



State of Wisconsin  
2019 - 2020 LEGISLATURE

LRB-0396/P2  
CMH&MED:amn

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

1     **AN ACT** *to renumber* 19.356 (1); *to amend* 19.356 (3) to (6); and *to create* 19.356  
2           (1g) and (2m) and 165.87 of the statutes; **relating to:** body cameras on law  
3           enforcement officers.

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***Analysis by the Legislative Reference Bureau***

This bill is explained in the NOTES provided by the Joint Legislative Council in the bill.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

JOINT LEGISLATIVE COUNCIL PREFATORY NOTE: This bill was prepared for the Joint Legislative Council's Study Committee on the Use of Police Body Cameras. Key provisions of the bill are summarized below.

**Law Enforcement Agency Policies, Training, and Compliance Related to Body Camera**

Under the bill, 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:

1. The use, maintenance, and storage of body cameras and body camera data.
2. Any limitations the law enforcement agency imposes on which law enforcement officers may wear a body camera.

3. Any limitations the law enforcement agency imposes on situations, persons, or encounters that may be recorded by a body camera.

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

1. Train all law enforcement officers wearing a body camera on the policy described above and on the body camera data retention requirements discussed below.

2. Train all employees that use, maintain, store, or release body camera data on all of the following: (1) the law enforcement agency's policy on body cameras described above; (2) the body camera data retention requirements discussed below; and (3) the requirements regarding when the body camera data may be released as discussed below.

3. Periodically review practices regarding the body cameras and body camera data to ensure compliance with: (1) the law enforcement agency's policy on body cameras described above; (2) the body camera data retention requirements discussed below; and (3) the requirements regarding when the body camera data may be released.

4. 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 at the Internet site.

#### Retention of Body Camera Data

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

1. Data must be retained until disposition of the case or complaint if the data records any of the following:

a. An encounter that resulted in the death of any individual or actual or alleged physical injury to an individual.

b. An encounter that resulted in a custodial arrest.

c. A search during an authorized temporary questioning (commonly referred to as a "Terry Stop") as provided under current law.

d. 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.

2. 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.

3. Data retained that are used in a criminal, civil, or administrative hearing may not be destroyed except upon all of the following: (1) final disposition; (2) a determination from the court or hearing examiner that the data are no longer needed; and (3) an order from the court or hearing examiner.

4. 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 bill, body camera data are, in general, open to inspection and copying under the Open Records Law. The bill provides an exception to this general rule if any of the following applies:

1. The data are subject only to the 120-day retention period.

2. The data depict nudity.

3. The data depict matter that is subject to a privilege under ch. 905, stats.

The bill contains another exception to the general rule that body camera data are open to inspection and copying relating to the treatment of minors, victims, and witnesses to 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 data. Specifically, the bill provides that the privacy of a record subject who is a minor, is a victim or witness 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 must be censored using pixelization or another method of censorship. However, if the public's interest in disclosing the protected record subject's identity is so great as to outweigh that public policy, the law enforcement agency shall follow the procedures under s. 19.356, stats., before releasing the data.

Section 19.356, stats., also known as the "Woznicki fix" because it was intended to codify and resolve a right to notice established by the supreme court in *Woznicki v. Erickson*, 202 Wis. 2d 178, 549 N.W.2d 699 (1996), provides that certain specified individuals have a right to be notified and seek judicial review of an authority's decision to release certain records that may be considered to be of a highly personal nature. The records to which this notice requirement currently applies include:

1. Any record containing information relating to an employee that is created or kept by the authority as the result of an investigation into a disciplinary matter involving the employee or possible employment-related violation by the employee of a statute, ordinance, rule, regulation, or policy of the employee's employer.
2. Any record obtained by the authority through a subpoena or search warrant.
3. Any record prepared by an employer other than an authority, if that record contains information relating to an employee of that employer, unless the employee authorizes the authority to provide access to that information.

The bill adds records consisting of data from a body camera used on a law enforcement officer that identify any of the following:

1. A victim of, or witness to, a sensitive or violent crime.
2. A minor.
3. An individual recorded in a location where the individual has a reasonable expectation of privacy.

Therefore, as is currently required for the records specified under s. 19.356, stats., an authority who determines that the public interest in disclosing a record subject's identity is so great as to outweigh public policy regarding that person's privacy interest must notify the subject of the decision to permit access within 3 days after making the decision to permit access. Notice must be written and delivered by certified mail or personal service. Within 5 days after receipt of a notice of the impending release of a record, the record subject may provide written notification to the authority of the record subject's intent to seek a court order restraining release of the record. The legal action must be commenced within 10 days after the record subject receives notice of release of the record. During this time, the authority is prohibited from providing access to the record and must not provide access until any legal action is final. The court must issue its decision within 10 days after the legal action has been commenced, unless a party demonstrates cause for extension of this period. However, the court must issue a decision within 30 days after commencement of the proceedings. Also, a court of appeals must grant precedence to an appeal of a circuit court decision over all other matters not accorded similar precedence by law. An appeal must be taken within 20 days after entry of the judgment or order appealed from. In determining whether to permit access to the record, the court must apply current law as well as the public policies expressed in the bill.

