

THE STATE OF NEW HAMPSHIRE  
SUPREME COURT

No. 2020-0450

New Hampshire Department of Safety,  
Division of State Police

v.

Thomas Owens

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APPEAL PURSUANT TO RULE 10 FROM A JUDGMENT OF THE  
PERSONNEL APPEALS BOARD

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**BRIEF FOR THE NEW HAMPSHIRE DEPARTMENT OF SAFETY,  
DIVISION OF STATE POLICE**

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NEW HAMPSHIRE DEPARTMENT OF SAFETY,  
DIVISION OF STATE POLICE

By its Attorneys,

JOHN M. FORMELLA  
ATTORNEY GENERAL

Emily C. Goering  
N.H. Bar No. 268497  
*Assistant Attorney General*

Matthew T. Broadhead  
N.H. Bar No. 19808  
*Senior Assistant Attorney General*

Transportation and Construction Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, NH 03301-6397

(Fifteen-minute Oral Argument)

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**ISSUE PRESENTED**

A dishonest State Trooper was dismissed from employment on the basis of indisputable evidence that the Trooper lacked integrity both in the discharge of his duties and during the ensuing internal investigation. Did the Personnel Appeals Board err by overturning the Trooper's dismissal, when such dismissal was executed in furtherance of the dominant public policy that supports removing law enforcement officers from service, and when, in the discretion of State Police, the Trooper lacked the requisite integrity for the position of State Trooper?

*Preserved at Motion for Rehearing. Notice of Appeal 25-44; CR 435-436, 441.*

**TEXT OF RELEVANT AUTHORITIES**

**STATUTES:**

**RSA 105:13-b: Confidentiality of Personnel Files.**

I. Exculpatory evidence in a police personnel file of a police officer who is serving as a witness in any criminal case shall be disclosed to the defendant. The duty to disclose exculpatory evidence that should have been disclosed prior to trial under this paragraph is an ongoing duty that extends beyond a finding of guilt.

**RSA 21-P:7, I(f): Division of State Police.**

I. There is established within the department the division of state police under the supervision of an unclassified director of state police who shall be responsible for the following functions, in accordance with applicable laws:

...

(f) Approving professional standards of conduct and standard operating procedures of the division of state police.

**RSA 33-A:3-a, CVIII: Disposition and Retention Schedule.**

The municipal records identified below shall be retained, at a minimum, as follows:

...

CVIII: Police, non-criminal-internal affairs investigations: as required by attorney general and union contract and town personnel rules.

**RSA 541:13: Burden of Proof.**

Upon the hearing the burden of proof shall be upon the party seeking to set aside any order or decision of the commission to show that the same is clearly unreasonable or unlawful, and all findings of the commission upon all questions of fact properly before it shall be deemed to be prima facie lawful and reasonable; and the order or decision appealed from shall not be set aside or vacated except for errors of law, unless the court is satisfied, by a clear preponderance of the evidence before it, that such order is unjust or unreasonable.

### **STATEMENT OF THE CASE**

On August 26, 2019, the New Hampshire Department of Safety, Division of State Police (“State Police”), terminated Thomas Owens (“Owens”) from his employment as a New Hampshire State Trooper. CR 198-209.<sup>1</sup> As detailed further below, Owens was dismissed for violating various provisions of the State Police Professional Standards of Conduct and the Personnel Administrative Rules. CR 198-99. Owens timely appealed his termination to the Personnel Appeals Board (“PAB”). CR 1-5. On March 18, 2020, the PAB held a hearing on the merits, during which it received numerous exhibits and heard live testimony of various witnesses. CR 88, 96-97.

On May 6, 2020, the PAB issued an order on the merits (the “Order”), in which it made no specific findings as to the grounds for termination, but nevertheless overturned Owens’ dismissal, reinstated him to the position of State Trooper, substituted a 20-day suspension without pay, and recommended that he be ineligible for detail work for a period of 60 days. CR 88-93. State Police filed a motion for rehearing setting forth the reasons in which the evidentiary record did not support the PAB’s generalized conclusions. CR 31-52. The PAB summarily denied the motion for rehearing. NOA 49.

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<sup>1</sup> Citations to the record are as follows:

“CR\_\_” refers to the Certified Record submitted by the Personnel Appeals Board, which includes the March 18, 2020 hearing transcript within the sequentially numbered pages.

“NOA\_\_” refers the Notice of Appeal filed by State Police and page number.

“SA\_\_” refers to the documents appended to this brief and page number.



On October 1, 2020, State Police filed a Notice of Appeal with this Court pursuant to Supreme Court Rule 10. NOA 1-15. Contemporaneously, State Police sought to stay the Order while the appeal was pending. CR 57-62. After the PAB denied the Motion to Stay (CR 63-64), State Police subsequently filed a motion with this Court to stay the Order, which was granted on January 13, 2021.

## STATEMENT OF FACTS

### **A. Underlying events prompting internal investigation.**

The events giving rise to this matter began on October 30, 2018. CR 199. On that day, Owens attended a required firearms training and then worked an extra duty detail as a police escort. CR 199, 274 291, 461-62. In conjunction with these activities, three routine timekeeping documents were generated: a timecard (CR 120), a computer aided dispatch (CAD) report (CR 121), and a detail voucher (CR 141-42). On the timecard, Owens entered information that he worked from 7:00AM to 1:00PM, totaling six hours.<sup>2</sup> CR 120, 199. On the detail voucher for that same day, Owens wrote that his regular duty shift ended at 2:30PM, indicating he worked a seven and a half hour day. CR 141, 199. On the CAD report for that same day, Owens was logged as beginning his regular duty shift at 7:24AM and ending his shift at 2:14PM, totaling a six hour and fifty minute day. CR 121, 200.

Owens' direct supervisor, Sergeant Vincent Grieco, discovered these timekeeping discrepancies while performing a routine review of employee timecards. CR 116, 199. Owens was previously reprimanded for timekeeping discrepancies, and received warning that future timecard issues would result in discipline. CR 146-47. Sgt. Grieco conducted an informal review of the timekeeping records, which revealed inconsistencies in the start time, end time, and total duration of hours worked. CR 116-18, 199-200. Sgt. Grieco additionally noted that Owens had not sought permission

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<sup>2</sup> Times have been converted from military time to regular time for ease of discussion.

to work a seven-hour day, which is less than the scheduled eight and a half hour regular duty shift. CR 116-18, 200. Another of Owens' direct supervisors, Sergeant Irwin Malilay, confirmed that Owens had not sought permission for the abbreviated workday. CR 116-18, 200.

The discrepancies amongst the timekeeping records raised concerns that, depending on which timekeeping record was reviewed, Owens had violated various State Police policies and practices. It appeared that Owens had worked two seven-hour shifts within the one pay period, on October 30 and November 2, violating the policy that a Trooper may only work one seven-hour shift within a 28-day period. CR 274-76, 281. It also appeared that Owens took a seven-hour shift without permission of a supervisor, in violation of the common practice of seeking pre-approval. CR 276-77. If Owens had in fact worked a full, regular duty shift, coupled with his extra-duty detail shift, he would have exceeded the policy that limits Troopers to working 16-hours within any 24-hour period. CR 286-288. Had Owens in fact worked a full regular duty shift, he would have violated the policy that prohibits Troopers from traveling to an extra-duty detail while on regular-duty. CR 296-97.

On November 3, 2018, after discovering the timekeeping discrepancies, Sgts. Grieco and Malilay met with Owens to discuss the inconsistencies. CR 117, 201, 282-83. During that initial conversation, Owens explained that a lot had happened on the day in question leading him to make the administrative mistakes. CR 284. Initially, Owens insinuated that the inconsistencies on his timekeeping records had been a mistake. CR 201, 288-89.

