

Sharon Carson
Senate District 14

State House
Room 106
(603) 271-1403

MEMORANDUM

DATE: November 1, 2022

TO: Honorable Chris Sununu, Governor
Honorable Sherman Packard, Speaker of the House
Honorable Chuck Morse, President of the Senate
Honorable Paul C. Smith, House Clerk
Honorable Tammy L. Wright, Senate Clerk
Michael York, State Librarian

FROM: Senator Sharon Carson, Chairman

SUBJECT: Final Report of the Committee to Study Establishing a Mental Health Incident Review Board
SB 376, Chapter 332:2, Laws of 2022

Pursuant to SB 376, Chapter 332:2, Laws of 2022, please find enclosed the final report for the Committee to Study Establishing a Mental Health Incident Review Board. This report details the efforts and recommendations of the Committee. Please also find included the minutes.

If you have any questions or concerns about this report, please do not hesitate to contact me.

Sincerely,

Senator Sharon Carson
Senate District 14
Chair

Enclosures: Meeting Minutes

COMMITTEE TO STUDY ESTABLISHING A MENTAL HEALTH INCIDENT REVIEW BOARD

FINAL REPORT

11/01/2022

Overview:

Study Committee (2022)
SB 376
Effective Date: 7/8/2022
Chapter Law: 332:2
Final Report Due: 11/1/2022

Membership

Senator Sharon Carson
Senator Suzanne Prentiss
Representative Mark Pearson
Representative Daryl Abbas
Representative Mark McLean

Charges of the Commission:

- I. The committee shall study establishing a mental health incident review board for the purpose of performing a comprehensive analysis of all mental health aspects of incidents involving law enforcement use of deadly force, and such non-lethal SWAT engagements, including regional SWAT teams, as the mental health incident review board may choose to review. The committee shall consider establishing the mental health incident review board under the auspices of a law enforcement conduct review committee similar to that established in HB 1682 of the 2022 regular legislative session.
- II. The committee shall solicit testimony from the following:
 - a. The commissioner of department of health and human services.
 - b. The commissioner of the department of safety.
 - c. One representative from the department of health and human services responsible for establishing departmental policy regarding mental health crisis intervention, appointed by the commissioner of the department of health and human services.
 - d. One representative from the department of safety responsible for statewide oversight and review of SWAT engagements, appointed by the commissioner of the department of safety.
 - e. The director of New Hampshire police standards and training council.
 - f. The chief executive officer of the New Hampshire hospital, or designee.
 - g. The executive director of the New Hampshire Brain Injury Association.
 - h. The executive director of National Alliance for Mental Illness, New Hampshire chapter.
 - i. The president of the New Hampshire Association of Chiefs of Police, or designee.
 - j. The president of the New Hampshire Police Association, or designee.
 - k. A member of the New Hampshire Tactical Officers Association, appointed by the president of such association.
 - l. The president of the New Hampshire Sheriff's Association, or designee.

- m. A member of the New Hampshire American Civil Liberties Union, appointed by that organization.
- n. The president of the New Hampshire Trooper's Association, or designee.

Summary of Meetings:

August 24th, 2022

The Committee met for their organizational meeting, electing Senator Carson as chair. Senator Carson reviewed the purpose of the Committee, and discussion regarding the agenda for meetings moving forward occurred.

September 7th, 2022

The Committee heard testimony from Director Julianne Carbin (Bureau of Mental Health Services, DHHS) regarding the recent establishment of the mobile crisis response system and its operation. Director John Scippa (Police Standards and Training) provided testimony on the Law Enforcement Conduct Review Committee, which goes into effect in January 2023, and the trauma officers experience following the use of deadly force in the line of duty. Ret. Major Russell Conte (State Police) testified to the State's effort to expand the Crisis Intervention Training Program for law enforcement and the positive impact that has had. The Committee discussed forming a panel in the similar vein as the Commission to Review Child Abuse Fatalities or the Council on Suicide Prevention. Further discussion was held outlining the desire to ensure this panel would take a holistic look at an incident, including relevant instances leading up to the event, and the need to ensure that the panel would not be punitive. The Committee further discussed the reviews that are already in place following a deadly use of force by a law enforcement officer that are conducted by the Attorney General's Office. Holly Stevens (NAMI NH) offered testimony regarding whether a panel would need to wait to conduct a review following the completion of the Attorney General's investigation, and what Senator's Giuda initial motivation for this study was.

September 20th, 2022

Ellen LaPointe (NH Hospital) provided an update regarding the current situation at NH Hospital and what procedures and policies are in place. She further testified to the challenges the State faces in addressing the mental health needs of its citizens. Holly Stevens and Susan Stearns (NAMI NH) spoke to incidents of deadly force that involved individuals with a mental health disorder. They spoke to the tragedy that all those involved experience including that of the officer, the individual, and the families of both respectively. Further discussion occurred regarding ensuring the nature of the panel was to not have a presumption that the officer did something wrong. Frank Knaack (ACLU) discussed the lack of statistical information surrounding these events, and the beneficial nature a panel such as this would provide in order to gain a better understanding of these situations. Mr. Knaack further spoke to possible other points and options of intervention that may prevent incidents such as this from occurring in the future. He further reinforced the need to ensure that a panel such as this would be truly independent. Krystal Chase (Brain Injury Association) testified to the challenges individuals with brain injuries face and the increased risk for all involved when it comes to addressing mental health issues in these situations. She also testified to the high number of veterans who have brain injuries and subsequent mental health issues, as well as their increased likelihood of interacting with law enforcement as a result.

September 27th, 2022

Chief Joseph Hoebeke and Chief David Goldstein (NH Association of the Chiefs of Police) raised concerns regarding the need to understand the nuances and mission of the panel before providing a position on its creation. They further expressed the need to ensure all investigations by the Attorney General's Office and civil or criminal cases are completed before a panel could review an incident. They further spoke to the fact that these situations are the end product of a failed system, and that the way to prevent them is through earlier intervention. The Committee discussed with the chiefs the challenges and stigma surrounding mental health. Officer Justin Breton (NH Police Association) reiterated that any panel would need to examine the situation as a whole and not simply the incident itself. He further testified to the increased efforts of collaboration between law enforcement and mental health services to address issues such as these. Officer Breton spoke to the fact that the Manchester Police Department has the Adverse Childhood Experiences Response Team (ACERT) that is working to provide services and responses beyond the criminal justice system, and the different nature of each law enforcement entity in the State. Trooper Frank Campo (NH Troopers Association) shared his concerns regarding the need for this panel and what the actual mission of it would be. He further spoke to the beneficial nature of the CIT training and the State Police's peer-to-peer unit that does work to assist with the mental health of officers in the State.

October 18th, 2022

The Committee discussed the testimony they had received and whether the creation of a panel was necessary. After determining that a creation of such a panel would be beneficial for creating best practices and preventing future incidents, the Committee discussed the potential structure, timing, and mission of a panel. The Committee examined similar efforts done by other states, including Maine's Deadly Force Review Panel and the need to ensure that any panel would have strong confidentiality measures for the privacy of the individual involved and the need to ensure beneficial discussions within the panel occur in order to develop best practices. The Committee reviewed the mental health challenges law enforcement officers face following these incidents, as well as the challenges faced by the officers' families and the families of the individual involved in the incident. Finally, the Committee deliberated the possibility of administratively attaching the Panel to either the Police Standards and Training Council or the Department of Health and Human Services.

Recommendations and Findings:

The Committee conducted multiple meetings to consider the possibility of establishing a mental health incident review board, which would perform comprehensive analyses of all mental health aspects of incidents involving law enforcement's use of deadly force. After hearing testimony from a comprehensive group of stakeholders, the Committee determined that the establishment of such a committee would serve to be beneficial to all parties involved including the officers, the individual involved in the incident, and the families of both parties. The Committee recognizes the already established review procedures that are in place through the Attorney General's Office and individual law enforcement entities that manage evaluations of justification and the officers' involved in incidents of deadly force. This panel would not examine any of the aspects already determined by other reviews, but instead would focus on developing best practices for law enforcement and mental health services, while identifying possible opportunities for prevention.

Due to these findings, the Committee recommends the creation of a Mental Health Incident Review Panel that would review incidents involving use of deadly force by law enforcement. The Panel would focus exclusively on a comprehensive review of the mental health aspects of these incidents. The nature of this review would examine the situation that occurred holistically and any relevant events leading up to the actual incident. This Panel would have strongly established and outlined confidentiality measures that would ensure that all working papers, notes, deliberations, electronic records and correspondence, discussions, and information or work products developed by such panel would be absolutely exempt from discovery or disclosure for any reason, and prohibited from disclosure or use for discipline, prosecution, or civil litigation. The Panel would be made up of members from law enforcement, the mental health community, the veterans community; the exact membership will be fleshed out through the legislative process. This Panel would not have any punitive authority regarding any parties involved and would serve the purpose of reviewing the incident with the intention of creating best practices with the goal of preventing these situations from occurring through potential earlier intervention or other measures. The Committee recommends this panel be housed and administratively attached to the Department of Health and Human Services to reassure all those involved in the process as to the non-punitive nature of the review, and that necessary funding and staffing be identified at the Department of Health and Human Services in order to ensure the appropriate functioning of the Panel.

