



Van H. Wanggaard

Wisconsin State Senator

TESTIMONY ON SENATE BILL 118

Thank you Vice-Chair and Committee Members for attending today's hearing on Senate Bill 118, which creates an Independent Use of Force Advisory Committee related to critical incidents.

This bill is the product of many years of research. I've been working on this idea since a conference was held in my district in May, 2017. In 2017, experts from around the state and country, including from NASA, the NTSB, and academia came together to discuss how better to review, learn from, and prevent critical incidents involving police.

The conference concluded that critical incidents in policing are much like critical incidents in medicine and transportation. When there are critical incidents in a hospital, or connected with a plane crash, a review occurs. When properly reviewed by experts in the field, those critical incidents can reveal information on how to create best practices. The reviews in these instances aren't to cast blame or to find fault. It is to find out what happened, and whether the incident could be prevented in the future.

Currently, most police critical incidents are the subject of two investigations – each with a specific goal. The first is an internal investigation occurring within the police department. That investigation seeks to determine whether or not department rules were followed, and whether the officer should be subject to discipline. The second investigation is done by an outside agency, usually the Department of Justice or another law enforcement agency, to determine the facts about whether or not a criminal charge should be brought.

Both of these investigations have a similar goal – looking to see if “fault” exists. Whether we like it or not, certain members of the public don't trust either investigation - and that is a problem.

This bill is a new way to address this issue. This bill creates a board of subject matter experts to review evidence in police critical incidents. Think a group of people like Noble Wray, reviewing all the evidence. The board's goal is not to find fault. Its goal is to find out what happened, why it happened, and can a similar incident be prevented in the future. The board will be able to see all the evidence gathered from all investigations. The board, looking at all the evidence from all

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investigations, allows a fuller picture to be seen, and the board may be able provide new answers to open questions.

For most incidents, the internal and external investigations will provide all the facts and conclusions necessary as to what happened and why. But, as any investigator knows, sometimes a fresh set of eyes will find something or see something that was missed. Looking at the evidence without a specific purpose/end goal allows the evidence to be evaluated in a new light.

A good example of this is highlighted by the Jacob Blake investigations in Kenosha. Following the internal department investigation, and the external investigation by the Department of Justice, the Kenosha District Attorney asked use-of-force expert and former Madison police chief, Noble Wray to review the evidence to inform his decision. While the involvement of Noble Wray in Kenosha was tied to the potential prosecution in the case, under this bill, the board's investigation would not and could not be used in any legal proceedings criminal or civil.

At least annually, the board would produce a public report about the incidents reviews, their conclusions of facts, and any recommendations the board is comfortable making to use of force policies. Those recommendations can then be discussed and debated by policy makers at the state and local level to improve and prevent critical incidents.

I would like to thank all the stakeholders that worked with us over the last several years to write this legislation. That includes, in no particular order: The Wisconsin Chiefs of Police, Badger State Sheriffs, Deputy Sheriffs, Governor Evers, WI Professional Police, Milwaukee Police Association, Mr. Michael Bell, members of the UW and Arizona State Law Schools, the NTSB, and many others.

The bill has a lot of moving parts and is highly technical. I could stay here for the next hour describing the bill and probably will with questions, but I have also distributed to the committee of FAQ sheet that will answer many of them.

Thank you.

FREQUENTLY ASKED QUESTIONS ABOUT SENATE BILL 118

1- What does the bill do?

Senate Bill 118 creates a board of subject matter experts to review and investigate use-of-force incidents and, if appropriate, make recommendations as to how to avoid similar incidents in the future.

2- Who are these “subject matter experts”?

- *The director of the Training and Standards Bureau*
- *A mental health professional, appointed by NAMI*
- *A member appointed jointly by the UW and Marquette Law Schools*
- *A criminal defense attorney, appointed by the State Bar*
- *One member each appointed by:*
 - *WI Chiefs of Police Association*
 - *Badger State Sheriffs’ Association*
 - *WI Professional Police Association*
 - *WI Sheriffs & Deputy Sheriff Association*
 - *WI Troopers Association*
 - *Milwaukee Police Association*
 - *WI Police Executive Group*
 - *WI Training Academy Directors*

3- Who will staff the committee?

