

Report of the Special Legislative Task Force to Review the
Rhode Island Law Enforcement Officers' Bill of Rights



Established Pursuant to Senate Resolution 2867
Adopted December 23, 2020

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The Honorable Dominick J. Ruggerio
President of the Senate
Room 318
Rhode Island Senate
State House

Dear President Ruggerio:

Thank you for bestowing upon me the responsibility of chairing the Special Legislative Task Force to Review the Rhode Island Law Enforcement Officers' Bill of Rights ("Task Force"). The report contained here-in includes meeting minutes, a survey of local law enforcement agencies, and our recommendations to improve the Law Enforcement Officers' Bill of Rights ("LEOBOR").

The minority community and others have expressed their concern that a problem exists and needs to be recognized by the status quo and addressed. Not to be deterred by the COVID-19 pandemic and cognizant of the calls for enhancing police accountability, our Task Force held seven meetings over the course of the five (5) months. We heard and received testimony from the public, police unions, police chiefs, community organizations, and attorneys with practice experience in the field. We also issued a survey to Rhode Island's 38 local law enforcement agencies regarding their experience with LEOBOR and officer misconduct. From the outset, our overarching objective was to design a system that is balanced, honest, and credible. Ultimately, the Task Force proposes three (3) substantive amendments to LEOBOR, which are detailed below. The ensuing report also includes additional recommendations we received on the broader topic of enhancing police – community relations.

First, the Task Force endorses extending the maximum period for summary punishment from two days suspension without pay to 14 days. Summary punishment is the suspension that a chief may impose without initiating the protections of the LEOBOR hearing process. The Task Force was presented with several options for extending this period, most prominently, suspension periods of 5, 10, and 30 days. After much debate, the Task Force agreed to recommend a summary punishment period of 14 days.

Second, the Task Force recommends changing the composition of the hearing committee. By statute, the panel consists of three (3) active or retired law enforcement officers from within the state of Rhode Island: one (1) member selected by the chief, one (1) member selected by the officer under investigation, and one (1) agreed to by the other two members or appointed by the presiding justice of the superior court if no agreement is reached. Organizations and individuals presented recommendations designed to improve the transparency, accountability, and continuity of LEOBOR hearing committee decisions. The Task Force endorsed the Rhode Island League of

Cities and Towns' recommendation, which, in principle, expands the hearing committee to five (5) members by adding two (2) additional neutral arbiters who would not need to possess a background in law enforcement. Furthermore, three (3) neutral arbiters would serve as a statewide standing committee and convene when appropriate alongside the two (2) locally appointed members (one by the law enforcement agency and one by the aggrieved officer). This would help form precedent and foster continuity when adjudicating discipline for law enforcement misconduct.

Third, the Task Force recommends amending the LEOBOR statute's prohibition on agency statements when an officer is under investigation for non-criminal matters. Currently, an agency may not offer a statement prior to the decision of a hearing panel in a non-criminal matter. The Task Force received testimony underscoring the need for greater transparency and discretion when an officer is being investigated, as these are pivotal to building public trust in the process. The Task Force endorsed a balancing framework that allows chiefs to make limited public statements if the agency is seeking termination of the officer.

Once again, the following report includes additional recommendations for enhancing police - community relations. However, based upon the testimony elicited by interested and experienced advocates, the Task Force concluded that these changes proposed to the Law Enforcement Officers' Bill of Rights will lead to increased accountability and transparency among Rhode Island's police departments. As the General Assembly considers specific amendments to the statute in sessions to come, I would underscore the need for enhancing public participation in the process and bringing balance to this system.

Sincerely,

Harold M. Metts
State Senate – District

Senate Resolution No. 2867
Read and passed by the Senate on June 18, 2020

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

SENATE RESOLUTION

CREATING A SPECIAL LEGISLATIVE TASK FORCE TO REVIEW AND PROVIDE RECOMMENDATIONS ON POLICIES PERTAINING TO THE RHODE ISLAND LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS (LEOBOR)

Introduced By: Senators Metts, Ruggerio, McCaffrey, Goodwin, and Coyne

Date Introduced: June 12, 2020

Referred To: Senate Judiciary

WHEREAS, The safety and security of individuals is a high priority and of utmost concern; and

WHEREAS, In a free society, law enforcement is essential in order to promote public safety and uphold the rule of law so that individual liberty may flourish; and

WHEREAS, Good will, trust, and accountability between law enforcement and the communities they are sworn to protect is crucial to advancing these goals; and

WHEREAS, The Law Enforcement Officers' Bill of Rights ("LEOBOR") was adopted in Rhode Island in 1976, and was codified in Rhode Island General Laws Chapter 42-28.6; and

WHEREAS, Since its passing, the LEOBOR has been amended several times, however it has not undergone a substantive review since 1995; and

WHEREAS, Recent events and tragedies have again revealed the need to review and strengthen conduct and discipline policies within law enforcement agencies across the nation and

in Rhode Island, thus, it is essential that a comprehensive examination and evaluation of the LEOBOR is undertaken; now, therefore be it

RESOLVED, That a special legislative task force be and the same is hereby created consisting of thirteen (13) members; three (3) of whom shall be members of the Senate, not more than two (2) from the same political party, to be appointed by the President of the Senate; one of whom shall be the Rhode Island Attorney General, or designee; one of whom shall be the Superintendent of the Rhode Island State Police, or designee; one of whom shall be a police chief of a Rhode Island law enforcement agency, to be appointed by the President of the Senate; one of whom shall be the Executive Director of the Rhode Island Human Rights Commission, or designee; one of whom shall be the President of the National Association for the Advancement of Colored People Providence Branch (NAACP), or designee; one of whom shall be the President of the Rhode Island AFL-CIO, or designee; one of whom shall be the Executive Director of the Latino Policy Institute at Roger Williams University, or designee; one of whom shall be the Executive Director of the Providence External Review Authority, or designee; and two (2) of whom shall be members of the public to be appointed by the Senate President.

In lieu of any appointment of a member of the legislature to a permanent advisory commission, a legislative study commission, or any commission or task force created by a General Assembly resolution, the appointing authority may appoint a member of the general public to serve in lieu of a legislator, provided that the majority leader or the minority leader of the political party which is entitled to the appointment consents to the member of the general public.

The purpose of said task force shall be to make a comprehensive study and provide recommendations on the Law Enforcement Officers' Bill of Rights including, but not limited to:

- Protect the rights of our residents;
- Conduct and accountability responsibilities;
- Police relations with racial and ethnic minority communities;
- Police management;
- Disciplinary procedures;
- Enhanced training for cultural competency; and

Diversity in all law enforcement agencies.

Forthwith upon passage of this resolution, the members of the task force shall meet at the call of the President of the Senate who shall appoint a chairperson, and organize.

Vacancies in said task force shall be filled in like manner as the original appointment.

The membership of said task force shall receive no compensation for their services.

All departments and agencies of the state, shall furnish such advice and information, documentary and otherwise, to said task force and its agents as is deemed necessary or desirable by the task force to facilitate the purposes of this resolution.

The Joint Committee on Legislative Services is hereby authorized and directed to provide suitable quarters for said task force; and be it further

RESOLVED, That the task force shall report its findings and recommendations to the Senate no later than February 9, 2021, and said task force shall expire on May 9, 2021.

Meeting of the Special Legislative Task Force to Review the
Rhode Island Law Enforcement Officers' Bill of Rights



Meeting Minutes for July 22, 2020
Meeting held in person in the Senate Lounge

Senator Harold Metts (District 6 - Providence) called to order the first meeting of the Senate Special Legislative Task Force to Review and Provide Recommendations on Policies Pertaining to the Rhode Island Law Enforcement Officers' Bill of Rights ("task force" or "LEOBOR Task Force"). Senator Metts then asked the LEOBOR Task Force's clerk, Jacob Bissaillon, to call the roll.

The clerk called the roll and a quorum was established. There were 11 members present and 2 members absent.

The committee clerk read a letter into the record from President of the Senate Dominick J. Ruggerio appointing Senator Metts chair of the task force. One member arrived following the appointment of Senator Metts as chair of the LEOBOR Task Force.

Senator Metts proceeded to opening remarks. He welcomed members of the commission and thanked them for expressing a willingness to serve. Senator Metts outlined the charge of the commission, "Our goal is to bring proper balance to the system as it relates to protecting our citizens and not protecting wrongdoers." He expressed a desire to bring stakeholders together to find common ground. To individuals questioning the motives of study commissions, he reflected on the success of the Police Community Relations Act.

Senator Metts then asked the members in attendance to introduce themselves:

- Michael Evora: Executive Director of the Rhode Island Commission for Human Rights serving in the capacity as such.
- Rev. Howard Jenkins: President of the Ministers' Alliance of Rhode Island serving as a member of the public appointed by the president of the senate.
- Tony Capezza: State Director of the International Brotherhood of Police Officers ("IBPO") serving in the capacity as the designee of the Rhode Island AFL-CIO.
- Senator Cynthia A. Coyne: District 32 - Barrington, Bristol, and East Providence serving as a Senate appointee.
- Jose Batista, Esq: Executive Director Providence External Review Authority serving in the capacity as such.
- Jim Vincent: President of the National Association for the Advancement of Colored People Providence Branch ("NAACP") serving in the capacity as such.
- Senator Harold Metts: District 6 - Providence serving as a Senate appointee.

- Marcela Betancur: Executive Director of Latino Policy Institute at Roger Williams University serving in the capacity as such.
- Rev. Chontell Washington: Rhode Island State Council of Churches serving as a member of the public appointed by the president of the senate.
- Colonel Hugh T. Clements: Chief of the Providence Police Department serving as the police chief of a Rhode Island law enforcement agency appointed by the president of the Senate.
- Superintendent James M. Manni: Superintendent of the Rhode Island State Police serving in the capacity as such.
- Attorney General Peter F. Neronha: Rhode Island Attorney General serving in the capacity as such.

Senator Metts directed the LEOBOR Task Force clerk to give an overview of the legislative history of the Law Enforcement Officers' Bill of Rights (LEOBOR).

Staff Overview of Rhode Island's Law Enforcement Officers' Bill of Rights Statute

The committee clerk, presented a PowerPoint, which is now publicly available on the commission website at <http://www.rilegislature.gov/commissions/leobr/pages/members.aspx>.¹

Below is a summary of Mr. Bissaillon's remarks:

This group is tasked with making recommendations on reforming and improving the Law Enforcement Officers' Bill of Rights ("LEOBOR") in order to present draft legislation. The task force has been asked to consider, among other items, the rights of our citizens, the employment rights of officers, and measures to increase:

- Accountability
- Diversity in law enforcement agencies
- Policies to enhance police-community relations
- Training for greater cultural understanding

The Law Enforcement Officers' Bill of Rights became a statutory concept in the 1970s after legislation was introduced in the U.S. House of Representatives. The intent was to create a framework that balances the constitutional due process rights of officers (as employees) with the rights of citizens.

In 1974, Florida and Maryland became the first states to codify a version of LEOBOR in their respective state statutes. Rhode Island became the third state to adopt a version of LEOBOR in

¹ Bissaillon, Jacob. "Senate Commission to Review the Law Enforcement Officers' Bill of Rights," RI Senate, 2020. Available at: <http://www.rilegislature.gov/commissions/leobr/commdocs/LEOBOR%20Slides%20v3.pdf> (Accessed on: 1 December 2020).

1976 (Rhode Island General Law Chapter 42-29.6).² Approximately a dozen states followed suit throughout the 1980s and early 1990s.

Since its adoption, Rhode Island's Law Enforcement Officers' Bill of Rights has been amended several times. Most of these amendments have been slight in nature, but LEOBOR was substantively reviewed and amended on one occasion. In 1995, the Rhode Island Senate and House of Representatives appointed a special commission to develop consensus-based recommendations on three issues:

- Promoting efficiency in the LEOBOR process,
- Protecting management rights and limiting costs, and,
- Determining the court's role in the process and increasing transparency.

The 1995 Commission agreed to seven consensus-based recommendations:

1. Establish maximum time limits for the selection of panel members, commencement of the process, and the conduct and conclusion hearings.
2. Change the existing appeal procedure to equalize rights of the agency and officer.
3. Change the law as related to secrecy to allow for release of information to the public.
4. Provide procedures and clarification as to a law enforcement agency's right to suspend an officer.
5. Allow for the discharge of an officer convicted of a felony or an officer who pleads guilty or no contest to a felony charge.
6. The elimination of the two-day summary punishment from LEOBOR; and subject it to existing contractual agreements.
7. Composition of a Hearing Panel to establish a neutral member on the panel to serve as Chairperson, including a process for the Presiding Justice of Superior Court to select a panel member from a pre-submitted list that can include law enforcement retirees.

The 1995 Commission also issued a survey to law enforcement agencies requesting information on LEOBOR.

- A) Total number of discipline cases, including reprimands for the last three years.
- B) Total number of discipline cases that did not result in hearing under the provisions of the Bill of Rights for the last three years.
- C) Total number of discipline cases that resulted in hearings under the provisions of the Bill of Rights for the last three years.
- D) Total number of cases resulting in findings of guilt by hearing panel for the last three years.
- E) Total number of cases resulting in findings of not guilty for the last three years.
- F) The total number of cases dismissed.

² Rhode Island General Law Chapter 42-28.6. Available at: <http://webserver.rilin.state.ri.us/Statutes/TITLE42/42-28.6/INDEX.HTM> (Accessed on 1 December 2020).

City/Town	A	B	C	D	E	F
State Police	58	55	3	1	1	0
Locals	555	512	33	18	7	6

At the direction of Senator Metts, Mr. Bissaillon suggested that the Task Force examine the statute's following components:

- 1) Composition of the hearing panel,
- 2) Extending the summary discipline period beyond 2 days,
- 3) Prohibition on public statements, and,
- 4) Investigatory procedures while protecting procedural due process.

Amber Widgery's National Overview of Policing Policy and LEOBOR Developments

Senator Metts welcomed Amber Widgery, who is a senior policy analyst for the National Conference of State Legislatures. Ms. Widgery began her presentation entitled, "State Law Enforcement Trends & Legislation." She began by saying that a national trends summary was important because the Rhode Island Law Enforcement Officers' Bill of Rights is "somewhat broader" than other states, so this would be an important place to start the discussion.³

Ms. Widgery started with an overview of NCSL and the organization's recent initiative that tracks state and national trends in policing policy. This resource is accessible online <https://www.ncsl.org/research/civil-and-criminal-justice/legislative-responses-for-policing.aspx>. She proceeded to give an overview of several policing reforms that other state legislatures have passed or are in the process of considering. *These minutes previously included a delineation of these reforms, and this overview is now in the appendix.*

Before reviewing the Law Enforcement Officers' Bills of Rights, Ms. Widgery summarized recent changes in policing policy across the 50 states:

- 11 have laws supporting the duty to intervene,
- 11 and Washington D.C. restrict or prohibit neck restraints,
- 10 require independent investigation of police-involved incidents by a state agency, the attorney general or other outside source, and,
- 8 require that at least some law enforcement officers utilize body-worn cameras.

