



## Legislative Fiscal Bureau

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May 7, 2015

Joint Committee on Finance

Paper #422

### Law Enforcement Officer Involved Death Investigations (Justice)

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#### CURRENT LAW

Effective April 25, 2014, 2013 Wisconsin Act 348 requires each law enforcement agency in the state to have a written policy regarding the investigation of an officer-involved death that involves a law enforcement officer. The written policy must require that an investigation into an officer-involved death (OID) be conducted by at least two investigators, one of whom is the lead investigator and neither of whom is employed by a law enforcement agency that employs an officer involved in the OID. The law enforcement agency may conduct an internal investigation into the OID as long as the internal investigation does not interfere with the investigation conducted by the two independent investigators. Act 348 defines an OID as the death of an individual that results directly from an action or an omission of a law enforcement officer while the officer is on duty or while the officer is off duty but performing activities that are within the scope of his or her law enforcement duties.

The Department of Justice (DOJ), through its Division of Criminal Investigation (DCI), investigates crime that is statewide in nature, importance, or influence. The Division currently employs 91 special agents (including special agents, special agents-in-charge, and senior special agents) that are generally provided all of the same police powers as are conferred upon peace officers. Upon request, the Division will provide investigative assistance to local law enforcement to help solve serious crimes. The Division does not charge law enforcement agencies for its investigative services.

The Department's Law Enforcement Services drug law enforcement, crime laboratories, and genetic evidence activities PR annual appropriation receives funding from the crime laboratory and drug law enforcement surcharge as well as the DNA surcharge. The appropriation is authorized to expend monies for activities relating to drug law enforcement, drug law violation prosecution assistance, and activities of the state's crime laboratories.

The crime laboratory and drug law enforcement surcharge totals \$13, and is assessed if a

court imposes a sentence, places a person on probation, or imposes a forfeiture for most violations of state law or municipal or county ordinance. The DNA surcharge is imposed whenever a court imposes a sentence or places a person on probation, totaling \$250 for each felony conviction and \$200 for each misdemeanor conviction.

## GOVERNOR

No provision.

## DISCUSSION POINTS

1. Prior to the passage of Act 348, DOJ would, upon request, assist local law enforcement agencies investigate officer-involved deaths and non-fatal officer-involved incidents. Table 1 identifies the number of officer-involved death investigations and investigations into non-fatal officer-involved incidents initiated by DOJ from calendar year 2010 through calendar year 2013. The Department indicates that prior to Act 348, larger law enforcement agencies often investigated their own such incidents.

**TABLE 1**

**Fatal and Non-Fatal Officer-Involved Incidents  
Investigated by DOJ from 2010-2013**

<u>Calendar Year</u>	<u>Fatal</u>	<u>Non-Fatal</u>	<u>Total</u>
2010	3	1	4
2011	3	0	3
2012	6	2	8
2013	<u>7</u>	<u>4</u>	<u>11</u>
Total	19	7	26

2. With the passage of Act 348, law enforcement agencies must require that an investigation into an OID be conducted by at least two investigators, neither of whom is employed by a law enforcement agency that employs an officer involved in the OID. The Department indicates that, as a result of Act 348, DOJ has become the preferred resource for local law enforcement agencies requiring independent investigators to investigate OIDs. Further, in testimony provided to the Committee at the agency briefing held on March 2, 2015, the Attorney General indicated that, "Act 348 also created an issue for local law enforcement concerning how they would respond to an officer-involved incident involving serious injury, but not death. Chiefs of police and sheriffs have expressed that they will err on the side of caution and request Department assistance when they are uncertain whether the suspect will die or recover from the injury."

3. Table 2 identifies the number of fatal and non-fatal officer-involved incident

investigations, as of April 7, 2015, initiated by DOJ since the passage of Act 348. As Table 2 indicates, the Department has initiated 18 officer-involved incident investigations over the 11½ month period since the passage of Act 348. The 18 investigations represent a 63.6% increase over the 11 investigations initiated by DOJ during calendar year 2013.

