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Comments

Now Recording: Ensuring Accountability in Rhode Island's Police Body-Worn Camera Legislation

Rebecca Costello*

“Body cameras help to record what happens. It may not be the golden ticket, the golden egg, the end-all-fix-all, but it helps to paint a picture of what happens during a police stop.” – Clementa C. Pinckney¹

INTRODUCTION

A bystander reaches out to touch one of the arresting officers when a third police officer “grabs the bystander and shoves him and another woman away, slamming into another young man who hits a light pole face-first and falls into the street.”² The cellphone video

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1. Matthew Weaver & Paul Bowers, *Charleston Shooting: State Senator Clementa Pinckney Among Victims*, THE GUARDIAN (June 18, 2015, 3:50 PM), <https://www.theguardian.com/us-news/2015/jun/18/charleston-church-shooting-state-senator-victim> [<https://perma.cc/5VV2-QPEJ>].

2. Amanda Milkovits, *Violent Arrest in Newport, R.I., Where Police Also Shoved and Punched Bystanders, is Under Review*, BOS. GLOBE (June 27, 2022, 3:07 PM), <https://www.bostonglobe.com/2022/06/27/metro/violent-arrest->

recording caught the entire chaotic scene on Thames Street in Newport, Rhode Island on June 26, 2022.³ The video pans back to the original arrest, where another bystander “walks by and stops, the officer turns and strikes him in the face, knocking him to the ground.”⁴ The scene erupts as people begin shouting at the police officers.⁵ Another cellphone video shows the second bystander “lying near the curb as an officer punches him in the head while arresting him.”⁶ The Newport Police Department is one of only two police departments in the state that requires officers to wear body-worn cameras, yet despite that obligation,⁷ the three police officers involved in the incident were not equipped with the devices.⁸ The only police officer equipped with a body camera that night was a sergeant who showed up on scene after the incident concluded.⁹

Recently, police departments across the country began implementing body-worn cameras to increase police oversight, transparency, and accountability.¹⁰ One study found that police officers equipped with body-worn cameras are forty percent less likely to have use of force reports against them¹¹ and are twenty-five percent less likely to have a civilian complaint lodged against them when

newport-ri-where-police-also-shoved-punched-bystanders-is-under-review/ [https://perma.cc/ZQ3K-5YU5].

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. Laura Damon, *As State Ok's Body Cameras for All Police Departments, Newport Has Been Ahead of The Curve*, NEWPORT DAILY NEWS (July 12, 2021, 5:48 AM), <https://www.newportri.com/story/news/local/2021/07/12/newport-police-department-ahead-curve-body-cameras/7859659002/> [https://perma.cc/CB6P-S7TF].

8. Amanda Milkovits, *Newport Police Release Video and Reports on Thames Street Arrests*, BOS. GLOBE (July 1, 2022, 6:13 PM), <https://www.bostonglobe.com/2022/07/01/metro/newport-police-release-video-reports-thayer-street-arrests/> [https://perma.cc/ZF4A-TAUC].

9. *Id.*

10. Morgan C. Williams Jr. et al., *Body-Worn Cameras in Policing: Benefits and Costs 2* (Nat'l Bureau of Econ. Rsch., Working Paper No. 28622, 2021).

11. ANTHONY BRAGA ET AL., THE BENEFITS OF BODY-WORN CAMERAS: NEW FINDINGS FROM A RANDOMIZED CONTROLLED TRIAL AT THE LAS VEGAS METROPOLITAN POLICE DEPARTMENT 8–9 (2017) (noting a “40.7 percent difference in the percentage of treatment officers relative to control officers who generated at least one use of force report”).

compared to their non-equipped peers.¹² Despite clear evidence to support the universal use of body-worn camera technology, national adoption and operation of the technology by law enforcement agencies remains inconsistent.¹³

To address this issue, Rhode Island passed a bill in the 2021 legislative session that created a statewide grant program to facilitate the voluntary adoption of body-worn cameras by police departments and encourage the creation of standardized policies and procedures tied to program funding.¹⁴ In October 2022, Attorney General Peter Neronha released the Statewide Body-Camera Policy which created standardized policies and procedures for the use of body-worn cameras in police departments across the state.¹⁵ To receive funding for the implementation of body-worn cameras, police departments must adopt the Statewide Body-Camera Policy.¹⁶ However, the policy left enforcement to individual police departments with little oversight.¹⁷ It merely states, “[s]upervisors that observe or become aware of a violation of this Policy shall ensure appropriate remedial action or referral for disciplinary action.”¹⁸ The statewide policy closely mirrors language from the Providence Police Department’s existing body-worn camera policy.¹⁹ In spite of this policy, there have been highly publicized incidents of Providence police officers engaging in serious misconduct where some or

12. *Id.* (noting a twenty-five percent reduction in “treatment officers relative to control officers who generated at least one complaint”).

13. *See, e.g., One-Fifth of LAPD Officers Slow to Turn on Body Cameras in Use-of-Force Incidents, Report Shows*, ABC7 EYEWITNESS NEWS (July 21, 2021), <https://abc7.com/lapd-body-worn-cameras-use-of-force-los-angeles-police-commission/10901418/> [<https://perma.cc/BC4X-52PN>]; *see also*, BRAGA ET AL., *supra* note 11 at 2, 8.

14. R.I. GEN. LAWS § 42-161-3 (2021).

15. *See* 110-10 R.I. CODE R. § 2 (LexisNexis 2022).

16. *Id.* § 2.3.

17. *See id.* § 2.5.5.D.

18. *Id.*

19. PROVIDENCE POLICE DEPARTMENT, BODY-WORN CAMERA (BWC) PROGRAM 15 (2022), <https://www.providenceri.gov/wp-content/uploads/2022/11/320.02-Body-Worn-Camera-BWC-Program.pdf> [<https://perma.cc/M8L3-D7KY>] (“Any violations of law or Department policy that are found during a review shall be reported in writing to the next supervisor in the reviewer’s chain of command for remedial action. Violations of a serious nature shall be forwarded to the Office of Professional Responsibility and to the Chief of Police.”).

all of the officers involved did not activate their body-worn camera.²⁰

Effective body-worn camera implementing legislation requires stringent accountability measures to ensure compliance with standardized policies and procedures.²¹ To harness the potential of this innovative technology, the Rhode Island legislature must mandate both the adoption of body-worn cameras and adherence to the standardized policies and procedures.²² The creation of civil liability, specifically creating the presumption of bad faith for the torts of negligent or intentional spoliation of evidence for individual police officers who fail to follow procedures, creates the necessary incentive to ensure full compliance with the mandated policies and procedures.²³

This Comment argues that the Rhode Island legislature should amend the existing legislation to mandate the implementation of body-worn cameras by all Rhode Island law enforcement agencies and require adherence to standardized policies and procedures. It also argues that the legislature should strengthen the enforcement of these procedures by requiring departments to establish disciplinary criteria for policy violations and by creating independent civil liability for police officers who fail to follow the policies. In Part I, this Comment provides necessary context on how body-worn cameras work and their increased use and regulation throughout the country. Part II provides the current Rhode Island legislation and statewide administrative regulations of police body-worn cameras. Part III identifies issues with the current legislation and administrative regulations and details why they must be enhanced. Part IV outlines the proposed legislative recommendations and details

20. See *ACLU Calls for Stronger Action to Address “Persistent” Providence Police Body Camera Violations*, ACLU R.I. (Jan. 18, 2021, 10:00 AM), <https://www.riaclu.org/en/news/aclu-calls-stronger-action-address-persistent-providence-police-body-camera-violations> [https://perma.cc/UWX4-YXCF] [hereinafter *ACLU R.I. Call for Action*].