Ms. Widgery proceeded to an overview of states with a Law Enforcement Officers' Bill of Rights. Nineteen states have a statute that could be considered a "law enforcement officers' bill of rights." They primarily vary in five ways: (1) Scope of applicability, (2) Notice of investigation, (3) Timing, (4) Investigation structure, and (5) Hearing structure and appeal process. At their core, all involve investigations into officer involved misconduct.

³ Widgery, Amber. "State law Enforcement Trends & Legislation," NCSL. Available at: <http://www.rilegislature.gov/commissions/leobr/commdocs/NCSL%20Widgery%20Policing%20Slides%20July%202020%20Final%20RI.pdf> (Accessed on: 1 December 2020).

Ms. Widgery observed that the vast majority of LEOBOR statutes were enacted in the 1970s and 1980s. Since their enactment, approximately half have been amended in the last six years. She did note that many have not been amended since their enactment, and, of those that were amended, many amendments were technical in nature or dealt with expanding the scope of applicability. Recent amendments that have expanded the applicability of LEOBOR include Delaware, which moved to include parole and probation officers in their LEOBOR.

Several states have made substantive changes in recent years regarding LEOBOR hearing procedures. Nevada Senate Bill 242 required that law enforcement officers receive back pay when suspended, and it also gave the law enforcement officer under investigation the ability to stop an interview in order to request representation. The amendment also increased the evidentiary access of police officers during the investigation and prior to the hearing. Florida also introduced legislation to expand confidentiality of discussions between first responders, including police officers, to include peer-support specialists. The legislation also provides law enforcement agency directors with ability to request assistance from outside agencies if there is a conflict. Recent changes in Arizona authorized note taking during interviews, video interviews, and expanded access to information for officers prior to any hearing.

Ms. Widgery then reviewed LEOBORs across three core attributes:

Applicability of statute

In most instances, LEOBOR covers rank and file police officers. In two states, firefighters are also protected. There is a broad continuum of when LEOBOR protections come into effect for an officer, ranging from Illinois which specifically exempts criminal proceedings to Wisconsin which specifically includes criminal proceedings. Additionally, there are differences in which type of department investigations lead to a commencement of LEOBOR and its protections. For example, Delaware applies LEOBOR whenever a law enforcement officer is under investigation for any reason which could lead to an adverse employment action.

Notification of investigation

Many LEOBOR statutes include provisions about when and how a law enforcement officer will be notified about an investigation. Many states require that an officer be notified of an investigation, as well as the date, time, and place of an interview. Some states require the law enforcement agency to provide the names and ranks of officers in charge of the investigation as well as any officers that will be present. These statutes also provide for notifications on the evidentiary rules, possibility of disciplinary sanctions, and the procedural rights of the officer. The timeframe for advance notice ranges from 48 hours to thirty days.

Composition and authority of hearing panel

Ms. Widgery said many states provide for the timing of the hearing, the composition of the hearing board, and the hearing's procedural posture. These include: Alabama, Delaware, Maryland, Rhode Island, Virginia, and West Virginia. Alabama offers an alternative to a hearing board by allowing a municipal body to convene a hearing. Other states are less explicit but imply a similar hearing procedure, such as: Arizona (hearing officer/ administrative law judge), Tennessee (hearing panel), or Kentucky (general reference to a hearing authority). Case law in

many states has had an impact on clarifying statutory language. For example, California courts have determined that the hearing must be conducted by a “neutral fact finder” and that hearings must be open to the public at the request of the officer and subject to procedural due process.

At this time, Senator Metts thanked Ms. Widgery for her presentation.

Task Force Discussion

An individual from the public raised a question regarding the relationship between the statute of limitations and Rhode Island’s LEOBOR statute. Senator Metts acknowledged the need to discuss statute of limitations as a possible restriction on appropriate law enforcement discipline at a future meeting. He added that he intends to discuss the following at future meetings: the composition of the hearing panel, extending the summary discipline period beyond two days, prohibiting law enforcement agency heads from issuing public statements, streamlining procedures while protecting procedural due process, and enhanced data collection and transparency. He then opened discussion to other members:

Mr. Vincent asked where Rhode Island fell on the continuum of LEOBOR statutes and his desire to analyze the protections afforded by Rhode Island’s statute relative to other states. The committee clerk stated that he would provide a state-by-state breakdown of LEOBOR statutes as it relates to applicability, composition of hearing panels, evidence, and process at the next meeting.

Reverend Jenkins then asked that commission documents be posted online.

Mr. Capezza then asked to invite the Police Chiefs’ Association to discuss training of local law enforcement personnel. He also requested that we ask municipalities to submit quantitative data on LEOBOR proceedings. The committee clerk stated he would distribute a draft survey at the next meeting with the idea that it would be distributed to law enforcement agencies this summer.

Mr. Batista asked his colleagues to consider two points/paths forward. First, police officers are public employees, and we should examine how cities and towns treat other public employees. Second, he proposed, on behalf of his PERA members, the immediate repeal of LEOBOR and to “fill in the gaps.” He believes the root of the board’s work would be best served in the second option.

Mr. Vincent agreed with surveying law enforcement agencies and asked that the data be requested on an annual interval for the three or five years.

There was no further discussion. Mr. Vincent made a motion to adjourn. The motion was seconded by Mr. Capezza.

Meeting of the Special Legislative Task Force to Review the
Rhode Island Law Enforcement Officers' Bill of Rights



Meeting Minutes for August 26, 2020
Meeting held virtually via WebEx

Senator Metts convened the meeting at 3:00 p.m.

Mr. Vincent moved to accept the minutes from the first meeting, which was seconded by Rev. Washington.

Mr. Evora asked that minutes include not only who made the motion but also who seconds the motion. Senator Metts agreed, and ensuing meeting minutes will specify the individuals making motions and seconding them

Senator Metts moved to the next item on the agenda, a presentation on LEOBOR statutes by the task force's clerk. The presentation could not be given due to technical difficulties.

Senator Metts moved to the next item on the agenda, which was a presentation by Sid Wordell. Mr. Wordell serves as the executive director of the Rhode Island Police Chiefs' Association. Prior to serving as executive director, Mr. Wordell served on the executive board of the Rhode Island Police Chiefs' Association.

Sid Wordell's Presentation on behalf of the Rhode Island Police Chiefs' Association

Mr. Wordell began with an overview of a recent Rhode Island Police Chiefs' Association ("RIPCA") survey of law enforcement agencies concerning LEOBOR and other disciplinary matters, including all suspensions for the past five years and a summarization thereof.

According to Mr. Wordell, there is no central repository for information related to LEOBOR procedure and proceedings, but LEOBOR protections have been used "infrequently" in recent years. Twenty-three law enforcement agencies participated in a recent RIPCA survey. According to this survey, LEOBOR was invoked 22 times over the last 10 years. That statistic does not mean that it went to a full hearing. Survey submissions also showed that during the last five years there have been a total of 262 suspensions* (please note this was clarified following a question from Mr. Evora during Q&A). 152 of those suspensions were for 2 days or fewer while 108 were for 3 or more days. Of those 108 instances where LEOBOR could have been invoked, "90 percent" of the time the discipline administered by the chief was accepted by the officer. The remaining 10 percent did not go to a full hearing.

Mr. Wordell restated that he believes LEOBOR has been used relatively infrequently. Chiefs have administered discipline more than 500 times over the last ten years with only a small

percentage leading to LEOBOR proceedings. He suggested that, in his experience, when a chief seeks discipline it is because he or she seeks rehabilitation rather than termination. Every department surveyed uses a form of progressive discipline. However, there is no statewide matrix of discipline to assist a department in determining that discipline. As a result, the RIPCA survey attempted to look at what chiefs use to determine appropriate discipline. Many chiefs said they rely on in-house software to track discipline. When asked what factors they take into account, chiefs responded that they consider the following factors: the severity or number of infractions, the intent of the officer (administrative violation or a lack of judgment), previous discipline of the officer, years of service, and “the likelihood of corrective behavior.” Most chiefs spoke to reviewing past disciplines first, and, where necessary, communicating with other chiefs about reasonable discipline.

According to Mr. Wordell, the majority of chiefs who responded agreed on the need to examine three core provisions of LEOBOR:

1. Extending summary discipline beyond two days,
2. Transparency, and
3. The makeup of the LEOBOR hearing panel.

Increasing the period of summary discipline beyond two days and factors taken into account

According to Mr. Wordell, nearly every chief that responded to the RIPCA survey recommended increasing the number of days an officer could be suspended without invoking LEOBOR. The vast majority (16/23) recommended a summary discipline of 10 days.

Transparency of Discipline

According to Mr. Wordell, every chief recognizes transparency is key to earning and maintaining the public’s trust. Mr. Wordell referenced the RIPCA’s 20 for 20 campaign and the ongoing to desire to increase transparency through Rhode Island’s law enforcement agencies.⁴ The vast majority of chiefs suggested that discipline centered on criminal behavior should be made public and must certainly be released upon conviction of the officer. The balancing test, as with any criminal case, is the public knowledge that an officer has been criminally charged with the public’s right to know and the officer’s due process rights.

Mr. Wordell stated that administrative violations of department policy make up the vast majority of initiating discipline. Most administrative discipline is initiated from within as opposed to originating from a public complaint. Some instances dictating administrative discipline occur in the public limelight, such as officers caught “sleeping on the job” or conduct unbecoming. Employee rights must be balanced with the public’s right to know.

The makeup of the hearing board

Mr. Wordell stated that many chiefs identified training for members who sit on LEOBOR hearing boards as a primary area for improvement. As an example, eight chiefs who participated in the survey had also previously served as members of hearing boards. They stated that their biggest obstacle as panel members was becoming familiar with the LEOBOR hearing process.

⁴ Rhode Island Police Chiefs’ Association. (2020). “The Twenty for 2020,” Rhode Island. Available at: <https://www.ripolicechiefs.org/twenty-for-2020-booklet> (Accessed on 2 December 2020).

Much of this arises from legal clauses that can delay the process, as well as public perception issues regarding the composition of the panel.

The RIPCA recommends the panel be comprised of 5 individuals, and that the majority of the members remain individuals with law enforcement background. RIPCA recommends the neutral arbiter be an individual with experience in judicial proceedings, such as: a retired judge, retired chief of police, past Attorney General, or an individual from the Attorney General's Office. Some respondents suggested creating a semi-permanent board with a law enforcement background; therefore, the board could act consistently to issue appropriate discipline. Boards similar to this would be the Rhode Island Parole Board or the Disability Board.

Resignation or retirement in lieu of discipline

Mr. Wordell cited the common occurrence of resignation or retirement when an officer is sanctioned with or may be subject to discipline. If this happens, it eliminates the need for LEOBOR. However, it also eliminates the need for disciplinary findings. This is relevant because of Rhode Island Police Officers Commission on Standards and Training ("POST") and Rhode Island's lack of a process for decertifying police officers. Therefore, a police officer subject to discipline by one law enforcement agency in Rhode Island who decides to resign or retire from that agency does so without a disciplinary finding. Thus, there is no record of discipline when they apply to a job at another law enforcement agency. As a result, one option the POST has considered is decertifying an officer upon leaving any law enforcement agency. This creates a mechanism for referral to the POST if that officer pursued employment at another law enforcement agency.

Task Force questions for Mr. Wordell

Mr. Evora asked for clarification about the 262 suspensions. Mr. Wordell stated the 262 suspensions occurred over a 5-year period.

Reverend Jenkins asked several questions:

- What is "acceptable behavior"?
 - Mr. Wordell responded that he did not mean to define acceptable behavior other than two say there are two types of discipline. First, there is discipline for criminal offenses. When this occurs, the frustration is that department's process for discipline is put on hold while the criminal proceeding goes forward. When it is a felony charge, he believes it is pretty clear the agency is looking for termination. Instances of misdemeanor charges are not as clear cut. Mr. Wordell believes these instances need to be examined in totality. In the third category of discipline, where an officer is brought up on disciplinary charges for behavior that is contrary to department policy, several factors are weighted.
- Is there any consideration for psychological exams on a regular basis (2-3 years)?
 - Mr. Wordell responded that the RIPCA has had conversations about ongoing mental health training of officers. As an example, he asked rhetorically, is it appropriate that we have a psychological evaluation before an officer goes to the academy but never revisit the issue?
- Reverend Jenkins said he recognizes that a police officer has a very difficult job, thus there is a need for ongoing mental health training because they are constantly being

bombarded by conflict. We must work “prior to” the disciplinary proceeding in order to help them serve the community.

Senator Rogers then asked a question centered on his experience negotiating contracts for a local town council; specifically, do disciplinary records get “wiped from the record” after a certain period of time or is there a central depository for records?

- This depends on local collective bargaining agreements.

Mr. Capezza then offered remarks in response to some of these questions. On stress and mental health testing, he mentioned that departments across Rhode Island have been trained on recommending various counseling centers. He proceeded to discuss a process whereby an officer acts irrationally or “in a bad way” the chief has the right to send that officer to a fitness of duty examination. These exams are usually conducted by a doctor or psychiatrist. In response to Mr. Wordell’s comments on a neutral arbiter, Mr. Capezza stated the current LEOBOR framework allows the hearing panel to have an attorney present to provide counsel.

Task Force Discussion on Draft LEOBOR Survey

At this point, the commission moved on to the draft survey prepared by staff. The survey would be issued to local law enforcement agencies that fall under the Law Enforcement Officers’ Bill of Rights. The survey requests annual information regarding disciplinary proceedings, including those that progressed to LEOBOR proceedings and the disposition of those cases.

Mr. Evora then asked whether there was a question concerning the underlying disciplinary issue. There was not, so this was added to the survey.

Mr. Vincent then asked if the survey requested information specific to the findings of the hearing panel. Questions within the survey were clarified to request this information.

Chief Clements then provided language for a question requesting information on the underlying charges that led to discipline.

At this time, Senator Metts discussed the ongoing need for the continued collection of traffic stop data.

Mr. Vincent then asked Mr. Wordell about the length of time it usually takes to arrive at a LEOBOR hearing. Mr. Wordell stated that if there are criminal charges involved the LEOBOR hearing process yields in deference to the criminal proceeding. Mr. Wordell then stated that most delays occur as a result of procedural issues raised by legal counsel for one party or another.

Senator Metts then asked if there was an appropriate way to phrase a question about these delays in the survey. Mr. Wordell responded by offering, “Ask chiefs about their perception on why it wasn’t handled in a reasonable amount of time...my question would be to ask a) were there criminal charges involved and was that a factor in delay b) if not, what led to the delay.”

At this time, Chief Clements agreed with Mr. Wordell's comments on what leads to a delay in these proceedings.

Reverend Jenkins then asked to have a conversation with Mr. Wordell and Mr. Capezza about training for officers.

Mr. Evora then asked Mr. Wordell about the 22 times LEOBOR was invoked in recent years and his reference that this was "infrequent" and that chiefs sometimes refrain from issuing discipline that leads to LEOBOR. Mr. Wordell responded by saying that he has heard from chiefs who do take in to account LEOBOR and perform a cost benefit analysis when considering discipline.

