



State of Wisconsin
2015 - 2016 LEGISLATURE

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2015 SENATE BILL 766

February 23, 2016 - Introduced by Senator C. LARSON, cosponsored by Representatives C. TAYLOR, BARNES, BERCEAU, BROSTOFF, KESSLER, SARGENT, SINICKI and YOUNG. Referred to Committee on Judiciary and Public Safety.

1 **AN ACT** *to repeal* 15.257 (3) and 165.87 (6); and *to create* 15.257 (3) and 165.87
2 of the statutes; **relating to:** body cameras on law enforcement officers and
3 providing criminal penalties.

Analysis by the Legislative Reference Bureau

This bill creates requirements for law enforcement agencies that use body cameras on law enforcement officers, including requirements for agency policies, which encounters must be recorded, restrictions on the use of recordings, and retention practices as well as limitations on encounters that may not be recorded. The bill creates limitations on access to data from body cameras. The bill makes it a Class I felony to tamper with, delete, copy, or upload data obtained from a body camera or to tamper with or destroy a body camera. This bill also creates the Law Enforcement Body Camera Council in the Department of Justice to make recommendations to the legislature and to establish best practices regarding body cameras worn by law enforcement officers.

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:

4 **SECTION 1.** 15.257 (3) of the statutes is created to read:

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1 15.257 (3) LAW ENFORCEMENT BODY CAMERA COUNCIL. (a) There is created in the
2 department of justice a law enforcement body camera council consisting of the
3 following members:

4 1. Three citizens from underrepresented communities, including a citizen from
5 a 1st class city, selected by the governor from a list prepared by the Wisconsin
6 Conference of the National Association for the Advancement of Colored People,
7 Centro Hispano of Dane County, and Centro Hispano Milwaukee.

8 2. The attorney general or his or her designee.

9 3. A member of the crime victims council representing an organization
10 providing victim support services, appointed by the attorney general.

11 4. A sheriff, selected by the Badger State Sheriffs' Association and the
12 Wisconsin Sheriffs And Deputy Sheriffs Association, or his or her designee.

13 5. A chief of police, selected by the Wisconsin Chiefs of Police Association, or
14 his or her designee.

15 6. The executive director of the Wisconsin Professional Police Association, or
16 his or her designee.

17 7. A district attorney, selected by the Wisconsin District Attorneys Association,
18 or his or her designee.

19 8. A state public defender, selected by the public defender board, or his or her
20 designee.

21 9. The executive director of the Wisconsin Freedom of Information Council, or
22 his or her designee.

23 10. A member or staff member of the American Civil Liberties Union, as
24 selected by the American Civil Liberties Union of Wisconsin.

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1 11. An attorney specializing in civil rights or an expert in constitutional law,
2 selected by the governor from a list prepared by the State Bar of Wisconsin.

3 (b) Members under par. (a) 1., 3., 4., 5., 7., 8., 9., 10., and 11. shall serve for
4 2-year terms, and, notwithstanding s. 15.09 (2), the member under par. (a) 2. shall
5 serve as the council chairperson.

6 **SECTION 2.** 15.257 (3) of the statutes, as created by 2015 Wisconsin Act (this
7 act), is repealed.

8 **SECTION 3.** 165.87 of the statutes is created to read:

9 **165.87 Body cameras on law enforcement.** (1) (a) If a law enforcement
10 agency uses a body camera on a law enforcement officer, the law enforcement agency
11 shall develop a written policy and conspicuously post it on an Internet site the agency
12 maintains. The agency may include policies and procedures that do not conflict with
13 the requirements under this paragraph and shall include all of the following in the
14 policy:

15 1. That no personnel except law enforcement officers who have the authority
16 to arrest and conduct searches may wear a body camera.

17 2. That the audio and video functions of the body camera shall be activated
18 when the law enforcement officer responds to a call or initiates an interaction for
19 enforcement or investigation purposes and may not be discontinued during the
20 response or interaction except as provided under sub. (2).

21 3. How the law enforcement agency shall classify, download, store,
22 administratively use, and ensure the security of data from a body camera.

23 4. Disciplinary measures for violating the policy.

24 5. Which employees may access data from body cameras.

SENATE BILL 766**SECTION 3**

1 (b) If a law enforcement agency uses body cameras on law enforcement officers,
2 the law enforcement agency shall train all law enforcement officers on the policy
3 under par. (a) and on this section.

4 (c) If a law enforcement agency uses body cameras on law enforcement officers,
5 the law enforcement agency shall confiscate the body camera if the camera has data
6 recording an incident involving a law enforcement officer that resulted in a death or
7 bodily harm to an individual, involving the use of force by a law enforcement officer,
8 or involving a law enforcement officer's discharge of a firearm. No law enforcement
9 officer involved in the incident may be allowed to review or be informed about the
10 contents of the data before the officer completes any required initial reports,
11 statements, or interviews regarding the incident.

