

State of New Hampshire
Inter-Department Memorandum

From: Director John V. Scippa
NH Police Standards and Training Council

Date: August 24, 2020

At: NH Police Standards
& Training Council
17 Institute Drive
Concord, NH 03301

To: All Members of the Governor's Commission on Law Enforcement Accountability,
Community and Transparency

Cc: File

Reference: NHPSTC Recommendations for Police Misconduct

To All Members of the Commission:

Attached herewith are my recommendations, as the Director of Police Standards and Training, dealing with Police Misconduct recommendations for NH Police Officers.

1. **Recommend that this Commission support the doctrine of qualified immunity and not speak to any consideration to allow for State Action exceptions.** After a considerable amount of testimony, no information was provided that the presence of Qualified Immunity was negatively impacting the citizens of our state or a problem in New Hampshire. The lawyers that testified all made it clear that qualified immunity simply made it more difficult for them to make money. Those same lawyers testified to the fact that they predicate their decisions to take on civil law suits against the police based solely on their chances of winning, irrespective to the merits of the case. Further, it should be clearly understood that law enforcement officers are very often tasked with addressing chaotic events that are rapidly evolving, with little or no information, and must make decisions without the benefit of time. The removal of qualified immunity will have a chilling effect on NH law enforcement which will then have a negative impact on the community they serve. Without qualified immunity, officers will hesitate to make decisions on the enforcement of law and will not proactively attempt to identify and arrest criminals because they will fear that their good faith efforts will expose them to frivolous civil law suits without the protection of qualified immunity. Finally, qualified immunity is a doctrine that applies not only to police officers but all government employees acting in their official capacity. If this commission made any

recommendations about changing qualified immunity, there is a strong possibility that those change would cause a number of unforeseen and unintended consequences that the members of this commission have not received testimony on. This topic would need to be more fully explored by all who would be impacted before any changes should be considered.

2. Recommend supporting the NH Attorney General's recommendation for the formation of a review board to address allegations of police misconduct and identification of EES officers, with the following considerations to be made part of the such efforts in the formation of the review board:

- a. The membership of the Board be weighted with members of law enforcement and retired judges to citizens, as is the case of the present Judicial Review Process for NH Lawyers.
- b. That the citizens appointed to the board be representative of the common citizenry of NH and not have any direct affiliation with law enforcement or of any organization such as the ACLU or other.
- c. That any case before the review board necessitate a finding of "clear and convincing evidence" and to insure due process with the right to be heard and the right of appeal be in place, as is the case of the present Judicial Review Process for NH Lawyers.
- d. That flexibility exist for those agencies that have a formal Internal Affairs Unit or who operate under a collective bargaining agreement or who choose to conduct their own primary investigation of the allegation with the results of such investigation being submit for review by the board.
- e. The board must work directly with NHPSTC so that if de-certification needs to be considered, NHPSTC can immediately begin to address the issue through our existing POL rules.
- f. That the formation of this review board will necessitate thoughtful and mindful consideration with all stakeholders at the table during its inception.

Respectfully,

John V. Scippa

Director, New Hampshire Police Standards and Training