



State of Wisconsin
2021 - 2022 LEGISLATURE

LRB-4143/1
MPG:skw

2021 ASSEMBLY BILL 746

December 7, 2021 - Introduced by Representatives BROSTOFF, BOWEN, HONG, MOORE OMOKUNDE, ANDERSON, BALDEH, DRAKE, HEBL, L. MYERS, CABRERA, STUBBS and SPREITZER, cosponsored by Senators LARSON, ROYS, JOHNSON and AGARD. Referred to Committee on Criminal Justice and Public Safety.

- 1 **AN ACT** *to create* 19.35 (8) of the statutes; **relating to:** public access to records
2 concerning the conduct of law enforcement officers.

Analysis by the Legislative Reference Bureau

This bill creates a number of requirements under Wisconsin's public records law in connection with certain records relating to law enforcement officers.

Under the bill, all of the following records are subject to disclosure under the public records law without prior notice to the record subject:

1. Any record relating to the report, investigation, or findings of any incident involving the discharge of a firearm at a person by a law enforcement officer or an incident in which the use of force by a law enforcement officer against a person resulted in death or in great bodily harm.

2. Any record relating to an incident in which a sustained finding was made that a law enforcement officer engaged in sexual assault involving a member of the public. The bill defines "sustained finding" to mean "a final determination by an investigating agency, commission, board, hearing officer, or arbitrator, following an investigation and opportunity for an administrative appeal, if applicable, that the conduct of a law enforcement officer violated law or law enforcement agency policy."

3. Any record relating to an incident in which a sustained finding was made that a law enforcement officer used unreasonable or excessive force.

4. Any record relating to an incident in which a sustained finding was made that a law enforcement officer failed to intervene against another officer using force that was clearly unreasonable or excessive.

5. Any record relating to an incident in which a sustained finding was made of dishonesty by a law enforcement officer directly relating to the reporting,

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investigation, or prosecution of a crime, or directly relating to the reporting or investigation of misconduct by another law enforcement officer, including any sustained finding of perjury, false statements, filing false reports, or the destruction, falsification, or concealment of evidence.

6. Any record relating to an incident in which a sustained finding was made that a law enforcement officer engaged in conduct, including verbal statements, writings, online posts, recordings, or gestures, involving prejudice or discrimination against a person on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military or veteran status.

7. Any record relating to an incident in which a sustained finding was made that a law enforcement officer made an unlawful arrest or conducted an unlawful search.

Under the bill, subject to a number of exceptions, a record of an incident specified above that is the subject of an active criminal or administrative investigation may be withheld.

Under the bill, records subject to disclosure above may be withheld or redacted for any of the following purposes:

1. To remove the home address, home e-mail address, home telephone number, or social security number of a law enforcement officer.

2. To preserve the anonymity of whistleblowers, complainants, victims, and witnesses.

3. To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in disclosure of records about misconduct and serious use of force by law enforcement officers.

4. To protect the safety of an individual identified in a record in a case in which there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to that individual.

Finally, under the bill, if criminal charges are filed related to an incident in which misconduct by a law enforcement officer occurred or in which force was used, the disclosure of records otherwise subject to disclosure under the bill may be delayed until a verdict on those charges is returned at trial or, if a plea of guilty or no contest is entered, the time to withdraw the plea. Also, the bill prohibits the disclosure of records regarding a civilian complaint against a law enforcement officer if the complaint is unfounded or frivolous.

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:

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1 **SECTION 1.** 19.35 (8) of the statutes is created to read:

2 19.35 (8) **RIGHT OF ACCESS TO LAW ENFORCEMENT RECORDS.** (a) In this subsection:

3 1. “Law enforcement agency” has the meaning given in s. 165.85 (2) (bv).

4 2. “Law enforcement officer” has the meaning given in s. 165.85 (2) (c).

5 3. “Sustained finding” means a final determination by an investigating agency,
6 commission, board, hearing officer, or arbitrator, following an investigation and
7 opportunity for an administrative appeal, if applicable, that the conduct of a law
8 enforcement officer violated law or law enforcement agency policy.

9 4. “Unfounded” means a case in which an investigation clearly establishes that
10 the allegation is not true.

11 (b) Notwithstanding ss. 19.356 and 19.36 (10) (b), and subject to pars. (c) to (g),
12 an authority shall make all of the following records available for inspection and
13 copying under sub. (1):

14 1. Any record relating to the report, investigation, or findings of any incident
15 involving the discharge of a firearm at a person by a law enforcement officer or an
16 incident in which the use of force by a law enforcement officer against a person
17 resulted in death or in great bodily harm, as defined in s. 939.22 (14).

18 2. Any record relating to an incident in which a sustained finding was made
19 that a law enforcement officer engaged in sexual assault, as defined in s. 165.93 (1)
20 (b), involving a member of the public.

