



*Sheriff Christopher D. Connelly
Chairman*

State of New Hampshire

POLICE STANDARDS & TRAINING COUNCIL

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*John V. Scippa
Director*

PUBLIC MINUTES

Police Standards and Training Council

November 16, 2021

In attendance:

Chairman. Sheriff Chris Connelly, Hillsborough County
Sheriff Massahos, Rockingham County Sheriff's Office
Mr. Edward Lecius
Judge Sawako Gardner, Circuit Court Judge
Chief Ho-Sing-Loy, Sugar Hill Police Department
Jane Young, Deputy Attorney General,
Jason Bishop, Community College System of New Hampshire
Chief Steven Russo, Keene Police Department
Colonel Nathan Noyes, New Hampshire State Police
Judge Melissa Countway 3rd Circuit District Division, Ossipee

Not Attending: Dr. Maureen Sullivan; Chief Michael Carignan, Nashua Police Department; Vice
Chairperson, Commissioner Helen Hanks, New Hampshire Department of Corrections

Staff Present: Director John Scippa, Major David Parenteau, (Ret.) Captain Adam Hawkins, and Anne
Pauin, Investigative Paralegal.

Guests Present: AAG Stacie Moeser, PSTC counsel; Assistant Chief Steven Mangone,
Manchester Police Department with Thomas Miller, Chief Paul Smith, Littleton Police Department with
Benjamin Trapletti.

Chairman Connelly called the meeting to order at 9:03 a.m.

He asked for approval of the minutes from the October 26, 2021 meeting.

Motion by Mr. Lecius, seconded by Judge Gardner to approve the public minutes from October
26, 2021. The voice vote was unanimous in favor of the motion, with Chief Ho-Sing-Loy abstaining

Motion by Judge Gardner, seconded by Chief Russo to approve the nonpublic minutes regarding the Department of Natural and Cultural Resources request. The voice vote was unanimous in favor of the motion, with Chief Ho-Sing-Loy abstaining from the vote.

Motion by Mr. Lecius, seconded Colonel Noyes, to approve the nonpublic minutes regarding the Berlin Police Department's request. The voice vote was unanimous in favor of the motion, with Chief Ho-Sing-Loy abstaining from the vote.

Director's Report

Director Scippa had submitted his written report along with a final report from the Commission to Develop Recommendations for Legislation to Establish a Single, Neutral, Independent Statewide Entity to Receive Complaints Alleging Misconduct Regarding All Sworn and Elected Law Enforcement Officers Pursuant to Recommendation # 16 in the Final Report Issued by the New Hampshire Commission on Law Enforcement Accountability, Community and Transparency, and also documentation regarding legislation proposed for revisions to RSA 106-L. Those copies are attached.

He noted that he had an update on the full-time academy that was in session regarding Covid. Since the written report had been provided to the Council:

- Four recruits in the full-time academy had tested positive for Covid and they were at home recovering.
- In order to follow CDC and DHHS guidelines, 26 academy recruits were quarantined as they were not vaccinated, they will remain quarantined for 10 days
- Recruits that were vaccinated will continue in the program
- Director Scippa had been in contact over the past weekend with DHHS, Chairman Connelly and with Captain Mark O'Brien regarding the situation and they are making a plan to go forward.
- Physical fitness training has ceased, however all recruits have passed their midterm fitness exam
- The current session of the academy is mostly hands on training; and Zoom is not applicable, recruits must be in attendance and the schedule cannot stop
- If the schedule were to stop, those recruits that are vaccinated and healthy would be penalized and their agencies would also be penalized because their recruits would not be ready to work.
- It will be difficult for PSTC staff to get those quarantined recruits caught up with the class
- Staff cannot rearrange scheduled training very much as it will interfere with in-service classes as well as the next academy class that begins in January
- Stopping the current class will cause a 'ripple effect', so the best plan is to continue to move forward
- Every precaution is being taken regarding cleanliness and wearing masks

- This particular incident has had the greatest impact that the academy has had so far regarding Covid exposure
- Staff is working with DHHS to develop a plan to get people tested periodically to lessen the exposure
- The goal is to get as many recruits as possible certified

There were no questions for Director Scippa when he concluded his report. Chairman Connelly asked for a motion to begin a nonmeeting to hear from PSTC's attorney, Stacie Moeser.

Motion by Mr. Lecius, seconded by Deputy Attorney General Jane Young to initiate a nonmeeting with counsel AAG Stacie Moeser. The voice vote was unanimous in favor of the motion.

At 9:19 a.m. the Council began a non-meeting.

Motion to exit the nonmeeting by Mr. Lecius, seconded by Chief Russo, the voice vote was unanimous in favor of the motion.

At 9:43 a.m. the Council returned to the scheduled meeting agenda.

Police Standards and Training Council Annual Report

The annual report had been forwarded to the Council members the previous week by email. Director Scippa stated that he was proud of all of the valuable work that had been accomplished so quickly by PSTC over the past biennium.

Mr. Lecius complimented Director Scippa and the staff on the report.

Motion to accept the Police Standards and Training Council 's Annual Report by Colonel Noyes, seconded by Judge Gardner, the voice vote was unanimous in favor of the motion.

New Business

Chairman Connelly read the following information regarding nonpublic sessions into the record:

"These hearings are presumed to be heard in public session. You are entitled to request that the hearing be held in non-public session. If you choose to make that request, you are required to provide "relevant facts and factors" for the Council to consider "in making an independent, case-specific and fact-based determination to hold a decertification hearing in non-public session. The Council may not enter into a non-public session or seal the minutes of a non-public decertification hearing, "if the only reason for prohibiting public access is that the respondent in the decertification hearing has so requested.

You are required to prove, with specificity that the portion of the hearing will reveal confidential information that creates a compelling interest outweighing the public's presumed right of access. You have the right to request a brief

hearing in nonpublic session to present your request for closure. After the Council hears your reason for closure and rules on your request, Council will return to public session to report its decision. The Council will then proceed to conduct the hearing in public session or return to nonpublic session for a portion of the hearing based on this decision.

If the Council grants your request to have your hearing held in non-public session, please be advised that if the Council issues an order finding cause to take action on your certification, they will reconsider whether the testimony offered at the hearing will be scaled. The authority to hear cases involving public employees in non-public session is contained in RSA 91-A:3, III and is not automatic".

Littleton Police Department

Major Parenteau asked Chief Smith if he was requesting a public or non-public session. Chief Smith asked for the matter to be heard in public session.

Chief Paul Smith was present with a candidate for their agency, Benjamin Trapletti. Their request was for a waiver of Pol 301.05 (g) (8) (a) (2).

Major Parenteau read the rule into the record.

Pol 301.05 Background Investigation

The following shall apply to the background investigation of the applicant by the agency:

(g) The hiring authority shall evaluate the results of its background investigation and the agency shall not appoint a person or invest with authority any person elected as a police, corrections or probation/parole officer who:

(8) Has ever illegally manufactured, transported for sale, or sold a controlled substance as sale is defined in RSA 318-B:1, unless, upon review of the council at the request of a hiring authority, the council finds that:

a. Either:

2. Where a sale as defined in RSA 318-B:1 did occur, however, the intent was not for profit, meaning the actual conduct exhibited was not intended to result in an excess of financial return over the expenditure in a transaction or series of transactions; and

b. The behavior pattern under the totality of the circumstances did not demonstrate a lack of good moral character.

For the purpose of “sale”, it's defined in RSA 318-B: 1 as a barter, exchange or gift or offer therefore in each transaction made by a person whether it's a principle, proprietor, agent, servant or employee.

Chief Smith was asked to summarize the circumstances surrounding his request for the waiver.

