

## CONCISE EXPLANATORY STATEMENT

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In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, the following is a concise explanatory statement:

**AGENCY:** Attorney General

**RULE IDENTIFIER:** 110-RICR-10-00-2

**RULE TITLE:** Rules and Regulations Establishing Statewide Policy for the Use and Operation of Body-Worn Cameras

**REASON FOR RULEMAKING:**

These rules and regulations are promulgated to set forth the statewide policy for the use and operation of body-worn cameras (“BWC” or “BWCs”). The policy is intended to govern Rhode Island law enforcement agencies using and operating body-worn cameras in connection with R.I. Gen. Laws Chapter 42-161, the Statewide Body-Worn Camera Program.

**ANY FINDING REQUIRED BY LAW AS A PREREQUISITE TO THE EFFECTIVENESS OF THE RULE:** *n/a*

**TESTIMONY AND COMMENTS:**

The Attorney General received comments (public hearing testimony and written submissions) from several individuals and organizations. As explained in this Statement, after careful consideration by the Attorney General and the Department of Public Safety (“DPS”), certain comments and sections of comments resulted in changes to the text of the Rule while others did not. The following summarizes the comments and sections of comments that did not result in changes to the text of the Rule:

*BWC recording inside law enforcement facilities with functioning camera systems*

A comment contended that a BWC Officer should be required to continue recording inside facilities with functioning camera systems. The Policy reaches an appropriate balance by allowing a BWC Officer to discontinue recording when an arrestee is brought to a location within a police facility, but only if that facility has a *functioning* surveillance system.

*Notification of recording*

Comments advocated for requiring BWC Officers to always notify individuals that they are being recorded. The Policy strikes an appropriate balance between the interests in providing notice to members of the public and ensuring officer and third-party safety by creating an expectation that members of the public will be informed that they are being recorded without establishing bases for punitive measures.

### *Deactivating or muting a BWC in certain situations*

Comments advocated for narrowing or eliminating the circumstances under which a BWC Officer could mute or deactivate their BWC. The Policy limits these circumstances, addresses them in detail, and strikes an appropriate balance between documenting a wide range of officer/citizen interactions for evidentiary and accountability purposes with enabling an officer to effectively perform their public safety duties while respecting Rhode Islanders' privacy interests.

### *Officer review of recording*

A comment contended that the Policy's provisions on BWC Officer review of a recording for certain serious use of force situations should be extended to, essentially, any recording documenting an officer/citizen interaction. The application of this approach to essentially all officer/citizen interactions is impracticable and the Policy's application of these provisions to the use-of-force situations subject to the Attorney General's Protocol Regarding the Review of Incidents Involving the Use of Deadly Force, Excessive Force, and Custodial Deaths is appropriate.

### *Release of recording and public access*

Comments advocate for the faster, or near-immediate, release of a BWC Recording of a serious use-of-force incident. The Policy strikes an appropriate balance between the public's interest in viewing such a recording and law enforcement's interest, acting on behalf of the public, in substantially completing any investigation into the incident, so as to preserve and protect the Office's ability to prosecute criminal conduct where warranted. As the Policy notes, substantial completion is expected to occur within thirty days.

Relatedly, comments advocate for further access to BWC recordings beyond what is provided for in Rhode Island's public records laws. The Policy, which embraces Rhode Island's Access to Public Records Act, is not an appropriate place to address these issues.

### *Policy language observations*

Comments raise concerns about Policy's use of terms such as "as soon as practicable" or "impracticable" and contend that these terms could be replaced with more specific terms. This terminology is necessary because the Policy is likely to govern the actions of thousands of Rhode Island law enforcement officers who, daily, find themselves in a wide range of different scenarios, many of which they have not previously encountered. Moreover, the Policy states that it is a "floor" not a "ceiling," and police departments will be able to add further specificity, provided they do not change the meaning of the Policy's provisions.

### *Privacy in medical facilities and mandatory training*

A comment advocated for adding language suggesting certain areas of hospitals and medical facilities should be areas where patient privacy and care should factor into BWC deactivation. The comment also suggested requiring annual

training for all BWC Officers on privacy laws on an annual basis. The Policy sufficiently identifies “certain locations in hospitals or clinics” as places where a BWC Officer must be mindful not to record beyond what is necessary and this type of privacy training, if determined to be appropriate, is more appropriately dealt with outside of the Policy like other forms of existing law enforcement training.

*Expanding Policy to discuss other topics*

Comments advocated for expanding the Policy to discuss additional topics such as the use of facial recognition technology or quarterly/annual reporting by police departments. These topics are either not appropriate to include in the Policy (e.g., facial recognition technology) or are more appropriately addressed as part of the Statewide Body-worn Camera Program (e.g., reporting by grantee departments).

**CHANGE TO TEXT OF THE RULE:**

Several changes were made between the text of the proposed Rule and the text of the Final Rule. These changes are consistent with, and a logical outgrowth of, the proposed Rule. The changes are as follows:

1. *§ 2.5.4.B.1 Clarifying that a case-by-case extension granted by a BWC Supervisor to a BWC Officer for the timely uploading of a BWC Recording should be documented in writing.* A comment recognized the need for such extensions but, among other observations about the procedure under this section, contended that the grant of the extension should be documented.

