

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



Meeting minutes – Second Meeting
August 26, 2020

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 underscored that minutes should include who made the motion and who seconds them. 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.

Mr. Wordell began his presentation with an overview of a recent survey of law enforcement agencies concerning LEOBOR and other disciplinary matters. This included all suspensions for the past five years and a summarization thereof.

At the outset, Mr. Wordell stated that there is no central repository for LEOBOR procedure and proceedings. He also stated that LEOBOR protections have been used "infrequently" in recent years. Twenty-three law enforcement agencies participated in his survey. According to the information the association gathered, LEOBOR was invoked 22 times over the last 10 years. That statistic does not mean that it went to a full hearing. According to submissions, over 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 a small percentage leading to LEOBOR proceedings. He offered that 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.

Mr. Wordell said that chiefs agreed on the need to examine three provisions of LEOBOR.

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

Increasing the period of summary discipline beyond two days.

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. When chiefs were asked how they determine discipline, some said they rely on in-house software to track discipline while others do not. 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. Several agencies do have a discipline matrix, which is provided to rank and file officers.

Transparency of Discipline.

According to Mr. Wordell, every chief recognizes transparency is key to gaining 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. The vast majority of chiefs suggested that discipline centered on criminal behavior should be made public, and most 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 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. The majority of this discipline is initiated from within, not from the public. Discipline short of termination has the intent of rehabilitating the employee. Thus, these are instances that are administrative but in the public limelight, such as officers caught “sleeping on the job.” Here, employer 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 that had been members of the hearing board stated their biggest obstacle was becoming familiar with the process. 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. The organization recommends that 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 to the survey 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.

Mr. Wordell underscored the common occurrence of resignation or retirement when an officer is sanctioned with or may be subject to discipline. When this occurs, it eliminates the need for LEOBOR. However, it also eliminates the need for disciplinary findings. Mr. Wordell stated that this is relevant because of Rhode Island Police Officers Commission on Standards and Training. Under this system, Rhode Island does not have a process for decertifying police officers. Therefore, a police officer subject to discipline by one law enforcement agency in Rhode Island who opts 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 if they leave a law enforcement agency to create a mechanism for referral to the POST if they seek employment at another law enforcement agency.

At this time Mr. Wordell opened it up to questions:

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

Reverend Jenkins then 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's pretty clear the agency is looking for termination. Instances of misdemeanor charges are not that 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 summarized by stating that 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 Gordon then asked a question centered on his experience negotiating contracts; specifically, do disciplinary records get “wiped from the record” after a certain period of time or is there a central depository for records?

Mr. Capezza then offered remarks in response to questions raised. 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 that under the current LEOBOR the board has the opportunity to have an attorney be present to provide counsel. He did say that this is used infrequently.

3) At this point, the commission moved on to the draft survey prepared staff. The survey would be issued to 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. These questions were clarified in the survey.

Chief Clements then provided language for a question concerning the 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 immediate need for a LEOBOR hearing pauses in deference to those criminal proceedings. 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 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 a cost benefit analysis of a suspension and LEOBOR.

At this time, Colonel Manni agreed with Mr. Evora that many times his suspension 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.