At this time, Colonel Manni agreed with Mr. Evora that many times his suspensions that are "not major" do take in to account LEOBOR.

Mr. Wordell then proffered that during this cost benefit analysis many chiefs consideration of appropriate does not solely reflect a punitive nature of discipline, but rather a benchmark of 2-3 days.

At this time, Senator Metts entertained a motion to adjourn. The motion was made by Mr. Evora and seconded by Mr. Vincent.

Special Legislative Task Force to Review the
Rhode Island Law Enforcement Officers' Bill of Rights



Meeting Minutes for September 30, 2020
Meeting held virtually via WebEx

Senator Metts convened the meeting at 3:00 p.m.

There were 11 members present and two members absent. This established a quorum.

Mr. Vincent moved to accept the minutes from the second meeting, which was seconded by Mr. Capezza.

There was a request to add page numbers to the minutes. Senator Metts acknowledged this request and the Task Force subsequently received amended minutes with page numbers.

Senator Metts proceeded to the next agenda item, which was a discussion on recommended changes to LEOBOR.

**Mayor Jorge Elorza's Presentation on behalf of the
Rhode Island League of Cities and Towns**

Mayor Jorge Elorza (Providence) presented recommendations on behalf of the Rhode Island League of Cities and Towns. The Rhode Island League of Cities and Towns formed a working group on this issue, and the group also met with the Rhode Island Police Chiefs' Association. The working group included Joe Almond (Lincoln Town Administrator), Steve Contente (Bristol Town Administrator), Christopher Cotta (Tiverton Town Administrator), Karen Pinch (Richmond Town Administrator), and Michael Wood (Burrillville).

Mayor Elorza outlined the five recommendations of the working group:

1. Extending the summary discipline period from 2 days to 10 days,
2. Improving transparency,
3. Retention of discipline records,
4. Improvements to LEOBOR proceedings, and
5. Changing the composition of the hearing panel.

The majority of the police chiefs agree that increasing the number of days of discipline that initiate LEOBOR will prevent the need for subsequent reforms to the LEOBOR process. The majority of suspensions are between 0 and 10 days. The working group believes extending the summary discipline period to 10 days will result in fewer cases going to LEOBOR. They discussed extending summary discipline beyond 10 days, but they believed it would not be

helpful. This is because, in many instances, when a chief seeks discipline beyond 10 days they are essentially moving towards termination.

The second area focuses on the need for greater transparency by giving chiefs or mayors the ability to make public comments. While the committee believes there is “wobble room” under the current statute, the working group would like consideration given to expanding transparency.

The third area of concern focuses on retaining disciplinary records. Sometimes records are sealed or expunged. The working group believes this lack of retention allows officers to be hired by a different agency with a “clean slate.” Instead, law enforcement agencies should retain all records of a police officer’s disciplinary history.

The working group also focused on improving the LEOBOR hearing process, including changing the composition of the hearing panel. The working group agrees that the LEOBOR process is “cumbersome, lengthy, and expensive.” Moreover, police chiefs consider these factors when applying discipline. In many instances, police chiefs and officers will negotiate down discipline so the LEOBOR process does not go in to effect. The working group believes this undermines the process in its entirety.

According to Mayor Elorza, police chiefs have noted that very few cases actually proceed to a LEOBOR hearing and decision. If the threshold is extended from 2 to 10 days, there will be even fewer instances of discipline that lead to LEOBOR proceedings. Nevertheless, the working group supports changing the composition of the LEOBOR panel and expanding it from 3 members to 5 members. The working group believes that by expanding the working group to 5 there will be a more professional character to the committee and an increased likelihood of unanimity. The working group recommends that the officer and department still be able to appoint one individual each to the committee. The working group also recommends that the remaining three members be a standing committee. The working group believes this will lend itself to forming precedent and removing the ad hoc nature of the committee.

Lastly, the working group advocates for certain changes to the LEOBOR process. This begins with adding reciprocity to discovery. The working group also recommends that there should be shared costs, which would be shared equally by the officer and department. The working group also believes that any witness statements and/or evidence that is intended to be used should be shared amongst both parties.

At this time, Mayor Elorza took questions from members:

- Mr. Vincent referenced the House bill’s provision increasing summary discipline from 2 days to 30 days, and he asked if there was any discussion about extending the summary discipline period to 30 days.
 - Mayor Elorza said the committee considered 30 days, but the reality is there is no difference between 10 days and 30 days because there are very few instances where police chiefs discipline officers with more than 10 days of suspension. When that discipline does occur, the underlying conduct is so egregious that the police chief is actually seeking termination.

- Mr. Vincent asked a follow up question concerning the makeup of the hearing panel. He asked if there was consideration of the court appointing all members of the panel to ensure neutrality.
 - Mayor Elorza said this was a good question and proceeded to reference the RI Police Chiefs' Association survey. The survey found that slightly more than 100 cases progressed to LEOBOR proceedings. Of these 100 or so cases, only 5 went to a full hearing. The court selected the neutral member in only three of these cases. Mayor Elorza stated that he feels this shows that changing the timeframe is the most important consideration. He then revisited the working panel's recommendation of increasing the number of neutrals from 1 to 3, thereby increasing the professionalism and neutrality of the board.

Presentation by Joe Reddish on behalf of the Rhode Island Commission on Prejudice and Bias

Joe Reddish from the Rhode Island Commission on Prejudice and Bias presented on behalf of the organization. The commission is comprised of legislators, members of the community, representation from law enforcement, and representatives from the Attorney General's Office. The commission and the Attorney General's Office handle the front-end training of law enforcement officers to help trainees understand and recognize bias, prejudice, and hate.

While the commission has focused on training officers on the front-end, the commission would like training to also be done on an ongoing basis. Two hundred and forty individuals have been trained since 2019, and 117 have been trained this year. The commission has discussed increasing the opportunities for law enforcement training in order to enhance relationships between law enforcement and the community. However, their work is constrained by funding. The commission's funding mostly comes from the Victims Compensation Fund. The commission recommends that law enforcement be given the tools to improve relationships with the community, including ongoing training and professional development.

- Reverend Jenkins asked how often the training takes place and why 117 officers.
 - Mr. Reddish responded that the number is driven by the number of new recruits. The commission is also working closely with the Attorney General's Office to allow for community members to report prejudice and bias. They established a website, www.calloutprejudiceri.org, and believe an important facet of creating progress on this issue is encouraging people to ask for help.
- Reverend Jenkins asked what the approximate cost is per officer/recruit.
 - Mr. Reddish responded that it depends on class size. The commission receives a grant and the Attorney General's Office covers the cost of the trainers.

Steven Brown on behalf of the Rhode Island Chapter of the American Civil Liberties Union

Steven Brown, who is the executive director of the RI ACLU, testified on improving transparency and accountability. He began by saying the ACLU agrees with many other recommendations on improving LEOBOR.

Mr. Brown stated that when discussing transparency it is critical to also look at the Access to Public Records Act. With regards to LEOBOR itself, there is only one section that deals with transparency. That section is the prohibition on public statements, and the ACLU agrees with giving public officials and law enforcement agencies more flexibility to discuss the investigations of officers. He believes a complete ban on public statements does create an issue of trust in the community.

Mr. Brown discussed the intersection of LEOBOR, law enforcement, and the Access to Public Records Act. He cited recent actions by district attorneys in other states regarding the release disciplinary records, including the names of officers and reasons for discipline. He said this trend has not reached Rhode Island, as the ACLU has had difficulty obtaining even redacted records. Mr. Brown discussed two Rhode Island Supreme Court cases decided in the 1980s and 1990s involving the Providence Police Department and records of police misconduct. He also reviewed the more recent court record as it relates to police officer misconduct cases. Most recently, a Superior Court judge denied the release of final records of police misconduct, which the ACLU had always thought were exempt under APRA in light of previous Rhode Island Supreme Court rulings. The ACLU strongly believes that the Access to Public Records Act needs to be amended to deal with issues of police officer misconduct.

Mr. Brown also discussed public access to police body camera footage. He encouraged the Task Force to consider creating legislative standards for releasing body camera footage. He stated that only a handful of police departments currently use body cameras, but more departments will use them in the near future. Standards for releasing footage will foster public trust.

- Mr. Capezza asked Mr. Brown to clarify his statement on pending litigation.
 - Mr. Brown responded that the ACLU has relied on two previous Rhode Island Supreme Court rulings that found final records of police misconduct were public records. A pending case before the Superior Court is now ruling on whether these requests should be determined on an individual basis.

Task Force Discussion

At this time, Senator Metts mentioned several pieces of written testimony that the commission has received.

Attorney General Peter Neronha expanded on several points made by Mr. Brown. The ACLU and the Attorney General's Office have a disagreement on the test that should be applied when determining if an internal record of discipline should be released. He said this does not prohibit these records from being disclosed, and, in certain instances, they have ordered the disclosure of internal affairs reports. He noted that this is based on an interpretation of the current Access to Public Records Act. He also said that it would be "enormously helpful" to have a rounded discussion about access to body camera footage. This is a multifaceted question that must take in to account the possibility of pending prosecutorial action. The Attorney General's Office recently asked the Rhode Island Supreme Court for an advisory opinion on this matter.

At this time, Reverend Jenkins stated that often times it is the optics concerning the legalities. In many instances, these legalities present a gray area, and, as a result, “we find ourselves between a rock and a hard place.” He referenced the advent of cell-phone footage and the ensuing erosion of trust among the community.

Mr. Batista offered two specific ideas. While the focus is often on whether a given reform is pro-labor or pro-management, he hopes to be discussing reforms that are pro-civilian. He mentioned that New York State recently repealed 50 (A), which, in effect, is their statute exempting police discipline records from the Access to Public Records Act. With regard to our particular LEOBOR statute, Mr. Batista stated that the investigatory process and its protections should also be examined. For example, under the current framework, the officer under investigation is given notice and a copy of the complaint offered against them in advance of questioning. Mr. Batista believes there is also an inherent conflict between civil rights and LEOBOR, and the Task Force’s emphasis should be on protecting civil rights.

At this time, Mr. Evora asked how states where LEOBOR is not in place handle disciplinary proceedings, and if those states should be examined. Mr. Capezza responded that in those states “everything goes to court.”

Mr. Vincent made a motion to adjourn, which was seconded by Senator Coyne.

Special Legislative Task Force to Review the
Rhode Island Law Enforcement Officers' Bill of Rights



Meeting Minutes for October 14, 2020
Meeting held virtually via WebEx

Senator Metts convened the meeting at 3:00 p.m.

There were 11 members present and two members absent. This established a quorum.

Jim Vincent moved to adopt the meeting minutes from the September 30 meeting, which was seconded by Anthony Capezza. The commission unanimously approved the meeting minutes.

**Cristie Hernandez on behalf of the
Rhode Island Chapter of the National Police Wives' Association**

Senator Metts stated that he received correspondence from members of the National Police Wives' Association, including a letter from Rhode Island Liaison Jillian Folger-Hartwell. The association helps law enforcement families meet certain needs and respond to certain situations, particularly during times of stress. Mrs. Folger-Hartwell introduced another member of the Rhode Island Police Wives' Association, Cristie Hernandez. Mrs. Hernandez spoke on behalf of the association, which includes the spouses and children of law enforcement throughout Rhode Island. She is the wife of a Providence Police officer.

Mrs. Hernandez said the association recognizes that "the time for change is upon us" and cited the summer's protests and demonstrations in Providence. The association believes Rhode Island's LEOBOR works, and she referenced testimony from the Rhode Island Police Chiefs' Association and the Rhode Island League of Cities and Towns. Specifically, she cited Chief Wordell's testimony that officers accept discipline instead of proceeding to a hearing panel 90% of the time. She asked members to focus on improvements relative to issues in Rhode Island rather than to respond to events in other states.

Mrs. Hernandez concluded by asking committee members to commit to the following before submitting recommendations: participate in police "ride alongs," consider attending citizen law enforcement academies, participate in simulation trainings and active shooter drills, speak with injured and disabled officers as well as their spouses and families, and meet with officers to discuss PTSD and job-related trauma. She believes the above will enhance each commission member's frame of reference.

Senator Metts thanked the National Police Wives' Association for their presentation. He underscored the commission's desire to strike balance and effect change.

Task Force Discussion on LEOBOR Survey & Recommendations

Senator Metts proceeded to discuss survey results to date. Ten law enforcement agencies had responded to the survey. The deadline is November 1st, and then results will be shared with commission members.

Senator Metts recapped the organizations that have presented to date. He mentioned that the Fraternal Order of Police and Direct Action for Rights and Equality would like an opportunity to present at an upcoming meeting. He also mentioned that two lawyers, one with experience representing management and the other with experience representing labor, have been invited to participate on October 28th. He asked if commission members know of other organizations. The following were mentioned:

- Mr. Capezza mentioned the Rhode Island Troopers' Association

Senator Metts reviewed three central themes discussed to date: extending the summary discipline period beyond two days, the composition of the hearing panel, and enhancing transparency.

Extending Summary Discipline Period to 10 Days

Senator Metts stated that there is "general consensus" about extending the summary discipline period. He restated the recommendations of the Rhode Island League of Cities and Towns and the Rhode Island Police Chiefs' Association to extend to a maximum of 10 days.

Mr. Vincent remarked that Representative Williams' bill, which has been introduced in the House, extends the period to 30 days. Senator Metts said the Task Force would note that.

Mr. Capezza stated that he understands the interest in extending to 10 days, but he doesn't know if anyone has sat down to determine the economic impact of a 10-day suspension. According to Mr. Capezza, depending on the department, the impact could be a penalty of between \$3,000 and \$4,000 for a 10-day suspension. He ended by saying this is a disciplinary measure that exists for administrative matters.

[At this point, the virtual meeting was paused to allow Capitol TV to reboot the simulcast.]

Once the meeting resumed, Mr. Capezza continued his remarks concerning the extension of summary discipline. Mr. Capezza said that he reviewed the testimony of the RIPCA concerning the extension of summary discipline, and he could not identify the problem the recommendation sought to address. Thus, he believes this is a remedy without a problem. He did not object to extending the number of days, but he has not heard the underlying reason for this change.

Colonel Clements then remarked that there were a number of considerations when the working group determined their recommendation concerning the extension of summary discipline. Primarily, he thinks those that exercise discipline need to consider what is reasonable. Most of the discipline imposed by chiefs falls within the 10 day period. Colonel Clements sees no need to go beyond 10 days, because, in instances where chiefs seek discipline beyond 10 days, they are "going to get that through the hearing process."

Mr. Vincent then advanced a hypothetical where Mr. Floyd's death occurred in Providence, and he asked if the maximum suspension under this hypothetical and proposal would be 10 days.

In response, Colonel Clements said the chief would most likely allow the Attorney General's Office to investigate and pursue criminal charges and he would seek termination. He stated that the record of discipline imposed in Providence reflects that this would be the approach.

