

Proposed Council Decertification Criteria and Penalties

I. Definitions

- a. "Law Enforcement Officer" shall have the same meaning as in 20 V.S.A. § 2358.
- b. "Agency" shall refer to any employer of a "law enforcement officer" as defined above.
- c. "Executive Officer" shall refer to the highest-ranking law enforcement officer of the Agency.
- d. "Effective Internal Affairs Program" shall mean:
 - i. The agency accepts complaints from any source, and assigns an investigator to determine whether an officer violated an agency rule or policy, state or federal law, or state or federal constitution. The investigator may be from another agency.
 - ii. The Agency has language in its policies or applicable collective bargaining agreement outlining expectations of employment and/or prohibited activity.
 - iii. The Agency discipline is decided upon just cause, a set range of sanctions for offenses, consideration of mitigating and aggravating circumstances and due process rights for accused members in its policies. The Agency treats accused agency members fairly.
 - iv. The Agency assigns an officer at the same certification level or higher and at a rank higher than the officer in question, and who is trained in investigations and/or internal affairs (doesn't apply if the agency is using an outside investigator).
 - v. The Agency has a civilian review process, at least for highly serious infractions, such as felonious criminal conduct or egregious professional misconduct, regardless of whether the process has a formal or final role in the investigation. An elected body, such as a Board of Selectmen, may constitute a civilian review process.
 - vi. Or, the Vermont State Police Internal Affairs process set forth pursuant to 20 V.S.A. Chapter 113, subchapter 3.

- e. "Investigator" shall mean an officer, whether of the agency or another agency, who is of a higher rank than the officer under investigation who is trained/certified in criminal investigations and/or internal affairs; a retired officer trained/certified in criminal investigations and/or internal affairs.
- f. "Valid investigation" shall mean an investigation conducted pursuant to established or accepted procedures. An investigation shall not be valid if:
 - i. The agency does not have an effective internal affairs program or did not assign the investigation to an investigator.
 - ii. The agency refuses, without any legitimate basis, to conduct an investigation.
 - iii. The agency intentionally did not report allegations to the Council as required.
 - iv. The agency attempts to cover up the misconduct or takes an action intended to discourage or intimidate a complainant
 - v. The agency's executive officer is the officer accused of misconduct.
- g. "Category A Violation" shall mean:
 - i. A felony recognized by the State of Vermont.
 - ii. Any misdemeanor recognized by the State of Vermont committed while on duty
 - iii. One of the following misdemeanors as defined by Vermont State Statutes if committed off duty:
 - 1. Simple Assault, 2nd Offense
 - 2. Domestic Assault
 - 3. False Reports and Statements
 - 4. DUI, 2nd Offense
 - 5. Violation of any court order
 - 6. Stalking
 - 7. Cruelty to Animals,
 - 8. False Pretenses
 - 9. Voyeurism,
 - 10. Prostitution,
 - 11. Distribution of a Regulated Substance
 - 12. Simple Assault on a Police Officer
 - 13. Possession of a Regulated Substance, 2nd Offense

- iv. Gross Professional Misconduct amounting to actions on duty and/or under color of authority that involve substantial deviation from conduct, such as:
 - 1. Sexual harassment involving physical contact or misuse of position
 - 2. Misuse of official position for personal or economic gain;
 - 3. Excessive use of force under color of authority, 2nd offense
 - 4. Mistreating persons in custody
 - 5. Use of electronic criminal records database for personal, political, or economic gain
 - v. Failure to complete annual in-service training requirements.
- h. "Category B Violation" shall mean allegations of misconduct that are neither Category A nor Category C Violations, as listed below:
- 1. Abuse of authority
 - 2. Biased enforcement
 - 3. Membership in organizations which advocate, promote, plan, or effects criminal conduct or the overthrow of or interference with any lawfully constituted government in the United States
 - 4. Political activity that would be in violation of any federal or state law or regulation
 - 5. Avoiding the responsibility of his/her law enforcement position
- i. "Category C Violation" shall mean all allegations of misconduct pertaining to Council processes or operations, including:
- i. Knowingly making material false statements or reports to the Council
 - ii. Falsification of Council documents
 - iii. Intentional interference with Council investigations, including intimidation of witnesses, or misrepresentations of material facts.
 - iv. Material false statements about certification status to an agency.
 - v. Knowing employment of individual in position or duties for which individual lacks proper certification.
 - vi. Intentional failure to file report mandated by this statute.

