AN ACT to repeal 165.87 (1) (a), 165.87 (1) (e), 165.87 (1m) and 165.87 (4); to amend 165.87 (title), 165.87 (1) (intro.), 165.87 (1) (b), 165.87 (1) (c), 165.87 (1) (d), 165.87 (2) (a), 165.87 (2) (b) (intro.), 165.87 (2) (d), 165.87 (2) (e), 165.87 (3) (a), 165.87 (3) (b), 165.87 (3) (c) 1., 165.87 (3) (c) 2., 165.87 (3) (d) and 165.87 (3) (e); and to create 111.70 (4) (mc) 7., 111.91 (2) (t), 165.85 (4) (em), 165.87 (1) (dm), 165.87 (1m) and 165.87 (4) of the statutes; relating to: requiring the use of body cameras by law enforcement and providing a penalty.

Analysis by the Legislative Reference Bureau

Under current law, if a law enforcement agency uses a body camera on a law enforcement officer, the law enforcement agency is required to administer a written policy regarding the use of body cameras. Under current law, the written policy is required to cover any limitations the law enforcement agency imposes on which law enforcement officers may wear a body camera, and any limitations on situations, persons, or encounters that may be recorded by a body camera. Current law also specifies data retention requirements for data from a body camera and specifies when data from a body camera may be released to the public under the open records law.

This bill does all of the following with respect to a body camera and a dashboard-mounted camera used by law enforcement:
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1. Requires the Law Enforcement Standards Board (LESB) to develop a statewide policy for a law enforcement officer’s use, maintenance, and storage of a body camera or a dashboard-mounted camera, and data recorded by such a camera by January 1, 2025. Under the bill, the policy developed by the LESB will replace the policy of a law enforcement agency. Under the bill, the LESB policy must require law enforcement officers to record every encounter with a civilian. Exceptions to this standard must be specific and based on best practices under the bill.

2. Specifies that if a law enforcement officer intentionally violates a written policy on body cameras by failing to use the camera, the law enforcement officer is guilty of the crime of misconduct in public office, a Class I felony.

3. Specifies that a law enforcement agency that is using a body camera on a law enforcement officer on the effective date of the bill is required to continue use of a body camera on that law enforcement officer until January 1, 2025, when the LESB policy will take effect.

4. Requires a law enforcement agency to provide body cameras to each of its law enforcement officers and dashboard-mounted cameras for each of its vehicles by January 1, 2025.

5. Requires a law enforcement agency to conduct periodic reviews of body camera and dashboard-mounted camera footage for compliance with the law enforcement agency’s use of force policy. If the law enforcement agency determines, as a result of such a periodic review, that a law enforcement officer has violated a use of force policy, the bill requires that the law enforcement agency immediately terminate employment of the law enforcement officer.

6. Applies to dashboard-mounted cameras the current data retention and open records requirements for body cameras.

Also, under current law, a collective bargaining unit that represents law enforcement officers may generally bargain wages, hours, and conditions of employment. Under the bill, mandatory termination of employment for a violation of a use of force policy that is discovered upon review of body camera or dashboard-mounted camera footage may not be collectively bargained.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

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:

SECTION 1. 111.70 (4) (mc) 7. of the statutes is created to read:

111.70 (4) (mc) 7. The termination of a public safety employee under s. 165.87 (1m) (b).
SECTION 2. 111.91 (2) (t) of the statutes is created to read:

111.91 (2) (t) The termination of a public safety employee under s. 165.87 (1m) (b).

SECTION 3. 165.85 (4) (em) of the statutes is created to read:

165.85 (4) (em) Body cameras and dashboard-mounted cameras. 1. The board shall establish a statewide policy for the use, maintenance, and storage of a body camera, a dashboard-mounted camera, and data recorded by the cameras by a law enforcement officer.

2. The policy under subd. 1. shall require a law enforcement officer who is acting in an official capacity and who has been issued a body camera or a vehicle with a dashboard-mounted camera to record all encounters with civilians. Any exceptions to this policy must be specific and based on best practices.

3. The policy under subd. 1. shall require a law enforcement agency to supply a body camera to each law enforcement officer that it employs and to equip a dashboard-mounted camera in each vehicle that the law enforcement agency provides for official use.

4. A law enforcement officer who intentionally violates a written policy under subd. 1. by failing to use or by deactivating a body camera or dashboard-mounted camera is guilty of misconduct under s. 946.12 (1).

