





- William Ward – Milwaukee Police Association

Appearances for Information Only

- None.

Registrations For

- Black Women's Network
- Grace Thomsen
- Brian Todd
- Mark Dluzak
- Orlando Owens
- Katrinka Toran
- Christopher Bostis, MICAH
- Albert Holmes – Milwaukee Fatherhood Collaboration

Registrations Against

- Sebastian Raclaw – Milwaukee Police Association

May 4, 2006

Failed to pass pursuant to Senate Joint Resolution 1.

Andrew Nowlan  
Committee Clerk



Wisconsin Legislature  
Assembly

**ANNETTE POLLY WILLIAMS**  
STATE REPRESENTATIVE  
10TH ASSEMBLY DISTRICT

May 13, 2005

Representative Garey Bies, Chair  
Corrections and Courts Committee  
State Capitol 125 West

Dear Rep. Bies:

I am requesting that the Corrections and Courts Committee hold a public hearing on AB359 (inquests involving death caused by law enforcement officers) in the city of Milwaukee on Wednesday, May 25, 2005. We have been in contact with Marquette University's School of Law officials and they have agreed to allow us to use their facility.

Thank you in advance for our immediate attention to this request.

Sincerely,

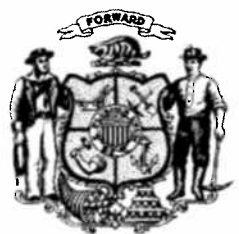
Annette Polly Williams  
State Representative  
10<sup>th</sup> Assembly District

Enclosure: AB359/fiscal estimate

*Has this Bill  
been assigned  
to us?*



# WISCONSIN STATE LEGISLATURE





# Assembly Committee Travel Approval Form

Chairperson's name: Garey Bies

Room # Auditorium Building Milwaukee Public Schools Administration Building Telephone \_\_\_\_\_

Name of Committee: Corrections and the Courts

City & Date: (If holding more than one hearing outside of Madison, please list each of them.)

Location(s)	Date(s)

Purpose of hearing (Please include Bill and LRB numbers)

AB 359

Is a page requested to attend?  Yes  No

Is an overnight stay required?  Yes  No

Will a state car be needed?  Yes\*  No

\*If yes, contact Doris Vande Loo (4-8588)

6-21-05

Date of request

\*\*APPROVAL MUST BE GRANTED PRIOR TO TRIP\*\*

Garey Bies  
Chairperson's signature

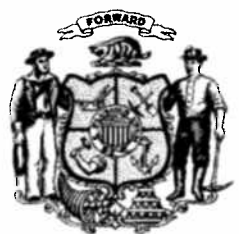
Glen M. Gard  
Speaker Gard Signature

Approved  Disapproved

June 28, 2005  
Date



# WISCONSIN STATE LEGISLATURE



STATE OF WISCONSIN LEGISLATURE  
BEFORE THE  
ASSEMBLY CORRECTIONS AND THE COURTS COMMITTEE

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WRITTEN TESTIMONY OF  
WISCONSIN ATTORNEY GENERAL PEG LAUTENSCHLAGER  
IN THE MATTER OF ASSEMBLY BILL 359

JULY 11, 2005

Thank you for the opportunity to submit written testimony today on 2005 Assembly Bill 359, relating to inquests into deaths caused by law enforcement officers. Assembly Bill 359 makes several changes to how inquests are ordered and conducted in cases in which a person has died as the result of an act of a law enforcement officer. Many of the changes proposed in the bill will affect the Department of Justice and my testimony today highlights the bill's potential impact on the agency.

Assembly Bill 359 changes who has authority to order an inquest. Currently, a district attorney uses his or her discretion in deciding whether to order an inquest. If a district attorney declines, the circuit court may order an inquest. Under Assembly Bill 359, the attorney general is required to order an inquest in all cases where there is any evidence that a person's death was caused by an act of a law enforcement officer.

Assembly Bill 359 also changes who conducts an inquest. Currently, if a district attorney or court orders an inquest, the district attorney appears for the state and presents all evidence which may be relevant or material to the inquest. Under Assembly Bill 359, if a death is caused by the act of a law enforcement officer, the attorney general or the attorney general's designee must appear for and represent the state at the inquest.