The provisions of the bill regarding the privacy of a victim of or witness to 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 bill 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.

The bill 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 bill 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.

1           **SECTION 1.** 19.356 (1) of the statutes is renumbered 19.356 (1r).

2           **SECTION 2.** 19.356 (1g) and (2m) of the statutes are created to read:

3           19.356 (1g) In this section, “record subject,” for the purposes of a record  
4 consisting of data from a body camera used on a law enforcement officer, has the  
5 meaning given in s. 165.87 (3) (a).

6           (2m) Except as otherwise authorized or required by statute, if an authority  
7 decides under s. 19.35 to permit access to a record consisting of data from a body  
8 camera used on a law enforcement officer and decides under s. 165.87 (3) (d) to do so  
9 in a manner that discloses the identity of a record subject who is a victim of or witness  
10 to a sensitive or violent crime, a minor, or an individual recorded in a location where  
11 the individual has a reasonable expectation of privacy, the authority shall, before  
12 permitting access and within 3 days after making the decision to permit access, serve  
13 written notice of that decision on any such record subject, either by certified mail or  
14 by personally serving the notice on the record subject. The notice shall briefly  
15 describe the requested record and include a description of the rights of the record  
16 subject under subs. (3) and (4).

17           **SECTION 3.** 19.356 (3) to (6) of the statutes are amended to read:

1           19.356 **(3)** Within 5 days after receipt of a notice under sub. (2) (a) or (2m), a  
2 record subject may provide written notification to the authority of his or her intent  
3 to seek a court order restraining the authority from providing access to the requested  
4 record.

5           **(4)** Within 10 days after receipt of a notice under sub. (2) (a) or (2m), a record  
6 subject may commence an action seeking a court order to restrain the authority from  
7 providing access to the requested record. If a record subject commences such an  
8 action, the record subject shall name the authority as a defendant. Notwithstanding  
9 s. 803.09, the requester may intervene in the action as a matter of right. If the  
10 requester does not intervene in the action, the authority shall notify the requester  
11 of the results of the proceedings under this subsection and sub. (5).

12           **(5)** An authority shall not provide access to a requested record within 12 days  
13 of sending a notice pertaining to that record under sub. (2) (a) or (2m). In addition,  
14 if the record subject commences an action under sub. (4), the authority shall not  
15 provide access to the requested record during pendency of the action. If the record  
16 subject appeals or petitions for review of a decision of the court or the time for appeal  
17 or petition for review of a decision adverse to the record subject has not expired, the  
18 authority shall not provide access to the requested record until any appeal is decided,  
19 until the period for appealing or petitioning for review expires, until a petition for  
20 review is denied, or until the authority receives written notice from the record subject  
21 that an appeal or petition for review will not be filed, whichever occurs first.

22           **(6)** The court, in an action commenced under sub. (4), may restrain the  
23 authority from providing access to the requested record. The court shall apply  
24 substantive common law principles construing the right to inspect, copy, or receive  
25 copies of records in making its decision. The court shall also, with respect to an action

1 commenced following a notice under sub. (2m), apply the public policies expressed  
2 in s. 165.87 (3) (d) 1. and 2. in making its decision.

3 **SECTION 4.** 165.87 of the statutes is created to read:

4 **165.87 Body cameras and law enforcement.** (1) If a law enforcement  
5 agency uses a body camera on a law enforcement officer, the law enforcement agency  
6 shall do all of the following:

7 (a) Administer a written policy regarding all of the following:

8 1. The use, maintenance, and storage of body cameras and data recorded by the  
9 body cameras.

10 2. Any limitations the law enforcement agency imposes on which law  
11 enforcement officers may wear a body camera.

12 3. Any limitations the law enforcement agency imposes on situations, persons,  
13 or encounters that may be recorded by a body camera.

14 (b) Train all law enforcement officers wearing a body camera on the policy  
15 under par. (a) and on the requirements under sub. (2).

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

18 (d) Periodically review practices regarding the body cameras and data from  
19 body cameras to ensure compliance with the policy under par. (a) and the  
20 requirements under subs. (2) and (3).

21 (e) If the law enforcement agency maintains an Internet site or has an Internet  
22 site maintained on its behalf, make the policy under par. (a) available to the public  
23 at the Internet site.

