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April 22, 2021

Milwaukee Fire & Police Commission  
City Hall  
200 E. Wells Street  
Room 705  
Milwaukee, WI

Re: SOP 460 – Use of Force

Dear FPC Executive Director Leon Todd,

On April 21, 2021, The Task Force's Subcommittee on Law Enforcement Policies and Standards published a document regarding several of the things they discussed over a 7-month period. The Subcommittee is made up of 19 members, some in the Law Enforcement field and some not. Please see the attached report as the names are listed in Appendix 2 of the report. This Subcommittee was led by Representative Jim Steinecke (R) and Representative Sheila Stubbs (D).

The Subcommittee presented recommendations. One of the recommendations is on the Use of Choke Holds by Officers. The recommendation is "creating a statewide prohibition against any law enforcement agency's use-of-force policy authorizing the use of choke holds by law enforcement officers, except in life-threatening situations or in self-defense". One out of the 19 members oppose having any exceptions.

This recommendation by the Subcommittee is similar to the verbiage that the Milwaukee Police Association placed in SOP 460 – Use of Force. The MPA added language that said "Officers maintain all rights of self-defense as enumerated in Wisconsin State Statutes" to the SOP to protect the Officer should they need to use a choke hold to save their own life.

I maintain that the language the MPA authored **MUST** be added to the SOP 460. I strongly encourage the Fire & Police Commission to pass SOP 460 with the language that the MPA provided.

Thank you.

Sincerely,

  
Dale Bormann, Jr.  
President  
Milwaukee Police Association



# Wisconsin State Assembly

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P.O. BOX 8952 MADISON, WI 53708

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TO: SPEAKER ROBIN VOS

FROM: Representatives Jim Steineke and Shelia Stubbs, Co-Chairs, Assembly Speaker's Task Force on Racial Disparities

RE: Report of the Task Force's Subcommittee on Law Enforcement Policies and Standards

DATE: April 21, 2021

This report summarizes the activities of and the topics of consensus identified by the Subcommittee on Law Enforcement Policies and Standards, a subcommittee of the Assembly Speaker's Task Force on Racial Disparities.

## CREATION AND MEMBERSHIP

On August 24, 2020, you created a task force to focus on racial disparities, educational opportunities, public safety, and police policies and standards in Wisconsin. After appointment of the co-chairs, community members were invited to apply to serve on the task force by submitting a statement of interest and resume. The task force's 32-person membership was announced on October 21, 2020. Appendix 2 contains a list of the current task force members.

The task force has two subcommittees: (1) the Subcommittee on Law Enforcement Policies and Standards (19 members); and (2) the Subcommittee on Education and Economic Development (13 members). This report briefly describes the meetings of the Subcommittee on Law Enforcement Policies and Standards, and summarizes the subcommittee's recommendations, based on discussions in which members reached consensus.

## MEETINGS

On October 28, 2020, the task force held its first introductory meeting, at which members shared their respective backgrounds, experiences, and goals. In addition, the co-chairs explained the goals of and expectations for the task force and announced the formation of the two subcommittees. After this first meeting, the Subcommittee on Law Enforcement Policies and Standards met eight times, as follows:

- **November 12, 2020 – Madison:** The subcommittee received invited testimony from families in Wisconsin who have been impacted by law enforcement officers' use of force.
- **December 3, 2020 – Green Bay:** The subcommittee received testimony from the following invited speakers: (1) The Center for Suicide Awareness, on the Law Enforcement Resiliency Program; and (2) Todd Thomas, Appleton Police Chief, on policing approaches implemented in the City of Appleton. After receiving testimony, the subcommittee discussed the topics of body cameras, crisis intervention training, and use-of-force data collection.
- **January 21, 2021 – Madison:** The subcommittee received invited testimony from subcommittee member Calvin Barrett, a law enforcement instructor at Madison College, regarding law enforcement use-of-force training. After receiving testimony, the subcommittee continued its

discussions on body cameras, crisis intervention training, and use-of-force data collection. The subcommittee also discussed various use-of-force topics, including the use of choke holds and mandated reporting of an officer's excessive use of force.

