AN ACT to create 19.35 (8) of the statutes; relating to: public access to records 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,
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.
SECTION 1. 19.35 (8) of the statutes is created to read:

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

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

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

3. “Sustained finding” means 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.

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

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

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, as defined in s. 939.22 (14).

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

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, 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.

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

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

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 a record subject 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 the record subject.

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

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

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

2. After the period specified in subd. 1. expires, an authority may continue to delay the disclosure of records if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against the law enforcement officer in connection with the incident. If an authority delays disclosure under this subdivision, the authority shall, no later than every 120 days, provide, in writing, a
statement of the reasons for the authority’s determination that disclosure could reasonably be expected to interfere with the criminal enforcement proceeding. The writing shall include the estimated date for the disclosure of the withheld records. Records withheld by the authority shall be disclosed when the reasons for withholding the records no longer apply, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs first.

3. After the period specified in subd. 1. expires, an authority may continue to delay the disclosure of records if the disclosure could reasonably be expected to interfere with a criminal enforcement proceeding against someone other than the law enforcement officer involved in the incident. If an authority delays disclosure under this subdivision, the authority shall, no later than every 120 days, provide, in writing, a statement of the reasons disclosure could reasonably be expected to interfere with a criminal enforcement proceeding, and shall provide an estimated date for the disclosure of the withheld records. Records withheld by the authority shall be disclosed when reasons for withholding the records no longer apply, when the investigation or proceeding is no longer active, or by no later than 18 months after the date of the incident, whichever occurs first, unless extraordinary circumstances warrant continued delay due to the active and ongoing investigation or proceeding. In that case, the authority shall show by clear and convincing evidence that the interest in preventing prejudice to the active and ongoing investigation or proceeding outweighs the public interest in prompt disclosure of the records. The authority shall release all records subject to disclosure that do not cause substantial prejudice, including any records that have otherwise become available.
4. During an active administrative investigation, an authority may delay the disclosure of records until the investigating body determines whether the law enforcement officer violated law or law enforcement agency policy, but the authority shall disclose the records no later than 180 days after the date the investigating body initiated its investigation or 30 days after the close of any criminal investigation related to the incident, whichever is sooner.

(f) If criminal charges are filed related to the incident in which misconduct occurred or force was used, an authority may delay the disclosure of records 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.

(g) A record of a civilian complaint, or the investigations, findings, or dispositions of that complaint, shall not be released under this subsection if the complaint is unfounded or frivolous.

(h) 1. A law enforcement agency or other applicable authority shall release to the complaining party a copy of his or her own statements at the time the complaint is filed.

2. A law enforcement agency may disseminate data regarding the number, type, or disposition of complaints, whether sustained, not sustained, exonerated, or unfounded, made against its law enforcement officers if that information is in a form that does not identify the individuals involved.

(END)