LEGISLATIVE COMMITTEE MINUTES

SB41

Bill as Introduced

SB 41 - AS INTRODUCED

2021 SESSION

21-0583
04/08

SENATE BILL *41*

AN ACT relative to police disciplinary hearings.

SPONSORS: Sen. French, Dist 7; Sen. Reagan, Dist 17

COMMITTEE: Judiciary

ANALYSIS

This bill provides that a party may petition to close a portion of a police disciplinary hearing.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 41 - AS INTRODUCED

21-0583
04/08

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to police disciplinary hearings.

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

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

III. For the purposes of a disciplinary hearing, subpoena and examine witnesses under oath, take oaths or affirmations, and reduce to writing testimony given at any hearing[~~. Any~~] ***provided that any*** person whose rights or privileges may be affected at such a disciplinary hearing may appear with witnesses and be represented by counsel***, and further provided that any disciplinary hearing shall be public, but a party may petition to close a portion of the hearing to the public if the party seeking closure proves that such portion of the hearing would disclose confidential information and that the disclosure creates a compelling interest outweighing the public right of access.***

2 Effective Date. This act shall take effect 60 days after its passage.

Committee Minutes

AMENDED
SENATE CALENDAR NOTICE
Judiciary

Sen Sharon Carson, Chair
Sen Bill Gannon, Vice Chair
Sen Harold French, Member
Sen Rebecca Whitley, Member
Sen Jay Kahn, Member

Date: January 13, 2021

HEARINGS

Tuesday		01/19/2021	
(Day)		(Date)	
Judiciary		REMOTE	1:00 p.m.
(Name of Committee)		(Place)	(Time)

1:00 p.m.	**SB 40**	relative to informed consent to search a motor vehicle.
1:15 p.m.	**SB 41**	relative to police disciplinary hearings.
1:30 p.m.	**SB 39**	exempting information and records contained in law enforcement personnel files from disclosure under the right-to-know law.
1:45 p.m.	**CACR 12**	relating to the retirement age for judges. Providing that the mandatory retirement age for judges is repealed.

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: https://www.zoom.us/j/95984454365
2. To listen via telephone: Dial(for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: 13126266799,,95984454365# or +16465588656,,95984454365#
4. Webinar ID: 959 8445 4365
5. To view/listen to this hearing on YouTube, use this link: https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link: http://gencourt.state.nh.us/remotecommittee/senate.aspx

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:
SB 40
Sen. French Sen. Avard Sen. Gannon Sen. Reagan

Sen. Rosenwald | Sen. D'Allesandro | Sen. Ward

SB 41

Sen. French | Sen. Reagan

SB 39

Sen. Carson

CACR 12

Sen. D'Allesandro | Sen. Prentiss | Sen. Kahn | Sen. Cavanaugh

Sen. Soucy | Sen. Sherman

Jennifer Horgan 271-7875

Sharon M Carson
Chairman

Senate Judiciary Committee

Jennifer Horgan 271-7875

SB 41, relative to police disciplinary hearings.

Hearing Date: January 19, 2021

Time Opened: 2:04 p.m. **Time Closed:** 2:48 p.m.

Members of the Committee Present: Senators Carson, Gannon, French, Whitley and Kahn

Members of the Committee Absent : None

Bill Analysis: This bill provides that a party may petition to close a portion of a police disciplinary hearing.

Sponsors:
Sen. French Sen. Reagan

Who supports the bill: Senator French; Senator Reagan; Representative Labranche; Representative Oxenham; Representative Andrew Bouldin; Joseph Lascaze, American Civil Liberties Union; David Saad, Right to Know NH; Gregory Sullivan, Union Leader Corporation; Richard Gagliuso, NH Press Assoc. and NE First Amendment Coalition; David K. Taylor; Deborah Sumner; Louis Calitz; Carla Gericke; Victoria Ayer; Sean Brennan; Alex Rhodes; Alexandra Mennella; Tabitha Bogardus; William Domenico; Ryan Bloodworth; Amber Diaz; Michael Mullin; Josie Pinto; Alvin See; Hayden Smith; Asma Elhuni, Rights and Democracy; Anthony Sculimbrene, NHACDL; Jennifer Punsalang-Cloutier; Penny Dean; Vince Perfetto; Joseph Brooks; Rhys Lossman; Katherine Cooper, NH Association of Criminal Defense Lawyers; Elijah Parsons; Linds Jakows; Elizabeth D'Amours; Linnea Simm; Sandra M

Who opposes the bill: Nancy West, NH Center for Public Interest Journalism; Joshua Chase; Marc Beaudoin, NH Troopers Association; John Krupski, NHTA; Kristen Millett

Who is neutral on the bill: Lissa Mascio, Dept of Corrections

Summary of testimony presented in support:
Senator French

- This bill will make police decertification hearings open to the public while providing that portions of a hearing can be made confidential if it is warranted.
- This is the current set up used for court proceedings.
- Giving police special treatment by preventing transparency sends a bad message and undermines public trust.

