



State of Wisconsin  
2021 - 2022 LEGISLATURE

LRB-3272/1  
EAW&MIM:skw

## 2021 ASSEMBLY BILL 465

July 12, 2021 - Introduced by Representatives BROSTOFF, BOWEN, ANDERSON, HESSELBEIN, HONG, MOORE OMOKUNDE, SHELTON and SINICKI, cosponsored by Senator L. TAYLOR. Referred to Committee on Campaigns and Elections.

\*\*\*AUTHORS SUBJECT TO CHANGE\*\*\*

1     **AN ACT to repeal** 165.87 (1) (a), 165.87 (1) (e), 165.87 (1m) and 165.87 (4); **to**  
2     **amend** 165.87 (title), 165.87 (1) (intro.), 165.87 (1) (b), 165.87 (1) (c), 165.87 (1)  
3     (d), 165.87 (2) (a), 165.87 (2) (b) (intro.), 165.87 (2) (d), 165.87 (2) (e), 165.87 (3)  
4     (a) 2. (intro.), 165.87 (3) (b), 165.87 (3) (c) 1., 165.87 (3) (c) 2., 165.87 (3) (d) and  
5     165.87 (3) (e); and **to create** 111.70 (4) (mc) 7., 111.91 (2) (t), 165.85 (4) (em),  
6     165.87 (1) (dm), 165.87 (1m) and 165.87 (4) of the statutes; **relating to:**  
7     requiring the use of body cameras by law enforcement and providing a penalty.

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

Under current law, if a law enforcement agency uses a body camera on a law enforcement officer, the law enforcement agency is required to administer a written policy regarding the use of body cameras. Under current law, the written policy is required to cover any limitations the law enforcement agency imposes on which law enforcement officers may wear a body camera, and any limitations on situations, persons, or encounters that may be recorded by a body camera. Current law also specifies data retention requirements for data from a body camera and specifies when data from a body camera may be released to the public under the open records law.

This bill does all of the following with respect to a body camera and a dashboard-mounted camera used by law enforcement:

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1. Requires the Law Enforcement Standards Board (LESB) to develop a statewide policy for a law enforcement officer's use, maintenance, and storage of a body camera or a dashboard-mounted camera, and data recorded by such a camera by January 1, 2025. Under the bill, the policy developed by the LESB will replace the policy of a law enforcement agency. Under the bill, the LESB policy must require law enforcement officers to record every encounter with a civilian. Exceptions to this standard must be specific and based on best practices under the bill.

2. Specifies that if a law enforcement officer intentionally violates a written policy on body cameras by failing to use the camera, the law enforcement officer is guilty of the crime of misconduct in public office, a Class I felony.

3. Specifies that a law enforcement agency that is using a body camera on a law enforcement officer on the effective date of the bill is required to continue use of a body camera on that law enforcement officer until January 1, 2025, when the LESB policy will take effect.

4. Requires a law enforcement agency to provide body cameras to each of its law enforcement officers and dashboard-mounted cameras for each of its vehicles by January 1, 2025.

5. Requires a law enforcement agency to conduct periodic reviews of body camera and dashboard-mounted camera footage for compliance with the law enforcement agency's use of force policy. If the law enforcement agency determines, as a result of such a periodic review, that a law enforcement officer has violated a use of force policy, the bill requires that the law enforcement agency immediately terminate employment of the law enforcement officer.

6. Applies to dashboard-mounted cameras the current data retention and open records requirements for body cameras.

Also, under current law, a collective bargaining unit that represents law enforcement officers may generally bargain wages, hours, and conditions of employment. Under the bill, mandatory termination of employment for a violation of a use of force policy that is discovered upon review of body camera or dashboard-mounted camera footage may not be collectively bargained.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report.

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:***

- 1           **SECTION 1.** 111.70 (4) (mc) 7. of the statutes is created to read:  
2           111.70 (4) (mc) 7. The termination of a public safety employee under s. 165.87  
3           (1m) (b).

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1           **SECTION 2.** 111.91 (2) (t) of the statutes is created to read:

2           111.91 (2) (t) The termination of a public safety employee under s. 165.87 (1m)  
3 (b).

4           **SECTION 3.** 165.85 (4) (em) of the statutes is created to read:

5           165.85 (4) (em) *Body cameras and dashboard-mounted cameras.* 1. The board  
6 shall establish a statewide policy for the use, maintenance, and storage of a body  
7 camera, a dashboard-mounted camera, and data recorded by the cameras by a law  
8 enforcement officer.

9           2. The policy under subd. 1. shall require a law enforcement officer who is  
10 acting in an official capacity and who has been issued a body camera or a vehicle with  
11 a dashboard-mounted camera to record all encounters with civilians. Any  
12 exceptions to this policy must be specific and based on best practices.