- **February 25, 2021 – Kenosha:** The subcommittee received testimony from the following invited speakers on various topics related to law enforcement policies and standards: (1) the American Civil Liberties Union; (2) Carlton T. Mayers, II, Esq., of Mayers Strategic Solutions, LLC; (3) Kail Decker, City Attorney of West Allis; (4) Bishop Tavis Grant; and (5) Mr. Justin Blake.
- **March 11, 2021 – Madison:** The subcommittee received invited testimony from Campaign Zero on use-of-force data collection, the use of choke holds, and no-knock search warrants, and from Tamika Mallory on no-knock search warrants. In addition to receiving testimony, the subcommittee discussed the following topics: (1) employment files of law enforcement officers; (2) police and fire commissions; (3) decertification of law enforcement officers; and (4) qualified immunity.
- **March 25, 2021 – Madison:** The subcommittee discussed the following topics: (1) decertification of law enforcement officers; (2) a statewide standard for use of force by officers; (3) whistleblower protections for officers who report, or intervene in, excessive use-of-force incidents; (4) criminal penalties for officers who fail to report or intervene when required; (5) independent use-of-force review advisory boards; (6) use-of-force data collection; (7) community-oriented policing house grant programs; (8) violence interruption grant programs; (9) crisis response teams; (10) school resource officers; and (11) no-knock search warrants.
- **April 8, 2021 – Madison:** The subcommittee discussed the following topics: (1) a statewide standard for use of force by officers; (2) public access to use-of-force policies; (3) the use of choke holds; (4) independent use-of-force review advisory boards; (5) no-knock search warrants; (6) crisis response teams; (7) officer drug testing; (8) officer psychological evaluations; (9) unnecessarily summoning a law enforcement officer; (10) conflict resolution centers; and (11) crisis intervention training.
- **April 20, 2021 – Madison:** The subcommittee discussed the topic of a statewide standard for use of force by law enforcement officers. The subcommittee also reviewed a list of items on which the subcommittee had reached consensus.

## RECOMMENDATIONS

Based on its discussions, the subcommittee has reached consensus on various recommendations that fall within four general categories: (1) use of force by law enforcement; (2) law enforcement oversight and accountability; (3) officer training and standards; and (4) community engagement. The specific recommendations within each of these categories are described below.

### USE OF FORCE BY LAW ENFORCEMENT

#### Duty to Report and Intervene

##### Background

Current state law does not expressly require an officer to report or intervene when another officer has used force in a manner that the reporting officer believes to be excessive. However, state law does generally prohibit public officers and employees from engaging in certain acts of misconduct in office. [s. 946.12, Stats.] A law enforcement agency's use-of-force policy may create an express duty to report or intervene when observing another officer using excessive force or, more generally, require an officer to report any known misconduct by another officer.

In other contexts, state law imposes a duty to report upon certain professionals. For example, in the child welfare context, individuals working in various professions are required to report suspected child abuse or neglect, if the individual has reasonable cause to suspect that a child seen in the course of the individual's professional duties has been abused or neglected. [s. 48.981 (2) (a), Stats.]

### **Recommendation**

The subcommittee recommends requiring, as a matter of state law, that officers intervene and report to his or her supervisor as soon as feasible after an officer observes another officer using force that the reporting officer reasonably believes to exceed the authorized level of force. The subcommittee further recommends specifying criminal penalties for an officer's failure to report or intervene, by creating a specific ground under the current law crime of misconduct in office.

## **Whistleblower Protections**

### **Background**

Under current law, a state employee may receive employment protection from retaliatory action for disclosing certain information, such as acts that an employee reasonably believes constitute a violation of state or federal law, an abuse of authority, or a danger to public health and safety. Commonly referred to as "whistleblower protections," the protections apply to most state employees, if certain steps are taken to disclose the information.

The state employee whistleblower protections do not apply to employees in local units of government. A locally employed officer who believes he or she has been retaliated against by an employer for disclosing abuses, however, may receive some protection under the "just cause" standard that applies to disciplinary actions generally imposed by police and fire commissions. This standard prohibits suspension, demotion, or discharge of a law enforcement officer unless there is "just cause" to sustain the charges against the officer, based on a seven-factor analysis for determining "just cause" set by statute.<sup>1</sup>

### **Recommendation**

The subcommittee recommends creating express protections for any law enforcement officer who reports, as soon as feasible, when observing another officer using force that the reporting officer believes to be excessive. Specifically, the subcommittee recommends that a law enforcement officer should 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 officer reports or intervenes pursuant to the duty to report or intervene.