Chief Smith stated that he was asking for the Littleton Police Department's applicant, Mr. Trapletti, he has been extended a conditional offer of employment. During the agency's background investigation of Mr. Trapletti it was revealed that 11 years ago, when he was approximately 18 years old, he facilitated an exchange of marijuana. He did not hold money or the product, he was approached by a friend and asked if he knew where to get marijuana, he introduced the individual and the transaction took place in front of him. This is the reason for requesting the waiver.

When asked, Chief Smith stated that the candidate never took the money or the drugs, but he did introduce the individual requesting the transaction. Major Parenteau asked whether or not the information was discovered in a pre-employment questionnaire or if it was only disclosed during the polygraph examination?

Chief Smith confirmed that Mr. Trapletti provided information about facilitating the sale in his pre-employment questionnaire, prior to the polygraph.

Motion to grant the waiver request by Colonel Noyes, seconded by Chief Russo. The voice vote of the Council was unanimous in favor of the motion.

Manchester Police Department

Assistant Chief Steven Mangone was present with candidate Thomas Miller to request a waiver for the background investigation under Pol 301.05.

Major Parenteau read the appropriate section of Pol 301.05 into the record,

The hiring authority shall evaluate the results of its background investigation and the agency shall not appoint a person or invest with authority any person elected as a police, corrections or probation/parole officer, who:

(10) Within 12 months before the application for hire, has used marijuana unless, upon review of the council at the request of a hiring authority, the council finds that the behavior pattern under the totality of the circumstances did not demonstrate a lack of good moral character as specified in (m) below;

(m) For purposes of this section, a determination of a lack of "good moral character" shall not be restricted to acts that reflect only moral turpitude, but shall be based upon the consideration of all aspects of a person's character as exemplified by his or her behavior, including but not limited to the following:

(4) Conduct that would adversely reflect on a person's fitness to perform law enforcement or corrections duties, including but not limited to:

c. Sale or use of illegal controlled substances.

Assistant Chief Mangone gave a summary of the request for the Council members. He explained that Thomas Miller applied for a position with the Manchester Police Department in August of 2021. During the pre-employment questionnaire, and pre-employment interview, he disclosed that in August of 2020 he consumed a THC edible. He went through the polygraph examination which he passed and an extensive background investigation, which is why they were requesting a waiver. When asked, Assistant Chief Mangone confirmed that when Mr. Miller consumed the edible he was in the state of New Jersey, during that time, and in that state recreational cannabis was legal.

When asked about additional use, Assistant Chief Mangone confirmed that it had been disclosed during the questionnaire, he used marijuana four or five times in the past in high school. The agency did not see a pattern or any moral issues.

Motion to approve the waiver request by Mr. Lecius, seconded by Chief Ho-Sing-Loy, the voice vote of the Council was unanimous in favor of the motion.

Jeffrey Fierimonte, Manchester Police Department

Attorney John Krupski was present with Jeffrey Fierimonte, who had been noticed for a hearing for temporary suspension of his certification.

Major Parenteau explained that Jeffrey Fierimonte had been arrested by the Bedford Police Department for DWI.

Pol 402.02 Revocation or Suspension.

(b) A certification shall be temporarily suspended pending resolution of criminal charges if the officer has been arrested, indicted or bound over either prior to or after certification for a felony or any crime involving moral turpitude or of a crime which tends to bring discredit on the police, corrections, or probation/parole service, unless the council, in its discretion, determines that the safety of the public or the confidence in the criminal justice system would not be adversely affected.

(c) Examples of crimes that involve moral turpitude or of a crime which tends to bring discredit on the police, corrections or probation/parole service shall include but not be limited to:

(3) DWI;

Attorney Krupski explained that his client was going to voluntarily, surrender his certification temporarily per Pol 402.02 (b) until the resolution of the criminal matter in court, and further order of the Council.

Motion by Deputy Attorney General Jane Young, seconded by Judge Gardner, to accept the voluntary, temporary surrender of Jeffrey Fierimonte's certification pending resolution of the matter and further order of the Council. The voice vote of the Council was unanimous in favor of the motion.

Major Parenteau informed the Council members that one of the items that had been scheduled for the current meeting has been continued for the December meeting. Attorney Krupski would like a declaratory ruling for the definition of the word "final" means regarding termination.

- There had been a similar request in the past while Chief Cahill in the position of Chairman of the Council.
- Their decision at that time was that "final" was when the individual was terminated from their agency.
- Is it “final” when the employer discharges the person, regardless of whether there is an appeal made; or is when all the appeals are exhausted and there is no opportunity for the individual to get their job back?
- The matter in question is under appeal at this time.

Consent Calendar Items

Prior Training and Experience Requests for certifications were granted to:

Laura Redmond, Lisbon Police Department

Keeley Bartolini, Londonderry Police Department

David Pardue, Wilton Police Department

Requests for Extensions

Note: Extensions granted until the first council meeting following the fitness testing for the requested Academy, and, if testing is successful, to the first council meeting following the end of the requested Academy.

*Full Time Academy

Class Number	186	187
Dates	08/30/21-12/17/21	01/04/2022-04/22/2022
Paperwork Submission Deadline *	08/21/2021	12/06/21
Fitness Test Date	08/16/2021	12/20/2021

* All paperwork by the submission deadline, which is before 4:30 PM close of business. Class size is limited to 67 students. The attendees will be determined after successful completion of the Entrance Fitness Test, based on the received order of the completed applications.

****Part Time Academy**

Class Number	281
Dates	07/24/2021-11-19/2021
Paperwork Submission Deadline *	06/26/2021
Fitness Test Date	07/10/2021

****Corrections Academy**

Class Number	116
Dates	09/07/2021-11/12/2021
Paperwork Submission Deadline *	08/09/21
Fitness Test Date	08/23/21

****All paperwork by the submission deadline, which is before 4:30 PM close of business. Class size may be limited. If so, the attendees will be determined after successful completion of the Entrance Fitness Test, based on the received order of the completed applications.**

Medical Extensions for Three Year Fitness Testing were granted to:

- Ryan Garney Plaistow Police Department
- Patrick Ofrias, Concord Police Department Daniel
- Dawe. Windham Police Department
- Richard Pappalardo, Rockingham County Sheriff s Office
- Neal Casale, Barnstead Police Department

End of Consent Calendar

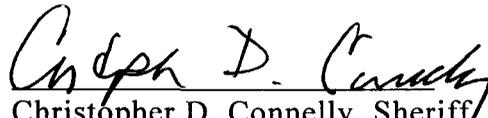
Motion to approve the Consent Calendar by Judge Countway, seconded by Chief Ho- Sing-Loy, the voice vote was unanimous in favor of the motion.

10:06 a.m. Motion to adjourn the meeting by Mr. Leci us, seconded by Mr. Bishop, the voice vote was unanimous in favor of the motion.

The next Council meeting, #536, is scheduled for December 14, 2021.

December 14,2021

Respectfully Submitted,


Christopher D. Connelly, Sheriff
Chairman

To: All NHPSTC Council Members
FROM: Director John Scippa
DATE: November 16, 2021
RE: Director's Monthly PSTC Council Report

Academy and In-Service Training:

1. Full Time and Part Time and are in session at different waypoints. COVID infections in the FTA has impacted three recruits directly and have caused us to have to quarantine 26 others because they are not vaccinated. Those that are vaccinated continue with the schedule. Based on these new conditions, PT has been canceled and we have returned to a day academy with very limited people staying overnight.
2. Corrections Academy graduated November 12th.
3. In-Service/On-Line Bureau reports in-person in-service classes are running smoothly and Benchmark is live and running smoothly as well.

Budget:

1. We have been informed that NHTI may be sending out an RFP to change vendors for dining services. We will closely watch this as any change in vendors will impact our current contract and will necessitate us to negotiate a new contract or seek an alternative vendor through a separate RFP process.

