

**New Hampshire Commission on Law Enforcement
Accountability, Community, and Transparency**



Report and Recommendations

Submitted August 31, 2020

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I. Introduction

On June 16, 2020 Governor Christopher T. Sununu created the Commission on Law Enforcement Accountability, Community and Transparency (LEACT) by Executive Orders 2020-11 and 2020-13. Copies of these Orders appear at Appendix A. The LEACT Commission was specifically charged with examining training curriculum, procedures and policies throughout the State; procedures related to the reporting and investigation of police misconduct; the current state of relationships between law enforcement and the communities they serve; and any other subject matter the Commission deemed relevant. Through the course of its work, the Commission deemed the following subject matters relevant to the overall mission of enhancing transparency, accountability, and community relations in law enforcement: mental health and well-being and the results of the February 2019 Office of Legislative Budget Assistant New Hampshire Police Standards and Training Council Performance Audit.

Over the course of 10 weeks, the Commission met 26 times and heard testimony from 24 subject matter experts, including Commission members, and 25 members of the public. Many individuals who testified before the Commission also submitted written testimony. Additionally, the Commission received more than 50 written submissions from a variety of individuals who did not testify. Oral and written testimony is part of the public record and is accessible at www.governor.nh.gov/accountability. Commission members considered all written submissions and asked probative questions of witnesses in order to make the following comprehensive recommendations.

II. Training Curriculum, Procedures and Policies

Executive Order 2020-11 directs that the Commission shall examine: “[t]raining curriculum, procedures and policies developed by State Police, local police departments and the Police Standards and Training Council, and potential options for improving the same to better address certain areas which may include, but are not limited to, (i) de-escalation, (ii) use of deadly and non-deadly force, and (iii) diversity training.” Executive Order 2020-11, at ¶ 3 (a).

This section of the report describes the current state of training, curriculum and policies with respect to the **New Hampshire** Police Standards and Training Council (**NH PSTC**), the New Hampshire State Police and local police departments; summarizes public testimony and recommendations on these subjects; discusses recent relevant legislative changes; and sets forth the Commission’s recommendations with respect to training curriculum, procedures and policies.

a. Current State of Training, Curriculum and Policies

i. Police Standards and Training Council

The legislature has assigned the responsibility for the education and training of all law enforcement officers, state corrections officers and state probation-parole officers to **NH PSTC**.



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RSA 106-L:1 & 6. By law, no person may serve as a law enforcement officer in New Hampshire “unless such person has satisfactorily completed a preparatory program of police, corrections, or probation-parole training appropriate to such person’s position at a school approved by the council.” RSA 106-L:6, I. **NH PSTC** oversees such a school, known informally as the police academy.¹

NH PSTC is an executive branch agency, RSA 106-L:4, and it is comprised of fourteen members, RSA 106-L:3. Four Council members (the chancellor of the community college system, the director of the division of state police, the attorney general and the commissioner of the department of corrections) serve *ex officio*; the governor appoints the other members to two-year terms. RSA 106-L:3, I & II. **NH PSTC** has extensive enumerated powers including with respect to rulemaking, standard setting and the conduct of administrative hearings. RSA 106-L:5. **NH PSTC** is 100 percent funded by the General Fund. Its total budget for the State Fiscal Year 2021 is \$3,472,749.

NH PSTC also has authority to nominate and appoint a director of police standards and training. RSA 106-L:5, XVIII. On March 16, 2020, **NH PSTC** appointed John Scippa as the director. Director Scippa serves as a member of this Commission.

The Police Academy is located at 17 Institute Drive, Concord. It is formally known as the Arthur D. Kehas Law Enforcement Training Facility and Campus. It contains lecture halls, classrooms, and a tactical training center. There is adjacent dormitory space.

NH PSTC provides three academies: a full-time officer academy, a part-time officer academy and a corrections academy. It also provides in-service training. At present, the full-time academy lasts sixteen weeks. There are three full-time officer academies per year.

Students, known as recruits, are hired and screened by their employing agency. Criteria to qualify for employment as a law enforcement or corrections officer are set forth in the **NH PSTC**’s administrative rules. See N.H. Admin. R. Pol 300. Those criteria include: a high school diploma or equivalent, fingerprints and a criminal record check, proof of United States citizenship, a physical examination, a background investigation, drug testing and psychological screening. See *id.* Employing agencies may have additional criteria.

The academy is paramilitary in nature and the recruits live on-site, Monday through Friday, for the duration of the sixteen-week academy. The current curriculum consists of 684 hours of instruction on various topics. A copy of the current curriculum **topics** and hours appears at Appendix B. There are both classroom and hands-on components to the curriculum. Class exams are conducted during the course of an academy.

¹ The legislature has also assigned to the Police Standards and Training Council the responsibility for the suspension or revocation of law enforcement officer certification “in the case of egregious misconduct or failure to comply with council standards.” RSA 106-L:5, V. This responsibility is discussed in detail in § III a, *infra*.



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Director Scippa testified before the Commission and provided written materials that are part of the record. His testimony focused on academy training with respect to three specific areas: diversity, de-escalation and use of force. The current block of instruction regarding diversity lasts two hours. It is classroom based and focuses on recognizing differences among cultures. It advocates a “Stop, Look and Listen” approach to dealing with individuals from different cultures. Very little time is devoted to defining and recognizing bias, including implicit bias, or overcoming and controlling the bias.

Recruits attend a six-hour block of instruction entitled “Communication Techniques” which deals generally with strategies relating to communication and de-escalation. However, Director Scippa testified that communication and de-escalation are themes throughout the academy, including during use-of-force scenarios. Recruits also receive sixteen hours of instruction on “Mental Illness Dynamics,” which consists of both lecture and practical exercises.

Use-of-force instruction includes classroom lectures and practical applications in the use of firearms, physical force, defensive tactics, oleoresin capsicum spray (otherwise known as “pepper spray”), and use of a baton. The classroom lectures include discussion of the mechanics of each area as well as the law governing use of deadly and non-deadly force.² Practical and physical skills comprise 93.25 hours. Most recruits do not have experience in the use-of-force and repetitious practice is required to ensure competent and accurate use-of-force under stressful circumstances. Toward the end of the academy, recruits participate in scenario-based training designed to replicate stressful and realistic situations recruits will likely face on the job. The academy uses a VirTra use-of-force simulator. The simulator can replicate up to 125 different scenarios which can be created by academy staff. After a review, the simulated scenarios incorporate a fair cross-section of participants from various communities.

A chokehold is not a technique that is taught at the academy, however, there is no training that expressly prohibits it.³ There is no training on the duty to intervene when another officer engages in the use of inappropriate force or other misconduct.

The part-time officer academy is 200 hours. All law enforcement officers are required to complete eight hours of in-service or refresher training annually. N.H. Admin. R. Pol 403.01. That is exclusive of firearms training, which requires a separate annual certification. N.H. Admin. R. 404.04.

ii. New Hampshire State Police

The legislature established the New Hampshire State Police in 1937. It is a division within the Department of Safety. RSA 106-B:2. It is comprised of approximately 350 sworn officers and is the largest law enforcement agency in New Hampshire. In addition to field

² RSA 627:5, captioned “Physical Force in Law Enforcement” sets forth the legal standards for the use of both non-deadly force, RSA 627:5, I, and deadly force, RSA 627:5, II, by law enforcement officers.

³ The use of chokeholds by law enforcement officers is now prohibited by New Hampshire law. See § II.a.iv., *infra*.



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operations spread across seven troops, the State Police also engages in numerous highly specialized functions, such as the Major Crime Unit and the state's only Forensic Science Laboratory. The director of the division of state police holds the rank of colonel. RSA 106-B:4. Colonel Nathan Noyes was sworn into office on April 8, 2020. Colonel Noyes testified before the Commission and provided written materials that are part of the record.

The legislature has assigned to the colonel, with the approval of the commissioner of safety, responsibility for the training of division members. RSA 106-B:6. The colonel is also ultimately responsible for policies and written directives governing the division's work. *See id.*

New Hampshire State Troopers attend the police academy. State Police receive in-service training that exceeds the eight-hour annual requirement. Colonel Noyes testified that, in recent years, State Police training has focused on issues including unconscious bias, fair and impartial policing and mental and physical wellness and resilience. Four times per year, troopers attend use-of-force training which encompasses review of relevant statutes, case law, recent events, internal policies as well as scenario-based training. Other trainings include an emergency vehicle operators' course, search and seizure training, response to active shooters, as well as policy review for the division's Fair and Impartial Policing, discussed below. In addition, when a new trooper is hired, he or she is required to spend at least one day at the New Hampshire Hospital, an experience intended to educate new troopers about appropriate responses with individuals in a mental health crisis.

