

**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~~

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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.

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

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;

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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~~ Troopers’ Association or its successor  
19 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 [BAW1]:** Note: Based on all below proposals, Council membership would consist of 16 members.

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1           (E) a member of the Chiefs of Police Association of Vermont, elected  
2 by its membership;

3           (F) a member of the Vermont Sheriffs' Association, elected by its  
4 membership;

5           (G) a member of the Vermont State's Attorneys Association, elected  
6 by its membership;

7           (H) a member of the Vermont Constables Association, elected by its  
8 membership;

9           (I) a representative from the Vermont League of Cities and Towns,  
10 appointed by the Executive Director of the League;

11           (J) a member of the law enforcement officers represented by the  
12 Vermont State Employees Association or its successor entity, elected by the  
13 law enforcement officer members;

14           (K) the Executive Director of the Center for Crime Victims Services  
15 or designee; and

16           (L) five additional two public members so as to provide broad  
17 representation of all aspects of law enforcement and the public in Vermont on  
18 the Council appointed by the Governor. The Governor shall solicit  
19 recommendations for appointment from the Vermont State's Attorneys  
20 Association, the Vermont State's Sheriffs Association, the Vermont Police  
21 Chiefs Association, and the Vermont Constables Association these

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1 appointments, and during incumbency these public members shall not serve  
2 and shall have never served as a law enforcement officer, corrections officer,  
3 or labor union officer, and shall not have an immediate family member who is  
4 serving or has ever served as any of those officers.

5 (2) ~~Their~~ A member's term shall be three years.

6 \* \* \*

7 § 2354. COUNCIL MEETINGS

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

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

13 (c)(1) ~~The commissioner of public safety, the commissioner of corrections,~~  
14 ~~the commissioner of motor vehicles, the commissioner of fish and wildlife, the~~  
15 ~~attorney general, the representative from the Vermont troopers' association, the~~  
16 ~~representative from the Vermont police association, and the representatives~~  
17 ~~from the Vermont state's attorneys', sheriffs', and police chiefs' association,~~  
18 ~~each~~ A member may designate in writing a person within ~~their~~ his or her  
19 agency or association to attend a meeting or meetings of the ~~council~~ Council.  
20 The designation shall be filed with the ~~chairman~~ Chair of the ~~council~~ Council.

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

5 § 2355. COUNCIL POWERS AND DUTIES

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

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

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

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

14 **[OPTION A:]**

15           (4) minimum qualifications for students at training programs, which  
16 shall include successful completion of a polygraph examination and a criminal  
17 background investigation;

18 **[OPTION B:]**

19           (4) minimum qualifications for students at training programs, which  
20 may include passage of a criminal background investigation, but which shall  
21 not include the taking of a polygraph examination;

**Comment [BAW2]:** *Note:* Council is an “agency” under VAPA’s [3 V.S.A. § 801\(b\)\(1\)](#) and therefore subject to VAPA’s rulemaking process set forth in [3 V.S.A. § 831\(a\)](#).

**Comment [BAW3]:** *Options choice:* Whether Council should be permitted to conduct polygraph examinations in order for a student to qualify for a training program.

- Option A: Polygraph examination would be required.

- Option B: Polygraph examination would be prohibited.

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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 **[OPTION A:]**

4 **[no additional rulemaking requirements under this subsection (a)]**

5 **[OPTION B:]**

6 **(13)** an effective internal affairs program, as that term is defined in  
7 subchapter 2 of this chapter, that applies to the Council's process for  
8 conducting investigations and hearings and determining sanctions.

9 \* \* \*

10 **[OPTION A:]**

11 **§ 2356. VERMONT POLICE ACADEMY**

12 The Vermont Police Academy within the Robert H. Wood, Jr. Criminal  
13 Justice and Fire Service Training Center of Vermont is hereby designated a  
14 law enforcement agency. Law enforcement officers employed by the  
15 Academy shall have statewide law enforcement authority.

16 **[OPTION B:]**

17 **§ 2356. VERMONT POLICE ACADEMY LAW ENFORCEMENT**

18 **OFFICERS**

19 Law enforcement officers employed by the Vermont Police Academy  
20 within the Robert H. Wood, Jr. Criminal Justice and Fire Service Training  
21 Center of Vermont shall have statewide law enforcement authority.

