

Bill as Introduced

HB 334-LOCAL - AS AMENDED BY THE HOUSE

14Feb2019... 0061h

2019 SESSION

19-0611
06/08

HOUSE BILL

334-LOCAL

AN ACT relative to disposition of certain municipal records.

SPONSORS: Rep. Keans, Straf. 23; Rep. Berch, Ches. 1

COMMITTEE: Municipal and County Government

ANALYSIS

This bill changes the length of time certain police records are required to be retained.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

HB 334-LOCAL - AS AMENDED BY THE HOUSE

14Feb2019... 0061h

19-0611
06/08

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Nineteen

AN ACT relative to disposition of certain municipal records.

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

1 1 Disposition of Municipal Records; Disposition and Retention Schedule. Amend RSA 33-A:3-a,
2 CVIII to read as follows:

3 CVIII. Police, non-criminal-internal affairs investigations: [~~as required by attorney general~~
4 ~~and union contract and town personnel rules~~] ***retirement or termination of subject officer plus***
5 ***20 years, except that the municipality shall follow the retention period for non-criminal***
6 ***internal affairs investigations set forth in a union or collective bargaining agreement***
7 ***already in effect on July 1, 2019.***

8 2 Effective Date. This act shall take effect July 1, 2019.

Amendments

Sen. Hennessey, Dist 5
April 16, 2019
2019-1510s
06/08

Amendment to HB 334-LOCAL

1 Amend RSA 33-A:3-a, CVIII as inserted by section 1 of the bill by replacing it with the following:

2

3 CVIII. Police, non-criminal-internal affairs investigations: ~~[as required by attorney general~~
4 ~~and union contract and town personnel rules]~~ *retirement or termination of subject officer plus*
5 *20 years, except that the municipality shall follow the retention period for non-criminal*
6 *internal affairs investigations set forth in a union or collective bargaining agreement*
7 *already in effect on July 1, 2019 until such agreement's expiration.*

UNAPPROVED

Senate Judiciary
April 24, 2019
2019-1632s
06/08

Amendment to HB 334-LOCAL

1 Amend RSA 33-A:3-a, CVIII as inserted by section 1 of the bill by replacing it with the following:

2

3 CVIII. Police, non-criminal-internal affairs investigations: ~~[as required by attorney general~~
4 ~~and union contract and town personnel rules]~~ ***retirement or termination of subject officer plus***
5 ***20 years, except that the municipality shall follow the retention period for non-criminal***
6 ***internal affairs investigations set forth in a union or collective bargaining agreement***
7 ***already in effect on July 1, 2019 until such agreement's expiration.***

Committee Minutes

SENATE CALENDAR NOTICE

Judiciary

Sen Martha Hennessey, Chair
 Sen Shannon Chandley, Vice Chair
 Sen Melanie Levesque, Member
 Sen Sharon Carson, Member
 Sen Harold French, Member

Date: April 11, 2019

HEARINGS

	Tuesday	04/16/2019
	(Day)	(Date)
Judiciary		9:00 a.m.
(Name of Committee)		(Time)
9:00 a.m.	EXECUTIVE SESSION ON PENDING LEGISLATION	
9:30 a.m.	HB 286-LOCAL relative to free inspection of records under the right-to-know law.	
9:40 a.m.	HB 334-LOCAL relative to disposition of certain municipal records.	
10:00 a.m.	HB 256-FN establishing reciprocity for notaries in abutting states.	
10:20 a.m.	HB 353 establishing a committee to study whether non-attorney legal professionals could be licensed to engage in the limited practice of law in the family division of the circuit court while under the supervision of a licensed attorney.	
10:35 a.m.	HB 354 establishing a committee to investigate whether modification should be made to the time frame for determining permanency pursuant to RSA 169-C:24-b.	
10:50 a.m.	HB 382 relative to private practice by the Carroll county attorney.	

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 286-LOCAL

Rep. Sylvia

Rep. McLean

Rep. Spillane

Rep. Wallace

HB 334-LOCAL

Rep. Keans

Rep. Berch

HB 256-FN

Rep. Spillane

Rep. Notter

Rep. Potucek

Sen. Reagan

HB 353

Rep. Gordon

HB 354

Rep. Gordon

HB 382

Rep. DesMarais

Rep. Woodcock

Rep. Marsh

Rep. Knirk

Rep. Butler

Rep. Kanzler

Jennifer Horgan 271-2609

Martha S. Hennessey
Chairman

- There were some appropriate concerns regarding existing collective bargaining agreements that this would be trampling on.
- The House amended this to allow existing collective bargaining agreements to prevail until their expiration even if this passes.
- Under this bill once those collective bargaining agreements expire the municipality will revert to this new policy.
- Currently, most government employees' retention policy is in one paragraph of the statute and police officer's retention policy is in a different paragraph.
- This simply creates parity by having those paragraphs mirror one another.
- Allowing these documents to be purged can hurt government accountability.
- Some may believe there could be an issue at a police department and this ensures they have the ability to review documents and see what is going on.
- There is some purging of documents going on in NH.
- The Nashua Police Department's current collective bargaining agreement allows letters of warning to be purged after five years and letters of suspension after seven years.
- These are handled differently than any other government employee.
- There was a recent investigation in Salem and a subsequent audit raised the concern that documents were not being retained.
- At a national level, many municipalities require retention after employment for far longer periods than NH does.

Summary of testimony presented in opposition:

None

jch

Date Hearing Report completed: April 19, 2019

Speakers

Testimony

Proposed HB334 Amendment

1 Disposition of Municipal Records; Disposition and Retention Schedule. Amend RSA 33-A:3-a, CVIII to read as follows:

CVIII. Police, non-criminal-internal affairs investigations: [~~as required by attorney general and union contract and town personnel rules~~] ***retirement or termination of subject officer plus 20 years, except that the municipality shall follow the retention period for non-criminal internal affairs investigations set forth in a union or collective bargaining agreement already in effect on July 1, 2019 UNTIL THAT AGREEMENT'S EXPIRATION.***

2 Effective Date. This act shall take effect July 1, 2019.



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

New Hampshire

18 Low Avenue
Concord NH 03301
(603) 224-5591
aclu-nh.org

Devon Chaffee
Executive Director

**Statement by Gilles Bissonnette, ACLU-NH Legal Director
Senate Judiciary Committee
House Bill 334
April 16, 2019**

I submit this testimony on behalf of the American Civil Liberties Union of New Hampshire (“ACLU-NH”)—a non-partisan, non-profit organization working to protect civil liberties throughout the State for over 50 years.

We respectfully urge the Committee to vote *ought to pass* on HB 334 for several reasons. *First*, HB 334 is necessary because current law treats the retention of non-criminal internal affairs and disciplinary records for police differently than the retention of similar personnel-file information for other municipal employees. This bill seeks to have the law treat police internal affairs/disciplinary files the same as how personnel files are treated for all other municipal employees. *Second*, this bill is necessary because we know based on recent media reports that disciplinary information in police personnel files are routinely being purged pursuant to collective bargaining agreements after certain periods of time, even where the officer is found to have committed misconduct. *Finally*, this bill does not require public disclosure of this information. It only requires that municipalities retain this information.

I. Current Law Treats the Retention of Non-criminal Internal Affairs and Disciplinary Records for Police Differently than the Retention of Similar Personnel-file Information for Other Municipal Employees.

The current version of RSA 33-A:3-a, CVIII generally delegates the retention of police internal affairs documents to collective bargaining agreements. Thus, generally, retention policies concerning police internal affairs and disciplinary documents are principally handled on a municipality-by-municipality basis in the form of collective bargaining agreements. These collective bargaining agreements often grant the police who have been disciplined with special retention protections concerning these documents—namely, disciplinary documents can be purged after a certain period of time. For example, a recent collective bargaining agreement in Nashua requires (i) letters of warning to be purged after 5 years, and (ii) letters of suspension to be purged after 7 years. *See Pages 6-13.*

Non-police employees of a municipality do not receive these special retention protections under the law. Under RSA 33-A:3-a, XCVI, personnel files for all other municipal employees are retained for “retirement or termination plus 20 years.” Indeed, law enforcement officers should be held to a higher standard than other municipal employees. This bill seeks to correct this imbalance by having police internal affairs and disciplinary documents subjected to the same retention standards as documents retained in the personnel files of all other municipal employees. It should be noted that, in the House, this bill was amended to ensure that it would not impact current, operative collective bargaining agreements.

II. This Bill is Necessary to Ensure that Documents Implicating Police Misconduct are Retained.

Allowing internal affairs/disciplinary documents to be purged damages public accountability. *First*, complaint records in personnel files can be critical to establishing the existence of a pattern of allegations from civilians of particular misconduct. A good example of this is a recent audit that was done of the Salem Police Department. The auditor reviewed internal affairs documents and concluded, among other things, that the Department demonstrated a pattern of mismanaging internal investigations, ignoring or discouraging citizen complaints, failing to keep complete records of internal investigations, and violating Department policies regarding complaints and personnel issues. *See Pages 14-22.* As part of this investigation, the auditor determined that the Department’s retention of internal affairs documents was incomplete. *See Pages. 23-24.*

Indeed, allegations of systemic misconduct by citizens may not surface for years; but, under many municipalities’ purging policies, by the time a comprehensive investigation is commenced, the relevant information from officers’ personnel files may have been destroyed. For example, in investigating the Chicago Police Department, the United States Department of

Justice found that the provision requiring the destruction of disciplinary records “deprives CPD of important discipline and personnel documentation that will assist in monitoring historical patterns of misconduct.” See United States Department of Justice Civil Rights Division, Investigation of the Chicago Police Department, at Page 50 (Jan. 13, 2017), *available at* <https://www.justice.gov/opa/file/925846/download>.