- Police have enormous power over the public and that power calls for increased transparency.
- This is going to bring light to areas in the past have been a little dark.
- Senator Carson asked who or what entity determines what is a 'compelling interest' on lines 8-9?
    - Is not sure.

Joseph Lascaze (ACLU) (provided written testimony)

- Over the summer the state has made great strides at improving transparency and accountability; this bill is aimed at continuing that progress.
- Currently, police decertification hearings are held in secret, in stark contrast to judges, lawyers, and state employees like nurses who have equivalent hearings.
- Aaron Brown, a former NH Police Officer, referred to Black community members as "useless", the n-word, and went so far as to say he 'got a new 40-cal to take out' Black residents.
- As a resident of Manchester and a Black man, when he sees a situation like Aaron Brown's and the decertification hearing held in secret, it is appalling.
- The fact that this decertification hearing was being held in secret sent a bad message to the community, especially to communities of color who have been waiting to have their voices heard and to have accountability measures seen.
- You cannot have accountability without transparency.
- Senator Kahn asked who should determine what is a 'compelling interest' and if it should be specified as the hearings officer.
    - To his knowledge it would be Police Standards and Training Council (PSTC) that makes that decision. In these situations, the officer makes a request to PSTC to have their hearing be confidential and must provide reasons as to why the hearing should be private. Would be happy to work with the Committee on clarifying that language.
- Senator Whitley asked how he sees this fitting into the overall reckoning of racial injustice in NH.
    - This is allowing closure for individuals who have experienced misconduct at the hands of law enforcement, especially when it is racially motivated. The Aaron Brown situation is recent and happened in NH, and the implications of that hearing happening in secret sends a terrible message to community members who were publicly shamed and referred to in a derogatory manner. This bill will help to restore faith for the public. For anyone who has experienced police misconduct, this will show the accountability measures. There was a Salem Police officer, Mr. Verrochi, who led police on a high-speed chase which put the public at risk and he was charged with a felony for evading police and reckless misconduct. He was not temporarily decertified while pending a felony charge. Mr. Verrochi choose to have his decertification hearing in public, but the public does not know what is happening behind closed doors. People cannot have faith in the government when they do not know what is

happening. This bill is aimed on bridging these gaps and rebuilding that trust.

- Senator Carson asked if a neutral party should determine what is a 'compelling interest' rather than the PSTC.
    - Thinks it should be a neutral party. One of the things that is really contributing to the lack of trust is the image of police investigating their own misconduct, as that hampers faith in the system. Especially when decisions coming back, disregard the plights of those who have experienced that misconduct. Would be happy to explore this further but thinks it should be an independent person.

Gregory Sullivan (Union Leader Corporation) (provided written testimony)

- This bill is a reflection of the law as it exists today, but unfortunately PSTC does not share that view.
- For this reason, Union Leader Corporation has filed a lawsuit in superior court that is currently pending.
- Transparency and accountability are critical to promoting trust between the citizenry and police agencies.
- When PSTC moved to conduct the decertification of Aaron Brown, the Union Leader Corporation moved to have that hearing public, but at the last minute an attorney for Mr. Brown withdrew the hearing and accepted a suspension of Mr. Brown's certification.
- On that same evening, there was another hearing on the decertification of another NH officer.
- Orally moved to keep that hearing open, but that motion was denied.
- Secrecy with respect to law enforcement is no longer acceptable.
- The Governor's Office with the LEACT Commission and the Supreme Court with their two recent decisions, show that both of those branches of government are moving towards more openness, transparency, and accountability.
- In terms of the 'compelling interest' question. A police officer or department would suggest there is a compelling interest outweighing the public's right of access.
- The PSTC would then vote to have the hearing in public or private or have certain portions thereto.
- Someone aggrieved by that decision, like a newspaper, would have the ability to appeal that decision to the superior court.