Generally, local law enforcement agencies rely upon their own resources to investigate the actions of their officers that result in a death. Or, in the case of a rural agency with limited resources, the county sheriff's department or a neighboring jurisdiction will assist with the investigation. On occasion, the Department of Justice is asked to investigate a limited number of cases involving deaths caused by law enforcement officers. Usually, this request is made of the department because the local law enforcement agency has a conflict of interest. In these cases, Department of Justice special agents respond to the incident, examine the scene of the incident, locate witnesses, interview witnesses, review local law enforcement reports, interview local law enforcement officers, obtain physical evidence, etc.

While Assembly Bill 359 does not specifically direct the Department of Justice to perform investigations relating to inquests into deaths resulting from the action of a law enforcement officer, by requiring the Attorney General to order and conduct an inquests in every such instance, and by removing counties' authority to order and conduct inquests in these cases, the Department will be left with the ultimate responsibility to investigate all cases of death resulting from the action of a law enforcement officer.

There are no statewide statistics compiled on deaths related to police action. The Office



of Justice Assistance (OJA) does participate in a federal program to collect such data. However, local department participation is voluntary and reporting of this information is sporadic. In addition, the definition used by OJA only includes deaths occurring from the time of an arrest to the time of booking. Deaths occurring before an arrest, such as during high speed pursuit, or after booking, such as at a holding facility after being taken into custody, are not recorded in this data. The cases reported to OJA understate the actual number of incidents.

Milwaukee County has had at least 40 people die while they have been in custody since 2002. These cases include deaths occurring during arrests, as well as deaths in various detention facilities, including municipal police departments' holding cells. The Department of Justice is also aware of several other incidents across the state over the past two years where death has resulted from vehicle chases or where death occurred while in detention. The Department believes it is fair to estimate the annual number of incidents to be approximately 25.

The number of hours Department of Justice investigators will be required to work on each case will depend upon the circumstances of the death, the resources and willingness of the local law enforcement agency involved, and the distance between the incident and our investigators. The Department estimates, based upon concerns such as travel to rural areas, complexity of the incident, and resources of local agencies, each incident will require approximately 400 hours of investigator time.

If the Department of Justice will be required to investigate 25 incidents per year and provide 400 hours per investigation, six more investigators will need to be hired. In addition to salary and fringe benefits, overtime funding would be needed as all of our requests for assistance in matters such as these have occurred at night or on the weekend. To ensure 24/7 coverage, standby pay would also be required. The agents would require vehicles, computers, police equipment, and office space. They would also be required to complete annual in service training, and additional training in police-involved death investigations. In addition to investigators, program support would also be required for typing, research, and general office support. Six investigators, working on issues so sensitive in nature, with a need for timeliness, would require one full-time program assistant. The Department estimates that the total cost for investigators, support staff, office space, supplies, travel, etc. will be approximately \$600,000/year.

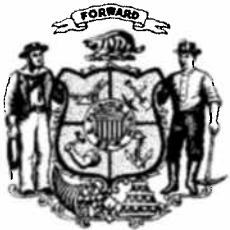
In addition to investigation, the Attorney General or the Attorney General's designee is required to appear for and represent the state at the inquest. It is likely that these cases would be handled by an assistant attorney general from the Department of Justice Criminal Litigation Unit. That unit will need two additional attorneys, a paralegal, and a legal secretary to handle 25 inquest cases per year. The Department estimates that the total cost to the Criminal Litigation Unit will be approximately \$200,000/year.

As you can see, Assembly Bill 359 will have a significant fiscal impact on the Department of Justice. The Department will have a more detailed fiscal estimate prepared before the Corrections and the Courts Committee takes executive action on the bill. In the meantime, please feel free to contact my office if you have any questions about how Assembly Bill 359

affects the Department of Justice. Again, thank you for the opportunity to submit testimony today.



# WISCONSIN STATE LEGISLATURE



no date

**Suzanne L. Anthony**  
3290 N 49<sup>th</sup> St.  
Milwaukee, WI 53216  
(414) 852-3006

**Testimony in Support of AB 359**

Chairman Rep. Biles,

I would like to thank Rep. Williams and Senator Taylor for authoring Assembly Bill 359, along with co-sponsors and all who had input into the proposed legislation. I also offer thanks to Rep. Toles, my district legislator, whose office staff agreed to accept, e-mails and/or faxes resulting from flyers circulated to support this bill.

