CONSENT CALENDAR

January 14, 2022

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Committee on Criminal Justice and Public Safety to which was referred HB 1682-FN-A,

AN ACT establishing the law enforcement conduct review committee in the New Hampshire police standards and training council and making an appropriation therefor. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. David Welch

FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

COMMITTEE REPORT

Committee:	**Criminal Justice and Public Safety**
Bill Number:	**HB 1682-FN-A**
Title:	**establishing the law enforcement conduct review committee in the New Hampshire police standards and training council and making an appropriation therefor.**
Date:	**January 14, 2022**
Consent Calendar:	**CONSENT**
Recommendation:	**OUGHT TO PASS WITH AMENDMENT 2022-0112h**

STATEMENT OF INTENT

This legislation is the result of recommendation 16 of the Law Enforcement Accountability Community and Transparency Commission (LEACT). The commission was charged with "establishment of a statewide entity to receive and review complaints alleging misconduct regarding all sworn and elected law enforcement officers." 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. Attorney General Formella proposed, and the commission moved to approve the draft legislation contained in this bill. On January 14th, the Criminal Justice and Public Safety committee held a public hearing on this bill and agreed with the language contained in the bill and with an amendment to correct a typographical error.

Vote 17-0.

Rep. David Welch
FOR THE COMMITTEE

Original: House Clerk
Cc: Committee Bill File

CONSENT CALENDAR

Criminal Justice and Public Safety

HB 1682-FN-A, establishing the law enforcement conduct review committee in the New Hampshire police standards and training council and making an appropriation therefor. **OUGHT TO PASS WITH AMENDMENT.**

Rep. David Welch for Criminal Justice and Public Safety. This legislation is the result of recommendation 16 of the Law Enforcement Accountability Community and Transparency Commission (LEACT). The commission was charged with "establishment of a statewide entity to receive and review complaints alleging misconduct regarding all sworn and elected law enforcement officers." 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. Attorney General Formella proposed, and the commission moved to approve the draft legislation contained in this bill. On January 14th, the Criminal Justice and Public Safety committee held a public hearing on this bill and agreed with the language contained in the bill and with an amendment to correct a typographical error. **Vote 17-0.**

Original: House Clerk
Cc: Committee Bill File

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 1682-FN-A

BILL TITLE: establishing the law enforcement conduct review committee in the New Hampshire police standards and training council and making an appropriation therefor.

DATE: January 14, 2022

LOB ROOM: 202-204

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. Welch Seconded by Rep. Bordenet AM Vote: 17-0

Amendment # 2022-0112h

Moved by Rep. Welch Seconded by Rep. Harriott-Gathright Vote: 17-0

CONSENT CALENDAR: YES

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Scott Wallace, Clerk

OFFICE OF THE HOUSE CLERK

1/10/2022 8:56:51 AM
Roll Call Committee Registers Report

2022 SESSION

Criminal Justice and Public Safety Amend

Bill #: HB1682 **Motion:** 2022-0112h **AM #:** 3:39 **Exec Session Date:** 1/14/21

Members	YEAS	Nays	NV
Abbas, Daryl A. Chairman	✓		
Roy, Terry Vice Chairman	✓		
Welch, David A.	✓		
Burt, John A.	✓		
Hopper, Gary S. Pleh	✓		
Green, Dennis E.	✓		
Wallace, Scott Clerk Rhode	✓		
Testerman, Dave	✓		
True, Chris	✓		
Pratt, Kevin M.	✓		
Marston, Dick	✓		
Harriott-Gathright, Linda C.	✓		
Pantelakos, Laura C.	✓		
O'Hearne, Andrew S.			
Bordenet, John	✓		
Meuse, David			
Newman, Ray E.	✓		
Bouldin, Amanda C.			
Conley, Casey M.	✓		
Klein-Knight, Nicole	✓		
Bradley, Amy	✓		
	14	0	

Rep. Welch, Rock. 13
January 14, 2022
2022-0112h
04/08

Amendment to HB 1682-FN-A

Amend RSA 106-L:23, III as inserted by section 10 of the bill by replacing it with the following:

III. Notwithstanding paragraph II, any grievance alleging misconduct under RSA 106-L:2, V(b)(1) may be filed at any time.

