW: Draft review: LRB s0238/P1 Topic: Protocol for deaths involving officers; options
Attachments: 13s0238/P1.pdf

Cathlene,

Rep. Bies has instructed me that he would like two changes to be made to the sub. Would you please make the following changes to the sub and make it a /P3?

1. Change the investigation process from requiring a team of at least a 3 investigators to instead require that the investigation must be conducted by either: (1) a law enforcement agency in another county (e.g. if the Madison PD employed the officer involved in the law enforcement-related death, either another county – not the Dane County Sheriff's Dept.) or (2) DOJ. DOJ uses its Division of Criminal Investigation (DCI) to conduct these investigations. I don't know off-hand how to define this so that DOJ is included.
2. Eliminate all provisions related to the independent review committee.

There is an executive session noticed for AB 409 on Thursday. Is there any way to have this sub drafted by the end of the day? I am available by email if you need me (I'm over on the Assembly Floor right now).

Thank you,

Melissa Schmidt

Senior Staff Attorney
Wisconsin Legislative Council
Ph: (608) 266-2298
Fax: (608) 266-3830

From: LRB.Legal
Sent: Thursday, January 16, 2014 12:07 PM
To: Schmidt, Melissa
Subject: Draft review: LRB s0238/P1 Topic: Protocol for deaths involving officers; options

Draft Requester: Rep. Garey Bies

Following is the PDF version of draft LRB s0238/P1.

Barman, Mike

From: Hanaman, Cathlene
Sent: Tuesday, January 21, 2014 3:41 PM
To: Parisi, Lori; Barman, Mike
Subject: The sub for Bies s0238/p3

Should go to the Bies office, **NOT** the floor. I'm sure you would have known that, since it's a p-draft, but just being sure.



Thanks

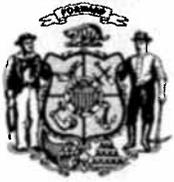
Hanaman, Cathlene

From: Bruce, Cory
Sent: Tuesday, January 21, 2014 4:52 PM
To: Hanaman, Cathlene
Cc: Schmidt, Melissa
Subject: AB 409 drafting change

Cathlene,
Can we take out page 2 lines 20-24 (all of section (d)).

Then it's good to go and we want to jacket it.

Thanks,
Cory



PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION
ASSEMBLY SUBSTITUTE AMENDMENT ,
TO ASSEMBLY BILL 409

negotiated

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7 (c) "Officer-involved death" means a death of an individual that results directly
8 from an action or an omission of a law enforcement officer while the law enforcement
9 officer is on duty or while the law enforcement officer is off duty but performing
10 activities that are consistent with his or her law enforcement duties.

1 (2) (a) Except as provided in par. (b), each law enforcement agency shall have
2 a written policy regarding the investigation of officer-involved deaths that involve
3 a law enforcement officer employed by the law enforcement agency.

4 (b) Paragraph (a) does not apply to a law enforcement agency in a city of the
5 1st class if the city maintains a policy that is substantially similar and no less
6 rigorous than the “Critical Use of Force Incidents” policy that is in effect on the
7 effective date of this paragraph [LRB inserts date].

8 (3) (a) Each policy under sub. (2) (a) must require an investigation conducted
9 by one of the following:

10 1. A law enforcement agency that is located in a county that is not the county
11 in which the officer-involved death occurred.

12 2. The division of criminal investigation in the department of justice.

13 (b) If the officer-involved death being investigated is traffic-related, the policy
14 under sub. (2) (a) must require the investigation to use a crash reconstruction unit
15 from a law enforcement agency that does not employ a law enforcement officer
16 involved in the officer-involved death being investigated.

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19 investigation conducted under par. (a).

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22 assessment of the fitness for duty of any involved law enforcement officer. An
23 assessment of the fitness for duty may involve any test the supervisor sees as
24 appropriate and may involve a blood test or an opinion from a medical professional.