**Comment [BAW4]: Options choice:** Whether Council should be required to adopt rules to establish its own effective internal affairs program that applies to its investigations, hearings, and sanctions.

- Option A: No such rulemaking requirement.
- Option B: Require this rulemaking.

**Notes:**

- Are all of the aspects of an effective internal affairs program applicable to the Council (ex.: determination of agency policy violation vs. Category conduct violations; civilian review process), or is intent more for rules for procedures re: investigations, hearings, and sanctions?

- Council already required to adopt rules of procedure for hearings under VAPA's [3 V.S.A. § 831\(d\)](#).

- See VAPA's [3 V.S.A. § 832\(a\)\(2\)](#), which provides general standard that rulemaking is not required to set forth staff guidelines re: investigations, prosecution, or settlements, if that disclosure would have certain impacts.

- See also the related reference to Council investigators complying with investigation rules, policies, and procedures set forth in § 2384(e). If rulemaking re: investigations is required here, language in § 2384(e) may be duplicative.

**Comment [BAW5]: Options choice:** Whether Vermont Police Academy should be designated a law enforcement agency.

Under either option, LEOs employed by Academy would have statewide authority.

- Option A: Designate Academy as a law enforcement agency. Note that this designation would mean the Academy would be subject to the provisions of subch. 2 (ex.: required effective internal affairs program; reporting).

- Option B: No Academy designation .



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1 \* \* \*

2 § 2358. MINIMUM TRAINING STANDARDS; DEFINITIONS

3 \* \* \*

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

9 (1) Level I certification.

10 \* \* \*

11 (B)(i) The scope of practice of a Level I law enforcement officer  
12 shall be limited to security, transport, vehicle escorts, and traffic control, as  
13 those terms are defined by the Council ~~by rule~~, except that a Level I officer  
14 may react in the following circumstances if the officer determines that it is  
15 necessary to do any of the following:

16 \* \* \*

17 (2) Level II certification.

18 (A) An applicant for certification as a Level II law enforcement  
19 officer shall first complete Level II basic training and may then become  
20 certified in a specialized practice area as set forth in subdivision (B)(ii) of this  
21 subdivision (2). Level II basic training shall include training to respond to

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1 calls regarding alleged crimes in progress and to react to the circumstances  
2 described in subdivision (B)(iii) of this subdivision (2).

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

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

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

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

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

14 ~~(V)~~ 13 V.S.A. §§ 505 (fourth degree arson), 508 (setting  
15 fires), and 509 (attempts);

16 ~~(VI)~~ 13 V.S.A. chapter 19, subchapter 1 (riots);

17 ~~(VII)~~ 13 V.S.A. §§ 1022 (noise in the nighttime), 1023  
18 (simple assault), 1025 (recklessly endangering another person), 1026  
19 (disorderly conduct), 1026a (aggravated disorderly conduct), 1027 (disturbing  
20 peace by use of telephone or other electronic communications), 1030 (violation  
21 of an abuse prevention order, an order against stalking or sexual assault, or a

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1 protective order concerning contact with a child), 1031 (interference with  
2 access to emergency services), 1042 (domestic assault), and 1062 (stalking);

3 ~~(VII)~~(VIII) 13 V.S.A. chapter 35 (escape);

4 ~~(VIII)~~(IX) 13 V.S.A. chapter 41 (false alarms and reports);

5 ~~(IX)~~(X) 13 V.S.A. chapter 45 (flags and ensigns);

6 ~~(X)~~(XI) 13 V.S.A. chapter 47 (frauds);

7 ~~(XI)~~(XII) 13 V.S.A. chapter 49 (fraud in commercial  
8 transactions);

9 ~~(XII)~~(XIII) 13 V.S.A. chapter 51 (gambling and lotteries);

10 ~~(XIII)~~(XIV) 13 V.S.A. chapter 57 (larceny and embezzlement),  
11 except for subchapter 2 (embezzlement);

12 ~~(XIV)~~(XV) 13 V.S.A. chapter 67 (public justice and public  
13 officers);

