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TESTIMONY ON H-6152, H-6153, H-5613 and H-5140, RELATING TO THE LAW ENFORCEMENT OFFICERS' BILL OF RIGHTS
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The ACLU of Rhode Island firmly believes that it is long past time for significant revisions to the Law Enforcement Officers' Bill of Rights (LEOBOR), a statute that a majority of states do not have and that one of those states, Maryland, just repealed this past week.

We express this view as a strong defender of due process rights and as an organization that has defended the constitutional rights of police officers in a variety of contexts. But the scope of protection provided to police by LEOBOR is extraordinary, not only compared with other government employees, but even with the rights of criminal defendants. Further, for the minority of other states that also have LEOBORs, Rhode Island's is considered one of the most protective of police officers accused of misconduct. When you add to that the fact that Rhode Island remains one of only a handful of states that doesn't have a certification process for law enforcement officers, the need for major change is apparent.

Before offering a few comments on the legislation being considered today, we believe that an essential prerequisite to LEOBOR reform is an increase in transparency and accountability in the results of investigations of police misconduct. In that regard, it is not necessarily LEOBOR that is the biggest obstacle. Rather, it is recent interpretations of the state's Access to Public Records Act (APRA) that stand in the way. While LEOBOR may make it difficult to hold police officers accountable for misconduct, recent interpretations of APRA make it extremely difficult for the public to learn how police departments are handling those investigations.

Therefore, without clarification of APRA and more transparency about the results of investigations into misconduct, revisions to LEOBOR will only be a half-victory. If the public is kept in the dark about police misconduct and the discipline applied to police who themselves violate the law, it is impossible to know whether the disciplinary system is in fact working properly.

While we will not use this testimony to go into depth about this open records issue, suffice it to say that obtaining information about police misconduct has been stifled by both recent Attorney General opinions and by a preliminary Superior Court ruling issued last year in a case being handled by the ACLU on behalf of a government watchdog group. Under those opinions, the public is not entitled to see all departmental final reports into the investigation of police misconduct *even with personally identifiable information redacted*. Compare that to the many other states where final reports of misconduct are not only clearly public, but they are released with the identity of the officers named. Especially when an officer is determined to have engaged in misconduct, any privacy interests are clearly outweighed by the public's right to know the names of the officers involved. In short, changing the investigative and adjudicative procedures in LEOBOR is a first step, but unless APRA is clarified to require the release of all final investigations of misconduct, the changes will be a hollow victory.

Having said that, we wish to offer a few comments on the legislation before the committee today, and we will focus specifically on H-6152. Framed by a nationwide upswell of public support for significant reforms to be made to our policing systems, practices, and laws, the amendments contained within this bill would appropriately address several provisions which currently impede police accountability.

- Entitlement to an appeal is a critical component of due process; however, where the current language in the statute allows for an appeal of any disciplinary action *prior* to the actual imposition of the discipline – which may mitigate the imposition of discipline in the first place – the amendments appropriately change the hearing committee appeal process to occur following both the initial hearing and the taking of disciplinary action by the law enforcement agency (42-28.6-4(a)). This is a positive amendment to this legislation.

- The proposed language makes important changes to the composition of the hearing committee by providing for the appointment of a majority of committee members from outside of the law enforcement agency. Where under the current statute the committee would be composed of three law enforcement officers – two of whom the law enforcement officer who is the subject of the hearing has the opportunity to directly choose – the proposed amendments would instead increase the committee size to five members and require that three of these members – none of whom can be either currently or previously affiliated with law enforcement – be chosen by independent groups and individuals.

  While these amendments do confront the bias inherent in the previous composition of these hearing committees, the law enforcement officer who is the subject of a hearing and the charging law enforcement agency may still select two of the hearing committee members – both of whom will be law enforcement officials – and there is no requirement that these selections be free of a conflict of interest. While the three new citizen selectees on the hearing committee are required to "immediately disclose to the presiding justice of the superior court any circumstances likely to give rise to justifiable doubt as to said selectee's impartiality or independence, including any bias, prejudice, financial, or personal interest

in the result or outcome of the hearing," (41-28.6-1(2)), there is no such requirement for the law enforcement officers who may sit on the committee. There should be.

- We urge amending the provision in the law that allows for the initial interrogation of an officer to be "suspended for a reasonable time until representation can be obtained" (42-28.6-2(9)). For matters of police accountability, timing is a critical component. Absent a delineated restriction on the permissible length of time that an officer has to secure counsel, this provision could allow for an overly flexible and indeterminate amount of time to pass before an officer even has their initial interrogation. This provision should be amended.

- The legislation appropriately specifies that all records of an officer's disciplinary history must be retained. But, as noted above, while this may help departments track patterns of misconduct, the public must have some oversight as well. Because this core component of accountability is critical, we urge that any amendments to the LEOBOR process include revisions to the "law enforcement" exemption in APRA along the lines of separate legislation that has been introduced this session by Rep. Ajello in 21-H 5859.

The ACLU of RI is appreciative of the work which has been done to try to address the need for better accountability measures for law enforcement agencies and their personnel. With some additional changes, we believe the law will better govern a process that should ensure due process for officers, but also provide for accountability, fairness and freedom from systemic bias.

Thank you for your consideration of our views.