The committee will hire an executive director to staff the committee. The committee may also “acquire” (i.e. hire on a temporary basis) additional experts and advisors to provide information and perspective to the committee. These additional experts and advisors include, but are not limited to: firearms instructors, defensive and arrests tactics (DAAT) instructors, experts in cultural competency, instructors in professional communications, tactical response instructors, victim advocates, and mental health professionals.

4- What is the committee allowed to investigate?

The committee can investigate and analyze the causes of and contributing factors of the following:

- *Officer-involved great bodily harm or death*
- *Great bodily harm or death to an officer resulting from:*
 - *Intentional actions by non-officers, or*
 - *An accident or unintentional action of someone who is not an officer, if the officer is performing official duties*

5- Why only these instances, why not more?

Original drafts of the legislation contained a much broader scope of incidents to investigate, including less serious injuries and in jail settings. In our conversations with state and national experts, we determined that broader definitions could quite probably overwhelm the committee and undermine its work. In the future, those may be appropriate to be added, but until the committee gets its "sea legs", it should not be added.

6- How does the committee determine what to investigate?

In order to provide the committee with the most independence, most flexibility, and to use its resources wisely, the committee can determine on its own which critical incidents (that result in death or great bodily harm, or creates "an unreasonable and substantial risk of same) to review. They may take suggestions from law enforcement, citizens, and the media, or seek them out. Ultimately, to maintain the committee's independence, it determines on its own what to investigate.

7- When can the committee investigate?

The committee can begin its review following any active criminal investigation. The committee will have access to all evidence and case files, related to an incident.

8- Can departments or officers not cooperate with the committee?

A department is obligated to turn over all of its files to the committee. The committee is also entitled to examine all evidence gathered by departments.

Because the committee will have access to all evidence, including interviews with the involved officers, individual officers not required to cooperate with the committee.

9- What do the committee's recommendations look like?

Annually, the committee will publish a public report identifying each incident that was subject of an investigation. If more than one incident is investigated, the report may not identify which data is associated with which incident.

The report shall also:

- *Organize incidents by type of death/great bodily harm and instrument used*
- *Identify relevant events or developments leading or contributing to the incident*
- *Any recommendations of the board as to how to prevent similar incidents*
- *Provide demographic information about each incident*
- *Share best practices revealed during their review of incidents*
- *Recommend best practices revealed through its review*
- *Redact information that is redacted by the local police department*

10- Who will receive the report?

The report will be publicly available and be delivered to:

- *The legislature*
- *All law enforcement agencies*
- *The Law Enforcement Standards Board*



STATE REPRESENTATIVE

JESSE JAMES

Testimony before Senate Committee on Judiciary and Public Safety
Senate Bill 118
Thursday, March 11, 2021

Thank you Chairman Wanggaard and committee members for holding a public hearing on Senate Bill 118 and allowing me to testify today. First, I want to thank Senator Wanggaard for bringing me on board for this important piece of legislation, and bringing all the stake holders together on this issue.

In recent years, throughout the country, we have seen an increase in public demonstrations as a result of use of force incidents by law enforcement officers. These incidents have caused people to be upset, angry, and heartbroken. As a law enforcement officer, I am upset by these incidents as well. These incidents make my job as a law enforcement officer harder and make communities more dangerous because they have worsened community relations, and increased distrust of law enforcement.

Senate Bill 118 creates an independent use of force review advisory board in the State of Wisconsin. The board will consist of professionals from law enforcement, mental health, and victim advocates. The board will review use of force incidents and share their recommendations to better serve the law enforcement community, so that law enforcement can better serve their community.

Simply, the board is meant to investigate an incident, identify if there were any problems, and provide recommendations on how to remedy those problems. The board will help instill confidence and trust in law enforcement officers and the investigation process again.

