

POLICE BODY CAMERAS AND THE USE OF FORCE



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Police arresting a young man in Houston, Texas.

Recent police actions resulting in the deaths of African-American men have put the spotlight on the police use of force, beginning with the fatal shooting of Michael Brown and the protests that followed in Ferguson, Missouri, in 2014. These incidents, some recorded on cellphone cameras, have raised questions about police use of force and whether police should wear body cameras to record their interactions with citizens in the community.

Policing is a dangerous job. Officers make arrests, respond to calls, deal with criminal suspects, and even intervene in crimes in progress. A seemingly harmless situation — walking around the corner on a street, pulling over a motorist — can turn perilous, even deadly, in an instant. According to FBI data, over the last 10 years, 511 police officers have been killed in criminal assaults, more than 50 a year on average.

Since their job entails dealing with dangerous situations, police are authorized to use force when enforcing the law. But limits are placed on how much force they may use. Department regulations, state

and federal law, and even the U.S. Constitution limit the police's use of force.

As a general rule, police may use whatever level of force is “reasonable and necessary” to make an arrest. For instance, clubbing a passive, unarmed person who has shoplifted a sweater from a store would most likely not be reasonable. Pepper spraying an unresisting suspect is not necessary.

Special rules apply to the use of deadly force. Deadly force is commonly defined as “force that poses a high risk of death or serious injury to its human target.” In general, police may only use deadly force when a suspect is threatening immediate death or serious bodily injury to the officer or others *and* deadly force is necessary to stop the threat.

Courts have ruled that an officer who uses deadly force *does not have to be certain* that a suspect will cause death or serious bodily injury. The justifiable use of deadly force depends on the facts that existed from the “perspective of a reasonable officer on the scene.” ▶

CRITICAL CONCERNS

This edition of Bill of Rights in Action looks at issues of critical concern. The first article looks at the issue of whether police should wear body cameras. The second article explores the argument among abolitionists over whether the Constitution was a pro-slavery document. The last article profiles Voltaire, the great Enlightenment thinker, and focuses on his campaigns for religious toleration.

Current Issue: Police Body Cameras and the Use of Force

U.S. History: Abolitionists and the Constitution

World History: Tolerance: Voltaire and the Spirit of the Enlightenment

Carlton Martz wrote the article on police use of force along with outgoing *Bill of Rights in Action* editor Bill Hayes and incoming editor Damon Huss. Damon Huss wrote on the abolitionists. Bill Hayes wrote the article on Voltaire along with CRF staffer Keith Mataya.



Chief Ken Burton of the City of Columbia Police Department in Missouri, addresses the Citizens Police Review Board. The board provides an external and independent process to review allegations of police misconduct.

For many years, most American police followed the old English common law rule that a “fleeing felon,” escaping from a crime, may be stopped with deadly force. But this changed in 1985 in *Tennessee v. Garner*. The U.S. Supreme Court ruled that police may only use deadly force when necessary to prevent the escape of a *dangerous* fleeing suspect, that is, a suspect who the pursuing police officer “has probable cause to believe . . . poses a threat of serious physical harm, either to the officer or to others.”

If police officers are alleged to have used excessive force, they face investigation and potential punishment by their department, civil lawsuits and citizen complaints, and in cases of extreme misbehavior, criminal charges. Depending on the circumstances, criminal charges can range from assault under color of authority or assault with a deadly weapon, to manslaughter or murder. State or local police officers can, in rare instances, face federal charges if they have been accused of willfully violating the victim’s civil rights.

Except in the most blatant cases, it can be difficult to successfully prosecute a police officer for using excessive force. Since police are authorized to use force, the prosecutor does not merely have to prove that the officer assaulted the victim. The prosecutor must show that the officer used *excessive* force. Many of these incidents happen at night with few witnesses other than the victim and the police, and juries tend to side with the police.

