

**ATTORNEY GENERAL
DEPARTMENT OF JUSTICE**

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LAW ENFORCEMENT MEMORANDUM

TO: All New Hampshire Law Enforcement Agencies

FROM: John M. Formella, Attorney General 

DATE: October 11, 2021

RE: Public Integrity Matters

In order to provide guidance to the public and to law enforcement, I am issuing this updated statement of the policies and procedures that have been and will continue to be followed by this office in handling matters involving allegations of criminal misconduct committed by public officials, including law enforcement officers, since the creation of this Office's dedicated Public Integrity Unit.

On October 7, 2020, Governor Christopher Sununu issued Executive Order 2020-19: "An order regarding implementation of recommendations of the New Hampshire Commission on Law Enforcement Accountability, Community, and Transparency ["LEACT"]." The Executive Order required that the Attorney General establish a dedicated Public Integrity Unit ("PIU"). The Order further stated that the purpose of the newly-created PIU "shall be to promote a uniform approach to the investigation and prosecution of alleged criminal conduct by government officials, including law enforcement officials." On October 30, 2020, the PIU was formally created.

As detailed further in the attached policy, the PIU will continue to handle all matters as previously described in the prior Public Integrity Matters Law Enforcement Memorandum issued January 30, 2019. In addition to the previously described duties and responsibilities and consistent with Executive Order 2020-19, the PIU is now exercising jurisdiction over all complaints and reports of on-duty criminal misconduct involving state county, municipal and local law enforcement officers.

The intention of this updated policy is to faithfully discharge this office's duty to ensure integrity in state, county, and municipal government and uniformity in the investigation and prosecution of alleged criminal conduct by state, local, county, and municipal law enforcement officials while also recognizing the appropriate role of the County Attorneys, state and local police, and other law enforcement agencies in this area. *See generally* RSA 7:6.

Accordingly, as discussed, this updated policy assigns primary responsibility for the investigation of criminal complaints involving: (1) state officials; and (2) state, local, county, and municipal law enforcement officials to the Attorney General's Office. *See* RSA 21-M:8, II(a) & (d) (statutory duties of the criminal bureau include investigating and prosecuting major crimes and such other criminal matters as the attorney general shall determine). Matters involving county, municipal, or local government officials, not including law enforcement officials, will be handled by the appropriate county or municipal law enforcement agency, except in unusual circumstances as described in the policy.

Consistent with this policy, allegations of criminal misconduct by a state official or a state, local, county, or municipal law enforcement official should be reported to the Chief of the Criminal Justice Bureau of this office at (603) 271-3671.

Reports of criminal misconduct by county, municipal, or local government officials should be reported to the County Attorney with jurisdiction. If the County Attorney believes that his or her office has an actual conflict of interest, the County Attorney shall make arrangements to refer the matter to another County Attorney.

If the County Attorney with jurisdiction believes that involvement of this office may be required to: (1) avoid an actual conflict of interest or other appearance of impropriety; or (2) to serve an important state interest that might not be adequately protected if the matter is handled locally, then the County Attorney shall refer the matter to the Chief of the Criminal Justice Bureau. Those reports will be reviewed and handled according to the procedures set forth in this policy.

This policy ensures that the Attorney General's Office will take whatever action is required to assist county or municipal law enforcement agencies in any case and to provide assurance to the public that investigations involving public officials, including law enforcement officials, are handled uniformly and appropriately.¹ This policy also strives to promote communication between local agencies and this office regarding public integrity matters.

Accordingly, the attached policy supersedes the January 30, 2019, law enforcement memorandum on the same subject.

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¹ Relatedly, RSA 631:4-a, which criminalizes harm or threats to sitting members of the legislature, executive councilors, past or present governors, members of the judiciary, or members of their immediate families—mandates that violations of the statute be prosecuted by the Attorney General's Office. Please report suspected violations of RSA 631:4-a, to the Chief of the Criminal Justice Bureau, at (603) 271-3671.

