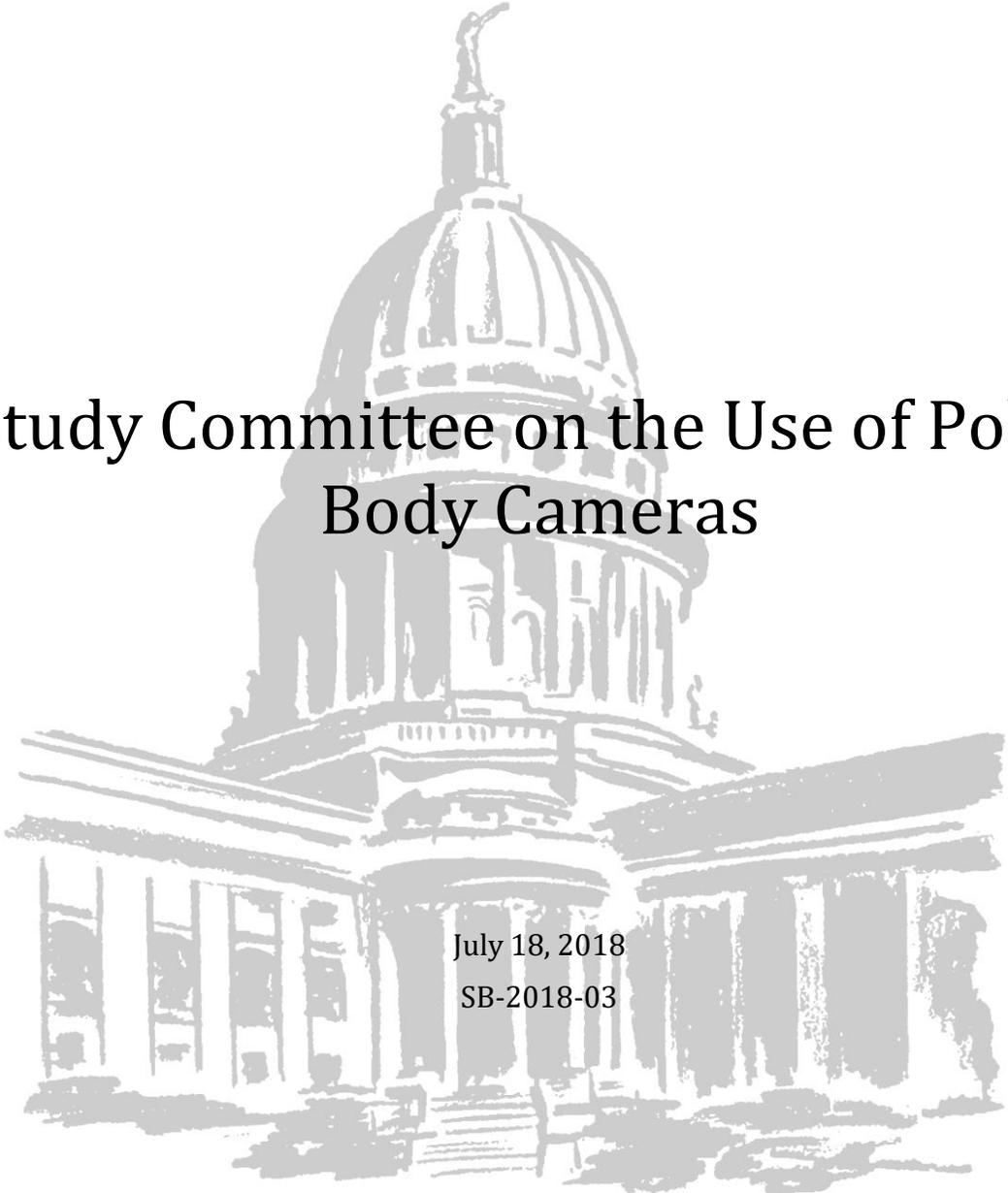


# Legislative Council Staff Brief



## Study Committee on the Use of Police Body Cameras

July 18, 2018

SB-2018-03

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# INTRODUCTION

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This Staff Brief provides background information for the members of the 2018 Joint Legislative Council Study Committee on the Use of Police Body Cameras. The Study Committee is directed to review law enforcement policies regarding the use of body cameras and recommend legislation to establish uniform procedures regarding the retention and release of body camera video for state and local law enforcement agencies.

The remainder of the Staff Brief is organized as follows:

- **Part I** summarizes selected provisions of current law regarding public records and their retention as applicable to police body camera video.
- **Part II** summarizes bills introduced during the 2017-18 legislative session relating to the use of police body cameras.
- **Part III** provides selected statutes and records retention schedules applicable to police body camera video retention and release.
- **Part IV** provides copies of the bills introduced during the 2017-18 legislative session relating to the use of police body cameras.

This Staff Brief was prepared by Dan Schmidt, Principal Analyst, and Steve McCarthy, Staff Attorney.



# PART I – CURRENT LAW OVERVIEW

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## Open Records Law in General

Wisconsin's Open Records Law is contained in ss. 19.31 to 19.39, Stats. (See Part III for the statute in full.) Section 19.31, Stats., provides as follows:

**Declaration of policy.** In recognition of the fact that a representative government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. Further, providing persons with such information is declared to be an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information. To that end, ss. 19.32 to 19.37 shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied. [s. 19.31, Stats]

Section 19.35, Stats., essentially codifies case law and generally requires that a record held by an authority remain open for inspection and copying. Broadly speaking, an "authority" is a state body, local body, or elected official having custody of a record. Further, an authority usually delegates to a named individual the responsibilities of acting as a legal custodian who will respond to requests for access to records. [ss. 19.32 (1) and 19.33, Stats.]

In discussing the applicability of, and the exceptions to, a predecessor of s. 19.35, Stats., the Wisconsin Supreme Court has stated the following:

We have concluded, however, where statutes, common law or court decisions have not limited the public's right to examine records, "presumptively public records and documents must be open for inspection." ... "[P]ublic policy, and hence the public interest, favors the right of inspection of documents and public records." There exists the legislative presumption that "where a public record is involved, the denial of inspection is contrary to the public policy and the public interest." Thus, the general presumption of our law is that public records shall be open to the public unless there is a clear statutory exception, unless there exists a limitation under the common law, or unless there is an overriding public interest in keeping the public record confidential. [*Hathaway v. Joint School District No. 1*, 116 Wis. 2d 388, 397, 342 N.W.2d 682, 686-687 (1984); citations omitted.]

To summarize, Wisconsin's Open Records Law provides that a record must remain open for inspection and copying unless:

1. There is a clear statutory exception to this requirement;
2. There exists a limitation on inspection and copying under the common law; or
3. On a case-by-case basis, a record custodian decides that the harm done to the public by disclosure of a record outweighs the public's interest in access to the record.

An authority receiving a record request must either fill the request or notify the requester of the authority's determination to deny the request in whole or in part, including specific reasons for the denial. Every written denial of a request by an authority must inform the requester that if the request for the record was made in writing, then the determination to deny the request is subject to review by mandamus or upon application to the attorney general or a district attorney. [s. 19.35 (4) (a) and (b), Stats.]

Section 19.37 (1), Stats., provides that if an authority withholds a record, or part of a record, a requester may either:

1. Bring an action for mandamus asking a court to order release of the record; or
2. In writing, request the district attorney of the county where the record is found, or request the attorney general, to bring an action for mandamus asking a court to order release of the record to the requester.

## **Open Records Law and Law Enforcement Records**

Wisconsin courts have generally held that while there may be a strong presumption of openness under the Open Records Law, law enforcement investigative records are of a category of records that are particularly sensitive and may have a greater adverse effect on public interests if they are released.<sup>1</sup> Despite this recognition, the Wisconsin Supreme Court has held that decisions against release must be made on a case-by-case basis.<sup>2</sup> With this in mind, the Wisconsin attorney general has indicated that the following policy interests represent some of the arguments against disclosure of law enforcement records:

- Interference with police business.
- Privacy and reputation.
- Uncertain reliability of "raw investigative data."
- Revelation of law enforcement techniques.
- Danger to individuals identified in the record.

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<sup>1</sup> See *Linzmeier v. Forcey*, 2002 WI 84, ¶ 30, 254 Wis. 2d 306, 646 N.W.2d 811.

<sup>2</sup> See *Linzmeier*, 2002 WI 84, ¶ 42.

Additionally, the attorney general has indicated that the following policy interests arguments for disclosure of law enforcement records:

- Public oversight of police and prosecutorial actions.
- Reliability of corroborated evidence.
- The degree to which sensitive information already has been made public.<sup>3</sup>

In addition to these general public policy interests, special considerations may need to be made for confidential informants,<sup>4</sup> as well as children<sup>5</sup> and juveniles,<sup>6</sup> when determining whether to release or withhold law enforcement records.

All of these interests are likely to guide public policy in regard to the release of police body camera video.

### **Retention of Law Enforcement Records**

Section 19.21 (4) (b), Stats. (see Part III for the statute in full), generally permits a town, city, or village to establish records retention periods by ordinance unless a specific period of time is required by statute. With the exception of certain public utility records, the retention period established by ordinance may not be less than seven years, unless a shorter period is fixed by the Public Records Board (PRB). Section 19.21 (5) (c), Stats., establishes a similar seven-year general retention provision (and exception for retention periods fixed by the PRB) for counties. As there is no statutory retention requirement for police dashboard camera video recordings and local authorities often determine that seven years is too long to maintain such footage, local governments often look to the PRB for approval of a shorter retention period for these records.

The PRB has general authority over the management and retention of state agency records. In addition, s. 16.61 (3) (e), Stats. (see Part III for the statute in full), permits the PRB to establish the minimum period of time for retention of records for any county, city, town, or village (local governmental units) in Wisconsin. In the case of police body camera video recordings, the PRB has not established a specific minimum retention period. Rather, they have encouraged local governmental units to seek appropriate legal counsel when establishing a retention schedule for PRB approval and directed the local governmental unit to the state agency retention requirement for monitoring and surveillance recordings for basic policy guidance.<sup>7</sup> The monitoring and surveillance recordings schedule requires a minimum retention of 120 days before destruction, but generally permits the retention of such records as long as needed for legal or program purposes. The 120-day retention period is generally required because this is the time limit for an individual to file a claim against a governmental body or state employee.<sup>8</sup> Legal counsel is specifically

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<sup>3</sup> See Wisconsin Dep't. of Justice, *Wisconsin Public Records Law Compliance Guide* 41 (March 2018).

<sup>4</sup> See s. 19.36 (8), Stats.

<sup>5</sup> See s. 48.396, Stats.

<sup>6</sup> See s. 938.396, Stats.

<sup>7</sup> See Public Records Board, RDA number FAC00082, *General Records Schedule for Facilities Management and Related Records* (February 22, 2010). [See Part IV for the full FAC 00082 documentations.]

<sup>8</sup> See ss. 893.80 and 893.82, Stats.

recommended because claims for federal civil rights violations, including excessive use of force, in particular, may be filed for up to six years after an incident.<sup>9</sup>

A brief survey of police body camera video retention policies indicates that current retention periods vary by locality in concert with the explanation given above. The retention requirement for body camera recordings ranges from 120 days to 5 months depending on the individual policy the PRB has approved, with 121 days as the most prevalent retention period. [See Part IV for examples of current body camera retention disposition authorizations.]

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<sup>9</sup> See 42 U.S.C. s. 1983 and s. 893.53, Stats.

# PART II – LEGISLATIVE PROPOSALS FROM THE 2017-18 LEGISLATIVE SESSION

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A number of legislative proposals relating to the use of police body cameras were introduced during the 2017-18 legislative session.

2017 Assembly Bill 351 was introduced by Representative Jesse Kremer on May 31, 2017. Its companion bill, 2017 Senate Bill 279, was introduced by Senator Patrick Testin on June 2, 2017.<sup>10</sup> Assembly Bill 351 received a public hearing in the Assembly Committee on Criminal Justice and Public Safety on October 5, 2017.

Representative Kremer offered Assembly Substitute Amendment 1 to Assembly Bill 351 on October 27, 2017. The Assembly passed the substitute amendment, including one amendment to the substitute amendment,<sup>11</sup> by a voice vote on November 9, 2017. Assembly Bill 351, as amended by Substitute Amendment 1, received a public hearing and was passed by the Senate Committee on Judiciary and Public Safety, but failed to be concurred in by the Senate pursuant to Senate Joint Resolution 1.

2017 Assembly Bill 557 was introduced by Representative Chris Taylor on October 18, 2017. Assembly Bill 557 did not receive a public hearing and failed to pass pursuant to Senate Joint Resolution 1.

Identified below are broad categories of law relating to the use of police body cameras addressed by Assembly Bill 351, Substitute Amendment 1 to Assembly Bill 351, and Assembly Bill 557, along with details of each proposal’s treatment of each category. See Part IV for copies of the bills and amendments in full.

## **LAW ENFORCEMENT AGENCY POLICIES, TRAINING, AND COMPLIANCE RELATED TO BODY CAMERAS**

### **Assembly Bill 351**

Under Assembly Bill 351, if a law enforcement agency uses a body camera on a law enforcement officer, the law enforcement agency must administer a policy regarding all of the following:

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

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<sup>10</sup> For brevity and clarity, this Staff Brief refers only to Assembly Bill 351, as that bill and Senate Bill 279 contain identical language.

<sup>11</sup> Assembly Substitute Amendment 1 and Assembly Amendment 1 to Assembly Substitute Amendment 1 are referred to collectively as “Substitute Amendment 1” throughout this Staff Brief.

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

### **Substitute Amendment 1 to Assembly Bill 351**

Substitute Amendment 1 does not amend any provisions of the bill discussed above that are related to the requirements regarding policies, training, and compliance review of body cameras.

### **Assembly Bill 557**

Under Assembly Bill 557, if a law enforcement agency uses a body camera on a law enforcement officer, the law enforcement agency must administer a policy, which must be conspicuously posted on an Internet site the agency maintains, that includes all of the following:

- That no personnel except law enforcement officers who have the authority to arrest and conduct searches may wear a body camera.
- That the audio and video functions of the body camera must be activated when the law enforcement officer responds to a call or initiates an interaction for enforcement or investigation purposes and may not be discontinued during the response or interaction except as provided under the bill.
- How the law enforcement agency must classify, download, store, administratively use, and ensure the security of data from a body camera.
- Disciplinary measures for violating the policy.
- Which employees may access data from body cameras.

Assembly Bill 557 further provides that the law enforcement agency must train all law enforcement officers on the policy and relevant laws and that the law enforcement agency must confiscate a body camera if the camera has data recording an incident involving a law enforcement officer that resulted in death or bodily harm to an individual, involving the use of force by a law

enforcement officer, or involving a law enforcement officer's discharge of a firearm. No law enforcement officer involved in the incident may be allowed to review or be informed about the contents of the data before the officer completes any required initial reports, statements, or interviews regarding the incident.

The bill requires that a law enforcement officer who is wearing a body camera must notify an individual that the individual is being recorded as soon as practically possible if the law enforcement officer is going to interact with the individual for enforcement or investigation purposes. If the interaction is because the individual is a crime victim, the law enforcement officer must obtain the individual's verbal consent before recording him or her.

Assembly Bill 557 also prohibits law enforcement officers and personnel from taking certain actions and using a body camera to record certain situations. Specifically, no law enforcement officer or personnel may do any of the following:

- Access data from a body camera for personal use.
- Record a conversation in public or in a law enforcement agency without the knowledge of the speakers during routine nonenforcement activities.
- Record activity that is unrelated to a response to a call or to an interaction initiated for enforcement or investigation purposes.
- Record off-duty or personal activity.
- Use a body camera for a purpose other than law enforcement.
- Merge data from a body camera with other data collected by a law enforcement agency or subject data from a body camera to automated analysis or analytics.
- Record activity with the intent of inhibiting or curbing the exercise of a right under the First Amendment of the U.S. Constitution and article I, section 18, of the Wisconsin Constitution.

Unless a law enforcement officer is confronting a violent suspect or anticipates the need to use force or unless a person is at risk of bodily harm or death, a law enforcement officer may not record any of the following:

- A situation in which a recording could risk the safety of an informant or an undercover officer unless the law enforcement officer receives from the informant or the undercover officer, whichever is applicable, permission, recorded on the body camera data.
- An individual who wants to anonymously report a crime or aid an investigation unless the law enforcement officer receives permission from the individual, recorded on the body camera data.
- A strip search unless the law enforcement officer receives permission from the subject of the search, recorded on the body camera data.
- Any activity on the grounds of any public, private, or parochial elementary or secondary school that does not involve a threat to life or safety.

