

# Committee Report

**REGULAR CALENDAR**

**February 25, 2020**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Criminal Justice and Public Safety  
to which was referred HB 1257,**

**AN ACT establishing a committee to study the  
opportunities for citizen involvement in attorney  
general investigations of officer involved shootings.**

**Having considered the same, report the same with the  
recommendation that the bill OUGHT TO PASS.**

**Rep. John Bordenet**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	<b>Criminal Justice and Public Safety</b>
Bill Number:	<b>HB 1257</b>
Title:	<b>establishing a committee to study the opportunities for citizen involvement in attorney general investigations of officer involved shootings.</b>
Date:	<b>February 25, 2020</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>OUGHT TO PASS</b>

### STATEMENT OF INTENT

This bill would establish a study committee on the opportunities to involve citizens in attorney general investigations dealing with police shootings. This would look at whether and how citizens can be involved in these high-profile cases. Hope is that this process would lead transparency in these matters, leading to better support of attorney general rulings.

Vote 15-5.

Rep. John Bordenet  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File

## REGULAR CALENDAR

### Criminal Justice and Public Safety

**HB 1257**, establishing a committee to study the opportunities for citizen involvement in attorney general investigations of officer involved shootings. **OUGHT TO PASS.**

Rep. John Bordenet for Criminal Justice and Public Safety. This bill would establish a study committee on the opportunities to involve citizens in attorney general investigations dealing with police shootings. This would look at whether and how citizens can be involved in these high-profile cases. Hope is that this process would lead transparency in these matters, leading to better support of attorney general rulings. **Vote 15-5.**

## COMMITTEE REPORT

Committee:	<b>Criminal Justice and Public Safety</b>
Bill Number:	<b>HB 1257</b>
Title:	<b>establishing a committee to study the opportunities for citizen involvement in attorney general investigations of officer involved shootings.</b>
Date:	<b>February 25, 2020</b>
Consent Calendar:	<b>REGULAR</b>
Recommendation:	<b>OUGHT TO PASS</b>

### STATEMENT OF INTENT

HB1257 is a bill to establish a study committee on the opportunities to involve citizens in attorney general investigations dealing with police shootings. This would look at whether and how citizens can be involved in these high-profile cases. Hope is that this process would lead transparency in these matters, leading to better support of attorney general rulings.

Vote 15-5.

*Ok Penny Cook*  
Rep. John Bordenet  
FOR THE COMMITTEE

*Regular calendar correct  
Yes*

Original: House Clerk  
Cc: Committee Bill File

# Voting Sheets

**HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY**

**EXECUTIVE SESSION on HB 1257**

**BILL TITLE:** establishing a committee to study the opportunities for citizen involvement in attorney general investigations of officer involved shootings.

**DATE:** February 25, 2020

**LOB ROOM:** 204

**MOTIONS:** OUGHT TO PASS

Moved by Rep. Bordenet

Seconded by Rep. Rodd

Vote: 15-5

Respectfully submitted,

Rep Linda Harriott-Gathright, Clerk

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 1257

BILL TITLE: establishing a committee to study the opportunities for citizen involvement in attorney general investigations of officer involved shootings.

DATE:

LOB ROOM: 204

MOTION: (Please check one box)

- OTP, ITL, Retain (1st year), Adoption of Amendment #, Interim Study (2nd year) (if offered)

Moved by Rep. Bern Seconded by Rep. Rodd Vote: 15/5

MOTION: (Please check one box)

- OTP, OTP/A, ITL, Retain (1st year), Adoption of Amendment #, Interim Study (2nd year) (if offered)

Moved by Rep. Seconded by Rep. Vote:

MOTION: (Please check one box)

- OTP, OTP/A, ITL, Retain (1st year), Adoption of Amendment #, Interim Study (2nd year) (if offered)

Moved by Rep. Seconded by Rep. Vote:

MOTION: (Please check one box)

- OTP, OTP/A, ITL, Retain (1st year), Adoption of Amendment #, Interim Study (2nd year) (if offered)

Moved by Rep. Seconded by Rep. Vote:

CONSENT CALENDAR: YES NO

Minority Report? Yes No If yes, author, Rep: Motion

Respectfully submitted: Rep Linda Harriott-Gathright, Clerk



# Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 1257

**BILL TITLE:** establishing a committee to study the opportunities for citizen involvement in attorney general investigations of officer involved shootings.

**DATE:** January 22, 2020

**LOB ROOM:** 204

**Time Public Hearing Called to Order:** 10:00 a.m.

**Time Adjourned:** 10:25 a.m.

**Committee Members:** Reps. Cushing, Rodd, Harriott-Gathright, Pantelakos, Opderbecke, Bordenet, Meuse, Murphy, R. Newman, Radhakrishnan, Swinburne, Welch, Green, Abbas and Roy, Ober

**Bill Sponsors:**

Rep. Amanda Bouldin  
Rep. Andrew Bouldin

Rep. Conley  
Rep. Espitia

Rep. Cleaver  
Rep. DiLorenzo

**TESTIMONY**

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

**\*Rep. Bouldin, Sponsor -**

- Claremont - falsify document
- Attorney General reverse decision in the Claremont case .
- Heed memo - 2004 officer protocol deadly force investigation

**Paul Twomey, Chichester - supports**

two things in a memo:

- Protocol investigation looks only at the decision to pull the trigger
- Law suite
- Weare - mentally distraught- wife complains he was going to kill us
- Told wife to stay on the porch
- PD walked in the house, man with gun shot him
- What other steps should the investigation look at

**Ken Norton, Nami-NH- no position**

- Pentagon - Department of Defense
- Too narrowly focused
- More general investigation
- Provide 16 hours of training to officers coming thru - suicide by cop, suicide of cop
- Focus on de-escalations
- 515 cases in 2017, .17 per hundred thousand
- 986 fatalities
- Definite disparity
- No support for family members
- Less deadly force
- Town of Tilton sponge guns vs tazers
- PD are not responding to suicide when a person has a firearm

**\*Jeanne Hruska - ACLU-NH - supports**

**David Cahill, Chief of Sunapee PD, Training Council Citizen review board - opposed**

- Plenty of PD shootings have been videotaped
- RSA not available for right to know
- Sponge gun is local
- Maranda rights
- Garrity rights

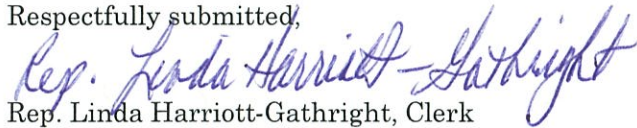
**Marc Beaudoin, retired NH trooper assoc.** - opposed

- Bill is a solution looking for a problem
- Garrity - tell us everything, no charges
- Training, statues, case law
- Social Media - Politics
- Thinks the process works well as is.