Respectfully Submitted,

Sharon Carson

Senator Sharon Carson
Senate District 14

Sen Sue Prentiss

Senator Sue Prentiss
Senate District 3

Rep Mark Pearson

Representative Mark Pearson
Rockingham - District 34

Rep Mark McLean

Representative Mark McLean
Hillsborough - District 44

Representative Daryl Abbas
Rockingham - District 8

2022 Study Committee, Established by Chapter 332:2, SB 376, Laws of 2022

Organizational Meeting Report

TO: Members of the Committee

FROM: Jennifer Horgan, *Legislative Aide*

RE: **Organizational Meeting Report on SB 376, Chapter 332:2, Laws of 2022**, there is established a committee to study establishing a mental health incident review board for the purpose of performing a comprehensive analysis of all mental health aspects of all incidents involving law enforcement use of deadly force, and such non-lethal special weapons and tactics (SWAT) engagements, including regional SWAT teams, as the mental health incident review board may choose to review.

MEETING DATE: August 24, 2022 1:00 p.m. Room: LOB 302-304

Members of the Commission Present: Senator Carson, Representative Abbas, Representative McLean

Members of the Committee Absent: Senator Prentiss, Representative Pearson

Summary of Meeting:

Senator Carson opened the meeting and welcomed the members.

Representative McLean nominated Senator Carson as chair, Representative Abbas seconded the motion. All members present voted in favor of the motion.

Senator Carson reviewed the purpose of the Committee as outlined in the legislation. She went on to discuss the possibility of placing the mental health incident review board under the Law Enforcement Conduct Review Committee as established in HB1682. It would be a good fit that would not require the creation of a new board. This proposal may simply require adding a few members to the Law Enforcement Conduct Review Committee to cover the mental health aspect.

Representative McLean asked if that would be an ongoing board.

Senator Carson answered yes because when these types of incidents happen there is often a mental health aspect included and we want to look at that. It makes sense that that would be a part of the whole review process.

Representative Abbas agreed that if there is already board in place, adding a second board would be fiscally irresponsible

Senator Carson agreed and questioned why the State would replicate what is already in place. Those that served on the commission to create the Law Enforcement Conduct Review Committee met for an extended period of time in order to get it right. Believes the Legislature has created a good review process that will be good for the public and law enforcement officers.

Senator Carson suggested having the next meeting include discussions with the commissioners of the Department of Health and Human Services, the Department of Safety, and NH Police Academy. With those entities the Committee will be able to create the skeleton of what it is going to look at.

Representative McLean asked for information about the structure of the Law Enforcement Conduct Review Committee.

Senator Carson indicated that she would get that information from Director Scippa.

The Committee discussed future meeting dates.

Next Meeting: Wednesday, September 7th 1pm

Report Due: November 1, 2022

2022 Study Committee, Established by Chapter 332:2, SB 376, Laws of 2022

Regular Meeting Report

TO: Members of the Committee

FROM: Jennifer Horgan, *Legislative Aide*

RE: **Regular Meeting Report on SB 376, Chapter 332:2, Laws of 2022**, there is established a committee to study establishing a mental health incident review board for the purpose of performing a comprehensive analysis of all mental health aspects of all incidents involving law enforcement use of deadly force, and such non-lethal special weapons and tactics (SWAT) engagements, including regional SWAT teams, as the mental health incident review board may choose to review.

MEETING DATE: September 7, 2022 1:00 p.m. Room: LOB 302-304

Members of the Commission Present: Senator Carson, Senator Cavanaugh (subbing for Senator Prentiss), Representative Pearson, Representative McLean, and Representative Abbas

Members of the Committee Absent: None

Summary of Meeting:

Senator Carson opened the meeting and welcomed the members.

Representative McLean made a motion to adopt the minutes and Senator Cavanaugh seconded. All present members voted in favor. The minutes were adopted.

Director Julianne Carbin (Bureau of Mental Health Services, DHHS)

In January, the Department launched a statewide integrated mobile crisis response system. The Department contracted with Beacon Health Options to administer a centralized access point where they respond to individuals through phone, text, and chat. The crisis center has clearly defined protocols in place. When an individual calls the crisis line, the trained workers determine the individual's level of risk; based on that assessment the worker then makes recommendations on a course of action. Those actions could be resolving the matter on the phone, make a referral, have a response team deploy, or contact law enforcement to be engaged. Once the deployment goes out, the worker is not able to lower that level of risk, but they can raise it throughout the course of the engagement. Law enforcement is involved with cases where there is a possession of weapons or attempting of suicide. About 80% of the calls are resolved over the phone and the other 20% in a face-to-face interaction. Nationally, 2% of

the responses involve law enforcement. The Department is still refining the system, as it was just implemented in January.

Senator Carson asked if law enforcement officers ever contact the system for a situation.

Director Carbin responded that that is not the core intention of the mobile response teams. There may be others who could speak to that. If a situation is resolved to the point that law enforcement believes that a clinical response team would help, they will sometimes be brought in after law enforcement has safely de-escalated the situation.

Senator Carson asked if the team compliments what law enforcement is already doing.

Director Carbin answered that they are designed to be different functions. The team is designed to go out for less heightened risk situations where public safety is not the main concern.

Rep. McLean asked if the team has discretion regarding what type of law enforcement should be deployed.

Director Carbin explained that the team does not make that determination; they simply notify local law enforcement of the situation.

Senator Carson asked if the Department envisions some sort of automatic crisis team speaking with the officers following an incident regarding their mental health.

Director Carbin does not believe she is the person to answer that. However, the teams are there to support anyone in the community. The Department does have a sentinel event reporting process. When anyone receiving mental health services through state funded services has an incident involving a police response, the Department receives a notification of that from the community mental health center that provides that individual with services. With anything outside of a homicide, there is a sentinel event review process that looks at how the Department might make improvements moving forward.

Rep. McLean asked what her thoughts are about adding the Mental Health Incident Review Board into the Law Enforcement Conduct Review Committee (LECR).

Director Carbin answered that in looking at the composition of that Committee that is something they would be interested in further exploring to make sure the sentinel response information could be transferred over in a seamless way.

Director John Scippa (Police Standards and Training)

In the last legislative session worked with Senator Carson, Rep. Welch, and stakeholders on the LECR Committee to make sure allegations are being investigated in a transparent way and that there is a clear pathway on how those officers are handled. The LECR Committee is going into effect in January of 2023, and it has a clearly defined and narrow responsibility. Is aware that this Study has discussed the possibility that the LECR Committee could take on mental health incident reviews. If that is what is directed, the LECR Committee will take that direction and make that happen. Would strongly encourage the members to look at the former

Child Fatality Review Committee as a possible alternative route though. That committee had stakeholders on it who had specific experience in that area. Something like that could address the topic of police use of force and mental health in a more comprehensive way. Is not sure the LECR Committee could bring the same level of review as a more comprehensive committee.

Rep. Pearson noted that the LECR Committee has four officer and three public members. Asked if concerns could be addressed by requiring one or more of the public members have a mental health background.

Director Scippa answered that if there was some representation relative to the mental health field that would help a committee understand the mental health aspects, and there would be tremendous value in that. Would ask this Committee that if they felt it was necessary to have this kind of review, to really look at the former Child Fatality Review Committee's model.

Rep. Pearson asked if he would be amenable to changing the LECR Committee to expand its focus specifically and add members with a mental health background.

Director Scippa responded that he would be hesitant to stand behind that objectively. Wants the LECR Committee to be excellent, to serve the people of the State appropriately, and does not want to confuse their mission or cause them to have dual roles of responsibility. Feels there could be some crossover if there was an issue that came to play. An officer in that situation may have to have their conduct reviewed by the LECR Committee and that could cause some confusion.

Rep. McLean stated that the LECR Committee is looking at individual cases, whereas the mission of this Study is to gain understanding of best practices. Asked about the Child Fatality Review Board.

Senator Carson answered that the Child Fatality Review Board no longer exists, but it would get access to reports about children that had died. The Board compiled that information for the Legislature. There was a wide breath of membership to discuss what was happening with the laws and whether they needed to change. A lot of legislation that came out of that Board initially, but then it tapered off. The Board would still get information but often could not get access to records because they were ongoing investigations.

Rep. McLean asked how those kinds of barriers might be overcome if they were to create a similar board for this situation.