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<sup>1</sup> These factors include: whether the officer could reasonably be expected to have knowledge of the probable consequences of the alleged conduct, whether the rule or order that was allegedly violated is reasonable; whether reasonable efforts were made to discover whether the officer did violate a rule or order; whether there was substantial evidence of the violation; whether the efforts to discover the evidence were fair and objective; whether the chief or sheriff is applying a rule or order fairly and without discrimination against the law enforcement officer, and whether the proposed discipline reasonably relates to the seriousness of the alleged violation and the officer's record of service. [ss. 59.26 (8) (b) 5m., 59.52 (8) (b), 61.65 (1) (am), 62.13 (5) (em), and 62.50 (17) (b), Stats.]

## **Use of Choke Holds by Officers**

### **Background**

Current state law does not specifically regulate the use of choke holds by law enforcement officers. State law requires that each law enforcement agency have a written policy or standard regulating the use of force by law enforcement officers in the performance of their duties, but does not specify its content. [s. 66.0511 (2), Stats.] Some law enforcement agencies have opted to address the use of choke holds in the agency's use-of-force policy. With respect to training, the Law Enforcement Standards Board (LESB)<sup>2</sup> publishes a guide titled *Defense and Arrest Tactics; a Training Guide for Law Enforcement Officers* ("DAAT guide"), which sets forth the use-of-force standards on which officers are trained. The DAAT guide does not include specific training standards regarding the use of choke holds, though a choke hold may be considered an appropriate use of force under the DAAT guide, if justified under the circumstances, such as acting in self-defense.

### **Recommendation**

The subcommittee recommends creating a statewide prohibition against any law enforcement agency's use-of-force policy authorizing the use of choke holds by law enforcement officers, except in life-threatening situations or in self-defense, though one member<sup>3</sup> opposes having any exceptions to the prohibition. In addition, the subcommittee recommends that "choke hold" be defined to include not only force that prevents or hinders breathing or air flow, but also force that hinders blood flow, such as carotid restraints.

## **Public Access to Use-of-Force Policies**

### **Background**

State law requires that each law enforcement agency "make available for public scrutiny" a written policy regulating the use of force by law enforcement officers in the performance of their duties. [s. 66.0511 (2), Stats.]

### **Recommendation**

The subcommittee recommends requiring that a law enforcement agency make its use-of-force 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 in which the law enforcement agency has jurisdiction. The subcommittee further recommends that a law enforcement agency: (1) ensure the website displays any updated policy as soon as practically possible but no later than one year after a change is made; (2) prominently display a means of requesting a copy of the policy; and (3) provide, upon request, a copy of the current policy free of charge within three days of the request.

## **Statewide Standard for Use of Force by Officers**

### **Background**

Several sources of legal authority set the parameters for appropriate use of force by a law enforcement officer. Those sources of authority, in hierarchical order, are as follows: (1) the Fourth Amendment of

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<sup>2</sup> The LESB is a 15-member board attached to the Department of Justice (DOJ) with statutory responsibilities related to law enforcement training and certification. [ss. 15.255 (1) and 165.85, Stats.]

<sup>3</sup> Where applicable, this report generally notes dissent from subcommittee members. However, upon request, dissent by subcommittee member ReBecca Burrell is expressly noted.

the U.S. Constitution, which generally protects a person's right to be free from unreasonable searches and seizures; (2) state statutes or local ordinances, to the extent the state or a local unit of government has enacted a law governing an officer's use of force; (3) the use-of-force policy adopted by the officer's employing law enforcement agency; and (4) the training standards, particularly certain defensive and arrest tactics, adopted in the LESB's DAAT guide.

With respect to the Fourth Amendment, the U.S. Supreme Court has held that an officer's use of force must be "objectively reasonable." [*Tennessee v. Garner*, 471 U.S. 1 (1985); *Graham v. Connor*, 490 U.S. 386 (1989).] State law authorizes officers to use force in certain situations, including in self-defense and as a reasonable accomplishment of arrest, but the statutes do not expressly address the level or type of force that an officer may use. [ss. 939.45 and 939.48, Stats.]

### **Recommendation**

The subcommittee generally recommends creation of a statewide standard governing use of force by law enforcement officers. However, after several discussions, the subcommittee did not reach consensus on a specific standard, with members primarily disagreeing on use of the term "proportional." The subcommittee supports ongoing discussions by stakeholders for future consideration in the Legislature's deliberations of the subcommittee's recommendations.

