



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-0907/P4
MLJ/CMH/EAW:skw&wlj

DOA:.....Schmidt, BB0228 - Adopt provisions from the August 2020 Special Session on the Use of Force by Law Enforcement (LRB-6273/1, LRB-6274/2 LRB-6275/1, LRB-6276/1 [update funding to reflect 2021-23 biennium], LRB-6277/1, LRB-6281/1, LRB-6283/2, LRB-6289/1, & 6292

FOR 2021-2023 BUDGET -- NOT READY FOR INTRODUCTION

AN ACT ...; relating to: the budget.

Analysis by the Legislative Reference Bureau

LAW ENFORCEMENT

Use of force policies

Under current law, each law enforcement agency must have a written public policy that regulates the use of force by law enforcement officers. This bill makes several changes that affect this requirement.

First, the bill requires the law enforcement agency to post its policy on the law enforcement agency website or, if the agency does not have one, on a website maintained by the municipality over which the law enforcement agency has jurisdiction.

Second, the bill requires each law enforcement agency to ensure that its use of force policy incorporates the following principles: that the primary duty of all law enforcement is to preserve the life of all individuals; that deadly force is to be used only as the last resort; that chokeholds are banned; that officers should use skills and tactics that minimize the likelihood that force will become necessary; that, if officers must use physical force, it should be the least amount of force necessary to safely

address the threat; and that law enforcement officers must take reasonable action to stop or prevent any unreasonable use of force by their colleagues.

Third, under the bill, each law enforcement officer must annually complete at least eight hours of training on use-of-force options and techniques a law enforcement officer may use to de-escalate a potentially unstable situation.

Fourth, the bill prohibits disciplining a law enforcement officer for reporting a violation of a law enforcement agency's use of force policy.

Finally, the bill requires the Law Enforcement Standards Board to develop a model use of force policy for law enforcement agencies. The model policy must address interactions with individuals with mental disorders, alcohol or drug problems, dementia disorders, and developmental disabilities; limit the use of force against vulnerable populations; and include other best practices that LESB identifies.

Reports on use of force incidents

Current law requires DOJ to collect certain information concerning criminal offenses committed in Wisconsin. The bill requires DOJ to collect data and publish an annual report on law enforcement use of force incidents, including incidents where there was a shooting, where a firearm was discharged in the direction of a person (even if there was no injury), and where other serious bodily harm resulted from the incident. The bill requires certain demographic information to be collected about each such incident, and reported annually by DOJ on its Internet site.

Grant program to reduce violence

The bill creates a \$1,000,000 grant program, administered by DOJ, to fund community organizations that are utilizing evidence-based outreach and violence interruption strategies to mediate conflicts, prevent retaliation and other potentially violent situations, and connect individuals to community supports.

Cause of action for unnecessarily summoning a law enforcement officer

The bill creates a civil cause of action for unnecessarily summoning a law enforcement officer. Under the bill, a person may bring an action against another person who, with the intent to do any of the following, causes a law enforcement officer to arrive at a location to contact the person: infringe upon a constitutional right of the person; unlawfully discriminate against the person; cause the person to feel harassed, humiliated, or embarrassed; cause the person to be expelled from a place in which the person is lawfully located; damage the person's reputation or standing within the community; or damage the person's financial, economic, consumer, or business prospects or interests.

Under the bill, the person may recover the greater of special and general damages, including damages for emotional distress, or an amount equal to \$250 from each defendant found liable; punitive damages; and costs, including all reasonable attorney fees and other costs of the investigation and litigation that were reasonably incurred.

Prohibition on no-knock warrants

Under current law, a law enforcement officer executing a search warrant must knock and announce before entering unless, at the time the warrant is executed, the

law enforcement officer has a reasonable suspicion that knocking and announcing will be dangerous or futile or will inhibit the effective investigation of the crime. This bill requires that a law enforcement officer executing a search warrant must, before entering the premises, identify himself or herself as a law enforcement officer and announce the authority and purpose of the entry.