Director Scippa responded that if a committee was constituted using the framework of the Child Fatality Review Committee it would be designed to look at police events and therefore would have to have access to those types of investigative reports. There is another concern that in the first instances, criminal investigation would supersede any type of other type of investigation. When Senator Giuda talked about this, he said the mission of the committee was to see if we could do things better. There is a concern about what happens should a committee sits down and says the officer did a good job, but they could have done it better; then that document becomes public and that would create a hesitation to share information. For a committee to sit down and pick that apart, it could be detrimental to what the mission of the committee is.

Rep. McLean asked if the LECR Committee requires information to be privileged.

Senator Cavanaugh asked about the de-escalating training the officers go through and the trauma that officers can experience in those situations.

Director Scippa answered that the police are often the forgotten piece to the whole event. Has never met a cop that looked forward to having to be forced to hurt a citizen in the line of duty. Every cop he knows who has had to make that life changing decision to use deadly force, they carry that with them to their grave and struggle with it every day. PSTC is working hard to help address those issues as well. If we could get information of value to help police deal with these situations it would be of tremendous value. Is concerned that if this came to the LECR Committee it may cause some conflict, as that Committee was not designed to do that kind of analysis. Transparency is important and looking to improve on that, but at the same time an officer makes a life-or-death decision in a matter of seconds with limited information in a rapidly evolving and chaotic event. The information from that should never be used against an officer who did the best job they could within the limits of the law.

The Committee discussed the confidentiality requirements of the LECR Committee.

Senator Carson asked what constitutes a 'mental health crises.' Can a police officer tell when someone is having a mental health crisis? How many of these instances are related to illicit substances? Are we going to put the onus on the officer to make that determination?

Director Scippa pointed out that officers have a very difficult and complex job. It would be unfair for an officer to be required to decide as to whether someone suffers from a mental health issue. What defines a mental health event and is there going to be conflict if someone says a use of force incident needs to be reviewed and someone else says it was not related to a mental health event? Who makes that decision? Suggested reviewing all use of forces and through that investigative process they may be able to come to a determination that there was a mental health component. There is a lot of cross over with mental health and substance abuse events. Any person that attacks an officer to the point the officer has to use deadly force to defend themselves, they are likely having some kind of mental health event. Believes this is a noble initiative but it is fraught with a number of challenges.

Senator Carson asked about the concept of death by cop; people who want to commit suicide and they want the officer to do that for them. Would say that is a mental health issue, but if a person is coming with a knife at an officer that officer has a right to protect themselves. These situations can escalate in a matter of seconds. Cannot imagine the volume of work this is going to take to sift through all instances where there is a potential mental health crisis.

Director Scippa concurred. The people who call the police because a fast-food restaurant got their order wrong, felt they needed to dial 911 for that. They may be suffering from a mental health issue.

Rep. Pearson said he thinks the job here is not to figure out all instances, but just enough of them to make some recommendations.

Senator Carson agrees but asked where we draw the line.

Rep. McLean stated if mental health issues were going before a public committee, it would be hard to draw that line. Where this is going to be privileged, the committee might just review the cases and could have the authority to do that triage work. We have the luxury of creating that.

Senator Carson asked about a child who brings a gun to school. Asked if that would be considered a mental health crisis. Asked if it would be helpful to have someone on staff with a mental health background at PSTC to review these cases rather than having a board.

Rep. Abbas stated that the laws regarding use of force are very clear. If someone were to use excessive force, they could get charged with a criminal offense and would have to go before PSTC. We have laws that are straightforward. If an officer is aware someone has a mental health issue that could be factored into their response as necessary, but if they do not know about it the officer had no reason to know.

Senator Carson stated that that is why having someone with the appropriate background be at PSTC may be helpful. If the information stays at PSTC to be used to improve training for officers, that may be a way to go.

Rep. McLean pointed out that a board would cover an array of mental health possibilities. Asked if one mental health expert could address all of this.

Director Scippa stated that he has very limited knowledge and background regarding the depth of what a mental health professional knows. Believes that having someone with that background could bring value. When a number of professionals are discussing a topic, generally the answers are going to be better because it is coming from multiple points of view versus just one.

Senator Carson stated that a number of officers have a background in mental health.

Rep. Pearson asked if the findings and recommendations would be public.

Director Scippa stated that the mission is to do the best job that they can. We do a great job in NH, but if we stop looking to do better then shame on us.

Ret. Major Russell Conte (State Police)

Is the Mental Health and Wellness Coordinator for the Department of Safety. The Crisis Intervention Training Program (CIT) has trained over 400 first responders. You can only connect those dots in these situations when going backwards. We are at a pivotal point as a society. The 988 and rapid response program is far ahead of any other state. There has been a real focus on mental health issues in NH. Talking about these things right now and reviewing these instances is going to tailor the future, and this is an opportunity to expand the great work that has already been done.

Rep. McLean asked what he thinks would be a good approach to moving this forward.

Major Conte stated that it is complicated, and something like this crosses systems. There are intersections with homelessness, mental health, and many other things. The Council on Suicide Prevention has entities from all those areas. Would caution against making this a part of the LECR Committee because this crosses so many disciplines. The beauty of what has been done with crisis management and the CIT program has been because everyone has come to the table. The Council on Suicide Prevention has confidentiality agreements, and they access medical and police records when looking at someone who has died by suicide. This study is looking to do something very similar except it looks at deadly force. When looking at use of deadly force, about 50% of those instances involved individuals suffering from mental health issues. NH isn't low, but we are also one of the safest states in the country. We connect the dots going backwards and that information was in the initial grant application for the original CIT training. The State beat out a lot of applicants to get the federal funding for that. When an officer gets to the point of using deadly force, it is already too late, and the system has already failed. In many of those instances it is not the first time a first responder or an officer was at that residence.

Rep. McLean asked if we created board, how do you get over the hurdle of whether something is a mental health issue or not.

Major Conte answered that the way they did it with the grant application was to look at if those situations and ensure there was a mental health component. Mental health components are vast, and it may take an initial review by PSTC. The Council on Suicide Prevention has the Medical Examiners Association, the Nursing Association, and everyone else at the table to determine what goes to it. This committee could look at what happened and what could have been done differently. The beauty of CIT and de-escalation is it is real time. Rapid response is helping because now the police don't have to be involved in every incident. In a situation where deadly force was used and 998 was involved, you would want those people at the table because that is where the solutions are going to come from. It is important to look at everything that has been done and everything that is being done. When you cross systems, the hardest thing is to get everyone on the same page.

Senator Carson questioned if patterns of behavior exist and if it does, how do you deal with that and use that to educate officers. Suggested that there be an initial person at PSTC reviewing all the instances and then a small committee with representatives from the Council on Suicide Prevention, the Attorney General's Office, police, and 988. Asked if he would suggest anyone else.

Major Conte answered that the Council on Suicide Prevention is small with the right people at the table, and it works well. They do have closed recommendations for people in the field. When looking at mental health you would want someone from community mental health. The problem exists when there isn't a warm handoff. Police can go and ask someone who is acting strangely to leave a McDonalds, but there is no handoff for community mental health. 988 is involving a lot of community-based programs. There are a lot of veterans in the homeless and those who suffer from mental health issues from their service and otherwise. Thinks this is a great start and it would be adding to the robustness of 988 and rapid response.

Senator Cavanaugh asked how many deaths by force happen a year in NH.

Major Conte stated that in 2018 he had looked over a period of almost 10 years and there were 50 some instances. The problem is when looking at the State it was not shocking for numbers, but there is a recognition that it is happening here in NH. The question is: what are we doing to address this for people and families dealing with mental health issues? NAMI NH provides people to do the practical in their own voice in CIT trainings. State Police has about 112 CIT trained troopers and there are over 400 statewide. They are doing the trainings monthly and they are booked solid. This is year one of a five-year grant. Anything done in relation to this cannot be done in a way that is judging someone's response because that is not fair to the families or the first responders. Should be trying to limit aspects, grow a community of mental health, and make the lineup so people are getting help.

Committee Discussion

Senator Carson asked for the Council on Suicide Prevention legislation.

Senator Cavanaugh thinks some great work is being done, and if we can help continue that work it would be positive for the public and law enforcement.

Rep. McLean agrees with possibly having someone triage the cases, and then have it go to a committee with multi-disciplinary review, keeping it out of the LECR Committee.

Rep. Abbas stated that he thinks everyone's heart is the right place, but the use of force laws are clear, and those are investigated appropriately. If anything, we may want to look at the use of force law. Mental health issues aside, if an officer has to affect an arrest, then use of force laws have to be considered. There is something to say if you see a violent crime occurring then there is often a mental health aspect.

Rep. McLean responded that this is trying to go beyond what is legal and what is not legal in order to optimize the interaction the police have with the public, especially those who may be at a mental disadvantage.

Rep. Abbas stated that the study is meant to look at instances of use of force. There are two types of force: deadly and not deadly. This would not address general police interactions with the public. If the force is excessive, it is excessive and if it is not, it's not.