Colonel Manni stated that his first reaction when he was appointed to the Task Force in July was that 30 days was an appropriate period of summary discipline. He then reviewed experiences on the Rhode Island State Police and observed that the vast majority of discipline issued fell within 2-5 days or 2-10 days. The Rhode Island State Police is unique because it allows the colonel to remove officers from duty every three years per statute. He agreed with Colonel Clements that 10 days was a reasonable period. He reflected upon the most serious examples of discipline in the RISP. In one instance, a trooper returned to duty after a two year suspension. In another example, a trooper was suspended for 60 days because of an alcohol related incident. Colonel Manni agrees with Mayor Elorza that anything past 10 days is seeking a lengthy suspension or termination. He also agreed that if George Floyd's death occurred in Rhode Island, the respective chief would have the tools to discipline the officer appropriately.

Changing and/or expanding the composition of the hearing panel

Senator Metts restated the recommendations from the Rhode Island Police Chiefs' Association and Rhode Island League of Cities and Towns concerning the composition of the hearing panel.

Mr. Vincent said he approves of a five-member panel, but he would like to see five neutrals appointed. This would help to alleviate the current belief within communities that the composition of the hearing panel is biased.

Senator Metts observed the importance of having a permanent board so the same offenses are not treated differently based upon the charging community or who is appointed to the board. He stated that there needs to be continuity and fairness in the process.

Mr. Capezza asked a series of questions and also referenced the fact that the 1995 Commission had a member of the judiciary on it.

- Would the permanent members of the board be compensated?
- The Supreme Court previously appointed the neutral members, and subsequently they moved to change this practice.

Attorney General Peter Neronha stated that he does not believe a member of his office should serve on a LEOBOR hearing panel. This person would presumably report to the Attorney General, and it is important that the criminal justice system remains separate from the LEOBOR process. There is a sentiment that the Attorney General's Office may dismiss a criminal case in exchange for certain administrative sanctions. His office has not engaged in this practice and investigates all complaints - whether initiated by civilians or a department. The processes should remain separate to allow for the Attorney General's Office to make their own criminal determination. If chiefs view LEOBOR as insufficient to the point where the criminal justice

system has to be used to advance administrative goals, then that may be indicative of room for improvement within the LEOBOR system rather than “cross pollinating” the processes.

Prohibition on Public Statements and Enhancing Transparency

Senator Metts restated Rhode Island General Law’s general prohibition on departments making public statements when an officer is under investigation. He restated the ACLU’s desire to address transparency and the importance of enhancing public trust in the process.

Mr. Capezza remarked that he personally does not see any harm in a chief admitting that an investigation is taking place without going into further details. He cited previous testimony by the Rhode Island Police Chiefs’ Association.

Colonel Manni underscored the need for transparency when “bringing someone up on charges” or seeking to remove an officer. Transparency is an important principle and LEOBOR often acts as a barrier to an administrator saying more. He asked the Task Force to take heed from labor attorneys to better understand what can and cannot be said with respect to the rights of the officer under investigation.

Mr. Batista remarked that PERA has dealt with this issue with respect to civilian complaints. He observed that there is often times a double standard when civilians are charged (citing the protestors on I-95 in Providence) and when officers are charged.

Colonel Clements responded that the Providence Police Department has made it a practice to release information on an officer when they are charged criminally. This does not occur when the department administers internal discipline.

Attorney General Neronha remarked that he believes there is room for a chief to publicly state the reasons for an investigation in a way that is not prejudicial to the officer. He referenced his office’s frequent refrain, “as alleged in the indictment.” He observed the importance of redressing the swirl of public consternation that gathers when an officer is investigated. Such a statement could include: the nature of the allegation, stating that it is only an allegation, the name of the individual, and the conduct giving rise to the need for discipline. There is a line of ethical obligation which would have to be built into the statute, but there should be room to issue a statement about what is alleged.

Senator Metts then reviewed recommendations that had been made to the task force but did not involve the LEOBOR process, including: annual data reporting on LEOBOR proceedings, continuous professional development for public safety officers, amending the Access to Public Records Act, and continued collection of traffic stop data to determine racial profiling.

At this point Senator Coyne attempted to comment on two issues: the continued collection of traffic stop data by local law enforcement agencies and prejudice and bias training for officers. In subsequent communications with the committee clerk, she requested that we obtain a fiscal impact statement on traffic stop data collection. Senator Coyne also stated that she believed law enforcement officers might already receive training for prejudice and bias, and that the Rhode Island Police Chiefs’ Association may be able to confirm. The Rhode Island Police Chiefs’

Association contacted Senator Metts to notify him that as of August 2020 the Rhode Island Police Accreditation Commission updated their standards to require an annual bias training for every officer.

Senator Metts proceeded to preview the next meeting of the Task Force. Mr. Evora then asked if members of the Task Force could make recommendations themselves to which Senator Metts responded, "Certainly."

Senator Metts then entertained a motion to adjourn, which was made by Mr. Vincent and seconded by Colonel Clements.

Special Legislative Task Force to Review the
Rhode Island Law Enforcement Officers' Bill of Rights



Meeting Minutes for October 28, 2020
Meeting held virtually via WebEx

Senator Metts convened the meeting at 3:00 pm on Wednesday, October 28, 2020. There were 13 members present, including a designee from the Rhode Island State Police.

Senator Metts began the meeting by discussing Senator Coyne's attempted comments at the previous meeting. She was unable to comment because of audio issues with her computer and those meeting's minutes reflect her sentiments on traffic stop data collection and ongoing professional development for officers.

Senator Coyne moved that the minutes be approved. Reverend Jenkins seconded her motion. The minutes were unanimously approved.

Senator Metts mentioned that Mr. Vincent would not be able to present recommendations today because he is out of town at a conference. He also mentioned that Direct Action for Rights and Equality would like to be heard at a future meeting. He also extended thanks to the police chiefs across Rhode Island for responding to the survey issued by the Task Force.

Vincent Ragosta's presentation on LEOBOR

Senator Metts introduced Vincent Ragosta. Mr. Ragosta is an attorney that frequently represents law enforcement agencies during Law Enforcement Officers' Bill of Rights ("LEOBOR") proceedings. Mr. Ragosta has practiced in this field for more than three decades, and he started his presentation with an overview of several officer misconduct cases. These cases ranged from criminal conduct to violations of administrative procedures.

Mr. Ragosta used House Bill 8036 (Williams) as a guiding document for his presentation. That legislation can be found here: [HB 8036 \(Williams\)](#).

According to Mr. Ragosta, LEOBOR was enacted in 1976 and has not been comprehensively amended since 1995. The advent of LEOBOR stemmed from protecting police officers' rights during the investigation process. The statutory scheme has evolved since then to include due process rights that are far more expansive than those afforded to other public employees. In Mr. Ragosta's view, LEOBOR has "supersized" due process well beyond protections afforded by the United States Supreme Court. Mr. Ragosta would like the commission to consider why employees of law enforcement agencies receive higher protections than other public employees. According to Mr. Ragosta, Rhode Island's LEOBOR statutory scheme is one of the most comprehensive in the country.

Comments specific to the composition of the hearing panel

In referring to HB 8036, Mr. Ragosta first discussed the composition of the hearing panel. The panel by definition is made up of two partial representatives – one appointed by the accused officer and one appointed by the chief of the charging agency. In his view, these individuals act as wingmen serving the respective interests of the appointing party. The third individual, in theory, is the neutral adjudicator appointed from one of two lists. These two lists are comprised of individuals recommended by the Rhode Island Police Chiefs' Association or the FOP/IBPO. This presents a scenario where there is a "50%" chance of having a better result depending on the list used. Mr. Ragosta said the process is "fraught with conflicts" because sometimes the attorney representing the officer also represents collective bargaining units. Consequently, Mr. Ragosta believes the composition of the hearing panel must be changed. He believes that adding three additional civilian members will enhance the neutrality of the board.

Comments specific to LEOBOR impeding punishment

Mr. Ragosta believes the commission should look at allowing for the immediate disposition of discipline and then allowing LEOBOR to serve as an appeals process. He believes this still affords the police officer due process.

Comments specific to the review authority of the hearing panel

Under HB 8036, the hearing panel would be limited in its review authority. The hearing panel would not be able to overturn the discipline issued by the chief. Instead, it would utilize the doctrine of deference, which is commonly used in labor law. At its core, this doctrine holds that if evidence is established to prove that discipline is warranted than the arbitrator should defer to the judgment of the employer. The discipline should not be overturned unless it is completely arbitrary or capricious.

Questions from members directed to Mr. Ragosta

- Mr. Capezza raised the point that court martials are the adjudicating authority for military personnel in reference to Mr. Ragosta's comments concerning police being paramilitary organizations. Mr. Capezza and Mr. Ragosta also discussed the civilian (non-lawyer) component to the Board of Bar Discipline. In summation, Mr. Capezza believes police officers are better positioned to understand and evaluate the officer's actions and Mr. Ragosta believes non-officers would bring an important perspective. Mr. Ragosta believes a broad array of perspectives is necessary to bring about police officer accountability.

General Neronha asked if Garrity applied in the LEOBOR context

- Editor's note: In Garrity v. New Jersey, the United States Supreme Court held that police officers cannot be compelled to testify in a **criminal matter** through threats to their employment status. In Garrity, a New Jersey police officer was questioned about an alleged "ticket fixing" scandal. When apprised that he could invoke his Fifth Amendment right against self-incrimination he was also told that doing so could result in his removal from employment. The Court held that this was unconstitutional and constituted coercion.
- Mr. Ragosta stated that *Garrity* does apply in the interrogation phase of LEOBOR proceedings. He said this presents chiefs with difficult decisions if they suspect

criminality. Instead of “Garritizing” a police officer and questioning them, Mr. Ragosta’s standard practice is to advise police chiefs that their best course of action is to work with the Attorney General if they believe criminal behavior exists.

- General Neronha presented a hypothetical whereby criminal charges were not brought against an officer and inquired as to whether compelled statements could be used in a LEOBOR disciplinary proceedings. Mr. Ragosta responded that an officer can be ordered to answer questions and that their failure to do so may result in additional administrative charges. In summation, orders to compel can be used.

Senator Metts proceeded to call on Michael Colucci of Olin & Penza to discuss his perspective as a labor law attorney.

Michael Colucci’s presentation on LEOBOR

Mr. Colucci began by stating that he worked alongside the 1995 Task Force on reforms to LEOBOR. That commission found that 94% of disciplinary cases were resolved before a LEOBOR hearing, and he believes that number has increased.

Mr. Colucci underscored that LEOBOR is the sole and exclusive remedy for dealing with police officer misconduct. It provides a framework for disciplinary procedure, specifically it is a procedure for conducting an investigation and a hearing. This means less court room costs and less time to achieve resolution. To eliminate LEOBOR or drastically change its protections would lead to increased lawsuits and legal fees. He believes that current concerns involving LEOBOR are misguided because they do not address police officer training.

Comments on increasing summary punishment rule

Mr. Colucci feels this an expensive proposition for police officers. A punishment of 5-10 days would mean the loss of thousands of dollars in pay. That is a significant penalty without the opportunity to have a hearing. As a result, police officers may be more likely to proceed to a LEOBOR hearing or invoke a department’s grievance procedure that could lead to arbitration. According to Mr. Colucci, officers are willing to accept a 2-day punishment and “move on.” He only recalls one officer filing a grievance over a 2-day suspension.

Comments on the composition of the hearing panel

Mr. Colucci believes that changing the composition of the hearing panel will lead to an increase in the number of meetings a hearing panel must have to reach a conclusion. This is because current panel members, as police officers, understand the standards and training techniques used by law enforcement. If civilians were on the board, experts would need to be brought in to advise the hearing panel. Second, Mr. Colucci believes that police officers serving on the panel increases accountability, because police officers are best suited to root out an officer’s failure to appropriately police and then rule on corrective discipline or terminate.

Senator Metts asked Mr. Ragosta and Mr. Colucci for comments on two questions:

- 1) Statewide hearing panel

- a. Mr. Ragosta stated that he believed a statewide hearing panel would bolster the professionalism of the panel. He referenced that the House Bill retains the two “partial” appointees who are law enforcement while increasing civilian participation. He believes civilians could quickly become educated about the appropriate police procedure because many cases involve chiefs and officers offering testimony about the standard to be use.
- 2) Prohibition on public statements
- a. Mr. Ragosta noted that there is a Rhode Island Supreme Court ruling calling into question the constitutionality of the “prohibition on public statements rule.” He believes that this rule infringes on an individual’s First Amendment right. Mr. Ragosta cited House Bill 8036’s revised prohibition on public statements rule. Under the proposal, the chief’s ability to comment is dependent on the punishment sought. If the chief seeks suspension or anything less than termination, then no public statement may be made. If a chief seeks termination, then an agency may make a limited public statement. Mr. Ragosta concluded by saying that he believes the Rhode Island Supreme Court has highlighted the importance of granting chiefs some flexibility when discussing officers under investigation in order to redress public unrest.
 - b. Mr. Colucci discussed an instance in the 1990s where a community organization filed superfluous complaints against an officer as an example in which increased public comment may lead to an undesirable result. His concern is that publishing names on unfounded complaints before there is an investigation could tarnish reputations and impede law enforcement.

Mr. Batista thanked the presenters, but he asked panel members to remain mindful that there is another side to this equation, which is the civilian. He asked that we remain cognizant of their Constitutional rights. He then asked Mr. Ragosta and Mr. Colucci to comment on the investigatory process delineated in LEOBOR, and, whether they agreed with his view that the process makes it difficult to arrive at the truth. Specifically, he mentioned the statute barring outside investigators and its requirement that the officer be provided with a copy of the complaint ahead of time.

1. Mr. Colucci responded by underscoring the high-resolution rate under the current LEOBOR statute. He attributes this high rate of resolution to the fact that officers are compelled to give testimony, as opposed to a civilian who retains the right to not incriminate themselves. Mr. Colucci said that this compelled testimony is “balanced off” by the reasonable place, time, and manner facets of the statute.
 - a. Mr. Batista responded by citing the high rate of plea or dismissal in criminal cases, so he does not see the 94% statistic as indicative of the process working well. Second, by way of anecdote, he spoke to the inherent benefit provided to the investigator when the officer under investigation does not know what the charging agency knows.

2. Mr. Ragosta said that he tends to agree with Mr. Colucci that the investigatory stage works well. He referred to this section as the “rules of engagement.” In his experience, this section provides an important structure for the investigatory process. He believes it is much more important to expand the summary discipline period, because chiefs perform a cost benefit analysis when disciplining an officer.

Senator Rogers commented on the composition of the hearing panel. He asked how civilians serving on a hearing panel alongside officers would differ from a jury where one of the members was a police officer. Senator Rogers also spoke from his own experience about the cost benefit analysis that a chief undertakes when assessing discipline, especially in small towns.

1. Mr. Colucci responded by saying that it essentially becomes a “jury of one” because the civilians follow the direction of the officer.

