

TRANSPARENCY AND LAW ENFORCEMENT

Qualified Immunity, Michael Bell Bill, Marsy's Law, and Footage Release

By

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QUALIFIED IMMUNITY

PROTECTING THOSE WHO "PROTECT AND SERVE"



What Is Qualified Immunity?

- Court-created legal doctrine that limits victims of police violence and misconduct from holding officers accountable when they violate a person's constitutional rights. It's not a law created by legislation.
- Since 2005, courts have increasingly applied the doctrine to cases involving use of excessive or deadly force by police
- Qualified immunity shields the offending individual government official from financial liability, but the government body can still be sued at the taxpayer's expense
 - In the last 10 years, the city of Milwaukee has spent more than \$40 million in settlements for officer misconduct



MICHAEL BELL BILL

WHO INVESTIGATES CRITICAL
INCIDENTS?





MICHAEL BELL BILL

AB 409



Brief History on Michael Bell

- Michael Bell (21) was shot and killed by Kenosha Police in 2004.
- Kenosha Police Department's detective division and internal affairs division investigated the fatal shooting.
- In less than 48 hours, they determined the shooting was justified.
- There were many questions lingering after the KPD investigated themselves in this case.



Assembly Bill 409 (Michael Bell Bill)

- After a decade fighting for justice, Michael Bell's family was able to push for Assembly Bill 409
- After a back and forth, AB 409 would require that investigations of death involving a law enforcement officer be conducted by a citizen review board instead of another police department within the state of WI
- As of today, there have been 67 deadly officer-involved shootings in the city of Milwaukee alone
- They have all been considered "justified" following investigations, with many never even making it into the courtroom
- The Michael Bell Bill was a step in the right direction, but it needs to be critiqued to sharpen it and help bring justice to victims of police crimes, as per its original intent



MARSHY'S LAW

ON THE RIGHTS OF VICTIMS



What Is Marsy's Law?

- Named after Marsalee (Marsy) Ann Nicholas, a University of California Santa Barbara student, who was stalked and killed by her ex-boyfriend in 1983.
- Marsy's Law seeks to ensure that victims of crime have equal, constitutional rights on the same level as those accused and convicted of crimes.
- First passed in California, it has also been approved by voters in Florida, Georgia, Illinois, Kentucky, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, and Wisconsin
- Idaho and Tennessee are undergoing efforts to approve





Marsy's Law In Wisconsin



Marsy's Law And Names of Police Officers Involved in Shootings

- **June 29, 2023:** Oshkosh police officer shot and wounded a suicidal 34-year-old man two blocks from the man's house after authorities say he pointed a hunting rifle at them.
- Benson Thao's identity was splashed in news stories across the region in the weeks after the shooting, in which the Winnebago County district attorney announced the police officer was legally justified in firing his service rifle.
- Yet the identity of the officer and some of the others involved in the incident remain withheld from the public — even in court documents.



Marsy's Law And Names of Police Officers Involved in Shootings

- Why are the names of officers not publicly released?
- Police and prosecutors argue that the officers were victims for having a gun pointed at them, thus being protected by Marsy's Law
- The language in the Constitutional Amendment in WI is broad and can be interpreted in a variety of ways, as Ed Fallon, Law Professor and former chair of the Fire and Police Commission, has explained



Marsy's Law in Milwaukee

- **Only one of the officers involved in the police shootings during the 5 de mayo celebrations that wounded two people has been identified – Andrew Langer**
- **Langer was one of at least nine officers named in a lawsuit brought by a man who was clubbed, pepper sprayed and tased in 2018. Common Council paid a \$175,000 settlement.**
- **MPD doesn't publicly release the names of officers involved in shootings**



MARSHY'S
LAW

Challenge to Marsy's Law



Recent Ruling in Florida

- **Florida Police Association** sued the city of Tallahassee to prevent the release of the names of two officers involved in fatal shootings. They argued that the officers were protected under Marsy's Law.
- **November 2023: Florida Supreme Court** ruled, in a 6-0, decision that Marsy's Law doesn't guarantee anonymity for police officers – or any victim of crime.
- **1st Amendment advocates** consider the ruling a victory, claiming that police officers aren't entitled to confidentiality for their on-duty conduct



FOOTAGE RELEASE POLICIES AROUND THE U.S.

OTHER EXMAPLES?





Minnesota



Minnesota Policy

- When an individual dies as a result of a use of force by a police officer, an involved officer's law enforcement agency must allow the following individuals, upon their request, to inspect all portable recording system data, redacted no more than what is required by law, documenting the incident **WITHIN 5 DAYS** of the request subject to paragraphs (c) and (d)
 - The deceased individual's next of kin
 - The legal representative of the deceased individual's next of kin
 - The other parent of the deceased individual's child



Minnesota Impact

- Minnesota law makes it so that footage is public with stipulations that protect the privacy of the officer
- There are clear legal timelines in situations where an individual dies. Footage is to be released within 14 days.
- The footage can be altered by removing language in order to protect the sensibilities of the public
- The family's request to release footage within 14 days can be denied or further altered.
- However, the footage is determined to be public