Richard Gagliuso (NH Press Association/New England First Amendment Coalition)

- Echoes Mr. Sullivan's testimony.
- Is a member of the Hearings Committee of the Attorney Discipline System, which considers ethical complaints and alleged violations by attorneys.
- Those hearings are open to the public and they work very well.
- Believes this bill enacts the same policy for comparable disciplinary processes for judges and doctors.
- It makes no sense that a police officers' hearings are handled differently.

- An officer can request that a portion of the proceedings be closed if there is going to be discussion of confidential information. Thinks that is an appropriate balance.

Carla Gericke (provided written testimony)

- Knows members of Right to Know NH sent in testimony in support of this.
- Without trust in the people who are enforcing our laws everything starts to breakdown.
- Transparency leads to faster reforms; we can't fix what we don't know is broken; and we can't know things are broken if they are done in secret.
- When officers are acting in their official capacity, they should be on the job and on the record.
- This will provide the public oversight of the PSTC.
- Based on the number of officers with sustained findings of misconduct that are currently being hidden in the Laurie List, there is an immediate and urgent need for more public scrutiny.
- The LEACT Commission recommended that the Exculpatory Evidence List be public.

Tony Sculimbrene

- Transparency is the key to legitimacy.
- Open discipline proceedings benefit the society as a whole.
- Instead of guessing why things are done, people can look at the record and decide for themselves.
- In the aftermath of incidents, both sides of the political spectrum have filled the gap in public knowledge with speculation that only fans the flames of discord.
- If officers are wrongfully disciplined, an open and transparent process will benefit them and spread the word of their illegitimate discipline.

Asma Elhuni (Rights and Democracy)

- We cannot ignore the many people begging for change here in NH.
- People are interpreting these private hearings as allowing people in positions of power to abuse that power, which is being allowed by lawmakers.
- Police should have higher standards of accountability rather than receiving special treatment.

Joseph Brooks

- Shared his personal story of being a victim of sexual assault and abuse.
- Shared his negative interactions with police, including intimidation.

Summary of testimony presented in opposition:

None

jch
Date Hearing Report completed: January 22, 2021

Speakers

Judiciary Committee Testify List for Bill SB41 on 2021-01-19					
Support: 38 Oppose: 5 Neutral: 1 Total to Testify: 11					
Name	**Title**	**Representing**	**Position**	**Testifing**	**Signed Up**
Gericke Carla	A Member of the Public	Myself	Support	Yes	1/19/2021 6:37
Lascaze Joseph	A Lobbyist	American Civil Liberties Union	Support	Yes	1/15/2021 11:34
West Nancy	A Member of the Public	NH Center for Public Interest Journalism	Oppose	Yes	1/18/2021 11:29
Sullivan Gregory	A Member of the Public	Union Leader Corporation	Support	Yes	1/18/2021 15:03
Gagliuso Richard	A Member of the Public	NH Press Assoc. and NE First Amendment Coalition	Support	Yes	1/18/2021 17:03
Beaudoin Marc	A Member of the Public	NH Troopers Association	Oppose	Yes	1/19/2021 12:05
krupski John	A Lobbyist	nhta	Oppose	Yes	1/19/2021 12:51
Elhuni Asma	A Lobbyist	Rights and democracy	Support	Yes	1/19/2021 12:58
Sculimbrene Anthony	A Member of the Public	NHACDL	Support	Yes	1/19/2021 12:58
Brooks Joseph	A Member of the Public	Myself	Support	Yes	1/19/2021 14:01
French Senator Harold	An Elected Official	Myself	Support	Yes	1/14/2021 7:50
Reagan Senator John	An Elected Official	Myself	Support	No	1/14/2021 7:52
Lossman Rhys	A Member of the Public	Myself	Support	No	1/19/2021 14:05
Bouldin Andrew	An Elected Official	Hillsborough 12	Support	No	1/19/2021 14:28
Cooper Katherine	A Lobbyist	NH Association of Criminal Defense Lawyers	Support	No	1/19/2021 14:32
Parsons Elijah	A Member of the Public	Myself	Support	No	1/19/2021 14:33
Jakows Linds	A Member of the Public	Myself	Support	No	1/19/2021 14:39
D'Amours Elizabeth	A Member of the Public	Myself	Support	No	1/19/2021 15:03
Simm Linnea	A Member of the Public	Myself	Support	No	1/19/2021 15:33
Millett Kristen	A Member of the Public	Myself	Oppose	No	1/19/2021 16:37
Bogardus Tabitha	A Member of the Public	Myself	Support	No	1/19/2021 10:29
Mullin Michael	A Member of the Public	Myself	Support	No	1/19/2021 11:21
Punsalang-Cloutier Jennifer	A Member of the Public	Myself	Support	No	1/19/2021 13:26
Dean Penny	A Member of the Public	Myself	Support	No	1/19/2021 13:58
Perfetto Vince	A Member of the Public	Myself	Support	No	1/19/2021 13:59
saad david	A Member of the Public	Right to Know NH	Support	No	1/18/2021 10:30
Taylor David K.	A Member of the Public	Myself	Support	No	1/18/2021 23:05
Calitz Louis	A Member of the Public	Myself	Support	No	1/19/2021 6:26
Brennan Sean	A Member of the Public	Myself	Support	No	1/19/2021 8:08
Domenico William	A Member of the Public	Myself	Support	No	1/19/2021 10:40
Bloodworth Ryan	A Member of the Public	Myself	Support	No	1/19/2021 10:45

