

DRAFT; NOT YET EDITED; FOR COMMITTEE DISCUSSION

1 TO THE HONORABLE SENATE:

2 The Committee on Government Operations to which was referred Senate
3 Bill No. 221 entitled “An act relating to law enforcement officers” respectfully
4 reports that it has considered the same and recommends that the bill be
5 amended by striking out all after the enacting clause and inserting in lieu
6 thereof the following:

7 * * * Vermont Criminal Justice Training Council * * *

8 Sec. 1. 20 V.S.A. chapter 151 is amended to read:

9 CHAPTER 151. VERMONT CRIMINAL JUSTICE TRAINING COUNCIL

10 Subchapter 1. General Provisions

11 § 2351. CREATION AND PURPOSE OF COUNCIL

12 (a) In order to promote and protect the health, safety, and welfare of the
13 public, it is in the public interest to provide for the creation of the Vermont
14 Criminal Justice Training Council.

15 (b) The Council is created to encourage and assist municipalities, counties,
16 and governmental agencies of this State in their efforts to improve the quality
17 of law enforcement and citizen protection by maintaining a uniform standard
18 of recruit and in-service training for law enforcement officers, ~~including~~
19 ~~members of the Department of Public Safety, Capitol Police officers,~~
20 ~~municipal police officers, constables, correctional officers, prosecuting~~
21 ~~personnel, motor vehicle inspectors, State investigators employed on a~~

Comment [BAW1]: Adds this subchapter designation so that a new Subchapter 2 can be added re: unprofessional conduct.

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1 full time basis by the Attorney General, fish and game wardens, sheriffs and
2 their deputies who exercise law enforcement powers pursuant to the provisions
3 of 24 V.S.A. §§ 307 and 311, railroad police commissioned pursuant to
4 5 V.S.A. chapter 68, subchapter 8, and police officers appointed to the
5 University of Vermont's Department of Police Services.

6 (c) The Council shall offer continuing programs of instruction in up-to-date
7 methods of law enforcement and the administration of criminal justice.

8 (d) It is the responsibility of the Council to encourage the participation of
9 local governmental units in the program and to aid in the establishment of
10 adequate training facilities.

11 § 2351a. DEFINITIONS

12 As used in this chapter:

13 (1) "Executive officer" means the highest-ranking law enforcement
14 officer of a law enforcement agency.

Comment [BAW2]: In accordance with Council proposal.

15 (2) "Law enforcement agency" means the employer of a law
16 enforcement officer.

Comment [BAW3]: [same as above]

17 (3) "Law enforcement officer" means an employee of the Vermont
18 Police Academy who exercises law enforcement authority; a member of the
19 Department of Public Safety who exercises law enforcement powers; a
20 member of the State Police; a Capitol Police officer; a municipal police officer;
21 a constable who exercises law enforcement powers; a motor vehicle inspector;

Comment [BAW4]: Added in accordance with Sec. 6, 20 V.S.A. § 2356 (Vermont Police Academy), which would designate the VPA as a law enforcement agency.

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1 an employee of the Department of Liquor Control who exercises law
2 enforcement powers; an investigator employed by the Secretary of State; a
3 Board of Medical Practice investigator employed by the Department of Health;
4 an investigator employed by the Attorney General or a State’s Attorney; a fish
5 and game warden; a sheriff; a deputy sheriff who exercises law enforcement
6 powers; a railroad police officer commissioned pursuant to 5 V.S.A. chapter
7 68, subchapter 8; or a police officer appointed to the University of Vermont’s
8 Department of Police Services.

9 (4) “Off-site training” means training provided off the premises of a law
10 enforcement officer training school and approved by the Council under the
11 provisions of section 2355 of this chapter.

12 § 2352. ~~CREATION OF COUNCIL~~ MEMBERSHIP

13 (a)(1) The Vermont Criminal Justice Training Council shall consist of:

14 (A) the Commissioners of Public Safety, of Corrections, of Motor
15 Vehicles, and of Fish and Wildlife;;

16 (B) the Attorney General;;

17 (C) a member of the Vermont State Police bargaining unit of the
18 Vermont State Employees’ Association State Troopers’ Association or its
19 successor entity, elected by its membership, ~~and;~~

20 (D) a member of the Vermont Police Association, elected by its
21 membership. ~~The Governor shall appoint;~~

Comment [BAW5]: Name correction.

