

Commission on Law Enforcement Accountability, Community and Transparency

Meeting Minutes for August 19, 2020

Meeting held via videoconference at the Attorney General's Office in Concord, NH.

Deputy Attorney General Jane Young called the meeting to order at 9:33 a.m. and reminded participants that the meeting was being recorded.

Members were then asked to introduce themselves and state their present location for the record.

Deputy Attorney General Jane Young - from the Department of Justice with Kim Schmidt, Annie Gagne, and Nicole Clay

Robert Quinn, DOS Commissioner - Concord, NH

Ahni Malachi, Executive Director, NH Commission for Human Rights – Penacook, NH

John Scippa, Director of Police Standards and Training Council – Concord, NH

Rogers Johnson, Chair of the Governor's Advisory Council on Diversity and Inclusion – Stratham, NH (joined at 9:42 a.m.)

James McKim, President of NH NAACP - Goffstown, NH

Sawako Gardner, Justice of the NH Circuit Court – Greenwich, CT

Mark Morrison, New Hampshire Police Association – Londonderry PD

Charlie Dennis, NH Chief Association – Hanover, NH

Ken Norton, Executive Director of NAMI – Great Cranberry Island, ME

Gilles Bissonnette, NH ACLU representative – Concord, NH

Julian Jefferson, Criminal Defense Representative – Manchester, NH

Ronelle Tshiela, public member and BLM organizer - absent

Eddie Edwards, public member – Dover, NH (joined at 9:42 a.m.)

The Deputy Attorney General requested the approval of the August 18th, 2020 minutes. A few edits still need to be made, which will be sent out at break and we will circle back to vote on.

The Deputy Attorney General covered the schedule for the day. We would continue questioning of Gilles Bissonnette by Director Malachi and Commissioner Quinn. Then we would have a presentation by Attorney Jake Krupski and then the AGO presentation from Deputy Attorney General Young.

Gilles Bissonnette, Director of NH ACLU (testimony on website) continued...

- Director Malachi – if black community is roughly 14% of American population, and we assume half lives in urban cities, what happens if we make all these changes, what happen to the rest of people that want more police interaction in communities

- Don't necessarily have the answer for that, limited data and input from those on the ground is forming recommendations
- Director Malachi – if choosing to make these large changes with limited info, how do we adjust for that
 - Data is important and valuable, some data points in NH do indicate that these problems exist, point is fair but hasn't seen evidence that we are immune
- Director Malachi – June 1st, 2020 numbers, 161 people black and African American, this number as it stands doesn't separate out federal inmates to state inmates, wouldn't be fair if we don't separate out, of people in prison population, would this individual have been convicted if not looking at the person
 - Only reflects state prison detainees, not federal or jail detainees
- Director Malachi – so are you looking at why are they there or why they exist
 - Exactly, why are they there
- Director Malachi – there are more sweeping thoughts that need to be looked into
 - Recommendations reflect the data we have, African Americans are being incarcerated at a higher rate than whites
- Director Malachi – is there a sense that more African Americans in prison are disproportionately caught in crime than actually done
 - Concern is how individuals are getting into system
- Director Malachi – would it make sense in terms of disparities to have laws changed
 - We are looking into several laws to be changed
- Director Malachi – if we all can agreed that expanding the scope of a search is unlawful, was the concern the suppression of the evidence or the expansion of the stop
 - The expansion of the stop
- Director Malachi – how are you asking us to determine what is in someone's mind when conducting a stop
 - Pretextual stops are problematic in general
- Director Malachi – how are you looking, federally, to get rid of qualified immunity
 - There is nothing this commission can do, but could create State cause of action
- Jane Young – we have been focusing on this one case, but I'm sure State Police has had several cases, can you discuss Commissioner Quinn
- Commissioner Quinn – NH is already seeing LEO from other states coming here based on our qualified immunity. Data regarding MET, your data goes back 22 years and covers 24 stops. MET team was put in place due to heroin addiction and overdose deaths, needed more support. In an 8 year period (2011-2018), 2,594 people died from heroin/fentanyl. DEA confirmed fentanyl and methamphetamine still pose a large concern to NH resident. Are we looking at systemic problems or isolated events. MET formed in 2015, 800 felony level drug arrest. 4,700 assists with local and federal investigations. Seized 33 kilos of fentanyl/heroin. MET team cannot dictate color of person who traffic and sell these drugs. We don't see MET team racism, the majority of stops have been white drivers. Training is vital for integrity of process. NHSP has worked closely with ACLU to create fair and impartial policing procedures that have been in effect for years.