Des Moines, Iowa



Des Moines Policy

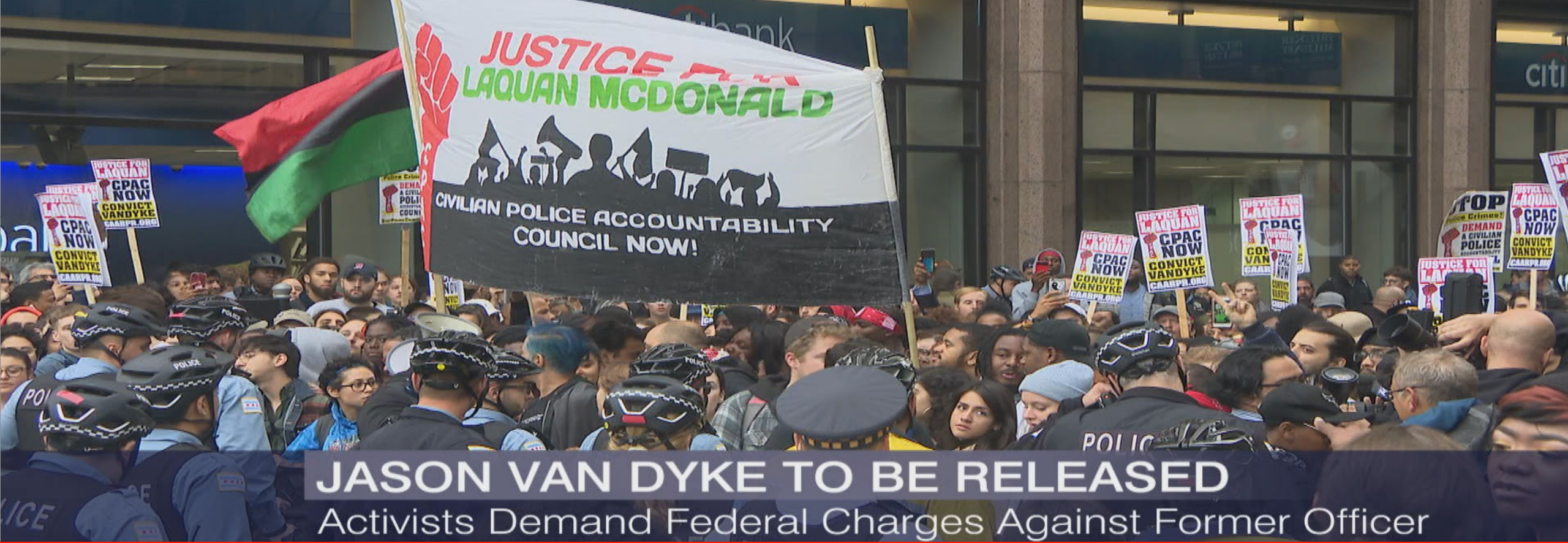
- Des Moines PD abides by city code
- Section 86-29 states “except for tapes designated confidential, the chief of police or his or her designee shall permit persons to observe and record excerpts of video tapes originally recorded by the police department within 30 days of the recorded event. A service fee shall be collected for recording reproductions made by the police department for a requestor. The requestor must supply a blank VHS type tape for such reproductions.”
- Chief of Police has authority, subject to approval of the city manager, to set limits to the reproduction of footage.



Des Moines Impact

- **Des Moines code is that video footage is not made public and provided through a records request no sooner than 30 days after an incident**
- **Requestors must pay services fees and bring their own VHS tape to transfer records**
- **The Chief of Police has the authority to change the rules to obtain records, with the approval of the city manager**
- **Presents various obstacles, such as in the case of Trevontay Jenkins (16) who was killed by DMPD on December 26, 2023.**





JASON VAN DYKE TO BE RELEASED
Activists Demand Federal Charges Against Former Officer

Illinois



Illinois Policy

- **Illinois State law requires the storage of law enforcement footage for a minimum of 90 days before its destruction**
- **Recordings made with the use of an officer-worn body camera are not subject to disclosure under the Freedom of Information Act**
- **Victims and/or their legal representative can file a complaint to request access to the footage**



Illinois Impact

- The lack of footage release presents obstacles for transparency
- Police departments keep their records for 90 days and the footage cannot be altered before this period
- Victims and/or their legal representatives may request footage themselves, but they need to also file a complaint against the law enforcement agency
- Though there is no timeline, footage for certain cases has been released relatively quickly
 - In the case of Adam Toledo (13) who was killed by Chicago Police in 2021, the footage was publicly released within 16 days





Michigan



Michigan Policy

- **Michigan State law does not define audio or video recording from a law enforcement body-worn camera as public record and is also exempt from the Freedom of Information Act**
- **They claim that the release of footage can:**
 - Interfere with law enforcement proceedings
 - Deprive a person of the right to a fair trial
 - Disclose the identity of a confidential source
 - Disclose law enforcement investigative techniques or procedures
 - Endanger the life or physical safety of law enforcement personnel
- **Law enforcement agencies may charge a fee for a copy of an audio and video recording**



Michigan Impact

- Since audio and footage from law enforcement body-worn cameras is not subject to the FOIA, it drastically limits access
- Requests for footage can be made, but if the footage is deemed to compromise the aforementioned criteria, requests will be denied
- The victims' next of kin face the burden to make requests of footage that meets the criteria
 - If the footage infringes on the privacy of the officer involved, the request will be denied
- No records are automatically made public





Akron, Ohio



Akron, OH Policy and Impact

- **Akron, OH created a city ordinance in 2021 that requires the release of body camera footage within 7 days of an incident**
- **This policy was in effect during the horrific shooting of Jayland Walker, who was killed by APD in 2022**
- **The footage is released quickly and is largely unedited**
- **There's a high standard for transparency due to this policy**
- **Families aren't kept out of the loop for months or years**



NEXT STEPS IN MILWAUKEE

- Continue applying pressure at the City, County, and State levels
- Continue educating our communities on these policies
- Support SOP 575 and transparency at all levels
- Sign petition for Civilian Accountability Council over the Milwaukee County Sheriff's Office
- Join the Milwaukee Alliance Against Racist & Political Repression