In September 2002, I watched the television news and heard of the police shooting of Larry Jenkins. To hear such a story is tragic and bothersome. What drew me on a personal level was the shooting happened within a block of my stepdaughter's home. Fortunately her family did not see the shooting, but were witnesses to the commotion following. This was disturbing.

I was surprised to hear that the Jenkins' family had to ask for an inquest. One would think this would happen automatically.

Again, in March of 2003, the police shooting death of Justin Fields hit the news. Knowing Justin's father, aunt, and grandfather, and also meeting Justin in the past, the news was shocking.

I've followed the news of the inquest in Justin's shooting, and learned about the inquest process. I found that the attorney representing Justin's family could not cross-examine the district attorney's witnesses, request their own witnesses, or argue on behalf of their client. This process seems biased, only presenting the district attorneys vantage point.

It is unfortunate that it is taking a federal investigation through the U.S. Department of Justice to bring out evidence that could not presented during the inquest. This evidence may have resulted in a different outcome in Justin's case had that facts been heard during the inquest. No family should have to go through this.

Assembly Bill 359 gives hope that systematically there is a chance for justice through the proposed legislation.

I have a sister, Mary, in her forties, who was diagnosed as schizophrenic in her teens and currently lives on disability payments. When she does not take her medication properly she has troubling behavior. There was an episode where she boarded a bus laid over near her residence. Mary, pretending to have a gun in her pocket, attempted to rob the bus driver. The police drove by and witnessed this, took a gun to her head and told her to "Drop it." Mary turned, pulled her hand out of her pocket and laughed. I wonder if Mary would still be alive if she were a black male like Larry and Justin.

My stepdaughter and daughter are African American. When my daughter Jennifer was fourteen we visited Atlanta spending time at the underground shopping center. I remember Jennifer's comment that she was amazed that there were so many black people together without a police officer in sight. Jennifer added that when she grew up she was moving out of Milwaukee. After attending Hampton University, Jennifer now resides in Baltimore working for a university there.

Jennifer and her boyfriend visited Milwaukee, during the winter holidays after Justin Fields' killing. I was anxious for their safety when they went to a downtown Milwaukee club to meet with friends. Jennifer told me that when she left the club and while saying "Goodbye" to her friends outside of the club, a police officer shone a light in their faces telling them to move on. She commented that this has never happened to her anywhere else. My daughter's friends are predominately African American, comprised of a student at the Medical College of Wisconsin in pediatrics, a native Milwaukeean, attending law school out of state, friends working in Milwaukee, students attending UWM, and other people trying to figure out what to do with their lives.

I was so thankful that she made it back at home safely that night. Citizens should not have to live with this type of anxiety and stress.

On May 29, 2005, I read the Journal Sentinel headlines, "Excessive force report ignored." Police Sgt. Harold Hampton was quoted in the article as saying; Justin Fields "did not have to die." I read the article while waiting at Milwaukee's airport to pick up my daughter Jennifer for her Memorial Day weekend visit. I greeted her with hugs and tears feeling fortunate that she was alive.

I recently had a conversation with a co-worker, who is married to a police officer, about tasers, the tactical alternative similar to pepper spray. She commented that her husband thought, "If you needed to taser them you might as well just shoot them." If this is the kind of conversation that happens at the police department in Milwaukee, something is very wrong.

The hearing today is a beginning in the process to make this bill a law. I will offer supporters a way be updated on Assembly Bill 359 through "Wisconsin Citizens for Accountable Law Enforcement." if they wish to sign up.

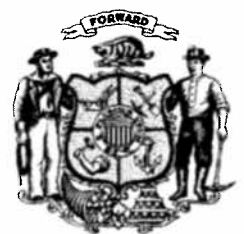
There are circumstances when a law enforcement officer is justified in taking the life of a citizen. Though, under the current legislation mandating inquest procedure, the process does not allow for proper outcomes when excessive force has been used. Prosecution must occur in the cases of wrongful deaths. Law enforcement officers need to be held accountable. Please support Assembly Bill 359.