Attorney Jake Krupski, Milner & Krupski, PLLC (testimony on website)

Removal of qualified immunity would be detrimental to law enforcement officers. Official immunity is what we are talking about. In a recent survey conducted by St. Anselm College in June of this year, of a cross section of the NH electorate, found that 85% of those polled rated their departments as “professional” and 61% provided their police department was very professional and only 7% rated the departments as unprofessional. New Hampshire has consistently been rated as having one of the lowest crime rates by US News #3 out of 50 for 2019 and 2018. We believe that the abolition may have the opposite effect of the goals of this commission.

- Julian Jefferson – thoughts on, in order to improve transparency, have allegations of misconduct investigated by independent body
 - o It already is under PSTC rules and regulations, also needs to be done under home department because that is the department they report to
- Julian Jefferson – do you agree that there is an obvious perception when police are policing themselves, do you see a value in a standard code of conduct that would govern all officers
 - o Yes, there is a value in that
- Julian Jefferson – do you recognize issues regarding inconsistency (reporting, discipline, etc.)
 - o Yes, valid concern
- Julian Jefferson – up to individual agency to do investigation, etc., consider having a separate agency do the investigation
 - o See some value but also danger, who makes up the review
- James McKim – if officer comes under investigation and done by investigation that employs officer, notification to PSTC, is that correct
 - o If officer has sustained finding of violation (suspension or more), Form B to PSTC
- James McKim – would it make sense that recommendations from this commission are focused around community boards
 - o It might
- James McKim – where is the tipping point between robust data and balancing anecdotal stories
 - o Doesn’t have an answer
- Gilles Bissonnette – lawyers have even non-docketed allegations are made public for two years and formal discipline made public, do you see that for officers
 - o No necessarily, officers required to interact with public on daily basis and cannot have effectiveness diminished by frivolous claims
- Gilles Bissonnette – unique police roles, do you agree with Wisconsin case stating officers
 - o Under NH law, that is incorrect, officers have same rights as everyone else

- Gilles Bissonnette – right to privacy against government officials
 - o State of NH, personnel records are governed by personnel rules
- Gilles Bissonnette – why shouldn't police be held to higher standards than lawyers
 - o Circumscribed when can use force
- Gilles Bissonnette – PD often harsher on their own, how does the public know that without full transparency
 - o Balancing of appropriate amount of transparency vs. rights infringed by transparency, don't have that answer
- Gilles Bissonnette – Person charged with crime without due process, differentiate due process for officers
 - o They do get due process (citizens), right now public can do anonymous complaint against officer with no evidence and that might become public, that's a problem
- Gilles Bissonnette – indemnification applies unless wanton and reckless behavior
 - o No, only if ask for the protection
- Gilles Bissonnette – have you represented officer that haven't been indemnified
 - o Yes
- Gilles Bissonnette – trying to determine rate at which officers aren't indemnified
 - o Depends on what you're talking about
- Lt. Morrison – do you think that by the function of the job of law enforcement, potential of criminal involvement and exposure of litigation
 - o Agreed
- Lt. Morrison – passing laws that prevent harassment of families, if a body were created to investigate misconduct, where do you think that funding may come from
 - o No idea, likely state government
- Lt. Morrison – fair to equate IA report to compare to ADO work product
 - o Until investigation complete, report not made available and should take the same format as ADO
- Judge Gardner – doctrine of unintended consequences
 - o Some things are detrimental to law enforcement, fear of litigation will alter officers action during emergent times, costs associated, PDs could be shut down, attraction and retention problem

Deputy Attorney General Jane Young, NH Attorney General's Office

Recommendations:

1. Single statewide body to receive complaints alleging misconduct regarding all sworn and elected law enforcement officers
 - a. Staffed by FT attorneys, paralegals, legal assistants, etc.
 - b. 23 member panel
 - c. Fairness and due process to all concerned
 - i. Statewide universal definitions finalized through rulemaking
 - ii. Right of appeal to NH Supreme Court
 - d. Findings must be public and database managed by professional body

- i. Authority to conduct random audits
2. Public Integrity Unit legislatively established within AGO
 - a. Permanent and sustainable resources
 - b. FT attorneys, paralegals, etc.
3. Implicit bias training for all prosecutors, staff
 - a. AGO
 - b. County Attorney
 - c. Police prosecutors
 - d. Municipal prosecutors
4. Position within AGO to facilitate outreach and communication between all prosecution offices

Currently happening at AGO: investigation and prosecution of criminal misconduct by state, county and local officials, including law enforcement officers. Prosecutors have to disclose favorable info to defense (*Brady*).

