



*Enhancing access to government information
Ensuring transparency of government operations
Promoting civic engagement*

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Executive Summary

Seattle police released this video of a street incident.

The issue of whether police should wear body cameras recording their actions became an increasingly active area of public debate following the tragic shooting of Michael Brown in Ferguson, Missouri, as well as the videotaped chokehold death of Eric Garner in New York City, and has only increased in prominence after similar footage, such as videos showing the shooting of Philando Castile and Charles Kinsey, has become all too common. Advocates for body camera usage suggest that requiring officers to wear cameras will serve as a check on police violence and also increase openness and transparency in state and local government more generally. Most opponents of body camera usage suggest that the requirement would hinder law enforcement officers in the performance of their duties and provide unreliable evidence. Some privacy advocates also have suggested that police body cameras might be a back door towards allowing heightened government surveillance. The issue is contentious, cuts across typical political lines, and is ripe for policy-making across the country.

The D.C. Open Government Coalition has an interest in enhancing the public's access to government information and ensuring the transparency of government operations. Accordingly, the Coalition, in conjunction with Ropes & Gray LLP, has surveyed 50 states and 15 major cities to prepare an analysis of the current state of laws and proposals governing police body camera recordings. This information is current as of July 14, 2016, and was obtained through a combination of outreach to state and local governments and research into legislative and media sources.

The Coalition is hopeful that its work will be helpful to state and local legislators seeking to understand the choices their peers across the country have made and spurring those legislators to action. More importantly, the Coalition is hopeful that this work will energize transparency advocates across the country to understand not just what the law is, but what it could be. By providing this resource, the Coalition ultimately hopes to further its ultimate goal of producing open government in our democratic society.

Elements of Body Camera Proposals

At the outset of this analysis, the Coalition focused on four areas relevant to the handling and availability of police body camera recordings:

- Collection of police body camera footage;
- Retention of police body camera footage;
- Applicability of existing Freedom of Information Act (FOIA) laws and exemptions; and
- Related police dashcam footage rules.

Legislative initiatives address some or all of these elements, the latter considered comprehensive proposals.

State Policies

Overview

- Nearly half of states — twenty three in total — have passed some form of legislation addressing police body cam footage.^[1] Within the past year, states appear to have been moving in a more conservative direction, with several — such as Louisiana and North Carolina — adopting particularly restrictive laws relating to public access.
- Twelve states have not proposed any police body cam legislation at the state level:^[2]
 - Of those, one has had a proposal enacted by a state administrative body.^[3]
- The remaining fifteen states have introduced legislation addressing police body cam footage, which either is under consideration,^[4] or has been debated and rejected in the legislative process.^[5]

Collection

Well over half of states have at least proposed legislation regarding the collection of police body camera footage. There is a range of enacted rules on this issue:

- On one end of the spectrum, several states have enacted laws delegating to third-parties, the task of drafting collection policies. This would generally be a law enforcement agency that is likely to craft policies more favorable to law enforcement interests than civil liberty considerations.^[6]
- Although some states have proposed legislation that broadly requires police to record in nearly all circumstances, many that set forth collection guidelines take a more moderate approach,^[7] requiring recording but enumerating exceptions where recording can be stopped, such as allowing that cameras may be turned off when:
 - The officer is inside a patrol car;
 - A victim or witness requests the camera be turned off;
 - The officer is interacting with a confidential informant;
 - The officer is engaging in community caretaking functions; or
 - A resident of a home requests the camera be turned off when an officer enters the

home under non-exigent circumstances.

Retention

Over half of states have at least proposed legislation regarding retention of police body camera footage. As with collection, there is a wide range of approaches:

- Several states have enacted or proposed rules that delegate to local police the authority to craft retention requirements, which tend to result in police-friendly provisions. [8]
- Most states, however, have enacted laws that set specific retention timelines.[9]
Recordings are retained for periods ranging from seven days in some to 180 days in the most transparency-minded jurisdictions, with 30 and 90 days as the most frequent periods.
 - Most states allow for a longer retention period of up to 2 or 3 years for special circumstances, including when:
 - A complaint has been filed associated with the recording;
 - An officer discharged a firearm or used excessive force;
 - Death or great bodily harm resulted from the officer's conduct;
 - The recording led to detention or arrest;
 - The officer is subject to an investigation;
 - The recording has evidentiary value; or
 - The officer requests that the video be retained for the longer period.

FOIA Applicability

Well over half of states have addressed the question of whether body camera footage is covered under existing FOIA laws (and exemptions) or whether the footage requires a specifically enumerated exception.

