Legislation would shine ‘sunlight’ on instances of N.H. police misconduct

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Under state law, the disciplinary records of public employees who have engaged in wrongdoing are kept out of the public eye.

But if a bill currently making its way through the State House passes, police officers would no longer enjoy that protection. House Bill 153 would make the disciplinary records of police officers subject to right-to-know requests when there has been a sustained finding of misconduct.

Examples of misconduct would include, but not be limited to, discharging a firearm that led to death or serious injury; sexual assault, and being dishonest, like falsifying reports or lying in court. The law would include any findings made outside of the court system, such as an internal review by municipal officials.
State Rep. Paul Berch, the bill’s prime sponsor, called the measure “sunlight legislation,” modeled after a recent change in California state law that made all police disciplinary records publicly available. He said about 27 states currently have limited access or complete access to police disciplinary records; the remaining, including New Hampshire, keep those records private.

He said the bill would help build public trust in law enforcement and show officers that state leaders take such matters seriously.

“We’re saying the public has a right-to-know what happened if there are disciplinary records involved,” he told fellow members of the House Judiciary Committee.

But representatives of the state’s police association and state trooper association felt differently.

No one likes a dishonest cop more than a good cop, said Sgt. Mark Beaudoin of the New Hampshire Troopers Association. But Beaudoin said the bill “seems to be a solution looking for a problem.”

He argued citizens are already able to learn about police misconduct when it results in criminal charges because those charges are public, he said. And in cases where a firearm is discharged, the state’s Attorney Generals Office investigates and releases its findings in a report.

Such a report, compiled by a police chief or another authority figure, would be more suitable than releasing the disciplinary records wholesale, Beaudoin said, because it would allow for discretion. He said releasing records could violate the privacy of people ancillary to the misconduct, like victims or other officers who were witnesses.
But even when summaries exist, public bodies don’t always disclose them.

The town of Salem spent $77,000 worth of taxpayer dollars to audit its police department last year. When the findings came out in November, the town refused to release the entire report. Since then, the *Union Leader* and the New Hampshire chapter of the American Civil Liberties Union have sued (https://www.unionleader.com/news/courts/union-leader-and-aclu-sue-town-of-salem-to-release/article_11871101-868c-5ecc-886b-8a21dbe3fe18.html) the town for the unredacted version, and the state’s Attorney Generals Office has opened an investigation into the department’s current deputy police chief.

ACLU-N.H. Legal Director Gilles Bissonnette said an “executive summary” of police misconduct already exists – the Exculpatory Evidence Schedule, formerly know as the Laurie List, but the Department of Justice has resisted releasing an unredacted version of the list, citing police personnel privacy laws.

Even records like the attorney general’s report on police shootings aren’t ideal, Bissonnette continued.

“The point of 91-A is so that the public can vet how the government investigates shootings, how it investigates crimes,” he said.

Bissonnette also mentioned that, as in any instance where a party’s privacy is concerned, officials have the ability to redact information from a record.

And David Saad, president of Right to Know N.H., questioned whether the public could trust a report on misconduct.
“The person writing the summary would act as a filter to the public,” he said. “I don’t think anyone should have the power to limit what the public can see.”

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