Outreach, Education and Legislation:

1. Still working with JLCAR on final rule changes.
2. We continue to address a number of 91-A requests for regulatory documents and curriculum. We continue to work with our civil attorney to respond to these requests.

Staff and Operations:

1. The remaining open BSW position continues to be advertised.
2. The budget for FY 22-23 contained four new positions, two full time and two part time. We have an additional PT LETS position that had been vacated by Lt O'Shea. We have been allowed to advertise for one of the PT LETS and the Full Time LETS. We have identified candidates and have made offers to one FT LETS and one PT LETS. Still waiting to hear on the SJD for the FT Instructional Design position.

Open Action Items:

1. "Wet Labs" : Will be introduced in the January Academy.
2. Boiler Replacement Project: Parts for the project continue to be delivered and stored here in preparation of the project beginning in the spring. Two boilers that are slated to be replaced failed a recent state inspection and we are having the deficiencies corrected to get through the winter.
3. Police Misconduct Committee: A final committee report was sent to the Governor, per HB2, on November 1, 2021. I have included the summary report and the proposed legislation that will be brought forward during this next legislative session.
4. LEOSA program-LETS are creating a Technical Assistance Manual to offer this program here. Based on the process outlined in the TAM, a zero balance cost per person will be calculated.
5. State Level Accreditation Program: We have begun talks with members of the executive board of the NH Association of Chiefs of Police to develop Articles of Organization for a State Level Accreditation body that will develop and deliver a voluntary accreditation program for NH Law Enforcement. A recently secured COPS Grant is being used to jumpstart this effort.

Pending Action Items:

1. Curriculum Review: JTA has identified some areas that need to be addressed. We will begin those efforts in the next few months.
2. Discussion on Part Time Certification: The LEACT GO 2020-19 mandates that NHPSTC lead a discussion and make findings on the Part Time Certification Program. Our first meeting was held on September 24th. 16 stakeholders representing 5 counties and 3 state agencies participated.
3. Citizenship Committee: Still a pending item.

Discussion Items:

n/a

EXHIBIT A

Draft Proposed Legislation

1. Amend RSA 106-L to read as follows (proposed revisions to RSA 106-L shown in redline/mark up):

TITLE VII SHERIFFS, CONSTABLES, AND POLICE OFFICERS

CHAPTER 106-L POLICE STANDARDS AND TRAINING COUNCIL

Section 106-L:1

106-L:1 Findings and Policy. – The legislature finds that the administration of criminal justice is of statewide concern; that police and corrections work are important to the health, safety, and welfare of the people of this state; that police and corrections work are of such a nature as to require education and training of a professional character; and that it is in the public interest that such education and training be made available to persons who seek to become police and corrections officers, persons who are serving as police and corrections officers in a temporary or probationary capacity, and persons already in regular service. *Further, the legislature finds that law enforcement officers are vested with responsibilities that require high standards of moral character, integrity, knowledge and trust. In support of these heightened responsibilities and to continuously strive for public confidence in law enforcement officers, the Law Enforcement Conduct Review Committee is created at the New Hampshire Police Standards and Training Council.*

Section 106-L:2

106-L:2 Definitions. – In this chapter:

1. "Law enforcement officer" means any individual who is
 - (a) employed by a local, municipal, county, or state governmental agency in the State of New Hampshire;
 - (b) certified or certifiable by the Police Standards and Training Council;
 - (c) responsible for the prevention, detection, or prosecution of crimes and the enforcement of the laws of the state and of its political subdivisions; and at least one of the following:
 - (i) has full general arrest powers, or
 - (ii) is a certified or certifiable state corrections officer, or
 - (iii) is a certified or certifiable state probation-parole officer.

~~"Police officer" means any appointed or elected employee of a police department or any appointed employee of a sheriff's department, the fish and game department, the department of safety, or any special agent appointed by the state liquor commission which is administered by the state or any of its political subdivisions and who is responsible for the prevention, detection~~

~~or prosecution of crime or the enforcement of the penal, traffic, highway, boating, liquor, or bingo and lucky 7 laws of this state or any of its political subdivisions.~~

II. "Committee" means the Law Enforcement Conduct Review Committee

III. "Council" means the Police Standards and Training Council.

III. "Director" means the director of the Police Standards and Training Council.

IV. "State corrections officer" means any sworn classified employee of the New Hampshire department of corrections who is responsible for the physical custody and security of inmates at a state correctional institution and is authorized by law to use force to prevent escapes from such institution.

VI. "State probation-parole officer" means any sworn employee of the New Hampshire department of corrections who is responsible for the supervision of probationers and parolees, who has an assigned caseload, and who has the authority to arrest for violations of the rules of probation or parole.

VII. "Valid complaint" means a statement in writing made by a person who identifies themselves to the council or any law enforcement agency that alleges a certified law enforcement officer, state corrections officer or probation-parole officer has committed an act or acts of misconduct.

VIII. As used in this Chapter, "misconduct" shall be defined as:

(a) The officer has been convicted of the following:

- (i) a crime which constitutes a felony in this or any other state;
- (ii) a misdemeanor for which there was a sentence of incarceration, regardless of whether all or part of the sentence was suspended;
- (iii) driving while intoxicated in this or any other state;
- (iv) a crime of moral turpitude. "Moral turpitude" means an illegal act involving dishonesty, deceit, theft, or willful misrepresentation or a crime which tends to bring discredit on the police or corrections service. A crime of moral turpitude shall include those crimes listed in POL 402.02(a)(4);

(b) A sustained finding that the officer has engaged in conduct negatively reflecting on the officer's trustworthiness or credibility, including but not limited to:

- (i) a deliberate and material lie during a civil, administrative, or criminal proceeding, in a police report, an internal investigation, or an investigation conducted by New Hampshire Police Standards and Training; or
- (ii) a falsification of records or evidence in an investigation or official proceeding;
- (iii) a misrepresentation or tampering with official records or reports, tampering with witnesses or falsifying evidence;

(c) A sustained finding that during the course of the officer's official duties, the officer engaged in discriminatory conduct on the basis of age, sex, sexual orientation, gender

identity, race, religious creed, color, marital status, familial status, physical or mental disability, or national origin prohibited by RSA 354-A;

(d) A sustained finding that the officer engaged in conduct, whether on or off duty, that would adversely reflect on their fitness to perform law enforcement or corrections duties to include engaging in racist conduct or making racist statements;

(e) A sustained finding that the officer engaged in acts or omissions of conduct which would cause a reasonable person to have doubts about the individual's honesty, fairness, and respect for the rights of others and for the laws of the state or nation;

(f) A sustained finding that the officer knowingly committed an egregious dereliction of duty resulting in a preventable fatality or serious bodily injury or resulting in the deprivation of constitutional rights or that leads to the failure of someone to be prosecuted for a felony; or

(g) A sustained finding that during the course of the officer's official duties, the officer engaged in the use of excessive and illegal force.

IX. "Valid investigation" means an investigation conducted pursuant to a law enforcement agency's established or accepted procedures. An investigation shall not be valid if:

(i) the agency has not adopted an effective internal affairs program;

(ii) the agency refuses, without any legitimate basis, to conduct an investigation;

(iii) the agency intentionally did not report allegations to the council as required;

(iv) the agency attempts to conceal the misconduct or takes an action intended to discourage or intimidate a complainant;

(v) the agency's executive officer is the officer accused of the misconduct; or

(vi) the agency's findings or conclusions are clearly not supported by the evidence or contain material errors or omissions of fact or law.

