

**R.I. OFFICE OF THE PUBLIC DEFENDER’S
COMMENTS ON
“PROPOSED DEPARTMENT OF PUBLIC SAFETY AMENDMENTS TO
RULES AND REGULATIONS ESTABLISHING STATEWIDE POLICY FOR
THE USE AND OPERATION OF BODY-WORN CAMERAS”
[270-RICR-60-00-2]**

The Office of the Public Defender (“OPD”) appreciates the opportunity to offer comments on the proposed amendments to the regulations concerning the use of body-worn cameras (“BWC”) in use-of-force cases.

Whether to use force is a real-time decision that police must make in the moment. It follows that an officer’s decision whether to use force can only be based on their perceptions at the time of the incident and should not be influenced—one way or the other—by facts that they learn about later. Thus, those real-time perceptions should be recorded through reports/narratives and statements filed by the officer as soon as practical without the influence of viewing BWC recordings.

The OPD appreciates that the proposed changes keep in place the original 2.5.12(C)(1) requirement that officers make their initial statements before viewing the recordings; however, the proposed amendments would now allow officers to supplement their statements after viewing the video. The OPD understands why reports sometimes need to be supplemented; however, we suggest that safeguards be put in place in order to best preserve the officers’ original perceptions of the event. First, it should be made explicit that officers are to write their initial statements as completely and thoroughly as possible. In addition, the regulation should mandate that any later statements are clearly labeled as supplemental statements that were written after viewing the video, and are not woven into the original report.

In addition to these suggestions regarding the proposed changes to 2.5.12(C)(1), the OPD would like to offer commentary on the proposed changes to 2.5.12(C)(2) as well. This amendment would require the internal team investigating an alleged use of force incident to, “upon request, allow the body-worn camera officer and opportunity to view their own recording before taking a formal audio and/or video recorded statement from a police officer.” While the OPD appreciates that, under 2.5.12(C)(1), the officers are still required to make an initial statement without first viewing the reports, we remain concerned about the fact that an officer must be given

an opportunity to view the recording before giving a **formal** audio or video recorded statement.

Allowing officers to view body camera recordings before giving a formal report will possibly—indeed, will be likely to—corrupt the officer’s memory. Law enforcement officers—like all of us—are subject to confirmation bias, which is the tendency to seek, interpret, and remember information that confirms one’s existing beliefs while ignoring or rejecting contradictory evidence. Once an officer has seen a video, it is impossible to prevent the recording from influencing their independent recollection of the event. In order to resolve these cases in a just manner, it is important the officers’ report captures what they actually perceived at the moment the decision to use force was made—not what they saw afterwards upon watching the video. Again, this is an all-to-human tendency, and even an actor with the best of intentions is subject to these biases. Therefore, it would be most prudent to ensure that the officer’s formal statement is taken **before** they can have their memory influenced by the recording, whether deliberately or not.

In conclusion, permitting the police officers to view body camera recordings before making a formal statement would not promote the transparency and integrity of police investigations. The potential dangers of mixing facts that are recalled independently, recollections that are refreshed by viewing a recording, and facts not previously known but that are learned by viewing a recording can be mitigated by a general prohibition against officers viewing the body camera footage until after both the initial and formal statements are filed, and ensuring that any supplemental statements made after viewing the footage are kept separate from the initial reports and clearly labeled as such.

Thank you for your consideration of our commentary.