**TABLE 2**

**Fatal and Non-Fatal Officer-Involved Incidents  
Investigated by DOJ Since the Passage of Act 348**

<u>Fatal</u>	<u>Non-Fatal</u>	<u>Total</u>
12	6	18

4. In conducting OID investigations, special agents are responsible for officer and witness interviews, crime scene processing, evidence collection, neighborhood canvassing, autopsy reviews, coordination with local law enforcement executives, coordination with interagency partners, investigative follow-up, report writing, law enforcement and prosecutorial briefings, and contacting the victim's family. As of April 7, 2015, DOJ special agents spent 8,131 hours conducting the 18 fatal and non-fatal officer-incident investigations initiated since the passage of Act 348. To the extent that some of these investigations are ongoing, it is expected that DOJ special agents will spend additional hours conducting these investigations.

5. Special agents employed by DOJ are generally assigned to specific investigative specialties including, but not limited to, major crimes (such as homicides or shootings), arson, narcotics, white collar crime, and Internet crimes against children. Typically, special agents assigned to major crimes lead OID investigations. When there is an overflow of OID and other major crime investigations in excess of what can be handled by major crime special agents, DOJ must redirect special agents from other investigative specialties to assist in OID investigations, leading to a delay in other investigations not handled by the major crimes unit.

6. In addition to investigative work, the Department indicates that it typically receives public records requests from victims' family, the public, and the media regarding the Department's investigations into officer-involved incidents. Between 2009 and May, 2014, (the implementation of Act 348) the Department received 50 public record requests relating to fatal and non-fatal officer-involved incident investigations. Since the passage of Act 348, DOJ has received 28 public records requests related to these investigations. According to the Department, the work related to each public records request is very time consuming. Specifically, the Department indicates:

"These requests require the careful review of reports, photographs, crime scene diagrams, audio tapes, video tapes and other multimedia prior to release. Like the investigations themselves, the process is generally labor-intensive and time consuming. Each request the Department receives is carefully considered following a methodical approach of documenting the request, assessing the scope, assigning priority and then scheduling the processing of the records. With the number of personnel at this Department currently assigned to public records request processing, the Department will be unable to take on additional work without impacting other critical operations."

7. In its 2015-17 budget request, the Department asked for \$352,600 PR in 2015-16, \$386,000 PR in 2016-17, and 5.0 PR positions annually to assist the Department with its workload regarding OID investigations and investigations into non-fatal officer-involved incidents. The 5.0 requested positions were comprised of 3.0 special agents for conducting investigations and 2.0 program and policy analysts for processing public records requests. The Department proposed utilizing program revenue from the crime laboratory and drug law enforcement (CLDLE) surcharge and the DNA surcharge to support its request. Further, in order to allow the Department to utilize program revenue from the surcharges, the Department requested that the drug law enforcement, crime laboratories, and genetic evidence activities appropriation be modified to support criminal investigation operations. The Department's request is not included in the Governor's recommendations.

8. Given that, since the passage of Act 348, the Department has been requested to conduct an increased number of fatal and non-fatal officer-involved incident investigations and process an increased number of public records requests, the Committee could approve the Department's request [Alternative 1].

9. Prior to 2013 Act 20, a court was required to assess a \$250 DNA surcharge if the court imposed a sentence or placed a person on probation for a violation of: (a) sexual assault; (b) first or second degree sexual assault of a child; (c) engaging in repeated acts of sexual assault of the same child; and (d) sexual assault of a child placed in substitute care. Further, courts were authorized, but not required, to assess a \$250 DNA surcharge if the court imposed a sentence or placed a person on probation for a felony conviction. Under 2013 Act 20, the DNA surcharge is assessed whenever the court imposes a sentence or places a person on probation. The DNA surcharge totals \$250 for each felony conviction and \$200 for each misdemeanor conviction. The \$13 CLDLE surcharge is assessed if a court imposes a sentence, places a person on probation, or imposes a forfeiture for most violations of state law or municipal or county ordinance. Based on revenues collected through March, 2015, it is estimated that the state will collect \$13,189,900 PR from the CLDLE surcharge and DNA surcharge in 2014-15. Given the significant recent change to the scope of the DNA surcharge under 2013 Act 20, it is difficult to estimate future revenues from the surcharges for the 2015-17 biennium. However, given that it is projected that the surcharges will collect \$13,189,900 in 2014-15, it is estimated that similar amounts would be collected during the 2015-17 biennium.