See Alvin	A Member of the Public	Myself	Support	No	1/19/2021 12:11
Labranche Rep Tony	An Elected Official	Myself	Support	No	1/19/2021 22:31
Oxenham Lee	An Elected Official	Sullivan Co. District 1	Support	No	1/19/2021 12:48
Smith Hayden	A Member of the Public	Myself	Support	No	1/19/2021 12:51
Sumner Deborah	A Member of the Public	Myself	Support	No	1/19/2021 5:52
Ayer Victoria	A Member of the Public	Myself	Support	No	1/19/2021 7:52
Rhodes Alex	A Member of the Public	Myself	Support	No	1/19/2021 8:55
Mascio Lissa	State Agency Staff	Dept of Corrections	Neutral	No	1/19/2021 10:00
Mennella Alexandra	A Member of the Public	Myself	Support	No	1/19/2021 10:07
Chase Joshua	A Member of the Public	Myself	Oppose	No	1/19/2021 10:10
Diaz Amber	A Member of the Public	Myself	Support	No	1/19/2021 10:54
Pinto Josie	A Member of the Public	Myself	Support	No	1/19/2021 11:36
M Sandra	A Member of the Public	Myself	Support	No	1/19/2021 18:18

Testimony

Jennifer Horgan

From: Carla Gericke <carlagericke@gmail.com>
Sent: Tuesday, January 19, 2021 7:46 AM
To: Jennifer Horgan
Subject: Please SUPPORT SB41

Dear Judiciary Committee Members:

My name is Carla Gericke, former Republican state Senate candidate in District 20. I live in Manchester, NH, am an attorney, and serve on several nonprofit boards, including Right-to-Know NH, a nonpartisan citizens' coalition that works to improve government transparency, a crucial component to maintaining public trust in our institutions.

Today, I'm submitting my written testimony in my personal capacity, and ask that you SUPPORT SB41 in order to increase police accountability by opening police disciplinary hearings to the public. Even though I have also signed up to testify orally, I ask that this email testimony be submitted into the permanent record for this bill.

Last summer, during the nationwide protests, we saw quite clearly that without trust in the people enforcing our laws, everything starts to break down. For years now, law enforcement officials have been overly protected at the expense of your constituents. Today, you have an opportunity to start to right that wrong.

More transparency leads to faster reforms. You can't fix what you don't know is broken, and you can't know what's broken when you hide the truth. Opening disciplinary actions to public scrutiny must happen in order to restore trust.

Police officers do not have a privacy interest when acting in their official capacities. Other professions have public disciplinary hearings... why not police officers, especially when considering the nature of their work?

Any disciplinary action before the Police Standards and Training Council, of course, creates a significant and compelling public interest, both with regard to the officer *and* the Council that is supposed to be providing the oversight.

Based on the number of officers that are being hidden from the public on the Laurie's List/Exculpatory Evidence Schedule (more than 270 at one time), there is an immediate and urgent need for more public scrutiny of this entire process.

The New Hampshire Commission on Law Enforcement Accountability, Community, and Transparency, concurs, recommending under #22 in its Final Report to "Make the existing Exculpatory Evidence Schedule (EES)" a public record. Both the ACLU-NH and the NH Press Association also support this bill to increase transparency and accountability.