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 1682-FN-A

BILL TITLE: **establishing the law enforcement conduct review committee in the New Hampshire police standards and training council and making an appropriation therefor.**

DATE: **January 14, 2022**

LOB ROOM: **204** **Time Public Hearing Called to Order:** **11:10am**

Time Adjourned: **12:25pm**

Committee Members: Reps. Abbas, Roy, Wallace, Welch, Burt, Hopper, Green, Testerman, True, Pratt, Marston, Harriott-Gathright, Pantelakos, O'Hearne, Bordenet, Meuse, R. Newman, Amanda Bouldin, Conley, Klein-Knight and Bradley

Bill Sponsors:
Rep. Welch

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Welch
- Sponsored the bill
- Representing: LEAC Committee

Tony Sculimbrene
- 10 Law enforcement - no criminal defense people
- Questions - No connection
- No lawyer'
- ACLU
- Stack deck in favor of PD

Matt Broadhead
- Attorney General Office
- Supports:
  - Over site
  - Transparency
  - Local control

John Scippa
- NH PSTC -Police Standard & Training
- Due Process
- Public
- Central Depository
- Conduct Review Committee - meets quarterly
- Local Control - misconduct
  - Chief low Enforcement Officer - then turns into the review committee (argument and work independent of the review)
- Criminal Case would be completed prior to

Eddie Edwards
- Asst. Commission of Department of Safety
- Supports bill

*Henry Klemenetowitz
- ACLU-NH
- Supports bill

Mark
- NHPA
- Doesn't support any changes except the clerical

Chief Charlie Dennis
- NHACOP - Chief of Police
- Supports bill

Respectfully submitted,

Rep. Scott Wallace

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 1682 Date 1/14/22

Committee Criminal Justice

** Please Print All Information **

Name	Address	Phone	Representing	(check one) Pro	Con
KEN NORTON	85 W. STATE ST CONCORD		NAMI NH	✓	
Marissa Chase		6038549330	NHAJ	✓	
John Knight	109 N 5th St Carroll			✓	
JOSEPH HOEBEKE	HOLLIS PD		NHACOP	✓	

House Remote Testify

Criminal Justice and Public Safety Committee Testify List for Bill HB1682 on 2022-01-14

Support: 1 Oppose: 10 Neutral: 0 Total to Testify: 0

Export to Excel

Name	City, State Email Address	Title	Representing	Position	Testifying	Non-Germane	Signed Up
Love, Rep.David	Derry, NH davidlove4rep@gmail.com	An Elected Official	Rockingham 6	Support	No	No	1/11/2022 10:19 AM
Levesque, Brian	Manchester, NH blevesque@merrimacknh.gov	A Member of the Public	Myself	Oppose	No	No	1/14/2022 10:35 AM
Reynolds, Charles	Dover, NH reynolds.charles@comcast.net	A Member of the Public	Myself	Oppose	No	No	1/14/2022 10:49 AM

EXHIBIT 3

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**

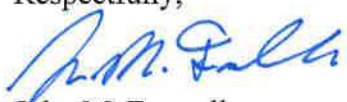
SUBJECT: **Final Report of Chapter 91:150, Laws of 2021**
Commission to Develop Recommendations for Legislation to Establish a Single, Neutral, and Independent Statewide Entity to Receive Complaints Alleging Misconduct Regarding All Sworn and Elected Law Enforcement Officers Pursuant to Recommendation #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,



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

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:

I. ***"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

II***I***. "Council" means the ***P***~~p~~olice ***S***~~s~~tandards and ***T***~~t~~raining ***C***~~c~~ouncil.

IV~~H~~. "Director" means the director of ~~the~~ ***P***~~p~~olice ***S***~~s~~tandards and ***T***~~t~~raining ~~council~~.

~~I~~V. "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.

