



STATE OF VERMONT
OFFICE OF LEGISLATIVE COUNCIL

MEMORANDUM

To: Senate & House Committees on Government Operations
From: Cameron Wood, Law Clerk
cc: BetsyAnn Wrask, Legislative Council
Date: December 11, 2014
Subject: Law Enforcement Studies Report

QUESTION PRESENTED

In lieu of passing 2014's H.585, the Senate Committee on Government Operations asked the Office of Legislative Council to review past studies related to the structure of law enforcement authority that have been submitted to the General Assembly since 1995. This report summarizes the recommendations of those studies, describes whether those studies address the issues enumerated in H.585, and acknowledges whether or not those recommendations were enacted into law.

BRIEF ANSWER

Although there are numerous law enforcement studies and reports that have been submitted to the General Assembly, most do not specifically look at the "structure" of law enforcement. Most studies and reports detail ongoing policy implementation or address the present nature of a specific department or entity. However, with that said, three major studies/reports have been commissioned in the past ten years that do specifically address some of the issues enumerated in H.585.¹ This report addresses those three studies/reports and their recommendations.²

DISCUSSION

2003 Report of the Law Enforcement Working Group

2003 Acts and Resolves No. 66, Sec. 300 commissioned the Law Enforcement Working Group "for the purpose of studying law enforcement in Vermont" and to make recommendations for improvements in the functions, responsibilities, and effective use of

¹ The three are: 2003 Report of the Law Enforcement Working Group; 2009 Independent Evaluation of Law Enforcement Services; and 2012 Law Enforcement Advisory Board Summary Report.

² This report addresses each study chronologically, starting with the oldest.

State, county and local officers.³ The working group summarized its findings in three areas: (I) Responsibility for Law Enforcement Services in Vermont; (II) Factors Affecting All Law Enforcement Agencies in the State; and (III) Comprehensive Approach for the Future.

I. Responsibility for Law Enforcement Services in Vermont

In this section, the group looked at the responsibility and authority for law enforcement services. The group outlined the different levels of law enforcement across the State. The group also acknowledged the tension between growing demands for more police presence and the resource limitations of the Vermont State Police (VSP). With this in mind, the group put forth six recommendations.

1. Local Police Presence Options

“The working group recommends a strategy be developed to inform communities and citizens about the need for community policing.”⁴ This strategy was to be developed by the Law Enforcement Advisory Board (LEAB) to help communities assess their current and future needs.⁵ The LEAB looked at rural law enforcement in its 2004 and 2005 Summary Reports.

In 2004, a subcommittee of the LEAB identified and examined some of the challenges facing law enforcement in rural areas. The Board intended to work on a “menu” of options for communities to give them a better understanding of available opportunities for more police coverage.⁶ There were no specific recommendations to the Vermont General Assembly.

The LEAB again took up the issue of rural law enforcement in its 2005 Summary Report. The Board looked at how police services are provided in Connecticut and New Hampshire and developed ideas for several pilot projects to enhance local coverage.⁷ The Board recommended that the General Assembly increase the professionalism of the Sheriff's Departments through funding and training. Additionally, the Board recommended that the Legislature define the roles of law enforcement in Vermont.⁸

I am not sure whether the funding recommended was ever given to the Sheriff's Departments. It is my understanding that the General Assembly has continued to define the roles of law enforcement in Vermont. Specifically, as discussed below, the General Assembly refined the role of the Department of Public Safety after the 2009 Independent Study conducted by the Public Safety Strategies Group.

³ 2003 Acts and Resolves No. 66, Sec. 300.

⁴ Law Enforcement Working Group, Report of the Law Enforcement Working Group 7 (2003).

⁵ *Id.*

⁶ Law Enforcement Advisory Board, Summary Report 2004 16 (2005).

⁷ Law Enforcement Advisory Board, Summary Report 2005 5, 6 (2006).

⁸ *Id.* at 7.

2. The Role of the State Police

The working group recommended that the State Police continue to prioritize their resources on major criminal and motor vehicle enforcement initiatives. Local communities that want an increased presence should develop local solutions.⁹

This recommendation had no concrete legislative aspects and, therefore, was not enacted into law. It is my understanding that this recommendation has not been followed as the State Police are still expected to be the primary law enforcement authority for both major and minor crimes in many Vermont communities without a local law enforcement presence.

3. Facilitate Communities' Ability to Work Together to Enhance Local Services

The working group supported amendments to Vermont law in order to “enable communities to choose to partner with other communities to enhance local law enforcement service.”¹⁰

This recommendation was enacted into law in 2003 Acts and Resolves No. 122, Secs. 85b–85l. These amendments allowed intermunicipal agreements for general police services and permitted union municipal districts to contract with a county sheriff for local law enforcement.

