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TITLE 110 – ATTORNEY GENERAL

CHAPTER 10 – GENERAL

SUBCHAPTER 00 – N/A

PART 2 – Rules and Regulations Establishing Statewide Policy for the Use and Operation of Body-Worn Cameras

2.1 Purpose

These Rules and Regulations (the "Rules") are promulgated to set forth the statewide policy for the use and operation of body-worn cameras (the "Policy"). 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 (the "Program").

2.2 Authority

These Rules are promulgated pursuant to R.I. Gen. Laws Chapter 42-161. These Rules have been prepared in accordance with the requirements of the Rhode Island Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35.

2.3 Scope

Pursuant to R.I. Gen. Laws § 42-161-4(c), any Rhode Island law enforcement agencies receiving grant funds through the Program must certify that the agency has adopted the Policy before any such Program funds will be disbursed by the Rhode Island Department of Public Safety. This Policy establishes a floor, not a ceiling; Departments are permitted to adopt adjustments to the Policy, provided that any such adjustments do not contravene the provisions of the Policy.

2.4 Severability

If any provision of these Rules, or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the validity of the remainder of the Rules shall not be affected thereby.

2.5 Statewide Policy for the Use and Operation of Body-Worn Cameras

2.5.1 Purpose

A. This Policy establishes guidelines for the use of and operation of body-worn cameras (“BWCs” or a "BWC") by law enforcement officers, other than undercover officers.

B. Any Department participating in the statewide body-worn camera program, established pursuant to R.I. Gen. Laws § 42-161-1 *et seq.*, must adopt this Policy as a condition of participating and receiving funds under the program.

C. Departments are permitted to impose additional requirements beyond — but not inconsistent with — those established in this Policy. Accordingly, Departments are permitted to tailor their BWC policies and procedures to address local concerns and needs.

D. Upon adoption of this Policy, Departments will ensure that the Policy is accessible to the public, including by posting to the Department’s website.

2.5.2 Policy

A. Body-worn cameras are key law enforcement tools. They promote transparency and accountability. They provide unbiased witness to law enforcement actions and encounters with the public, building community trust while also providing prosecutors with critical evidence.

B. The policies and standards established in this Policy are designed to help Departments balance competing, yet equally important, interests and goals — the need to promote accountability and transparency on the one hand, against the privacy interests of members of the public on the other hand; as well as the benefits achieved by recording evidence that might solve a crime or aid in the prosecution of an offender on the one hand, against the costs of harming public trust or chilling a victim or a witness on the other.

2.5.3 Definitions

A. "Activation" or "activate" means triggering a body-worn camera's audio and video recording functions, unless otherwise defined in this Policy.

B. "Body-worn camera" or "BWC" means a video and audio recording device that is carried by, or worn on the body of, a law enforcement officer and that is capable of recording the actions and interactions of the officer and the public.

C. "BWC officer" means an officer assigned to wear a BWC, other than an undercover officer.

D. "BWC program" means a Department's program overseeing the use and operation of BWCs.

E. "BWC recording" means a video and/or audio recording created by a BWC.

F. "BWC supervisor" means the immediate supervisor of a BWC Officer. A BWC Supervisor may also be a BWC Officer.

G. "BWC system" means the BWC and any associated hardware or software.

H. "Chief of Police" means the highest ranking active sworn member of a law enforcement agency regardless of rank or title.

I. "Department" means a Rhode Island law enforcement agency.

2.5.4 BWC Officer Responsibilities

A. At the beginning of each shift, a BWC Officer shall:

1. Ensure that issued BWC equipment is charged and properly functioning.

   a. As soon as practicable, report to their immediate supervisor, both verbally and by documenting the facts and circumstances in writing, whenever a BWC is not functioning properly, damaged, or missing. A missing or lost BWC shall be replaced as soon as practicable.

   b. As soon as practicable, turn over for repair and/or replacement a BWC that is not functioning properly, is damaged, or requires maintenance, along with copies of associated documentation.