**B. First formal recorded interview, conducted by Sgt. Grieco.**

On November 29, 2018, Sgt. Grieco met with Owens to conduct a formal recorded interview regarding the timekeeping discrepancies. CR 201; Audio Exhibit J.<sup>3</sup> In preparation for that meeting, Owens drafted a “Yellow Letter,” which is an explanatory letter prepared by a Trooper to explain certain conduct. In the Yellow Letter, Owens explained that “I started my day at 07:00 hours, when I should have put I started it at 07:30 hours. I did not do this in an attempt to deceive the timecard or any derivative thereof.” CR 144-45. Owens further characterized the inconsistencies as “due to [his] mistake of poor planning and confusion about dates and lack of time management...” CR 144-45. During the first recorded interview, the following exchanges occurred:

*Q: Can you offer any type of explanation or reasoning that would make sense, or maybe at the time of what you were thinking, why these things took place?*

*A: I guess the admin. errors for the timecard, I just, for some reason I put seven and didn't look up when I signed on and just put seven and the thirteen hundred was just a, that was just a typo, its just, bad on my part, and then, changing the eight and a half to a seven was just so I knew I didn't violate on the sixteen hours.*

(Audio Exhibit J @ 21:24)

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*Q: My concern is this, and I will ask you bluntly and I want you to be honest with me, are these clerical errors, are these administrative errors, is this an issue of poor management, or is this an integrity issue that we need to be concerned about*

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<sup>3</sup> Audio Exhibits are included on a compact disc submitted by the PAB with the Certified Record.

*with documentation of your hours, where you are at the time that you say you are, or what you are doing?*

*A: No I think it's a, me making poor decisions with time management, managing my time, managing my extra-duty details, and my planning of duty shifts, extra duty shifts, and scheduling time, it's not my intention or anything to deceive the system or anything like that, nothing along those lines of integrity issues, it's just that, trying to make it work, and, you know, it's just poor management and bad decision on my part.*

(Audio Exhibit J @ 28:33)

Following the interview, Sgt. Grieco compiled his findings into a report that was distributed to superiors within the State Police chain of command. CR 115-19. Because Sgt. Grieco made no recommendation to find an integrity violation, it appears that Sgt. Grieco accepted Owens' explanation that he (Owens) did not intend to deceive anyone and the inaccuracies were the result of mismanagement and poor planning. CR 118-19.

**C. Second formal recorded interview, conducted by Lt. Mullen.**

Colonel Christopher Wagner, then-director of State Police and tasked with determining the ultimate findings from this investigation, reviewed Sgt. Grieco's report and felt there were insufficient answers and requested additional information. CR 424, 426-27. He assigned Lieutenant John Mullen, head of the State Police Professional Standards Unit, to conduct further investigation into Owens' conduct. CR 307, 426-27. On March 15, 2019, Lt. Mullen conducted a follow-up interview with Owens. CR 202, 338; Audio Exhibit K. Prior to the interview, Lt. Mullen learned that Owens had previous instances of paperwork issues that pertained to

timecards, and had been cautioned that any future errors would result in suspension from performing details. CR 341-32. Throughout the interview, Owens made admissions that established he was not merely mistaken when he made timecard entries, rather, he had purposely entered inaccurate information on his timecard in order to avoid a policy violation and to distance himself from a pattern of poor behavior.

When Owens was asked why he documented 7:00AM as his start time on the timecard, when he had in fact started, as reflected on the CAD report, at 7:24AM, the following exchange occurred:

*Q: But yet, you didn't sign on at zero seven hundred, so why was that the sign on time different from when you actually signed on, what was the thought process behind that?*

*A: I am not sure, it was probably so I could get my seven hour day in with my detail and not go over, something like, so I wasn't working my detail on, traveling to my detail on the duty day, I don't know I really wasn't sure when I signed on, like I don't look at this, I guess per se (CAD Report), yea the time stamps, I don't look at that ... **I guess I just put it in there so I didn't say I travelled to the detail on my duty shift**, I guess, if that makes sense.*

(Audio Exhibit K @ 12:11) (emphasis added.)

For reference, the option to work extra-duty details is a privilege extended by the Director of State Police. PSC 22-E.1.0; CR 148. Troopers are prohibited from working extra-duty details while on their regular duty shift. PSC 22-E.1.2; CR 149-51.

When attempting to establish why Owens would have entered a start time that was not accurate, the following exchange occurred:

*Q: So you are putting zero seven hundred on your timecard because you know if you put anything else, zero eight or further on, that you will be over in hours, you will have run into your hours for detail?*

*A: Yes.*

*Q: So you put zero seven so you wouldn't be in violation of the policy?*

*A: Yes.*

(Audio Exhibit K @ 13:43)

When clarifying the motive for Owens to enter an inaccurate start time, the following exchange occurred:

*Q: So you did it [entering an inaccurate start time on the timecard] to make it work, to make the hours work?*

*A: Yes.*

(Audio Exhibit K @ 20:02)

When trying to establish why Owens did not notify a supervisor about the potential violation based on his hours, the following exchange occurred:

*Q: Do you think you felt like you may have been in trouble at that point, which is why you did it?*

*A: Probably.*

(Audio Exhibit K @ 20:49)

When Owens was asked why he didn't ask permission to take a seven-hour workday after the fact, the following exchanges occurred:

*Q: How come you didn't ask for permission to take your seven-hour day, which I think is what the normal protocol is?*

*A: It is. I don't know because I just knew I had to do it to make the hours work, and it was post everything.*

(Audio Exhibit K @ 40:52)

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Q: *And in this case why did you choose not to ask after the fact?*

A: *I don't know, because I knew I was in the wrong, and it's not kosher, it's not how you do things.*

(Audio Exhibit K @ 41:34)

When confirming that Owens had purposely entered inaccurate information into his timecard in an attempt to rectify the likely violation, the following exchanges occurred:

Q: *The paperwork seems to be an intentional thing to cover for the mistake that was made earlier, and please elaborate, expand, that is what I am hearing you say?*

A: *I guess I didn't plan to, when I originally did it I didn't plan to make it wrong, whenever I worked these I didn't plan, I didn't say 'I'm going to work these and I'm gonna fix it later,' I didn't mean to do anything like that, I dunno that just not, that doesn't make sense, and its not me as a person to say 'I'm gonna do this and try to fix it later,' **I guess this is just me trying to cover myself** when I should say Sarg. this is this...*

Q: *So you're trying to cover yourself by entering the false or inaccurate information into your timecard so you wouldn't have to ask, is that correct?*

A: Yes.

(Audio Exhibit K @ 57:40) (emphasis added)

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Q: *You just get to the point where then you realize 'I have to enter it like this, purposely, so that I can make it fit,' and you do that after the fact?*

A: Yes.



(Audio Exhibit K @ 1:00:18)

When asked whether previous instances of poor timekeeping factored into his actions, the following exchange occurred:

Q: *Were you nervous from the previous emails back in August?*

A: *Yea.*

Q: *Okay, so the previous emails back in August were in relation to timecard saying one thing for hours on a detail and your detail voucher saying another, and that happened once and we spoke, it happened again and we spoke, and then we followed up in writing saying 'listen this is on you, do not let this happen again or else you will be suspended from the detail desk.' Were you thinking that when you were filling out your timecard and trying to make it all work?*

A: *I think that's why I changed how I did my timecard because we spoke previously and I did my timecard prior and then that didn't work so then I changed it to try and fix it, and then I was here, and I don't know.*

Q: *So it's fair to say that during this whole timeframe when you are trying to figure this out, make it work, that you didn't want to go for help in that the previous conversations that we had about being accurate on all of this stuff was in your mind at that time?*

A: *Yes.*

(Audio Exhibit K @ 01:03:25)

(CR 146-47 prior emails documenting timekeeping errors)

At the conclusion of this interview, it was clear to Lt. Mullen that Owens had provided two different explanations about the timecard discrepancies. CR 359-60. Given that Owens had led Sgt. Grieco to believe the inaccuracies were a mistake, and subsequently admitted to Lt. Mullen

that some of the inaccuracies were entered on purpose, it was necessary to hold yet another interview to reconcile the two stories. CR 359-60.