Training and recruiting officers

This bill makes certain changes to the responsibilities of the Law Enforcement Standards Board. Under current law, LESB regulates the training of law enforcement officers. This bill requires LESB to also regulate jail and juvenile detention officer training standards, and to regulate recruitment standards for the recruiting of new law enforcement, jail, and juvenile detention officers.

The bill also requires each law enforcement agency to maintain an employment file for each employee. Under the bill, when a law enforcement agency, jail, or juvenile detention facility is recruiting for new officers, the agency, jail, or facility must require each candidate that is or has been employed by a different agency, jail, or facility to authorize that employer to disclose his or her employment files to the recruiting agency, jail, or facility and to release that employer from any liability related to the use and disclosure of the files.

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

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

SECTION 1. 20.455 (2) (eq) of the statutes is created to read:

20.455 (2) (eq) *Violence interruption grant program; ongoing funding.* The amounts in the schedule for the violence interruption grant program under s. 165.988.

***NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 2. 20.455 (2) (f) of the statutes is amended to read:

20.455 (2) (f) *School safety.* As a continuing appropriation, the amounts in the schedule to provide grants under s. 165.88 (2), and to make the transfer required under 2021 Wisconsin Act (this act), section 9227 (1).

SECTION 3. 20.455 (2) (ks) of the statutes is created to read:

20.455 (2) (ks) *Violence interruption grant program; initial funding.* All moneys transferred under 2021 Wisconsin Act ... (this act), section 9227 (1), for the violence interruption grant program under s. 165.988.

****NOTE: This SECTION involves a change in an appropriation that must be reflected in the revised schedule in s. 20.005, stats.

SECTION 4. 66.0511 (1) of the statutes is renumbered 66.0511 (1) (intro.) and amended to read:

66.0511 (1) ~~DEFINITION~~ DEFINITIONS. (intro.) In this section, ~~“law;~~

(b) “Law enforcement agency” has the meaning given under s. 165.83 (1) (b).

SECTION 5. 66.0511 (1) (a) of the statutes is created to read:

66.0511 (1) (a) “Choke hold” means the intentional and prolonged application of force to the throat or windpipe that prevents or hinders breathing or reduces the intake of air.

SECTION 6. 66.0511 (2) of the statutes is renumbered 66.0511 (2) (intro.) and amended to read:

66.0511 (2) USE OF FORCE POLICY. (intro.) Each person in charge of a law enforcement agency shall prepare in writing and make available for public scrutiny a policy or standard regulating the use of force by law enforcement officers in the performance of their duties. The law enforcement agency shall make the policy publicly available on a website maintained by the law enforcement agency or, if the agency does not maintain its own site, on a website maintained by the municipality over which the law enforcement agency has jurisdiction. The law enforcement agency shall provide in its policy the instances in which a use of force must be reported, how to report a use of force, and a requirement that officers who engage in

or observe a reportable use of force report it. Each policy or standard shall incorporate the following principles:

SECTION 7. 66.0511 (2) (a), (b), (c), (d), (e) and (f) and (4) of the statutes are created to read:

66.0511 (2) (a) That the primary duty of all law enforcement is to preserve the life of all individuals.

(b) That deadly force is to be used only as a last resort.

(c) That the use of choke holds by law enforcement officers is prohibited.

(d) That officers should use skills and tactics, including de-escalation tactics, that minimize the likelihood that force will become necessary.

(e) That, if law enforcement officers must use physical force, it should be the least amount of force necessary to safely address the threat.

(f) That law enforcement officers shall take reasonable action to stop or prevent any unreasonable use of force by their colleagues.

