

TRANSCRIPTION

Police-Involved Deadly Force Encounters Working Group
Hearing 3: Policy and Legal Implication-PART 1 October
17, 2019

14:09 My name is in English, Ricky and DeFoe in French for a combination of things, the reason I start that way is because when we think about how society sees us. When I was in school in Duluth, Minnesota they would say all those stereotypes that we all were socialized to believe, would come out. So even though I have an English name Rick and a French name of Defoe, before Ojibwe names, we face some of this, society did not see me as a French boy and I was not raised a French boy or an English boy.

14:21 Society saw me as a little Indian boy growing up in Duluth in the 60s. And things had its implications along with that stereotype. So we lived through those moments. And they shape us, who we are. So I think it's important that names have meaning.

14:49 So I start with that. I've been asked to come today. I've been given tobacco, a gift by John and I'm grateful for that. We start off in a good way. We are in Ojibwe country so we do this and generally do we start with prayer offerings. This pipe here was given to me by an old man that came

15:20 to visit in which we call a [??] is the breath of life. Ebn(sp?) is something that not that we host there but something that we use an instrument can send our thoughts and prayers to the great mystery. So we have not gendered the great mystery we do Ojibwe with a world view.

15:52 So I just wanted to lead off with that and I'm honored to be here this morning. I know the work that you are doing is very very important to create a just society where we know for our beloved society that we need to be striving for day in day out and use our ego as a piece of that to keep that going a little bit above myself.

16:23 I used the chair at the time that the Duluth American Indian commission. And we changed it to Duluth Indigenous Commission to change the world view the way we see things that we were truly a nation of people that were issued on homelands. Rather it's worth. Good or bad.

16:52 These remains in the land we have and so we look to strengthen them in these ways. Much of what we do is we sold out. We echo the words of our ancestors our elders and then we go to relationship to that way. Everything is relational. To the cosmos to our world view to each of us.

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17:50 How we see one another in our relationships. So all things are equal then. Nobody's a hierarchy of life. We do not have dominion over all things. And we do not see the world in such a way that is as gendered, great mystery. So with that being said we will think about the relationship to the walkers the four legged ones.

18:22 The Flyers, the winged ones, the swimmers, the fishes and the Crawlers all of those ones also are in our prayers. We talk about the winds. From the four directions we know we have this experience in the sky. We know we have the spirits in our mother earth. Those are the six directions wherever we sit wherever we're at.

18:54 That is the is the seventh. We are centered then. So with those things in mind and then we see the sun, the moon. These are relational, natural law we must not be led by natural law and spiritual law and then we go a little bit further away from our homelands and we see the star world and [????] and then there on mystery.

19:29 We do not know [???] where the great mystery abides. So all those thoughts in mind. We've got both the tobacco from the [???] trees from the area and also commercial tobacco. We say why we really ask why we say because we live in two worlds.

19:59 So we've got to bring those worlds together and we do these things. Traditional tobacco, traditional tobacco, commercial tobacco. When we think about institutions in conflicts within cultures you know is possible to talk about diversity of things. We always say that in practice is better than talking. So we are going to practice some of that here in this higher learning place this morning.

20:32 Prayer in Ojibwe

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Prayer continued

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So it's important that we do some things in our ways here and these lands here. Welcome. We humbly welcome you here. Say we're grateful that you've come to these lands and you're out here in a good way so we embrace you in this good way and the work that you are doing in the relationships to people all over Turtle Island.

So in a good way I do these things. Thank you for hearing me.

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John Harrington: Good morning. My name is John Harrington, I am the Commissioner for Public Safety. First of all, I'd like to thank our greeter for opening in the right way. That is what I asked him to do.

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This is important work, it's heavy work that has life and death implications all over the state of Minnesota. So I wanted us to open up in this particular place. I was very very happy that I have been welcomed here before, I knew that this was a great space for us to be in.

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And I want to just echo one point which is really good. It reminded me that we must all our work diligently for our beloved community. And that's what this work is about.

Keith Ellison: This morning I could only say that I want to say thank you to our Creator who I think has said all right and proper time for our deliberations today.

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So with that, if we have any family testimony. I think it's the proper time to come forward for that. Seeing no families present to offer their testimony. Is Nate Gove prepared to begin? So Mr. Nate Gove is making his way now. Please make yourself comfortable and proceed.

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Nate Gove: Good morning Commissioner Harrington, Attorney General Ellison, members, thank you for having me up here to explain what the POST board in terms of the state's Occupational Licensing Agency does and has been doing for the last approximately over 40 years in the state of Minnesota. So I appreciate this opportunity. My name is Nate Gove.

32:23 I'm the executive director of the Minnesota board of peace officers standards and training. Commonly referred to as the POST Board. We are the state's Occupational Licensing Agency that oversees the law enforcement profession in Minnesota. The mission of the police board is to advance the professionalism of Minnesota's licensed peace officers by adopting and regulating the education, selection, licensing and standards and training of Minnesota's nearly 12,000 peace officers.

33:03 I myself am a product of this system. I had just under 29 years of law enforcement service for the state of Minnesota.

33:36 Beginning my career in 1985 [sound too low to hear] City of Elk River in Sherman County that has changed dramatically in that part of the state due to population growth and expansion.

33:45 I came down to the metro area and worked for the city of Minnetonka as a peace officer for seven years. And did my last 20 at the city of Golden Valley retiring at the rank of Commander. I have been the executive director of the POST board coming up on five years. Thank you for having me here to explain what the pulse board does and I'll try to do my very best to answer questions.

34:18 The POST board was created by the Minnesota Legislature in 1977. We replaced the Minnesota Peace Officer Training Board which came into being in 1967 and that was the state's real first foray into regulating law enforcement. At that time it was to standardize some of the few academies that existed in the state.

34:47 Prior to that Minnesota did not require. A great deal of training for law enforcement officers especially in greater Minnesota. They were exempt. It was one week of training, two weeks of training with the Minnesota Peace Officer Training Board believe they up that to about eight weeks of training. Much has changed since that time. The board operates under statute 626 for many of our mandated policies, training requirements, powers and duties etc.. We also operate under Chapter 214, Reference Laws that control boards and commissions in Minnesota, regulatory boards. Also Chapter 14, the Administrative Procedures Act and how we make determinations about discipline towards a status of a Peace Officers license and then again of course Chapter 6700 is our rules, administrative rules that sort of get to the nuts and bolts of how we carry out our duties. So why the change why did Minnesota.

35:19 Become the first occupational licensing entity in the country back in 1978.

35:49 Well, certainly contemporary policing required a more well-educated, well-trained, well-rounded peace officer than seven to eight weeks of training at an academy, here you go, to serve the public in a very challenging and complex profession. It was to create the minimum standards. Minnesota engaged with its college and university system. Higher Ed if you will. It was a partnership requiring a minimum of two years of college in a professional peace officer education program that was certified by the board. The passing of a licensing exam, an ongoing education in an officers licensing cycle. So in Minnesota the minimum to enter the law enforcement profession is a two year college degree. Many officers have a bachelor's degree, many officers have advanced degrees.

36:14 We also as a board certify the state's 30 professional peace officer education programs. Most of them are public institutions. There are some private, Rasmussen

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Business College for profit being one of them and also there are 10 statewide skills programs that I think a lot of people would think of that in terms of more of an academy.

37:44 The hands on instruction in the Peace Officer duties. This has grown over the years when I entered the profession in 1985 there was about six to seven. It has expanded I think due to regional requests and concerns to serve the entire state of Minnesota. Obviously many of the programs are in the metro area which works good.

38:16 If you live in the metro area it doesn't work so easy if you live in Thief River Falls or War Road or Worthington, or Rochester. It has expanded to 30 with 10 skills programs that provide that education licensing component. One study that was done by Metro State showed almost 50 percent of the officers holding a Bachelors four year degree. I think that has significantly increased and there are a number of

38:52 avenues to licensure certainly for somebody who's coming from the military who has reciprocal experience from out of state. So it's got a lot of different avenues to take into consideration, people's background and experience rather than just strictly if you don't have a two year degree at Alexandria you can't enter the law enforcement profession.

39:22 That's just not the case. We the POST board does serve as the state's licensing regulatory board over law enforcement. We're also a resource. We pride ourselves on being a resource to law enforcement and other stakeholders and we are the vehicle that implements legislative changes in terms of policy, training requirements that are mandated by the state. And we've done so.

39:52 A recent example would be the implementation of the sexual assault investigation model policy that went into effect as of October 1st of this year. Back in 2017 the legislature passed the police training bill mandating additional requirements within an officer's licensing period to have training in three important areas.

40:21 That I'll touch on later my presentation. But that was another area where the POST board implemented that statewide. Chapters 626 sets forth who is on the POST board, 15 members. One and I have a number of my bosses and post board members here. Chief Rice Mr. Castille, Superintendent Evans Superintendent Evans is the only ex officio member. As the superintendent the BCA and the history of Minnesota Law Enforcement Training has always had a strong role in the peace officer training board. They're appointed by the governor staggered four year terms. Obviously we're represented by current and former law enforcement professionals on the board.

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41:18 Two police chiefs, two sheriffs, four peace officers, one being a Minnesota state trooper, two former officers that are involved in the professional peace officer education program as faculty members, a college administrator, two public members and a very specific carve out, an elected official from outside the metropolitan area a population of less than 5000.

41:46 So a very specific board seat which is held by a council member from Lindstrom. So this makes up the board. Just sort of a pictorial representation our current board. The chair is a police chief. The POST board's current staffing is 11 FTE's.

42:14 We had a maximum number back in the early 2000's of 15. And over the time have lost staff positions but we've gained a very important one back that we're in the.

process of filling and that is a rules coordinator. The board operates by state statute of course, but also by our administrative rules.

42:41 And this was a position that the board has not had since about 2010. We did recently complete a first phase of rulemaking which I'll touch on in a few slides. That person is retiring and it was very basic rulemaking. Administrative rulemaking is complicated. This is a very important asset to the POST board should there be future changes to board rules, to requirements etc.. Here is our lineup of staff members and their positions. Certainly we have administrative support. We have a peace officer education coordinator who works with all the colleges and universities to recertify them to ensure that their meeting board requirements meeting our learning objectives.

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43:47 Testing and licensing. Another important position. So how's the POST board funded? Historically we've been funded through a special revenue stream. The special revenue account in Chapter 357 of state statute which was a surcharge on criminal and traffic violations that a portion of that was directed to the POST board. As of the 2019 legislature we have been shifted to the general fund and I would have to say that that is a good thing.

44:20 I'm not sure funding, for two reasons, one is I think there's always a concern about funding an agency based on the amount of people that are arrested and convicted and ticketed. I just. I'm not sure that's the way things should be funded. Obviously when that statute was passed it's been amended many times over the years there were different views on that, but it was a declining revenue stream and the vast majority of our budget as you will see goes towards local and county political subdivisions essentially state aid, for peace officer training reimbursement.

45:02 In service peace officer training reimbursement and continuing education. So I think this is a good thing that we've switched to the general fund and I understand if there are economic downturns where there are across the board cuts that may be easily absorbed by a multi-billion dollar state agency that for the Post board, an 8 or 10 percent cut could have an impact much more significantly, it would be more difficult for us to absorb even modest cuts.

45:34 As you can see with our positions, and as I lay out the board's responsibilities, I believe we operate quite efficiently on what we have. So here's our budget. And it's significantly increased with some additional sunset and training dollars about \$10.3 million dollars of that just under \$1.2 million is our operating budget for the staff for our office space etc..

46:09 There is an ongoing \$100,000 one time appropriation per fiscal year for de-escalation training that's been going on since 2014, 2013, 2014. It has started out as training dealing with veterans returning from our foreign wars and many of the challenges that they face. And that has really expanded to not just veterans but other people in crisis that really requires special response from law enforcement or certainly additional knowledge about what might be going on, different options for response. This does not, although law enforcement receives a say in our training free, statewide about eight hundred first responders most of which are law enforcement are trained.