**D. Third formal recorded interview, conducted by Lt. Mullen.**

On April 24, 2019, Lt. Mullen conducted his final interview with Owens. CR 204, 359; Audio Exhibit L. The focus of this interview was to determine why Owens led Sgt. Grieco to believe the inaccuracies were an error, when Owens had told Lt. Mullen that the inaccuracies were entered on purpose. CR 104-05. Upon questioning, the following exchange occurred:

*Q: So, when you told Sgt. Grieco that everything you told him was accurate, was that true?*

*A: I guess not, it wasn't my intention to mislead him, you know what I mean, it wasn't my intention to tell him something wrong, because I told him everything, I didn't want to mislead him, I don't know.*

*Q: But isn't that what you did?*

*A: Yea, I don't think I did it on purpose to the point of being, I don't think I meant to do that during that interview with him.*

(Audio Exhibit L @ 12:49)

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*Q: Is that an accurate sentence? (referring to the Yellow Letter sentence that reads: I did not do this in an attempt to deceive the timecard or any derivative thereof.)*

*A: That wouldn't be pursuant to everything we've been through and talked about.*

(Audio Exhibit L @ 20:14)

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*Q: For the seven versus the seven thirty, that wasn't an administrative error?*

*A: No, I mean, I don't think so.*

*Q: That was done with intent?*

*A: Yes.*

*Q: And when we look at that statement on the Yellow Letter, that's not an accurate statement that we just went through?*

*A: No.*

(Audio Exhibit L @ 21:20)

Lt. Mullen compiled his findings from the subsequent interviews and documentary evidence into a report for Col. Wagner. CR184-197. He ultimately concluded that Owens' statements to Sgt. Grieco that the inconsistencies were clerical or administrative errors, and his Yellow Letter that reflected the same, were in fact inaccurate statements intended to deceive because Owens had intentionally entered the false information. CR 194. Lt. Mullen sustained findings that Owens had committed multiple violations, most importantly, that Owens had violated the State Police integrity policy. CR 194.

**E. Col. Wagner's decision to terminate Owens' employment.**

On August 26, 2019, Col. Wagner met with Lt. Mullen, Owens, and New Hampshire Trooper Association Executive Director Marc Beaudoin. CR 205. The purpose of this meeting was to discuss the evidence that Col. Wagner believed supported dismissal and to give Owens an opportunity to refute that evidence. CR 205. Owens indicated he had nothing to say regarding the investigation or proposed dismissal, nor about his name being

submitted for inclusion on the Exculpatory Evidence Schedule.<sup>4</sup> CR 205-06.

Upon careful consideration of the relevant facts, Col. Wagner concluded that there were sufficient grounds to sustain various disciplinary charges against Owens.<sup>5</sup> Chief amongst the violations, and pertinent to this appeal, was Owens' violation of the New Hampshire State Police Professional Standards of Conduct, Section 1.4.8, Integrity. CR 163, 206-07.

Col. Wagner's dismissal letter detailed that Owens deliberately intended to deceive Sgt. Grieco by leading him to believe that the timecard entry was an error, when in fact, as established by his interviews with Lt. Mullen, Owens deliberately entered inaccurate information into the timecard, and not by accident. CR 206. The dismissal letter went to great lengths to explain the importance of integrity and the severity of such a violation. The letter described that personal and professional integrity is one of the most fundamental and valuable qualities that a State Trooper must possess. CR 206. As a State Trooper and law enforcement officer, it is personal integrity that instills, promotes, and maintains trust with the

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<sup>4</sup> The Exculpatory Evidence Schedule ("EES") is presently confidential, and as a matter of standard practice, State Police does not discuss the names of Troopers included on the EES. However, Owens inclusion on the EES was discussed before the PAB and appears in the transcript and documents that comprise the certified record. Owens' counsel additionally alluded to his inclusion on the EES in the Objection to Motion to Stay, filed with this Court.

<sup>5</sup> Per 1002.08(b)(7), violation of a posted or published agency policy or procedure; 1002.08(b)(10), obstructing an internal investigation; Per 1002.08(b)(12), falsification of any agency records received, maintained or utilized by the agency; Professional Standard of Conduct (PSC) Section 1.3.4, willful insubordination; PSC Section 1.4.13, division reports; PSC 22-E, extra-duty details. CR 148-83, 207-08.

public. CR 206. Owens' lack of personal integrity brought disrepute both to himself and to the organization of State Police as a whole. CR 206. The investigation exposed the extent of Owens' lack of integrity, resulting in a loss of the Colonel's trust and confidence in him, and resulting in his effectiveness as a law enforcement officer and witness being compromised beyond repair. CR 206. Lastly, the letter detailed that, not only had Owens violated the State Police Professional Standards of Conduct, his lack of honesty necessitated listing him on the Exculpatory Evidence Schedule, which could detrimentally affect his ability to prosecute criminal cases. CR 206. As a result of the untruthful behavior, State Police lost faith in Owens' ability to be a trooper, and he was terminated from employment.

**F. Personnel Appeals Board hearing.**

On March 18, 2020, the PAB held a hearing on the merits. NOA 18. On behalf of the State, the PAB heard from Sgt. Malilay, Lt. Mullen, and Col. Wagner. NOA 18. The PAB additionally heard from Owens. NOA 18. The PAB additionally heard selected portions of the interview audio recordings, and received the entirety of audio records and investigatory materials. CR 95-254; Audio Exhibits J, K, L.

**G. PAB Order, State's Motion for Rehearing, and Order on Rehearing.**

On May 6, 2020, the PAB issued the Order, in which it overturned Owens' disciplinary dismissal. CR 88-93. The PAB impliedly acknowledged that Owens committed conduct that would sustain the violations, but made no specific findings about which violations of the

Personnel Rules and State Police Professional Standards of Conduct it sustained or overruled. NOA 23; CR 93. Pertinent to this appeal, the PAB made no specific finding as to whether Owens violated the integrity policy. It simply characterized Owens' conduct as "an example of inattention to detail and poor time management." NOA 23; CR 93.

State Police's Motion for Rehearing raised the issue that the PAB had made no specific determinations as to any of the alleged violations, including the integrity violation. NOA 25-44; CR 31-56. The Motion for Rehearing additionally argued that the evidence, and the PAB's own factual findings, unequivocally supported a determination that Owens had violated the integrity policy. NOA 31-41; CR 38-50. The PAB issued a cursory Order on Rehearing denying the motion. NOA 49; CR 87. The Order on Rehearing similarly failed to sustain or overrule specific violations, or to address the inconsistencies between its factual findings and the ultimate decision. NOA 49; CR 87. Based on the PAB's specific factual findings that Owens had intentionally altered his timecard to avoid a policy violation (NOA 21-23; CR 91-93), the PAB must have found that Owens committed an integrity violation, but that termination was not warranted.

### **SUMMARY OF THE ARGUMENT**

As the adage goes, it's not the crime, it's the cover-up. This is not a matter of a mere timecard violation. This is a matter of a law enforcement officer who intentionally falsified an agency record to cover up a mistake in order to avoid discipline. Owens' mistake was consistent with a pattern of similar policy violations for which he had already been reprimanded, and when asked for an explanation, he purposely misled his superiors to believe that he was merely acting in error when the cover-up had in fact been volitional. When it comes to matters of integrity, if State Police has determined that a Trooper's dishonesty has irreparably damaged their ability to perform the duties of an officer, State Police must be given the ability to maintain a dismissal.

The PAB erred as a matter of law in reinstating Owens because it contravenes the well-established dominant public policy that supports the dismissal of a dishonest law enforcement officer who has lost the confidence of his police force. This policy is built upon constitutional concerns, model standards of conduct, local standards of conduct, executive orders, commission recommendations, case law, statute, and historical application. The reinstatement of an officer with sustained findings of dishonesty contravenes that public policy, and is therefore erroneous.

The PAB further erred by ordering a result that is both unjust and unreasonable. Reinstating a Trooper who has been dismissed for dishonesty fills an employment position with an individual who State Police believes is no longer suitable to perform the basic functions of a law enforcement officer. Such a reinstatement is unjust not only to the operational needs of

State Police, but it is unreasonable to the general public, who have an expectation of the trustworthy character that a law enforcement officer must possess.

In the end, the PAB's order impedes the goals of State Police, particularly in this moment in time, from doing what the public expects and demands: identifying, investigating, and dismissing dishonest officers from law enforcement's ranks. If left in force, the PAB's order undermines public confidence in law enforcement and feeds a public narrative that police officers cannot be trusted. Where State Police has found that Owens lacks the requisite integrity to be a Trooper, and the public demand such integrity from Troopers, the PAB order cannot stand.



