

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.