(4) WHISTLEBLOWER PROTECTIONS. No law enforcement officer may be discharged, disciplined, demoted, or denied promotion, transfer, or reassignment, or otherwise discriminated against in regard to employment, or threatened with any such treatment, because the law enforcement officer reported, or is believed to have reported, any violation of a policy under sub. (2); initiated, participated in, or testified in, or is believed to have initiated, participated in, or testified in, any action or proceeding regarding a violation of a policy under sub. (2); or provided any information, or is believed to have provided any information, about a violation of a policy under sub. (2).

SECTION 8. 165.845 (title) of the statutes is amended to read:

165.845 (title) Collect Collection and reporting of crime and criminal justice data.

SECTION 9. 165.845 (1) (intro.) and (c) of the statutes are renumbered 165.845 (1r) (intro.) and (c).

SECTION 10. 165.845 (1) (a) of the statutes is renumbered 165.845 (1r) (a) (intro.) and amended to read:

165.845 (1r) (a) (intro.) Collect information concerning the number and nature of offenses known to have been committed in this state and such other information as may be useful in the study of crime and the administration of justice. The department of justice may determine any other information to be obtained regarding crime, evidence, and justice system data or statistics. The information shall include data all of the following:

1. Data requested by federal agencies under the U.S. department of justice, including the federal bureau of investigation under its system of uniform crime reports for the United States.

SECTION 11. 165.845 (1) (b) of the statutes is renumbered 165.845 (1r) (b) and amended to read:

165.845 (1r) (b) Furnish all reporting officials with forms or instructions or both that specify the nature of the information required under par. (a), the time it is to be forwarded, the process for submitting the information, the method of classifying and any other matters that facilitate collection and compilation.

SECTION 12. 165.845 (1g) of the statutes is created to read:

165.845 (1g) In this section, “serious bodily harm” has the meaning given in s. 969.001 (2).

SECTION 13. 165.845 (1r) (a) 2. of the statutes is created to read:

165.845 (1r) (a) 2. Data concerning sexual assault kits, as defined in s. 165.775 (1) (e), collected in this state.

SECTION 14. 165.845 (1r) (a) 3. of the statutes is created to read:

165.845 (1r) (a) 3. For any incident involving the shooting of a civilian by a law enforcement officer or the shooting of a law enforcement officer by a civilian; any incident involving the discharge of a firearm by a law enforcement officer at or in the direction of a civilian or the discharge of a firearm by a civilian at or in the direction of a law enforcement officer; and any incident in which an action taken by a law enforcement officer as a response to an act of resistance results in serious bodily harm or death or in which an act of resistance taken by a civilian against a law enforcement officer results in serious bodily harm or death, all of the following information:

- a. The gender, race, ethnicity, and age of each person who was shot at, injured, or killed.
- b. The date, time, and location of the incident.
- c. Whether any civilian involved in the incident was armed and, if he or she was armed, the type of weapon that the civilian possessed.
- d. The type of resistance used against the law enforcement officer by the civilian, the type of action taken in response by the officer, and if applicable, the types of weapons used.
- e. The number of law enforcement officers involved in the incident.
- f. The number of civilians involved in the incident.
- g. A brief description regarding the circumstances surrounding the incident, including perceptions on behavior or mental disorders.

SECTION 15. 165.845 (1r) (d) of the statutes is created to read:

165.845 (1r) (d) Publish the following reports:

1. At least annually, a report containing data on law enforcement agency compliance with the sexual assault kit data collection requirement under par. (a) 2. The reports may be published electronically on the department's Internet site.

2. Annually, a report using the information collected on incidents under par. (a) 3. The reports may be published electronically on the department's Internet site in an interactive format and shall include, at a minimum, all information that is reported to the department by local law enforcement agencies under par. (a) 3.

SECTION 16. 165.845 (2) of the statutes is amended to read:

165.845 (2) All persons in charge of law enforcement agencies and other criminal and juvenile justice system agencies shall supply the department of justice with the information described in sub. (1) (1r) (a) on the basis of the forms or instructions or both to be supplied by the department under sub. (1)(a) (1r) (b). The department may conduct an audit to determine the accuracy of the data and other information it receives from law enforcement agencies and other criminal and juvenile justice system agencies.

