**State and Local Policies Regarding Public Access to Police Body-Worn Cameras
Executive Summary**September 2020

 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 suffocation of George Floyd in Minneapolis, 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 been tracking laws and proposals governing police body camera recordings in 50 states and 15 major cities since 2015. The information contained in this executive summary is current as of September 25, 2020, 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.

Footnotes throughout the discussion below provide examples of states that have adopted the policies discussed.

*State Policies*

**Overview**

* A majority of states—at least 34—have passed some form of legislation addressing police body cam footage.[[1]](#footnote-1) While there is more work to be done, the general trend appears to be towards more comprehensive policies regarding use and collection of body camera recordings and increased public disclosure, including, in some cases, automatic public disclosure of footage of “critical” incidents involving use of force by a police officer.
* Only a handful of states have not proposed any police body cam legislation at the state level in recent years.[[2]](#footnote-2)
* Other states have introduced legislation addressing police body cam footage, which either is under consideration[[3]](#footnote-3) or has been debated and rejected or indefinitely stalled in the legislative process.[[4]](#footnote-4)
	+ A trend among some states in the past five years has been to create a task force or commission to study and make recommendations regarding the use of body cameras in the state.[[5]](#footnote-5) This often leads to adoption of a model body camera policy for the state, but does not always lead to meaningful reform in the state.
	+ Some states have introduced legislation that would specifically exclude body and/or dashboard camera footage from the state’s open records law[[6]](#footnote-6), while others have considered (or adopted) comprehensive legislation covering collection, retention, and public access to footage, either on a standalone basis or as part of broader police accountability or body camera legislation.
	+ Budgetary concerns continue to be cited as a reason for lack of adoption of body cameras. In some states, body camera laws have including funding provisions, and these laws often include requirements for law enforcement agencies to adopt policies that meet minimum requirements in order to obtain funding for body cameras.[[7]](#footnote-7)

**Collection**

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

* On one end of the spectrum, some states have enacted laws that delegate the drafting of collection policies (or model collection policies) to a third party. This would generally be a law enforcement agency that is likely to craft policies more favorable to law enforcement interests than civil liberty considerations.[[8]](#footnote-8)
* Although some states have proposed legislation that broadly requires police to record in nearly all circumstances, the vast majority of states that set forth collection guidelines take a more moderate approach, 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 the retention of police body camera footage. As with collection, there are 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.[[9]](#footnote-9)
* Most states, however, have enacted laws that set specific retention timelines for body camera footage.[[10]](#footnote-10) Recordings are retained for periods ranging from seven to 180 days, with between 30 and 90 days as the most frequent periods
	+ Most states allow for a longer retention period of up to two or three 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.
* Some states expressly prohibit destruction of a recording after receipt of a public records request.[[11]](#footnote-11)

**FOIA Applicability**

 There are mixed practices among states on the question of whether body camera footage is covered under existing FOIA laws (and exemptions) or whether the footage requires a specifically enumerated exception. Some states have proposed[[12]](#footnote-12) or adopted[[13]](#footnote-13) legislation that specifically excludes body camera footage from the state’s FOIA law.

* Several states have issued either blanket prohibitions on accessing police body camera footage under FOIA or conditional prohibitions barring access unless certain factors, such as firearm discharge or use of force, are present.[[14]](#footnote-14) Some states only allow a victim or other person depicted in the footage to have access.[[15]](#footnote-15)
* Some states have adopted or proposed statutory provisions that explicitly seek to include body camera footage within the purview of state open record laws, either generally or with specific FOIA provisions applicable to body camera footage (which may or may not be more burdensome for requestors than the state’s general FOIA request process).[[16]](#footnote-16)
* Most states that have addressed the FOIA exemption question have suggested that police body camera footage may not be released in instances where privacy concerns enter the picture, or where footage would interfere with an active investigation.[[17]](#footnote-17) Where privacy concerns are present, some states allow the subject to waive the privacy interest and consent to disclosure.[[18]](#footnote-18)
* In recent times, an increasing number of states have adopted policies regarding automatic public disclosure of body camera footage. Automatic public disclosure typically applies to footage of incidents involving an officer discharging a firearm or using force that results in death or serious bodily injury of when a member of the public files a complaint.[[19]](#footnote-19) Some states require release of the video to family members or representatives of the subject of police use of force prior to public release.[[20]](#footnote-20)
* 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 Policies**

 States treat the retention and release of police daschcam videos differently, with some states opting for much narrower public access than others.[[21]](#footnote-21) However, most dashcam footage policies, by contrast to proposed body camera policies, treat dashcam footage as covered by general FOIA exemptions.[[22]](#footnote-22) In Rhode Island and Virginia, dashcam videos are expressly excluded from the state’s public records law. While 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*

 While crafting open-record and right-to-know laws has largely been handled on the state level, decisions regarding whether or not to purchase body cameras—and if so, in what quantity—as well as implementation policies, are vested in various city and county legislative bodies. Of the 15 major U.S. cities the Coalition surveyed, all have at some point in time implemented a pilot program to test different body camera offerings and develop workable policies for wider implementation and/or adopted policies and procedures regarding use of body cameras.[[23]](#footnote-23)

All cities 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. While 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 conversation, 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.