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1 (E) a member of the Center for Crime Victims Services, elected by
2 its membership; and

Comment [BAW6]: Proposed by the Center.

3 (F) five six additional members appointed by the Governor so as to
4 provide broad representation of all aspects of law enforcement and the public
5 in Vermont on the Council.

Comment [BAW7]: Proposed by the Council to reflect the actual number of members.

6 (2) The Governor shall solicit recommendations for appointment from
7 the Vermont State’s Attorneys Association, the Vermont State’s Sheriffs
8 Association, the Vermont Police Chiefs Association, and the Vermont
9 Constables Association.

10 (3) ~~Their~~ A member’s term shall be three years.

11 * * *

12 § 2354. COUNCIL MEETINGS

13 (a) The ~~council~~ Council shall meet at least once in each quarter of each
14 year. Special meetings may be called by the ~~chairman~~ Chair or upon the
15 written request of six members of the ~~council~~ Council.

16 (b) The ~~council~~ Council shall adopt rules as to quorum and procedures with
17 respect to the conduct of its meetings and other affairs.

18 (c)(1) ~~The commissioner of public safety, the commissioner of corrections,~~
19 ~~the commissioner of motor vehicles, the commissioner of fish and wildlife, the~~
20 ~~attorney general, the representative from the Vermont troopers’ association, the~~
21 ~~representative from the Vermont police association, and the representatives~~

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1 ~~from the Vermont state's attorneys', sheriffs', and police chiefs' association,~~
2 ~~each~~ A member may designate in writing a person within ~~their~~ his or her
3 agency or association to attend a meeting or meetings of the ~~council~~ Council.
4 The designation shall be filed with the ~~chairman~~ Chair of the ~~council~~ Council.

5 (2) A person so designated shall have the same voting rights and
6 responsibilities as the ~~ex-officio~~ member at such meeting or meetings ~~except,~~
7 but that the designee shall not automatically assume the member's place as an
8 officer of the ~~board~~ Council.

9 § 2355. COUNCIL POWERS AND DUTIES

10 (a) The Council shall adopt rules with respect to:

11 (1) the approval, or revocation thereof, of law enforcement officer
12 training schools and off-site training programs;

13 (2) minimum courses of study, attendance requirements, and equipment
14 and facilities to be required at approved law enforcement officer training
15 schools and off-site training programs;

16 (3) minimum qualifications for instructors at approved law enforcement
17 officer training schools and off-site training programs;

18 (4) minimum qualifications for students at training programs, which
19 shall include passage of a polygraph examination or a criminal background
20 investigation, or both;

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1 (5) minimum basic training for law enforcement officers in each level of
2 law enforcement officer certification and the time within which that training
3 shall be completed;

4 ~~(5) [Repealed.]~~

5 (6) minimum annual in-service training requirements for law
6 enforcement officers in each level of law enforcement officer certification;

7 (7) minimum courses of training for other criminal justice personnel;

8 (8) categories or classifications of advanced in-service training
9 programs and minimum courses of study and attendance requirements with
10 respect to those categories or classifications;

11 (9) recertification of persons who have not been employed as law
12 enforcement officers for a three-year period;

13 (10) a definition of criminal justice personnel and criminal justice
14 training for purposes of this title; and

15 ~~(11) decertification of persons who have been convicted of a felony
16 subsequent to their certification as law enforcement officers;~~

17 ~~(12) decertification of persons who have not complied with in-service
18 training requirements, provided that the Council, through permitting its
19 Executive Director, ~~may~~ to grant up to a 60-day waiver to a law enforcement
20 officer who has failed to meet his or her annual in-service training~~

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1 requirements but who is able to complete those training requirements within
2 ~~that 60-day period~~ the time period permitted by the Executive Director.

3 * * *

4 § 2356. VERMONT POLICE ACADEMY

5 The Vermont Police Academy within the Robert H. Wood, Jr. Criminal
6 Justice and Fire Service Training Center of Vermont is hereby designated a
7 law enforcement agency. **Law enforcement officers employed by the**
8 **Academy shall have statewide law enforcement authority.**

Comment [BAW8]: Proposed by Council.

9 * * *

10 § 2358. MINIMUM TRAINING STANDARDS; DEFINITIONS

11 * * *

12 (b) The Council shall offer or approve basic training and annual in-service
13 training for each of the following three levels of law enforcement officer
14 certification in accordance with the scope of practice for each level, and shall
15 determine by rule the scope of practice for each level in accordance with the
16 provisions of this section:

17 (1) Level I certification.