21. *Police Body-Worn Cameras: Let’s Do It Right*, ACLU MASS., <https://www.aclum.org/en/police-body-worn-cameras-lets-do-it-right> [https://perma.cc/95BT-BEL5] (last visited Nov. 10, 2022).

22. See, e.g., 2020 COLO. SB. 217 (requiring law enforcement to utilize body-worn cameras and creating standardized procedures for their use).

23. See, e.g., N.M. STAT. ANN. § 29-1-18 (2020) (enacting legislation that creates civil liability for individual officers who fail to follow the statewide body-worn camera policy).

how the proposed changes would address the issues identified in Part III. Lastly, Part V considers counterarguments against the proposed stronger enforcement mechanisms and concludes they are deficient.

I. HISTORY AND USE OF POLICE BODY-WORN CAMERAS

A. *What are Body-Worn Cameras and How do they Work?*

Officer body-worn cameras are small battery-operated devices, typically worn on the officer's chest, that record exchanges between police and members of the community who can include suspects, victims, and the greater public.²⁴ Body-worn cameras possess varying functionalities: manual or automatic activation,²⁵ real-time video streaming,²⁶ touch-screen controls,²⁷ and the ability to play-back recordings in the field.²⁸ When an officer activates a body-worn camera, it records audio and video footage.²⁹ Certain models also collect timestamp and location information.³⁰ Additionally, individual law enforcement agencies or third party vendors maintain and control the recorded footage on external databases.³¹

B. *Use of Police Body-Worn Cameras in the United States*

On August 9, 2014, police officer Darren Wilson shot and killed eighteen-year-old Michael Brown in Ferguson, Missouri.³² A fierce debate ensued about what happened: Officer Wilson maintained he acted in self-defense, and a St. Louis County grand jury declined to

24. BUREAU OF JUST. ASSISTANCE, U.S. DEPT. OF JUST., BODY-WORN CAMERA FREQUENTLY ASKED QUESTIONS 1 (2015), https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/BWC_FAQs.pdf [<https://perma.cc/WMB3-YS3B>].

25. *Street Level Surveillance: Body-Worn Cameras*, ELEC. FRONTIER FOUND. (Oct. 18, 2017), <https://www.eff.org/pages/body-worn-cameras> [<https://perma.cc/8LYM-HEUV>] (body-worn cameras can also be placed on sunglasses or hats but are commonly mounted on a police officer's chest).

26. *Id.*

27. BUREAU OF JUST. ASSISTANCE, U.S. DEPT. OF JUST., *supra* note 24, at 1.

28. *Id.*

29. *Street Level Surveillance: Body-Worn Cameras*, *supra* note 25.

30. *Id.*

31. *Id.*

32. Mitch Smith, *Policing: What Changed (and Didn't) Since Michael Brown Died*, N.Y. TIMES (Aug. 7, 2019), <https://www.nytimes.com/2019/08/07/us/racism-ferguson.html> [<https://perma.cc/9AZC-G6UR>].

indict him.³³ Meanwhile, witnesses challenged Officer Wilson's characterization of the event as they found the shooting unjust.³⁴ All those involved agreed – their sole point of consensus – that video footage of the incident “could have helped find the truth.”³⁵ As a direct result of the police shooting death of Michael Brown, the federal government began providing funding for state and local police departments to help with the costs of implementing new body-worn camera technology.³⁶ Five years after the police shooting of Michael Brown the New York Times called the implementation of body-worn cameras “the most tangible legacy of Ferguson.”³⁷

Body-worn cameras remain a crucial tool for accountability.³⁸ For example, the prosecution of the Minneapolis police officers who murdered George Floyd in the summer of 2020 presented body-worn camera footage as evidence.³⁹ As a result of George Floyd's murder, the Minnesota Department of Human Rights launched an investigation into the Minneapolis Police Department.⁴⁰ Recorded bodycam footage played an important role in showing that the Minneapolis Police Department engaged in a “pattern of discriminatory, race-based policing.”⁴¹ Research also shows that body-worn cameras correlate with a reduced number of citizen complaints filed against police officers, and when a citizen files a complaint

33. *Id.*

34. *Id.*

35. *Id.*

36. Julia Edwards, *Obama Administration Says to Provide \$20 Million for Police Body Cameras*, REUTERS (May 1, 2015, 7:35 AM), <https://www.reuters.com/article/us-usa-police-cameras/obama-administration-says-to-provide-20-million-for-police-body-cameras-idUSKBN0NM3PL20150501> [<https://perma.cc/XG2C-LPAC>].

37. Smith, *supra* note 32.

38. See Cheryl Corley, *Study: Body-Worn Camera Research Shows Drop in Police Use of Force*, NAT'L PUB. RADIO, (Apr. 26, 2021, 12:36 PM), <https://www.npr.org/2021/04/26/982391187/study-body-worn-camera-research-shows-drop-in-police-use-of-force> [<https://perma.cc/F94N-3CTF>].

39. *Id.*

40. See MINN. DEP'T. OF HUM. RTS., INVESTIGATION INTO THE CITY OF MINNEAPOLIS AND THE MINNEAPOLIS POLICE DEPARTMENT 5 (2022), <https://mn.gov/mdhr/mpd/findings/> [<https://perma.cc/YK3Q-VXJE>] (click “Read the Findings”).

41. *Id.* at 39.

erroneously, body-worn camera footage may corroborate the officer's account.⁴²

C. *Regulation of Body-Worn Cameras in the United States*

Twenty-six states, not including Rhode Island, implemented legislation regulating the use of body-worn cameras by law enforcement.⁴³ Body-worn camera regulations generally define circumstances where activation of the devices is mandatory, discretionary, or prohibited.⁴⁴ Legislation also typically outlines the use, maintenance, and storage of the body-worn camera devices and the policies for reviewing bodycam footage, retention of records, and determining when public release of bodycam footage is appropriate.⁴⁵ Most state statutes—seventeen of the twenty-six⁴⁶—do not mandate the use of body-worn cameras for law enforcement; instead they either create statewide regulations for law enforcement agencies that choose to implement the devices or require the individual agencies to create their own policies.⁴⁷ However, ten states with police body-worn camera legislation mandate the implementation of the devices.⁴⁸ Several states' statutes include strong enforcement

42. Brett Chapman, *Body-Worn Cameras: What the Evidence Tells Us*, NAT'L INST. JUST. J., Jan. 2019, at 1, <https://www.ojp.gov/pdffiles1/nij/252035.pdf> [<https://perma.cc/4XK5-3WL3>].