Some critics point out that prosecutors work with police on a daily basis and depend on officers to investigate crimes and testify at trials. Since police are part of the “prosecution team,” critics charge that prosecutors have a conflict of interest in pursuing cases against police. These critics call for states to use special, independent prosecutors who do not work with local police to handle allegations of excessive force.

Most prosecutors and others disagree about the need for a special prosecutor. Frank Sedita of New York, the Erie County District Attorney, has stated, “We view ourselves as an independent agency that is called upon, on a daily basis, to review the work of the police . . . In my office, there’s not a week that goes by that there’s not some disagreement between prosecutors and police.”

Police and the Public

Instituting a special prosecutor is one proposal to address community concerns about police use of force. Other proposed policies, reforms, and practices are designed to address these concerns, but also to help improve relations and resolve conflicts that arise between police and local communities.

Many police departments have instituted programs to help prevent conflicts and raise community awareness of the difficulties faced by police officers. These programs usually do not produce controversy. Police “ride along” programs allow citizens to accompany police during their daily routines. Citizen police academies provide classes conducted by police officers to educate community members about their local police department’s history, structure, and investigative procedures.

Many police departments have adopted community policing. In this preventive approach to law enforcement, officers work within the community, building relationships and trust with members of the community by helping them solve problems that otherwise might lead to crime. An act of Congress in 1994 provided funding for Community Oriented Policing Services (COPS). The objective of COPS is to assist local law-enforcement agencies in hiring more officers to effectively engage in community policing nationwide.

Citizens have also turned to civil lawsuits in alleged cases of excessive force. Families of those who have been killed have sued police departments and

city governments. For example, Eric Garner, a 43-year-old African-American man was killed while in police custody in New York City in 2014. Garner's family sued the city after a medical examiner determined that a police chokehold contributed to Garner's death. The family settled with the city for \$5.9 million in 2015.

Many have advocated a more vigorous oversight of police practices by civilian (or citizen) review boards, though these can be highly controversial. A civilian review board is composed of community members who investigate complaints of police misconduct or excessive use of force. Supporters of civilian review boards argue that unlike the special prosecutor or a police department's own internal investigations office, a civilian review board is independent and, therefore, fairer in its treatment of citizen complaints.

Critics of civilian review boards argue that they are not, however, fair to the police officers involved. Even with programs like COPS and other trust-building measures, police often feel that the public does not have a clear understanding of the day-to-day dangers and difficulties of police work. For this reason, they argue that police officers themselves are better informed and more able than civilians to investigate alleged police misconduct.

Police Body Cameras

As more incidents of police use of force have been caught on video by onlookers, many police departments have started to equip their officers with body cameras to record what happens in an incident. Such cameras are worn somewhere on the officer's uniform and cost several hundred dollars each.

Supporters of putting body cameras on police officers argue that video eliminates much of the uncertainty of what happened, as in the shooting of Michael Brown in Ferguson, which was not caught on video. Video can be used as evidence at trials where eyewitness accounts often differ. Video can also be used for training recruits and disciplining officers who violate department policy. In addition, body-camera video can defuse false rumors of police misconduct and build community trust by recording the difficult decisions police have to make throughout the day.

Critics of body cameras counter that they are totally under the control of the officer who decides when to turn it on and off. Others voice privacy concerns such as recording statements of a child, a rape victim, or a witness who fears retaliation from a gang. Some argue that body cameras might even erode community trust if footage is made public of people in private moments of grief or anguish at a crime scene. Body



Body cameras can be attached to the officer's shoulder or, as pictured above, the officer's chest area.

ASU Now

cameras show only one narrow view, say the critics, and do not show entirely what the officer is doing. Some are troubled that this is another step in the widespread government surveillance of Americans.

Little research has been conducted on the use of body cameras. The most noted study was done in 2012–13 in Rialto, Calif., with a police force of about 50 officers. It showed a 60-percent drop in use of force by the half of the police department that wore body cameras. Citizen complaints also fell by almost 90 percent.