14 ~~(XV)~~(XVI) 13 V.S.A. chapter 69 (railroads);

15 ~~(XVI)~~(XVII) 13 V.S.A. chapter 77 (trees and plants);

16 ~~(XVII)~~(XVIII) 13 V.S.A. chapter 81 (trespass and malicious  
17 injuries to property);

18 ~~(XVIII)~~(XIX) 13 V.S.A. chapter 83 (vagrants);

19 ~~(XIX)~~(XX) 13 V.S.A. chapter 85 (weapons);

20 (XXI) 13 V.S.A. § 7559(d), (e), and (f) (violating condition of  
21 release);

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- 1                   ~~(XX)~~(XXII) 18 V.S.A. §§ 4230(a), 4230c, and 4230d  
2 (marijuana possession);
- 3                   ~~(XXI)~~(XXIII) 18 V.S.A. § 4231(a) (cocaine possession);  
4                   ~~(XXII)~~(XXIV) 18 V.S.A. § 4232(a) (LSD possession);  
5                   ~~(XXIII)~~(XXV) 18 V.S.A. § 4233(a) (heroin possession);  
6                   ~~(XXIV)~~(XXVI) 18 V.S.A. § 4234(a) (depressant, stimulant, or  
7 narcotic drug possession);
- 8                   ~~(XXV)~~(XXVII) 18 V.S.A. § 4234a(a) (methamphetamine  
9 possession);
- 10                  ~~(XXVI)~~(XXVIII) 18 V.S.A. § 4235(b) (hallucinogenic drug  
11 possession);
- 12                  ~~(XXVII)~~(XXIX) 18 V.S.A. § 4235a(a) (ecstasy possession);  
13                  ~~(XXVIII)~~(XXX) 18 V.S.A. § 4476 (drug paraphernalia  
14 offenses);
- 15                  (XXXI) 20 V.S.A. § 3132 (firework prohibitions);
- 16                  ~~(XXXI)~~(XXXII) 21 V.S.A. § 692(c)(2) (criminal violation of  
17 stop-work order);
- 18                  ~~(XXX)~~(XXXIII) any misdemeanor set forth in Title 23 of the  
19 Vermont Statutes Annotated, except for 23 V.S.A. chapter 13, subchapter 13  
20 (drunken driving), 23 V.S.A. § 3207a (snowmobiling under the influence),

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1 23 V.S.A. § 3323 (boating under the influence), or 23 V.S.A. § 3506(b)(8)  
2 (operating an all-terrain vehicle under the influence);

3 ~~(XXXI)~~(XXXIV) any motor vehicle accident that includes  
4 property damage and injuries, as permitted by the Council by rule;

5 ~~(XXXII)~~(XXXV) any matter within the jurisdiction of the  
6 Judicial Bureau as set forth in 4 V.S.A. § 1102;

7 ~~(XXXIII)~~(XXXVI) municipal ordinance violations;

8 ~~(XXXIV)~~(XXXVII) any matter within the jurisdiction of a  
9 game warden or deputy game warden as set forth in 10 V.S.A. chapter 103,  
10 subchapter 4 (game wardens); and

11 ~~(XXXV)~~(XXXVIII) any matter within the scope of practice of  
12 a Level I law enforcement officer.

13 \* \* \*

14 (d) ~~As used in this section:~~

15 (1) ~~“Law enforcement officer” means a member of the Department of~~  
16 ~~Public Safety who exercises law enforcement powers, a member of the State~~  
17 ~~Police, a Capitol Police officer, a municipal police officer, a constable who~~  
18 ~~exercises law enforcement powers, a motor vehicle inspector, an employee of~~  
19 ~~the Department of Liquor Control who exercises law enforcement powers, an~~  
20 ~~investigator employed by the Secretary of State, Board of Medical Practice~~  
21 ~~investigators employed by the Department of Health, Attorney General, or a~~

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1 ~~State’s Attorney, a fish and game warden, a sheriff, or deputy sheriff who~~  
2 ~~exercises law enforcement powers, a railroad police officer commissioned~~  
3 ~~pursuant to 5 V.S.A. chapter 68, subchapter 8, or a police officer appointed to~~  
4 ~~the University of Vermont’s Department of Police Services.~~

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

8 (3) [Repealed.]