Chokeholds are not an approved technique and are not taught by State Police in its use-of-force instructions.⁴

With respect to policies and procedures relating to race and bias, in February 2019, State Police issued General Order 100.04, captioned "Fair and Impartial Policing." A copy of the policy appears at Appendix C. Its purpose is to: "prevent and prohibit the practice of biased policing and other discriminatory practices in any law-enforcement related activity involving a member of the Division." The policy states that: "[i]n the absence of any specific report or suspicious circumstances, the actual or perceived race, ethnic background, color, age, gender, sexual orientation, religion, economic status, cultural group or any other identifiable group of any person will not be the basis for the detention, interdiction or other disparate treatment of any individual by any member of the Division of State Police." This policy was developed with the input of community leaders and the ACLU-NH and has become a standard for other New Hampshire law enforcement agencies.

iii. Local Police Departments

There are approximately 210 municipal law enforcement agencies in New Hampshire. They range in size from one law enforcement officer to over two hundred. The chief of police

⁴ The use of chokeholds by law enforcement officers is now prohibited by New Hampshire law. *See* § II.a.iv., *infra*.



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generally has control and direction of police within a jurisdiction. *See* RSA 48:10 (cities) and RSA 105:2-a (towns). Chiefs are generally appointed by municipalities' executive (e.g., selectmen, RSA 105:1, mayor or city manager).⁵ Charlie Dennis is the Chief of Police in Hanover and currently serves as the President of the New Hampshire Association of Chiefs of Police. He is a member of the Commission. Chief Dennis testified before the Commission and provided written materials that are part of the record.

Each police department is responsible for writing, maintaining and enforcing its own policies and procedures, including with respect to training. There are no model statewide policies or standards. The Police Standards and Training Council has no role in developing or approving local policies and procedures. There is no statute or rule that governs local policies or procedures.

Because of the enormous variation in department sizes and resources, there is variation in policies, procedures and training. For example, the Manchester Police Department – the largest municipal law enforcement agency in New Hampshire – requires newly hired officers to undergo eight weeks of training, both before and after the academy.

The Commission on Accreditation for Law Enforcement Agencies (CALEA) was founded in 1979 as a joint effort of the International Association of Chiefs of Police, the National Organization of Black Law Enforcement Executives, the National Sheriffs Association and Police Executive Research Forum. Its purpose was to create policies and procedures for law enforcement based on best practices.

CALEA is expressly committed to procedural justice, ethical policing, community trust and engagement, transparency and service delivery, appropriate organizational culture, fairness in systems and processes, and consistency in what the public should expect from a law enforcement agency. Basic accreditation requires compliance with 181 standards. There are substantial costs to becoming accredited and to maintaining CALEA accreditation. At present, there are fifteen law enforcement agencies in New Hampshire which have CALEA accreditation.⁶

⁵ Police commissions exist in at least the following cities: Manchester, Nashua, Portsmouth, Laconia and Berlin. The commissions are authorized by statute, *see* N.H. Laws of 1913, ch. 148, and city charters. They are comprised of three to five citizens. The roles and responsibilities vary among police commissions but, generally, they can be an important source of community input for the police department's leadership.

⁶ The CALEA accredited agencies are: Claremont Police Department, Dover Police Department, Durham Police Department, Goffstown Police Department, Hollis Police Department, Hudson Police Department, Keene Police Department, Laconia Police Department, Manchester Police Department, Nashua Police Department, Pelham Police Department and Portsmouth Police Department. In addition, the Strafford County Sheriff's Office and the University of New Hampshire Police Department are CALEA accredited. Four other local law enforcement agencies are currently pursuing CALEA accreditation.



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iv. Recent Legislative Changes

Since the creation of the Commission on June 16, 2020, the legislature has passed and the governor has approved statutory changes that implicate matters within the Commission’s charge. On July 16, 2020, Governor Sununu signed HB 1645 into law. Section 25 of that bill amends RSA 627:5 (addressing the use of physical force in law enforcement) by adding a new section to prohibit the use of chokeholds by any law enforcement officer. This provision, which took effect on July 16, 2020, defines “chokehold” as “the application of any pressure to the throat, windpipe, or neck, which prevents or reduces intake of air, or oxygen to the brain.”

Another section of HB 1645 requires that it “shall be the duty of any law enforcement officer who observes misconduct by another law enforcement officer to notify the chief law enforcement officer in his or her department in writing immediately or as soon as practicable after observing such misconduct.” Within seven days of such a notification, the chief must report the misconduct to the Police Standards and Training Council. The new statute defines misconduct as: “assault, sexual assault, bribery, theft, tampering with evidence, tampering with a witness, use of a chokehold, or excessive and illegal use of force as defined by the New Hampshire criminal code.”

b. Summary of Public Testimony Received by the Commission

In addition to the witnesses discussed above, the Commission heard testimony from 18 members of the public on July 9 & 14, 2020. Other individuals submitted written testimony. Several themes repeated throughout the discussion of training curriculum procedures and policies. These included the need for training in the areas of de-escalation, implicit and unconscious bias, ethics, and increase in the number of hours required for yearly in-service training required for a law enforcement officer to maintain certification.

Recordings of all of the Commission’s hearings are available on its website: www.governor.nh.gov/accountability. In addition, members of the public submitted extensive written materials. Those are also available on the Commission’s website.

i. Specific Recommendations Submitted by the Public

Members of the public made the following specific recommendations for improvements and reforms with respect to training curriculum, procedures and policies:

1. Extend the length of the police academy beyond its current 16 weeks.
2. Improve and augment police academy training on diversity.
3. Expand in-service training requirements, standardize subject matter and mandate topics such as implicit and unconscious bias.



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4. Expand police academy training to include history of police relations with minorities, prejudice and misconduct toward persons of color.
5. Improve and augment police academy training on communicating with hearing-impaired individuals.
6. Expand police academy training to include the consideration of race by law enforcement officers when deciding whether there is reasonable cause to detain someone or whether they consent to a search.
7. Improve and augment police academy training on de-escalation techniques.
8. Improve and augment police academy training on mental health/overall wellness of law enforcement officers (including ongoing psychological screenings).
9. Improve and augment police academy training on mental health and substance abuse issues.
10. Improve and augment police academy training on police ethics, including the duty to intervene.
11. Abolish the part-time police academy.
12. Improve and augment police academy training for School Resource Officers.
13. Improve and augment police academy training for child abuse and sex crimes investigations.
14. Implement statewide mobile-crisis response teams to decrease police response to mental health crisis.
15. Improve and augment police academy training for crisis intervention training.
16. Increasing diversity of police academy teaching staff.
17. Implement statewide accreditation requirements for all police departments.
18. Mandate collection and publication of demographic data pertaining to all police contacts with members of the public.
19. Mandate implicit bias screening of new officers.
20. Improve efforts to recruit diverse candidates for law enforcement.



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21. Require prosecutors to inform agencies when evidence is suppressed or a case is dismissed/abandoned in court.

c. Commission Recommendations

The Commission makes the following recommendations for reforms and improvements with respect to training curriculum, procedures and policies:

I. Required Training to Maintain Law Enforcement Officer Certification

1. As soon as practicable, NH PSTC, with input from all relevant law enforcement agencies, should pursue all actions necessary, including emergency rulemaking pursuant to RSA 541-A, to amend existing administrative rules to provide as follows:
 - a. Increase the mandatory number of hours of annual in-service training for law enforcement officers in NH, on an incremental basis over the next three years. By January 1, 2024, the total mandatory hours of annual in-service training should be a minimum of twenty-four (24) hours.
 - b. Mandate that annual in-service training as approved by NH PSTC include, at a minimum, two (2) hours on each of the following topics:
 - i. Implicit bias and cultural responsiveness;
 - ii. Ethics; and
 - iii. De-escalation.
2. Beginning January 1, 2021, strongly encourage all law enforcement agencies to require their officers to participate and receive, at a minimum two (2) hours annually, of training in the following areas:
 - a. Implicit bias and cultural responsiveness;
 - b. Ethics; and
 - c. De-escalation.

II. NH Police Standards and Training Council General Recommendations

3. NH PSTC should conduct a Job Task Analysis (JTA) for entry-level law enforcement officers and entry level corrections officers and based on those findings, conduct an overall review of the present academy curriculums. Based on curriculum changes founded in the JTA, an extension of the length of the police academy beyond its current 16 weeks may be warranted.
4. NH PSTC needs to leverage technology and be allowed to purchase and deploy a robust database management system and on-line learning platform for the twofold



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purpose of: 1) maintaining a full record over the course of an officer's career of his/her training completion, any incidents of sustained misconduct, movement from one agency to another and/or decertification, and 2) to develop and deliver standardized on-line training to all NH law enforcement **officers** in an efficient and economical way.