SECTION 4. 165.87 (title) of the statutes is amended to read:

165.87 (title) Body cameras and dashboard-mounted cameras and law enforcement.

SECTION 5. 165.87 (1) (intro.) of the statutes is amended to read:
165.87 (1) (intro.) If a law enforcement agency uses a body camera on a law enforcement officer, the law enforcement agency shall do all of the following with respect to a body camera or a dashboard-mounted camera:

Section 6. 165.87 (1) (a) of the statutes is repealed.

Section 7. 165.87 (1) (b) of the statutes is amended to read:

165.87 (1) (b) Train all law enforcement officers wearing a body camera or operating a vehicle equipped with a dashboard-mounted camera on the policy under par. (a) and on the requirements under sub. (2).

Section 8. 165.87 (1) (b) of the statutes, as affected by 2021 Wisconsin Act .... (this act), is amended to read:

165.87 (1) (b) Train all law enforcement officers wearing a body camera or operating a vehicle equipped with a dashboard-mounted camera on the policy under par. (a) s. 165.85 (4) (em) 1, and on the requirements under sub. (2).

Section 9. 165.87 (1) (c) of the statutes is amended to read:

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

Section 10. 165.87 (1) (c) of the statutes, as affected by 2021 Wisconsin Act .... (this act), is amended to read:

165.87 (1) (c) Train all employees that use, maintain, store, or release data from a body camera or a dashboard-mounted camera on the policy under par. (a) s. 165.85 (4) (em) 1, and on the requirements under subs. (2) and (3).

Section 11. 165.87 (1) (d) of the statutes is amended to read:

165.87 (1) (d) Periodically review practices regarding the body cameras and dashboard-mounted cameras and data from body cameras and dashboard-mounted
cameras to ensure compliance with the policy under par. (a) and the requirements under subs. (2) and (3).

SECTION 12. 165.87 (1) (d) of the statutes, as affected by 2021 Wisconsin Act .... (this act), is amended to read:

165.87 (1) (d) Periodically review practices regarding the body cameras and dashboard-mounted cameras and data from body cameras and dashboard-mounted cameras to ensure compliance with the policy under par. (a) s. 165.85 (4) (em) 1, and the requirements under subs. (2) and (3).

SECTION 13. 165.87 (1) (dm) of the statutes is created to read:

165.87 (1) (dm) Periodically review footage from body cameras and dashboard-mounted cameras of encounters involving the use of force to determine whether law enforcement officers are acting in accordance with the law enforcement agency’s use of force policy under s. 66.0511.

SECTION 14. 165.87 (1) (e) of the statutes is repealed.

SECTION 15. 165.87 (1m) of the statutes is created to read:

165.87 (1m) (a) A law enforcement officer who intentionally violates a written policy under sub. (1) (a) by failing to use a body camera is guilty of misconduct under s. 946.12 (1).

(b) If, during a periodic review of footage from a body camera or dashboard-mounted camera under sub. (1) (dm), a law enforcement agency determines that a law enforcement officer used excessive force in violation of the law enforcement agency’s use of force policy, the law enforcement agency shall immediately terminate employment of that law enforcement officer.

SECTION 16. 165.87 (1m) of the statutes, as created by 2021 Wisconsin Act .... (this act), is repealed.
SECTION 17. 165.87 (2) (a) of the statutes is amended to read:
165.87 (2) (a) Except as provided in pars. (b), (c), and (d), all data from a body
camera used on a law enforcement officer or a dashboard-mounted camera on a
vehicle issued to a law enforcement officer shall be retained for a minimum of 120
days after the date of recording.

SECTION 18. 165.87 (2) (b) (intro.) of the statutes is amended to read:
165.87 (2) (b) (intro.) Data from a body camera used on a law enforcement
officer or a dashboard-mounted camera on a vehicle issued to a law enforcement
officer that record any of the following shall be retained until final disposition of any
investigation, case, or complaint to which the data pertain, except as provided in
pars. (c) and (d):

SECTION 19. 165.87 (2) (d) of the statutes is amended to read:
165.87 (2) (d) Data from a body camera used on a law enforcement officer or
a dashboard-mounted camera on a vehicle issued to a law enforcement officer that
are used in a criminal, civil, or administrative proceeding may not be destroyed
except upon final disposition, including appeals, a determination from the court or
hearing examiner that the data are no longer needed, or an order from the court or
hearing examiner.