12 (d) If a law enforcement agency enters into a contract regarding any aspect of
13 the use of body cameras, no party to the contract may use data from the body camera
14 in a manner inconsistent with this section or with any policies and procedures of the
15 law enforcement agency that are not inconsistent with this section.

16 (e) No law enforcement officer may use a body camera unless he or she is acting
17 on the authority of a law enforcement agency that has a policy under par. (a).

18 **(2)** A law enforcement officer who is wearing a body camera shall notify an
19 individual that the individual is being recorded as soon as practically possible if the
20 law enforcement officer is going to interact with the individual for enforcement or
21 investigation purposes.

22 **(3)** (a) 1. Except as permitted under this section, an individual who tampers
23 with, deletes, copies, or uploads data obtained from a body camera is guilty of a Class
24 I felony.

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1 2. Except as permitted under this section, an individual who intentionally
2 tampers with or destroys any body camera, or part of a body camera, used by a law
3 enforcement agency is guilty of a Class I felony.

4 3. An individual who intentionally violates sub. (1) (c) is guilty of a Class I
5 felony.

6 (b) No law enforcement officer or personnel may do any of the following:

7 1. Access data from a body camera for personal use.

8 2. Record a conversation in public or in a law enforcement agency without the
9 knowledge of the speakers during routine nonenforcement activities.

10 3. Record activity that is unrelated to a response to a call or to an interaction
11 initiated for enforcement or investigation purposes.

12 4. Record off-duty or personal activity.

13 5. Use a body camera for a purpose other than law enforcement.

14 6. Merge data from a body camera with other data collected by a law
15 enforcement agency or subject data from a body camera to automated analysis or
16 analytics.

17 7. Record activity with the intent of inhibiting or curbing the exercise of a right
18 under the First Amendment of the U.S. Constitution and article I, section 18, of the
19 Wisconsin Constitution.

20 (c) Unless a law enforcement officer is confronting a violent suspect or
21 anticipates the need to use force or unless a person is at risk of bodily harm or death,
22 a law enforcement officer may not record any of the following:

23 1. A situation in which a recording could risk the safety of an informant, as
24 defined in s. 19.36 (8) (a) 1., or an undercover officer unless the law enforcement

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1 officer receives from the informant or the undercover officer, whichever is applicable,
2 permission, recorded on the body camera data.

3 2. An individual who wants to anonymously report a crime or aid an
4 investigation unless the law enforcement officer receives permission from the
5 individual, recorded on the body camera data.

6 3. A strip search unless the law enforcement officer receives permission from
7 the subject of the search, recorded on the body camera data.

8 4. Any activity on the grounds of any public, private, or parochial elementary
9 or secondary school that does not involve a threat to life or safety.

10 5. Any activity in a patient care area of a hospital, rape treatment center, or
11 other health care facility that does not involve an enforcement action unless the law
12 enforcement officer receives permission, recorded on the body camera data, from all
13 the recorded subjects.

14 6. Any activity in a place where a significantly heightened expectation of
15 privacy exists unless the law enforcement officer receives permission, recorded on
16 the body camera data, from all the recorded subjects who have the expectation.

17 (d) A court may impose the following remedies if the court determines a law
18 enforcement officer or member of law enforcement personnel violated this section or
19 a policy under sub. (1) (a):

20 1. The court may suppress data recorded in violation of this section or a policy.

21 2. The court may presume in favor of a criminal defendant who reasonably
22 asserts that an officer or member of personnel destroyed or failed to capture
23 exculpatory data in violation of this section.

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1 3. The court may presume on behalf of a civil plaintiff who reasonably asserts
2 that an officer or member of personnel destroyed or failed to capture favorable data
3 in violation of this section.

4 (4) (a) All data from a body camera shall be retained for 6 months and destroyed
5 after that period, except as provided in pars. (b), (c), and (d) and s. 19.35 (5).

6 (b) Data shall be retained until any applicable issue is finally resolved or for
7 42 months, whichever is longer, if the data are a record of any of the following:

8 1. An encounter about which a formal or informal complaint has been filed by
9 the subject of the data. The law enforcement agency that is the custodian of the data
10 shall allow the subject to access the data in a timely manner to determine whether
11 to file a complaint.

12 2. An encounter during which a law enforcement officer discharged his or her
13 firearm or used force.

14 3. An encounter that resulted in the death of or bodily harm to any person.

15 4. An encounter that resulted in a detention or arrest, excluding a traffic stop
16 that did not result in further detention or arrest.

17 5. An encounter with evidentiary value for a criminal proceeding, as
18 determined by a supervisor, prosecutor, defendant, or court or the law enforcement
19 officer.