5. NH PSTC, in collaboration with other law enforcement agencies, using nationally vetted best practices as set forth by International Association of Chiefs of Police (IACP), Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA), Police Executive Research Forum (PERF), and National Organization of Black Law Enforcement (NOBLE), shall create policy guidelines on the following topics that serve as a minimum standard with which all law enforcement agencies must comply:
 - Use of Force
 - Duty to Intervene
 - Code of Conduct
 - Duty to Report Misconduct
 - Prohibition of Chokeholds
 - Procedures to Guard Against Positional Asphyxia
6. NH PSTC should increase the number of hours of scenario-based training in both academy and in-service settings.
7. NH PSTC should improve and augment police academy training on diversity by conducting a review of the present lesson plan on cultural dynamics and amend it to properly address the topic. Training on the topic of implicit bias and diversity to be developed with one or more community partner(s).
8. NH PSTC should improve and augment police academy and in-service training on implicit bias and procedural justice by adopting the International Association of Chiefs of Police, (IACP) recognized Fair and Impartial Policing training or similar type training.
9. NH PSTC should improve and augment police academy and in-service training on de-escalation techniques by adopting the Police Executive Research Forum's Integrated Communication and Tactics training (ICAT) or similar training.
10. NH PSTC should improve and augment police academy training on police ethics by re-instituting the Ethics block of instruction.
11. NH PSTC should improve and augment police academy and in-service training on the duty to intervene by adopting Georgetown University's Active Bystandership



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Law Enforcement (ABLE) training, (formally known as EPIC training) or similar training.

12. NH PSTC should include **in its instruction** *NH v Ernest Jones* and any other State court decisions where race or protected class was a matter the court considered while reaching its decision. These cases should be part of the lesson plan in those relevant topic areas that are already delivered. An attorney from the Attorney General's Office will be dedicated to teach at NHPSTC and regularly update materials.
13. Recognizing that certain NH police agencies need to rely on part time law enforcement officers, NH PSTC should re-evaluate the Part Time Police Officer certification process upon receipt of the **Job Task Analysis JTA** and consider extending the length of such training and give certain consideration to what law enforcement functions part time officers be allowed to perform.
14. NH PSTC should amend administrative rule POL 301.05 Background Investigations to mandate that background investigations specifically vet police recruit candidates in the area of having demonstrated outward bias toward a protected group by way of past history, behavior, affiliation with a subversive group, social media posts and other objective sources to help determine the overall fitness for duty the candidate possesses and to consider those findings in the overall decision to hire the candidate.

III. Other Recommendation

15. All NH law enforcement agencies should be encouraged to pursue CALEA accreditation. In the absence of CALEA accreditation, agencies should continually review and maintain policies consistent with nationally accepted best practices.

III. Reporting and Investigation of Police Misconduct

Executive Order 2020-11 directs that the Commission shall examine: "State and local procedures related to the reporting and investigation of police misconduct, and potential reforms which may include, but are not limited to, development of a uniform statewide system for the reporting, investigation, and punishment of police misconduct." Executive Order 2020-11, at ¶ 3 (b).

This section of the report describes the current state of procedures related to the reporting and investigation of police misconduct, at both the state and local level; summarizes public testimony and recommendations on these subjects; and sets forth the Commission's



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recommendations with respect to state and local procedures related to the reporting and investigation of police misconduct.

a. **Current State of Laws, Policies and Procedures Governing Reporting and Investigation of Police Misconduct**

Police Misconduct

There is no universal definition of police misconduct subject to reporting, investigation, and discipline. While on July 16, 2020, Governor Sununu signed HB 1645 into law, which defines “misconduct” in the context of law enforcement as: “assault, sexual assault, bribery, theft, tampering with evidence, tampering with a witness, use of a chokehold, or excessive and illegal use of force as defined by the New Hampshire criminal code,” this definition does not encompass all misconduct which could lead to criminal charges or departmental discipline.⁷ The “misconduct” definition in HB 1645 becomes effective January 1, 2021.

New Hampshire Police Standards and Training Council (NH PSTC) has extensive enumerated powers as discussed above.⁸ Among those powers is the authority to revoke or suspend a law enforcement officer’s certification. RSA 106-L:5; Pol 402.02. All law enforcement officers, except elected county sheriffs, must be certified by NH PSTC. RSA 106-L:2 (I). Reasons for revocation or suspension of a certification include conviction of a felony level offense; conviction of a misdemeanor level offense with a sentence of incarceration; and conviction of a crime of “moral turpitude or of a crime which tends to bring discredit on the police or corrections service.” Pol 402.02. The rule includes a non-exhaustive list of qualifying offenses, only some of which are also included in the “misconduct” definition above. Pol 402.02 (a)(4).

In determining whether to decertify an officer, NH PSTC must hold a hearing to determine if there has been a violation of NH PSTC rules. NH PSTC usually becomes aware of a rule violation in one of three ways: 1) notification that officer has allegedly engaged in criminal conduct; 2) notification of an officer’s change of status (e.g. demotion, suspension, termination); or 3) receipt of a complaint against an officer from the general public. When determining whether to suspend or revoke a certification, NH PSTC must “apply a balancing test to determine whether factors constituting just cause [not to suspend or revoke a certification] outweigh the public interest in protecting the safety of the public or confidence in the criminal justice system.” Pol 402.02 (e). The officer facing suspension or revocation of certification has the burden to show just cause why his/her certification should not be suspended or revoked. *Id.* Examples of just cause may include “[s]uspension or revocation would not have a rehabilitative value and

⁷ Discussed above at ¶ II, a, iv.

⁸ See ¶ II, a, i.



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[t]he officer's health or service status makes suspension or revocation a needless gesture." Pol 402.02 (f).

Currently, there is no statewide database to track reports or investigations of police misconduct. NH PSTC tracks revocations and suspensions of certifications in an antiquated and not easily searched system often consisting of paper files or ad-hoc entries in an excel spreadsheet. Data maintained by NH PSTC is under-inclusive for purposes of tracking police misconduct throughout New Hampshire. Not every report or complaint of misconduct is made to NH PSTC in the first instance or reported by the law enforcement agency that received and/or investigated a complaint.

Similarly, there is no standardized process for how such complaints should be investigated or by whom. Investigations into police misconduct are generally not available to the public as the contents of law enforcement personnel files are confidential by statute. RSA 105:13-b (III). An exception to this rule is made for the disclosure of "exculpatory evidence in a police personnel file of a police officer who is serving as a witness in any criminal case." RSA 105:13-b (I). "The duty to disclose exculpatory evidence that should have been disclosed prior to trial under this paragraph is an ongoing duty that extends beyond a finding of guilt." *Id.* Likewise, there is no standard period of time for how long a law enforcement personnel file must be retained, rather the time period is typically controlled by various collective bargaining agreements negotiated by the police unions in the State.

Individual law enforcement agencies routinely conduct internal affairs investigations of the officers in their agencies. As stated above, such investigations are not regulated by a uniform policy or procedure. A complaint made directly to NH PSTC is often referred back to the law enforcement agency that is the subject of the complaint, or, if the conduct is alleged to be criminal, to the Office of the Attorney General or the County Attorney's Office with jurisdiction over that agency. NH PSTC has the authority to audit law enforcement agencies' compliance with Council rules, however this authority does not allow for the examination of police personnel files.

Deputy Attorney General Jane E. Young, the Chair of the Commission, testified before the omission and provided written materials that are part of the record. She testified that currently, the Public Integrity Unit of the Office of the Attorney General investigates and prosecutes allegations of criminal misconduct by state officials including state law enforcement officers. The criminal misconduct must typically bear a connection to the officer's performance of his or her official responsibilities. The Public Integrity Unit is not currently legislatively mandated. Allegations of criminal misconduct by county or municipal law enforcement officers are usually most appropriately reviewed and investigated by county and municipal authorities. However, how such matters are investigated and prosecuted vary amongst the ten county attorney offices. A copy of the Law Enforcement Memo regarding Public Integrity Investigations Policies and Procedures issued by Attorney General Gordon J. MacDonald appears at Appendix D.