## **LAW ENFORCEMENT TRANSPARENCY AND OVERSIGHT**

### **Independent Use-of-Force Review Advisory Board**

#### **Background**

Current law imposes various procedures that may apply if an officer is involved in a critical use-of-force incident. For example, a police and fire commission or other reviewing authority may authorize disciplinary action against a law enforcement officer, based on a statutory "just cause" standard, or the officer may be subject to civil liability based on his or her use of force, depending on the circumstances.

In addition, a law enforcement officer's use of force may result in criminal charges against the officer. Specifically, if an event constitutes an "officer-involved" death, current law requires an independent investigation. Specifically, current law requires that each law enforcement agency have a written policy requiring that an investigation of any officer-involved death by at least two investigators, one of whom is the lead investigator and neither of whom is employed by the law enforcement agency that employs the officer involved in the officer-involved death. Though not required, DOJ's Division of Criminal Investigations conducts many of the independent officer-involved death investigations for law enforcement agencies. The outside investigators must provide, in an expeditious manner, a complete report to the district attorney of the county in which the officer-involved death occurred. If the district attorney determines no basis exists for criminally prosecuting the officer involved in the officer-involved death, the investigators must publicly release the report that was provided to the district attorney. [s. 175.47, Stats.]

The subcommittee reviewed a legislative proposal to create an independent use-of-force review advisory board, tasked generally with: (1) researching and reviewing the causes and contributing factors of certain use-of-force incidents involving law enforcement officers; (2) publishing an advisory report after conducting its investigation and analysis; and (3) sharing and recommending best practices.

#### **Recommendation**

The subcommittee generally supports creation of an independent use-of-force review advisory board, though some members expressed uncertainty about the board's role. However, with the exception of

some members, the subcommittee further recommends that the board's membership include permanent members representing diverse demographics who may be disproportionately impacted by use-of-force incidents. The subcommittee further recommends, with some members dissenting, that the board include, when analyzing specific use-of-force incidents, an additional member from the municipality in which the specific use-of-force incident occurred, to serve temporarily on the board to participate in the investigation and analysis for that specific incident.

## **Body Cameras**

### **Background**

State law does not require use of body cameras by law enforcement agencies. However, for those agencies that opt to use body cameras, current law requires that the agency: (1) administer, and make publicly available, a written policy regarding their use, maintenance, and storage; (2) train officers and employees on certain topics related to body cameras; and (3) comply with certain requirements related to data retention and release. An agency's policy on use of body cameras may, but is not required to, address activation. Body camera data are generally open to inspection and copying under Wisconsin's Open Records Law, subject to certain exceptions. [s. 165.87, Stats.]

According to the Legislative Fiscal Bureau, law enforcement agencies utilizing body cameras rely on local or federal funding sources to support their use, as no state funding is specifically dedicated to body cameras. Costs incurred for equipment purchase and data storage are the primary impediments to law enforcement agencies utilizing body cameras.

### **Recommendation**

The subcommittee recommends that all active duty law enforcement officers who are primarily assigned to patrol functions be equipped with a body camera. The subcommittee further recommends creating a funding mechanism to assist agencies with costs associated with body cameras. The subcommittee supports collaboration among law enforcement agencies to reduce costs, assuming third-party vendors are willing to participate in such contracts.

With respect to activation, the subcommittee recognizes that "24/7 activation" may be too costly and could raise privacy concerns for both officers and public citizens in certain situations. However, the subcommittee supports requiring body camera activation in certain situations in which an officer interacts with the public, such as enforcement and investigative contacts, or any other contact that becomes adversarial after the initial contact in a situation that would not otherwise require activation.

## **Statewide Collection of Data on Use of Force**

### **Background**

State law requires DOJ to collect, and law enforcement agencies to provide, information concerning the number and nature of offenses known to have been committed in this state, along with other information that DOJ may consider useful in the study of crime and the administration of justice. The information collected by DOJ must include data requested by the Federal Bureau of Investigation (FBI) under its uniform crime reports (UCR) program. [s. 165.845, Stats.]

DOJ began collecting data on use of force by law enforcement officers in 2020. This effort was prompted, in part, by the FBI's UCR program launching a National Use-of-Force Data Collection Program in 2019. DOJ currently collects data on the same types of use-of-force incidents that qualify for data collection under the FBI's national program, those being: (1) use-of-force incidents resulting in a

person's death; (2) use-of-force incidents resulting in serious injury to a person; and (3) use-of-force incidents resulting in an officer discharging a firearm at, or in the direction of, a person.