Second, such internal affairs/disciplinary documents should be retained for a significant period of time because it is possible for an officer to be placed on the EES/Laurie list based on a later reassessment of a prior incident; however, this information may be inappropriately purged under current collective bargaining agreements. In such a situation, a defendant would have a constitutional right to this potentially exculpatory information concerning the officer’s credibility or truthfulness, yet this information may no longer exist in the officer’s personnel file under these agreements. This would deprive the defendant of his or her due process rights.

III. Many Municipalities Outside of New Hampshire Provide Greater Protections By Retaining These Documents for a Longer Period of Time.

Many other police departments in major cities do not have similar personnel file purging policies. The Cincinnati, Los Angeles, and Pittsburgh police departments each maintain records during the officer’s employment, plus an additional five years for Cincinnati, and an additional three years for Los Angeles and Pittsburgh (after which time Pittsburgh archives the information indefinitely). See Cincinnati Police Department Apr. 12, 2002 Memo. of Agreement ¶¶ 58(g), 59, 63 (“The City will maintain all personally identifiable information about an officer included in the risk management system during the officer’s employment with the CPD and for at least five years.”); Los Angeles Police Department Consent Decree ¶¶ 41(g)-(h), 49 (“The City shall maintain all personally identifiable information about an officer included in TEAMS II during the officer’s employment with the LAPD and for at least three years thereafter.”); Pittsburgh Police Department Consent Decree ¶¶ 12(a), 44, 12(c) (“Data regarding an officer shall be maintained in the automated early warning system during that officer’s employment with the PBP and for three (3) years after the officer leaves the PBP.”).

For these reasons, the ACLU-NH support the proposed amendment to HB 334, and we respectfully urge members of this Committee to vote *ought to pass* on HB 334 as amended.

TITLE III TOWNS, CITIES, VILLAGE DISTRICTS, AND UNINCORPORATED PLACES

CHAPTER 33-A DISPOSITION OF MUNICIPAL RECORDS

Section 33-A:3-a

33-A:3-a Disposition and Retention Schedule. –

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

- I. Abatements: 5 years.
- II. Accounts receivable: until audited plus one year.
- III. Aerial photographs: permanently.
- IV. Airport inspections-annual: 3 years.
- V. Airport inspections-daily, including fuel storage and vehicles: 6 months.
- VI. Annual audit report: 10 years.
- VII. Annual reports, town warrants, meeting and deliberative session minutes in towns that have adopted official ballot voting: permanently.
- VIII. Archives: permanently.
- IX. Articles of agreement or incorporation: permanently.
- X. Bank deposit slips and statements: 6 years.
- XI. Blueprints-architectural: life of building.
- XII. Bonds and continuation certificates: expiration of bond plus 2 years.
- XIII. Budget committee-drafts: until superseded.
- XIV. Budgets: permanently.
- XV. Building permits-applications and approvals: permanently.
- XVI. Building permits-lapsed: permanently.
- XVII. Building permits-withdrawn, or denied: one year.
- XVIII. Capital projects and fixed assets that require accountability after completion: life of project or purchase.
- XIX. Cash receipt and disbursement book: 6 years after last entry, or until audited.
- XX. Checks: 6 years.
- XXI. Code enforcement specifications: permanently.
- XXII. Complaint log: expiration of appeal period.
- XXIII. Contracts-completed awards, including request for purchase, bids, and awards: life of project or purchase.
- XXIV. Contracts-unsuccessful bids: completion of project plus one year.
- XXV. Correspondence by and to municipality-administrative records: minimum of one year.
- XXVI. Correspondence by and to municipality-policy and program records: follow retention requirement for the record to which it refers.
- XXVII. Correspondence by and to municipality-transitory: retain as needed for reference.
- XXVIII. Current use applications and maps: until removed from current use plus 3 years.
- XXIX. Current use release: permanently.

- XXX. Deed grantee/grantor listing from registry, or copies of deeds: discard after being updated and replaced with a new document.
- XXXI. Deferred compensation plans: 7 years.
- XXXII. Underground facility damage prevention forms: 4 years.
- XXXIII. Dredge and fill permits: 4 years.
- XXXIV. Driveway permits and plans: permanently.
- XXXV. Easements awarded to municipality: permanently.
- XXXVI. Elections-federal elections: ballots and absentee ballot applications, affidavit envelopes, and lists: by the town clerk until the contest is settled and all appeals have expired or at least 22 months after the election, whichever is longer.
- XXXVII. Elections-not federal: ballots and absentee ballot applications, affidavit envelopes, and lists: by the town clerk until the contest is settled and all appeals have expired or at least 60 days after the election, whichever is longer.
- XXXVIII. Elections-challenge affidavits by the town clerk: until the contest is settled and all appeals have expired or 22 months after the election, whichever is longer.
- XXXIX. Elections-ward maps: until revised plus 1 year.
- XL. Emergency medical services run reports: 10 years.
- XLI. Equipment maintenance: life of equipment.
- XLII. Excavation tax warrant and book or list: permanently.
- XLIII. Federal form 1099s and W-2s: 7 years.
- XLIV. Federal form 941: 7 years.
- XLV. Federal form W-1: 4 years.
- XLVI. Fire calls/incident reports: 10 years.
- XLVII. Grants, supporting documentation: follow grantor's requirements.
- XLVIII. Grievances: expiration of appeal period.
- XLIX. Health-complaints: expiration of appeal period.
- L. Health-inspections: 3 years.
- LI. Health-service agreements with state agencies: term plus 7 years.
- LII. Health and human services case records including welfare applications: active plus 7 years.
- LIII. Inspections-bridges and dams: permanently.
- LIV. Insurance policies: permanently.
- LV. Intent to cut trees or bushes: 3 years.
- LVI. Intergovernmental agreements: end of agreement plus 3 years.
- LVII. Investigations-fire: permanently.
- LVIII. Invoice, assessors: permanently.
- LIX. Invoices and bills: until audited plus one year.
- LX. Job applications-successful: retirement or termination plus 20 years.
- LXI. Job applications-unsuccessful: current year plus 3 years.
- LXII. Labor-public employees labor relations board actions and decisions: permanently.
- LXIII. Labor union negotiations: permanently or until contract is replaced with a new contract.
- LXIV. Ledger and journal entry records: until audited plus one year.
- LXV. Legal actions against the municipality: permanently.
- LXVI. Library:
- (a) Registration cards: current year plus one year.
- (b) User records: not retained; confidential pursuant to RSA 201-D:11.
- LXVII. Licenses-all other except dog, marriage, health, and vital records: duration plus 1 year.
- LXVIII. Licenses-dog: current year plus one year.
- LXIX. Licenses-dog, rabies certificates: disposal once recorded.
- LXX. Licenses-health: current year plus 6 years.

- LXXI. Liens-federal liens upon personal property, other than IRS liens: permanently.
- LXXII. Liens-hospital liens: 6 years.
- LXXIII. Liens-IRS liens: one year after discharge.
- LXXIV. Liens-tax liens, state liens for support of children: until court order is lifted plus one year.
- LXXV. Liens-tax liens, state meals and rooms tax: until release plus one year.
- LXXVI. Liens-tax sale and record of lien: permanently.
- LXXVII. Liens-tax sales/liens redeemed report: permanently.
- LXXVIII. Liens-Uniform Commercial Code leases: lease term plus 4 years; purge all July 1, 2007.
- LXXIX. Liens-Uniform Commercial Code security agreements: 6 years; purge all July 1, 2007.
- LXXX. Meeting minutes, tape recordings: keep until written record is approved at meeting. As soon as minutes are approved, either reuse the tape or dispose of the tape.
- LXXXI. Minutes of boards and committees: permanently.
- LXXXII. Minutes of town meeting/council: permanently.
- LXXXIII. Minutes, selectmen's: permanently.
- LXXXIV. Motor vehicle-application for title: until audited plus one year.
- LXXXV. Motor vehicle-titles and voided titles: sent to state division of motor vehicles.
- LXXXVI. Motor vehicle permits-void and unused: until audited plus one year.
- LXXXVII. Motor vehicle permits and registrations-used: current year plus 3 years.
- LXXXVIII. Municipal agent daily log: until audited plus one year.
- LXXXIX. Notes, bonds, and municipal bond coupons-cancelled: until paid and audited plus one year.
- XC. Notes, bonds, and municipal bond coupon register: permanently.
- XCI. Oaths of office: term of office plus 3 years.
- XCII. Ordinances: permanently.
- XCIII. Payrolls: until audited plus one year.
- XCIV. Perambulations of town lines-copy kept by town and copy sent to secretary of state: permanently.
- XCV. Permits or licenses, pole: permanently.
- XCVI. Personnel files: retirement or termination plus 20 years.
- XCVII. Police, accident files-fatalities: 10 years.
- XCVIII. Police, accident files-hit and run: statute of limitations plus 5 years.
- XCIX. Police, accident files-injury: 6 years.
- C. Police, accident files-involving arrests: 6 years.
- CI. Police, accident files-involving municipality: 6 years.
- CII. Police, accident files-property damage: 6 years.
- CIII. Police, arrest reports: permanently.
- CIV. Police, calls for service/general service reports: 5 years.
- CV. Police, criminal-closed cases: statute of limitations plus 5 years.
- CVI. Police, criminal-open cases: statute of limitations plus 5 years.
- CVII. Police, motor vehicle violation paperwork: 3 years.
- CVIII. Police, non-criminal-internal affairs investigations: as required by attorney general and union contract and town personnel rules.
- CIX. Police, non-criminal-all other files: closure plus 3 years.
- CX. Police, pistol permit applications: expiration of permit plus one year.
- CXI. Property inventory: 5 years.
- CXII. Property record card: current and last prior reassessing cycle.
- CXIII. Property record map, assessors: until superceded.
- CXIV. Property tax exemption applications: transfer of property plus one year.
- CXV. Records management forms for transfer of records to storage: permanently.
- CXVI. Road and bridge construction and reconstruction, including highway complaint slips: 6 years.
- CXVII. Road layouts and discontinuances: permanently.

