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State of Rhode Island House of Representatives Judiciary Committee
Seema Sadanandan, on behalf of Arnold Ventures
April 4, 2023
RE: Testimony in support of HB6181

I would like to respectfully thank Committee Chair Robert Craven, Vice Chairs McEntee and Knight, and all members of this committee for hearing my testimony today. My name is Seema Sadanandan. I am an attorney, and I am here on behalf of Arnold Ventures - a philanthropy dedicated to improving Americans' lives through evidence-based policy solutions and one of the largest funders of criminal justice reform in the country.

Today, I will be testifying in support of H.B. 6181, which would authorize the Rhode Island Police Officers Commission of Standards and Training ("POST")—a state agency—to certify and suspend or revoke the certification of officers (statewide) who have engaged in serious misconduct. I will also make comments generally related to the host of bills pertaining to the RI Law Enforcement Bill of Rights. My comments are aimed at helping RI adopt reforms that modernize and professionalize its policing practices and bring them up to date with the practices and policies that are enshrined in law in nearly every other state in the country.

We at Arnold Ventures work to support law enforcement in conducting their duties fairly, effectively, and professionally. The men and women who serve as law enforcement officers in RI are often tasked with providing a first response to crises, emergencies, and dangerous situations in which they must act quickly to protect both the public and themselves from grave harm. To say this is a taxing and difficult profession and a great service to the public is a gross understatement.

LEOBOR

Rhode Island is the only state in New England with a law enforcement officer bill of rights law. Indeed, most states across the country do not have a LEOBOR. Best practices acknowledged by the profession of policing, seek to balance a fair due process procedure for LE against the need for openness, transparency, accountability, and public confidence - in the instance of an allegation of serious police misconduct.

Simply said – RI's approach to police accountability should be modernized to fall in line with nearly every other state in the country such that police officers should enjoy due process protections - and RI should remove any special protections that make it difficult, if not impossible, for rogue or corrupt individual police officers' actions to be disciplined by their Chief in the rare instance of serious misconduct.

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1. No state in New England and hardly any other state in the country stacks the disciplinary hearing process in favor of the law enforcement officers as is outlined in the LEOBOR. We would recommend three sets of changes: (1) take the hearing committee out of initial fact finding and transform them into appeal boards; (2) change the composition of the hearing committee to ensure more balance; and (3) make any hearing committee findings, decisions, or orders available to the public (with sensitive information redacted).

2. We recommend RI clarify that anonymous and unsworn complaints are entitled to be filed freely and should be investigated to the same extent as if they were sworn. Of course, RI may clarify that officers still have the right to examine any witnesses used against them at the disciplinary hearing and can call into question the reliability of the complainant to the extent that the state relies on the initial complaint. We also recommend that RI not require the name of any complainant to be disclosed until after disciplinary charges have been filed and only if the complainant's testimony will be (i) introduced during the disciplinary hearing; or (ii) used by the investigating agency as a basis for finding a violation.

3. Section 42-28.6-2(9) provides that whenever an officer is subject to a disciplinary interrogation, that interrogation "shall be suspended for a reasonable time until" the officer can secure counsel. The length of a "reasonable time" is not specified in the statute. We thus recommend that RI clarify that (a) the waiting period must be no longer than 24 hours rather than a "reasonable time" and the waiting periods comes into play only if the officer requests representation (that will give officers ample time to secure counsel if they wish); (b) no law or agreement may preclude supervisors or investigators from asking questions about matters reasonably prompted by a concern for officer or public safety; and (c) no law or agreement may preclude supervisors or investigators from separating officers to ensure multiple officers at the same incident do not communicate with one another until after their disciplinary interviews have been completed.

4. Section 42-28.6-4 prohibits disciplinary action against officers more than 3 years after an incident unless the incident involves a potential criminal offense. This limitation period becomes problematic when an agency does not become aware of the incident many months or years after the incident. We thus recommend (a) running the limitations period at least 1-2 years from when the agency becomes aware of the incident; and (b) adding a requirement that agencies must accept, process, and investigate all complaints filed within 2 or 3 years of (i) the complained-of incident or (ii) the date the victim of the complained-of incident becomes aware that the complained-of incident occurred. The latter provision is important in case the victim does not learn of the officer misconduct until some later date; for example, a person who only learns that an officer unlawfully entered, searched, and seized property within her vacation home many months after the fact.

5. The LEOBOR contains several other provisions that serve as impediments to officer accountability that we would recommend repealing. Namely, § 42-28.6-2(2) requires all interrogations to take place in a pre-specified room at the police station and §32-28.6-2(3) only permits one interrogator to question an officer. Both of these are non-standard provisions not typically afforded to other public employees and unnecessary to afford the officer due process.