### **Recommendation**

The subcommittee generally supports statewide standardization of law enforcement agencies' reporting of use-of-force incidents involving law enforcement officers. The subcommittee recommends that DOJ collect data on other types of use-of-force incidents, such as any incident in which an officer draws his or her firearm at another person. One member noted concerns about potential fiscal implications of requiring agencies to report data.

## **No-Knock Search Warrants**

### **Background**

Current state law allows officers to forcibly enter a person's home or other premises without knocking and announcing their presence under certain circumstances. Generally, officers executing a search warrant must follow the "knock and announce" rule, which requires an officer to announce his or her identity and purpose, and provide occupants time to either refuse or consent to entry. However, as an exception, an officer may execute a "no-knock" search warrant if there is reasonable suspicion that announcing would be dangerous or futile, or would inhibit investigation of the crime.

### **Recommendation**

The subcommittee recommends that DOJ collect data on the use of no-knock search warrants from all state and local law enforcement agencies, as well as federal law enforcement agencies, to the extent feasible. Collected data must include: (1) the number of no-knock search warrants applied for, granted, and executed, as compared to the number of knock-and-announce warrants; (2) the type of suspected crime for which any no-knock warrant was sought, granted, or executed; (3) the outcomes of executed no-knock warrants; (4) the race, age, and gender of any suspect identified in the warrant's application. The subcommittee further recommends that DOJ publish a report on the collected data one year after the data collection requirement goes into effect.

Some subcommittee members proposed banning the use of no-knock search warrants, with limited exceptions, while others expressed concern about imposing a ban in the absence of any statewide information on the prevalence of their use. Ultimately, the subcommittee lacked consensus on whether to recommend a prohibition against, or modification to, the use of no-knock search warrants.

## **Employment Files of Law Enforcement Officers**

### **Background**

Current law does not explicitly require an employer to maintain a personnel file for each employee. However, for state employees, certain requirements for maintaining disciplinary records exist. While not expressly required under state law, the LESB collects from law enforcement agencies information on any officer separation from employment, using identifying categories such as resigned in good standing, resigned in lieu of termination, and terminated for cause. Employing agencies may access this information when conducting a pre-hire background investigation. Employing agencies may also seek information from the officer's prior employing agency, though such information may be subject to a nondisclosure agreement entered into by the officer and the prior employing agency, depending on the circumstances.



## **Recommendation**

The subcommittee recommends requiring law enforcement agencies to maintain an “employment file” that includes files relating to an officer’s employment, such as performance reviews, files related to job performance, internal affairs investigative files, personnel-related claims, and disciplinary actions. The subcommittee further recommends that an interviewing agency be allowed access to a candidate’s employment file and that a candidate be considered ineligible for employment or LESB certification if the candidate refuses to allow access to a file. Finally, the subcommittee recommends that nondisclosure agreements be prohibited from preventing such access.

## **OFFICER TRAINING AND STANDARDS**

### **Officer Drug Testing**

#### **Background**

Pursuant to its statutory authority to establish minimum employment standards, the LESB requires applicants seeking employment as a law enforcement officer to submit to pre-employment drug testing. Specifically, prior to an applicant’s first date of employment, the applicant must submit to a drug test for the presence of the following controlled substances or classes of controlled substances or their metabolites: (1) amphetamines; (2) cannabis or cannabinoids; (3) opiates; (4) cocaine; and (5) phencyclidine (PCP). The prospective employing agency bears the costs of sample collection and analysis. The LESB will deny certification to any applicant who fails to appear for a drug test and does not have an explanation which is adequate to the prospective employing agency, refuses to take a test, or tests positively. [s. 165.85, Stats.; s. LES 2.02, Wis. Adm. Code.]

#### **Recommendation**

The subcommittee recommends requiring that each law enforcement agency adopt a written policy regarding drug and alcohol testing following an officer-involved critical incident, meaning an incident involving the death of, or great bodily harm to, an individual that results directly from an action of a law enforcement officer, or when an officer intentionally discharges his or her firearm at another person. The written policy should require each officer who is involved in an officer-involved critical incident to submit to drug and alcohol testing as soon as practicable after the incident. The written policy must also require a test that shows any presence and concentration of: (1) alcohol; (2) amphetamines; (3) cannabis or cannabinoids; (4) opiates; (5) cocaine; (6) PCP; and (7) anabolic steroids.

