

**Rutland City Police Commission
September 12, 2022**

Present: Chairman Sean Sargeant, Commissioners Tony Romeo, Alis Headlam, Luther Brown and *Peg Flory.

Also attending: Chief Kilcullen, Commanders Sam Delpha and Greg Sheldon, Ryan Brady, Crime Analyst Nathan Thibodeau, Mayor Allaire, Richard Ley, Carmen Ley and Acting States Atty. Ian Sullivan.

Call to order by Chairman Sargeant at 6 pm.

Approval of Minutes

Commissioner Flory moved to approve the minutes of August 8, 2022. Commissioner Romeo seconded. Motion carried 5-0.

Public Comment

Richard Ley read his statement regarding an incident that happened on July 11, and reported to the RPD on July 12, during which he says he was assaulted while filming, with his cellphone, an inspection by City Building Inspector Mike Brookman of his sister-in-law's property at 55 Chaffee Avenue. He claims the assault injured his left eye. He provided Officer Tavares with a video of the incident and his statement. Carmen Ley, owner of 55 Chaffee Avenue, also provided Officer Tavares with a statement. Mr. Ley followed up with the Mayor and Chief Kilcullen. Having not received satisfactory results, Mr. Ley is asking the Police Commission to review the slow motion video, which he provided on a thumb drive, to determine whether the incident constitutes simple assault under state statute. Chairman Sargeant said he would include Mr. Ley's statement as part of the minutes, as well as, review the video with the patrol commander. Chief Kilcullen discussed how the video and lack of witnesses entered into his decision not to pursue an arrest adding that, the elements did not support a charge to take someone into custody.

Carmen Ley said she asked Richard to accompany her to the inspection because she did not feel comfortable there alone. She said she did not witness the incident but added that she did not know who the guy was or why he was at the property.

Mr. Ley also discussed the marijuana plants he filmed at the location and asked how many plants are legal. Chief Kilcullen responded 2 mature and 4 immature plants. Commander Sheldon added that the date of the video is two months old and unless the plants are in plain view, the police cannot investigate without probable cause.

Acting States Atty. Ian Sullivan was invited to the meeting to discuss RPD plans to convene a judicial town hall to discuss the issues in Rutland with repeat offenders and bail reform. Atty. Sullivan said Vermont has a handful of tools to respond to criminal

behavior when it happens but before adjudication. He said until that point a person carries a presumption of innocence up until they are convicted and because of that the Vermont Supreme Court and US Supreme Court have said for decades that the sole permissible basis for the imposition of bail is appearance. The bail statute changed from risk of non-appearance to risk of flight to avoid prosecution and this really matters. He offered an example of the distinction in the wording. He added that early in the pandemic there also was cultural change among the judges and prosecutors that having someone pulled into the correctional facility for not posting \$50, posed a public health risk and this has become a habit. This is not a legal change but a practice change. He does not believe in asking for bail if someone has failed to appear a single time because it would not be just. He added that there are tools for specialized cases where bail is enforced for pre-trial release or detention, but this tool should not be used lightly because there is no jury. The other area where bail is enforced is for a life offense like murder, sexual assault and when the evidence of guilt is great. Atty. Sullivan discussed the area that comes up most frequently as being when someone is on supervision with the Department of Corrections, is either serving a jail sentence in the community or someone who is on probation in the community with a list of conditions. If the list is violated, within the last 5 years, folks on probation with non-listed misdemeanors or felonies could have bail imposed, but were not necessarily in a position where pre-determinations of violation for probation could be held. The rarest way in VT law that bail can be imposed is to show that someone's behavior, while a charge is pending, is interfering with the truth seeking function of the judiciary, like witness intimidation.

Chairman Sargeant asked if the Vermont Legislature changed the definition of bail from risk of non-appearance to risk of flight to avoid prosecution in statute, not in case law. Atty. Sullivan said it is in statute and it could change back. Chairman Sargeant asked if those serving their sentences in the community who violate the conditions of their furlough and/or parole, is it discretionary for the DOC to remand them back to jail. Atty. Sullivan said the judiciary and legislature have embarked on a project called "Justice for the Investment II" in which returns to jail, on technical violations or risk factors to reoffend, are not something that are looked favorably on and will be an uphill battle.

Commander Sheldon said they are being told by the Dept. of Corrections that until there is a conviction on a simple assault, which could take months at best, there is no violation of probation brought. Atty. Sullivan said, under the old probation orders, what you are being told is correct. Under the new judiciary forms, which have been out for a couple of years, probation is all about a contract that an offender makes with the court for conditional liberty. Chairman Sargeant said what is missing is that the contract is with the community.

Atty. Sullivan added that Vermont has created a list of offenses that have the ability to be expunged upon conviction. The limitation of bail statute was in 2017 that limits bail on expungement eligible misdemeanors to \$200. This is significant because 1) the crimes people most likely blow off coming to court fall under that category and 2)

violations of conditions of release, six-month misdemeanor, also fall under expungement so options are limited to \$200.