The results of a study done in San Diego, Calif., in 2014–15 were more mixed. Citizen complaints fell by 23 percent, but use of force *increased* 10 percent. The study also revealed an 8-percent drop in the use of alternative control methods like pepper spray and stun guns, which some view as less dangerous than the use of firearms. The researchers called for caution in adopting body cameras until more studies have been done.

In 2015, Los Angeles became the largest city in the U.S. to adopt body cameras for its entire police force of 7,000 officers. But disagreement has erupted over the body-camera usage rules.

The most controversial issue was over the rule that required officers to view the video of their use-of-force incidents *before* writing their reports. Police officials said that viewing the video first will make sure officers write complete and accurate reports while deterring dishonesty. But those who opposed this rule argued that it gives officers a chance to shape their written reports to their advantage, leaving out important details not shown in the video.

Another controversy arose over who should have access to police body-camera video. The Los Angeles Police Department policy prohibits releasing video to the public unless authorized by the chief. The purpose of this rule is to observe privacy laws and control evidence. Critics of this rule, however, called for public release of video involving alleged police misconduct.

DISCUSSION AND WRITING

1. What are the basic rules for police using force in arresting suspects?
2. Do you think the law gives police too much, too little, or about the right amount of authority to use force? Why?
3. Do you think the local prosecutor should handle cases of local police accused of using excessive force? Explain.
4. What programs and policies are described in the article to build trust between communities and police? Do you think they are adequate? Why?
5. Do you think police body cameras are a good idea or not? Why?
6. What other recommendations, if any, would you make to reduce the killing of suspects? Explain.

ACTIVITY: A Body Camera Policy for Your Police Department

1. Form small groups to discuss and complete the template below for a body camera policy designed for the local police department. Students may want to interview local officers to get their views on the policy.
2. The groups will present and discuss their recommendations for each part of the policy and try to reach a consensus on the policy.

Body Camera Policy

- A. What is the purpose of the police body-camera?
- B. When should the body camera be switched on and off?
- C. In what situations should a body-camera activation be required?
- D. Which of the following a body camera activations should be prohibited or left to the officer's discretion? Why?
 - interviewing rape victims
 - searches of a home
 - searches of a person
 - interviewing minors
- E. Should suspects and other persons be notified they are being recorded? Why?
- F. Should officers view video before they write their reports? Why?
- G. Which of the following should have access to police body camera video? Why?
 - police and criminal justice system personnel only
 - person(s) recorded
 - media
 - any interested citizen

About Constitutional Rights Foundation

Constitutional Rights Foundation is a non-profit, non-partisan educational organization committed to helping our nation's young people to become active citizens and to understand the rule of law, the legal process, and their constitutional heritage. Established in 1962, CRF is guided by a dedicated board of directors drawn from the worlds of law, business, government, education, and the media. CRF's program areas include the California State Mock Trial, youth internship programs, youth leadership and civic participation programs, youth conferences, teacher professional development, and publications and curriculum materials.

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Standards Addressed

Police Body Cameras and the Use of Force

National Civics Standard 3: Understands the sources, purposes, and functions of law, and the importance of the rule of law for the protection of individual rights and the common good.

National Civics Standard 18: Understands the role and importance of law in the American constitutional system and issues regarding the judicial protection of individual rights.

California History-Social Science Standard 12.10: Students formulate questions about and defend their analyses of tensions within our constitutional democracy . . .

Common Core Standard RH.11-12.1: Cite specific textual evidence to support analysis of primary and secondary sources, connecting insights gained from specific details to an understanding of the text as a whole.

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Common Core Standard SL.11-12.3: Evaluate a speaker's point of view, reasoning, and use of evidence and rhetoric, assessing the stance, premises, links among ideas, word choice, points of emphasis, and tone used.

Common Core Standard SL.11-12.4: Present information, findings, and supporting evidence, conveying a clear and distinct perspective, such that listeners can follow the line of reasoning, alternative or opposing perspectives are addressed, and the organization, development, substance, and style are appropriate to purpose, audience, and a range of formal and informal tasks.

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Sources

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