

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



Meeting Minutes – Third Meeting
September 30, 2020

Senator Metts convened the meeting at 3:00 p.m.

There were 11 members present and two members absent. This established a quorum.

Mr. Vincent moved to accept the minutes from the second meeting, which was seconded by Mr. Capezza.

There was a request to add page numbers to the minutes. Senator Metts acknowledged this request and the Task Force subsequently received amended minutes with page numbers.

Senator Metts proceeded to the next agenda item, which was a discussion on recommended changes to LEOBOR.

Mayor Jorge Elorza (Providence) presented recommendations on behalf of the Rhode Island League of Cities and Towns. He shared that the Rhode Island League of Cities and Towns formed a working group that also met with the Rhode Island Police Chiefs' Association. The working group included: Joe Almond (Lincoln Town Administrator), Steve Contente (Bristol Town Administrator), Christopher Cotta (Tiverton Town Administrator), Karen Pinch (Richmond Town Administrator), and Michael Wood (Burrillville). Mayor Elorza began his remarks by outlining their five recommendations:

1. Extending the summary discipline period from 2 days to 10 days
2. Improving transparency
3. Retention of discipline records
4. Improvements to LEOBOR proceedings
5. Changing the composition of the hearing panel

The majority of the police chiefs agree that increasing the number of days of discipline that initiative LEOBOR will obviate the need for subsequent reforms to the LEOBOR process. The majority of suspensions are between 0 and 10 days. If the summary discipline period is extended to 10 days, this will result in fewer cases going to LEOBOR. The committee discussed extending summary discipline beyond 10 days, but they believed it would not be helpful. This is because, in many instances, when a chief seeks discipline beyond 10 days they are essentially moving towards termination.

The second area focuses on the need for greater transparency by giving chiefs or mayors the ability to make public comments. While the committee believes there is “wobble room” under the current statute, the working group would like consideration given to expanding transparency.

The third area of concern focuses on retaining disciplinary records. Sometimes records are sealed or expunged. The working group’s concern is that this lack of retention allows officers to be hired by a different agency with a “clean slate.” The working group believes that a law enforcement agency should retain all records of a police officer’s disciplinary history.

The working group also focused on improving the LEOBOR appeals process, including changing the makeup of the hearing panel. The working group agrees that the LEOBOR process is “cumbersome, lengthy, and expensive.” Moreover, police chiefs consider these factors when applying discipline. In many instances, police chiefs and officers will negotiate down discipline so the LEOBOR process does not go in to effect. The working group believes this undermines the process in its entirety.

According to Mayor Elorza, police chiefs have noted that very few cases actually proceed to a LEOBOR hearing and decision. If the threshold is extended from 2 to 10 days, there will be even fewer instances of discipline that lead to LEOBOR proceedings.

Nevertheless, the working group supports changing the composition of the LEOBOR panel and expanding it from 3 members to 5 members. The working group believes that by expanding the working group to 5 there will be a more professional character to the committee, and that there will be an increased likelihood of unanimity. The working group recommends that the officer and department still be able to appoint two individuals to the committee. The working group also recommends that the remaining three members be a standing committee. The working group believes this will lend itself to forming precedent and removing the ad hoc nature of the committee.

Lastly, the working group advocates for certain changes to the process. This begins with adding reciprocity to discovery. The working group also believes that there should be shared costs, which would be shared equally by the officer and department. The working group also believes that any witness statements and/or evidence that is intended to be used should be shared amongst both parties.

At this time, Mayor Elorza took questions from members:

- Mr. Vincent referenced the House bill’s provision increasing summary discipline from 2 days to 30 days, and he asked if there was any discussion about extending the summary discipline period to 30 days.
 - Mayor Elorza said the committee considered 30 days, but the reality is there is no difference between 10 days and 30 days because there are very few instances where police chiefs discipline officers with more than 10 days of suspension. When that discipline does occur, the underlying conduct is so egregious that the police chief is actually seeking termination.

- Mr. Vincent asked a follow up question concerning the makeup of the hearing panel. He asked if there was consideration of the court appointing all members of the panel to ensure neutrality.
 - Mayor Elorza said this was a good question and proceeded to reference the RI Police Chiefs' Association survey. The survey found that slightly more than 100 cases progressed to LEOBOR proceedings. Of these 100 or so cases, only 5 went to a full hearing. The court selected the neutral in only three of these cases. Mayor Elorza stated that he feels this shows that changing the timeframe is the most important consideration. He then revisited the working panel's recommendation of increasing the number of neutrals from 1 to 3, thereby increasing the professionalism and neutrality of the board.

At this time, Joe Reddish from the Rhode Island Commission on Prejudice and Bias presented. He began with an overview of the commission's work as established by statute. The commission is comprised of legislators, members of the community, representation from law enforcement, and a representative from the Attorney General's Office. The commission handles the front-end training of law enforcement officers to help them understand and recognize bias, prejudice, and hate.