Senate Committee on Judiciary and Public Safety
Public Hearing SB 118
Testimony of State Senator Lena C. Taylor
March 11, 2021

Vice-Chair Wimberger and Members of the Committee, thank you for the opportunity to provide testimony on SB 118, relating to: the creation of an independent use of force review advisory board

As a state and a nation, we have been inundated over the past few years with cases of officer involved deaths. Whether George Floyd in Minneapolis, or Wisconsin's Jacob Blake, Syville Smith, Michael Bell, Jr. or Alvin Cole, these events have often left the community with more questions than answers.

These cases, that require review, are not limited to civilians. Milwaukee police officer Matthew Rittner's death, during the execution of a search warrant, alarmed a number of residents. There has been a clear mandate to review use of force cases, to ensure that we don't have training deficits, we are learning from our mistakes, and making recommendations to correct our course of action. Candidly, there is also a desire to understand when officers have made the wrong call, in the execution of their duties.

In 2014, as a result of the work of the father of the aforementioned Michael Bell, Wisconsin became the first state in the nation to require an independent investigation any time a police officer kills someone in the line of duty. It's been 6 years and the reviews are mixed. There is a realization that we also need to review and recommend changes were necessary. SB 118 isn't perfect. There are some amendments that I believe are needed to improve the bill. But this legislation is another step that moves us toward an independent system of review in cases involving use of force.

The first thing the bill does is acknowledge that we need subject matter experts to review and make recommendations regarding these cases. I believe it is too heavily loaded with law enforcement, but we can address that. However, this bill can help us to get change where change is needed. We will get recommendations and will get help with accountability.

The bill requires that we look at previous recommendations and see if the things that were identified for change or improvement have been done. It will further evaluate those changes. Far too often, we make change and we don't monitor the implementation or decide if they've been effective. We don't want change for change sake, we must ensure different outcomes.

The bill has teeth, in that, it grants the review board access to all complete criminal and administrative investigation case files, models or renderings used in an investigation, and evidence and also to the state crime laboratories.

It allows for additional subject matter experts and outside advisors to be utilized as necessary. It includes the opportunity for information from a victim advocate and mental health professional to be brought to the table. We are getting voices and perspectives that are often overlooked an ability to be a part of these reviews.

Finally as a part of their work, the reports must include demographic information, which gives us the ability to further understand how communities of color are engaged as compared to others. Again, it's not perfect. I am interested in what others think will make it better.

For example, I want to establish clearer guidance on how cases are heard by the independent use of force review advisory board. Yet, I know we must start somewhere and SB 165 gets us moving in the right direction. Thank you for your consideration.



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Intergovernmental Relations Division

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Director of Administration

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City of Milwaukee Testimony on SB-118, Relating to: the creation of an independent use of force review advisory board.
Senate Committee on Judiciary and Public Safety

March 11, 2021

Thank you, Chairman Wanggaard and fellow members of the Senate Committee on Judiciary and Public Safety, for the opportunity to provide testimony on SB 119 on behalf of the City of Milwaukee.

The City of Milwaukee is supportive of Senate Bill 118, though we suggest the creation of additional non-law enforcement members in the makeup of the advisory board. This legislation will help Wisconsin obtain a much more in-depth understanding of use-of-force abuses on a state-wide basis and will allow for the recommendation of use-of-force changes to help prevent future abuses from occurring.

Our only request to make this legislation even more impactful is to further diversify the representation on the advisory board. As the legislation is currently written, 10 of the 13 advisory committee members would be appointed by law enforcement agencies or adjacent organizations. The City of Milwaukee believes that it is essential for this advisory committee to not only have voices representing law enforcement at the table, but to have additional voices on the negative impacts on the community that law enforcement use-of-force abuses cause. **It is our suggestion that one or more of the law enforcement advisory board members be replaced with a leader(s) from violence prevention organizations. The City of Milwaukee's Office of Violence Prevention would be able to provide an essential and informed perspective to the work of this proposed advisory group.**

The City of Milwaukee would like to again thank the Committee for taking up this important piece of legislation. If the Committee has any additional questions or would like any additional information, please contact Jordan Primakow, Intergovernmental Relations Division, at 414-708-6433 or jprima@milwaukee.gov.