**Andrew Beaudoin** - supports

- All that he heard in testimony - believe

Respectfully submitted,

Handwritten signature in blue ink that reads "Rep. Linda Harriott-Gathright".

Rep. Linda Harriott-Gathright, Clerk



① ★ Rep/mand, Bouddin Hills Dist 12  
HB1257 Claremont - falsy document

Sponsor

- Atty general reverse decision in the Claremont case.

- NY has a citizen board
- Need memo - 2004 Officer Protocol Deadly Force investigation

② Paul Twomey Chichester self

Support

Two things in the memo

- Protocol investigation <sup>looks</sup> only at the decision to pull the trigger
- lawsuit

- We are - mentally distraught - wife complains he told wife to stay on the porch <sup>going to kill us.</sup>
- PD walk in the house man with gun shot him.
- What other steps should the investigation look at

③ Ken Norton ED Nami-NH

Dengen - Depart of Defense

- Too narrowly focused
- Use general investigation
- Provide 16 hours of training to officers covering thru  
Suicide by cop  
Suicide of cop
- Focus on de-escalation

Support  
120  
120



- 515 cases in 2017 .17 per hundred thousands
- 986 fatalities
- del. disparity

• No support for families members

Less deadly force  
 town of Milton sponge guns vs tazers

- PD are now not responding to suicidal when a person has a fire arm

④ Jeanette Huska PD Accu-NTF  
 \* support

⑤ David Cahill, Chief of <sup>Sunapee</sup> NHT Chief of PD  
 Training Counsel  
 Citizen Review Board

- oppose
- ~~PD~~ <sup>PD</sup> plenty PD have been video tape
  - RSA not available for right to know
  - Sponge gun is local
  - maranda rights
  - garity rights

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HB 1257

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Mike Mare Beaudoin <sup>retired</sup> ED NF Trooper Association

oppose

- Bill A solution looking for a problem
- Sanity - tell us everything no charges
- Training - statutes, case law,
- Social Media - politics
- Thinks the process works well as is.

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Andrew Beaudoin - all that he heard in testimony believe

support

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# Testimony





**Statement by Jeanne Hruska, Political Director ACLU-NH  
House Criminal Justice and Public Safety Committee  
House Bill 1257  
January 22, 2020**

I submit this testimony on behalf of the American Civil Liberties Union of New Hampshire (ACLU)—a non-partisan, non-profit organization working to protect civil liberties throughout New Hampshire for over fifty years. I appreciate the opportunity to testify today in support of HB1257, which offers an opportunity for New Hampshire to increase transparency and accountability in the event of officer-involved shootings.

**Balancing power with transparency and accountability.** Government is the most powerful entity with which any person will come in contact during their natural life. Government has the authority legally, and one might even argue morally, to restrict a person's liberty or revoke it completely. Perhaps most telling, it has a monopoly on the right to use violence against the people it serves, even to kill in certain circumstances.

In everyday life, police represent the embodiment of that authority. We rely on police to uphold public safety, and to do so we entrust them with extraordinary authority, including the powers to use deadly force and to decide who is stopped, searched, arrested, and funneled into the criminal justice system. This extreme authority must be balanced by accountability and transparency.

Law enforcement's often fraught relationships with the communities they serve and are meant to protect is concerning and something both law enforcement and the public should strive to change. Part of the solution is to bring greater transparency and accountability to how our communities are policed and the processes by which possible misconduct is investigated.

**Ensuring transparency when it matters most.** The pursuit of transparency and accountability must include re-evaluating that which has, perhaps more than any other police action, fractured the relationships between law enforcement and the people they serve – officer-involved shootings. Specifically, the investigations conducted in the wake of such shootings.

In New Hampshire, the Attorney General's office and the state police have exclusive domain over all such investigations. The Attorney General's office works with law enforcement every day. There is an inherent conflict of interest in colleagues investigating colleagues. This conflict of interest is particularly acute in the absence of any role for community members, who must stand by and wait for the Attorney General's eventual report to be released, if it ever is. In NH, 52 out of 56 times, that final report has found the officer who pulled the trigger to have been justified in doing so over the past thirty years.

It is not hard to understand the public's distrust and emotional outcries when shootings are routinely found to be justified given the opaque process through which that conclusion is drawn.

If community members have no role in the investigation and there is no transparency during the process, how can the public trust the outcome?

Recently, the Attorney General's office changed its decision about a 2016 shooting. It previously ruled the shooting justified, but now says that the shooting is no longer deemed legally justified.<sup>1</sup> This change in conclusion raises questions, particularly for a public that had no role nor any representative in the investigation.

**Benefiting from lessons learned around the country.** Cities across the country are working to bring transparency to these investigations, understanding that the trust of their communities is on the line. For many cities, transparency has come through the creation of civilian review boards or civilian oversight committees – a group of members of the most policed communities who are intricately involved in the investigation of officer-involved violence and killings.

A number of cities across the country have already established civilian review boards. This includes Detroit, MI (population 672,800), Fort Worth, TX (population 854,000), Las Vegas, NV (population 648,000), Miami, FL (453,000), Newark, NJ (population 281,700), New York City, NY (8.54 million), Philadelphia, PA (1.58 million), San Francisco, CA (population 883,000) and Washington, DC (population 702,000). West Virginia is currently considering a state wide civilian review board (state population 1.82 million).