Commissioner Headlam said she is frustrated as a resident with the revolving door of people who commit retail theft in the morning and are back out on the street recommitting that same afternoon per the RUTSTAT information. She asked how what Atty. Sullivan has presented addresses that issue. Atty. Sullivan said it does not. He suggested that when an arrest warrant is issued for skipping out on a citation, the person is more likely to run and fight, so forcing the issuance of an arrest warrant over what can be a controlled situation when someone is being picked up on their 17th retail theft and who routinely don't show up at court, that second scenario is less likely to lead to conflict that might hurt the members of the public or police officers.

Chief Kilcullen agrees there needs to be a balance but, we need to know what is allowed statutorily and whether the decisions being made are based on statute or are they discretionary. With respect to pre-trial detention, the statute says to use conditions of release when appropriate except when the public cannot be protected. Chief Kilcullen asked if that means physical violence because clearly the public is not being protected financially and continue to be victimized. Commissioner Flory said there used to be consequences for repeat offenders and now it's ignored. Atty. Sullivan said because a lot of these decisions by judges are discretionary, we are able to make arguments based on statute and routinely argue that accumulation of charges for bail are limited by constitutional interpretation of bail to appearance or flight. A feature and challenge of Vermont's system of judicial adjudication is that there are times when judges only view the decisions they make from the bench as a purely legal exercise as opposed to something that impacts the community.

Chairman Sargeant said he plans to invite someone to the Town Hall meeting from the judicial system, the chair of the Criminal Justice Council. Atty. Sullivan said there is a lot of talk regarding bail reform but not in the direction this board is interested.

Commissioner Flory suggested that instead of bail reform, the Legislature should think about repeat offenders. Commissioner Headlam suggested looking at the drug court model and see if there is a way, with repeat offenders, to them to discuss how they will put their lives together as an incentive. Atty. Sullivan said the drug court offenders are usually held for lack of bail and are facing incarceration and they are offered treatment and way out of jail. Chairman Sargeant asked if someone is on probation and they violate their conditions of release, does Corrections have a discretionary grid as to whether the person is returned to jail; and if they are not happy, can it be challenged? Also, can the community challenge that decision with a community impact statement? Atty. Sullivan said there is no formal process. Commander Sheldon said he will reach out to the Department of Corrections. Commissioner Flory suggested also reaching out to the Corrections Oversight Committee. Commissioner Headlam discussed how this systemic issue affects the morale of the police officers and the ability to recruit officers. Atty. Sullivan said there are good and improving relationships between police officers

and prosecutors and his office also faces a similar rebuilding task and they are doing their best.

Chairman Sargeant said the gentleman that will be leading the Rutland City Patrol was scheduled to attend tonight but he will be rescheduled for the October meeting.

Chairman Sargeant said he received an interview request from VT Digger southern VT reporter asking about Matt Prouty's role. The article did drop and he invited people to read it.

Commanders' Report

Commander Delpha reported there are 7 applicants in background, one applicant has been hired and started at the academy today. The new hire and Officer Root will be available for the next full time class in February. Commander Delpha is hoping another 4 or 5 candidates will also be available for that class. He is working on getting the body cameras up and running. The Axon rep was here last week to give training on the administration and set up. There is some department training coming up to finish the yearly mandatories.

Commander Sheldon said the annual evening meeting for Project Vision is scheduled for Wednesday at 6 pm at the RIS cafeteria. The focus will be on schools with Rob Bliss providing staff presentations. He discussed the feedback from the Community Policing Subcommittee. He and Mark will be meeting with some head people at organizations that work with the homeless to discuss the homeless problem that will occur next March when the money runs out. LIT is no longer at the Cortina and Quality Inn. He has not heard back regarding the judiciary meeting and he will reach out to the DOC Commissioner.

Mapping Update

Nate Thibodeau distributed copies of the end of month report for July 2022. The highlights include 25 transient cases, 70 cases involved alcohol and 10 involved weapons, 41 involved mental health and 1 prostitution. He referred to page 7 and the Comparison of all Larceny saying there have been 627 total larcenies this year which is double from every other year. In July there were 76 arrests/lodged/cited or released with a total of 59 individuals arrested of which 11 have been arrested or cited multiple times. Nate said, in the next report, he will add year-to-date information to see how many individuals were arrested multiple times. On the last page under larceny from motor vehicles, an individual was arrested who committed numerous thefts from vehicles due to heavy drug use, was arrested on \$5,000 bail and in the past three weeks there has been a 62% reduction in theft from motor vehicle. He said as an update, vehicle larceny has doubled since that person was released on August 12.

