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February 17, 2013

Assembly Committee on State Affairs and Government Operations
Public Hearing
11:00 AM – 328 Northwest

Chairman Weininger and Members of the Committee:

Thank you for the opportunity to testify on behalf of AB 768. This legislation authorizes Marquette University to enter into an agreement with the Wisconsin Attorney General or designees or the Milwaukee Police Department to establish a university police department and employ university police officers. This is similar to four-year UW System campuses' policies.

This legislation allows for Marquette University police officers to have the same authority as a Milwaukee law enforcement officer to maintain order, detect and prevent crime, enforce laws and ordinances, and make arrests for violations of laws and ordinances. Currently, 21 states and the District of Columbia, including Illinois, Indiana, Michigan, and Ohio, allow for the commissioning for private college and university campus public safety officers.

AB 768 requires each officer to meet training and certification standards provided by the Law Enforcement Standards Board. Additionally, Marquette University will maintain liability insurance for these officers as well as written policies on arrests and rendering aid.

Thank you again for taking the time to discuss AB 768. I am open to any questions the committee may have.

Thank you,

A handwritten signature in black ink, appearing to read "Dale P. Kooyenga". The signature is fluid and cursive, written over a light blue horizontal line.

Rep. Dale P. Kooyenga



Alberta Darling

Wisconsin State Senator
Member, Joint Committee on Finance

Assembly Bill 768 Marquette Police Force

Thank you Chairman Weininger and committee members,

Unfortunately, safety concerns on college campuses are becoming more prominent for students and their families. Three days ago marked the six year anniversary of the mass shooting at Northern Illinois University, which is located just a couple hours to our south. While tragic events like the one at NIU and Virginia Tech draw headlines, college campuses experience crime like any area where large numbers of people gather.

In response to safety concerns, Marquette's campus is currently patrolled by a public safety force that is licensed as "private detective agency" by the Wisconsin Department of Safety and Professional Services. Marquette's safety officers are armed, but they are not licensed to make arrests and they have no access to law enforcement databases. This severely hampers their efforts to keep students safe on campus.

After the tragedy at Virginia Tech in 2007, the Governor's Task Force on Campus Safety recommended that Wisconsin join the 21 other states and the District of Columbia who allow the creation of police forces on private colleges and universities. Illinois, Michigan, Indiana, and Ohio currently allow for this type of policing but Wisconsin does not. I believe it's time for Wisconsin to make this change.

Local law enforcement officials including Milwaukee County Sheriff David Clarke, Milwaukee Police Chief Ed Flynn, and Milwaukee County District Attorney John Chisholm, are supportive of a university police force for Marquette and are willing to work with the school to implement that force if this bill becomes law. This is a situation where locals are willing and able to collaboratively make Milwaukee safer – they are here asking the Legislature for the necessary statutory changes to make their collaboration possible.

Thank you again for hearing Assembly Bill 768. I respectfully request that the committee support this important bill which will help make Marquette even safer for students and faculty and the surrounding area.



MARQUETTE
UNIVERSITY

To: Rana Altenburg
Vice President for Public Affairs

Mary Czech-Mrochinski
Director of Governmental and Community Affairs

From: Douglas O. Smith
Associate General Counsel

Subject: **Commissioning Legislation**

Date: February 13, 2014

I have reviewed the draft legislation that you provided earlier today. I have identified four changes to the legislation that would be appropriate and would allow the legislation to facilitate the establishment of a university police department at Marquette.

Parties to Agreement Establishing University Police Department

There are two related changes in this regard. First, in the “Analysis by the Legislative Reference Bureau,” the first two lines should read: **“This bill authorizes Marquette University to enter into an agreement with the attorney general or designee or the Milwaukee Police Department to establish a university police department and”**. Second, in section 2, with respect to s.175.42(2)(a), the first two lines should read (page 2, lines 20 and 21): **“The university may enter into an agreement with the attorney general or with the Milwaukee Police Department to establish a university police department and employ”**.

ANALYSIS: Marquette University’s Department of Public Safety has worked effectively with the Milwaukee Police Department for many years, and MPD is in a unique position to understand the required protocols for interaction and coordination with a university police department. The issues related to the establishment of a university police department are primarily operational in nature, and MPD has the necessary expertise with respect to the operation of a university police department. Consequently, it is appropriate that any such agreement be the product of discussions directly between the university and the Milwaukee Police Department.