X. "Sustained finding" means a final determination on the merits of an allegation only after the completion of the grievance or legal appeal process, and after the officer has exhausted all appellate rights, unless the grievance or legal process determines that the alleged misconduct was unfounded, not sustained, or that the officer was exonerated.

Section 106-L:3

106-L:3 Police Standards and Training Council. –

I. There is established a police standards and training council. It shall consist of the following members:

(a) Two members shall be chiefs of police in *a town or for a university*;

(b) Two members shall be chiefs of police in cities;

(c) Two members shall be county sheriffs;

(d) Two members shall be judges of courts with criminal jurisdiction;

(c) ~~The chancellor of the community college system of New Hampshire, or designee~~ *One member shall be a professor from a New Hampshire college or university whose primary teaching responsibilities are in the field of criminal justice or similar course of study;*

(f) *A law enforcement officer of a town or city employed at a rank below lieutenant;*

(g) ~~+~~ The director of the division of state police, or designee;

(h) ~~+~~ The attorney general, or designee;

(i) ~~+~~ The commissioner of the department of corrections, or designee; and

(j) ~~Two~~ *Four* public members, *none* ~~neither~~ of whom shall be a certified police officer, lawyer, or judge, and *none* ~~neither~~ of whom shall have a spouse, sibling, or parent, by birth, adoption, or marriage, who is a certified police officer, lawyer, or judge.

II. Except for the members appointed pursuant to subparagraphs I(e) ~~-(h)~~ (g)-(i) who shall serve during their continuance in office, members of the council shall be appointed by the governor for terms of 2 years. No member shall serve beyond the time that the office or employment which qualified such member for appointment. Any vacancy on the council shall be filled for the unexpired term in the same manner as the original appointment is held. Persons filling vacancies shall be appointed to serve out the unexpired term and shall have the same qualifications for office as the member whose vacancy they are filling.

III. The governor shall designate a member to be the chairperson of the council, and the council shall elect annually its vice chairperson from among the members of the council.

IV. Notwithstanding the provisions of any statute, ordinance, local law, or charter provision to the contrary and except as otherwise provided in subparagraph I(i) regarding qualification of public members, membership on the council shall not disqualify any member from holding any other public office or employment, or cause the forfeiture of any office or employment.

V. Members of the council shall serve without compensation, but shall be entitled to receive reimbursement for any actual expenses incurred as a necessary incident to such service.

VI. The council shall hold no fewer than 4 regular meetings a year. The chairperson shall fix the times and places of meetings, either on the chairperson's own motion or upon written request of any 5 members of the council.

VII. The council shall report annually to the governor and executive council on its activities, and may make such other reports as it deems desirable.

Section 106-L:4

106-L:4 Executive Branch Jurisdiction. ~~The Police Standards and Training, its council, committees and employees are~~ *is* an executive branch *agency* ~~entity~~. The council, the director, and employees hired by the director performing the functions required by this chapter shall be subject to RSA 7:8, RSA 541-B, and RSA 99-D, and contracts by them shall be subject to attorney general review and review and approval by the governor and executive council.

Section 106-L:5

106-L:5 Powers. –

In addition to other powers given to the council *and its agency* by this chapter, it may:

1. Adopt rules for the administration of this chapter in accordance with the provisions of RSA 541-A.

- II. Require submission of reports and information from law enforcement and corrections agencies within this state that may be pertinent to the effective functioning of the council.
- III. For the purposes of a disciplinary hearing, *investigate, review investigative reports*, subpoena and examine witnesses under oath, take oaths or affirmations, and reduce to writing testimony given at any hearing. Any person whose rights or privileges may be affected at such a disciplinary hearing may appear with witnesses and be represented by counsel.
- IV. Establish minimum educational and training standards for employment as a police officer, state corrections officer, or state probation-parole officer either in permanent positions or in temporary or probationary status.
- V. Certify persons as being qualified under the provisions of this chapter to be police officers, state corrections officers, state probation-parole officers, or certified border patrol agents for the purposes of RSA 594:26, and establish, rules under RSA 541-A for the *investigation*, suspension or revocation of the certification of such persons in the case of egregious misconduct or failure to comply with council standards.
- VI. Establish entrance, student conduct, and curriculum requirements for preparatory, in-service, and advanced courses and programs for schools operated by or for the state or its political subdivisions for the specific purpose of training police, state corrections, or state probation-parole recruits or officers or tuition students at such programs.
- VII. Consult and cooperate with counties, municipalities, agencies of this state, other governmental agencies, and with universities, colleges, junior colleges, and other institutions concerning the development of police and corrections training schools and programs or courses of instruction, and the development of standards and methodology for the voluntary accreditation of police departments in the state.
- VIII. Offer the educational material and, as appropriate, training relative to the human immunodeficiency virus and related issues prepared and developed pursuant to RSA 141-F:3, II.
- IX. Establish, maintain, certify, or approve institutions and facilities for training police officers, state corrections officers, or state probation-parole officers, and recruits for such positions.
- X. Make or cause to be made studies of any aspect of police or corrections education and training or recruitment.
- XI. Prepare and make available, upon request, model policies and procedures to assist law enforcement agencies in preparation of written policies.
- XII. Establish and maintain a voluntary certification program for police canines and canine handlers.
- XIII. Make recommendations concerning any matter within its purview pursuant to this chapter.
- XIV. Make such investigations as may be necessary to determine whether *law enforcement officers and* governmental units are complying with the provisions of this chapter.
- XV. Adopt and amend bylaws, consistent with law, for its internal management and control.
- XVI. Enter into contracts or do such things as may be necessary and incidental to the administration of its authority pursuant to this chapter.
- XVII. Accept in the name of the state any and all donations or grants, both real and personal, from any governmental unit or public agency, or from any institution, person, firm, or corporation. The council shall receive, utilize, and dispose of all donations and grants subject to budgetary provisions and according to the rules of the council and consistent with the purposes

or conditions of the donation or grant. The receipt of a donation or grant shall be noted in the annual report of the council. The report shall identify the donor, the nature of the donation or grant, and the condition of the donation or grant, if any. Any moneys received by the council pursuant to this paragraph shall be deposited in the state treasury to the account of the council and shall not lapse.

XVIII. Nominate and appoint a director of police standards and training for a term of 4 years who shall report to the police standards and training council, and who shall be an unclassified employee, and whose salary shall be established by RSA 94:1-a. All other employees shall be hired by the director and shall be classified employees. The director shall have practical and academic knowledge in the field of law enforcement, including substantial administrative experience and a degree or degrees in criminology, police administration, or other similar field or any equivalent combination of education and experience.

XIX. The council may delegate to the director of police standards and training any powers and duties enumerated in this chapter.

XX. The director may grant authority to any certified full-time police officer *or attorney* employed by the council *to serve as an* assistant director, ~~or~~ law enforcement training specialist *or investigator*, to enforce the provisions of this chapter and any rules adopted under this chapter, and cooperate and exchange information with any local, state, or federal law enforcement agency relative to the qualification and moral fitness of applicants for employment or continued employment as police officers or corrections officers. *Certified full-time law enforcement officers employed by the council shall maintain their law enforcement certification during employment with the council, shall have statewide law enforcement authority and shall be recognized as peace officers as defined by RSA 594:1, III.*

XXI. The council may appoint, after consultation with the commissioner of corrections, a corrections advisory committee from a list of nominees submitted by the director. The members shall serve without compensation at the pleasure of the council and shall consist of one representative of the management of each adult correctional facility operated by the department of corrections, one representative each from prison industries, the secure psychiatric unit, and probation-parole, one medical professional from within the correctional system, one state corrections officer chosen by the New Hampshire state employees' association, and one representative of a county correctional institution chosen by the New Hampshire Association of Counties. The committee shall meet not less than twice in each fiscal year at the call of the director, and shall advise the council as requested on issues coming before it concerning corrections standards and training.