Nate proceeded with the mapping update. He reported that the call volume for August was 1,285 and total for the year 8,084. Homicide in 2021 was 1, 5 year average 0 and

1 in 2022. Robbery 2021- 15, five-year avg.-6, 2022-7, Aggravated Assault 2021 -29, five-year avg.-31 2022-36, Burglary 2021 – 59, five-year avg.-47 2022-29. Larceny automobile 2021-25 five-year avg.-12 2022-60, larceny from motor vehicle 2021-92 five-year avg.-56 2022-204, larceny from buildings 2021-25 five-year avg.-29 2022-91. Retail theft 2021-81 five-year avg.-76 2022-232. Retail theft has surpassed theft from motor vehicle since last month. Monthly theft from motor vehicle was July 16 and Aug 5 with 78% from unlocked vehicles and 8% broken into. Automobile theft was 7 in July and 11 in August with the recovery rate 84% with the national average only 56%. There was 1 stolen weapon in August from an unlocked vehicles and 0 in July. Retail theft information includes 48 in August which is lower than July

Nate continued saying that hotel/motel calls were 53 in August. The Quality Inn has the highest calls for services followed by the Econolodge. The calls from Rodeway North jumped. He reported that there have been 4 in August and 9 assaults. The drug use information is 62 overdoses this year with 55 non-fatal and 7 fatal. Their housing status is 74% are residential, 17% are temporary (hotels) and 9% are transient. There have been 53 referrals made with 4 in recovery. Commander Sheldon discussed there has been some success with this process. He is unaware of any other county that does overdose referral to this level. The process of how referrals are being done was discussed in lieu of an overdose response team. He proposed, for the future, an addiction recovery person who works at the RPD or has an MOU for 40 hours a week.

Commissioner Romeo asked of the 62 overdoses, how many are on house arrest, supervision or probation. Chief Kilcullen said, anecdotally speaking, it would be a low amount but most, if not all, have had some involvement in the criminal justice system. Commander Sheldon discussed the need for collaboration between agencies, as well as, not making Rutland a destination for recovery.

Nate continued with drug seizure information saying there was 61 grams of heroin, 204 grams of crack seized. Four weapons have been seized.

Commissioner Brown asked about the department's typical response to larceny from automobiles. Chief Kilcullen said there is not a lot of solvability but when they cluster it is announced on Facebook. Commissioner Brown suggested getting a stronger message out to people about leaving their cars unlocked.

*Commissioner Flory left the meeting.

Budget Report

Chief Kilcullen reported that at 16.7% of the fiscal year, expenses are at 15%.

Chief's Report

Chief Kilcullen gave the following report: The DPW Committee met on August 9 to discuss the Forest St. paving, curbs and reclaiming of the green belt, on Aug 10 the

Charter & Ordinance Committee met to discuss the City's noise ordinance and they decided to use the City of Schenectady's policy as their sample policy. Commissioner Headlam suggested that the use of leaf blowers should be included in the noise ordinance discussion. Chief Kilcullen continued saying on Aug 11 the Board of Finance approved a grant for drug testing equipment, on August 16 Efficiency Vermont provided a strategic city-wide plan for buildings and he briefly discussed the RPD's HVAC needs. Staff Operations Support Specialist Ryan Brady added that estimate for the roof-top, air conditioning only, came in at \$98,000. Chief Kilcullen said he met with Sen. Sanders staff on August 17, as well as, an Axon zoom meeting regarding the software setup for the body cameras. There were a couple Animal Control hearings over the course of the month. Chairman Sargeant said a new order will be ready for signature in the morning. Chief Kilcullen said he made a presentation to the Rotary Club on Sept. 8. There were a couple of meetings with outside council on the Human Rights Disability Rights VT complaint and there will be a report next month. Proctor Gas provided an appreciation barbecue for officers and staff on September 9. He added that new hire Nicolas Budrow started Friday and is doing his firearms training and starting the level 2 training next week. Crystal Murray transferred to records clerk and that opened a dispatch position. Chief Kilcullen said there are already two applicants with level 2 experience for the dispatch position.

Trainings

Aug 1-7 – Officers Dumas and Rajda attended an Active Shooter Instructor Course are instructing officers in the Active Shooter that started Labor Day weekend in Rutland Town

Aug 23, 25 - Taser training for all sworn personnel and ACO to obtain certification

Sept 7 – Axon training with Sgt. Whitehead taking the lead for training all sworn personnel

Ongoing - 2022 mandatory online Domestic Violence training

Oct. 4 – Nate will attend Open Source Web-based Investigation training in Epping NH

Dec. 12-13 – Officer Blanchard will attend ARIDE Training in West Dover

Commissioner Brown asked if the RPD provides active shooter training for community organizations. Chief Kilcullen said a training was done two years ago, Run Hide, Fight with former Commander Prouty. He will look into something going forward.

Adjournment

Commissioner Brown moved to adjourn. Commissioner Romeo seconded. Motion passed 4-0.

Meeting called to a close at 8:18 pm.

Submitted by: Barbara Spaulding

cc: Chief Brian Kilcullen

Mayor David Allaire
Police Commission
City Clerk Henry Heck
Board of Aldermen
Union President Rick Caravaggio