V***I***. "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;

(e) ~~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***~~f~~) The director of the division of state police, or designee;

(***h***~~g~~) The attorney general, or designee;

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

(***j***~~i~~) ~~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 p~~***P***olice ***S***~~s~~tandards and ***T***~~t~~raining***, its*** council***, committees and employees are*** ~~is~~ an executive branch ***agency*** ~~council~~. 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:

I. 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.

I. 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.

Archived: Thursday, March 10, 2022 2:49:10 PM
From: Joseph Lascaze
Sent: Friday, January 14, 2022 9:32:28 AM
To: ~House Criminal Justice and Public Safety
Cc: Henry Klementowicz
Subject: HB 1682
Importance: Normal
Attachments:
3 -- Final Report of Chapter 91 150, Laws of 2021.pdf ;1 -- LEACT Report.pdf ;2 -- Study Committee Formation.pdf ;Statement on House Bill 1682 -- statewide agency.pdf ;

Dear Members of the Criminal Justice and Public Safety Committee,

I write from the ACLU of New Hampshire in support of HB 1682, which will be before your committee this morning at 11:15am. Please find attached our written testimony and LEACT Report which includes a summary of the bill and the areas we support.

Thank you for your time and consideration. I would be happy to discuss any questions you may have concerning the bill at your convenience.

Best regards,

Joseph Lascaze
Smart Justice Campaign Manager
American Civil Liberties Union of New Hampshire
18 Low Avenue, Concord, NH 03301
603.227.6683 x 108 | Joseph@aclu-nh.org
aclu-nh.org

This message may contain information that is confidential or legally privileged. If you are not the intended recipient, please immediately advise the sender by reply email that this message has been inadvertently transmitted to you and delete this email from your system.

Statement on House Bill 1682
by Joseph Lascaze, ACLU-NH Smart Justice Campaign Manager,
and Gilles Bissonnette, ACLU-NH Legal Director
House Criminal Justice and Public Safety Committee
Hearing: January 14, 2022

We submit this testimony on behalf of the American Civil Liberties Union of New Hampshire ("ACLU-NH"), a non-partisan, non-profit organization working to protect civil liberties for over 50 years. HB1682 would establish a law enforcement conduct review committee in the New Hampshire Police Standards and Training Council ("PSTC").

The ACLU-NH is generally supportive of HB1682, but we recommend that this Committee make certain changes to the transparency provisions enacted in Section 10 of the bill to ensure that this new council is more accountable to the public.

I. Background: HB1682 and the LEACT Recommendation for a Statewide Agency to Investigate Police Complaints

The New Hampshire Commission on Law Enforcement Accountability, Community, and Transparency ("LEACT Commission") conducted 26 meetings during the summer of 2020 following the May 25, 2020 murder of George Floyd. In the LEACT Commission's final August 31, 2020 Report, the Commission recommended—at the initiative of then Attorney General Gordon MacDonald—the "establishment of a single, neutral and independent statewide entity to receive complaints alleging misconduct regarding all sworn and elected law enforcement officers" with several components. The ACLU-NH—through its Smart Justice Campaign Manager, Joseph Lascaze—was a member of the LEACT Commission and supported this recommendation. That specific recommendation is attached as ***Exhibit 1***.

In last year's HB2, a separate study committee was established "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" LEACT Commission. A copy of the budgetary provisions forming the study committee is attached as ***Exhibit 2***.

A majority of the study committee constituted law enforcement members. Along with a Senate and House designee, the study committee included the Attorney General, the director of PSTC, the Commissioner of Safety's designee, the N.H. Association of Chiefs of Police, and the New Hampshire Police Association—in total, 5 law enforcement members. The ACLU-NH—through its Smart Justice Campaign Manager, Joseph Lascaze—was also a member of this study committee, along with Julian Jefferson—an attorney with the Office of the Public Defender who also served on the LEACT Commission.