- Any activity in a patient care area of a hospital, rape treatment center, or other health care facility that does not involve an enforcement action unless the law enforcement officer receives permission, recorded on the body camera data, from all the recorded subjects.
- Any activity in a place where a significantly heightened expectation of privacy exists unless the law enforcement officer receives permission, recorded on the body camera data, from all the recorded subjects who have the expectation.

## **RETENTION OF BODY CAMERA DATA**

### **Assembly Bill 351**

In general, Assembly Bill 351 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:

- Data must be retained until disposition of the case or complaint if the data records any of the following:
  - An encounter that resulted in the death of any individual or actual or alleged physical injury to an individual.
  - An encounter that resulted in a custodial arrest.
  - A search during an authorized temporary questioning (commonly referred to as a “Terry Stop”) as provided under current law.
- Retention beyond 120 days may be directed by a law enforcement officer or law enforcement agency, 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.
- 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. Data retained in internal investigations that are not subject to any such jurisdiction may be disposed of by the law enforcement agency.

### **Substitute Amendment 1 to Assembly Bill 351**

Substitute Amendment 1 generally retains the retention requirements prescribed in Assembly Bill 351, but for the following changes:

- Provides that retention beyond either 120 days or the final disposition of any case or complaint to which the data pertains, if the body camera data record any of the events listed above, may also be directed by a board of police and fire commissioners. The substitute amendment also clarifies that a preservation directive must be submitted to the law enforcement agency having custody of the record.

- Eliminates the provision that authorizes a law enforcement agency to dispose of “data retained in internal investigations that are not subject to any such jurisdiction.”
- Clarifies that body camera data may not be destroyed at any time after the receipt of an open records request except as provided by current law.<sup>12</sup>

## **Assembly Bill 557**

In general, Assembly Bill 557 requires all body camera data to be retained for six months and destroyed after that time. The bill provides the following exceptions for longer retention:

- Data must be retained until any applicable issue is finally resolved or for 42 months, whichever is longer, if the data are a record of any of the following:
  - An encounter about which a formal or informal complaint has been filed by the subject of the data. The law enforcement agency that is the custodian of the data must allow the subject to access the data in a timely manner to determine whether to file a complaint.
  - An encounter during which a law enforcement officer discharged his or her firearm or used force.
  - An encounter that resulted in the death of or bodily harm to any person.
  - An encounter that resulted in a detention or arrest, excluding a traffic stop that did not result in further detention or arrest.
  - An encounter with evidentiary value for a criminal proceeding, as determined by a supervisor, prosecutor, defendant, or court or the law enforcement officer.
  - An encounter that is or may be used as evidence in any court or administrative proceeding, as determined by the law enforcement agency that is the custodian, by the law enforcement officer, or by an individual who is the subject of the data. The law enforcement agency that is the custodian of the data must allow the subject to access the data in a timely manner to determine if the data must be retained under this subdivision.
  - A subject of an ongoing investigation.
- If, within the immediately preceding six months, data have been the subject of an open records request regarding a specific law enforcement incident, the data relating to that specific incident must be retained.

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<sup>12</sup> Current law prohibits an authority from destroying any record after the receipt of an open records request until “after the request is granted or until at least 60 days after the date that the request is denied or, if the requester is a committed or incarcerated person, until at least 90 days after the date that the request is denied. If an authority receives written notice that an action relating to a record has been commenced under [current law], the record may not be destroyed until after the order of the court in relation to such record is issued and the deadline for appealing that order has passed, or, if appealed, until after the order of the court hearing the appeal is issued. If the court orders the production of any record and the order is not appealed, the record may not be destroyed until after the request for inspection or copying is granted.” [s. 19.35 (5), Stats.]

- A law enforcement agency may retain data from a body camera for any period if the data will be used only for law enforcement training purposes.

## **RELEASE OF BODY CAMERA DATA**

### **Assembly Bill 351**

Under Assembly Bill 351, body camera data are, in general, confidential and not open to inspection and copying under the Open Records Law. The bill provides an exception to this general rule if the camera records any of the following:

- An encounter that resulted in the death of any individual or actual or alleged physical injury to an individual.
- An encounter that resulted in a custodial arrest.
- A search during an authorized “Terry Stop.”

If the body camera data includes any of the instances listed above, it is generally open to inspection and copying under the Open Records Law. The exception to this is when the data record any of the instances listed above in a location where an individual may have a “reasonable expectation of privacy.” Under the bill, if the body camera data record any of the instances listed above, in a location where an individual may have a reasonable expectation of privacy, then all of the following apply:

- The body camera data is not subject to the right of inspection and copying under the Open Records Law unless each individual who is a “known victim or witness” or an “owner,” or a person authorized by each such individual as provided under current law, provides the law enforcement agency with written permission for the release.
- If a law enforcement agency receives an open records request for the body camera data, the law enforcement agency generally must mail a request for permission to release the body camera data to the last-known address of each individual who is a “known victim or witness” or an “owner.” The law enforcement agency is not required, however, to mail requests for permission to release body camera data if the law enforcement agency denies the request on other grounds.
- If the law enforcement agency has not received the requisite permission to release the body camera data within 14 business days after mailing the request, then the law enforcement agency may deny the request. Any written permission for the release received after the 14-day period is valid with respect to any subsequent requests for the same data.
- If a law enforcement agency mails requests for permission for the release of body camera data, the law enforcement agency is not required to mail such requests for any subsequent open records request for the same body camera data.

- The law enforcement agency must retain any correspondence related to the body camera data for at least as long as the law enforcement agency retains the body camera data to which the correspondence relates.

A “known victim or witness” is defined by the bill to mean an individual to whom all of the following apply: (1) the individual was present at the location during the recording; (2) the individual’s identity is known to the law enforcement agency; and (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.

An “owner” is defined by the bill to mean an individual to whom all of the following apply: (1) the individual owns or otherwise controls the property at the location that was recorded; and (2) 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.

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.

### **Substitute Amendment 1 to Assembly Bill 351**

Substitute Amendment 1 generally retains the release requirements prescribed in Assembly Bill 351, but for the following changes:

- Adds another criterion to the definition of “known victim or witness” that 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.
- Makes modifications and clarifications to the requirement that certain known victims or witnesses or owners receive notice of an open records request, including permitting personal service of a notice and requiring that the notice briefly describe the requested data and include a description of the rights of the individual or person to deny permission to the law enforcement agency to release the data.
- Permits a law enforcement agency to release data from a body camera if the law enforcement agency determines that releasing the data is in the interests of justice, except that data may not be released in the interests of justice if data from a body camera record a location where an individual may have a reasonable expectation of privacy, unless each individual who is a known victim or witness or an owner, or a person authorized by each such individual, provides the law enforcement agency with written permission for the release.

- Provides that all of the provisions related to the release of body camera data do 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.

## **Assembly Bill 557**

Under Assembly Bill 557, 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:

- The data are subject only to the six-month retention period.
- The data depict nudity.
- The data depict matter that is subject to a privilege under ch. 905, Stats.

Assembly Bill 557 also includes statements of public policy relating to treatment of crime victims, minors, and individuals with a reasonable expectation of privacy. Specifically, the bill 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.

The presumption regarding the privacy of a victim does not apply if the victim, or his or her next of kin if the victim 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.

Additionally, the bill provides that if a law enforcement agency enters into a contract regarding any aspect of the use of body cameras, no party to the contract may use data from the body camera in a manner inconsistent with the bill or with any policies and procedures of the law enforcement agency.

Assembly Bill 557 also clarifies that the law enforcement agency is the legal custodian of the record and neither a party to a contract regarding any aspect of the use of body cameras nor a person that has custody of a record for the primary purpose of information storage, information technology processing, or other information technology usage is the legal custodian of the record.

## **CRIMINAL PENALTIES AND COURT REMEDIES**

### **Assembly Bill 351 and Substitute Amendment 1 to Assembly Bill 351**

Neither Assembly Bill 351 nor Substitute Amendment 1 to Assembly Bill 351 provide criminal penalties for tampering with or improperly destroying a body camera or body camera data or list remedies a court may impose for violations of police body camera laws.

## **Assembly Bill 557**

Assembly Bill 557 provides that an individual who does any of the following is guilty of a Class I felony:<sup>13</sup>

- Except as permitted under the bill, tampers with, deletes, copies, or uploads data obtained from a body camera.
- Except as permitted under the bill, intentionally tampers with or destroys any body camera, or part of a body camera.
- Intentionally violates the requirement that a body camera be confiscated by a law enforcement agency under certain circumstances or the prohibition on a law enforcement officer involved in an incident that requires body camera confiscation from reviewing or being informed about the contents of the data before the officer completes any required initial reports, statements, or interviews regarding the incident.

Additionally, Assembly Bill 557 provides that a court may impose any of the following remedies if the court determines a law enforcement officer or member of law enforcement personnel violated any provisions of the bill:

- The court may suppress data recorded in violation of this section or a policy.
- The court may presume in favor of a criminal defendant who reasonably asserts that an officer or member of personnel destroyed or failed to capture exculpatory data in violation of this section.
- The court may presume on behalf of a civil plaintiff who reasonably asserts that an officer or member of personnel destroyed or failed to capture favorable data in violation of this section.

## **CREATION OF LAW ENFORCEMENT BODY CAMERA COUNCIL**

### **Assembly Bill 351 and Substitute Amendment 1 to Assembly Bill 351**

Neither Assembly Bill 351 nor Substitute Amendment 1 to Assembly Bill 351 provide for the creation of a law enforcement body camera council.

### **Assembly Bill 557**

Assembly Bill 557 provides for the creation of a law enforcement body camera council within the Wisconsin Department of Justice and chaired by the attorney general or his or her designee.

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<sup>13</sup> The penalty for a Class I felony is a fine not to exceed \$10,000 or imprisonment not to exceed three years and six months, or both. [s. 939.50 (3) (i), Stats.]

The bill provides for council members to serve two-year terms and requires that membership of the council consist of the following individuals:

- Three citizens from underrepresented communities, including a citizen from a first class city, selected by the governor from a list prepared by the Wisconsin Conference of the National Association for the Advancement of Colored People, Centro Hispano of Dane County, and Centro Hispano Milwaukee.
- The attorney general or his or her designee.
- A member of the crime victims' council representing an organization providing victim support services, appointed by the attorney general.
- A sheriff, selected by the Badger State Sheriffs' Association and the Wisconsin Sheriffs and Deputy Sheriffs Association, or his or her designee.
- A chief of police, selected by the Wisconsin Chiefs of Police Association, or his or her designee.
- The executive director of the Wisconsin Professional Police Association, or his or her designee.
- A district attorney, selected by the Wisconsin District Attorneys Association, or his or her designee.
- A state public defender, selected by the Public Defender Board, or his or her designee.
- The executive director of the Wisconsin Freedom of Information Council, or his or her designee.
- A member or staff member of the American Civil Liberties Union, as selected by the American Civil Liberties Union of Wisconsin.
- An attorney specializing in civil rights or an expert in constitutional law, selected by the governor from a list prepared by the State Bar of Wisconsin.

Assembly Bill 557 provides that the law enforcement body camera council must do all of the following:

- Establish best practices and standards for the use of a body camera by a law enforcement agency and submit an annual report to the Legislature that includes recommendations to the Legislature on the subject of body cameras.
- Examine best practices for data storage, including determining if centralized storage of data is feasible, cost effective, and efficient.
- Establish best practices for determining when a law enforcement officer or law enforcement personnel may access or review data recorded by a body camera, including which personnel and for what purposes.

- Develop guidelines for where a law enforcement officer must wear his or her body camera, including whether it should be in public view and where on his or her torso or head it should be worn.
- Establish best practices on any issues the council finds appropriate for ensuring that data recorded by a body camera are uploaded, processed, and stored properly and securely, including classification, download, and storage of data, data security, discipline of law enforcement officers for violating agency policy on body cameras, administrative use of recordings, and which law enforcement officers should wear body cameras.
- Establish best practices for open records and public release of body camera data.

Finally, Assembly Bill 557 provides for repeal of the law enforcement body camera council on the first day of the 121<sup>st</sup> month beginning after publication of the bill's enactment.



# PART III – Selected Applicable Statutes and Records Retention Schedules

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## WIS. STATS., CHAPTER 19, SUBCHAPTER II – PUBLIC RECORDS AND PROPERTY

**19.21 Custody and delivery of official property and records.** (1) Each and every officer of the state, or of any county, town, city, village, school district, or other municipality or district, is the legal custodian of and shall safely keep and preserve all property and things received from the officer's predecessor or other persons and required by law to be filed, deposited, or kept in the officer's office, or which are in the lawful possession or control of the officer or the officer's deputies, or to the possession or control of which the officer or the officer's deputies may be lawfully entitled, as such officers.

(2) Upon the expiration of each such officer's term of office, or whenever the office becomes vacant, the officer, or on the officer's death the officer's legal representative, shall on demand deliver to the officer's successor all such property and things then in the officer's custody, and the officer's successor shall receipt therefor to said officer, who shall file said receipt, as the case may be, in the office of the secretary of state, county clerk, town clerk, city clerk, village clerk, school district clerk, or clerk or other secretarial officer of the municipality or district, respectively; but if a vacancy occurs before such successor is qualified, such property and things shall be delivered to and be receipted for by such secretary or clerk, respectively, on behalf of the successor, to be delivered to such successor upon the latter's receipt.

(3) Any person who violates this section shall, in addition to any other liability

or penalty, civil or criminal, forfeit not less than \$25 nor more than \$2,000; such forfeiture to be enforced by a civil action on behalf of, and the proceeds to be paid into the treasury of the state, municipality, or district, as the case may be.

(4) (a) Any city council, village board or town board may provide by ordinance for the destruction of obsolete public records. Prior to the destruction at least 60 days' notice in writing of such destruction shall be given the historical society which shall preserve any such records it determines to be of historical interest. The historical society may, upon application, waive such notice. No assessment roll containing forest crop acreage may be destroyed without prior approval of the secretary of revenue. This paragraph does not apply to school records of a 1st class city school district.

(b) The period of time any town, city or village public record is kept before destruction shall be as prescribed by ordinance unless a specific period of time is provided by statute. The period prescribed in the ordinance may not be less than 2 years with respect to water stubs, receipts of current billings and customer's ledgers of any municipal utility, and 7 years for other records unless a shorter period has been fixed by the public records board under s. 16.61 (3) (e) and except as provided under sub. (7). This paragraph does not apply to school records of a 1st class city school district.

(c) Any local governmental unit or agency may provide for the keeping and preservation of public records kept by that governmental unit through the use of microfilm or another reproductive device, optical imaging or electronic formatting. A local governmental unit or agency shall make such provision by ordinance or resolution. Any such action by a subunit of a local governmental unit or agency shall be in conformity with the action of the unit or agency of which it is a part. Any photographic reproduction of a record authorized to be reproduced under this paragraph is deemed an original record for all purposes if it meets the applicable standards established in ss. 16.61 (7) and 16.612. This paragraph does not apply to public records kept by counties electing to be governed by ch. 228.

(cm) Paragraph (c) does not apply to court records kept by a clerk of circuit court and subject to SCR chapter 72.

(5) (a) Any county having a population of 750,000 or more may provide by ordinance for the destruction of obsolete public records, except for court records subject to SCR chapter 72.

(b) Any county having a population of less than 750,000 may provide by ordinance for the destruction of obsolete public records, subject to s. 59.52 (4) (b) and (c), except for court records governed by SCR chapter 72.

(c) The period of time any public record shall be kept before destruction shall be determined by ordinance except that in all counties the specific period of time expressed within s. 7.23 or 59.52 (4) (a) or any other law requiring a specific retention period shall apply. The period of time prescribed in the ordinance for the destruction of all records not governed by s. 7.23 or 59.52 (4) (a) or any other law prescribing a specific retention

period may not be less than 7 years, unless a shorter period is fixed by the public records board under s. 16.61 (3) (e).

(d) 1. Except as provided in subd. 2., prior to any destruction of records under this subsection, except those specified within s. 59.52 (4) (a), at least 60 days' notice of such destruction shall be given in writing, to the historical society, which may preserve any records it determines to be of historical interest. Notice is not required for any records for which destruction has previously been approved by the historical society or in which the society has indicated that it has no interest for historical purposes. Records which have a confidential character while in the possession of the original custodian shall retain such confidential character after transfer to the historical society unless the director of the historical society, with the concurrence of the original custodian, determines that such records shall be made accessible to the public under such proper and reasonable rules as the historical society promulgates.

2. Subdivision 1. does not apply to patient health care records, as defined in s. 146.81 (4), that are in the custody or control of a local health department, as defined in s. 250.01 (4).

(e) The county board of any county may provide, by ordinance, a program for the keeping, preservation, retention and disposition of public records including the establishment of a committee on public records and may institute a records management service for the county and may appropriate funds to accomplish such purposes.

(f) District attorney records are state records and are subject to s. 978.07.