- CXVIII. Scenic roads: permanently.
- CXIX. School records: retained as provided under RSA 189:29-a.
- CXX. Septic plan approvals and plans: until replaced or removed.
- CXXI. Sewer system filtration study: permanently.
- CXXII. Sign inventory: 7 years.
- CXXIII. Site plan review: life of improvement plus 3 years.
- CXXIV. Site plan review-lapsed: until notified that planning board action and appeal time has expired plus one year.
- CXXV. Site plan review-withdrawn or not approved: appeal period plus one year.
- CXXVI. Special assessment (betterment of property): 20 years.
- CXXVII. Street acceptances: permanently.
- CXXVIII. Street signs, street lights and traffic lights-maintenance records: 10 years.
- CXXIX. Subdivision applications-lapsed: until notified that planning board action and appeal period has expired plus one year.
- CXXX. Subdivision applications-successful and final plan: permanently.
- CXXXI. Subdivision applications-withdrawn, or not approved: expiration of appeal period plus one year.
- CXXXII. Subdivision applications-working drafts prior to approval: expiration of appeal period.
- CXXXIII. Summary inventory of valuation of property: one year.
- CXXXIV. Tax maps: permanently.
- CXXXV. Tax receipts paid, including taxes on land use change, property, resident, sewer, special assessment, and yield tax on timber: 6 years.
- CXXXVI. Tax-deeded property file (including registered or certified receipts for notifying owners and mortgagees of intent to deed property): permanently.
- CXXXVII. Time cards: 4 years.
- CXXXVIII. Trust fund:
 - (a) Minutes and quarterly reports, in paper or electronic format: permanently.
 - (b) Bank statements, in paper or electronic format: 6 years after audit.
- CXXXIX. Vehicle maintenance records: life of vehicle plus 2 years.
- CXL. Voter checklist-marked copy kept by town pursuant to RSA 659:102: 7 years.
- CXLI. Voter registration:
 - (a) Forms, including absentee voter registration forms: until voter is removed from checklist plus 7 years.
 - (b) Same day, returned to undeclared status, form and report from statewide centralized voter registration database: 7 years.
 - (c)(1) Party change form: until voter is removed from checklist plus 7 years.
 - (2) List of undeclared voters from the statewide centralized voter registration database: 7 years.
 - (d) Forms, rejected, including absentee voter registration forms, and denial notifications: 7 years.
 - (e) Qualified voter affidavit: until voter is removed from checklist plus 7 years.
 - (f) Verifiable action of domicile document: until voter is removed from checklist plus 7 years.
 - (g) Overseas absentee registration affidavit: until voter is removed from checklist plus 7 years.
 - (h) Absentee ballot voter application form in the federal post card application format, for voters not previously on the checklist: until voter is removed from checklist plus 7 years.
 - (i) Absentee ballot affidavit envelope for federal post card applicants not previously on the checklist: until voter is removed from checklist plus 7 years.
 - (j) Notice of removal, 30-day notice: until voter is removed from checklist plus 7 years.
 - (k) Report of death: until voter is removed from checklist plus 7 years.
 - (l) Report of transfer: until voter is removed from checklist plus 7 years.
 - (m) Undeliverable mail or change of address notice from the United States Postal Service: until voter is removed from checklist plus 7 years.
- CXLII. Vouchers and treasurers receipts: until audited plus one year.

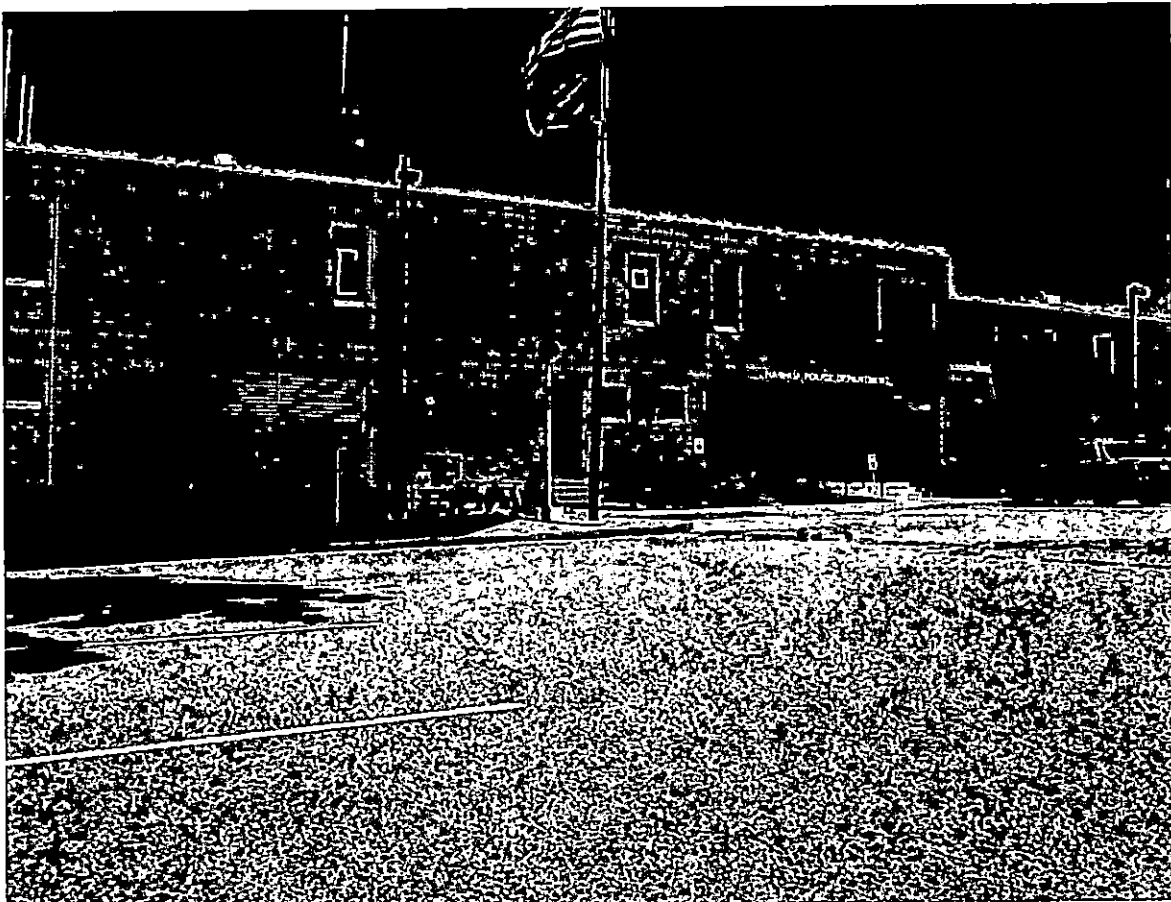
- CXLIII. Warrants-land use change, and book or list: permanently.
- CXLIV. Warrants-property tax, and lists: permanently.
- CXLV. Warrants-resident tax, and book or list: permanently.
- CXLVI. Warrants-town meeting: permanently.
- CXLVII. Warrants-treasurer: until audited plus one year.
- CXLVIII. Warrants-utility and betterment tax: permanently.
- CXLIX. Warrants-yield tax, and book or list: permanently.
- CL. Welfare department vouchers: 4 years.
- CLI. Work program files: current year plus 6 years.
- CLII. Writs: expiration of appeal period plus one year.
- CLIII. Zoning board of adjustment applications, decisions, and permits-unsuccessful: expiration of appeal period.
- CLIV. Intent to excavate: completion of reclamation plus 3 years.
- CLV. Election return forms, all elections: permanently.
- CLVI. Affidavits of religious exemption: until voter is removed from checklist plus 7 years.

Source. 2005, 187:3, eff. Aug. 29, 2005. 2006, 119:2-5, eff. May 12, 2006. 2010, 172:1-3, eff. Aug. 16, 2010; 191:1, eff. Aug. 20, 2010. 2012, 113:1, eff. May 31, 2012; 284:13, eff. Sept. 1, 2015. 2014, 319:1, eff. Sept. 30, 2014. 2015, 4:1, eff. July 4, 2015. 2017, 205:15, eff. Sept. 8, 2017. 2018, 247:1, 2, eff. Aug. 11, 2018.

