



## **States, civil liberty advocates collide over police body camera policy**

[Aamer Madhani](#)

May 5, 2015

Lawmakers throughout the USA are grappling with just how much the public is entitled to see when a police body camera has recorded a volatile or even mundane incident on video.

Since the beginning of the year, lawmakers in at least 15 states and Washington, D.C., have introduced legislation that would limit release of footage from the body cameras through open record laws. The cameras are attached to an officer's clothing, helmet or glasses and capture footage of arrests, traffic stops and other encounters.

New York, Los Angeles and Chicago are among the many large cities testing surveillance cameras with their police officers.

Law enforcement interest in body cameras has surged following the police shooting death of 18-year-old Michael Brown in Ferguson, Mo., last August that touched off riots and national racial discord over what actually happened moments before Brown was taken down in a barrage of bullets.

"This is another example of technology moving faster than regulation and legislation," said Matthew Feeney, a policy analyst at the Washington think tank Cato Institute, who has done extensive research on body cameras.

At issue is just how much is a matter of public record in police-recorded videos. Governments and police departments argue that while the cameras provide transparency and accountability, they may also compromise a citizen's right to privacy and the integrity of some investigations which will inevitably rely on the video in a courtroom.

Other recent racially charged incidents, including the police shooting death of Walter Scott in North Charleston, S.C., and the death of Freddie Gray, who suffered severe spinal cord injuries while in Baltimore Police custody, have kept the issue in the national spotlight.

In the Gray case, a bystander's video shows police dragging the man to a police van as he is writhing in pain. A witness captured video of police officer Michael Slager shooting Scott in the back as he ran away from the officer. As in the Ferguson case, officers involved in the Baltimore and North Charleston cases weren't wearing a police camera.

In a speech last week, Democratic presidential candidate Hillary Clinton pointed to the unrest in Baltimore after Gray's death to make the case that all police officers should wear cameras to "improve transparency and accountability in order to protect those on both sides of the lens."

Clinton's call follows President Obama's proposal in December to provide law enforcement agencies with \$75 million to purchase cameras to help improve transparency in policing.

But a White House Task Force on 21st Century Policing also recently recommended that states and communities update their public record laws, noting that the emerging technology comes with a treasure trove of complexities.

The task force's March report raises concerns about victims' privacy and pointed to the December shooting death of a police officer in Flagstaff, Ariz., whose killing was captured by the body camera he had on.

Facing public records requests from local media, Flagstaff police released a 14-minute video, which ends with the chilling image of a domestic violence suspect pulling out a gun on a rookie police officer that he would use to kill him.

"This illustration also raises questions concerning the recording of police interactions with minors and the appropriateness of releasing those videos for public view given their inability to give informed consent for distribution," the White House task force report said of the Flagstaff case.

The task force's privacy concerns have been echoed by many state and local policymakers who have begun their own legislative pushes on the issue. Police departments also say they need to limit the broad and costly requests they sometimes get.

Washington Mayor Muriel Bowser last month proposed for the city to spend about \$5.1 million to purchase 2,800 body cameras for its police force. At the same time, the mayor has called for the videos to be exempt from public record requests.

D.C.'s police chief, Cathy Lanier, has said it would be too expensive and time consuming to make all videos available to the public. She also expressed concern about preserving the privacy of crime victims and witnesses.

"We still have a very strong interest in protecting the privacy of people in general," Lanier recently told WAMU radio. "If you imagine the cameras being the eyes of a police officer during their shift, there are a lot of people who get caught in the images on the video, and we have a strong interest in protecting their privacy for a lot of reasons."

Police chiefs and elected officials in several communities, including Baltimore Mayor Stephanie Rawlings-Blake, also have raised concerns about long-term costs.

In December, she vetoed a proposal that would have required officers to wear cameras, because she didn't think details, such as video storage, were properly weighed. In Baltimore, it was estimated storage could cost up to \$2.6 million per year.

But activists and some civil liberty groups say that many of the proposed regulations in the pipeline run counter to the public's demand for greater transparency and give police far too much authority in deciding what they keep out of the public sphere.

Florida's Legislature passed a bill last month that would exempt from public record law police videos shot in a house, health care facility or any place where a person would reasonably expect privacy.

The bill would allow law enforcement to release the video if it's "in furtherance of its official duties and responsibilities." It also would require agencies to release the videos, or portions of them, to people who are on the recordings or their attorneys or representatives.

Third parties, including the media, would have to go to court to get the videos if they couldn't obtain them from an individual involved in the incident. The judge would be required to consider eight different criteria before deciding whether to release it, including whether it would cause harm to the reputation of anyone in the video.

Opponents note Florida already has exemptions in its record laws that bar the release of information needed to protect ongoing investigations and victims of sexual, domestic violence as well as child victims.

"The Florida Senate has taken a huge step backwards for police accountability," said Michelle Richardson, ACLU of Florida's public policy director. "Police body cameras can be a win-win for both police and the communities they serve, but only when they strike a delicate balance that protects privacy while also providing a record of police activity."

In Missouri, state lawmakers are weighing a bill that would exempt camera footage from the state's Sunshine Law. Similar legislation is in the pipeline in South Carolina, which would make police video filmed inside a private place exempt from the Freedom of Information Act.

Lawmakers in Maryland began debating police camera policy long before Freddie Gray died in police custody on April 19. The state Legislature recently passed broad guidelines governing how law enforcement agencies can use cameras, but kicked the task of creating public disclosure policy to a police training commission.

Meanwhile, the Texas Senate this month passed a \$10 million grant program for communities to purchase police cameras. The legislation also includes guidelines for the use of body cameras by police.

An amendment included in the legislation, which still needs to be voted on by the Texas House, stipulates recordings that were not made on duty or that were done during activities not meant to be recorded would be exempt from public records.

"Somewhere there's got to be some happy medium," said Tim Dees, a former Reno Police Department officer and law enforcement analyst. "People have to understand we can't give you every moment of video that we have and still do our job and protect everyone's privacy."

The policy debate over police body cameras is happening at the municipal level as well.

The Los Angeles Police Department recently became the largest department in the USA to detail plans to equip all of its 7,000 officers with cameras. But LAPD Chief Charlie Beck said he won't make footage available for most cases because of privacy concerns and to maintain the integrity of ongoing investigations.

The American Civil Liberties Union of Southern California also criticized a provision in the policy that will allow police officers involved in major incidents such as police shootings to review footage from their and other officers' cameras before making an initial statement. The ACLU says the policy would give "officers who are willing to lie to cover up misconduct an opportunity to provide an account that's consistent with video evidence."

The Seattle Police Department thinks it's on the path to finding the sweet spot of balancing privacy concerns with the public's right to know.

The police department worked with a volunteer group of hackers to create a computer program that deletes audio and blurs footage captured by officers using body cameras as part of a pilot program.

Viewers can get a general idea of what's going on in the video, but the program redacts personal details. The department plans to store the footage for three years.

The department posts all of the altered videos on YouTube within days and considers public record requests for clear and unaltered video footage on a case-by-case basis. The department generally refuses to release videos that show police interaction with sex crime victims, juveniles and confidential informants.

Programmers are now working to upgrade the program so audio can be included in what's published without releasing private information about individuals, such as their names and phone numbers, said Mike Wagers, the Seattle Police Department's chief operating officer.

Wagers said the onus is on police departments to get as much of the video out as possible to demonstrate a commitment to transparency.

"What's the purpose of the cameras?" Wagers said. "The purpose of the camera is to get at the truth. Then you want to be as transparent as possible. Given what's going on in the country, I don't think departments have the luxury to say these issues are insurmountable."