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47:08 This was a grant that was held for a long time by the upper Midwest Community Policing Institute and they have closed up last year. Many of their instructors and

employees continue on this training under a another business name, Centurion Skills, carrying out this training statewide. It's free for first responders, not just limited to the law enforcement but certainly corrections and others can take advantage.

47:41 In addition \$6 million dollars under the Dayton administration and legislative leaders, sent to the post board to increase the amount of training reimbursement, implement best practices and it sunsets in 2022. Under our general budget about \$3 million dollars, just under \$3 million dollars per year is earmarked for training reimbursements so before that infusion of \$6 million. We're operating on about 3 million to \$2.8 million. When you have, when you send that out to almost ninety-five hundred peace officers at 396 law enforcement agencies statewide is about \$314 - \$317 dollars per licensed officer. Training is expensive as you will see Minnesota officers do a lot of in-service training, more than I think people realize.

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48:47 So who does the Post board serve? We have a very wide range of stakeholders. In addition to our licensees, peace officers who, or their agencies pay a fee to the board for a number of services that we provide. Certainly the citizens of Minnesota, associations that represent the law enforcement profession, the courts, the League of Minnesota Cities, Association of Minnesota Counties, other state agencies, the governor's office, certainly the legislature, others special interest groups and the media. So just a snapshot for Minnesota. We are a decentralized law enforcement state. Like most states in our country. There's about 18,000 law enforcement agencies in the United States.

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49:51 Two thirds plus have about 25 officers or less. In Minnesota we have four hundred and twenty five agencies. Most of them are municipal agencies. Then we have our eighty seven counties we have our nine tribal police departments, eight non municipal such as University of Minnesota Twin Cities campus, Metro Transit, University of Minnesota Duluth, Morris. And then our state agencies, Bureau of Criminal Apprehension, State Patrol, DNR. Here's the breakdown when you think about size and resources. And this is really important. Over two thirds have 25 or less officers.

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50:46 We still have 17 agencies that have one peace officer. Now talk about a job, not policed 24 hours a day, by that municipal agency. There are obviously sheriff's offices that take over, but one Chief law enforcement officer. And the rulebook we don't cherry pick out and say Chief Arradando has all these responsibilities with a lot of resources.

51:16 It must also apply a minimum standard to that one officer who is also, plows the street in that municipality, cuts the grass in the cemetery and that's a fact. And they don't have, they still fax to us they're very limited resources. Law enforcement not unlike education, fire departments, is locally controlled.

51:45 In many aspects grassroots control of their law enforcement agency. What Minneapolis is looking for may not be what Hallock is looking for in terms of the services provided the resources or the or the ability to support but. But I believe the poster board we set minimum standards what we can all agree on should be a minimum level of reasonable competency. But, you know when you see 90 percent at 50 or less officers that's not everybody has huge resources. In terms of Minnesota we have just under 10,000 or just under 11,000

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licensed actively working peace officers. We have about 1,300 that maintain an inactive peace officer license.

52:38 They have to have continuing education, pay a \$90 licensing fee that keeps their license in an inactive status for three years. The only exception is if you're inactive you have no peace officer authority. As you are not employed, if you're employed by an appointing authority a political subdivision charged with enforcing the criminal laws of the state and then you're an active officer with the adjoining peace officer authority. So around 12,000 licenses that the board needs to oversee and renew about a third of those every year.

53:08 So what does the POST Board do what are key service areas?

53:36 Well, we administer a new online licensing exam to people entering the field, or reciprocal candidates from out of state that want to come to Minnesota to be a licensed peace officer. This used to be paper and pencil. Bubble tests we did about twelve a year statewide. It's hard for one person to oversee a gymnasium of people back in the day taking the exam.

54:04 It is now online. It's accessible. To people outside of Minnesota currently delivered through Pearson view testing that does about 200 professional exams we do around 1300 per year. Obviously there's some that people need to retake but we have an excellent passing rate.

54:29 I think that speaks to the fact that it's a new validated exam that was put together with new learning objectives passed by the board in early 2015 and that's working out quite well. We license and re-license 12,000 peace officers, about a third annually. We monitor compliance with mandated policies and procedures, we do that online annually for every chief law enforcement officer.

55:02 We also do onsite compliance checks or audits. We do about 80 to 90 so that every four to five years we can personally visit every law enforcement agency in Minnesota. We also monitor and enforce compliance with standards of conduct, discipline.

55:39 I will have a number of slides talking about that process and we manage the training reimbursement fund that I pointed out earlier which sends back about 89 to 90 percent of our budget back to local units of government. State agencies are not currently able to receive that funding, but they go to municipal departments, tribal, and county sheriff's offices. This is a snapshot of last year's reimbursement.

56:08 Statewide, a conservative estimate of what does it cost law enforcement agencies to keep officers up to date on training and education for in-service? A conservative estimate is \$34.5 million. That doesn't count, take into account having to pay overtime, if appropriate to send officers to training. Obviously they're paying officers to attend training but when you're at training you're not out serving your communities.

56:38 Certainly it's important, but so it is you can see where it's a significant increase in the amount of training, which has been very helpful. Anytime you roll out a mandated training bill and again it's about resources especially if you remember the chart, that slide I put up about the size of agencies, that don't have the same size training budgets, as we would expect with many high resource agencies, especially in the metropolitan area.

57:18 We certify the professional peace officer education programs and recertify those every five years by board rule and we will be doing that in 2020 and actually rolling

57:46 out the extensive application process at this year's professional peace officer education one and a half day conference that we host up at Camp Ripley for all the colleges and universities to send their coordinators to be updated by POST, to have a conversation about the needs of the industry. And certainly then to provide that application on to how they're providing the educational component based on the learning objectives that the board publishes which are about 455 learning objectives. We track officers continuing education credits. This is something that I brought back when I started that post for most of my career as a law enforcement officer the post board, in addition to my own training unit if you happen to work for a department that had a training unit track your CEs. We do that now.

58:18 Officers must have the minimum CEs to be re-licensed that must be on file with the POST board. We also approved peace officer training and monitor about 25 accredited training sponsors that the board has allowed through board rule to provide the training and approve it on behalf of the board of the polls barred under certain guidelines. Some other initiatives: we no longer issue a part-time peace officer

58:50 licenses that had less training and education training requirements, officers were limited to work only 1,040 hours per year. We don't issue anymore new licenses and we're at about 104 part-time licenses.

59:19 The board issued a new set of learning objectives to all the colleges and universities from which they build their curriculum. We did that back in 2015. They had to have that curriculum in place by 2017.

59:48 We did a new license exam validated, defensible, it's about 150- to 175 questions. The previous test was 275, we're more in line with industry standard.

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00:00 [Matt Gove] the licensing exam. Our use of force learning objectives were updated back in 2018. They are published online and our new exam was actually released online of October of last year. Another legislative initiative along with law enforcement was the Pathways to Policing, some additional funding for that did sunset and was not renewed at the end of fiscal year 19.

00:27 But it was another mechanism for candidates from under-served populations with a two or four year degree to enter a program, a twenty-two week program to get them prepared for pre-licensure. They were actually employed at the time by a law enforcement agency and paid about 70 percent of a starting peace officer salary.

00:56 And these funds were utilized to reimburse up to 50 percent of the costs for that pay, benefits and equipment. It had mixed results. It was utilized by it appeared mostly Metropolitan agencies. The police training bill which was passed in 2017 mandating combination of 16 continuing education credits within an officers three year licensing period.

01:35 In those three topic areas for which the POST board through work groups published learning objectives that needed to be met as part of the training. Mental illness Crisis Response, conflict management, mediation, cultural diversity, to include implicit bias.

02:04 And this all officers are on the as of this year, as this bill actually took effect July 1st of 2018 are now on their 3 year clock to make sure that they get a combination of these training topics before they re license. I touched on the investigation of sexual assault model policy that was mandated by the state and has been implemented within our state as of this October 1st.

02:34 And we just completed in the first part of September, the first phase of rulemaking where we cleaned up some rules as they pertain to issuances of part-time licenses which we don't issue anymore. People who hold a part time peace officer license are sunsetted in to that. But we added three misdemeanor convictions within our standards of conduct that would come before our board for potential board discipline:

03:03 Misdemeanor domestic assault, misdemeanor fifth degree assault, and misdemeanor fourth degree DWI. Domestic assault and misdemeanor assault are disqualifying as, if you have a conviction for that, that disqualifies you from entering the law enforcement profession. And those have been on our rulebooks for quite some time but it didn't come before our board for discipline once you were a peace officer and you got convicted for that.

03:33 And so the board chose to shore that up. And certainly fourth degree DWI I think most people know driving while impaired is a threat to the motoring public, to us, to our families and certainly law enforcement officers who are out and about making

traffic stops throughout the state.

04:03 And again that is, that is something that reflects poorly on law enforcement, is typically on a front page if an officer is arrested for DWI as they're charged with enforcing that particular law and enforcing it quite strictly, so I think that was also an appropriate change for board rules. We do plan a second phase phase of rule-making to begin in 2020. There are a number of areas that the board has identified in its rules that I think need to be updated and looked at in some proposed changes and certainly there will be a discussion that comes along with that.

04:37 But the first step would be to restore the capacity of our board to do administrative rule-making. I talked about licensing. So, just in general terms, people who aren't law enforcement officers, there's a process through education and an exam to become license eligible. And once somebody is license eligible, then they can seek law enforcement employment unlike other professions such as psychology, or being an attorney. You can't work independently as a law enforcement officer in our state. You have to be employed by a law enforcement agency which is defined by statute.

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05:34 Once an officer's hired, their license is for three years. The fee is \$90. 48 CEs would be the minimum in-service training they must have over those three years. Our most recent renewal which ended June 30th of this year, we did a report on the approximately 3,200 officers that renewed their license and two thirds of them,

06:03 74 percent had between 100 and 199 CEs. Yes, there is a small percentage that had the 48 to 50 but we had also 26%, almost one quarter of the officers that had between 200 and 816 CEs of ongoing training and a CE is 50 minutes of educational instruction at least 50 minutes to get that one CE.

06:35 Minnesota officers spend a lot of time in training based on the priorities of their chief law enforcement officer, their communities, in a variety of areas. Of the 48 minimum requirements to get re-licensed in Minnesota, about half are mandated. About half, 24.

07:00 Pursuit driving, vehicle operations, use of force firearms, the through the mandated training bill that the Board put out. Depending on when you have your, your emergency vehicle driving and pursuit training, it could be 32 hours of the 48 that are mandated by the state.

07:29 When a chief or a sheriff sends us an application to initially license a candidate, they need to affirm that the person has met the board's minimum selection standards. Here's a snapshot of them. They must have been backgrounded. A state statute requires it, psychologically screened and recommended for a higher by a licensed psychologist.

07:54 A job related medical exam or a physical test of strength and agility but it must be job related to meet appropriate labor law. And it can't be something that is not related to the job for which they are being hired. They must be fingerprinted. Sent to the BCA and the FBI to ensure they don't have criminal convictions that would preclude them from being hired.

08:24 They must have an oral interview, a written application. Most agencies I'm aware of have some type of a writing exercise to ensure literacy. Now I get it with technological changes, the days of handwriting reports are becoming few and far between.

but they still occur. An officer's ability to write legible, factual, chronological reports cannot be overstated.