4. Amend Statute for Supervision of Special Police Officers

The working group found that temporary special officers operated under the supervision of constables. “This could result in a situation where a trained officer may be under the direction of an untrained constable.”¹¹ The working group supported an amendment to allow communities the choice between oversight of special officers by a selectboard or constable.

This recommendation was enacted into law in 2003 Acts and Resolves No. 122, Secs. 85b–85l.¹²

5. Joint Approach to Clarification of Elected Constable Duties

The working group recommended that a “white paper” be developed by the Vermont League of Cities and Towns (VLCT) with the Vermont Criminal Justice Training Council in order to educate selectboards, constables, and the public on the constable’s duties and town liability.¹³

Efforts to find a specific “white paper” were unsuccessful. However, the VLCT generated a memo on constable law enforcement responsibilities in 2005. In 2006, the VLCT, in connection with the LEAB, began producing a “Policing Options” brochure which covers a range of options for municipal law enforcement. Additionally, the LEAB took an extensive look at rural law enforcement in its 2004 and 2005 Summary Reports.

⁹ Report of the Law Enforcement Working Group 8.

¹⁰ *Id.*

¹¹ *Id.* at 6.

¹² 2003 Acts and Resolves No. 122, Sec. 85(c) changed the oversight of temporary police officers to the control of the legislative body rather than the constable of a municipality.

¹³ Report of the Law Enforcement Working Group 8.

6. Amendments to County Support for Sheriffs

A subcommittee of the working group recommended that the law be amended to allow for “assistant judges, upon recommendation of a special committee, to raise county taxes for the purpose of expanding funding for the county sheriff.”¹⁴

This recommendation was not adopted by the working group because it believed the intermunicipal amendments allowed for greater local police coverage. The subcommittee’s recommendation passed the House but was not enacted into law.¹⁵

II. Factors Affecting All Levels of Law Enforcement

In this section, the working group recognized certain factors that were affecting all of Vermont law enforcement agencies. This section contained no specific recommendations but instead highlighted areas of concern for agencies across the State. These include recruitment and retention, training, and dispatch. One large issue that affects all three factors seems to be money.

III. Comprehensive Approach for the Future

In this section, the working group recommended the creation of the Law Enforcement Advisory Board in order to help solve the growing problems facing Vermont law enforcement, including those found in the previous section. This recommendation was enacted into law and the LEAB was created in 2004.¹⁶ The statutory authority for the LEAB can be found in 24 V.S.A. § 1939.

2009 Independent Evaluation of Law Enforcement Services

2007 Acts and Resolves No. 65, Sec. 293c created a State Law Enforcement Study Committee. This Committee was tasked to address some of the specific issues raised in 2014’s H.585, including identifying various State policing services, their missions, areas of special training, and operational and fiscal relationships.¹⁷ The Committee ultimately recommended an independent evaluation be conducted.¹⁸ The contract for this independent evaluation was given to the Public Safety Strategies Group (PSSG), which submitted its final report on February 25, 2009.¹⁹

“The mission of the Study included the review of the roles and responsibilities of various State-funded law enforcement agencies and their impact on local and county law enforcement.”²⁰ The study was a comprehensive look at Vermont State law enforcement and included both general, albeit substantial, as well as specific recommendations.

¹⁴ *Id.* at 9.

¹⁵ 2005, H. 342.

¹⁶ 2004 Acts and Resolves No. 122, Sec. 85e.

¹⁷ 2007 Acts and Resolves No. 65, Sec. 293c.

¹⁸ State Law Enforcement Study Committee, Report of the State Law Enforcement Study Committee (2007).

¹⁹ 2008 Acts and Resolves No. 90, Sec. 2. This section authorized a one-time appropriation of \$150,000 “to be used by the secretary of administration to contract for an independent evaluation of law enforcement service provision statewide.”

²⁰ Public Safety Strategies Group, Independent Evaluation of Law Enforcement Services 1 (2009).

According to the PSSG, the guiding principle for developing their recommendations was how to “do more with less.”²¹

The biggest recommendation was a substantial realignment of State law enforcement agencies into a new division within the Department of Public Safety. Specifically, the PSSG recommended that the Fish and Wildlife Division of Law Enforcement, the Department of Motor Vehicles Enforcement and Safety Division, and the Department of Liquor Control, Education, Licensing and Enforcement be moved into the new division.²² Under this restructuring, each division would “maintain its identity and focus on its specific mission, but will work closely with each other and the State Police to streamline and improve operations.”²³

PSSG believed that this restructuring of law enforcement would eliminate duplicated services and increase communication and resource sharing among the specific divisions. The duplicated services identified by the PSSG include search and rescue responsibilities and capabilities of both Vermont State Police and Fish and Wildlife, and commercial vehicle enforcement responsibilities shared by VSP and DMV.²⁴ The PSSG believed that this new alignment would also help in resource sharing and communication among those divisions as opposed to the “siloe” structure that existed.

