



WISCONSIN LEGISLATIVE COUNCIL STUDY COMMITTEE MEMORANDUM

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

FROM: SM Steve McCarthy, Staff Attorney, and ^{D.S.} Dan Schmidt, Principal Analyst

RE: Description of LRB-0396/P2, Relating to Police Body Cameras

DATE: October 10, 2018

This memorandum responds to your request for an analysis of LRB-0396/P2, a preliminary bill draft presented for review to the Joint Legislative Council Study Committee on the Use of Police Body Cameras, that identifies which parts of LRB-0396/P2 are derived from 2017 Assembly Bill 351¹ and 2017 Assembly Bill 557, and which parts of LRB-0396/P2 are new material.

For a complete substantive description of LRB-0396/P2, please see the Joint Legislative Council Prefatory Note on the attached copy of LRB-0396/P2.

LRB-0396/P2

Generally, LRB-0396/P2 addresses three primary topics: (1) law enforcement policies, training, and compliance related to body cameras; (2) retention of body camera data; and (3) release of body camera data. LRB-0396/P2 is comprised of material from both Assembly Bill 351 and Assembly Bill 557 and new material, as described in more detail below.

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

The material in LRB-0396/P2 regarding law enforcement agency policies, training, and compliance related to body cameras is nearly identical to the material in Assembly Bill 351, but for two additions. Specifically, LRB-0396/P2 clarifies that the required law enforcement agency

¹ For brevity and clarity, this memorandum refers only to Assembly Bill 351. However, all references to Assembly Bill 351 refer to Assembly Substitute Amendment 1 to Assembly Bill 351 and Assembly Amendment 1 to Assembly Substitute Amendment 1 to Assembly Bill 351.

policy must be written, and requires that a law enforcement agency make its body camera policy available to the public at its internet site, if the law enforcement agency maintains an internet site or has an internet site maintained on its behalf.

Retention of Body Camera Data

The material in LRB-0396/P2 regarding retention of body camera data is nearly identical to the material in Assembly Bill 351, but for one addition. Like Assembly Bill 351, LRB-0396/P2 includes a list of circumstances under which body camera data must be retained until final disposition of any case or complaint to which the data pertain. The list in LRB-0396/P2 is identical to that in Assembly Bill 351 except that the list in LRB-0396/P2 also includes "an encounter that included use of force by a law enforcement office, except if the only use of force was the use of a firearm to dispatch an injured wild animal." This provision is similar to one from Assembly Bill 557 that requires extended retention of data that recorded "an encounter during which a law enforcement officer discharged his or her firearm or used force."

Release of Body Camera Data

The material in LRB-0396/P2 regarding release of body camera data is modeled significantly upon Assembly Bill 557, but includes both new material and material that harmonizes parts of Assembly Bill 557 with parts of Assembly Bill 351.

LRB-0396/P2 uses language from Assembly Bill 557 that provides that data from a body camera is generally subject to the right of inspection and copying unless a specified exception applies. One such exception contained in Assembly Bill 557 provides that the privacy of a victim of a sensitive or violent crime, a minor, or an individual in a location where the individual has a reasonable expectation of privacy who is a subject of the data 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 victim's, minor's, or individual's face and anything else that would allow the victim or minor to be identified must be censored using pixelization or another method of censorship.

LRB-0396/P2 generally retains this exception. However, LRB-0396/P2 clarifies that the privacy of the above classifications of individuals is protected only if the individual qualifies as a "record subject." The definition of "record subject"² under LRB-0396/P2 is identical to the definition of "known victim or witness" under Assembly Bill 351.

² LRB-0396/P2 defines "record subject" as an individual recorded by a body camera to whom all of the following apply:

- a. The individual is depicted in the recording, or the individual's voice is audible in the recording.
- b. The individual's identity is known to the law enforcement agency.
- c. 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.

LRB-0396/P2 also provides that, if the public's interest in disclosing the protected record subject's **identity** is so great as to outweigh the public policy of maintaining a protected record subject's privacy, the law enforcement agency must follow the procedures under s. 19.356, Stats.,³ before releasing the data. LRB-0396/P2 creates new material to provide for the incorporation of notice to protected record subjects of body camera data.

Lastly, LRB-0396/P2 includes provisions from Assembly Bill 351 that describe the legal custodian of body camera data and clarify that the bill does not prohibit a district attorney from releasing body camera data when required to do so under current law governing the review of deaths involving officers.

If you have any questions, please feel free to contact us directly at the Legislative Council staff offices.

SM:DWS:mcm

d. 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.

³ Section 19.356, Stats., is sometimes referred to as the "Woznicki fix" because it was intended to codify and resolve a right to notice established by the court in *Woznicki v. Erickson*, 202 Wis. 2d 178, 549 N.W.2d 699 (1996). See the Joint Legislative Council Prefatory Note for LRB-0396/P2 for a detailed description of s. 19.356, Stats.