## ARGUMENT

### **I. THE ORDER ERRS AS A MATTER OF LAW BECAUSE IT CONTRAVENES A DOMINANT PUBLIC POLICY.**

In the course of normal employment matters, the PAB is generally granted broad discretion to reinstate an employee despite finding that they committed a terminable offense. RSA 21-I:58, I; *Appeal of N.H. Div. of State Police*, 171 N.H. 262, 268-69 (2018). This is not the case, however, in matters that involve a dominant public policy. In such cases, the PAB is without authority to reinstate an employee if doing so violates public policy. *In re Amalgamated Transit Union, Local 717*, 144 N.H. 325, 327-28 (1999). Here, the PAB erred as a matter of law when it reinstated a dishonest officer in contravention of public policy.

The PAB acts in a quasi-judicial capacity and inherently has only limited jurisdiction to apply strong and dominant public policy to resolve questions arising within the scope of its jurisdiction. *Id.* at 327-28. Dominant public policy must find root in controlling statutes, regulations, common law, and other similar authority. *Id.* Moreover, although New Hampshire case law does not expressly mention the rights and duties established by the Constitutions of the United States and New Hampshire, it is axiomatic that they are an authority of public policy. *See Seattle Police Dep't v. Seattle Police Officer's Guild*, No. 80467-7-I, 2021 WL 1247946 (Wash. Ct. App., Div. 1, April 5, 2021)(dominant public policy against police excessive force is grounded in U.S. Constitution); *Chicago Transit Authority v. Amalgamated Transit Union Local 308*, 108 N.E.3d 285, 290 (App. Ct. 1<sup>st</sup> Dist. 2018)(public policy of a state must be determined by its

constitution, laws, and judicial decisions); *Ray v. Wal-mart Stores, Inc.*, 359 P.3d 614, 620 (Utah 2015)(a policy is recognized as an authoritative source of state public policy if defined by legislative enactments, constitutional standards, or judicial decisions). Public policy is shaped by “the confines of positive law, rather than general considerations of supposed public interest.” *In re Pelham*, 154 N.H. 125, 129 (2006).

**A. Constitutional and statutory issues arising from dishonest law enforcement officers.**

The landmark United States Supreme Court case of *Brady v. Maryland* triggered a long line of cases that have established that the State violates a criminal defendant’s due process rights by withholding exculpatory or impeachment evidence, even if there is no specific request for that material. *United States v. Bagley*, 473 U.S. 667, 676 (1985); *United States v. Agurs*, 427 U.S. 97, 106-07 (1976); *Brady v. Maryland*, 373 U.S. 83, 88 (1963). This Court had occasion to interpret the interplay between the *Brady* requirements of exculpatory evidence, officer credibility, and the New Hampshire Constitution in the case of *State v. Laurie*, 139 N.H. 325 (1995). The officer in *Laurie* had a pre-employment investigation and personnel file filled with incidents of being untruthful, making misrepresentations, being described as a liar, and offering information about himself that could not be substantiated. *Id.* at 331-32. These records reflected negatively on the officer’s character and credibility, which could have been valuable impeachment evidence to be used by the defendant had the records been released. *Id.* at 333. As a matter of fundamental fairness to the criminal defendant, this Court found a duty to disclose both exculpatory

information and impeachment evidence that may be found in an officer's personnel file. *Id.* at 329, 333.

The prosecutorial duty that spawned from *Laurie* was of constitutional due process magnitude, leaving the government with a great interest in keeping track of officers whose personnel files contain exculpatory or impeachment evidence. *Gantert v. City of Rochester*, 168 N.H. 640, 649 (2016). That duty spurred law enforcement to develop a list – formerly known as the *Laurie* List, and presently called the Exculpatory Evidence Schedule (“EES”) – of police officers who have engaged in misconduct that reflects negatively on their credibility or trustworthiness. *N.H. Ctr. for Pub. Interest Journalism v. N.H. Dep’t of Justice*, No. 2019-0279, 2020 WL 6372970, \*1 (N.H. September 16, 2020). The EES functions as a reference point to alert a prosecutor to the need to look into an officer's actual personnel file to inquire if there is exculpatory evidence. *Id.* The list began as an informal sharing of information amongst law enforcement and evolved into a more formal process to be undertaken between police departments and each county attorney, and has now become a state-wide list maintained by the New Hampshire Department of Justice. *Id.* at \*3. Merely being on the EES is enough to trigger preliminary disclosure to the trial court any time that officer appears as a witness. *Duchesne v. Hillsborough Cnty. Attorney*, 167 N.H. 774, 780 (2015).

The underlying conduct in *Gantert* is strikingly similar to the present case, where an officer had no intention to deceive, but knew that he was providing incorrect information. *Gantert*, 168 N.H. 645. There, the officer was concerned with his incorrect belief that it was a departmental policy violation if he did not send a Lethality Assessment Protocol form to the

county attorney. *Id.* at 643. Having the mistaken belief that the form was not sent, and being unsuccessful in contacting the domestic violence victim who could fill out the form, and rather than consulting with any other superior or employee, the officer filled out the form himself with information that he knew could be incorrect. *Id.* at 643-45. This conduct of deliberately lying on the form and falsifying the information, even though he did not intend to deceive, was sufficient conduct to place the officer on the EES. *Id.* at 645-46. The officer was discharged, and an arbitrator subsequently found that the officer's actions did implicate his honesty and integrity, yet he was reinstated. *Id.* at 644-45. Despite the reinstatement, the officer's conduct was a reflection of his general credibility, and the arbitrator's decision regarding his inaccurate statements was sufficient to keep the officer on the EES. *Id.* at 650-51.

Similarly, in the present case, the PAB did not explicitly overturn State Police's conclusion that Owens acted intentionally; i.e. that he lied. As a result, despite the PAB reinstating Owens to his position as a Trooper, he must be listed on the EES until such time that the allegations of dishonesty are determined unsubstantiated and he petitions the superior court for removal. *Duchesne*, 167 N.H. 784-85. As it presently stands, his personnel file includes the State Police internal investigation that substantiated his dishonesty, and the Order made factual findings that he intentionally entered incorrect information to avoid a policy violation and discipline.

In keeping with the constitutional requirement of disclosing exculpatory or impeachment evidence about officers, the state legislature enacted RSA 105:13-b to mandate that a police officer personnel file

containing exculpatory evidence be disclosed to a criminal defendant. This is an ongoing duty that extends even beyond a finding of guilt. RSA 105:13-b, I. The requirement to continue disclosure, even after findings of guilt, illustrates that exculpatory evidence can play a profound role in a criminal defendant's case even well after court proceedings have concluded. As it pertains to Owens, there is both a constitutional and statutory ongoing obligation to disclose his lack of integrity.

**B. State Police Professional Standards of Conduct violations arising from dishonesty.**

The crucial import of disclosing an officer's lack of credibility stems from the incomparable role that law enforcement officers play within our society. Police officers are trusted with one of the most basic and necessary functions of society, securing and preserving public safety. *Everitt v. Gen. Elec. Co.*, 156 N.H. 202, 217 (2007). Officers must make decisions and take actions that have serious consequences and repercussions to the individuals immediately involved, to the public at large, and to themselves. *Id.* On any given day, officers may be required to employ their training, experience, measured judgment, and prudence in situations such as investigatory stops, investigations of crime, and arrests. *Id.* As a representative of the government, an officer has the inevitable asset of tremendous credibility. *See State v. Jaroma*, 137 N.H. 562, 570-71 (1993)(in voir dire it is appropriate to ask jurors if they believe a police officer is more credible than a private citizen to expose possible biases); *State v. Reynolds*, 136 N.H. 325, 328-29 (1992)(it is impermissible for a law enforcement officer to testify about another witness' credibility because

the officer's experience and aura of importance raises the risk that jurors will not use their own common sense in judging a witness' credibility); *State v. Bujnowski*, 130 N.H. 1, 4 (1987)(public prosecutor, as representative of the government, is likely to be seen by a jury as authority figure whose opinion carries considerable weight); *State v. Thorp*, 116 N.H. 303, 307 (1976)(unidentified informant was determined credible on the basis that he was a former New Hampshire police chief). It is precisely that perceived credibility that may be the only thing tipping the scales in favor of guilt instead of innocence. This places a premium on an officer's integrity.