10. The Department's budget request proposed utilizing revenue from the CLDLE surcharge and the DNA surcharge to support the requested five positions. Table 3 identifies the estimated fund condition of the CLDLE surcharge and the DNA surcharge under AB 21/SB 21.

**TABLE 3**

**Crime Laboratory and Drug Law Enforcement Surcharge and  
DNA Surcharge Fund Condition Under AB 21/SB 21**

	<u>2015-16</u>	<u>2016-17</u>
Opening Balance	\$1,669,900	\$1,389,800
Revenue	\$13,189,900	\$13,189,900
<i>Obligations</i>		
Crime laboratories; DNA analysis	\$4,511,200	\$4,511,200
Drug law enforcement, crime laboratories, and genetic evidence activities	8,246,800	8,267,500
Crime laboratory equipment and supplies	558,100	558,100
District Attorney's DNA prosecutor	<u>153,900</u>	<u>153,900</u>
Total Obligations	\$13,470,000	\$13,490,700
Ending Balance	\$1,389,800	\$1,089,000

11. Table 3 would suggest that there is a structural imbalance in the fund for 2015-17. However, given a balance in excess of \$1 million in each fiscal year, the Committee could provide funding for the requested 5.0 positions.

12. Alternatively, the Committee could decide to provide a reduced level of funding and position authority as compared to what is requested by the Department. The 3.0 special agents requested by the Department would support its increased investigative workload, while the 2.0 requested program and policy analysts would support increased workload related to public records requests.

13. Given the nature of the work that would be performed by the special agents, one could argue that providing additional resources to support the requested special agents should be prioritized over providing additional resources to support the requested program and policy analysts. As a result, the Committee could provide DOJ with \$255,000 PR in 2015-16, \$267,700 PR in 2016-17, and 3.0 PR positions annually to support 3.0 special agents [Alternative 2a].

14. On the other hand, given the increased public demand for records relating to officer-involved incidents since the passage of Act 348, the Committee could provide DOJ resources to support 2.0 special agents and 1.0 program and policy analyst [Alternative 2b]. In order to provide the necessary funding to support these three positions, the Committee could provide DOJ \$220,300 PR in 2015-16, \$237,600 PR in 2016-17, and 3.0 PR positions annually.

15. Conversely, it could be argued that DOJ should not be provided any additional resources at this time. Act 348 has only been in effect for approximately one year's time. Therefore, it is difficult to demonstrate with a degree of certainty DOJ's future workload as a result of Act 348. Further, current law does not require DOJ to conduct all OID investigations. Such investigation

may be conducted by any qualified law enforcement agency under Act 348 provisions.

16. Further, DOJ is currently utilizing base resources to support the increase in fatal and non-fatal officer-involved incident investigations. The Department indicates that, "If additional resources are not provided, DCI [Division of Criminal Investigation] will continue to conduct Officer Involved Death / Shooting (OID / OIS) investigations with existing resources." Since DOJ is currently utilizing base resources to support the increase in these investigations, it could be argued that DOJ could continue to utilize base resources to support these investigations. It should be noted, however, that the Department argues that a continued utilization of base resources could lead to a detrimental delay in other criminal investigations conducted by DCI.

17. Given that there may be variability with regards to the number of fatal and non-fatal officer-involved incidents that DOJ will be asked to conduct in future years, and that DOJ is currently utilizing base resources to support the increase in these investigations, the Committee could decide to maintain current law and not provide DOJ additional resources at this time [Alternative 3].