SECTION 20. 165.87 (2) (e) of the statutes is amended to read:
165.87 (2) (e) Notwithstanding pars. (a) to (d), data from a body camera used
on a law enforcement officer or a dashboard-mounted camera on a vehicle issued to
a law enforcement officer may not be destroyed during the period specified in s. 19.35
(5).

SECTION 21. 165.87 (3) (a) 2. (intro.) of the statutes is amended to read:
165.87 (3) (a) 2. (intro.) “Record subject” means an individual recorded by a body camera used on a law enforcement officer or a dashboard-mounted camera on a vehicle issued to a law enforcement officer to whom all of the following apply:

**SECTION 22.** 165.87 (3) (b) of the statutes is amended to read:

165.87 (3) (b) Data from a body camera used on a law enforcement officer or a dashboard-mounted camera on a vehicle issued to a law enforcement officer are subject to the right of inspection and copying under s. 19.35 (1), except as provided in par. (c).

**SECTION 23.** 165.87 (3) (c) 1. of the statutes is amended to read:

165.87 (3) (c) 1. It shall be the public policy of this state to maintain the privacy of a record subject who is a victim of a sensitive or violent crime or who is a minor and that access to data from a body camera used on a law enforcement officer or a dashboard-mounted camera on a vehicle issued to a law enforcement officer that record such a record subject shall be provided only if the public interest in allowing access is so great as to outweigh that public policy. In that case, the record subject’s face and anything else that would allow the record subject to be identified may be redacted using pixelization or another method of redaction. The presumption under this subdivision regarding the privacy of a record subject who is a victim of a sensitive or violent crime does 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 under this subdivision regarding the privacy of a record subject who is a minor does not apply if the parent or legal guardian of the record subject does not object to granting access to the data.

**SECTION 24.** 165.87 (3) (c) 2. of the statutes is amended to read:
165.87 (3) (c) 2. It shall be the public policy of this state to maintain the privacy
of a record subject who is in a location where the record subject has a reasonable
expectation of privacy and that access to data from a body camera used on a law
enforcement officer or a dashboard-mounted camera on a vehicle issued to a law
enforcement officer that record a record subject in such a location shall be provided
only if the public interest in allowing access is so great as to outweigh that public
policy. In that case, the record subject’s face and anything else that would allow the
record subject to be identified may be redacted using pixelization or another method
of redaction. The presumption under this subdivision does not apply if the record
subject does not object to granting access to the data.

SECTION 25. 165.87 (3) (d) of the statutes is amended to read:

165.87 (3) (d) For purposes of requests under s. 19.35 (1) for access to data from
a body camera or dashboard-mounted camera on a vehicle issued to a law
enforcement officer used by a law enforcement agency, the law enforcement agency
is the legal custodian of the record, and if any other authority has custody of any such
data, that authority is not the legal custodian of that data. If any other authority
receives a request under s. 19.35 (1) for that data, that authority shall deny any
portion of the request that relates to that data.

SECTION 26. 165.87 (3) (e) of the statutes is amended to read:

165.87 (3) (e) Nothing in this subsection prohibits the release of data from a
body camera or a dashboard-mounted camera on a vehicle issued to a law
enforcement officer under s. 175.47 (5) (b).

SECTION 27. 165.87 (4) of the statutes is created to read:
165.87 (4) A law enforcement agency that uses a body camera on a law enforcement officer on the effective date of this subsection .... [LRB inserts date] may not discontinue use of a body camera on that law enforcement officer.

**SECTION 28.** 165.87 (4) of the statutes, as created by 2021 Wisconsin Act .... (this act), is repealed.

**SECTION 29. Initial applicability.**

(1) The treatment of ss. 111.70 (4) (mc) 7. and 111.91 (2) (t) and the creation of s. 165.87 (1m) (b) first apply to an employee who is covered by a collective bargaining agreement under subch. IV or V of ch. 111 that contains provisions inconsistent with this act on the day on which the agreement expires or is terminated, extended, modified, or renewed, whichever occurs first.

**SECTION 30. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) The treatment of ss. 165.85 (4) (em) and 165.87 (1) (a), (b) (by **SECTION 8**), (c) (by **SECTION 10**), (d) (by **SECTION 12**), and (e) and the repeal of s. 165.87 (1m) and (4) take effect on January 1, 2025.

(END)