The Director of State Police is responsible for "[a]pproving professional standards of conduct and standard operating procedures of the division of state police." RSA 21-P:7, I(f). Pursuant to this authority and understanding a Trooper's unparalleled role within society, State Police has developed a robust set of rules and regulations known as the Professional Standards of Conduct ("Standards"). The overarching requirement of the Standards is that "Division members must strive at all times to honor the trust and responsibility that has been placed in them and to serve the people well and faithfully." PSC 1.1.0: CR 159. The Standards hold such significance that Division Members are required to keep a complete, up-to-date personal set, and ignorance of the Standards is not an excuse for violation of any provision. PSC 1.3.2, CR 160. A violation of any provision of the Standards subjects an employee to discipline, up to and including dismissal. PSC 1.13.0, CR 175. Amongst the many obligations of the Standards is that of integrity, which reads:

Integrity: No Division Member shall, under any circumstances, make any false official statement or intentional misrepresentation of facts. Any Division Member who becomes aware that another Division Member has made a false statement or intentional misrepresentation of facts shall, without delay, inform his or her Commanding Officer. Any Division Member who becomes aware that any person has provided false information to a superior, shall inform the superior as soon as possible.

(PCC 1.4.8; CR 163.)

This Standard unequivocally prohibits *any* type of false official statement or intentional misrepresentation of facts under *any* circumstance. Conduct that would violate this Standard is considered so severe that it requires reporting to a commanding officer without delay.

State Police has always taken the position that the highest level of integrity is the only way to ensure the public's trust, officer accountability, and officer responsibility. CR 435-36. That tenet is reflected in the State Police mission statement, “[d]edicated to providing the highest degree of law enforcement service throughout the State of New Hampshire while maintaining the traditions of fairness, professionalism and *integrity*.” (emphasis added). This principle is further captured in the State Police vision statement, “[w]e will display in our daily professional and personal lives character and *integrity*.” (emphasis added). The doctrine is memorialized further still in the State Police Code of Ethics, “*Honest in thought and deed* in both my personal and official life, I will be

exemplary in obeying the laws of the land *and the regulations of my division.*” (emphasis added).

These policies, binding on all Troopers, firmly establish that integrity, synonymous with credibility, literally lies at the core of being a State Trooper. Integrity is of such paramount importance to State Police that when that Standard is violated it warrants the strictest of discipline. CR 441. As applied, State Police has consistently terminated Troopers whose integrity violations resulted in an unrestorable lack of faith in them. State Police enforced its Standards and administered the historically consistent discipline for an integrity violation when it terminated Owens. By reinstating him, the PAB erroneously undermined both the importance of the Standards and the discipline that has been consistently applied to Troopers whose dishonesty has irreparably damaged both their ability to perform the duties of an officer and the State Police’s faith in them.

**C. Executive Order and Commission recommendations pertaining to dishonest officers.**

Within the past year, the societal importance of law enforcement integrity has become an inescapable national conversation. With the signing of Executive Order 2020-11, New Hampshire Governor Christopher T. Sununu mandated the need to enhance transparency, accountability, and community relations in law enforcement. To that end, Governor Sununu launched the New Hampshire Commission on Law Enforcement Accountability, Community and Transparency (“Commission”) for the



purpose of developing recommendations and reforms. Executive Order 2020-11, ¶1. The Governor expressly tasked the Commission with examining the reporting, investigation, and punishment of police misconduct. Executive Order 2020-11, ¶ 3(b); SA 45.

The Commission developed a roadmap to establish necessary reforms targeted at all areas of law enforcement, from local police departments, to Police Academy students, to State Police, to the Department of Justice. Commission Roadmap; SA 48. Recommendation 4 implores the New Hampshire Police Standards and Training (“NHPST”) to purchase a robust database to maintain a full record over the course of an officer’s career of any incidents of sustained misconduct or movement between agencies. Such a requirement makes clear that accountability for misconduct must follow an officer over the span of their career and cannot be disposed of simply by changing agencies. Recommendation 5 advises NHPST to use the nationally vetted best practices of IACP, CALEA, PERF, and NOBLE<sup>6</sup> to create policy guidelines that serve as a minimum standard for a code of conduct and a duty to report misconduct. The IACP Model Policy for Standards of Conduct, which the Commission recommends as a resource for developing practices, specifically requires that “officers be truthful in all matters and shall not lie, falsify, conceal, purposely distort, diminish, embellish, or fail to fully disclose facts associated with any law enforcement business” and that unbecoming conduct is that which “casts doubt on [the officer’s] integrity, honesty, moral judgment, or character.”

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<sup>6</sup> International Association of Chiefs of Police; Commission on Accreditation for Law Enforcement Agencies; Police Executive Research Forum; National Organization of Black Law Enforcement Executives.

Recommendation 20 encourages a statutory change to make the standard retention schedule for police non-criminal internal affair investigations a minimum of 20 years after retirement or separation. *See* S.B. 96-FN-A, 2021 Sess. (N.H. 2021); RSA 33-A:3-a, CVIII. This recommendation makes clear that non-criminal internal investigations, such as Owens', are of such importance that they must be retained even well after an officer has retired or separated from a law enforcement agency. Recommendation 22 mandates that the EES be made public. *See* H.B. 471, 2021 Session (N.H. 2021). This drastic diversion from the previous confidentiality of the EES signals that the Commission believes officer credibility and conduct to be of such societal importance, not just in the context of exculpatory evidence, but to all citizens, that an officer lacking credibility must be publically known.

These roadmap recommendations provide powerful undergirding for the public policy that an officer must possess integrity, accountability, and credibility. The recommendations also make clear that officer misconduct is so severe that it becomes a matter of public disclosure, even decades after an officer has separated from service. When State Police determined that it needed to terminate Owens, it did so consistent with the national conversations regarding police accountability, and the State reforms addressing qualifications for all officers, all of which support the public policy Owens' dishonesty violated.

**D. The PAB Order errs in light of this dominant public policy.**

The PAB order runs directly contrary to the public policy that has been established through constitutional concerns, case law, statute, executive order, Commission findings, model standards of conduct, local standards of conduct, and customary practice. The PAB made no specific finding as to whether or not the integrity violation was sustained or overturned, and ultimately did not quibble with State Police's finding, and the significant evidence in support thereof, that Owens acted intentionally. Yet the PAB detailed that Owens "denied any intentional wrongdoing" (NOA 20), while simultaneously finding that "[Owens] was just trying to clean up the mess that he created by adjusting the duty times to fit with the detail time." (NOA 20); "[Owens] acknowledged that he intentionally entered his start time as 07:00 on that morning knowing that it was not correct." (NOA 21); and that "[Owens] was looking at a policy violation unless he adjusted the timecard." (NOA 22). The PAB, in other words, found that Owens denied any wrongdoing, but, contradictorily, that he had intentionally entered inaccurate times. As only one of these explanations can be accurate - either he *did not* intentionally commit a wrong or he *did* intentionally commit a wrong - the evidence the PAB recites establishes that one of Owens' explanations must be untruthful. Further, by finding that Owens "intentionally entered his start time...knowing it was not correct" and that "he was looking at a policy violation unless he adjusted the timecard," the PAB found that Owens engaged in a cover-up to avoid a policy violation. Regardless of the fact that the PAB neglected or declined to make a specific ruling as to Owens' integrity, it has indirectly

acknowledged that there was an integrity policy violation based on its findings that prove Owens was untruthful and engaged in deception. The reinstatement defies the dominant public policy that demands truthfulness and transparency for officers.

**II. THE ORDER IS UNJUST AND UNREASONABLE BECAUSE IT REINSTATES AN OFFICER, WHO IN THE JUDGMENT OF STATE POLICE, NO LONGER MEETS THE NECESSARY QUALIFICATIONS TO BE A STATE TROOPER.**

As laid out in detail above, in light of the public policy expectations, integrity and confidence from State Police are fundamental qualifications of a State Trooper. Conduct that bears negatively on an officer's integrity has the potential to carry a stigma, tarnish a reputation, and could affect the professional standing with those whom they work and interact on a regular basis. *See Duchesne*, 167 N.H. 783. Not only does a lack of integrity risk the officer's personal reputation, it risks the reputation of the organization as a whole, and compromises all proceedings in which the officer is called to testify. State Police holds its Troopers to the highest standard and cannot be associated with officers that are in fact stigmatized, tarnished, or in poor standing with their professional peers.