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Police Commissions

Individual law enforcement agencies are accountable to their municipalities via a town manager, board of selectmen or aldermen, an elected or appointed police commission, or a combination thereof. There are at least two types of police commissions in New Hampshire. Those authorized by RSA 105-C and those that are otherwise authorized by a city or town charter. The adoption of a traditional three-person police commission and its method of selection is decided by the voters of a municipality. RSA 105-C:2 & 3. The police commissioners' duties and powers include the appointment, promotion and removal of police personnel, and creation and enforcement of rules "necessary for the operation of the police force in the manner most beneficial to the public interest." RSA 105-C:4. A police commission otherwise created by a city or town charter does not have the same powers.

Prosecutors' Obligations

Deputy Attorney General Young also testified that prosecutors in criminal cases have constitutional obligations to disclose potentially exculpatory evidence and information that could be used to impeach the testimony of a prosecution witness. *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."); *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.); *State v. Laurie*, 139 N.H. 325 (1995) (State is required to provide all evidence of favorable proofs). The Exculpatory Evidence Schedule (EES) (formerly known as the *Laurie* List) is a device originally intended for prosecutors to reconcile their obligation to disclose exculpatory evidence with the legislatively mandated confidentiality of police files. The EES contains the names of officers that have been deemed by the head of his/her law enforcement agency as having potentially exculpatory information in his/her personnel file. Based on current law, the EES is not publicly available. Public access to the EES is currently being litigated at the New Hampshire Supreme Court.

Immunity

Senior Assistant Attorney General Matthew Broadhead testified before the Commission. Senior Assistant Attorney General Broadhead testified that law enforcement agencies and officers are subject to civil lawsuits for federal and state causes of action alleging violations of constitutional rights or intentional torts. When facing a federal suit, an officer may assert the judicial doctrine of qualified immunity. The purpose of qualified immunity is to protect government officials acting under the color of law and engaged in conduct that might touch upon constitutional rights. It is immunity from suit itself and is determined at the earliest possible stage of the proceedings. Once qualified immunity is raised, the litigation may continue only if the plaintiff can show a clearly established constitutional right that was violated. In order to show the constitutional right was "clearly established," there must be a robust consensus such that would put the officer on notice that his/her action(s) were impermissible.



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In response to state causes of action in New Hampshire, law enforcement officers may assert official immunity pursuant to RSA 99-D or RSA 541-B. An officer is immune from civil suit if the officers took some discretionary action that was within the scope of the officer's employment, and the action was not taken in a wanton or reckless manner. Whether RSA 99-D provides official immunity is based on an objective, reasonable person standard while RSA 541-B accounts for the subjective mindset of the officer. If the request for immunity is denied, an officer may still litigate any other available defenses. For state causes of action, the employing entity, either State or municipality, decides whether to indemnify the individual officer so long as the officer's conduct was not wanton or reckless.⁹

b. Summary of Public Testimony Received by the Commission

In addition to the information witnesses discussed above, the Commission heard testimony from nine members of the public on August 20, 2020. Other individuals submitted written testimony. The Commission received testimony on the reporting and investigation of police misconduct throughout the entirety of its work. Several themes repeated throughout the discussion of police misconduct. These included the need for greater transparency of police misconduct allegations, investigations, the names of officers on the *Laurie* List/EES and police personnel files as well as the need for civilian oversight.

Recordings of all the Commission's hearings are available on its website: www.governor.nh.gov/accountability. In addition, members of the public submitted extensive written materials. Those are also available on the Commission's website.

i. Specific Recommendations Submitted by the Public

Members of the public made the following specific recommendations for improvements and reforms with respect to the reporting and investigation of police misconduct:

1. Make law enforcement personnel records public and require a retention period consistent with other municipality records.
2. Require full cooperation with public safety background investigations to including allowing breach of non-disclosure agreements.

⁹ "Every agreement to settle a lawsuit against a governmental unit, threatened lawsuit, or other claim, entered into by any political subdivision or its insurer, shall be kept on file at the municipal clerk's office and made available for public inspection for a period of no less than 10 years from the date of settlement." RSA 91-A:4(VI). "In any action against a governmental unit where the governmental unit has agreed to a settlement of such action, the complete terms of the settlement and the decree of the court judgment shall be available as a matter of public record pursuant to RSA 91-A." RSA 507:17(II).



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3. Establish a statewide civilian board to review all allegations of police misconduct, including all use of force, with the authority to issue punishment and publish findings.
4. Establish a statewide database to track problem officers and prevent fired officers from being re-hired.
5. Require every police shooting to be deemed justified or unjustified.
6. Require data collection and publication for all police encounters with demographics including race and ethnicity.
7. Require every law enforcement agency to have body and dash cameras with right to access the footage.
8. Require ethics training for law enforcement officers.
9. Eliminate qualified immunity and official immunity.
10. Require all prosecutors to receive implicit bias and racial profiling training.
11. Require prosecutors to report police misconduct and create Professional Code of Conduct rule mandating this.
12. Encourage prosecutors' offices to increase diversity of staff and create policies on dealing with racial profiling and police misconduct.
13. Require data collection and publication of charges, indictments, dismissals and decisions not to charge or indict with demographics including race and ethnicity.
14. Require publication of the cost of litigation and lawsuit settlement amounts involving law enforcement officers.
15. Require NH PSTC to re-evaluate its members' backgrounds.
16. Establish civilian oversight of officer-involved shootings.
17. Abolish the *Laurie* List/EES.
18. Make the *Laurie* List/EES public.
19. Create a culture of accountability in law enforcement.
20. Ban pre-textual stops.



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21. Create a state cause of action for police violations of citizens' state constitutional civil rights, which eliminates qualified immunity as a defense.
22. Third-parties and organizations contracted to perform law enforcement responsibilities should be subject to statewide entity responsible for reporting, investigation, and punishing police misconduct.
23. Provide NH PSTC with additional staffing to conduct audits.
24. Explore the adaptation of current NH PSTC administrative rules to review cases more transparently.
25. The County Attorney should decide whether an officer's name is placed on the EES and oversee any internal investigation involving serious allegations against an officer.
26. The *Laurie* List/EES should contain separate categories for active, inactive, and decertified officers.
27. Law enforcement officer applications should include specific questions to determine if there were any issues with the applicant's prior employment.
28. Establish one unit at the Attorney General's Office to handle all allegations of criminal behavior by officers.
29. Enact legislation that creates a duty for officers to report police misconduct or dishonesty.
30. Ban the use of private cell phone communications by on-duty officers.
31. Law enforcement officers should carry their own liability insurance.
32. Use funds from the police retirement system to settle lawsuits against law enforcement agencies and officers.

c. Commission Recommendations

The Commission makes the following recommendations for reforms and improvements with respect to reporting and investigation of police misconduct:

1. Support the establishment of a single, neutral and independent statewide entity to receive complaints alleging misconduct regarding all sworn and elected law enforcement officers **with the following components:**



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- a. Staffed by full-time attorneys, paralegals, legal assistants and investigators;
- b. Providing robust due process with multiple levels of review, including both sides having the right to appeal;
- c. Members of the various committees and panels to be appointed by the Governor, consisting of community members, current or retired judges, law enforcement officers, attorneys; 3 year terms (initially staggered). Any committee or panel would be slightly weighted toward law enforcement;
- d. Statewide, universal definition regarding what constitutes misconduct;¹⁰
- e. Notice of complaint to the officer and an opportunity to be heard;
- f. Initial screening of all complaints received by the entity to determine if an investigation is warranted;
- g. Investigation following consistent and defined standards;
- h. Statewide, universal standards to apply with respect to determination of whether misconduct occurred;
- i. Executive summary of finding to be made available to the public with the full investigative report subject to disclosure upon in-camera review. Sustained findings publicly accessible in a database maintained by the entity;
- j. Right of appeal to New Hampshire Supreme Court;
- k. Require all law enforcement agencies to report alleged misconduct to this entity; and
- l. Nothing in this recommendation would limit the ability of the hiring law enforcement agency or NH PSTC to investigate, discipline, or take any action consistent with their rules, regulations, and collective bargaining agreements; or would limit the ability of the Office of the Attorney General or County Attorney with jurisdiction to investigate or prosecute any criminal conduct.

¹⁰ Definition of misconduct should take into consideration the policy guidelines regarding Code of Conduct to be developed by NH PSTC. See ¶ II, c, II, 5.



