

## 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 one written comment from ACCESS/RI, a coalition consisting of various organizations. As explained in this Statement, after careful consideration by the Attorney General and the Department of Public Safety (“DPS”), certain comments resulted in changes to the text of the Rule, while others did not. The following summarizes the comments that did not result in changes to the text of the Rule:

*Policy language observations*

Comments raise concerns about the Policy’s use of certain terms, contending that the Policy could be more specific and narrowed, specifically as it relates to the duties and authorities of supervisors. The terminology utilized in the regulations is necessary because the Policy governs 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 police departments will be able to

add further specificity, provided they do not change the meaning of the Policy's provisions.

*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.

*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.

*Privacy*

A comment raises concern for "open-ended" authority in a BWC officer's ability to "weigh any reasonable expectation of privacy in determining whether to activate or discontinue recording." Further, it advocates for the blanket utilization of BWCs when recording victims and witnesses, with no alternative for privacy considerations. The Policy appropriately provides BWC Officers some discretion in determining when activating or discontinuing recordings of victims or witnesses.

*Release of recording and public access*

A comment advocates for the faster, or near-immediate, release of BWC footage involving 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.

**CHANGE TO TEXT OF THE RULE:**

Three 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.2. *Clarifying when the existence of a BWC Recording must be included in written narratives at the end of each shift.* The Attorney General and Department of Public Safety have amended the language to clarify that the existence of a BWC Recording should be documented in all “applicable” written narratives and provides non-limiting examples of the types of written narratives. This will ensure that the Rule is not misinterpreted in a manner that would narrow the types of reports that must document the existence of BWC recordings.
2. § 2.5.8. A.2. *Clarifying when a BWC Officer is required to active their BWC.*

The Attorney General and Department of Public Safety have removed the proposed amendment to this section to ensure BWC Officers activate their BWCs at the initiation of any investigative or enforcement activity involving a member of the public. This will ensure that BWC Officers have sufficient clarity about when their BWCs must be activated.

3. § 2.5.11.C. *Correcting a grammatical error.*

The amended text read “make a request for to restrict access to...”. To make the text grammatically correct, it should read “make a request to restrict access to...”.

#### **REGULATORY ANALYSIS:**

R.I. Gen. Laws § 42-161-4 requires the Office of the Attorney General and the Department of Public Safety to promulgate rules and regulations for the use and operation of the Statewide Body-Worn Camera Program. Pursuant to the promulgated policy, on an annual basis, the Office of the Attorney General and Department of Public Safety are required to review the policy.

The proposed amendments are the result of this annual review. The amendments are reflective of feedback received from multiple law enforcement agencies in the state. In the development of the proposed amendments, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information. The Attorney General and the Department of Public Safety have determined that amending these regulations will not add any financial cost to the agency or the public at large and the societal benefits of updating rules and regulations far outweighs any concern to the contrary. The proposed amendments will continue to support the objectives of the authorizing legislation with greater net benefits than other regulatory alternatives. These

amendments ensure that the goals set forth in the original regulations - including providing long-term health, safety, welfare and economic benefits to the State of Rhode Island - are being met.