Many of the cities surveyed also have adopted policies regarding automatic public release of body camera footage in certain circumstances. For example

* The Los Angeles Police Commission in 2018 directed the LAPD to release all relevant video of officer-involved shootings from body camera, dashcam, bystander or other cameras within 45 days of the shooting. At the time it was cited as the largest department in the nation to proactively release such video. The policy also requires the release of footage any time an officer uses force that results in hospitalization, and allows the police chief and commission to release video of other high profile incidents on a case-by-case basis.
* The Dallas Police Department in 2020 established a policy to release footage of police shootings or use of force that results in serious injury or death and deaths in custody within 72 hours of the injury or death. The next of kin and certain government and police officials are entitled to review the footage before it is released.

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. While these state-level laws are likely to control the conversation going forward for the time being—particularly as most cities defer to the state level policy on exempting police body camera footage from public access—local-level policies provide the beginnings of an illustrative way forward for advocates of transparency and accountability.

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The D.C. Open Government Coalition invites public feedback and comments about this report. Please feel free to contact us at info@dcogc.org.

1. CA, CO, CT, FL, GA, ID, IL, IN, KS, KY, LA, MA\*, MD, MI, MN, NB, NJ\*, NM, NV, NY, NH, NC, ND, OH, OK, OR, PA, SC, TX, UT, VA, VT, WA and WI. \*In MA and NJ, legislation has passed both houses of the state legislature but has not yet been finalized. [↑](#footnote-ref-1)
2. AK, AZ, DE, MT and WV. [↑](#footnote-ref-2)
3. IL and ME. [↑](#footnote-ref-3)
4. HI, IA, MS, RI, SD and TN. [↑](#footnote-ref-4)
5. Colorado legislation created a commission tasked with studying and recommending policies on the use of body cameras. The report was released in 2016, but in accordance with the statutory mandate, it did not consider issues related to public access to body camera footage. In 2019, Connecticut legislation created a task force to study police transparency and accountability. In 2020, Maryland created a Law Enforcement Body Camera Task Force to create recommendations on economical storage and retention of police body camera footage by December 1, 2020. [↑](#footnote-ref-5)
6. For example, a new bill introduced in Alabama in March 2020 (HB 373) would exclude body and dashboard camera footage from the definition of public record and enumerate very limited circumstances in which the public could have access to footage. South Carolina has adopted legislation that excludes body camera footage from the state’s public records law. [↑](#footnote-ref-6)
7. For example, SC. Unfortunately, while South Carolina’s law was passed in 2015, it has not yet been fully funded, and adoption of body cameras in the state has been slow as a result. [↑](#footnote-ref-7)
8. FL, IL, MD, NB, NM, NV, NC, OR, PA, SC, UT, VA and WA. Such policies typically have to meet minimum standards set by statute. In South Carolina, a law enforcement agency’s policy must be approved by the state Law Enforcement Training Council if the agency receives grant money to implement the use of body cameras. In Virginia, policies must be subject to public review and comment before being enacted. [↑](#footnote-ref-8)
9. MD, NY, OH, UT and VT. In Maryland, a state commission is expected to issue recommendations regarding economical storage and retention of body camera footage by the end of 2020. [↑](#footnote-ref-9)
10. CA, FL, GA, ID, IL, IN, MA\*, MI, MN, NB, NH, NJ\*, NM, NV, OK, OR, SC, TX, WA and WI. \*In MA and NJ, legislation has passed both houses of the state legislature but has not yet been finalized. [↑](#footnote-ref-10)
11. ID, WI. [↑](#footnote-ref-11)
12. AL. [↑](#footnote-ref-12)
13. PA, SC. [↑](#footnote-ref-13)
14. IL, NH, OR, UT [↑](#footnote-ref-14)
15. IL, IN, NC, SC, WY. [↑](#footnote-ref-15)
16. CA, FL, OH, PA, VT, WI. [↑](#footnote-ref-16)
17. CT, FL, GA, IL, IN, KS, KY, LA, MI, MN, NB, ND, NY, TN, TX, UT, VT, WA, WI . Under New Jersey’s proposed legislation, video may be exempt from public disclosure upon request of the subject or the subject’s parent/guardian or next of kin. [↑](#footnote-ref-17)
18. CO. [↑](#footnote-ref-18)
19. CA, CO. [↑](#footnote-ref-19)
20. CO. [↑](#footnote-ref-20)
21. For example, North Carolina explicitly covers “a visual, audio, or visual and audio recording captured by a . . . dashboard camera” under its restrictive law. Oklahoma also has specifically addressed dashcam videos in its public records statute. [↑](#footnote-ref-21)
22. WI, WY. [↑](#footnote-ref-22)
23. Atlanta, Boston, Chicago, Dallas, Detroit, Houston, Los Angeles, Miami, Minneapolis, New York, Philadelphia, Phoenix, San Diego, San Francisco, Seattle. [↑](#footnote-ref-23)