Public scrutiny is our best check and balance to hold law enforcement officials accountable. It starts with this bill, and your appetite to do what is right in the name of restoring public trust. Without trust, everything will crumble... Don't let this happen on your watch.

Thank you for your time.

Sincerely,
Carla Gericke
West Manchester

Jennifer Horgan

From: Nicholas Thomas <nicholas.w.thomas@uconn.edu>
Sent: Tuesday, January 19, 2021 10:04 AM
To: Jennifer Horgan
Subject: SB 41

Hello,

Please accept SB 41 so that we can have transparency in matters of police conduct which are of interest to the public.

Thank you,

Nicholas Thomas
67 Brook St
Manchester, NH 03104
+1 734 355 3870

Jennifer Horgan

From: Penny Dean <penny@pennydean.com>
Sent: Tuesday, January 19, 2021 3:02 PM
To: Jennifer Horgan
Subject: SB 41-support with amendment or reservation

Dear Member of the Senate Judiciary Committee:

I would respectfully suggest that another option be added to the Senate Remote sign in sheet or option to add comments. When one signs in on the electronic sheet, there is no way to add a caveat. I support SB 41 but with amendment or correction. I do not support the portion in SB 41 III that provides

"but a party may petition to close a portion of the hearing to the public if the party seeking closure proves that such portion of the hearing would disclose confidential information and that the disclosure creates a compelling interest outweighing the public right of access."

I do not believe that portions of the hearing should be closed, and this provision should be struck, I can see that this provision would be abused to close embarrassing (to a variety of sources) or other information or behavior that should very much be public.

Respectfully,
Penny Dean 603-230-9999

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The price that good men pay for indifference to public affairs is to be ruled by evil men.
Plato

ACLU
New Hampshire

Statement by Joseph Lascaze, ACLU-NH
Senate Judiciary Committee
Senate Bill 41
January 19, 2021

I am the Smart Justice Organizer at the American Civil Liberties Union of New Hampshire (ACLU)—a non-profit organization working to protect civil liberties throughout New Hampshire for over fifty years. On behalf of the ACLU, I appreciate the opportunity to testify today in support of SB41, which would provide for law enforcement decertification hearings to be public, with the option of making certain portions non-public if warranted. This bill improves transparency, which boosts accountability and public trust in law enforcement. I urge the members of this committee to vote *ought to pass* on SB41.

As things are right now, police decertification hearing are usually held in secret. The public is kept in the dark about what happens in these hearings and there is no public review or analyzation of the process unless the officer being decertified chooses to grant the public access.[1] This standard is directly contradictory to the standard set for lawyers, judges, and other licensed professionals for whom disciplinary hearings are public. NH community members have the right to know what becomes of a lawyer who has cheated clients out of their paychecks or provided ineffective counsel. People in NH have the right to know what becomes of a nurse who disregards hospital policy and engages in unethical actions while on the job. So why do our community members not have the right to know what becomes of someone who has violated professional standards for that NH law enforcement and is potentially being stripped of the privilege and the power of serving as law enforcement? Intentional or not, this double standard sends a clear message to NH residents – NH law enforcement get special treatment in the form of secrecy, despite the heightened public interest involving their misconduct.

Our Attorney General, Gordon MacDonald, has publicly declared his support for this type of legislation, specifically drawing the comparison between certification hearings for police versus similar licensing hearings that exist for other professionals. Attorney General MacDonald, who also sits on the Police Standards and Training Council (PSTC), stated last fall:

> I would support a legislative change which aligns the Police Standards and Training Council's certification hearings with the statutes that allow other professional licensure boards to conduct public hearings. It is the right thing to do.[2]

[1] The PSTC relies on RSA 91-A:3, II(c), which allows a body to go into nonpublic session with respect to "[m]atters which, if discussed in public, would likely affect adversely the reputation of any person, other than a member of the public body itself, unless such person requests an open meeting."

[2] https://www.unionleader.com/news/courts/hearings-to-decertify-police-officers-closed-to-public/article_e6365084-d9ba-5309-a39d-03afac4f42ce.html

Each time a police officer violates community trust, this adds to the overwhelming public interest in learning about the misconduct of a police officer, as well as how the PSTC operates in making decertification decisions. Police, unlike nearly every other licensed professional, have the unmatched authority to stop, detain, or when deemed necessary even kill us. This unique and special authority should be matched with expanded transparency when it comes to police misconduct, including a proceeding wherein officers are subject to accountability.