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2. To promote a uniform approach to investigation and prosecution of alleged criminal conduct by government officials, including law enforcement officials, 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. To promote equal justice under the law in all aspects of the criminal justice system, the Commission strongly encourages implicit bias and racial profiling training for all prosecutors, including all police prosecutors, all criminal defense attorneys, and all judges.
 - a. The Office of the Attorney General shall require such training for all attorneys, investigators, legal staff and victim/witness advocates in the Attorney General's Office; all County Attorney Offices; and all state agency attorneys.
 - b. The Office of the Attorney General shall facilitate and arrange for such trainings as described in 3(a) no later than April 1, 2021.
 - c. The Office of the Attorney General shall establish a system whereby all new prosecutor hires receive implicit bias and racial profiling training within thirty days of their start date.
 - d. Recommend the New Hampshire Supreme Court require one hour of yearly continuing legal education credits (CLEs) to be dedicated to implicit bias and racial profiling training.
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.
5. Amend RSA 33-A:3-a, CVIII to require "police, non-criminal-internal affairs investigations" to be retained, at a minimum, for a period of 20 years after retirement or separation.
6. Encourage all law enforcement agencies to use body and/or dash cameras.
7. Make the existing Exculpatory Evidence Schedule (EES) public subject to the following provisions:
 - a. The Office of the Attorney General will provide immediate written notice to all living persons on the current list that they are on the list with the following notifications that:



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- i. Six (6) months from date of notification to request a hearing in Superior Court to have his or her name removed from the EES.
 - ii. Six (6) months from date of notification, individual names on the list with a sustained finding shall be made public, except for any individual with a pending Superior or Supreme Court action in regard to removal from the EES.
- b. The names of deceased **individuals former law enforcement officers** shall be released once there has been a determination that the officer was afforded due process prior to placement on the list or the conduct subject to EES was previously provided as discovery in a criminal case.

IV. Current State of Relations Between Law Enforcement and the Communities They Serve

Executive Order 2020-11 directs that the Commission shall examine: “[t]he current state of relationships between law enforcement and the communities they serve, and potential steps that can be taken to enhance these relationships.” Executive Order 2020-11, at ¶ 3. (c).

This section of the report describes the current state of relationships between New Hampshire law enforcement and the communities they serve; summarizes public testimony and recommendations on this subject; and sets forth the Commission’s recommendations with respect to improving relationships between law enforcement and the communities they serve.

a. Current State of Affairs

Community Policing

Law enforcement officers and citizens often interact with each other for a variety of reasons, not always related to criminal conduct and investigations. Relationships across New Hampshire between law enforcement and the communities they serve are as unique as the communities themselves. Each law enforcement agency is individually responsible for cultivating a relationship with the community it serves. In New Hampshire, there are no statewide standards, policies, or procedures that dictate how to cultivate a strong working relationship between law enforcement and individual communities.

There are a variety of programs promulgated by law enforcement agencies across New Hampshire designed to engage their communities and help foster strong relationships. The Commission received testimony about such programs including Police Athletic Leagues (PAL), self-defense courses taught by local law enforcement officers, drug take back programs, Touch a Truck, coffee with a cop, National Night Out, citizens academy, and police explorers or cadet



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(youth) academy. The extent of community engagement in and effectiveness of these programs is monitored at the local level by the agencies that provide such programs.

The variety of programming available in New Hampshire was illustrated by the testimony of Lieutenant Carlos Camacho of the Nashua Police Department, Captain Mark Newport of the Portsmouth Police Department, and Major John Marasco of New Hampshire State Police. Lieutenant Camacho, Captain Newport and Major Marasco testified before the Commission and provided written materials that are part of the record.

Lieutenant Camacho spoke at length about training titled “Effective Police Interaction with Youth.” All Nashua School Resources Officers complete this course with the goal of fostering more positive interactions with juveniles, both in and out of school. Additionally, Nashua School Resource Officers are certified and teach a Mirror Project class, which educates juveniles on how to interact with law enforcement officers.

Numerous schools in New Hampshire have a School Resource Officer (SRO) embedded in the day-to-day activities of the school. Currently, in New Hampshire, there are no mandated classroom or field training programs for an officer to become an SRO. As with individual communities, each school that has an SRO also has unique needs and goals for working with that SRO.

Captain Newport attributed the positive relationship between the city of Portsmouth and its police department to constant engagement with the community with the goal of understanding its needs and requests. Portsmouth Police Department has an officer dedicated to community outreach whose goal is to foster positive relationships and collaborations with members of the community so that they view the presence of law enforcement officers as a comfort in times of need or stress. Captain Newport attributed Portsmouth Police Department’s success in this area to hiring the right candidates with the desired motive of wanting to help people. Portsmouth Police Commissioner Stefany Shaheen echoed Captain Newport’s testimony regarding the importance of community outreach in order for the community to feel that law enforcement is an ally.

Major Marasco attributed his agency’s positive relationship with members of the public to proactive community outreach through a variety of initiatives. Major Marasco explained that relationships with various communities were built one at a time, many with the goal of law enforcement and the communities understanding each other.

In addition to consistent community outreach, New Hampshire State Police implemented its Fair and Impartial Policing Policy in 2019.¹¹ When establishing this policy, State Police sought input from community stakeholders. Since its implementation, the policy has served as a model for other law enforcement agencies throughout the state.

¹¹ Discussed above at ¶ II, a, ii.



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There are also programs initiated by various community organizations. New Hampshire Blue and You is a project operated by New Hampshire Listens, which is a civic engagement initiative of the Carsey School of Public Policy at the University of New Hampshire. New Hampshire Blue and You provides an opportunity to connect residents with each other and their local law enforcement agencies in order to form a collaborative relationship geared towards improving the community.

Data Collection and Analysis

Presently, there is no standardized mechanism for quantifying the relationships between each community and law enforcement agency. Each law enforcement agency tracks interactions with members of the public utilizing a records management system, computer aided dispatch system, or other software of their choosing. Currently, law enforcement agencies are not required to collect demographic data, such as race and gender, for all interactions with members of the public. Any data that is collected is maintained locally. Currently, there is no statewide mechanism to collect, maintain or analyze data that is collected.

Law enforcement agencies are required to submit crime reports to the department of safety, division of state police. *See* RSA 106-B:14-c. Crime reports document, among other things, the race and ethnicity of the offender, arrestee, and victim involved in the case. If an individual is not identified as a victim, offender, or arrestee, then his/her race and ethnicity are not recorded. For these reports, race and ethnicity are defined by the Federal Bureau of Investigation's (FBI's) Criminal Justice Information Services' (CJIS) Uniform Crime Reporting (UCR) Program. Arrest reports are included within crime reports that are required to be submitted. Ethnicity is not recorded on eTickets or Fingerprinting LiveScans/ink cards. Race is an optional field for these documents.

New Hampshire law enforcement agencies are also responsible for receiving, tracking, investigating and responding to complaints and concerns from the communities they serve. There is no state-wide database to track complaints made to or against individual officers or agencies. As previously discussed, the degree to which law enforcement agencies are monitored varies; some law enforcement agencies are accountable to police commissions while others are monitored by their respective municipalities.¹²

b. Summary of Public Testimony

In addition to the information witnesses discussed above, the Commission heard testimony from two members of the public on August 10, 2020. Other individuals submitted written testimony. The Commission received testimony on the topic of relationships between law enforcement and the communities they serve throughout the entirety of its work. Several themes repeated throughout the discussion of community relations. These included the need and

¹² Discussed above at ¶ III, a.



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function of SROs and the criminalization of juvenile behavior; legalizing marijuana and making simple possession of any drug a misdemeanor as opposed to a felony; and the collection and analysis of demographic data.

Recordings of all of the Commission's hearings are available on its website: www.governor.nh.gov/accountability. In addition, members of the public submitted extensive written materials. Those are also available on the Commission's website.

i. Specific Recommendations Submitted by the Public

Members of the public made the following specific recommendations for improvements and reforms with respect to relationships between law enforcement and the communities they serve:

1. Law enforcement agencies should provide periodic updates/reports to inform the community of the agencies' activities and ongoing efforts.
2. Create and employ alternatives to law enforcement responding to and dealing with non-criminal matters such as mental health crises and substance abuse.
3. Legalize cannabis/marijuana.
4. Decriminalize all drugs.
5. Adopt fair and impartial policing type policies and communicate those policies to the community.
6. Re-allocate resources from law enforcement officers in schools to counselors and social workers for children.
7. Provide opportunities for members of the public to communicate and have positive interactions with law enforcement officers.
8. Law enforcement agencies should initiate conversations with members of their communities in an effort for each side to learn about and understand the other in order to improve the relationship.
9. Remove SROs from schools.
10. Better define the role of SROs and mandate specialized training.
11. Provide more funding to law enforcement agencies that have an officer designated to community policing.