9 \* \* \*

10 § 2359. SUPERVISING OFFICERS; CERTIFICATION REQUIREMENTS

11 (a) A law enforcement officer in a supervisory position shall not supervise  
12 a law enforcement officer who is certified at a higher level than the supervising  
13 officer.

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

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

17 \* \* \*

**Comment [BAW6]:** *Note:* See Sec. 2(a) re: transitional provision applicable to this section.

Pursuant to Sec. 2(a), this section does not apply to a supervising officer in his or her current position in his or her current law enforcement agency in effect on the effective date of this section (1/1/16).

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1 § 2367. STATEWIDE POLICY; ELECTRONIC CONTROL DEVICES;  
2 REPORTING

3 \* \* \*

4 (b) On or before January 1, 2015, the Law Enforcement Advisory Board  
5 shall establish a statewide policy on the use of and training requirements for  
6 the use of electronic control devices. ~~On or before January 1, 2016~~ Prior to  
7 any use of or intent to use an electronic control device, every a State, local,  
8 county, and or municipal law enforcement agency and every or constable who  
9 is not employed by a law enforcement agency shall adopt this policy. If a law  
10 enforcement agency or officer that is was required to adopt a policy pursuant to  
11 this subsection ~~fails~~ but failed to do so on or before January 1, 2016, that  
12 agency or officer shall be deemed to have adopted, and shall follow and  
13 enforce, the model policy established by the Law Enforcement Advisory  
14 Board. The policy shall include the following provisions:

15 \* \* \*

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

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1 (d) On or before June 30, 2017, every State, ~~local~~, county, and municipal  
2 law enforcement agency that employs one or more certified law enforcement  
3 officers shall ensure that all officers have completed the training established in  
4 2004 Acts and Resolves No. 80, Sec. 13(a), and every constable who is not  
5 employed by a law enforcement agency shall have completed this training.

6 \* \* \*

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

11 (g) The Law Enforcement Advisory Board shall:

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

14 and

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

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



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

4 Subchapter 2. Unprofessional Conduct

5 § 2381. DEFINITIONS

6 As used in this subchapter:

7 (1) “Category A conduct” means:

8 (A) A felony.

9 (B) A misdemeanor committed while on duty.

10 (C) Any of the following misdemeanors, if committed off-duty:

11 (i) Simple assault, second offense;

12 (ii) Domestic assault;

13 (iii) False reports and statements;

14 (iv) Driving under the influence, second offense;

15 (v) Violation of any court order;

16 (vi) Stalking;

17 (vii) Cruelty to animals;

18 (viii) False pretenses;

19 (ix) Voyeurism;

20 (x) Prostitution;

21 (xi) Distribution of a regulated substance;

**Comment [BAW7]:** *Note:* See Sec. 2(c) re: the application of this subchapter to alleged LEO conduct.

Pursuant to Sec. 2(c), this subchapter applies to LEO conduct alleged to have been committed on and after the effective date of this subchapter (1/1/17).

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- 1                   (xii) Simple assault on a law enforcement officer; or
- 2                   (xiii) Possession of a regulated substance, second offense.
- 3                   (D) Gross professional misconduct amounting to actions on duty or  
4 under color of authority that involve substantial deviation from conduct,  
5 such as:
- 6                   (i) sexual harassment involving physical contact or misuse of  
7 position;
- 8                   (ii) misuse of official position for personal or economic gain;  
9                   (iii) excessive use of force under color of authority, second  
10 offense;
- 11                   (iv) mistreating persons in custody; or
- 12                   (v) use of electronic criminal records database for personal,  
13 political, or economic gain.
- 14                   (2) “Category B conduct” means any of the following allegations of  
15 misconduct that are neither Category A nor Category C conduct:
- 16                   (A) abuse of authority;
- 17                   (B) biased enforcement;
- 18                   (C) membership in organizations that advocate, promote, plan, or  
19 effect criminal conduct or the overthrow of or interference with any lawfully  
20 constituted government in the United States;

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

3           (E) avoiding the responsibility of his or her law enforcement  
4 position.