(6) A school district may provide for the destruction of obsolete school records. Prior to any such destruction, at least 60 days' notice in writing of such destruction shall be given to the historical society, which shall preserve any records it determines to be of historical interest. The historical society may, upon application, waive the notice. The period of time a school district record shall be kept before destruction shall be not less than 7 years, unless a shorter period is fixed by the public records board under s. 16.61 (3) (e) and except as provided under sub. (7). This section does not apply to pupil records under s. 118.125.

(7) Notwithstanding any minimum period of time for retention set under s. 16.61 (3) (e), any taped recording of a meeting, as defined in s. 19.82 (2), by any governmental body, as defined under s. 19.82 (1), of a city, village, town or school district may be destroyed no sooner than 90 days after the minutes have been approved and published if the purpose of the recording was to make minutes of the meeting.

(8) Any metropolitan sewerage commission created under ss. 200.21 to 200.65 may provide for the destruction of obsolete commission records. No record of the metropolitan sewerage district may be destroyed except by action of the commission specifically authorizing the destruction of that record. Prior to any destruction of records under this subsection, the commission shall give at least 60 days' prior notice of the proposed destruction to the state historical society, which may preserve records it determines to be of historical interest. Upon the application of the commission, the state historical society may waive this notice. Except as provided under sub. (7), the commission may only destroy a record under this subsection after 7 years elapse from the

date of the record's creation, unless a shorter period is fixed by the public records board under s. 16.61 (3) (e).

**19.22 Proceedings to compel the delivery of official property.** (1) If any public officer refuses or neglects to deliver to his or her successor any official property or things as required in s. 19.21, or if the property or things shall come to the hands of any other person who refuses or neglects, on demand, to deliver them to the successor in the office, the successor may make complaint to any circuit judge for the county where the person refusing or neglecting resides. If the judge is satisfied by the oath of the complainant and other testimony as may be offered that the property or things are withheld, the judge shall grant an order directing the person so refusing to show cause, within some short and reasonable time, why the person should not be compelled to deliver the property or things.

(2) At the time appointed, or at any other time to which the matter may be adjourned, upon due proof of service of the order issued under sub. (1), if the person complained against makes affidavit before the judge that the person has delivered to the person's successor all of the official property and things in the person's custody or possession pertaining to the office, within the person's knowledge, the person complained against shall be discharged and all further proceedings in the matter before the judge shall cease.

(3) If the person complained against does not make such affidavit the matter shall proceed as follows:

(a) The judge shall inquire further into the matters set forth in the complaint, and if it appears that any such property or things are withheld by the person complained against the judge shall by warrant commit the person

complained against to the county jail, there to remain until the delivery of such property and things to the complainant or until the person complained against be otherwise discharged according to law.

(b) If required by the complainant the judge shall also issue a warrant, directed to the sheriff or any constable of the county, commanding the sheriff or constable in the daytime to search such places as shall be designated in such warrant for such official property and things as were in the custody of the officer whose term of office expired or whose office became vacant, or of which the officer was the legal custodian, and seize and bring them before the judge issuing such warrant.

(c) When any such property or things are brought before the judge by virtue of such warrant, the judge shall inquire whether the same pertain to such office, and if it thereupon appears that the property or things pertain thereto the judge shall order the delivery of the property or things to the complainant.

**19.23 Transfer of records or materials to historical society.** (1) Any public records, in any state office, that are not required for current use may, in the discretion of the public records board, be transferred into the custody of the historical society, as provided in s. 16.61.

(2) The proper officer of any county, city, village, town, school district or other local governmental unit, may under s. 44.09 (1) offer title and transfer custody to the historical society of any records deemed by the society to be of permanent historical importance.

(3) The proper officer of any court may, on order of the judge of that court, transfer to the historical society title to such

court records as have been photographed or microphotographed or which have been on file for at least 75 years, and which are deemed by the society to be of permanent historical value.

(4) Any other articles or materials which are of historic value and are not required for current use may, in the discretion of the department or agency where such articles or materials are located, be transferred into the custody of the historical society as trustee for the state, and shall thereupon become part of the permanent collections of said society.

**19.24 Refusal to deliver money, etc., to successor.** Any public officer whatever, in this state, who shall, at the expiration of the officer's term of office, refuse or willfully neglect to deliver, on demand, to the officer's successor in office, after such successor shall have been duly qualified and be entitled to said office according to law, all moneys, records, books, papers or other property belonging to the office and in the officer's hands or under the officer's control by virtue thereof, shall be imprisoned not more than 6 months or fined not more than \$100.

**19.25 State officers may require searches, etc., without fees.** The secretary of state, treasurer and attorney general, respectively, are authorized to require searches in the respective offices of each other and in the offices of the clerk of the supreme court, of the court of appeals, of the circuit courts, of the registers of deeds for any papers, records or documents necessary to the discharge of the duties of their respective offices, and to require copies thereof and extracts therefrom without the payment of any fee or charge whatever.

**19.31 Declaration of policy.** In recognition of the fact that a representative

government is dependent upon an informed electorate, it is declared to be the public policy of this state that all persons are entitled to the greatest possible information regarding the affairs of government and the official acts of those officers and employees who represent them. Further, providing persons with such information is declared to be an essential function of a representative government and an integral part of the routine duties of officers and employees whose responsibility it is to provide such information. To that end, ss. 19.32 to 19.37 shall be construed in every instance with a presumption of complete public access, consistent with the conduct of governmental business. The denial of public access generally is contrary to the public interest, and only in an exceptional case may access be denied.

**19.32 Definitions.** As used in ss. 19.32 to 19.39:

(1) "Authority" means any of the following having custody of a record: a state or local office, elective official, agency, board, commission, committee, council, department or public body corporate and politic created by the constitution or by any law, ordinance, rule or order; a governmental or quasi-governmental corporation except for the Bradley center sports and entertainment corporation; a special purpose district; any court of law; the assembly or senate; a nonprofit corporation which receives more than 50 percent of its funds from a county or a municipality, as defined in s. 59.001 (3), and which provides services related to public health or safety to the county or municipality; a university police department under s. 175.42; or a formally constituted subunit of any of the foregoing.

(1b) "Committed person" means a person who is committed under ch. 51, 971,

975 or 980 and who is placed in an inpatient treatment facility, during the period that the person's placement in the inpatient treatment facility continues.

(1bd) "Elective official" means an individual who holds an office that is regularly filled by vote of the people.

(1bg) "Employee" means any individual who is employed by an authority, other than an individual holding local public office or a state public office, or any individual who is employed by an employer other than an authority.

(1c) "Incarcerated person" means a person who is incarcerated in a penal facility or who is placed on probation and given confinement under s. 973.09 (4) as a condition of placement, during the period of confinement for which the person has been sentenced.

(1d) "Inpatient treatment facility" means any of the following:

(a) A mental health institute, as defined in s. 51.01 (12).

(c) A facility or unit for the institutional care of sexually violent persons specified under s. 980.065.

(d) The Milwaukee County mental health complex established under s. 51.08.

(1de) "Local governmental unit" has the meaning given in s. 19.42 (7u).

(1dm) "Local public office" has the meaning given in s. 19.42 (7w), and also includes any appointive office or position of a local governmental unit in which an individual serves as the head of a department, agency, or division of the local governmental unit, but does not include any office or position filled by a municipal employee, as defined in s. 111.70 (1) (i).

(1e) "Penal facility" means a state prison under s. 302.01, county jail, county house of correction or other state, county or municipal correctional or detention facility.

(1m) "Person authorized by the individual" means the parent, guardian, as defined in s. 48.02 (8), or legal custodian, as defined in s. 48.02 (11), of an individual who is a child, as defined in s. 48.02 (2); the guardian of an individual adjudicated incompetent in this state; the personal representative or spouse of an individual who is deceased; or any person authorized, in writing, by an individual to act on his or her behalf.

(1r) "Personally identifiable information" has the meaning specified in s. 19.62 (5).

(2) "Record" means any material on which written, drawn, printed, spoken, visual, or electromagnetic information or electronically generated or stored data is recorded or preserved, regardless of physical form or characteristics, that has been created or is being kept by an authority. "Record" includes, but is not limited to, handwritten, typed, or printed pages, maps, charts, photographs, films, recordings, tapes, optical discs, and any other medium on which electronically generated or stored data is recorded or preserved. "Record" does not include drafts, notes, preliminary computations, and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working; materials that are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent, or bequest; and published materials in the possession of an authority other than a public library that are available

for sale, or that are available for inspection at a public library.

(2g) "Record subject" means an individual about whom personally identifiable information is contained in a record.

(3) "Requester" means any person who requests inspection or copies of a record, except a committed or incarcerated person, unless the person requests inspection or copies of a record that contains specific references to that person or his or her minor children for whom he or she has not been denied physical placement under ch. 767, and the record is otherwise accessible to the person by law.

(3m) "Special purpose district" means a district, other than a state governmental unit or a county, city, village, or town, that is created to perform a particular function and whose geographic jurisdiction is limited to some portion of this state.

(4) "State public office" has the meaning given in s. 19.42 (13), but does not include a position identified in s. 20.923 (6) (f) to (gm).

**19.33 Legal custodians.** (1) An elective official is the legal custodian of his or her records and the records of his or her office, but the official may designate an employee of his or her staff to act as the legal custodian.

(2) The chairperson of a committee of elective officials, or the designee of the chairperson, is the legal custodian of the records of the committee.

(3) The cochairpersons of a joint committee of elective officials, or the designee of the cochairpersons, are the legal custodians of the records of the joint committee.

(4) Every authority not specified in subs. (1) to (3) shall designate in writing one or more positions occupied by an officer or employee of the authority or the unit of government of which it is a part as a legal custodian to fulfill its duties under this subchapter. In the absence of a designation the authority's highest ranking officer and the chief administrative officer, if any, are the legal custodians for the authority. The legal custodian shall be vested by the authority with full legal power to render decisions and carry out the duties of the authority under this subchapter. Each authority shall provide the name of the legal custodian and a description of the nature of his or her duties under this subchapter to all employees of the authority entrusted with records subject to the legal custodian's supervision.

(5) Notwithstanding sub. (4), if an authority specified in sub. (4) or the members of such an authority are appointed by another authority, the appointing authority may designate a legal custodian for records of the authority or members of the authority appointed by the appointing authority, except that if such an authority is attached for administrative purposes to another authority, the authority performing administrative duties shall designate the legal custodian for the authority for whom administrative duties are performed.

(6) The legal custodian of records maintained in a publicly owned or leased building or the authority appointing the legal custodian shall designate one or more deputies to act as legal custodian of such records in his or her absence or as otherwise required to respond to requests as provided in s. 19.35 (4). This subsection does not apply to members of the legislature or to members of any local governmental body.

(7) The designation of a legal custodian does not affect the powers and duties of an authority under this subchapter.

(8) No elective official of a legislative body has a duty to act as or designate a legal custodian under sub. (4) for the records of any committee of the body unless the official is the highest ranking officer or chief administrative officer of the committee or is designated the legal custodian of the committee's records by rule or by law.

**19.34 Procedural information; access times and locations.** (1) Each authority shall adopt, prominently display and make available for inspection and copying at its offices, for the guidance of the public, a notice containing a description of its organization and the established times and places at which, the legal custodian under s. 19.33 from whom, and the methods whereby, the public may obtain information and access to records in its custody, make requests for records, or obtain copies of records, and the costs thereof. The notice shall also separately identify each position of the authority that constitutes a local public office or a state public office. This subsection does not apply to members of the legislature or to members of any local governmental body.

(2) (a) Each authority which maintains regular office hours at the location where records in the custody of the authority are kept shall permit access to the records of the authority at all times during those office hours, unless otherwise specifically authorized by law.

(b) Each authority which does not maintain regular office hours at the location where records in the custody of the authority are kept shall:

1. Permit access to its records upon at least 48 hours' written or oral notice of intent to inspect or copy a record; or

2. Establish a period of at least 2 consecutive hours per week during which access to the records of the authority is permitted. In such case, the authority may require 24 hours' advance written or oral notice of intent to inspect or copy a record.

(c) An authority imposing a notice requirement under par. (b) shall include a statement of the requirement in its notice under sub. (1), if the authority is required to adopt a notice under that subsection.

(d) If a record of an authority is occasionally taken to a location other than the location where records of the authority are regularly kept, and the record may be inspected at the place at which records of the authority are regularly kept upon one business day's notice, the authority or legal custodian of the record need not provide access to the record at the occasional location.

**19.345 Time computation.** In ss. 19.33 to 19.39, when a time period is provided for performing an act, whether the period is expressed in hours or days, the whole of Saturday, Sunday, and any legal holiday, from midnight to midnight, shall be excluded in computing the period.

**19.35 Access to records; fees.** (1) Right to inspection. (a) Except as otherwise provided by law, any requester has a right to inspect any record. Substantive common law principles construing the right to inspect, copy or receive copies of records shall remain in effect. The exemptions to the requirement of a governmental body to meet in open session under s. 19.85 are indicative of public policy, but may be used as grounds for denying public access to a record only if the

authority or legal custodian under s. 19.33 makes a specific demonstration that there is a need to restrict public access at the time that the request to inspect or copy the record is made.

(am) In addition to any right under par. (a), any requester who is an individual or person authorized by the individual has a right to inspect any personally identifiable information pertaining to the individual in a record containing personally identifiable information that is maintained by an authority and to make or receive a copy of any such information. The right to inspect or copy information in a record under this paragraph does not apply to any of the following:

1. Any record containing personally identifiable information that is collected or maintained in connection with a complaint, investigation or other circumstances that may lead to an enforcement action, administrative proceeding, arbitration proceeding or court proceeding, or any such record that is collected or maintained in connection with such an action or proceeding.

2. Any record containing personally identifiable information that, if disclosed, would do any of the following:

a. Endanger an individual's life or safety.

b. Identify a confidential informant.

c. Endanger the security, including the security of the population or staff, of any state prison under s. 302.01, jail, as defined in s. 165.85 (2) (bg), juvenile correctional facility, as defined in s. 938.02 (10p), secured residential care center for children and youth, as defined in s. 938.02 (15g), mental health institute, as defined in s. 51.01 (12), center for the developmentally disabled, as defined in s. 51.01 (3), or facility, specified under s.

980.065, for the institutional care of sexually violent persons.

d. Compromise the rehabilitation of a person in the custody of the department of corrections or detained in a jail or facility identified in subd. 2. c.

2m. The actual address, as defined in s. 165.68 (1) (b), of a participant in the program established in s. 165.68.

3. Any record that is part of a records series, as defined in s. 19.62 (7), that is not indexed, arranged or automated in a way that the record can be retrieved by the authority maintaining the records series by use of an individual's name, address or other identifier.

(b) Except as otherwise provided by law, any requester has a right to inspect a record and to make or receive a copy of a record. If a requester appears personally to request a copy of a record that permits copying, the authority having custody of the record may, at its option, permit the requester to copy the record or provide the requester with a copy substantially as readable as the original.

(c) Except as otherwise provided by law, any requester has a right to receive from an authority having custody of a record which is in the form of a comprehensible audio recording a copy of the recording substantially as audible as the original. The authority may instead provide a transcript of the recording to the requester if he or she requests.

(d) Except as otherwise provided by law, any requester has a right to receive from an authority having custody of a record which is in the form of a video recording a copy of the recording substantially as good as the original.

(e) Except as otherwise provided by law, any requester has a right to receive from an authority having custody of a record which is not in a readily comprehensible form a copy of the information contained in the record assembled and reduced to written form on paper.

(em) If an authority receives a request to inspect or copy a record that is in handwritten form or a record that is in the form of a voice recording which the authority is required to withhold or from which the authority is required to delete information under s. 19.36 (8) (b) because the handwriting or the recorded voice would identify an informant, the authority shall provide to the requester, upon his or her request, a transcript of the record or the information contained in the record if the record or information is otherwise subject to public inspection and copying under this subsection.

(f) Notwithstanding par. (b) and except as otherwise provided by law, any requester has a right to inspect any record not specified in pars. (c) to (e) the form of which does not permit copying. If a requester requests permission to photograph the record, the authority having custody of the record may permit the requester to photograph the record. If a requester requests that a photograph of the record be provided, the authority shall provide a good quality photograph of the record.

(g) Paragraphs (a) to (c), (e) and (f) do not apply to a record which has been or will be promptly published with copies offered for sale or distribution.

(h) A request under pars. (a) to (f) is deemed sufficient if it reasonably describes the requested record or the information requested. However, a request for a record

without a reasonable limitation as to subject matter or length of time represented by the record does not constitute a sufficient request. A request may be made orally, but a request must be in writing before an action to enforce the request is commenced under s. 19.37.

