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January 11th, 2023

Assembly Committee on Judiciary

Testimony on Assembly Bill 544

Thank you Chairman Tusler and members of the Assembly Committee on Judiciary for considering Assembly Bill (AB) 544.

Today, I am honored to present AB 544 to amend state statutes concerning court-issued criminal complaints in cases of self-defense. Every Wisconsinite has, since our state's inception, been imbued with the right to defend themselves, their family, and their communities. AB 544 is designed to reinforce this right and protect individuals, especially our law enforcement officers, from being subjected to repetitive and unnecessary legal proceedings in situations where they have acted in self-defense.

The current state statute has, in recent years, been exploited to unfairly target two of our state's law enforcement officers. Officer Mensah used self-defense to protect himself while on the job in 2015. After several investigations, the court confirmed he acted in self-defense. In 2021, Milwaukee County Circuit Court Judge Glenn Yamahiro found probable cause to investigate Waukesha County Sheriff's Deputy Joseph and assigned two special prosecutors to do so. This nearly year-long investigation, which mirrored the findings of four prior inquiries by various agencies, concluded with no charges filed, reaffirming Officer Mensah's actions as justified self-defense. It's concerning that such investigations, which echo previous exonerations, can be perpetuated, consuming significant time and resources.

Moreover, a similar situation unfolded with Madison Police Officer Matthew Kenny, who faced a petition for charges related to an incident seven years prior, despite the Dane County District Attorney already ruling the action as justified self-defense.

This bill will prevent courts from conducting repetitive hearings on cases where the district attorney has declined to issue a complaint because the person was acting in self-defense when there is no new evidence presented. This bill seeks to uphold the decisions made by elected district attorneys and protect not only our law enforcement officers but also private citizens from being subjected to redundant and damaging investigations after their actions have been legally justified. The intent of this bill is to alleviate our citizens as well as our law enforcement officers from costly and reputation-assailing repeat investigations when their innocence has already been found.

This legislation has widespread support from stakeholders across the justice and civil rights spectrums. I extend my gratitude to the committee for reviewing AB 544 and urge timely action on this pivotal legislation.



# ROB HUTTON

STATE SENATOR | 5<sup>th</sup> DISTRICT

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January 11, 2024

TO: Assembly Committee on Judiciary

FR: Senator Rob Hutton

RE: Assembly Bill 544 — Court-issued criminal complaints if the person's actions were in self-defense

Thank you for holding a hearing on Assembly Bill 544. This bill limits baseless investigations meant to harass police officers who were involved in an incident of justifiable self-defense unless new evidence is presented.

Current law provides for an archaic “John Doe” process that can be used to open investigations into an individual. A John Doe proceeding may be convened either by a district attorney or by a complaint to a judge by a third party in cases where the district attorney declined to issue charges. This process is being used with more frequency against police officers.

Anybody can file such a complaint with a court and request the initiation of a John Doe process. This process has been used by political activists to harass former Wauwatosa Police Officer Joseph Mensah, despite him being cleared of any wrongdoing after multiple investigations.

This obscure tactic was also used against Madison Police Officer Matthew Kenny. A similar petition was filed with the Dane County Circuit Court requesting he be charged for the 2015 shooting of Tony Robinson. Dane County District Attorney Ismael Ozanne had previously ruled that Officer Kenny’s use of deadly force was justified and he would not face charges.

This provision of the Wisconsin Statutes is being abused to usurp the authority of an elected district attorney to re-evaluate the facts of the case and reverse a decision to not file criminal charges because the officer clearly acted in self-defense. Activists are using this statutory provision to target law enforcement officers.

This bill would prevent courts from holding such hearings when the district attorney has refused to file charges because the person was acting in self-defense, unless new evidence is presented that the person was not acting in self-defense.

This bill has the support of the Badger State Sheriffs’ Association, Wisconsin Chiefs of Police Association, Wisconsin Sheriffs and Deputy Sheriffs Association, and the Wisconsin State Lodge of the Fraternal Order of the Police.

Again, thank you for your time and consideration of this bill. I respectfully ask for your support.