***NOTE: This is reconciled s. 165.845. This SECTION has been affected by drafts with the following LRB numbers: -0742/P1, -0907/P3.

SECTION 17. 165.85 (2) (ap) of the statutes is created to read:

165.85 (2) (ap) "Employment file" means all files relating to a person's employment, including performance reviews, files related to job performance, internal affairs investigative files, administrative files, previous personnel applications, personnel-related claims, disciplinary actions, and all substantiated complaints and commendations, but does not include pay or benefit information, similar administrative data or information that does not relate to performance or

conduct, or medical files unless the medical file relates to mental competency issues bearing on the person's suitability for a law enforcement, tribal law enforcement, jail, or juvenile detention officer position.

SECTION 18. 165.85 (2) (be) of the statutes is created to read:

165.85 (2) (be) "Government agency" means any department, agency, or court of this state, or of a city, village, town, or county in this state.

SECTION 19. 165.85 (2) (bv) of the statutes is amended to read:

165.85 (2) (bv) "Law enforcement agency" means a governmental unit of this state or a political subdivision of this state that employs one or more law enforcement officers, and includes the Marquette University police department.

SECTION 20. 165.85 (2) (c) of the statutes is amended to read:

165.85 (2) (c) "Law enforcement officer" means any person employed by the state or any political subdivision of the state, for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances that the person is employed and sworn to enforce. "Law enforcement officer" includes a university police officer, as defined in s. 175.42 (1) (b).

SECTION 21. 165.85 (2) (fm) of the statutes is created to read:

165.85 (2) (fm) "Tribal law enforcement agency" has the meaning given in s. 165.83 (1) (e).

SECTION 22. 165.85 (3) (a) of the statutes is amended to read:

165.85 (3) (a) Promulgate rules for the administration of this section including the authority to require the submission of reports and information pertaining to the administration of this section by law enforcement and agencies, tribal law enforcement agencies, jails, juvenile detention facilities, and schools approved by the

board and operated by or for this state or any political subdivision of the state for the specific purpose of training law enforcement recruits, law enforcement officers, tribal law enforcement recruits, tribal law enforcement officers, jail officer recruits, jail officers, juvenile detention officer recruits, or juvenile detention officers in this state.

SECTION 23. 165.85 (3) (am) of the statutes is created to read:

165.85 (3) (am) Establish minimum qualification standards for admission to preparatory law enforcement, jail, or juvenile detention officer training for preservice students and recruits, but not for department of corrections correctional officers. The standards shall relate to the competence and reliability of persons to assume and discharge the responsibilities of law enforcement, tribal law enforcement, jail, or juvenile detention officers. The board shall prescribe the means for presenting evidence of fulfillment of these requirements.

SECTION 24. 165.85 (3) (b) of the statutes is amended to read:

165.85 (3) (b) Establish minimum educational ~~and~~, training, and recruitment standards for admission to employment as a law enforcement ~~or~~, tribal law enforcement, jail, or juvenile detention officer in permanent positions and in temporary, probationary or part-time status. The standards shall relate to the competence and reliability of persons to assume and discharge the responsibilities of law enforcement, tribal law enforcement, jail, or juvenile detention officers. Educational and training standards for tribal law enforcement officers under this paragraph shall be identical to standards for other law enforcement officers. The board shall prescribe the means for presenting evidence of fulfillment of these requirements.