EES: no uniform standards, best used as a cheat or one reference point. Both over and underinclusive. Not designed to advance transparency and accountability. If done properly, officer misconduct would be public.

- Lt. Morrison – who is going to come up with definition of misconduct
 - o Would have to be developed as well as standards
- Lt. Morrison – where did the number 23 member panel come up, would there be majority LEO or equally spaced
 - o We looked at the number of ADO, labor boards, same model – tip toward LEO
- Lt. Morrison – audits of PDs, what’s included
 - o Team could come in, ask to look at PD files
 - Director Scippa verified that when a Chief departs, there is an audit of training files, backgrounds, firearms and hours of work by PT officers
- Gilles Bissonnette – how complaints would be treated that are undocketed, would they be public
 - o That would have to have further discussion, anybody can write anything, what do you do with those, this is a framework (thought and discussion needed)
- Gilles Bissonnette – do you envision there wouldn’t need to be a list moving forward
 - o Yes
- Judge Gardner – definition would include sheriffs?
 - o It would.
- Judge Gardner – training for all CAO employees, varied experiences, could you provide them a handbook or guidelines. Funding, \$1.2 million to fund ADO, would you need same amount and where would it come from?
 - o We have not discussed the funding, leave up to people making decisions on recommendations
- Rogers Johnson – public defender’s office goes through training, want to make sure public defender’s office goes through implicit bias training

- We can't mandate it, we don't have the same oversight over public defender's office
- Director Scippa – ask that if recommended by commission and implemented, ask that PSTC be a part of it, need some formalized process for two agencies to integrate
 - One process would not trump another (criminal case, internal investigation, etc.)
 - This is the framework to build around
- Chief Dennis – panel overseen by AG's Office
 - It would be its own entity
- Chief Dennis – who would do the investigations
 - Current or retired LEO that understand what is currently happening
- Chief Dennis – same evidence standard as ADO
 - Should be clearly one of the guidelines, would have to be built
- Chief Dennis – someone makes complaint about being stopped for 20 minutes for no reason, addressed by this committee
 - It would depend
- Chief Dennis – this is an idea worth looking at, like standards
- Eddie Edwards – agency headed by law enforcement background, subcommittees headed by law enforcement background
 - Yes. I don't know best person to run that, but consistent with ADO panels
- Eddie Edwards – have to be very deliberate with our choices
- Commissioner Quinn – Public Integrity Unit, would this globally handle all this
 - One recommendation would be law enforcement and another is PIU would look at all criminal conduct to ensure consistency, separate from stand-alone agency
- Ken Norton – based on any existing model from anywhere else
 - Did not base of any other state, ADO and internal conversations
- Ken Norton – definition of misconduct is key here, where does use of force come into this
 - Certainly if criminal conduct, will be taken up on that side, we need to start a model and have others build upon it
- Ken Norton – excessive force has never been charged in NH
 - We have had a number of cases we looked at (Nashua, Seacoast), make determinations from what are sent to our office
- Ken Norton – what would be the interface between PSTC and this stand-alone agency
 - Group would take in complaint, look at it and if certification needs revoking, conversation with PSTC
- Ken Norton – what happens with current EES list
 - Pending litigation on that, we would have to determine how are you on the list, etc.
- Gilles Bissonnette – detainees face use of force but can't contact the AGO, oral argument scheduled for EES in September, can you clarify on the memos that came from the office that provide robust due process
 - Foster memo came out because there were questions of Heed memo

- Lt. Morrison – need to be careful about comments on pending legislation about the memos and EES

Will move on to public testimony tomorrow, please contact LEACT@doj.nh.gov if you would like to speak and to add testimony to the website.

The Deputy Attorney General requested a motion to adjourn. So moved by Judge Gardner and seconded by Lt. Morrison. A roll call vote was taken on the motion to adjourn and the votes were recorded as follows:

Deputy Attorney General Jane Young – Y
Commissioner Robert Quinn – Y
Director Ahni Malachi – Y
Director John Scippa – Y
Chairman Rogers Johnson – Y
President James McKim – Y
Justice Sawako Gardner – Y
Lt. Mark Morrison – Y
Chief Charlie Dennis – Y
Director Ken Norton – Y
Attorney Gilles Bissonnette – Y
Attorney Julian Jefferson – absent
Mr. Eddie Edwards – Y
Ms. Ronelle Tshiela – absent

The meeting was adjourned at 1:26 p.m.