18. Act 348 requires that the investigation of officer-involved deaths be conducted by at least two investigators, neither of whom is employed by a law enforcement agency employing an officer involved in the death. The law does not require, however, that non-fatal officer-involved incidents be investigated by independent investigators who are not employed by a law enforcement agency employing an officer involved in the death. As noted above, the Attorney General has stated that, "Chiefs of police and sheriffs have expressed that they will err on the side of caution and request Department assistance in cases of officer-involved shooting when they are uncertain whether the suspect will die or recover from the injury."

19. Table 1 indicates that, prior to the passage of Act 348, the Department initiated investigations into seven non-fatal officer involved incidents from 2010-2013. Further, as noted in Table 2, the Department has initiated investigations into six non-fatal officer-involved incidents since the passage of Act 348. The Department's special agents have spent 1,816.25 hours investigating these six non-fatal officer-involved incidents as of April 7, 2015. It could be argued that conducting investigations into non-fatal officer-involved incidents consumes time that special agents could utilize investigating other criminal investigations or officer-involved deaths.

20. Since Act 348 does not require that independent investigators conduct investigations into non-fatal officer-involved incidents, and that conducting non-fatal officer-involved incidents takes time away from special agents that could be utilized to conduct other investigations, the Committee could decide to modify current law and add statutory language prohibiting DOJ from investigating non-fatal officer-involved incidents [Alternative 4].

21. A contrary argument may be made however, that adding such statutory language would be counter to the idea that DOJ exists to provide assistance to local law enforcement agencies. Further, current law requires DOJ to investigate crimes that are of statewide nature, importance, or influence. Given the relationship between law enforcement officials and the general public, it could be argued that non-fatal officer-involved incidents are of statewide importance and influence.

22. To this point, DOJ states the following:

"DCI has the authority to refuse to assist in non-fatal encounters and to tell the involved agency to investigate the incident themselves. However, refusing to assist would be completely contrary to the position of DCI that we assist agencies when requested to do so. These incidents are clearly of state-wide importance and nature and clearly fit into the statutory authority of DCI."

23. Finally, adding statutory language that would prohibit DOJ from investigating non-fatal officer involved incidents could create confusion in instances in which an individual is critically injured as a result of an officer-involved incident and it is unclear as to whether the injured individual will survive. Further, requiring DOJ to delay an officer-involved incident investigation until the individual perishes could hamper the effectiveness of the investigation.

## ALTERNATIVES

1. Approve the Department of Justice's agency budget request and provide DOJ with \$352,600 PR in 2015-16, \$386,000 PR in 2016-17, and 5.0 PR positions annually to support 3.0 special agents and 2.0 program and policy analysts to support workload related to officer-involved death investigations and investigations into non-fatal officer-involved incidents. Program revenue for the positions would be supported by the crime laboratory and drug law enforcement surcharge and the DNA surcharge. In addition, modify current statutory language associated with the drug law enforcement, crime laboratories, and genetic evidence activities PR appropriation to authorize the appropriation to support criminal investigative operations.

ALT 1	Change to Bill	
	Funding	Positions
PR	\$738,600	5.00

2. Provide a reduced level of funding and position authority to DOJ for officer-involved incident investigations in either of following ways. For either Alternative 2a or 2b, current statutory language associated with DOJ's PR appropriation would be modified to authorize the appropriation to support criminal investigative operations.

a. Provide \$255,000 PR in 2015-16, \$267,700 PR in 2016-17, and 3.0 PR positions annually to support 3.0 special agent positions.

ALT 2a	Change to Bill	
	Funding	Positions
PR	\$522,700	3.00

b. Provide \$220,300 PR in 2015-16, \$237,600 PR in 2016-17, and 3.0 PR positions

annually to support 2.0 special agent positions and 1.0 program and policy analyst position.

<b>ALT 2b</b>	<b>Change to Bill</b>	
	Funding	Positions
PR	\$457,900	3.00

3. Take no action.

4. Modify current law related to officer-involved death investigations to prohibit DOJ from conducting non-fatal officer-involved incident investigations. *This alternative may be chosen in addition to Alternative 3.*

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