# Wisconsin State Lodge *Fraternal Order of Police*



PO Box 206 West Bend, WI 53095

**Ryan Windorff**  
President

**Mark Sette**  
Vice President

**Shane Wrucke**  
Secretary

**Randy Winkler**  
Treasurer

**Tim Toth**  
Second Vice President

**Sean Marschke**  
Sergeant at Arms

**Don Kapla**  
Immediate Past President

**Jerry Johnson**  
National Trustee

January 1, 2024

## Wisconsin Fraternal Order of Police Testimony in Support of Assembly Bill 544

### Assembly Committee on Judiciary

My name is Ryan Windorff, and I am the President of the Wisconsin State Lodge of the Fraternal Order of Police. The Fraternal Order of Police is the world's largest organization of sworn law enforcement officers, with more than 372,000 members in more than 2,200 lodges. The Wisconsin State Lodge proudly represents more than 3,200 members in 32 lodges throughout the state. We are the voice off those who dedicate their lives to protecting and serving our communities. We are committed to improving the working conditions of law enforcement officers and the safety of those we serve through education, legislation, information, community involvement and employee representation.

Every citizen of our state has the right to defend themselves from harm. Wisconsin statutes explicitly state that persons are privileged to threaten or intentionally use force against another to defend themselves or others. Law enforcement officers share this right, like everyone else, however have the added responsibility to protect and serve their community. This duty often requires them to respond to and intervene in dangerous situations that require them to use force to defend themselves or others more often than the average citizen.

Despite these job requirements, use of force by law enforcement that results in serious injury or death is rare. In 2023, 19 use of force incidents in Wisconsin resulted in serious injury and 18 resulted in death. Not surprising to those that are familiar with the training and professionalism of our law enforcement officers in Wisconsin, all of these use of force incidents were deemed to be legally justified.

Under current law, the elected district attorney in the county in which the incident occurred is tasked with reviewing use of force incidents to ascertain whether such force meets the criteria of self-defense. For law enforcement officers, when an act or omission by an officer leads to the death of an individual, the law mandates that an investigation be conducted by investigators from an outside agency and that the investigative findings be forwarded to the district attorney for a similar assessment. If the district attorney decides that there was not requisite justification for the use of force, they may decide to issue a complaint to charge the person with a crime corresponding to the level of force used. In the case of a self-defense claim, the district attorney must carefully review the facts and circumstances of the use of force to determine if the person's actions were a privileged use of self-defense under the law.



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Current law also provides that if a district attorney refuses to issue a complaint, any person may petition a Circuit Court Judge to conduct a hearing to determine if there is probable cause to believe that the person committed a crime and, if so, issue a complaint. These hearings are conducted ex parte where only one side presents evidence and there is no right of cross-examination. The person who is the subject of the proposed prosecution does not have the right to participate in any way or to obtain reconsideration of the ultimate decision reached.

This seldom-used law was employed in 2021 in the midst of an anti-police movement that infected our state and country. After receiving such a petition, Milwaukee County Circuit Court Judge Glenn Yamahiro found probable cause to believe that former Wauwatosa Police Officer and current Waukesha County Sheriff's Deputy Joseph Menash committed a homicide when he shot and killed Jay Anderson after a 2016 encounter where Anderson ignored commands and reached for a gun during an interaction with Officer Mensah. The shooting was investigated by the Milwaukee Police Department and reviewed by Milwaukee County District Attorney John Chisolm, the latter of whom found that Officer Mensah was privileged to use self-defense and would not face charges. Officer Mensah was similarly cleared of any wrongdoing by an internal investigation by the Wauwatosa Police Department, an investigation by the United States Attorney's Office, and an independent investigation conducted by former United States Attorney Steve Biskupic.

Judge Yamahiro assigned two special prosecutors who, after almost a year of investigation, found that charges would not be filed against Officer Mensah because, like the investigation before, Officer Mensah was acting in self-defense. While officer Mensah was eventually cleared, again, for the years old incident it brought untold stress to his personal and professional life with negative publicity and the financial strain of hiring an attorney to defend him in the criminal proceedings. But Officer Mensah cannot put this incident behind him, because there is no statute of limitation on homicide and since he was never charged, there is nothing stopping anyone from re-petitioning the court to hold an indefinite number of these proceedings.