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Decertification

While we understand that in practice the chiefs of police in RI collaborate effectively to restrict internal transfers where the officer may have a history of misconduct - it is important to make the process of decertification both objective, fair, transparent, and uniform - so that officers know what is expected of them and what consequences they will face at the state level when they deviate substantially from the norms within the profession and under our legal system.

While the debate on LEOBOR seeks to outline a fair disciplinary process when it comes to discipline administered by the local law enforcement agency that employs an officer accused of misconduct - the question of decertification is a separate and related one pertaining to when the state *POST* may suspend or revoke an officer's state-level certification following sustained serious misconduct. Under the standard adopted by many states, including your neighbors in Massachusetts, the POST enjoys the authority to both certify and decertify officers.

We understand that there are some inconsistencies in the present draft and so I will outline briefly the scope of reform that we believe will bring RI in line with most other states.

A decertification regime in RI should expand the authority of the POST to certify or decertify officers where there has been a criminal conviction of an officer, or the POST makes a post-hearing finding (by clear and convincing evidence) that the officer engaged in serious misconduct that serves as basis for state license suspension or revocation by POST. That authority granted to the POST will allow them to consider a finding or conviction in the context of officer certification to ensure that in the case of serious misconduct as outlined by statute - the officer would no longer be able to serve in any jurisdiction. Other similarly situated public sector unions, like nurses and teachers, also engage in a separate statewide certification regime that is separate from the agency level disciplinary process.

In every state in the country except Rhode Island and Hawaii, police officers are licensed (e.g., certified) by a state agency (usually called a POST, or Police Officer Standards and Training board) that is also empowered to revoke or suspend an officer's license if the POST board finds that the officer engaged in serious misconduct. Just as lawyers can be disbarred by a state agency if they engage in serious professional misconduct, every state except Rhode Island recognizes that the same should be true for police officers. Thus, if an officer uses unjustified, excessive force and kills someone, in many states, the POST board could revoke an officer's license, even if the officer is not criminally prosecuted or fired by their employing agency. Indeed, in 2021, Massachusetts enacted legislation authorizing its POST board to suspend or decertify officers who engage in specified categories of serious misconduct, including excessive force resulting in death or serious bodily injury.

RI's status as an outlier must change and passing H.B. 6181 is the way to change it. The bill would empower the POST to certify and suspend or decertify officers, stripping them of their license statewide if the POST finds by clear and convincing evidence that the officer engaged in egregious misconduct. Among other provisions, the bill sets forth clear grounds for when the Commission must revoke an officer's license, e.g., when the officer is convicted of a felony, engages in excessive force resulting in death, or plants evidence.

The bill importantly empowers the POST, a state-level agency, to strip the worst officers of their badge, even when their employing agency will not or cannot fire them. In some cases, a chief may want to fire a police officer who engaged in egregious misconduct but is prevented from doing so by particular RI

LEOBOR provisions that hamper the chief from imposing discipline on his or her officers. The POST, in other words, serves as a state-level backstop to ensure officers who pose a danger to the public are held accountable when they engage in serious misconduct, even if they are not criminally prosecuted or punished by their local employing agency.

The bill also would go a long way to addressing the so-called "wandering officer" problem—in which officers who engage in serious misconduct get hired by another agency after separating from their prior employing agency. Addressing the wandering officer problem is aligned with the current internal practices employed by RI Chiefs of Police and merely seeks to codify and make uniform the standards applied to all officers.

In sum, H.B. 6181 would benefit police chiefs and officers (and members of the public) by setting forth clear rules ahead of time specifying when POST may suspend or decertify officers at the state-level for engaging in egregious misconduct, following a thorough investigation and full hearing. Again, every state in the country EXCEPT Rhode Island empowers their POST (or comparable state agency) to certify and decertify its officers.

In all of these states, then, there are two distinct mechanisms for holding officers accountable following misconduct: (1) local agencies & police chiefs can discipline officers who works for them who engage in misconduct (e.g., by demoting them, suspending them, firing them for working at their particular law enforcement agency) ; and (2) separately, a state agency (POST) serves as a backstop and can suspend or revoke the license of an officer statewide when POST finds by clear and convincing evidence after a hearing that the officer engaged in the most severe forms of misconduct. (optional: a comparison to the legal profession is apt: a law firm can suspend or fire a lawyer who embezzles funds from a client. But a state entity, the RI Judiciary Disciplinary Board, can also disbar the lawyer, preventing them from working at any law firm (or for any other legal employer) across RI if, after a hearing, it finds the lawyer's misconduct was sufficiently egregious. There is no reason law enforcement officers in RI should not be subject to a similar scheme).

This decertification process affords officers due process protections as robust as any other public employee; indeed, NJ recently authorized its POST to decertify officers with the support of police unions, with the President of NJ's largest union of state troopers calling it a "commonsense reform." It is past time for RI to join every other state in enacting this commonsense reform by setting forth clear statewide standards for its officers.

Respectfully,
Seema Sadanandan, on behalf of Arnold Ventures