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12. Children ages 12 and under should not face criminal prosecution.
13. Simple possession of every drug should always be misdemeanor.
14. Require data collection of demographics for all interactions between law enforcement agencies and any member of the public.
15. Training on the topic of respectful interactions with trans and gender non-conforming (TGNC) population and pronoun inclusion.
16. Increase training in order to improve the relationship between law enforcement agencies and the hearing-impaired community.

c. **Commission Recommendations**

The Commission makes the following recommendations for reforms and improvements with respect to the current state of relationships between law enforcement and the communities they serve:

I. **Data Collection**

1. All law enforcement agencies should gather, analyze and make available to the public, at least annually, data on demographics (including, at a minimum, gender and race) for arrests, citations and motor vehicle and subject stops regardless of disposition.
2. New Hampshire Department of Motor Vehicles should include a person's race on NH Drivers' Licenses and Non-Drivers' Identification Cards, with the option for the person to opt out from answering the question.
3. All law enforcement agencies will comply with RSA 106-B:14-c by submitting crime reports to the Department of Safety, Division of State Police based on the specifications prescribed by the Federal Bureau of Investigation (FBI).

II. **Community Policing and Engagement**

4. All law enforcement agencies should adopt the definition of Community Policing as set forth by International Association of Chiefs of Police (IACP):

“Community policing is a comprehensive philosophy that guides policy and strategy aimed at achieving more effective and efficient crime control, reduced fear of crime, improved quality of life, and improved police services and police legitimacy through a proactive reliance on community resources that seeks to change crime



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causing conditions. This assumes a need for greater accountability of police, elected community leaders, and the community in general, along with greater public share in decision-making through the identification of service needs and priorities and a greater concern for civil rights and liberties.”

5. Encourage **all** law enforcement agencies, when practicable, to dedicate an officer or unit to community policing and engagement.
6. Encourage **all** law enforcement agencies to engage in community relationship building by working collaboratively with community liaisons, public agencies, non-profits, community stakeholders and existing community-based programs. Models like New Hampshire Blue and You, the Mirror Project, Police Athletic Leagues (PALs), and citizen police academies serve as a guide for such efforts.
7. **All** law enforcement agencies should establish ongoing officer training at all levels to encourage a culture that empowers individual officers to engage in community policing and relationship building efforts.
8. **All** law enforcement agencies should publish/advertise community events and consider the use of social media and the establishment of Public Service Announcement (PSA) campaigns to educate the public about police **officers and their work**.
9. NH PSTC should maintain and publish a list of all currently **CALEA** accredited law enforcement agencies **in New Hampshire**.

III. School Resource Officers

10. NH PSTC should set forth mandated “certification” for SROs that would require the officer to complete National Association of School Resource Officers (NASRO) training, Mirror Project Train-the-Trainer and Effective Police Contact with Youth training prior to assignment. Further, certain annual in-service hours to maintain SRO “certification” should be identified and mandated by NH PSTC.
11. NH PSTC should work with stakeholders and oversee the development of a model SRO Memorandum of Understanding (MOU) to be used by police departments and **School Administrative Units** (SAUs) that clearly defines the roles, expectations and prohibitions of how the SRO will work in the school setting and specifically with regard to the SRO’s role in student discipline for non-criminal matters.
12. Each **department law enforcement agency** should have a field training program specifically for SROs. A transition plan should be implemented over a course of



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weeks/months between each outgoing/incoming SRO so there is overlap, information exchange, and adjustment for the stakeholders.

13. MOUs between law enforcement agencies and **school districts SAUs** should be made public.

IV. Hiring/Recruitment of Officers

14. Recognizing the difficulty of hiring and recruiting qualified candidates, law enforcement agencies should continue efforts to recruit officers from minority communities to allow for a diverse law enforcement workforce.
15. All public entities should develop a comprehensive strategy to actively attract, recruit, and retain diverse law enforcement candidates, to include **looking candidates from** outside New Hampshire.

V. Other

16. In order to advance relationships with the trans and gender non-conforming population, all law enforcement agencies should seek and provide training on pronoun inclusion.
17. In order to advance relationships with the deaf and hard of hearing community, law enforcement agencies should continue to seek a better understanding of, and communication with, members of that community, to include the greater use and dissemination of driver visor cards by law enforcement.
18. In order to advance a greater understanding of juvenile offenders, form a separate commission to review the present state of juvenile justice laws. In particular, the commission should review the minimum age for juvenile prosecutions and the statute that creates a presumption of transfer to the adult criminal court.

V. Other Subject Matters Considered by the Commission

Executive Order 2020-11 directs that the Commission shall examine any “subject matter which the Commission deems relevant to the overall mission of enhancing transparency, accountability, and community relations in law enforcement.” Executive Order 2020-11, at ¶ 3 (d).

As Director Scippa testified, in February 2019 the Office of the Legislative Budget Assistant conducted a Performance Audit of NH PSTC. The audit resulted in 16 recommendations for improvements, 14 of which NH PSTC wholly concurred in and two of which NH PSTC partially concurred in. Director John Scippa repeatedly spoke of NH PSTC’s



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desire to comply with the recommendations and the funding needed for such compliance. A copy of the audit appears at Appendix E.

Over the course of its work, the Commission heard testimony from Kenneth Norton, Executive Director of the New Hampshire Chapter of the National Alliance on Mental Illness, and others who highlighted that mental illness is a facet of many interactions between law enforcement officers and individuals. Director Norton is a member of this Commission. He submitted written testimony which is part of the record. Law enforcement officers are often called upon to deal with issues stemming from mental health and/or substance use because the individual requesting help has no other available resources. Law enforcement officers are not trained as mental health professionals and are often not equipped to handle such volatile situations.

The Commission also discussed the topic of law enforcement officers' mental well-being and its impact on an officer's ability to effectively carry out his or her duties. Law enforcement officers respond to and are exposed to traumatic events on a regular basis often with little to no time to process one tragic event before being sent to another incident. Police suicides are more widely discussed now, but for many years, and still for many officers, the topic of mental health issues was taboo in law enforcement.

a. Summary of Public Testimony Received by the Commission

In addition to the witnesses discussed above, the Commission heard from one member of the public on August 28, 2020, who did not address a matter relevant to the Commission's mission.

Recordings of all of the Commission's hearings are available on its website: www.governor.nh.gov/accountability.

b. Commission Recommendations

The Commission makes the following recommendations for reforms and improvements with respect to mental health and well-being and the results of the February 2019 Office of Legislative Budget Assistant NH PSTC Performance Audit.

1. Specially trained mental health professionals should be embedded in tactical response teams. There should be a review to determine if such mental health professionals will be afforded protection from litigation stemming from their participation in such activities.
2. Encourage partnerships between communities and local law enforcement to pursue services and resources dedicated to individuals with substance use disorders (SUDs) and mental illness and to make those services readily available



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in order to reduce the burden on law enforcement responding to issues stemming from SUDs as well as mental illness.

3. Endorse the findings and recommendations of the February 2019 Office of Legislative Budget Assistant NH PSTC Performance Audit and ensure that sufficient funding is allocated to implement and sustain the recommendations.
4. Offer training regarding the mental well-being of law enforcement officers. Training should include information regarding the high rates of post-traumatic stress, depression and suicide among law enforcement officers and available resources for seeking help. Enhance the availability and encourage the continued collaboration of law enforcement peer support programs in the state.
5. NH PSTC should explore the issue of requiring mandatory periodic psychological screenings of law enforcement officers, similar to what is currently required for physical fitness under Pol 404.07, to determine ongoing fitness for duty and/or assist with referring officers for mental health treatment/support.
6. The University of New Hampshire and other higher education institutions within New Hampshire are encouraged to collaborate with NH PSTC to develop specialized curriculum and/or graduate/post graduate certificate programs dedicated:
 - a. To mental health providers who collaborate with law enforcement officers in responding to individuals experiencing a mental health crisis in order to respond more effectively to critical incidents involving individuals who are a danger to themselves or others.
 - b. To address the special mental health needs of law enforcement officers/first responders including, trauma, depression, and substance misuse, in order to enhance the skills, understanding, and availability of licensed mental health professionals in New Hampshire who can provide treatment/support and collaborate with our law enforcement community.
7. In order to enhance transparency, accountability, and community relations between law enforcement and the people they serve, the Commission strongly encourages the Governor and the legislature to allocate or re-allocate appropriate funding needed to implement and sustain the recommendations made by this Commission. Stakeholders are encouraged to advocate for their funding needs before House Finance Committee or their local funding body.
8. Extend, as needed, this Commission to assist with implementation of any recommendation.



