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RHODE ISLAND HOUSE JUDICIARY COMMITTEE

HEARING:

Public Hearing on H.B 6200, H.B____, & H.B _____

DATE OF TESTIMONY:

April 5, 2023

TESTIMONY OF THE POLICING PROJECT IN SUPPORT OF H.B. 6200 AND REFORM OF RHODE ISLAND'S LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS

This testimony is on behalf of the Policing Project, a national organization that believes that one of the best ways to ensure transparent, effective, and equitable policing is for the public to be democratically involved in setting expectations for police practices *before* police act, instead of *after* something has gone wrong. Our testimony is in part based on the Policing Project's research and model state statutes on decertification & removing barriers to officer accountability. The latter statute addresses how to reform particular accountability-impeding provisions in Law Enforcement Officer Bills of Rights (LEOBORs). These provisions can significantly inhibit police chiefs from imposing discipline on their officers after they engage in serious misconduct. The Policing Project vetted our thinking on these issues with an advisory committee, consisting of law enforcement officials and chiefs, academics, police reform experts, and affected community members.

We write in support of H.B. 6200, which would authorize the Rhode Island Police Officers Commission of Standards and Training ("POST" or "Commission")—a state agency—to certify and suspend or revoke the certification of officers (statewide) who engage in egregious misconduct.

We also write in support of significant LEOBOR reform because RI's current LEOBOR poses significant obstacles that inhibit local police chiefs from imposing discipline on their own officers.

On both of these issues, our goal is to bring Rhode Island in line with Massachusetts, the rest of New England, and nearly every other state in the country by setting forth clear rules for when officers may be held accountable following serious misconduct, and protecting officers' due process rights while also ensuring that officers who engage in serious misconduct receive appropriate discipline.

Rhode Island Needs A Decertification Statute, and H.B. 6200 Is That Statute

In every state in the country *except* Rhode Island, police officers are licensed (e.g., certified) by a state agency (usually called a POST board) that is also empowered to revoke or suspend an

officer's license if the POST board finds that the office engaged in serious misconduct. Just as lawyers can be disbarred by a state agency if they engage in serious professional misconduct (even if their law firm or other legal employer does not discipline them), every state except Rhode Island recognizes that the same should be true for police officers. Thus, if an officer uses 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.

But Rhode Island's POST board has no such authority: it is the only state in the entire country that does not vest their POST board, or a comparable state agency, with the power to revoke or suspend an officer's license. That must change.

Passing H.B. 6200 is necessary to modernize Rhode Island's approach to policing. The bill would empower the Commission to certify and also suspend or decertify officers, stripping them of their license statewide if the Commission finds by clear and convincing evidence (after a hearing) 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 Commission, a state-level agency, to strip the worst officers of their badge, even when their employing agency or police chief will not or cannot fire them (e.g., because the police chief is hamstrung by an RI LEOBOR protection that goes above and beyond the due process protections that any other RI public employee receives). The Commission, in other words, serves as a backstop to ensure officers who undercut the reputation of Rhode Island law enforcement and pose a danger to the public are held accountable.

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. We understand the RI Chiefs of Police already engage in laudable efforts to address this "wandering officer" issue through regular meetings and information sharing. But, part of modernizing RI's policing laws requires codifying these practices just as other states do to ensure *all* potential new hires are thoroughly vetted by their hiring agency.

To that end, the bill requires that agencies conduct thorough background checks before hiring new officers. The bill would reduce the risk that agencies hire these so-called "wandering officers," by requiring that all agencies conduct a criminal history check, communicate with references from all of an officer's prior law enforcement agency employers, and review past performance evaluations and investigatory records before agencies can hire a new officer.

Rhode Island Needs To Overhaul Its 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.

When law enforcement agencies investigate officers for engaging in misconduct, officers of course are entitled to the same basic due process protections that other public employees receive. But Rhode Island's LEOBOR contains numerous provisions that afford officers protections far beyond the protections afforded to other public employees—and, indeed, that go well beyond the protections police officers receive in virtually all other states. Many of its provisions seriously impede agencies and police chiefs from holding their officers accountable for grave misconduct while doing very little to further due process. A number of examples follow below:

Officer Discipline

Rhode Island's LEOBOR undermines the authority that local police chiefs have in nearly every other state to make initial factfinding and disciplinary decisions following allegations of officer misconduct. Instead, the LEOBOR empowers a disciplinary hearing committee that consists of three rank-and-file officers to engage in initial factfinding and disciplinary decisions. While we have come across some states where a hearing committee gets to review the chief's imposition of discipline after the fact and other states where the committee is composed with a mix of rank-and-file officers and other adjudicators, RI is unusual in having its hearing committee consist *exclusively* of fellow rank-and-file officers—and in putting that committee (as opposed to the chief of police) in charge of the *initial* determination of whether discipline is appropriate. The LEOBOR's disciplinary hearing provisions serve as a recipe for inadequate discipline and strip local chiefs of one of their primary disciplinary tools.

Filing Complaints

In addition, Rhode Island's LEOBOR contains provisions that discourage community members from filing complaints after officers engage in serious misconduct. Specifically, Sections 42-28.6-2(4) and (5) require all complaints to be signed and sworn, and entitle the officer to be informed of the names of all complainants before a disciplinary hearing can occur. We recommend that 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.

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.

Waiting Periods

One more example: Section 42-28.6-2(9) of RI's LEOBOR 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 and we have come across collective bargaining agreements mandating waiting periods as long as a week or even thirty days. Such waiting periods seriously impede agencies from holding officers accountable for misconduct; the delays can lead to evidence loss and memory lapses, and give officers an opportunity to coordinate exculpatory accounts.

We thus recommend that RI clarify that 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. A 24-hour delay gives officers ample time to secure counsel, while ensuring that

agencies can obtain the information they need in order to promptly and thoroughly investigate allegations of misconduct.

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In conclusion, it is long past time that Rhode Island align itself with every other state in New England, and across the country, by enacting H.B. 6200, and providing a path for officer discipline and decertification by its state POST board. The state should also consider LEOBOR reform to ensure law enforcement agencies and police chiefs can hold officers accountable when they engage in serious misconduct.

Thank you for considering our testimony.