

Mr. Kenneth Norton on behalf of NAMI NH

1. At least every three years, NH Police Standards and Training should conduct an audit of each Law Enforcement Agency/Police Department in NH to determine compliance with:
 - a. Hiring policies and background investigations
 - b. In-service training requirements
 - c. Annual Firearms and use of force training requirements
 - d. Reporting of Internal Affairs Investigations
 - e. Hours worked by Part Time Officers
 - f. All audit reports and any subsequent corrective action plans will be a matter of public record and within 30 days of issuance/receipt will be available to the public via the PSTC website. A listing of all audits conducted, and an aggregated summary of findings, should be included each year in the PSTC Annual Report.
2. Form “B” designating change in employment status as indicated in NH Pol 101.22 should be amended to include:
 - a. An oath above the signature that the information contained in the form is true
 - b. A checkbox indicating that the officer has not been the subject of an Internal Affairs (IA) investigation during the previous six months
 - c. Or if the officer was the subject of a recent IA the form should include:
 - i. A checkbox indicating the IA was fully investigated and concluded
 - ii. A brief summary regarding the nature of the IA
3. The terms of a judgment or settlement agreement from a civil lawsuit against any law enforcement agency or individual police officer in New Hampshire should be a matter of public record. Non disclosure agreements or any similar arrangement should be prohibited in these cases.
4. Any settlement agreement under NH Pol 205.05 regarding alleged misconduct should be a matter of public record.
5. A standardized complaint form for reporting complaints against a police officer or law enforcement agency should be created and approved jointly by the NH Department of Justice and Police Standards and Training Council by December 31, 2020.
6. By January 1, 2021, all law enforcement agencies should add a clearly marked tab/portal on the home page of their website which links to the standardized complaint form. Any complaint filed should automatically be directed to the local police agency employing the officer(s) involved and to NH Police Standards and Training or the NH Department of Justice or if and when established, an independent organization with the authority to investigate police misconduct.

7. The NH Police Standards and Training Council should amend the Police Code of Conduct rules to reflect that *failure to immediately report, in writing, police misconduct* as defined in HB 1647 section VII shall itself be considered misconduct. Instances where officers may have failed to make such reports should be investigated by NH PSTC, the NH Department of Justice or other entity established with the authority for investigating police misconduct. A finding of misconduct (failing to report) should result in a recommendation of disciplinary action up to and including decertification as a police officer.
8. Future efforts by the NH PSTC, Department of Justice, or NH Legislature to define police misconduct beyond those listed in HB 1647 section VII should consider:
 - a. Failure to report observed misconduct by another officer
 - b. Failure to intervene during misconduct by another officer
 - c. Deliberate indifference to serious medical needs or a substantial risk of harm to a person in custody
 - d. Obstruction of justice

Ms. Ronelle Tshiela on behalf of Black Lives Matter Manchester, NH

1. Create an independent oversight board to handle investigations of law enforcement misconduct.
2. Police records should be retained for 20 years.
3. Publicize the existing Exculpatory Evidence Schedule.
4. Failure to report misconduct should carry a consequence.

Judge Sawako Gardner

1. In consideration of state and local procedures related to the reporting and investigation of police misconduct, it is recommended that a uniform statewide system be developed for the reporting, investigation and punishment of criminal police misconduct. Currently, there is a system in place at the NHPSTC for the suspension and decertification of police officers, but a parallel system of accountability such as the framework suggested by the Attorney General's Office would provide consistency in how officers are investigated and held accountable.
2. The EES/Laurie list should not exist, and should be replaced with a system that provides fairness and due process for the officers, and public access of information regarding a sustained finding affecting the credibility or criminal behavior of any officer. The above referenced framework would eliminate the need for such a list. It is important that both the privacy interests of the officers be considered and weighed against the transparency owed to the public as analyzed by the NH Supreme Court in Gantert v. City of Rochester, Everitt v. General Electric Co., and Duchesne v. Hillsborough County Attorney. This commission is not the appropriate group to develop the details of this system, as it is limited in its charge, time and ability to research all of the important elements of such a system.
3. Many have testified that culture shapes any agency. Culture is fostered by the leadership within a police department. In order to promote a culture of transparency, accountability, and service, it is recommended that every newly hired/elected chief, sheriff or other head of a law enforcement/correctional agency be required to attend a leadership course that is approved by NHPSTC. Ongoing training regarding current issues that affect the community should be made available for chiefs/sheriffs, and a formal mentorship program be established. Since County Attorneys are the head law enforcement official for the county, it is equally important for the prosecutors and their staff to receive training as well. The implicit bias training recommended by the Attorney General is a good starting point.
4. Most chiefs of police are hired by local municipalities, and those hiring bodies may not have the guidance needed to recruit, interview, vet and hire the most qualified candidates. In order to help those municipalities, PSTC with assistance from local law enforcement and Attorney General's Office should put together a guide for the hiring of chiefs of police.