- 08:56 As part of the psychological, this is part of a pre-licensing minimum selection standard, licensed psychologist to include an oral interview, recommended for hire. Once licensed, it's not required. If Nate Gove moves from Elk River to Minnetonka after having a license psychological evaluation by a license psychologist, the chief minute talk is not required to send me to another psychological exam.
- 09:26 But they did and most agencies that I am familiar with do that as a practice as a best practice. But it is not mandated by the board. There are cost considerations. Industrial psychological evaluation including an oral interview run around \$550 to \$600 a promotional type of an assessment is around \$1,200in plus depending on how depth that is.
- 09:57 I do think this is an area that has come up by staff and other board members and myself as that I understand some of the questions around this and I do think the board will look at this in the future if that would be mandated. Anytime somebody is hired as a peace officer even though they've already been screened a year before, or two years before the board recommends they do it with each hire. Regardless. But that is a discretionary item for the executive of the law enforcement agency to determine.
- 10:26
- 10:53 Backgrounds on officers: I know this is a big topic. It's required by state statute, that a thorough background must be done on anyone appointed to the job of a peace officer even if they just were backgrounded a year ago. Now I do know agencies get a hold of that background and should take a look at that see what's changed and go from there. But they must conduct a thorough background, it's not defined in statute but the board defined five areas that need to occur as part of that thorough background and actually it turns out to be more than five areas because they must document that minimum selection standards were met, which are quite extensive.
- 11:24 State and Federal criminal history, local criminal history. Interview previous employers, their professional peace officer education program skills instructors, interview neighbors, co-workers, work colleagues as applicable. Agencies must also provide written notice to the board when they start a background.
- 11:54 And they send in a form to us and we attach that to the. When they're hired. The licenses record as to who background to them and report back. We also publish a two page checklist that we. Tell agencies they need to utilize that if they check those boxes.
- 12:20 They met a I think a gold standard for a very in-depth thorough background check on this point our system we get about 10 to 20 submissions weekly. It's tied to the licenses record and it points a. Agency towards other agencies at a backgrounded this candidate. We supply that information to the requesting agency.
- 12:49 So our discipline process, the board believes that it is the proper function of the employer. Certainly our board does have a role as to the status of the practicing professional, their license, but we do not function currently as a statewide Internal Affairs. We have the authority over the status of the license. It must involve an allegation of a violation of a statute or rule the board is empowered to enforce.
- 13:22 If it doesn't we send it to the originating agency. Depending on who is the allegation against. Certainly if it's against the chief we don't send it to the chief to

investigate himself. We send it to the chief's boss, the city manager, the mayor, the council, it gets a little tricky when you're talking about an elected official, a sheriff. Who do they answer to? The public.

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But we've, we've received excellent cooperation by sending it to and this is a non jurisdictional one, the county attorney, the chair of the county board. Because obviously we want transparency and I know the sheriffs do as well. Standards of Conduct is really in our rulebook where poor discipline is triggered if it's in our jurisdiction.

14:22

We receive a complaint. If it alleges a violation a jurisdictional violation for us, there's a couple of things we do with that. Violations that are discovered by the board staff members that go out and check on training mandates and policy mandates, if we discover the source we bring it into our complaint investigation committee which is a subcommittee of the board.

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It's a panel of three board members, two of which must be peace officers by board rule and state statute. All others within board jurisdiction, I would assign by statutory authority an appropriate law enforcement agency to conduct an inquiry and report back to the POST board, me within 30 days a written summary of their findings.

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I do that, I wouldn't use the word frequently, but it's it's it happens quite a bit where I need to assign a law enforcement agency to investigate an officer on another agency or depending on I can send it to the chief for the sheriff to investigate one of their officers as well.

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And we've done that. The complainant and the licensee are given notice and an opportunity to be heard before our complaint committee and they're brought in before that committee majority vote determines what the outcome would be. There's a number of ways in which the board can discipline the licensee.

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They can go directly to a contested case hearing at the Office of Administrative Hearings, and not even offer a settlement to the licensed officer if they believe an arguable violation has occurred of a statute or a rule. They can dismiss the case. They can as part of a contested case hearing if there's findings of fact by administrative law a judge in a report back to the board, they have options they want to revoke the license, suspended license, imposed limitations, censure reprimand. A frequent way to resolve violations of board rules with licenses, many of which are failure-to-train type issues, is a stipulation and consent order.

17:04

It's a corrective action plan. It does not go to the office of Ministry of Administrative Hearing. And I have experienced both in my capacity as the executive director overseeing that where we have gone directly for a contested hearing to revoke a license. And we've had licenses they weren't working they had been terminated, essentially defaulted.

17:29

They did not go to the hearing and a decision was made brought back to the full board who makes the final disciplinary decision based on the recommendations. They must take into account the recommendations of the administrative law judge and a revocation occurred. Some discipline statistics, we publish revocations the board directed me to do that going back to the year 2000.

18:01

We have revocations that go back to the inception of the POST board 1981. But they go back 19 almost 20 years now posted on our Board Web site. The information on the revocation. Here's a snapshot of the disciplinary cases since I took over, we had 40 cases in fiscal year 2015, 7 in '16, 21 in '17, 19 in '18 and currently as of today's date

18:36 eight cases of disciplinary matters. Revocations involuntary surrenders are submitted to the national decertification index. I know somebody had a question about that we submit to that. We have 177 records that are listed on there going back to 1981 and it's a pointer system. It says revoked for cause or voluntary relinquishment and directs a another state to contact me at the POST board for additional information.

Questions. Questions. I know that's kind of an A to Z and I want to be.

19:15 [Ellison] Ok, who would like to be recognized. I'll recognize myself. What are some of the reasons that licenses were revoked or voluntarily surrendered? What is there a more common cause than others?

19:40 And then also you know one of the reasons that we're here is that we are trying to reduce deadly force encounters and bring about a greater more understandable just transparent system. When these tragedies occur do you have any recommendations for us as to how we might achieve those goals? So those couple of questions I have.

20:08 [Gove] Concerning the license revocation, there is a state statute that requires an automatic revocation when convicted of a felony. So I brought some records going back to 2000 and they're really kind of all over the map so to speak. Obviously sexual offenses seem to be a common one.

20:33 Theft would be another one, certainly a dis-qualifier for us is a misdemeanor or are not a petty misdemeanor but a minor theft conviction would preclude you from being a licensed peace officer. I know that that has come up before the board in the past that there's some chiefs that disagree with that. They say you mean to tell me somebody stole a candy bar when they were 17, well when they're 17 it's not, that's a juvenile offense.

21:01 I doubt they'd be certified as an adult for that. That would not be a precluding, but there is a concern if somebody is committing theft at age 18 and 19 and they want to be peace officer at age 21. The board's current position is that would disqualify you. There are a number of from I think the most one I see again, criminal sexual conduct misconduct of a public official.

21:31 It's important to know that for discipline regarding coming before the board, all convictions for gross misdemeanors come before the board for discipline. A felony conviction automatic revocation and about 20 or so selected misdemeanors. Keep in mind there's about thirteen hundred plus misdemeanor criminal violations on the books. So these are serious offenses.

21:58 And it's not all of our list of revocations or felonies, some are gross misdemeanors or the board moved to revoke the license as in addition to some misdemeanor theft as well. In terms of recommendations, the board hasn't weighed in on that. Obviously the board our next meeting is the end of January. We recognize that we play a role

22:26 for legislative changes, for statutory changes in terms of of the mission we have in terms of training, if there are mandates, if there are changes to the deadly force statute. What does that you know what does that look like for the board to play a role as we are the vehicle for bringing that to the law enforcement profession in many ways. I think you see that by the police training bill.

22:54 Where an important area is the mental health crisis type calls that many times result in deadly force confrontations. These are very challenging calls I can tell you from personal experience. They're challenging because they don't ever happen, it seems to

me, where there's a lot of resources by medical professionals, it's an officer at two o'clock in the morning trying to figure this out in the middle of the street or in someone's car and they're not there peace officers they're not trained medical professionals.

- 23:33 And so I think the board has obviously tried to put forth those learning objectives and ensure that additional moneys are available for that type of ongoing in-service training, and then certainly be a partner with other agencies in the profession to say it costs money. It costs a lot of money to send somebody to a 40 hour CIT and trying to build policies that all agencies can meet.
- 24:02
- 24:29 [Ingebrigtsen] Thank you. Good to see you. You know it comes before the Judiciary Committee that I sit on in the Senate. So we see each other occasionally. I've got a couple of questions for you.
- You did a marvelous job of showing what the what the police officer has to go through to become licensed in Minnesota. Where do we stand in Minnesota in regards to our licensing requirements versus every other state or other states? You should have some idea on that. Are we high? Are we low? or are we in the middle? Where do we stand as far as having the best officers versus mediocre versus the worst?
- 24:58 [Gove] Well thank you for the question Senator. Obviously I'm a little biased towards that, Minnesota remains the only state that as a matter of statewide minimum standard requires a two year college education. We are a licensing state. The highest level of regulation regarding a profession. Most other states, some call themselves licensing states.
- 25:28 They're sort of bifurcating between the police academies system and their technical college system, but they a certification states. Their POST commissions oversee a lot of different facets of the criminal justice system from correctional officers to reserve officers, auxiliary officers. We license only peace officers with one standard. If you look at other states, they're academies vary between 550 hours, some of the higher ones are about 800 hours.
- 26:00 Generally, it's about a 740-750 hour academy. Then they go to their agencies as a certified officer. Minnesota if you look at a two year degrees 68 credits roughly classroom instruction is it's about 1200 hours. Minnesota used to have sort of a stand alone.
- 26:31 You went and did your academic like I did I had to get my core classes through Mankato State, Minnesota State Mankato as a waiver as a I received my. B.A. from Gustavus Adolphus College. That was not the professional Peace Officer education program, but I got my training from Mankato then I went to about a nine weeks skills program in Bloomington back in 1985.
- 26:59 Now it's really integrated, it's not just located the classroom and now you're doing the hands on. It's integrated through out their educational program of either two or four years. So think about that, 1200, I think Minnesota sets an excellent example, but I've been asked numerous times well why don't all the other states follow Minnesota. As you saw Minnesota doesn't really have that many peace officers.
- 27:28 And other states have very ingrained Academy protocols for large agencies and they're not that interested in giving up that control. If you look at Wisconsin, Wisconsin State Patrol, Dane County, Milwaukee, they hold their own police academies certification. But if you aren't hired by them you can go to Eau Claire,

27:55 and go through one of their technical colleges for your skills training and get certified as an officer. So that's a long answer, but I stand behind Minnesota's system I really do.

[Ingebrigtsen] If I could just ask one more. Mr. Chair and that is. I think we all know that I'm kind of an old timer here I started in the 60s.

28:21 And back in the 60s before you even could go to a school and there were only a couple then Alec Tech (sp?) and I think one more up in that range or someplace. You had to pass a psychological evaluation, you had to do a, the school send out a person to do a background investigation before you could even sign up for school. That went away, and now we all talk about psychological evaluations to get hired.

28:49 Well to get hired, you've already got at least a minimum of two years maybe even four years. What you potentially are doing here is having somebody go to school for two or four, and then not pass a psychological evaluation. Would it make sense for for us to consider going back to that? Whereas you cannot and the reason I say this not that that,

29:17 you know, my era was not one of the best, but I will tell you that I talked to a an instructor at one of those schools within the last month and he said you know what Senator, he said we got some people in our, in our school we should not be graduating. That was very very concerning to me. They don't do any evaluation before they, before they sign them up because everybody gets an opportunity for an education. I think I think we're

29:47 seriously wrong in allowing that to happen. To the student as well as the public that's going to be served. What are your comments on that?

[Gove] Thank you Senator. Obviously there are yes educational or there I would say rights or opportunity for an education.

30:07 I do know that board rules currently state that the person must not be a danger to themselves or others, and that most of the schools they don't preclude somebody from entering the law enforcement education program to be educated. I don't think you have to take a psychological or background if you want to become an attorney, a dentist, a barber. They're regulated.

30:36 But at the point of skills, the practical, or they're going to be handling firearms, and driving, and involved in the tools, and tactics, and techniques, many of the programs do run an MMPI. They certainly, the coordinators do their very best to interview the students and make determinations.

31:00 And I I'm sure they walk a very tight line to sort of advise students out of seeking that type of career in law enforcement. I don't think we're any different than other professions were there people who get professional licenses that probably shouldn't, but there's no failsafe system.

31:34 [Harrington] Thank you very much. My question is twofold. One, regards the diversity of candidates that are coming into the post system and whether or not there are enough candidates going into public education to fill the kind of vacancies that we have?

31:54 And then the second question is about how often do we revise or review the learning objectives that we teach at the at the professional police officer education level?

[Gove] Thank you Commissioner. In terms of the diversity of candidates, that is something that I know has been collecting that data is not currently allowed by the POST board, and that has been debated by the legislature to collect that data at time of license eligibility.