There are lessons to be learned from all of these. Some have subpoena authority. Some have broad authority to investigate police misconduct more generally, including analyzing department policies, making recommendations to department heads and public officials, and issuing disciplinary recommendations.

While New Hampshire has few police shootings compared to some cities and other states, it would be wise for us not to rest on our laurels, but instead to consider proactively how community members could be included in officer-involved shooting investigations. Better we be proactive now than wait for a shooting with cellphone video and scramble to re-evaluate the process with an outraged public.

**HB11257 offers our state an excellent opportunity to start this conversation.** It would form a study committee, made up of legislators who can request the testimony of a variety of stakeholders, including the Attorney General and law enforcement. The legislation presumes no specific outcome. It does not even require that legislators recommend future legislation on this topic. Instead, it simply invites us to engage in a timely and important conversation that emulates those happening across the nation.

Let's talk. Let's learn from other states. Let's see how we could improve the system here in New Hampshire, for the betterment of all. Ultimately, there should be a shared goal of helping to create police departments that are fair, accountable, and foster public trust. In this pursuit of transparency and accountability, I respectfully urge you to vote *ought to pass* on HB1257.

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<sup>1</sup> "Rare reversal of AG finding in officer-involved shooting after Claremont cop convicted of lying."  
[https://www.unionleader.com/news/crime/rare-reversal-of-ag-finding-in-officer-involved-shooting-after/article\\_67aa022c-1645-5512-8dc0-60b96976fef2.html](https://www.unionleader.com/news/crime/rare-reversal-of-ag-finding-in-officer-involved-shooting-after/article_67aa022c-1645-5512-8dc0-60b96976fef2.html)



# AG Says Claremont Officer's Shooting No Longer Considered 'Legally Justified'

By [DANIELA ALLEE](#) · OCT 1, 2019

The New Hampshire Attorney General's Office has amended its finding in a fatal 2016 officer involved shooting of a 25-year-old Claremont man, [Cody LaFont](#).

The Attorney General's office initially concluded that the shooting was "legally justified," but it decided to re-examine the case after the officer involved was convicted of falsifying documents related to a police search last year.

The Attorney General's office says it can't disprove former officer Ian Kibbe's self-defense claim, beyond a reasonable doubt.

Assistant Attorney General John Kennedy says Kibbe's unrelated crimes called his credibility into question, and that changed their conclusion.

"We no longer are confident that this is legally justified, that the evidence supported beyond a reasonable doubt that Mr. Kibbe acted in conformance with the law," he said.

The office had reviewed the case and hired an expert in crime scene reconstruction. That review found that that the physical evidence at the shooting scene was generally consistent.

But, Kennedy says in a case like this, his office uses first-hand accounts, like Kibbe's in coming to their conclusions.

"Because of his subsequent convictions that went directly to his credibility, we no longer feel confident in relying upon his statements as being credible," he said.

The state won't file any new charges against Kibbe.

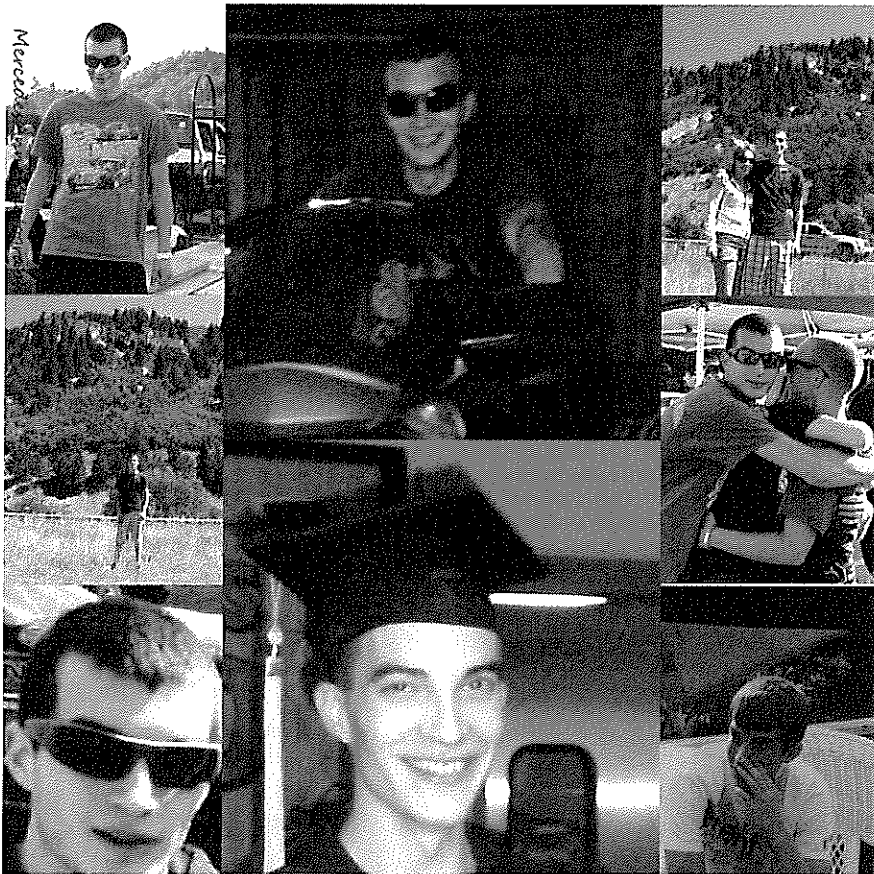
The family of Cody LaFont, who died in the shooting, [filed a lawsuit last week](#) against the city of Claremont, a police supervisor and Kibbe himself. They claim he used excessive force and that LaFont was the victim of discrimination.