Chief Charlie Dennis on behalf of New Hampshire Association of Chiefs of Police

1. Thorough pre-employment background investigations to include polygraph and enhanced psychological examinations; successful New Hampshire Police Standards & Training (PST) Academy completion; participation in regular agency field-training programs; and well-established probationary periods following PST certification.
2. Establishment of statewide model policies, procedures, and standards of conduct, and a model disciplinary system to be utilized by all New Hampshire law enforcement agencies.
 - a. **Model Standards of Conduct:** Standards of Conduct policy that (1) embodies the necessary elements to effectively govern law enforcement behavior while including and embracing the sanctity of life for all; (2) includes the requirement to strictly adhere to all policies and procedures relative to ethics and integrity; and (3) contains a mandatory requirement to report integrity related misconduct (to include the unnecessary and/or excessive uses of force), and language that outlines a duty to intervene for the purposes of stopping excessive/unnecessary uses of force.
 - b. **Model Disciplinary System:** We recommend a model NH disciplinary system that ensures a progressive discipline approach for the purposes of assuring that compliance with standards of conduct are uniformly applied.
3. Creation of a statewide model policy regarding the investigation and reporting of misconduct.
 - a. **Model Guide for the Investigation and Reporting of Misconduct:** We recommend the development and dissemination of a NH model guide for the investigation and documentation of integrity related misconduct to assure the proper outcome in all integrity related investigations.
4. Development of a risk management system (Early Warning System) for the purposes of identifying employees who may be in need of additional performance assistance, guidance, supervision, and/or training.
5. PSTC should establish a 40-hour minimum course of instruction to certify detectives/officers how to do Internal Affairs investigations.
6. Establishment of clearly defined definitions of misconduct.
7. Sustained findings of police misconduct such as untruthfulness, criminal excessive

force, integrity related misconduct, and criminal charges should be made public.

8. If the recommendation of the Attorney General for Improving, Investigation and Punishment of Police Misconduct is accepted by the Commission, we recommend the following:
 - a. Majority of the Board should be LE professionals with the make-up of the other board members being attorneys, retired judges, and other community members.
 - b. Local agencies that can do their own internal investigations will continue to do them and send the ones related to "defined" misconduct to the Board for review and appropriate action.

Lt. Mark Morrison on behalf of New Hampshire Police Association

- #1 Recommend making available to the public, post-appeal **sustained** complaint conclusions (Officer Name, policy/performance in question, sustained finding) in the following categories: Excessive Use of Force, Untruthfulness (defined as a material intentional misrepresentation in an official investigation, hearing, or sworn statement), Corruption, or other criminal misconduct as defined by statute.
- #2 Recommend a yearly report be filed by the Chief Executive and the prosecuting entity for the agency indicating a review of all Internal Affairs Investigations (IA) that certifies there are no Exculpatory Evidence Schedule (EES) reportable investigations. This report to be sent to the County Attorney of record and/or the Attorney General's Office.
- #3 Current EES List Recommendations:
 - Provide immediate written notice to all living persons on the current list that they are on the list with the following notifications:
 - Give anyone on the list one (1) year from date of notification to request a hearing in Superior Court to have their name removed.
 - After one year, the remaining names on the list with a sustained finding, shall be made public.
 - Form a confidential temporary section of the EES list reserved for anyone who is currently appealing a finding or decision.
- #4 Recommend that all Internal Affairs (IA) investigative reports be kept confidential, and continue with the current law, which demands **In Camera review** in accordance with RSA 105:13-b for exculpatory information on any sustained complaint prior to a trial, as requested by a prosecutor or defense counsel.
- #5 Recommend any employee who is responsible for conducting Internal Affairs (IA) investigations attend training on IA investigations to acquire the skills to conduct an investigation according to nationally accepted best practices.
- #6 Recommend all law enforcement agencies develop and implement an early warning system to identify training needs and emotional support for employees.
- #7 Recommend all agencies to provide access to a confidential peer to peer support network to assist in officer mental health.
- #8 Recommend PSTC make available a digital library of sample policies that meet nationally accepted best practices.
- #9 Recommend supporting Qualified Immunity and Official Immunity as they currently exist to include supporting legislation that would solidify Official Immunity for all municipal employees.

Director John Scippa

1. **Recommend that this Commission support the doctrine of qualified immunity and not speak to any consideration to allow for State Action exceptions.**
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.