I thank you for being heard.

*Suzanne G. Anthony*



# WISCONSIN STATE LEGISLATURE



**Police-Related Deaths**  
*City of Milwaukee*  
 01/1999-06/2005

Name of Deceased	Date of Death	Officer's Name	Cause of Death	Jury Verdict at Inquest Unless Otherwise Noted
Ball, Laron	05/29/2002	Ofc. Alphonso Morales	Gunshot wound to the head that severed the brain stem.	Privileged in self-defense and/or defense of others.
Blucher, Michael	09/05/2004	Ofc. Tommy Wilson	Three gunshots.	Privileged by the law of self-defense.
Brzezinski, Rodney	10/26/2000	Sgt. Frederick Tice	Loss of blood due to multiple gunshot wounds.	Privileged either by the privileges of dangerous felony suspect apprehension, self-defense, or defense of others, or any combination of these privileges.
Bushlow, David A.	04/22/2003	Sgt. Jeffrey Cook	Exsanguination due to three gunshot wounds.	No inquest requested. Determination made that conduct was privileged in self-defense.
Cohoe, Arthur Jr.	07/26/1999	Kranz, Jeffrey Ofc.	Gunshot wound.	Privileged by the law of self-defense.
Fields, Justin P.	03/02/2003	Nawotka, Craig Ofc.	A gunshot wound.	Privileged by either the privilege of self-defense or the privilege of a police officer to use deadly force to accomplish an arrest and prevent an escape, or any combination of these privileges.
Franklin, Mannix	10/31/2003	Pendergast, Michael Ofc.	Gunshot wounds.	Handled by special prosecutor Asst. Atty. Gen. Roy Korte. Privileged by the privilege of self-defense or the privilege of a police officer to use deadly force to accomplish an arrest, or any combination of those privileges.
Guzman, Gabriel	11/16/2001	Peterson, Kelly Ofc. and Ungerer, Brant Ofc.	Gunshot wounds.	No inquest requested. Determination made that conduct was privileged in self-defense.
Jenkins, Larry	09/19/2002	Bartlett, Jon Ofc.	Gunshot wounds.	No inquest requested. Determination made that conduct was privileged in self-defense.



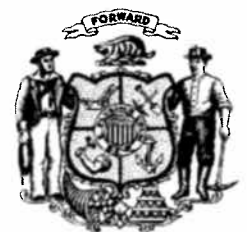
Johns, Victor	04/26/2005	Brosseau, Brian Ofc.	Gunshot wounds per medical examiner.	Family request for inquest. Special prosecutor appointment may be sought, as this office is prosecuting the mother of the deceased's children for alleged activities in support of deceased. Privileged in self-defense and/or defense of others.
Page, Michael Jr.	04/05/2002	Malone, James E. Ofc.	Exsanguination with blood aspiration.	Privileged by either the privilege of self-defense or the privilege of a police officer to use deadly force to accomplish an arrest and prevent an escape, or any combination of these privileges. Under review by DA.
Prado, Wilberto	03/06/2005	Glover, Alphonso Ofc.	Gunshot wounds to the back through the chest.	Privileged either by the privileges of dangerous felony suspect apprehension, the privilege of self-defense, or the privilege of defense of others, or any combination of these privileges.
Pundsack, Edward A.	12/22/2002 or 12/23/2002	Wagner, Mark Sgt.	A gunshot wound to the left temple with damage to the brain stem.	Use of deadly force privileged in self-defense and/or defense of others.
Rodriguez, Samuel, Sr.	06/27/2002	Sandoval, Richard Ofc. and Zuberbier, Karl Ofc.	Gunshot wound to head.	Privileged in self-defense.
Rodriguez, Samuel	10/27/1999	Hackbarth, Christopher U.S. DEA Special Agent	Exsanguination from gunshot wound to chest.	Racine County DA appointed special prosecutor. No inquest conducted. Determination that slaying was justified.
Yang, Tou	01/26/2005	Officers Brad Schlei and Kurt Kezeske, and Sgt Joel Kujawa discharged firearms. Not determined who filed lethal shots.	Gunshot wounds.	