XXII. Adopt rules and establish fees to implement the provisions of the Law Enforcement Officers Safety Act of 2004, 18 U.S.C. section 926C(d)(2)(B) in accordance with RSA 541-A.

XXIII. The council and its agency shall assess whether law enforcement agencies are in compliance with this Chapter and whether they have sufficient policies and procedures to handle internal affairs investigations governing allegations of misconduct;

XXIV. Upon receipt by the council of written notification of the arrest of a law enforcement officer, to include a copy of the charging document, the director shall have the authority to impose an immediate and temporary administrative suspension of the involved officer's

certification. The aggrieved officer may file a written petition with the council to be heard at the next regularly scheduled council meeting on the administrative action. The administrative suspension or the failure of the officer to request such a hearing shall not be prejudicial. Until such time that the matter is heard and decided on by the council, or resolved by informal process approved by the council, the administrative suspension will remain in place.

XXV. The council may impose any of the following sanctions on a law enforcement officer's certification upon its final finding on clear and convincing evidence that a law enforcement officer committed misconduct or violated any administrative rule:

(a) a written warning;

(b) a suspension, that may run concurrent with the length and time of any suspension imposed by the employing law enforcement agency with an effective internal affairs program, which shall amount to suspension for time already served if an officer has already served a suspension imposed by the employing agency with such a program;

(c) a suspension independent and unilateral from any locally-imposed suspension and with the option of recertification at the discretion of the council; or

(d) a permanent revocation.

XXVI. Nothing established in this Chapter shall replace or hinder the ability of a law enforcement agency to investigate, discipline, or take any action against an employee consistent with their rules, regulations, and collective bargaining agreements within the context of the employer/employee relationship. Further, nothing in this chapter shall limit the ability of the Department of Justice or County Attorney with jurisdiction to investigate or prosecute any criminal conduct.

Section 106-L:6

106-L:6 Education and Training Required. –

I. The council shall provide by rule that after one year from the effective date of the rule no person shall be appointed as a police officer, state corrections officer, or state probation-parole officer, except on a temporary or probationary basis, 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. No such officer who lacks the educational and training qualifications required by this section may have the temporary or probationary employment extended beyond 2 years.

II. Every elected police officer shall be required to satisfactorily complete a preparatory program of police training at a school approved by the council. Any elected officer who has not complied with the educational and training requirements of this paragraph within 6 months after election shall be removed from office by the governing body of the governmental unit by which such officer was elected; provided, however, that the council may, for such reasons as it may specify in its rules, grant an extension of this time limit not to exceed an additional 6 months. A governing body which has removed an elected police officer from office under the provisions of this paragraph shall appoint a police officer to fill the vacant office. The appointed police officer

shall continue to hold office until the elected officer who was removed has complied with the educational and training requirements of this paragraph or until an election is held, whichever occurs first. If any police officer who has failed to comply with the educational and training requirements of this paragraph is reelected, such officer shall not take office without permission of the council. If a noncomplying police officer who has not obtained the permission of the council to take office is reelected, the governing body of the governmental unit by which such officer was elected shall appoint a police officer to fill the vacant office. The appointed police officer shall continue to hold office until the elected officer has complied with the educational and training requirements of this paragraph or until an election is held, whichever occurs first.

III. The council, by rules adopted under RSA 541-A, shall establish the standards for physical and mental fitness under paragraphs IV-XI and shall fix other qualifications for the appointment of police officers, state corrections officers, and probation-parole officers, including minimum age, physical and mental standards, citizenship, good moral character, experience, and other such matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of their offices. The council shall prescribe the means for presenting evidence of the fulfillment of these requirements.

IV. The council shall require that all uncertified part-time and full-time police officers, state corrections officers, and probation-parole officers, prior to assuming their duties, successfully pass a medical examination including a drug screening administered under the direction of a licensed physician according to protocols adopted by the council. Such examination, when conducted, shall be valid for a period of one year for purposes of application for employment.

V. The council shall require that all uncertified part-time and full-time police officers, state corrections officers, and probation-parole officers, as a condition of admission to a basic or reciprocal certification training program successfully pass a physical fitness performance test administered according to standards adopted by the council.

VI. The council shall require that all uncertified part-time and full-time police officers, state corrections officers, and probation-parole officers, prior to assuming their duties, successfully pass a psychological screening test battery administered under the direction of a licensed psychologist or psychiatrist according to protocols adopted by the council and designed to detect behavioral traits that could adversely affect the person's ability to perform the essential functions of a law enforcement officer. Such an examination shall be valid for a period of one year from the date of administration for purposes of application for such employment.

VII. Beginning January 1, 2001, the police standards and training council shall require that all certified police officers, state corrections officers, and probation-parole officers, hired after that date, as a condition of continued certification and employment furnish the council every 3 years with a certificate from a licensed physician, physician's assistant, or registered nurse practitioner who has conducted a medical examination of the officer according to protocols adopted by the council, certifying that in the opinion of the examiner the officer is physically capable of participating in the council's physical fitness test.

VIII. Any officer who is unable to meet the medical requirements of paragraph VII may request an additional medical examination by a physician chosen by the council. If the officer is still unable to meet the standards, such officer's certification shall be placed in a probationary status for a period of up to 2 years, during which time the officer may request re-examination at any time. If following the 2-year period the officer is still unable to meet the standards, the officer's certification shall be suspended until such time as such officer obtains the medical certification required in paragraph VII.

IX. Beginning January 1, 2001, the police standards and training council shall require that all certified police officers, state corrections officers, and probation-parole officers, hired after that date, as a condition of continued certification and employment every 3 years pass a physical fitness performance test administered by the hiring authority or the council, according to protocols adopted by the council.

X. Any officer who is unable to meet the physical fitness performance requirements of paragraph IX may request an additional physical fitness performance test administered by the council. If the officer is still unable to meet the standards, such officer's certification shall be placed in a probationary status for a period of up to 2 years, during which time the officer may request re-examination at any time. If, following the 2-year period, the officer is still unable to meet the standards, the officer's certification shall be suspended until such time as such officer is able to pass the physical performance test.

XI. In any case where the council has reasonable grounds to doubt that the medical examination performed as required in paragraph VII was performed in accordance with the appropriate protocols, the council may require the officer to submit to a separate examination by a physician selected by the council, at the council's expense.

XII. A licensed physician, psychiatrist, psychologist, or person acting under the licensee's supervision, whose examination administered under this chapter results in an employment decision adverse to a police, corrections, or probation-parole officer shall be immune from suit resulting from such examination or decision, providing such examination is conducted in good faith, not in a wanton or reckless manner.

XIII. To the extent required to comply with federal or state law, the council may grant a waiver, with respect to employment at a specific agency, to an officer who cannot meet the standards in paragraphs VII-X.

XIV. Nothing in this section shall prevent individual hiring agencies from adopting physical fitness programs for their officers that are more stringent or frequent than those required in this section.

XV. Except as provided in paragraph XI and notwithstanding other provisions of law to the contrary, a hiring authority may assess a testing fee to cover all or part of the cost of any medical or psychological examination in cases where the person has been given a conditional offer of employment. A hiring authority may also make repayment of a testing fee part of any training or hiring contract that establishes a minimum term of employment for such an officer.

XVI. The council shall issue a certificate evidencing satisfaction of the requirements of paragraphs I, II, and III to any applicant who presents such evidence as may be required by its rules of satisfactory completion of a program or course of instruction in another jurisdiction equivalent in content and quality to that required by the council for approved police, corrections, or probation-parole, as appropriate, education and training programs in this state.