This study committee met during the Fall of 2021, and we greatly appreciate the efforts of the Attorney General and his staff to facilitate negotiations of all committee members—a task which is undoubtedly difficult. The study committee issued a report on November 1, 2021. HB1682 is the product of this study committee's report. The study committee's report and draft legislation is attached as ***Exhibit 3***. As the ACLU-NH indicated in the final report, "[t]he 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." The ACLU-NH took this position because the transparency provisions of this proposal were not fully discussed until the study committee's last meeting on October 28, 2021, and changes were made on that last day that required further analysis and stakeholder input.

II. While the ACLU-NH is Generally Supportive of HB1682, this Committee Should Be Aware that it is Inconsistent with the LEACT Commission's Recommendation in Several Ways.

While the ACLU-NH continues to be generally supportive of the November 1, 2021 report and the resulting HB1682, the ACLU-NH has also made clear that the November 1, 2021 report and this resulting legislation was the result of many compromises, including some that have caused this resulting proposal to be inconsistent with the LEACT Commission's August 31, 2020 recommendation in several ways. For example:

1. The LEACT Commission made clear that this new body should conduct "[i]nvestigation[s] following consistent and defined standards." However, the November 1, 2021 report and the resulting HB1682 does not allow this new body to automatically conduct investigations at its own discretion, but rather only after it first concludes that the employing agency did not conduct a "valid" investigation, including if the local "agency's findings or conclusions are *clearly not supported by the evidence or contain material errors or omissions of fact or law*." This is a high threshold in determining when an investigation should be conducted by this new council. *See* Page 3, Lines 34-35 (defining "valid investigation); Page 7, Lines 10 (noting that the new body is to determine is an "investigation by a law enforcement agency was valid), Page 9, Lines 21-23 ("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.").

2. The LEACT Commission made clear that this new body should be a "single, neutral and independent statewide entity." However, the November 1, 2021 report and the resulting HB1682 placed this new body within the PSTC, which is essentially a law enforcement agency with a majority of law enforcement members. *See* RSA 106:L-3.

3. The LEACT Commission made clear that, in this new body, "[a]ny committee or panel would be slightly weighted toward law enforcement." However, the November 1, 2021 report and the resulting HB1682, only causes the final hearing body that hears complaints—the PSTC—to have 17 members, which includes 10 law enforcement members and only 4 public members. The committee also would include two judges and a criminal justice college professor. *See* Page 4, Lines 1-18. With only four public members, we do not believe that this is "slightly weighted toward law enforcement" consistent with the LEACT Commission's recommendation.[1]

III. The Importance of a New Body to Investigate Police Officer Complaints.

Despite these inconsistencies with the LEACT Commission, the ACLU-NH expressed general support of this proposal—while reserving final judgment on the transparency provisions—because it is a significant improvement over the current process where local law enforcement agencies conduct disciplinary investigations of their own police officers with little public accountability or transparency. One of the benefits of this bill is—consistent with the LEACT recommendation—a statewide, universal definition of what constitutes misconduct. *See* Page 2, Line 8-Page 3, Line 6.[2] This new proposal will help address the mistrust that stems from police departments internally investigating their own officers for misconduct.

Indeed, there are often inherent conflicts with investigations into misconduct being exclusively performed by an officer's own department (meaning their own colleagues). Such conflicts can raise suspicions that internal

[1] Currently, the PSTC has 14 members consisting of a vast majority of law enforcement members. It contains 9 law enforcement members, two judges, a community college designee, and two public members. *See* RSA 106:L-3.

[2] This bill states before each misconduct definition that a "sustained finding" should exist. *See* Page 2, Line 8-Page 3, Line 6. This should be construed to mean that there has been a sustained finding by PSTC, not that "misconduct" depends on whether the local police department determined the misconduct to be "sustained." Such an alternative interpretation would undermine the entire point of this bill.

investigations that have led to "unfounded" or "unsubstantiated" determinations may not have been done with full independence.