### **Officer Psychological Evaluations**

#### **Background**

As a condition to employment as a law enforcement officer, an individual must meet several recruit qualifications established by the LESB, including that the applicant is free from any physical, emotional, or mental condition which might adversely affect performance of duties as an officer. [s. LES 2.01 (1) (g), Wis. Adm. Code.] However, current law does not require individuals to undergo a psychological evaluation as a condition of employment as an officer, though some individual law enforcement agencies currently require such evaluations as a condition of hire.

#### **Recommendation**

The subcommittee recommends that, as a condition of initial employment or certification as a law enforcement officer, individuals be required to submit to a psychological examination to determine the individual’s personality characteristics and suitability to perform the duties of an officer. The

subcommittee further recommends requiring the LESB to promulgate administrative rules governing the administration and interpretation of psychological examinations, including the type of test used.

The subcommittee generally supports other initiatives related to officer wellness, such as allowing law enforcement officers to receive worker's compensation benefits based on a diagnosis of post-traumatic stress disorder, creating officer wellness programming through DOJ, and increasing the use of peer-to-peer support programs for officers.

## **School Resource Officers**

### **Background**

School resource officers are not defined in state law, but are commonly understood to be law enforcement officers employed by law enforcement agencies to work within schools on a full-time or part-time basis. School districts have the discretion to determine whether to establish the use of school resource officers. The specific duties of a school resource officer and any required training are typically governed by a memorandum of understanding between a law enforcement agency and a school district. Current law does not impose training requirements or standards specific to school resource officers, though DOJ's Office of School Safety currently offers guidance in developing SRO programs and advertises training initiatives for school resource officers, such as a 40-hour course sponsored by the National Association of School Resource Officers.

### **Recommendation**

The subcommittee recommends creating a statewide requirement that any law enforcement officer employed as a school resource officer must complete training on the role and function of school resource officers, employment in an educational environment, and de-escalation techniques.

## **Crisis Intervention Training**

### **Background**

Current law requires the LESB to establish an officer preparatory training program consisting of at least 600 hours of training. Pursuant to its authority to establish training criteria, the LESB has approved a training program curriculum of 720 hours, of which 20 hours are currently devoted to crisis management. [s. 165.85 (4) (a) and (5) (b), Stats.]

State law further requires that law enforcement officers annually complete 24 hours of recertification training. Beyond certain statutory requirements for handgun and police pursuit training, each law enforcement agency may determine the remaining content for its officers' recertification training. While crisis intervention training is not statutorily required as a component of an officer's recertification training, law enforcement agencies may choose to provide such training to their officers. The state reimburses law enforcement agencies in an amount of \$160 per officer for approved expenses related to completion of annual recertification training requirements. [s. 165.85 (4) (a) and (5) (b), Stats.]

Current law provides grant funds that may be used by law enforcement agencies to provide crisis intervention training to their officers. Specifically, the Department of Health Services (DHS) is appropriated \$250,000 each biennium to award grants for mental health crisis intervention training to law enforcement agencies. Currently, DHS contracts with the National Alliance on Mental Illness (NAMI) Wisconsin to administer the grant. NAMI's 40-hour crisis intervention training program, conducted by mental health professionals and other stakeholders, trains officers on mental illness, the perspective of people with lived experience of mental illness, and crisis de-escalation skills. [s. 46.535, Stats.]

## **Recommendation**

The subcommittee recommends that law enforcement officers complete a specified number of hours of crisis management training throughout their careers, with such hours counting towards an officer's recertification requirements. The subcommittee also recommends increasing the DHS grant funds available to law enforcement agencies for crisis intervention training, along with directing that DHS, when administering those funds, ensure that crisis intervention training is accessible to law enforcement agencies in all regions of the state.

## **Decertification of Law Enforcement Officers**

### **Background**

Under current state law, the LESB may decertify a law enforcement officer who does any of the following: (1) terminates employment or is terminated; (2) violates or fails to comply with an LESB rule, policy, or order relating to curriculum or training; (3) falsifies information to obtain or maintain certified status; (4) is certified as the result of an administrative error; (5) is convicted of a felony, or any offense that, if committed in Wisconsin, could be punished as a felony; (6) is convicted of a misdemeanor crime of domestic violence; or (7) fails to pay certain types of court-ordered support, such as child or family support or birth expenses, or fails to comply with a subpoena or warrant related to paternity or child support proceedings. [s. 165.85 (3) (cm), Stats.]