32:33 I know there are ongoing efforts the Pathways Program with mixed results, so I can't tell you what that breakdown is currently. I think that is a worthy goal and one that should continue to be addressed by all parties. There is no question that law enforcement agencies need to reflect the communities they serve.

33:01 No question. In terms of the candidates entering law enforcement, that's a complex question. There is a lot of scrutiny on law enforcement. At times second guessing, some appropriate, some not. Coupled with 3 percent unemployment a fairly robust economy,

33:24 it's not uncommon that people are choosing not to enter law enforcement. And I hear this from other POST directors across the country who need to hire far more police officers than Minnesota does. I'm trying to encourage people to enter this noble profession. In Minnesota, I saw, I went to an excellent

33:51 presentation by the state demographer, in terms of looking at how many people of working age are in Minnesota. And that's declining, and our population is aging. Law enforcement is a young person's career. You can practice law up until your 80s and we see that with our Supreme Court justices, right. Being a law enforcement officer in your 70s and 80s, I think would be very challenging.

34:24 In terms of numbers entering the profession, we are always concerned about that as we license about 450 to 650 new officers every year. And I'll just assume that most of them haven't been officers before. We do have reciprocal candidates but it's not very many. Those officers we have to make sure we have enough coming in in the pipeline that are also getting

34:53 encouraged to go work at Amazon, flexible hours, bring your dog to work, work from home, and make a lot more money. I don't know how we compete against that, but the best guide for us is how many people show up to take the licensing exam. It's hard to track who enters a law enforcement program and then decides they want to be a probation officer, or dispatching,

35:21 or it's just not for them. It's hard for colleges to track that, but we look at who shows up to take the licensing exam. We think that's a pretty big step to wanting to be a peace officer, and we know some of those people pass the exam they go out they look for jobs, they don't get hired, they go back and work on the family farm, or go work for a parent, or sort of DQ themselves.

35:47 They're hard to track as well, but we ran as of two days ago I did look at today's date and it is nice to see that we've actually issued more licenses in this fiscal year, and we've seen an uptick of about 30 some people. I know I brought the graph with me I'm just trying to find it my papers, but it was very encouraging, and I'm hoping that what we're seeing is more young people saying I want to be part of the solution, rather than stand on the sidelines and criticize what law enforcement is or isn't doing.

36:23 I'm going to sign up, and and serve my community, and in bring what I can bring to the table, and I think that's encouraging because I know in other states it is a real crisis. I'm not saying Minnesota isn't, but I've seen an uptick in what we ran for this year in the number of people that are being licensed and taking our exam.

36:53 [Ellison] Mr. Director, Thank you for that. It's 10:30. We're supposed to break it ten. It's 10:32. We're supposed to break at 10:30 and we do have Darris, Kappelhoff and Moran who have questions we're supposed to get going again at 10:45 so

we're into our break time at this moment. We can keep plowing through it, or we can take a break and go on with questions. I advise us to do the questions,

37:25 and then we'll break and then try to make it up a little bit on the back end. So with that Darris, Kappelhoff, Moran.

[Darris] Quickly, what is this statutory authority that allows the POST board to defer discipline to the police chief. [Gove] Defer discipline to the police chief? [Darris] the discipline of an officer when an issue is brought to the board.

37:58 Is there a specific statute that says in these instances, defer the investigation and the determination of that matter to the police chief or is that just a practice.

[Gove] Well I'm not. If it comes before the board for discipline, that's not deferred to the police chief in fact [Darris] it comes to the board as a complaint. Correct. That's what. Yes.

38:23 [Darris] If it comes to the board as a complaint, the question that I'm asking is what is the authority that then triggers the POST Board to say oh we're going to allow the police chief to make that determination in this particular matter? [Gove] If it's not a within our jurisdiction, then under 214, 10 through 13 lays out a process by which that is sent to the appropriate authority which would be the employer.

38:54 [Darris] Couple of questions actually. Do you support the growing view within community that there should be a stronger enforcement or a stronger presence of the POST board in removing licenses from officers?

39:21 [Gove] The board has not taken a policy position on that. So that would be, I'm not really able to answer that, but I would say that part of my reason for coming here and to explain on behalf of the board of what we do as a I think people think we don't take a role, narrow as it might be, and I understand that's going to be up for future debate but we're not really an outlier with other states

39:51 We're actually quite consistent with the Midwest in the type revocation numbers that we take. Since I've taken over, we've revoked 20 licensed officers licenses, and we've disciplined many others in terms of correction action plan. So the board has not weighed in on that take of what is the board's position.

40:17 [Darris] So would you agree that many of those stripping of licensure was automatic, that you know these were individuals that had felony convictions and so there would be automatic anyway?

[Gove] Yes, I mean that certainly proven bad behavior conviction, the board absolutely took that license, but that's not to say that officers who meet less of that type of internal behavior and discipline aren't disciplined.

40:49 That's not been my experience, both in my capacity as the executive director or as a peace officer for 29 years. [Darris] So could you provide us with the data, not the automatic removal of license licensure, but the other determinations. Just so we can see that broken out because I also saw voluntary surrenders. If we can have that data broken now just a little bit more, just so that we can see you know the overall supervisory function of the POST board, so we can just see how that is kind of playing out within our state.

41:26 I would absolutely love to get those data sets so we can see [Gove] Public data that you're talking about. Yes. [Darris] Yeah. Yeah it's just provided to this board. [Gove] OK. OK. [Darris] As we're doing our deliberations. And then a couple other questions, and then I'll be done. One of the questions that I had was so I saw as part of your presentation that when an officer is going from one agency to another agency

41:57 [Darris] that that agency is notified of the seeking of employment. Is that what you said?

[Gove] If when they start a background you know not just the initial application, but where they're actually moving to hire somebody, have made a conditional job offer, that we point that agency to who other agencies that that may have been backgrounded. Then for someone who's just entering the profession, there may not be many if, if any. We provide that information and agencies do backgrounds so our officers.

42:36 [Darris] So if and someone attempting to go from one agency to another agency fails a background check, and then a psychological evaluation. Is there any kind of flags this triggered within the POST Board, like let's say that officer or that potential officer then goes to a third agency. Is there any kind of flags that potentially trigger to say oh this person has failed background? And then this person has also failed a psychological evaluation, and this person is going to a third agency now.

43:05 Are there any kind of triggers that alerts the POST board to let that third or fourth agency know this may be a problematic hire? [Gove] In terms of a process at the POST board, No. Those agencies as it's I'm not sure it's just, when people fail a psychological, it's not that hey this question you've failed it.

43:37 It is a an opinion of a licensed psychologist that they may not be a good fit for that agency. I've seen people fail a psychological because for whatever reason due to their immaturity at that time. Quite frankly, the subjectivity of that psychologists that have gone on to have outstanding law enforcement careers, I don't think it's just an either or.

44:10 Now certainly it's different if if a conviction or something like that is discovered, but no it's not reported if somebody says well this person didn't get hired, now they forever cannot hire the law enforcement. [Darris] So as of now the POST board would not let that third agency know that this individual did not pass background into other agencies? [Gove] No, we don't hear back from the employer on backgrounding pre-hiring decisions.

44:44 [Ellison] Okay, Kappelhoff then Moran.

[Kappelhoff] Thank you for your time. I'm on? That's good. I'm a slow learner. Thank you for your testimony here this morning. Just to two quick questions related to the complaint process.

45:09 Do the complaints come up to the board primarily through the police department, the chief, or others in the department? And related that, can community members either file a complaint or is it a process through which they can file a complaint with the police board regarding a police officer's conduct? [Gove] Both, the jurisdictional complaints we receive from a number of sources, I would say indirect can be the media,

45:41 word of mouth, a citizen complaint. There is reporting obligations for the licensee themselves. I understand some of the weaknesses with that particular rule. It's a may report potential licensing issues by the chief law enforcement officer I think that's another area the board is certainly going to look at. Not all states require that, most do not.

46:08 Or the public can contact us directly, download our complaint form, send it in. We get about one hundred and fifty plus complaints from people. The vast majority are not in our jurisdiction. There's service delivery type issues and we redirect those back to the employer of the licensed officer to handle according to their peace officer misconduct policy.

46:39 [Kappelhoff] So the may report that's interesting. So the statute provides the chief. So in the legal profession there is a shall, there are certain incidences that occur before a lawyer or a judge for that matter, where we're required to make a report to the licensing board. That isn't the case. It's not a shall it I may? [Gove] Correct, anyone with knowledge of an act or omission or a condition.

47:04 And I think that's something that the board, we've certainly identified that has something to look at changing that particular ruled. Something that basically it's because we know agencies are required to let us know when an officer resigns, or retires, or leaves their employment because they're no longer active. They're known that we change their status of their license because they no longer have peace officer authority, they notify us of that and

47:35 we feel that that's an area we've identified that providing some additional information as to why they left? They resigned. For what purpose? It would be a pointer system for us to at least take a look at as to why are they leaving. [Kappelhoff] and then just one final follow up with regard to the complaints,

47:59 Do you keep track of any patterns that may develop for a particular officer or a particular police department? For example, if you were to receive a number of complaints about a particular officer, does that impact the board's view of it and is that shared with the Department particularly if they weren't coming from the Department they'd be coming from community members, and or if you have a number of complaints from a particular police department, is that something you look at as developing a pattern of maybe concern.

48:30 [Gove] We do not collect that kind of data in terms of of of a pattern. Because most of the complaints, if I'm understanding your question correctly. Well what I see is they're spread around statewide and you might think well a large department gets all of the complaints to the POST board, that's just simply not the case.

48:59 And we would not share that back because under 13.41, licensing data is private data. For the licensee it's confidential, if it is being investigated and there is a point where it is triggered back to the department the chief law enforcement officer for public disciplinary action by the board.

49:24 [Kappelhoff] So what I guess I'm getting at is if there were one particular officer who had in a six month period of time, I'm just making this up, 10 complaints of uses of force or something like that that's not something you track? [Gove] We do not, and I don't believe we have the authority to collect that data from a law enforcement agency. [Kappelhoff-OK. Thank you. [Moran] All right. Thank you also for being here to give us some clarity on the work that you do and your responsibilities.

49:55 So I want to go back to the Pathway to Policing, you have a budget of 10.3 million in that budget. There is a 400k budget for the Pathway to Policing, which in a big way is targeting that communities of color to create pathways and probably like you to I would like to see more officers of color in this in this field.

50:26 But you said a couple of times that there's been mixed results. Could you talk a little bit more about those mixed results that you are talking about? [Gove] Yes, thank you. I'm aware of Minneapolis has run a law enforcement training opportunities program for many years, the Minnesota State Patrol as well. St. Paul has a number of initiatives that they've run.

50:53 [Gove] I don't have before me you know to what extent that they put in for some of those funds. They may not have. It is essentially \$400,000, was a sort of a legislative statute decision by the legislature. That amount of money would pay for around just under 30 officers to be hired.

51:22 And what we saw is more a non-major metropolitan agency, suburbs. There was several sheriff's offices that took advantage of that. And anecdotally, I've just been told that it's sort of it's kind of a mixed. It's a mixed bag so to speak as to whether that's really because some of these agencies they need to hire probably more than 30.

51:52 But if they don't have the candidates, they need to then try to seek candidates from outside the state to hire. But that's the challenge. I know Chief Arradondo and I have had those discussions over coffee as the pool of candidates by which everyone's competing for. And I think it just became a budgetary decision certainly not by the POST board to not re-up that money. [Moran] So the mixed results is the fact that you just don't have enough candidates coming forward?

52:24 [Gove] That seems to be. Yes ma'am. That that's one of the challenges as the candidates by which to utilize those funds to hire. [Moran] OK, I have another question. So in 2018, I think legislatively we mandated some training around the use of force training. Right. So you talked about the use of force training that started in 2018.

52:51 [Gove] That was the police training bill that identified three areas: the mental health crisis response, conflict management, mediation. [Moran] How is that going? [Gove] Well there's a lot of departments that this year for the training reimbursement as the largest took effect July, well a year ago July 1st 2018. But this year's reimbursement money we asked them to report back to us, what they spent the money on.