ATTORNEY GENERAL'S OFFICE
PUBLIC INTEGRITY INVESTIGATION POLICIES & PROCEDURES

I. STATEMENT OF GENERAL POLICY

The Criminal Justice Bureau, Public Integrity Unit ("PIU") of the Attorney General's Office ("AGO") will investigate and prosecute allegations of criminal misconduct by state officials and state, county, municipal, and local law enforcement officials, and seek to vindicate the public's interest in honest government. The AGO will also, in certain circumstances, investigate and prosecute allegations of criminal misconduct by county or municipal officials. As provided in Section III, *infra*, the criminal misconduct must typically bear a connection to the official's performance of his or her official responsibilities.

Consistent with this policy, the AGO will respond to complaints of criminal misconduct by state officials and state, county, municipal, and local law enforcement officials according to the following guidelines and procedures.

II. PROCEDURES FOR HANDLING COMPLAINTS

A. Form and Receipt of Complaints. Complaints should be submitted in writing to the:

Criminal Justice Bureau
Public Integrity Unit
Attorney General's Office
33 Capitol Street
Concord, NH 03301

Complaints may also be submitted via email to: InvestInfo@doj.nh.gov. Inquiries may be made by telephone or in person, but it shall be the general policy of the AGO not to commence an investigation or other action except upon receipt of a written complaint. The complaint should set forth all of the facts which the complainant believes warrant the commencement of a criminal investigation. Complaints which do not provide sufficient factual information may be returned to the complainant without further review by the AGO.

All complaints should include the complainant's name, address, and telephone number. Anonymous complaints generally will not be reviewed. However, upon request, a complainant's identity may be kept confidential if practicable, bearing in mind that such confidentiality may impede or foreclose the AGO's ability to investigate or take other action on the complaint.

Upon receipt by the AGO, complaints shall be logged in by the name of the complainant and the official (or, where the official is not named, the official's agency). If the complaint alleges conduct by a county or municipal government official, the AGO will refer the complainant to the County Attorney or other appropriate law enforcement agency having jurisdiction, with notice to the complainant of such. See Section III, *infra*.

B. Preliminary Review. All complaints shall be subject to preliminary review to determine whether they satisfy the criteria for investigation or other action by the AGO. This preliminary review shall be conducted by an attorney within the Criminal Justice Bureau, or by an investigator in consultation with an attorney. The preliminary review shall be based upon the content of the complaint itself, together with any other information supplied to the AGO by the complainant, and may also include such other preliminary factual inquiry as is deemed appropriate.

The standard employed by the AGO for the preliminary review is as follows: whether, based upon the content of the complaint itself, together with any other information supplied to the AGO by the complainant, there is a reasonable suspicion to believe that further investigation will lead to probable cause that criminal conduct has occurred.

If, upon preliminary review, it appears that the complaint does not allege criminal conduct or otherwise meet the criteria for investigation or other action by the AGO as set forth above and as discussed further in Section III, *infra*, the complainant shall be so notified in writing. In such cases, the AGO may refer the matter to another governmental agency for appropriate action. If the complaint satisfies the standard to open an investigation or other action by the AGO, the complainant will be so notified in writing.

C. Investigation or Other AGO Action. If a complaint alleges criminal misconduct and satisfies the criteria set forth to open an investigation, the AGO will: (1) investigate the matter itself; (2) supervise or assist a state, county or municipal law enforcement agency in investigating the matter; or (3) take any other action that is appropriate to the needs of the particular case.

D. Disposition. Upon completion of an investigation or other action on a matter, the AGO will: (1) prosecute the matter; (2) refer the matter to the appropriate County Attorney's Office for prosecution; (3) decline prosecution, but refer the matter to the appropriate law enforcement or other governmental agency for possible administrative action; (4) decline prosecution, but issue a report setting forth its investigative findings to the extent permitted by law; or (5) decline prosecution and close the matter without further action. If the AGO declines prosecution with a report or without further action, the complainant will be so notified in writing.