2. Position the BWC in the location and manner consistent with the product's specifications and as communicated and demonstrated through Department-approved training, to facilitate obtaining an appropriate and unobstructed recording field of view.

B. At the end of each shift, a BWC Officer shall:

1. Ensure that BWC footage has been uploaded and that recordings are flagged or marked for retention consistent with the requirements set forth in § 2.5.14 of this Part. A BWC Supervisor or other supervisor may grant case-by-case extensions for the uploading of a BWC Recording.

2. Document in all written narratives, including in reports, summonses, citations, and witness statements, the existence of a BWC Recording. A BWC Officer should continue to prepare reports in the same manner as prior to the use of a BWC. Documentation such as "Refer to video" may not be used as a substitute for a detailed and thorough report.

3. After uploading any BWC Recordings, securely store the BWC and ensure the charging of BWC equipment, if necessary.

C. All BWC Officers shall receive training on the use and operation of BWCs.

D. A BWC Officer shall not remove, dismantle, or tamper with any hardware and/or software component or part of a BWC System. This provision shall not apply to redactions made by authorized Department personnel in accordance with this Policy.

2.5.5 BWC Supervisor and System Administration Responsibilities

A. A BWC Supervisor shall:

1. Ensure that BWC Officers wear and utilize the BWC and the BWC system in accordance with this Policy. Such efforts must include, but are not limited to, ensuring that BWCs are properly affixed to the uniforms of BWC Officers and are functioning properly.

2. Upon receiving notification of a damaged or malfunctioning BWC, remove the BWC from service, report the damage or malfunction to the Department supervisor responsible for the BWC Program, and ensure the issuance of another unit, if available.

3. Review and document where appropriate when notified that a BWC Recording was interrupted or an event was not recorded as required by this Policy. Such documentation shall be forwarded through the chain of command to the Chief of Police.

4. Forward all requests for deletion of BWC Recordings through the chain of command to the Department supervisor designated by the Chief of Police.

B. The Chief of Police or designee(s) shall ensure oversight of the Department's BWC Program, which includes but is not limited to the following:

1. Operation and user administration of the Department's BWC System;

2. BWC System evaluation;

3. Training for all BWC Officers;

4. Policy and procedure review and evaluation;

5. Coordination with information technology personnel, as necessary, regarding BWC System-related issues;

6. Ensuring that BWC Recordings are retained in accordance with § 2.5.14 of this Part;

7. Ensuring that requests for copies of any BWC Recordings or documents, data, records, and files, relating to BWC Recordings are reviewed and approved by the Chief of Police or designee, in conjunction, where

appropriate, with the Department's municipal law department or the Attorney General's Office; and

8. Ensuring that written directives from the Chief of Police to edit, delete, or alter any BWC Recording are carried out as stated and documented.

C. Supervisors, including BWC Supervisors, and others as designated by the Chief of Police, shall periodically audit BWC Recordings to ensure compliance with this Policy and to identify training issues and opportunities.

1. More specifically, BWC Supervisors shall perform a documented review of at least one (1) BWC Recording per BWC Officer under their command, per month.

2. Supervisors up the chain of command, as determined by the Chief of Police, shall also randomly review BWC Recordings of BWC Officers under their command each month to ensure compliance with Department policies.

3. The focus of these reviews will include, but need not be limited to:

a. Professionalism;

b. Adherence to directives and training for the BWC System;

c. The functionality and effectiveness of the BWC System;

d. Officer safety and related training;

e. Any other issue that could result in a complaint from a member of the public; a hindrance to prosecution; or liability to the Department or municipality.

D. Supervisors that observe or become aware of a violation of this Policy shall ensure appropriate remedial action or referral for disciplinary action.

E. The Chief of Police or designees(s) shall, at least annually, review the Department's BWC Program and this Policy. The Department of Public Safety and the Attorney General shall solicit feedback on this Policy, at least annually, from Departments participating in the statewide body-worn camera program and other individuals and organizations as the Department of Public Safety and the Attorney General deem appropriate.