Reverend Howard Jenkins’ presentation on behalf of The Ministers’ Alliance

Reverend Jenkins presented recommendations on behalf of the Ministers’ Alliance. He acknowledged that society is at a critical crossroads in determining the role of law enforcement and race policing in America. Reverend Jenkins referenced articles and a recent Pew Research study that examined the discrepancies between a respondent’s race/ethnicity and their perception of law enforcement and justice.⁵ Moreover, he believes these perceptions are grounded in the inequities within our criminal justice system and reflective of systemic racism. He stated that all racial groups must be treated fairly and equally.

Rev. Jenkins stated that we are here today not only because the time has come to study LEOBOR, but also because of George Floyd, the Black Lives Matter Movement and others who have said enough is enough. He stated that “all police officers are not bad,” but rather a few scattered within the ranks of our police departments give policing a bad reputation. We are faced with a culture that has routinely recognized its wrongs, still the culture has persisted. These abuses have become undeniable in the age of the cell phone, and such technologies have thwarted misguided attempts to justify abuse.

Rev. Jenkins stated that there is a perception that this task force only has intentions of a “soft reform of LEOBOR and not a comprehensive overhaul.” Currently, LEOBOR prevents civilian oversight. Instead, law enforcement officers are judged by their peers. True overhaul begins by including the community. Reverend Jenkins repeated his refrain from prior meetings that policing is a difficult job. And, while it has been said Rhode Island does not face the same issues as other states, the reality is Rhode Island’s LEOBOR must be addressed.

Rev. Jenkins continued that he has often asked what is considered “bad or acceptable behavior” from a law enforcement officer. It is not about shaming police, rather this question aims to identify the specific culture within law enforcement that allows poor judgment and police

⁵ DeSilver, Drew, Fahmy, Dalia, and Lipka, Michael. (2020). ‘Ten Things We Know About Race and Policing in the U.S.,’ *Pew Research Center, Washington D.C.*, 3 June 2020. Available at: <https://www.pewresearch.org/fact-tank/2020/06/03/10-things-we-know-about-race-and-policing-in-the-u-s/> (Accessed: 1 December 2020).

offenses to persist. Bad people, mistakes, and poor judgment exist in every population. Still, there seems to be an unwillingness to accept reality. He referenced a recent Target 12 investigation the “use of force” in arrests from 2017-2019.⁶ Reverend Jenkins said the near universal acceptance that the “use of force” was justified juxtaposed to recent demonstrations about police misconduct was indicative of the need for change. He, and Senator Metts in follow up dialogue, cited comments within the Target 12 investigation made by Attorney Dawn Huntley concerning the process of “use of force” investigations. Specifically, officers self-report in paperwork filed with the department while civilians may not have the opportunity to be heard until legal proceedings. This may lead to certain facts not making their way in to the record.

Rev. Jenkins concluded by stating that once LEOBOR goes into effect (when an officer is investigated for misconduct) it is too late. The reality has historically been that it is the police officer’s word over the citizen’s version of the story. Rev. Jenkins asked if there should be an independent agency to examine police behavior and provide a safe platform for individuals to speak about system injustice. He also asked the Task Force to look at increased training for police officers as well as the use of shift rotations to better shape behavior and alleviate stress. He concluded by agreeing with Mr. Ragosta’s recommendation to include civilians on LEOBOR hearing panels.

Professor Marcel Beausoleil’s presentation on behalf of The Rhode Island Fraternal Order of Police

Professor Beausoleil previously served as commander of the Woonsocket Police and now teaches at Fitchburg State University in Fitchburg, Massachusetts. He has taught LEOBOR seminars in the criminal justice program at Roger Williams University.

Professor Beausoleil started by saying many of his points were raised by Mr. Colucci. He believes three interests come in to play during any LEOBOR proceeding: 1) rights of police officers to fair and appropriate treatment 2) rights of police administrators to manage their departments and 3) accountability to the public. In his experience, the LEOBOR works. This does not mean there is no room for improvement, but cases are most frequently appealed on technical grounds.

Professor Beausoleil underscored the need for fair procedures to protect an officer’s due process. Organizational justice is a new field of research that examines the relationship between unfair treatment within a department and job performance in law enforcement agencies. He mentioned work slowdowns and misconduct by way of example. Research has pointed out that unfair procedures within departments have perpetuated the “code of silence” and impeded transparency, fairness, and accountability. Dignity, fair treatment, and ability to be heard (on the officer’s part) are critical to organizational justice.

⁶ Sherman, Eli and White, Tim. (2020). ‘Target 12 probe reveals police use of force almost always deem ‘justified’ in RI, WPRI, *Rhode Island*, 1 Sep. Available at: <https://www.wpri.com/target-12/target-12-probe-reveals-police-use-of-force-almost-always-deemed-justified-in-ri> (Accessed: 1 December 2020).

Professor Beausoleil referenced “The President’s Task Force on 21st Century Policing,” which was established by President Obama. The report was issued in 2013, and many see it as a blueprint for reforming policing.⁷ Professor Beausoleil highlighted Recommendation 1.4 in the report, which states “Law enforcement agencies should promote legitimacy internally within the organization by applying the principles of procedural justice.” He believes law enforcement agencies can promote procedural justice by clearly articulating core values and transparently applying policies and protocols. Moreover, when police officers are involved in forming these policies, they are more likely to buy in.

Professor Beausoleil continued by discussing the differences in police officer misconduct, namely the difference between “honest mistakes” and “malicious conduct.” He said that many departments fail to distinguish between the two, and they often discipline officers who commit these offenses in a similar fashion. He returned to a theme presented in earlier meetings that police officers are assets, and, if an officer is deemed worthy of rehabilitation they should be rehabilitated through training and a behavioral focus on discipline.

Mr. Beausoleil ended by making several recommendations on increasing organization justice:

- Training should look more at competence and context,
- Department policies should also be widely disseminated and updated frequently, and
- Early intervention systems should be incorporated so departments can intervene before it becomes a problem.

Trooper John Brown’s presentation on behalf of The Rhode Island Troopers Association

Trooper Brown agreed with the sentiments of Mr. Colucci and Professor Beausoleil. He discussed the last four years of “use of force” instances on the Rhode Island State Police. The RISP had over 400,000 contacts over the last four years. Officers used “force” in 144 instances, and all of those were deemed justified. Force can mean anything from physical force, such as an arm bar, to discharging a firearm. Trooper Brown believes the RISP low use of force numbers are due to several variables, namely training and the culture of the RISP.

Trooper Brown then discussed the summary discipline period. He believes the state police are unique in their perspective because they have a different schedule. The RISP work a 3 on/3 off schedule. Consequently, a ten-day suspension carries greater economic ramifications for state police officer. He believes two days provides a reasonable layer that ensures due process. On the hearing panel composition, Trooper Brown agrees that the current composition is sufficient. He believes the current statistics indicate that there have been few issues.

⁷ President’s Task Force on 21st Century Policing. (2015). “Final Report of the President’s Task Force on 21st Century Policing,” Washington, DC: Office of Community Oriented Policing Services. Available at: https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf (Accessed on 1 December 2020).

Task Force Discussion

Senator Metts asked Mike DiLauro if he could present at the next meeting because of timing issues. He then discussed holding two further meetings.

Jim Vincent then made a motion to adjourn. The motion was seconded by Tony Capezza, and unanimously moved by the commission.

Special Legislative Task Force to Review the
Rhode Island Law Enforcement Officers' Bill of Rights



Meeting Minutes for November 18, 2020
Meeting held virtually via WebEx

Senator Metts convened the meeting at 3:00 pm on Wednesday, November 18, 2020. There were 8 members present.

Mr. Vincent moved that the minutes of the October 28th be approved. Chief Clements seconded the motion, and the minutes were unanimously approved.

Senator Metts began by stating that Mr. DiLauro was supposed to present at the last meeting but could not offer recommendations due to time constraints. Also, Direct Action for Rights and Equality would offer remarks following Mr. DiLauro's presentation.

**Michael DiLauro's presentation on behalf of
The Rhode Island Public Defender**

Mr. DiLauro offered recommendations in pre-recorded testimony via recording. The mission of the Public Defender to provide criminal defense and other related services to indigent defendants. While the work of the Public Defender's Office is not directly related to LEOBOR, the Task Force has heard presentations on the issue of transparency. The Public Defender's Office is particularly interested in transparency surrounding accessibility of records of allegations of and investigations into law enforcement officer misconduct, specifically in the context of the discovery process in criminal cases.

Information related to allegations of and investigations into law enforcement officer misconduct is known in the criminal procedure context as a type of *Giglio material*. *Giglio material* may also be referenced as *Brady-Giglio material* because it derives the name from two United States Supreme Court Cases, Giglio v. United States and Brady v. Maryland. These cases held that a defendant's right to due process and a fair trial require prosecutors to disclose exculpatory evidence, including evidence that is material to guilt or punishment or the credibility of a witness. Thus, allegations of and investigations into law enforcement misconduct are a particular type of *Giglio material* that should be disclosed because it may go to the truthfulness or accuracy of the witness' / officers' testimony. Although the law is clear, it has been the experience of the public defender that the appropriate mechanisms to ensure access to this information in a complete and timely fashion is in need of improvement. The Public Defender believes that the issue of *Brady-Giglio material* and transparency may be addressed through standardized, consistent, and uniform statewide standards regarding the storage and transmission of this material.

In 2018, the Public Defender directed an APRA request to 44 state and local law enforcement agencies requesting each agency's *Brady-Giglio* policy under court rules and Brady doctrine. This information has been considered by another Senate Task Force that is examining improvements to criminal discovery. Mr. DiLauro believes that some of the consensus reached by that Task Force is applicable to the work of Task Force on LEOBOR, specifically its work regarding allegations of and investigations into law enforcement officer misconduct. The Senate Task Force on Discovery unanimously agrees that it would be beneficial to have statewide, uniform, standardized, written policies containing 'best practices' regarding discoverable *Giglio* material. Determining a model policy should be done in conjunction with the Rhode Island Police Accreditation Committee, which has already begun that process at the suggestion of the Senate's Discovery Task Force. Mr. DiLauro cited a model policy promulgated by the International Association of Chiefs of Police, which is available online, as well as similar policies promulgated in Minnesota, Utah, and Washington State. All four (4) of the policies mentioned here have been brought to the attention of the Senate's Discovery Task Force. Mr. DiLauro cited and circulated two Rhode Island Supreme Court cases that have dealt with *Giglio* material, both entitled *State v. Beaumier*.

Kiah Bryant's presentation on behalf of Direct Action for Rights and Equality

Ms. Bryant testified via phone call. She began by stating that DARE is comprised of community members from Providence, Central Falls, Woonsocket, and Pawtucket. Many of their members are directly impacted by police issues, including assault at the hands of police officers. These members believe that LEOBOR provides a mechanism for police officers to avoid accountability. Furthermore, LEOBOR provides a "get out of jail free card" for officers and impedes accountability.

DARE believes that LEOBOR shields police officer misconduct. She cited the recent incident involving Jhamal Gonsalves. This also includes improper search and seizures and aggressive policing tactics. The community supports repealing LEOBOR altogether, because they believe it impedes accountability and erodes public trust. She cited the belief that LEOBOR is used as a safeguard, especially when police officers are exposed to criminal charges.

Senator Metts reiterated that the community must trust in the process, and the work of this Task Force is to bring balance to the system in order to build public trust. This will only be done by allowing chiefs to terminate officers deserving of discipline. Current circumstances dictate that we must come together to find common ground to enhance public trust in policing and the LEOBOR process.

Jacob Bissaillon's presentation on LEOBOR Survey of Local Law Enforcement

Mr. Bissaillon stated that 37 of the 38 local law enforcement agencies participated in the Task Force's survey. Each department completed the survey in a way that uniquely reflects that specific department's collective bargaining agreement, disciplinary policies and procedures, and

interpretation of the survey. Mr. Bissaillon's PowerPoint presentation is available online as well as a copy of the survey.

The survey results indicate that officers have been disciplined on more than 900 instances between 2015 and 2019. Four LEOBOR hearing panels have convened and adjudicated discipline during that period (Providence – 2015, North Providence – 2015, Woonsocket – 2015, and Pawtucket – 2018). All four panels found the officers guilty, and two panels reduced the recommended punishment of the chief. The cost of these panels ranged from \$25,000 to \$42,000 (including appeal).

The survey also requested input from police chiefs concerning the LEOBOR process. The majority of chiefs could not comment on this as they admittedly had little experience with the hearing process. Several chiefs did provide comment that indicated that the process can be deterred and/or impeded if there are criminal charges pending, because the LEOBOR process must yield to any criminal proceeding. In their commentary, many chiefs stated the importance of allowing the criminal process to play out before administering and/or adjudicating discipline. Other delays to the process cited by chiefs include scheduling difficulties and legal posturing by both parties.

Each agency's response to the survey reflect their own unique policy for recording and maintaining disciplinary records. Some agencies provided little description for the discipline issued, while other categorized it by who initiated the discipline (civilian v. internal), the type of discipline (written v. verbal v. suspension), and the type of infraction (Neglect of duty, criminal charges, etc.)

Task Force LEOBOR Discussion

Mr. Vincent asked Mr. Bissaillon if LEOBOR must wait for there to be a conclusion to a criminal process and/or investigation. Yes, LEOBOR yields to a criminal investigation.

- Attorney General Neronha stated that this is because the stakes are higher in a criminal process because it is a criminal charge. He also believes that it is important to not carry-on multiple investigations at the same time, and it is important to hold the criminal investigation first. There are mechanisms for turning over evidence found in a criminal investigation to administer administrative discipline.

Mr. Vincent also stated that he supports Ms. Bryant's view that LEOBOR's provision to allow for paid-leave while a criminal charge is pending does in essence create a "paid vacation."

Mr. Evora asked several questions concerning the data. He asked if Row B was the number of cases in which LEOBOR was not invoked. Mr. Bissaillon responded that all charges of discipline in Row B cannot be treated the same, because the items listed are dependent on how the chief interpreted the survey. Some charges of discipline may have been able to progress to a LEOBOR if challenged by the officer, while other charges would not have arisen to a LEOBOR survey. Mr. Evora observed that this data demonstrates the need for knowing the percentage of cases in which a disciplined officer could have invoked LEOBOR but chose not to.

Chief Clements agreed with General Neronha's comments on Mr. Vincent's observation about the intersection of criminal charges and administrative discipline. Chief Clements believes that two things become abundantly clear when examining this data. First, delays in the LEOBOR process occur when there is underlying criminal charges and/or investigation. Second, he believes it shows that LEOBOR is used infrequently. He has only used LEOBOR twice in his nine years as chief. Chief Clements stated that this in no way means he does not administer discipline, rather he administers more discipline than was reported under this survey. Often times discipline is administered without ever reaching Internal Affairs. While some may question whether this is discipline, he believes that it is because the administrative action seeks to rehabilitate or train the officer.

Chief Clements then discussed the 27 times over the last five years that Providence Police has imposed discipline in the form "termination or resignation." Each one of those twenty-seven could have progressed to a LEOBOR hearing, but they did not. He believes LEOBOR remains an important tool for enhancing department discipline, improving police service, and removing officers when necessary.