43. *Police Body-Worn Cameras Legislation Tracker*, URB. INST. (Jul. 14, 2022), <https://apps.urban.org/features/body-camera-update/> [<https://perma.cc/X4SV-FGW4>].

44. See, e.g., S.B. 20-217, 72d Gen. Assemb., Reg. Sess. (Colo. 2020); N.M. STAT. ANN. § 29-1-18 (2020); 83 Del. Laws 2 (2021).

45. See, e.g., N.C. GEN. STAT. § 132-1.4A (2021); COLO. REV. STAT. § 24-31-902 (2021); N.J. STAT. ANN. § 40A:14-118.5 (West 2022).

46. See *Police Body-Worn Cameras Legislation Tracker*, *supra* note 43.

47. See, e.g., N.C. GEN. STAT. § 132-1.4A (2021); FLA. STAT. § 943.1718 (2017).

48. The ten states that mandate implementation of body-worn camera devices are Colorado, Connecticut, Delaware, Illinois, Maryland, New Jersey, New Mexico, New York, Nevada and South Carolina. See COLO. REV. STAT. § 24-31-902 (2021); GEORGE MILES, OLR BACKGROUNDER: BODY CAMERAS, DASHBOARD CAMERAS, AND OTHER POLICE RECORDING EQUIPMENT, OFFICE OF LEGISLAT. RSCH. DOC. NO. 2020-R-0173 (Ct. 2020); DEL. CODE ANN. tit. 11, § 8402A (2021); 50 ILL. COMP. STAT. 706 / 10-15; MD. CODE ANN., PUB. SAFETY § 3-511 (LexisNexis 2022); N.J. STAT. ANN. § 40A:14-118.5 (West 2022); N.M. STAT. ANN. § 29-1-18 (2020); N.Y. EXEC. LAW § 234 (McKinney 2021); NEV. REV. STAT. § 289.830 (2019); S.C. CODE ANN. § 23-1-240 (2015).

mechanisms to ensure compliance with body-worn camera policies.⁴⁹ Three states create civil liability, for either the individual police officer or the law enforcement agency, for an individual officer's failure to follow the body-worn camera policy.⁵⁰ At least two states create criminal liability for failure to follow the body-worn camera policy.⁵¹ Overall, states vary significantly on the type and scope of body-worn camera legislation.⁵²

II. RHODE ISLAND BODY-WORN CAMERA LEGISLATION & STATEWIDE POLICY

A. *Current Legislation (as of October 2022)*

In July 2021, the Rhode Island legislature – at the behest of the Rhode Island Attorney General – passed legislation that authorized the Director of the Department of Public Safety to provide funding to Rhode Island police departments to implement body-worn cameras, and authorized the creation of a statewide body-worn camera policy that police departments must adhere to as a requirement to receive funding.⁵³ In October 2022, the Attorney General's Office announced that the state received \$16 million in federal funding to finance the implementation of body-worn cameras in every police department that chose to participate in the program.⁵⁴ The press release announced that the federal funding covers the costs of 1,773 body-worn cameras for forty-two law enforcement agencies across the state.⁵⁵ Rhode Island Attorney General Peter Neronha stated that this initiative supplies enough

49. See, e.g., MINN. STAT. § 13.825 (2022); COLO. REV. STAT. § 24-31-902 (2021); IND. CODE § 35-44.1-2-2.5 (2021); N.C. GEN. STAT. § 132-1.4A (2021); N.M. STAT. ANN. § 29-1-18 (2020).

50. See, e.g., COLO. REV. STAT. § 24-31-902 (2021); N.M. STAT. ANN. § 29-1-18 (2020); MINN. STAT. § 13.825 (2022).

51. See, e.g., IND. CODE § 35-44.1-2-2.5 (2021); N.C. GEN. STAT. § 132-1.4A (2021).

52. See, e.g., COLO. REV. STAT. § 24-31-902 (2021); S.C. CODE ANN. § 23-1-240 (2015); N.C. GEN. STAT. § 132-1.4A (2021).

53. R.I. GEN. LAWS § 42-161-3 (2021).

54. Press Release, Peter F. Neronha, R.I. Att'y Gen., State, Federal, and Law Enforcement Leaders Announce \$16 Million in Grants for Police Departments Statewide for Body-Worn Cameras (Oct. 12, 2022), <https://riag.ri.gov/press-releases/state-federal-and-law-enforcement-leaders-announce-16-million-grants-police> [https://perma.cc/NY8S-VYBP].

55. *Id.*

funding for a body-worn camera for almost every front-line police officer.⁵⁶ The state and federal funding will finance the program for five years, starting in 2022 and ending in 2026.⁵⁷

B. *Statewide Body-Worn Camera Policy (as of October 2022)*

Along with the funding announcement, Attorney General Peter Neronha also released the statewide body-worn camera policy.⁵⁸ The scope of the statewide policy reiterates language from the legislation that states the policy applies to “any Rhode Island law enforcement agencies receiving grant funds through the [Statewide Body-Worn Camera] Program.”⁵⁹ The legislation – and the accompanying policy – requires that the agency agree to adopt the statewide body-worn camera policy before the disbursement of program funding.⁶⁰ Additionally, the policy creates “a floor, not a ceiling,” and law enforcement agencies may create more stringent policies beyond what is required in the statewide policy so long as the enhancements do not conflict with any provisions of the policy.⁶¹

The policy defines a body-worn camera officer as any officer “assigned to wear a [body-worn camera].”⁶² The policy does not identify requirements for who must wear a body-worn camera, but does understandably exclude undercover officers from the policy requirements.⁶³ A body-worn camera officer must ensure proper functionality of the device, including that the device be fully charged and properly positioned.⁶⁴ All video footage shall be uploaded at the end of the officer’s shift and any footage that needs to be preserved must be flagged; however, the policy fails to define what footage merits flagging.⁶⁵

56. Mark Reynolds, *Grant Money Will Enable Nearly Every Rhode Island Police Officer to Have a Body Camera*, PROVIDENCE J. (Oct. 12, 2022, 7:35 PM), <https://www.providencejournal.com/story/news/local/2022/10/12/ri-police-body-camera-program-grants-awarded-statewide/10478785002/> [https://perma.cc/BMJ6-RSYV].

57. *Id.*

58. Press Release, Peter F. Neronha, R.I. Att’y Gen., *supra* note 54.

59. 110-10 R.I. CODE R. § 2.3 (LexisNexis 2022).

60. *Id.*

61. *Id.*

62. *Id.* § 2.5.3.C.

63. *Id.*

64. *Id.* § 2.5.4.