III. CRITERIA FOR INVESTIGATION IN PARTICULAR CASES

A. State Government Officials. The AGO will review any complaint of criminal misconduct by a state official if it is related to his or her official duties. The AGO will investigate such complaints where: (1) it appears upon review of the complaint that there is a sufficient basis to commence an investigation; and (2) the alleged criminal misconduct is related to the official's performance of his or her official duties (*i.e.*, was committed in the course of those duties, or is of such a nature as to reasonably call into question the integrity of the official's governmental function).

B. Law Enforcement Officers.

1. State, County, Municipal, or Local Law Enforcement Officers. The AGO will review a complaint of criminal misconduct by: (1) a State law enforcement officer or other State law enforcement official or (2) a county, municipal, or local law enforcement official, if the complaint is related to his or her official duties. Where it appears upon review of the complaint that there is a sufficient basis for investigation, the AGO will: (1) investigate the matter itself; (2) supervise or assist a state or local agency in investigating the matter; or (3) take any other action that is appropriate to the needs of the particular case.

2. Notification to Other Prosecuting Agencies. In any matter in which the complaint satisfies the standard to open an investigation as set forth in Section II(B), *supra*, or in which the AGO determines that a law enforcement officer has engaged in criminal misconduct or any other misconduct that would be required to be disclosed to a criminal accused under *State v. Laurie*, 139 N.H. 325 (1995) and its progeny, the AGO shall notify the head of that officer's law enforcement agency, the appropriate County Attorney's Office, and any other identifiable prosecuting agency that may be affected.

3. Reporting of Misconduct Under RSA 105:19. Newly enacted RSA 105:19, which became effective January 1, 2021, requires that any police department which receives a report of misconduct, conduct a timely investigation and reach a determination on the merits of the complaint.¹ Specifically, the statute mandates that upon receiving notification that an officer has engaged in misconduct, the chief law enforcement officer of the agency shall within seven days notify the police standards and training council of such misconduct in writing.

Notwithstanding the definition of "misconduct" found in RSA 105:19, any complaint alleging criminal conduct on the part of any state, county, municipal, or local law enforcement officer shall be reported to the AGO consistent with this policy. In addition, any reports made to the police standards and training council pursuant to RSA 105:19 must also be made to the AGO.

4. Public Integrity Investigations and Agency Internal Investigations. Upon receiving a complaint or acting on its own, any state, county, municipal, or local law enforcement agency shall refer to the AGO as set forth in this policy, all complaints that allege a law enforcement officer has engaged in criminal conduct if there exists sufficient information which meets the preliminary review standard set forth in Section II(B), *supra*. The law enforcement agency shall also open an internal investigation on any matter referred to the AGO. However, the law enforcement agency shall stay any such investigation while the AGO's criminal investigation is pending, unless the AGO and the law enforcement agency mutually agree that the law enforcement agency may proceed with its independent administrative internal investigation and that the internal investigation would not interfere with any criminal investigation.

C. Judicial Officers. The AGO will review complaints of criminal misconduct by a judge if it is related to his or her official duties, and will investigate such complaints where it

¹ "Misconduct" as defined in RSA 105:19, I, includes "assault, sexual assault, bribery, fraud, theft, tampering with evidence, tampering with a witness, use of a chokehold, or excessive and illegal use of force as defined by the New Hampshire criminal code."

appears upon review of the complaint that there is a sufficient basis to do so. Complaints that do not allege criminal misconduct, or which do not appear to set forth a sufficient basis for investigation, shall be referred to the Judicial Conduct Committee if warranted.

The AGO will review complaints of criminal misconduct by other officers of the judicial branch of state government, and will investigate such complaints where: (1) it appears upon review of the complaint that there is a sufficient basis to commence an investigation utilizing the standard set forth in Section II(B), *supra*; and (2) the alleged criminal misconduct is related to the officer's performance of his or her official duties (*i.e.*, was committed in the course of those duties, or is of such a nature as to reasonably call into question the integrity of the official's governmental function).