This Court has found that an administrative order is unreasonable when it reinstates an unqualified individual into an employment position, which results in displacing a qualified individual from that same position. *In re Lisbon Regional School District*, 143 N.H. 390, 397-98 (1999) (holding that it was unreasonable to reinstate an individual who was not a certified health education teacher because it would displace an individual who was a certified health education teacher). As a result of his conduct, the internal investigation findings, and the PAB's findings, it has been well documented that Owens lacks the requisite integrity for the position of State Trooper. He acknowledges his placement on the EES, which, in the judgment of State Police and based on Owens' particular conduct, severely

compromises his ability to perform the basic duties expected of him. It is unjust and unreasonable to require State Police to employ a Trooper whose credibility may be attacked in any criminal proceeding, which, in turn, affects the State's ability to enforce the criminal code.

A law enforcement employee with credibility issues can negatively affect the ability to enforce the criminal code, and impact the public's trust, in a multitude of ways. Take for example the well-publicized case of Johnny St. Valentine Brown, a police detective who falsified his credentials as an expert witness in narcotics, which became impeachment evidence against his credibility, resulting in the reconsideration and retrial of many criminal offenders. *See U.S. v. Jones*, 84 F.Supp.2d 124 (1999). Or take for example the more recent example of Annie Dookhan, a forensic chemist that performed the drug analyses used in criminal cases, who admitted to altering and falsifying drug tests. Based on Dookhan's dishonesty, more than 20,000 cases are now eligible for reexamination to determine if they should be vacated, dismissed, or retried. *Bridgeman v. District Attorney for Suffolk District*, 476 Mass. 298 (2017). Or take the local example of Officer Kibbe of the Claremont, NH Police Department. *Amended Conclusion Regarding the September 25, 2016 Officer-Involved Shooting Incident in Claremont, New Hampshire*, New Hampshire Department of Justice (October 1, 2019), <https://www.doj.nh.gov/news/2019/20191001-claremont-shooting.html>. Officer Kibbee was involved in a fatal shooting, that, upon investigation by the New Hampshire State Police and New Hampshire Department of Justice, was determined to be legally justified. Two years later, Officer Kibbe was convicted of crimes that had taken place while he was acting in his capacity as an officer: the falsification of

documentation related to a police search, unsworn falsification, and obstructing government administration. Officer Kibbe's later convictions were wholly unrelated to the fatal shooting, a subsequent review of the fatal shooting revealed no new information or significant discrepancies, and a nationally recognized crime scene reconstructionist concluded that the physical evidence was consistent with Officer Kibbe's original statements about the incident. But despite this evidence that corroborated Officer Kibbe's statements, his newly discovered lack of credibility cast such doubt over his testimony that the New Hampshire Department of Justice amended its findings and could no longer conclude that the fatal shooting was legally justified.

Each of these examples illustrates the harms that can flow from an individual in law enforcement that lacks integrity. Because there is no way to predict how a lack of integrity may impact the prosecution of a case, or an individual's rights and liberties, the State Police must maintain their discretion to terminate a Trooper who has demonstrated a lack of integrity and lost the confidence of the force.

This Court may set aside an order of an administrative agency when it is unjust or unreasonable. RSA 541:13. Where the terms *unjust* and *unreasonable* are not specifically defined, they are ascribed their plain and ordinary meaning. *State v. Jennings*, 159 N.H. 1, 3 (2009). *Unjust* is characterized by injustice; deficient in justice and fairness; wrongful. *Unjust*, Webster's New International Dictionary 2502 (3d ed. 2002). *Unreasonable* is not governed by or acting according to reason; exceeding the bounds of reason or moderation. *Unreasonable*, Webster's New International Dictionary 2507 (3d ed. 2002). In light of the dominant public

policy supporting dismissal of a Trooper whose dishonesty has irreparably damaged not only his ability to perform the duties of a Trooper, but has also lost State Police's faith, it is unfathomable to believe that reinstating such a person to the position of State Trooper is within the bounds of reason or moderation.



**CONCLUSION**

For the foregoing reasons, State Police respectfully requests this Court to reverse the PAB's Order because it violates a dominant public policy, errs as a matter of law, is unjust, and unreasonable.

State Police certifies that the appealed decision is in writing and is appended to this brief.

State Police requests a fifteen minute oral argument to be presented by Assistant Attorney General Emily Goering.

Respectfully Submitted,

THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF SAFETY  
DIVISION OF STATE POLICE

By Its Attorneys,

JOHN M. FORMELLA  
ATTORNEY GENERAL

April 26, 2021

/s/ Emily C. Goering  
Emily C. Goering  
N.H. Bar No. 268497  
Assistant Attorney General

/S/ Matthew T. Broadhead  
Matthew T. Broadhead,  
N.H. Bar No. 19808  
Senior Assistant Attorney General

Transportation and Construction Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, NH 03301-6397  
(603) 271-3675

**CERTIFICATE OF COMPLIANCE**

I, Emily C. Goering, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this brief contains approximately 8,032 words, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief.

April 26, 2021

/s/ Emily C. Goering  
Emily C. Goering

**CERTIFICATE OF SERVICE**

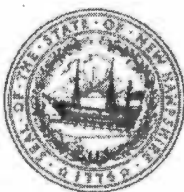
I, Emily C. Goering, hereby certify that a copy of State Police's brief shall be served on Marc Beaudoin, Esquire, and Jake Krupski, Esquire, counsel for Thomas Owens, through the New Hampshire Supreme Court's electronic filing system.

April 26, 2021

/s/ Emily C. Goering  
Emily C. Goering

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CHRISTOPHER T. SUNUNU  
Governor

**STATE OF NEW HAMPSHIRE  
OFFICE OF THE GOVERNOR**

**STATE OF NEW HAMPSHIRE  
BY HIS EXCELLENCY  
CHRISTOPHER T. SUNUNU, GOVERNOR**

**Executive Order 2020-11**

**An order establishing the New Hampshire Commission on Law Enforcement  
Accountability, Community, and Transparency**

**WHEREAS**, in the wake of the tragic murder of George Floyd in Minneapolis, MN, our country is engaged in a nationwide conversation regarding law enforcement, social justice, and the need for reforms to enhance transparency, accountability, and community relations in law enforcement; and

**WHEREAS**, law enforcement in New Hampshire make daily sacrifices, serve our State admirably, and are a necessary and pivotal part of our communities; and

**WHEREAS**, the State of New Hampshire has an obligation to participate in the national conversation and engage in self-examination to identify any opportunities to improve the state of our law enforcement and the relationship between law enforcement and the communities they serve; and

**WHEREAS**, New Hampshire finds itself in a pivotal moment that demands prompt action to initiate important conversations and develop recommendations for reform.

**NOW, THEREFORE, I, CHRISTOPHER T. SUNUNU, GOVERNOR** of the State of New Hampshire, by the authority vested in me pursuant to part II, article 41 of the New Hampshire Constitution, do hereby order, effective immediately, that:

1. There is established the New Hampshire Commission on Law Enforcement Accountability, Community and Transparency (the "Commission"). The Commission shall consist of the following members:
  - (a) The Attorney General, or designee, who shall chair the Commission
  - (b) The Commissioner of the Department of Safety, or designee
  - (c) The Executive Director of the New Hampshire Commission for Human Rights
  - (d) The Director of the Police Standards and Training Council
  - (e) The Chair of the Governor's Advisory Council on Diversity and Inclusion
  - (f) The President of the Manchester, NH NAACP

