

February 12, 2016

TO: Senate Government Operations Committee Witness.

FROM: Michael G Davidson, Castleton VT

SUBJECT: Hearing Witness – written statement to supplement oral testimony

Background: I was born and raised in Rutland, VT and became a police officer at the age of 20, just prior to my 21st birthday. I have remained a sworn police officer for the past 28 years. I have served in my current position with the State of Vermont for the past 14 years. I have served in a variety of positions to include deputy sheriff, patrolman, sergeant, acting chief, director of security at a state campus, and investigator. I have worked as both an administrator and non-supervisory employee. I had served as a shop steward for the state union for over a decade and a past member of the contract bargaining team.

Current Position: Investigator, Vermont Department of Liquor Control

EDUCATION

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| 2002 | Master of Arts, Castleton State College- Educational Leadership |
| 1998 | Bachelor of Arts, Castleton State College – Sociology w/concentration in Criminology |
| 1991 | Associate in Science, Castleton State College – Criminal Justice |

EMPLOYMENT IN LAW ENFORCEMENT

2002 – current - Investigator, Vermont Department of Liquor Control

1992 – 2002 Vermont State Colleges

Director of Public Safety, Castleton State College

1990 – 1992 Police Officer/Sergeant/Acting chief, Town of Castleton, VT

1988 – 1990 Deputy Sheriff, Rutland County Sheriff's Department

*1992-2002 Part-time Officer, Rutland county Sheriff's and Fair Haven Police

I appear before the committee to raise some issues I believe should be addressed in S.221. I do support the overall concept of the Bill, but wish to identify areas that I believe, if modified, could better achieve the goals intended.

My first concern is the organization of the Council. This Bill intends to create a professional standards board to oversee and stand in judgement of police professional conduct. While I do support the need for holding officers accountable for unprofessional conduct, I believe a council or board should be comprised of the practitioners from all levels, from the administrators to the beat cops. The proposed make-up will consist of mostly political appointees with just a couple association appointments. This does not meet what I consider to be representative of a profession, where the rules of conduct are determined from its members. (example: bar association and medical boards).

I ask this committee to consider either adjusting how the council is derived to include lower-ranking officers, or to create some mechanism to form a peer-review board to be used in the professional misconduct determinations.

In addition, Investigators from liquor control currently have no representative or proposed representation on the Council. Neither does the union representing DLC Investigator's interest (VSEA). I ask the committee to consider combining a council appointment through a selection derived by internal group determination from the three state law enforcement entities (game wardens, DMV, and liquor control). These three groups are currently trying to form a separate collective bargaining unit and, if successful, would be similar to how the Troopers Association appoints a Council member.

The proposed decertification criteria and penalties section of this Bill contains many issues that should be carefully considered, as it impacts the jobs of the police officer. While I believe the newly amended proposal takes into consideration the majority of issues to assure fairness, there is a couple areas that I believe should be addressed.

The proposed implementation of this Bill of July 2016 has left little time for any collective bargaining agreements to be negotiated to meet the standard of an "effective internal affairs program". With the state contract already beyond the point of negotiations, it is expected to be July 2018 before another one is bargained. While some agencies may already have policies in place that meet the proposed standards, others do not. I ask the committee to consider some form of phase-in, or agency mandate to establish through the appropriate processes, policies and conditions that create the "effective internal affairs program".

To have an overall professional conduct review program, I believe it should be equally applied to all members of the law enforcement community. The current bill, as amended, proposes to essentially exempt the Vermont State Police from the proposed process and Council oversight. While the VSP does have a statutory internal affairs program, there should not be two standards. I ask the committee, that if implemented, that they treat all officers and agency equally.

In my years of observing the various agencies application of their internal affairs program, I believe that the Investigators are often influenced by the agency head or supervisors, creating a bias outcome. If the overall goal of this Bill is to establish a professional misconduct determination board, I believe some form of external agency review should be done, outside the influence of the employee's agency.

I ask the committee to consider some form of mechanism to eliminate the potential bias of an investigator reporting to the same agency head as the officer under investigation. I suggest the addition to the proposal to allow for an officer under investigation to be able to request some form of review or oversight of the process from the Council. The current proposal requires the Council to accept the findings and sanctions determined by an agency with an "effective internal affairs program". This "must accept" language may impede the Council from taking jurisdiction when a bias is perceived.