II. Investigation.

a. The Council shall investigate or refer for investigation complaints against officers that, if deemed to be credible, constitute grounds for suspension or revocation of certification, unless the allegations were subject to a valid investigation by the agency's effective internal affairs program.

i. A valid investigation shall not bar a Council investigation if

1. The officer received a final conviction of a Category A offense;
2. The investigation resulted in the officer's termination from the agency.
3. The report involved a second violation of a Category B offense.
4. The allegations are Category C violations.

b. If administrative or criminal investigation(s) about a second violation of Category B allegations is ongoing or if the matter is subject to a *de novo* hearing or appeal (including but not limited to a *Loudermill* hearing, an arbitration hearing or a Vermont Labor Relations Board grievance/appeal), the Council shall defer its own conclusions and actions until the conclusion of the investigation or hearing, or until any final disposition of criminal allegations, including but not limited to verdict or dismissal.

c. If a valid investigation into a second violation of a Category B offense by an agency with an effective internal affairs program concludes that the officer did not engage in the alleged misconduct, then the Council will take no action. If a valid investigation concludes that the misconduct occurred, the Council must accept the agency's disciplinary decision, unless the Council concludes the level of discipline imposed is arbitrary or capricious.

d. In the event that the Council conducts the investigation, the Council-assigned investigator shall abide by all Council policies or procedures governing investigations.

III. **Council Disciplinary Procedure**

a. Hearings shall be conducted by the Council in accordance with 3 V.S.A. §§ 809, 809a, 809b, and 810.

b. Prior to any hearing, the Council shall produce all documents associated with agency's investigation, including but not limited reports, witness

statements, recordings, or transcripts, to the officer. Such documents may be subject to conditions to address confidentiality concerns.

- c. Hearing decisions shall comply with the requirements of 3 V.S.A. § 812
Judicial review of the final decisions of the Council is available in the supreme court, pursuant to 3 V.S.A. § 815.
- d. The Council shall have discretion to decline, cease and/or settle an investigation, including but not limited to for reasons of administrative efficiency and/or policy.

IV. Duty to Report, Duty to Maintain, Duty to Confirm, Disciplinary Guidelines, Range of Penalties

- a. The executive officer of an agency shall report to the Council within 10 business days of receipt of any valid civil, administrative or criminal complaint, that if deemed credible constitutes that the officer committed a Category A violation;
- b. The executive officer of an agency shall have report to the Council within 10 business days of issuance of any report or findings of an investigation or appeal into allegations of a Category A Violation, including but not limited to a due process hearing by the employer, a trial, or an arbitration or administrative hearing;
- c. The executive officer of an agency shall have the duty to report to the Council within 10 business days of issuance of any decision or findings related to allegations of a Category A Violation, including but not limited to, hearing officer decision, arbitration or administrative decision, judicial decision (including findings of fact or verdict);
- d. The executive officer of an agency without an effective internal affairs process shall report to the Council within 10 business days of receipt of allegations of Category B violation;
- e. The executive officer of an agency process shall report to the Council within 10 business days of termination of an officer for Category B violation;
- f. In any circumstances, the executive officer of an agency shall report to the Council within 10 business days if an officer resigns while under investigation for any offense category, including Category B second offenses.
- g. Duty to report by the Vermont State Police shall conform with 20 V.S.A. §1923 with the approval of the State Police Advisory Commission.

- h. Prior to hiring or accepting transfer of an individual who has worked as an officer for another agency, the executive officer of an agency department shall confirm certification of the applicant or transferee with the Council, and shall notify Council that the employer has hired or is contemplating hiring an individual previously employed by another agency in a position that required certification from the Council.
 - i. During the administrative certification review, the Council may withhold verification if it determines that the officer may have left previous agency for Category B or C violations and for the duration of any Council investigation.
 - 1. The Council may temporarily suspend certification during its investigation.
 - 2. The Council may, following an investigation, suspend or revoke certification, subject to hearing requirements above.

V. Sanctions

- a. The Council may choose from the actions identified below when determining an appropriate sanction for a violation:
 - i. Written reprimand, removed from the officer's record after three years provided there is no repetition of the same or similar offense
 - ii. Probation.
 - iii. Probation with terms and conditions as imposed by the Council, which may include training, participation in counseling, payment of restitution, etc.
 - iv. Suspension of certification and privilege of employment as an officer for a period not to exceed two years.
 - v. Revocation of certification for a period not to exceed three years.
 - vi. Permanent revocation of certification.

VI. Confidentiality

- a. All records discussed in this section shall be subject to Vermont Public Records Law.

VII. Regulations

- a. The Council may implement rules to enforce this statute.