21 3. Any record relating to an incident in which a sustained finding was made
22 that a law enforcement officer used unreasonable or excessive force.

23 4. Any record relating to an incident in which a sustained finding was made
24 that a law enforcement officer failed to intervene against another officer using force
25 that was clearly unreasonable or excessive.

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1 5. Any record relating to an incident in which a sustained finding was made of
2 dishonesty by a law enforcement officer directly relating to the reporting,
3 investigation, or prosecution of a crime, or directly relating to the reporting or
4 investigation of misconduct by another law enforcement officer, including any
5 sustained finding of perjury, false statements, filing false reports, or the destruction,
6 falsification, or concealment of evidence.

7 6. Any record relating to an incident in which a sustained finding was made
8 that a law enforcement officer engaged in conduct, including verbal statements,
9 writings, online posts, recordings, or gestures, involving prejudice or discrimination
10 against a person on the basis of race, religious creed, color, national origin, ancestry,
11 physical disability, mental disability, medical condition, genetic information, marital
12 status, sex, gender, gender identity, gender expression, age, sexual orientation, or
13 military or veteran status.

14 7. Any record relating to an incident in which a sustained finding was made
15 that a law enforcement officer made an unlawful arrest or conducted an unlawful
16 search.

17 (c) An authority shall withhold or redact records subject to disclosure under
18 par. (b) for any of the following purposes:

19 1. To remove the home address, home electronic mail address, home telephone
20 number, or social security number of a law enforcement officer, unless the officer
21 authorizes the authority to provide access to such information.

22 2. To preserve the anonymity of whistleblowers, complainants, victims, and
23 witnesses.

24 3. To protect confidential medical, financial, or other information of which
25 disclosure is specifically prohibited by federal law or would cause an unwarranted

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1 invasion of personal privacy that clearly outweighs the strong public interest in
2 disclosure of records about misconduct and serious use of force by law enforcement
3 officers.

4 4. To protect the safety of a record subject in a case in which there is a specific,
5 articulable, and particularized reason to believe that disclosure of the record would
6 pose a significant danger to the record subject.

7 (d) An authority may withhold or redact a record that is subject to disclosure
8 under par. (b) in a case in which, on the facts of the particular case, the public interest
9 served by not disclosing the information clearly outweighs the public interest served
10 by disclosure of the information.

11 (e) An authority may withhold a record of an incident specified in par. (b) that
12 is the subject of an active criminal or administrative investigation, subject to all of
13 the following:

14 1. During an active criminal investigation, disclosure may be delayed for up to
15 60 days after the date of the incident or until charges are filed against the law
16 enforcement officer, whichever occurs first. If an authority delays disclosure under
17 this subdivision, the authority shall provide, in writing, the authority's
18 determination that the public interest in delaying disclosure clearly outweighs the
19 public interest in disclosure. The writing shall include the estimated date for
20 disclosure of the withheld records.

21 2. After the period specified in subd. 1. expires, an authority may continue to
22 delay the disclosure of records if the disclosure could reasonably be expected to
23 interfere with a criminal enforcement proceeding against the law enforcement
24 officer in connection with the incident. If an authority delays disclosure under this
25 subdivision, the authority shall, no later than every 120 days, provide, in writing, a

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1 statement of the reasons for the authority's determination that disclosure could
2 reasonably be expected to interfere with the criminal enforcement proceeding. The
3 writing shall include the estimated date for the disclosure of the withheld records.
4 Records withheld by the authority shall be disclosed when the reasons for
5 withholding the records no longer apply, when the investigation or proceeding is no
6 longer active, or by no later than 18 months after the date of the incident, whichever
7 occurs first.

8 3. After the period specified in subd. 1. expires, an authority may continue to
9 delay the disclosure of records if the disclosure could reasonably be expected to
10 interfere with a criminal enforcement proceeding against someone other than the
11 law enforcement officer involved in the incident. If an authority delays disclosure
12 under this subdivision, the authority shall, no later than every 120 days, provide, in
13 writing, a statement of the reasons disclosure could reasonably be expected to
14 interfere with a criminal enforcement proceeding, and shall provide an estimated
15 date for the disclosure of the withheld records. Records withheld by the authority
16 shall be disclosed when reasons for withholding the records no longer apply, when
17 the investigation or proceeding is no longer active, or by no later than 18 months after
18 the date of the incident, whichever occurs first, unless extraordinary circumstances
19 warrant continued delay due to the active and ongoing investigation or proceeding.
20 In that case, the authority shall show by clear and convincing evidence that the
21 interest in preventing prejudice to the active and ongoing investigation or proceeding
22 outweighs the public interest in prompt disclosure of the records. The authority shall
23 release all records subject to disclosure that do not cause substantial prejudice,
24 including any records that have otherwise become available.