**SUMMARY:** In 6 ½ years in the City of Milwaukee, 15 persons were lethally shot by Milwaukee Police Officers and one person was lethally shot by a U.S. DEA Special Agent. This averages to 2.3 lethal shootings by Milwaukee Police per year.

Effective 06/17/2005



# WISCONSIN STATE LEGISLATURE



### Fatal Shootings By Police 1990-2000

Shooting Rates and Rankings of Prince George's and the 50 largest, local law enforcement agencies.

AGENCY	Avg. Population of Service Area '90-'00	Avg. Number of Fatal Shootings by Police '90-'00	Fatal Shootings Per 100,000 Residents	Fatal Shootings Per 1,000 Sworn Officers	Fatal Shootings Per 10,000 Violent Crimes	Fatal Shootings Per 100 Murders	Fatal Shootings For Violent Crime	Fatal Shootings Per 1,000 Arrests For All Crime
New York	7,412,325	24.1	0.33 (28)	0.71 (43)	1.90 (45)	1.79 (41)	0.49 (45)	0.34 (42)
Los Angeles	3,564,159	19.0	0.53 (12)	2.19 (12)	2.77 (37)	2.44 (31)	0.84 (30)	1.15 (8)
Los Angeles Co., Calif.	2,548,467	15.7	0.62 (7)	1.95 (22)	5.23 (10)	4.70 (7)	1.30 (17)	1.68 (5)
Chicago	2,807,267	11.8	0.42 (22)	0.92 (37)	1.61 (46)	1.44 (48)	0.91 (28)	0.40 (37)
Houston	1,795,009	9.6	0.54 (11)	1.96 (21)	4.19 (17)	2.54 (29)	2.76 (2)	0.68 (22)
Detroit	991,589	8.6	0.87 (3)	2.16 (14)	3.42 (25)	1.68 (43)	0.83 (31)	1.05 (12)
<b>Washington, D.C.</b>	<b>559,396</b>	<b>8.5</b>	<b>1.53 (1)</b>	<b>2.15 (15)</b>	<b>6.35 (5)</b>	<b>2.24 (34)</b>	<b>1.86 (9)</b>	<b>1.69 (4)</b>
Phoenix	1,174,343	7.2	0.62 (8)	3.14 (3)	6.69 (4)	3.94 (14)	2.47 (3)	0.99 (14)
Philadelphia	1,503,744	6.9	0.46 (17)	1.06 (32)	3.31 (29)	1.68 (44)	0.70 (39)	0.87 (18)
San Diego	1,174,960	6.5	0.55 (10)	3.27 (2)	5.86 (9)	6.55 (2)	1.22 (18)	1.01 (13)
Baltimore	686,717	6.3	0.91 (2)	2.08 (17)	3.23 (31)	1.96 (37)	1.44 (13)	0.91 (16)
Miami-Dade Co.	1,108,050	5.0	0.45 (19)	1.78 (23)	2.84 (36)	3.29 (22)	0.91 (27)	0.74 (21)
<b>Prince George's Co.</b>	<b>638,425</b>	<b>4.3</b>	<b>0.67 (5)</b>	<b>3.37 (1)</b>	<b>5.92 (7)</b>	<b>3.73 (18)</b>	<b>2.21 (4)</b>	<b>2.71 (1)</b>
Jacksonville, Fla.	676,953	3.5	0.52 (13)	2.61 (6)	3.58 (24)	3.42 (20)	1.08 (22)	0.81 (20)
New Orleans	478,766	3.5	0.73 (4)	2.37 (9)	3.78 (23)	1.12 (49)	1.42 (14)	0.63 (24)
San Bernardino, Calif.	780,987	3.4	0.43 (20)	2.75 (4)	10.01 (1)	4.81 (6)	0.84 (29)	1.06 (11)
Denver	495,196	3.3	0.66 (6)	2.36 (10)	8.06 (2)	4.69 (8)	2.09 (7)	0.57 (28)
Las Vegas	774,551	3.2	0.40 (24)	2.05 (18)	4.27 (16)	2.82 (26)	1.81 (10)	0.47 (31)
Riverside Co., Calif.	715,452	3.1	0.43 (21)	2.73 (5)	5.90 (8)	3.79 (16)	1.71 (11)	1.98 (2)
Nashville	507,958	2.9	0.57 (9)	2.57 (7)	3.33 (28)	3.32 (21)	0.98 (24)	0.61 (26)
San Francisco	738,744	2.7	0.37 (26)	1.35 (29)	2.61 (41)	3.06 (24)	0.59 (42)	0.58 (27)
San Antonio	1,098,229	2.6	0.23 (36)	1.42 (28)	4.35 (15)	1.83 (39)	2.15 (5)	0.89 (17)
San Jose	833,356	2.5	0.31 (30)	2.03 (19)	4.63 (14)	6.97 (1)	0.73 (37)	0.64 (23)
Cleveland	500,127	2.5	0.51 (14)	1.45 (27)	3.24 (30)	2.01 (36)	0.96 (26)	0.52 (30)
Memphis	619,511	2.5	0.41 (23)	1.67 (24)	2.63 (40)	1.63 (45)	1.20 (19)	0.42 (36)
Sacramento Co., Calif.	670,527	2.5	0.37 (25)	2.01 (20)	4.98 (12)	5.14 (5)	0.82 (33)	1.11 (9)
Harris Co., Tex.	923,115	2.5	0.27 (32)	1.03 (34)	4.99 (11)	3.70 (19)	3.47 (1)	1.83 (3)
Fort Worth	478,149	2.4	0.49 (15)	2.14 (16)	3.93 (20)	2.19 (35)	1.35 (15)	0.46 (32)
Dallas	1,074,406	2.3	0.21 (38)	0.81 (41)	1.44 (47)	0.95 (51)	0.75 (36)	0.28 (44)
San Diego Co.	779,510	2.3	0.29 (31)	1.29 (30)	6.31 (6)	5.92 (3)	1.07 (23)	1.21 (7)
Portland, Ore.	500,610	2.3	0.45 (18)	2.41 (8)	2.88 (35)	5.21 (4)	2.03 (8)	0.83 (19)
Oklahoma City	464,667	2.2	0.47 (16)	2.22 (11)	4.02 (19)	2.74 (27)	1.71 (12)	1.11 (10)
Milwaukee	601,709	2.1	0.35 (27)	1.02 (35)	3.33 (27)	1.51 (46)	0.61 (41)	0.24 (47)
Columbus, Ohio	663,548	1.7	0.26 (33)	1.09 (31)	2.65 (38)	1.83 (40)	0.40 (47)	0.97 (15)
DeKalb Co., Ga.	495,091	1.5	0.31 (29)	2.18 (13)	4.76 (13)	2.63 (28)	2.13 (6)	1.47 (6)
Hillsborough Co., Fla.	565,836	1.5	0.26 (34)	1.58 (25)	3.39 (26)	4.65 (9)	0.73 (38)	0.63 (25)
Baltimore Co.	715,705	1.4	0.19 (40)	0.88 (39)	1.91 (44)	4.33 (10)	0.57 (43)	0.43 (35)
El Paso	572,641	1.4	0.24 (35)	1.45 (26)	2.64 (39)	4.17 (11)	0.76 (34)	0.46 (33)

