



State of Wisconsin
2019 - 2020 LEGISLATURE

LRB-5730/1
CMH&MED:amn

2019 ASSEMBLY BILL 964

February 28, 2020 - Introduced by JOINT LEGISLATIVE COUNCIL. Referred to Committee on Rules.

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 is explained in the NOTES provided by the Joint Legislative Council in the bill.

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:

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on the Use of Police Body Cameras. Key provisions of the bill are summarized below.

Law Enforcement Agency Policies, Training, and Compliance Related to Body Cameras

Under the bill, if a law enforcement agency uses a body camera on a law enforcement officer, the law enforcement agency must administer a written policy regarding all of the following:

1. The use, maintenance, and storage of body cameras and body camera data.
2. Any limitations the law enforcement agency imposes on which law enforcement officers may wear a body camera.
3. Any limitations the law enforcement agency imposes on situations, persons, or encounters that may be recorded by a body camera.

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Also, under the bill, if a law enforcement agency uses a body camera on a law enforcement officer, the law enforcement agency must do all of the following:

1. Train all law enforcement officers wearing a body camera on the policy described above and on the body camera data retention requirements discussed below.
2. Train all employees that use, maintain, store, or release body camera data on all of the following: (1) the law enforcement agency's policy on body cameras described above; (2) the body camera data retention requirements discussed below; and (3) the requirements regarding when the body camera data may be released as discussed below.
3. Periodically review practices regarding the body cameras and body camera data to ensure compliance with: (1) the law enforcement agency's policy on body cameras described above; (2) the body camera data retention requirements discussed below; and (3) the requirements regarding when the body camera data may be released.
4. If the law enforcement agency maintains an Internet site or has an Internet site maintained on its behalf, make its written policy available to the public at the Internet site.

Retention of Body Camera Data

In general, the bill requires all body camera data to be retained for a minimum of 120 days after the date of recording. The bill provides the following exceptions for longer retention:

1. Data must be retained until disposition of the investigation, case, or complaint if the data record any of the following:
 - a. An encounter that resulted in the death of any individual or actual or alleged physical injury to an individual.
 - b. An encounter that resulted in a custodial arrest.
 - c. A search during an authorized temporary questioning (commonly referred to as a "Terry Stop") as provided under current law.
 - d. An encounter that included the use of force by a law enforcement officer, except if the only use of force was the use of a firearm to dispatch an injured wild animal.
2. Retention beyond 120 days may be directed by a law enforcement officer or law enforcement agency, a board of police and fire commissioners, a prosecutor, a defendant, or a court that determines that the data have evidentiary value in a prosecution. An entity making the directive must submit a preservation order within 120 days after the incident.
3. Data retained that are used in a criminal, civil, or administrative hearing may not be destroyed except upon one of the following: (1) final disposition, including appeals; (2) a determination from the court or hearing examiner that the data are no longer needed; or (3) an order from the court or hearing examiner.
4. Body camera data may not be destroyed at any time after the receipt of an open records request except as provided by current law.

Release of Body Camera Data

Under the bill, body camera data are, in general, open to inspection and copying under the Open Records Law.

The bill contains an exception to the general rule that body camera data are open to inspection and copying relating to the treatment of minors and victims of a sensitive or violent crime, and a record subject who is in a location where the record subject has a reasonable expectation of privacy who is captured by body camera data. Specifically, the bill provides that the privacy of a record subject who is a minor, is a victim of a sensitive or violent crime, or has a reasonable expectation of privacy must be maintained and that access to such data must be provided only if the public interest in allowing access is so great as to outweigh that public policy. In these cases, the protected record subject's face and anything else that would allow the protected record subject to be identified may be redacted using pixelization or another method of redaction. A decision to redact body camera footage pursuant to these provisions is subject to be challenged in a mandamus

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action in the same manner as are any other decisions to deny access to part or all of a record under the Open Records Law.

The provisions of the bill regarding the privacy of a victim of a sensitive or violent crime do not apply if the record subject, or his or her next of kin if the record subject is deceased, does not object to granting access to the data. The presumption regarding the privacy of a minor does not apply if the parent or legal guardian of the minor does not object to granting access to the data. The presumption regarding the privacy of an individual with a reasonable expectation of privacy does not apply if the individual does not object to granting access to the data.

The bill defines "record subject" as an individual recorded by a body camera to whom all of the following apply: (1) the individual is depicted in the recording, or the individual's voice is audible in the recording; (2) the individual's identity is known to the law enforcement agency; (3) the individual is not suspected of committing a crime or other violation of law in connection with the law enforcement officer's presence in the location that was recorded; and (4) the individual is not a law enforcement officer who was acting in an official capacity, unless a crime or other violation of law has been committed or is alleged to have been committed against the law enforcement officer while the law enforcement officer was present at the location that was recorded.

The bill also provides that for purposes of an open records request for access to body camera data used by a law enforcement agency, the law enforcement agency is the legal custodian of the record. If any other authority has custody of such data, that authority is not the legal custodian of that data and must deny any portion of an open records request that relates to that body camera data.

Additionally, the bill provides that all of the provisions related to the release of body camera data do not prohibit investigators investigating an officer-involved death from releasing body camera data when required to do so under current law.

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).

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

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

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

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

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

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

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

18 3. A search during an authorized temporary questioning as provided in s.
19 968.25.

20 4. An encounter that included the use of force by a law enforcement officer,
21 except if the only use of force was the use of a firearm to dispatch an injured wild
22 animal.

23 (c) Retention beyond the period determined under par. (a) or (b) may be directed
24 by a law enforcement officer or law enforcement agency, a board of police and fire
25 commissioners, a prosecutor, a defendant, or a court that determines that the data

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1 have evidentiary value in a prosecution. A person making a preservation directive
2 under this paragraph shall submit the directive to the law enforcement agency
3 having custody of the record within 120 days after the date of recording.

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

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

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

12 1. "Authority" has the meaning given in s. 19.32 (1).

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

15 a. The individual is depicted in the recording, or the individual's voice is audible
16 in the recording.

17 b. The individual's identity is known to the law enforcement agency.

18 c. The individual is not suspected of committing a crime or other violation of
19 law in connection with the law enforcement officer's presence in the location that was
20 recorded.

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

25 3. "Requester" has the meaning given in s. 19.32 (3).

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

3 (c) 1. It shall be the public policy of this state to maintain the privacy of a record
4 subject who is a victim of a sensitive or violent crime or who is a minor and that access
5 to data from a body camera used on a law enforcement officer that record such a
6 record subject shall be provided only if the public interest in allowing access is so
7 great as to outweigh that public policy. In that case, the record subject's face and
8 anything else that would allow the record subject to be identified may be redacted
9 using pixelization or another method of redaction. The presumption under this
10 subdivision regarding the privacy of a record subject who is a victim of a sensitive or
11 violent crime does not apply if the record subject, or his or her next of kin if the record
12 subject is deceased, does not object to granting access to the data. The presumption
13 under this subdivision regarding the privacy of a record subject who is a minor does
14 not apply if the parent or legal guardian of the record subject does not object to
15 granting access to the data.

16 2. It shall be the public policy of this state to maintain the privacy of a record
17 subject who is in a location where the record subject has a reasonable expectation of
18 privacy and that access to data from a body camera used on a law enforcement officer
19 that record a record subject in such a location shall be provided only if the public
20 interest in allowing access is so great as to outweigh that public policy. In that case,
21 the record subject's face and anything else that would allow the record subject to be
22 identified may be redacted using pixelization or another method of redaction. The
23 presumption under this subdivision does not apply if the record subject does not
24 object to granting access to the data.