Mr. James McKim

1. Address the lack of a statewide information management system that captures data from all law enforcement agencies for Reporting, Investigating, and Adjudicating Police Officer Misconduct
 - a. Ensure tracking of complaints, internal investigations, discipline, and resolutions
Determine a way to prioritize funding for such a system.
 - b. Make sure those who analyze that data to generate reports are trained on data analytics with respect to people of color.
2. Establish an independent community conduct review board similar to what the Attorney General's office recommends to address misconduct.
3. Involve the Public Employee Labor Relations Board in discussions around how to handle misconduct issues.
4. Fix the system for maintaining and disclosing officer misconduct.
 - a. Make all law enforcement employee records public, and retain those records for 20 years.
 - b. Making police disciplinary files categorically public under the Right-to-Know Law.
 - c. Ensure that any entry in the current Exculpatory Evidence List (EEL) (aka "Lauries List") is included in officer's official personnel file
 - d. Do away with the EEL
 - e. The NH Attorney General shall issue a directive to all of the NH Police Chiefs and the NH Police Standards and Training Council (NH PSTC) that personnel records, witnesses and all other resources shall be made available to the County Attorney and their investigators, specific to the EES officer investigations.
 - f. The NH Attorney General shall create a policy making it clear that the County Attorney shall determine whether the officer's conduct rises to the level that they are no longer credible. If the County Attorney determines that further investigation is required, it shall be conducted by the County Attorney's investigator or an investigator from the NH Attorney General's Office and not the law enforcement agency of the officer in question.
5. Endorse the findings and recommendations of the PSTC February 2019 Audit
6. Ensure prosecutors have the knowledge and tools to check officer misconduct.
 - a. Every prosecutor in the NH should receive annual implicit bias training.
 - b. Every prosecutor in the state should receive annual training on what constitutes racial profiling and the importance of identifying, acknowledging and accounting

for it in their decisions. This training should be done in collaboration with trainers from outside the prosecutors' offices, be it at the municipal, county, or state level.

- c. Require prosecutors to report police misconduct to the department chief and police standards and training by adding them to the recently passed legislation requiring police to report certain misconduct by a fellow officer.
 - d. Recommend to the Supreme Court that they pass a Rule of Professional Conduct that requires a prosecutor to report police misconduct to the appropriate authorities.
 - e. The NH Attorney General's office shall develop a policy and procedure for reporting misconduct.
 - f. Prosecutors' offices must develop specific plans for increasing the diversity amongst the prosecutors in their office.
 - g. Comprehensive data collection and release of race/ethnicity data by prosecutors' offices concerning charges; indictments; dismissals and decisions not to charge or indict.
7. Develop a system to gather data on race, ethnicity, and gender for the Attorney Disciplinary Board.
 8. Develop a mechanism to discipline attorneys who behave unethically.
 9. Analyze and modify the rules on Pre-textual Stops so they are not discriminatory.
 10. Require that Sheriffs be "certified" police officers.
 11. Provide training and/or a guide for County Attorneys on the "strategy" and best practices for running the County Attorney's office.
 12. A uniform statewide system for the reporting, investigation, and punishment of "police misconduct" include any third-party or organization under contract or agreement with a law enforcement agency to assist with law enforcement responsibilities.
 13. Recommend a state court action against "official immunity"
 14. PSTC should create guidelines for hiring chiefs who understand and embrace the notion that reputation of law enforcement officers are important but should not be second to the reputation of a citizen.
 15. Enforce that the Country Attorney, not Law Enforcement, has the final say in how a case is tried so that misconduct in an investigation is not minimized.
 16. Encourage creation of metrics and rewards for de-escalation of situations.

17. The Attorney General's office (or some entity) shall establish regular meetings/gatherings of County Attorney's and Police Chiefs.
18. Fully fund the Public Defender's offices.
19. Establish policy that prosecutors not be part of a police department.
20. Establish accountability mechanisms for upper admin/Chiefs/higher ranking officers.
21. Require that prior to any promotion; candidates must demonstrate not only their understanding of but also their ability to follow fair and impartial policing practices as well as de-escalation and procedural justice.

Director Ahni Malachi

1. I support by recommendation all the submitted written and verbal testimony presented by Deputy Attorney General Jane Young of the NH DOJ relative to Law Enforcement transparency and accountability.
2. Although Attorney Gregory Sullivan (Malloy & Sullivan), Attorney Charles Douglas (Douglas, Leonard & Garvey, P.C.), and Attorney Gilles Bissonnette (ACLU NH) all representing the plaintiff – Union Leader Corporation, in Union Leader v. Town of Salem (2020), have argued for the publication of the “EES or Laurie List” to be made public I recommend that the list not be made public. However, the names currently on the list must be appropriately processed with actionable outcomes. Once those on the list are processed, the list itself is dissolved with any future accusations being handled properly through local measures, Police Standards and Training Council (PSTC), and the Public Integrity Unit of the DOJ to provide needed oversight, transparency, and accountability.