2.5.6 BWC Activation and Deactivation

A. Activation

1. A BWC Officer shall immediately activate their BWC when required to do so by § 2.5.8 of this Part unless it is unsafe and impracticable to do so. If there is an immediate threat to a BWC Officer's life or safety or the life or safety of others, making camera activation impossible or dangerous, the BWC Officer shall activate the BWC at the first reasonable opportunity to do so.

2. A BWC Officer will only activate their BWC in conjunction with official law enforcement duties, consistent with §§ 2.5.8, 2.5.9, 2.5.10, and 2.5.11 of this Part.

3. If the BWC System procured by the Department features pre-event buffering capabilities that automatically save some portion of footage prior to a BWC Officer activating a BWC, those capabilities must be enabled.

B. Deactivation

1. Once a BWC has been activated, recording should continue uninterrupted until the event or interaction that is being recorded has concluded, unless otherwise provided for by law or by this Policy.

2. Examples of when an event or interaction may be considered concluded include, but are not limited to the following:

   a. Victim and/or witness contact has concluded;

   b. Either the BWC Officer or the involved parties have departed the scene;

   c. All persons stopped have been released or have left the scene;

   d. After a transporting officer transfers the care, custody, and control of an arrestee to another Department or detention/police facility; or

   e. After an arrestee is brought to a location within a Department facility that has a functioning surveillance system, such as a holding cell or booking area.

3. On the scene of a law enforcement use of deadly force, a BWC Officer shall not deactivate their BWC until instructed to do so by a supervisor.

4. To the extent possible, prior to deactivating a BWC — whether because the event or interaction has concluded or because deactivating is otherwise consistent with or permitted by this Policy — a BWC Officer should state the reason for doing so.

   a. Upon any reactivation, the BWC Officer should state that they have restarted the recording.

b. The reasons for any deactivation and reactivation during an event or interaction should also be documented in any written reports.

c. For purposes of this subsection, deactivation includes muting the BWC, stopping recording, diverting the BWC, or recording only audio.

C. If, in violation of this Policy, a BWC Officer fails to activate their BWC, fails to record the entire event or interaction, or interrupts the recording, the BWC Officer shall document in their written report of the incident why a recording was not made, was interrupted, or was terminated.

2.5.7 Notice of Recording

A. As soon as practicable and consistent with ensuring officer safety or the safety of others, a BWC Officer is encouraged to inform individuals that they are being recorded. An example of a circumstance in which providing notice would be impracticable is when a BWC Officer is dealing with a suicidal individual or an individual experiencing a mental health crisis. In such a circumstance, a BWC Officer can refrain from making this announcement, to the extent refraining from doing so would help avoid escalating the situation.

B. To the extent practicable, a BWC Officer should also notify other individuals present, including, but not limited to, law enforcement agency personnel, that the interaction is being recorded.

C. Consent to record is not required. When a member of the public objects to being recorded, a BWC Officer may determine whether to proceed with recording consistent with §§ 2.5.8 – 2.5.11 of this Part.

2.5.8 Activation Required

A. A BWC Officer is required to activate their BWC under the following circumstances:

1. They are responding to a call for service or they self-initiate a call for service;

2. At the initiation of any investigative or enforcement activity involving a member of the public;

3. At the initiation of any pursuit or emergency driving; and

4. When the BWC Officer is assisting another officer in any of the above activities.

B. A BWC Officer may activate their BWC at any other time when the BWC is not required by this Policy to be activated:

1. If the BWC Officer believes an encounter with a member of the public has escalated and become confrontational; or

2. During any other contact with a member of the public or performance of official duties, if the BWC Officer reasonably believes that recording would enhance police transparency, increase public trust, or preserve factual representations of the interaction.