Senator Metts then asked how LEOBOR can be improved to increase trust in the process when clearly discipline is being administered but only four cases have progressed to a hearing.

Mr. Vincent then asked Chief Clements if he believed police chiefs would abuse their summary discipline power if it was extended to thirty days. Chief Clements responded that the present group of chiefs would not. Mr. Vincent then asked Chief Clements if he had the 30-day summary discipline period when the one case progressed to LEOBOR would it still have progressed to a hearing. Chief Clements responded that it probably would have. Mr. Vincent responded that he believes a summary discipline period of 30 days would lead to fewer hearings.

Senator Metts then asked the committee clerk to compile a list of recommendations that have been presented to the task force. The committee clerk and Senator Metts discussed formulating a draft report to be discussed on December 2nd with the goal of adopting it on December 16th.

Mr. Vincent made a motion to adjourn, which was seconded by Chief Clements.

Special Legislative Task Force to Review the
Rhode Island Law Enforcement Officers' Bill of Rights



Meeting Minutes for December 9, 2020
Meeting held virtually via WebEx

Senator Metts convened the meeting at 3:00 p.m.

There were 10 members present and three members absent. This established a quorum.

Jim Vincent moved to adopt the meeting minutes from the November 18 meeting. Colonel Clements seconded his motion, which the commission unanimously approved.

Discussion of draft report and proposed reforms

Senator Metts introduced the report and discussed the overarching objective to find a system that is balanced, honest, and credible.

1) Extending summary discipline beyond two days

Senator Metts introduced this proposed reform by restating recommendations received from previous organizations and individuals. Although there was a difference of opinion on the number of days, he said there exists a general consensus that summary discipline must be extended beyond two days. At this point, Senator Metts opened the floor to discussion.

Mr. Vincent stated that he reviewed the report and recommendations as well as the House Bill from Representative Williams. He knows that the “chiefs of today” are fair, however he believes “anything short of 30 days is a problem.”

Senator Rogers said he is comfortable with a summary discipline period of 10 days, because once you go beyond that period the cause of action is usually something more serious and the agency is probably seeking termination.

Colonel Clements agreed with Senator Rogers’ comments. He believes previous testimony from practitioners has shown that discipline of 10 days or more usually indicates termination. When the punishment is 10 days or more, the agency’s recommendation is usually sustained. Aside from LEOBOR hearings, the Providence Police Department has also had 27 instances of forced termination. He believes there is a need and a call for more than two days, and 10 days is sufficient.

Mr. Capezza stated that he believes 10 days is excessive because the statute currently reads that summary punishment of two days may be imposed for minor violations of department rules. He cited several examples of minor violations. More importantly for Mr. Capezza, he believes that

any extension of summary discipline will lead to an increase in grievances and arbitration. For some departments, a 10-day suspension is no longer corrective but more so punitive. Even at five days, this will result in approximately a \$1,700 monetary penalty for officers.

Mr. Evora stated his perspective is that the low number of cases that progress to LEOBOR hearings must be put in the proper context. He cited his question of Chief Wordell at the August hearing, which revealed that some chiefs undergo a cost/benefit analysis before determining discipline. Thus, we need to look at the number of days within that context. He agrees with Mr. Vincent's recommendation of 30 days.

Ms. Swearingen asked whether a summary discipline period allows the chief to have the autonomy to impose a punishment from 0 days to the upper maximum. Colonel Clements and Mr. Evora clarified that LEOBOR currently stipulates that a 2 day suspension may be imposed before triggering the protections of LEOBOR, thus if the recommendation was to extend summary discipline to a new upper maximum the chief could still impose discipline within that threshold. For example, a chief could impose a discipline of 5 or 10 or 15 days.

At this point, Mr. Evora suggested that we entertain a motion beginning at 30 days to determine where the majority feels comfortable. Mr. Vincent followed this comment by making a motion to extend summary discipline to 30 days, which was seconded by Mr. Evora. At this time the clerk called the roll:

Yeas: Senator Metts, Mr. Evora, Ms. Swearingen, Mr. Vincent, and Rev. Washington. (5)

No: Senator Coyne, Senator Rogers, General Neronha, Lt. Col. Barry*, Colonel Clements, and Mr. Capezza. (6)

Absent: Betancur, Jenkins

Final: The motion to extend summary discipline to 30 days fails on a vote of 5-6 (Lt. Col. Barry subsequently joined the Task Force as Colonel Manni's designee after the vote. He asked to be recorded in the negative, which did not change the outcome of the vote. He stated that he supports extending to 10 days).

During the vote, General Neronha offered commentary that while he does not support 30 days, he does support extending the period of summary discipline. He stated that based on his experience in federal practice, 14 days is usually the threshold point where an agency is essentially seeking termination.

After the vote, Mr. Vincent made a motion to extend to 14 days, which was seconded by Ms. Swearingen. The clerk called the roll:

Yeas: Senator Metts, General Neronha, Mr. Evora, Ms. Swearingen, Mr. Vincent, and Rev. Washington. (6)

Nos: Senator Coyne, Senator Rogers, Lt. Col. Barry*, Colonel Clements, Mr. Capezza. (5)

Absent: Betancur, Jenkins

Final: The motion to extend summary discipline to 14 days carries on a vote of 6-5 (Lt. Col. Barry joined the Task Force as Colonel Manni's designee after the vote. He asked to be recorded

in the negative, which did not change the outcome of the vote. He stated that he supports extending to 10 days).

2) Changing the composition of the hearing panel

Senator Metts restated the recommendations of the Rhode Island League of Cities and Towns as well as the Rhode Island Police Chiefs' Association concerning the composition of the hearing panel.

Mr. Vincent made a motion to adopt the Rhode Island League of Cities and Towns recommendation that the composition of the hearing panel include 3 neutral arbiters.

Mr. Capezza mentioned that he did support the Rhode Island Police Chiefs' Association's recommendation that members appointed to LEOBOR hearing panels to receive training.

Colonel Clements underscored the need for training of any member appointed to a hearing panel, thus the benefit of having individuals with backgrounds in law enforcement.

Senator Rogers and Mr. Evora asked for clarification on Mr. Vincent's motion. Precisely, does it incorporate all of the Rhode Island League and Cities Town's recommendation? Mr. Vincent responded that it did, and Mr. Evora asked to clarify whether this would include members of the public.

For clarification, Senator Metts, Mr. Evora, and Colonel Clements restated the following recommendation from the Rhode Island League of Cities and Towns:

- Expanding the hearing panel to five members to increase the number of neutral members.
- These three members would be a standing statewide committee and the two remaining members would be appointed by the charging agency and the officer under investigation. This would help form a precedent.
- The three neutral members would not have to be officers or former officers; however, two may have a background in law enforcement and labor law.

Yeas: Senator Metts, Senator Coyne, Senator Rogers, General Neronha, Lt. Col. Barry, Colonel Clements, Mr. Vincent, and Rev. Washington. (9)

No: Mr. Capezza. (1)

Abstain: Mr. Evora. (1)

Absent: Betancur, Jenkins. (2)

Final: The motion carries on a vote of 9 yeas, 1 no, 1 abstention, and 2 absent.

3) Amending LEOBOR's prohibition on public statements

Several groups called on removing or amending the section with LEOBOR that precludes law enforcement agencies from publicly discussing discipline matters. Senator Metts outlined the balancing framework testified to by Mr. Ragosta, which reads:

- If recommended discipline is less than termination, the law enforcement agency shall make no public statement until after a decision is rendered by the hearing

committee.

- If recommended discipline is termination, the law enforcement agency may make a limited public statement indicating that the officer's termination is sought, that a hearing committee will decide whether such is deserved, whether and what (if any) criminal charges have been brought against the officer, and that the officer has or has not been suspended. After the hearing committee has decided the charges against the officer, the law enforcement agency may make additional public statements disclosing the charges, the hearing committee's decision, and it may also release the hearing committee's discussion.
- In either of the above scenarios, if a law enforcement officer makes a public statement about the charges against them then the law enforcement agency may respond with public statements of its own.

Mr. Vincent made a motion to recommend the above language, which was seconded by Colonel Clements. The clerk called the roll:

Yeas: Senator Metts, Senator Coyne, Senator Rogers, General Neronha, Lt. Col. Barry, Colonel Clements, Mr. Evora, Mr. Vincent, and Rev. Washington. (10)

No: Mr. Capezza. (1)

Absent: Betancur, Jenkins. (2)

Final: The motion carries on a vote of 10 yeas, 1 no, and 2 absent.

4) Repeal the LEOBOR statutory framework in its entirety.

Senator Rogers made a motion to recommend repealing the LEOBOR statutory framework in its entirety, which was seconded by Mr. Evora. Mr. Evora stated that he has not been convinced as to the need for a Law Enforcement Officers' Bill of Rights in Rhode Island. He supports law enforcement officers being treated the same as other municipal or state employees.

Mr. Capezza stated that he agrees that police officers should not be treated differently, but the reality is they are treated differently, even in terms of the department investigation. A police officer is mandated to answer questions during an investigation or face further charges. As Mr. Evora noted, Rhode Island is not the only state that has a Bill of Rights and the impetus for the protection was to protect police officers from arbitrary and capricious management decisions.

Senator Rogers spoke from his experience as a volunteer firefighter and EMT. As a licensed cardiac, he is under heightened supervision similar to police officers. Thus, the bill of rights is there to protect officers in the unique profession of policing.

Chief Clements spoke of the unique profession that is policing as well as the complicated work that police officers are called to carry out. He cited the balancing framework of LEOBOR as successful in protecting due process rights of officers, but the time has come for change. He opposes a complete repeal.

General Neronha spoke from his experience in federal service. To take a job action against a federal employee is very difficult. If you were to consider a major overhaul of the statute it is very difficult to do once every two weeks over the course of several months. Instead, he hopes that the changes proposed today would give chiefs more flexibility and take into account more voices during the hearing panel process.

Mr. Vincent stated that he agrees with Mr. Evora. He also spoke from his personal work experience that individuals face unfair discipline every day in the workplace.

Senator Coyne expanded upon the comment of the Attorney General relative to improving the current statutory framework. She believes the recommended changes will make it better.

Mr. Evora summarized by stating that he believes critical times “sometimes call for critical measures.”

Senator Metts stated that his goal in this task force was to bring balance to the system. With that said, he believes the three recommendations accepted today will lend balance, honesty, and credibility to the system. Senator Metts concluded by stating that we need a system based on truth, balance, fairness, and integrity.

No: Senator Metts, Senator Coyne, Senator Rogers, General Neronha, Lt. Col. Barry, Colonel Clements, and Mr. Capezza. (7)

Yes: Mr. Evora, Ms. Swearingen, Mr. Vincent, and Rev. Washington. (4)

Absent: Betancur and Jenkins. (2)

Final: The motion fails on a vote of 4 yeas to 7 nos.

5) Maintain the LEOBOR statutory framework in its entirety.

No: Senator Metts, Senator Coyne, Senator Rogers, General Neronha, Lt. Col. Barry, Colonel Clements, Mr. Capezza, Mr. Evora, Ms. Swearingen, Mr. Vincent. (10)

Yes: (0)

Absent: Betancur, Jenkins, and Washington. (3)

Final: The motion fails on a vote of 0 yeas to 10 nos.

Senator Metts then discussed recommendations that have been presented to the task force concerning enhancing police community relations. These recommendations, which are listed below, do not directly relate to the LEOBOR statute and are general in nature. Each requires a more in-depth discussion. On a motion made by Mr. Vincent, which was seconded by Senator Rogers, the Task Force unanimously approved including the below recommendations in the final report by reference to the organizations and individuals who introduced them.

- Annual data reporting regarding officer discipline and LEOBOR proceedings.
- Continued funding collection of traffic stop data by the Department of Transportation.
- Require and support increased funding for continuous professional development/prejudice and bias training for law enforcement agencies and officers.

- Amending the Access to Public Records Act (“APRA”) to allow for increased disclosure related to law enforcement officer personnel records. Additionally, some groups have expressed concerns with officer disciplinary records being sealed and/or expunged. Instead, they would like law enforcement agencies to retain all records of an officer’s disciplinary history to ensure progressive discipline and accountability.
- Support the adoption of a statewide, standardized process for collecting and maintaining information relative to officer misconduct.

Mr. Vincent moved to adjourn, which was second by Senator Rogers. The motion carried unanimously.

Results of Survey Distributed to Local Law Enforcement Agencies

Below are the prompts and responses to the Task Force's survey of local law enforcement agencies on officer discipline for the last five years.

A. Annual number of discipline cases for the last five years, including written reprimands. In a separate document, please list the charges that led to these discipline cases.

B. Annual number of discipline cases over the last five years that did not result in a hearing under the provisions of the Bill of Rights.

C. Annual number of discipline cases over the last five years that resulted in a hearing under the provisions of the Bill of Rights.

D. Annual number of cases resulting in findings of guilt by a hearing panel.

E. Annual number of cases resulting in findings of not guilty by a hearing panel.

F. Annual number of cases dismissed by hearing panels for failure to comply with the provisions of the Bill of Rights or violations of due process.

G. Annual number of cases for the last five years where the hearing panel increased the recommended punishment.

H. Annual number of cases for the last five years where the hearing panel reduced the recommended punishment.

I. Estimated annual cost incurred by your municipality for hearings conducted under the provisions of the Bill of Rights, including legal expenses, witness fees, and overtime cost.

J. Do you believe disciplinary proceedings that progress to a LEOBOR hearing are handled in a reasonable amount of time? If not, was it because criminal charges were involved? If there were no criminal charges involved, what do you believe led to the delay?

	2015	2016	2017	2018	2019
A	197	167	189	167	201
B	161	143	169	150	178
C	3	0	0	1	0
D	3	0	0	1	0
E	0	0	0	0	0
F	0	0	0	0	0
G	0	0	0	0	0
H	2	0	0	0	0
I	\$ 67,000.00	\$ -	\$ -	\$ 36,246.58	\$ -

* Only 2 reported cost

	A	B	C	D	E	F	G	H	I	J
Barrington	17	17								
Bristol	0	0								
Burrillville	14	2								
Central Falls	25	25								
Charlestown	2									
Coventry	33	33								
Cranston	34	3								*
Cumberland	4	4								
East Greenwich	9	9								*
East Providence	49	28								
Foster	3	3								*
Glocester	1	1								*
Hopkinton	9	9								*
Jamestown	5	5								
Johnston	18									
Lincoln	4	4								
Little Compton	2	2								
Middletown	21	21								
Narragansett	16	16								
New Shoreham	3	3								
Newport	9	9								
North Providence	37	36	1	1				1	\$25,000	*
North Smithfield	9	9								
Pawtucket	99	98	1	1					\$36,247	*
Portsmouth	63	63								
Providence	156	155	1	1					\$42,000	*
Richmond	1	1								*
Smithfield	14									
Tiverton	18									
Warren	7	7								
Warwick	164	164								
West Greenwich	2	2								
West Warwick	28	28								
Westerly	11	11								*
Woonsocket	34	33	1	1				1	-	
Total	921	801	4	4				2	\$103,247	

Responses to Question J <next page>:

Cranston Chief of Police Michael Winkvist

Once the hearing is convened, it progresses in a reasonable amount of time. However, we have had an occurrence when criminal charges led to a delay in the hearing, which was unreasonable

East Greenwich Chief of Police Stephen J. Brown

I believe that most of the delays of LEOBOR are due to criminal cases. However, because of the intricacies of these types of cases and their outcomes there does not seem to be a clear solution to speeding up the LEOBOR cases prior to the adjudication of the criminal case.