March 11, 2021

To: Chairman Wanggaard and Members of the Senate Committee on Judiciary and Public Safety

From: Ken Pileggi, Immediate Past President, Wisconsin Chiefs of Police Association (WCPA)

Re: Support Senate Bill 118, Use of Force

Thank you Chairman Wanggaard, for your willingness to hold a hearing on this bill. We want to thank the Senate authors, Yourself and Senator Taylor, for introducing this important bill. We also are grateful for our lead Assembly authors Representatives James and Armstrong.

We urge support of Senate Bill 118. We appreciate the bipartisan approach to this legislation.

The issue of the use of force has seen much discussion and debate over the last several months.

This legislation creates an independent Use of Force Review Advisory Board.

Here are key elements of the proposal:

- Use of Force Advisory Board creation - this Board will conduct annual independent investigations of deaths and great bodily harm injuries to officers and citizens.
- The investigation may begin only after mandatory (civil) or criminal investigations are totally completed to prevent any issues for agencies with

pending mandatory (civil) or criminal investigations that are on-going and could create an issue.

- Compels agencies to provide all reports to the Board inclusive of all investigative reports and information regarding the incident.
- Allows for the use of experts as advisors as needed to answer questions to assist the Board with its duties.
- The report by the Board shall identify events/developments that led to the death or great bodily harm of the officer or citizen.
- The Board is required to promulgate an advisory report that will be made public and submitted to the legislature for their review.
- The Board is also required to provide the report to the Law Enforcement Standards Board (LESB) who will review the report and submit findings to the varying LESB advisory committees for review and consideration of potential recommendations to best practices. This will help formulate those best practices used by law enforcement officers and recommend practices that the Board learns when exercising these reviews.
- The report must provide demographic information regarding each incident.

We appreciate the work that has been done by you, and others. We also appreciate your willingness look for the best language to address the issue.

Lastly, the Wisconsin Chiefs of Police Association appreciates the open line of communication we have had with you and others on this issue – and other issues that impact law enforcement.



To: Members, Senate Committee on Judiciary and Public Safety
From: Badger State Sheriffs' Association (BSSA)
Wisconsin Sheriffs and Deputy Sheriffs Association (WS&DSA)
Date: March 11, 2021
RE: Comments submitted for information only – SB 118

Our organizations submit these comments for information only on Senate Bill 118, which creates an independent use of force advisory board to review incidents and issue an annual report. Badger State Sheriffs' Association (BSSA) is a statewide organization representing all of Wisconsin's 72 Sheriffs and Wisconsin Sheriffs and Deputy Sheriffs Association (WS&DSA) is a statewide organization representing over 1,000 members, including Sheriffs, Deputies, and jail officers. BSSA and WS&DSA have a joint legislative committee and work closely on public safety issues of concern to our members.

Over the years, there have been major improvements in Wisconsin specific to the development of law governing officer conduct, the use-of-force, and officer involved deaths in the State. Currently, Wisconsin requires all law enforcement agencies to have a use-of-force policy published and available for "public scrutiny."

In 2014, Wisconsin became the first state in the country to enact a law requiring outside investigations when there is an officer-involved death. These separate, independent investigations yield the highest standard of transparency for all parties involved and the public. The overarching goal for every law enforcement agency is to provide an open, honest, ethical department that ensures transparent and impartial investigations.

SB 118 takes a separate approach to examining use of force incidents. The advisory board created under the bill is not examining fault, but rather working through the facts and granular details of incident to determine *why* it happened and *how* adjusting the approach could lead to different outcomes in the future.

Our organizations endorse the conceptual framework of this legislation, and thank the author, Senator Wanggaard, for his leadership, thorough discussion, and willingness to take feedback on this legislation.

We submit these comments for information only, as we are still working through some loose ends in the bill and continue a dialogue with the author. We will continue to be a partner and a resource to policymakers on this subject.