
Wisconsin Legislative Council

ACT MEMO



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2019 Wisconsin Act 108
[2019 Senate Bill 50]

Police Body Cameras

2019 WISCONSIN ACT 108

The act creates standards for a law enforcement agency that uses a body camera on a law enforcement officer. Specifically, the act addresses law enforcement agency policies, training, and compliance related to body cameras, and retention and release of body camera data.

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

Under the act, 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:

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

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

- Train all law enforcement officers wearing a body camera on the policy described above and on the body camera data retention requirements discussed below.
- Train all employees that use, maintain, store, or release body camera data on all of the following:
 - The law enforcement agency's policy on body cameras, described above.
 - The body camera data retention requirements, discussed below.
 - The requirements regarding when the body camera data may be released, as discussed below.
- Periodically review practices regarding the body cameras and body camera data to ensure compliance with:
 - The law enforcement agency's policy on body cameras, described above.
 - The body camera data retention requirements, discussed below.
 - The requirements regarding when the body camera data may be released.
- 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 on the Internet site.

Retention of Body Camera Data

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

- Data must be retained until disposition of the investigation, case, or complaint if the data records any of the following:
 - An encounter that resulted in the death of any individual or actual or alleged physical injury to an individual.
 - An encounter that resulted in a custodial arrest.
 - A search during an authorized temporary questioning (commonly referred to as a “Terry Stop”) as provided under current law.
 - 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.
- 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.
- Data retained that are used in a criminal, civil, or administrative hearing may not be destroyed except upon one of the following:
 - Final disposition, including appeals.
 - A determination from the court or hearing examiner that the data are no longer needed.
 - An order from the court or hearing examiner.
- 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 act, body camera data are, in general, open to inspection and copying under the Open Records Law.

The act 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 data¹. Specifically, the act 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

¹ The act 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.

provisions is subject to be challenged in a mandamus 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 act 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 act 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 act 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.

Effective date: March 1, 2020

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