### **Recommendation**

The subcommittee recommends creating various additional grounds on which the LESB may decertify an officer. First, the subcommittee recommends modifying the LESB's authority to decertify an officer based on termination of employment, to instead allow decertification of an officer who resigns in lieu of termination or who is terminated for just cause. The subcommittee further recommends requiring the LESB to promulgate administrative rules governing the procedures and standards for review of decertification on this ground, and further requiring such rules include an analysis of the severity of the incident, the officer's character, and the officer's fitness to serve the interest of public safety. Some members expressed support for requiring the LESB to analyze whether an officer acted with reckless disregard for the safety of the public or any person.

Second, the subcommittee recommends authorizing the LESB to decertify an officer when the officer enters into one of the following, whether pending or successfully completed, for any felony or crime related to domestic abuse: (1) a deferred judgment and sentencing agreement or deferred sentencing agreement; (2) a deferred prosecution agreement; or (3) a pretrial diversion agreement.

Third, the subcommittee recommends creating new grounds related to domestic abuse, by allowing decertification when an officer is convicted of: (1) a misdemeanor crime of domestic violence, as defined under federal law; (2) domestic abuse, as defined under state law; or (3) a crime that is subject to the imposition of Wisconsin's domestic abuse surcharge, regardless of whether any part of the surcharge was waived by the court.

## **COMMUNITY ENGAGEMENT**

### **Community Grant Programs**

#### **Background**

The subcommittee considered various legislative proposals to provide grant programs to support community engagement. For example, the subcommittee reviewed a proposal to create a grant program

in which DOJ awards funds to cities with a population of 60,000 or more for community-oriented policing (COP) house programs, under which, very generally, a law enforcement agency purchases or builds a neighborhood home to build relationships with the community. The subcommittee also reviewed a proposal to create a DOJ-administered grant program that awards funds to community organizations utilizing evidence-based outreach and violence interruption strategies to mediate conflicts, prevent retaliation and other potentially violent situations, and connect individuals to community supports.

### **Recommendation**

The subcommittee generally supports both grant programs. However, the subcommittee recommends that eligibility for the violence interruption grant program be expanded to include faith-based organizations. With respect to the COP house grant program, the subcommittee recommends that eligibility be expanded to metropolitan areas, rather than cities, with a population of 60,000 or more, and some members would further recommend eligibility be expanded to allow any municipality to qualify. The subcommittee also recommends that DOJ prioritize grants to applicants seeking to use the funds for a COP house that will serve as a community resource center, and authorize funds to be used not only for the purchase of a COP house, but also for programming offered at the COP house, including programs focused on recreation, mental health, education, and community listening and engagement. One member<sup>4</sup> does not support a COP house grant program.

## **Crisis Response Teams**

### **Background**

Crisis response teams, or “mobile crisis services,” are currently used by many counties to provide mental health services for individuals experiencing a mental health crisis. Current law does not mandate that every county have a mobile crisis service, though every county is required to provide general emergency mental health services. However, in order to receive reimbursement under the state’s Medical Assistance program for services provided to persons who are eligible under that program, an emergency mental health services program must have additional features, such as a mobile crisis service for on-site, in-person response. Mobile crisis services must include certain types of mental health professionals, such as psychologists, psychiatrists, psychiatric nurses, certified independent clinical social workers, professional counselors, and physician assistants with at least one year experience working in a clinical mental health facility. [s. DHS 34.22 (3) (b), Wis. Adm. Code.]

State law currently provides \$250,000 each biennium to DHS to award grants to counties or regions to establish or enhance crisis programs to serve individuals having crises in rural areas. Recipients must provide a 50 percent match for the state grant amount. [s. 46.536, Stats.] Among other proposals related to community-based health services, Governor Evers’s 2021-23 budget proposal would increase the funds appropriated to the crisis program to also provide grants to establish and enhance collaborative programs between law enforcement agencies and behavioral health emergency response services, and require recipients to match at least 25 percent of the grant amount awarded.

### **Recommendation**

The subcommittee supports expansion of the crisis program grants to provide grants for establishing and enhancing collaborative programs between law enforcement agencies and behavioral health programs. The subcommittee further recommends requiring grant recipients to report on the use of the

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<sup>4</sup> ReBecca Burrell requested that her dissention be expressly noted.

funds, outcomes generated as a result of enhancing relationships between law enforcement and crisis response services, and any other accountability measures determined by DHS.

