

Testimony of Mark G. Bodanza
August 20, 2020

I want to first thank the Commission for considering my written testimony. The work that you have been appointed to undertake is important and critical to the transparency and confidence in law enforcement and their interaction with the community.

I have been blessed to have been a law enforcement officer in New Hampshire since 1998. Throughout out my career I have been privileged to provide community policing services to various municipalities as well as holding positions within Police Standards and Training. Through these opportunities I have also had the task of presenting police decertification cases before the council in addition to investigating internal affairs matters. The true joy of my career was the commanding of the police training academy and investing in the present generation of law enforcement officers.

After hearing significant testimony, I feel it is necessary to bring light to the decertification process of police officers and the upholding of professional conduct within the profession. Although not entirely, significant testimony has eluded to a substantial deviation from agency-to-agency. Having participated in the presentation of decertification hearings, for nearly a decade at Police Standards and Training, I think it is important to know that many officers have been suspended and decertified by the Council for just cause pursuant to the Council's Rule (POL rules); some of which were a result of an anonymous complaint to the Council. Additionally, many officers were investigated locally by their agency and held accountable through the employer's discipline process. The belief that police are not "policing themselves" is really a misnomer in New Hampshire and should not be categorically adopted. Nor should the Commission adopt recommendations that swing the pendulum of accountability to a point in which is unattainable or realistic without significant support systems being implored.

Many times, complaints regarding an officer's behavior, and interaction with the public, were received by Police Standards and Training, and referred to the local employing agency for review; unless some extenuating circumstances existing such as the complaint being against the Chief. Barring any exceptional circumstance, this was the appropriate venue given the employment of the police officer and the potential resolution, weather discipline is warranted or not, much like any other employee-employer relationship. Not exclusively, but most of the time the complaint against the officer did not rise to conduct that impacted the POL rules for suspension or decertification. Statistically, most complaints received by agencies are concerning the officer's general demeanor and rudeness. In some cases, PSTC never received a complaint for an officer's behavior, but was later informed by way of required notification. What is important to understand is that when an agency does investigate the complaint, PSTC is informed of an agency's decision to suspend the officer by way of a *Change in Status*, "Form B". Years ago, there was a minimum three (3) day suspension requirement prior to a form B being completed but was more recently changed to "any suspension" being reportable.

What is significant to understand is that a majority of agencies, CALEA (Nationally Accredited) or not, have policies and procedures in place to conduct through Internal Affairs Investigations. At points in my time at Police Standards and Training there was an attempt to place all Internal Affairs Investigations upon the agency but was not supported due to the severe lack of resources and personnel. As some of you may recall, the agency was nearly placed into extinction when the “dedicated” Police Training Fund was significantly depleted to balance underestimated state budgets. The agency actually went through a restructuring and positions were eliminated while programming and advanced in-service training was limited. I bring this to your attention because the academy today has only been under its current funding model for a short period of time and had never been satisfactorily staffed for its existing dual mission or any expansion. Current staffing levels at bare minimum for an academy, which was once designed only to be held twice a year for 8-10 weeks at a time and for 45 recruits. Hence, the lack of air conditioning units for summertime academy usage and the short supply of rooms requiring academy numbers to be “capped”. The Council meeting records, would reveal that even current numbers, pre-covid-19 on-line model, were too high for the amount of content to be covered thoroughly. To place any additional responsibilities, investigative or otherwise, would be a continued difficult expectation upon a sorely underfunded and understaffed existing system.

There had also been discussion about creating a hybrid Standards unit between the Police Academy and the Attorney General’s Office. This unit would work cooperatively to investigate violations of misconduct relative to the state laws and the POL Administrative rules. Some concerns over “jurisdictional” and fiscal responsibilities hampered further movement of such a unit being explored further. This type of model is, in premise, utilized in Florida and Georgia. Again, this model, if structured properly may avoid the request to create another state agency.

At minimum, a state-wide database tracking internal investigation by local agencies, would be the best option to implore early warning systems and follow officers who may seek to change agencies after scrutinized deplorable behavior or citizen complaints. Early warning systems should be required by all agencies so incidents involving officers, potentially comparable to officers involved in the death of Mr. George Floyd, are dealt with early and equitably. We cannot continue to burden the system without supporting those within the system already. Early warning systems support officers and their communities at the earliest possible moment. Some support comes by way of Employee Assistance Programs, while others assist in the removal of errant officers from the force or provide for additional training in substandard performances.

Secondarily, I would recommend additional staffing for Police Standards and Training for the sole purpose of training. However, at minimum to this topic, additional staff should be funded to review the database information and follow-up on agency audits. As part of the audit performed by the Office of the Legislative Budget Assistant, the Council adopted a protocol of auditing agencies, against its’ rules, when there is a change in agency head. Although this is certainly warranted, the responsibility is placed upon part-time staff already conducting other important functions. This additional staffing would allow this process to be more efficient but

should not be tasked with the internal affairs investigative responsibility or exculpatory evidence schedule determination for all two-hundred and thirty plus agencies. The current system is not systematically broken but is in need of “fine tuning” and systematic oversight, which is best resolved through the current rules and a better database.

Lastly, I would not have believed that officers were being placed upon the Exculpatory Evidence Schedule (EES) without due process until I observed it within the system. In one instance, the guidance was to place the officer on the EES list and then subsequently move to remove if the ensuing investigation revealed an un-sustained finding. This is in opposition to the due process model discussed by many on the commission. Consequently, you cannot publish a public EES list with the current discrepancies in due process model. Many Chiefs have called for additional guidance to the EES Memo because it is not completely clear in the black and white memorandum. I recommend there should be administrative rules which has defined terms and to establish the process such as other conduct review processes. Training for the Chief’s, investigators and consultant agencies should then be required based upon the rules. A memo alone should not be substantive enough to determine such an impactful decision. Once the clearly defined process is exhausted then, only then, should the information be made public.

A call for an independent review board has been suggested and may very well be the most appropriate for the sustaining long term but is very far off from coming to any reality due to fiscal restraints and efficiency concerns. I would strongly encourage the Commission to institute recommendations relative to:

1. Fund a statewide database for PSTC that tracks complaints, internal investigations, discipline, and resolutions;
2. Recommend a statewide early warning system management and supportive policies;
3. Fund additional staff for Police Standards and Training;
4. Explore the adaptation of current Pol rules to review cases more transparently;
5. Explore a Hybrid Standards Unit comprised of members of the Attorney General’s Office and the Police Standards and Training to screen, docket and present certification rule violations.
6. If a Hybrid Standards Unit is not attainable, then the exploration of a well-balanced review board should be recommended.