The Telegraph

ACLU concerned about NPD contract

Officers will be able to have personnel files purged



Staff photo by Damien Fisher The Nashua Police Department headquarters.

NASHUA — Officers with the Nashua Police Department may soon have the ability to purge their own personnel files, even if there is incriminating material in those files, thanks to a new contract.

This pending change in the police contract alarms officials with the American Civil Liberties Union-New Hampshire. They sent a letter to Nashua officials Friday.

"The proposed agreement's provisions allowing for the purging of police personnel files are deeply problematic and must be eliminated," wrote Gilles Bissonnette, legal director for the ACLU-NH.

~~The new contract, if approved, would allow police officers to purge their files, even eliminating sustained complaints about their~~ conduct. While members of the Nashua Board of Aldermen are set to vote on the financial component of the contract in the coming weeks, the board is not expected to vote on the other provisions.

"Complaint records in personnel files can be critical to establishing the existence of a pattern of allegations from civilians of particular misconduct, which can be relevant to resolving credibility disputes between officers and civilians," Bissonnette wrote.

The contract would allow officers to request reviews of their files, and have items purged after a set time. Remedial training records and warning letters can be purged after five years, or three years after an optional review by the chief of police.

Records of suspension can be purged after seven years, or after five years after an optional review by the chief.

This purging schedule does not apply to officers on the New Hampshire Exculpatory Evidence Schedule, or EES. Under the proposed contract, those records stay in the file as long as the officer is on the EES.

The EES originates from the New Hampshire Supreme Court decision in State vs. Laurie from 1995. That ruling overturned Carl Laurie's murder conviction because prosecutors withheld knowledge that a key police witness had been disciplined for dishonesty.

Since 2004, police chiefs have been required to keep lists of officers who have been disciplined for disclosure to defense attorneys. Police chiefs must report officers who have:

- ☐ been found to lack credibility,
- ☐ used excessive force,
- ☐ failed to comply with legal procedures, or
- ☐ have exhibited mental illness or instability.

Nashua Corporation Counsel Steve Bolton said the new contract provision to purge records is the city's attempt to comply with the Attorney General's latest EES directives. This year, New Hampshire Attorney General Gordon MacDonald revised the rules to allow for police officers listed on the EES to appeal and get their records cleared.

"We're trying to follow the law as determined by the top law enforcement officer in New Hampshire," Bolton said.

Bissonnette disputes this, stating in his letter that Nashua's policy goes against the new EES guidelines.

Representatives with MacDonald's office declined to comment when contacted on Friday.

Nashua has 15 officers listed on the EES, though most of those officers are no longer with the department, Chief Andrew Lavoie said in a previous interview. Of the officers Lavoie reported under the EES directive, two are still working for Nashua. Under the law, police departments must continue to report the officers on the list even after they leave their

service.

Damien Fisher can be reached at 594-1245 or dfisher@nashuatelegraph.com or @Telegraph_DF.



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

New Hampshire

18 Low Avenue
Concord NH 03301
(603) 224-5591
aclu-nh.org

Devon Chaffee
Executive Director

July 20, 2018

BY EMAIL (BoltonS@nashuanh.gov)

Steven A. Bolton
Corporation Counsel
City of Nashua
229 Main Street
Nashua, NH 03060

RE: Proposed Collective Bargaining Agreement between the Nashua Board of Police Commissioners and the Nashua Patrolman’s Association from July 1, 2018 Through June 30, 2022

Dear Attorney Bolton:

We write on behalf of the ACLU of New Hampshire (ACLU-NH) and the New Hampshire Association of Criminal Defense Lawyers (NHACDL) in opposition to Article 6, Section C (Pages 4-5) of the proposed collective bargaining agreement between the Nashua Board of Police Commissioners and the Nashua Patrolman’s Association from July 1, 2018 through June 30, 2022. This Section addresses the purging of police officer personnel files. Nashua’s Budget Review Committee will consider this proposed agreement on Monday, July 23, 2018. We understand that full Board of Aldermen approval may be sought on August 14, 2018. For the reasons below, we ask that the Budget Committee delete this Section.

The personnel file purging language in Article 6, Section C states as follows:

The Department maintains a purging system for official personnel files as follows:

The respective officer may request a review of stale disciplinary documentation in his/her personnel file as outlined below:

- *Remedial Training/Counseling Form: Purged after five (5) years with the option that it can be reviewed/purged by the Chief of Police after three (3) years. **See EES below.*
- *Letter of Warning: Purged after five (5) years with the option that it can be reviewed/purged by the Chief of Police after three (3) years. **See EES below.*



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

New Hampshire

18 Low Avenue
Concord NH 03301
(603) 224-5591
aclu-nh.org

Devon Chaffee
Executive Director

- *Letter of Suspension: Purged after seven (7) years with the option that it can be reviewed/purged by the Chief of Police after five (5) years. **See EES below.*
- ***EES: In such cases where said documentation pertains to having been placed on the Exculpatory Evidence Schedule (EES), the rejected documentation will remain on the member's personnel file. If the member is taken off the EES, the purging of the documentation will follow the respective timeframes outlined above.*

The proposed agreement's provisions allowing for the purging of police personnel files are deeply problematic and must be eliminated, even in instances where the material to be purged does not warrant placement on the Exculpatory Evidence Schedule ("EES"). This is the case for at least five reasons.

First, law enforcement officers, unlike regular citizens, are professional court witnesses. This means that officers should be held to a higher standard than regular citizens. However, the proposed agreement's provisions allowing for purging of personnel files give law enforcement special privileges that normal citizens do not have with respect to their personnel files. It is important to note that the proposed agreement's purging policy allows for the permanent removal of sustained incidents in which an officer acted inappropriately.

Second, these special privileges in the form of personnel file purging can harm a defendant's due process rights, even if the information to be purged has not resulted in the officer being placed on the EES list. Whether information in an officer's personnel file is exculpatory and must be disclosed to a defendant is fact-specific and often depends on the facts in the specific criminal case. Thus, there is always a possibility that purged information could be relevant in a future criminal case, even if that officer is not placed on the EES list. Moreover, it is possible for an officer to be placed on the EES list based on a later reassessment of a prior incident; however, this information may be inappropriately purged under this proposed agreement. In such a situation, a defendant would have a constitutional right to this potentially exculpatory information concerning the officer's credibility or truthfulness, yet this information may no longer exist in the officer's personnel file under the proposed agreement. This would deprive the defendant of his or her due process rights. In short, allowing these personnel files to be forever purged creates too great a risk that a defendant may not obtain access to the information that he or she may need to defend themselves against an officer's allegations in court.

Third, allowing these records to be purged—even if the officer is not placed on the EES list—damages public accountability. Complaint records in personnel files can be critical to



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

New Hampshire

18 Low Avenue
Concord NH 03301
(603) 224-5591
aclu-nh.org

Devon Chaffee
Executive Director

establishing the existence of a pattern of allegations from civilians of particular misconduct, which can be relevant to resolving credibility disputes between officers and civilians. Indeed, allegations of systemic misconduct by citizens may not surface for years; but, under this proposed purging policy, by the time a comprehensive investigation is commenced, the relevant information from officers' personnel files may have been destroyed. Furthermore, law enforcement agencies should retain disciplinary records for the purpose of a proactive early intervention system, which can assist in identifying officers with ongoing problems. For example, in investigating the Chicago Police Department, the United States Department of Justice found that the provision requiring the destruction of disciplinary records "deprives CPD of important discipline and personnel documentation that will assist in monitoring historical patterns of misconduct." See United States Department of Justice Civil Rights Division, Investigation of the Chicago Police Department, at Page 50 (Jan. 13, 2017), available at <https://www.justice.gov/opa/file/925846/download>.

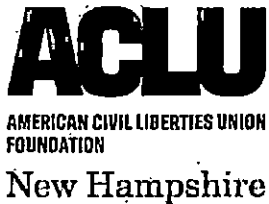
Fourth, many other police departments in major cities do not have similar personnel file purging policies. The Cincinnati, Los Angeles, and Pittsburgh police departments each maintain records during the officer's employment, plus an additional five years for Cincinnati, and an additional three years for Los Angeles and Pittsburgh (after which time Pittsburgh archives the information indefinitely). See Cincinnati Police Department Apr. 12, 2002 Memo. of Agreement ¶¶ 58(g), 59, 63 ("The City will maintain all personally identifiable information about an officer included in the risk management system during the officer's employment with the CPD and for at least five years.");¹ Los Angeles Police Department Consent Decree ¶¶ 41(g)-(h), 49 ("The City shall maintain all personally identifiable information about an officer included in TEAMS II during the officer's employment with the LAPD and for at least three years thereafter.");² Pittsburgh Police Department Consent Decree ¶¶ 12(a), 44, 12(c) ("Data regarding an officer shall be maintained in the automated early warning system during that officer's employment with the PBP and for three (3) years after the officer leaves the PBP.")³

Finally, this personnel purging policy conflicts with the Attorney's General's mandates concerning the maintenance of police officer personnel files. At the outset, the Attorney General's operative memoranda concerning the EES list dated March 21, 2017 and April 30, 2018 only govern placement and removal of an officer's name on the EES list; these memoranda do not require or authorize the removal of information in an officer's personnel file. To the contrary, the Protocol for Identifying Witnesses with Potentially Exculpatory Evidence in Their Personnel Files promulgated by the Attorney General's on March 21, 2017

¹ Available at <https://www.cincinnati-oh.gov/police/linkservid/EA1A2C00-DCB5-4212-8628197B6C923141/showMeta/0/>.