18 * * *

19 (B)(i) The scope of practice of a Level I law enforcement officer
20 shall be limited to security, transport, vehicle escorts, and traffic control, as
21 those terms are defined by the Council ~~by rule~~, except that a Level I officer

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1 may react in the following circumstances if the officer determines that it is
2 necessary to do any of the following:

3 * * *

4 (2) Level II certification.

5 (A) An applicant for certification as a Level II law enforcement
6 officer shall first complete Level II basic training and may then become
7 certified in a specialized practice area as set forth in subdivision (B)(ii) of this
8 subdivision (2). Level II basic training shall include training to respond to
9 calls regarding alleged crimes in progress and to react to the circumstances
10 described in subdivision (B)(iii) of this subdivision (2).

11 (B)(i) Except as provided in subdivisions (ii) and (iii) of this
12 subdivision (B), the scope of practice of a Level II law enforcement officer
13 shall be limited to investigating the following matters:

14 (I) 7 V.S.A. § 657 (person under 21 years of age
15 misrepresenting age, procuring, possessing, or consuming alcoholic beverages;
16 third or subsequent offense);

17 (II) 7 V.S.A. § 658 (sale or furnishing to minors; enabling
18 consumption by minors);

19 ~~(III)~~ 13 V.S.A. chapter 7 (advertisements);

20 ~~(IV)~~ 13 V.S.A. chapter 8 (humane and proper treatment of
21 animals);

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1 ~~(IV)~~(V) 13 V.S.A. §§ 505 (fourth degree arson), 508 (setting
2 fires), and 509 (attempts);
3 ~~(V)~~(VI) 13 V.S.A. chapter 19, subchapter 1 (riots);
4 ~~(VI)~~(VII) 13 V.S.A. §§ 1022 (noise in the nighttime), 1023
5 (simple assault), 1025 (recklessly endangering another person), 1026
6 (disorderly conduct), 1026a (aggravated disorderly conduct), 1027 (disturbing
7 peace by use of telephone or other electronic communications), 1030 (violation
8 of an abuse prevention order, an order against stalking or sexual assault, or a
9 protective order concerning contact with a child), 1031 (interference with
10 access to emergency services), 1042 (domestic assault), and 1062 (stalking);
11 ~~(VII)~~(VIII) 13 V.S.A. chapter 35 (escape);
12 ~~(VIII)~~(IX) 13 V.S.A. chapter 41 (false alarms and reports);
13 ~~(IX)~~(X) 13 V.S.A. chapter 45 (flags and ensigns);
14 ~~(X)~~(XI) 13 V.S.A. chapter 47 (frauds);
15 ~~(XI)~~(XII) 13 V.S.A. chapter 49 (fraud in commercial
16 transactions);
17 ~~(XII)~~(XIII) 13 V.S.A. chapter 51 (gambling and lotteries);
18 ~~(XIII)~~(XIV) 13 V.S.A. chapter 57 (larceny and embezzlement),
19 except for subchapter 2 (embezzlement);
20 ~~(XIV)~~(XV) 13 V.S.A. chapter 67 (public justice and public
21 officers);

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- 1 ~~(XXV)~~(XXVI) 13 V.S.A. chapter 69 (railroads);
- 2 ~~(XXVI)~~(XXVII) 13 V.S.A. chapter 77 (trees and plants);
- 3 ~~(XXVII)~~(XXVIII) 13 V.S.A. chapter 81 (trespass and malicious
- 4 injuries to property);
- 5 ~~(XXVIII)~~(XIX) 13 V.S.A. chapter 83 (vagrants);
- 6 ~~(XIX)~~(XX) 13 V.S.A. chapter 85 (weapons);
- 7 (XXI) 13 V.S.A. § 7559(d), (e), and (f) (violating condition of
- 8 release);
- 9 ~~(XX)~~(XXII) 18 V.S.A. §§ 4230(a), 4230c, and 4230d
- 10 (marijuana possession);
- 11 ~~(XXI)~~(XXIII) 18 V.S.A. § 4231(a) (cocaine possession);
- 12 ~~(XXII)~~(XXIV) 18 V.S.A. § 4232(a) (LSD possession);
- 13 ~~(XXIII)~~(XXV) 18 V.S.A. § 4233(a) (heroin possession);
- 14 ~~(XXIV)~~(XXVI) 18 V.S.A. § 4234(a) (depressant, stimulant, or
- 15 narcotic drug possession);
- 16 ~~(XXV)~~(XXVII) 18 V.S.A. § 4234a(a) (methamphetamine
- 17 possession);
- 18 ~~(XXVI)~~(XXVIII) 18 V.S.A. § 4235(b) (hallucinogenic drug
- 19 possession);
- 20 ~~(XXVII)~~(XXIX) 18 V.S.A. § 4235a(a) (ecstasy possession);