This was seen recently with respect to the Salem Police Department where an internal audit report from 2018 showed that the Department failed to take seriously complaints concerning their officers' alleged misconduct.[3] Moreover, this report showed that, pursuant to Salem's collective bargaining agreement with the police union, there is a narrow window of six months from the date of an incident within which time a complaint must be filed, or else the Department is prohibited from even investigating the case. Further, this 2018 report showed that the Department failed to meaningfully investigate potential criminal activity from 2012 where an officer, while off-duty, led another Salem police officer on a high-speed chase. The report said this internal investigation "did not meet acceptable best practices for internal review." This report also noted that a Salem Police Department investigator made little effort to review a heated altercation at a local ice rink where police stunned and arrested a hockey coach in December 2017. In the end, the Salem Police Department deemed the complaint against its officers as "unfounded" within less than 24 hours.[4]

These concerns about the independence and integrity of internal police internal investigations are precisely why this agency will have value and why the LEACT Commission made its original recommendation.

However, as explained below, we recommend that some of the transparency provisions in HB1682 be changed to ensure that this new function is more accountable to the public.

IV. We Recommend Certain Changes to the Transparency Provisions in Section 10 of HB 1682 To Create a More Open and Accountable Process.

We recommend certain changes to the transparency provisions in Section 10 of HB 1682 (including Page 9, Line 24 to Page 10, Line 20) to make this body more accountable to the public:

1. The third paragraph states that "*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." *See* Page 9 (Lines 25-28) (emphasis added). This proposal is problematic for several reasons. *First*, this information should become publicly available at the time the committee recommends to the council that a finding of misconduct be sustained, as opposed to "[a]t the time of the hearing." This proposed limitation in HB 1682 prevents the public from, in real time, evaluating the conduct of the new council in prosecuting a complaint, as the public would have to wait until a hearing to get substantive information. Indeed, this timing limitation is inconsistent with the criminal process where a member of the public can access court pleadings and can even access a prosecutorial file, subject to RSA ch. 91-A exemptions, before trial. This allows a member of the public to learn more about the case before the trial has commenced, which provides insight on both the prosecutorial and judicial process. The same should be true here. *Second*, this limitation is inconsistent with Chapter 91-A principles which do not limit disclosure on the timing of certain events—here, a hearing. *Third*, this limitation is not consistent with how the Attorney Discipline Office handles the transparency of its records. There, once a complaint is docketed and/or a notice of charge is filed, this information becomes public even before a hearing has occurred. *See* N.H. Sup. Ct. R. 37(20)(b) ("All records and proceedings relating to a complaint docketed by the attorney discipline system shall be available for public inspection (other than work product, internal memoranda, and deliberations) upon the earliest of the following: When the Attorney Discipline Office general counsel, the complaint screening committee or the

[3] Ryan Lessard, *Report Blasts Salem Police for Handling Officer Complaints, Internal Investigations*, Union Leader (Nov. 23, 2018), https://www.unionleader.com/news/politics/local/report-blasts-salem-police-for-handling-of-officer-complaints-internal-investigations/article_a7b3323c-d6a1-5380-9b46-1f1114c5250e.html.

[4] Ryan Lessard, *Court documents: Salem police made little effort to investigate complaints*, Union Leader (Jan. 25, 2019), https://www.unionleader.com/news/courts/court-documents-salem-police-made-little-effort-to-investigate-complaints/article_3e93d64e-8682-56bd-853d-adc735a1d22f.html.

professional conduct committee finally disposes of a complaint; [or] (2) When disciplinary counsel issues a notice of charges …. ").

2. The first paragraph states that: "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 right to know of any action taken against a law enforcement officer when that action is based on a sustained finding of misconduct." *See* Page 9 (Lines 25-28). This sentence is unnecessary and effectively serves as "statement of purpose," where the later transparency provisions in this section should actually govern how this information is treated. This language is also inconsistent with the bill, which appropriately allows hearings to be public even if the PSTC determines after a hearing that misconduct was not sustained. *See* Page 10 (Lines 2-3) (referencing that hearings "shall be conducted in accordance with RSA 106-L:5, III," which makes them generally public). Further, this language could be used by law enforcement to argue that unsustained investigatory files in the possession of local law enforcement agencies themselves should not be made available on request more generally—a position that is not consistent with case law. *See Provenza v. Town of Canaan*, No. 215-2020-cv-155 (Grafton Cty. Super. Ct. Dec. 2, 2020) (Bornstein, J.) (holding that an internal investigation report concerning an allegation that an officer engaged in excessive force and that found the misconduct unsustained is a public document, in part, because "the public has a significant interest in knowing how the police investigate such complaints"; currently on appeal to N.H. Supreme Court at No. 2020-0563); *see also Reid v. N.H. AG*, 169 N.H. 509, 532 (2016) ("[t]he public has a significant interest in knowing that a government investigation is comprehensive and accurate").

