ACCESS/ Rhode Island
Freedom of Information Coalition

COMMENTS ON PROPOSED DEPARTMENT OF PUBLIC SAFETY AMENDMENTS TO RULES AND REGULATIONS ESTABLISHING STATEWIDE POLICY FOR THE USE AND OPERATION OF BODY-WORN CAMERAS
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ACCESS/RI is a broad-based, non-profit freedom of information coalition dedicated to improving citizen access to the records and processes of government in Rhode Island. The coalition consists of a number of organizations that work on open government issues, including Common Cause RI, the ACLU of RI, the RI Press Association, the New England First Amendment Coalition, and the League of Women Voters of RI. We offer this testimony in response to the Department's annual review of its police body-worn camera (BWC) regulations.

While the Department is not proposing this year any amendments to the regulations that directly implicate our coalition's interests, we feel it is important to reiterate concerns that we have expressed in the past about the regulations, as we continue to believe that these rules could be strengthened to promote greater transparency and accountability.

Before reiterating those concerns, we offer a more general observation. The rule-making notice refers to review of the policy by "stakeholders" and that proposed amendments reflect "feedback received from multiple law enforcement agencies." We believe it would behoove the Department in future years to also reach out to the broader public community for initial input since they, as much as police officers, have a vested interest in the accountability that the use of BWCs is supposed to foster. For example, public entities like the Providence External Review Authority and private organizations like Rhode Island Community for Justice are just as much "stakeholders"

as police chiefs when it comes to police oversight. Consideration of those perspectives before, not just after, the annual review is sent out for public comment would, we submit, better match the goal of this important program.

With that observation, we cite below for your renewed consideration comments that we submitted when these rules were first proposed in 2022 and that we consider just as valid today.

1. **Section 2.5.4(B)(1):** This section concerns the responsibilities that a BWC officer has at the conclusion of their shift, including a requirement that all BWC footage be uploaded and appropriately flagged for retention. This section authorizes extensions for compliance with the upload/flagging requirement "on a case-by-case" basis. We recognize that there may be legitimate circumstances under which the uploading of BWC videos may not be immediately practicable, such as, for example, in the midst of a technological failure or an emergency. But there should be an articulated "for cause" basis for granting an extension, and one that discourages or prohibits extensions after "use of force" or other controversial incidents, where the video could be critical for a prompt investigation of the event and release of the footage to the public.

2. Section 2.5.5(A)(3). This section explains the responsibilities of supervisors with respect to BWC footage and requires documentation when a BWC recording was interrupted. We believe the length of the interruption and the nature of the incident at which it occurred should be included in the documentation, and explicitly specified in the regulation.

3. Section 2.5.5(C)(1): For oversight purposes, this subsection requires supervisors to review at least one BWC recording a month of officers under their command. In order to

appropriately ensure meaningful and unbiased oversight of this BWC implementation, we believe that this provision should specify that the review involve a designated time period chosen at random that can capture omissions as well as commissions – i.e., checking for times when a camera should have been activated by the officer but was not.

4. Section 2.5.5(C)(2). This subsection requires supervisors up the chain of command to further randomly review BWC recordings each month. We believe it should spell out in greater detail the random auditing *of personnel* (not just the recording) by requiring that every officer using a BWC have an equal chance of being audited in a given month.

5. Section 2.5.6(B)(2)(e): This section allows for deactivation of a BWC if "an arrestee is brought to a location within a Department facility that has a functioning surveillance system." However, if an interaction between a civilian and a law enforcement officer has not officially concluded, we believe that the BWC should continue to be activated to ensure that a comprehensive understanding of the interaction is available, regardless of the presence of supplementary camera or recording devices. After all, facility cameras can malfunction or be placed in such a way as to not provide the best perspective. Publicized incidents of police interactions have often demonstrated the value of multiple viewing positions of a disputed encounter, and that is no less true if it happens to occur in a police facility.[1]

6. Section 2.5.6(B)(3): This section deals with deadly force incidents, and authorizes an officer involved in such an incident to temporarily mute their BWC when instructed to do so by

[1] To offer a concrete example, we note the 2021 assault conviction of Cranston police officer Andrew Leonard, whose actions at the police station were captured by the facility's surveillance cameras. If the officer had a BWC, this proposal would have allowed Leonard to turn off his camera while assaulting the person in his custody.

a supervisor. This provision should require the supervisor to identify the specific grounds under §2.5.10(c) for making that decision.

