



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-5442/1
CMH&MED:amn

2019 ASSEMBLY BILL 896

February 11, 2020 - Introduced by Representative SPIROS. Referred to Committee on State Affairs.

1 **AN ACT to create** 165.87 of the statutes; **relating to:** body cameras on law
2 enforcement officers.

Analysis by the Legislative Reference Bureau

This bill creates requirements for law enforcement agencies that use body cameras on law enforcement officers. Under the bill, if a law enforcement agency uses a body camera, the agency must have a written policy on the use, maintenance, and storage of the cameras and the data recorded by the cameras. The bill also requires that the law enforcement agencies retain data from the recordings for at least 120 days and specifies the circumstances in which that data must be retained longer. For instance, under the bill, if data depict an encounter that resulted in a death, injury, or custodial arrest; a search during temporary questioning; or an encounter that involved an officer using force, the agency must retain the data until the final disposition of the investigation, case, or complaint to which the data pertain. Under the bill, the data from body cameras are subject to inspection and copying under the open records laws with exceptions to protect privacy and the identity of victims and minors.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

ASSEMBLY BILL 896**SECTION 1**

1 **SECTION 1.** 165.87 of the statutes is created to read:

2 **165.87 Body cameras and law enforcement.** (1) If a law enforcement
3 agency uses a body camera on a law enforcement officer, the law enforcement agency
4 shall do all of the following:

5 (a) Administer a written policy regarding all of the following:

6 1. The use, maintenance, and storage of body cameras and data recorded by the
7 body cameras.

8 2. Any limitations the law enforcement agency imposes on which law
9 enforcement officers may wear a body camera.

10 3. Any limitations the law enforcement agency imposes on situations, persons,
11 or encounters that may be recorded by a body camera.

12 (b) Train all law enforcement officers wearing a body camera on the policy
13 under par. (a) and on the requirements under sub. (2).

14 (c) Train all employees that use, maintain, store, or release data from a body
15 camera on the policy under par. (a) and on the requirements under subs. (2) and (3).

16 (d) Periodically review practices regarding the body cameras and data from
17 body cameras to ensure compliance with the policy under par. (a) and the
18 requirements under subs. (2) and (3).

19 (e) If the law enforcement agency maintains an Internet site or has an Internet
20 site maintained on its behalf, make the policy under par. (a) available to the public
21 at the Internet site.

22 **(2)** (a) Except as provided in pars. (b), (c), and (d), all data from a body camera
23 used on a law enforcement officer shall be retained for a minimum of 120 days after
24 the date of recording.

ASSEMBLY BILL 896

1 (b) Data from a body camera used on a law enforcement officer that depict any
2 of the following shall be retained until final disposition of any investigation, case, or
3 complaint to which the data pertain, except as provided in pars. (c) and (d):

4 1. An encounter that resulted in the death of any individual or actual or alleged
5 physical injury to an individual.

6 2. An encounter that resulted in a custodial arrest.

7 3. A search during an authorized temporary questioning as provided in s.
8 968.25.

9 4. An encounter that involved the use of force by a law enforcement officer,
10 except if the only use of force was the use of a firearm to dispatch an injured wild
11 animal.

12 (c) Retention beyond the period determined under par. (a) or (b) may be directed
13 by a law enforcement officer or law enforcement agency, a board of police and fire
14 commissioners, a prosecutor, a defendant, or a court that determines that the data
15 have evidentiary value in a prosecution. A person making a preservation directive
16 under this paragraph shall submit the directive to the law enforcement agency
17 having custody of the record within 120 days after the date of recording.

18 (d) Data from a body camera used on a law enforcement officer that are used
19 in a criminal, civil, or administrative proceeding may not be destroyed except upon
20 final disposition, including appeals, a determination from the court or hearing
21 examiner that the data are no longer needed, or an order from the court or hearing
22 examiner.

23 (e) Notwithstanding pars. (a) to (d), data from a body camera used on a law
24 enforcement officer may not be destroyed during the period specified in s. 19.35 (5).

25 **(3)** (a) In this subsection:

ASSEMBLY BILL 896**SECTION 1**

1 1. “Authority” has the meaning given in s. 19.32 (1).

2 2. “Record subject” means an individual recorded by a body camera used on a
3 law enforcement officer to whom all of the following apply:

4 a. The individual is depicted in the recording, or the individual’s voice is audible
5 in the recording.

6 b. The individual’s identity is known to the law enforcement agency.

7 c. The individual is not suspected of committing a crime or other violation of
8 law in connection with the law enforcement officer’s presence in the location that was
9 recorded.

10 d. The individual is not a law enforcement officer who was acting in an official
11 capacity, unless a crime or other violation of law has been committed or is alleged to
12 have been committed against the law enforcement officer while the law enforcement
13 officer was present at the location that was recorded.

14 3. “Requester” has the meaning given in s. 19.32 (3).

15 (b) Data from a body camera used on a law enforcement officer are subject to
16 the right of inspection and copying under s. 19.35 (1), except as provided in par. (c).

17 (c) 1. It shall be the public policy of this state to maintain the privacy of a record
18 subject who is a victim of a sensitive or violent crime or who is a minor and that access
19 to data from a body camera used on a law enforcement officer that depict such a
20 record subject shall be provided only if the public interest in allowing access is so
21 great as to outweigh that public policy. In that case, the record subject’s face and
22 anything else that would allow the record subject to be identified may be redacted
23 using pixelization or another method of redaction. The presumption under this
24 subdivision regarding the privacy of a record subject who is a victim of a sensitive or
25 violent crime does not apply if the record subject, or his or her next of kin if the record

ASSEMBLY BILL 896

1 subject is deceased, does not object to granting access to the data. The presumption
2 under this subdivision regarding the privacy of a record subject who is a minor does
3 not apply if the parent or legal guardian of the record subject does not object to
4 granting access to the data.

5 2. It shall be the public policy of this state to maintain the privacy of a record
6 subject who is in a location where the record subject has a reasonable expectation of
7 privacy and that access to data from a body camera used on a law enforcement officer
8 that depict a record subject in such a location shall be provided only if the public
9 interest in allowing access is so great as to outweigh that public policy. In that case,
10 the record subject's face and anything else that would allow the record subject to be
11 identified may be redacted using pixelization or another method of redaction. The
12 presumption under this subdivision does not apply if the record subject does not
13 object to granting access to the data.

14 3. If a requester believes that an authority has improperly made a decision to
15 redact or deny access to data under subd. 1. or 2., the requester may pursue the
16 remedies under s. 19.37 (1).

17 (d) For purposes of requests under s. 19.35 (1) for access to data from a body
18 camera used by a law enforcement agency, the law enforcement agency is the legal
19 custodian of the record, and if any other authority has custody of any such data, that
20 authority is not the legal custodian of that data. If any other authority receives a
21 request under s. 19.35 (1) for that data, that authority shall deny any portion of the
22 request that relates to that data.

23 (e) Nothing in this subsection prohibits the release of data from a body camera
24 under s. 175.47 (5) (b).

25 (END)