Recent incidents in our state have demonstrated the need for transparency around decertification hearings. As a person of color, born and raised in Manchester, NH, this particular legislation holds significant impact for me and many like myself. A confidential decertification hearing was planned for former Manchester Police Officer Aaron Brown. Mr. Brown is the former police officer who while on the job, referred in text messages to black community members (which includes me and my family) as the n-word, useless and even went as far as saying he purchased a new 40 cal to take black people out. Mr. Brown engaged in sustained misconduct, and a (secret) decertification hearing was slated to occur for Mr. Brown, but it was cancelled.

This is a prime example of an officer committing misconduct that directly affects community members and yet the community members affected by his actions would have been segregated from having any closure or idea of the outcome. Our state is undertaking numerous historic efforts to promote police reform and racial justice. Black Granite Staters who have been affected by racism in law enforcement are asking for our voices to be heard. We are waiting for transparency, accountability and closure for the instances wherein we are targeted based on the color of our skin rather than by the action of our hands. The public wants to know how PSTC responds to acts of racism such as this and other instances of misconduct committed by police officers.

It is not enough to know only of the PSTC's final decision whether to decertify an officer or not. Rather, the public should be able to witness the PSTC's proceedings and deliberations so the public can learn how the PSTC operates and evaluate the PSTC's decisions. This need for the public to learn about how the PSTC does its work was made clear by the September 20, 2020 decertification hearing for Salem Sgt. Michael Verrocchi, which was made public only at Mr. Verrocchi's own request (something that is unusual). The decertification hearing was in response to Mr. Verrocchi taking part in a 2012 high-speed chase and evading law enforcement while off duty. This incident led to felony criminal charges for evading the police that were initiated by the Department of Justice in early 2020. In the decertification hearing, the PSTC shockingly decided not to temporarily suspend Mr. Verrocchi's certification while this felony charge was pending. The decision raises serious concerns and highlights the need for transparency in future decertification hearings.[3]

Here, we only know of these facts because Mr. Verrocchi allowed the proceeding to be public, but this case shows how all such proceedings should be accessible to the public so the public can evaluate the PSTC's actions. Transparency, like that in the Verrocchi case, allows the public to see how the PSTC operates and arrives at decisions – and to hold the PSTC accountable in turn where appropriate. Learning afterwards that the PSTC decided against the temporary decertification in the Verrocchi case

[3] During this hearing, one retired Salem deputy chief, after being asked whether "he agreed that the events that happened were reckless and a criminal act," stated "'one hundred percent,' it was egregious putting people's lives in jeopardy that night." Another retired Salem sergeant acknowledged that Mr. Verrocchi's actions "had put the public at risk."

would have told the public very little, versus being able to observe the proceedings, hear the testimony from witnesses, and seriously evaluate the PSTC's reasoning in reaching the decision that it did.

This bill does not create a blanket rule. Rather, it explicitly provides that portions of a decertification hearing can be confidential if warranted, which is no different than how court proceedings are conducted. The bill allows for closing proceedings to the public in limited circumstances. The standard applied in this bill is the same standard applied in judicial proceedings.[4]

In short, transparency is the only way to build public trust in government, particularly with law enforcement. It is why our Right-to-Know Law exists. The greater the power of a government unit, the more important transparency is to building public trust in that unit. It is difficult to imagine a public servant with greater power than a police officer who goes to work every day with the authority to deprive us of our civil liberties and even take our lives. That authority necessitates heightened transparency. The current secrecy surrounding decertification hearings contributes to the distrust between people subject to policing and the police. This bill is a key step towards building trust and ensuring accountability.

For these reasons, the ACLU-NH respectfully urges the members of this committee to vote *ought to pass* on SB41.

[4] *See In re Keene Sentinel*, 136 N.H. 121, 128 916 (1992) ("Under part I, article 8, the public has a right of access to court proceedings and to court records which cannot be 'unreasonably restricted.' We hold that under the constitutional and decisional law of this State, there is a presumption that court records are public and the burden of proof rests with the party seeking closure or nondisclosure of court records to demonstrate with specificity that there is some overriding consideration or special circumstance, that is, a sufficiently compelling interest, which outweighs the public's right of access to those records.").

Date: January 18, 2021

To: Honorable Members of the Senate Judiciary Committee

Re: SB41

My name is David Saad. I live in Rumney NH. I am also the President of Right to Know New Hampshire (RTKNH). I ask you to support SB 41.