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VI. Conclusion

For the past ten weeks Commission members worked diligently to address the concerns of this state, in the wake of the murder of George Floyd, and the ensuing discussions regarding New Hampshire's obligation to engage in self-examination to identify all available opportunities to improve relationships between law enforcement and the communities they serve. Each Commission member accepted this appointment with passion and with the goal of addressing issues facing our state and country. Commission members contributed varied positions and views resulting in robust discussion on and debate of the subjects detailed in this report. The unanimous conclusions and recommendations in this report are the result of these thoughtful discussions and debates.

While there was an overwhelming acknowledgement that the men and women who serve as law enforcement officers in New Hampshire are the epitome of professionalism and self-sacrifice, there was also the acknowledgement of recommendations needed to improve the profession of law enforcement, both for the officers and the people of this state. There was likewise unequivocal agreement that law enforcement has no room or tolerance for officers who engage in unethical, abusive, or oppressive conduct. There was no stronger voice for this sentiment than those in law enforcement who strive each and every day to do the best job possible.

The 48 recommendations made by the Commission resulted from listening to subject-matter expert and public testimony; reviewing written testimony and materials; relying on each Commissioner's common sense and lived experiences, as well as discussions between Commissioner members during hours of discussion – with some discussions being very spirited. While the Commission members did not always agree on recommendations or proposed recommendations, all agreed that in order to effect meaningful change the Commission needed to speak with one voice. The diverse Commission members accomplished this task by listening to each other, by understanding that every Commission member's opinion was important and by understanding that, in some instances by compromising, a better recommendation was produced.

It was an honor for each member to serve on this Commission, and it is the Commission members' sincere hope that with the implementation of these recommendations, New Hampshire will be an even better and safer place for all people including law enforcement officers.

In closing, the Commission members thank Fallon Reed and Maria Eklund from Homeland Security and Emergency Management at the New Hampshire Department of Safety, and Assistant Attorney General Nicole Clay, Annie Gagne and Kim Schmidt from the Office of the Attorney General for all of their work in facilitating every aspect of our meetings.

Per Executive Order 2020-11, this report and recommendations will be submitted to the Governor, the Speaker of the House and the President of the Senate.



New Hampshire Commission on Law Enforcement Accountability, Community, and Transparency

Respectfully submitted,

Jane E. Young, Chair
Deputy Attorney General

Robert Quinn
Commissioner, Department of Safety

Ahni Malachi
Executive Director, New Hampshire
Commission for Human Rights

John Scippa
Director, Police Standards and Training
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Rogers Johnson
Chair, Governor's Advisory Council on
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James T. McKim
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Sawako Gardner
Justice of the New Hampshire Circuit Court

Lieutenant Mark Morrison
New Hampshire Police Association

Chief Charlie Dennis
New Hampshire Association of Chiefs of
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Julian Jefferson, Esq.
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Joseph Lascaze
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Chief Eddie Edwards (Ret.)
Public Member

Ronelle Tshiela
Public Member and Co-Founder, Black Lives
Matter

Dated: August 31, 2020



**New Hampshire Commission on Law Enforcement
Accountability, Community, and Transparency**

**COMPILATION OF COMMISSION
RECOMMENDATIONS**



New Hampshire Commission on Law Enforcement Accountability, Community, and Transparency

Recommendations Regarding Current State Of Training Curriculum, Procedures And Policies:

1. As soon as practicable, NH PSTC, with input from all relevant law enforcement agencies, should pursue all actions necessary, including emergency rulemaking pursuant to RSA 541-A, to amend existing administrative rules to provide as follows:
 - a. Increase the mandatory number of hours of annual in-service training for law enforcement officers in NH, on an incremental basis over the next three years. By January 1, 2024, the total mandatory hours of annual in-service training should be a minimum of twenty-four (24) hours.
 - b. Mandate that annual in-service training as approved by NH PSTC include, at a minimum, two (2) hours on each of the following topics:
 - i. Implicit bias and cultural responsiveness;
 - ii. Ethics; and
 - iii. De-escalation.
2. Beginning January 1, 2021, strongly encourage all law enforcement agencies to require their officers to participate and receive, at a minimum two (2) hours annually, of training in the following areas:
 - a. Implicit bias and cultural responsiveness;
 - b. Ethics; and
 - c. De-escalation.
3. NH PSTC should conduct a Job Task Analysis (JTA) for entry-level law enforcement officers and entry level corrections officers and based on those findings, conduct an overall review of the present academy curriculums. Based on curriculum changes founded in the JTA, an extension of the length of the police academy beyond its current 16 weeks may be warranted.
4. NH PSTC needs to leverage technology and be allowed to purchase and deploy a robust database management system and on-line learning platform for the twofold purpose of: 1) maintaining a full record over the course of an officer's career of his/her training completion, any incidents of sustained misconduct, movement from one agency to another and/or decertification, and 2) to develop and deliver standardized on-line training to all NH law enforcement officers in an efficient and economical way.
5. NH PSTC, in collaboration with other law enforcement agencies, using nationally vetted best practices as set forth by International Association of Chiefs of Police (IACP), Commission on Accreditation for Law Enforcement Agencies, Inc.



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(CALEA), Police Executive Research Forum (PERF), and National Organization of Black Law Enforcement (NOBLE), shall create policy guidelines on the following topics that serve as a minimum standard with which all law enforcement agencies must comply:

- Use of Force
 - Duty to Intervene
 - Code of Conduct
 - Duty to Report Misconduct
 - Prohibition of Chokeholds
 - Procedures to Guard Against Positional Asphyxia
6. NH PSTC should increase the number of hours of scenario-based training in both academy and in-service settings.
 7. NH PSTC should improve and augment police academy training on diversity by conducting a review of the present lesson plan on cultural dynamics and amend it to properly address the topic. Training on the topic of implicit bias and diversity to be developed with one or more community partner(s).
 8. NH PSTC should improve and augment police academy and in-service training on implicit bias and procedural justice by adopting the International Association of Chiefs of Police, (IACP) recognized Fair and Impartial Policing training or similar type training.
 9. NH PSTC should improve and augment police academy and in-service training on de-escalation techniques by adopting the Police Executive Research Forum's Integrated Communication and Tactics training (ICAT) or similar training.
 10. NH PSTC should improve and augment police academy training on police ethics by re-instituting the Ethics block of instruction.
 11. NH PSTC should improve and augment police academy and in-service training on the duty to intervene by adopting Georgetown University's Active Bystandership Law Enforcement (ABLE) training, (formally known as EPIC training) or similar training.
 12. NH PSTC should include **in its instruction** *NH v Ernest Jones* and any other State court decisions where race or protected class was a matter the court considered while reaching its decision. These cases should be part of the lesson plan in those relevant topic areas that are already delivered. An attorney from the Attorney General's Office will be dedicated to teach at NHPSTC and regularly update materials.



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13. Recognizing that certain NH police agencies need to rely on part time law enforcement officers, NH PSTC should re-evaluate the Part Time Police Officer certification process upon receipt of the **Job Task Analysis JTA** and consider extending the length of such training and give certain consideration to what law enforcement functions part time officers be allowed to perform.
14. NH PSTC should amend administrative rule POL 301.05 Background Investigations to mandate that background investigations specifically vet police recruit candidates in the area of having demonstrated outward bias toward a protected group by way of past history, behavior, affiliation with a subversive group, social media posts and other objective sources to help determine the overall fitness for duty the candidate possesses and to consider those findings in the overall decision to hire the candidate.
15. All NH law enforcement agencies should be encouraged to pursue CALEA accreditation. In the absence of CALEA accreditation, agencies should continually review and maintain policies consistent with nationally accepted best practices.

Recommendations Regarding Reporting And Investigation Of Police Misconduct:

16. Support the establishment of a single, neutral and independent statewide entity 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. Provide robust due process with multiple levels of review, including both sides having the right to appeal;
 - c. Members of the various committees and panels to be appointed by the Governor, consisting of community members, current or retired judges, law enforcement officers, attorneys; 3 year terms (initially staggered). Any committee or panel would be slightly weighted toward law enforcement;
 - d. Statewide, universal definition regarding what constitutes misconduct;¹³

¹³ Definition of misconduct should take into consideration the policy guidelines regarding Code of Conduct to be developed by NH PSTC. See ¶ II, c, II, 5.



