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## New England First Amendment Coalition

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*SENT VIA EMAIL*

September 24, 2021

To Whom It May Concern,

I'm writing on behalf of the New England First Amendment Coalition, the region's leading advocate for First Amendment freedoms and the public's right to know about government.

Thank you for the opportunity to submit comments concerning the use and operation of police body-worn cameras. Attached are the suggestions of Access Rhode Island, a coalition of open government advocates that includes our organization. On matters of transparency, the comments provided therein reflect the positions of NEFAC.

Outside the scope of government transparency, we have additional concerns about the use of body-worn cameras to deter or chill First Amendment-protected activity. Any policy that is created by your respective office should have sufficient safeguards in place for citizens exercising their constitutional rights. We recommend including in your policy the following provision:

**Body-worn cameras shall not be used to gather intelligence information on any First Amendment-protected activity, including but not limited to peaceful assembly, newsgathering, and religious practice.**

Thanks again for your consideration. We look forward to providing additional guidance beyond this initial comment period and throughout the rule-making process.

Sincerely,

Justin Silverman  
Executive Director

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Paul and Ann Sagan



The Boston Globe

THE ROBERTSON FOUNDATION



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identification purposes only.

September 23, 2021

Office of the Attorney General  
150 South Main Street  
Providence, RI 02903

Thank you for soliciting input as part of the Advanced Notice of Proposed Rulemaking regarding a Policy for Use and Operation of Body-Worn Cameras. Such a statewide policy is much needed as the use of body-worn cameras expands in Rhode Island.

We start from the position that the use of body-worn cameras is a welcome measure for holding police officers and police departments accountable as they exercise the police powers of the state. That accountability can only be accomplished if the body-worn cameras are used consistently and the footage they capture is released in a timely manner.

§ 42-161-4 specifies eight (8) areas that a body-worn camera policy must cover:

- 1) Proper use of equipment;
- 2) Data and equipment security;
- 3) Activation and deactivation of cameras;
- 4) Notification to the public of recordings;
- 5) Records retention procedures and timelines;
- 6) Access to data by law enforcement and the public;
- 7) Privacy protections, including redaction procedures, and;
- 8) Compliance monitoring.

Our comments do not address all the areas you are tasked by statute with considering for a policy because our area of interest and expertise is restricted to transparency and accountability.

We believe that body-worn cameras should be used consistently. That means every officer who responds to calls where they interact with the public should be equipped with a body-worn camera.

Body-worn cameras should be activated whenever officers interact with the public in response to a call, or when they are engaged in a law enforcement or investigatory encounter, including but not limited to an arrest, detention, search, or traffic stop. To eliminate the possibility that an officer forgets to activate the camera when they arrive at the scene, they should activate the camera at the moment they are dispatched, if they

are dispatched. In situations where activation of the body-worn camera poses a risk to the officer's safety, they should activate the camera as soon as reasonably possible.

The primary vendors for body-worn cameras allow add-on technology to automatically trigger when the camera records. When an officer discharges their firearm or uses a Taser - or similar less-lethal device - the camera should automatically record without requiring the officer to press a button.

We believe body-worn camera footage should be retained for a minimum of three years. In instances when the footage involves a use of force incident, or when an officer is subject to a complaint, it should be retained for six years.

The release of body-worn camera footage is currently governed by the Access to Public Records Act (APRA). The APRA sets a floor, not a ceiling, for the release of records. In the case of law enforcement records, that floor is already high, and we believe any policy should promote release of body camera footage whenever, and as expeditiously as, possible.

Your office has stated the body-worn camera footage should be released when an investigation is "substantially complete." We believe that is too long a timeframe. We believe that when there is a high-profile incident, including, but not limited to, every time there is a use of force incident, footage should be released within one week. In all other instances, release should be subject to the normal timeframe for records under the Access to Public Records Act.

Reasonable steps must be taken to protect the privacy of members of the public who appear in body-worn camera footage. Minors, victims of crimes, and confidential sources should be redacted using technology that protects their identity. When possible, redaction should be done by blurring a person's identity, not editing the footage.

Any policy should have a clear system for reviewing any deviations from the policy for activation of, retention of, and redaction of the body-worn camera and footage. Officers who deviate from the policy should be subject to appropriate disciplinary action.

We appreciate your consideration of our input on this matter.

Signed,

Steven Brown, Executive Director, ACLU of Rhode Island\*  
Jane Koster, President, League of Women Voters of Rhode Island

Linda Levin, President, ACCESS/RI

John Marion, Executive Director, Common Cause Rhode Island

John Pantalone, Associate Professor of Journalism, University of Rhode Island

Justin Silverman, Executive Director, New England First Amendment Coalition

\*The ACLU of Rhode Island is also separately submitting more detailed testimony on this proposal.