2.5.9 Automatic Activation

A. BWC product offerings continue to expand, improve, and evolve. While Departments are encouraged to take advantage of product innovations, particularly those that ensure that the BWC is recording during critical incidents, this Policy acknowledges that many of these innovations may be financially unattainable for some Departments. Departments are free to choose the product offerings that best meet their needs, and nothing within this subsection shall be interpreted to require a Department to procure a particular product, capability, or combination of products and capabilities.

B. Departments are required to enable the following automatic activation features, if available to them based on the products they procured, and BWCs in those Departments will automatically activate under the following circumstances:

1. The light bar in a BWC Officer's vehicle is activated;

2. A BWC Officer's vehicle travels over a certain speed;

3. A BWC Officer's taser is removed from its holster; and/or

4. A BWC Officer's firearm is removed from its holster.

C. Departments adopting and issuing this Policy shall identify which automatic activation capabilities have been procured and enabled and shall update that portion of the Policy on an ongoing basis.

2.5.10 Standards Governing Deactivation in Limited Circumstances

A. Areas Where There May Be a Reasonable Expectation of Privacy and Other Sensitive Locations

1. A BWC Officer recording in areas where there may be a reasonable expectation of privacy, or other sensitive locations, shall 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.

2. The BWC shall not be used with exploratory intent to create an inventory of items or individuals within a location.

3. Such areas may include but are not limited to:

a. Private residences;

b. Locker rooms;

c. Places of worship;

d. Religious ceremonies;

e. Certain locations in hospitals or clinics;

f. Law offices;

g. Daycare facilities; and

h. Schools.

3. Decisions to mute the BWC, stop recording, divert the BWC, or record only audio should be based on the following considerations:

a. The extent to which the BWC Officer observes activities or circumstances of a sensitive or private nature;

b. The presence of individuals who are not the subject of the interaction between the BWC Officer and members of the public;

c. Presence of individuals who appear to be minors;

d. Whether a potential witness requests to speak with an officer and desires anonymity;

e. Consultation with other members of law enforcement; and

f. Whether a BWC Recording would provide evidence and/or further an investigation.

4. Any Department seeking to equip a School Resource Officer ("SRO") with a BWC shall ensure that equipping the SRO with a BWC is pursuant to an agreement between the Department and the School District, and that the use of the BWC by an SRO in a school is consistent with this Policy.

B. Recording of Victims and Witnesses

1. If a BWC Officer is in visual or audio recording range of a victim or witness who is giving their first account of a crime, the BWC Officer may record the encounter but should weigh any reasonable expectation of privacy in determining whether to activate or discontinue recording.

2. If the BWC Officer decides to continue recording, the BWC Officer is encouraged to notify the victim or witness of the recording.

3. If the victim or witness is unsure of the need for the recording or is uncomfortable being recorded, the BWC Officer may inform them that they can request to have the BWC turned off. Any such requests to deactivate, as well as the BWC Officer's response to the request, should be recorded.

4. Decisions with respect to victim or witness requests to stop recording shall be based upon the following considerations:

   a. The privacy and safety interests of the victim or witness;

   b. Age or other characteristics of the victim or witness;

   c. Nature of the crime(s) under investigation;

   d. The need for the information or assistance that the victim or witness will provide; and

   e. Whether the victim or witness will provide information or otherwise cooperate if the recording is continued.

C. Consulting with Other Members of Law Enforcement

A BWC Officer may temporarily mute the BWC while consulting with other members of law enforcement, but only while participating in a discussion pertaining to criminal investigation, law enforcement strategy, planning, or tactical response, provided that the discussion is not conducted in the immediate presence of a member of the public, or in a discussion that is entirely personal in nature, further provided that the BWC Officer is not actively engaged in the collection of physical evidence.

2.5.11 Activation Prohibited

A. A BWC shall not be used to gather intelligence information based on First Amendment protected speech, associations, or religion, or to record activity that is unrelated to a response to a call for service or a law enforcement or investigative encounter between an officer and a member of the public.