5           (3) “Category C conduct” means any allegation of misconduct  
6 pertaining to Council processes or operations, including:

7           (A) knowingly making material false statements or reports to the  
8 Council;

9           (B) falsification of Council documents;

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

12           (D) material false statements about certification status to a law  
13 enforcement agency;

14           (E) knowing employment of an individual in a position or for duties  
15 for which individual lacks proper certification;

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

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

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1           (4) “Effective internal affairs program” means that a law enforcement  
2 agency:

3           (A) has language in its policies or applicable collective bargaining  
4 agreement outlining for its law enforcement officers expectations of  
5 employment or prohibited activity, or both;

6           (B) accepts complaints against its officers from any source;

7           (C) assigns an investigator to investigate complaints for the purpose  
8 of determining whether its accused officer violated an agency rule or policy or  
9 State or federal law;

10           (D) treats it accused officers fairly and provides due process rights  
11 for those officers in its policies;

12           (E) decides discipline its officers upon just cause, a set range of  
13 sanctions for offenses, and consideration of mitigating and aggravating  
14 circumstances; and

15           (F) provides for review of this process by civilians, which may be a  
16 selectboard or other elected body, at least for highly serious infractions, such  
17 as felonious criminal conduct or egregious professional misconduct, regardless  
18 of whether the civilian review process has a formal or final role in the  
19 investigation.

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1           (5) “Investigator” means:

2           (A) a law enforcement officer of the law enforcement agency, who is  
3 of a higher rank than the officer under investigation and who is trained or  
4 certified in criminal investigations or internal affairs, and that training or  
5 certification is recognized by the Council; or

6           (B) a retired law enforcement officer or a law enforcement officer of  
7 another agency who is trained or certified in criminal investigations or internal  
8 affairs, and that training or certification is recognized by the Council.

9           (6)(A) “Valid investigation” means an investigation conducted pursuant  
10 to a law enforcement agency’s established or accepted procedures.

11           (B) An investigation shall not be valid if:

12           (i) the agency has not adopted an effective internal affairs  
13 program;

14           (ii) the agency refuses, without any legitimate basis, to conduct an  
15 investigation;

16           (iii) the agency intentionally did not report allegations to the  
17 Council as required;

18           (iv) the agency attempts to cover up the misconduct or takes an  
19 action intended to discourage or intimidate a complainant; or

20           (v) the agency’s executive officer is the officer accused of  
21 misconduct.

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1 **§ 2382. LAW ENFORCEMENT AGENCIES; DUTY TO ADOPT AN**  
2 **EFFECTIVE INTERNAL AFFAIRS PROGRAM**

3 (a) Each law enforcement agency shall adopt an effective internal affairs  
4 program in order to manage complaints regarding the agency's law  
5 enforcement officers.

6 (b) The Council shall adopt a model effective internal affairs program that  
7 may be used by law enforcement agencies to meet the requirements of this  
8 section.

9 **§ 2383. LAW ENFORCEMENT AGENCIES; DUTY TO REPORT**

10 (a) Alleged Category A conduct. 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 a complaint against the officer that, if deemed  
14 credible by the executive officer of the agency, alleges that the officer  
15 committed Category A conduct.

16 (2) The agency receives or issues any of the following:

17 (A) a report or findings of an investigation into allegations that the  
18 officer committed Category A conduct; or

19 (B) any decision or findings, including findings of fact or verdict,  
20 regarding allegations that the officer committed Category A conduct, including

**Comment [BAW8]: Notes:**

- See Sec. 2(b) re: effective dates for implementation of this section.  
- Agencies required to adopt by 1/1/17  
- Council required to adopt model policy by 10/1/16

- As written, will apply to constables and investigators employed by OPR and DOH/BMP.

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1 a hearing officer decision, arbitration, administrative decision, or judicial  
2 decision, and any appeal therefrom.

3 (3) The agency terminates the officer for Category A conduct.

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

7 (1) The agency receives a complaint that the officer committed a second  
8 offense of Category B conduct.

9 (2) The agency terminates the officer for Category B conduct.

10 (c) Officer resignation; any category conduct. 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 conduct, except for a first offense of Category B conduct.

14 (d) Agency hires.