In March 2022, shortly after this obscure tactic was used against Officer Mensah, a similar petition was filed with the Dane County Circuit Court against Madison Police Officer Matthew Kenny requesting he be charged for the 2015 shooting of Tony Robinson. Dane County District Attorney Ismael Ozanne had previously ruled that Officer Kenny's use of deadly force was justified and he would not face charges. After months of legal proceedings, Dane County Circuit Court Judge Stephen Ehlke dismissed the petition.

We recognize that the loss of any life is tragic and the loss of life from the use of force by a law enforcement officer, even if justified, can be difficult for the family and friends of the person lost to accept. These victim's families have rights, and this legislature has recognized those rights by prescribing specific requirements for the investigation and review of these incidents as I previously discussed. But these rights do not usurp a law enforcement officer's, or anyone else's, right to defend themselves, or others, when done appropriately within the confines of the law.



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Even if the law enforcement officer is not physically harmed in a use of force incident, one aspect that is often ignored is the emotional impact these incident have on the involved officers. Officers swore an oath to defend the constitution and protect their communities. They are tasked with the unpleasant responsibility of making split-second decisions when presented with threats. When an officer uses force that results in serious harm or death, they are immediately placed on administrative leave pending the investigation, which can take months to years, as could the district attorney review process. This isolates the officer and adds to the trauma experienced as a result of the incident. I know several officers who have been involved in use of force incidents who have suffered emotionally and been diagnosed with anxiety, depression, and post-traumatic stress disorder after the incident. Some of these officers have had to leave the law enforcement profession because of these diagnoses.

After the criminal investigation and review process is completed, if the review determines that the use of force was legally justified, the employing agency then does a separate investigation to determine if the officer abided by the department's policies and procedures. In some cases, as in Officer Mensah's case, the United States Attorney's Office does yet another investigation to determine if the officer violated the person's civil rights. These are all checks and balances, that are already in place, that ensure that officers who use force are justified in doing so and are acting within the confines of the law.

Because of the provision in the law which allows any person to petition the circuit court to bring charges, law enforcement officers or anyone else who defends themselves are subject to never-ending scrutiny in the form of legal proceedings that require them to continue to defend themselves and their actions, preventing them from focusing on healing with any level of certainty. For law enforcement officers still employed in the profession, these continued legal proceedings often bring new periods of administrative suspension which takes an officer off of the street in a time when departments across the state are struggling to fill their shifts at the minimum staffing levels.

Under this bill, if the district attorney refused to issue a complaint because the person was privileged to use force for self-defense, the court may not conduct a hearing or issue a complaint unless the court has new evidence that the person's actions were not self-defense. Incidents of self-defense are different than other crimes, in that they already demand the careful review of the district attorney to decide whether a complaint should be filed. In fact, in law enforcement use of force cases incidents that involve death, the law requires it. These are not cases that are ignored or not addressed by the criminal justice system, a tremendous amount of resources are invested into their review to ensure that actions were justified and proper. If they are deemed to be unlawful, our criminal justice system has and does prosecute officers and citizens who violate the law and the rights of others. But if they are deemed lawful, the lives of those involved should not be able to be permanently disrupted by those who are simply not happy with the result.



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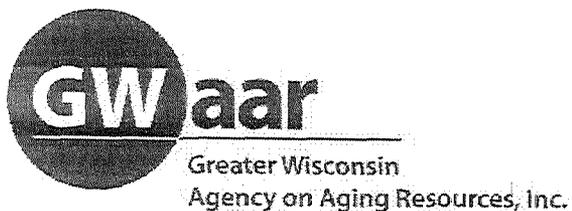
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No person should have to go through what Officers Mensah and Kenny went through. When I began my career in law enforcement, my greatest concern was getting seriously injured or killed and not being able to come home to my family. I trained countless hours on professional communication, defense and arrest tactics, and situational awareness to make sure that I was as tactically sound as I could be to be able to protect my community and come home at the end of my shift. Now, the greatest concern of mine and many other officers in our state, is being publicly maligned, fired, sued, or criminally charged for doing my job, even though I follow my training, policies and procedures of my agency, and the law. Many officers are deciding that this risk is no longer worth it and choosing to leave law enforcement, contributing to our already discouraging retention issues amongst our profession.