Oversight of University Police Department

In section 2, with respect to s.175.42(2)(a), the sentence reading as follows should be deleted (page 3, lines 3 through 6): “The agreement entered into with the city of Milwaukee shall provide methods for ensuring the accountability of the university police department and the university police officers.” In its place, the following may be substituted: **“The agreement establishing the university police force shall be subject to review by the City of Milwaukee Fire and Police Commission as part of its policy review under s.62.50(1m).”**

ANALYSIS: The legislation separately provides three key mechanisms for oversight. First, the involvement of the Wisconsin Attorney General in the drafting of the legislation and potentially in the conclusion of the agreement establishing the university police department can address any issues of public concern that might arise. Second, the university police department will be subject to Open Records Act requests, and the general public will be able to obtain copies of relevant records with respect to the operations of the university police department and seek whatever civil redress or oversight that might be required. Third, the university will remain financially responsible for the actions of university police officers and so will have every incentive to establish appropriate policies and procedures to assure accountability for the activities of its officers.

If some additional measure of accountability is required, the City of Milwaukee Police and Fire Commission, which already provides annual reviews and oversight concerning the operations of the Milwaukee Police Department, is the appropriate governmental entity to review any agreement establishing a university police department that will operate within the City of Milwaukee and will necessarily coordinate its operations with those of the Milwaukee Police Department.

Indemnification of State and Political Subdivisions

In section 2, with respect to s.175.42(4)(b), the sentence reading as follows should be deleted (page 4, lines 17-21): “If, notwithstanding par. (a), a court finds the state or a political subdivision of the state liable for any acts or omissions of a university police officer acting under the section, the university shall indemnify the state or political subdivision against that liability and against all reasonable attorney fees and expenses incurred in defending that action.” In its place, the following may be substituted: **“Marquette University shall pay in full any judgment in which Marquette University and a state or any political subdivision of the state is found jointly and severally liable for any action of a university police officer taken under authority of this section and shall reimburse the state or such political subdivision of the state for all reasonable attorney’s fees and expenses incurred in defending against such action.”**

ANALYSIS: Previous sections specify that "the university is liable for all acts and omissions of a university police officer while acting under this section." Consequently, to the extent that the university directs a university police officer to act or to refrain from acting, or a university police officer decides on his own or her own to act or to refrain from acting, in violation of law or in violation of a duty of care, the university will be civilly and perhaps criminally liable and will be required to pay any judgments, fines, or settlements that result.

To the extent that university police officers, acting in coordination with MPD, may follow instructions of MPD commanders as contemplated by the agreement establishing the university police department, the university will not be able to assert a defense of sovereign immunity. A state or political subdivision of the state will have the ability to assert a defense of sovereign immunity, however. If the university is obligated to indemnify the state or a political subdivision of the state under those circumstances, the defense of sovereign immunity will have been forfeited. The statutory requirements for the assertion for such a claim against the state or a political subdivision of the state will also have been waived. Consequently, the university will become civilly liable not only for the actions of its own university police officers but also for the actions of MPD commanders who may in certain situations be directing their activities. Such a shift of liability would require the university to implement protocols to prevent such liability, even when acceding to such direction by MPD commanders is in the public interest.

In addition, although the university would be obligated to indemnify the state or a political subdivision of the state, it will be deprived of the ability to control the defense of such suits and to propose a settlement without the approval of the state or the political subdivision of the state. Such restrictions are not consistent with commercial insurance policies and so will deprive the university of the ability to insure against such risks.

If, however, both the university and the state or a political subdivision of the state are, notwithstanding the language of s.172.45(4)(a) in the bill that prevents the state or a political subdivision of the state from being held liable for the actions of a university police officer, held jointly and severally liable for actions taken by a university police officer, it would be appropriate for the university to assume responsibility for the payment of such a judgment. The state and the political subdivisions of the state would retain control over their respective defenses of such claims; the language proposed above would be fully consistent with commercial insurance policy language; and the state and political subdivisions of the state, but not the university, would be able to assert the sovereign immunity defense wherever it is appropriate for them to do so.

Please let me know if you have any questions or concerns or require additional information concerning this matter.

Thanks.