## **Unnecessarily Summoning an Officer**

### **Background**

Current law includes crimes prohibiting a person from intentionally conveying false information in certain circumstances, such as bomb scares, false alarms to public officers, or obstructing an officer. Current law also allows a person to bring a civil cause of action against another person for various types of intentional torts, such as defamation, intentional infliction of emotional distress, and invasion of privacy. The subcommittee reviewed a legislative proposal to allow a person to seek damages from another who knowingly causes a law enforcement officer to arrive at a location to contact the person, with the intent to cause certain adverse outcomes, such as unlawfully discriminate, cause the person to feel harassed or embarrassed, or damage the person's reputation.

### **Recommendation**

The subcommittee recommends creating legal consequences to discourage individuals from unnecessarily summoning a law enforcement officer based on an individual's intent to cause certain adverse outcomes. The subcommittee also expressed support for continued public engagement with law enforcement, including contacting the police to report public safety concerns in good faith.

## **APPENDIX 1**

### **QUALIFIED IMMUNITY**

Throughout its work, the subcommittee heard testimony on and discussed the topic of qualified immunity, a federal doctrine that generally provides immunity from liability for government officials performing discretionary functions in cases involving the deprivation of statutory or constitutional rights, subject to limited exceptions. Recognizing that state legislation cannot modify the federal qualified immunity doctrine, the subcommittee generally discussed proposed modifications to governmental immunity under Wisconsin law. However, the subcommittee was unable to reach consensus on this topic. Some subcommittee members expressed support for eliminating immunity or narrowing the circumstances in which it may be invoked. Other members expressed concern for various unintended consequences, such as decreased officer recruitment and public safety risks, if immunity was eliminated or modified.

## APPENDIX 2

### MEMBERS OF THE SPEAKER'S TASK FORCE ON RACIAL DISPARITIES

#### Subcommittee on Law Enforcement Policies and Standards

Representative Jim Steineke, 5th Assembly District | *Task Force and Subcommittee Co-Chair*  
Representative Shelia Stubbs, 77th Assembly District | *Task Force and Subcommittee Co-Chair*  
Reverend and Dr. Marcus Allen | *Pastor, Mount Zion Baptist Church of Madison*  
Kalvin Barrett | *Law Enforcement Instructor, Madison College*  
Keetra Burnette | *Senior Director of Stakeholder Engagement, United Way Dane County*  
ReBecca Burrell | *Founder, Revolution Ready*  
Danilo Cardenas | *Milwaukee Police Association*  
Nate Dreckman | *Grant County Sheriff*  
Pastor Dannie Evans | *Former Probation and Parole Agent, Rock County Youth Justice*  
Tony Gonzalez | *Founder and Co-Chair, Toward One Wausau*  
Pam Holmes | *Retired Milwaukee Police Officer*  
Tory Lowe | *Co-Founder and CEO, Justice of Wisconsin*  
Patrick Mitchell | *Chief of Police, West Allis*  
Orlando Owens | *Minister, Abundant Harvest Church of God In Christ*  
Jim Palmer | *Executive Director, Wisconsin Professional Police Association*  
Steven Roux | *Chief of Police, Rice Lake Police*  
Fred Royal | *Vice President, Milwaukee NAACP*  
Wayne Strong | *Retired Lieutenant, Madison Police Department*  
Reverend Yao Yang | *Pastor, The Cross of Wausau, and Joseph Project Leader*

#### Subcommittee on Education and Economic Development

Representative Robert Wittke, 62nd Assembly District | *Subcommittee Co-Chair*  
Representative Kalan Haywood, 16th Assembly District | *Subcommittee Co-Chair*  
Damond Boatwright | *Regional President, SSM Health – Wisconsin*  
Marty Calderon | *Executive Director, God Touch Ministry of Milwaukee*  
Ricardo Diaz | *Retired and Former Director, United Community Center in Milwaukee*  
Linda Fair | *Advisor, Blackhawk Technical College*  
Dr. Eve Hall | *President and CEO, Milwaukee Urban League*  
Tehassi Hill | *Chair, Oneida Nation*  
Dr. Jeremiah Holiday | *Chief Academic Officer, Milwaukee Public Schools*  
Theresa Jones | *Vice President for Diversity, Inclusion, and Equity, Children's Wisconsin*  
Veronica King | *Instructor, Gateway Technical College*  
Ted Neitzke | *CEO and Agency Administrator, CESA 6*  
Pastor Jerome Smith | *Greater Praise Church of God In Christ, and Co-Founder, The Joseph Project*