    - For the same reasons, Section II in proposed RSA 106-L:20 should also be edited, as this provision could be used by local law enforcement agencies as a basis to blanketly shield investigatory files in their own possession in a manner inconsistent with current case law. *See* Page 8, Lines 33-34.

3. Finally, the bill should make clear that all findings of sustained misconduct—whether stipulated to or found by the PSTC—are placed on a publicly accessible website, which was contemplated in the LEACT recommendation.

Accordingly, we would propose the amendment concerning transparency at the end of this testimony which reflects these recommendations.[5]

For these reasons, the ACLU-NH is generally supportive of the concept of HB1682. However, we would recommend several changes to the transparency provisions enacted in Section 10 of the bill to ensure that this new council is more accountable to the public.

[5] On Page 6 , Lines 33-35, the bill states that the "[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 <u>*shall be responsible to present recommended findings in front of the council on behalf of the committee*</u>." (emphasis added). We view this role as one of a prosecutor. Other licensing agencies—like the OPLC, Board of Medicine, and the ADO (which governs lawyers)—have a prosecutor that investigates and affirmatively prosecutes misconduct. We think that this prosecutorial role is important because it will ensure that this new process is more meaningful and leads to correct results. Indeed, a fully adversarial system is the best system to produce justice, which precisely is why the courts and other licensing bodies use it.

Proposed ACLU-NH Amendment

106-L:20 Law Enforcement Agencies; Duty to Report an Allegation of Misconduct. [Page 8, Lines 33-4]

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, and any findings and decisions. ~~**Such documents shall not be subject to RSA 91-A, except as provided in this chapter.**~~

106-L:22 Accessibility and Confidentiality. [Page 9, Line 24 to Page 10, Line 20]

~~**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 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 be work product and shall not be made public or be discoverable under RSA 91-A except as provided in this subdivision. If the committee recommends to the council that a finding of misconduct be sustained then such 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 containing 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, t**~~***T***he 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 ***if the committee recommends to the council that a finding of misconduct be sustained***. After the council issues its final decision, the decision and all records or information relied on or presented to the council shall be 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. ***All findings of sustained misconduct—whether stipulated to or found by the police standards and training council—shall be placed on a publicly accessible website***. ….

HB 1682-FN-A - AS INTRODUCED

2022 SESSION

22-3119
08/04

HOUSE BILL ***1682-FN-A***

AN ACT establishing the law enforcement conduct review committee in the New Hampshire police standards and training council and making an appropriation therefor.

SPONSORS: Rep. Welch, Rock. 13

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill establishes the law enforcement conduct review committee in the New Hampshire police standards and training council and makes an appropriation therefor.

- -

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

22-3119
08/04

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Two

AN ACT establishing the law enforcement conduct review committee in the New Hampshire police standards and training council and making an appropriation therefor.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings and Policy; Police Standards and Training Council. Amend RSA 106-L:1 to read as follows:

106-L:1 Findings and Policy.

I. 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.

II. 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 New Hampshire police standards and training council.

2 Definitions; Police Standards and Training Council. Amend RSA 106-L:2 to read as follows:

106-L:2 Definitions. In this chapter:

I. [~~"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.~~] ***"Committee" means the law enforcement conduct review committee.***

II. "Council" means the police standards and training council.

III. "Director" means the director of the police standards and training council.

IV. "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:

(1) Has full general arrest powers, or

(2) A certified or certifiable state corrections officer, or

(3) A certified or certifiable state probation-parole officer.