Mr. Rogers Johnson

1. In the case of the removal of absolute immunity from law enforcement officials, this removal will suspend and revert back to the status quo ante if the result of this removal results in the large scale (20% or more) retirement or resignation of police officers statewide, or an exponential increase in litigation against law enforcement officials and/or municipalities, or both, within two years of enactment. Furthermore, if it is determined that such litigation has occurred against law enforcement officials and/or municipalities, which would not have occurred otherwise without this change, the Trial Lawyers Association along with the Public Defenders Office will provide restitution to any police officer, municipality or any other entity which may have suffered a financial loss/penalty as a result of such action.
2. In the case of the establishment of a statewide Civilian Review Board, the Board will have responsibility to oversee bias training for all government attorney's regardless of where they are assigned. Furthermore, the Board will ensure all defense attorney's and Public Defender's are included in such training. No attorney will be allowed to appear in court until they have successfully completed this training.

Chief Eddie Edwards

1. Law Enforcement investigation/disciplinary structure consistent with New Hampshire Supreme Court Attorney Discipline System.
2. Law enforcement officers on the Laurie List should be officially notified.
3. Extension of the Commission on Law Enforcement Accountability, Community and Transparency to oversee the development of a law enforcement disciplinary system.

Mr. Joseph Lasczae on behalf of ACLU NH

1. Create an independent agency to investigate reports of misconduct by law enforcement and to manage public database regarding misconduct. Per the recommendation of the Attorney General, there should be an independent agency created through legislation to manage police misconduct. The makeup of this agency should include law enforcement, attorneys with experience in the criminal legal system, and members of the public. The agency's protocols would provide due process for officers. This agency would be charged with maintaining a public database that lists sustained findings of police misconduct. Once implemented, this agency and its public database could remove the need for the exculpatory evidence list. The framework and procedures for this agency should be set out in legislation.
2. Create Mandatory Obligation to Intervene. The mandatory obligation of law enforcement to report misconduct should be strengthened to include a similar obligation to intervene to stop misconduct, and there should be a consequence for knowingly failing to intervene or report misconduct.
3. Create a State Cause of Action for Constitutional Violations by law enforcement. There should be a state-cause of action created for violations of NH constitutional rights by law enforcement, for which official and/or qualified immunity is not a defense. This would provide victims of police misconduct an avenue to pursue redress. Plaintiff would have to prove that their constitutional rights were violated by the officer and that they suffered damage.
4. Ban Pre-textual Stops. The use of motor vehicle stops to investigate non motor vehicle related suspicions should be prohibited. These pre-textual stops are vulnerable to explicit or implicit bias, including disproportionate stops of people of color.
5. Make Public the Laurie List: The existing exculpatory evidence list, also known as the "Laurie List," should be publicly released. So long as the EES list exists, the public list should be continuously updated with the names of officers added to it.
6. Retain Police Personnel Files for 20 years: Police personnel files should be retained for 20 years, in line with other municipal public employee personnel files.
7. Involve Civilians in the DOJ's officer-involved shooting investigations: The Department of Justice should develop procedures to include members of the public in officer-involved shooting investigations. This would provide a degree of civilian oversight and help promote transparency and public trust.

8. Make police disciplinary and misconduct files categorically public under Chapter 91-A with respect to official police behavior.
9. Use of body cams and dash cams. All law enforcement agencies should be strongly encouraged to use body cams and dash cams.

Commissioner Robert Quinn

1. Support of the NH Attorney General's recommendation to create a single, statewide body to receive complaints, provide fairness, and institute due process when misconduct regarding sworn and elected law enforcement officers is alleged.
2. Standardization of "Fairness in Policing" policies should be implemented within law enforcement agencies throughout the State of New Hampshire, to ensure that citizens and visitors receive the same level of service in all communities throughout the state.
3. The creation and standardization of policies governing the intake, investigation, and appropriate reporting of citizen complaints should occur within law enforcement agencies statewide. Additionally, law enforcement officers tasked with completing internal affairs investigations should receive standardized internal affairs investigative training and should have adequate resources to document and track misconduct.

Office of the Attorney General

1. Single, statewide body to receive complaints alleging misconduct regarding all sworn and elected law enforcement officers:
 - a. Staffed by full-time attorneys, paralegals, legal assistants and investigators
 - b. 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)
 - c. Statewide, universal definition regarding what constitutes misconduct; finalized through rulemaking
 - d. Notice of complaint to the officer and an opportunity to be heard
 - e. Initial screening of all complaints received by the body
 - f. Investigation following consistent and defined standards
 - g. Statewide, universal standards to apply with respect to determination of whether misconduct occurred; finding becomes available to the public
 - h. Right of appeal to New Hampshire Supreme Court
2. Establish by statute a dedicated Public Integrity Unit within the Attorney General's Office with permanent and sustainable resources including fulltime 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.