B. A BWC Officer is prohibited from activating their BWC under the following additional circumstances:

1. When performing or present during a strip search;

2. During breaks or when a BWC Officer is engaged in personal activities not related to official activities;

3. Any administrative activities of other employees or any personal conversation of or between other Department employees without the recorded employee's knowledge;

4. Investigative briefings;

5. Encounters with undercover officers or confidential informants, or where recording could compromise their identities or techniques; or

6. Department meetings, workgroups, in-service training, or assignments or activities of an operational or administrative nature. Using BWCs and the BWC System for training purposes is not a violation of this restriction.

B. Whenever a prohibited BWC Recording is made by a BWC Officer, the officer shall, as soon as practicable, make a request for deletion of the video file at issue by documenting the facts and circumstances in writing and forwarding it to their BWC Supervisor. A BWC Officer may also request deletion of accidental BWC Recordings pursuant to this same process.

2.5.12 Internal Access to BWC Recordings and Data

A. General

1. All access to the BWC Camera System is logged and subject to audit.

2. Access to BWC Recordings is permitted on a right/need to know basis.

3. Department personnel authorized to view BWC Recordings may only do so in accordance with the provisions of this Policy.

4. Department personnel are prohibited from making personal copies of BWC Recordings, including utilizing secondary/personal recording devices to create a duplicate recording.

5. BWC Recordings shall not be duplicated or distributed, unless for official authorized business.

B. Officer Access to BWC Recordings

1. Except as provided in § 2.5.12(c) of this Part, a BWC Officer and other officers may review BWC recordings as they relate to:

a. Their involvement in an incident, or the investigation of an incident, for the purposes of completing an investigation and/or preparing official reports;

b. Providing testimony in court to refresh recollection. A testifying officer will ensure that the prosecutor is aware that the officer has reviewed the BWC Recording(s) prior to a court appearance; and

c. Prior to being interviewed in a criminal, civil, or administrative matter or providing a statement to an investigating body or pursuant to an administrative inquiry.

C. Officer Access Following Certain Use of Force Incidents.

1. In order to ensure the fairness and integrity of investigations subject to the Attorney General's Protocol Regarding the Review of Incidents Involving the Use of Deadly Force, Excessive Force, and Custodial Deaths, a BWC Officer who is alleged to have used force shall not be permitted to view any camera footage associated with the incident, until that BWC Officer first provides a descriptive statement from their recollection and perception of the incident, in either a recorded walk-through statement or another type of recorded statement.

2. After providing a statement regarding the incident, the BWC Officer and their union or legal representative shall be permitted to view their own BWC Recording and data.

3. After the BWC Officer has viewed their own BWC Recording and data, the officer shall provide a continuation of their descriptive statement of the incident. The officer shall be permitted to note, address, and/or explain any discrepancies or differences between the officer's original statement and what is shown or heard on the BWC Recording.

4. The BWC Officer may submit other written statements, reports, or documents after providing the recorded continuation of their descriptive statement of the incident.

5. If viewing the BWC Recording causes an adverse stress-related reaction, the BWC Officer's statement shall be suspended immediately and the officer shall be afforded counseling and/or medical aid.

D. Other Internal Access

1. Supervisors

a. Any supervisor within the recording BWC Officer's chain of command, or the Chief of Police or designee, may review a BWC Recording pertaining to any investigation.

b. A supervisor may also access any BWC Recording to perform their duties under this Policy as set forth in § 2.5.5 of this Part.

2. Internal Affairs and Training

a. A BWC Recording may be viewed by members of the Department's internal affairs office, consistent with the responsibilities of that office under this Policy, as set forth in § 2.5.5 of this Part.

b. A BWC Recording may be viewed and used for training purposes, with prior approval by the Chief of Police or designee.

3. In the event a BWC Officer is incapacitated or unresponsive while on duty, the BWC Recording may be viewed to identify a possible suspect and aid in apprehension.