65. *Id.*

The policy also identifies the responsibility of the immediate supervisor of a body-worn camera officer, and notes that a supervisor may also be assigned to wear a body-worn camera.⁶⁶ The responsibilities of a body-worn camera supervisor include examining body-worn camera recordings to check that subordinates are complying with the policy.⁶⁷ Specifically, the direct supervisor of a police officer assigned to wear a body-worn camera must review one body-worn camera recording for each of their subordinates per month to ensure compliance.⁶⁸ Additionally, higher-up supervisors must randomly review body-worn camera footage at unspecified intervals to ensure compliance with the statewide policy.⁶⁹ Notably, individual departments determine enforcement of this policy with little oversight.⁷⁰ The policy itself only requires that supervisors “ensure appropriate remedial action or referral for disciplinary action” if they witness policy violations.⁷¹

III. ISSUES WITH THE CURRENT LEGISLATION & WHY WE MUST ENHANCE THE LEGISLATION

A. *Voluntary Nature of Implementation & Adherence to Statewide Policy*

Currently, body-worn camera implementation in Rhode Island remains voluntary and nothing prevents a law enforcement agency from opting out at any point.⁷² Further, the legislation only makes adherence to the body-worn camera policy contingent on the law enforcement agency receiving state funding for the devices.⁷³ After the five-year funding period passes, police departments may

66. *Id.* §§ 2.5.3–5.

67. *Id.* § 2.5.3.F.

68. *Id.* § 2.5.5.C.1.

69. *Id.* § 2.5.5.C.2.

70. *See id.* § 2.5.5.D.

71. *Id.*

72. *See Community College of Rhode Island Says No to Body-Worn Camera Program*, NBC 10 NEWS (Oct. 13, 2022, 5:45 PM), <https://turnto10.com/news/local/community-college-of-rhode-island-declines-body-worn-camera-program> [<https://perma.cc/A7GA-EHZ4>] (noting the Community College of Rhode Island chose not to implement body-worn cameras, citing privacy concerns). *See generally* R.I. GEN. LAWS § 42-161-3 (2021).

73. R.I. GEN. LAWS § 42-161-3.

discontinue enforcing the policy.⁷⁴ A law enforcement agency could decide anytime during the five-year period to stop receiving grant funds, and therefore would not be required to follow the policy.⁷⁵ Allowing law enforcement to opt-out of the program, while it may increase law enforcement participation in the short term, ultimately thwarts the program's purpose of increasing accountability and transparency.⁷⁶ No one should be able to opt-out of accountability.

B. *Lack of Enforcement Mechanism*

The legislation and the statewide policy lack effective enforcement measures.⁷⁷ The legislation fails to specify what should happen if an agency or individual officer fails to comply.⁷⁸ While the statewide policy does address failure to comply, it leaves determination of remedial action or referral for disciplinary action up to the individual law enforcement agencies.⁷⁹ The policy fails to create consistent remedial and disciplinary actions for failure to follow the policy and lacks any external accountability.⁸⁰ Statewide remedial and disciplinary requirements would result in more consistent, reliable, and appropriate enforcement of the policy. Failure to include statewide requirements for enforcement will predictably result in inadequate enforcement of the policy.⁸¹ Inadequate enforcement undermines the whole purpose of the body-worn camera program, namely increasing accountability and transparency.

Starting in 2017, Providence and Newport became the first police departments in Rhode Island to implement body-worn

74. *See id.*

75. *Id.*

76. *See Community College of Rhode Island Says No to Body-Worn Camera Program, supra* note 72.

77. *See* R.I. GEN. LAWS § 42-161-3.

78. *Id.*

79. 110-10 R.I. CODE R. § 2.5.5.D (LexisNexis 2022).

80. *See id.*

81. *See generally* *ACLU R.I. Call for Action, supra* note 20 (explaining that Providence Police Department's body-worn camera policy lacks efficient enforcement procedures and the department's enforcement of the procedure is lackluster).

cameras.⁸² The Executive Director of the American Civil Liberties Union (“ACLU”) of Rhode Island previously called on the Providence Public Safety Commissioner and Providence Police Chief to “take stronger steps to enforce the department’s body camera policy.”⁸³ The impetus for the letter was numerous instances of Providence police officers failing to turn their body-worn cameras on during interactions with the public, thereby violating the city’s body-worn camera policy.⁸⁴ The ACLU of Rhode Island specifically described three high-profile incidents where Providence police officers did not activate their body-worn cameras which violated the department’s policy.⁸⁵ First, prosecutors charged a police officer with assault after he allegedly beat a civilian.⁸⁶ In that incident, only two of the three responding police officers activated their body-worn cameras.⁸⁷ The second incident occurred in June of 2020 when two officers, only one of whom activated their body-worn camera, drew their guns when they approached a Black firefighter sitting peacefully in his car parked outside his fire station.⁸⁸ In a third incident, three officers failed to activate their body-worn cameras during a controversial moped collision.⁸⁹ The ACLU of Rhode Island filed an access to public records request with the Providence Police Department in 2020.⁹⁰ These records revealed that between January 2018 and June 2020, the Department disciplined twenty of their officers for failing to activate their body-worn cameras.⁹¹ In all twenty disciplinary actions, the punishment for failing to activate body-worn cameras did not “exceed . . . a verbal reprimand.”⁹² The ACLU of Rhode Island’s open letter stated it believed that the low number of disciplinary actions was an indicator that the Providence Police Department’s process for identifying infractions of the body-worn

82. *Providence Police to Begin Using Body Cameras*, ABC6 NEWS (Oct. 4, 2017, 11:28 PM), <https://www.abc6.com/providence-police-to-begin-using-body-cameras/> [<https://perma.cc/E6QP-98KZ>]; Damon, *supra* note 7.

83. *ACLU R.I. Call for Action*, *supra* note 20.

84. *Id.*

85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.*

91. *Id.*

92. *Id.*

camera policy was insufficient.⁹³ These examples illustrate the dangers of non-existent enforcement of body-worn camera policies.⁹⁴

The Rhode Island legislation and statewide policy provide no external accountability measure nor redress for the people who are harmed by police officers' failure to use body-worn cameras.⁹⁵ At this time, individuals may only sue under established causes of actions, none of which address failing to properly use police body-worn cameras.⁹⁶ Further, suits against police for misconduct under established causes of action can be subject to qualified immunity.⁹⁷ Rhode Island's body-worn camera legislation and statewide policy's lack of external accountability is a critical weakness that must be remedied.

IV. PROPOSED LEGISLATION CHANGES

This Comment proposes that the Rhode Island legislature amend the existing statute to mandate the implementation of body-worn cameras for all public-facing police officers.⁹⁸ Additionally, the existing legislation should also mandate adherence to the statewide policies and procedures, regardless of whether the police department receives funding for the implementation or continued use of police body-worn cameras.⁹⁹ The current legislation must create strong enforcement mechanisms to ensure compliance with the policies and procedures regulating use of body-worn cameras.

93. *Id.*

94. *Id.*

95. *See generally* R.I. GEN. LAWS § 42-161-3 (2021) (omitting an external accountability provision); 110-10 R.I. CODE R. § 2 (LexisNexis 2022) (same).