² Available at http://assets.lapdonline.org/assets/pdf/final_consent_decree.pdf.

³ Available at <https://www.clearinghouse.net/chDocs/public/PN-PA-0003-0002.pdf>.



18 Low Avenue
Concord NH 03301
(603) 224-5591
aclu-nh.org

Devon Chaffee
Executive Director

states clearly that “[t]he employer must maintain in personnel files all complaints against an employee that ... are sustained (meaning the evidence proved the allegation true).” See Attorney General Mar. 21, 2017 Memorandum, at Page 6 of document/Page 1 of Protocol (emphasis added), available at <https://www.doj.nh.gov/criminal/documents/exculpatory-evidence-20170321.pdf>. This includes sustained complaints regardless of whether they require the officer to be placed on the EES list. See also RSA 33-A:3-a, XCVI (stating that municipalities must retain “[p]olice, non-criminal-internal affairs investigations” “as required by attorney general and union contract and town personnel rules”) (emphasis added).⁴

For these reasons, we ask that the Budget Committee reject Article 6, Section C of the proposed collective bargaining agreement. Do not hesitate to contact me if you have any questions.

Very truly yours,

/s/ Gilles Bissonnette

Gilles Bissonnette
Legal Director

/s/ Robin Melone

Robin Melone, Esq.

cc: Members of the Nashua Budget Review Committee

- Alderman Richard A. Dowd, Chairman (dowdr@nashuanh.gov)
- Alderman-at-Large Lori Wilshire, Vice Chair (wilshirel@nashuanh.gov)
- Alderman-at-Large Michael B. O'Brien (obrienm@nashuanh.gov)
- Alderwoman-at-Large Shoshanna Kelly (kellys@nashuanh.gov)
- Alderman Jan Schmidt (schmidtj@nashuanh.gov)
- Alderman-at-Large Brian S. McCarthy (mccarthyb@nashuanh.gov)
- Alderman-at-Large David C. Tencza (tenczad@nashuanh.gov)

⁴ Law enforcement officers are given special privileges under Chapter 33-A—the Disposition of Municipal Records Act—with respect to how municipalities must retain employee personnel files. While municipalities must generally retain personnel files of their employees 50 years beyond the employee’s retirement or termination, see RSA 33-A:3-a, XCVI, police personnel records concerning internal affairs investigations must only be retained “as required by the attorney general and union contract and town personnel rules,” see RSA 33-A:3-a, CVIII.

https://www.unionleader.com/news/politics/local/report-blasts-salem-police-for-handling-of-officer-complaints-internal/article_a7b3323c-d6a1-5380-9b46-1f1114c5250e.html

Report blasts Salem police for handling of officer complaints, internal investigations

By RYAN LESSARD Union Leader Correspondent Nov 23, 2018



Salem Police Department



Embattled Salem chief settles suit against town over his suspension



SALEM — Salem Police Department demonstrated a pattern of mismanaging internal investigations, ignored or discouraged citizen complaints, failed to keep complete records of internal investigations and



Salem Police Chief Paul Donovan

Download PDF

Salem police chief announces resignation under cloud of critical audit, allegations of wrongdoing

MORE INFORMATION

More than \$275K paid out in settlements against Salem police since 2012

TO: Town of Salem, MA
FROM: Paul J. Linskey, Chief of Police
DATE: November 9, 2012
SUBJECT: Staff Report Summary
EXECUTIVE SUMMARY
This report provides the Staff Report, which was commissioned in the spring of 2012, by Town Manager Christopher Dillon. The report contains findings and recommendations regarding the handling of officer complaints and personnel issues, according to a town-commissioned audit released Friday.

violated department policies regarding complaints and personnel issues, according to a town-commissioned audit released Friday.

The report also includes the allegation that some officers, including Police Chief Paul Donovan, worked outside details during their paid shifts.

Town Manager Christopher Dillon posted the redacted audit Friday morning on the town's website.

The 170-page report was authored by Kroll Inc., hired by the town via a lawfirm earlier this year, and is based on the findings of an independent investigation led by Daniel Linskey, former superintendent-in-chief of the Boston Police Department.

The audit recommends a "complete overhaul" of the department's internal affairs program, as well as other changes to policies and procedures.

In a press release, Dillon states the town will contract with Municipal Resources Inc. to hire a civilian police administrator to help the department implement Kroll's recommendations.

"The men and women that work for the police department are dedicated and hardworking. I have met with them and they recognize improvements need to be made and will work with the civilian administrator to address the recommendations identified in the report," Dillon wrote in a statement.

Chief Donovan in a statement wrote that he had concerns about

how the audit was conducted but would work with the town and Dillon to implement changes to improve the police force.

"I have some disagreement with the allegations in (the audit). I am also disappointed with the lack of transparency and lack of opportunities for collaboration before and during the investigation," wrote Donovan.

"However, in the interest of putting the town first ... I am committed to work with everyone to implement changes in the administration and the day-to-day operations of the SPD as suggested in the Kroll Report."

Included in the the audit is a report dated Oct. 12 that focuses on the department's internal affairs program and a secondary report dated Sept. 19 that examines officers' time and attendance practices. The second report found some officers, including Donovan, were working outside details during their paid work shifts.

In his response to the report, Donovan said that current and previous town managers gave him permission to work the details because they were unable to grant him raises that would bring his salary in line with chiefs of similarly sized departments.

The audit also raised issues with the department's culture, which was a common theme in nearly every interview Kroll conducted. Concerns included "members of management who either ignore or even encourage an environment where there exists a complete disregard for the Town's authority."

That lack of regard for the town's authority started at the top. According to the report, Town Manager Dillon said Donovan would not respect his authority as his direct supervisor. Dillon said it became increasingly challenging to get answers to questions and Donovan began refusing to attend meetings altogether.

The rift between the two officials became apparent after Chief

Donovan filed two lawsuits against the town in recent months. One from August seeks to overturn a disciplinary action Dillon took against Donovan (a two-day suspension without pay), and it outlines a verbal argument the men had in July about the handling of a citizen complaint.

Donovan took issue with the report's accusation that he disregard's the town manager's authority.

"I have always carried out the town's directives and will continue to do so," he wrote, adding "If there is a misperception that I am 'unable and unwilling' to recognize the authority structure within the town, I want to correct that misperception through my words and actions going forward."

Kroll's review of the police department's policies and collective bargaining agreements found several deficiencies and areas that failed to meet accepted best practices. The collective bargaining agreement contained "some of the most restrictive language ever reviewed by Kroll," and "severely impacts" on the department's ability to effectively discipline officers, the report says.

The Kroll report recommends a legal review of the union contract and revision where needed. In particular, that contract dictates a narrow window of six months from the date of an incident that a complaint must be filed, or else the department is prohibited from investigating the case, the report says.

The union contract further sets a 10-day clock to complete an investigation, even though a corruption investigation might take months to gather evidence, according to the report.

Investigators found the department had no policy addressing how officers should respond to situations involving their friends or family. They also found Deputy Chief Robert Morin's role as union president for administrative staff to be a conflict of interest since he also oversees all internal affairs investigations

I Center brawl

The report addresses the police response to a fight at the I Center after a youth hockey game on Dec. 2, 2017, though a significant portion of this section was redacted. Here, it finds the Salem police internal investigation into citizen complaints violated internal policy and best practices. The report used strong language in its findings.

“Not only did this investigation not meet acceptable best practices, but these actions undermine the integrity of the Salem PD,” the report states. “Further, it is Kroll’s opinion that there was a significant failure by the department’s leadership in their accepting this investigation as a complete effort.”

Later in the report, under the section covering Kroll’s communication with people outside the department, it further addresses the internal investigation into the I Center incident. It says Salem police initiated an “internal inquiry” that didn’t rise to the level of a formal internal affairs investigation and took less than 24 hours to find the complaint not sustained.

Kroll found that no one in the department tried to interview the complainant or their witnesses, and only began seeking testimony from witnesses who would support the officers’ version of events after “adverse” media coverage — a possible reference to a WBZ-TV report in April.

“This is a complete violation of the Salem PD complaint policy and can even appear to be negligent or retaliatory in nature,” the report states.

Police arrested assistant youth hockey coach Robert Andersen of Wilmington, Mass., on Dec. 2, 2017, after using a Taser on him multiple times. Several parents say Andersen was trying to mediate a fight between parents when the police arrested him. Police claimed he made a threatening motion toward an officer, failed to comply with orders and violently resisted arrest. They

claimed an officer was wounded in the process.

Andersen was charged with assaulting an officer and resisting arrest. His trial is set for May and he is being represented by former New Hampshire Attorney General Michael Delaney, who is with the McLane Middleton law firm. Donovan defended his department's handling of the case, writing that WBZ-TV's story was "one-sided and inciteful."

Incomplete records

The Salem Police Department's policy on IA record retention, dictated by the CBA, is possibly a violation of the state AG's regulations, according to the report.