SECTION 25. 165.85 (3) (cm) of the statutes is renumbered 165.85 (3) (cm) (intro.) and amended to read:

165.85 (3) (cm) (intro.) Decertify law enforcement, tribal law enforcement, jail, or juvenile detention officers who terminate do one of the following:

1. Terminate employment or are terminated, ~~who violate.~~
2. Violate or fail to comply with a rule, policy, or order of the board relating to curriculum ~~or~~, training, ~~who falsify, or recruitment.~~
3. Falsify information to obtain or maintain certified status, ~~who are.~~
4. Are certified as the result of an administrative error, ~~who are.~~
5. Are convicted of a felony or of any offense that, if committed in Wisconsin, could be punished as a felony, ~~who are.~~
6. Are convicted of a misdemeanor crime of domestic violence, ~~or who fail as defined in 18 USC 921 (a) (33), or are convicted of domestic abuse, as defined in s. 968.075 (1) (a), or the conviction is subject to the imposition of the domestic abuse surcharge under s. 973.055 (1), regardless of whether any part of the surcharge is waived by the court under s. 973.055 (4).~~

8. Fail to pay court-ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse, or who fail to comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings.

(cp) The board shall establish procedures for decertification under par. (cm) in compliance with ch. 227, except that decertification for ~~failure to pay court-ordered payments of child or family support, maintenance, birth expenses, medical expenses, or other expenses related to the support of a child or former spouse or for failure to~~

~~comply, after appropriate notice, with a subpoena or warrant issued by the department of children and families or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings~~ an action described under par. (cm) 8. shall be done as provided under sub. (3m) (a).

SECTION 26. 165.85 (3) (cm) 7. of the statutes is created to read:

165.85 (3) (cm) 7. For any crime listed in subd. 5. or 6., enter into any of the following if the board determines that certification is not in the best interest of the public:

a. A deferred judgment and sentencing agreement or deferred sentencing agreement, whether pending or successfully completed.

b. A deferred prosecution agreement, whether pending or successfully completed.

c. A pretrial diversion agreement, whether pending or successfully completed.

SECTION 27. 165.85 (4) (a) 7. d. of the statutes is created to read:

165.85 (4) (a) 7. d. Each officer who is subject to this subdivision shall annually complete at least 8 hours of scenario-based training on use-of-force options, focusing on skills and tactics that minimize the likelihood of using force, including de-escalation tactics. In this subd. 7. d., “de-escalation tactics” are actions and techniques used by law enforcement officers to slow down or stabilize a potentially unstable situation to allow for more time, options, and resources for resolution or prevention of an incident. Hours of training completed under this subd. 7. d. shall count toward the hours of training required under subd. 7. a.

SECTION 28. 165.85 (4) (em) of the statutes is created to read:

165.85 (4) (em) *Officer recruitment.* 1. When a law enforcement agency, tribal law enforcement agency, jail, or juvenile detention facility recruits for new officers,

the interviewing agency shall require each candidate that it interviews for a law enforcement, tribal law enforcement, jail, or juvenile detention position, who is or has been employed by another law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency to execute a written waiver that explicitly authorizes each law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or other government agency to disclose the candidate's employment files to the interviewing agency, and releases the interviewing agency and each law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency that employs or has employed the candidate from any liability related to the use and disclosure of the candidate's employment files.

2. A law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency may disclose a candidate's employment files by either providing copies to the interviewing agency or allowing the interviewing agency to review the files at the offices of the law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency that employed the candidate.

3. A candidate who refuses to execute the waiver shall not be considered for employment by the interviewing agency or considered for certification by the board.

4. The interviewing agency shall, at least 30 days prior to making its hiring decision, submit the waiver to each law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency that has employed the candidate. A law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency that receives a waiver shall make the

requested employment files available to the interviewing agency not more than 21 days after receiving the waiver.

5. The interviewing agency may also conduct an official oral interview of individuals from the law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency that employed the candidate.

6. A law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency is not required to provide the candidate's employment records if the agency or facility is prohibited from providing the employment records pursuant to a binding nondisclosure agreement to which the law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency is a party if the agreement was executed before the effective date of this subdivision [LRB inserts date].

7. No law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency may enter into a nondisclosure agreement preventing an interviewing law enforcement agency, tribal law enforcement agency, jail, or juvenile detention facility from viewing employment files after the effective date of this subdivision [LRB inserts date].