This bill will correct the exploitation of this legal provision and ensure that due process is not infringed for those put in already difficult situations. It will further prevent years of wasted resources and languishing investigations on incidents that have already been thoroughly investigated through a process prescribed by law.

I want to thank you for your attention to this matter and for the opportunity to testify in support of this bill.



Date: January 11, 2024

To: Chairperson Tusler and members of the Assembly Judiciary Committee

From: Janet L. Zander, Advocacy & Public Policy Coordinator

Re: **Support for AB 556** – expediting criminal proceedings when a victim or witness is an elder person and preserving the testimony of a crime victim or witness who is an elder person.

Thank you for this opportunity to share testimony on AB 556. My name is Janet Zander and I serve as the Advocacy and Public Policy Coordinator for the Greater Wisconsin Agency on Aging Resources, Inc. (GWAAR). GWAAR is a nonprofit agency committed to supporting the successful delivery of aging programs and services in our service area consisting of 70 counties (all but Dane and Milwaukee) and 11 tribes in Wisconsin. We are one of three area agencies on aging (AAAs) in Wisconsin. We provide lead aging agencies in our service area with training, technical assistance, and advocacy to ensure the availability and quality of programs and services to meet the changing needs of older people in Wisconsin. Our mission is to deliver innovative support to lead aging agencies as we work together to promote, protect, and enhance the well-being of older people in Wisconsin. There are over one million adults aged 60 and older residing in our service area. **GWAAR provides several other services in addition to its role as an AAA, including operation of the state's Elder Abuse Hotline Program. As of October 2023, the Elder Abuse Hotline was projecting a call volume for the year of over 1600, which represents nearly a 65% increase in calls over 2022.**

The number of reported elder abuse cases in the state continues to rise, increasing by nearly 81% percent from 2009<sup>1</sup> to 2022 when there were 9,621 reported cases.<sup>2</sup> The actual number of elder abuse cases is likely much higher, as fear and embarrassment lead to underreporting of abuse. According to the U.S. Department of Justice more than 1 in 10 Americans aged 65 and older experience some form of elder abuse each year.<sup>3</sup>

The consequences of elder abuse can be devastating, placing abused elders at increased risk of hospitalization, nursing home admission, and even death. Given the significant negative impacts of elder abuse and the amount of stress placed on elder victims and witnesses, **GWAAR supports AB 556** which requires courts to expedite criminal proceedings in cases involving a victim or witness who is 60 years of age or older and provides an opportunity to preserve testimony through a video-taped court hearing. Recording the testimony in a timely manner preserves the older victim's/witness's testimony in case of

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<sup>1</sup> Wisconsin Coalition Against Domestic Violence, Volume 29, Issue 2; <https://www.endabusewi.org/wp-content/uploads/2018/11/Chronicles-29-2.pdf>

<sup>2</sup> Wisconsin's Annual Elder Abuse and Neglect Report: 2022, Wisconsin Department of Health Services. Retrieved on January 2, 2024 from <https://www.dhs.wisconsin.gov/publications/p00124.pdf>.

<sup>3</sup> About Elder Abuse, U.S. Department of Justice. Retrieved on January 2, 2024 from <https://www.justice.gov/elderjustice/about-elder-abuse>.

J. L. Zander – AB 556 Testimony – Assembly Committee on Judiciary\_1/11/24

illness, later incompetency or even death. Under the bill an older witness, if there is good cause, may even provide testimony into the record of the hearing by telephone or live audiovisual means, thereby minimizing any further negative impacts on the older adult's health, independence, and dignity.

We appreciate the interest in and efforts of policy makers to protect older adults against elder abuse, neglect, and exploitation and to address this growing problem. We look forward to continuing to work with you on policies that improve the quality of life of older people in Wisconsin.

Thank you for your consideration of these comments supporting AB 556.

Contact:

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