



Caution needed in the use of police body cameras

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October 24, 2016

Body cameras are often presented as tools that can play a valuable role in criminal justice reform. They are supported by a clear majority of the public, which isn't surprising given that the cameras can provide crucial evidence in police misconduct investigations and help police officers dismiss false accusations of impropriety. But a recent study on facial recognition serves as a reminder that we risk invading citizens' privacy in our attempts to implement much-needed criminal justice reform.

According to a recent Georgetown Law study based on more than 100 public record requests, about half of American adults are in a law enforcement facial recognition network. The study also found that there are minimal prohibitions on misuse of facial recognition technology, which is often shrouded in secrecy and not as accurate as fictional crime dramas might have you believe.

As the authors of the study noted, "If deployed pervasively on surveillance video or police-worn body cameras, real-time face recognition will redefine the nature of public spaces."

This is especially disturbing at a time when the public overwhelmingly supports body cameras and very few police departments outline policies restricting facial recognition tools being used on body camera footage.

In August, The Leadership Conference and Upturn released an updated version of their police body camera scorecard. Of the 50 police body camera policies rated in the scorecard, not one "sharply limits" biometric technology, such as facial recognition software, being used to identify individuals in body camera footage. Only six departments impose some restrictions on using facial recognition technology on body camera data. The vast majority of police departments have no limits in place.

This is especially concerning given that, according to the Georgetown study, no state has laws in place that comprehensively regulate police use of facial recognition technology. In such a regulatory environment we shouldn't be shocked if police departments examine body camera footage with biometric tools, a trend that will only become more pronounced as body camera and biometric technology continues to improve and become more affordable.

Lawmakers, regulators, and law enforcement agencies can impose restrictions on police departments using biometric tools on body camera data. This should be done sooner rather than later as police departments across the country come under pressure from criminal justice reform advocates to outfit officers with body cameras. Yet body cameras can only provide the desired

increase in accountability and transparency if they're governed by appropriate policies. Absent these policies the body camera could quickly become a tool of indiscriminate surveillance.

Biometric technology policies do not need to include bans. Facial recognition technology is here to stay, and it would be foolish to think that it should never play a role in law enforcement operations. But the use of this technology should be restricted to searches for suspects and crime victims based on reasonable suspicion. In addition, biometric databases should be regularly purged of information related to individuals who have never been convicted of a violent crime or who are not subjects of an ongoing investigation.

It's especially important for lawmakers and regulators to tackle the difficult privacy questions raised by the emergence of facial recognition software. After all, current doctrine related to the Fourth Amendment, which protects "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures," is unsatisfying at a time when law enforcement is using biometric technology.

In 2012 testimony before a Senate Judiciary subcommittee, Duke law professor Nita Farahany said, "as a general matter, law enforcement use of [facial recognition technologies] is not, in itself, a Fourth Amendment search, let alone an unreasonable one." This isn't a surprise. Courts are notoriously slow at catching up with technological advances.

Lawmakers are in an unenviable position when it comes to increasing law enforcement accountability and transparency while protecting privacy. There is understandably widespread support for body cameras, which have proven invaluable in police misconduct investigations. However, the recent Georgetown study reminds us that we must be wary of the indiscriminate surveillance made possible by the intersection of body camera and facial recognition technology. It would be a cruel irony if our quest for criminal justice reform resulted in more indiscriminate surveillance.

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