(i) Except as authorized under this paragraph, no request under pars. (a) and (b) to (f) may be refused because the person making the request is unwilling to be identified or to state the purpose of the request. Except as authorized under this paragraph, no request under pars. (a) to (f) may be refused because the request is received by mail, unless prepayment of a fee is required under sub. (3) (f). A requester may be required to show acceptable identification whenever the requested record is kept at a private residence or whenever security reasons or federal law or regulations so require.

(j) Notwithstanding pars. (a) to (f), a requester shall comply with any regulations or restrictions upon access to or use of information which are specifically prescribed by law.

(k) Notwithstanding pars. (a), (am), (b) and (f), a legal custodian may impose reasonable restrictions on the manner of access to an original record if the record is irreplaceable or easily damaged.

(L) Except as necessary to comply with pars. (c) to (e) or s. 19.36 (6), this subsection does not require an authority to create a new record by extracting information from existing records and compiling the information in a new format.

(2) Facilities. The authority shall provide any person who is authorized to inspect or copy a record under sub. (1) (a), (am), (b) or (f) with facilities comparable to

those used by its employees to inspect, copy and abstract the record during established office hours. An authority is not required by this subsection to purchase or lease photocopying, duplicating, photographic or other equipment or to provide a separate room for the inspection, copying or abstracting of records.

(3) Fees. (a) An authority may impose a fee upon the requester of a copy of a record which may not exceed the actual, necessary and direct cost of reproduction and transcription of the record, unless a fee is otherwise specifically established or authorized to be established by law.

(b) Except as otherwise provided by law or as authorized to be prescribed by law an authority may impose a fee upon the requester of a copy of a record that does not exceed the actual, necessary and direct cost of photographing and photographic processing if the authority provides a photograph of a record, the form of which does not permit copying.

(c) Except as otherwise provided by law or as authorized to be prescribed by law, an authority may impose a fee upon a requester for locating a record, not exceeding the actual, necessary and direct cost of location, if the cost is \$50 or more.

(d) An authority may impose a fee upon a requester for the actual, necessary and direct cost of mailing or shipping of any copy or photograph of a record which is mailed or shipped to the requester.

(e) An authority may provide copies of a record without charge or at a reduced charge where the authority determines that waiver or reduction of the fee is in the public interest.

(f) An authority may require prepayment by a requester of any fee or fees imposed under this subsection if the total amount exceeds \$5. If the requester is a prisoner, as defined in s. 301.01 (2), or is a person confined in a federal correctional institution located in this state, and he or she has failed to pay any fee that was imposed by the authority for a request made previously by that requester, the authority may require prepayment both of the amount owed for the previous request and the amount owed for the current request.

(g) Notwithstanding par. (a), if a record is produced or collected by a person who is not an authority pursuant to a contract entered into by that person with an authority, the authorized fees for obtaining a copy of the record may not exceed the actual, necessary, and direct cost of reproduction or transcription of the record incurred by the person who makes the reproduction or transcription, unless a fee is otherwise established or authorized to be established by law.

(4) Time for compliance and procedures. (a) Each authority, upon request for any record, shall, as soon as practicable and without delay, either fill the request or notify the requester of the authority's determination to deny the request in whole or in part and the reasons therefor.

(b) If a request is made orally, the authority may deny the request orally unless a demand for a written statement of the reasons denying the request is made by the requester within 5 business days of the oral denial. If an authority denies a written request in whole or in part, the requester shall receive from the authority a written statement of the reasons for denying the written request. Every written denial of a request by an

authority shall inform the requester that if the request for the record was made in writing, then the determination is subject to review by mandamus under s. 19.37 (1) or upon application to the attorney general or a district attorney.

(c) If an authority receives a request under sub. (1) (a) or (am) from an individual or person authorized by the individual who identifies himself or herself and states that the purpose of the request is to inspect or copy a record containing personally identifiable information pertaining to the individual that is maintained by the authority, the authority shall deny or grant the request in accordance with the following procedure:

1. The authority shall first determine if the requester has a right to inspect or copy the record under sub. (1) (a).

2. If the authority determines that the requester has a right to inspect or copy the record under sub. (1) (a), the authority shall grant the request.

3. If the authority determines that the requester does not have a right to inspect or copy the record under sub. (1) (a), the authority shall then determine if the requester has a right to inspect or copy the record under sub. (1) (am) and grant or deny the request accordingly.

(5) Record destruction. No authority may destroy any record at any time after the receipt of a request for inspection or copying of the record under sub. (1) until after the request is granted or until at least 60 days after the date that the request is denied or, if the requester is a committed or incarcerated person, until at least 90 days after the date that the request is denied. If an authority receives written notice that an action relating to a record has been commenced under s.

19.37, the record may not be destroyed until after the order of the court in relation to such record is issued and the deadline for appealing that order has passed, or, if appealed, until after the order of the court hearing the appeal is issued. If the court orders the production of any record and the order is not appealed, the record may not be destroyed until after the request for inspection or copying is granted.

(6) Elective official responsibilities. No elective official is responsible for the record of any other elective official unless he or she has possession of the record of that other official.

(7) Local information technology authority responsibility for law enforcement records. (a) In this subsection:

1. "Law enforcement agency" has the meaning given s. 165.83 (1) (b).

2. "Law enforcement record" means a record that is created or received by a law enforcement agency and that relates to an investigation conducted by a law enforcement agency or a request for a law enforcement agency to provide law enforcement services.

3. "Local information technology authority" means a local public office or local governmental unit whose primary function is information storage, information technology processing, or other information technology usage.

(b) For purposes of requests for access to records under sub. (1), a local information technology authority that has custody of a law enforcement record for the primary purpose of information storage, information technology processing, or other information technology usage is not the legal custodian of the record. For such purposes, the legal custodian of a law enforcement record is the

authority for which the record is stored, processed, or otherwise used.

(c) A local information technology authority that receives a request under sub. (1) for access to information in a law enforcement record shall deny any portion of the request that relates to information in a local law enforcement record.

**19.356 Notice to record subject; right of action.** (1) Except as authorized in this section or as otherwise provided by statute, no authority is required to notify a record subject prior to providing to a requester access to a record containing information pertaining to that record subject, and no person is entitled to judicial review of the decision of an authority to provide a requester with access to a record.

(2) (a) Except as provided in pars. (b) to (d) and as otherwise authorized or required by statute, if an authority decides under s. 19.35 to permit access to a record specified in this paragraph, the authority shall, before permitting access and within 3 days after making the decision to permit access, serve written notice of that decision on any record subject to whom the record pertains, either by certified mail or by personally serving the notice on the record subject. The notice shall briefly describe the requested record and include a description of the rights of the record subject under subs. (3) and (4). This paragraph applies only to the following records:

1. A record containing information relating to an employee that is created or kept by the authority and that is 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. A record obtained by the authority through a subpoena or search warrant.

3. A 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.

(b) Paragraph (a) does not apply to an authority who provides access to a record pertaining to an employee to the employee who is the subject of the record or to his or her representative to the extent required under s. 103.13 or to a recognized or certified collective bargaining representative to the extent required to fulfill a duty to bargain or pursuant to a collective bargaining agreement under ch. 111.

(c) Paragraph (a) does not apply to access to a record produced in relation to a function specified in s. 106.54 or 230.45 or subch. II of ch. 111 if the record is provided by an authority having responsibility for that function.

(d) Paragraph (a) does not apply to the transfer of a record by the administrator of an educational agency to the state superintendent of public instruction under s. 115.31 (3) (a).

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

(4) Within 10 days after receipt of a notice under sub. (2) (a), a record subject may commence an action seeking a court order to

restrain the authority from providing access to the requested record. If a record subject commences such an action, the record subject shall name the authority as a defendant. Notwithstanding s. 803.09, the requester may intervene in the action as a matter of right. If the requester does not intervene in the action, the authority shall notify the requester of the results of the proceedings under this subsection and sub. (5).

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

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

(7) The court, in an action commenced under sub. (4), shall issue a decision within 10 days after the filing of the summons and complaint and proof of service

of the summons and complaint upon the defendant, unless a party demonstrates cause for extension of this period. In any event, the court shall issue a decision within 30 days after those filings are complete.

(8) If a party appeals a decision of the court under sub. (7), the court of appeals shall grant precedence to the appeal over all other matters not accorded similar precedence by law. An appeal shall be taken within the time period specified in s. 808.04 (1m).

(9) (a) Except as otherwise authorized or required by statute, if an authority decides under s. 19.35 to permit access to a record containing information relating to a record subject who is an officer or employee of the authority holding a local public office or a state public office, the authority shall, before permitting access and within 3 days after making the decision to permit access, serve written notice of that decision on the record subject, either by certified mail or by personally serving the notice on the record subject. The notice shall briefly describe the requested record and include a description of the rights of the record subject under par. (b).

(b) Within 5 days after receipt of a notice under par. (a), a record subject may augment the record to be released with written comments and documentation selected by the record subject. Except as otherwise authorized or required by statute, the authority under par. (a) shall release the record as augmented by the record subject.

**19.36 Limitations upon access and withholding.** (1) Application of other laws. Any record which is specifically exempted from disclosure by state or federal law or authorized to be exempted from disclosure by state law is exempt from disclosure under s. 19.35 (1), except that any portion of that

record which contains public information is open to public inspection as provided in sub. (6).

(2) Law enforcement records. Except as otherwise provided by law, whenever federal law or regulations require or as a condition to receipt of aids by this state require that any record relating to investigative information obtained for law enforcement purposes be withheld from public access, then that information is exempt from disclosure under s. 19.35 (1).

(3) Contractors' records. Each authority shall make available for inspection and copying under s. 19.35 (1) any record produced or collected under a contract entered into by the authority with a person other than an authority to the same extent as if the record were maintained by the authority. This subsection does not apply to the inspection or copying of a record under s. 19.35 (1) (am).

(4) Computer programs and data. A computer program, as defined in s. 16.971 (4) (c), is not subject to examination or copying under s. 19.35 (1), but the material used as input for a computer program or the material produced as a product of the computer program is subject to the right of examination and copying, except as otherwise provided in s. 19.35 or this section.

(5) Trade secrets. An authority may withhold access to any record or portion of a record containing information qualifying as a trade secret as defined in s. 134.90 (1) (c).

(6) Separation of information. If a record contains information that is subject to disclosure under s. 19.35 (1) (a) or (am) and information that is not subject to such disclosure, the authority having custody of the record shall provide the information that is

subject to disclosure and delete the information that is not subject to disclosure from the record before release.

(7) Identities of applicants for public positions. (a) In this subsection:

1. "Final candidate" means each applicant who is seriously considered for appointment or whose name is certified for appointment, and whose name is submitted for final consideration to an authority for appointment, to any of the following:

a. A state position that is not a position in the classified service and that is not a position in the University of Wisconsin System.

b. A local public office.

c. The position of president, vice president, or senior vice president of the University of Wisconsin System; the position of chancellor of an institution; or the position of the vice chancellor who serves as deputy at each institution.

2. "Final candidate" includes all of the following, but only with respect to the offices and positions described under subd. 1. a. and b.:

a. Whenever there are at least 5 applicants for an office or position, each of the 5 applicants who are considered the most qualified for the office or position by an authority.

b. Whenever there are fewer than 5 applicants for an office or position, each applicant.

c. Whenever an appointment is to be made from a group of more than 5 applicants considered the most qualified for an office or position by an authority, each applicant in that group.

3. "Institution" has the meaning given in s. 36.05 (9).

(b) Every applicant for a position with any authority may indicate in writing to the authority that the applicant does not wish the authority to reveal his or her identity. Except with respect to an applicant whose name is certified for appointment to a position in the state classified service or a final candidate, if an applicant makes such an indication in writing, the authority shall not provide access to any record related to the application that may reveal the identity of the applicant.

(8) Identities of law enforcement informants. (a) In this subsection:

1. "Informant" means an individual who requests confidentiality from a law enforcement agency in conjunction with providing information to that agency or, pursuant to an express promise of confidentiality by a law enforcement agency or under circumstances in which a promise of confidentiality would reasonably be implied, provides information to a law enforcement agency or, is working with a law enforcement agency to obtain information, related in any case to any of the following:

a. Another person who the individual or the law enforcement agency suspects has violated, is violating or will violate a federal law, a law of any state or an ordinance of any local government.

b. Past, present or future activities that the individual or law enforcement agency believes may violate a federal law, a law of any state or an ordinance of any local government.

2. "Law enforcement agency" has the meaning given in s. 165.83 (1) (b), and includes the department of corrections.

(b) If an authority that is a law enforcement agency receives a request to inspect or copy a record or portion of a record under s. 19.35 (1) (a) that contains specific information including but not limited to a name, address, telephone number, voice recording or handwriting sample which, if disclosed, would identify an informant, the authority shall delete the portion of the record in which the information is contained or, if no portion of the record can be inspected or copied without identifying the informant, shall withhold the record unless the legal custodian of the record, designated under s. 19.33, makes a determination, at the time that the request is made, that the public interest in allowing a person to inspect, copy or receive a copy of such identifying information outweighs the harm done to the public interest by providing such access.

(9) Records of plans or specifications for state buildings. Records containing plans or specifications for any state-owned or state-leased building, structure or facility or any proposed state-owned or state-leased building, structure or facility are not subject to the right of inspection or copying under s. 19.35 (1) except as the department of administration otherwise provides by rule.

(10) Employee personnel records. Unless access is specifically authorized or required by statute, an authority shall not provide access under s. 19.35 (1) to records containing the following information, except to an employee or the employee's representative to the extent required under s. 103.13 or to a recognized or certified collective bargaining representative to the extent required to fulfill a duty to bargain under ch. 111 or pursuant to a collective bargaining agreement under ch. 111:

(a) Information maintained, prepared, or provided by an employer concerning the home address, home electronic mail address, home telephone number, or social security number of an employee, unless the employee authorizes the authority to provide access to such information.

(b) Information relating to the current investigation of a possible criminal offense or possible misconduct connected with employment by an employee prior to disposition of the investigation.

(c) Information pertaining to an employee's employment examination, except an examination score if access to that score is not otherwise prohibited.

(d) Information relating to one or more specific employees that is used by an authority or by the employer of the employees for staff management planning, including performance evaluations, judgments, or recommendations concerning future salary adjustments or other wage treatments, management bonus plans, promotions, job assignments, letters of reference, or other comments or ratings relating to employees.

(11) Records of an individual holding a local public office or a state public office. Unless access is specifically authorized or required by statute, an authority shall not provide access under s. 19.35 (1) to records, except to an individual to the extent required under s. 103.13, containing information maintained, prepared, or provided by an employer concerning the home address, home electronic mail address, home telephone number, or social security number of an individual who holds a local public office or a state public office, unless the individual authorizes the authority to provide access to such information. This subsection does not apply to the home address of an individual

who holds an elective public office or to the home address of an individual who, as a condition of employment, is required to reside in a specified location.

(13) Financial identifying information. An authority shall not provide access to personally identifiable information that contains an individual's account or customer number with a financial institution, as defined in s. 134.97 (1) (b), including credit card numbers, debit card numbers, checking account numbers, or draft account numbers, unless specifically required by law.

### **19.37 Enforcement and penalties.**

(1) Mandamus. If an authority withholds a record or a part of a record or delays granting access to a record or part of a record after a written request for disclosure is made, the requester may pursue either, or both, of the alternatives under pars. (a) and (b).

(a) The requester may bring an action for mandamus asking a court to order release of the record. The court may permit the parties or their attorneys to have access to the requested record under restrictions or protective orders as the court deems appropriate.

(b) The requester may, in writing, request the district attorney of the county where the record is found, or request the attorney general, to bring an action for mandamus asking a court to order release of the record to the requester. The district attorney or attorney general may bring such an action.

(1m) Time for commencing action. No action for mandamus under sub. (1) to challenge the denial of a request for access to a record or part of a record may be commenced by any committed or incarcerated person later than 90 days after

the date that the request is denied by the authority having custody of the record or part of the record.

(1n) Notice of claim. Sections 893.80 and 893.82 do not apply to actions commenced under this section.

(2) Costs, fees and damages. (a) Except as provided in this paragraph, the court shall award reasonable attorney fees, damages of not less than \$100, and other actual costs to the requester if the requester prevails in whole or in substantial part in any action filed under sub. (1) relating to access to a record or part of a record under s. 19.35 (1) (a). If the requester is a committed or incarcerated person, the requester is not entitled to any minimum amount of damages, but the court may award damages. Costs and fees shall be paid by the authority affected or the unit of government of which it is a part, or by the unit of government by which the legal custodian under s. 19.33 is employed and may not become a personal liability of any public official.

(b) In any action filed under sub. (1) relating to access to a record or part of a record under s. 19.35 (1) (am), if the court finds that the authority acted in a willful or intentional manner, the court shall award the individual actual damages sustained by the individual as a consequence of the failure.