V. "Misconduct" means:

(a) An officer has been convicted of one or more the following:

(1) A crime which constitutes a felony in this or any other state;

(2) A misdemeanor for which there was a sentence of incarceration, regardless of whether all or part of the sentence was suspended;

(3) Driving while intoxicated in this or any other state;

(4) 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); or

(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:

(1) A deliberate and material lie during a civil, administrative, or criminal proceeding, in a police report, an internal investigation, or an investigation conducted by the New Hampshire police standards and training council;

(2) A falsification of records or evidence in an investigation or official proceeding; or

(3) A misrepresentation or tampering with official records or reports, tampering with witnesses or falsifying evidence; or

(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; or

(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; or

(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; or

(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 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.

~~[IV.]~~ ***VI.*** "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.

VII. "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.

~~[V.]~~ ***VIII.*** "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.

IX. "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.

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

(a) The agency has not adopted an effective internal affairs program;

(b) The agency refuses, without any legitimate basis, to conduct an investigation;

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

(d) The agency attempts to cover up the misconduct or takes an action intended to discourage or intimidate a complainant;

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

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

3 Membership; Police Standards and Training Council. Amend RSA 106-L:3, I-II to read as follows:

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 towns~~] ***a chief 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;

(e) [~~The chancellor of the community college system of New Hampshire, or designee;~~] ***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;

[~~(f)~~] ***(g)*** The director of the division of state police, or designee;

[~~(g)~~] ***(h)*** The attorney general, or designee;

[~~(h)~~] ***(i)*** The commissioner of the department of corrections, or designee; and

[~~(i)~~] ***(j)*** ***[***~~Two~~] ***Four*** public members, [~~neither~~] ***none*** of whom shall be a certified police officer, lawyer, or judge, and [~~neither~~] ***none*** 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)~~] ***I(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.

4 Executive Branch Jurisdiction; Police Standards and Training Council. Amend RSA 106-L:4 to read as follows:

106-L:4 Executive Branch Jurisdiction. The police standards and training council***, its committees, and its employees*** [~~is~~] ***are*** an executive branch [~~council~~] ***agency pursuant to RSA 21-G:6-b, III***. 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.

5 Powers; Police Standards and Training Council. Amend RSA 106-L:5, III to read as follows:

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. A disciplinary hearing shall be public; however, a portion of the hearing may be closed to the public only if the party seeking closure can 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. The council may, in a nonpublic session, hear and consider the request for closure and rule on such request.

6 Powers; Police Standards and Training Council. Amend RSA 106-L:5, V to read as follows:

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.

7 Powers; Police Standards and Training Council. Amend RSA 106-L:5, XIV to read as follows:

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.

8 Powers; Police Standards and Training Council. Amend RSA 106-L:5, XX to read as follows:

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 their employment with the council, shall have statewide law enforcement authority, and shall be recognized as a peace officer as defined by RSA 594:1, III.***

9 New Paragraphs; Powers; Police Standards and Training Council. Amend RSA 106-L:5 by inserting after paragraph XXII the following new paragraphs:

XXIII. The council 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 of written notification of the arrest of a law enforcement officer by the council, to include a copy of the charging document, the director may 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 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 shall 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 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.

10 New Subdivision; Law Enforcement Conduct Review Committee. Amend RSA 106-L by inserting after section 16 the following new subdivision:

Law Enforcement Conduct Review Committee

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

I. There is established the law enforcement conduct review committee. The governor shall appoint members of the law enforcement conduct review committee and name its chairperson. This committee shall be administratively attached to New Hampshire police standards and training council and shall report to the director or his or her designee. Such committee shall be composed of 4 law enforcement members and 3 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.

II. The quorum required for the committee to transact business shall be 5 members, of which least 3 are law enforcement officers, and 2 are public members. The committee shall meet at least 4 times a year to address their responsibilities. Their meetings shall be conducted in nonpublic 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. Each member shall be appointed for 2 years and no appointed member may serve more than 3 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.

III. The council shall post a link to the law enforcement conduct review committee on the council's public website.

106-L:18 Responsibilities of the Committee.