Section f (Valid Investigation) addresses issues that mostly appear to be the failings at a leadership level. I believe wording should be addressed to require an agency follow established investigation policies. Example, the failure of a chief to assign an investigator, whether internally or externally, when a valid complaint has been received should not deprive the officer of their due process under their agencies established internal affairs program. There should be a misconduct violation brought against an agency

head for failure to comply with their policies and the Council should require the agency to conduct the investigation in accordance with the established program.

Regarding conducting hearings while concurrent proceedings are pending, the Investigative and Hearing portion of this Bill, as amended, states the Council may hold a hearing even during administrative or criminal proceedings involving an alleged violation. However, the conclusions will be deferred until the process is completed for violations of category B.

The concern I have is this only addresses category B and does not address category A violations. I believe that requiring an officer to testify and provide evidence while other proceedings are concurrently taking place may jeopardize their due process rights in those other proceedings. To have an administrative hearing that uses a lower standard to determine fault (preponderance of evidence) as well as a different standard for entering statements, witness testimony, and other evidence, may impact the officer's ability to receive a fair hearing.

I ask the committee to consider placing restriction/delays on the administrative process concerning categories A and B while other administrative, criminal, or appellate actions are still pending.

The establishment of a decertification process that is external of an employee's agency creates some legal issues that should be considered. Again, I do support the establishment of some form of decertification process, but this process must be fair and as simple as possible for all parties. I ask this committee to consider a way to ensure that employee/employer labor relation rights will continue during any Council action. The fact that decertifying an officer effectively terminates their employment or future employment in their career field should have this committee carefully consider how the employee's constitutional protected property right will be protected throughout the process. Again, I don't disagree the need for a professional conduct review program. I just want to urge the committee to afford the officer the same rights as other professions would receive.

The hearing process may be a large financial burden on the officer as they would most likely need to hire an attorney to represent them or guide them through the legal process associated with formal administrative procedures. In most cases, unions would not represent their members at this level, as it no longer is part of their collective bargaining agreements. The cost should be reviewed and some mechanism be in place to limit the expense for an officer should be established.

The appeal process to the Supreme Court would most likely cost an officer in the area of \$20,000, considering the transcripts, filing, and attorney fees.

I recommend the committee consider some form of peer-review as an intermediate appeal remedy or somewhere in the process, to limit the potential high costs to the officers.

I believe a peer-review would bring an element of professional review to the process, if the peers were selected by a fair and impartial process that includes officers from varying backgrounds.

My final concern is the section of the bill, as amended, that places a requirement on agencies hiring an officer who has worked at another agency to notify the Council prior to hiring. The council will the need to verify the officer is certified. This provision allows for the Council to withhold certification (suspend) and seek information from the former employer regarding the officers conduct while employed, even if the conduct was not used in termination of employment.

My concerns here are that the process unfairly restricts the officer's employment rights. The officer at this point may have limited rights from bargaining contracts or labor law as they are no longer employed. The process of decertification should have taken place prior, in accordance of this proposed bill, upon the officer leaving the former employment while under investigation, if there was cause for such action.

I do see the need for a standardized background investigation on all newly hired police officer. I believe the Council should report either "certified" or "not certified" upon inquiry. If the Council temporarily suspends or take other investigative action at the time the officer is being hired at another agency, this may cause an undue impact on the hiring agencies decision to employ a police officer. Again, if there was cause for decertification that action should have already taken place.

Additionally, this practice is only applicable to Vermont Agencies. Officers often come to Vermont from other States with reciprocation on training standards. These agencies from other states are not subject to the reporting requirements and will create a double-standard.

I speak in support of this Bill addressing the requirements to report to the Council if a member left employment in the midst of a complaint. However, the agency or Council should be required to complete their investigation at the time of employment separation, not at a later date.

In conclusion, I want to thank the committee for their hard work on this issue. I do support the intent of this Bill, as amended, and ask for your careful consideration to assure due-process and fairness is of the utmost importance when considering any action that would impact the career, reputation, and livelihood of an officer. I reiterate that I believe this decertification process should be applicable to all, not a selective group, and that the processes should not be costly or interfere with the due-process rights of police officer.

Thank you

Michael Davidson