(3) Punitive damages. If a court finds that an authority or legal custodian under s. 19.33 has arbitrarily and capriciously denied or delayed response to a request or charged excessive fees, the court may award punitive damages to the requester.

(4) Penalty. Any authority which or legal custodian under s. 19.33 who arbitrarily and capriciously denies or delays response to a request or charges excessive fees may be

required to forfeit not more than \$1,000. Forfeitures under this section shall be enforced by action on behalf of the state by the attorney general or by the district attorney of any county where a violation occurs. In actions brought by the attorney general, the court shall award any forfeiture recovered together with reasonable costs to the state; and in actions brought by the district attorney, the court shall award any forfeiture recovered together with reasonable costs to the county.

**19.39 Interpretation by attorney general.** Any person may request advice from the attorney general as to the applicability of this subchapter under any circumstances. The attorney general may respond to such a request.

## WIS. STATS., SECTION 16.61 – RECORDS OF STATE OFFICES AND OTHER PUBLIC RECORDS

**16.61 Records of state offices and other public records.** (1) Public records board. The public records board shall preserve for permanent use important state records, prescribe policies and standards that provide an orderly method for the disposition of other state records and rationalize and make more cost-effective the management of records by state agencies.

(2) Definitions. As used in this section:

(a) "Board" means the public records board.

(af) "Form" has the meaning specified in s. 16.97 (5p).

(am) "Microfilm reproduction" means any manner by which an image is reduced in size and reproduced on fine-grain, high resolution film.

(an) "Personally identifiable information" has the meaning specified in s. 19.62 (5).

(b) "Public records" means all books, papers, maps, photographs, films, recordings, optical discs, electronically formatted documents, or other documentary materials, regardless of physical form or characteristics, made or received by any state agency or its officers or employees in connection with the transaction of public business, and documents of any insurer that is liquidated or in the process of liquidation under ch. 645. "Public records" does not include:

1. Records and correspondence of any member of the legislature.

1m. Any state document received by a state document depository library.

2. Duplicate copies of materials the original copies of which are in the custody of the same state agency and which are maintained only for convenience or reference and for no other substantive purpose.

3. Materials in the possession of a library or museum made or acquired solely for reference or exhibition purposes.

4. Notices or invitations received by a state agency that were not solicited by the agency and that are not related to any official action taken, proposed or considered by the agency.

5. Drafts, notes, preliminary computations and like materials prepared for the originator's personal use or prepared by the originator in the name of a person for whom the originator is working.

6. Routing slips and envelopes.

(bm) "Records and forms officer" means a person designated by a state agency to comply with all records and forms management laws and rules under s. 15.04 (1) (j) and to act as a liaison between that state agency and the board.

(c) "Records series" means public records that are arranged under a manual or automated filing system, or are kept together as a unit, because they relate to a particular subject, result from the same activity, or have a particular form.

(cm) "Retention schedule" means instructions as to the length of time, the location and the form in which records series

are to be kept and the method of filing records series.

(d) "State agency" means any officer, commission, board, department or bureau of state government.

(3) Powers and duties of the board.  
The board:

(a) Shall safeguard the legal, financial and historical interests of the state in public records.

(b) Upon the request of any state agency, county, town, city, village, or school district, may order upon such terms as the board finds necessary to safeguard the legal, financial, and historical interests of the state in public records, the destruction, reproduction by microfilm or other process, optical disc or electronic storage or the temporary or permanent retention or other disposition of public records.

(c) May promulgate rules to carry out the purposes of this section.

(d) Shall establish a system for the protection and preservation of essential public records that are necessary to the continuity of governmental functions in the event of a disaster, as defined in s. 323.02 (6), or the imminent threat of a disaster, and in establishing the system shall do all of the following:

1. Determine what records are essential for operation during a state of emergency and thereafter through consultation with all state departments and independent agencies and the administrator, establish the manner in which such records shall be preserved, and provide for their preservation.

2. Require every state department and independent agency to establish and maintain

a preservation program for essential state public records.

3. Provide for security storage of essential state records.

4. Furnish state departments and independent agencies with copies of the final plan for preservation of essential public records.

5. Advise all political subdivisions of this state on preservation of essential public records.

(e) May establish the minimum period of time for retention before destruction of any county, city, town, village, metropolitan sewerage district or school district record.

(f) Shall cooperate with and advise records and forms officers.

(j) Shall establish a records management program for this state.

(L) Shall receive and investigate complaints about forms, except as provided in sub. (3n).

(o) May delegate any of the duties under this subsection to other state agencies.

(r) Shall consider recommendations and advice offered by records and forms officers.

(s) Shall recommend to the department procedures for the transfer of public records and records of the University of Wisconsin Hospitals and Clinics Authority to optical disc format, including procedures to ensure the authenticity, accuracy, and reliability of any public records or records of the University of Wisconsin Hospitals and Clinics Authority so transferred and procedures to ensure that such records are protected from unauthorized destruction. The board shall also recommend to the

department qualitative standards for optical discs and copies of documents generated from optical discs used to store public records and records of the University of Wisconsin Hospitals and Clinics Authority.

(t) Shall recommend to the department qualitative standards for optical discs and for copies of documents generated from optical discs used to store materials filed with local governmental units.

(tm) Shall recommend to the department qualitative standards for storage of records in electronic format and for copies of documents generated from electronically stored records filed with local governmental units.

(u) 1. Shall create a registry, in a format that may be accessed by computer terminal, describing the records series maintained by state agencies that contain personally identifiable information by using, to the maximum extent feasible, information submitted to the board in retention schedules under sub. (4) (b). The board may require state agencies to provide additional information necessary to create the registry. The board may not require a state agency to modify any records series described in the registry.

2. The registry shall not include any of the following:

a. Any records series that contains the results of a matching program, as defined in s. 19.62 (3), if the state agency using the records series destroys the records series within one year after the records series was created.

b. Mailing lists.

c. Telephone directories.

d. Records series pertaining exclusively to employees of a state agency.

e. Records series specified by the board that contain personally identifiable information incidental to the primary purpose for which the records series was created, such as the name of a salesperson or a vendor in a records series of purchase orders.

f. Records series relating to procurement or budgeting by a state agency.

3. The registry shall be designed to:

a. Ensure that state agencies are not maintaining any secret records series containing personally identifiable information.

b. Be comprehensible to an individual using the registry so that identification of records series maintained by state agencies that may contain personally identifiable information about the individual is facilitated.

c. Identify who may be contacted for further information on a records series.

(3L) Executive secretary. The department shall, with the consent of the board and based on qualifications approved by the board, appoint an official in the classified service to oversee the day-to-day execution of the board's duties, to serve as the executive secretary of the board and to coordinate the statewide records management program.

(3n) Exempt forms. The board may not receive or investigate complaints about the forms specified in s. 16.971 (2m).

(4) Approval for disposition of records. (a) All public records made or received by or in the custody of a state agency shall be and remain the property of the state. Those public records may not be disposed of without the written approval of the board.

(b) State agencies shall submit records retention schedules for all public records

series in their custody to the board for its approval within one year after each record series has been received or created unless a shorter period of retention is authorized by law, in which case a retention schedule shall be submitted within that period. The board may alter retention periods for any records series; but if retention for a certain period is specifically required by law, the board may not decrease the length of that period. The board may not authorize the destruction of any public records during the period specified in s. 19.35 (5).

(c) A records retention schedule approved by the board on or after March 17, 1988, is effective for 10 years, unless otherwise specified by the board. At the end of the effective period, an agency shall resubmit a retention schedule for approval by the board. During the effective period, if approved by the board and the board has assigned a disposal authorization number to the public record or record series, a state agency may dispose of a public record or record series according to the disposition requirements of the schedule without further approval by the board.

(5) Transfer of public records to optical disc or electronic format. (a) Subject to rules promulgated by the department under s. 16.611, any state agency may transfer to or maintain in optical disc or electronic format any public record in its custody and retain the public record in that format only.

(b) Subject to rules promulgated by the department under s. 16.611, state agencies shall maintain procedures to ensure the authenticity, accuracy, reliability, and accessibility of public records transferred to or maintained in optical disc or electronic format under par. (a).

(c) Subject to rules promulgated by the department under s. 16.611, state agencies that transfer to or maintain in optical disc or electronic format public records in their custody shall ensure that the public records stored in that format are protected from unauthorized destruction.

(6) Procedure for microfilm reproduction of public records. Any state agency desiring to microfilm public records shall submit a request to the board for the microfilm reproduction of each records series to be reproduced together with any information the board requires. In granting or denying approval, the board shall consider factors such as the long-term value of the public records, the cost-effectiveness of microfilm reproduction compared with other records management techniques and the technology appropriate for the specific application. Upon receiving written approval from the board, any state agency may cause any public record to be microfilmed in compliance with this section and rules adopted pursuant thereto.

(7) When copy deemed original record; standards for reproduction of public records. (a) Any microfilm reproduction of an original record, or a copy generated from an original record stored in optical disc or electronic format, is deemed an original public record if all of the following conditions are met:

1. Any device used to reproduce the record on film or to transfer the record to optical disc or electronic format and generate a copy of the record from optical disc or electronic format accurately reproduces the content of the original.

2. The reproduction is on film that complies with the minimum standards of quality for microfilm reproductions, as

established by rule of the board, or the optical disc or electronic copy and the copy generated from optical disc or electronic format comply with the minimum standards of quality for such copies, as established by rule of the department under s. 16.611.

3. The film is processed and developed in accordance with the minimum standards established by the board.

4. The record is arranged, identified, and indexed so that any individual document or component of the record can be located with the use of proper equipment.

5. The state agency records and forms officer or other person designated by the head of the state agency or the custodian of any other record executes a statement of intent and purpose describing the record to be reproduced or transferred to optical disc or electronic format, the disposition of the original record, the disposal authorization number assigned by the board for public records of state agencies, the enabling ordinance or resolution for cities, towns, villages, or school districts, or the resolution that authorizes the reproduction, optical imaging, or electronic formatting for counties when required, and executes a certificate verifying that the record was received or created and microfilmed or transferred to optical disc or electronic format in the normal course of business and that the statement of intent and purpose is properly recorded as directed by the board.

(b) The statement of intent and purpose executed under par. (a) 5. is presumptive evidence of compliance with all conditions and standards prescribed by this subsection.

(c) Any microfilm reproduction of an original record which was made prior to April

18, 1986, in accordance with the standards in effect under the applicable laws and rules for authenticating the record at the time the reproduction was made is deemed an original record.

(8) Admissible in evidence. (a) Any microfilm reproduction of a public record meeting the requirements of sub. (7) or copy of a public record generated from an original record stored in optical disc or electronic format in compliance with this section shall be taken as, stand in lieu of, and have all the effect of the original document and shall be admissible in evidence in all courts and all other tribunals or agencies, administrative or otherwise, in all cases where the original document is admissible.

(b) Any enlarged copy of a microfilm reproduction of a public record made as provided by this section or any enlarged copy of a public record generated from an original record stored in optical disc or electronic format in compliance with this section that is certified by the custodian as provided in s. 889.08 shall have the same force as an actual-size copy.

(9) Preservation of reproductions. Provision shall be made for the preservation of any microfilm reproductions of public records and of any public records stored in optical disc or electronic format in conveniently accessible files in the agency of origin or its successor or in the state archives.

(10) Contracts for copying. Contracts for microfilm reproduction, optical imaging or electronic storage of public records to be performed as provided in this section shall be made by the secretary as provided in ss. 16.70 to 16.77 and the cost of making such reproductions or optical discs or of electronic storage shall be paid out of the appropriation

of the state agency having the reproduction made or the storage performed.

(11) Authority to reproduce records. Nothing in this section shall be construed to prohibit the responsible officer of any state agency from reproducing any document by any method when it is necessary to do so in the course of carrying out duties or functions in any case other than where the original document is to be destroyed; but no original public record may be destroyed after microfilming, optical imaging or electronic storage without the approval of the board unless authorized under sub. (4) or (5).

(12) Access to reproductions and copies. All persons may examine and use the microfilm reproductions of public records and copies of public records generated from optical disc or electronic storage subject to such reasonable rules as may be made by the responsible officer of the state agency having custody of the same.

(13) Historical society and university archives as depositories. (a) The historical society, as trustee for the state, shall be the ultimate depository of the archives of the state, and the board may transfer to the society such original records and reproductions as it deems proper and worthy of permanent preservation, including records and reproductions which the custodian thereof has been specifically directed by statute to preserve or keep in the custodian's office. The permanent preservation of records of the University of Wisconsin System may be accomplished under par. (b). The society may deposit in the regional depositories established under s. 44.10, title remaining with the society, the records of state agencies or their district or regional offices which are primarily created in the geographic area serviced by the depository, but the records of

all central departments, offices, establishments and agencies shall remain in the main archives in the capital city under the society's immediate jurisdiction, except that the society may place the records temporarily at a regional depository for periods of time to be determined by the society. Nothing in this subsection nor in ch. 44 prevents the society's taking the steps for the safety of articles and materials entrusted to its care in library, museum or archives, including temporary removal to safer locations, dictated by emergency conditions arising from a state of war, civil rebellion or other catastrophe.

(b) The board may designate an archival depository at each university as defined in s. 36.05 (13) which shall meet standards for university archival depositories established by the board with the advice of the board of regents and the historical society or their respective designated representatives. The board may transfer to the appropriate university archival depository all original records and reproductions the board deems worthy of permanent preservation.

(c) The historical society shall, in cooperation with the staff of the board, as soon as practicable, adequately and conveniently classify and arrange the state records or other official materials transferred to its care, for permanent preservation under this section and keep the records and other official materials accessible to all persons interested, under proper and reasonable rules promulgated by the historical society, consistent with s. 19.35. Copies of the records and other official materials shall, on application of any citizen of this state interested therein, be made and certified by the director of the historical society, or an authorized representative in charge, which certificate shall have the same force as if made by the official originally in charge of them.

(d) 1. Except as provided in subd. 2., records which have a confidential character while in the possession of the original custodian shall retain their confidential character after transfer to the historical society unless the board of curators of the historical society, with the concurrence of the original custodian or the custodian's legal successor, determines that the records shall be made accessible to the public under such proper and reasonable rules as the historical society promulgates. If the original custodian or the custodian's legal successor is no longer in existence, confidential records formerly in that person's possession may not be released by the board of curators unless the release is first approved by the public records board. For public records and other official materials transferred to the care of the university archival depository under par. (b), the chancellor of the university preserving the records shall have the power and duties assigned to the historical society under this section.

2. Notwithstanding subd. 1., a record which is transferred to an archival depository under this subsection and which has a confidential character shall be open to inspection and available for copying 75 years after creation of the record unless the custodian, pursuant to ss. 19.34 and 19.35, determines that the record shall be kept confidential.

(e) This subsection does not apply to patient health care records, as defined in s. 146.81 (4), that are in the custody or control of the department of health services.

**16.611 State public records; optical disc and electronic storage.** (1) In this section, "public records" has the meaning given under s. 16.61 (2) (b).

(2) (a) The department shall prescribe, by rule, procedures for the transfer of public records and records of the University of Wisconsin Hospitals and Clinics Authority and of the Wisconsin Aerospace Authority to optical disc or electronic format and for the maintenance of such records stored in optical disc or electronic format, including procedures to ensure the authenticity, accuracy, reliability, and accessibility of any public records or records of the University of Wisconsin Hospitals and Clinics Authority or of the Wisconsin Aerospace Authority so transferred and procedures to ensure that such records are protected from unauthorized destruction.

(b) The department shall prescribe, by rule, procedures governing the operation of its optical disc and electronic storage facility under s. 16.62 (1) (bm).

(c) The department shall prescribe, by rule, qualitative standards for optical discs and for copies of documents generated from optical discs used to store public records and records of the University of Wisconsin Hospitals and Clinics Authority and of the Wisconsin Aerospace Authority.

(d) The department shall prescribe, by rule, qualitative standards for the storage of public records in electronic format and for copies of public records stored in electronic format.

(3) Prior to submitting any proposed rule prescribed under sub. (2) to the legislative council staff under s. 227.15 (1), the department shall refer the proposed rule to the public records board for its recommendations.

**16.612 Local government records; optical disc and electronic storage standards.**

(1) In this section, "local governmental unit" has the meaning given under s. 19.42 (7u).

(2) (a) The department shall prescribe, by rule, qualitative standards for optical discs and for copies of documents generated from optical discs used to store materials filed with local governmental units. Prior to submitting any such rule to the legislative council staff under s. 227.15 (1), the department shall refer the rule to the public records board for its recommendations.

(b) The department shall prescribe, by rule, qualitative standards for the storage of public records in electronic format and for copies of documents generated from electronically stored materials filed with local governmental units. Prior to submitting any such rule to the legislative council staff under s. 227.15 (1), the department shall refer the rule to the public records board for its recommendations.