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1 ~~(XXXVIII)~~(XXX) 18 V.S.A. § 4476 (drug paraphernalia
2 offenses);
3 (XXXI) 20 V.S.A. § 3132 (firework prohibitions);
4 ~~(XXXIX)~~(XXXII) 21 V.S.A. § 692(c)(2) (criminal violation of
5 stop-work order);
6 ~~(XXX)~~(XXXIII) any misdemeanor set forth in Title 23 of the
7 Vermont Statutes Annotated, except for 23 V.S.A. chapter 13, subchapter 13
8 (drunken driving), 23 V.S.A. § 3207a (snowmobiling under the influence),
9 23 V.S.A. § 3323 (boating under the influence), or 23 V.S.A. § 3506(b)(8)
10 (operating an all-terrain vehicle under the influence);
11 ~~(XXXI)~~(XXXIV) any motor vehicle accident that includes
12 property damage and injuries, as permitted by the Council by rule;
13 ~~(XXXII)~~(XXXV) any matter within the jurisdiction of the
14 Judicial Bureau as set forth in 4 V.S.A. § 1102;
15 ~~(XXXIII)~~(XXXVI) municipal ordinance violations;
16 ~~(XXXIV)~~(XXXVII) any matter within the jurisdiction of a
17 game warden or deputy game warden as set forth in 10 V.S.A. chapter 103,
18 subchapter 4 (game wardens); and
19 ~~(XXXV)~~(XXXVIII) any matter within the scope of practice of
20 a Level I law enforcement officer.
21 * * *

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1 (d) As used in this section:

2 (1) ~~“Law enforcement officer” means a member of the Department of~~
3 ~~Public Safety who exercises law enforcement powers, a member of the State~~
4 ~~Police, a Capitol Police officer, a municipal police officer, a constable who~~
5 ~~exercises law enforcement powers, a motor vehicle inspector, an employee of~~
6 ~~the Department of Liquor Control who exercises law enforcement powers, an~~
7 ~~investigator employed by the Secretary of State, Board of Medical Practice~~
8 ~~investigators employed by the Department of Health, Attorney General, or a~~
9 ~~State’s Attorney, a fish and game warden, a sheriff, or deputy sheriff who~~
10 ~~exercises law enforcement powers, a railroad police officer commissioned~~
11 ~~pursuant to 5 V.S.A. chapter 68, subchapter 8, or a police officer appointed to~~
12 ~~the University of Vermont’s Department of Police Services.~~

13 (2) ~~“Off site training” means training provided off the premises of a law~~
14 ~~enforcement officer training school and approved by the Council under the~~
15 ~~provisions of section 2355 of this chapter.~~

16 (3) [Repealed.]

17 * * *

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1 § 2359. SUPERVISING OFFICERS; CERTIFICATION REQUIREMENTS

2 (a) A law enforcement officer in a supervisory position shall not supervise
3 a law enforcement officer who is certified at a higher level than the supervising
4 officer.

5 (b)(1) An executive officer shall be Level III certified.

6 (2) The provisions of subdivision (1) of this subsection shall not apply
7 to an elected official.

8 * * *

9 § 2367. STATEWIDE POLICY; ELECTRONIC CONTROL DEVICES;
10 REPORTING

11 * * *

12 (b) On or before January 1, 2015, the Law Enforcement Advisory Board
13 shall establish a statewide policy on the use of and training requirements for
14 the use of electronic control devices. ~~On or before January 1, 2016~~ Prior to
15 any use of or intent to use an electronic control device, every State, ~~local,~~
16 county, and municipal law enforcement agency and every constable who is not
17 employed by a law enforcement agency, shall adopt this policy. If a law
18 enforcement agency or officer that is required to adopt a policy pursuant to this
19 subsection fails to do so on or before January 1, 2016, that agency or officer
20 shall be deemed to have adopted, and shall follow and enforce, the model

Comment [BAW9]: Council proposal. Substitute for muni supervision requirement.
Grandfathering for current supervisors set forth in Sec. 2 of the bill.