1           **(2)** (a) Except as provided in pars. (b), (c), and (d), all data from a body camera  
2 used on a law enforcement officer shall be retained for a minimum of 120 days after  
3 the date of recording and may be destroyed after that time.

4           (b) Data from a body camera used on a law enforcement officer that record any  
5 of the following shall be retained until final disposition of any case or complaint to  
6 which the data pertain, except as provided in pars. (c) and (d):

7           1. An encounter that resulted in the death of any individual or actual or alleged  
8 physical injury to an individual.

9           2. An encounter that resulted in a custodial arrest.

10          3. A search during an authorized temporary questioning as provided in s.  
11 968.25.

12          4. An encounter that included the use of force by a law enforcement officer,  
13 except if the only use of force was the use of a firearm to dispatch an injured wild  
14 animal.

15          (c) Retention beyond the period determined under par. (a) or (b) may be directed  
16 by a law enforcement officer or law enforcement agency, a board of police and fire  
17 commissioners, a prosecutor, a defendant, or a court that determines that the data  
18 have evidentiary value in a prosecution. A person making a preservation directive  
19 under this paragraph shall submit the directive to the law enforcement agency  
20 having custody of the record within 120 days after the date of recording.

21          (d) Data from a body camera used on a law enforcement officer that are used  
22 in a criminal, civil, or administrative proceeding may not be destroyed except upon  
23 final disposition, a determination from the court or hearing examiner that the data  
24 are no longer needed, and an order from the court or hearing examiner.

**SECTION 4**

1 (e) Notwithstanding pars. (a) to (d), data from a body camera used on a law  
2 enforcement officer may not be destroyed during the period specified in s. 19.35 (5).

3 **(3)** (a) In this subsection, “record subject” means an individual recorded by a  
4 body camera used on a law enforcement officer to whom all of the following apply:

5 1. The individual is depicted in the recording, or the individual’s voice is audible  
6 in the recording.

7 2. The individual’s identity is known to the law enforcement agency.

8 3. The individual is not suspected of committing a crime or other violation of  
9 law in connection with the law enforcement officer’s presence in the location that was  
10 recorded.

11 4. The individual is not a law enforcement officer who was acting in an official  
12 capacity, unless a crime or other violation of law has been committed or is alleged to  
13 have been committed against the law enforcement officer while the law enforcement  
14 officer was present at the location that was recorded.

15 (b) Data from a body camera used on a law enforcement officer are subject to  
16 the right of inspection and copying under s. 19.35 (1), except as provided in pars. (c)  
17 and (d).

18 (c) Data from a body camera used on a law enforcement officer are not subject  
19 to the right of inspection and copying under s. 19.35 (1) if any of the following applies:

20 1. The data are subject only to the 120-day retention period under sub. (2) (a).

21 2. The data depict nudity.

22 3. The data depict matter that is subject to a privilege under ch. 905.

23 (d) 1. It shall be the public policy of this state to maintain the privacy of a record  
24 subject who is a victim of or witness to a sensitive or violent crime or who is a minor  
25 and that access to data from a body camera used on a law enforcement officer that

1 record such a record subject shall be provided only if the public interest in allowing  
2 access is so great as to outweigh that public policy. In that case, the record subject's  
3 face and anything else that would allow the record subject to be identified shall be  
4 censored using pixelization or another method of censorship or, if the public interest  
5 in disclosing the record subject's identity is also so great as to outweigh that public  
6 policy, the law enforcement agency shall follow the procedures under s. 19.356 before  
7 releasing the data. The presumption under this subdivision regarding the privacy  
8 of a record subject who is a victim of or witness to a sensitive or violent crime does  
9 not apply if the record subject, or his or her next of kin if the record subject is  
10 deceased, does not object to granting access to the data. The presumption under this  
11 subdivision regarding the privacy of a record subject who is a minor does not apply  
12 if the parent or legal guardian of the record subject does not object to granting access  
13 to the data.

14 2. It shall be the public policy of this state to maintain the privacy of a record  
15 subject who is in a location where the record subject has a reasonable expectation of  
16 privacy and that access to data from a body camera used on a law enforcement officer  
17 that record such a record subject shall be provided only if the public interest in  
18 allowing access is so great as to outweigh that public policy. In that case, the record  
19 subject's face and anything else that would allow the record subject to be identified  
20 shall be censored using pixelization or another method of censorship or, if the public  
21 interest in disclosing the record subject's identity is also so great as to outweigh that  
22 public policy, the law enforcement agency shall follow the procedures under s. 19.356  
23 before releasing the data. The presumption under this subdivision does not apply  
24 if the record subject does not object to granting access to the data.

25 (e) 1. In this paragraph, "authority" has the meaning given in s. 19.32 (1).