Police officers should not have a privacy interest with respect to their official conduct. When their conduct is called into question and brought forth before the Police Standards and Training Council there is a significant and compelling public interest in the conduct and activities of both the officer and the Council. The public has a right to know the process undertaken by the Council during an officer's disciplinary hearing.

Disclosure of police misconduct is in the public interest. The New Hampshire Commission on Law Enforcement Accountability, Community, and Transparency agrees and recommends "Make the existing Exculpatory Evidence Schedule (EES)" a public record as noted in their Final Report (Recommendation # 22).

Police, by the nature of their duties and power, must be held to a higher standard. That higher standard must include transparency regarding their conduct and the process performed by the Council to review and take action regarding such misconduct. The Council's disciplinary hearings should be open to public scrutiny to allow for adequate checks and balances to insure bad behavior or inadequate action cannot hide behind a veil of secrecy and further erode the public's trust.

I have read the submitted testimony from both the ACLU and the New Hampshire Press Association and fully agree with their testimony.

Malloy & Sullivan
LAWYERS
PROFESSIONAL CORPORATION

Gregory V. Sullivan, MA, NH
Kathleen C. Sullivan, MA, NH
Kerstin H. Peterson, MA
Brendan T. Bowes, MA

Founders
Ralph Warren Sullivan
Richard A. Sullivan
James Malloy
Morton Myerson

Statement by Gregory V. Sullivan,
General Counsel to Union Leader Corporation
Senate Judiciary Committee
Senate Bill 41
January 19, 2021

My name is Gregory V. Sullivan and I serve as General Counsel to Union Leader Corporation. For over 150 years Union Leader Corporation has been committed to advancing and protecting the constitutional values of a free press and the public's corresponding right to know what its government is up to. The hearings conducted by the New Hampshire Police Standards and Training Council, (hereinafter "NHPSTC"), regarding certification and/or decertification of officers are currently held in private unless an officer requests otherwise. That practice violates the clear dictates of both the Constitution of New Hampshire, Part I Article 8, and RSA 91-A, the Right to Know law. Those important hearings should be subject to the same rules applicable to the hearings and records of our court system. As the New Hampshire Supreme Court has ruled,

> Under part I, article 8, the public has a right of access to court proceedings and to court records which cannot be 'unreasonably restricted.' We hold that under the constitutional and decisional law of this State, there is a presumption that court records are public and the burden of proof rests with the party seeking closure or nondisclosure of court records to demonstrate with specificity that there is some overriding consideration or special circumstance, that is, a sufficiently compelling interest, which outweighs the public's right of access to those records.

In re Keene Sentinel, 136 N.H. 121 (1992).

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Malloy & Sullivan
LAWYERS
PROFESSIONAL CORPORATION

Hearings to discipline judges, lawyers and doctors are all held in public. The light of public scrutiny is as important, if not more important, when the certification of officers entrusted with powers of the use of force and arrest is at issue. Transparency and accountability are critical to promote trust between citizens and the police during these turbulent times.

Jennifer Horgan

From: BOB <bob.freeman@earthlink.net>
Sent: Tuesday, January 26, 2021 9:17 AM
To: Jennifer Horgan
Subject: SB 39; SB 41

Morning Jennifer; We are writing you in concerns about SB 39. As citizens of Grafton county. From the town of Rumney. We are voicing our concerns that we don't want you to vote in favor of Bill 39.
We see that Bill 39 will undermine transparency creating obscurity, and will prevent accountability of our civil servants. We implore you as our representative to Vote no On Bill 39.

We are also asking that you give your full support to SB 41 which will amend RSA 106-L:5 III. Which will serve as a check and balance on the executive branch assuring, and ensuring that our civil servants don't infringe on our civil liberties, and that they will be held accountable should they do so. They are civil servants and we the citizens of our state want our right to know laws upheld

Sincerely

BOBBY & KAREN FREEMAN
1097 Stinson Lake Rd
Rumney, NH 03266

NH Press Association
749 E. Industrial Park Dr.Manchester, NH 03109 / www.pressnh.org / info@pressnh.org

The New Hampshire Press Association supports SB 41 as an important step towards improving public trust in law enforcement.

SB 41, which would make police disciplinary hearings open to the public, has been proposed at a time when the state is committing to increased law enforcement accountability and transparency at all levels.

Police officers have some of the broadest powers of any government employee. If a member of the state's police force is accused of abusing those powers to the point of becoming decertified, he or she has a right to hearing. The public has a compelling interest to hear the allegations against an officer and his or her defense.