<https://www.nhpr.org/post/ag-says-claremont-officers-shooting-no-longer-considered-legally-justified#stream/0>

## COURTS & CORRECTIONS

# NH's Police-Involved Shootings: Who Should Investigate?

By Nancy West  December 1, 2019



*Courtesy photo*

A collage of photos of Cody Lafont, who was shot to death Sept. 25, 2016 in Claremont by then-Police Cpl. Ian Kibbe

*Police-involved shootings in New Hampshire are almost always determined to be legally justified. In the Granite State, these investigations are conducted by New Hampshire State Police and the state Attorney General's Office. But even in a generally pro-police state like New Hampshire, some say the shootings are justified far too often and suggest it's time to empanel a civilian review board to examine them. This already happens in New York City and elsewhere. While race hasn't been an issue in New Hampshire police-involved shootings as in some other states, the percentage of mentally ill people who are shot by police is far above the national average. And one former police officer who backs how investigations are conducted now, speaks out about killing a man on the job and living with the aftermath. This report was made possible by a grant from the Fund for Investigative Journalism.*

**By NANCY WEST, InDepthNH.org**

Cody Lafont was looking for help and a shoulder to cry on as he often did late at night when dialing 9-1-1 after drinking too much.

Claremont, N.H., police often obliged, stopping by the home that the lonely, depressed 25-year-old shared with his pitbull terrier. The officers sometimes engaged Cody in conversation long enough to convince him to sleep it off.

Other times, police took him into protective custody.

The last time Cody called 9-1-1 three years ago, he was due in court the following month to face charges of abusing the 9-1-1 emergency call system. He told friends he was worried about the possibility of going to jail as a result.

It was around 4 a.m. on Sept. 25, 2016, when Cody started calling police that day, becoming irked they didn't show up right away. Friends had dropped him off at home after a night of drinking and attending the auto races.

Cody had texted his father earlier. He was worried, too, about missing counseling appointments his father was paying for to get him help for the major depression he experienced much of his life.

"Hey pops losing my mind agains [sic]," Cody texted.

And he kept calling 9-1-1. Finally, then-Claremont Police Cpl. Ian Kibbe was dispatched to Cody's place to tell him to knock it off.

There was little conversation that early morning and no witnesses, no body or cruiser cameras, when Cpl. Kibbe knocked on Cody's door with his flashlight just before 5 a.m.

Cody unlocked the screen door and was holding a bottle of vitamin water in his right hand and a black Colt revolver in his left hand, according to Kibbe's account later to investigators.

The dog ran outside past Kibbe, who ordered Cody to drop the revolver. Cody had an odd smile on his face, Kibbe recounted, as he pointed the revolver at him.

Kibbe fired the three shots that killed Cody during the brief encounter. It had lasted less than one minute.

Like almost all civilian shootings by police, Cody's death was investigated by State Police and the state Attorney General's Office and deemed to be legally justified.

His family didn't believe it from the start.

"It was senseless and we all just knew it," said Tracy McEachern, Cody's mother. "Cops investigating cops. I think they are all corrupt."

After Cpl. Kibbe was convicted of crimes related to a search he conducted 18 months later in an unrelated case and was jailed for 90 days, Attorney General Gordon MacDonald reviewed the finding and recently changed the report so Lafont's death is no longer deemed legally justified.

Kibbe pleaded guilty to obstruction of government administration and unsworn falsification in that case in which he and another officer conducted an illegal search, discovered weapons and lied about where they found them.

The amended conclusion now states: "Instead, the Office has concluded that it could not disprove Mr. Kibbe's self-defense claim, beyond a reasonable doubt, and therefore no criminal charges will be filed against Mr. Kibbe as a result of Mr. Lafont's death."

## **56 Shootings**

A review of the New Hampshire Attorney General's reports of 56 police-involved shootings over 30 years, several lawsuits and documents, a State Police grant and interviews showed:

14 police-involved shootings were not fatal.

52 were determined to be legally justified.

4 were not deemed justified. No criminal charges were brought (including the Lafont case) even when the final report was critical of the police.

25 of 55, or about 45 percent of police-involved shootings in New Hampshire researched for a State Police grant, involved victims with a documented mental illness. Experts say the national average is 25 percent.

### **Time for change?**

Mark Sisti, a well-known defense attorney who practices in Chichester and often represents high-profile clients, said it's time for New Hampshire to involve civilians in determining whether police acted appropriately when using lethal force against citizens.

Sisti called Attorney General MacDonald's reasoning in amending Ian Kibbe's shooting of Cody Lafont "a goofy, illogical conclusion. I don't understand it."

Because so many of the police-involved shootings are swiftly deemed legally justified by the Attorney General's Office, the rulings are not always viewed by the public as credible, Sisti said.

The law would have to be changed to create a civilian review board, which Sisti believes should include law enforcement, prosecutors, defense attorneys, forensic experts and lay people.

"This is still a police-driven legislature and the nature of the state instead of a citizen-driven state," Sisti said. "My feeling always has been that there should be some neutral and detached review of police-involved shootings."

People are skeptical of law enforcement doing their own investigations, he said.

"You can get rid of all that doubt by opening it to neutral people and it's not hard to do," Sisti said, pointing to citizen review boards in New York City and other cities around the country.

Police officers should be subject to the same scrutiny as anyone else, Sisti said.

"I think it's an incredible coincidence that all the police officers are always cleared. That does create skepticism around the state when they read headline after headline that all the officers are cleared. If we had a neutral panel, there would be more credibility," Sisti said.

State Rep. David Welch, R-Kingston, a member of the House Criminal Justice and Public Safety Committee, is an ardent supporter of police. He attends every graduation from the police academy.

Welch said it's getting harder to recruit new police officers because society is changing and the job is considered too dangerous.

It's also fraught with problems, including high divorce and suicide rates, Welch said.

Welch also believes there is a self-selection process in recruiting that sees more military veterans joining local police departments. If the veteran saw combat duty, he or she would have to be retrained for civilian police work, he said.

"Service in combat is a whole different thing than walking down Elm Street," Welch said.

