
Wisconsin Legislative Council

AMENDMENT MEMO



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Contact: Amber Otis, Senior Staff Attorney

2021 Assembly Bill 108

**Assembly Substitute
Amendment 1 and Assembly
Amendment 1 to Assembly
Substitute Amendment 1**

BACKGROUND

State law requires each person in charge of a state or local law enforcement agency to prepare a written policy or standard regulating the use of force by law enforcement officers in the performance of their duties, and make the policy or standard available for public scrutiny. The statutes do not specify any content that must be included in each agency's use-of-force policy or standard.¹

Also, under current law, a state employee may receive employment protection from retaliatory action for disclosing workplace abuses, commonly referred to as "whistleblower protections." The protections apply to most state employees, if certain steps are taken to disclose the information and if the disclosures are of certain types of information. The state employee whistleblower protections do not apply to employees in local units of government. A local law enforcement officer who believes he or she has been retaliated against by his or her employer for disclosing workplace abuses, however, may receive some protection from retaliation under the "just cause" standard, a seven-factor analysis enumerated by statute that applies to disciplinary hearings for law enforcement officers.

2021 ASSEMBLY BILL 108

Required Content in Use-of-Force Policies

The bill requires each law enforcement agency to provide all of the following in its use-of-force policy:

- The instances in which a use of force must be reported.
- How to report a use of force.
- A requirement that officers who engage in or observe a reportable use of force report it.

¹ A use-of-force policy adopted by the officer's employing law enforcement agency is one of several sources of authority that set the parameters for appropriate use of force by a law enforcement officer. Use of force by law enforcement is governed broadly by certain constitutional principles rooted in the Fourth Amendment of the U.S. Constitution, which generally protects a person's right to be free from unreasonable searches and seizures. An officer is also trained on certain defensive and arrest tactics as determined by the Law Enforcement Standards Board, a governmental board responsible for establishing educational and training standards for and certifying law enforcement officers in this state.

Whistleblower Protections

Under the bill, a law enforcement officer may not 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 did any of the following:

- Reported, or is believed to have reported, any violation of an agency's use-of-force policy.
- 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 an agency's use-of-force policy.
- Provided any information, or is believed to have provided any information, about a violation of an agency's use-of-force policy.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 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 or who intentionally fails to report an intervention.

Use-of-Force Standard

Under the substitute amendment, a law enforcement officer is required, 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 substitute amendment 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. Under the substitute amendment, 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 substitute amendment 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 substitute amendment 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 report an intervention as required.

Whistleblower Protections

The substitute amendment generally maintains the bill's protections from adverse employment actions for officers reporting certain information, but grants those protections to officers who report, or are believed to have reported, any noncompliant use of force and other related acts, rather than to officers who report a violation of an agency's use-of-force policy, as provided under the bill.

ASSEMBLY AMENDMENT 1 TO ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Amendment 1 to Assembly Substitute Amendment 1 clarifies two provisions related to the duty to intervene. First, the amendment extends the misdemeanor penalty to also apply when an officer intentionally fails to intervene when required to do so under the substitute amendment. Second, the amendment applies the whistleblower protections to an officer who intervenes to prevent or stop a noncompliant use of force.

BILL HISTORY

Representatives Steineke and Stubbs offered Assembly Substitute Amendment 1 on June 1, 2021, and Assembly Amendment 1 to Assembly Substitute Amendment 1 on June 2, 2021. On June 2, 2021, the Assembly Committee on Government Accountability and Oversight recommended all of the following actions:

- Adoption of Assembly Amendment 1 to Assembly Substitute Amendment 1 on a vote of Ayes, 7; Noes, 1.
- Adoption of Assembly Substitute Amendment 1, as amended, on a vote of Ayes, 6; Noes, 2.
- Passage of Assembly Bill 108, as amended, on a vote of Ayes, 6; Noes, 2.

AO:jal