XVII. Any special agent of the state liquor commission who has the power to enforce the criminal laws under RSA title XIII and rules of the state liquor commission and who was serving under a permanent appointment prior to August 13, 1985, shall not be required to meet the requirements of paragraphs I and III; however, any special agent referred to in this paragraph shall complete such limited programs as may be prescribed by rule adopted under RSA 541-A by the police standards and training council under this section within one year of the date the programs are required. Should any special agent exempted from the requirements of paragraphs I and III of this section by this paragraph terminate employment with the state liquor commission and be hired as a police officer by another police department of the state or a political

subdivision thereof, the special agent's certification shall lapse and may be reinstated upon completion of such necessary additional training courses as the police standards and training council may prescribe by rule adopted under RSA 541-A.

Section 106-L:7

106-L:7 Additional Training of Peace Officers. – The director of the police standards and training council shall develop appropriate training programs and methods to instruct peace officers in the proper techniques for dealing with intoxicated and incapacitated persons and to encourage the maximum utilization by peace officers of detoxification facilities, alcohol counselors, and licensed general hospitals for such purposes.

Section 106-L:8

106-L:8 Alzheimer's Disease and Other Related Dementia Training. – The director of the police standards and training council shall provide education and training to the law enforcement community on Alzheimer's disease and other related dementia. The director may use the educational program developed in conjunction with the department of health and human services under RSA 126-A:5, XXVII and may include such additional components as may be appropriate to effectively assist law enforcement officers in responding to incidents involving persons with Alzheimer's disease and other related dementia.

Section 106-L:9

106-L:9 Reimbursement of Expenses. – The council may reimburse political subdivisions or the state for, or may pay for a portion of, the expenses incurred by the officers in attendance at police training programs conducted or approved by the council, and the expenses incurred for psychological stability screening for candidates for certification as law enforcement officers.

Section 106-L:10

106-L:10 Penalty Assessment; Waiver of Penalty. –

- I. Every court shall levy a penalty assessment of \$2 or 24 percent, whichever is greater, on each fine or penalty imposed by the court for a criminal offense, including any fine or penalty for a violation of RSA title XXI or any municipal ordinance, except for a violation of a municipal ordinance relating to motor vehicles unlawfully left or parked. Notwithstanding any law or rule to the contrary, the penalty assessment shall be levied in addition to the amount of the fine or penalty imposed by the court.
- II. If multiple offenses are involved, the penalty assessment shall be imposed on the total fine.
- III. If a fine is suspended in whole or in part, the penalty assessment shall be reduced in proportion to the suspension.
- IV. The clerk of each court shall collect all penalty assessments and shall transmit the amount collected under paragraphs I-III to the state treasurer for deposit in the following funds. The state treasurer shall deposit 66.66 percent of the amount collected in the state general fund, 16.67 percent of the amount collected in the victims' assistance fund, and 16.67 percent of the amount collected in the judicial branch information technology fund.

V. If it is determined by a court that the payment of all or any part of a penalty assessment would work a hardship on the person convicted or on such person's immediate family, the court may suspend the payment of all or any part of the assessment.

Section 106-L:11

106-L:11 Attendance by Persons Other Than Police Officers. – Persons who are not police officers as defined in RSA 106-L:2 may attend courses given by the police standards and training council under such conditions and for such tuition as may be established by the council. Certain courses may be closed to persons who are not police officers on recommendation of the director and approval by the council.

Section 106-L:12

106-L:12 Tuition Students. –

I. The council may set tuition, selection procedures, and fees for acceptance of tuition students at its programs and for the use of its facilities. Such fees shall be credited, with the approval of the department of administrative services, to the operating accounts of the council to offset additional expenditures necessitated by the acceptance of the additional students.

II. Tuition students at police and corrections academy programs shall be required to comply with background investigation requirements no less stringent than for persons hired as police or corrections officers by units of government.

III. Certain courses may be closed to persons who are not police or corrections officers on recommendation by the director and approval by the council.

Section 106-L:13

106-L:13 Volunteers; Liability Limited. –

I. Any volunteer of a nonprofit organization or government entity assisting the council in its training programs shall be immune from civil liability in any action brought on the basis of any act or omission resulting in damage or injury to any person if:

(a) The volunteer had prior written approval from the organization to act on behalf of the organization; and

(b) The volunteer was acting in good faith and within the scope of the volunteer's official functions and duties with the organization; and

(c) The damage or injury was not caused by willful, wanton, or grossly negligent misconduct by the volunteer.

II. In this section:

(a) "Damage or injury" includes physical, nonphysical, economic, and noneconomic damage.

(b) "Nonprofit organization" shall include, but not be limited to, a not for profit organization, corporation, community chest, fund or foundation, and an organization exempt from taxation under section 501(c) of the Internal Revenue Code of 1986 organized or incorporated in this state or having a principal place of business in this state.

Section 106-L:14

106-L:14 Firearms Instructors; Liability Limited. – Members of the council, council employees, or persons currently certified as firearms instructors by the council pursuant to Pol 404.05, having certified a person as being proficient with their weapons and meeting the standards established in Pol 404.03 to qualify under the provisions of 18 U.S.C. section 926C(d)(2)(B), shall be immune from liability for any action taken by such person subsequent to their certification, unless the employee or firearms instructor knew that the person certified was not qualified under 18 U.S.C. section 926C(d)(2)(B) to have received such certification.

Section 106-L:15

106-L:15 Prior Certification. – Any police officer previously certified by the police standards and training council prior to the effective date of this chapter shall be considered certified under this chapter and shall continue to be subject to the jurisdiction of the police standards and training council.

Section 106-L:16

106-L:16 Police Psychological Stability Screening Fund. – There is established a police psychological stability screening fund for the purpose of reimbursing costs related to psychological stability screening for candidates for certification as law enforcement officers, which shall be administered by the council. The fund shall be nonlapsing and shall be continually appropriated to the council.

Section 106-L:17

106-L:17. The Law Enforcement Conduct Review Committee.

1. The Governor shall appoint members of the Law Enforcement Conduct Review Committee and name its chairperson. This committee shall be administratively attached to the New Hampshire Police Standards and Training Council and shall report to the director or his or her designee. This committee shall be composed of four law enforcement members and three public members, none of whom shall be employed as a certified police officer, lawyer, or judge, and none of whom shall have a spouse, sibling, or parent, by birth, adoption, or marriage, who is a certified police officer, lawyer, or judge. A quorum for the transaction of business by the Committee shall be five members; of which least three shall be law enforcement officers, and two shall be public members. The committee shall meet at least four times a year to address their responsibilities. Their meetings shall be conducted in non-public session. A staff attorney hired by and reporting to the director shall provide guidance to the committee, shall direct investigations as authorized by the committee or the director, and shall be responsible to present recommended findings in front of the council on behalf of the committee. No committee member may serve concurrently as a member of the council. The term of appointment for each member is two years and no appointed member may serve more

than three consecutive terms. No member shall participate in any proceedings before the committee involving his, her, or their own conduct or the conduct of his, her, or their agency.

II. The existence of the Law Enforcement Conduct Review Committee shall be publicly displayed on the council's website.

Section 106-L:18

106-L:18 Responsibilities of the Committee.

I. The committee shall review all valid complaints alleging misconduct, as defined by statute and, if determined necessary, shall cause or direct an investigation of the alleged misconduct to be conducted by the law enforcement agency that employs the subject officer; confirm that any investigation by a law enforcement agency was valid; review the record and findings of an investigation by a law enforcement agency and, if the investigation was not valid, authorize the staff attorney to direct the complaint to be investigated with assistance from investigators; after said investigation, direct the staff attorney to present a recommended finding to the council at a public hearing of the council on behalf of the committee; and provide a recommended sanction upon a sustained finding of misconduct by the council.