Senator Carson stated this is trying to look at when there was deadly force used, was there a mental health aspect and what does that encompass. This would lead to a better understanding for the public regarding why the officer did what they did, and also help officers recognize a mental health crisis and give them tools for these instances. Understands that where we want to go with this is to have an entity that looks at these types of deadly force incidents and look at it from different eyes, law enforcement and the person on the other side.

Rep. Abbas shared the State's deadly force laws. Questioned what this entity would accomplish in changing what an officer would do, as it won't change a person's behavior. Asked how often deadly force is used in the State.

Director Scippa answered that it is 10 or less a year in NH.

Rep. Abbas pointed out that in those circumstances this entity would not change the fact of what a person does. Questioned what this entity would accomplish.

Senator Carson responded that we can't change what happened in the past, but we can look at the incident from a different perspective to see if something can be done differently in the future. Often when deadly force is used, it is not that individual's first contact with law enforcement. This entity could look at how we stop it from getting to the point where officers have to use deadly force.

Rep. Pearson stated that the LECR is very discreet and narrow, this is establishing a big picture review. We need both.

Rep. McLean stated that he is not looking to change the deadly force statute, but this will help in developing training for the future. The deadly force statute addresses when the officer feels threatened; maybe with proper training he could better be able to de-escalate the situation. This is an opportunity to understand what happened in the past to train better for the future.

Senator Carson reviewed that this would involve a hire in PSTC with a mental health background to triage, and then a board with someone from NAMI NH, the Council on Suicide Prevention, the Attorney General's Office, police, community mental health, 988, and veterans' mental health would review the incident.

Rep. Pearson suggested legislator be added as well in order to streamline bringing legislation.

Senator Carson raised the concern of not wanting to involve politics in this as it may muddy the waters.

Beth Sargent (NH Association of Chiefs of Police & NH Sheriffs Association) stated that the Attorney General's Office already does a review of a deadly force incidents to determine if it was justified or not.

Senator Carson said she thinks it is important to have them because they collect data as well. Spoke to potential different officers who could fill a role on the board.

Rep. Pearson noted that there is an appropriation for funding to PSTC for CIT training. Asked if that money would fund the new position at PSTC.

Director Scippa stated that that is a non-lapsing fund that was initially designated for support of training CIT to help every police agency in the State to have at least one CIT trained officer. It will take a long time to accomplish that goal. Rep. Abbas is correct that this would be looking at 10 or less incidents a year. Therefore, instead of funding a full-time person, maybe set aside a portion of those funds to contract as needed.

Rep. Abbas stated that we can't pick and choose. If we are talking about non-lethal force, there is going to be a lot more than 10. We need to determine what direction we want to go.

Senator Carson noted that the charge of the committee is "incidents involving law enforcement use of deadly force, and such non-lethal SWAT engagements, including regional

SWAT teams, as the mental health incident review board may choose to review.” Therefore, they are being given a lot of leeway to determine what to review. Which is why it would be good to have someone at PSTC look at all of those incidents and decide about what it should be reviewed.

Rep. Abbas questioned if that kind of discretion should be allowed. If someone wants their situation reviewed and it does not get reviewed that could be perceived as problematic. Agrees we trust the board, but it is a matter of public perception.

Rep. Pearson noted that every use of deadly force incident will be reviewed by the Attorney General’s Office, but some of them would be reviewed by this board.

Senator Carson stated that this will allow for these to be reviewed through the mental health lens.

Rep. McLean responded that because this is privileged and not to review actions, then this will not be a concern. The concern would be ensuring that there is an individual that can effectively triage these cases.

Holly Stevens (NAMI NH)

If the Attorney General’s Office is reviewing a deadly force incident and simultaneously the board is reviewing that incident, and there is individual who is serving one both, that could be result in people being less forthcoming. In the preliminary discussions on this bill, there was a question of whether this entity should not review an incident until after the Attorney General completed their investigation. NAMI NH’s does not support that delay. The police also had a real concern about the Attorney General’s Office being on this. The incident that brought this to Senator Giuda’s attention was when there was gentleman involved with police who ended up losing his life. There were contacts with police earlier that day. Ultimately the gentleman charged and there was reason to use deadly force in that instance, but there might have been things that could have been done earlier in the day that would have changed the outcome.

The Committee discussed future meeting dates and presenters.

Next Meetings: September 20th and 27th at 1pm.

Report Due: November 1, 2022

2022 Study Committee, Established by Chapter 332:2, SB 376, Laws of 2022

Regular Meeting Report

TO: Members of the Committee

FROM: Jennifer Horgan, *Legislative Aide*

RE: **Regular Meeting Report on SB 376, Chapter 332:2, Laws of 2022**, there is established a committee to study establishing a mental health incident review board for the purpose of performing a comprehensive analysis of all mental health aspects of all incidents involving law enforcement use of deadly force, and such non-lethal special weapons and tactics (SWAT) engagements, including regional SWAT teams, as the mental health incident review board may choose to review.

MEETING DATE: September 20, 2022 1:00 p.m. Room: LOB 101

Members of the Commission Present: Senator Carson, Representative Pearson, and Representative McLean

Members of the Committee Absent: Senator Prentiss and Representative Abbas

Summary of Meeting:

Senator Carson opened the meeting.

The Committee discussed the minutes. Rep. Pearson moved to accept the minutes with a correction changing references from 'NAMI' to NAMI NH'; Rep McLean seconded the motion. All members present voted in support of the motion. The minutes were adopted.

Ellen LaPointe (NH Hospital)

NH Hospital is an acute psychiatric facility. The current census of the Hospital is approximately 144 as of this morning. The purpose of the Hospital is to accept patients primarily from emergency departments (EDs) who are in an acute mental health scenario; occasionally the Hospital accepts patients from jails and prisons. The vast majority of individuals that are served at the Hospital are there involuntarily through a court appointed order. It is rare they accept voluntary individuals, as there are other receiving facilities for that. NH Hospital is a very restrictive environment that works to service individuals with very acute needs. The Hospital uses treatment teams comprised of various clinicians. The length of stay is dependent on the circumstances of the individual. Mental health often comes with other challenges such as

substance use issues, homelessness, and more. A good portion of those staying at the Hospital are currently in need of housing. It is a struggle for individuals be able to access the community-based care they need when they return to their communities. The Hospital team is very skilled in their approach to treatment and tries to be extremely comprehensive in treating patients. The Hospital has a small medical team, but medical care is not the Hospital's primary purpose. Often depend on other hospitals, primarily Concord Hospital, for treating medical needs.

Rep. McLean asked what her thoughts are on the proposed membership of the board: NAMI NH, Suicide Fatality Review Board, the Attorney General's Office, law enforcement, mental health counselor, 988, and an individual representing veterans.

Ms. LaPointe responded that she feels that is a pretty comprehensive group. NH Hospital has good communication with NAMI NH, would definitely support their participation. NH Hospital is sometimes involved in those types of conversations, but it is a bit more removed from it, so it would not necessarily make sense to have them as a member.

Rep. Pearson asked what max population is at NH Hospital.

Ms. LaPointe answered approximately 185; that flex based on the patients in residence needs.

Rep. Pearson asked what percentage of the population is remanded from the courts.

Ms. LaPointe stated she would get the numbers on that to the Committee. It is hard to say because sometimes there is criminal involvement with DOC, sometimes there is past history of concerns, and sometimes cases are not active, but they are still playing out in the legal system. Might be 40% of the population that has some type of active legal circumstances.

Senator Carson asked what the average stay of an individual is.

Ms. LaPointe responded that it is hard to say because it is dependent on the individual and their demographics. Sometimes it is very dependent on what brings them in legally. Some are with the Hospital for a short amount of time for something like a medication adjustment or they just need help through an immediate crisis. Anywhere from 10 days to some folks who are with the Hospital in a more forensic capacity that could be upwards of years.

Senator Carson asked what the average number of people that have had a previous stay is.

Ms. LaPointe answered that she would get back to the Committee with those numbers. Would say that probably half if not a little bit more. This would be whether that stay was when they were a youth or as an adult. NH Hospital no longer does youth-based services.

Senator Carson asked if there is a way for police to know if that person has had a prior commitment to NH Hospital. Also noted the mental health toll police officers experience when dealing with these situations and the aftereffects of that.

Ms. LaPointe responded that there is now the mobile crisis response process and wondered about the possibility of collaboration between the mobile crisis team and NH Hospital that could

offer some type of awareness to officers. That collaboration could perhaps allow officers to call upon on that in the moment so they can better understand what is happening and to better meet the needs of the community.

Senator Carson raised the issue of silo-ing. Asked how NH Hospital could be a resource for first responders.