15 (1) Prior to hiring or accepting the transfer of an individual who has  
16 worked as a law enforcement officer for another law enforcement agency, the  
17 executive officer of the agency considering the hiring or transfer shall verify  
18 with the Council the law enforcement officer's certification with the Council.

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**[OPTION A:]**

(2) During its certification verification review, the Council may advise that executive officer that the law enforcement officer resigned from his or her previous law enforcement agency **for** any Category B conduct.

**[OPTION B:]**

[No subdiv. (2)]

(e) Ability to report other conduct. Nothing in this section shall prohibit a law enforcement agency from reporting to the Council any other instances of a law enforcement officer's alleged unprofessional conduct.

§ 2384. COUNCIL INVESTIGATIONS

(a) Generally; restriction. The Council shall accept from any source complaints alleging law enforcement officer unprofessional conduct and shall investigate or refer for investigation such complaints that, if deemed to be credible by the Council, constitute grounds for disciplinary action, unless the allegations were subject to a valid investigation.

(b) Restriction exceptions. Notwithstanding the provisions of subsection (a) of this section, a valid investigation shall not bar a Council investigation if:

**Comment [BAW9]: Options choice:** Whether to allow Council to advise potential hiring agency that LEO left former agency due to any Category B conduct.

- Option A: Allow Council to share this info.  
What about Category A or C conduct?

- Option B: Do not provide for Council to share this info.

*Notes:* See also potential confidentiality § 2387(f) re: ability of Council to advise hiring agencies re: unprofessional conduct.



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**[OPTION A:]**

(1) the officer is alleged to have committed Category A conduct;

**[OPTION B:]**

(1) the officer received a final conviction for criminal charges related to Category A conduct;

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

(3) **except as provided in subsection (c) of this section,** the valid investigation involved an alleged second offense of Category B conduct; or

(4) the allegation is in regard to Category C conduct.

**(c) Alleged second offense of Category B conduct.**

(1) If a law enforcement agency, administrative, or criminal investigation about a law enforcement officer's alleged second offense of Category B conduct 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.

(2) If a law enforcement agency conducts a valid investigation of its law enforcement officer's alleged second offense of Category B conduct, the

**Comment [BAW10]: Options choice:** When Council would be permitted to investigate Category A conduct.

- Option A: When an LEO is alleged to have committed Category A conduct.

- Option B: When an LEO has been finally convicted of a charge related to Category A conduct.

**Note:** Under Option B, more information is necessary re: ability of Council to investigate Category A conduct that is not criminally charged, such as Category A gross professional misconduct.

**Comment [BAW11]: Notes:**

- It is unusual to cite caselaw in statute and this reference does not seem necessary if law enforcement agency investigations are referenced.  
- Under Loudermill, prior to being deprived of a property interest, tenured public employees are entitled to notice of employer charges, an explanation of employer evidence, and an opportunity to present their side of story. Loudermill, 470 U.S. 532, 546 (1985).

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1 Council shall accept the agency’s disciplinary decision, if any, and take no  
2 action, unless the Council concludes that the agency’s decision is arbitrary or  
3 capricious.

4 (d) Council investigators. In the event that the Council conducts an  
5 investigation, the Council-assigned investigator shall abide by any Council  
6 rules, policies, and procedures governing investigations.

7 § 2385. COUNCIL DISCIPLINARY PROCEDURE

8 Except as otherwise provided in this subchapter, the Council shall conduct  
9 its proceedings in accordance with the Vermont Administrative Procedure Act.

10 § 2386. PERMITTED COUNCIL DISCIPLINE

11 (a) The Council may impose any of the following discipline on a law  
12 enforcement officer’s certification upon its finding that a law enforcement  
13 officer committed unprofessional conduct:

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

16 (2) Probation, which may include conditions such as training,  
17 supervision, participation in counseling, or payment of restitution.

18 (3) Suspension of certification for a period not to exceed two years.

19 (4) Revocation of certification for a period not to exceed three years.

20 (5) Permanent revocation of certification.

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1 § 2387. ACCESSIBILITY AND CONFIDENTIALITY

2 (a) It is the purpose of this section both to protect the reputation of law  
3 enforcement officers from public disclosure of unwarranted complaints against  
4 them, and to fulfill the public's right to know of any action taken against a law  
5 enforcement officer when that action is based on a determination of  
6 unprofessional conduct.