13           3. The policy under subd. 1. shall require a law enforcement agency to supply  
14 a body camera to each law enforcement officer that it employs and to equip a  
15 dashboard-mounted camera in each vehicle that the law enforcement agency  
16 provides for official use.

17           4. A law enforcement officer who intentionally violates a written policy under  
18 subd. 1. by failing to use or by deactivating a body camera or dashboard-mounted  
19 camera is guilty of misconduct under s. 946.12 (1).

20           **SECTION 4.** 165.87 (title) of the statutes is amended to read:

21           **165.87 (title) Body cameras and dashboard-mounted cameras and law**  
22 **enforcement.**

23           **SECTION 5.** 165.87 (1) (intro.) of the statutes is amended to read:

**ASSEMBLY BILL 465****SECTION 5**

1           165.87 (1) (intro.) ~~If a~~ A law enforcement agency uses a body camera on a law  
2 enforcement officer, the law enforcement agency shall do all of the following with  
3 respect to a body camera or a dashboard-mounted camera:

4           **SECTION 6.** 165.87 (1) (a) of the statutes is repealed.

5           **SECTION 7.** 165.87 (1) (b) of the statutes is amended to read:

6           165.87 (1) (b) Train all law enforcement officers wearing a body camera or  
7 operating a vehicle equipped with a dashboard-mounted camera on the policy under  
8 par. (a) and on the requirements under sub. (2).

9           **SECTION 8.** 165.87 (1) (b) of the statutes, as affected by 2021 Wisconsin Act ...  
10 (this act), is amended to read:

11           165.87 (1) (b) Train all law enforcement officers wearing a body camera or  
12 operating a vehicle equipped with a dashboard-mounted camera on the policy under  
13 ~~par. (a) s. 165.85 (4) (em) 1.~~ and on the requirements under sub. (2).

14           **SECTION 9.** 165.87 (1) (c) of the statutes is amended to read:

15           165.87 (1) (c) Train all employees that use, maintain, store, or release data from  
16 a body camera or a dashboard-mounted camera on the policy under par. (a) and on  
17 the requirements under subs. (2) and (3).

18           **SECTION 10.** 165.87 (1) (c) of the statutes, as affected by 2021 Wisconsin Act ...  
19 (this act), is amended to read:

20           165.87 (1) (c) Train all employees that use, maintain, store, or release data from  
21 a body camera or a dashboard-mounted camera on the policy under ~~par. (a) s. 165.85~~  
22 (4) (em) 1. and on the requirements under subs. (2) and (3).

23           **SECTION 11.** 165.87 (1) (d) of the statutes is amended to read:

24           165.87 (1) (d) Periodically review practices regarding the body cameras and  
25 dashboard-mounted cameras and data from body cameras and dashboard-mounted

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1 cameras to ensure compliance with the policy under par. (a) and the requirements  
2 under subs. (2) and (3).

3 **SECTION 12.** 165.87 (1) (d) of the statutes, as affected by 2021 Wisconsin Act ....  
4 (this act), is amended to read:

5 165.87 (1) (d) Periodically review practices regarding the body cameras and  
6 dashboard-mounted cameras and data from body cameras and dashboard-mounted  
7 cameras to ensure compliance with the policy under ~~par. (a)~~ s. 165.85 (4) (em) 1. and  
8 the requirements under subs. (2) and (3).

9 **SECTION 13.** 165.87 (1) (dm) of the statutes is created to read:

10 165.87 (1) (dm) Periodically review footage from body cameras and  
11 dashboard-mounted cameras of encounters involving the use of force to determine  
12 whether law enforcement officers are acting in accordance with the law enforcement  
13 agency's use of force policy under s. 66.0511.

14 **SECTION 14.** 165.87 (1) (e) of the statutes is repealed.

15 **SECTION 15.** 165.87 (1m) of the statutes is created to read:

16 165.87 (1m) (a) A law enforcement officer who intentionally violates a written  
17 policy under sub. (1) (a) by failing to use a body camera is guilty of misconduct under  
18 s. 946.12 (1).

19 (b) If, during a periodic review of footage from a body camera or  
20 dashboard-mounted camera under sub. (1) (dm), a law enforcement agency  
21 determines that a law enforcement officer used excessive force in violation of the law  
22 enforcement agency's use of force policy, the law enforcement agency shall  
23 immediately terminate employment of that law enforcement officer.

24 **SECTION 16.** 165.87 (1m) of the statutes, as created by 2021 Wisconsin Act ....  
25 (this act), is repealed.

**ASSEMBLY BILL 465****SECTION 17**

1           **SECTION 17.** 165.87 (2) (a) of the statutes is amended to read:

2           165.87 (2) (a) Except as provided in pars. (b), (c), and (d), all data from a body  
3 camera used on a law enforcement officer or a dashboard-mounted camera on a  
4 vehicle issued to a law enforcement officer shall be retained for a minimum of 120  
5 days after the date of recording.

