

Hiring and Discipline Subcommittee
Montgomery County Policing Advisory Commission
December 4, 2020

Summary of Meeting

Pursuant to notice, the subcommittee convened at 5 pm on Friday, Dec. 4, 2020. Present were Alicia Hudson, Caroline Fredrickson, Nadia Salazar Sandi and Eric Sterling. Also present was Prof. Christy Lopez, Georgetown University Law Center who researches police accountability mechanisms, to address the subcommittee's charge.

Prof. Lopez said that the Maryland's LEOBOR has long been considered problematic in limiting the ability of police administrations to enforce accountability. But aside from the details of procedure, the most important feature of a high quality police department was a culture of accountability and a culture of integrity. The community and the police administration must reward those who hold themselves accountable. A risk to accountability arises when officers in a department say that they have learned to use LEOBOR as an excuse to avoid demanding accountability of their peers.

It is important to recognize that for all public employees who are accused of misconduct, Maryland provides civil service protections that strongly protect against hasty, arbitrary or capricious discipline.

Q: Is the level of staffing adequate to address the workload necessary to adequately prepare a case? A. Often, the agency fails to do a good job supporting the charge against the officer, and the hearing board must rule against the agency.

Q: To what extent is union leadership aligned with more problematic officers? To what extent in order to protect marginal officers does the union less aggressively bargain for a pay increase in exchange for procedures that reduce the agency ability to enforce accountability and impose discipline? To what extent is the agency – perennially facing budget pressure – willing to accept reduced accountability in exchange for a smaller pay increase?

Q: Use of force and an officer's duty to intervene to stop the application of inappropriate force.

Rule 6 Use of Force

Officers will use force only in accordance with law and departmental procedures and will not use more force than is objectively reasonable to make an arrest, an investigatory stop/detention or other seizure, or in the performance of their lawful duties, to protect themselves or others from personal attack, physical resistance, harm, or death.

No officer will use force in a discriminatory manner.

It shall be the duty of every officer present at any scene where physical force is being applied to either stop, or attempt to stop, another officer when force is being inappropriately applied or is no longer required.

It appears that the Police Department rules now include a duty to intervene. However, there is an important preamble to the Department Rules:

If a provision of a regulation, departmental directive, rule, or procedure conflicts with a provision of the contract, the contract prevails except where the contract provision conflicts with State law or the Police Collective Bargaining Law (FOP Contract, Article 61)

H&D does not know, at this time, if the duty to intervene “conflicts” with some provision of the FOP contract.

In addition to whether there the duty is spelled out, perhaps the greater challenge is overcoming the psychological barrier of intervening against a fellow officer. The culture and the training in how to intervene are very important in order to make this requirement real.

A technique is called Active Bystander for Law Enforcement (ABLE) to train for intervention.

Q: What is the role of public members of hearing boards?

Civilian members can play an important role, but they can also be ineffective. It is pointless to the degree that it is insulting to appoint members of the public to boards who cannot vote and fully participate. That is a charade. But how members of the public are selected, how they are trained, and how they are acculturated are very important. Police members of hearing boards are paid, and in general, members of the public should be paid.

One approach has been to elect public members. To enforce their responsibility, a system of retention elections, such as exists for judges in many jurisdictions can be used. But elections can be a cumbersome way to select and control such public members. Outcome cannot be reliably predicted by the prior employment experience of candidates. Effective training and adequate pay are important to obtain committed public members.

Q: What are issues regarding police officers serving on hearing boards?

In general, Chiefs want to create cultures of accountability and be able to impose discipline to do so. Higher level officers such as Deputy Chiefs are more subject to direct control by the Chief than the lower ranking officers. It is harder for an agency to rely on lower ranking officers to enforce accountability against their peers unless there is a very strong culture for accountability.

Q: What should be the burden of proof?

Preponderance of the evidence is the appropriate standard. The proceedings are most akin to other civil matters, they are not criminal, and this standard is used in other workplace proceedings.

Q: Has there been a history of racial unfairness in the use of police discipline procedures?

A: Yes.

Q: What is the evidence of infiltration of police departments by white supremacist organizations?

A: Prof. Lopez reported that there has been evidence of this in Chicago, Los Angeles County, and Ferguson, MO. It also may also be that certain kinds of specialized units (gang or canine)

might attract persons with these views. In pre-employment screening, social media account searching should be used.

Q: What can be done to prevent racists from being hired by a police department?

A: First, in the course of hiring, there are psychological screening tools that can be used. Second, there is evidence that a person may become more racist the longer one serves on a police force.

Third, unconscious bias is a real phenomenon, and it is unrealistic to expect that it simply goes away after one becomes self-aware of it. Teaching how to respond is very important. In an encounter, learn how to create opportunities to slow down and practice changed behavior.

Q: Instruction to make stops: A directive to patrol officers to make stops of “suspicious persons” is going to result in racially disproportionate stops.

Q: Is “dark” humor a danger sign?

First responders to tragedy – fire fighters, EMTs and police officers – all need coping mechanisms. Dark humor may be one. A strong officer wellness program is important. The department culture needs to challenge the stigma around officer wellness and counseling. Officers need to be encouraged to intervene for wellness issues as well as use of force issues. Police work is traumatizing. For a safe department for the public, it is essential that the department keep its officers healthy. Officers who aren’t sleeping well, who using alcohol excessively, or who have thoughts of suicide need help.

Q: A member of the public inquired about the benefits of a requirement that officers live in the jurisdiction.

A: This can be limited. In Chicago, most police officers lived in one of three neighborhoods in the city. A similar situation happened in Los Angeles – but an African American officer who lived in the community was arrested because “he didn’t belong here.”

Different jurisdictions have different costs of living. Such a requirement is more burdensome in communities with shortages of affordable housing.

Q: How can an Internal Affairs Division maintain its appropriate independence?

A: One approach is to build in a civilian sensibility through leadership or other mechanisms. Another is a model of the “independent auditor.”

Q: Montgomery County has an agreement with the Howard County State’s Attorney for that office to investigate officer involved shootings. Howard County has a reciprocal relationship. Does that reciprocity potentially undermine independence?

A: Not addressed.

Adjourned at 6:23 pm with great appreciation to Professor Lopez expressed.