He would support a civilian review board to oversee police-involved shootings as long as it is balanced. It's important that the public view the process as fair, he said.

The Attorney General's Office comes down "a little too quick," on determining the shootings are justified, he said.

"It doesn't always allay the suspicions people have," Welch said. While he supports police "almost 100 percent, they are human beings, too."



Associate Attorney General Jeff Strelzin is in charge of officer-involved shooting investigations. **Evan Lips photo**

### **Investigations**

Associate Attorney General Jeff Strelzin said all police-involved shootings are scrupulously investigated and treated the same as any homicide probe.

The three other police-involved shootings that weren't found to be justified besides the recent amending of the Ian Kibbe report included one in Nashua because the state didn't have enough information to rule one way or the other, Strelzin said.

In the second case, the state could not disprove the officer's self-defense claim beyond a reasonable doubt.

And the third involved an incident in Weare in which a suspected drug dealer was shot to death during a botched drug bust. The state didn't have enough evidence to make a finding, Strelzin said.

As to Cody Lafont's family believing a gun was planted at the scene, Strelzin said the ownership of the gun was tracked and Cody Lafont did in fact own it.

The difference between a justified shooting and one that isn't is based on the certainty of the level of proof in the case, Strelzin said.

"When a private citizen or a police officer uses deadly force and claims they acted in self-defense, the state has the burden of proof to disprove self-defense beyond a reasonable doubt.

"So, there's no burden of proof on the actor that he or she acted appropriately under the law. Once they raise the issue of self-defense, the burden of proof shifts to the prosecuting authority to disprove that claim beyond a reasonable doubt," Strelzin said.

Although the Attorney General's Office also represents State Police and other state agencies in its civil bureau, Strelzin said it is a totally separate unit and there is no communication between the two on such cases.

### **New York City review**

The New York City Civilian Complaint Review Board, chaired by the Rev. Fred Davie, is credited with the recent resolution to fire Police Officer Daniel Pantaleo in the widely publicized death of Eric Garner five years ago.

Federal and state authorities had declined to indict Pantaleo. A video showing him using a chokehold while arresting Garner for selling loose cigarettes went viral. Garner kept saying, "I can't breathe," before he died. Outrage in that case and others showing lethal force against African Americans generated calls for reform.

In an opinion piece published in the Washington Post, Davie said the all-civilian review board received the complaint that led to Pantaleo's firing.

"I hope that our experience on the board in the Garner case will prompt cities across the country to consider the value of civilian oversight of police.

"Holding law enforcement officers accountable and working toward better policing requires everyone to pay attention and speak up when appropriate," Davie said.

### **The aftermath**

Patrolman Tony Pivero was on patrol in Nashua, N.H., on a warm Labor Day evening in 2002 when his radio carried the excited description of a small pickup truck whose driver had just shot to death his ex-wife and a male friend. Her 9-year-old twin boys were home at the time.

The suspect, Joseph Collopy, 64, a former Massachusetts police officer, was seen fleeing his ex-wife's apartment, according to police reports.

By the time Pivero's cruiser pulled up beside Collopy's truck at a red light just before 7:45 p.m., he had just crossed Veterans Bridge, near the Hudson, N.H., town square.

Collopy was intoxicated and obsessed with his ex-wife. Police believed he was on his way to settle another grudge by murder when Pivero stopped him.

Pivero said he pulled up beside Collopy's truck.

"I looked to my right and we locked eyes," Pivero said. He knew he had the right guy and quickly pulled in front of Collopy blocking him from leaving.

Sirens blaring, cruisers from Hudson and Nashua pulled up behind Collopy so he couldn't leave.

Pivero's adrenalin had already kicked in. Suddenly, it was on overdrive. Pivero exited his cruiser, positioning himself by the trunk. He was hyper-focused on the killer's face – and staying alive.

Collopy put his gun, a .45-caliber, to his head at one point. Then he put it down in his lap.

"He lifted the gun again and started pointing it at me," Pivero said. "I fired and all of sudden ... chaos."

Pivero thought 10 or 15 minutes passed, but likely it was just a minute or two.

Other officers started shooting as soon as he fired.

"It sounded like thunder. It was chaos," Pivero said. "Then suddenly everything went eerily quiet."

Pivero remembered walking up to the truck and saw a bullet hole in Collopy's cheek.

"I went into police work to help people," Pivero said. But he could no longer perform the duties he loved for 18 years and soon retired on disability.



At first, it was bizarre dreams, he remembered.

“In one, I was sleeping, and I felt someone rubbing my arm. And when I woke up the person over me who was rubbing my arm was Joseph Collopy...,” Pivero said.

“It was so lifelike that today I am convinced that it actually happened.”

Police officers often have a similar mindset, he said. They get into the business to help people, Pivero said.

“What turned him bad I don’t know,” Pivero said. The Collopy shooting was determined to be legally justified.

After retiring, Pivero went into construction work, but he can’t help wondering what life would be like had he never unholstered his gun that day.

He felt a kinship with Collopy after learning he had been a police officer in Massachusetts. In his dream, the face seemed real.

“It was the same face I saw that day – kind of an old man looking depressed. It was very scary because it was so lifelike,” Pivero said.

Pivero, who has been known to criticize the Attorney General’s Office in the past, believes the current system to investigate police-involved shootings works well under the direction of Associate Attorney General Strelzin.

Part 1 of the interview with retired police officer Tony Pivero in Hudson town square near where the shooting death of Joseph Collopy occurred in 2002.

View [Part 2 \(https://youtu.be/ZwUojpGIDY8\)](https://youtu.be/ZwUojpGIDY8) and [Part 3 \(https://youtu.be/IgCEXC-2Wlc\)](https://youtu.be/IgCEXC-2Wlc) of the interview by clicking on the links. **Videos by EVAN LIPS.**

### **Numbers game**

Justin Nix, an assistant professor of criminology and criminal justice at University of Nebraska, said making sense of numbers when reviewing police-shooting deaths is difficult because there is no state or federal agency that keeps detailed records.