Seattle	531,183	1.2	0.22 (37)	0.95 (36)	1.99 (43)	2.30 (33)	1.15 (20)	0.34 (41)
Charlotte-Mecklenburg	582,972	1.1	0.20 (39)	0.89 (38)	1.29 (49)	1.51 (47)	0.30 (50)	0.40 (38)
Honolulu	870,135	1.0	0.11 (45)	0.54 (46)	4.05 (18)	3.19 (23)	0.98 (25)	0.21 (49)
Austin	555,760	1.0	0.18 (41)	1.05 (33)	3.09 (32)	2.54 (30)	0.83 (32)	0.26 (45)
<b>Montgomery Co.</b>	<b>792,400</b>	<b>0.8</b>	<b>0.10 (46)</b>	<b>0.87 (40)</b>	<b>3.86 (21)</b>	<b>3.95 (12)</b>	<b>1.31 (16)</b>	<b>0.53 (29)</b>
Boston	559,883	0.8	0.15 (42)	0.39 (49)	0.82 (51)	1.06 (50)	0.20 (51)	0.34 (40)
Orange Co., Fla.	513,837	0.8	0.15 (43)	0.71 (42)	1.39 (48)	2.88 (25)	0.37 (48)	0.25 (46)
Suffolk Co., N.Y.	1,210,314	0.7	0.06 (50)	0.28 (50)	3.02 (34)	1.95 (38)	0.53 (44)	0.22 (48)
Orange Co., Calif.	527,737	0.6	0.12 (44)	0.48 (48)	3.82 (22)	3.77 (17)	0.75 (35)	0.43 (34)
<b>Fairfax Co.</b>	<b>866,305</b>	<b>0.6</b>	<b>0.07 (48)</b>	<b>0.59 (45)</b>	<b>6.95 (3)</b>	<b>3.94 (13)</b>	<b>1.13 (21)</b>	<b>0.20 (51)</b>
Nassau Co., N.Y.	1,025,076	0.6	0.06 (51)	0.20 (51)	3.08 (33)	3.81 (15)	0.67 (40)	0.39 (39)
Palm Beach Co., Fla.	467,388	0.5	0.10 (47)	0.50 (47)	1.26 (50)	1.74 (42)	0.31 (49)	0.30 (43)
King Co., Wash.	603,139	0.4	0.06 (49)	0.61 (44)	2.18 (42)	2.33 (32)	0.42 (46)	0.20 (50)
<b>MEDIAN</b>			<b>0.36</b>	<b>1.45</b>	<b>3.36</b>	<b>2.78</b>	<b>0.94</b>	<b>0.60</b>