- (g) A current justice of the New Hampshire Superior or Circuit Court, appointed by and serving at the pleasure of the Governor
  - (h) A representative of the New Hampshire Police Association, appointed by and serving at the pleasure of the Governor
  - (i) The President of the New Hampshire Association of Chiefs of Police
  - (j) The Executive Director of the New Hampshire Chapter of the National Alliance on Mental Illness
  - (k) A representative from the New Hampshire ACLU, appointed by and serving at the pleasure of the Governor
  - (l) Two members of the public, appointed by and serving at the pleasure of the Governor
2. If any of the members named in Paragraph 1 become unable to serve for any reason, then the Governor shall appoint a new member to serve in their place.
  3. The Commission shall engage all interested and relevant public, private, and community stakeholders and develop recommendations for reforms that the Commission deems necessary to enhance transparency, accountability, and community relations in law enforcement. To fulfill this charge, the Commission shall examine the following:
    - (a) Training curriculum, procedures and policies developed by State Police, local police departments, and the Police Standards and Training Council, and potential options for improving the same to better address certain areas which may include, but are not limited to, (i) de-escalation, (ii) use of deadly and non-deadly force force, and (iii) diversity training;
    - (b) State and local procedures related to the reporting and investigation of police misconduct, and potential reforms which may include, but are not limited to, development of a uniform statewide system for the reporting, investigation, and punishment of police misconduct;
    - (c) The current state of relationships between law enforcement and the communities they serve, and potential steps that can be taken to enhance these relationships; and
    - (d) Any other subject matter which the Commission deems relevant to the overall mission of enhancing transparency, accountability, and community relations in law enforcement.
  4. For the purpose of this Order, the term "law enforcement" is intended to refer to individuals who are employed by a municipal, county, or state governmental agency in the State of New Hampshire; certified by the Police Standards and Training Council; responsible for the prevention, detection, or prosecution of crimes and the enforcement of the laws of the state and of its political subdivisions; and have full general arrest powers. Such individuals may include, but not necessarily be limited to, chiefs, police officers, sheriffs, deputy sheriffs, colonels, troopers, conservation officers, liquor commission inspectors, fire investigators/marshals, state troopers, forest rangers, and marine patrol officers.
  5. The Commission shall meet at the call of the Chair, and as often as necessary to complete its work. A majority of the appointed Commission members shall constitute a quorum, and all official actions of the Commission shall require a majority vote of those present and voting.

6. All meetings and proceedings of the Commission shall comply with the requirements of RSA 91-A.
7. No later than 45 days from the date of this Order, the Commission shall submit a report containing its recommendations to the Governor, the Speaker of the House, and the President of the Senate. The Commission's report shall be posted publicly on the Governor's Office website.

Given under my hand and seal at the Executive Chambers in Concord, this 16th day of June, in the year of Our Lord, two thousand and twenty, and the independence of the United States of America, two hundred and forty-four.



**GOVERNOR OF NEW HAMPSHIRE**

Title of Recommendation	Implementation
<b>A. TRAINING</b>	
<b>I. Required Training to Maintain Law Enforcement Officer Certification</b>	
1. As soon as practicable, NH PSTC, with input from all relevant law enforcement agencies, should pursue all actions necessary, including emergency rulemaking pursuant to RSA 541-A, to amend existing administrative rules to provide as follows:	
1-A. Increase the mandatory number of hours of annual in-service training for law enforcement officers on an incremental basis over the next three years. By January 1, 2024, the total mandatory hours of annual in-service training should be a minimum of twenty-four (24) hours.	Executive Order and Rulemaking
1-B. Mandate that annual in-service training as approved by NH PSTC include, at a minimum, two (2) hours on each of the following topics: i. Implicit bias and cultural responsiveness; ii. Ethics; and iii. De-escalation.	Executive Order and Rulemaking
2. Beginning January 1, 2021, strongly encourage all law enforcement agencies to require their officers to participate and receive, at a minimum two (2) hours annually, of training in the following areas: a. Implicit bias and cultural responsiveness; b. Ethics; and c. De-escalation.	Executive Order - Contracting
<b>II. NH Police Standards and Training Council General Recommendations</b>	
3. NH PSTC should arrange for a Job Task Analysis (JTA) for entry-level law enforcement officers and entry-level corrections officers, and based on those findings, conduct an overall review of the present academy curriculums. Based on curriculum changes found by the JTA, an extension of the length of the police academy beyond its current 16 weeks may be warranted.	Executive Order
4. NH PSTC needs to leverage technology and be allowed to purchase and deploy a robust database management system and on-line learning platform for the twofold purpose of: 1) maintaining a full record over the course of an officer's career of his or her training completion, any incidents of sustained misconduct, movement from one agency to another and/or decertification, and 2) to develop and deliver standardized on-line training to all law enforcement officers in an efficient and economical way.	Executive Order & potential legislation for funding



Title of Recommendation	Implementation
<p>5. NH PSTC, in collaboration with other law enforcement agencies, using nationally vetted best practices as set forth by IACP, CALEA, PERF, and NOBLE, shall create policy guidelines on the following topics that serve as a minimum standard with which all law enforcement agencies must comply:</p> <ul style="list-style-type: none"> <li>- Use of Force</li> <li>- Duty to Intervene</li> <li>- Code of Conduct</li> <li>- Duty to Report Misconduct</li> <li>- Prohibition of Chokeholds</li> <li>- Procedures to Guard Against Positional Asphyxia</li> </ul>	Executive Order and Rulemaking
<p>6. NH PSTC should increase the number of hours of scenario-based training in both academy and in-service settings.</p>	Executive Order and Rulemaking
<p>7. NH PSTC should improve and augment police academy training on diversity by conducting a review of the present lesson plan on cultural dynamics, and amend it to properly address the topic. Training to be developed with one or more community partner(s).</p>	Executive Order and Rulemaking
<p>8. NH PSTC should improve and augment police academy and in-service training on implicit bias and procedural justice by adopting the IACP recognized Fair and Impartial Policing training or similar type training.</p>	Executive Order and Rulemaking
<p>9. NH PSTC should improve and augment police academy and in-service training on de-escalation techniques by adopting the PERF's Integrated Communication and Tactics training (ICAT) or similar training.</p>	Executive Order and Rulemaking
<p>10. NH PSTC should improve and augment police academy training on police ethics by re-instituting the Ethics block of instruction.</p>	Executive Order and Rulemaking
<p>11. NH PSTC should improve and augment police academy and in-service training on the duty to intervene by adopting Georgetown University's Active Bystandership Law Enforcement (ABLE) training, (formally known as EPIC training) or similar training.</p>	Executive Order and Rulemaking
<p>12. NH PSTC should include in its instruction State of New Hampshire v. Jones (decided January 10, 2020) and any other State court decisions where race or protected class was a matter the court considered while reaching its decision. These cases should be part of the lesson plan in those relevant topic areas that are already delivered. An attorney from the Attorney General's Office will be dedicated to teach at NH PSTC and regularly update materials.</p>	Executive Order and Rulemaking

Title of Recommendation	Implementation
13. Recognizing that certain NH police agencies need to rely on part-time law enforcement officers, NH PSTC should re-evaluate the Part-Time Police Officer certification process upon receipt of the JTA and consider extending the length of such training and give certain consideration to what law enforcement functions part-time officers be allowed to perform.	Executive Order and Rulemaking Potential legislation for funding
14. NH PSTC should amend administrative rule POL 301.05 Background Investigations to mandate that background investigations specifically vet police recruit candidates in the area of having demonstrated outward bias toward a protected group by way of past history, behavior, affiliation with a subversive group, social media posts and other objective sources to help determine the overall fitness for duty the candidate possesses and to consider those findings in the overall decision to hire the candidate.	Executive Order and Rulemaking
<b>III. Other Recommendation</b>	
15. All law enforcement agencies should be encouraged to pursue CALEA accreditation. In the absence of CALEA accreditation, agencies should continually review and maintain policies consistent with nationally accepted best practices under Section C:1-a-1.	Recommendation, and potential Executive Order related to State assistance
<b>B. REPORTING AND INVESTIGATION OF POLICE MISCONDUCT</b>	
16. Support the establishment of a single, neutral and independent statewide entity to receive complaints alleging misconduct regarding all sworn and elected law enforcement officers with the noted componets from the LEACT Report:	Legislation
17. To promote a uniform approach to investigation and prosecution of alleged criminal conduct by government officials, including law enforcement officials, establish by statute, a dedicated Public Integrity Unit within the Attorney General's Office with permanent and sustainable resources, including full-time attorneys, paralegals, legal assistants, and investigators.	Executive Order Legislation for additional funding
18. To promote equal justice under the law in all aspects of the criminal justice system, the Commission strongly encourages implicit bias and racial profiling training for all prosecutors, including all police prosecutors, all criminal defense attorneys, and all judges.	Executive Order for prosecutors and public defenders Legislation for judges
19. Establish a community outreach position within the Attorney General's Office to facilitate communication between all state, county and local prosecution offices and New Hampshire's diverse communities.	Executive Order Legislation for additional funding
20. Amend RSA 33-A:3-a, CVIII to require "police, non-criminal-internal affairs investigations" to be retained, at a minimum, for a period of 20 years after retirement or separation.	Legislation