53:20 And my rough calculations they spent about half of it on the mandated training and I think that speaks to the fact that there's a lot of other training that's also required for them to do. That their communities put as a priority for that elected sheriff or appointed police chief to provide that training so we will continue to ask for that data and report that accordingly.

53:49 [Moran] OK. Last question. So often hear really mixed results about the cultural diversity implicit bias training that police officers. Is that a mandate for them to take that training? [Gove] That is one of the three training areas they must have a combination of 16 CEs. That's a, that's a decision made by the chief law enforcement officer. Some cities may say I want eight hours of that 16, others may say we're going to do four.

54:21 And again I understand there's not one course with one or two instructors that provide that, we improve training by a number of providers and I think the challenge is as I've had told Senator Ingebrigtsen and others in the legislatures, anytime we mandate, we know we're ringing the bell. We know who the custom orders are twelve about 11000 working peace officers.

54:51 Who's going to provide that training and then what kind of a timeline? And as much as we hear people say well we can do that because they see the millions of dollars, logistically and pragmatically they can't in any kind of a timetable scenario. So you would have license officers in a position saying I'm coming up on my three years but there's only one place to go get this training. What happens if I don't get it? And what I'm trying to avoid is getting a position where I have to tell the chief in Minneapolis, or St. Paul,

55:23 or a sheriff to say you're 50 officers can't work, because that's going to impact public safety for that community. So we want to try to design some of these things with a reasonable amount of flexibility so that they can be accomplished. [Moran] Alright, thank [Rubin] Thank you, Mr. Chair. Director Gove, What is the current pass rate for the licensing exam? And the number two,

55:52 Is there a difference in the racial makeup of those who pass the exam and those who do not pass that licensing exam? [Gove] Thank you sir. The current pass rate is around 92 percent, which is excellent for a new exam. I was just up at Alexandria Technical College and their specific pass rate was about 95 percent. We do not collect the racial data on that.

56:22 I don't believe, well we can't collect that, but the PSI, they may, but I'm not sure what authority we would have to collect that data and publish it. But it is a validated exam that they stand behind, and I think that was one of the important reasons why we contracted with a company PSI to actually through subject matter experts, PHDs create this test so that it's validated and defensible.

56:58 [Gottschalk] Two questions. First, can you give us a sense of would you say more complaints are initiated with the POST board from the community or from law enforcement agencies themselves? As far as reporting to you for investigation or disciplinary action. And secondarily, touching on Ms Moran's comment, have you gotten a sense from law enforcement of the impact that the additional training dollars have had for those agencies and in serving their communities and any concerns or response from those law enforcement agencies on what the sunseting of that fund might mean for their ability to train officers?

57:33 [Gove] Yes, thanks chief. The first part of your question if I got that correct. So we receive a lion's share of our complaints that are actually within our jurisdiction from the law enforcement agency, the chief, the sheriff. I'm getting more and more license self reporting that then we track, watching the outcome.

58:00 Many of the complaints that we receive from the public are about service delivery. I didn't like, I don't think I should have got a ticket, the officer didn't fill out the report correct. We do receive complaints from correctional facilities wanting the POST board to retry their case, but that's not in our jurisdiction. But the ones that are in our jurisdiction, we hear from law enforcement, we hear from indirect sources, the media as well. Does that answer your question about that?

58:30 And then concerning the sunseting, I would just say this, it's there's a lot of mandates, it costs money. I showed you the sort of the makeup of what, if you think beyond the metropolitan area, which is pretty high resourced with their tax base.

58:57 And you look at really what is the makeup of law enforcement agencies that serve our citizens across our state. Those training dollars are very very important especially if there's additional mandates for emergency vehicle operation. They still need to do use of force training, firearms, very low frequency high risk high litigation for those communities that they need to make sure that they're putting dollars towards that to try to train officers for good outcomes for everybody.

59:34 So I'm hoping the legislature doesn't let that sunset. [Ellison] So we're about five to eleven that I think get us off. Well you know about about a half an hour. And so why do we take our 15 minute break. We all think can we do it in ten? Huh. Yeah we'll do a 10.

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00:00 And then we'll start back with Drew Evans. I want to note that there are some citizens here who want to offer their reflections and we'll see we'll be working to see if we can get that in. So with that let's have a quick break. Thank you.

00:34

19:23

19:39

20:55 [Drew Evans] I think we should go ahead and proceed. The next testifier is Superintendent Drew Evans of the Minnesota BCA. He's going to speak to our issues around. Technology Policy Implications. We were in the working group having conversations about body cam video during active investigation so student events please proceed.

21:16 Commissioner, members, thank you for having me back. What I was asked to focus on is how we handle some of the technology pieces you'll be discussing today from an investigation standpoint in these use of force investigations and so I'll provide a little bit of an overview and I can try to go through this as quickly as possible when we get video in a criminal investigation which is what we conduct and we've discussed before whether it be a officer involved shooting or a use of deadly force investigation.

21:44 We consider all of video I think it goes without saying but it's considered evidence in a criminal investigation. However video is really unique in many respects when we think about this from a public perception standpoint and our public because part of the culture that we're so used to now is we have video on everything we do. Example I put here as you know I am sure some of you have children or around children.

22:07 I think everything they do whether it's tik tok or YouTube there's constant we're so used to video being a part of our lives that I think when it comes to investigations if something is captured our public has an expectation to see the video to see for themselves really what occurred. I think that 24/7 news cycle that we even ourselves at the BCA are guilty of we're constantly watching the 24/7 news and our fusion center for example because it's often the first canary in the coal mine of something happening and we all go to that video to determine for certain what occurred.

22:38 So that's what I'm and talk about from there and then I was asked to also talk about statements just a little bit to clarify statements in terms of how they're taken. We do take recorded statements from everybody in our investigations at this point in time which is a little bit of a change and working with some of our county attorney's offices around the state in terms of their expectations and what they would like to see as they evaluate these cases. And I will go through that from our officers that are involved in these investigations.

- 23:04 I want to make sure that we clarify in this process, because I often do hear from community members concerns about when officers are allowed to provide a statement how long they wait etc., I do need to point out that it's always a voluntary interview. We are conducting a criminal investigation and so we can never compel a police officer to provide us with a statement in these or it would fall under the Garrity protections which is a court case that would tell us we are no longer allowed to use that statement in a criminal investigation.
- 23:33 So they're always represented by counsel in these investigations, there's either legal defense fund for FOP or Teamsters contracts with these organizations to provide counsel for officers that are involved in these incidents and we work with those different lawyers that represent police officers to arrange these interviews. We utilize a cognitive interview technique and without getting into real detail what we're trying to do is elicit as much information from the peace officers involved to really gather all the information they remember about the incidents so that the prosecutor has that information available to them.
- 24:07 And it's an open ended narrative technique that we use in many other instances. We use it in criminal sexual conduct cases, we use it in a number trying to gain and gather as much information as possible. We audio record all of those interviews with they involve police officers and we transcribe those and put them in the case file for the review by the prosecutor's office. I will tell you that most police officers it's become commonplace that they are waiting to interview a number of days often before they interview and again it's a voluntary interview.
- 24:37 We always say for us we as the BCA will be out at the scene we're willing to interview anybody and everybody that wants to provide an interview at that time. But we're often working with counsel to schedule those interviews industry experts and policing are often advising police officers to wait a period of time provide prior to providing a statement to go sleep to think about things to make sure they gather their thoughts as the thought process from there.
- 25:01 We don't take a position because again it's a voluntary interview on behalf of that's a police officer going through that I wanted to point out here for us in the statement portion that what we do is we're often asked and of course it's blurry when we have it up there, but it's a criminal investigation warning form that is provided to the police officer, reviewed by their attorney and going in what that's doing is it's clarifying that it is not a Garrity statement. It's not a compelled statement required by their police agency, that it is a statement being provided voluntarily to us and that that information will be used in a criminal investigation to be reviewed by the prosecutor's office.
- 25:37 Transitioning into video issues that we're seeing one of the things that has become certainly a challenge for us in these investigations video has provided a lot of rich information in our investigations to be able to see firsthand really what occurred that has created a lot more video I will say it's not just body cams.
- 25:55 When I reference before us being really a video driven society in many ways especially in our densely populated areas we are regularly encountering video systems from businesses from homes all along the way that are capturing these incidents which is a benefit to us in conducting an investigation that we're often seeing these incidents from multiple angles where we're doing that in our larger

police departments like Chief Arradando knows it's not uncommon to have 50 plus police officers at a scene when these roll out.

- 26:22 That means that we're going to have 50 plus body cams off and that we're going to need to review and those policies are certainly driven towards the air erring on the side of recording more not less. And so what that means is often you may even have a police officer on scene in the city of Minneapolis. They might be on a perimeter but that body cam is rolling for two plus possible hours.
- 26:44 Our agents in order to provide a really a complete picture to our county attorney's need to watch those videos real time listen to determine if anything was discussed or when the prosecutors are reviewing the case they can determine if we need to do additional interviews if there's any additional information they need based on conversations that may have occurred. There are numerous vendors with our body cams. Axon is the largest vendor that we're seeing across the state currently but there's multiple vendors and we don't take a position obviously as the BCA that's determined as to what's best for that police agency based on their current needs some integrate with their in squad cameras some don't.
- 27:20 They make a determination what's best along the way. The quality of video that we're seeing can really vary. I will tell you for example just using one like X on when we're talking face to face on the street. It's excellent HD video. It really is wonderful video that we can see it records everything it picks up a lot of things. What we are seeing in our officer involved shooting investigations is oftentimes they are dynamic.
- 27:45 There might be a physical altercation there may be running that those video camera systems are not quite to the point where the processes really keep up with that and they become pixelated, granulated very quickly and things happened really fast in the real world. So we have had to spend time trying to clarify video in terms of how we analyze it to be able to show certain things in the video by using techniques that we have available to us either through experts or we've invested in-house in training our personnel and then buying really high end video clarification examination equipment so we can clarify that video for prosecutors to review in that process.
- 28:27 Video examination as I said before the average case file for us is now 50 to 60 gigabytes of information. I always struggle personally as a non I.T. person to really illustrate that but previously it was five gigabytes of information our case files. What I mean by this is there's just a large volume of information that we need to work through and video is a big piece of it. The video system we're going through are often proprietary meaning that they only operate on their own developed system from the company.
- 28:55 So we are often in the position where we're needing to actually take the entire system from a home, from a business and then we go back to our facilities and we download those and then we replace that system for the person at scene so that we don't lose that information or that video when we're trying to download it. What we do in terms of actual investigation, how we work on this is the agent on scene will work to get all body camera systems downloaded to an agency server ideally in many situations that would work best and in an ideal clean pristine world to be able to take the actual body cams and then we would do those downloads. Axon as an example.
- 29:32 We did that and we purchased all the equipment we have it internally at the BCA we're going to take down all those body cameras, then work with the prosecutor's office to determine if we can give that body camera back or we need to maintain it as

evidence. However Axion as a company has now in order to store data on their servers they encrypt the data so that only for example the Minneapolis Police Department can view their video nobody else on that system can. What that means is we need the Minneapolis St. Paul Police Department to download those videos themselves with acts on.

30:03

We have gone through the process of actually sending those body cameras out to experts. We have done everything we can from a forensic video analysis perspective to determine those body cameras once they're downloaded stored nothing else on that body camera. We know that we don't know that with all vendors. And so as we work through additional vendors we're gonna have to have that discussion whether or not we know all video is erased from that body cam once it's uploaded. Axon as I've said a clip encrypts it. A copy goes to the BCA, from that and we do ask that the local agency continue to store a copy on their server.

30:38

We ask them to lock that down to only key administrators in their process so that nobody in the department has access to it. The reason that we do that is to ensure that our copy that goes to us we don't erase it from there so that we know there's two copies so we never lose evidence I think it would be very challenging for us to explain to the public if a piece of evidence as a copy goes does it no longer works for us and we erased it from a server. So that's why we asked for that process to continue amongst your materials today you should have our policy and I think you've received this before on deadly force encounters.