Donovan told Linskey that he does not keep records of any internal investigations that result in a not sustained or an unfounded disposition. He said they get destroyed. Donovan said that's in

keeping with state guidance on Laurie List records, but Kroll disputes this, saying the state requires departments to keep both sustained and not-sustained records.

Kroll also states in its report that keeping the "not sustained records" is a good practice for picking up troubling patterns with problem officers.

In interviews, reviewers found contradicting statements between the top two heads of the agency. Donovan said he did not keep permanent files on internal investigations that include not sustained cases. Morin said that Donovan did keep those files.

Police complaints

One of the issues that triggered the audit was concern that the department repeatedly discouraged citizens from filing complaints.

In one instance, a citizen submitted a complaint directly to the town manager because the citizen didn't expect the department to investigate. Dillon asked the citizen to submit it in writing. The resident wrote the complaint and the town manager forwarded it to Donovan, but the chief declined to investigate. Instead, Donovan accused Dillon of violating the collective bargaining agreement by getting involved in the investigation, an assertion the Kroll report refutes.

The department's complaint form lists the town manager's office as one of the ways to file a complaint and the department's own policies state that complaints can be filed in person, by phone or in writing, the report notes.

After Chief Donovan refused to investigate the matter, it was referred to the Attorney General's office, which only determines if a crime was committed. The matter was referred back to Salem police for administrative review, which the Kroll report says never happened. The officer's name and details of the case are redacted.

"These actions confirmed what the complainant alleged, which was that no investigation would be conducted," the report concludes.

It goes on to say the refusal to investigate the matter was a failure of the complainant's rights to due process, and failed the officers entitled to an investigation whereby their names might have been cleared. Failing to investigate the complaint opened the town and its officers to unnecessary liability, it says.

The Kroll report also found the official complaint form the department required to be intimidating, with language warning of criminal charges if any statements are later deemed to be untrue. Individuals with complaints were directed to go to police headquarters to file that form, which some found intimidating.

But that appears to have been the point, according to the report.

Kroll "determined that citizens were actively dissuaded from filing complaints."

A supervisor of the IA program was quoted as saying during an interview for the report that he wants a complainant to fill out the form "because when she does, and we disprove it — and we will — we're going to charge her; that's why she's not coming in."

"This statement and attitude by a senior leader who has oversight for the professionalism of the department is quite concerning and certainly exposes some truth behind comments that the department makes it difficult for the public to submit a formal complaint," the report says.

Reviewers found Salem Police Department had very few citizen complaints in the last five years. When Linskey asked Donovan why he thought that was, he is quoted saying he didn't think they get a lot.

"This isn't Boston. It's amazing what you get here. I mean, most of the people are very cooperative, we rarely run into people that are not cooperative with us," Donovan said, according to the interview transcript.

But in his response to the report, the chief acknowledged that the complaint and internal affairs process were in need of an overhaul.

He said he was willing to implement a litany of changes, including accepting all complaints regardless of how they are submitted, providing officers with internal affairs training, eliminating the intimidating language on complaint forms, and implementing a consistent investigation process.

Internal affairs

Kroll reviewed 29 cases from the past five years using documents supplied by Donovan. The report notes a "significant lack of

documentation" in those case files, with several supporting documents missing and no audio files of interviews.

Of those 29 cases, 16 were generated internally and all resulted in sustained findings. Thirteen were generated from outside the department, five of which were sustained. The rest were not sustained or unfounded.

A handful of the cases were found to have been both compliant with department policy and to have met with accepted best practices, but most violated internal policy, failed to meet best practices or both.

In one case outlined in the report, an officer was assigned to investigate another officer of the same rank. The officer being investigated was involved in a single-vehicle accident while driving under the influence of alcohol. He was arrested and sent to a hospital. Prior to that, he was witnessed exhibiting "disoriented" behavior at a shopping mall in a neighboring jurisdiction.

The reviewers said that case should have been handled by the chief, given the seriousness of the case.

That officer was placed on administrative leave before being granted Family and Medical Leave, during which the officer resigned. This was found to be non-compliant with department policy and best practices, according to the report.

Several cases highlighted less-than-thorough investigations, ignored complaints and examples of lenient disciplinary action when stronger action was called for, according to reviewers.

Kroll found that there was a lack of formal internal affairs training in the department. Only Capt. Joel Dolan and Det. Lt. Kevin Fitzgerald received formal training. Other officers who frequently handle IA investigations, such as Capt. Michael Wagner, had no training in conducting those types of probes.

Recommendation #3: Kroll recommends a complete overhaul of the Salem PD IA program. Further, those involved in developing and implementing the program must be educated on the best acceptable law enforcement practices and trained to properly conduct IA investigations. The department leadership must be aligned with these goals to ensure proper execution, and at a minimum, the following should be adopted immediately into any new IA process:

- Implement the Guardian System to identify and track officer performance.
- Develop a comprehensive IA investigative check list.
- Accept any and all complaints, including those submitted in person, over the phone, in writing (including email), through third parties and anonymously.
- Initiate investigations proactively, even for those where no formal complaint is made but for which information is developed from lawsuits, social media posts or any other means.
- Investigate any and all complaints regardless of perceived severity or perceived biases against the complainant.
- Provide officers with formal IA investigative training.
- Amend the complaint process to eliminate the potential for intimidation towards complainants.
- Implement consistent investigative processes, documentation and disciplinary actions for all members of the department to avoid disparate action based on relationships.
- Administer standard outreach to all complainants, as well as witnesses.
- Record audio statements for all interviews, when possible.
- Conduct periodic audits of IA investigations, both internally, as well as via external third parties.
- Provide timely notification of complaints, as well as outcomes, by electronic and/or certified mail.
- Implement a consistent protocol for recordkeeping to ensure complete and accurate case files.
- Ensure compliance with the department's CBAs for officers' due process rights.

Finding #4: There is a mandatory retention period for IA investigative files as stipulated by the New Hampshire Attorney General's Office. The Salem PD may not be compliant with this regulation.

The Salem PD's policies indicate that there should be a locked file cabinet in Chief Donovan's office to store IA complaints and case files, including those that were sustained and not sustained. The town manager directed Chief Donovan to provide Kroll with all IA investigative files for the preceding five years. However, despite this directive, the files were seemingly incomplete, as there were no Garrity forms, no audio recordings and many missing documents / whole case files. Kroll was also provided

with several not sustained and unfounded complaints, allegedly provided by happenstance during the records collection process, despite the department's belief that these files were purged. Kroll disagrees with this assertion, as the rule stipulates that all sustained and not sustained complaints should be kept for the entirety of an employee's career.

However, there is seemingly confusion within the senior administration of the department, as Chief Donovan informed Kroll that the department does not maintain not sustained or unfounded complaints. However, Deputy Chief Morin stated that the files are, in fact, stored in a file cabinet in the chief's office. As a result of the discrepancy, Kroll re-interviewed Chief Donovan and asked if such a cabinet existed in his office. Chief Donovan stated that he did not retain the files. Therefore, if the files are not retained, then the department is in violation of Salem PD GO 65-7, as well as the New Hampshire Attorney General's guidelines. [REDACTED]

Recommendation #4: Kroll recommends that the Salem PD update its current recordkeeping system for IA investigative files in consultation with best practices and as directed by the Attorney General's Office.

Finding #5: The deputy chief in charge of IA investigations should not be union president, as it is a conflict of interest to oversee IA investigations and represent the interests of union members.

Recommendation #5: Kroll recommends that the deputy chief be responsible for assisting with contract negotiations for the department but be prohibited from serving as union president.

Finding #6: As detailed in Kroll's secondary report relative to time and attendance concerns within the Salem PD, members of the administration are also known to work detail assignments, often during regular working hours. It is Kroll's opinion that these detail assignments may adversely impact the supervisors' ability to properly oversee the department's IA program.

[REDACTED]

BY REFERENCES

shire's right-to-know law," see 48 and N.H.B.J. 38 (No. 3, Autumn 2007). np-

ns. In this chapter:

municipal records board.

a city or town, county or precinct.

means:

the board of selectmen.

ty which has adopted the council 9-A, the city manager.

er city, the mayor.

y, the county commissioners.

ct, the precinct commissioners.

means all municipal records, re- ledgers, journals, checks, bills, re- ds and any other written or compu- lesigned by the board.

termination or expiration of obli- of need for further attention, and ending legal processes.

HISTORY

:1, Amendments—2005. Paragraph V: ff. Added.

BY REFERENCES

tees. The municipal officers or ie clerk, treasurer, an assessor, and own shall constitute a committee to nicipal records pursuant to this 140

chapter. Unless otherwise provided by a municipal ordinance, the committee shall designate the office responsible for the retention of each type of record created for the municipality.

HISTORY

Source. 1967, 105:1. 1977, 358:2, eff. July 1, 1977. 2005, 187:2, eff. Aug. 29, 2005. 2006, 119:1, eff. May 12, 2006.

Amendments—2006. Substituted "an assessor" for "assessors" in the first sentence, and added "Unless oth-

erwise provided by a municipal ordinance," preceding "the committee" in the second sentence.

—2005. Deleted "the rules promulgated by the municipal records board and the standards established by" following "pursuant to" in the first sentence, and added the second sentence.