**Testimony of Paul Mascari, Interim Associate Director of Operations
Marquette University, Department of Public Safety
Assembly Committee on State Affairs and Government Operations
Assembly Bill 768 and Assembly Amendment 1
February 17, 2014**

Good morning Chairman Weininger and members of the Committee. My name is Paul Mascari and I serve as the Interim Associate Director of the Marquette University Department of Public Safety. I have been at Marquette University's Department of Public Safety for 10 years and oversee the Department's patrol, crime prevention, and investigations units. Further, I am responsible for the recruitment, hiring, and training of new public safety officers, and am also a certified law enforcement firearms instructor. I spent nearly 10 years in the military, serving in the Marine Corps and Coast Guard Reserve throughout the United States, Middle East, and East Asia. I am pleased to be here today to testify in favor of Assembly Bill 768 and adoption of Assembly Amendment 1.

I am also joined today by Marquette University's Associate General Counsel, Doug Smith, Vice President for Public Affairs, Rana Altenburg, and Director of Governmental and Community Affairs, Mary Czech-Mrochinski.

Marquette University's Department of Public Safety has evolved over the years. Since 2001, Marquette University's public safety force has operated as a "private detective agency" licensed by the Department of Safety and Professional Services (DSPS). This license under DSPS allows Marquette University to have an armed public safety force; it does not allow for arrest powers. Currently, only 4-year University of Wisconsin System schools have the statutory authority to establish a sworn police force on campus.

Marquette University has a proven track record of deterring crime (both on and off campus) and creating a positive law enforcement presence in the community. Marquette University's Department of Public Safety (DPS) maintains a sophisticated, highly professional staff, complete with a state-of-the-art camera and video surveillance system. Marquette University's DPS patrols a one square mile area that includes the campus and near off-campus neighborhood 24 hours per day, 365 days per year. The level of law enforcement collaboration is outstanding.

Currently, Marquette University's Department of Public Safety employs about 90 individuals, 51 of whom are qualified to be armed under the University's "private detective agency" status with the State of Wisconsin. Under its current classification as a "private detective agency", Marquette University Department of Public Safety officers do not have the authority to arrest suspects and are limited to making "citizen's arrests." Our officers also do not have access to non-public law enforcement records which would allow them to better address situations and possible suspects. Because of this, our officers often have to wait for the Milwaukee Police Department (MPD) to arrive and process a situation or subject. This keeps our officers from

continuing to patrol the neighborhood. While the arrangement with MPD is workable, it could be more efficient.

In 2013, the Marquette University Department of Public Safety's Command Information Center, which incorporates nearly 700 cameras that help monitor the university's patrol zone, fielded more than 30,000 calls for service, ranging from a student needing a walking escort to the library to reporting a possible crime.

We believe allowing for such officers to serve as "peace officers" for the purpose of maintaining public order, detecting and preventing crime, and enforcing state laws and local ordinances on the Marquette University campus and in adjacent areas, as described in the agreement is a logical and appropriate step in furthering the ongoing investment in protecting the Marquette neighborhood. In addition, as contemplated in the agreement, Marquette University may assign additional duties to the university police department. This bill requires that a university police officer meet training and certification standards provided by the Law Enforcement Standards Board and that the university has written policies on arrests and rendering aid.

I believe various law enforcement entities, such as the Wisconsin Department of Justice, Milwaukee Police Department, Milwaukee County Sheriff's Office, Milwaukee County District Attorney's Office, etc., have already communicated their support for this legislation directly to you or will do so today.

Assembly Amendment 1 makes several important technical changes to the bill and Marquette University respectfully requests adoption of this amendment to the proposed legislation.

Marquette University's Department of Public Safety has worked effectively with the Milwaukee Police Department for many years, and MPD is in a unique position to understand the required protocols for interaction and coordination with a university police department. The issues related to the establishment of a university police department are primarily operational in nature. Consequently, it is appropriate that any such agreement be the product of discussions directly between the university and MPD.

For this reason, Marquette University supports the change in Assembly Amendment 1 on page 2 deleting line 21 and substituting "or with the city of Milwaukee police department."

The legislation separately provides three key mechanisms for oversight. First, the involvement of the Wisconsin Attorney General in the drafting of the legislation and potentially in the conclusion of the agreement establishing the university police department can address any issues of public concern that might arise. Second, the university police department will be subject to Open Records Act requests, and the general public will be able to obtain copies of relevant records with respect to the operations of the university police department and seek whatever civil redress or oversight that might be required. Third, the university will remain financially responsible for the actions of university police officers and so will have every incentive to

establish appropriate policies and procedures to assure accountability for the activities of its officers.