Title of Recommendation	Implementation
21. Encourage all law enforcement agencies to use body and/or dash cameras.	Executive Order for State Police - with potential legislation for funding Legislation for local law enforcement
22. Make the existing Exculpatory Evidence Schedule (EES) public subject to the following provisions: a. The Office of the Attorney General will provide immediate written notice to all living persons on the current list that they are on the list with the following notifications that: i. Six (6) months from date of notification to request a hearing in Superior Court to have his or her name removed from the EES. ii. Six (6) months from date of notification, individual names on the list with a sustained finding shall be made public, except for any individual with a pending Superior or Supreme Court action in regard to removal from the EES. b. The names of deceased former law enforcement officers shall be released once there has been a determination that the officer was afforded due process prior to placement on the list or the conduct subject to EES was previously provided as discovery in a criminal case.	Legislation
<b>C. COMMUNITY RELATIONS</b>	
<b>I. Data Collection</b>	
23. All law enforcement agencies should gather, analyze and make available to the public, at least annually, data on demographics (including, at a minimum, gender and race) for arrests, citations and motor vehicle and subject stops regardless of disposition.	Legislation
24. New Hampshire Department of Motor Vehicles should include a person's race on NH Drivers' Licenses and Non-Drivers' Identification Cards, with the option for the person to opt out from answering the question.	Legislation
25. All law enforcement agencies will comply with RSA 106-B:14-c by submitting crime reports to the Department of Safety, Division of State Police based on the specifications prescribed by the Federal Bureau of Investigation (FBI).	Recommendation and communication push from State to remind local law enforcement agencies of statutory requirements

Title of Recommendation	Implementation
<b>II. Community Policing and Engagement</b>	
26. All law enforcement agencies should adopt the definition of Community Policing as set forth by IACP: "Community policing is a comprehensive philosophy that guides policy and strategy aimed at achieving more effective and efficient crime control, reduced fear of crime, improved quality of life, and improved police services and police legitimacy through a proactive reliance on community resources that seeks to change crime causing conditions. This assumes a need for greater accountability of police, elected community leaders, and the community in general, along with greater public share in decision-making through the identification of service needs and priorities and a greater concern for civil rights and liberties."	Executive Order for State Police Recommendation for local law enforcement
27. Encourage all law enforcement agencies, when practicable, to dedicate an officer or unit to community policing and engagement	Executive Order for State Police Recommendation for local law enforcement
28. Encourage all law enforcement agencies to engage in community relationship building by working collaboratively with community liaisons, public agencies, non-profits, community stakeholders and existing community-based programs. Models like New Hampshire Blue and You, the Mirror Project, Police Athletic Leagues (PALs), and citizen police academies serve as a guide for such efforts.	Executive Order for State Police Recommendation for local law enforcement
29. All law enforcement agencies should establish ongoing officer training at all levels to encourage a culture that empowers individual officers to engage in community policing and relationship building efforts.	Executive Order for State Police Recommendation for local law enforcement
30. All law enforcement agencies should publish/advertise community events and consider the use of social media and the establishment of Public Service Announcement (PSA) campaigns to educate the public about police officers and their work.	Executive Order for State Police Recommendation for local law enforcement
31. NH PSTC should maintain and publish a list of all currently CALEA accredited law enforcement agencies.	Executive Order
<b>III. School Resource Officers</b>	
32. NH PSTC should set forth mandated "certification" for SROs that would require the officer to complete National Association of School Resource Officers (NASRO) training, Mirror Project Train-the-Trainer and Effective Police Contact with Youth training prior to assignment. Further, certain annual in-service hours to maintain SRO "certification" should be identified and mandated by NH PSTC.	Executive Order and Rulemaking Potential legislation for funding

Title of Recommendation	Implementation
33. NH PSTC should work with stakeholders and oversee the development of a model SRO Memorandum of Understanding (MOU) to be used by police departments and School Administrative Units (SAUs) that clearly defines the roles, expectations and prohibitions of the SRO's role in the school setting and specifically with regard to the SRO's role in student discipline for non-criminal matters.	Executive Order
34. Each law enforcement agency should have a field training program specifically for SROs. A transition plan should be implemented over a course of weeks/months between each outgoing/incoming SRO so there is overlap, information exchange, and adjustment for the stakeholders.	Recommendation
35. MOUs between law enforcement agencies and SAUs should be made public.	Legislation
<b>IV. Hiring/Recruitment of Officers</b>	
36. Recognizing the difficulty of hiring and recruiting qualified candidates, law enforcement agencies should continue efforts to recruit officers from minority communities to allow for a diverse law enforcement workforce.	Executive Order for State Police Recommendation for local law enforcement Legislation for funding for these efforts
37. All public entities should develop a comprehensive strategy to actively attract, recruit, and retain diverse law enforcement candidates, to include candidates from outside New Hampshire.	Executive Order for State entities Recommendation for public non-state entities
<b>V. Other</b>	
38. In order to advance relationships with the trans and gender non-conforming population, all law enforcement agencies should seek and provide training on pronoun inclusion.	Executive Order for State Police Recommendation for local law enforcement
39. In order to advance relationships with the deaf and hard of hearing community, law enforcement agencies should continue to seek a better understanding of, and communication with, members of that community, to include the greater use and dissemination of driver visor cards by law enforcement.	Executive Order for State Police Recommendation for local law enforcement
40. In order to advance a greater understanding of juvenile offenders, form a separate commission to review the present state of juvenile justice laws. In particular, the commission should review the minimum age for juvenile prosecutions and the statute that creates a presumption of transfer to the adult criminal court.	Legislation

Title of Recommendation	Implementation
<p><b>The Commission makes the following recommendations for reforms and improvements with respect to mental health and well-being and the results of the February 2019 Office of Legislative Budget Assistant NH PSTC Performance Audit.</b></p>	
<p>41. Specially trained mental health professionals should be embedded in tactical response teams. There should be a review to determine if such mental health professionals will be afforded protection from litigation stemming from their participation in such activities.</p>	<p>Recommendation</p>
<p>42. Encourage partnerships between communities and local law enforcement to pursue services and resources dedicated to individuals with substance use disorders (SUDs) and mental illness and to make those services readily available in order to reduce the burden on law enforcement responding to issues stemming from SUDs as well as mental illness.</p>	<p>Recommendation and State assistance for local law enforcement agencies</p>
<p>43. Offer training regarding the mental well-being of law enforcement officers. Training should include information regarding the high rates of post-traumatic stress, depression and suicide among law enforcement officers and available resources for seeking help. Enhance the availability and encourage the continued collaboration of law enforcement peer support programs in the state.</p>	<p>Executive Order for State Police Recommendation and State assistance for local law enforcement Potential legislation for funding</p>
<p>44. NH PSTC should explore the issue of requiring mandatory periodic psychological screenings of law enforcement officers, similar to what is currently required for physical fitness under Pol 404.07, to determine ongoing fitness for duty and/or assist with referring officers for mental health treatment/support.</p>	<p>Executive Order</p>
<p>45. The University of New Hampshire and other higher education institutions within New Hampshire are encouraged to collaborate with NH PSTC to develop specialized curriculum and/or graduate/post-graduate certificate programs dedicated:</p> <p>a. To mental health providers who collaborate with law enforcement officers in responding to individuals experiencing a mental health crisis, in order to respond more effectively to critical incidents involving individuals who are a danger to themselves or others.</p> <p>b. To address the special mental health needs of law enforcement officers/first responders including, trauma, depression, and substance misuse, in order to enhance the skills, understanding, and availability of licensed mental health professionals in New Hampshire who can provide treatment/support and collaborate with our law enforcement community.</p>	<p>Recommendation Governor conversation with the USNH and CCSNH boards</p>

Title of Recommendation	Implementation
46. Endorse the findings and recommendations of the February 2019 Office of Legislative Budget Assistant NH PSTC Performance Audit and ensure that sufficient funding is allocated to implement and sustain the recommendations.	Legislation - next biennial budget
47. In order to enhance transparency, accountability, and community relations between law enforcement and the people they serve, the Commission strongly encourages the Governor and the legislature to allocate or re-allocate appropriate funding needed to implement and sustain the recommendations made by this Commission. Stakeholders are encouraged to advocate for their funding needs before House Finance Committee or their local funding body.	Legislation - next biennial budget
48. Extend, as needed, this Commission to assist with implementation of any recommendation.	Commission to re-convene to assess progress on recommendations after next legislative session