In consideration of the comment, the Attorney General and DPS have added language clarifying that any such extensions should be documented in writing.

2. *§ 2.5.B.8 Clarifying that a Chief of Police must authorize a deletion of an original BWC Recording.* Comments observed that this section should be clarified.

In consideration of the comments, the Attorney General and DPS have amended the section clarifying that a Chief of Police must authorize a deletion of an original BWC Recording and that all other editing of a non-original BWC Recording, such as implementing privacy-related redactions on a copy of a BWC Recording, should be carried out in accordance with the other sections of the Policy.

3. *§ 2.5.C.1 Clarifying that a BWC Supervisor must review at least one BWC Recording recorded by every BWC Officer under their command, per month.* Comments observed that this section should be clarified.

In consideration of the comments, the Attorney General and DPS have added

language clarifying that a BWC Supervisor must review at least one BWC Recording recorded by every BWC Officer under their command, per month.

4. § 2.5.6.A.2 *Cleaning up a reference by inserting “§§ 2.5.8 – 2.5.11” instead of “§§ 2.5.8, 2.5.9, 2.5.10, and 2.5.11”*
5. § 2.5.6.B.3 *Clarifying that a BWC Officer on the scene of a law enforcement use of deadly force must not deactivate their BWC until the event has concluded and that any temporary muting must be done in accordance with the other sections of the Policy.* Comments expressed concerns about whether this section, as written, would enable a BWC Officer to deactivate their camera in situations where they would not otherwise be able to under the Policy.

In consideration of the comments, the Attorney General and DPS have added language clarifying that, when on the scene of a law enforcement use of deadly force, a BWC Officer must not deactivate their BWC until the event has concluded and, if instructed to temporarily mute their BWC by a supervisor pursuant to other sections of the Policy, the supervisor should state the reason for doing so.

6. § 2.5.10.3 *Adding areas where there may be a reasonable expectation of privacy due to the exercise of First Amendment rights.* Comments suggested that additional areas where First Amendment rights are being exercised should be added to this section.

In consideration of the comments, the Attorney General and DPS have added areas where peaceful protests are taking place and newsrooms as areas where there may be a reasonable expectation of privacy and a BWC Officer should be mindful not to record beyond what is necessary to capture contact with members of the public, effect an arrest, or search for an individual.

7. § 2.5.10.4 *Correcting a section labeling error*
8. § 2.5.10.5 *Adding language explaining that decisions about whether to equip a School Resource Officer with a BWC raise important educational, privacy, and public safety considerations.* A comment expressed concerns about the use of BWCs by school resource officers.

The Policy already provides that School Resource Officers will only be equipped with BWCs where there is agreement by the relevant school district and will accordingly vary by community. In consideration of the comment, the Attorney General has added language explaining that “the potential impact of an officer equipped with a camera on a school district’s ability to foster a productive educational environment and a community’s interest in preserving students’ privacy, for instance, must be carefully balanced against the

community's interest in ensuring transparency and accountability regarding officer/student interactions in a school setting.”

9. § 2.5.11.C *Correcting a section labeling error*

10. § 2.5.15.A *Clarifying that those who violate the Policy are subject to appropriate remedial or disciplinary action as well as any other consequences outlined in municipal, state, and federal laws and regulations.* A comment observed that, as written, this could be read to reference the Body-worn Camera enabling legislation instead of all municipal, state, and federal laws and regulations.

In consideration of the comment, the Attorney General and DPS have added language clarifying that those who violate the Policy are subject to appropriate remedial or disciplinary action in addition to any other consequences outlined in municipal, state, and federal laws and regulations.

**SUMMARY OF REGULATORY ANALYSIS:**

The policy at the center of the proposed rule is anticipated to generate significant, long-term public health, safety, welfare, and economic benefits for the State of Rhode Island and its residents. These substantive benefits for Rhode Islanders and the State stemming from the policy include: creating consistency in public safety policy and setting public expectations for police, advancing protection of important constitutional rights, ensuring important interactions between law enforcement and members of the public are documented for evidentiary and accountability purposes, and building important public trust in government. There are also modest costs associated with local and state police agencies participating in the Statewide Body-worn Camera Program and adopting the policy, specifically related to: video review for auditing and compliance; and video review, redaction, and processing for open records requests and civil and criminal discovery.

The Attorney General and the Department of Public Safety, in consultation with the Rhode Island Police Chiefs' Association, have developed the Policy to achieve the maximum potential benefit to the State of Rhode Island through the Statewide Body-worn Camera Program and the funding appropriated for its use. The primary goals of the program are to promote the widespread adoption of body-worn cameras—key accountability and law enforcement tools that are an unbiased witness to law enforcement actions and help build community trust while providing prosecutors with critical evidence—and ensuring the effective use and operation of the cameras. As drafted, the Attorney General and the Department of Public Safety believe the policy will achieve these goals, providing long-term health, safety, welfare and economic benefits to the State of Rhode Island.

The Attorney General and the Department of Public Safety have determined that the benefits of the proposed rule justify the costs of the proposed rule, and that the

proposed rule will achieve the objectives of the authorizing legislation in a more cost-effective manner, or with greater net benefits, than other regulatory alternatives.

For full regulatory analysis or supporting documentation contact the agency.