( ) - Numbers in parentheses indicate department's ranking within a category

Note: Based on the average number of fatal shootings and average number of police, residents, crimes, arrests and killings, 1990 through 2000. Data gathered through surveys of individual departments, state police agencies, FBI Uniform Crime Report data and the U.S. Census Bureau. All numbers were averaged over the 11-year period to compensate for discrepancies, extremes in fluctuation or missing years. Agencies chosen for comparison were county, city and consolidated city-county police agencies that on average served the largest number of residents 1990-2000. Prince George's was excluded from the median. All numbers rounded after calculations.

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**885 PRIVILEGE TO USE FORCE: REASONABLE ACCOMPLISHMENT  
OF A LAWFUL ARREST BY A PEACE OFFICER: DEADLY FORCE**

INSERT THE FOLLOWING AFTER THE ELEMENTS OF THE CRIME ARE  
DEFINED BUT BEFORE THE CONCLUDING PARAGRAPHS.

**Use of Force by Peace Officer**

The use of force by a peace officer<sup>1</sup> is an issue in this case. The law allows a peace officer to use force in making a lawful arrest<sup>2</sup> only if:

- the defendant believed that it was necessary to use force to make an arrest; and,
- the defendant believed that the amount of force used was necessary to secure and detain the person arrested, to overcome any resistance, to prevent escape, or to protect himself from bodily harm; and,
- the defendant's beliefs were reasonable.

The defendant may intentionally use force which is intended or likely to cause death or great bodily harm in making a lawful arrest only if (he) (she) believed that such force was necessary to prevent the escape of (name of victim) and believed that (name of victim) posed a significant threat of death or serious physical injury to the defendant or others.<sup>3</sup>

**Determining Whether Beliefs Were Reasonable**

A belief may be reasonable even though mistaken. In determining whether the defendant's beliefs were reasonable, the standard is what an ordinary, prudent, and reasonably intelligent officer would have believed in the defendant's position, having the knowledge and training that the defendant possessed, and acting under the circumstances that existed at the time of the alleged offense.<sup>4</sup>

### State's Burden of Proof

The State must prove by evidence which satisfies you beyond a reasonable doubt that the defendant was not acting lawfully in the use of force to make an arrest.

### Jury's Decision

If you are satisfied beyond a reasonable doubt that all \_\_\_\_\_ elements of \_\_\_\_\_<sup>5</sup> have been proved and that the defendant did not act lawfully in using force to make an arrest, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

### COMMENT

Wis JI-Criminal 885 was originally published in 1987 and revised in 1994. This revision was approved by the Committee in April 2005.

