

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



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

At 1:00 p.m., 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 proceeded to read a letter into the record from President of the Senate Dominick J. Ruggerio appointing Senator Metts chair of the task force. One member subsequently arrived during the appointment of Senator Metts as chair of the LEOBOR Task Force.

Senator Metts then offered opening remarks. He welcomed the members of the commission and thanked them as well as other members of the public for expressing a willingness to serve. He stated that "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 reminded commission members of the success of the Police Community Relations Act.

Senator Metts then asked the members present to introduce themselves:

- Michael Evora: Executive Director of the state's Commission for Human Rights
- Rev. Howard Jenkins: Public member appointed by the president of the senate and President of the Ministers' Alliance of Rhode Island
- Tony Capezza: Rhode Island AFL-CIO
- Senator Cynthia Coyne: District 32 - Barrington, Bristol, and East Providence
- Jose Batista, Esq: Providence External Review Authority
- Jim Vincent: President of the Rhode Island NAACP
- Senator Harold Metts: District 6 - Providence
- Marcela Betancur: Executive Director of Latino Policy Institute
- Rev. Chontell Washington: Rhode Island State Council of Churches
- Colonel Hugh Clements: Providence Police Department
- Superintendent James M. Manni: Rhode Island State Police
- Peter F. Neronha: Rhode Island Attorney General

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

Mr. Bissailon's overview:

The committee presented a PowerPoint, which is publicly available on the commission website at: <http://rilegislature.gov/commissions/leobr/commdocs/LEOBOR%20Slides%20v3.pdf>. He discussed the following in part:

This group is tasked with making recommendations on reforming and improving the Law Enforcement Officers' Bill of Rights over the next several months in order to present draft legislation.

You have 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*

Law Enforcement Officers' Bill of Rights became a statutory concept in the 1970s after legislation was introduced in the US House of Representatives. At its core, the framework sought to protect in a balancing framework the constitutional due process rights of officers as employees with the rights of citizens.

In 1974, Florida and Maryland were the first states to adopt Law Enforcement Officers' Bill of Rights. Rhode Island follow suit in 1976, and became the third state to pass a bill of rights. Several other states followed suit throughout the 1980s and by 1991. Rhode Island adopted the Law Enforcement Officer Bill of Rights in 1976. At the time, it was the third state in the country to do so. As you will hear later, approximately a dozen states followed suit throughout the 1980s and in to the early 1990s.

Since 1997, Rhode Island's Law Enforcement Officer Bill of Rights has been amended several times; and, on one occasion was substantively reviewed.

In 1995, the Senate and House of Representatives appointed a special commission to develop consensus based recommendations largely on three fronts:

- *Efficiency in the process*
- *Protecting management rights and limiting costs*
- *The court's role in the process and the desire for transparency*

Ultimately, the 1995 Commission agreed to seven consensus based recommendations:

1. *Establish maximum time limits for the selection of panel members, commencement, conduct and conclusion hearings.*

2. *Change to the existing appeal procedure to equalize rights of 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 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 Hear Panel to establish a neutral members on the panel to serve as Chairperson, including a process for the Presiding Justice of Superior Court to select panel member from a pre-submitted list that can include law enforcement retirees.*

In addition, the Commission issued a survey to law enforcement agencies requesting department information on LEOBOR.

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

- 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.*

Items to consider:

- 1) *Composition of hearing panel.*
- 2) *Extend the Summary Suspension period beyond 2 days.*
- 3) *Prohibition on public statements.*
- 4) *Streamline procedures while protecting procedural due process.*

Chair Metts then welcomed Amber Widgery from 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 Officer Bill of Rights is "somewhat broader" than other states, so this would be an important place to start the discussion. Her presentation is available here:

<http://www.rilegislature.gov/commissions/leobr/commdocs/NCSL%20Widgery%20Policing%20Slides%20July%202020%20Final%20RI.pdf>.

Ms. Widgery's presentation stated in part:

An overview of NCSL and its recent initiative to track recent trends in policing policy moving forward. That initiative is available here: <https://www.ncsl.org/research/civil-and-criminal-justice/legislative-responses-for-policing.aspx>.

Several states have created new mechanisms to study and oversee policing; including:

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

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

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

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:

- CO 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.
- IA HB 2647 – Restricts the use of chokeholds to when deadly force would otherwise be authorized.
- NH HB 1645 – Restricts the use of chokeholds except in certain codified circumstances.
- NY AB 6144 – Establishes the crime of strangulation in the first degree specific to officers who disregard procedures banned by their employment related to chokeholds.

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):

- CO 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.

- IA 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.
- NJ AB 744 – Requires that law enforcement agencies provide internal affairs and personnel files to other agencies under certain circumstances.
- NM 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.
- OR HB 4205 – Authorizes suspension or revocation of certification for failure to intervene or report.
- OR 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.

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

- CO SB 217 – Requires broad adoption of body-worn cameras and establishes regulation for use of body-worn cameras.
- NM SB 8 – Requires certain law enforcement officers to use body-worn cameras and requires agency adoption of policies and procedures.
- NY 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.
- VT SB 219 – Requires the Department of Public Safety to equip law enforcement officers with body cameras.

Before moving on to a discussion centered on Law Enforcement Officers' Bills of Rights, Ms. Widgery provided this summation of 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.
- 8 require that at least some law enforcement officers utilize body-worn cameras.

Ms. Widgery then proceeded to give an overview of states where a Law Enforcement Officers' Bill of Rights exists. She offered that 19 states across the country have a statutory framework in place that could be considered a "law enforcement officers' bill of rights." She said that these statutes vary primarily 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. She also stated that the vast majority of these laws were enacted in the 1970s and 1980s.

Since their enactment, approximately half of LEOBOR statutes across the country have been amended over 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 scope applicability. Recent amendments that have expanded the applicability of LEOBOR include Delaware, which moved to include parole and probation officers in their LEOBOR.

There have also been a handful of 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 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.

Applicability: In most instances, LEOBOR covers rank and file police officers. Two states have LEOBORs that cover firefighters. 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: 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.

Hearings: Ms. Widgery then said that 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.

Conclusion of Ms. Widgery’s presentation.

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

An individual from the public then 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 continued by adding that he hoped 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:

At this time, Mr. Vincent asked where Rhode Island fell on the continuum of LEOBOR statutes and his desire to analyze the protections afforded by Rhode Island 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 agencies. 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. First, police officers are public employees and we should consider that fact alongside how cities and towns treat other public employees. Second, he proposed on behalf of his PERA members, the board should consider an immediate repeal of LEOBOR and “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, and Mr. Vincent made a motion to adjourn.