33-A:3-a Disposition and Retention Schedule. The municipal records identified below shall be retained, at a minimum, as follows:

- I. Abatements: 5 years.
- II. Accounts receivable: until audited plus one year.
- III. Aerial photographs: permanently.
- IV. Airport inspections-annual: 3 years.
- V. Airport inspections-daily, including fuel storage and vehicles: 6 months.
- VI. Annual audit report: 10 years.
- VII. Annual reports, town warrants, meeting and deliberative session minutes in towns that have adopted official ballot voting: permanently.
- VIII. Archives: permanently.
- IX. Articles of agreement or incorporation: permanently.
- X. Bank deposit slips and statements: 6 years.
- XI. Blueprints-architectural: life of building.
- XII. Bonds and continuation certificates: expiration of bond plus 2 years.
- XIII. Budget committee-drafts: until superseded.
- XIV. Budgets: permanently.
- XV. Building permits-applications and approvals: permanently.
- XVI. Building permits-lapsed: permanently.

- XVII. Building permits-withdrawn, or denied: one year.
- XVIII. Capital projects and fixed assets that require accountability after completion: life of project or purchase.
- XIX. Cash receipt and disbursement book: 6 years after last entry, or until audited.
- XX. Checks: 6 years.
- XXI. Code enforcement specifications: permanently.
- XXII. Complaint log: expiration of appeal period.
- XXIII. Contracts-completed awards, including request for purchase, bids, and awards: life of project or purchase.
- XXIV. Contracts-unsuccessful bids: completion of project plus one year.
- XXV. Correspondence by and to municipality-administrative records: minimum of one year.
- XXVI. Correspondence by and to municipality-policy and program records: follow retention requirement for the record to which it refers.
- XXVII. Correspondence by and to municipality-transitory: retain as needed for reference.
- XXVIII. Current use applications and maps: until removed from current use plus 3 years.
- XXIX. Current use release: permanently.
- XXX. Deed grantee/grantor listing from registry, or copies of deeds: discard after being updated and replaced with a new document.
- XXXI. Deferred compensation plans: 7 years.
- XXXII. Underground facility damage prevention forms: 4 years.
- XXXIII. Dredge and fill permits: 4 years.
- XXXIV. Driveway permits and plans: permanently.
- XXXV. Easements awarded to municipality: permanently.
- XXXVI. Elections-federal elections: ballots and absentee ballot applications, affidavit envelopes, and lists: by the town clerk until the contest is settled and all appeals have expired or at least 22 months after the election, whichever is longer.

XXXVII. Elections-not federal: ballots and absentee ballot applications, affidavit envelopes, and lists: by the town clerk until the contest is settled and all appeals have expired or at least 60 days after the election, whichever is longer.

XXXVIII. Elections-challenge affidavits by the town clerk: until the contest is settled and all appeals have expired or 22 months after the election, whichever is longer.

XXXIX. Elections-ward maps: until revised plus 1 year.

XL. Emergency medical services run reports: 10 years.

XLI. Equipment maintenance: life of equipment.

XLII. Excavation tax warrant and book or list: permanently.

XLIII. Federal form 1099s and W-2s: 7 years.

XLIV. Federal form 941: 7 years.

XLV. Federal form W-1: 4 years.

XLVI. Fire calls/incident reports: 10 years.

XLVII. Grants, supporting documentation: follow grantor's requirements.

XLVIII. Grievances: expiration of appeal period.

XLIX. Health-complaints: expiration of appeal period.

L. Health-inspections: 3 years.

LI. Health-service agreements with state agencies: term plus 7 years.

LII. Health and human services case records including welfare applications: active plus 7 years.

LIII. Inspections-bridges and dams: permanently.

LIV. Insurance policies: permanently.

LV. Intent to cut trees or bushes: 3 years.

LVI. Intergovernmental agreements: end of agreement plus 3 years.

LVII. Investigations-fire: permanently.

LVIII. Invoice, assessors: permanently.

LIX. Invoices and bills: until audited plus one year.

LX. Job applications-successful: retirement or termination plus 20 years.

- LXI. Job applications-unsuccessful: current year plus 3 years.
- LXII. Labor-public employees labor relations board actions and decisions: permanently.
- LXIII. Labor union negotiations: permanently or until contract is replaced with a new contract.
- LXIV. Ledger and journal entry records: until audited plus one year.
- LXV. Legal actions against the municipality: permanently.
- LXVI. Library:
 - (a) Registration cards: current year plus one year.
 - (b) User records: not retained; confidential pursuant to RSA 201-D:11.
- LXVII. Licenses-all other except dog, marriage, health, and vital records: duration plus 1 year.
- LXVIII. Licenses-dog: current year plus one year.
- LXIX. Licenses-dog, rabies certificates: disposal once recorded.
- LXX. Licenses-health: current year plus 6 years.
- LXXI. Liens-federal liens upon personal property, other than IRS liens: permanently.
- LXXII. Liens-hospital liens: 6 years.
- LXXIII. Liens-IRS liens: one year after discharge.
- LXXIV. Liens-tax liens, state liens for support of children: until court order is lifted plus one year.
- LXXV. Liens-tax liens, state meals and rooms tax: until release plus one year.
- LXXVI. Liens-tax sale and record of lien: permanently.
- LXXVII. Liens-tax sales/liens redeemed report: permanently.
- LXXVIII. Liens-Uniform Commercial Code leases: lease term plus 4 years; purge all July 1, 2007.
- LXXIX. Liens-Uniform Commercial Code security agreements: 6 years; purge all July 1, 2007.
- LXXX. Meeting minutes, tape recordings: keep until written record is approved at meeting. As soon as minutes are approved, either reuse the tape or dispose of the tape.

- LXXXI. Minutes of boards and committees: permanently.
- LXXXII. Minutes of town meeting/council: permanently.
- LXXXIII. Minutes, selectmen's: permanently.
- LXXXIV. Motor vehicle-application for title: until audited plus one year.
- LXXXV. Motor vehicle-titles and voided titles: sent to state division of motor vehicles.
- LXXXVI. Motor vehicle permits-void and unused: until audited plus one year.
- LXXXVII. Motor vehicle permits and registrations-used: current year plus 3 years.
- LXXXVIII. Municipal agent daily log: until audited plus one year.
- LXXXIX. Notes, bonds, and municipal bond coupons-cancelled: until paid and audited plus one year.
- XC. Notes, bonds, and municipal bond coupon register: permanently.
- XCI. Oaths of office: term of office plus 3 years.
- XCII. Ordinances: permanently.
- XCIII. Payrolls: until audited plus one year.
- XCIV. Perambulations of town lines-copy kept by town and copy sent to secretary of state: permanently.
- XCV. Permits or licenses, pole: permanently.
- XCVI. Personnel files: retirement or termination plus 20 years.
- XCVII. Police, accident files-fatalities: 10 years.
- XCVIII. Police, accident files-hit and run: statute of limitations plus 5 years.
- XCIX. Police, accident files-injury: 6 years.
- C. Police, accident files-involving arrests: 6 years.
- CI. Police, accident files-involving municipality: 6 years.
- CII. Police, accident files-property damage: 6 years.
- CIII. Police, arrest reports: permanently.
- CIV. Police, calls for service/general service reports: 5 years.

CV. Police, criminal-closed cases: statute of limitations plus 5 years.

CVI. Police, criminal-open cases: statute of limitations plus 5 years.

CVII. Police, motor vehicle violation paperwork: 3 years.

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

CIX. Police, non-criminal-all other files: closure plus 3 years.

CX. Police, pistol permit applications: expiration of permit plus one year.

CXI. Property inventory: 5 years.

CXII. Property record card: current and last prior reassessing cycle.

CXIII. Property record map, assessors: until superceded.

CXIV. Property tax exemption applications: transfer of property plus one year.

CXV. Records management forms for transfer of records to storage: permanently.

CXVI. Road and bridge construction and reconstruction, including highway complaint slips: 6 years.

CXVII. Road layouts and discontinuances: permanently.

CXVIII. Scenic roads: permanently.

CXIX. School records: retained as provided under RSA 189:29-a.

CXX. Septic plan approvals and plans: until replaced or removed.

CXXI. Sewer system filtration study: permanently.

CXXII. Sign inventory: 7 years.

CXXIII. Site plan review: life of improvement plus 3 years.

CXXIV. Site plan review-lapsed: until notified that planning board action and appeal time has expired plus one year.

CXXV. Site plan review-withdrawn or not approved: appeal period plus one year.

CXXVI. Special assessment (betterment of property): 20 years.

CXXVII. Street acceptances: permanently.

CXXVIII. Street signs, street lights and traffic lights-maintenance records: 10 years.

CXXIX. Subdivision applications-lapsed: until notified that planning board action and appeal period has expired plus one year.

CXXX. Subdivision applications-successful and final plan: permanently.

CXXXI. Subdivision applications-withdrawn, or not approved: expiration of appeal period plus one year.

CXXXII. Subdivision applications-working drafts prior to approval: expiration of appeal period.

CXXXIII. Summary inventory of valuation of property: one year.

CXXXIV. Tax maps: permanently.

CXXXV. Tax receipts paid, including taxes on land use change, property, resident, sewer, special assessment, and yield tax on timber: 6 years.