Comment [BAW10]: These amendments would do the following:
- In (b), clarify that LEOs only need ECD training if they plan on using ECDs; and
- eliminate the use of "local" since "municipal" is already used.

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1 policy established by the Law Enforcement Advisory Board. The policy shall
2 include the following provisions:

3 * * *

4 (c) The Criminal Justice Training Council shall adopt rules and develop
5 training to ensure that the policies and standards of this section are met. The
6 Criminal Justice Training Council shall ensure that a law enforcement officer
7 receives appropriate and sufficient training before becoming authorized to
8 carry or use an electronic control device.

9 (d) On or before June 30, 2017, every State, ~~local~~ county, and municipal
10 law enforcement agency that employs one or more certified law enforcement
11 officers shall ensure that all officers have completed the training established in
12 2004 Acts and Resolves No. 80, Sec. 13(a), and every constable who is not
13 employed by a law enforcement agency shall have completed this training.

14 * * *

15 (f) Every State, ~~local~~ county, and municipal law enforcement agency and
16 every constable who is not employed by a law enforcement agency shall report
17 all incidents involving the use of an electronic control device to the Criminal
18 Justice Training Council in a form to be determined by the Council.

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1 (g) The Law Enforcement Advisory Board shall:

Comment [BAW11]: Eliminating (3) and (4) since the deadlines have passed.

2 (1) study and make recommendations as to whether officers authorized
3 to carry electronic control devices should be required to wear body cameras;

4 and

5 (2) establish a policy on the calibration and testing of electronic control
6 devices;

7 ~~(3) on or before January 15, 2015, report to the House and Senate~~
8 ~~Committees on Government Operations and on Judiciary concerning the~~
9 ~~recommendations and policy developed pursuant to subdivisions (1) and (2) of~~
10 ~~this subsection; and~~

11 ~~(4) on or before April 15, 2015, ensure that all electronic control devices~~
12 ~~carried or used by law enforcement officers are in compliance with the policy~~
13 ~~established pursuant to subdivision (2) of this subsection.~~

14 **Subchapter 2. Unprofessional Conduct**

Comment [BAW12]: New subchapter for unprof. conduct

15 § 2381. DEFINITIONS

16 As used in this subchapter:

17 (1) “Category A violation” means:

18 (A) A felony recognized by the State of Vermont.

19 (B) A misdemeanor recognized by the State of Vermont, committed
20 while on duty.

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1 (C) Any of the following misdemeanors as defined by Vermont law,
2 if committed off-duty:

- 3 (i) Simple assault, second offense;
4 (ii) Domestic assault;
5 (iii) False reports and statements;
6 (iv) Driving under the influence, second offense;
7 (v) Violation of any court order;
8 (vi) Stalking;
9 (vii) Cruelty to animals;
10 (viii) False pretenses;
11 (ix) Voyeurism;
12 (x) Prostitution;
13 (xi) Distribution of a regulated substance;
14 (xii) Simple assault on a law enforcement officer; or
15 (xiii) Possession of a regulated substance, second offense.

16 (D) Gross professional misconduct amounting to actions on duty or
17 under color of authority that involve substantial deviation from conduct, such
18 as:

- 19 (i) sexual harassment involving physical contact or misuse of
20 position;
21 (ii) misuse of official position for personal or economic gain;

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1 (iii) excessive use of force under color of authority, second
2 offense;

3 (iv) mistreating persons in custody; or

4 (v) use of electronic criminal records database for personal,
5 political, or economic gain.

6 (2) “Category B violation” means any of the following allegations of
7 misconduct that are neither Category A nor Category C violations:

8 (A) abuse of authority;

9 (B) biased enforcement;

10 (C) membership in organizations that advocate, promote, plan, or
11 effect criminal conduct or the overthrow of or interference with any lawfully
12 constituted government in the United States;

13 (D) political activity that would be in violation of any federal or State
14 law, rule, or regulation; or

15 (E) avoiding the responsibility of his or her law enforcement
16 position.