8. A law enforcement agency, tribal law enforcement agency, jail, juvenile detention facility, or government agency is not liable for complying with the provisions of this paragraph or participating in an official oral interview with an investigator from the interviewing agency, regarding the candidate.

SECTION 29. 165.85 (4m) of the statutes is created to read:

165.85 (4m) BEST PRACTICES. The board shall develop, and review at least once every 2 years, a model use of force policy for law enforcement agencies that does all of the following:

(a) Incorporates the principles under s. 66.0511 (2).

(b) Addresses interactions with individuals with mental disorders, alcohol or drug problems, dementia disorders, and developmental disabilities.

(c) Limits the use of force against vulnerable populations, including children, elderly individuals, pregnant women, individuals with physical or mental disabilities, and individuals with limited English proficiency.

(d) Includes other best practices that the board identifies.

SECTION 30. 165.988 of the statutes is created to read:

165.988 Violence interruption grant program. From the appropriation accounts under s. 20.455 (2) (eq) and (ks), the department shall provide grants to community organizations that are utilizing evidence-based outreach and violence interruption strategies to mediate conflicts, prevent retaliation and other potentially violent situations, and connect individuals to community supports.

SECTION 31. 175.65 of the statutes is created to read:

175.65 Law enforcement agency employment files. Each Wisconsin law enforcement agency, as defined in s. 165.85 (2) (bv), shall keep an employment file, as defined in s. 165.85 (2) (ap), for each person the agency employs.

SECTION 32. 895.440 of the statutes is created to read:

895.440 Unnecessarily summoning officer; action for. (1) A person may bring a civil cause of action for damages against another person who, with the intent to do any of the following, knowingly causes a law enforcement officer to arrive at a location to contact the person:

(a) Infringe upon a right of the person under the Wisconsin Constitution or the U.S. Constitution.

(b) Unlawfully discriminate against the person.

(c) Cause the person to feel harassed, humiliated, or embarrassed.

(d) Cause the person to be expelled from a place in which the person is lawfully located.

(e) Damage the person's reputation or standing within the community.

(f) Damage the person's financial, economic, consumer, or business prospects or interests.

(2) The burden of proof in a civil action under sub. (1) rests with the plaintiff to prove his or her case by a preponderance of the credible evidence.

(3) If the plaintiff prevails in a civil action under sub. (1), he or she may recover the greater of special and general damages, including damages for emotional distress, or an amount equal to \$250 from each defendant found liable; punitive damages; and costs, including all reasonable attorney fees and other costs of the investigation and litigation that were reasonably incurred.

SECTION 33. 940.203 (1) (c) of the statutes is amended to read:

940.203 (1) (c) "~~Law enforcement officer~~" ~~means any person who currently is or was employed by the state, by any political subdivision, or as a tribal law enforcement officer for the purpose of detecting and preventing crime and enforcing laws or ordinances and who is authorized to make arrests for violations of the laws or ordinances the person is employed to enforce, whether that enforcement authority extends to all laws or ordinances or is limited to specific laws or ordinances~~ has the meaning given in s. 165.85 (2) (c) and includes a person who formerly was a law enforcement officer under that definition.

SECTION 34. 968.14 (title) of the statutes is amended to read:

968.14 (title) Use Announcement requirement and use of force.

SECTION 35. 968.14 of the statutes is renumbered 968.14 (2).

SECTION 36. 968.14 (1) of the statutes is created to read:

968.14 (1) When executing a search warrant, a law enforcement officer may not enter the premises subject to the warrant without first identifying that he or she is a law enforcement officer and announcing the authority and purpose of the entry.

SECTION 9227. Fiscal changes; Justice.

(1) VIOLENCE INTERRUPTION GRANT PROGRAM. There is transferred from the appropriation account under s. 20.455 (2) (f) to the appropriation account under s. 20.455 (2) (ks), \$1,000,000 in fiscal year 2021-22.

(END)