Foster Chief of Police David J. Breit

In my experience in law enforcement, the bill of rights often takes an inordinate amount of time. It is understandable when criminal charges are involved, but when only departmental charges are involved, the process in my opinion needs to be streamlined.

Glocester Chief of Police Joseph DelPrete

No. The Police Officers Law Enforcement Bill of Rights has worked well in Rhode Island, whether criminal charges have been filed or not. However, hearings should be streamlined and time sensitive for efficiency and cost.

Hopkinton Chief of Police David S. Palmer

During the five year block requested we did not have any LEOBOR cases. However, prior to 2015, my experience is that possible hearings were delayed because of various reasons. Criminal charges will delay LEOBOR in most cases; and with the COVID-19 pandemic court delays add to this delay. Past delays I have experienced were due to attorney, police and witness scheduling; and picking the three-member panel.

North Providence Chief of Police Arthur J. Martins

I was appointed Chief of Police of the North Providence Police Department in January 2020. I have little experience with the LEOBOR from my current position with this agency. Prior to joining the North Providence Police Department in 2018, I was employed with the Pawtucket Police Department for 28 years. I have knowledge and experience in some cases involving my tenure with the Pawtucket Police Department. Some of those LEOBOR cases were not handled in a reasonable amount of time. Several cases involved criminal charges that caused the delay in resolving the case, in some matters several years transpired prior to a decision being declared. In other matter that did not include criminal charges, delays were caused by scheduling conflicts between the principal parties involved.

Pawtucket Chief of Police Tina Goncalves

I believe the disciplinary proceedings that progress to a LEOBOR hearing are handled in a reasonable amount of time after criminal charges are adjudicated. While a case progressing through the criminal justice system can be time consuming and delay disciplinary actions, it is paramount for criminal charges to be adjudicated prior to any disciplinary actions.

Providence Chief of Police Hugh T. Clements

Yes.

Richmond Chief of Police Elwood Johnson, Jr.

Between 2010 and 2020, as Chief of the Richmond Police Department, I have not had any disciplinary cases result in a LEOBOR hearing. There have been other disciplinary cases prior to 2015 and after 2019 that resulted in punitive action in which the aggrieved officer accepted responsibility and/ or the recommended discipline.

Prior to 2010, I was a Major with the Rhode Island State Police, and in that capacity I witnessed several LEOBOR hearing committees, usually as a respective Administration's selection to the hearing committee, or as the case agent presenting a case against an aggrieved officer on behalf of the Administration. Based on those experiences, I offer the following response to letter "J":

LEOBOR hearings are time consuming as they mirror judicial hearings in the criminal justice system, and afford due process to the aggrieved/ accused officer. Though they did not proceed as quickly as most would wish, I do not believe it was because "criminal charges" may have been involved, but rather because of the severity of the recommended penalty such as termination and/ or lengthy suspension and/ or demotion, and the unwillingness of the aggrieved officer to accept the terms. I have served on three-member LEOBOR hearing panels in which both sides were able to agree on a third to serve as neutral or "chair" of the panel, and have witnessed instances in which the Presiding Justice of the Superior Court had to select a neutral due to lack of agreement between the aggrieved officer's representative and the administration's pick.

The process is time consuming because of the number of people involved who must be present at the same time and place in order for the hearing to convene and proceed. Aside from the three hearing committee members, there is the aggrieved officer along with their attorney(s), the administration's case agent along with their attorney, the court stenographer, and then witnesses who are often scheduled and rescheduled because of unforeseen delays. It was always difficult to identify mutually acceptable dates to convene the hearing due to the busy schedules of everyone involved. Aside from that, I have observed the process to be fair, thorough, and afford sufficient due process to the aggrieved officer. There is also an appeals process, which can further delay the ability of an administration to carry out the recommended penalty. Fortunately, for most agencies, most cases do not result in a LEOBOR hearing.

Westerly Chief of Police Shawn M. Lacey

In my opinion most hearings are not handled in a reasonable amount of time. I do not feel it is a result of criminal charges, as I realize this can delay the process as the outcome of the criminal case has an impact on the outcome of the hearing. My experiences is most cases is both sides agree to delays which delays the timeliness of the hearing, which can leave the officer on paid leave, resulting in a financial impact to the town or city, or leave the officer unpaid leaving a financial hardship of the officer involved. I feel the timeliness is important to both sides, and if both sides must adhere to timeline restrictions, this will result in cases completed in a reasonable amount of time.

Recommendations to amend LEOBOR's Statutory Framework

- 1) Extend the summary punishment period from two (2) days to fourteen (14) days.

The Task Force endorses extending the maximum period for summary punishment from two days suspension without pay to 14 days. The Task Force was presented with several options for extending this period, most prominently, suspension periods of 5, 10, and 30 days. After much debate, the Task Force agreed to recommend a summary punishment period of 14 days.

- 2) Amend the composition of the hearing panel to increase the number of neutral members from one (1) to three (3).

The Task Force endorsed the Rhode Island League of Cities and Towns' recommendation, which, in principle, expands the hearing committee to five (5) members by adding two (2) additional neutral arbiters who would not need to possess a background in law enforcement. Furthermore, the three (3) neutral arbiters would serve as a statewide standing committee and convene when appropriate alongside the two (2) locally appointed members (one by the law enforcement agency and one by the aggrieved officer). This would help form precedent and foster continuity when adjudicating discipline for law enforcement misconduct.

- 3) Amend LEOBOR's prohibition on public statements when an officer is under investigation for non-criminal matters.

Currently, the chief of a law enforcement agency may not offer a statement prior to the decision of a hearing panel when the investigation is for a non-criminal matter. The Task Force received testimony underscoring the need for greater transparency and dialogue when an officer is being investigated, as these are pivotal to building public trust in the process. The Task Force endorsed a balancing framework that allows chiefs to make limited public statements if the agency is seeking termination of the officer for non-criminal matters.

Recommendations presented unrelated to LEOBOR's statutory framework

- *Continued data reporting regarding officer discipline and LEOBOR proceedings.* No statewide repository for LEOBOR related information exists. The Rhode Island Police Chiefs' Association issued a survey in 2020 concerning officer misconduct and the Task Force collected its own statewide survey.
- *Continued collection of traffic stop data by the Department of Transportation.* The Comprehensive Police-Community Relations Act of 2015 required local law enforcement agencies to collect data on police stops and searches for the purposes of determining whether racial profiling exists. The requirement that this data be collected expired in 2020, and several community organization have called the continued collection of this information.

- *Require and support increased funding for continuous professional development for prejudice and bias training for law enforcement agencies and officers.* The Rhode Island Police Chiefs' Association and the Rhode Island Commission on Prejudice and Bias each testified to the need for continuous professional development for law enforcement. In follow up communications with the Task Force, the Rhode Island Police Chiefs' Association shared updated guidance from the Rhode Island Police Accreditation Commission that requires annual training on biased policing as of August, 2020.
- *Amending the Access to Public Records Act ("APRA") to allow for increased disclosure related to law enforcement officer personnel records.* The Rhode Island Chapter of the ACLU as well as the Rhode Island Public Defenders' Office discussed the intersection of APRA and cases of law enforcement officer misconduct. The ACLU expressed concerns with access to officer disciplinary records, while the Public Defender supports the adoption of a statewide standardized process for collecting and maintaining information relative to officer misconduct to improve the discovery of *Brady-Giglio* material.

Appendix

National Overview of Police Related Legislation Provided by Amber Widgery, Esq. on behalf of the National Conference of State Legislatures

New mechanisms to study and oversee policing:

- Georgia SR 1007: Creates the Senate Law Enforcement Study Reform Committee. ([GA SR 1007](#))
- Louisiana SCR 7: Establishes the Police Training, Screening and De-escalation Task Force. ([LA SCR 7](#))
- Oregon HB 4201: Establishes the joint legislative committee on transparent policing and use of force reform. ([OR HB 4201](#))
- Rhode Island SB 2867: Creates a special legislative study task force to study and provide recommendations on the law enforcement officers' bill of rights. ([RI SB 2867](#))

Additionally, states have introduced and/or adopted legislation regarding data collection:

- Colorado SB 217: Requires reporting on use of force, weapon unholstering and other police contact data / Requires public database. ([CO SB 217](#))
- New York AB 10609: Requires reporting on arrested-related deaths with annual reports to the legislature and the governor. ([NY AB 10609](#))
- Vermont SB 219: Conditions state grant funding for departments on compliance with existing reporting requirements for demographic information on police stops. ([VT SB 219](#))

Ms. Widgery then provided an overview of recent trends in police training and certification. Examples from legislation enacted this summer on use of force trends includes:

- Colorado SB 217: Modernizes the use of force standard to reflect case law, requires use of nonviolent means when possible before using force, limits when physical force may be used, requires that force be consistent with minimization of injury, and prohibits use of chokeholds. Requires identification and warning prior to use of deadly force and restricts when deadly force may be used. Restricts when and how chemical agents and projectiles may be used in response to protests. ([CO SB 217](#))
- Iowa HB 2647: Restricts the use of chokeholds to when deadly force would otherwise be authorized. ([IA HB 2647](#))
- New Hampshire HB 1645: Restricts the use of chokeholds except in certain codified circumstances. ([NH HB 1645](#))

- New York AB 6144: Establishes the crime of strangulation in the first degree specific to officers who disregard procedures banned by their employment related to chokeholds. ([NY AB 6144](#))

Ms. Widgery then provided an overview of enacted legislation on police officer certification/decertification. This is commonly referred to as Police Officer Standards and Training (POST):

- Colorado SB 217: Require the Police Officer Standards and Training Board to revoke officer certification for inappropriate use of force or failure to intervene. Restricts the POST Board from reinstating certification or granting new certification unless the officer is exonerated by a court. POST Board is required to record decertification in a database. ([CO SB 217](#))
- Iowa HB 2647: Establishes circumstances under which the Iowa Law Enforcement Academy Council is required to revoke officer certification, may suspend or revoke certification or may deny an application for certification. ([IA HB 2647](#))
- New Jersey AB 744: Requires that law enforcement agencies provide internal affairs and personnel files to other agencies under certain circumstances. ([NJ AB 744](#))
- New Mexico SB 8: Requires permanent revocation of certification for a conviction involving unlawful use or threatened use of force or a crime involving failure to intervene. ([NM SB 8](#))
- Oregon HB 4205: Authorizes suspension or revocation of certification for failure to intervene or report. ([OR HB 4205](#))
- Oregon HB 4207: Requires denial of application, suspension or revocation of certification upon a finding of certain criminal convictions, status as a sex offender, and discharge for cause related to certain circumstances. Requires a database of decertification. ([OR HB 4207](#))

Ms. Widgery also detailed information on recent initiatives across the country on body-worn cameras. These initiatives include:

- Colorado SB 217: Requires broad adoption of body-worn cameras and establishes regulation for use of body-worn cameras. ([CO SB 217](#))
- New Mexico SB 8: Requires certain law enforcement officers to use body-worn cameras and requires agency adoption of policies and procedures. ([NM SB 8](#))

- New York SB 8493: Establishes the State Police Body Worn Cameras Program, requires the Division of State Police to provide body-worn cameras to be worn by all officers. ([NY SB 8493](#))
- Vermont SB 219: Requires the Department of Public Safety to equip law enforcement officers with body cameras. ([VT SB 219](#))

Written Testimony from Mayor Jorge O. Elorza, On Behalf of the Rhode Island League of Cities and Towns

September 30, 2020

Thank you, Senator Metts and members of the Commission. We appreciate the Rhode Island Senate's commitment to studying and reforming the Law Enforcement Officer's Bill of Rights (LEOBOR). Additionally, we thank the Police Chiefs' Association for their time, consideration and feedback.

As the Commission has worked through the legislative history and application of LEOBOR, the Rhode Island League of Cities and Towns convened a working group to clarify our position on the items that have been discussed before this commission. I served on that working group along with Joe Almond, Lincoln Town Administrator; Steven Contente, Bristol Town Administrator; Christopher Cotta, Tiverton Town Administrator; Karen Pinch, Richmond Town Administrator; and Michael Wood, Burrillville Town Manager. Our group consulted extensively with the Police Chiefs' Association, and our recommendations are consistent with theirs. In short, we support extended thresholds for suspension of officers, improved transparency, discipline record retention in addition to overall improvements to the process, including the composition of the hearing committee. As the commission continues its work, we ask that you consider the following recommendations.

We strongly support expanding a police chief's authority to suspend police officers for up to 10 days without convening a committee hearing. We support a limited review in such instances, where deference is given to the police chief's discipline. The majority of Rhode Island police chiefs want to increase the number of days they may suspend an officer without triggering the LEOBOR process. The current threshold of two days is too short, and we concur with the chiefs' recommendation. We believe that modifications here are among the most critical pieces of reform possible.

We agree that municipal leaders and police chiefs need a greater ability to discuss cases publicly, especially those with possible criminal acts. We are supportive of legislative language that allows for municipal leaders, chiefs, police departments to speak publicly about such investigations. At the very least, leaders should have the ability to confirm or deny public inquiries into investigations in order to ensure public confidence.

We have concerns with officer disciplinary records being sealed and/or expunged. This potentially allows for officers to reset the clock on progressive discipline and be hired by another agency with a clean slate. Law enforcement agencies should retain all records of an officer's disciplinary history.

We do not have specific recommendations about how best to accomplish this goal – whether establishing a database of all disciplinary actions or administratively suspending an officer's credentials after leaving employment with a law enforcement agency. We are open to various

approaches, provided that the end result improves accountability.

Finally, we support revamping the overall process and composition of the LEOBOR board. Police chiefs have noted that very few disciplinary cases actually went to the board for review and those that do lack a consistent set of standards and processes. We support changing the composition of the hearing committees tasked with adjudicating misconduct by expanding it from three representatives to a standing committee of five members. Under a new standing committee, the Judiciary could appoint three permanent members, at least two of whom have a background in law enforcement and/or labor law. The two remaining members would be the officer's and management's representatives, as provided for in the current law. This reform would greatly serve to standardize the LEOBOR process, creating a standing group to ensure the uniform application of standards and discipline across cases. Further, from a process standpoint, we have two other recommendations: making pre-hearing discovery rules reciprocal, thereby requiring officers to produce to the law enforcement agency witness statements and other evidence intended to be used at a hearing; and sharing any costs of the LEOBOR hearings equally between the employer and the officer's representatives.