17 (3) “Category C violation” means any allegation of misconduct
18 pertaining to Council processes or operations, including:

19 (A) knowingly making material false statements or reports to the
20 Council;

21 (B) falsification of Council documents;

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1 (C) intentional interference with Council investigations, including
2 intimidation of witnesses or misrepresentations of material facts;

3 (D) material false statements about certification status to a law
4 enforcement agency;

5 (E) knowing employment of an individual in position or duties for
6 which individual lacks proper certification;

7 (F) intentional failure to file a report required by this subchapter; or

8 (G) failure to complete annual in-service training requirements.

9 (4) “Effective Internal Affairs Program” means either:

10 (A) A law enforcement agency that:

11 (i) Accepts complaints from any source and assigns an
12 investigator to determine whether an officer violated an agency rule or policy
13 or State or federal law, or state or federal constitution. The investigator may
14 be from another agency.

15 (ii) Has language in its policies or applicable collective bargaining
16 agreement outlining expectations of employment or prohibited activity, or
17 both.

18 (iii) Decides discipline upon just cause, a set range of sanctions
19 for offenses, and consideration of mitigating and aggravating circumstances,
20 and provides due process rights for accused members in its policies. The
21 agency treats accused agency members fairly.

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1 (iv) Assigns an investigator to investigate the complaint.
2 (v) Has a civilian review process, at least for highly serious
3 infractions, such as felonious criminal conduct or egregious professional
4 misconduct, regardless of whether the process has a formal or final role in the
5 investigation. An elected body, such as a selectboard, may constitute a civilian
6 review process.

Comment [BAW13]: Uses “investigator” definition; slight change to council lang.

7 (B) The Vermont State Police internal affairs process set forth in
8 20 V.S.A. chapter 113, subchapter 3.

9 (5) “Investigator” means a law enforcement officer of the law
10 enforcement agency, who is of a higher rank than the officer under
11 investigation and who is trained or certified in criminal investigations or
12 internal affairs, recognized by the Council. A retired law enforcement officer
13 or a law enforcement officer of another agency may serve as an investigator if
14 he or she is trained or certified in criminal investigations or internal affairs,
15 recognized by the Council.

Comment [BAW14]: Either training or certification?

Comment [BAW15]: Either training or certification?

Comment [BAW16]: Okay?

16 (6) “Valid investigation” means an investigation conducted pursuant to a
17 law enforcement agency’s established or accepted procedures. An
18 investigation shall not be valid if:

19 (A) The agency does not have an effective internal affairs program or
20 did not assign the investigation to an investigator;

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1 (B) The agency refuses, without any legitimate basis, to conduct an
2 investigation;

3 (C) The agency intentionally did not report allegations to the Council
4 as required;

5 (D) The agency attempts to cover up the misconduct or takes an
6 action intended to discourage or intimidate a complainant; or

7 (E) The agency’s executive officer is the officer accused of
8 misconduct.

9 § 2382. LAW ENFORCEMENT AGENCIES; DUTY TO REPORT

10 (a) Alleged Category A violations. The executive officer of a law
11 enforcement agency shall report to the Council within 10 business days if any
12 of the following occur in regard to a law enforcement officer of the agency:

13 (1) The agency receives any valid civil, administrative, or criminal
14 complaint against the officer that, if deemed credible by the executive officer
15 of the agency, alleges that the officer committed a Category A violation.

16 (2) The agency receives or issues any report or findings of an
17 investigation into allegations or an appeal of a finding of a Category A
18 violation committed by the officer, including a due process hearing by the
19 employer, a trial, or an arbitration or administrative hearing.

20 (3) The agency receives or issues any decision or findings, including
21 findings of fact or verdict, related to allegations of a Category A violation.

Comment [BAW17]: Could an outside entity conduct this trial, arbitration, or hearing?

What is meaning of “appeal into”?

Comment [BAW18]: Could the agency issue a decision or findings?

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1 including a hearing officer decision, arbitration, administrative decision, or
2 judicial decision.

3 (b) Alleged Category B violations. The executive officer of a law
4 enforcement agency shall report to the Council within 10 business days if any
5 of the following occur in regard to a law enforcement officer of the agency:

6 (1) The agency receives a complaint that the officer committed a
7 Category B violation and the agency does not have an effective internal affairs
8 process.