The major recommendation of the PSSG (the restructuring of the major Vermont law enforcement groups) was not enacted into law. Still, the General Assembly addressed some of the issues that lead to the PSSG’s recommendations. 2010 Acts and Resolves No. 105 requires the Commissioner of Public Safety to develop memorandums of understanding with the Commissioners of Fish and Wildlife, of Motor Vehicles, and of Liquor Control. These memorandums, among other things, attempt to maximize resources, provide information sharing, and provide an “overall statewide law enforcement strategic plan.”²⁵

The PSSG made numerous specific recommendations. Because the major recommendation was not implemented, the more specific recommendations likely were not enacted as a result. For example, those recommendations that likely were not enacted were a consolidation of the VSP SCUBA team and Fish and Wildlife Swift Water Rescue capabilities and assigning primary responsibility of recreational enforcement and education to Fish and Wildlife. However, the memorandums of understanding attempt to address these duplications of services.

Conversely, there were some recommendations that were acted upon by the General Assembly. PSSG recommended that VSP and Fish and Wildlife consolidate their search and rescue responsibilities. The General Assembly ultimately decided to place search and rescue operations under the jurisdiction of the Commissioner of Public Safety, who is required to coordinate with Fish and Wildlife as needed.²⁶ Although there

²¹ *Id.* at 2.

²² *Id.*

²³ *Id.* at 3.

²⁴ *Id.* at 14, 13.

²⁵ Act Summary of 2010 Acts and Resolves No. 105.

²⁶ 2013 Acts and Resolves No. 26, Sec. 1; 20 V.S.A. § 1842.

was no consolidation (as recommended), the changes enacted were meant to provide better coordination among the participating agencies.²⁷

Here is a list of other recommendations and whether or not they were acted upon:

1) Ensure specialized services are developed based on community needs and available resources –

In 2005, the General Assembly allowed special investigative units to apply and receive grants from the State and federal governments.²⁸ This was amended the following year to require the Department of State's Attorneys and Sheriffs to coordinate efforts to provide access to special investigative units to each region in Vermont.²⁹ The intent was to have access to special units for all Vermonters by 2009. In 2010, after the PSSG report, the General Assembly amended this section to provide appropriations to sheriff's departments serving fewer than 8,000 residents to help pay for part-time specialized investigative units.³⁰

I am not aware of any policies enacted since 2009 to help streamline special units or to better develop them based on community needs and available resources.

2) Continue practice of joint academy training and increase multi-agency team-based training –

There is still a statewide law enforcement training academy (Vermont Police Academy) administered by the Vermont Criminal Justice Training Council. The Council is tasked with providing basic and annual in-service training for each level of law enforcement.³¹ Although there is no statute requiring interagency training, 20 V.S.A. § 2361 allows commissioners, departments, and agency heads to provide additional training beyond basic training.³²

3) Move the Homeland Security Unit out of VSP and create stand-alone unit reporting to the Commissioner of Public Safety –

This recommendation included replacing sworn staff with civilians when possible in order to reassign VSP to patrol functions. The Division of Emergency Management and Homeland Security is currently under the Department of Public Safety.

4) VSP Troopers v. Detectives –

The PSSG found that there was an unbalanced workload between the patrol and detective troopers. Patrol troopers were often handling felony level crimes from start to finish, whereas the detectives could handle a heavier caseload. This recommendation

²⁷ See 20 V.S.A. § 1843(a):

“The Commissioner shall ensure that all search and rescue operations are conducted using the incident command system in order to provide the seamless integration of all responding search and rescue agencies and organizations. ...”

²⁸ 2005 Acts and Resolves No. 83, Sec. 12. This created 24 V.S.A. § 1940 and the Special Investigative Unit Grants Board.

²⁹ 2006 Acts and Resolves No. 192, Sec. 5.

³⁰ 2010 Acts and resolves No. 156, Sec. E.206.

³¹ 20 V.S.A. § 2358.

³² 20. V.S.A. § 2361.

asks that VSP Troopers take initial felony reports and then hand them off to the detectives who could handle more cases.³³

This recommendation was not implemented within the VSP, largely due to the reduction in the number of detective troopers assigned to general detective work. Many detective troopers are now assigned to SIUs. Based on the changes to SIUs listed above – mainly the intent that all Vermonters have access to SIUs – the VSP simply does not have the number of detectives to assign to general detective work. While some funding was allocated, most positions in the SIUs were drawn from existing detective positions. The VSP went from having 12 detective troopers (one per barracks) to four (one per troop area).³⁴

5) Create a Grants Office in the Administration Division of DPS –

This is supposed to create a system to help coordinate all law enforcement grants as opposed to the “siloe” approach of each agency applying for grants separately. No Grants Office was ever created but the memorandums of understanding attempt to address this issue.