We appreciate the Commission's efforts to improve transparency and accountability in law enforcement agencies. Thank you for the time and consideration of our views.

**Written Testimony from Juan M. Cofield, President of the New England Area Conference
of the NAACP**



**NAACP
NEW ENGLAND AREA CONFERENCE**

**Post Office Box 320320128
(617) 325-7580**

West Roxbury, MA 02132

December 1, 2020

The Honorable Harold Metts
Rhode Island Senator and Chair
Rhode Island Law Enforcement Officers Bill Of Rights Task Force
Sen-Metts@rilegislature.gov

Dear Senator/Chair Metts:

I am writing on behalf of the NAACP, New England Area Conference (NEAC). NEAC is the governing and coordinating entity of the NAACP for the states of Rhode Island, Massachusetts, New Hampshire, Maine and Vermont. NEAC has the sole authority to address state legislative and policy matters for the state of Rhode Island, as well as the other above named states.

NEAC appreciates the state's determination of need for the LEOBOR - to protect the rights of law enforcement officers. However, NEAC avers that LEOBOR has exceeded its reasonable objective to assure and protect law enforcement officers' basic rights and their collective labor bargaining rights. With the rights of law enforcement officers to arrest, curtail the liberty of other citizens, and use deadly force when necessary comes an enormous responsibility. Substantial accountability to Rhode Island citizens must also come with the grant of such officers' rights. There must be a balance.

Herein lies the grave concern of NEAC, as it believes that the balance of protecting the rights and freedom of Rhode Island citizens is way off kilter. Many citizens believe that, as a group, law enforcement officers have forgotten the basic need for their existence, to protect citizen's life and property. Even more citizens of color, believe that law enforcement officers, as a group:

- disregard their rights of liberty as citizens
- regularly disrespect them
- occasionally use excessive force
- otherwise treat them in a manner which reflects racial bias.

The LEOBOR has gone too far and it harms the ability of managing officers to maintain necessary control and order of policing forces. More importantly, it has substantially reduced accountability of officers, and such effect has placed Rhode Island citizens in harm's way, particularly for citizens of color.

After considerable deliberation, NEAC has developed a document of policing reforms which it feels are essential to bring law enforcement officers' rights and responsibilities, and citizens' rights and freedoms in equilibrium. The recommended policing reform document is attached. You may also be interested in know what your bordering state, Massachusetts is doing regarding policing reform, so I am providing a link to an article which appeared in today's *Boston Globe* regarding this state's legislative actions today.

<https://www.bostonglobe.com/2020/11/30/metro/lawmakers-unveil-police-reform-compromise-after-months-secret-negotiations/>

I will be out of the area until December 10th. After that point, I will be pleased to meet with you as Chair or with the Task Force as a body. I can be reached at any point on my cell phone, (617) 256-4802 or by email. Thank you for your consideration.

Cordially yours,

Juan M. Cofield
Juan M. Cofield
President

[Below is a document provided by the NAACP New England Area Conference entitled "NEAC Policing Advocacy Issues," which serves as a guiding document for their ongoing efforts in Massachusetts]

NEAC POLICING ADVOCACY ISSUES

The NAACP, New England Area Conference (NEAC), has undergone a deliberative process to address urgent policing issues our communities are facing. The process included significant discussion by NEAC members, which resulted in recommendations to the Executive Committee. With some tweaking and minor changes, the recommendations were adopted.

The adopted policing policies provide guidelines for NEAC and our Branches to address. Some relate solely to municipalities and counties and those must be addressed by Branches. Some relate solely to state issues and statutes, which must be addressed by NEAC. Thirdly, some relate to state, municipal and county governmental entities and statutes. Those will be addressed by NEAC, in concert with Branches.

NEAC acknowledges that there are yet broader issues relating to how governmental entities should be re-imagined to provide safety and protection to communities and the enforcement of laws. This review requires a different and somewhat longer process, which should include more research and analysis. The NEAC criminal justice committee is being asked to begin that process.

The NEAC Policing Advocacy Issues document, which follows, is divided into the 3 sections, municipal and county issues, state issues, and the combined municipal, county and state issues.

Municipal and County Issues

1. Establish a civilian review board with subpoena power which must review all police deadly shootings and excessive force complaints.
2. Reduce police department budget where appropriate to reallocate funds for mental health and other community based services.
3. Remove uniformed, armed police from public schools and increase the presence of trained professionals to manage disciplinary matters.
4. In communities where the housing cost will permit, adopt and enforce residency requirements for police jobs.

State Issues

5. Enact statutes to eliminate the qualified immunity doctrine.
6. Establish a strong statewide Peace Officer Standards and Training (POST) system to certify police officers and enable de-certification for misconduct and abuse.
7. Modify the application of veteran's preference in police hiring. Add racial and ethnic diversity as a preference for police positions to ensure that all policing units are racially, ethnically and gender diverse and that when the percentage of people of color exceeds 5% of a community, the percentage of people of color are at least proportional to the population of people of color.
8. Enact statutes which require that all civil monetary awards in dispute settlements and court ordered judgments against states, counties, cities or towns be made public, in instances where a police shooting, police misconduct, police excessive force, racial, ethnic or gender discrimination is alleged. Additionally, the full cost of defending such cases must be made public. At the end of each calendar year, the governmental entity must publish the aggregate amount of any such awards in local publications.
9. Review and modify de-escalation protocols, and require data collection and regular public reporting of police use of force.
10. Develop an updated statewide data collection system with race and ethnicity identification that is standardized and mandatory for all law enforcement agencies related to use of force, traffic stops, arrests, mental health and other related topics. This data should be used to help shape oversight and training efforts, be fully accessible to the public in easy-to-read formats and housed as a statewide database.

11. Establish a statewide model policy on the use of force for all law enforcement agencies and officers. The model policy shall establish a statewide definition for what constitutes the use of force by police. Such use of force should only be authorized where it is necessary, reasonable and proportionate, as deemed by a reasonable person.

12. Require the investigation and prosecution, if appropriate, by any city, town or county law enforcement officer involved in a deadly shooting be conducted by a special unit of the state attorney general's office established for that purpose. Where a deadly shooting is committed by a state law enforcement officer, the governor, senate president and speaker of the house must agree, by majority vote, to engage a special prosecutor to investigate and prosecute, if deemed appropriate, the accused law enforcement officer.

13. Seek Enactment of a Statute or Ordinance Establishing a Presumption for Summonses. Such laws would require that law enforcement officers issue court summonses for all misdemeanors and non-violent minor offenses.

14. The hiring, promotion and retention of Black law enforcement officers and other officers of color is an important element of a fair and trusted criminal justice system. Accordingly, allegations of patterns and practices of discrimination and disparate treatment of officers of color by law enforcement agencies must be investigated and appropriate action taken by the US Department of Justice.

Municipal, County and State issues

15. Prior to any promotion, candidates must demonstrate their understanding of fair and impartial policing practices as well as de-escalation and procedural justice.

16. All law enforcement officers must be required to use body worn cameras. There must be clear and consistent statewide policies governing their use, including activation / de-activation, privacy issues and release of camera footage.

17. Prohibit the police use of a fire arm unless it is necessary and reasonable, as deemed by a reasonable person, to save the life of a police officer and, or the life of members of the general public. Shooting an unarmed person, a fleeing person or the shooting of a person in the back are additionally and specifically prohibited.

18. Establish the duty and obligation of other police officers on an incident scene to intervene when they witness the excessive use of force by a fellow officer.

19. Prohibit no knock warrants.

20. Prohibit the use by police officers of any technique, tactic or hold which restricts the circulation of blood or air in the body.

DOCUMENT NOTES

In this document, the terms police and law enforcement officers and departments are intended to include sheriff deputies and or sheriff departments. It is important to make this reference because in Massachusetts, the Massachusetts Supreme Judicial Court has ruled that under the relevant statute, sheriff deputies are nor law enforcement officers.

Dated: July 2, 2020

Written Testimony from Ralph Ezovski, National Representative of the International Brotherhood of Police Officers



International Brotherhood of Police Officers

A DIVISION OF THE NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES

Written Testimony of:

Ralph W. Ezovski

National Representative

International Brotherhood of Police Officers (IBPO)

To The Honorable Members of the
Rhode Island Law Enforcement Officers' Bill of Rights Task Force

My name is Ralph Ezovski and I am a National Representative for the International Brotherhood of Police Officers (IBPO), and served as a police officer with the City of East Providence for 21 years, retiring as a Lieutenant. In addition, for the past 28 years I have been an adjunct faculty member teaching Criminal Justice at Bristol Community College.

I have served on Law Enforcement Officers' Bill of Rights hearing committees in the past. I understand the current climate and the need for dialogue concerning policing in America. I also understand that police officers must be afforded due process rights. It has been my experience that the Bill of Rights has worked since its inception. That being said, there is always room for improvement.

In 1995 the General Assembly amended the Bill of Rights with a commission chaired by then-Senator Paul Tavares. That amendment provided changes that were necessary at that time. I have watched the hearings of the current commission and am aware of the concerns that have been raised. I do believe that there is a need for more transparency as it relates to the Bill of Rights. I would be in favor of allowing police chiefs more flexibility in discussing pending disciplinary investigations and charges. I would also be in favor of allowing the summary punishment to be increased from two days to five days. This is a significant amount of time and a significant financial penalty to the officer. I would not be in favor of expanding the hearing committee beyond three members. I have seen no evidence that the three-member panel does not work.

We often speak of policing as being a profession, and like other professions practitioners should decide the appropriate penalties. I would be in favor of establishing some type of training for officers who serve on the panel.

Finally, there has been discussion about the delay that takes place in holding hearings. From my experience, the delays are often the result of attorneys being unable to schedule hearing dates to meet their schedules. I would suggest that timelines be implemented that require attorneys to meet the timelines.

Thank you for the opportunity to present this written testimony to you.



Written Testimony Submitted by Jillian Folger-Hartwell on behalf of The National Police Wives Association

To All This May Concern:

We stand at a moment in time. Time to talk about real change in our country. A time where everyone's hearts and minds are focused on equality, justice, fairness, and inclusion. A time for everyone to come to the table and finally listen, not just to hear, but to understand and be heard. As proud family members of law enforcement Officers, we could not be more hopeful. As spouses and families, we have watched with silent concern from the sidelines for far too long. We stand united as the bridge to community trust, understanding, and faith in our loved ones that proudly put on their uniforms daily to serve and protect the communities we call home. Unfortunately, we have witnessed this bridge being slowly torn down. While we believe there is blame to be shared by all for this breakdown, it is both selfish and unproductive to continue down the path of pointing fingers and using divisive rhetoric. As community members and law enforcement family members we are asking for more from you. We know you believe we all deserve better! We have come to learn through our leadership coach and our training, that "Our Response is our Responsibility." We feel as though we can no longer reasonably stand by in silence. We know that the time has come to speak about Police Reform. We, too believe that standards need to be raised. As community members we, too believe that we should have the best Officers; Officers who are well paid, have the most up to date training and have access to the best mental wellness resources and tools. This is a priority. We see firsthand what long hours, trauma, lack of planning, and minimal commitment to mental health has caused. It takes only a moment to look at the numbers and data provided by our partners at Blue Help with regard to suicide in law enforcement. Suicide has surpassed line of duty deaths and has become the number one cause of death for Officers. Yet, we all still turn a blind eye. We want to see Officers given the additional and unlimited resources they need, to not only respond to communities that are in danger or in crisis, but also when Officers are called to respond to social issues. These community concerns require follow-up and partnership with other agencies to assist. These issues weigh heavily on us as families and, quite frankly, as community members. There is so much to lose if we don't get this right. We have come to ask for your help during this transitional time. We know it is important to you, as lawmakers and elected officials, to have the facts. When attempting to legislate issues that so profoundly impact the community at large, having good, unbiased, and credible information from all sides is essential. We are asking that before you make any decisions about how Officers perform their everyday tasks and duties you, personally, do the few things listed below. We also encourage any other parties who are consulting or advising on these issues to do the same.

Sit down and review the information provided during Citizens Academies given by your Police Department.

Go on ride-alongs during several shifts, in several areas in your city. This should definitely include high crime areas over the weekend, and any other times the Police Department may experience a high volume in calls.

Go through a Police Simulator with the use of force scenarios and document your results for study. As you begin to legislate or form your opinions on Officer response, these notes will

be so helpful and useful to understand what might go through an Officer's mind in those milliseconds they have to act!!

Lastly – and this is most important – arrange to sit down and talk with widows and family members of Fallen Officers. Talk with Wounded and Injured Officers, both permanently disabled and those who were able to return to work after their challenges. Sit down with spouses and families of those who have committed suicide. Finally, speak with Officers who have had to cut their careers short due to issues with PTSD and other issues that sprung from trauma experienced because of the weight of the job. We would be happy to facilitate meetings with any of the families who are dealing with these challenges listed above.

We are respectfully asking your consideration of these requests. Right now, in our homes and all across the country, we are seeing what happens when our Officers feel distressed and frustrated when they feel they cannot do the job that they swore an oath to do without fear that they will put their own families and livelihood at risk, and when they cannot respond and protect the public as they were called to do. We have all seen the drastic steps Officers feel they need to take. We are concerned as spouses, families, and community members about what will happen if we continue toward this trend of mass resignations, confusion, and general hopelessness about how to do the job. For us, there is so much more to lose than just a paycheck. The decisions being made affect our very lives, and public safety as a whole.

In recent weeks, in the court of public opinion, the complete and total way those in the law enforcement profession have been marginalized and come under attack has caused great difficulty, pain, and strife in all our households. It's difficult to describe how hard it has become to support Officers who feel like they have lost the hearts of the communities. These are the very communities that they would die for, that Officers have in the past died for, and that they have all risked their lives to protect. We have grave concerns for Officers' mental health due to increased hours, disconnection from any normalcy, and the lack of downtime with family. We have grave concerns about the increased pressure of confusion about how to defend themselves or the public without fear of unwarranted reprisal. We are asking, as their spouses and families, for you to stand a moment in their shoes. Ask yourself, would you want to continue in a job with such uncertainty, when doing so could cost you your very life?

It's so important to get this right for all concerned. It is moments such as these that call to mind the symbolic and significant message that was captured in a tweet after the 2019 Atlanta Super Bowl by Reverend Bernice King, daughter of the late Dr. Martin Luther King Jr., in which she proclaimed "...humanity is turning the tide and our efforts must include bridgebuilders, strategic negotiators, and ambassadors." So very true and profound. We at the National Police Wives Association are asking you for your help in calling everyone to the table. The time has come!! We know all too well what is at stake. We welcome the talks about transparency and accountability and welcome the opportunity to be invited to that table, to play the part that Ms. King so eloquently envisioned.

Please let us know how we can further help. You will find contact information for our President Kelli Lowe, listed here in this letter. Please let us know when we can arrange a meeting to introduce our leaders and ambassadors in your area, and discuss our special initiative "Enough." We would

love to be strategic negotiators to help begin to rebuild the bridges into both worlds that have become broken.

Respectfully,

The Executive Board and Members of
The National Police Wives Association