96. *See* R.I. GEN. LAWS § 42-161-3 (lacking independent causes of action for police misconduct related to misuse of body-worn cameras).

97. *Qualified Immunity*, EQUAL JUST. INITIATIVE, <https://eji.org/issues/qualified-immunity/> [<https://perma.cc/6GUD-L7PF>] (last visited Mar. 10, 2023).

98. This recommendation necessarily excludes undercover officers from having to wear body-worn cameras. *See, e.g.*, COLO. S.B. 20-217(II)(A) (mandating body-worn cameras for all public-facing police officers, excluding undercover officers); N.M. STAT. ANN. § 29-1-18 (2020) (same).

99. *See* MILES, *supra* note 48 (noting that Connecticut legislation mandates body-worn cameras for public-facing police officers; delegates the creation of statewide policies to a statewide administrative board, the Police Officer Standards and Training Council, in collaboration with the Department of Emergency Services and Public Protection, and mandates that police officers adhere to the statewide policies).

Specifically, it should require the statewide administrative regulations regarding use of body-worn cameras outline disciplinary actions for officers who violate the body-worn camera policies and procedures.¹⁰⁰ The legislation should also create independent civil liability for police officers for the independent torts of negligent and intentional spoliation of evidence and establish a rebuttable presumption that an officer who violated the body-worn camera policy acted in bad faith.¹⁰¹ Furthermore, it must also specifically exclude qualified immunity as a defense to these torts.¹⁰² Intentional failure to activate body-worn cameras or tampering with their footage should be criminalized.¹⁰³ Finally, the legislation must create an evidentiary presumption favoring criminal defendants who can establish that pertinent body-worn camera footage was tampered with or destroyed.¹⁰⁴ This evidentiary presumption would protect the defendant from the impact of evidence tampering. These recommendations include legislative and policy best practices after a nationwide review of enacted body-worn camera legislation,¹⁰⁵

100. See COLO. S.B. 20-217(IV)(A) (defining certain types of misuse and includes disciplinary measures up to termination of the individual officer).

101. See N.M. STAT. ANN. § 29-1-18 (2020) (creating civil liability for police officers for the independent torts of negligent and intentional spoliation of evidence and establishes a rebuttable presumption that an officer in violation of the legislation acted in bad faith).

102. See COLO. S.B. 20-217(III)(2)(b), (5) (creating state cause of action similar to 42 U.S.C. § 1983 and specifically excluding qualified immunity as a defense).

103. See IND. CODE § 35-44.1-2-2.5 (2021) (criminalizing misuse and tampering with a body-worn camera by a police officer for the purpose of committing or concealing a crime).

104. See ACLU, A MODEL ACT FOR REGULATING THE USE OF BODY WORN CAMERAS BY LAW ENFORCEMENT (2021), https://www.aclu.org/sites/default/files/field_document/aclu_police_body_cameras_model_legislation_v3.1.pdf [<https://perma.cc/C68D-356Q>] (creating an evidentiary presumption favoring criminal defendants who can establish that pertinent police body-worn camera footage was tampered with or destroyed).

105. The legislative recommendations come from existing body-worn camera legislation in Colorado, New Mexico, Connecticut, and Indiana and include a recommendation from the ACLU's model body-worn camera legislation. See, e.g., COLO. SB. 20-217(II)(A); N.M. STAT. ANN. § 29-1-18 (2020); MILES, *supra* note 48; IND. CODE § 35-44.1-2-2.5 (2021).

model legislation from the ACLU,¹⁰⁶ and statewide policies.¹⁰⁷ These recommendations would make Rhode Island's body-worn camera legislation and statewide policy the strongest and most comprehensive in the nation.¹⁰⁸

A. *How Proposed Legislation Would Fix Issues with Current Legislation & Statewide Policy*

1. *Internal Remedial and Disciplinary Action*

Statewide standardized remedial and disciplinary proceedings prevent inconsistent or insufficient disciplinary action for body-worn camera policy infractions.¹⁰⁹ The proposed policy change creates clear expectations for both police officers and the public about what is expected of law enforcement personnel and the consequences for failing to follow established guidelines.¹¹⁰ This proposed policy change improves consistency by officers and establishes accountability.¹¹¹

It would be naïve to assume that, unlike every other human organization, law enforcement agencies are immune to personnel misconduct. A recent study on the San Diego police department's body-worn camera program showed that up to forty percent of police officers did not record enforcement actions as required by their

106. See ACLU, *supra* note 104.

107. The statewide body-worn camera policy recommendations come from existing statewide body-worn camera legislation in Connecticut. See MILES, *supra* note 48.

108. See ACLU, *supra* note 104 (indicating that no state body-worn camera legislation currently includes an evidentiary presumption for criminal defendants who can prove that police tampered with or destroyed body-worn camera footage). While most states mandate adherence to statewide body-worn camera policies or legislation only Colorado, New Mexico, and North Carolina define disciplinary proceedings or civil liability for misconduct. See COLO. SB. 20-217; N.M. STAT. ANN. § 29-1-18 (2020); N.C. GEN. STAT. § 132-1.4A (2021). Further, only Indiana criminalizes tampering with a body-worn camera or destroying body-worn camera footage by a police officer. See IND. CODE § 35-44.1-2-2.5 (2021).

109. See Darrel Stephens, *Police Discipline: A Case for Change*, U.S. DEPT. OF JUST. OFF. OF JUST. PROGRAMS, June 2011, at 10, <https://www.ojp.gov/pdffiles1/nij/234052.pdf> [<https://perma.cc/89N7-8NPZ>] (suggesting that creating police disciplinary matrices engenders consistency in disciplinary proceedings, holds officers accountable, and improves transparency).

110. See *id.*

111. See *id.*

policy.¹¹² Drafters design compliance programs to ensure that all personnel adhere to the policy.¹¹³ An effective body-worn camera program must include explicit compliance measures.¹¹⁴ Compliance measures do not need to be unduly punitive, instead, these measures should focus on achieving maximum compliance through training, adequate supervision and review, and remedial efforts where appropriate.¹¹⁵ In the event these measures fail, corrective actions will require the appropriate level of discipline to ensure compliance with the policy directives.¹¹⁶

2. *External Accountability*

Body camera footage creates an unbiased record of police interaction with the public including suspects, victims, and the community at large.¹¹⁷ These recordings provide invaluable evidence that can be used to convict or exonerate defendants, prove or disprove the police officer's account of an interaction and, ultimately, help the factfinder determine what actually happened.¹¹⁸ The purpose of the body-worn camera program and the statewide policy is to ensure that this valuable evidence is captured and preserved.¹¹⁹ The policy makes it explicit that the law enforcement officer has a duty to capture and preserve this evidence.¹²⁰ There must be consequences for police officers who do not capture and preserve evidence because their actions prevent the courts and the public from using

112. Lyndsay Winkley, *Many San Diego Police Officers Didn't Activate Body-Worn Cameras When They Were Supposed To, Report Finds*, SAN DIEGO UNION-TRIB. (Jul. 20, 2022, 9:21 PM), <https://www.sandiegouniontribune.com/news/public-safety/story/2022-07-20/san-diego-officers-dont-record-many-police-encounters-city-auditor-finds>.