We are recommending an additional measure of accountability by the City of Milwaukee Police and Fire Commission, which already provides annual reviews and oversight concerning the operations of the Milwaukee Police Department. The Commission is the appropriate governmental entity to review any agreement establishing a university police department that will operate within the City of Milwaukee and will necessarily coordinate its operations with those of the Milwaukee Police Department. For this reason we support the second language change on page 3 of the Assembly Amendment 1.

The original language on page 4 of Assembly Bill 768, lines 17 to 21, also requires a technical change. Marquette University and its liability carrier are willing to waive any defense of sovereign immunity and assume liability for all acts and omissions of a university police officer.

Under the current language, if university police officers, acting in coordination with MPD, follow instructions of MPD commanders as contemplated by the agreement establishing the university police department, the defense of sovereign immunity, if appropriate, should remain available to the City of Milwaukee. If Marquette indemnifies the City of Milwaukee, however, that defense will be lost, and Marquette will have to pay claims that otherwise could not have been asserted. In addition, because Marquette's insurer would not have the right to control the defense of a claim against the City of Milwaukee, Marquette and not its insurer would have to bear the full cost of such claims.

Under the proposed technical change to page 4 of the Assembly Amendment, Marquette would have to pay any claims in which Marquette and the City of Milwaukee are held jointly and severally liable for actions taken by a university police officer. In that case, the City of Milwaukee would retain control over its defense of such claims; the City of Milwaukee, but not Marquette, would be able to assert the sovereign immunity defense; and Marquette would be able to obtain reimbursement of its costs of defense and any judgment from its liability insurer.

Finally, it should be noted that at least 21 states and the District of Columbia currently allow commissioning/granting of authority as peace officers of private college and university campus public safety officers. These states include Illinois, Indiana, Michigan, and Ohio.

Again, thank you for the opportunity to testify before you here today in support of Assembly Bill 768. I would be happy to answer any questions at this time.



BE A FORCE

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<http://www.milwaukee.gov/police>

Edward A. Flynn
Chief of Police

(414) 935-7200

February 17, 2014

Representative Chad Weininger
Chair, State Affairs and Government Operations
State Capitol
Madison, WI 53703

Representative Rob Swearingen
Co-Chair, State Affairs and Government
Operations
State Capitol
Madison, WI 53703

RE: AB 768 Authorizing Marquette University to create a police department and employ university police officers.

Dear Committee Members:

As Chief of Police for the City of Milwaukee, I am writing to express my support for AB 768, relating to the creation of a sworn police unit for Marquette University.

Currently, Marquette University's highly professionalized public safety force is licensed as a private detective agency with the state. While they are armed, they are unable to perform other critical duties that sworn law enforcement officers are authorized to execute. With passage of AB 768, Marquette University will be able to commence the creation of a university police department.

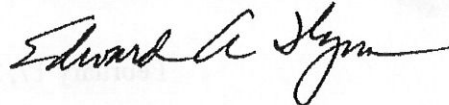
This bill would allow a more effective deployment of Milwaukee Police Officers to neighborhoods suffering from higher levels of street violence and crime while providing more efficient coverage of Marquette's campus. As sworn officers, Marquette's police force would be able to gain access to law enforcement records during field stops and investigations, enforce traffic laws, and garner increased compliance by students and the public.

This bill would hold Marquette's police force to the same standards of professionalism and training that my officers adhere to by requiring that a university police officer meet training and certification standards provided by the Law Enforcement Standards Board. It would also require that the university have written policies on arrests and rendering aid.

The partnership between the Milwaukee Police Department and Marquette University's security staff will be enhanced with the passage of AB 768. Currently, officers from the Milwaukee Police Department's District Three patrol the areas in and around the Marquette campus, which covers approximately one square mile of our City. With the passage of AB 768, Marquette's police force would increase the law enforcement presence to approximately 51 sworn officers, substantially improving the policing presence in both the Marquette campus area and the rest of District Three.

I ask that you support AB 768. Do not hesitate to contact my office at 414-935-7200 if you have questions or need additional clarification.

Sincerely,



EDWARD A. FLYNN
CHIEF OF POLICE

Cc: Milwaukee Delegation
Committee Members