**GENERAL RECORDS SCHEDULE, FACILITIES MANAGEMENT AND RELATED RECORDS,  
FAC00082 – MONITORING AND SURVEILLANCE RECORDINGS**

**General Records Schedule  
Facilities Management and Related Records**

Approved by the Public Records Board

**February 22, 2010**



Revised: August 24, 2015

Expiration: February 22, 2020

**For use by all units of Wisconsin  
Government at the State, County, and  
Municipal level**

## Scope

This general records schedule covers the facility and related records of Wisconsin government agencies. There are six broad categories:

- General Policies and Procedures
- Capital Budget Related records
- Use and Operation of Facilities related records including parking
- Security related record Series
- Health, Safety and Risk management Facility related records
- Records related to state owned and operated cemeteries

For the Capital Budget section this schedule covers facilities that are constructed under the statutory authority of the State Building Commission which has responsibility for developing and implementing the state building program. Facility related records related to state transportation functions which have separate statutory authority are not included within the scope of this general records schedule. These records would be covered by program specific records schedules.

When the General Records Schedule for Budget and Budget Related Records was approved in March 2002 it did not include the record series related to the capital budget which follows its own set of policies and procedures until the approved State Building Commission biennial building program is added to the biennial budget bill by the Joint Committee on Finance. The Legislature then considers the capital budget as part of the biennial budget bill.

The sections on Use and Operation of Facilities; Security related records and Health, Safety and Risk management have general applicability to all state owned and or operated facilities.

The section on state owned and operated cemeteries narrowly applies to the state agencies that own and operate such facilities. This retention schedule applies to records in all media. A companion document Introduction to General Records Schedules June 2009 provides more information and guidance about the use of general records schedules by Wisconsin government agencies. In particular agencies are cautioned about destroying records at the end of the required retention time period if:

- records are required for a financial or performance audit;
- records are relevant to an existing, pending, or impending legal proceeding
- a relevant public records request has been received and not completed;
- a revised retention schedule is under development that would extend the retention time period.

RDA Number	Record Series Title	Description	Minimum Retention and Disposition	PII	Confidential	Use Case/Example
FAC00081	<b>Building Admittance Passes; Visitor Logs; Access Cards-Detail on Card Activity High Security Facilities and or High Security Areas</b>	<p>Documentation of assignment of temporary building access. Also manual or automated logs documenting who was granted access to facilities or secure areas within a facility.</p> <p>Detailed data on the date; time and specific doors opened by specific cards</p> <p>Agencies have discretion in determining which facilities and areas to designate as high-security.</p>	<p>Retain for 3 years and then destroy confidential.</p> <p>CR+3 years-destroy</p> <p>Note: If an investigation is underway or imminent these records should be held from routine destruction.</p>	PII-Yes	Confidential No	
FAC00082	<b>Monitoring and Surveillance Recordings</b>	<p>Monitoring and surveillance recordings that document incidents that may lead to claims against the governmental unit.</p> <p>Monitoring and surveillance recordings showing no discernable incidents.</p>	<p>Retain for 120 days and then destroy.</p> <p>Retain only until no longer needed and then reuse or destroy.</p>	PII No	Confidential No	<p>Note: 120 days is the time within which a claim may be filed against an agency. [See <a href="#">ss. 893.80</a> and <a href="#">893.82(3), Stats.</a>]</p> <p>Note: As with all public records, if the monitoring or surveillance record is required for any legal or program purpose, including open records requests, claims or litigation holds, the record must be retained until no longer needed to meet the legal or program requirement.</p>

						Note: In order to avoid premature destruction of a monitoring or surveillance record, agencies should have adequate procedures in place to ensure that requests for the record, or an agency's legal or program need for the record, is communicated in a timely manner to the
RDA Number	Record Series Title	Description	Minimum Retention and Disposition	PII	Confidential	Use Case/Example
						appropriate agency personnel.
<b>FAC00083</b>	<b>Access Cards, Keys, Identity Badges/Name Plates and Photo Identification- Documentation of Assignment</b>	<p>Documentation of assignment of access cards, keys, identity badges, name plates and/or photo identification as an employee or contractor.</p> <p>DOA is implementing a Security Access Management System to keep track of keys and access cards. If this system is not available supervisors should keep track of individual keys/access cards using some type of check sheet which is typically maintained in the supervisor's copy of the P-file.</p>	<p>Retain for 6 months after (event) date the card/key is returned or reported lost and then destroy confidential.</p> <p>EVT+ 6 months-destroy</p>	PII- Yes	Confidential No	Photo ID in either or both print or digital format if maintained by an agency.

FAC00084	<b>Input forms for Access Cards, Keys, Badges, Name Plates or Photo Identification</b>	Input forms requesting access cards, keys, badges and or photo identification.  See Facilities Access Cards and Building Keys section of the Building Tenant Manual.	Retain for 1 month after request is completed and then destroy confidential.  CR+1 month-destroy.  These forms have no value once the request has been processed.	PII-Yes	Confidential No	
FAC00085	<b>Administrative Records-Building Security</b>	Reports, memoranda, correspondence, copies of policies and procedures, background materials and related records used by agencies to support administration of building security programs.	Retain the file until after (event) the date the items are obsolete or no longer needed and then destroy.  Destroy copies, drafts and routine materials when no	PII-No	Confidential No	

# SELECTED APPROVED RECORDS RETENTION/DISPOSITION AUTHORIZATIONS FOR POLICE BODY CAMERA VIDEO RECORDINGS

STATE OF WISCONSIN  
DEPARTMENT OF ADMINISTRATION  
PUBLIC RECORDS BOARD  
PRB-001 (R09/2016)  
PAGE 1 OF 3

<http://publicrecordsboard.wi.gov>

## Records Retention / Disposition Authorization

<ul style="list-style-type: none"> <li>• Read instructions provided on pages 2-3 before completing.</li> <li>• In accordance with Wis. Stat. § 16.61, this form must be completed and approved by the Agency and the Public Records Board (PRB) within one year of creation of the records series and prior to disposition of any public record.</li> <li>• Agency Records Officer: Forward original to the PRB. Maintain an agency copy during the PRB review process.</li> </ul>		1. RDA #	2. Record Series Title Body Camera Recordings			
		3. RDA Status (Check One): <input checked="" type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Renewal				
		4. Agency #: 54222		5. Unit #:		
		6. Agency Name City of Evansville Police Department				
Division Name		Subdivision Name				
7. Record Series Year of Creation 2017		8. Medium for Records Storage (Check all appropriate) <input checked="" type="checkbox"/> Electronic/Digital <input type="checkbox"/> Microform <input type="checkbox"/> Paper <input type="checkbox"/> Other (Specify)				
9. Retention Time Period - Specify Actual Period		10. Event that initiates the Start of the Retention Time Period (Check One)				
Yrs	Mo	Wks	Days	Permanent*		
			121	<input type="checkbox"/>		
		Creation <input type="checkbox"/> Fiscal <input type="checkbox"/> Other (Specify) <input type="checkbox"/>				
		<input type="checkbox"/> (CR) <input type="checkbox"/> (FIS) <input type="checkbox"/>				
*If selecting Permanent, cite supporting statute, code, other legal authority, or sufficient justification in Box 12, Record Series Description.						
11. Disposition (Check One): <input checked="" type="checkbox"/> Destroy <input type="checkbox"/> Destroy Confidential <input type="checkbox"/> Transfer - State Archives (WHS) <input type="checkbox"/> Transfer - UW Archives <input type="checkbox"/> Transfer - Other Location (Specify):						
12. Records Series Description						

The City of Evansville Police Department now has body cameras worn by on-duty officers. As such, the cameras have a recording that the Police Department saves but does not have a records retention policy for. The City of Evansville Police Department would like a retention policy for such body camera recordings to be retained for 121 days.

13. Records Contain Personally Identifiable Information (PII): <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		14. PII Registry Exemptions (Check YES if PII is exempted): <input type="checkbox"/> Yes <input type="checkbox"/> No	
15. Name of Agency <input type="checkbox"/> Program Contact or <input checked="" type="checkbox"/> Records Officer: Chief Scott McElroy		Telephone: 608-882-2292 Email: s.mcelroy@ci.evansville.wi.gov	
16. Records Series Contains Content that is Confidential or Access is Protected: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, enter Statute/Code/ or explain other Legal Authority in Box 12, Record Series Description.			

**17. APPROVAL SIGNATURES**

Agency Official	Date (mm/dd/ccyy)	Agency Records Officer	Date (mm/dd/ccyy)
-----------------	-------------------	------------------------	-------------------

**PUBLIC RECORDS BOARD APPROVAL** – Authorization is contingent on restrictions to record destruction contained in Wis. Stat. § 19.35(5), (Open Records Law), and that no records are destroyed if litigation or audit involving these records has commenced or is anticipated.

State Archivist	Date (mm/dd/ccyy)	Executive Secretary – PRB	Date (mm/dd/ccyy)
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Approval subject to 10-year sunset per Wis. Stat. § 16.61(4)(c). Action required before: \_\_\_\_\_

This document can be made available in alternate formats to individuals with disabilities upon request.

**Records Retention / Disposition Authorization**

<ul style="list-style-type: none"> <li>Read Instructions provided on pages 2-3 before completing.</li> <li>In accordance with Wis. Stat. § 16.61, this form must be completed and approved by the Agency and the Public Records Board (PRB) within one year of creation of the records series and prior to disposition of any public record.</li> <li>Agency Records Officer: Forward original to the PRB. Maintain an agency copy during the PRB review process.</li> </ul>	1. RDA # 1	2. Record Series Title Law Enforcement Video - Non Facilities
	3. RDA Status (Check One): <input checked="" type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Renewal	
4. Agency #: 013118		5. Unit #:
6. Agency Name Village of DeForest		
Division Name Village of DeForest Police Department		Subdivision Name
7. Record Series Year of Creation 2000	8. Medium for Records Storage (Check all appropriate) <input checked="" type="checkbox"/> Electronic/Digital <input type="checkbox"/> Microform <input type="checkbox"/> Paper <input type="checkbox"/> Other (Specify)	
9. Retention Time Period - Specify Actual Period Yrs   Mo   Wks   Days   Permanent*       121   <input type="checkbox"/>		10. Event that Initiates the Start of the Retention Time Period (Check One) Creation <input checked="" type="checkbox"/> (CR) <input type="checkbox"/> Fiscal <input type="checkbox"/> (FIS) <input type="checkbox"/> Other (Specify)
*If selecting Permanent, cite supporting statute, code, other legal authority, or sufficient justification in Box 12, Record Series Description.		
11. Disposition (Check One): <input type="checkbox"/> Destroy <input checked="" type="checkbox"/> Destroy Confidential <input type="checkbox"/> Transfer - State Archives (WHS) <input type="checkbox"/> Transfer - UW Archives <input type="checkbox"/> Transfer - Other Location (Specify):		
12. Records Series Description		

The record series includes squad car video recordings, body camera recordings and all other video and audio recordings created or maintained by the Village of DeForest Police Department.

Currently, the police department maintains squad car video recordings, but it is anticipated that in the future the police department will use body cameras and other recording devices that will create video and audio records.

16. Some video recordings may contain information that constitutes a juvenile record, per Wis. Stat. § 938.396(1). In addition, some records may be protected from access based on being law enforcement records, per Wis. Stat. § 19.36(2), and informant records, per Wis. Stat. § 19.36(8). In addition, some records may be protected from disclosure per Wis. Stat. § 19.35(1), including safety of an individual and the identity of a confidential informant. In addition, access may be prohibited after a balancing test considering the public interest in disclosure of the record and the public interest in nondisclosure. This is determined on a case by case basis.

13. Records Contain Personally Identifiable Information (PII): <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	14. PII Registry Exemptions (Check YES if PII is exempted): <input type="checkbox"/> Yes <input type="checkbox"/> No
15. Name of Agency <input type="checkbox"/> Program Contact or <input checked="" type="checkbox"/> Records Officer: Village Deputy Administrator/Clerk Telephone: (608)846-6751 Email: <a href="mailto:leggett@vi.deforest.wi.us">leggett@vi.deforest.wi.us</a>	
16. Records Series Contains Content that is Confidential or Access is Protected: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No If yes, enter Statute/Code/ or explain other Legal Authority in Box 12, Record Series Description.	
17. APPROVAL SIGNATURES	

Agency Official _____	Date (mm/dd/ccyy) _____	Agency Records Officer _____	Date (mm/dd/ccyy) _____
PUBLIC RECORDS BOARD APPROVAL – Authorization is contingent on restrictions to record destruction contained in Wis. Stat. § 19.35(5), (Open Records Law), and that no records are destroyed if litigation or audit involving these records has commenced or is anticipated.			
State Archivist _____	Date (mm/dd/ccyy) _____	Executive Secretary – PRB _____	Date (mm/dd/ccyy) _____

Approval subject to 10-year sunset per Wis. Stat. § 16.61(4)(c). Action required before: \_\_\_\_\_

This document can be made available in alternate formats to individuals with disabilities upon request.

**Records Retention / Disposition Authorization**

<ul style="list-style-type: none"> <li>Read instructions provided on pages 2-3 before completing.</li> <li>In accordance with Wis. Stat. § 16.61, this form must be completed and approved by the Agency and the Public Records Board (PRB) within one year of creation of the records series and prior to disposition of any public record.</li> <li>Agency Records Officer: Forward original <u>only</u> to the PRB. Maintain an agency copy during the PRB review process.</li> </ul>	1. RDA # 1	2. Record Series Title Mobile Video Recordings
	3. RDA Status: <input type="checkbox"/> New <input type="checkbox"/> Amended <input checked="" type="checkbox"/> Renewal	
	4. Agency #: 016281	5. Unit #:
	6. Agency Name Superior Police Department	
Division Name		Subdivision Name
7. Record Series Year of Creation 2006	8. Medium for Records Storage - Check all appropriate categories <input checked="" type="checkbox"/> Electronic/Digital <input type="checkbox"/> Microform <input type="checkbox"/> Paper <input type="checkbox"/> Other (Specify)	
9. Retention Time Period - Specify Actual Period Yrs   Mo   Wks   Days   Permanent*       120   <input type="checkbox"/>		10. Event that Initiates the Start of the Retention Time Period Creation Fiscal Other (Specify) <input checked="" type="checkbox"/> (CR) <input type="checkbox"/> (FIS) <input type="checkbox"/>
*If selecting Permanent, cite supporting statute, code, other legal authority, or sufficient justification in Box 12, Record Series Description.		
11. Disposition: <input type="checkbox"/> Destroy <input checked="" type="checkbox"/> Destroy Confidential <input type="checkbox"/> Transfer - State Archives (WHS) <input type="checkbox"/> Transfer - UW Archives <input type="checkbox"/> Transfer - Other Location:		

12. Records Series Description  
 The Superior Police Department has utilized digital video cameras in its fleet of marked squad cars for over a decade. The department will be adding body worn cameras that integrate with the same in-car recording system. The cameras record to a hard drive that is then downloaded to a server. Video files that are considered to be evidence are then burned to DVD and retained in evidence until the case is adjudicated.

The server has a finite capacity so there is a need to delete video files once they are no longer needed. Many video files are created simply for the testing of the system. Many files are created that do not result in enforcement action and long term retention of these files is unnecessary.

The Superior Police Department is requesting an exemption to the standard seven year retention of records. We request permission to purge non-evidentiary video files after 120 days. We understand that any destruction/deletion of video files must be in compliance with Wisconsin Statute 19.35(5).

Regarding field 16, Superior Police Department conforms with Wisconsin Statute 19.35 (1) and 48.981 (7) regarding confidential information, information that would endanger an individual's life or safety and matters involving children.

APPROVAL SUBJECT TO 10-YEAR  
 SUNSET. RESUBMITTAL REQUIRED  
 PRIOR TO August 2026

13. Records Contain Personally Identifiable Information (PII): <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Read instructions on page 3 before completing Boxes 13 and 14
14. PII Registry Exemptions (Check YES if PII is exempted): <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

15. Name of Agency  Program Contact or  Records Officer: Nicholas F. Alexander  
 Telephone: 715-395-7450 Email: alexandern@ci.superior.wi.us

16. Records Series Contains Content that is Confidential or Access is Protected:  Yes  No  
 .If yes, enter Statute/Code/ or explain other Legal Authority in Box 12, Record Series Description.

17. APPROVAL SIGNATURES  
 Nicholas F. Alexander 06-03-16 Donna Swanson 06/03/2016  
 Agency Official Date (mm/dd/ccyy) Agency Records Officer Date (mm/dd/ccyy)

PUBLIC RECORDS BOARD APPROVAL - Authorization is contingent on restrictions to record destruction contained in Wis. Stat. § 19.35(5), (Open Records Law), and that no records are destroyed if litigation or audit involving these records has commenced or is anticipated.

[Signature] AUG 2 2 2016 Linda Fauth 9/12/2016  
 State Archivist Date (mm/dd/ccyy) Executive Secretary - PRB Date (mm/dd/ccyy)

This document can be made available in alternate formats to individuals with disabilities upon request.

**Records Retention / Disposition Authorization**

<ul style="list-style-type: none"> <li>Read instructions provided on pages 2-3 before completing.</li> <li>In accordance with Wis. Stat. § 16.61, this form must be completed and approved by the Agency and the Public Records Board (PRB) within one year of creation of the records series and prior to disposition of any public record.</li> <li>Agency Records Officer: Forward original to the PRB. Maintain an agency copy during the PRB review process.</li> </ul>	1. RDA # 1	2. Record Series Title SQUAD VIDEO RECORDINGS
	3. RDA Status (Check One): <input checked="" type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Renewal	
	4. Agency #: 030241	5. Unit #:
6. Agency Name CITY OF KENOSHA		
Division Name KENOSHA POLICE DEPARTMENT		
Subdivision Name		
7. Record Series Year of Creation 2005	8. Medium for Records Storage (Check all appropriate) <input checked="" type="checkbox"/> Electronic/Digital <input type="checkbox"/> Microform <input type="checkbox"/> Paper <input type="checkbox"/> Other (Specify)	
9. Retention Time Period - Specify Actual Period Yrs   Mo   Wks   Days   Permanent*       121   <input type="checkbox"/>		10. Event that Initiates the Start of the Retention Time Period (Check One) Creation   Fiscal   Other (Specify) <input checked="" type="checkbox"/> (CR) <input type="checkbox"/> (FIS) <input type="checkbox"/>
*If selecting Permanent, cite supporting statute, code, other legal authority, or sufficient justification in Box 12, Record Series Description.		
11. Disposition (Check One): <input checked="" type="checkbox"/> Destroy <input type="checkbox"/> Destroy Confidential <input type="checkbox"/> Transfer - State Archives (WHS) <input type="checkbox"/> Transfer - UW Archives <input type="checkbox"/> Transfer - Other Location (Specify):		
12. Records Series Description		

Squad video recordings that document enforcement contact and incidents that may or may not lead to claims against the municipality.

The statutory authority for the retention time period is Wis. Stat. § 893.80, which provides in part that 120 days is the time with which a claim may be filed against a municipality. As with all public records, if the squad video recording is required for any legal purpose, including public records requests, evidence in any enforcement proceeding, claims or litigation holds, the squad video recording must be retained until no longer needed to meet the legal requirement.

13. Records Contain Personally Identifiable Information (PII): <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	14. PII Registry Exemptions (Check YES if PII is exempted): <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
15. Name of Agency: <input type="checkbox"/> Program Contact or <input checked="" type="checkbox"/> Records Officer: CHIEF DANIEL G. MISKINIS	
a Telephone: 262 605-5200 Email: DMISKINIS@KENOSHA.ORG	
16. Records Series Contains Content that is Confidential or Access is Protected: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, enter Statute/Code/ or explain other Legal Authority in Box 12, Record Series Description.	

17. APPROVAL SIGNATURES

Agency Official	Date (mm/dd/ccyy)	Agency Records Officer	Date (mm/dd/ccyy)
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PUBLIC RECORDS BOARD APPROVAL - Authorization is contingent on restrictions to record destruction contained in Wis. Stat. § 19.35(5), (Open Records Law), and that no records are destroyed if litigation or audit involving these records has commenced or is anticipated.

State Archivist	Date (mm/dd/ccyy)	Executive Secretary - PRB	Date (mm/dd/ccyy)
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**CITY OF JEFFERSON POLICE DEPARTMENT  
RECORDS RETENTION SCHEDULE**

RECORDS SERIES TITLE	RETENTION PERIOD	LOCATION
<b>ELECTRONIC RECORDINGS</b>		
Squad Car Video/Audio	Retention Period Same as Body Worn Video	Police Dept.
Body Worn Video/Audio	Muni Citation - Creation + 121 Days Traffic Warning - Creation + 121 Days Criminal Traffic - Permanent Criminal Arrest - Permanent Complaint - Creation + 121 Days Interview - Creation + 121 Days Emergency Detention = Creation + 365 Days Training - Creation + 365 Days Uncategorized (Other) - Creation + 121 Days	Police Dept.
Audio Tapes	Creation + 121 Days	Police Dept.
Criminal Event Recordings (All)	Event + 2 Years (EVT=Date of Final Appeal)	Police Dept.
Telecommunicator's Radio	Creation + 120 Days	Police Dept.
Traffic Accident Photos	Event + 6 Years (EVT= Date of Final Appeal)	Evidence Room
Prisoner Booking Photos	Permanent	Booking Room
Surveillance Recordings - Audio/visual	121 Days	Police Dept.
State Uniform Crime Report	Creation + 5 Years	Police Dept.
<b>WRITTEN REPORTS</b>		
Accident Report	Creation + 8 Years	Police Dept.
Accident Report-Reportable	Creation + 8 Years	Police Dept.
Uniform Traffic Citations	EVT + 1 Year: EVT = Closed, disposed, canceled	Police Dept.
Incident Records	Creation + 10 Years	Police Dept.
Critical Incidents	EVT + 10 Years: EVT = Incident	Police Dept.
Death Investigation/Homicide Reports	Permanent	Police Dept.
Evidence Retention, Major Cases	EVT +1 Year: EVT = Final Appeal	Evidence Room
Evidence Cards	Creation + 10 Years	Evidence Room
Citations	Creation + 8 Years	Police Dept.
Warning Notices	EVT+ 6 Months: EVT= After compliance	Police Dept.
Officer's Daily Reports	Creation + 7 Years	Police Dept.
Arrest Records	Creation + 8 Years	Police Dept.
Search Warrants	EVT + 1 Year: EVT = Search Completed	Police Dept.

MAB  
State Archivist
5/25/16  
Date
Linda Forth  
Executive Secretary - PRB
6/3/2016  
Date

**APPROVAL SUBJECT TO 10-YEAR  
SUNSET. RESUBMITTAL REQUIRED  
PRIOR TO May 2026**

**Records Retention / Disposition Authorization**

• Read instructions provided on pages 2-3 before completing.  
 • In accordance with Wfs. Stat. § 16.61, this form must be completed and approved by the Agency and the Public Records Board (PRB) within one year of creation of the records series and prior to disposition of any public record.  
 • Agency Records Officer: Forward original only to the PRB. Maintain an agency copy during the PRB review process.

1. RDA # 1		2. Record Series Title POLICE DEPARTMENT RECORDINGS	
3. RDA Status: <input checked="" type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Renewal			
4. Agency #: 006251		5. Unit #:	
6. Agency Name CITY OF MONDOVI		Subdivision Name	
Division Name POLICE DEPARTMENT			
7. Record Series Year of Creation: 2015	8. Medium for Records Storage – Check all appropriate categories <input checked="" type="checkbox"/> Electronic/Digital <input type="checkbox"/> Microform <input type="checkbox"/> Paper <input type="checkbox"/> Other (Specify)		
9. Retention Time Period - Specify Actual Period Yrs   Mo   Wks   Days   Permanent* 5         <input type="checkbox"/>		10. Event that Initiates the Start of the Retention Time Period Creation <input checked="" type="checkbox"/> (CR) Fiscal <input type="checkbox"/> (FIS) Other (Specify) <input type="checkbox"/>	
*If selecting Permanent, cite supporting statute, code, other legal authority, or sufficient justification in Box 12, Record Series Description.			
11. Disposition: <input checked="" type="checkbox"/> Destroy <input type="checkbox"/> Destroy Confidential <input type="checkbox"/> Transfer - State Archives (WHS) <input type="checkbox"/> Transfer - UW Archives <input type="checkbox"/> Transfer - Other Location:			
12. Records Series Description 1) IN CAR VIDEO RECORDINGS OF NON-EVIDENTIARY VALUE 2) BODY CAMERA RECORDINGS OF NON-EVIDENTIARY VALUE  ALL CAR VIDEO AND BODY CAMERA RECORDINGS OF EVIDENTIARY VALUE WILL BE SAVED ON DISC IN CASE FILE FOR 7 YEARS.			
13. Records Contain Personally Identifiable Information (PII): <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Read Instructions on page 3 before completing Boxes 13 and 14	
14. PII Registry Exemptions (Check YES if PII is exempted): <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
15. Name of Agency: <input type="checkbox"/> Program Contact or <input checked="" type="checkbox"/> Records Officer: CHIEF SCOTT S SMITH Telephone: 715-926-4443 Email: mpd@mondovi.com			
16. Records Series Contains Content that is Confidential or Access is Protected: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If yes, enter Statute/Code/ or explain other Legal Authority in Box 12, Record Series Description.			
17. APPROVAL SIGNATURES			
<i>Daniel J. Samardak</i> Agency Official: (Date (mm/dd/ccyy) 3/19/16)		<i>Scott S Smith</i> Agency Records Officer (Date (mm/dd/ccyy) 03-18-16)	
PUBLIC RECORDS BOARD APPROVAL – Authorization is contingent on restrictions to record destruction contained in Wfs. Stat. § 19.35(5), (Open Records Law), and that no records are destroyed if litigation or audit involving these records has commenced or is anticipated.			
<i>[Signature]</i> State Archivist (Date (mm/dd/ccyy) 5/25/16)		<i>Linda Forth</i> Executive Secretary – PRB (Date (mm/dd/ccyy) 6/3/2016)	

This document can be made available in alternate formats to individuals with disabilities upon request.

**APPROVAL SUBJECT TO 10-YEAR  
 SUNSET. RESUBMITTAL REQUIRED  
 PRIOR TO May 2026**



# PART IV – COPIES OF 2017-18 SESSION BILLS

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## 2017 ASSEMBLY BILL 351



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-1100/1  
CMH&MED:ahe&wlj

## 2017 ASSEMBLY BILL 351

May 31, 2017 - Introduced by Representatives KREMER, R. BROOKS, HORLACHER, KERKMAN, KULP, MURSAU, SANFELIPPO, SKOWRONSKI and THIESFELDT, cosponsored by Senators TESTIN, OLSEN, STROEBEL and WANGGAARD. Referred to Committee on Criminal Justice and Public Safety.

1     **AN ACT** *to create* 165.87 of the statutes; **relating to:** body cameras on law  
2           enforcement officers.

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### *Analysis by the Legislative Reference Bureau*

This bill creates requirements for law enforcement agencies that use body cameras on law enforcement officers, including requirements for agency policies and training and for the retention and confidentiality of data recorded by the body cameras.

The bill also provides that if a public authority has custody of data from a body camera used by a law enforcement agency, that authority is not considered to be the custodian of that data. For purposes of requests for access to such data, the bill provides that the law enforcement agency is considered to be the custodian of that data and the bill directs any other authority that has custody of any such data to deny access to that data.

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:*

3           **SECTION 1.** 165.87 of the statutes is created to read:

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1           **165.87 Body cameras on law enforcement.** (1) (a) If a law enforcement  
2 agency uses a body camera on a law enforcement officer, the law enforcement agency  
3 shall administer a policy regarding all of the following:

4           1. The use, maintenance, and storage of body cameras and data recorded by the  
5 body cameras.

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

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

10           (b) If a law enforcement agency uses a body camera on a law enforcement  
11 officer, the law enforcement agency shall do all of the following:

12           1. Train all law enforcement officers wearing a body camera on the policy under  
13 par. (a) and on the requirements under sub. (2).

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

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

19           (2) (a) Except as provided in pars. (b), (c), and (d), all data from a body camera  
20 shall be retained for a minimum of 120 days after the date of recording and may be  
21 destroyed after that time.

22           (b) Data recording any of the following shall be retained until disposition of the  
23 case or complaint:

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

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- 1           2. An encounter that resulted in a custodial arrest.
- 2           3. A search during an authorized temporary questioning as provided in s.
- 3           968.25.
- 4           (c) Retention beyond 120 days may be directed by a law enforcement officer or
- 5           law enforcement agency, a prosecutor, a defendant, or a court that determines that
- 6           the data have evidentiary value in a prosecution. An entity making the directive
- 7           shall submit a preservation order within 120 days after the incident.
- 8           (d) Data retained under par. (a), (b), or (c) that are used in a criminal, civil, or
- 9           administrative hearing may not be destroyed except upon final disposition, a
- 10          determination from the court or hearing examiner that the data are no longer
- 11          needed, and an order from the court or hearing examiner. Data retained in internal
- 12          investigations that are not subject to any such jurisdiction may be disposed of by the
- 13          law enforcement agency.
- 14          **(3)** (a) In this subsection:
- 15           1. "Known victim or witness" means an individual to whom all of the following
- 16           apply:
- 17           a. The individual was present at the location during the recording.
- 18           b. The individual's identity is known to the law enforcement agency.
- 19           c. The individual is not suspected of committing a crime or other violation of
- 20           law in connection with the law enforcement officer's presence in the location that was
- 21           recorded.
- 22           2. "Owner" means an individual to whom all of the following apply:
- 23           a. The individual owns or otherwise controls the property at the location that
- 24           was recorded.

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1           b. The individual is not suspected of committing a crime or other violation of  
2 law in connection with the law enforcement officer's presence in the location that was  
3 recorded.

4           (b) Data from a body camera are confidential and not open to inspection and  
5 copying under s. 19.35 (1) unless sub. (2) (b) applies to the data. If sub. (2) (b) applies  
6 to the data, the data are subject to the right of inspection and copying under s. 19.35  
7 (1), except as provided in par. (c).

8           (c) 1. If the data record a location where an individual may have a reasonable  
9 expectation of privacy, the data recording the location are not subject to the right of  
10 inspection and copying under s. 19.35 (1) unless each individual who is a known  
11 victim or witness or an owner, or a person authorized by each such individual as  
12 described under s. 19.32 (1m), provides the law enforcement agency with written  
13 permission for the release.

14           2. Upon receipt of a request under s. 19.35 (1) for data to which this paragraph  
15 applies, the law enforcement agency shall, subject to subd. 3., mail a request for such  
16 permission to the last-known address of each individual who is a known victim or  
17 witness or an owner. If the law enforcement agency has not received the requisite  
18 permission to release the data within 14 business days after the law enforcement  
19 agency mails the requests, the law enforcement agency may deny the request, but  
20 any written permission for the release received after that 14-day period shall be  
21 valid as to any subsequent requests for the same data.

22           3. a. A law enforcement agency is not required to mail requests for permission  
23 to release data under subd. 2. if the law enforcement agency denies the request on  
24 other grounds.



# ASSEMBLY SUBSTITUTE AMENDMENT 1 TO 2017 ASSEMBLY BILL 351



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRBs0153/1  
CMH&MED:amn

## ASSEMBLY SUBSTITUTE AMENDMENT 1, TO ASSEMBLY BILL 351

October 27, 2017 - Offered by Representative KREMER.

1 AN ACT *to create* 165.87 of the statutes; **relating to:** body cameras on law  
2 enforcement officers.

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

3 SECTION 1. 165.87 of the statutes is created to read:

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

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

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

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

1 (b) If a law enforcement agency uses a body camera on a law enforcement  
2 officer, the law enforcement agency shall do all of the following:

3 1. Train all law enforcement officers wearing a body camera on the policy under  
4 par. (a) and on the requirements under sub. (2).

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

7 3. Periodically review practices regarding the body cameras and data from body  
8 cameras to ensure compliance with the policy under par. (a) and the requirements  
9 under subs. (2) and (3).

10 (2) (a) Except as provided in pars. (b), (c), and (d), all data from a body camera  
11 shall be retained for a minimum of 120 days after the date of recording and may be  
12 destroyed after that time.

13 (b) Data recording any of the following shall be retained until final disposition  
14 of any case or complaint to which the data pertains, except as provided in pars. (c)  
15 and (d):

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

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

19 3. A search during an authorized temporary questioning as provided in s.  
20 968.25.

21 (c) Retention beyond the period determined under par. (a) or (b) may be directed  
22 by a law enforcement officer or law enforcement agency, a board of police and fire  
23 commissioners, a prosecutor, a defendant, or a court that determines that the data  
24 have evidentiary value in a prosecution. A person making a preservation directive

1 under this paragraph shall submit the directive to the law enforcement agency  
2 having custody of the record within 120 days after the date of recording.

3 (d) Data that are used in a criminal, civil, or administrative proceeding may  
4 not be destroyed except upon final disposition, a determination from the court or  
5 hearing examiner that the data are no longer needed, and an order from the court  
6 or hearing examiner.

