



**TO: Senate Government Operations Committee**  
**FROM: Allen Gilbert, executive director, ACLU-VT**  
**DATE: Feb. 16, 2016**  
**SUBJECT: S. 221, law enforcement officers**

There has been increasing interest both around the country and in Vermont on how to provide greater police accountability. The issue has two sides: the need for the profession itself to ensure professionalism, and the public's right, as expressed in the Vermont Constitution in Article 5, of "governing and regulating" police. Quoting the state constitution can sound like hyperbole, but **public trust in police is often said to be an officer's most effective weapon.**

Vermont has a very decentralized policing system. Officers are proud of control over their local agency. There are few state standards, even in an area as critical as use of deadly force. And once an individual gains officer certification after completing a course at the Vermont Police Academy, s/he is largely good to go – forever.

Very few officers certified in Vermont have had their certification revoked (the number currently posted on the Vermont Criminal Justice Training Council Web site is 11, all within the last three years). **There have been egregious examples of officer misconduct that didn't lead to decertification.** Perhaps one of the worst examples is the recent case of two officers who profiled both a colleague and citizens by race; their actions led to a million-dollar legal settlement. An internal investigation substantiated the profiling allegations, yet neither of these officers has been disqualified to work in law enforcement in Vermont. (Under current rules, there are no grounds for their decertification.)

Four years ago the ACLU served on a study committee charged with looking at greater police accountability. The majority of the committee was unenthusiastic about licensing police officers (as is done in Vermont for nearly 50 other professions). However, a national law enforcement expert, Prof. Roger Goldman of St. Louis University School of Law, suggested using the system already in place for certification of officers as a mechanism for also de-certifying those officers who broke the law or acted unprofessionally. The bill before you builds on that suggestion.

**Broadening de-certification grounds has merit, and we applaud the VCJTC's work in moving things this far. In its current form, however, S. 221 has serious shortcomings.** The substantial modifications made to the original bill will largely keep in place the current system of officer investigations. We fear this will do little to increase public trust in police accountability and transparency.

The ACLU sees these shortcomings with the bill:

- **Oversight of officers remains largely in the hands of local agencies rather than in the hands of an autonomous, independent body.** The original S. 221 had the VCJTC providing oversight.
- **The bill is complex.** It creates three categories of police conduct violations. Exactly when the VCJTC can launch its own investigation of alleged violations within these three categories is difficult to understand, with mandatory "shall" language used alongside

exemptions and prohibitions (see “§2383. Council Investigations” starting on line 10, page 22 of the bill for an example of the complexity).

- **The bill requires a determination of whether a local agency’s internal investigation process is “effective.” Exactly how effectiveness is to be determined initially and on an ongoing basis is not clearly established.** Will an annual review of all 60+ agencies’ internal investigation processes take place? This seems an extraordinary amount of work and is doubtless why most professions rely on state-level practice boards to accept and investigate complaints of unprofessional conduct.
- **Establishing the State Police Advisory Commission as a benchmark for “effective” officer oversight (line 7, page 19) will be seen by many outside law enforcement as hollow.** The SPAC is viewed as insular, secret, and conflicted. It rarely, if ever, exercises its statutory option to release information about the officer investigations it reviews. The Vermont State Police web site describes SPAC as “made up of independent Vermont citizens who have no connection to the Vermont State Police.” This is a bit of a stretch. Its current chair is a prominent police defense lawyer whose “reputation as a subject matter expert on law enforcement liability is well known throughout Vermont and beyond,” according to one Vermont police chief quoted on the SPAC chair’s law firm Web site.
- **Internal investigations undertaken by the Vermont State Police are not likely to be reported to the VCJTC (line 14, page 21) because SPAC approval is needed for disclosure.** As noted above, the overwhelming practice of the SPAC over 30 years of operation is nondisclosure of any information concerning VSP internal investigations. Since SPAC is seen in the bill as a model for “effective” oversight, local agencies may try to follow this SPAC practice and decline to report investigations to the VCJTC.
- **Equating review by a local select board with a civilian review process in police agency internal affairs investigations (line 2, page 19) ignores the inherent conflict an employer has in an agency matter.** Civilian review processes are check-and-balance reviews handled by a body of independent citizens with no ties to any of the people involved in the investigation. A select board, or city council, cannot provide the necessary objectivity – both perceived and actual – the public expects.
- **There are odd and confusing exceptions to the VCJTC reporting requirement,** such as the exception that alleged violations of Category B first offenses need not be reported to the VCJTC when an officer resigns. One Category B violation is “biased enforcement.” This exception means that if an agency begins to investigate profiling complaints against a specific officer, and the officer resigns while under investigation, no report of the complaint and investigation need be sent to the VCJTC. Given the public’s sensitivity to profiling by police, this exception could be criticized as enabling cover-ups of bad actors who can continue working in law enforcement by jumping to another department.
- **Regardless of intent, giving the VCJTC “discretion to decline, cease, or settle an investigation, including for reasons of administrative efficiency or policy” (line 10, page 24) could invite charges of favoritism.** The terms “administrative efficiency” and “policy” are very broad. The public will likely conclude the worst (cover-up) when the VCJTC declines or halts an investigation (and the reality is inadequate human or financial resources).

The goal of the original S. 221 was designation of a fair, impartial body to handle officer misconduct complaints in a consistent manner that respects proper procedures and due process rights. The ACLU worries that atomizing this function and effectively approving current practices will not convince the public that a new level of police accountability has been reached.