The Washington Post keeps fatal shooting data that remains steady at just under 1,000 fatal shootings a year nationally.

“We know that nationally, about 25 percent of those fatally shot showed signs of mental illness,” Nix said. “We also know that police frequently come into contact with people suffering from mental illness.”

On its face, more training, the use of crisis intervention teams, or pairing mental health workers with officers as they respond to calls involving people with known mental illnesses all seem like promising ideas, Nix said.

New Hampshire had 0.75 fatal officer-involved shootings per 1 million residents from 2015 to 2018. That ranks 42<sup>nd</sup> among all states and Washington, D.C.

There is no database that includes nonfatal officer-involved shootings.

The fact that most of the police-involved shootings in New Hampshire were ruled justified is not surprising, according to Nix.

Officers have the legal authority to use deadly force when faced with an imminent threat to their safety or the safety of others.

The available data consistently suggest that officer-involved shootings predominantly involve citizens who were armed with deadly weapons or were actively attacking the officers or other citizens – 82 percent had a deadly weapon, and 74 percent were either pointing/shooting a gun or attacking someone with a deadly weapon, Nix said.

“Given that such shootings are already a rare outcome of police-citizen interactions (a few thousand out of 52 million-plus in 2015), and most fall within their legal authority, I’m not sure what we should expect the number of officers charged to be, but I don’t think we should be surprised that it is small,” Nix said.

### **State Police grant**

Retired State Police Maj. Russell Conte has three decades of experience in police work and more recently served as a board member for the National Alliance on Mental Illness-NH.

He helped write a \$120,000 grant that will train 435 state troopers and fire/emergency personnel over the next three years in crisis intervention training to improve outcomes when dealing with mentally ill people.

“Between 1999 and 2017, there were 55 officer-involved shootings for all New Hampshire law enforcement agencies, of which 25 victims had documented mental health issues. In the same time period, the NH State Police were involved in 10 shootings, of which 5 victims had documented mental health issues,” according to the grant.

Conte expects the training will change the culture of state police and emergency first responders.

At a grant-funded training session earlier this year, Kim LaMontagne, a sales executive from Derry and a NAMI-NH volunteer, told about a dozen troopers how she suffered with mental illness in silence for many years.

She is now certified to train others in the “In Our Own Voice” NAMI-NH program. Using role play and personal anecdotes, LaMontagne explained how frightening it feels to have police show up at your door during a mental health crisis.

LaMontagne knows the feeling well as someone who suffers from major depression, anxiety disorder and who has been recovering from alcohol abuse for 10 years.

“I was that girl in the corner. I was that person who felt broken and empty,” LaMontagne told the group. “I had no hopes, no dreams...”

The troopers seemed unsure at first how to respond as she pretended to be a barricaded subject, but with LaMontagne’s encouragement, they began reaching out to her with growing confidence.

They asked calming questions about her children and family and eased her fears by telling her they didn’t park the cruiser in front of her home.

### **Cody Lafont’s mom**

The sadness lingers for Lafont’s friends and family. His mother, Tracy McEachern, couldn’t find a lawyer as administrator of his estate to sue police until just before the statute of limitations would have run out in September.

Attorneys Charles G. Douglas III and Jared Bedrick filed the lawsuit Sept. 24 in federal court the day before the deadline. The Attorney General’s Office released its final report a week later, saying Kibbe’s shooting was no longer considered justified.

The lawsuit alleges that the city of Claremont, Brent Wilmot and Ian Kibbe knew or should have known that Cody Lafont suffered from a mental disability and was a “qualified individual with a disability” as defined by the Rehabilitation Act or the Americans With Disabilities Act.

“Instead of perceiving Lafont’s disruptive behavior as being the manifestation of mental illness, ignored obvious pleas for help, and instead instructed an officer to respond to the house to tell Lafont to stop calling for help,” the lawsuit alleges.

McEachern, who was a local businesswoman until she left Claremont last year, doesn’t believe Cody owned the revolver that police say was found on the ground near his body.

“I firmly believe it was a plant,” McEachern said.

She distrusts much of the investigation. “It still bothers me that State Police was not called for an hour and a half,” she said.

And she doesn’t believe Cody calmly opened the door for Kibbe with an odd smile on his face.

“When Cody was drunk, he was mouthy. I don’t buy that business of a smile for a minute,” she said.

Because of his drinking, the family had removed a safe from Cody’s house containing what they believed were all of his weapons. Before that, when he bought a gun, he bragged about it, McEachern said.

“He hunted. Whenever he got a new rifle, he’d bring it to my house or into the shop and say, ‘Hey mom look what I bought this weekend.’”

McEachern moved to Florida last year. “Being out of the area has made it easier in a lot of ways. I’m not always running into people in a small town,” she said.

The last time she saw her son was a week before his death. Sometimes the grief is hard to handle even three years later, McEachern said.