113. See Stephens, *supra* note 109, at 10 (suggesting creation of disciplinary and remedial measures ensure consistency).

114. See *id.* at 22.

115. See *id.* at 21.

116. See *id.*

117. See 110-10 R.I. CODE R. § 2.5.5.2.A (LexisNexis 2022) (“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”).

118. See *id.*

119. See *generally id.* § 2.

120. See *id.* § 2.5.4.

important evidence.¹²¹ Legal liability provides the mechanism that holds an officer accountable for breaching their duty to collect and preserve body-camera footage.¹²² Further, legal liability goes beyond the sanctions available to the individual officer's agency.¹²³ Legislation that lacks legal liability thwarts the intended purpose of the legislation, which is to create accountability through transparency.¹²⁴ The program must anticipate a certain number of law enforcement officers who are capable of misconduct.¹²⁵ It would be unreasonable to expect that such officers will record that conduct and preserve the evidence of their misdeeds, particularly if there are no legal consequences for failing to do so.¹²⁶

a. Civil Liability

Civil liability creates external accountability, improves transparency, and provides access to justice for people who have been harmed by police misconduct. In New Mexico, the statute mandating body-worn cameras for law enforcement personnel also created civil liability for individual officers.¹²⁷ Specifically, the statute made individual officers liable for the independent torts of negligent and intentional spoliation of evidence if they fail to comply with the statute's policy governing body-worn camera use.¹²⁸ It

121. See generally *ACLU R.I. Call for Action*, *supra* note 20.

122. Rashawn Ray, *Why Police Department Insurances Are the Key to Progress on Police Reform*, BROOKINGS INST. (Jun. 26, 2020), <https://www.brookings.edu/blog/how-we-rise/2020/06/26/why-police-department-insurances-are-the-key-to-progress-on-police-reform/> [<https://perma.cc/ECN8-K8HC>] (noting that a civil cause of action against police officers for misconduct creates external accountability and provides a remedy that would be denied in federal court due to the doctrine of qualified immunity).

123. *Id.*

124. See 110-10 R.I. Code R. § 2.5.5.2.A; *Police Body-Worn Cameras: Let's Do It Right*, *supra* note 21, at 2.

125. Brian Amaral, *ACLU Says Providence Police Must Do More to Make Sure Body Cameras Are Used*, PROVIDENCE J. (Jan. 18, 2021, 3:09 PM), <https://www.providencejournal.com/story/news/crime/2021/01/18/providence-police-dont-adequately-enforce-body-cam-policy-aclu-says/4205122001/> [<https://perma.cc/865G-2HKX>].

126. *Police Body-Worn Cameras: Let's Do It Right*, *supra* note 21, at 2.

127. N.M. STAT. ANN. § 29-1-18 (2020).

128. *Id.*

also created a presumption that the individual officer acted in bad faith.¹²⁹

Spoilation of evidence refers to an evidentiary presumption that the contents of deliberately or negligently destroyed evidence would have been unfavorable to the party who destroyed the evidence.¹³⁰ This presumption, and the doctrine of *omnia prae-sumuntur contra spoliatores*¹³¹ dates back to 1722 in England.¹³² California became the first state in the country to recognize an independent cause of action for spoliation in 1984.¹³³ The Rhode Island Legislature and the Rhode Island Supreme Court have not created an independent cause of action for the negligent or intentional spoliation of evidence.¹³⁴ Thus, a plaintiff must have an existing cause of action in order to assert spoliation of evidence.¹³⁵ If a spoliation of evidence claim within existing litigation is supported, Rhode Island courts apply an adverse inference against the despoiler.¹³⁶ However, spoliation of evidence is not dispositive but “merely *permits* an inference that the destroyed evidence would have been unfavorable to the despoiler.”¹³⁷ Further, the Rhode Island Supreme Court has held that the plaintiff does not need to show bad faith from the despoiler, “although a showing of bad faith may strengthen the inference of spoliation.”¹³⁸ Notably, Rhode Island courts have not recognized spoliation of evidence as an

129. *Id.*

130. *Tancrelle v. Friendly Ice Cream Corp.*, 756 A.2d 744, 749 (R.I. 2000).

131. Latin for “all things are presumed against a despoiler or wrongdoer.”

132. *See Laurent v. St. Michael’s Country Day School*, No. WC20090545, 2013 WL 1880377, at *4 (R.I. Super. Apr. 30, 2013) (citing *Armory v. Delamire*, 93 Eng. Rep. 664 (K.B. 1722)).

133. *See Smith v. Sup. Ct.*, 198 Cal. Rptr. 829, 831 (Cal. Ct. App. 1984); *see* US L. NETWORK, INC., SPOILIATION OF EVIDENCE: COMPENDIUM OF LAW 1 (2021) https://www.uslaw.org/wp-content/uploads/2022/01/USLAW_2021_Spoilation_of_Evidence_Compndium_of_Law.pdf.

134. *See Malinowski v. Documented Vehicle/Drivers Systems, Inc.*, 66 Fed. Appx. 216, 222 (1st Cir. 2003); US L. NETWORK, INC., *supra* note 133, at 40.

135. *See* US L. NETWORK, INC., *supra* note 133, at 40.

136. *Laurent*, 2013 WL 1880377, at *4. Rhode Island Courts apply an adverse inference against the despoiler most commonly through jury instructions. *Id.* at *5.

137. *Tancrelle v. Friendly Ice Cream Corp.*, 756 A.2d 744, 749 (R.I. 2000) (quoting *New Hampshire Insurance Co. v. Rouselle*, 732 A.2d 111, 114 (R.I. 1999)).

138. *Id.* at 748 (citing *Farrell v. Connetti Trailer Sales, Inc.* 727 A.2d 183, 186 (R.I. 1999)).

independent cause of action because the Rhode Island Supreme Court instructed that “the creation of new causes of action should be left to the Legislature.”¹³⁹

There are two policy-based reasons for including civil liability for intentional and negligent spoliation of evidence in the proposed legislation: (1) creating external accountability and (2) providing reparations to those harmed by the spoliation.¹⁴⁰ Creation of an independent tort for negligent spoliation of evidence and intentional spoliation of evidence provides necessary external accountability for law enforcement officers who negligently or intentionally destroy or fail to create body-camera footage.¹⁴¹ This independent tort action creates an avenue for redress to an individual harmed by law enforcement’s negligent or intentional misuse of body-worn camera footage when that individual may not be able to utilize other causes of action due to the misuse.¹⁴² “The importance of preventing . . . spoliation is crucial to upholding a number of the judicial system’s key goals—most significantly, truth and fairness.”¹⁴³ This independent liability is especially important when the perpetrators of spoliation are the very people who are entrusted to uphold the law.

b. Criminal Liability

The Rhode Island legislature should amend its body-worn camera legislation to make it a misdemeanor crime for a police officer to disable, fail to record, or tamper with their body-worn camera if the individual officer does so with the intent to commit or conceal a crime. For egregious misconduct of the body-worn cameras and the statewide policy, criminal liability must follow. Criminal liability

139. *Laurent*, 2013 WL 1880377, at *7 (quoting *Ferreira v. Strack*, 652 A.2d 965, 968 (R.I. 1995)).