31:10

But when it comes to body cameras in viewing I wanted you to have this because it outlines our process for viewing video in an active criminal investigation.

31:19

The BCA is perspective has been since this policy was enacted in 2017 that I think you'll hear today from the league [MN League of Cities] on the actual body camera law that exists both and are that a practice of statute thirteen point eight two five [13.825] which governs body worn systems and then there's another statute that I have in here that looks to acquisition of body camera systems in those situations the acquisition of those systems requires that the local police agency go in front of their governing board.

31:48

There's a public comment period and that their oversight the county board their legislative counsel for the legislature for us if it's their city council members that they weigh in on that policy when it comes to that policy if their policy allows the peace officer to view the video prior to providing a statement. Any officer involved shooting investigation we defer to that agency. The BCA does not show that video, we allow that agency to show that video to them. The reason that we allow that is because of that provision in the policy that that local community had an opportunity to review that portion of the policy, have public comment on that portion of the policy, and that their board signs off on that policy. And so we respect the local control in this agency if they defer to the BCA or have no policy on this which they're required to have a policy so they should have one.

32:40

What we do is that the interview regarding the event itself happens at the end of that interview. The officer if they so choose would be allowed to view the video at that point in time they would be allowed to consult with their attorney and then provide any clarifying information that they wish. After that our perspective and how we got to this place as the BCA was through a lot of discussion with my counterparts from around the country as I've noted before I sit on the use of force investigations subcommittee of the Association of State criminal investigative agencies.

33:10 And in terms of having that discussion and how we got there is this is that we believe that you've heard a little bit about the law in Minnesota talking about the reasonableness. I know you're going to hear more about Graham v. Connor today talking about a reasonable police officer without the benefit of 20/20 hindsight as the standard by which we judge use of force and we believe that that reasonableness you hear from the police officer on what they were reasonably interpreting at the time.

33:37 If a peace officer for example, and this does happen or across our state, that you've heard some the term suicide by cop where somebody does an action wanting the police to shoot them. For example, if I watched that video and that person points a cell phone, which recently happened in our state, at them in a manner that appears to be holding a firearm and that was the intention.

34:00 Our perspective has always been if that happens and you watch it on video you will have to tell us something different than what you originally perceive because you're going to have to now say if I see it's a cell phone and you originally believed that to be a gun for example that I thought it was a gun. I thought what I saw was a firearm, etcetera. So from our perspective it gets the cleanest recollection of what they were perceiving at the time and then they're allowed to watch the video to clarify anything that they may see and clarify in that.

34:28 But that's why we've come to that perspective on this portion of the if it was deferred to us from there as well. Again it's often referred to that we don't allow police officers to view video. We do allow police officers to view video after that initial statement is provided because it isn't intended to be a gotcha game again it's intended to be an interview gathering as much information as possible in this which includes the reasonable perceptions of a police officer involved in one of these incidents from from across the state when it comes to witness officers, witnesses and other officers we do leave it to the discretion of the police or the agent investigating the case.

35:09 The reason we do is if we believe that there will be a benefit to showing to that officer in that case or a witness and they would provide clarification; to provide perspective where they may be to help us understand something in the video or what we're seeing; what the agent may do that in that situation. The reason why it's different between them is we incorporate the body camera statutes as I've noted to you before and it's an attempt to get a complete interview with the involved officer. Remember they are now the subject of the investigation. As the peace officer I will tell you that there's been some consternation amongst police officers not viewing the video and part of the reason is that from our perspective, and this is really an anecdotal comment, is that many of their policies require them making an arrest when they're involved in a different incident to view the video that they're required to view the video prior to writing their reports in an attempt to gather all the pertinent facts in a report to provide to the prosecutor along the way.

36:08 Viewing of other video by other involved officers. We do not allow that. So if there's video camera systems from the from the public from commercial establishments we do not allow that we say the body cam because it's from their perspective so they're viewing in the body cam if they are it's from their perspective seeing what they saw. Not from a different angle when it comes to release of video to the public.

36:34 We felt it was important to provide a little bit of context on the BCA position on this from there 13 82 subdivision 15 is public benefit data. There is a provision on here

that allows us to release data that would normally be protected under Chapter 13 82 as confidential protected non-public, and essentially what that means is we can share it with other law enforcement agencies or the prosecutor but nobody else can see that data while it's an active criminal investigation.

- 37:04 There is this exception amongst others that will aid law enforcement in the process. That's typically if we send out a surveillance video for example that allows us to do that in a criminal investigation, promote public safety, or importantly dispel widespread rumor or unrest. If we have riots and the video will be aired us and telling the public what actually happened in a situation and the chief in the city believe that it's in the best interests of the community.
- 37:28 This is the provision that allows them to release that video in that situation. From the BCA perspective, in doing that, we believe it's really our responsibility and working with our prosecutors across Minnesota to protect the integrity of the investigation. Our role is to make sure that we get the most pristine investigation to the prosecutor and that they have an opportunity to review that investigation without the evidence being released to the public in that situation.
- 37:56 Our challenge is always going to be a video is released prior to the case being reviewed by the prosecutors, it will be very difficult for us to assess the statements of the witness. In other words, even if it was released widespread publicly not that somebody would necessarily be telling us something that they didn't review specifically, but that video potentially could change certain aspects of their memory that they saw.
- 38:20 If the video is going to be released that or we did make a change what I want to say we believe that that video should be released at the conclusion from the BCA as all of our public data is at the conclusion of the investigation once it's been adjudicated meaning the prosecutor either finishes their prosecution of the case they decline the case once it becomes public information. We have had a change in terms of how we release information in these cases and the video in particular.
- 38:50 There is a provision in the statute as well that says images that are clearly offensive to the common sensibilities should be redacted from the case file or may be redacted in terms of our. I think all of us would agree in some respect that seeing somebody shot is clearly offensive to our common sensibilities. However we have moved to the place that we show the shooting unless it's clearly a grotesque portion, so that the public really has an opportunity once it's closed to see the shooting itself. Really for a lot of the work that all of you do from a public policy standpoint, if they see something that's concerning to them as the public, they get an opportunity to view that at the right time in the investigation. To say our police, really even if it was legal, that we have concerns about the tactics that were used and they can make those decisions when video is released by the local agency if they choose to do that.
- 39:39 This is how we'd like to see this process work and how it's worked in Minneapolis and St. Paul. We have a discussion with the keel (sp?) and the chief law enforcement officer of that organization. It does say a law enforcement agency is the one that may release that video. We preferred interview obviously, for I think for obvious reasons, all no indirect witnesses of the event if they saw the actual shooting. We would like to have them interviewed prior to the video being released. They think that gives us our strongest position when we tell the prosecutor that this is the memory of that witness

at the time and we have no position on whether or not the local agency should release the video.

- 40:13 What I've said when we're having these discussions with local police officials is it's really your job to keep your community safe and do what you think is best for your community as you're assessing the unrest that may be occurring in that community. We would like them to have that discussion and we're often involved with it, with the county attorney because as you've heard they ultimately have the decision to determine whether or not the use of force was justified or not.
- 40:34 So we certainly want them to weigh in and have a discussion in that process a video is going to get released to the public. And then we would also ask that that local agency, if they do release, once that occurs if any additional witnesses come forward or they learn of them, which has been really, which they do regularly all the time, anyways that they would notify us of those witnesses, if they contact the police agency for example so we can interview them after the fact.
- 41:01 One of the things that we are working and that you've seen this before so I'll go through it very quickly but once it is, when it comes to releasing this information our goal is always to make the information available as soon as possible. Witness Hennepin County Attorney Freeman is here today. We're working regularly with his office as he makes determinations in these cases. If they're going to clear that case we're working with his office to try to redact those case files as quickly as possible. So that when they release information, that the full case file and everything that we do, is available to the public quickly. So that it's not simply a summary of what they reviewed but that the public can see those actual documents and the supporting documentation along with it.
- 41:41 We do have to redact those files under the statute common redactions our undercover officers 9-1-1 callers and mental health situations, photos and video offensive to the common sensibilities. Like I said before we've been showing the shooting, but we don't believe that it's necessary for the public to see somebody laying bleeding to death on the ground after they've been shot. And so we redact it once that shooting actually occurs.
- 42:04 Body camera video has some very specific provisions and 13 8 to 5 in which pieces can go out, only the portions that capture the use of force incident itself, is the information that we're allowed to release under the statute. And then protected identities of certain victims criminal sexual conduct for example. Those victims identities are protected in that situation, mental health emergencies, etc.. And we've had this before. I'll just leave it with this.
- 42:29 But if there's other questions surrounding body camera videos that you have and how we handle them in criminal investigations I will tell you that it's been a because the technology is rapidly advancing changing all along the way we are working through a process where we need to continually evaluate how we use them in the investigations how we assess and capture that information.
- 42:52 And one of the things that we always need to be cognizant of when it comes to these stat statements, and I said it before, but very clearly the voluntary statement is there because each police officer has the same right against self incrimination that any citizen does along the way. It's always our job as the BCA to gather as much information to get to the truth as to what occurred in every situation so that the prosecutor can make an evaluation of that.

43:16 But we need to do it in a way that protects the constitutional rights of everybody that's involved, that we're doing it in a legally defensible manner, in a way that we are gathering information within the confines of the Constitution and the state statutes under which we are operating. And with that I will stand for any questions of the board. [Castille] I heard you mention the worse that statue. So does that mean that every agency in the state of Minnesota has body cams.

43:48 [Evans] No, I think is the clearest answer. It is not. We are seeing them become more common and we see agencies go online all the time. But by no means do all agencies have body cams in the state. [Castille] I was just thinking it'd be really important that every agency did and that we as a board should maybe consider making a recommendation to our lawmakers that we mandate that the state of Minnesota all Agencies use body cams.

44:18 One more question. You do you think. Are you familiar with the tool kit. Yes I am Clarence. Do you think it would be a good idea if the BCA was to put a tool kit together and have that for public information. [Evans] Yes.

44:41 So members of the board and Clarence, the tool kit is something that Clarence, the Ramsey County Attorney and worked with a number of other entities along the way. And it's a prosecutor's toolkit outlining a number of recommendations along the way that would provide greater transparency, greater trust in the investigations, things for family members, et cetera along the way. And I think in terms of the tool kit's really got a lot of great suggestions in it. I think a copy will if you don't have one we certainly can get one. So.

45:11 So it should be on line. There's some things out of it that I think it was some really excellent work. One of the ideas that we frankly got and that we are happy to report will report posting here next week actually has a community and family services liaison person a position that's dedicated to working with families across Minnesota to be working with the community to provide greater transparency and information.

45:38 And that's one of the recommendations is communication with families involved in these incidents that comes directly out of that. And so we've already taken a number of things from that tool kit on the BCA site. And I know prosecutors in the room whether it was directly from the tool kit or not, that they agree with a lot of the pieces that were outlined in that tool kit. And we've begun to implement them in our investigations.

46:10 [Darrius] Good morning. [Evans] Morning. [Darrius] Good morning. Yep is still morning. Couple of questions. So are you aware that a lot of the social sciences is coming out and saying that cooling off period especially for officers involved in shootings actually negative impacts that officers memory.

46:34 There's a lot of studies that have been published especially over the years especially over the last few years are you aware of any of these studies. [Evans] I'm not aware of the specific studies necessarily you're talking about I'm aware of the original study that did discuss this and who did it. And I don't take an opinion on the cooling off period or sleep cycles center from the BCA. As we said we would interview any and all officers when they're prepared and ready to provide those statements.

47:02 [Darrius] So do you all have a standard time in which you say OK at this time this is when we're going to conduct the officer in the shooting of the officer involved. Excuse me that interview of the officer involved in a shooting. [Evans] No. So again we are telling them that we want to interview them as soon as possible and all these investigations and as I

noted before they're represented by counsel and so that's often a discussion with the consulate represents them and they're the ones setting the time that they're willing to come in that we don't have any ability whether it's state statute from a criminal investigative perspective to force one that will be a lot of the witness officers it depends on where it is.

