



---

## WISCONSIN LEGISLATIVE COUNCIL STUDY COMMITTEE MEMORANDUM

---

TO: MEMBERS OF THE STUDY COMMITTEE ON THE USE OF POLICE BODY CAMERAS

FROM: Dan Schmidt, Principal Analyst, and Steve McCarthy, Staff Attorney

RE: Potential Discussion Points for September 13, 2018 Meeting

DATE: August 30, 2018

Below are some discussion points identified by Legislative Council staff that the committee may want to address at its September 13 meeting. The list below is not intended to be exhaustive, but rather, is intended to serve as a vehicle for directing committee discussion.

### **LAW ENFORCEMENT BODY CAMERA POLICIES**

Both 2017 Assembly Bill 351 and its amendments (“AB 351”) and 2017 Assembly Bill 557 (“AB 557”) include provisions that require a law enforcement agency that uses a body camera on a law enforcement officer to administer a body camera policy regarding a number of aspects of the use of police body cameras.

- Though both AB 351 and AB 557 require a law enforcement body camera policy, the committee is not bound by either bill, and may elect to craft its own requirement as it relates to requiring a body camera policy by law enforcement.
- If the committee decides to require a law enforcement body camera policy, it may want to discuss how prescriptive the legislation should be as it relates to items required to be in the policy. During the committee’s discussion at its first meeting, law enforcement members indicated that overly prescriptive policy requirements would be disfavored by law enforcement.
- The differences between AB 351 and AB 557 illustrate the divergent approaches the committee may choose to take. AB 351 allows each law enforcement agency that uses police body cameras to decide how it will impose limitations on situations, persons, or encounters that may be recorded by a body camera, but requires that such limitations be included in its policy, whereas AB 557 includes prescriptive lists of

situations, persons, or encounters that may not be recorded and actions that law enforcement officers and personnel are explicitly prohibited from taking.

- Both AB 351 and AB 557 require law enforcement to conduct certain trainings for officers and personnel. The committee may want to discuss the appropriate amount and type of training required by any committee bill.
- AB 351 requires any law enforcement agency that uses body cameras to periodically review practices regarding the body cameras and body camera data to ensure compliance with the agency's policy, and to review requirements for body camera data retention and release. The committee may want to discuss whether or how to require periodic compliance reviews by law enforcement agencies.

## **RETENTION OF BODY CAMERA DATA**

The committee is directed to recommend legislation to establish uniform procedures regarding the retention and release of body camera video for state and local law enforcement agencies. Though both AB 351 and AB 557 include provisions addressing retention and release of body camera data, the committee is free to establish its own policies that may or may not include provisions from past legislative proposals.

- The committee will need to consider how to appropriately establish uniform procedures regarding the retention of body camera data.
- The committee may want to discuss a minimum period of time that all police body camera data must be retained. Generally speaking, AB 351 provides for retention for 120 days and AB 557 provides for retention for six months.
- The committee may want to discuss situations under which a law enforcement agency must retain body camera data for longer than the minimum retention period. Both AB 351 and AB 557 include such provisions, though they differ in their details.

## **RELEASE OF BODY CAMERA DATA**

- The committee will need to consider how to appropriately establish uniform procedures regarding the release of body camera data.
- The committee may want to discuss whether body camera data should be generally confidential (AB 351) or generally open to inspection and copying (AB 557).
- The committee may want to discuss situations under which police body camera data must be released and situations under which police body camera data may not be released. AB 351 is structured so that certain situations captured by police body camera video are required to be released, whereas AB 557 is structured in a way so that certain situations captured by police body camera video may not be released.
- The committee may want to discuss how best to take into account the rights of all persons captured by a police body camera data. AB 351 generally requires that police

body camera video may not be released if all “known victims or witnesses” have not provided written permission for release. AB 557, which generally requires release of police body camera video, provides that video depicting certain individuals may not be released unless the public interest in allowing access is so great as to outweigh those individuals’ privacy interests. If such video is released, AB 557 requires that certain identifying information be pixelated or otherwise censored.

DWS:SM:mcm;ksm