

WRITTEN TESTIMONY IN OPPOSITION TO PROPOSED AMENDMENTS TO 270-RICR-60-00-2
Rules and Regulations Establishing Statewide Policy for the Use and Operation of Body-Worn Cameras

Submitted to:
Lieutenant Melissa Rand
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Re: Proposed Amendments to 270-RICR-60-00-2, Section 2.5.12(C)

Dear Lieutenant Rand:

I respectfully submit this written testimony in opposition to the proposed amendments to Section 2.5.12(C) of the Rules and Regulations Establishing Statewide Policy for the Use and Operation of Body-Worn Cameras.

Body-worn cameras exist to promote transparency, accountability, accuracy, and public trust. Those goals are most important in precisely the circumstances covered by Section 2.5.12(C): incidents involving deadly force, excessive force, custodial deaths, or other serious uses of force subject to the Attorney General's review protocol. These are the incidents in which public confidence is most fragile, the stakes are highest, and the integrity of the investigative process is most critical.

For those reasons, the proposed amendments should be rejected.

The current rule contains an important safeguard: before an officer involved in a serious use-of-force incident reviews body-worn-camera footage, the officer must first provide a descriptive statement based on the officer's own recollection and perception of the incident. That safeguard serves a clear and necessary purpose. It preserves the officer's independent memory before that memory is influenced, refreshed, corrected, or shaped by video evidence.

That distinction matters. A body-worn-camera recording is evidence, but it is not a substitute for an officer's own contemporaneous perception. A camera may capture sights or sounds the officer did not perceive. It may fail to capture things the officer did perceive. It may not reflect peripheral vision, stress, fear, auditory exclusion, distance, lighting, timing, or the officer's subjective understanding in the moment. Because use-of-force law and policy often depend on

what the officer reasonably perceived at the time force was used, the officer's unrefreshed account is a critical piece of evidence.

The proposed amendments weaken that safeguard in two significant ways.

First, the proposed change to Section 2.5.12(C)(1) appears to allow the officer's initial statement to be memorialized in a less reliable manner, including through a statement taken by a supervising officer and written down, rather than requiring a recorded statement. This is a substantial reduction in investigative integrity. In the most serious police incidents, the initial statement should be preserved with the greatest possible accuracy. A recorded statement avoids later disputes about what the officer said, what the officer meant, what questions were asked, whether the officer was led or prompted, and whether the written summary accurately captured the officer's words.

There is no persuasive justification for relaxing that requirement. These incidents are rare, serious, and consequential. The administrative burden of recording an initial statement is minimal when compared to the public interest in accuracy, transparency, and confidence in the investigation. If body-worn cameras are intended to create an accurate record of police-public encounters, then the officer's initial explanation of a serious use-of-force incident should likewise be preserved by recording, not reduced to a secondhand summary.

Second, the proposed change to Section 2.5.12(C)(2) would allow an officer, upon request, to review the officer's own body-worn-camera footage before giving a formal audio or video recorded statement. This change undermines the central purpose of the existing rule. It creates a two-step process in which an officer may first provide a limited or generic initial account, then review the footage, and then provide a more detailed formal statement that has been shaped by the recording.

That process does not strengthen accuracy. It risks producing a statement that is less useful for determining what the officer perceived at the time of the incident. It also creates an appearance of special treatment. Civilian witnesses, victims, and bystanders are generally not given an opportunity to review video evidence before providing their initial formal statements. Allowing officers to do so in the most serious cases risks creating a double standard that will weaken public confidence in the fairness of the investigation.

The issue is not whether officers should ever be permitted to review body-worn-camera footage. In many routine circumstances, review may be appropriate for report writing, testimony preparation, or clarifying details. But serious use-of-force incidents are different. In those cases, the investigative process must first capture the officer's independent recollection and perception before allowing footage review. Only after that formal recorded statement is completed should

the officer be permitted to review the footage and provide a supplemental statement identifying any additional information, clarification, or discrepancy.

That approach is fair to everyone. It preserves the officer's own account. It allows the officer to explain differences between memory and video. It protects the integrity of the investigation. It provides prosecutors, investigators, oversight bodies, courts, and the public with a clearer record. And it better serves the stated purpose of the statewide BWC policy: transparency, accountability, and public trust.

The proposed amendments would also create practical problems. If an officer's initial account is not formally recorded, investigators and the public may later be forced to rely on a supervisor's characterization of what the officer said. That invites avoidable disputes. If an officer then reviews the footage before giving a formal statement, it may become difficult or impossible to determine which parts of the officer's account reflect independent memory and which parts reflect information learned from the video. The regulation currently recognizes this distinction elsewhere by requiring officers to distinguish facts recalled independently, recollections refreshed by video, facts learned from video, and areas where the video differs from the officer's perception. The proposed amendments to Section 2.5.12(C) move in the opposite direction.

The Department should not adopt a rule that makes serious use-of-force investigations more vulnerable to claims of tailoring, coaching, or post hoc justification. Even where no such misconduct occurs, the appearance of an officer conforming a statement to video evidence can damage public trust. That damage is especially serious in cases involving death, serious injury, or allegations of excessive force.

For these reasons, I respectfully urge the Department of Public Safety and the Office of Attorney General to reject the proposed amendments to Section 2.5.12(C)(1) and Section 2.5.12(C)(2), and to retain the existing safeguard requiring an officer to provide a formal recorded statement based on the officer's own recollection and perception before reviewing body-worn-camera footage from a serious use-of-force incident.

In the alternative, if the Department proceeds with amendments, the rule should be revised to include at least the following minimum protections:

1. The officer's initial descriptive statement must be audio- or video-recorded in full.
2. The statement must be taken by an investigator or supervisor who is not materially involved in the incident.
3. The officer may not review any BWC footage or other video evidence until after that recorded initial statement is completed.

4. Any subsequent statement after footage review must expressly identify what information was independently recalled, what information was refreshed by the footage, and what information was learned for the first time from the footage.
5. Any discrepancies between the initial statement and the post-review statement must be specifically documented.
6. The regulation should make clear that this procedure applies to serious use-of-force incidents, including incidents involving deadly force, excessive force, and custodial deaths.

The current rule better protects fairness, accuracy, accountability, and public trust. The proposed amendments weaken those protections at the precise moment when they are most needed.

Thank you for your consideration of this testimony. Pursuant to R.I. Gen. Laws § 42-35-2.6, if these objections are not adopted, I respectfully request a statement of the reasons for rejecting them.

Respectfully submitted,



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