The 1987 and 1994 revisions of this instruction changed its format to allow integrating the description of the privilege to use force with the instruction on the crime charged. See the Comment to Wis JI-Criminal 800.

Wis JI-Criminal 885 attempts to explain the limits on the use of deadly force by peace officers in making a lawful arrest. The privilege to use force to make a lawful arrest is recognized in broad terms by § 939.45(4). It is not specifically limited to peace officers, though this instruction is. Peace officers may also be privileged to use force in self-defense or defense of others, situations that are beyond the scope of this instruction. See Wis. Stat. § 939.48 and Wis JI-Criminal 800 through 835.

1. "Peace officer" is defined as follows in § 939.22(22):

"Peace officer" means any person vested by law with a duty to maintain public order, whether that duty extends to all crimes or is limited to specific crimes.

2. With regard to whether the arrest was lawful, footnote 1 to the 1974 version of this instruction provided as follows:

1. An element of this defense is that the arrest is lawful (defined Wis. Stat. § 968.07 (1971)), that is, that the arrest was made pursuant to a warrant or if made without a warrant, there was probable cause for the arrest. The question for arrest, without a warrant, based upon probable cause, is a

mixed question of law and fact. If there is no dispute as to the facts of the arrest, then it is up to the court to decide if they show probable cause for arrest. If the facts are in dispute, the court should instruct the jury as to what facts will constitute probable cause, and submit to them only the question of the existence of those facts. 5 Am. Jur.2d Arrest § 49, p. 741 (1962). An arrest made pursuant to a warrant valid in form and issued by a court of competent jurisdiction is considered lawful as to the arresting officer. 5 Am. Jur.2d Arrest § 4, p. 698 (1962). Validity of the warrant then is a matter for the court to decide. It is suggested that the lawfulness of the arrest, if it is a matter for merely the court to decide, should be decided first because if the arrest is found to be unlawful, the defense would be unavailable to the defendant and therefore no longer an issue for the jury to decide.

3. The standard for the use of deadly force is based on the decision of the United States Supreme Court in Tennessee v. Garner, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985). Garner held that deadly force may not be used to accomplish an arrest "unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others." 471 U.S. 1, 3.

The Garner decision is based on the Fourth Amendment's rule against unreasonable seizures: "apprehension by the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment." 471 U.S. 1, 7. Thus, Garner does not articulate principles of substantive criminal law. However, the Committee concluded that it was instructive in setting forth the two requirements for the valid use of deadly force which are adopted in the instruction.

It is not clear whether Wisconsin had continued to follow the common law "fleeing felon rule" that Garner invalidated. (The fleeing felon rule being that deadly force could be used to accomplish any felony arrest.) In Garner, the Court assumed that Wisconsin did continue to follow the rule. See footnote 14 at 471 U.S. 1, 16. Also see the discussion in Clark v. Ziedonis, 513 F.2d 79 (7th Cir. 1975). After Garner, it is obvious that Wisconsin must adopt a rule consistent with that decision.

4. The 1987 revision substantially shortened the text of the instruction. No case law or other developments required the change. The intent was to simplify and clarify the instruction.

The Committee is aware of no reported criminal cases dealing with the privilege of a peace officer to use force in making an arrest. The following are some of the civil cases that discuss the issue: McCluskey v. Steinhorst, 45 Wis.2d 350, 173 N.W.2d 148 (1969); Celmer v. Quarberg, 56 Wis.2d 581, 203 N.W.2d 45 (1973); and Johnson v. Ray, 99 Wis.2d 777, 299 N.W.2d 849 (1981). Also see Clark v. Ziedonis, 513 F.2d 79 (7th Cir. 1975).

5. In the two blanks provided, insert the number of elements that the crime has and the name of that crime, where the crime has a convenient short title. For example, for a case involving simple battery under § 940.19(1), the sentence would read as follows: "... that all four elements of battery have been proved..." See Wis JI-Criminal 1220A. If the crime does not have a convenient short title, use "this offense" instead. For example, for a case involving substantial battery under § 940.19(2), the sentence would read: "that both elements of this offense were proved,..." See Wis JI-Criminal 1222A.