I. The committee shall review all valid complaints alleging misconduct and, if determined necessary, shall:

(a) Cause or direct an investigation of the alleged misconduct to be conducted by the law enforcement agency that employs the subject officer;

(b) Confirm that any investigation by a law enforcement agency was valid;

(c) Review the record and findings of an investigation by a law enforcement agency and, if the investigation was not valid;

(d) Authorize the staff attorney to direct the complaint to be investigated with assistance from investigators;

(e) After such 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

(f) 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:

(a) The complainant lacks standing;

(b) The council lacks jurisdiction over the complaint;

(c) The complaint is insufficient or there is insufficient cause to proceed;

(d) The complaint alleges a minor agency policy violation that does not meet the definition of misconduct; or

(e) The statute of limitations has expired under RSA 106-L:23.

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

I. Within 9 months of the effective date of this section, each law enforcement agency shall adopt an internal affairs program in order to conduct internal investigations and manage complaints regarding their agency's law enforcement officers.

II. An internal affairs program shall include all of the following:

(a) A written policy that defines code of conduct and/or misconduct and defines the internal investigation process.

(b) A written procedure for accepting a properly filed complaint against a law enforcement officer.

(c) A written procedure to assign an investigator to conduct an investigation as determined by the written policy to determine whether an officer has committed an act or acts of misconduct.

(d) A written policy, or provisions in the applicable collective bargaining agreement, that outline for its officers the acts of misconduct enumerated in this chapter, the expectations of employment or prohibited activities of the agency, and the due process rights for its officers.

(e) Due process for the accused officer, including addressing discipline based on just cause, establishing 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 file copies of all written policies required by this section 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

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 has received a valid complaint of misconduct, and:

(1) That the agency is conducting, or has conducted a valid internal investigation of the allegation as defined in this chapter and in accord with their internal affairs policy;

(2) That the agency has an outside law enforcement agency conducting or has conducted a valid internal investigation into the matter as defined in this chapter; or

(3) That 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, and any findings and 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 a valid internal affairs program at

the local agency, the committee may recommend a separate investigation be conducted by police standards and training investigators.

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 an investigation to be conducted if the allegation is in regard to a law enforcement officer who is the executive officer of the agency.

V. The committee shall 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.

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 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 be work product and shall not be made public or be discoverable under RSA 91-A except as provided in this subdivision. If the committee recommends to the council that a finding of misconduct be sustained then such 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 containing 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 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 person charged with committing an act or acts of misconduct may 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, a prosecutor in a criminal proceeding may review and disclose 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 subject to the procedure set forth in RSA 105:13-b in order to determine whether any such information contains potentially exculpatory materials consistent with the prosecutor's constitutional, legal, or ethical obligations.

106-L:23 Statute of Limitations.

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

II. A valid complaint shall be filed within 2 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 shall be filed within 2 years of the time it was discovered, or in the exercise of reasonable diligence should have been discovered.

III. Notwithstanding paragraph II, any grievance alleging misconduct under RSA 106-L:2, VIII(b) relating to an officer's trustworthiness or credibility may be filed at any time.

11 Appropriation. The sum of $350,000 for the fiscal year ending June 30, 2023 is hereby appropriated to the police standards and training council. Such appropriation shall be nonlapsing and shall be used for the purpose of hiring one full time staff attorney and 2 full time investigators. The governor is authorized to draw a warrant for said sum out of any money in the treasury not otherwise appropriated.

12 Effective Date. This act shall take effect January 1, 2023.

LBA
22-3119
12/28/21

HB 1682-FN-A- FISCAL NOTE
AS INTRODUCED

AN ACT establishing the law enforcement conduct review committee in the New Hampshire police standards and training council and making an appropriation therefor.

FISCAL IMPACT:

Due to time constraints, the Office of Legislative Budget Assistant is unable to provide a fiscal note for this bill, **as introduced**, at this time. When completed, the fiscal note will be forwarded to the House Clerk's Office.

AGENCIES CONTACTED:

Police Standards and Training Council