- Seven states have either blanket prohibitions on accessing police body camera footage under FOIA or conditional prohibitions on access unless certain factors are present, such as firearms discharge or use of force by police.[10]
- Some states have proposed explicitly including body camera footage within the purview of open record laws, but none of these transparency minded approaches have been enacted.[11]
- Most states that have addressed the FOIA exemption question have suggested that police body camera footage is explicitly excluded in instances where privacy concerns enter the picture, or where footage would interfere with an active investigation.[12]
- States have proposed a number of specific circumstances where body cam footage would be exempt from disclosure, such as where footage:
 - Relates to law enforcement investigations; or
 - Displays
 - Death or serious injury;
 - Nudity;
 - Minors under the age of 16;
 - Detention for mental health or drug treatment purposes;
 - Personal information;

- The identity of a sex crime or domestic violence victim; or
- Confidential informants.

Dashcam Policy

States treat retention and release of police dashcam videos differently, with some opting for much narrower public access than others.^[13] However, most dashcam footage policies, by contrast to proposed body camera policies, treat dashcam footage as covered by general FOIA exemptions. For example, Nebraska and Oklahoma currently withhold dashcam footage if it constitutes part of an investigation, and proposals in Missouri and Rhode Island would do the same. Although states appear more comfortable with the public accessing records of dashcams than they are at the present time with public access to the broader range of footage that is collected by police body cameras, policies continue to diverge.

City Policies

Although crafting open-record and right-to-know laws has largely been handled on the state level, decisions regarding whether to purchase body cameras, the number of cameras to deploy, and implementation policies, are vested in various city and county legislative bodies. Of the fifteen major U.S. cities the Coalition surveyed,

- Fourteen cities — including Boston, which had previously been staunchly opposed to the use of body cameras — have implemented pilot programs to test different body camera offerings and develop workable policies for wider implementation;^[14]
- Nine cities have approved large-scale purchases of body cameras, with procurements ranging from several hundred to more than four thousand cameras;^[15] and
- An additional two cities have budget requests for body cameras pending before their governing bodies.^[16]

Numerous cities — including Chicago, Dallas, Houston, Miami, Philadelphia and San Francisco — have issued guidelines regarding the collection and retention of body camera footage that are, particularly in comparison with many state laws, quite transparency friendly. Cities typically require retention for a period of 90 days, and can require retention for much longer depending on the nature of the recording. Although certain recordings are generally prohibited, including recordings (1) where there is a reasonable expectation of privacy; (2) where a confidential informant or undercover officer's identity might be revealed; and (3) during personal conversations; collection is generally mandated by city guidelines in a wide range of situations, including:

- Enforcement stops;
- Arrival when on call for any service;
- Pursuits (both vehicular and non-vehicular);
- Arrival to crime scenes;
- Execution of warrants or “knock and talk” operations;
- Consensual searches;
- Planned or anticipated arrests;
- Inventorying of seized property;

- Field sobriety tests; and
- Whenever the officer’s training and experience causes him or her to believe the incident needs to be recorded to enhance reports, preserve evidence, or aid in subsequent court testimony.

Decisions occurring at the local level are significant for three reasons. First, many municipal proposals and policies are being developed and enacted at a much faster pace than their state counterparts. Second, the interplay between local and state officials on this issue has created an environment where some cities have attempted to craft a model policy to anticipate and guide statewide debate. Finally, local-level policies appear to be more transparency minded than the majority of state-level laws. Although these state-level laws are likely to control the conversation going forward — particularly because most cities defer to state policies exempting police body camera footage from public access — local policies illustrate for transparency and accountability advocates a way forward when seeking greater access under state law.

Endnotes

[1] AZ, CO, CT, FL, GA, IL, IN, LA, MD, MN, NB, NV, NH, NC, ND, OK, OR, RI, SC, TX, UT, VT, and WA.

[2] AL, AK, AR, DE, ID, KY, ME, NM, SD, WV, WS, and WY.

[3] KY.

[4] CA, HI, IA, MA, MI, MO, NJ, NY, OH, PA, and TN.

[5] KS, MS, MT, and VA.

[6] AZ, FL, NB, NV, NC, and WA.

[7] CA, CT, LA, MD, NV, NC, SC, and VA.

[8] MD, NV, NC, and RI.

[9] GA, IL, IN, MN, NB, NH, OR, SC, TX, and WA.

[10] IL, IN, LA, MN, NH, NC, OR, RI, and SC.

[11] MO, NV, NJ, and NY.

[12] GA, NV, OK, TX, UT, and WA.

[13] For example, North Carolina explicitly covers “a visual, audio, or visual and audio recording captured by a . . . dashboard camera” under its restrictive new law, whereas Illinois explicitly indicates that dashboard camera videos “shall be available under the applicable provisions of the Freedom of Information Act.”

[14] Atlanta, Boston, Chicago, Dallas, Detroit, Houston, Miami, Minneapolis, New York, Philadelphia, Phoenix, San Diego, San Francisco, Seattle.

[15] Dallas, Detroit, Houston, Philadelphia, Phoenix Los Angeles, Miami, New York, San Diego.

[16] Atlanta, San Francisco.