6           **SECTION 18.** 165.87 (2) (b) (intro.) of the statutes is amended to read:

7           165.87 (2) (b) (intro.) Data from a body camera used on a law enforcement  
8 officer or a dashboard-mounted camera on a vehicle issued to a law enforcement  
9 officer that record any of the following shall be retained until final disposition of any  
10 investigation, case, or complaint to which the data pertain, except as provided in  
11 pars. (c) and (d):

12           **SECTION 19.** 165.87 (2) (d) of the statutes is amended to read:

13           165.87 (2) (d) Data from a body camera used on a law enforcement officer or  
14 a dashboard-mounted camera on a vehicle issued to a law enforcement officer that  
15 are used in a criminal, civil, or administrative proceeding may not be destroyed  
16 except upon final disposition, including appeals, a determination from the court or  
17 hearing examiner that the data are no longer needed, or an order from the court or  
18 hearing examiner.

19           **SECTION 20.** 165.87 (2) (e) of the statutes is amended to read:

20           165.87 (2) (e) Notwithstanding pars. (a) to (d), data from a body camera used  
21 on a law enforcement officer or a dashboard-mounted camera on a vehicle issued to  
22 a law enforcement officer may not be destroyed during the period specified in s. 19.35  
23 (5).

24           **SECTION 21.** 165.87 (3) (a) 2. (intro.) of the statutes is amended to read:

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1           165.87 (3) (a) 2. (intro.) “Record subject” means an individual recorded by a  
2           body camera used on a law enforcement officer or a dashboard-mounted camera on  
3           a vehicle issued to a law enforcement officer to whom all of the following apply:

4           **SECTION 22.** 165.87 (3) (b) of the statutes is amended to read:

5           165.87 (3) (b) Data from a body camera used on a law enforcement officer or  
6           a dashboard-mounted camera on a vehicle issued to a law enforcement officer are  
7           subject to the right of inspection and copying under s. 19.35 (1), except as provided  
8           in par. (c).

9           **SECTION 23.** 165.87 (3) (c) 1. of the statutes is amended to read:

10          165.87 (3) (c) 1. It shall be the public policy of this state to maintain the privacy  
11          of a record subject who is a victim of a sensitive or violent crime or who is a minor  
12          and that access to data from a body camera used on a law enforcement officer or a  
13          dashboard-mounted camera on a vehicle issued to a law enforcement officer that  
14          record such a record subject shall be provided only if the public interest in allowing  
15          access is so great as to outweigh that public policy. In that case, the record subject’s  
16          face and anything else that would allow the record subject to be identified may be  
17          redacted using pixelization or another method of redaction. The presumption under  
18          this subdivision regarding the privacy of a record subject who is a victim of a sensitive  
19          or violent crime does not apply if the record subject, or his or her next of kin if the  
20          record subject is deceased, does not object to granting access to the data. The  
21          presumption under this subdivision regarding the privacy of a record subject who is  
22          a minor does not apply if the parent or legal guardian of the record subject does not  
23          object to granting access to the data.

24          **SECTION 24.** 165.87 (3) (c) 2. of the statutes is amended to read:

**ASSEMBLY BILL 465****SECTION 24**

1           165.87 (3) (c) 2. It shall be the public policy of this state to maintain the privacy  
2 of a record subject who is in a location where the record subject has a reasonable  
3 expectation of privacy and that access to data from a body camera used on a law  
4 enforcement officer or a dashboard-mounted camera on a vehicle issued to a law  
5 enforcement officer that record a record subject in such a location shall be provided  
6 only if the public interest in allowing access is so great as to outweigh that public  
7 policy. In that case, the record subject's face and anything else that would allow the  
8 record subject to be identified may be redacted using pixelization or another method  
9 of redaction. The presumption under this subdivision does not apply if the record  
10 subject does not object to granting access to the data.

11           **SECTION 25.** 165.87 (3) (d) of the statutes is amended to read:

12           165.87 (3) (d) For purposes of requests under s. 19.35 (1) for access to data from  
13 a body camera or dashboard-mounted camera on a vehicle issued to a law  
14 enforcement officer used by a law enforcement agency, the law enforcement agency  
15 is the legal custodian of the record, and if any other authority has custody of any such  
16 data, that authority is not the legal custodian of that data. If any other authority  
17 receives a request under s. 19.35 (1) for that data, that authority shall deny any  
18 portion of the request that relates to that data.

19           **SECTION 26.** 165.87 (3) (e) of the statutes is amended to read:

20           165.87 (3) (e) Nothing in this subsection prohibits the release of data from a  
21 body camera or a dashboard-mounted camera on a vehicle issued to a law  
22 enforcement officer under s. 175.47 (5) (b).

23           **SECTION 27.** 165.87 (4) of the statutes is created to read:

