

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



Meeting Minutes – Fourth Meeting  
October 14, 2020

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, and Anthony Capezza seconded his motion. The commission unanimously approved the meeting minutes.

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 then introduced another member of the Rhode Island Police Wives' Association, Christina Hernandez. Mrs. Hernandez spoke on behalf of the association. Mrs. Hernandez thanked the committee for the opportunity to outline her organization's concerns. She is the wife of a Providence Police officer. The association speaks on behalf of thousands of spouses and children of law enforcement officers across Rhode Island.

Mrs. Hernandez stated 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 that are relative to Rhode Island rather than 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.

Senator Metts proceeded to discuss survey results to date. Ten law enforcement agencies had responded to the survey thus far. The deadline is November 1<sup>st</sup>, 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 28<sup>th</sup>. 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 two above groups' 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 measures that exists for administrative matters.

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

The meeting resumed shortly thereafter, and 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 move for criminal charges or termination under the present construction of the Law Enforcement Officers' Bill of Rights. 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. He mentioned the unique nature of the RISP, which 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/Expanding the Composition of the Hearing Panel**

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

Mr. Vincent stated 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 commission/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 in to 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 that when a police officer is charged criminally their information is released immediately. 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 obligations which would have to be built in to the statute, but there should be room to issue a statement about what is alleged.

Senator Metts proceeded to recount 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 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.