Ms. LaPointe replied that NH Hospital is really committed to meeting the mental health needs of individuals across the State. Does not have any immediate suggestions beyond trying to create that connection to community-based resources. NH Hospital really wants to be able to support the mental health needs of the State. The challenges they have of having enough beds and staff to meet the care needs across the State is a challenge. Anything the Hospital can do to have an individual's needs met right then and there would be amazing and that would mean one less person waiting in EDs.

Senator Carson asked if it would be appropriate to bring individuals who police respond to with suicidal thoughts directly to NH Hospital or is it better to take them to a local ED.

Ms. LaPointe answered that that is not the way the system is currently structured. Unfortunately, the capacity at the Hospital is such that they would not have that flexibility. It is an interesting approach to think about. From a legal perspective, the way it works now is to have the ED complete those involuntary admission orders which generally come from law enforcement, family members, and others. Would have to really think about an overhaul to the system in order to accomplish that not only from a capacity perspective but also from a legal perspective.

Senator Carson noted that people are stuck in EDs for days and not getting the treatment they need. The State has added more beds but that is not enough. Asked if we can give the police another tool rather than just have the ED deal with the situation.

Ms. LaPointe agrees it is a challenge. There is a lot of work that is being done and even more work that could be done in the coming years on increased community-based support and services. The Department is working hard on increasing community-based services. Although NH Hospital is skilled at what they do, it is very restrictive environment. Would advocate for any opportunity to meet needs in the community in a less restrictive environment. NH Hospital should be the last resort.

Senator Carson noted that at the end of the day we must be more realistic about what we are facing. Community-based care is important but there is a distinct population that is in a very difficult situation needing something intensive and they don't need to be on a stretcher in an ED hallway.

Ms. LaPointe agrees. It is disheartening to know that there are individuals in EDs that need care. We all want to do better at meeting those needs. In an ideal world we would not have a queue at all to meet those needs. Hope to get there in the near future. There was a point during the pandemic where that happened for a day, but that involved several different facets of approach including Hampstead Hospital and other organizations who were able to come together in the moment. Trying to get there but they are not there yet.

Holly Stevens and Susan Stearns (NAMI NH)

Ms. Stearns stated that when there is officer involved shootings involving people with a known mental health disorder, those are tragedies across the board. Knows NH appears to have a higher rate of those incidents than the national average. Some of the most heartbreaking situations are when families call 911 seeking help for their loved ones and it ends tragically. This is also a tragedy for the first responders and their families. First responders are at a greater risk of PTSD and issues around suicide. In these situations, there is no support in place for the family of the individual who lost their life. Often these individuals have committed a crime or some sort of criminal act, so the Assisting Victim Witness Program would not be appropriate in these cases, but these families really need support. These families do not have communication coming from Attorney General's Office the way that homicide victim families do. Would want to ensure the mental health of the officers involved and their families is looked at and at if the officers have been involved in similar incidents before and what is the toll of using deadly force more than once in their career. What is the tracking of these incidents, officers, and their involvements. NAMI NH supported this bill as an opportunity to learn. After the Attorney General has done his review and determined something is legally justified, this would serve as an opportunity to review what happened leading up to the event and what could have changed in the outcome. There are moments in the Claremont case that raise questions, not about blame but were there missed opportunities. How do we learn from these incidents so we can inform training. Chief Goldstein has been hosting Crisis Intervention Team (CIT) training in Franklin. CIT training is so needed, and the first responders are interested receiving these trainings. NAMI NH does 16hrs of training for all recruits through the Police Academy. People with mental illness are some of the most highly stigmatized individuals in our society. In no way can we say they are not sometimes dangerous and violent and that is why we need a robust system. Far too often the families of these victims feel ashamed. To have called 911 and have the situation end in loved one's death is a pain none of us would want to carry. Sees this as a societal/systems failure, not a failure of law enforcement.

Senator Carson noted that because someone suffers from mental illness it is not necessarily a lifelong problem; people do recover. There is a fairly large stigma attached to someone who has or who is suffering from a mental illness. As a society we need to start thinking of mental illness in the same way we think of other illnesses. Agrees with the need to have something in place for the families of the person who was killed and for the families of the first responders involved. There is a lot of negative attention brought to the first responder that impacts them and their families. The national press today portrays these incidents and sometimes officers encounter individuals who are very angry and who will take that anger out on the officers. Spoke to the challenges first responders face in society today and how we should have more support systems in place for officers today.

Ms. Stearns stated that we know that in law enforcement that stigma regarding mental health is even greater. We have great work happening in the State to try and reduce that. That stigma keeps first responders from getting the help they need and that impacts them, their families, and their communities. We need to bring this out of the shadows. In some instances, would think most first responders experiencing some kind of mental health challenge would be a rational response to what they witness.

Senator Carson noted she does not want to create a board with the presumption that the officer did something wrong. Thinks too often that presumption is already in place and facts are not looked at until some formal board reviews it, and even then, some people do not trust that review. Would hope that this board would be a place where mental health professionals and law enforcement would come together to talk about this and about what can be done to help. Does not want to see this board being set up to say right away that law enforcement is bad.

Ms. Stearns answered that they are in absolute agreement. These are tragedies for everyone involved; let's take the opportunity to learn and develop systems to try and prevent them.

Holly Stevens noted that there is a review board with airline pilots and in hospitals when someone dies. Those fact-finding efforts are not done with the purpose to determine if the doctor or pilot was at fault, but to look at what happened system wide and how to make sure it does not happen again. NAMI NH is committed to making sure this board has that same flavor to it and that it is not a blame game. The Attorney General review is the appropriate venue for a determination regarding justification. This board would look at opportunities to see if something different could have been done. That doesn't mean something was done wrong but that something can be done differently in the future that might have led to a different outcome.

Senator Carson noted the number these types of incidents we are having in NH and what can we do to reduce them. Once in a great while something happens, and it is unavoidable. This is an opportunity to gather mental health professionals and law enforcement together to determine what is needed.

Frank Knaack (ACLU)

NH lacks basic data around what is happening in terms of police killings in NH. End up relying on news sources provide that information. Establishing some kind of data collection would ensure that the public knows what is going on. We are seeing competing percentages regarding the numbers of individuals killed by police who were experiencing a mental health crisis. The Washington Post and the Concord Monitor are saying different numbers because we lack uniform methodology. If we had a uniform methodology that would develop a common understanding which is important.

Senator Carson asked who should be gathering the information.

Mr. Knaack responded that the Department of Safety (DOS) is already producing crime reports, so this could be an addendum to that.

Senator Carson asked if the proposed board would be an appropriate place to compile that information and issue a report.

Mr. Knaack answered absolutely, as long as there is a methodology everyone agrees on and that the process is transparent. Appreciates the conversations regarding the need to de-silo and think beyond the specific facts that happen in an incident. There was a recent police killing in Meredith with the individual experiencing a mental health crisis. Meredith Police told the Concord Monitor that the opportunity for intervention was weeks or months before the shooting. The mobile crisis teams have been rolled out, but there is still a shortage of them and of mental health beds. Has seen efforts like the Cahoots program out of Eugene and the Star

Program in Denver are extremely effective and drastically reduce the need for police to be involved in situations that could escalate to a police shooting. We have turned police into our solution to individuals experiencing a mental health or substance use disorder crisis. When we deinstitutionalized facilities in the 50s that was supposed to be followed up with intense community mental health programs but that never happened. We need to look at all those issues combined to address this moving forward.

Senator Carson requested Senate Research to look at the Cahoots and the Star Program.

Mr. Knaack noted that another important piece is recognizing legislative drug policy and the war on drugs. The fact that we are continuing to push a punishment focused model versus a harm reduction model is a challenge. We know ways to reduce harm and the need to meet people where they are. We must recognize that these issues happen, and we need to rethink our approach on drugs to be more focused on a harm reduction perspective in order to make our communities safer. Would have concerns about the perception and independence of any committee made up of law enforcement officers, but instead it needs to be made up of academics, mental health providers, and others who can look at this. This would be a truly independent body with people who know what they are doing, who can assess the facts and make determinations based on those facts. Thinks that the whole process needs to be public and as transparent as possible. Sunlight is important and it is essential to ensure this is independent with its own funding stream to ensure the community trusts the results.

Rep. McLean raised the point that the Committee has discussed that this would not be transparent in order to allow people to go very deep. There is a conduct review done by the Attorney General's Office which is very transparent, but this was going to be something focused on exploring those deeper aspects.

Mr. Knaack appreciates that that is a decision that has to be made. Would error on the side that transparency in this process is important and is a factor that needs to be prioritized. If something went wrong that is something that needs to be discussed in public, so that we can have informed discussions about what happened and why it happened.

Rep. Pearson asked what other states do regarding data collection.

Mr. Knaack answered that he will get back to the Committee with that information.

Rep. Pearson asked why he thinks we don't collect data.

Mr. Knaack responded that he wouldn't want to speculate, but he has seen on a number of issues in the legal realm have a lack of data needed to make informed decisions.

