

Attorney General's Recommendations for Improving the Reporting, Investigation and Punishment of Police Misconduct

*Presented to the Commission on Law Enforcement Accountability, Community
and Transparency*

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Accountability and Transparency Recommendations

Single, statewide body to receive complaints alleging misconduct regarding all sworn and elected law enforcement officers:

- Staffed by full-time attorneys, paralegals, legal assistants and investigators
- Hearing panel membership of at least 23 people, appointed by the Governor, consisting of community members, current or retired judges, law enforcement officers, attorneys; 3 year terms (initially staggered)

Accountability and Transparency Recommendations

Fairness and due process to all concerned:

- Statewide, universal definition regarding what constitutes misconduct; finalized through rulemaking
- Notice of complaint to the officer and an opportunity to be heard
- Initial screening of all complaints received by the body
- Investigation following consistent and defined standards
- Statewide, universal standards to apply with respect to determination of whether misconduct occurred; finding becomes available to the public
- Right of appeal to New Hampshire Supreme Court

Accountability and Transparency Recommendations

Transparency

- Findings of misconduct **must be public**
- Searchable, publicly accessible statewide **database managed by the professional body**

Accountability

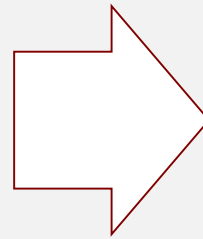
- Authority to conduct random audits of a police department's internal files to ensure misconduct has been reported

Public Integrity Recommendation

The Attorney General's Public Integrity Unit should be legislatively established with permanent and sustainable resources including full-time attorneys, paralegals, legal assistants and investigators

Implicit Bias Training Recommendations

The Attorney General **shall require implicit bias training** for all attorneys, investigators, legal staff and victim/witness advocates in the Attorney General's Office; all County Attorney Offices; all state agency attorneys; and all municipal prosecutors, including police prosecutors



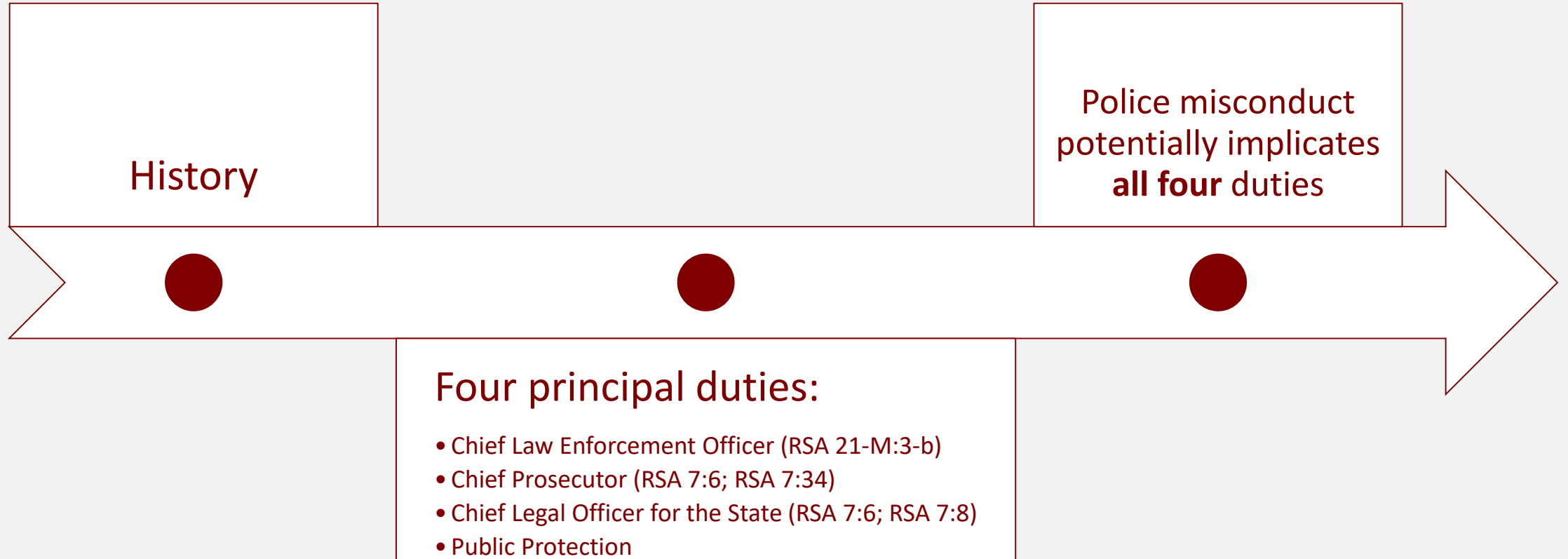
The Attorney General's Training Prosecutor **shall:**

- Facilitate and arrange for such trainings no later than April 1, 2021
- Establish a system whereby all new hires, as defined above, receive implicit bias training within 30 days of their start date
- Establish a publicly accessible list, reflecting those who have and have not received such training

Community Outreach Recommendation

Establish a position within the Attorney General's Office dedicated to facilitate outreach and communication between all state, county and local prosecution offices and New Hampshire's diverse communities

Attorney General's Constitutional, Statutory and Common Law Duties



The investigation and prosecution of criminal misconduct by state, county and local officials, including law enforcement officers, is essential to vindicate the public's fundamental interest in honest and accountable government.

Obligations of Prosecutors

A prosecutor has a **constitutional obligation** to disclose to a criminal defendant **evidence favorable to that defendant**.

- *Brady v. Maryland*, 373 U.S. 83 (1963) (“Society wins not only when the guilty are convicted, but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly.”)

Favorable evidence includes **evidence that is exculpatory** and **information that could be used to impeach** the testimony of a prosecution witness.

- *Giglio v. United States*, 405 U.S. 150 (1972) (If information would be material to the preparation or presentation of the defendant’s cases, it must be turned over)

Obligations of Prosecutors

The obligation to disclose **is not limited to the information in the hands of the prosecuting agency**

- *Kyles v. Whitley*, 514 U.S. 419 (1995) (Disclosure obligation extends to information “known to the others acting on the government’s behalf in the case, including the police”)

An **obligation to disclose also imposed on all prosecutors** by the New Hampshire Rules of Professional Conduct

- N.H. R. Prof. Cond. 3.8(d) (“A prosecutor in a criminal case shall . . . make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense.”)

What the EES Is

A device originally intended **for prosecutors to reconcile** their **obligation to disclose** with the **legislatively mandated confidentiality of police files**

Imperfect

- No uniformity in standards over the years for the decision to place – or not to place – an officer on the list
- No uniformly available mechanism for an officer to appeal placement on the list
- Likely both overinclusive and underinclusive

At best, it is **one reference point** for prosecutors to discharge disclosure obligations

- Best practice is for prosecutors to contact chiefs and officers in each case

What the EES Is Not

A mechanism designed to advance the critically important objectives of **transparency and accountability for police officer misconduct**



Those objectives must be advanced



If done so properly, **officer misconduct would be a matter of public record** and the need for the EES would be eliminated altogether

Recommendations

1. Single, statewide body to receive complaints alleging misconduct regarding all sworn and elected law enforcement officers ensuring due process and transparency
2. Establish by statute a dedicated Public Integrity Unit within the Attorney General's Office with permanent and sustainable resources including full-time attorneys, paralegals, legal assistants and investigators
3. Mandatory Implicit Bias Training for prosecutors and staff at all levels
4. Establish community outreach position within the Attorney General's Office to facilitate communication between all state, county and local prosecution offices and New Hampshire's diverse communities