D. County, Municipal, and Local Officials. Complaints of criminal misconduct by county, municipal, or local government officials are most appropriately reviewed and investigated by county, municipal, or local law enforcement agencies. Complaints of this type that are addressed in the first instance to the AGO will therefore ordinarily be referred to the appropriate county or municipal law enforcement agency (*e.g.*, county attorney, local police department, city or town counsel, etc.), with notice to the complainant.

Should the appropriate county, municipal, or local law enforcement agency have an actual conflict of interest the agency with jurisdiction shall make arrangements to refer the matter to another law enforcement agency for investigation. Should the County Attorney with jurisdiction have an actual conflict of interest, the County Attorney shall make arrangements to refer the matter to another County Attorney.²

The AGO may exercise its authority to act in matters of this type in the first instance, but only where it determines that such action is necessary: (1) to avoid an actual conflict of interest or other appearance of impropriety³; or (2) to serve an important State interest that might not be adequately protected if the matter is handled locally by the agency with jurisdiction or an agency handling the matter as a conflict referral. Whether such a State interest exists will be determined on a case-by-case basis from the facts and circumstances of a particular case. Such an interest may be present, for example, where the cases involves criminal misconduct in more than one county; presents a unique or complex legal issue that is likely to be appealed in the event of a conviction; or presents criminal conduct of such magnitude or complexity that the expenditure of State resources is warranted.

The AGO's decision as to whether to act in such matters in the first instance will be made, whenever possible, in consultation with the appropriate county or municipal authorities. Where the AGO decides to take such action, it may: (1) investigate the matter itself; (2) supervise or assist a state or local agency in investigating the matter; or (3) take any other action that is appropriate to the needs of the particular case.

² An actual conflict of interest does not arise merely because the county or municipal official is one whom with the county or municipal agency has worked.

³ An actual conflict of interest does not arise merely because the county or municipal official is one whom with the county or municipal agency has worked.

E. County Corrections Officers. Complaints of criminal misconduct by county corrections officers are most appropriately reviewed and investigated by county law enforcement agencies. Complaints of this type that are addressed in the first instance to the AGO will therefore ordinarily be referred to the appropriate county law enforcement agency (*e.g.*, county attorney, county sheriff's department, etc.), with notice to the complainant.

Should the appropriate county law enforcement agency have an actual conflict of interest the agency with jurisdiction shall make arrangements to refer the matter to another law enforcement agency for investigation. Should the County Attorney with jurisdiction have an actual conflict of interest, the County Attorney shall make arrangements to refer the matter to another County Attorney.⁴

The AGO may exercise its authority to act in matters of this type in the first instance, but only where it determines that such action is necessary: (1) to avoid an actual conflict of interest or other appearance of impropriety⁵; or (2) to serve an important State interest that might not be adequately protected if the matter is handled locally by the agency with jurisdiction or an agency handling the matter as a conflict referral. Whether such a State interest exists will be determined on a case-by-case basis from the facts and circumstances of a particular case. Such an interest may be present, for example, where the cases involves criminal misconduct in more than one county; presents a unique or complex legal issue that is likely to be appealed in the event of a conviction; or presents criminal conduct of such magnitude or complexity that the expenditure of State resources is warranted.

The AGO's decision as to whether to act in such matters in the first instance will be made, whenever possible, in consultation with the appropriate county authorities. Where the AGO decides to take such action, it may: (1) investigate the matter itself; (2) supervise or assist a state or local agency in investigating the matter; or (3) take any other action that is appropriate to the needs of the particular case.

IV. PURPOSE AND EFFECT OF POLICY STATEMENT

The purpose of this statement is to facilitate the effective handling of public integrity matters by the AGO, and to provide general guidance to the public and to government agencies in dealing with the AGO. This statement is subject to change, and is not intended to confer any rights, privileges, or benefits upon any person or entity.

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⁴ An actual conflict of interest does not arise merely because the county or municipal official is one whom with the county or municipal agency has worked.

⁵ An actual conflict of interest does not arise merely because the county or municipal official is one whom with the county or municipal agency has worked.