Rep. McLean asked if this board is going to be equipped to review this data. Asked if there is data available to the Suicide Prevention Board.

Mr. Knaack answered that he is not familiar with how the other board operates. Does not have a concern with the idea of the board collecting data where similar data is already being collected by an agency like the DOS. There is a cost factor involved, but if there is already a

system in place collecting that data in a public way, then that process can be tweaked. Transparency, methodologies, and clarity about collection would be the most important things.

Senator Carson noted she sees the issue of the collection of the data being done with a separate piece of legislation. There are a lot of people who object to the collection of the data and would hate to attach it to the bill creating the board and have that data collection aspect kill the whole bill.

Rep. McLean noted the concern about this being a law enforcement heavy board. A lot of this would be used to drive training for police. Asked if he would have concerns with even a minority composition of police serving on the board.

Mr. Knaack answered that he would prefer full true independence. Would prefer academics who study this regularly and community members who have the trust of the community and mental health professionals who understand the factors involved. If there was just one police member would have less concern. More concerned if the board was a majority law enforcement entity. This is not about questioning trust in law enforcement; it is about appearance and the fact that it is inappropriate to have the people being reviewed to have that kind of power.

Senator Carson had to leave the room and turned the chairmanship over to Representative Pearson.

Krystal Chase (Brain Injury Association)

The Brain Injury Association is a nonprofit grassroots advocacy organization. Their mission is education and advocacy for individuals with brain injuries and other disabilities. Works to ensure these individuals' needs can be met in appropriate treatment settings, and that people are receiving the right services they need to live independently in the community. They have a significant amount interaction with individuals with diagnosed mental health issues and those experiencing mental health issues whether before a brain injury or after. People with brain injuries have a higher rate of experiencing some kind of mental health issue than the general population. Follows almost 700 individuals for case management services. Around 550-600 of those individuals also have a mental health diagnosis along with their brain injury. Have a lot of individuals who they are the primary servicer of supports, but they are not a mental health organization.

Rep. McLean asked based on the discussion regarding the board what are her thoughts.

Ms. Chase answered that individuals with brain injuries often interact with police, and they can be misunderstood by police due to things like speech or cognition challenges. Did partner at one point with local law enforcement in a pilot study where they gave individuals with brain injuries cards that identified that they had a brain injury to give to officers. It kind of ended up being used in a way they had not intended. Having someone that understands brain injuries serving on the board is important. Suggested that because a large number of veterans suffer from brain injuries, the members with veteran ties could cover that sector. Suggested having someone with lived experience with mental health serve on the board. Any agency providing DHHS funded services is mandated to report interactions with officers as well as suicidal attempts and completed suicides as a sentinel event. There is already a process for sentinel reviews and not every event is called for a sentinel review. That review is done by a multi-

disciplinary group who review the circumstances and look for opportunities for improvement; it has never been punitive. Sgt. Patrick Dawson (Derry Police) is very involved in crisis intervention training and helping officers recognize their own trauma that may occur in those situations. He could provide really valuable information as well.

Rep. Pearson noted the Deaf and Hard of Hearing committee also engaged in a card process. Suggested Ms. Chase look at that.

Ms. Chase noted that they do work very closely with law enforcement when a situation comes up involving one of their clients. Found the cards being used as a means to not get in trouble. Had to rethink how it was designed but appreciates that input. Did have cards for case management clients to show at EDs to show that they were connected with the Association and that was really successful.

Rep. Pearson asked if it is a proper inference that a mental health issue from an acquired brain injury may present differently than other mental health issues.

Ms. Chase answered yes. People with acquired or traumatic brain injuries have higher rates of depression and anxiety than the general population. This presents differently in the sense that every brain injury is a unique and an individual experience. Two individuals could have the same injury from the same experience and they both develop depression, but it presents differently in each of them.

Ellen LaPointe suggested that one of the board members be a mental health clinician. A mental health counselor would be of great value to support those clinical based conversations, but a clinician might be able to provide the board with more parallels and support in how an individual's needs can be met within a given diagnosis. If there is consideration of a clinician in an acute setting like NH Hospital, that might be very helpful to provide that viewpoint of that level of care. NH Hospital does after action event reviews. It is a bit reactive as opposed to proactive, but it helps them improve. When they have an adverse event, they do a in depth team-based review to allow them to learn from the event and hopefully prevent future similar events. NH Hospital also participates in sentinel events run by DHHS depending on if NH Hospital is involved. Both reviews help them to update policies and procedures to improve services.

Rep. Pearson questioned if having an individual who has worked through their mental health challenges would be valuable to have on the board.

Ms. LaPointe answered absolutely. NH Hospital has peer support individuals employed with them who are able to support current patients and provide them with encouragement and the ability to see what success may look like for them as an individual.

Susan Sterns noted that they would support someone with lived experience participating in the board. The Suicide Prevention Council has a data report they produce that relies heavily on data from the state medical examiner.

Representative Pearson closed the meeting at 2:13pm

Next Meetings: September 27th at 1pm.

Report Due: November 1, 2022

2022 Study Committee, Established by Chapter 332:2, SB 376, Laws of 2022

Regular Meeting Report

TO: Members of the Committee

FROM: Jennifer Horgan, *Legislative Aide*

RE: **Regular Meeting Report on SB 376, Chapter 332:2, Laws of 2022**, there is established a committee to study establishing a mental health incident review board for the purpose of performing a comprehensive analysis of all mental health aspects of all incidents involving law enforcement use of deadly force, and such non-lethal special weapons and tactics (SWAT) engagements, including regional SWAT teams, as the mental health incident review board may choose to review.

MEETING DATE: September 27, 2022 1:00 p.m. Room: SH 100

Members of the Commission Present: Senator Carson and Senator Cavanaugh (subbing for Senator Prentiss)

Members of the Committee Absent: Representative Pearson, Representative McLean, and Representative Abbas

Summary of Meeting:

Senator Carson opened the meeting. Explained that due to the lack of a quorum the Committee will not be taking up the minutes.

Chief Joseph Hoebeke (NH Association of the Chiefs of Police)

Understands from NAMI NH's testimony during the hearing on this bill that the goal of this is to decrease the number of people with mental illness involved in officer involved shootings. Agrees that this is a laudable goal but recognizes the need to consider the multifaceted nature of this issue. This is not just a law enforcement issue. During the last meeting the use of the phrase "police killings" was invoked. Takes issue with that language and finds it to be highly insensitive; serving to do nothing more than to drive a wedge in the collaboration needed for efforts such as this. Is not opposed to the concept of reviewing cases for training purposes only. Who would sit on the board? Would every officer involved shooting incident be reviewed including non-fatal incidents? How will it be determined that the case is the result of an interaction with a person with a mental health episode or a history of mental health challenges? At what point in time will the case be reviewed? The Association of Chiefs of Police's position is that the case must not be examined until the Attorney General issues their

ruling, and any criminal and civil cases have concluded. Although the bill promises confidentially, the Association is concerned about case related matters raised after the fact such as, any future legislative body with uninformed rulings relative to an RSA 91-A request. Officers do not go to work with the intention of using deadly force, such actions are a last resort. These incidents are tragic to all those involved. These incidents are an end product of a failed system. NH law enforcement officers are trained in CIT and de-escalation. The Police Academy provides a 16-hour block of mental health training. Currently, there is a work group developing a process for state accreditation for police departments, and mental health training is a component of the standards for that accreditation. CIT is not a silver bullet or a magic cure, but it should be viewed as a critical tool. When dealing with human behavior and emotional issues, there are a myriad of issues at play and mitigating factors law enforcement cannot control like drug and alcohol misuse. We must look at the system as a whole when reviewing incidents such as this. Law enforcement has worked for years relying on a system that fails to deal with the root causes. Until all parts of the system take steps to intervene, when necessary, this will continue to be an issue in spite of any and all training.

Senator Carson agreed with the testimony regarding the failure to deal with the root causes. The State has instituted the mobile crisis teams and that is doing a good job, but there are still times when officers are walking into a situation blind. When an officer gets a call from a parent that their son won't get out of bed and go to school, the officer doesn't know if that child has a history of mental health issues. The Study Committee needs to determine if we really need this board. If we have it, what is it going to look like? This board would need the involvement of police because they are the responding to calls for kids, the homeless, drug addicts, and more. The State asks law enforcement to shoulder a lot, but she is not sure we are giving them the resources needed to do this job.

