
Wisconsin Legislative Council

AMENDMENT MEMO



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2021 Senate Bill 120

Assembly Amendment 1

2021 SENATE BILL 120, AS PASSED BY THE SENATE

Senate Bill 120, as passed by the Senate, creates all of the following: (1) a statewide use-of-force standard; (2) a duty to report and a duty to intervene in certain situations in which a law enforcement officer observes another officer failing to comply with the statewide use-of-force standard; and (3) a misdemeanor penalty for an officer who intentionally fails to report noncompliant use of force, intervene to prevent or stop a noncompliant use of force, or report an intervention.

Use-of-Force Standard

The bill requires a law enforcement officer, when using force, to be acting in good faith to achieve a legitimate law enforcement objective. A law enforcement officer is authorized to use force that is objectively reasonable based on the totality of the circumstances, including:

- The severity of the alleged crime at issue.
- Whether the suspect poses an imminent threat to the safety of law enforcement officers or others.
- Whether the suspect is actively resisting or attempting to evade arrest by flight.

With respect to deadly force, a law enforcement officer may use such force only as a last resort when the officer reasonably believes that all other options have been exhausted or would be ineffective. A law enforcement officer may use deadly force only to stop behavior that has caused or imminently threatens to cause death or great bodily harm to the law enforcement officer or another person. If both practicable and feasible, a law enforcement officer must give a verbal warning before using deadly force.

Duty to Report

The bill creates a duty to report, in that it requires a law enforcement officer who, in the course of his or her law enforcement duties, witnesses another officer use force that does not comply with the use-of-force standard above in the course of that officer's official duties to report the noncompliant use of force as soon as is practicable. An officer may be fined up to \$1,000, imprisoned for up to six months, or both, for intentionally failing to report a noncompliant use of force.

Duty to Intervene

Relatedly, the bill also creates a duty to intervene, by requiring an officer to, without regard for chain of command, intervene to prevent or stop another officer from using force that does not comply with the use-of-force standard above in the course of that officer's official duties, if both of the following apply:

- The law enforcement officer observes use of force, or reasonably should have observed use of force, that does not comply with the use-of-force standard above.
- The circumstances are such that it is safe for the law enforcement officer to intervene.

The bill requires a law enforcement officer who intervenes to report the intervention to his or her immediate supervisor as soon as is practicable and provides the same misdemeanor penalty for intentionally failing to intervene to prevent or stop a noncompliant use of force or intentionally failing to report an intervention, as required.

Whistleblower Protections

The bill generally provides protections from adverse employment actions to officers who report, or intervene to prevent or stop, any use of force that does not comply with the statewide use-of-force standard, or who engage in certain acts in proceedings regarding such reports or interventions.

ASSEMBLY AMENDMENT 1

Assembly Amendment 1 makes two changes to Senate Bill 120, as passed by the Senate. First, the amendment delays the bill's effective date to January 1, 2022. Second, the amendment deletes the phrase "reasonably should have observed," thereby rendering inapplicable the duty to intervene and associated penalty for intentionally failing to intervene in situations in which a law enforcement officer reasonably should have observed noncompliant force. Rather, under the amendment, a law enforcement officer is required to intervene to prevent or stop another officer from using force if: (1) the officer observes use of force that does not comply with the use-of-force standard; and (2) the circumstances are such that it is safe for the law enforcement officer to intervene.

BILL HISTORY

Senate Action

Senator Wanggaard offered Senate Substitute Amendment 1 on June 4, 2021. On June 9, 2021, the Senate adopted Senate Substitute Amendment 1 on voice votes, and passed Senate Bill 120, as amended, on a vote of Ayes, 30; Noes, 2.

Assembly Action

The Assembly received Senate Bill 120, as amended and passed by the Senate, on June 10, 2021. Representative Steineke offered Assembly Amendment 1 on June 22, 2021. That same day, the Assembly adopted the amendment on a vote of Ayes, 60; Noes, 38; and passed Senate Bill 120, as amended, on voice votes.

AO:jal