7. Section 2.5.10(A)(4): This subsection allows an officer to consider the "presence of individuals who are not the subject of the interaction between the BWC Officer and members of the public" in deciding to "mute," "stop," "divert," or "record only audio." A recording could also be stopped or muted if "individuals who appear to be minors" are present or if the officer consults with "other members of law enforcement." These exceptions are confusing and overbroad, as they appear to give extensive authority to officers to stop recordings in situations that do not warrant deactivation, such as when footage would incidentally capture uninvolved bystanders, minors who are part of the interaction with police, or relevant conversations about the incident between officers.[2] In many of these instances, the presence and use of BWCs would be extremely important for accountability purposes.

In some instances, these situations might provide valid reasons for *redacting* a recording when releasing it to the public, but not for failing to record it in the first place, if only for internal investigatory purposes. These exceptions, because of their breadth, could be easily abused. We believe this provision should be much more narrowly crafted and clarified to ensure that the exceptions don't swallow the rule.

8. Section 2.5.10(B): This section addresses the recording of victims and witnesses and requires that a BWC officer "weigh any reasonable expectation of privacy in determining whether to activate or discontinue recording." This open-ended authority should be clarified and narrowed,

[2] As worded, an officer could shut off or mute their BWC if they were effectuating a questionable arrest of a juvenile among a group of teenagers, or turn off the audio while another officer on the scene discusses with them the improper restraint of a suspect.

as the comments of those individuals will often be critical to the investigation of an incident under scrutiny. Further, while we appreciate that some of these conversations may very well deserve privacy protection from the general public, that is a separate issue from recording them in the first place. In almost all instances, we assume these recordings will be helpful to the department itself in pursuing criminal investigations, for the same reasons it has become best practice to record the interrogations of criminal suspects. If there are privacy considerations that warrant discontinuing recordings even for internal purposes, they should be spelled out more clearly.

9. Section 2.5.10(C): For reasons similar to those we expressed about Section 2.5.10(A)(4), we are concerned about allowing officers to deactivate BWCs while consulting with other officers "pertaining to criminal investigation" or "law enforcement strategy." These broadly worded exceptions could be used to hide relevant conversations between police engaged in possible misconduct. We note that the Massachusetts State Police policy on BWCs limits muting of recordings to much more specific circumstances, such as protecting the safety of victims or witnesses, revealing confidential strategy, etc. Again, it's important to differentiate between circumstances when a recording could be redacted from public inspection and when it should not be made at all.

10. Section 2.5.13(D): This subsection dealing with public access to BWC recordings creates special rules for footage involving serious use of force incidents. While those rules are ostensibly designed to allow access to BWC recordings when APRA would otherwise permit *withholding* the footage from the public, we are concerned that they fail to adequately take into account the public's strong interest in gaining prompt access to BWC footage in those situations.

Under the current language, BWC recordings "from an AG Protocol incident shall be provided to the public...no later than upon the substantial completion of the investigation," which is further described to mean that "evidence has been collected and witnesses have been interviewed," with the *expectation* that substantial completion occurs "within thirty (30) days." We consider this standard for public release to be too broad and imprecise, as it could keep footage of highly publicized incidents secret for months. Rather, we believe that recordings of incidents of alleged police misconduct should be released sooner rather than later and that the policy itself should encourage prompt release in those instances, but certainly no longer than 30 days, as there are good reasons for a shorter timeframe.

Rarely should the disclosure of a recording taken in public in a high-profile incident "be expected to interfere with investigations of criminal activity" so as to qualify for secrecy under APRA. To the contrary, its release may aid in such investigations. Indeed, as we have seen in many such situations, there may be *private* recordings that have already been released, making any claims about investigation interference moot. We believe the time for releasing recordings in such instances should be measured in days, not an indefinite and amorphous period of time which could stretch for months. We urge that this provision more clearly delineate and confine the circumstances warranting disclosure only after "substantial completion" of an investigation, and that the 30-day period should be a hard ceiling after which the footage must be released.

11. Section 2.5.15: Under this section, violations of these regulations subject individuals to "appropriate remedial or disciplinary action." We urge that the regulations be amended to further provide that any instances of violations imposed pursuant to this section and any non-compliance found through the audits conducted under §2.5.5 be made public on a quarterly basis (without

providing individually identifiable information of the officer). This disclosure will provide some minimum level of public oversight and knowledge as to how effectively these regulations are being complied with.

As before, we ask you to apprise us, per the Administrative Procedures Act, of the reasons if you do not accept any or some of the recommendations we have offered. Thank you.

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