Chief Goldstein (NH Association of the Chiefs of Police)

Shared his experience with and education on human behavior over the course of decades. When listening to what this Committee is trying to achieve, it is the same old song. Wonders if we appreciate how difficult and complex this problem really is. Shared the how the Diagnostic and Statistical Manual has expanded over the years. People may be defined as having 'mental issues' when they are depressed, anxious, stressed, or otherwise seriously upset. Challenges anyone in this room to claim they have never experienced emotions like that. It is the same with 'disability', where it is defined as someone finding it difficult to function personally, physically, occupationally, or socially. Questioned again, who in this room has not had a difficult time functioning. Officers and first responders find themselves dealing with people who are in crisis. Crisis is defined as a time when someone finds an unbalance in their lives. What is a crisis to one person, may be nothing to someone else. We need to be able to understand that; to empathize. In the development of a crisis, it is looked at in stages: the development of the crisis itself, having problems dealing with it, and then overreacting or reacting improperly. It is at that last stage that law enforcement gets called in. Often family and friends aren't addressing those earlier stages; they only call when someone is horribly acting out. Would like people to realize how difficult of a task this is while developing the concept of this board.

Senator Carson noted the stigma associated with mental health and how often people and family members wait to get someone help. If they had gotten help earlier, it could have been a different outcome. Doesn't know how to compensate for that. People look to the government

do everything when they shouldn't. Even when government gets involved, sometimes it doesn't get it right. Wants to ensure that if this board is established, it will not a 'gotcha' to the officers, with the presumption that the officer did something wrong. Being in law enforcement today is a very difficult job. Wants the board to be fair and not be done in public because it is talking about the mental health status of an individual and the officer. We need to make sure the resources are there to help the officer and the individual, and both of their families. There are resources at the local level, but what does the State need to do help to make sure those officers and the victim's family get the services and support they need. Thinks there is some topics this board could discuss but it should be done in private and would be meant to be used as a learning tool. Agrees that the term "police killings" is inappropriate.

Officer Justin Breton (NH Police Association)

Is the Mental Health and Wellness Coordinator for the Manchester Police Department. Expressed that when coming to these hearings and hearings some of the divisive and uneducated testimony, it only exacerbates the difficulties of being an officer and serving the communities law enforcement officers truly care about. The Police Association is still trying to get an understanding of: who will be on the board? what cases would it review? what should be done with that review? and who should have access to it? Looking at how to create an effective system, it is necessary to look at what it takes to create a truly psychologically resilient program. That can be broken down into three tiers. One, anything that is developed from this needs to be based on integrity, which means that we need to look at the system as a whole. There needs to be leaders from the multi-disciplinary teams throughout the State that are willing to work and come together to have effective communication not only about what they individually need to be effective but also be able to engage in courageous candor and be able to hold each other accountable. Agrees that sometimes government gets involved doesn't get it right. Mentioned the challenges posed by the silo-ing effect of departments. More recently some of those silos are breaking down. The Manchester Police Department with the Greater Manchester Center for Mental Health have developed some proactive programs. To expand that would help to better serve the underserved communities in the area. These leaders need to be supportive of their own programs and voice the things that they need. Works with community partners and gets to see some of the hardest working clinicians and individuals he has ever met; they will be the first to say they need help. The first responders are working day in and day out without rest or reprieve and without the support that they need. Friends and colleagues have burned out and left the professions, which is really sad to see especially when the State is dealing with a shortage of competent mental health professionals. We need to be fearlessly creative collaboratively, so that community-based support services are all coming together. The Child Fatality Review Committee was an extremely holistic approach. Every multidisciplinary team member that should be there was represented on that committee. Noted that there have been concerns that the results of that committee's effort may not have been what the original intention was. Noted that there may be a need to look at some other ways to be more innovative in order to achieve what this Committee is trying to achieve rather than simply following the established model.

Senator Carson mentioned that the Child Fatality Review Committee, the Grand Families Committee, and the Oversight Commission on Children Services were all mostly made up of the same people. The decision was made to repeal the Child Fatality Review Committee and the Grand Families Commission and roll their duties into the Oversight Commission on Children Services while adding members. The Oversight Commission on Children Services now truly has

a more holistic approach with people from all walks of life. Often the officer is the first one on the scene and they are going to hopefully help the situation by saying 'here is information as to where someone can get help'. This trauma informed training can be another tool in the toolbox.

Officer Breton noted that the Manchester Department has the Adverse Childhood Experiences Response Team (ACERT). This can truly transform how an officer is interacting by giving the means to provide services and responses beyond the criminal justice system. Believes that is something all law enforcement would want to provide to their community. This is a resource law enforcement is grateful for. Another form of innovation they are grateful for is the money set aside by this bill to be able to provide CIT training for officers and to include the back pay for overtime cost and cost of filling their shift. Thinks the unfortunate piece is that in NH we have law enforcement agencies that range from 393 officers to one officer. Some communities don't have the same resources as others. One administrator from another community expressed to him that they are envious of some of the resources Manchester has because the only other business leaders they have in their community are drug dealers.

Senator Carson asked if would be possible to have a memorandum of understanding between smaller and larger communities' police departments to provide services that smaller communities do not have.

Officer Breton responded that with the roll out of CIT and more officers being trained, those agencies will have better services to offer. In terms of sharing resources, would need to assess if it is adequately funded and adequately staffed. Manchester Mental Health does already service Auburn with their mobile crisis team. That team will rely on the Auburn Police Department for that service, but that trained peer will be coming from Manchester Mental Health.

Senator Carson questioned if an officer from Manchester could go to Auburn to help.

Officer Breton answered that there are MOUs for some instances. That could be explored more for instances when it comes to mental health. A more pointed direction would be to continue expanding CIT training. The NH Police Association was encouraged by the mindset of SB220, which establishes a committee to study licensure of mental health professionals. Mental health professionals will say they need backup, and they need it now. Reviewing that process is a progressive way to look at options to better serve the communities. The second tier is that he thinks the government could become more involved through increasing financial resources for nonprofits and community mental health services. The demand is much higher than the supply right now. Clients are still having very long wait times to get these services. Thinks the third tier would also include an inclusive model that is authentically representing all partners. There were comments made about potentially excluding law enforcement from the board and that is concerning. The board should be confidential out of concern for the protection of our citizens. These families deserve a right to some privacy. We still have a long way to go with removing the stigma and judgment surrounding mental illness. Not every family is going to want to have their situation put out in the public to be dissected and speculated over. Their privacy should be considered and should be protected.

Senator Carson asked if the board is created then should it not meet until after the incident has been cleared by the Attorney General's Office and the completion of any civil suits.

Officer Breton agrees with that. Questioned what information the board would have access to prior to that investigation being completed. If they were completing any review in conjunction with the investigation, not all of the information, interviews, and discovery would be available. Understands that people want answers but in order to maintain the integrity of any investigation, that investigation needs to be thorough, accurate, unbiased, and fair. To conduct a review before the criminal investigation was completed could be pretty dangerous and even negligent. As the Mental Health Coordinator in Manchester and the co-coordinator for the southern NH regional team, they have been fortunate to be the fiscal agent of a two-year grant project from the Cops Support Community Policing. These funds allow them the financial resources to train peer support officers, dispatchers, and civilian personnel to provide health and wellness support to officers as issues arise. They have 38 agencies across the State engaging in this training, and they have been meeting on a regular basis to organize and regionalize efforts. There are now four regional teams across the State, and officers are able to utilize when they see the effects of the stress creep in.

Senator Cavanaugh noted that it is important to get this right. Sometimes legislation can be proposed that meant well but ultimately creates more of a problem for law enforcement. Sometimes getting it right means going forward and sometimes it means removing an effort. The legislature doesn't know, what they don't know until groups come forward to testify.

Trooper Frank Campo (NH Troopers Association)

Reiterates what the Chiefs and the Police Association stated. Questioned if this board is really needed. The State already has a use of force review completed by the Attorney General's Office, and each department has an internal process for any type of use of force. Asked if the point of this is to look at these mental health incidents to determine what the officer did right or wrong. Noted that there is already a place to review that. The question that may be worth asking is whether the officer was set up for success in the first place. If this board is determined to be needed, the incident should be looked at through a larger lens and focus more on questions like: why are the police being asked to respond to this? could something have been done prior to police being called to avoid the need for a police response? what department procedures can be examined or changed to ensure this would not happen in the future? The funding for CIT training is great, and State Police has done an excellent job rolling out the training to over 100 troopers. Just like any training though it is perishable and simply going through this training does not make an officer a mental health expert. The training does get better every year and without further training the State will be losing out. Agrees that if there is a determination that a review such as this should move forward, then it should only be initiated after the completion of the Attorney General's investigation. This would need to occur after in order to not compromise the integrity of the investigation and because the investigation will provide information the board would want to have when conducting their review.

Senator Carson noted that the same types of challenges are being faced by municipal and state police.

Trooper Campo responded that they are going to encounter the same things. State Police does have a peer-to-peer unit that does an excellent job reaching out to troopers that are involved in a variety of situations. It allows officers to reach out at any point and always is 100% confidential, so there is no fear of information leaking out. They have made that

accessible to other police departments, and it is a step in the right direction in addressing officer's mental health.