47:40 I will give you an example and they change very rapidly. We are up in this use of force incident that occurred and recently in the middle part of the state where the individual was involved in a chase. Many of those officers interviewed that night. There's just a few outstanding from there. Sometimes it takes a couple of days. It can be a longer period that they're setting. When it's a lot of officers were often working directly with the police department and Chief Arradando

48:08 for example there could be 50 officers we're working directly with this command staff to schedule those so we get through them as quickly as possible and they work directly with us to get those interviews arranged in a successive order so we can get to them as quickly as possible. [Darrius] So I guess my primary question is not necessarily about the officers at the FBI but the primary officer involved in the action.

48:32 Do you think that it will be who the BCA to implement a specific policy whether that police officer or that police officer's representative follows that policy or not to say that you know we're going to more immediately interview officers. Because there have been studies that have been published in 2014, 2015 and most recently 2018 that talks about the cooling off period and how the longer you go without having that immediate interview it impacts the memory of that officer. [Evans] From a memory standpoint,

49:04 and again I don't take a position on this I think I don't know in terms of the police context. I mean there is a lot of studies about memory and how we form memory. I do need to say on this I the BCA I just have to be completely clear we cannot compel or force anybody to interview we tell it. We have that conversation at the scene that night and we're working with their attorney to try to determine when they will interview. I cannot have a policy that says they have to interview at this time or the answer from the officer will be we're not interviewing.

49:33 And I have no way to compel that interview in this context if it switches over to a internal affairs investigation that agency can then compel that officer to provide a statement. However that statement can no longer be used in the investigation that we're conducting because we're conducting only the criminal portion of it. So while we would clearly for everybody involved in any incident we want to gather as much factual information as quickly as possible to inform ourselves as an investigative agency the prosecutors that we're working directly with from day one in these investigations.

50:04 But we don't set the timeline as to when the officers will provide that statement. [Darrius] Now a couple more questions. So so one of the other questions that I have is in terms of you use the term clarify when you allow the officer after the initial interview was conducted to then review the the footage and then you use the term clarify his or her statement.

50:31 What does clarify mean and how does that impact the original statement that was taken from your agents. [Evans] So from our perspective again, our job is just to gather the complete information and then that information is reviewed by the prosecutors in the incident. When we say clarify for example these are incidents that are up and having

51:06 happening very quickly they're very dynamic. There's a lot going on in the situation if they view a portion of the video and there's something that they didn't talk about, that they neglected, that they said for example, they saw a black object come at us, they made and it was a cell phone they may clarify in that video, that's the black object that I'm referring to. All that information is just simply recorded in terms of the actual interview occurring and then that information is available to the prosecutor to make a weighted judgment on how to review and how to interpret that clarifying information. [Darrius] So, so at the end of that initial interview. The initial statement that's retained and then clarified statement that's retained as well.

51:37 [Evans] Yes. So that information is the entire first interview as is recorded in real time and the same thing with the clarifying statement would be recorded as well. [Darrius] Can you see how it impacts public trust that. Officers are being allowed to review footage as they are giving their statements to the BCA again as the witnesses also that are being interviewed they're not allowed to review the footage as they're giving their statements typically on the scene.

52:08 Right yeah. [Evans] So, again our policy is that they provide that information to begin with if they defer to us. So that statement is an original statement without being the video and the video is what was on the officer at the time that is recording their perspective, that is recording the actual incident. The video is there, and so that that review if it's deferred to us is done after the statement that they provided. So from a public perception or public trust perspective that initial statement is provided clean without nor any review of that video if it's deferred to the agency.

52:42 However I think many of the agencies here that allow that, agency here in the state that have body camera video, the perspective has been on the flip side of your question, and the discussion that's been happening nationally, not my perspective, that just the discussion has been that that video really does record what actually happened.

53:01 And so when they watch that video they're providing a rendition then, of seeing what they actually were seeing because it's from their perspective at the time and going through. And again many agencies require officers to review that video prior to writing reports and any other type of case and so they're saying that the video, the term I think when we say video doesn't lie, or the video is complicated, it doesn't always capture the full range of view of a police officer that that's the reason why many agencies do make that determination to allow them to view ahead of time.

53:32 But again I am not the one that sets those policies for organizations and so I'm not really there to speak to the entire holistic view as to why those policies are put in place. [Ruben] Thank you Mr. Chair. Drew, officers are required to do reports on all their calls if they are involved in a deadly force encounter. Do they still have to do a report and who makes the decision whether or not they have to do it.

54:01 [Evans] So we tend to do one or the other to begin with, not both. We tend to have all officers that are involved in deadly force encounter that their statement to us acts as the report. We work that out on scene usually with the command staff from the agency and or whoever would be in charge of those officers at the time. There are times where we have them write report that they still will write report and do a statement. But that's rare.

54:28 Typically what that is is it's a situation where they're conducting a criminal investigation prior to the deadly force incident being completed. We're not typically

the ones investigating that other incident. So they may write a report up to the surveillance as an example as to what they were doing ahead of time. And then when the deadly force incident occurs, we tell them to have in the report that you see the transcript from the BCA and then we will go over the entire incident as to what occurred when that deadly force incident occurred.

54:57 I will tell you that we've had this conversation through the request of some county attorneys around the state. That previously if somebody responded to the scene wasn't directly involved in the incident that we were having them write reports and then we would evaluate whether or not to interview them. We have transitioned to interviewing really anybody that arrives at the scene. We do an investor an interview with them and we are trying to get those done as expeditiously as possible.

55:22 We're working with our teams around the state we're bringing in agents from different areas to try to really work through that quickly in terms of getting those interviews completed. [Ellison] Drew, thanks again for testifying in helping us through this process. Could you outline. The differences in an investigation between a civilian involved in a homicide and an officer involved where there's the death of a person that's been affected. I mean, are they identical. They're both homicides or in your view is there critical difference. And what are those differences and how do you explain to us the reason for that. [Evans] So they're both homicides in terms of if somebody is killed and that by a medical examiner definition homicide is defined as death at the hands of another.

55:52

56:22 However the primary difference is this. There's a state statute that provides peace officers the ability to use deadly force in a way that no civilian is allowed to do. And 6 0 9 0 6 6 and because of that there are different elements that we're looking at along the way. And they are often called to a scene as a responsibility of their employment and get engaged in some sort of encounter along the way. So it is not a typical, just any other run of the mill murder investigation.

56:50 There's a number of other elements as the judge noted even in our last hearing about what we're looking for in these investigations and that they're doing, they're involved in this encounter as a really a condition of their employment. Whether or not it was a justified use of force is really obviously the goal of the investigation reviewed by the prosecutor but because of that and there are different things along the way that come with that. We've been talking about one. Chief Arradando requires police officers to wear body cams in their employment.

57:18 He requires them to have them on in certain situations according to his policy. Each one of those elements and what they're doing is going to create differences from if for example somebody is walking down the street. Even if we look at it from a self-defense perspective they get in some sort of encounter and we're examining that. We know right from the beginning that that police officer was working at the time when the incident occurred I should say most situations. Whereas, when a citizen to citizen encounter occurs we're often untangling what their relationship was, what the interaction was, what happened what led up to the initial encounter.

57:52 And so from that perspective we're really coming into that as investigators in many ways blind, until we unwrap and figure out what occurred. Whereas, with the police involved situation we know at least the initial encounter and then what we're doing is unpacking whether or not their use of force is justified under the law while they're doing that. And so I don't know know that that's actually quite helpful. [Ellison] Does the role

of the prosecutor change from an investigative standpoint here's what I mean in your average homicide I'm assuming that if the prosecutor says,

58:27

Hey, I need you to get the cell phone of the officer, I want to know what he talked about before, I want to know what he talked about afterwards. Then I would assume that that's probably no problem but if you believe reports that were in the press around the Noor case there was resistance there. And so I guess what I'm asking you is from the standpoint of just, you know, the prosecutor's ability to work with the DEA agent to get the evidence that they need. Does that change based on being a civilian or not.

58:56

[Evans] I don't think it changes I think what it does though is there's some complications with a few of these. Remember, whenever we're going to seize anything that I need, if I'm going to seize it, I need to have probable cause to seize it. It for example, the example you just used around a phone, we regularly take all work phones in these incidents for example, to determine just that what was going on at the time, we do that.

59:20

If it's a personal phone, for example, our agents would say in these investigations if there's probable cause and remember in this situation and that's a reasonable likelihood that evidence of a crime exists in the place to be searched, that we need to have that, in order to seize and take that item ethically. And so I do think it creates some complications and showing those. Another one for example, would be how we request a blood in every situation from every police officer to examine it for alcohol and schedule one narcotics.

59:50

We don't always do that in a civilian investigation, but we may, but we would need if the answer is -No, upon consent we will need to get a

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00:00 [Evans] evidence and that item. I think these are conversations that are evolving with the prosecutor, in terms of really making sure that we get what they can within the confines of the Constitution and our responsibilities as an investigative agency, and we're really working through those. When you say some of the things, I will tell you from some of the reports, since you're referencing it here, some of these needed to be elevated to a level, for example, with myself and others so we could talk through that the answer wasn't no. There's some things that forensically we just can't do within our accreditation of our laboratories.

00:31 We need to work to a common place where we can all agree that we can do and present the evidence in a way that can be defended by us as an organization and can be used in trial at the time. And I think those are conversations that continued are ongoing. I think we've made a lot of progress I would not characterize anything as resistance on the part of the BCA, but certainly in any investigation we need to work directly with the prosecutor to obtain the evidence. I think Attorney each County Attorney Choi said you know it well in that that ultimately it's their decision.

01:03 So we need to make sure that the evidence they have is gained appropriately and properly and so that they can make that determination. Thank you. [Ingebrigsten] Thank you Drew for the testimony. Just one real quick question and it comes with Posner's regards to the public trust with regards to police reporting.

01:29 How many police deadly force encounter investigations has your office had where the cameras didn't work or the malfunction before that happened. And how do you handle that. [Evans] Senator off the top my head I wouldn't know the exact number is certainly there have been incidents, again anecdotally and I'm actually not from body cams now going way back. We've had dash cams in cars for a long time.

01:58 We sometimes forget about that but there are times where they certainly have had a dash cam that was broken, wasn't working, didn't capture what needed to be captured at the time. What we do in those situations is we document how it occurred. We do as much as we can in some of the cases where we've had a body cam that you know often they get if they get turned on after the incident we do everything we can to a certain that we have all the video that we can offer that body cam that there is an additional information on it.

02:28 We will examine it download it, to make sure if they didn't turn it on, to document and show the prosecutor everything we can. So we really do go through that process and document that and we will ask them why it wasn't on at the time and we'll document if it was broken in all the different pieces along the way. [Moran] So this question aligns with Darris' and our A.G.

02:57 around a civilian or citizen in a case of murder or whatever. So the BCA can not force a police officer to testify is that the same for a civilian you have when they come before you they can refuse to testify. [Evans] Yes they can and they regularly do on our homicides. [Moran] OK. And what happens when that is the case? [Evans] The same thing that would happen in these cases we continue investigating and gathering other information through other sources.

03:27 [Kappelhoff] All right. Thank you. Good morning to you. Thanks for your testimony and you described very well the distinction between a homicide and then a police involved shooting. Some of the other complexities to that investigation also the law is different related to it to it to a typical, I hate to describe it as a typical homicide, versus an officer involved use of force because the statutes are different in the case law supporting or different.

03:59 [Evans] Yes very much so. Correct. [Kappelhoff] And that helps in having off agents in your case or officers trained in the law and the statute because obviously you're investigating to satisfy the elements of the offense or not satisfy the elements of the offense.

04:15 [Evans] Yes, that's correct and I do think with the prosecutors in the state we've provided, while we're not conducting a civil investigation, some of the factors from Graham vs. Connor have been examined by the prosecutors. And so it's certainly something that we have our officers think or our agents thinking about as they're doing these investigations. [Kappelhoff] And having trained agents to read my mind here trained agents who are familiar with obvious Graham vs. Conner and the other statutes working with prosecutors are equally trained in that particular expertise. And I would call it frankly an expertise given the complexity of the law related officers use of force would be helpful I imagine in conducting investigat[Evans]ions of this nature.