SB 41 does not guarantee these hearings to be completely open and allows portions to be closed to the public for good reason, but sets openness as the default, which is the bedrock of the state's right to know law.

As this committee considers this and other proposals to alter RSA-91:A, we urge you to be guided by the spirit and letter of the law itself, which is to "to ensure both the greatest possible public access to the actions, discussions and records of all public bodies, and their accountability to the people."

The New Hampshire Press Association urges this committee and all lawmakers to endorse any bill that expands openness and provides for the "greatest possible public access" and strike down any bill that limits public transparency.

It is in everyone's interest to keep New Hampshire open and transparent.

New Hampshire Press Association

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Voting Sheets

Senate Judiciary Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # SB 341

Hearing date: _____

Executive Session date: _____

Motion of: OTP **Vote:** 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair			X	
Sen. Gannon, V-Chair			X	
Sen. French	X		X	
Sen. Kahn			X	
Sen. Whitley		X	X	

Motion of: consent **Vote:** 5-0

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair			X	
Sen. Gannon, V-Chair		X	X	
Sen. French	X		X	
Sen. Kahn			X	
Sen. Whitley			X	

Motion of: _____ **Vote:** _____

Committee Member	Made by	Second	Yes	No
Sen. Carson, Chair				
Sen. Gannon, V-Chair				
Sen. French				
Sen. Kahn				
Sen. Whitley				

Reported out by: French

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Thursday, March 11, 2021

THE COMMITTEE ON Judiciary

to which was referred **SB 41**

AN ACT relative to police disciplinary hearings.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 5-0

Senator Harold French
For the Committee

This bill will make police decertification hearings open to the public, while providing that portions of a hearing can be made confidential if it is warranted. Police have enormous power over the public and therefore ensuring there is transparency in these proceedings is essential for public trust.

Jennifer Horgan 271-7875

FOR THE CONSENT CALENDAR

JUDICIARY

SB 41, relative to police disciplinary hearings.
Ought to Pass, Vote 5-0.
Senator Harold French for the committee.

This bill will make police decertification hearings open to the public, while providing that portions of a hearing can be made confidential if it is warranted. Police have enormous power over the public and therefore ensuring there is transparency in these proceedings is essential for public trust.

General Court of New Hampshire - Bill Status System

Docket of SB41

Docket Abbreviations

Bill Title: relative to police disciplinary hearings.

Official Docket of **SB41.**:

Date	Body	Description
1/12/2021	S	**Introduced** 01/06/2021 and Referred to Judiciary; **SJ 3**
1/14/2021	S	Remote **Hearing:** 01/19/2021, 01:15 pm; Links to join the hearing can be found in the Senate Calendar; **SC 7**
3/11/2021	S	Committee Report: Ought to Pass, 03/18/2021; Vote 5-0; CC; **SC 15**
3/18/2021	S	**Ought to Pass**: **RC** 23Y-1N, MA; OT3rdg; 03/18/2021; **SJ 8**
3/31/2021	H	Introduced (in recess of) 02/25/2021 and referred to Judiciary **HJ 4** P. 50
4/13/2021	H	Public Hearing: 04/20/2021 09:00 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/92977620223 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
4/20/2021	H	Executive Session: 05/04/2021 01:00 pm Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/95312058132
5/13/2021	H	Retained in Committee
9/8/2021	H	Executive Session: 09/28/2021 10:00 am LOB 206-208
11/12/2021	H	Committee Report: Inexpedient to Legislate SB41 90/28/2021 (Vote 20-0; CC) **HC 48** P. 14
1/11/2022	H	Inexpedient to Legislate: MA VV 01/05/2022 **HJ 1**

NH House	NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB41 **Senate Committee:** Jud

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

X Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

X Bill version as it came to the committee

X All Calendar Notices

X Hearing Sign-up sheet(s)

X Prepared testimony, presentations, & other submissions handed in at the public hearing

X Hearing Report

N/A Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

____ - amendment # _____ ____ - amendment # _____

____ - amendment # _____ ____ - amendment # _____

X Executive Session Sheet

X Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

____ - amendment # _____ ____ - amendment # _____

____ - amendment # _____ ____ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

____ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

____ Enrolled Bill Amendment(s)

____ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

____ as amended by the senate ____ as amended by the house

____ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Jennifer Horgan 8/12/21

Committee Aide **Date**

Senate Clerk's Office