140. See generally Nick Sibilla, *Colorado Passes Landmark Law Against Qualified Immunity, Creates New Way to Protect Civil Rights*, FORBES (June 21, 2020, 7:36 PM), <https://www.forbes.com/sites/nicksibilla/2020/06/21/colorado-passes-landmark-law-against-qualified-immunity-creates-new-way-to-protect-civil-rights/> [<https://perma.cc/AX95-P7U7>] (explaining that a state cause of action against police officers for misconduct creates external accountability and provides a remedy that would be denied in federal court due to the doctrine of qualified immunity).

141. See generally *id.*

142. See generally *id.*

143. *Laurent*, 2013 WL 1880377, at *4.

should occur only in instances where police officers fail to record or tamper with body-worn camera footage with the intent to commit or conceal a crime.

A police officer who disables, fails to record or tampers with their body-worn camera in furtherance of a crime could not be prosecuted under Rhode Island's current criminal code.¹⁴⁴ Rhode Island does not separately criminalize evidence tampering, but evidence tampering falls under the crimes of obstruction of the judicial system¹⁴⁵ and obstructing an officer in execution of their duty.¹⁴⁶ Since the Rhode Island statute for obstruction of the judicial system closely mirrors the language in the federal obstruction of justice statute, Rhode Island courts have looked to interpretations of the federal statute to guide Rhode Island's courts in interpreting the Rhode Island statute.¹⁴⁷ Using federal courts' interpretation of the corresponding federal statute, Rhode Island courts held that the first element of an obstruction of the judicial system charge is that the conduct, (e.g. evidence tampering) must be "aimed at interfering with a pending judicial proceeding."¹⁴⁸ If evidence tampering occurs prior to grand jury or other judicial convening, the alleged defendant could not be found guilty of obstruction of the judicial system.¹⁴⁹ Thus, if a law enforcement officer tampers with body-worn camera footage prior to a judicial proceeding, their actions

144. See *State v. Pari*, 546 A.2d 175, 181 (R.I. 1988) (holding that if evidence tampering occurs prior to judicial proceeding it could not be considered obstruction of the judicial system); *State v. Berberian*, 416 A.2d 127, 129 (R.I. 1980) (holding that the key element of obstruction of officer in execution of duty is that defendant must have obstructed a peace officer which fails to consider that the defendant is a police officer).

145. See R.I. GEN. LAWS § 11-32-3 (2021); see also *Pari*, 546 A.2d at 181 ("The Rhode Island statute states a general prohibition against unlawful conduct by anyone who 'corruptly, maliciously, recklessly or by threats or force . . . influences, obstructs or impedes, or endeavors to influence, obstruct or impede, the due administration of justice.'" (quoting R.I. GEN. LAWS § 11-32-3)).

146. See R.I. GEN. LAWS § 11-32-1.

147. *Pari*, 546 A.2d at 180–81 ("The language of our statute is patterned closely after 18 U.S.C. § 1503 the federal Obstruction of Justice Statute which indicates to us that the Legislature intended for this state to follow the federal statutory scheme. That is an important factor in our conclusion because we shall look for guidance to the fairly extensive body of case law that has developed in the federal courts that have interpreted and applied § 1503.").

148. *Id.* at 181.

149. *Id.*

would not meet the elements of obstruction of the judicial system.¹⁵⁰

However, evidence tampering during the course of an investigation would likely fall under obstruction of an officer in execution of their duties.¹⁵¹ The required elements of this crime are “(1) that the defendant acted knowingly, (2) that the defendant “resisted” or “obstructed” a peace officer, (3) that the defendant knew the peace officer was in fact a peace officer, and (4) that the peace officer was performing an authorized act within his capacity.”¹⁵² Here, the key element is that the defendant “obstructed” a peace officer” which fails to consider that a police officer could have tampered with evidence during the course of their investigation.¹⁵³ The existing law in Rhode Island does not adequately address how to prosecute a police officer who intentionally tampers with or disables a body-worn camera to commit or conceal a crime.¹⁵⁴

In 2021, the Indiana state legislature made it a misdemeanor crime for any police officer “who, with the intent to commit or conceal the commission of a criminal act, turns off or disables a law enforcement recording device in violation of regulations or a policy adopted by the law enforcement agency that employs the officer.”¹⁵⁵ In the year since the Indiana state legislature enacted the statute, no police officer has been charged with the crime of disabling a law enforcement recording device.¹⁵⁶ However, Indiana does not mandate body-worn cameras for law enforcement agencies, instead

150. *See id.*

151. *See* R.I GEN. LAWS § 11-32-1.

152. *State v. Berberian*, 416 A.2d 127, 129 (R.I. 1980).

153. *Id.*

154. The gap in the Rhode Island legislation is best illustrated by Providence Police Sergeant Joseph Hanley who was convicted in March 2021 of misdemeanor assault but was not charged with any crime for failing to activate his body-worn camera in violation of Providence Police Department policy. *See generally* Amanda Milkovits, *Providence Sergeant Hanley Found Guilty of Assault. Is the ‘Blue Wall Of Silence’ Broken?*, BOS. GLOBE (Mar. 18, 2021, 7:12 PM), <https://www.bostonglobe.com/2021/03/18/metro/providence-sergeant-hanley-found-guilty-assault-is-blue-wall-silence-broken/> [<https://perma.cc/YK4P-XKGE>].

155. IND. CODE § 35-44.1-2-2.5 (2021).

156. After a thorough search of multiple databases, no record was found of a police officer violating this statute in the state of Indiana.

leaving it up to the individual agencies to determine whether to implement body-worn cameras.¹⁵⁷

c. Rebuttable evidentiary presumption in criminal cases

While civil and criminal liability are necessary and important external accountability tools, it is also critical to provide criminal defendants a remedy when, due to police misuse of body-worn camera devices, they lack important evidence in their criminal cases. The ACLU created model legislation for states interested in body-worn camera programs that addresses this concern.¹⁵⁸ Specifically, the model legislation recommends a rebuttable evidentiary presumption in favor of criminal defendants who can “reasonably assert” that police officers did not record or destroyed exculpatory evidence.¹⁵⁹ If law enforcement agents intentionally or negligently fail to activate their body-worn cameras to record evidence that could have been used to acquit a defendant in a criminal case, there must be a remedy *within that criminal case* for the defendant. Civil or criminal liability for a police officer after the fact, when that police officer’s misconduct had an adverse impact on an individual’s criminal trial, is not enough; the damage has already been done.