04:55 [Evans] So that's excellent question. Thank you for bringing it up. We do train our officers in this are agents in this that do this work. The special agent in charge of this unit is as a use of force expert. We're regularly looking at these I know some people would have specific groups or trainers that they would feel very beneficial from a use of force training perspective.

05:15 But I will tell you our approach is we try to get to all of them and really then meld together and see what is being trained for our police officers really from a for Science Institute as one you often hear reference they go and they review the work they're doing but then we're also out coming up here Erik Daigle is a chair reason chair of the ICP legal officers section puts on his own.

05:39 We really look very holistically to gather the legal perspective the federal agencies that do this work the different groups that are doing this so we can really hone in on hearing what's being taught what's being done so that we have that expertise and house as well along the way and that's not limited to just you know our certified use of force expert that oversees these but many of the other agents that are conducting the work as well. [Kappelhoff] Thank you.

06:09 [Gottschalk] As it relates to giving statements to the investigators in a non-officer involved homicide investigation, after the evidence is released to the attorneys on both sides, if a defendant wanted to give an additional statement after seeing video and something related to that case, would the BCA accept a statement from them if they asked to come forward and give another statement. [Evans] You know our perspective has always been that will gather all the

06:29

07:03 evidence and information and then the prosecutor can determine the veracity of that information at that time. [Darrius] Couple of questions about the release of footage because that's obviously, that's another thing that's that has really impacted their public trust in some instances we've seen a release very quickly in other instances it's taken a very long time. That level of inconsistency obviously also impacts public trust and in other municipalities and other states, I should say we see a much more rapid release of the footage and that's because you know those local officials have taken into account the impact that the delay has had on public trust. Where is the BCA in terms of moving more towards the position of a more rapid release especially where there is like widespread rumor where there is discord within the community and BCA has the statutory authority to release, especially after all of the initial interviews have been taken from those who are on scene.

07:28 [Evans] So I'll just give you an example again as I noted earlier. I think it really is our job to protect the integrity of the investigation and that's the role of the investigating agency as the BCA. I think that that local decision you noted, local officials are making those determinations in those cities and really evaluating just what you noted from there. I'll give you an example of how it's working. Chief Axtell, in the latest case we're doing everything we can in these investigations to work around the clock to get to the witnesses as quickly as possible and I'm in close communication with them, when he says he wants to release the video that came out of St. Paul for example, and then we inform him we've conducted those investigations and he's made that determination to release that video.

08:30 So again we don't take a position on whether or not the decision of the local officials as you know I believe it would be beneficial to their community to release that video. We're simply working with them to try to make sure we get to the known witnesses of an event as quickly as possible and that's our goal and those investigations and we're doing that really as quickly as we can find those witnesses they're willing to give their information and get those conducted in a rapid fashion, which we as you saw in that case we did fairly quickly.

09:04 [Darrius] And would you say that for the most part that those rapid interviews happened pretty quickly within let's say a week. [Evans] Well that's our goal. It's not always the case. We work hard to get to him as quickly as possible. But we're working on it within typically within two weeks we have the bulk of the interviews done.

09:30 [Darrius] And so you know this goes back so to the initial question about public trust and so what we've seen also and this has also created great consternation is you know the videos that are typically released rapidly are the videos in which the individual who has had his life or her life terminated. It's clearly shown that there is a level of threat to the office but in the other videos to date some still have not been released, despite the fact that you know many of the interviews have already been conducted those interviews excuse me those videos are still being withheld.

10:04 And so despite the fact that the local law enforcement or the local officials aren't releasing the footage, I think the community is requesting that the BCA begins taking a more aggressive posture. Where do you stand on the BCA taking a more aggressive posture of releasing the video. [Evans] I think I've outlined where our perspective is on this right now. But I also tell you in that conversation we're regularly doing is working with the prosecutor who is evaluating those cases and those prosecutors really do have the perspective that they want to have a full review of their case.

10:37 Typically they clearly, when you're working with the line prosecutors doing their job day to day, that they want to protect as much of that information while they conduct that review of their case to determine the veracity of all the statements gathered. And so again our perspective is is that we're the investigating agency and that and I've outlined kind of what how we handle that, but we work very closely with the agencies involved.

11:11 [Darrius] And so one final question, in line with Minnesota statute 13 as a law enforcement agency as well. What is your view in terms of the BCA also dispelling myths and rumors with the release of footage. [Evans] I think as you see in our investigations we quickly release information. I will tell you that when we're releasing information and providing press information about incidents, it's often the information is there is information known to us, not information that we need additional investigation that we need to work through while these incidents happen very quickly, they're incredibly complex. And it takes us a lot of time sometimes to work through each element of the investigation to be doing that. And so from our perspective and I think you note this here is one of the concerns, that from our perspective as an organization, releasing video is, regardless of what that video shows, there is no way for us as an organization that's charged with investigating the case to provide context to that video or other information that we know from the criminal investigation at that time. Because that information is protected under Minnesota data practices and it's really our ethical obligation to protect that investigation as it occurs.

11:40

12:15 So that is one of the challenges that we have when it comes to releasing video. As we've noted I absolutely and I want to be very clear I believe that the public has a right to see that video when that criminal investigation is at a stage where that information becomes public and that information should be provided to the public in a way that they're able to evaluate that use of force. It's the timing, in terms of when they should go out I think is the discussion point in our are concerned internally about releasing that video.

12:45 [Smith Baker] I have a question. So I'm looking at the policy here and it looks like each of the agencies can make a determination on release of video and we learned earlier the number of agencies that exist within our state. And my, I guess my question is is that it feels like the agencies have got to determine whether or not there's cameras whether or not the policy relative to cameras and then whether or not they're able to view prior to giving testimony. How does that complicate investigations overall. Do you have a recommendation and do you see this complicating public trust and understanding.

13:20 [Evans] I think as you noted everything you say is correct. It's up to the local individual agency on whether or not to have them and to set that policy. From our perspective on doing that, as I noted before that was a discussion that was a very robust discussion. I remember it happening in front of our legislature in front of numerous committees in front of the full legislature when they set that policy with numerous stakeholders on really all sides of the issue and that was the agreed upon outcome in terms of how you would evaluate the policies within the agencies. For us, it doesn't complicate it because our agents are well aware of our policy, and so it's something they're regularly working with the agency we asked for a copy of the policy. So we haven't it's documented and we are not the ones showing any video in this situation.

13:47

14:17 And then we documented through the interview whether or not it was reviewed so that information is known. You know I think that, you know, in terms of those other pieces, I really do feel it's probably the work of your group to debate and discuss if you have any recommendations. [Moran] Could you just inform me it's my who would be some of those other local agencies that you're speaking about. [Evans] Are you just all 430 plus law enforcement agencies in the state.

14:47 [Moran] OK. And, but I'm kind of like hearing so I need you to listen clearly that the BCA does the investigation but it seems to be that a release of a video. What is this other form Hunter agency or is the prosecutor that you work in in partnership with the prosecutors. [Evans] We are, correct, every time. [Moran] Every time, so that really impacts like the release of the video, whether or not you're going to charge someone not charge someone.

15:21 Or whether or not to Darrius' position around whether or not something is released early because we can justify the police shooting versus when it's more of a deadly force that took someone's life.

[Evans] You know I mean I think to your, getting at your point I think some of the challenges that police officials have with these investing or not investigations with the actual video itself is that they don't always clearly show what happened.

15:52 And so they're making that determination whether or not to release video. But you're correct that the county prosecutor we know every one of our cases are going to go to them for review. So we have an obligation to work directly with them in these cases. [Moran] Thank you. [Kappelhoff] Just a follow up to something Drew you and I have talked about I think quite related to what we're talking about now.

16:20 The notion of independence, transparency and public trust and those are critical to these investigations, myself having been involved in many high profile investigations or a federal standpoint. The advantage we had in the civil rights division, we had one uniform way in handling those cases that we work with the FBI. They went to the Civil Rights Division, charging decisions were made there we knew what the protocol was. In every case we did it the same way in every case what it meant.

16:48 And I'm saying this and we've had this conversation. Do you think it would benefit the state of Minnesota having a uniform way of handling these cases so the community, the state knows that a team of BCA agents is handling the case. It isn't and then, potentially the attorney general's office or some other independent body ultimately making a charging decision or declination decision and then each of those investigations are handled uniformly throughout the state an independent transparent way. And would that avoid having the 400 plus agencies that you have to navigate actually 400 plus agencies at the time.

17:16 [Evans] I will say with again I think some of this is the the the discussion you need to have as a working group. So I don't think it's appropriate for me to have an open you know in kind of some of these pieces from here. What I will tell you is this part of reason I gave you this policy today is we do have a uniform way of handling these. We do have a lot of agencies we need to navigate much like the FBI would have to as well but our process is largely the same regardless of where we go.

17:49 I do think that there's continued and I've noted this that there's room to create common protocols as much as we can across the state. And those are usually fairly broad protocols because with 87 independently elected county attorneys many appointed police chiefs 87 independently elected sheriffs, we certainly are going to

have to work with them along the way to make sure we're meeting their needs, in particular at the county attorney's again because it's their decision in these cases. I do think we've worked and we've come a long ways towards creating standardization across the state.

18:20 And I think we're getting much more consistent in that. And what I will say at the end of this is I completely agree with you that consistency, wherever we are going is good for public trust, it's good for investigations it's good for everybody involved. [Kappelhoff] Thank you.

18:48 [Torgeson] Superintendent Evans, just to clarify I think it goes back to some of the public trust questions that I think you've answered. But I just want to be again clear. Is it true that the delay of the release of some of the videos or in some cases is to get each witness's point of view, regardless if it's an officer or another witness a civilian. That it's that important, to get their point of view, not the point of view of other people, other videos and such so that the delay in the video that's, whether it's the officers or others is so that they're not their point of view is their point of view, not something they saw off video or other places. And that's the end. And hence it's why it's delayed so that you get their perspective is that true.

19:13 [Evans] Well I will say that the short answer is yes but all the video is classified as protected non-public data, it's it's that's under 1382 it's is not public information unless the exception applies. We are trying to do that in every case and make sure that we get the assessment of the, from that perspective and releasing that video. I will tell you from prosecutors both federally and on the county attorney side when we get a statement from somebody they're asking us, you know, how do we know this is exactly what this person saw. I think when nobody video is out to the public I think it's obvious right. That's there isn't any other place that they have received this information other than their own knowledge and then, that's compared to all the other evidence we have in a criminal investigation that's how they can really weigh and evaluate that information.

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20:15 So there really is, from our perspective, why we don't release any evidence in a criminal investigation, not just video but again, when we say we don't have a perspective I think it's people like Chief Arradondo and Chief Axtell and others and working with community members as Mr. Darrius says that we need to make sure that they're given that opportunity that they assess what is best for their community in terms of public safety trust and everything else that goes along with.

20:46 [Gottschalk] It's been referenced a few times about the timing for the release of the video as it relates to compromising the investigation and its context relating to your last comments. You're not going to, so if an agent if, if for instance an investigation will become compromised, you're not going to lose the ability to not charge the officer. And where I'm going with that is, is that by delaying the release, keeping information closer to the vest, would that actually more preserve your ability to maintain the integrity of the case for charging if appropriate. Rather than the opposite?

21:16 [Evans] Yes, is the short answer to that, from a criminal investigative standpoint, keeping the information confidential through the investigation and eventual prosecution in your scenario is absolutely best for the case. [Gottschalk] So releasing it could actually inhibit your ability to charge more than it could help your ability to charge. [Evans] Potentially, you know depending on the situation and that's the discussion we have with the prosecutors.

21:44

But again that's why you're doing that weighing of all the different pieces of this that it's important for us to protect the integrity of the investigation. But sometimes it becomes very important for the public safety and a community for that information to go out. And that's the weighing of different options that always has to occur. Thank you very much.

22:15