While the commission has focused on training officers on the front-end, the commission would like training to be considered on an ongoing basis. Mr. Reddish stated that 240 individuals have been trained since 2019 with 117 being trained this year. Mr. Reddish said the commission has discussed increasing the opportunities for law enforcement training in order to enhance relationships between law enforcement and the community. The commission's work is constrained by its funding, which is mostly derived from the Victims Compensation Fund. The commission recommends that law enforcement be given the tools to improve relationships with the community, including training and professional development.

- Reverend Jenkins asked about the 117 officers that have been trained this year, and he specifically asked how often that takes place.
 - Mr. Reddish said that the number is driven by the number of new recruits. The commission is also working closely with the Attorney General's Office to allow for community members to report prejudice and bias. The website is www.calloutprejudiceri.org. The commission believes an important facet of creating progress on this issue is encouraging people to ask for help.
- Reverend Jenkins asked what the approximate cost is per pupil.
 - Mr. Reddish responded that it depends on class size. The commission receives a grant and the Attorney General's Office covers the cost of the trainers.

At this time, the commission received testimony from Steve Brown of the RI ACLU on improving transparency and accountability. As an aside, Mr. Brown stated that the ACLU agrees with many other recommendations on improving LEOBOR.

Mr. Brown stated that when discussing transparency it is critical to also look at the Access to Public Records Act. With regards to LEOBOR itself, there is only one section that deals with transparency. That section is the prohibition on public statements, and the ACLU agrees with

giving public officials and law enforcement agencies more leeway to talk about these issues. He stated that a complete ban on public statements does create an issue of trust in the community. He then stated that there is a second issue with that component of the statute, because it has led to records not being released.

Mr. Brown proceeded to discuss the interaction between LEOBOR, law enforcement, and the Access to Public Records Act. He referenced decisions by district attorneys in other states to release disciplinary records, which include the names of officers and reasons for discipline. He said this is a trend occurring across the country. This trend has not reached Rhode Island, as the ACLU has had difficulty obtaining even redacted records. He proceeded to give a brief review of the court records concerning police misconduct and open records requests. The Rhode Island Supreme Court decided two cases in the 1980s and 1990s involving the Providence Police Department and records of police misconduct. Most recently, a Superior Court judge denied the release of final records of police misconduct that the ACLU thought were previously available under the Supreme Court's ruling. The ACLU strongly believes that the Access to Public Records Act needs to be amended to deal with issues of police misconduct.

Mr. Brown proceeded to discuss the issue of public access to police body camera footage. He encouraged the Task Force to consider creating legislative standards for releasing body camera footage. He stated that only a handful of police department currently use body cameras, but more departments will use them in the near future. Thus, standards for releasing footage will be imperative to fostering public trust.

- Mr. Capezza asked for clarification on Mr. Brown's statement on pending litigation and ACLU requests for information.
 - Mr. Brown said that ACLU has relied on two previous Rhode Island Supreme Court rulings that held that final records of police misconduct were public records. A pending case before the Superior Court is now ruling on whether these requests should be determined on an individual basis.

At this time, Senator Metts mentioned several pieces of written testimony that the commission has received.

Attorney General Peter Neronha then responded to several points made by Mr. Brown. He began by saying that the ACLU and the Attorney General's Office do have a disagreement on the test that should be applied when determining if an internal record of discipline should be released. He summarized by saying this does not prohibit these records from being disclosed, and, in certain instances, they have ordered the disclosure of internal affairs reports. He also stated that this is an interpretation of the current Access to Public Records Act. He also said that it would be "enormously helpful" to have a rounded discussion about access to body camera footage. This is a multifaceted question that must take in to account the possibility of pending prosecutorial action. The Attorney General's Office recently asked the Rhode Island Supreme Court for an advisory opinion on this matter.

At this time, Reverend Jenkins stated that often times it is the optics concerning the legalities. In many instances, these legalities present a gray area, and, as a result, "we find ourselves between

a rock and a hard place.” He referenced the recent use of cell-phone footage and the ensuing erosion of trust among the community.

At this time, Mr. Batista offered two specific ideas. He said he believes that while the focus is often on whether a given reform is pro-labor or pro-management, we should be discussing reforms that are pro-civilian. He mentioned that New York State recently repealed 50 (A), which, in effect, is their statute exempting police discipline records from the Access to Public Records Act. With regard to the particular LEOBOR statute, Mr. Batista stated that the investigatory process and commensurate protections should also be examined. For example, under the current framework, the officer under investigation must be given notice and narrative about the complaint offered against them. Lastly, Mr. Batista observed that he sees as an inherent conflict between civil rights and LEOBOR and the Task Force’s emphasis should be on protecting civil rights.

At this time, Mr. Evora asked how states where LEOBOR is not in place handle disciplinary proceedings, and if those states should be examined. Mr. Capezza responded that in those states “everything goes to court.”

At this time, Mr. Vincent made a motion to adjourn, which was seconded by Senator Coyne.