20 6. An encounter that is or may be used as evidence in any court or
21 administrative proceeding, as determined by the law enforcement agency that is the
22 custodian, by the law enforcement officer, or by an individual who is the subject of
23 the data. The law enforcement agency that is the custodian of the data shall allow
24 the subject to access the data in a timely manner to determine if the data must be
25 retained under this subdivision.

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1 7. A subject of an ongoing investigation.

2 (c) If, within the immediately preceding 6 months, data have been the subject
3 of an open records request regarding a specific law enforcement incident, the data
4 relating to that specific incident shall be retained.

5 (d) A law enforcement agency may retain data from a body camera for any
6 period if the data will be used only for law enforcement training purposes.

7 **(5)** (a) Data from a body camera are subject to the right of inspection and
8 copying under s. 19.35 (1), except as provided in pars. (b) and (c).

9 (b) Data from a body camera are not open to inspection and copying under s.
10 19.35 (1) if any of the following applies:

11 1. The data are subject only to the 6-month retention period under sub. (4) (a).

12 2. The data depict nudity.

13 3. The data depict matter that is subject to a privilege under ch. 905.

14 (c) 1. It shall be the public policy of this state that the privacy of a victim of a
15 sensitive or violent crime, or the privacy of a minor, who is a subject of the data shall
16 be maintained and that access to such data shall be provided only if the public
17 interest in allowing access is so great as to outweigh that public policy. In that case,
18 the victim's or minor's face and anything else that would allow the victim or minor
19 to be identified shall be censored using pixelization or another method of censorship.
20 The presumption regarding the privacy of a victim under this subdivision does not
21 apply if the victim, or his or her next of kin if the victim is deceased, does not object
22 to granting access to the data. The presumption regarding the privacy of a minor
23 under this subdivision does not apply if the parent or legal guardian of the minor does
24 not object to granting access to the data.

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1 2. It shall be the public policy of this state that the privacy of an individual who
2 is a subject of the data in a location where the individual has a reasonable
3 expectation of privacy shall be maintained and that access to such data shall be
4 provided only if the public interest in allowing access is so great as to outweigh that
5 public policy. In that case, the individual's face and anything else that would allow
6 the individual to be identified shall be censored using pixelization or another method
7 of censorship. The presumption under this subdivision does not apply if the
8 individual does not object to granting access to the data.

9 (d) For purposes of requests under s. 19.35 (1) for access to a record under this
10 section, the law enforcement agency is the legal custodian of the record. Neither a
11 party to a contract regarding any aspect of the use of body cameras nor a person that
12 has custody of a record under this section for the primary purpose of information
13 storage, information technology processing, or other information technology usage
14 is the legal custodian of the record.

15 **(6)** The law enforcement body camera council shall do all of the following:

16 (a) Establish best practices and standards for the use of a body camera by a law
17 enforcement agency and, beginning one year after the effective date of this
18 paragraph ... [LRB inserts date], submit an annual report to the chief clerk of each
19 house of the legislature for distribution to the legislature under s. 13.172 (2) that
20 includes recommendations to the legislature on the subject of body cameras.

21 (b) Examine best practices for data storage, including determining if
22 centralized storage of data is feasible, cost effective, and efficient.

23 (c) Establish best practices for determining when a law enforcement officer or
24 law enforcement personnel may access or review data recorded by a body camera,
25 including which personnel and for what purposes.

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1 (d) Develop guidelines for where a law enforcement officer must wear his or her
2 body camera, including whether it should be in public view and where on his or her
3 torso or head it should be worn.

4 (e) Establish best practices on any issues the council finds appropriate for
5 ensuring that data recorded by a body camera are uploaded, processed, and stored
6 properly and securely, including all of the following:

7 1. Classification, download, and storage of data.
8 2. Data security.
9 3. Discipline of law enforcement officers for violating agency policy on body
10 cameras.

11 4. Administrative use of recordings.

12 5. Which law enforcement officers should wear body cameras.

13 (f) Establish best practices for open records and public release of body camera
14 data.

15 **SECTION 4.** 165.87 (6) of the statutes, as created by 2015 Wisconsin Act (this
16 act), is repealed.

17 **SECTION 5. Nonstatutory provisions.**

18 (1) Notwithstanding section 15.257 (3) (b) of the statutes, as created by this act,
19 the initial members of the council appointed under section 15.257 (3) (a) of the
20 statutes, as created by this act, shall be appointed for the following terms:

21 (a) One member appointed under section 15.257 (3) (a) 1. of the statutes for a
22 term expiring one year after the initial appointment.

23 (b) The members appointed under section 15.257 (3) (a) 3., 5., 7., 9., and 11. of
24 the statutes for a term expiring one year after the initial appointment.