II. Upon receipt of a valid complaint alleging that a law enforcement officer committed a criminal act or acts while acting as a law enforcement officer, the committee shall report its findings to the director immediately, who shall refer the complaint to the New Hampshire Attorney General's Office, Public Integrity Unit for investigation.

III. The committee shall dismiss a complaint of misconduct when the complainant lacks standing, the council lacks jurisdiction over the complaint, the complaint is insufficient or there is insufficient cause to proceed, the complaint alleges minor agency policy violation that does not meet the definition of misconduct, or the period of limitation has expired.

Section 106-L: 19

106-L:19 Law Enforcement Agencies; Duty to Adopt a Valid Internal Affairs Program

I. Within nine months of the effective date of this section, each law enforcement agency shall adopt a valid internal affairs program in order to manage complaints regarding their agency's law enforcement officers.

II. A valid internal affairs program requires that a law enforcement agency provide all of the following:

(a) The agency has a written formal policy that defines code of conduct and/or misconduct and a formal written policy that defines the internal investigation process.

(b) The agency accepts properly filed complaints against its law enforcement officers.

(c) The agency assigns an investigator to conduct an investigation as determined by the formal written policy, to determine whether an officer has committed an act or acts of misconduct.

(d) The agency must have language in its policies or applicable collective bargaining agreement that outlines for its officers the acts of misconduct enumerated in this chapter, the expectations of employment or prohibited activities of the agency and provides due process rights for its officers in its policies.

(e) The agency policy must provide for due process for the accused officer and address discipline based on just cause, a set range of discipline for offenses, and consideration of mitigating and aggravating circumstances.

III. The chief executive officer of every law enforcement agency in the State shall be responsible for the implementation of this section and shall cause copies of all written policies required by this section to be filed with the Police Standards and Training Council.

IV. The council shall create an effective internal affairs program model policy that may be used by law enforcement agencies to meet the requirements of this section

Section 106-L:20

106-L:20 Law Enforcement Agencies; Duty to Report an Allegation of Misconduct

I. The chief executive officer of a law enforcement agency shall report to the committee, through the Director or designee, within 15 business days if any of the following occur in regard to a law enforcement officer of the agency:

(a) The agency is in receipt of a valid complaint of misconduct, and:

(i) The agency is conducting, or has conducted, a valid internal investigation of the allegation as defined in this Chapter and in accordance with their internal policy;

(ii) The agency has an outside law enforcement agency conducting, or that has conducted, a valid internal investigation into the matter as defined in this Chapter; or

(iii) The agency is requesting a valid internal investigation be conducted into the matter by investigators designated by the Director or the committee.

(b) The results of a valid internal investigation has resulted in a sustained finding of misconduct; or

(c) That an officer resigned from the agency while under investigation for misconduct.

II. As part of the report, the executive officer of the agency shall provide a copy of any all relevant documents associated with the valid investigation, including the agency's investigative report, any findings, decisions. Such documents shall not be subject to RSA 91-A, except as provided in this chapter.

III. The committee shall review the report to determine if the local agency has conducted a valid investigation. If the committee determines that there is not an effective internal affairs program at the local agency, the committee can recommend a separate investigation be conducted by police standards and training investigators.

Section 106-L:21

106-L:21 Investigations

I. Each law enforcement agency shall conduct or cause a valid investigation of any complaint alleging that a law enforcement officer employed by the agency committed an act or acts of misconduct. An agency shall conclude the investigation even if the officer resigns from the agency during the course of the investigation.

II. A law enforcement agency or the governing executive body of that agency shall refer to the committee any misconduct complaints made against a law enforcement officer who is the executive officer of that agency.

III. The committee shall accept valid complaints alleging a law enforcement officer committed misconduct and shall refer any complaints regarding allegations of misconduct to the executive officer of the agency who employs that officer, and that agency shall conduct a valid investigation.

IV. A staff attorney, at the direction of the committee or Director, shall cause to be conducted an investigation if the allegation is in regard to a law enforcement officer who is the executive officer of the agency.

V. The committee shall have the authority to review all documents related to a law enforcement agency's investigation into misconduct and may receive or solicit additional information from the local law enforcement agency or any other person in order to determine whether the law enforcement agency conducted a valid investigation. If the committee determines that a law enforcement agency's investigation of the officer's conduct did not constitute a valid investigation or was not fully completed, the committee or the Director shall direct the complaint to be investigated.

Section 106-L:22

106-L:22 Accessibility and Confidentiality

I. It is the purpose of this section both to protect the reputation of law enforcement officers from public disclosure of unwarranted complaints against them and to fulfill the public's right

to know of any action taken against a law enforcement officer when that action is based on a sustained finding of misconduct.

II. Meetings of the committee concerning an individual complaint shall not be open to the public. Records of the committee as well as investigations conducted by the committee shall in all respects be treated as work product and shall not be made public or be discoverable under RSA ch. 91-A except as provided in this Section. However, if the committee recommends to the council that a finding of misconduct be sustained then this decision of the committee shall be public and the council shall schedule a public hearing.

III. The council shall prepare and maintain a register of all complaints reviewed by the committee, which shall be open to public inspection and copying and contain the following information:

(a) the date and the nature of the complaint, but not including the identity of the law enforcement officer or employing agency; and

(b) a summary of the disposition of the completed investigation.

IV. All hearings of the council concerning complaints of misconduct shall be conducted in accordance with RSA 106-L:5, III. At the time of the hearing, the committee's investigative report and any records relied on by the committee to present its recommendation to the council shall be available for public inspection. After the council issues its final decision, the decision and all records or information relied on or presented to the council shall be made public. However, any hearing or record, or any portion thereof, described in this paragraph may be sealed or redacted if the council determines with specificity that any such record will reveal confidential information that creates a compelling interest outweighing the public's presumed right of access.

V. A law enforcement officer charged with committing an act or acts of misconduct shall have the right to inspect and copy the investigation file that results in the charges against him or her, except for any attorney work-product or other privileged information.

VI. Any person aggrieved by a final order of the council granting or denying in whole or in part the relief sought may obtain review of such order in the manner prescribed in RSA 541.

VII. Notwithstanding any other provision of law set forth in this Chapter, in a criminal proceeding a prosecutor may review and disclose, subject to the procedure set forth in RSA 105:13-b, any such information or records related to a sustained finding of misconduct in the possession of any law enforcement agency, the council, or the committee in order to determine whether any such information contains potentially exculpatory materials consistent with the prosecutor's constitutional, legal, or ethical obligations.

Section 106-L:23

106-L:23 Statute of Limitations:

I. The committee may not review any complaint or allegation of misconduct that is alleged to have occurred prior to the effective date of this provision.

II. Complaints must be filed within two years after the act or acts of alleged misconduct. When alleged misconduct was not discovered, and could not reasonably have been discovered at the time of the alleged misconduct, the complaint must be filed within two years of the time it was discovered, or in the exercise of reasonable diligence should have been discovered.

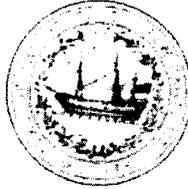
Notwithstanding the foregoing, a complaint alleging misconduct under RSA 106-L:2, VIII (b) relating to an officer's trustworthiness or credibility may be filed at any time.

2. The sum of \$350,000 is hereby appropriated to the Police Standards and Training Council for the fiscal year ending June 30, 2023 for the purpose of hiring one full time staff attorney and two full time investigators.