9 (2) The agency terminates the officer for a Category B violation;

10 (c) Officer resignation; any category offense. The executive officer of a
11 law enforcement agency shall report to the Council within 10 business days if a
12 law enforcement officer of the agency resigns while under investigation for
13 any alleged category offense, except for a Category B first offense.

14 (d) Vermont State Police. Notwithstanding the provisions of this section,
15 the Vermont State Police shall report to the Council in accordance with
16 20 V.S.A. §1923 with the approval of the State Police Advisory Commission.

17 (e) Agency hires.

18 (1)(A) Prior to hiring or accepting the transfer of an individual who has
19 worked as a law enforcement officer for another law enforcement agency, the
20 executive officer of the agency considering the hiring or transfer shall confirm
21 with the Council the law enforcement officer's certification with the Council.

Comment [BAW19]: Needs further confirmation re: when VSP must report.

Comment [BAW20]: Difference between the two, (A) and (B)?

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1 (B) An executive officer shall notify the Council that his or her law
2 enforcement agency has hired or is contemplating hiring an individual
3 previously employed by another agency in a position that required certification
4 from the Council.

5 (2) During its administrative certification review, the Council may
6 withhold verification if it determines that the officer may have left his or her
7 previous law enforcement agency for a Category B or C violation, and may
8 continue to withhold that verification for the duration of any Council
9 investigation.

10 § 2383. COUNCIL INVESTIGATIONS

11 (a) The Council shall investigate or refer for investigation complaints
12 against a law enforcement officer that, if deemed to be credible, constitute
13 grounds for disciplinary action, unless the allegations were subject to a valid
14 investigation his or her law enforcement agency's effective internal affairs
15 program.

Comment [BAW21]: Could be any discipline;
original council draft only referred to suspension or
revocation

16 (b) A valid investigation shall not bar a Council investigation if:

17 (1) The officer received a final conviction of a Category A offense;

18 (2) The investigation resulted in the officer's termination from his or her
19 law enforcement agency;

20 (3) The report involved a second violation of a Category B offense; or

21 (4) The allegation is in regard to a Category C violation.

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(c) If an administrative or criminal investigation about a second violation of Category B allegation is ongoing or if the matter is subject to a de novo hearing or appeal, including a *Loudermill* hearing, an arbitration hearing or a Vermont Labor Relations Board grievance or 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 verdict or dismissal.

Comment [BAW22]: More info needed

(d)(1) If a valid investigation into a second violation of a Category B offense by a law enforcement agency with an effective internal affairs program concludes that the officer did not engage in the alleged misconduct, then the Council shall take no action.

(2) If a valid investigation concludes that the misconduct occurred, the Council shall accept the agency’s disciplinary decision, unless the Council concludes the level of discipline imposed is arbitrary or capricious.

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

§ 2384. COUNCIL DISCIPLINARY PROCEDURE

(a) The Council shall conduct hearings in accordance with 3 V.S.A. §§ 809, 809a, 809b, and 810.

Comment [BAW23]: VAPA:
- 809: contested cases; notice, hearings; records
- 809a: subpoenas
- 809b: subpoenas or discovery orders; modification
- 810: rules of evidence

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(b) Prior to any hearing, the Council shall produce all documents associated with agency’s investigation, including reports, witness statements, recordings, or transcripts, to the charged law enforcement officer. These documents may be subject to conditions to address confidentiality concerns.

Comment [BAW24]: Should this refer to “the State” since the Council is the adjudicator?

(c)(1) Hearing decisions shall comply with the requirements of 3 V.S.A. § 812.

Comment [BAW25]: Re: decisions including findings of fact and conclusions of law

(2) Judicial review of the final decisions of the Council is available in the Supreme Court of Vermont, pursuant to 3 V.S.A. § 815.

(d) The Council shall have discretion to decline, cease, or settle an investigation, including for reasons of administrative efficiency or policy.

§ 2385. COUNCIL SANCTIONS

(a) The Council may choose from the following actions when determining an appropriate sanction for a violation:

(1) Written reprimand, removed from the officer’s record after three years provided there is no repetition of the same or similar offense.

(2) Probation.

(3) Probation with terms and conditions as imposed by the Council, which may include training, participation in counseling, or payment of restitution.

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1 (4) Suspension of certification and privilege of employment as an
2 officer for a period not to exceed two years.

3 (5) Revocation of certification for a period not to exceed three years.

4 (6) Permanent revocation of certification.

