Thirty states and the District of Columbia have enacted body camera laws as of July 2016. Data and privacy issues continue to be a major focus of body camera measures as lawmakers seek to improve transparency for law enforcement while still protecting the rights of individuals. Laws addressing these issues specify how open record laws apply to body camera data, when video can be released to individuals who are the subject of a recording, police procedures for camera use and retention schedules for body camera data.

**Open Records**

Nineteen states and D.C. have addressed how open record laws apply to body camera data. Laws in Connecticut, Nevada, North Dakota, Oklahoma and Texas treat body camera recordings as public records, but provide many caveats for when police may withhold, redact or obscure certain videos. Connecticut, for example, excludes from its open records laws footage containing: communication between police officers and informants; situations involving medical or psychological treatment; and situations involving victims of domestic abuse, sexual abuse or homicide. Oklahoma’s law allows footage containing the death of a person, or violence against a person, to be redacted unless the harm was caused by law enforcement. Texas law prohibits the release of any footage taken in a private place that contains behavior that didn’t result in an arrest or would only constitute a misdemeanor punishable by a fine. In addition, North Dakota makes any recording made in a private place by a police officer or firefighter with a body camera exempt from the state’s open record law.

Laws in Florida, Georgia, Illinois, Minnesota, New Hampshire, North Carolina, Oregon and South Carolina exclude body-worn camera footage from open record requests, but provide several exceptions to when footage can be released. New Hampshire’s law, for example, provides exemptions for instances where police use force, discharge a firearm, or engage in a situation that leads to a felony level arrest. Under North Carolina’s law, release of a video recording can only be done pursuant to a court order. The court, when considering to release a video, must evaluate many factors including whether there is a compelling public interest and whether the release would create a serious threat to the fair, impartial, and orderly administration of justice. Minnesota’s law includes several exceptions that
would allow video to be made public, including if a subject of the video requests it be made public. Oregon’s law enables video to be released if it serves the public interest. South Carolina’s law enables law enforcement and the attorney general to release video at their discretion.

State laws also address how much data a requester may access, and what standards they must meet to access the data. For example, Nevada’s law requires that video be requested on a per incident basis, and enables law enforcement, if the video contains confidential information that cannot be redacted, to only provide the information to the requester at the location the video is being stored. Texas addresses how state officials must respond to requests for large amounts of data. Their law defines a “voluminous public information request” as a request for recordings that include more than five separate incidents, more than five separate requests from the same person in a 24-hour period, or a request that totals more than five hours of footage.

**Release of Video to Individuals**

State law also specifies procedures for granting certain individuals access to body camera videos. North Carolina’s law, for example, enables a person, or their representative, to view the recording if their voice or image is present in it. Georgia’s law grants access to those who believe the video is relevant to their pending criminal case or civil action. South Carolina’s law enables an individual, or their representative, who is the subject of the recording, or where the recording is relevant to the seizure of their property or their criminal or civil case, to receive data pursuant to the South Carolina Rules of Criminal Procedure, the South Carolina Rules of Civil Procedure, or a court order.

**Police Procedures**

At least 14 states and D.C. require written policies for police departments that use or receive funding for body-worn cameras. Certain procedures, such as when police are required to turn their body cameras on or off and when law enforcement must notify individuals they are being recorded, can have a significant effect on privacy. Maryland’s law, for example, requires the Police Training Commission to develop and publish a body-worn camera policy that addresses when recording is mandatory, when it is prohibited and consequences for officers who violate the policy or alter recordings. New Hampshire’s law requires that police activate their cameras when responding to a call for service, or are engaging in police activity. If the camera is not activated the officer must document the reason for doing so. Under Illinois’ law, an officer must provide notice of recording to any person who has a reasonable expectation of privacy. Proof of the officer’s notice must be evident in the recording. In Utah, state law enables police officers to deactivate the camera at the request of an individual. Their law also requires officers with a body-worn camera who enter a private residence to give notice, when reasonable, that a camera is in use by wearing it in a clearly visible manner or by giving audible notice.

**Retention Schedules**

Legislatures also have set requirements for the length of time body camera data must be retained. New Hampshire’s law, for example, requires data generally to be stored for longer than 30 days but less than 180 days. It also requires data to be kept for three years if the recording captures deadly force, the discharge of a firearm, death, serious injury, or an encounter where a complaint has been filed against a police officer. Nebraska law requires data to be retained for a minimum of 90 days. Recordings must be kept longer than 90 days in certain circumstances, including when a court notifies a law enforcement agency that video may have evidentiary value. In Georgia, body camera data must be retained for thirty months if it is part of a criminal investigation or shows an accident, detainment, arrest or use of force. Otherwise, data must be kept for 180 days.

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