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

33 CAPITOL STREET
CONCORD, NEW HAMPSHIRE 03301-6397

JOHN M. FORMELLA
ATTORNEY GENERAL



JANE E. YOUNG
DEPUTY ATTORNEY GENERAL

MEMORANDUM

DATE: November 1, 2021

TO: Honorable Christopher Sununu, Governor
Honorable Sherman Packard, Speaker of the House
Honorable Chuck Morse, President of the Senate
Honorable Paul C. Smith, House Clerk
Honorable Tammy L. Wright, Senate Clerk
Michael York, State Librarian

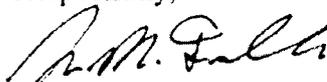
FROM: Attorney General John M. Formella, Chairman

SUBJECT: Final Report of Chapter 91:150, Laws of 2021
Commission to Develop Recommendations for Legislation to Establish a
Single, Neutral, and Independent Statewide Entity to Receive Complaints
Alleging Misconduct Regarding All Sworn and Elected Law Enforcement
Officers Pursuant to Recommendation #16 in the Final Report Issued by the
New Hampshire Commission on Law Enforcement Accountability,
Community and Transparency

Pursuant to HB2, Chapter 91:150, Laws of 2021, enclosed please find the final report of the Commission to Develop Recommendations for Legislation to Establish a Single, Neutral, and Independent Statewide Entity to Receive Complaints Alleging Misconduct Regarding All Sworn and Elected Law Enforcement Officers Pursuant to Recommendation #16 in the Final Report Issued by the New Hampshire Commission on Law Enforcement Accountability, Community and Transparency.

If you have any questions or comments regarding this report, please do not hesitate to contact me.

Respectfully,

A handwritten signature in black ink, appearing to read "John M. Formella". The signature is written in a cursive style with a large initial "J" and "M".

John M. Formella
Attorney General

Enclosure

FINAL REPORT

Commission to Develop Recommendations for Legislation to Establish a Single, Neutral, and Independent Statewide Entity to Receive Complaints Alleging Misconduct Regarding All Sworn and Elected Law Enforcement Officers Pursuant to Recommendation #16 in the Final Report Issued by the New Hampshire Commission on Law Enforcement Accountability, Community and Transparency

**HB2, Chapter 91:150, Laws of 2021
November 1, 2021**

MEMBERS

Commission

Attorney General John Formella
Senator Sharon Carson
Representative David Welch
Director John Scippa, Police Standards and Training
Assistant Commissioner Eddie Edwards, New Hampshire Department of Safety
Attorney Julian Jefferson, New Hampshire Public Defender
Chief Charlie Dennis, Hanover Police Department
Lieutenant Mark Morrison, Londonderry Police Department
Joseph Lascaze, ACLU

Alternates

Senior Assistant Attorney General Matthew Broadhead
Chief Joseph Hoebeke, Hollis Police Department
Attorney Jake Krupski, Milner & Krupski
Attorney Gilles Bissonette, ACLU

CHARGE OF THE COMMISSION

The Commission to Develop Recommendations for Legislation to Establish a Single, Neutral, and Independent Statewide Entity to Receive Complaints Alleging Misconduct Regarding All Sworn and Elected Law Enforcement Officers Pursuant to Recommendation #16 in the Final Report Issued by the New Hampshire Commission on Law Enforcement Accountability, Community and Transparency (“the Commission”) was charged with “establishment [of] a statewide entity to receive and review misconduct complaints.”

HISTORY

The Commission held meetings on August 23; September 2, 9, 16, 23, and 30; and October 7, 13, 14, 21, 27, and 28, 2021.

On August 23, Senior Assistant Attorney General (“SAAG”) Matthew Broadhead presented an overview of the LEACT Commission’s mission and the resulting forty-eight recommendations that issued, including the establishment of this Commission through recommendation sixteen (16). Numerous topics were raised on which members requested additional background at further meetings in order to achieve the goals of the Commission. A weekly standing meeting was scheduled to achieve consensus and provide a report to the Legislature by November 1.

On September 2, SAAG Broadhead highlighted numerous LEACT Commission recommendations that had been enacted, including but not limited to public release of the Exculpatory Evidence Schedule (“EES List”), establishing a state fund for body cameras for local law enforcement, juvenile justice reform, revisions to law enforcement training curriculum, model policy development, and improved crime reporting data. Director John Scippa presented an overview of how Police Standards and Training could serve as the appropriate body to incorporate the goals of this Commission, since it was already doing much of the functions in regulatory oversight and certification hearings, and could adopt needed changes through statutory and regulatory amendments.

On September 9, Hanover Police Chief Charlie Dennis presented “Citizen Complaints and Internal Investigations” to the Commission, discussing the procedure for local law enforcement to receive complaints, complete internal affairs investigations, and issue determinations including discipline. The presentation included an explanation of expectations of police officers and supervisors, the interaction with the PSTC certification procedure, and the impact of collective bargaining agreements. SAAG Broadhead also provided an overview of the proposed legislation based on the LEACT recommendations to receive complaints within a reformed PSTC model or by creating a new entity incorporating public participation and modeled on the Attorney Discipline Office (“ADO”).

On September 16, Hollis Police Chief Joseph Hoebeke presented an overview of body-worn and cruiser-system police cameras and their impact on evaluation of officer conduct, description of incident scenes and police reports, and enhancement of police transparency. Additionally, there was further exploration of the options to enact LEACT Commission recommendation sixteen, and Director Scippa presented findings from his review of models in other states, and in particular that of Vermont.

On September 23, Executive Director of the Vermont Police Academy Heather Simmons, and Chief Bricknell of the Vermont Regulation Committee, provided an overview of the system

implemented in Vermont to address complaints against police officers, including a council with seventeen (17) subcommittees. New Hampshire Office of Professional Licensure and Certification Executive Director Lindsay Courtney also presented an overview of the office's procedures, responsibilities, hierarchy, and considerations, with particular emphasis on dealing with complaints and investigations. Finally, Janet Ackerman, Vice President of Eastern Bankshares, Inc., provided a presentation to the board on volunteering for the ADO and the responsibilities and procedures of investigations.

On September 30, the Commission identified and discussed four essential questions that it needed to answer: (1) what authority would the entity have, (2) where would the entity be housed, (3) how would the entity be composed and staffed, and (4) what is the appropriate definition of misconduct?

In the subsequent meetings, the Commission proceeded into discussion of specific proposals submitted by Commission members. On October 7, the Commission commenced a review of a draft definition of misconduct that had been submitted by the ACLU, which continued to be discussed on October 13. On October 14, the Commission began a review of an initial proposal by Director Scippa for changes to the relevant provisions of RSA 106-L Police Standards and Training Council, to incorporate the creation of the committee. On October 21, the Commission reviewed the ACLU's proposed changes to the draft of RSA 106-L previously submitted by Director Scippa, as well as additional provisions submitted by Londonderry Police Lieutenant Mark Morrison.

The Commission conducted its final meeting on October 28. An updated draft incorporating all of the prior discussions was reviewed with further additions and revisions agreed by the Commission. The ACLU-NH is generally supportive of this proposal, but stated it is still reviewing the proposal's transparency provisions and reserves final judgment on those provisions. At the conclusion of the discussion, Attorney General Formella proposed and the Commission moved to approve the draft legislation contained in Exhibit A, and to authorize the Attorney General to file this report recommending that the General Court adopt the same with the understanding that final details will be clarified through the legislative process. The Commission unanimously voted to approve this motion. The approved draft legislation is attached herein as Exhibit A.

FINDINGS AND RECOMMENDATIONS

The Commission presents for the consideration of the General Court two legislative recommendations as follows, with the understanding that the final details will be clarified through the legislative process:

1. RSA Chapter 106-L Police Standards and Training Council, be amended as detailed in Exhibit A; and

2. The sum of \$350,000 be appropriated to the Police Standards and Training Council for the fiscal year ending June 30, 2023, for the purpose of hiring one full-time staff attorney and two full-time investigators.

LIST OF APPENDICES

Exhibit A: Draft Proposed Legislation