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- e. Notice of complaint to the officer and an opportunity to be heard;
 - f. Initial screening of all complaints received by the entity to determine if an investigation is warranted;
 - g. Investigation following consistent and defined standards;
 - h. Statewide, universal standards to apply with respect to determination of whether misconduct occurred;
 - i. Executive summary of finding to be made available to the public with the full investigative report subject to disclosure upon in-camera review. Sustained findings publicly accessible in a database maintained by the entity;
 - j. Right of appeal to New Hampshire Supreme Court;
 - k. Nothing in this recommendation would limit the ability of the hiring law enforcement agency or NH PSTC to investigate, discipline, or take any action consistent with their rules, regulations, and collective bargaining agreements; or would limit the ability of the Office of the Attorney General or County Attorney with jurisdiction to investigate or prosecute any criminal conduct; and
 - l. Require all law enforcement agencies to report alleged misconduct to this entity.
17. To promote a uniform approach to investigation and prosecution of alleged criminal conduct by government officials, including law enforcement officials, 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.
18. To promote equal justice under the law in all aspects of the criminal justice system, the Commission strongly encourages implicit bias and racial profiling training for all prosecutors, including all police prosecutors, all criminal defense attorneys, and all judges.
- a. The Office of the Attorney General shall require such training for all attorneys, investigators, legal staff and victim/witness advocates in the Attorney General's Office; all County Attorney Offices; and all state agency attorneys.



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- b. The Office of the Attorney General shall facilitate and arrange for such trainings as described in 3(a) no later than April 1, 2021.
 - c. The Office of the Attorney General shall establish a system whereby all new prosecutor hires receive implicit bias **and racial profiling** training within thirty days of their start date.
 - d. Recommend the New Hampshire Supreme Court require one hour of yearly continuing legal education credits (CLEs) to be dedicated to implicit bias and racial profiling training.
19. 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.
 20. Amend RSA 33-A:3-a, CVIII to require "police, non-criminal-internal affairs investigations" to be retained, at a minimum, for a period of 20 years after retirement or separation.
 21. Encourage all law enforcement agencies to use body and/or dash cameras.
 22. Make the existing Exculpatory Evidence Schedule (EES) public subject to the following provisions:
 - a. The Office of the Attorney General will provide immediate written notice to all living persons on the current list that they are on the list with the following notifications that:
 - i. Six (6) months from date of notification to request a hearing in Superior Court to have his or her name removed from the EES.
 - ii. Six (6) months from date of notification, individual names on the list with a sustained finding shall be made public, except for any individual with a pending Superior or Supreme Court action in regard to removal from the EES.
 - b. The names of deceased **individuals former law enforcement officers** shall be released once there has been a determination that the officer was afforded due process prior to placement on the list or the conduct subject to EES was previously provided as discovery in a criminal case.



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Recommendations Regarding Current State Of Relations Between Law Enforcement And The Communities They Serve:

23. All law enforcement agencies should gather, analyze and make available to the public, at least annually, data on demographics (including, at a minimum, gender and race) for arrests, citations and motor vehicle and subject stops regardless of disposition.
24. New Hampshire Department of Motor Vehicles should include a person's race on NH Drivers' Licenses and Non-Drivers' Identification Cards, with the option for the person to opt out from answering the question.
25. All law enforcement agencies will comply with RSA 106-B:14-c by submitting crime reports to the Department of Safety, Division of State Police based on the specifications prescribed by the Federal Bureau of Investigation (FBI).
26. All law enforcement agencies should adopt the definition of Community Policing as set forth by International Association of Chiefs of Police (IACP):

“Community policing is a comprehensive philosophy that guides policy and strategy aimed at achieving more effective and efficient crime control, reduced fear of crime, improved quality of life, and improved police services and police legitimacy through a proactive reliance on community resources that seeks to change crime causing conditions. This assumes a need for greater accountability of police, elected community leaders, and the community in general, along with greater public share in decision-making through the identification of service needs and priorities and a greater concern for civil rights and liberties.”

27. Encourage all law enforcement agencies, when practicable, to dedicate an officer or unit to community policing and engagement.
28. Encourage all law enforcement agencies to engage in community relationship building by working collaboratively with community liaisons, public agencies, non-profits, community stakeholders and existing community-based programs. Models like New Hampshire Blue and You, the Mirror Project, Police Athletic Leagues (PALs), and citizen police academies serve as a guide for such efforts.
29. All law enforcement agencies should establish ongoing officer training at all levels to encourage a culture that empowers individual officers to engage in community policing and relationship building efforts.



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30. All law enforcement agencies should publish/advertise community events and consider the use of social media and the establishment of Public Service Announcement (PSA) campaigns to educate the public about police officers and their work.
31. NH PSTC should maintain and publish a list of all currently CALEA accredited law enforcement agencies in New Hampshire.
32. NH PSTC should set forth mandated “certification” for SROs that would require the officer to complete National Association of School Resource Officers (NASRO) training, Mirror Project Train-the-Trainer and Effective Police Contact with Youth training prior to assignment. Further, certain annual in-service hours to maintain SRO “certification” should be identified and mandated by NH PSTC.
33. NH PSTC should work with stakeholders and oversee the development of a model SRO Memorandum of Understanding (MOU) to be used by police departments and School Administrative Units (SAUs) that clearly defines the roles, expectations and prohibitions of how the SRO will work in the school setting and specifically with regard to the SRO’s role in student discipline for non-criminal matters.
34. Each department law enforcement agency should have a field training program specifically for SROs. A transition plan should be implemented over a course of weeks/months between each outgoing/incoming SRO so there is overlap, information exchange, and adjustment for the stakeholders.
35. MOUs between law enforcement agencies and school districts SAUs should be made public.
36. Recognizing the difficulty of hiring and recruiting of qualified candidates, law enforcement agencies should continue efforts to recruit officers from minority communities to allow for a diverse law enforcement workforce.
37. All public entities should develop a comprehensive strategy to actively attract, recruit, and retain diverse law enforcement candidates, to include looking candidates from outside New Hampshire.
38. In order to advance relationships with the trans and gender non-conforming population, all law enforcement agencies should seek and provide training on pronoun inclusion.
39. In order to advance relationships with the deaf and hard of hearing community, law enforcement agencies should continue to seek a better understanding of, and



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communication with, members of that community, to include the greater use and dissemination of driver visor cards by law enforcement.

40. In order to advance a greater understanding of juvenile offenders, form a separate commission to review the present state of juvenile justice laws. In particular, the commission should review the minimum age for juvenile prosecutions and the statute that creates a presumption of transfer to the adult criminal court.

Recommendations Regarding Other Subject Matters Considered By The Commission:

41. Specially trained mental health professionals should be embedded in tactical response teams. There should be a review to determine if such mental health professionals will be afforded protection from litigation stemming from their participation in such activities.
42. Encourage partnerships between communities and local law enforcement to pursue services and resources dedicated to individuals with substance use disorders (SUDs) and mental illness and to make those services readily available in order to reduce the burden on law enforcement responding to issues stemming from SUDs as well as mental illness.
43. Endorse the findings and recommendations of the February 2019 Office of Legislative Budget Assistant NH PSTC Performance Audit and ensure that sufficient funding is allocated to implement and sustain the recommendations.
44. Offer training regarding the mental well-being of law enforcement officers. Training should include information regarding the high rates of post-traumatic stress, depression and suicide among law enforcement officers and available resources for seeking help. Enhance the availability and encourage the continued collaboration of law enforcement peer support programs in the state.
45. NH PSTC should explore the issue of requiring mandatory periodic psychological screenings of law enforcement officers, similar to what is currently required for physical fitness under Pol 404.07, to determine ongoing fitness for duty and/or assist with referring officers for mental health treatment/support.
46. The University of New Hampshire and other higher education institutions within New Hampshire are encouraged to collaborate with NH PSTC to develop specialized curriculum and/or graduate/post graduate certificate programs dedicated:
 - a. To mental health providers who collaborate with law enforcement officers in responding to individuals experiencing a mental health crisis in order to respond more effectively to critical incidents involving individuals who are a danger to themselves or others.



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- b. To address the special mental health needs of law enforcement officers/first responders including, trauma, depression, and substance misuse, in order to enhance the skills, understanding, and availability of licensed mental health professionals in New Hampshire who can provide treatment/support and collaborate with our law enforcement community.

- 47. In order to enhance transparency, accountability, and community relations between law enforcement and the people they serve, the Commission strongly encourages the Governor and the legislature to allocate or re-allocate appropriate funding needed to implement and sustain the recommendations made by this Commission. Stakeholders are encouraged to advocate for their funding needs before House Finance Committee or their local funding body.

- 48. Extend, as needed, this Commission to assist with implementation of any recommendation.



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APPENDIX A



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APPENDIX B



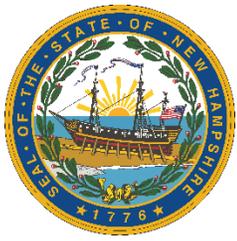
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APPENDIX C



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APPENDIX D



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APPENDIX E