CXXXVI. Tax-deeded property file (including registered or certified receipts for notifying owners and mortgagees of intent to deed property): permanently.

CXXXVII. Time cards: 4 years.

CXXXVIII. Trust fund:

(a) Minutes and quarterly reports, in paper or electronic format: permanently.

(b) Bank statements, in paper or electronic format: 6 years after audit.

CXXXIX. Vehicle maintenance records: life of vehicle plus 2 years.

CXL. Voter checklist-marked copy kept by town pursuant to RSA 659:102: 7 years.

CXLI. Voter registration:

(a) Forms, including absentee voter registration forms: until voter is removed from checklist plus 7 years.

(b) Same day, returned to undeclared status, form and report from statewide centralized voter registration database: 7 years.

(c)(1) Party change form: until voter is removed from checklist plus 7 years.

(2) List of undeclared voters from the statewide centralized voter registration database: 7 years.

(d) Forms, rejected, including absentee voter registration forms, and denial notifications: 7 years.

(e) Qualified voter affidavit: until voter is removed from checklist plus 7 years.

(f) Verifiable action of domicile document: until voter is removed from checklist plus 7 years.

(g) Overseas absentee registration affidavit: until voter is removed from checklist plus 7 years.

(h) Absentee ballot voter application form in the federal post card application format, for voters not previously on the checklist: until voter is removed from checklist plus 7 years.

(i) Absentee ballot affidavit envelope for federal post card applicants not previously on the checklist: until voter is removed from checklist plus 7 years.

(j) Notice of removal, 30-day notice: until voter is removed from checklist plus 7 years.

(k) Report of death: until voter is removed from checklist plus 7 years.

(l) Report of transfer: until voter is removed from checklist plus 7 years.

(m) Undeliverable mail or change of address notice from the United States Postal Service: until voter is removed from checklist plus 7 years.

CXLII. Vouchers and treasurers receipts: until audited plus one year.

CXLIII. Warrants-land use change, and book or list: permanently.

CXLIV. Warrants-property tax, and lists: permanently.

CXLV. Warrants-resident tax, and book or list: permanently.

CXLVI. Warrants-town meeting: permanently.

CXLVII. Warrants-treasurer: until audited plus one year.

CXLVIII. Warrants-utility and betterment tax: permanently.

CXLIX. Warrants-yield tax, and book or list: permanently.

CL. Welfare department vouchers: 4 years.

CLI. Work program files: current year plus 6 years.

CLII. Writs: expiration of appeal period plus one year.

CLIII. Zoning board of adjustment applications, decisions, and permits-unsuccessful: expiration of appeal period.

CLIV. Intent to excavate; completion of reclamation plus 3 years.

CLV. Election return forms, all elections: permanently.

CLVI. Affidavits of religious exemption: until voter is removed from checklist plus 7 years.

HISTORY

Source. 2005, 187:3, eff. Aug. 29, 2005. 2006, 119:2-5, eff. May 12, 2006. 2010, 172:1-3, eff. Aug. 16, 2010; 191:1, eff. Aug. 20, 2010. 2012, 113:1, eff. May 31, 2012; 284:13, eff. Sept. 1, 2015. 2014, 319:1, eff. Sept. 30, 2014. 2015, 4:1, eff. July 4, 2015. 2017, 205:15, eff. Sept. 8, 2017. 2018, 247:1, 2, eff. Aug. 11, 2018.

Amendments—2018. Paragraph LX: Chapter 247:1 substituted "20 years" for "50 years".

Paragraph XCVI: Chapter 247:2 substituted "20 years" for "50 years".

—2017. Paragraph CXLI(f): Substituted "Verifiable action of domicile document" for "Domicile affidavit".

—2015. Paragraph CXXXVIII: Amended generally.

—2014. Paragraph XXXVIII: Amended generally.

—2012. Paragraph CXLI(c): Chapter 113:1 designated the existing text as subpar. (1) and added subpar. (2).

Paragraph CLVI: Added by ch. 284:13.

—2010. Paragraph XXXII: Chapter 191:1 substituted "Underground facility damage prevention" for "Dig safe".

Paragraphs XXXVI to XXXVIII: Amended generally by ch. 172:1.

Paragraph CXL: Chapter 172:2 substituted "7 years" for "5 years".

Paragraph CXLI: Chapter 172:2 substituted "Forms, including absentee voter registration forms: until voter is removed from checklist plus 7 years" for "Purged record cards: 5 years" in subpar. (a); substituted "status, form and report from statewide centralized voter registration database: 7 years" for "status: 5 years" in subpar. (b); and; added subpars. (c) to (m).

Paragraph CLV: Added by ch. 172:3.

—2006. Paragraph XXIX: Chapter 119:2 substituted "release: permanently" for "card: until removed from current use plus 3 years".

Paragraph LII: Chapter 119:3 inserted "including welfare applications" following "records".

Voting Sheets

Senate Judiciary Committee

EXECUTIVE SESSION

Bill # HB 334

Hearing date: _____

Executive session date: _____

Motion of: 1510

VOTE: 5-0

<u>Made by</u> Hennessey <input checked="" type="checkbox"/>	<u>Seconded</u> Hennessey <input type="checkbox"/>	<u>Reported</u> Hennessey <input type="checkbox"/>
<u>Senator:</u> Chandley <input type="checkbox"/>	<u>by Senator:</u> Chandley <input type="checkbox"/>	<u>by Senator:</u> Chandley <input type="checkbox"/>
Carson <input type="checkbox"/>	Carson <input type="checkbox"/>	Carson <input type="checkbox"/>
Levesque <input type="checkbox"/>	Levesque <input type="checkbox"/>	Levesque <input type="checkbox"/>
French <input type="checkbox"/>	French <input checked="" type="checkbox"/>	French <input type="checkbox"/>

Motion of: OTPA

VOTE: AND 3-2

<u>Made by</u> Hennessey <input type="checkbox"/>	<u>Seconded</u> Hennessey <input checked="" type="checkbox"/>	<u>Reported</u> Hennessey <input type="checkbox"/>
<u>Senator:</u> Chandley <input type="checkbox"/>	<u>by Senator:</u> Chandley <input type="checkbox"/>	<u>by Senator:</u> Chandley <input type="checkbox"/>
Carson <input type="checkbox"/>	Carson <input type="checkbox"/>	Carson <input type="checkbox"/>
Levesque <input type="checkbox"/>	Levesque <input type="checkbox"/>	Levesque <input type="checkbox"/>
French <input checked="" type="checkbox"/>	French <input type="checkbox"/>	French <input type="checkbox"/>

<u>Committee Member</u>	<u>Present</u>	<u>Yes</u>	<u>No</u>	<u>Reported out by</u>
Senator Hennessey, Chairman	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Senator Chandley, Vice-Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator Carson	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Senator Levesque	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Senator French	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

*Amendments: _____

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Wednesday, April 24, 2019

THE COMMITTEE ON Judiciary

to which was referred **HB 334-LOCAL**

AN ACT relative to disposition of certain municipal records.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS WITH AMENDMENT

BY A VOTE OF: 3-2

AMENDMENT # 2019-1632s

Senator Martha Hennessey
For the Committee

Jennifer Horgan 271-2609

JUDICIARY

HB 334-LOCAL, relative to disposition of certain municipal records.

Ought to Pass with Amendment, Vote 3-2.

Senator Martha Hennessey for the committee.

Docket of HB334

Docket Abbreviations

Bill Title: relative to disposition of certain municipal records.

Official Docket of HB334.:

Date	Body	Description
1/9/2019	H	Introduced 01/02/2019 and referred to Municipal and County Government HJ 2 P. 45
1/9/2019	H	Public Hearing: 01/15/2019 11:30 am LOB 301
1/16/2019	H	Executive Session: 01/23/2019 01:00 pm LOB 301
1/29/2019	H	Committee Report: Ought to Pass with Amendment #2019-0061h for 02/14/2019 (Vote 17-2; RC) HC 11 P. 18
2/14/2019	H	Amendment #2019-0061h : AA VV 02/14/2019 HJ 5 P. 73
2/14/2019	H	Ought to Pass with Amendment 2019-0061h: MA VV 02/14/2019 HJ 5 P. 73
3/12/2019	S	Introduced 03/07/2019 and Referred to Judiciary; SJ 8
4/11/2019	S	Hearing: 04/16/2019, Room 100, SH, 09:40 am; SC 18
4/25/2019	S	Committee Report: Ought to Pass with Amendment #2019-1632s , 05/02/2019; SC 20
5/2/2019	S	Sen. Feltes Moved Laid on Table, MA, VV; 05/02/2019; SJ 15
5/2/2019	S	Pending Motion Committee Amendment #2019-1632s ; 05/02/2019; SJ 15

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB 334-LOCAL

Senate Committee: Judiciary

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

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

Bill version as it came to the committee

All Calendar Notices

Hearing Sign-up sheet(s)

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

Hearing Report

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

Committee Action Documents: {Legislative Aides}

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

- amendment # 1632 - amendment # _____

- amendment # _____ - amendment # _____

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

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

- amendment # _____ - amendment # _____

- amendment # _____ - amendment # _____

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

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

Enrolled Bill Amendment(s)

Governor's Veto Message

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

as amended by the senate as amended by the house

final version

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

Committee Aide

Date

Senate Clerk's Office JM