5 § 2386. CONFIDENTIALITY

6 Any record described in this subchapter shall be subject to the Vermont
7 Public Records Act.

8 § 2387. COUNCIL RULEMAKING AUTHORITY

9 The Council may adopt rules to administer the provisions of this
10 subchapter.

11 Sec. 2. TRANSITIONAL PROVISION; CURRENT SUPERVISORS

12 The law enforcement officer supervisor certification requirements set forth
13 in 20 V.S.A. § 2359 (supervising officers; certification requirements) in Sec. 1
14 of this act shall not apply to a supervising officer in his or her current position
15 in his or her current law enforcement agency in effect on the effective date of
16 that section.

17 * * * Law Enforcement Advisory Board * * *

18 Sec. 3. REPEAL

19 24 V.S.A. § 1939 (Law Enforcement Advisory Board) is repealed.

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1 Sec. 4. 20 V.S.A. § 1818 is added to read:

2 § 1818. LAW ENFORCEMENT ADVISORY BOARD

3 (a) A Law Enforcement Advisory Board is created within the Department
4 of Public Safety to advise the Commissioner of Public Safety, the Governor,
5 and the General Assembly on issues involving the cooperation and
6 coordination of all agencies that exercise law enforcement responsibilities.

7 The Board shall review any matter that affects more than one law enforcement
8 agency. The Board shall comprise the following members:

9 (1) the Commissioner of Public Safety;

10 (2) the Director of the Vermont State Police;

11 (3) the Director of the Vermont Criminal Justice Services Division;

12 (4) a member of the Vermont Association of Chiefs of Police appointed
13 by the President of the Association;

14 (5) a member of the Vermont Sheriffs' Association appointed by the
15 President of the Association;

16 (6) a representative appointed by the Vermont League of Cities and
17 Towns appointed by the Executive Director;

18 (7) a member of the Vermont Police Association appointed by the
19 President of the Association;

20 (8) the Attorney General or designee;

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1 (9) a State’s Attorney appointed by the Executive Director of the
2 Department of State’s Attorneys and Sheriffs;

3 (10) the U.S. Attorney or designee;

4 (11) the Executive Director of the Vermont Criminal Justice Training
5 Council;

6 (12) the Defender General or designee;

7 (13) one representative of the Vermont State Troopers’ Association or
8 its successor entity, elected by its membership;

Comment [BAW26]: Name correction, and use of “or its successor entity” to match VCJTC membership language.

9 (14) a member of the Vermont Constables Association appointed by the
10 President of the Association;

11 (15) the Commissioner of Fish and Wildlife or designee;

12 (16) the Commissioner of Motor Vehicles or designee; and

13 (17) one member of the Vermont Network Against Domestic & Sexual
14 Violence, elected by its membership.

Comment [BAW27]: Proposed by Network.

15 (b) The Board shall elect a chair and a vice chair, which shall rotate among
16 the various member representatives. Each member shall serve a term of two
17 years. The Board shall meet at the call of the Chair. A quorum shall consist of
18 six members, and decisions of the Board shall require the approval of a
19 majority of those members present and voting.

20 (c) The Board shall undertake an ongoing formal review process of law
21 enforcement policies and practices with a goal of developing a comprehensive

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1 approach to providing the best services to Vermonters, given monies available.

2 The Board shall also provide educational resources to Vermonters about public
3 safety challenges in the State.

4 (d) The Board shall meet no fewer than six times a year to develop policies
5 and recommendations for law enforcement priority needs, including retirement
6 benefits, recruitment of officers, training needs, homeland security issues,
7 dispatching, and comprehensive drug enforcement. The Board shall present its
8 findings and recommendations in brief summary to the House and Senate
9 Committees on Judiciary annually on or before January 15.

10 Sec. 5. RECODIFICATION

11 (a) 24 V.S.A. § 1939 is recodified as 20 V.S.A. § 1818. During statutory
12 revision, the Office of Legislative Council shall revise accordingly any
13 references to 24 V.S.A. § 1939 in the Vermont Statutes Annotated.

14 (b) Any references in session law and adopted rules to 24 V.S.A. § 1939 as
15 previously codified shall be deemed to refer to 20 V.S.A. § 1818.

16 * * * Effective Dates * * *

17 Sec. 6. EFFECTIVE DATES

18 This act shall take effect on July 1, 2016.

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(Committee vote: _____)

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Senator _____

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FOR THE COMMITTEE