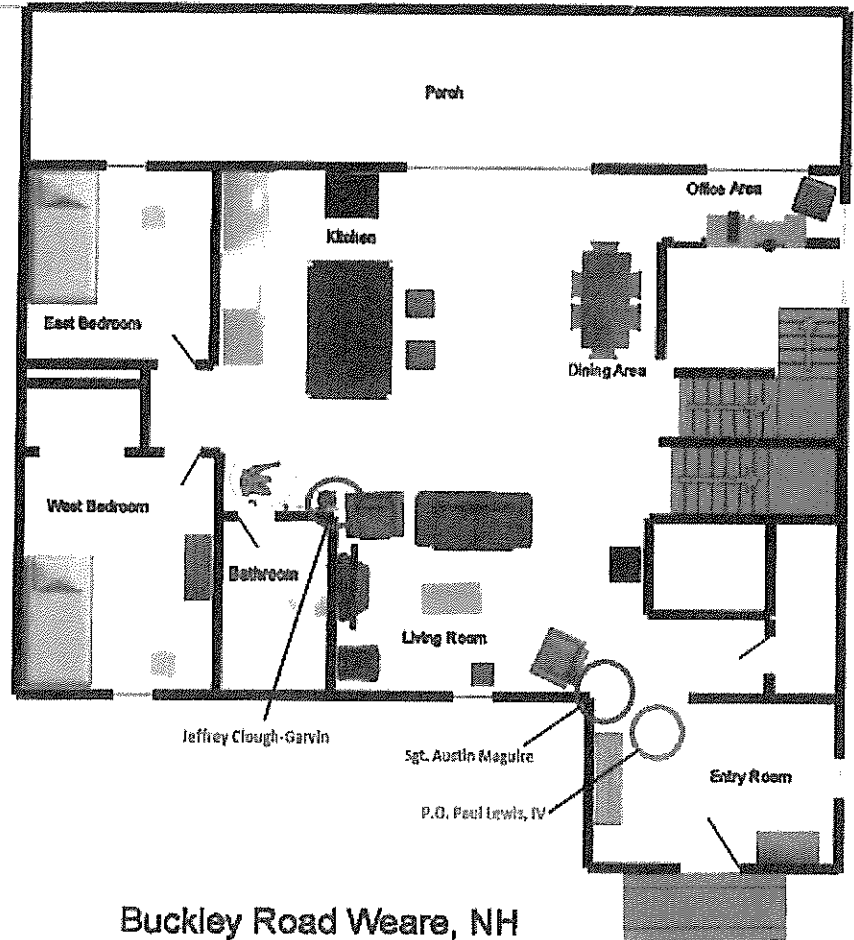
“You still have those days, you know,” she said

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**COURTS & CORRECTIONS**

# AG's Review Process in Weare Police-Involved Shooting Criticized

By Nancy West  December 23, 2019



*Attorney General's report*

Diagram of the Weare home where the officer-involved shooting occurred on Aug. 1. Jeffrey Clough-Garvin committed suicide after being shot by Weare Sgt. Austin Maguire.

By NANCY WEST, InDepthNH.org

**CONCORD** – The review process that led to the Aug. 1 police-involved shooting in Weare being deemed justified shows it's time for civilians to have a say in making such determinations, according to a well-known New Hampshire attorney.

Paul Twomey said he didn't find fault with the shooting itself but was critical of the review process undertaken by Attorney General Gordon MacDonald's office, which along with state police, investigates all officer-involved shootings.

"I believe we need some civilian non-law enforcement involvement in reviewing these situations with at least some persons who don't work with police being able to ask questions before the case is closed," Twomey said.

It's an issue that will come before lawmakers in the upcoming session with [House Bill 1257](http://gencourt.state.nh.us/bill_Status/bill_status.aspx?lsr=2575&sy=2020&txtsessionyear=2020&txtbillnumber=hb1257&sortoption=) ([http://gencourt.state.nh.us/bill\\_Status/bill\\_status.aspx?lsr=2575&sy=2020&txtsessionyear=2020&txtbillnumber=hb1257&sortoption=](http://gencourt.state.nh.us/bill_Status/bill_status.aspx?lsr=2575&sy=2020&txtsessionyear=2020&txtbillnumber=hb1257&sortoption=)), seeking to form a committee to study bringing civilians into the review process.

Almost all such officer-involved shootings are deemed justified by the Attorney General's Office in New Hampshire, according to records dating back three decades. No criminal charges have been brought in the handful of cases that weren't found to be justified.

Twomey reviewed the body camera footage of the two officers who responded to the Weare home where Jeffrey Clough-Garvin, 43, committed suicide after being shot by Weare Police Sgt. Austin Maguire on Aug. 1.

"I don't see any reason to criticize the actual shooting — it was a highly volatile and dangerous situation and there is nothing I see in the videos that would raise a question about the officers' version of events," Twomey said.

The Attorney General's report said Sgt. Maguire shot Clough-Garvin, 43, in an exchange of gunfire, but Clough-Garvin fired the fatal shot himself and his death was ruled a suicide. Clough-Garvin shot Officer Paul Lewis IV in the arm shortly after both officers entered the home.

"I do see a reason to criticize the review process," Twomey said. The videos are posted at the end of this story and on the Attorney General's website.

MacDonald's spokesman Kate Spiner said there was no criticism heard at the recent press conference announcing the Weare findings or after.

"The investigation was to determine the legality of the use-of-deadly-force by law enforcement, not the propriety of tactics or procedures," Spiner said.

About House Bill 1257, Spiner said, "At this time, this office has not reviewed the legislation and we are unable to comment."

### **Questions raised**

The videos show the officers arriving at the home for a domestic complaint and talking with Clough-Garvin's wife outside by the entrance, telling her to stay there. She told police her husband was armed and would kill them. Gunfire erupted within 30 seconds of the officers entering the home.

"Drop the gun," the officers kept shouting.

Clough-Garvin responded: "Kill me."

Twomey said: "There is no mention of the decisions that created the situation.

"As I understand it there was a distraught violent person who had ingested drugs and exhibited extremely dangerous behavior. I see no review or even discussion of the decision to enter the home once the wife had been safely removed (although telling her to wait by the door area as they entered does appear to me at least to be unnecessarily endangering her.)" Twomey said.

Twomey wondered why the police officers didn't wait and try to begin negotiating before entering the home.

"There well may be good answers to these questions but it is instructive that the current review process by the Attorney General acting alone fails to raise or address this question. The entry would seem to have markedly raised the danger to everyone involved including the officers themselves," Twomey said.

“Reviewing it would not be for the purpose of criticism of the officers but rather to see if lessons could be learned that could save lives in the future,” he said.

Rep. Paul Berch, D-Westmoreland, said he was reluctant to give an off-the-cuff opinion of the Weare shooting, but said civilians should be involved in the review process.

“I do think we should have an independent, non-partisan civilian review board to review officer-involved shootings, develop and apply national best practice standards in this area, and issue reports and recommendations, both as a general matter and with regard to specific events,” Berch said.