E. Documenting BWC Incidents

1. Because a BWC Recording may capture sights and sounds that officers did not personally hear or observe, officers must clearly distinguish and delineate the following information in any and all reports that are required by Department policy:

a. Facts that are recalled independent of a BWC Recording;

b. Recollections that are refreshed by viewing a BWC Recording;

c. Facts that were not previously known but that are learned by viewing a BWC Recording; and

d. Areas in the BWC Recording that appear to differ from the officer's actual perceptions during the event/incident, or that appear to present a distorted view of the actual scene or events.

2.5.13 Public Access to BWC Recordings

A. A BWC Recording is subject to the Rhode Island Access to Public Records Act ("APRA"), R.I. Gen. Laws Chapter 38-2, and all requests for public access to a BWC Recording shall be handled in accordance with that law.

B. Prior to public release of a BWC Recording, Departments should ensure that the BWC Recording is redacted, where appropriate and consistent with the law. Among other reasons permitted by law, Departments should consider redaction if release could reasonably be expected to constitute an unwarranted invasion of personal privacy, could reasonably be expected to disclose the identity of a confidential source or the information furnished, or would disclose techniques and procedures for law enforcement investigations or prosecutions.

C. Nothing within this subsection is intended to supersede or conflict with the provisions of the APRA or other law.

D. BWC Recordings from Certain Use of Force Incidents

1. The public's interest in transparency and accountability is significant for incidents involving police use of force that fall within the scope of the Attorney General's Protocol Regarding the Review of Incidents Involving the Use of Deadly Force, Excessive Force, and Custodial Deaths.

2. While a BWC Recording must be released where disclosure is required under the APRA, the provisions of this subsection are intended to further ensure and require the release of a BWC Recording in circumstances where withholding such footage would be permitted under the APRA.

3. Unless otherwise prohibited by law or judicial order, a BWC Recording from an AG Protocol incident shall be provided to the public:

   a. In response to a public records request made pursuant to the APRA;

   b. No later than upon the substantial completion of the investigation, as determined by the Attorney General, in consultation with the Rhode Island State Police and other involved Department(s); and

   c. In accordance with Rhode Island Supreme Court Ethics Advisory Panel Opinion 2020-02, upon the request of the Attorney General.

4. Substantial completion means that evidence has been collected and witnesses have been interviewed. Substantial completion is expected to occur within thirty (30) days.

5. To the extent that any BWC Recording pertains to a matter that remains under investigation or for which criminal charges remain pending:

   a. Any statements accompanying the video must be limited to a factual recitation describing the context of the BWC Recording (e.g., source, date, time, place);

   b. Release should also be accompanied by a disclaimer that the BWC Recording may not depict all of the circumstances relevant to the event in question and that the defendant is presumed innocent unless proven guilty; and

   c. Release may also be accompanied by a disclaimer that BWC Recordings provide a limited view of the event, may capture sights and sounds that officers did not personally hear or observe, and should be considered with all other available evidence.

2.5.14 Records Retention

A. Unless otherwise prohibited by law, a BWC Recording shall be retained in accordance with Rhode Island Records Retention Schedule LG6.3.6 Body Camera and Dash Camera Recordings.

B. Notwithstanding the above, the following individuals may order archival of BWC Recordings: the Chief of Police and/or designee(s), the supervisor of the Department's internal affairs unit or equivalent unit, and the municipal solicitor/legal counsel or designee.

2.5.14 Violations

A. If a law enforcement officer, employee, or agent violates any provision of this Policy, the officer, employee, or agent shall be subject to appropriate remedial or disciplinary action, in addition to any other consequences outlined in the law.

B. Intentional failure to activate or tampering warrants discipline up to and including termination.

C. Any officer that observes a violation of this Policy is required to report the violation in writing to their immediate supervisor in the officer's chain of command.

D. Supervisors that observe or become aware of a violation of this Policy shall ensure appropriate remedial action or referral for disciplinary action, consistent with the Department's policies with respect to internal investigations.