7 (3) (a) In this subsection:

8 1. "Known victim or witness" means an individual to whom all of the following  
9 apply:

10 a. The individual is depicted in the recording, or the individual's voice is audible  
11 in the recording.

12 b. The individual's identity is known to the law enforcement agency.

13 c. The individual is not suspected of committing a crime or other violation of  
14 law in connection with the law enforcement officer's presence in the location that was  
15 recorded.

16 2. "Owner" means an individual to whom all of the following apply:

17 a. The individual owns or otherwise controls the property at the location that  
18 was recorded.

19 b. The individual is not suspected of committing a crime or other violation of  
20 law in connection with the law enforcement officer's presence in the location that was  
21 recorded.

22 (b) Data from a body camera are confidential and not open to inspection and  
23 copying under s. 19.35 (1) unless the data record anything specified in sub. (2) (b) 1.,  
24 2., or 3. If the data record anything specified in sub. (2) (b) 1., 2., or 3., the data are

1 subject to the right of inspection and copying under s. 19.35 (1), except as provided  
2 in par. (c).

3 (c) 1. If a law enforcement agency has otherwise decided under s. 19.35 to  
4 permit access to data from a body camera that is subject to disclosure under par. (b)  
5 and the data record a location where an individual may have a reasonable  
6 expectation of privacy, the law enforcement agency shall, before permitting access  
7 and subject to subd. 3., serve notice of the request for the data on each individual who  
8 is a known victim or witness or an owner, or a person authorized by each such  
9 individual as described under s. 19.32 (1m), either by mail or by personally serving  
10 the notice. The notice may be mailed to the individual's or person's last-known  
11 address if his or her current address is not known. The notice shall briefly describe  
12 the requested data and include a description of the rights of the individual or person  
13 to deny permission to the law enforcement agency to release the data. The data  
14 recording the location are confidential and not subject to the right of inspection and  
15 copying under s. 19.35 (1) unless each individual who is a known victim or witness  
16 or an owner, or a person authorized by each such individual as described under s.  
17 19.32 (1m), provides the law enforcement agency with written permission for the  
18 release.

19 2. If the law enforcement agency has not received the requisite permission to  
20 release data under subd. 1. within 14 business days after the law enforcement agency  
21 makes the request, or a longer period determined by the law enforcement agency, the  
22 law enforcement agency shall deny the request, but any written permission for the  
23 release received after that period shall be valid as to any subsequent request for the  
24 same data.





2017 ASSEMBLY Bill 557



State of Wisconsin  
2017 - 2018 LEGISLATURE

LRB-1463/1  
CMH&MED:emw

2017 ASSEMBLY BILL 557

October 19, 2017 - Introduced by Representatives C. TAYLOR, CROWLEY, SARGENT, ANDERSON, BERCEAU, BOWEN, CONSIDINE and SINICKI, cosponsored by Senators LARSON and JOHNSON. Referred to Committee on Criminal Justice and Public Safety.

1 AN ACT *to repeal* 15.257 (3) and 165.87 (6); and *to create* 15.257 (3) and 165.87  
2 of the statutes; **relating to:** body cameras on law enforcement officers and  
3 providing criminal penalties.

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

This bill creates requirements for law enforcement agencies that use body cameras on law enforcement officers, including requirements for agency policies, which encounters must be recorded, restrictions on the use of recordings, and retention practices as well as limitations on encounters that may not be recorded. The bill creates limitations on access to data from body cameras. The bill makes it a Class I felony to tamper with, delete, copy, or upload data obtained from a body camera or to tamper with or destroy a body camera. This bill also creates the Law Enforcement Body Camera Council in the Department of Justice to make recommendations to the legislature and to establish best practices regarding body cameras worn by law enforcement officers.

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:***

4 SECTION 1. 15.257 (3) of the statutes is created to read:

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1           15.257 (3) LAW ENFORCEMENT BODY CAMERA COUNCIL. (a) There is created in the  
2 department of justice a law enforcement body camera council consisting of the  
3 following members:

4           1. Three citizens from underrepresented communities, including a citizen from  
5 a 1st class city, selected by the governor from a list prepared by the Wisconsin  
6 Conference of the National Association for the Advancement of Colored People,  
7 Centro Hispano of Dane County, and Centro Hispano Milwaukee.

8           2. The attorney general or his or her designee.

9           3. A member of the crime victims council representing an organization  
10 providing victim support services, appointed by the attorney general.

11           4. A sheriff, selected by the Badger State Sheriffs' Association and the  
12 Wisconsin Sheriffs And Deputy Sheriffs Association, or his or her designee.

13           5. A chief of police, selected by the Wisconsin Chiefs of Police Association, or  
14 his or her designee.

15           6. The executive director of the Wisconsin Professional Police Association, or  
16 his or her designee.

17           7. A district attorney, selected by the Wisconsin District Attorneys Association,  
18 or his or her designee.

19           8. A state public defender, selected by the public defender board, or his or her  
20 designee.

21           9. The executive director of the Wisconsin Freedom of Information Council, or  
22 his or her designee.

23           10. A member or staff member of the American Civil Liberties Union, as  
24 selected by the American Civil Liberties Union of Wisconsin.

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1           11. An attorney specializing in civil rights or an expert in constitutional law,  
2 selected by the governor from a list prepared by the State Bar of Wisconsin.

3           (b) Members under par. (a) 1., 3., 4., 5., 7., 8., 9., 10., and 11. shall serve for  
4 2-year terms, and, notwithstanding s. 15.09 (2), the member under par. (a) 2. shall  
5 serve as the council chairperson.

6           **SECTION 2.** 15.257 (3) of the statutes, as created by 2017 Wisconsin Act ... (this  
7 act), is repealed.

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

9           **165.87 Body cameras on law enforcement. (1)** (a) If a law enforcement  
10 agency uses a body camera on a law enforcement officer, the law enforcement agency  
11 shall develop a written policy and conspicuously post it on an Internet site the agency  
12 maintains. The agency may include policies and procedures that do not conflict with  
13 the requirements under this paragraph and shall include all of the following in the  
14 policy:

15           1. That no personnel except law enforcement officers who have the authority  
16 to arrest and conduct searches may wear a body camera.

17           2. That the audio and video functions of the body camera shall be activated  
18 when the law enforcement officer responds to a call or initiates an interaction for  
19 enforcement or investigation purposes and may not be discontinued during the  
20 response or interaction except as provided under sub. (2).

21           3. How the law enforcement agency shall classify, download, store,  
22 administratively use, and ensure the security of data from a body camera.

23           4. Disciplinary measures for violating the policy.

24           5. Which employees may access data from body cameras.

**ASSEMBLY BILL 557****SECTION 3**

1           (b) If a law enforcement agency uses body cameras on law enforcement officers,  
2 the law enforcement agency shall train all law enforcement officers on the policy  
3 under par. (a) and on this section.

4           (c) If a law enforcement agency uses body cameras on law enforcement officers,  
5 the law enforcement agency shall confiscate the body camera if the camera has data  
6 recording an incident involving a law enforcement officer that resulted in a death or  
7 bodily harm to an individual, involving the use of force by a law enforcement officer,  
8 or involving a law enforcement officer's discharge of a firearm. No law enforcement  
9 officer involved in the incident may be allowed to review or be informed about the  
10 contents of the data before the officer completes any required initial reports,  
11 statements, or interviews regarding the incident.

12           (d) If a law enforcement agency enters into a contract regarding any aspect of  
13 the use of body cameras, no party to the contract may use data from the body camera  
14 in a manner inconsistent with this section or with any policies and procedures of the  
15 law enforcement agency that are not inconsistent with this section.

16           (e) No law enforcement officer may use a body camera unless he or she is acting  
17 on the authority of a law enforcement agency that has a policy under par. (a).

18           **(2)** A law enforcement officer who is wearing a body camera shall notify an  
19 individual that the individual is being recorded as soon as practically possible if the  
20 law enforcement officer is going to interact with the individual for enforcement or  
21 investigation purposes. If the interaction is because the individual is a crime victim,  
22 the law enforcement officer shall obtain the individual's verbal consent before  
23 recording him or her.

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1           **(3)** (a) 1. Except as permitted under this section, an individual who tampers  
2 with, deletes, copies, or uploads data obtained from a body camera is guilty of a Class  
3 I felony.

4           2. Except as permitted under this section, an individual who intentionally  
5 tampers with or destroys any body camera, or part of a body camera, used by a law  
6 enforcement agency is guilty of a Class I felony.

7           3. An individual who intentionally violates sub. (1) (c) is guilty of a Class I  
8 felony.

9           (b) No law enforcement officer or personnel may do any of the following:

10           1. Access data from a body camera for personal use.

11           2. Record a conversation in public or in a law enforcement agency without the  
12 knowledge of the speakers during routine nonenforcement activities.

13           3. Record activity that is unrelated to a response to a call or to an interaction  
14 initiated for enforcement or investigation purposes.

15           4. Record off-duty or personal activity.

16           5. Use a body camera for a purpose other than law enforcement.

17           6. Merge data from a body camera with other data collected by a law  
18 enforcement agency or subject data from a body camera to automated analysis or  
19 analytics.

20           7. Record activity with the intent of inhibiting or curbing the exercise of a right  
21 under the First Amendment of the U.S. Constitution and article I, section 18, of the  
22 Wisconsin Constitution.

23           (c) Unless a law enforcement officer is confronting a violent suspect or  
24 anticipates the need to use force or unless a person is at risk of bodily harm or death,  
25 a law enforcement officer may not record any of the following:

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1           1. A situation in which a recording could risk the safety of an informant, as  
2 defined in s. 19.36 (8) (a) 1., or an undercover officer unless the law enforcement  
3 officer receives from the informant or the undercover officer, whichever is applicable,  
4 permission, recorded on the body camera data.

5           2. An individual who wants to anonymously report a crime or aid an  
6 investigation unless the law enforcement officer receives permission from the  
7 individual, recorded on the body camera data.

8           3. A strip search unless the law enforcement officer receives permission from  
9 the subject of the search, recorded on the body camera data.

10          4. Any activity on the grounds of any public, private, or parochial elementary  
11 or secondary school that does not involve a threat to life or safety.

12          5. Any activity in a patient care area of a hospital, rape treatment center, or  
13 other health care facility that does not involve an enforcement action unless the law  
14 enforcement officer receives permission, recorded on the body camera data, from all  
15 the recorded subjects.

16          6. Any activity in a place where a significantly heightened expectation of  
17 privacy exists unless the law enforcement officer receives permission, recorded on  
18 the body camera data, from all the recorded subjects who have the expectation.

19          (d) A court may impose the following remedies if the court determines a law  
20 enforcement officer or member of law enforcement personnel violated this section or  
21 a policy under sub. (1) (a):

22           1. The court may suppress data recorded in violation of this section or a policy.

23           2. The court may presume in favor of a criminal defendant who reasonably  
24 asserts that an officer or member of personnel destroyed or failed to capture  
25 exculpatory data in violation of this section.

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1           3. The court may presume on behalf of a civil plaintiff who reasonably asserts  
2 that an officer or member of personnel destroyed or failed to capture favorable data  
3 in violation of this section.

4           (4) (a) All data from a body camera shall be retained for 6 months and destroyed  
5 after that period, except as provided in pars. (b), (c), and (d) and s. 19.35 (5).

6           (b) Data shall be retained until any applicable issue is finally resolved or for  
7 42 months, whichever is longer, if the data are a record of any of the following:

8           1. An encounter about which a formal or informal complaint has been filed by  
9 the subject of the data. The law enforcement agency that is the custodian of the data  
10 shall allow the subject to access the data in a timely manner to determine whether  
11 to file a complaint.

12           2. An encounter during which a law enforcement officer discharged his or her  
13 firearm or used force.

14           3. An encounter that resulted in the death of or bodily harm to any person.

15           4. An encounter that resulted in a detention or arrest, excluding a traffic stop  
16 that did not result in further detention or arrest.

17           5. An encounter with evidentiary value for a criminal proceeding, as  
18 determined by a supervisor, prosecutor, defendant, or court or the law enforcement  
19 officer.

20           6. An encounter that is or may be used as evidence in any court or  
21 administrative proceeding, as determined by the law enforcement agency that is the  
22 custodian, by the law enforcement officer, or by an individual who is the subject of  
23 the data. The law enforcement agency that is the custodian of the data shall allow  
24 the subject to access the data in a timely manner to determine if the data must be  
25 retained under this subdivision.

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**SECTION 3**

1           7. A subject of an ongoing investigation.

2           (c) If, within the immediately preceding 6 months, data have been the subject  
3 of an open records request regarding a specific law enforcement incident, the data  
4 relating to that specific incident shall be retained.

5           (d) A law enforcement agency may retain data from a body camera for any  
6 period if the data will be used only for law enforcement training purposes.

7           (5) (a) Data from a body camera are subject to the right of inspection and  
8 copying under s. 19.35 (1), except as provided in pars. (b) and (c).

9           (b) Data from a body camera are not open to inspection and copying under s.  
10 19.35 (1) if any of the following applies:

- 11           1. The data are subject only to the 6-month retention period under sub. (4) (a).
- 12           2. The data depict nudity.
- 13           3. The data depict matter that is subject to a privilege under ch. 905.

14           (c) 1. It shall be the public policy of this state that the privacy of a victim of a  
15 sensitive or violent crime, or the privacy of a minor, who is a subject of the data shall  
16 be maintained and that access to such data shall be provided only if the public  
17 interest in allowing access is so great as to outweigh that public policy. In that case,  
18 the victim's or minor's face and anything else that would allow the victim or minor  
19 to be identified shall be censored using pixelization or another method of censorship.  
20 The presumption regarding the privacy of a victim under this subdivision does not  
21 apply if the victim, or his or her next of kin if the victim is deceased, does not object  
22 to granting access to the data. The presumption regarding the privacy of a minor  
23 under this subdivision does not apply if the parent or legal guardian of the minor does  
24 not object to granting access to the data.

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1           2. It shall be the public policy of this state that the privacy of an individual who  
2 is a subject of the data in a location where the individual has a reasonable  
3 expectation of privacy shall be maintained and that access to such data shall be  
4 provided only if the public interest in allowing access is so great as to outweigh that  
5 public policy. In that case, the individual's face and anything else that would allow  
6 the individual to be identified shall be censored using pixelization or another method  
7 of censorship. The presumption under this subdivision does not apply if the  
8 individual does not object to granting access to the data.

9           (d) For purposes of requests under s. 19.35 (1) for access to a record under this  
10 section, the law enforcement agency is the legal custodian of the record. Neither a  
11 party to a contract regarding any aspect of the use of body cameras nor a person that  
12 has custody of a record under this section for the primary purpose of information  
13 storage, information technology processing, or other information technology usage  
14 is the legal custodian of the record.

15           **(6)** The law enforcement body camera council shall do all of the following:

16           (a) Establish best practices and standards for the use of a body camera by a law  
17 enforcement agency and, beginning one year after the effective date of this  
18 paragraph .... [LRB inserts date], submit an annual report to the chief clerk of each  
19 house of the legislature for distribution to the legislature under s. 13.172 (2) that  
20 includes recommendations to the legislature on the subject of body cameras.

21           (b) Examine best practices for data storage, including determining if  
22 centralized storage of data is feasible, cost effective, and efficient.

23           (c) Establish best practices for determining when a law enforcement officer or  
24 law enforcement personnel may access or review data recorded by a body camera,  
25 including which personnel and for what purposes.

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**SECTION 3**

1 (d) Develop guidelines for where a law enforcement officer must wear his or her  
2 body camera, including whether it should be in public view and where on his or her  
3 torso or head it should be worn.

4 (e) Establish best practices on any issues the council finds appropriate for  
5 ensuring that data recorded by a body camera are uploaded, processed, and stored  
6 properly and securely, including all of the following:

- 7 1. Classification, download, and storage of data.
- 8 2. Data security.
- 9 3. Discipline of law enforcement officers for violating agency policy on body  
10 cameras.
- 11 4. Administrative use of recordings.
- 12 5. Which law enforcement officers should wear body cameras.

13 (f) Establish best practices for open records and public release of body camera  
14 data.

15 **SECTION 4.** 165.87 (6) of the statutes, as created by 2017 Wisconsin Act .... (this  
16 act), is repealed.

17 **SECTION 5. Nonstatutory provisions.**

18 (1) Notwithstanding section 15.257 (3) (b) of the statutes, as created by this act,  
19 the initial members of the council appointed under section 15.257 (3) (a) of the  
20 statutes, as created by this act, shall be appointed for the following terms:

21 (a) One member appointed under section 15.257 (3) (a) 1. of the statutes for a  
22 term expiring one year after the initial appointment.

23 (b) The members appointed under section 15.257 (3) (a) 3., 5., 7., 9., and 11. of  
24 the statutes for a term expiring one year after the initial appointment.