### **Proposed legislation**

House Bill 1257 ([http://gencourt.state.nh.us/bill\\_Status/bill\\_status.aspx?lstr=2575&sy=2020&txtsessionyear=2020&txtbillnumber=hb1257&sortoption=](http://gencourt.state.nh.us/bill_Status/bill_status.aspx?lstr=2575&sy=2020&txtsessionyear=2020&txtbillnumber=hb1257&sortoption=)) will be introduced Jan. 8 and referred to the House Criminal Justice and Public Safety Committee.

Rep. Amanda Bouldin, D-Manchester, submitted the legislation that would form a study committee to examine the benefits of having some kind of citizen review board for officer-involved shootings.

The committee would include three House members appointed by the Speaker and two senators appointed by the Senate President.

The committee would look at “opportunities for and the value of citizen involvement in the department of justice’s investigations of officer-involved shootings.”

It would also include studying existing policies for investigations into officer-involved shootings and into police misconduct, how other states have incorporated citizens into such investigations and the use by other states or local entities of public disciplinary or review hearings in response to police misconduct.

“I hope most legislators are open to having this conversation,” Bouldin said.

### **From the Attorney General’s website:**

*These videos include language and images that may be unacceptable or troubling to viewers. Viewer discretion is advised. Click on the Video Clip to continue or “[Return to DOJ Home](#) (<https://www.doj.nh.gov/index.htm>)” to cancel.*

- [Weare Body Cam 1](https://www.doj.nh.gov/multimedia/weare-video01.htm) (<https://www.doj.nh.gov/multimedia/weare-video01.htm>)
- [Weare Video 2](https://www.doj.nh.gov/multimedia/weare-video02.htm) (<https://www.doj.nh.gov/multimedia/weare-video02.htm>)
- [Weare Video 3](https://www.doj.nh.gov/multimedia/weare-video03.htm) (<https://www.doj.nh.gov/multimedia/weare-video03.htm>)
- [Weare Video 4](https://www.doj.nh.gov/multimedia/weare-video04.htm) (<https://www.doj.nh.gov/multimedia/weare-video04.htm>)
- [Weare Video 5](https://www.doj.nh.gov/multimedia/weare-video05.htm) (<https://www.doj.nh.gov/multimedia/weare-video05.htm>)
- [Attorney General’s Report Regarding August 1, 2019 Officer-Involved-Shooting Incident in Weare, New Hampshire](https://www.doj.nh.gov/multimedia/documents/20191216-weare-ois-report.pdf) (<https://www.doj.nh.gov/multimedia/documents/20191216-weare-ois-report.pdf>)
- [August 1, 2019 Officer-Involved-Shooting Incident in Weare, New Hampshire Presentation](https://www.doj.nh.gov/multimedia/documents/20191216-weare-ois-presentation.pdf) (<https://www.doj.nh.gov/multimedia/documents/20191216-weare-ois-presentation.pdf>)





Bill as  
Introduced



HB 1257 - AS INTRODUCED

2020 SESSION

20-2575  
08/06

HOUSE BILL            **1257**

AN ACT                establishing a committee to study the opportunities for citizen involvement in attorney general investigations of officer involved shootings.

SPONSORS:            Rep. Conley, Straf. 13; Rep. Cleaver, Hills. 35; Rep. Andrew Bouldin, Hills. 12; Rep. Espitia, Hills. 31; Rep. DiLorenzo, Rock. 17

COMMITTEE:          Criminal Justice and Public Safety

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ANALYSIS

This bill establishes a committee to study the opportunities for citizen involvement in attorney general investigations of officer involved shootings.

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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.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Twenty*

AN ACT                    establishing a committee to study the opportunities for citizen involvement in attorney general investigations of officer involved shootings.

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

1            1 Committee Established. There is established a committee to study the opportunities for  
2 citizen involvement in attorney general investigations of officer involved shootings.

3            2 Membership and Compensation.

4            I. The members of the committee shall be as follows:

5            (a) Three members of the house of representatives, appointed by the speaker of the  
6 house of representatives.

7            (b) Two members of the senate, appointed by the president of the senate.

8            II. Members of the committee shall receive mileage at the legislative rate when attending to  
9 the duties of the committee.

10          3 Duties.

11          I. The committee shall study opportunities for and the value of citizen involvement in the  
12 department of justice's investigations of officer involved shootings, including:

13          (a) The department of justice's existing policies for its investigations into officer involved  
14 shootings and into police misconduct.

15          (b) How other states have incorporated citizens into the investigations of officer involved  
16 shootings and police misconduct, including through civilian oversight bodies, police commissions,  
17 and citizen participation on internal police review entities whether at the state, regional, municipal,  
18 or local level.

19          (c) The use by other states or by municipal and local entities of public disciplinary or  
20 review hearings in response to police misconduct.

21          (d) The possible establishment of a civilian complaint commission or review board in  
22 New Hampshire to oversee officer involved shooting investigations and/or to field complaints of  
23 police misconduct in the state.

24          (e) The method of and standards for appointment of members, citizens, and others to the  
25 various entities described above.

26          (f) Other methods to increase the transparency of officer involved shooting investigations  
27 and ensure police accountability in New Hampshire.

28          II. The committee shall solicit information from any individual or entity the committee  
29 deems relevant to its study, including the attorney general or their representative, members of law

HB 1257 - AS INTRODUCED

- Page 2 -

1 enforcement, the New Hampshire Public Defenders, the New Hampshire Association of Criminal  
2 Defense Lawyers, the American Civil Liberties Union, and members of the public.

3       4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from  
4 among the members. The first meeting of the committee shall be called by the first-named house  
5 member. The first meeting of the committee shall be held within 45 days of the effective date of this  
6 section. Three members of the committee shall constitute a quorum.

7       5 Report. The committee shall report its findings and any recommendations for proposed  
8 legislation to the speaker of the house of representatives, the president of the senate, the house  
9 clerk, the senate clerk, the governor, and the state library on or before November 1, 2020.

10       6 Effective Date. This act shall take effect upon its passage.