

May 7, 2025

Chair Tusler, Vice-Chair Jacobson, and Honorable Members of the Assembly Committee on Judiciary:

The American Civil Liberties Union of Wisconsin appreciates the opportunity to provide testimony in opposition to Assembly Bill 34.

This proposal seeks to limit the seldom-used process of judicial review under Wis. Stat. § 968.02 and § 968.26. Under the bill, a court may not permit the filing of a complaint against a law enforcement officer in relation to an officer-involved death unless “there is new or unused evidence presented.” Ultimately, this legislation creates a privileged category for law enforcement, undermining public trust and the fundamental principles of fairness and equal justice under the law.

The reality is that it is extremely rare for police officers to be criminally charged—and even more rarely convicted—when they shoot and kill civilians. One contributing factor is the relationship between law enforcement agencies and local prosecutors. When prosecutors work closely with police departments on a daily basis, relying on them for evidence and testimony, the relationship can create an inherent conflict of interest and a reluctance to pursue charges against officers.

A recent article examined the significant differences between how civilians and police officers are investigated in civilian death incidents.¹ The Milwaukee Area Investigative Team (MAIT) was established to ensure independent investigations and is comprised of nearly two dozen law enforcement agencies. According to a review of 17 MAIT investigations conducted over a four-year period, police officers under investigation for a civilian death were often afforded privileges that the general public are not:

- While police interrogate civilian suspects in an attempt to elicit an incriminating response, officers are interviewed as witnesses or victims (unless directed by a supervisor) typically in the presence of a union representative or lawyer.
- Officers can refuse to allow their statements to be recorded (despite MAIT protocols noting recording all interviews is “accepted best practice”); civilian suspects are not afforded that privilege.

¹ MAIT: How Wisconsin’s investigations into police shootings protect officers, Cops under investigation get special privileges, can change their stories and are rarely charged, *Wisconsin Examiner* (Feb. 12, 2025), <https://wisconsinexaminer.com/2025/02/12/maut-how-wisconsin-investigations-into-police-shootings-protect-officers/>

- Officers are permitted to make “additional statements” after reviewing video evidence, which provides an opportunity for officers to align their narratives with the recorded evidence.
- Despite MAIT protocols directing that the involved officer be “separated from other witnesses and removed from unnecessary contact with other officers” to avoid contamination of officer statements, officers were not separated after a civilian death in six of the 17 MAIT investigations reviewed for the story.

Law enforcement officers wield significant power and authority, especially in circumstances where use of force is employed. With such power comes the responsibility to uphold the highest standards of conduct. It is imperative that officers are held to at least the same level of scrutiny as civilians to maintain public confidence in our justice system.

To be clear: the John Doe process does not determine guilt. It is a tool to assess whether there is enough evidence following a hearing to move forward with a charge, only if the judge finds there is probable cause. If charges are filed, officers—like anyone else—still have every legal protection afforded under the Constitution, and the prosecution bears the burden of proving guilt beyond a reasonable doubt. In the two examples cited in testimony during the Senate committee hearing regarding recent use of the John Doe statute in cases involving officer-involved deaths, charges were never issued; as mentioned during that public hearing, perhaps the process is working as intended.

Devastatingly, fatal police encounters are not rare. Nationwide, 1,367 people were killed by police in 2024 according to Mapping Police Violence.² In Wisconsin, there were 24 fatal police encounters in 2024, up from 14 in the previous year.³ By creating a separate standard for police officers, this bill sends a message that they are above the law, a dangerous precedent that erodes trust and makes community engagement with law enforcement more fraught and less effective. We urge you to oppose this legislation and to advocate for policies that promote equal accountability, fairness, and transparency for all individuals, regardless of their profession.

² <https://mappingpoliceviolence.org/>

³ ‘A shoot can be legal. That doesn’t mean it was necessary.’ Fatal police encounters rise in Wisconsin, *Wisconsin Watch* (Aug. 23, 2024), <https://wisconsinwatch.org/2024/08/wisconsin-police-deaths-fatal-shooting-encounters-law-enforcement/>.