Senator Carson asked if the peer-to-peer can involve family members as well. For example, if an officer's family reports that the officer is acting strangely is that when the family can get involved.

Trooper Campo answered that yes, they can. Can't speak directly for that unit as they operate very confidentially. Is 100% confident that if they were contacted by a family member or a fellow officer they would immediately act, per their training, in the best way they could.

Beth Sargent (NH Sheriff's Association)

The Sheriff's Association remarks would mirror that of the NH Association of the Chiefs of Police.

The NH Tactical Officer's Association is convening on Wednesday, and if they have any remarks, they will be happy to pass them along to the Committee.

Senator Cavanaugh expressed gratitude for all who have come before the Committee to testify, as it helps to determine which direction to go in.

Senator Carson agreed. Questioned if this would be replicating something that is already in place, and if it is already in place is there anything that can be done to enhance it. Thinks that is a question for the Committee's work sessions.

Chief Hoebeke shared that it is against the Americans with Disabilities Act to force a fitness for duty evaluation on an officer involved in a shooting simply because they were involved in the shooting. Noted we need to be careful, as that could be a byproduct of the board.

Next Meeting: October 18th at 1pm

Report Due: November 1, 2022

2022 Study Committee, Established by Chapter 332:2, SB 376, Laws of 2022

Regular Meeting Report

TO: Members of the Committee

FROM: Jennifer Horgan, *Legislative Aide*

RE: **Regular Meeting Report on SB 376, Chapter 332:2, Laws of 2022**, there is established a committee to study establishing a mental health incident review board for the purpose of performing a comprehensive analysis of all mental health aspects of all incidents involving law enforcement use of deadly force, and such non-lethal special weapons and tactics (SWAT) engagements, including regional SWAT teams, as the mental health incident review board may choose to review.

MEETING DATE: October 18, 2022 1:00 p.m. Room: SH 100

Members of the Commission Present: Senator Carson, Senator Prentiss, and Representative Pearson

Members of the Committee Absent: Representative McLean, and Representative Abbas

Summary of Meeting:

Senator Carson opened the meeting.

Representative Pearson made a motion to adopt the minutes from September 20, 2022; Sen Prentiss seconded the motion. All present voted in favor. Senator Carson approved the minutes from September 27, 2022.

Senator Carson asked if there were any recommendations or findings. Questioned how the Committee feels about whether this is a needed effort.

Senator Prentiss pointed out that there may be duplication of efforts.

Representative Pearson asked who reviews these incidents currently.

Senator Carson explained that a variety of different places review incidents of use of deadly force, including the Attorney General's Office. Pointed out that law enforcement raised concerns about when this board would convene, and how all criminal and civil cases must be adjudicated before a board could review an incident. Questioned if this is putting the cart before the horse.

Asked how many of these instances are related to the mental health of the individual. Senator Carson explained that there should be services available for the family of an officer as well as others, as it is a traumatic event for all those involved. She reiterated that the Committee heard testimony that State Police has implemented peer-to-peer programs that have been very successful, but those officers are going to exhibit trauma at home.

Representative Pearson noted that a board would not be established to review criminal or malpractice aspects, but instead to look at developing new best practices.

Senator Carson responded that it might be best then to place a board in Police Standards and Training Council.

Senator Prentiss spoke to the Domestic Violence Fatality Review Committee, and how they do not review an incident until it has been cleared of any criminal charges. She also sits on the Child Fatality Review Committee which spent time looking at concerns about co-sleeping and positions of children when they sleep. These incidents clearly did not involve criminal activity, so the Committee was able to review them.

Senator Carson expressed that there is something that can be done that can be teased out in the legislative process. Believes a board should be some sort of commission and not be loaded with legislators. Membership should include those in the mental health field, Police Standards and Training Council, Department of Safety, law enforcement, troopers, chiefs, sheriffs, etc. Thinks it is important that the board has the knowledge and experience of officers. The board would possibly be able to develop programs in the mental health field or training to deal with these situations. Membership could be adjusted throughout the legislative process to also include institutions like NAMI NH, the ACLU, NH Hospital, and more. It would be interesting to have someone from Veterans Affairs, since soldiers can suffer from PTSD or traumatic brain injuries that result in them engaging with law enforcement. Officers are walking into these situations blind.

The Committee discussed the Maine Deadly Force Review Panel, which is a seven-member panel that reviews incidents such as these.

Senator Carson suggested that a review panel could be housed in the Executive Branch, removing the legislature from the equation.

Senator Prentiss noted that some of the commissions she sits on were attached to the Department of Justice. These commissions would bring up all aspects of the incident from the beginning to see if there was a gap that could be addressed.

Senator Carson noted she likes the idea of a review panel with no legislators that would try to find the gaps. The board could then come to legislators to bring forward legislation.

Senator Prentiss explained that on her commissions, members had to sign confidentiality agreements as they examined documents such as autopsy reports.

Senator Carson agreed that that confidentiality needs to be maintained, not only for the first responders but also for the individual involved. Board members need to be sensitive to the

privacy issues of the individuals. The board would only look at how the State do things better. Suggested creating a Mental Health Fatality Review Panel.

The Committee discussed potential language for the construction of the Panel, pulling language from the original bill and from the Maine statute.

Senator Carson explained that Senator Giuda had filed this legislation in response to a deadly force incident in his district. In that case, there had been contact with the individual involved earlier in the day, and that person was not taken into custody at that time.

Senator Prentiss noted that the goal of the Panel would be to learn from incidents in order to develop best practices to prevent fatalities from occurring in the future.

Representative Pearson explained it would be helpful to determine what best practices are currently being utilized, and what can be done to improve them.

Senator Carson agreed and pointed to the fact that the Attorney General already determines whether the action of an officer is legally justified. This board would examine whether there was a way to handle things differently.

Ken Norton noted that Maine Panel outlines their purpose as: "The purpose of such examinations is to identify whether there was compliance with accepted and best practices under the particular circumstances and whether the practices were sufficient for the particular circumstances or whether the practices require adjustment or improvement. The panel shall recommend methods of improving standards, including changes to statutes, rules, training, policies and procedures designed to ensure incorporation of best practices that demonstrate increased public safety and officer safety."

Officer Breton expressed some concern regarding that verbiage.

Senator Carson reiterated that the purpose of the Panel is not to look at the legality but to look at what could be done to prevent these incidents from happening in the future. The Panel could identify where gaps are and what might be done to fill them. Senator Carson expressed that very rarely do we look at what the officer and the families are going through, and this Panel could also examine what can be done to help them. Law enforcement is facing a very negative perception right now, and we need to ensure that this Panel is not punitive or attempting to question what the officer did, but rather look at the situation holistically to prevent it from escalating to the point of officer involvement in the future.

Representative Pearson asked Officer Breton about the peer-to-peer program.

Officer Breton explained that through his work, he has had countless meetings about officers' mental health. The peer-to-peer support is becoming very effective, and it is expanding throughout the State. Officer Breton expressed the importance of CIT training and the continued training of officers across the State to help address these situations.

Senator Carson suggested that the Committee recommend the creation of a Mental Health Incident Review Panel that would focus exclusively on a comprehensive review of mental health

aspects of all deadly force incidents, with all working papers, notes, deliberations, electronic records and correspondence, discussions, and information or work products developed by such committee to be absolutely exempt from discovery or disclosure for any reason, and prohibited from disclosure or use for discipline, prosecution, or civil litigation. The Panel would be made up of a mix of mental health practitioners and law enforcement with the ultimate goal of creating best practices to prevent incidents from escalating to necessitating the use of deadly force.

Beth Sargent (NH Association of Chiefs of Police) reiterated that it is vital the Panel is not transparent, as it will be reviewing the private mental health status of an individual, and any kind of justification discussion will already be reviewed by the Attorney General.

Senator Carson questioned who the Panel should be administratively attached to: DOS, DHHS, DOJ. It is necessary that the location of the panel be in a non-threatening atmosphere for all parties involved. If it sits in the DOS or the DOJ that may cause individuals involved concern.

Representative Pearson agreed that the atmosphere needs to emphasize that this be therapeutic as opposed to attempting to place blame on individuals involved.

Senator Carson agreed that the Panel needs to be non-threatening to everyone. This will not be an adjudicatory panel, but rather one focused on best practices and getting everyone on board.

Representative Pearson agreed to have a discussion with DHHS about whether they felt they could take on the administrative duties of the Panel.

Beth Sargent suggested that the Panel could be housed at PSTC.

Senator Carson requested that Director Scippa submit testimony regarding that suggestion.

Susan Stearns (NAMI NH) explained the importance of supporting the families of the individuals involved in the aftermath, and how there are no support mechanisms for them.

Senator Carson noted that DHHS may be the better location to house the Panel because it is neutral.

The Committee discussed the submission of the final report.

Report Due: November 1, 2022