V. ADDRESSING POTENTIAL OBSTACLES TO STRONGER ENFORCEMENT MECHANISMS

A potential obstacle to internal disciplinary guidelines for misuse of body-worn cameras is that, in Rhode Island, discipline of law enforcement officers is subject to the Law Enforcement Officer’s Bill of Rights.¹⁶⁰ The Law Enforcement Officer’s Bill of Rights provides a heightened due process standard for law enforcement officers that is more extensive than the process for other municipal or state government employees.¹⁶¹ The Rhode Island Legislature enacted the Law Enforcement Officer’s Bill of Rights in 1976, and it details the

157. See IND. CODE § 35-44.1-2-2.5.

158. See ACLU, *supra* note 104.

159. *Id.*

160. Jim Hummel, *A Pivot on Police Discipline in Rhode Island? How Officers’ Bill of Rights Might Change*, PROVIDENCE J. (Mar. 11, 2022, 2:47 PM), <https://www.providencejournal.com/story/news/crime/2022/03/10/how-rhode-island-law-enforcement-officers-bill-rights-might-change-2022/9424433002/> [https://perma.cc/5G2E-KX3D].

161. *Id.*

due process standard for law enforcement officers facing suspension without pay for more than two days.¹⁶² The statute entitles an officer to a hearing in front of a three-member panel.¹⁶³ The three-member panel is comprised of one member selected by the police officer being disciplined, a second member selected by the police department disciplining the officer, and a third member selected by the two previously listed committee members.¹⁶⁴ The hearing is time-intensive and, during this time, the police department must continue to provide health benefits and pay the officer.¹⁶⁵ This process provides a protracted and expensive bureaucratic obstacle to disciplining a police officer for serious infractions of the body-worn camera policy.¹⁶⁶

The internal guidelines for misuse of body-worn cameras should first include remedial action, to help officers learn how to use the devices properly. Internal disciplinary guidelines should be used when a police officer knows, or should know, how to use the device and intentionally decides to utilize the device improperly. In instances of insubordination, the police officer should be subject to disciplinary action. Internal disciplinary action that goes up to a two-day suspension without pay will not trigger the Law Enforcement Officer's Bill of Rights process.¹⁶⁷ However, serious infractions that warrant harsher sanctions implicate the Law Enforcement Officer's Bill of Rights.¹⁶⁸

Individuals may be wrongly acquitted by a hearing panel, and some critics of the Law Enforcement Officer's Bill of Rights argue that the statute shields police from accountability and strict consequences for their misconduct.¹⁶⁹ This possibility highlights the

162. *Id.*

163. R.I. GEN. LAWS §§ 42-28.6-1–4 (2021).

164. *Id.*

165. Hummel, *supra* note 160.

166. *See id.* (explaining that all police officer discipline over a two-day suspension is subject to the Law Enforcement Officer's Bill of Rights, which would impact any discipline of body-worn camera policy infractions serious enough to warrant more than a two-day suspension).

167. *Id.*

168. *Id.*

169. Amy Russo, *Violent Arrests of 3 Teens Raises More Calls to Repeal Law Enforcement Officers' Bill of Rights*, PROVIDENCE J. (Aug. 21, 2021, 6:02 PM), <https://www.providencejournal.com/story/news/local/2021/08/20/protest-violent-arrest-teens-raises-fresh-demands-repeal-law-enforcement-officers-shield/8212135002/> [<https://perma.cc/J4BH-QDBE>].

necessity that any proposed legislation contains elements of external accountability. External and internal accountability creates an additional safeguard that prevents misconduct from going unpunished.¹⁷⁰ If one accountability measure fails, the other accountability measures can provide a remedy.¹⁷¹ For instance, if the hearing panel fails to punish a police officer for egregious misconduct that results in harm, the injured party could pursue civil liability, or the state could pursue criminal liability.

The doctrine of qualified immunity presents a potential challenge to imposing civil liability on individual police officers for negligent or intentional misuse of body-worn camera devices.¹⁷² Qualified immunity arose as a defense to a federal statute, 42 U.S.C. § 1983, which created a cause of action against state and local officials who violate an individual's federal constitutional rights.¹⁷³ Qualified immunity "shields government officials from damages liability – even if they have violated plaintiffs' constitutional rights – so long as they have not violated 'clearly established law.'"¹⁷⁴ A police officer can only violate clearly established law "if there is a prior court of appeals or Supreme Court decision holding virtually identical facts to be unconstitutional."¹⁷⁵ Here, the proposed legislation creates a cause of action specifically for spoliation of evidence, making the doctrine of qualified immunity inapplicable because the plaintiff would not be alleging a constitutional violation under 42 U.S.C. § 1983.¹⁷⁶ Further, the proposed legislation proactively bans the use of qualified immunity as a defense.

170. See generally Thomas Schillemans, *Redundant Accountability: The Joint Impact of Horizontal and Vertical Accountability on Autonomous Agencies*, 34 PUB. ADMIN. Q. 300 (2010) (noting redundant accountability measures improve reliability for autonomous public sector agencies).

171. See generally *id.*

172. Joanna C. Schwartz, *Qualified Immunity's Boldest Lie*, 88 U. CHI. L. REV. 605, 607 (2021).

173. Matt Ford, *Are States Really Abolishing Qualified Immunity for Cops? Not Exactly.*, NEW REPUBLIC (Apr. 13, 2021), <https://newrepublic.com/article/162026/new-mexico-ended-qualified-immunity> [<https://perma.cc/VZ8D-AEZA>].

174. Schwartz, *supra* note 172, at 607.

175. *Id.* at 613.

176. See Ford, *supra* note 173.

CONCLUSION

In 2023, it is essential that law enforcement utilize body-worn camera technology to improve accountability and transparency. The benefits of this technology will only be realized through proper use of the devices. The current legislation and statewide policy do not go far enough to ensure consistent implementation of the devices and compliance with the statewide policy. Rhode Island must enhance the current legislation to mandate the implementation of body-worn cameras by law enforcement agencies and require adherence to the statewide body-worn camera policy. Further, the statewide body-worn camera policy must outline internal remedial and disciplinary guidelines for officers who fail to comply with the policy. Finally, the legislation must create civil and criminal liability for misuse of the devices and provide an evidentiary presumption for criminal defendants who lack access to pertinent evidence in their case due to police misuse of body-worn camera devices. The core of any body-worn camera program is accountability and transparency; to achieve those goals, Rhode Island must enact a more comprehensive body-worn camera statute that addresses gaps in the current legislation and statewide policy. Our society gives law enforcement significant power, exclusive authorities, and sanctioned use of appropriate force. But such power must be constrained by oversight, transparency, and accountability. Our justice system relies heavily on the determination of facts, and there is no doubt that body-worn camera technology provides critical evidence for fact finders. A robust, comprehensive package of legislation and statewide policy for body-worn cameras will provide an essential layer of protection for justice in Rhode Island and serve as a model of implementation of this technology as a tool of justice.