6) Relocate the Governor’s Highway Safety Program into the new DPS division –

According to the PSSG, this program was located in the Criminal Justice Services Division and issues federal highway grants to local agencies. Relocating this program was recommended to continue the consolidation of law enforcement under one roof to help facilitate communication and resource sharing.

This program is a stand-alone unit that reports directly to the Commissioner of Public Safety. It was not realigned based on the overall PSSG recommendation.

7) Consolidation of Municipal Resources –

The PSSG recommended the phasing out of VSP contracts and the development of regional police strategies.

As mentioned above, the General Assembly allowed municipalities to contract together for police services in response to the 2003 working group’s recommendations. Additionally, 2014’s H.585, as introduced, intended to address this issue. As introduced, the bill would have prevented the VSP from creating and renewing contracts with municipalities for police services. However, this has not been enacted.

8) Use of Constables –

The PSSG recommended that constables be used for minor quality-of-life issues for smaller municipalities. The PSSG recommended that those constables being used as such should have proper training and their roles and responsibilities should be aligned in statutes and regulations.

³³ PSSG, Independent Evaluation of Law Enforcement Services 17.

³⁴ This is based on information gathered from Major Glenn Hall, Criminal Division Commander, VSP.

Constables now have to be certified in order to act as a law enforcement officer.³⁵ However, constables are allowed to perform limited duties, even without certification.³⁶ Under the new levels of law enforcement that will take effect on July 1, 2015, constables can perform different levels of law enforcement authority.³⁷

Lastly, it should be mentioned that the PSSG recommended that the VSP refrain from instituting 24/7 police coverage. “The data does not support 24/7 coverage by the State Police and there is not a sufficient budget to staff 24/7.”³⁸ The PSSG recommended that municipalities consider consolidation of resources with neighboring communities or the use of constables for minor quality-of-life issues, or both.³⁹ These recommendations have been somewhat addressed by the amendments recommended by the 2003 working group which allows municipalities to contract together for police services.

2012 Law Enforcement Advisory Board Summary Report

Since its inception, the LEAB has issued six summary reports, the last being from 2012. Most of the reports have not listed specific recommendations to the Legislature regarding the structure of law enforcement. Instead, the reports generally study and outline potential programs or policies that can be implemented by Vermont law enforcement agencies. For instance, in the 2010 report, the LEAB looked at model policies regarding responses to law enforcement involved in domestic violence, and in 2011, the LEAB began to look into bias-free policing policies. However, the 2012 LEAB report looked at specific legislation regarding the structure of law enforcement and made recommendations.

First, the LEAB looked at a proposal, set forth in 2012’s S.248, to repeal the Vermont Criminal Justice Training Council and replace it with a board under the Office of Professional Regulation. The LEAB recommended the VCJTC “be given broader rule making authority to determine hiring standards and professional conduct standards including greater decertification authority.”⁴⁰ Currently, 20V.S.A. § 2355 only permits decertification of persons for felony convictions or failure to comply with in-service training requirements.

Second, the LEAB addressed the problems with part-time and full-time certification of police officers. The LEAB recommended that the VCJTC be empowered to create rules governing levels of certification.⁴¹ The General Assembly dealt with this issue in 2014 Acts and Resolves No. 141. In that act, the General Assembly created a tiered certification system beginning on July 1, 2015 and allows VCJTC to develop training for each level.⁴²

³⁵ 20 V.S.A. § 2358.

³⁶ 24 V.S.A. § 1936a.

³⁷ 2014 Acts and Resolves No. 141, Sec. 5.

³⁸ PSSG, Independent Evaluation of Law Enforcement Services 18.

³⁹ *Id.* at 20.

⁴⁰ LEAB, Summary Report 2012 6 (2013).

⁴¹ *Id.* at 34.

⁴² 2014 Acts and Resolves No. 141, Sec. 5.

Finally, the LEAB recommended changes to the internal investigations of law enforcement officers, specifically, the release of confidential records. Currently, records of internal investigations must be confidential, except that the State Police Advisory Commission may report to authorities, or even the public, “as it may deem appropriate.”⁴³ “As a result, it’s extremely easy for public perception to be skewed and allow for a belief that law enforcement agencies are ‘taking care of their own’ to avoid accountability.”⁴⁴ The LEAB recommended that similar statutory language be enacted to enable governing bodies or employers the same type of discretion to release records.

This recommendation has not been enacted into law. However, the Public Records Study Committee is recommending that this issue be taken up by the House and Senate Committees on Judiciary.

⁴³ 20 V.S.A. § 1923(d).

⁴⁴ LEAB, Summary Report 36.