7 (b) All meetings and hearings of the Council shall be subject to the Open  
8 Meeting Law.

9 (c)(1) The Executive Director of the Council shall prepare and maintain a  
10 register of all complaints, which shall be a public record and which shall show:

11 (A) with respect to any complaint, the following information:

12 (i) the date and the nature of the complaint, but not including the  
13 identity of the law enforcement officer; and

14 (ii) a summary of the completed investigation; and

15 (B) only with respect to a complaint resulting in filing of charges or  
16 stipulations or the taking of disciplinary action and except as provided in  
17 subdivision (2) of this subsection, the following additional information:

18 (i) the name and business addresses of the law enforcement officer  
19 and the complainant;

20 (ii) formal charges, provided that they have been served or a  
21 reasonable effort to serve them has been made;

**Comment [BAW12]:** Note: Compare to OPR's confidentiality statute set forth in [3 V.S.A. § 131](#) and BMP's confidentiality statute set forth in [26 V.S.A. § 1318](#).

**Comment [BAW13]:** Note: Compare to BMP's [26V.S.A. § 1318\(c\)\(1\)\(B\)](#).

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- 1                    (iii) the findings, conclusions, and order of the Council;  
2                    (iv) the transcript of the hearing, if one has been made, and  
3 exhibits admitted at the hearing;  
4                    (v) any stipulation filed with the Council; and  
5                    (vi) any final disposition of the matter by the Vermont Supreme  
6 Court.

7                    (2) The Executive Director shall remove from the register any of the  
8 information described in subdivision (1)(B) of this subsection if the final  
9 disposition of the matter dismisses all charges filed against the law  
10 enforcement officer in the same action. The Executive Director shall ensure  
11 that the period for appealing an order has expired prior to removing any such  
12 information from the register, and shall remove that information within five  
13 business days of the expiration of the appeal period.

**Comment [BAW14]:** Note: Compare to BMP's 26 V.S.A. § 1318(c)(2).

14                    (d)(1) The Council, its hearing officer, and Council staff shall keep  
15 confidential any other information regarding unprofessional conduct  
16 complaints, investigations, proceedings, and related records except the  
17 information required or permitted to be released under this section.

18                    (2) The Executive Director shall, upon request, provide information that  
19 was maintained on the register under subdivision (c)(1) of this section but  
20 which was later removed from the register under the provisions of subdivision  
21 (c)(2) of this section.

**Comment [BAW15]:** Note: Compare to BMP's 26 V.S.A. § 1318(d).

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1       (e) A law enforcement officer charged with unprofessional conduct shall  
2       have the right to inspect and copy the investigation file that results in the  
3       charges against him or her, except for any attorney work product or other  
4       privileged information.

5       (f) Nothing in this section shall prohibit the disclosure of any information  
6       regarding unprofessional conduct complaints pursuant to an order from a court  
7       of competent jurisdiction, or to a State or federal law enforcement agency in  
8       the course of its investigation or its potential hiring of a law enforcement  
9       officer, provided the agency agrees to maintain the confidentiality of the  
10       information as provided in subsection (d) of this section.

11       Sec. 2. TRANSITIONAL PROVISIONS TO IMPLEMENT THIS ACT

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

17       (b) Effective internal affairs programs.

18       (1) Law enforcement agencies. On or before January 1, 2017, each law  
19       enforcement agency shall adopt an effective internal affairs program in  
20       accordance with 20 V.S.A. § 2382(a) in Sec. 1 of this act.

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1           (2) Vermont Criminal Justice Training Council. On or before  
2           October 1, 2016, the Vermont Criminal Justice Training Council shall adopt an  
3           effective internal affairs program model policy in accordance with  
4           20 V.S.A. § 2382(b) in Sec. 1 of this act.

5           (c) Alleged law enforcement officer unprofessional conduct. The  
6           provisions of 20 V.S.A. chapter 151, subchapter 2 (unprofessional conduct) in  
7           Sec. 1 of this act shall apply to law enforcement officer conduct alleged to  
8           have been committed on and after the effective date of that subchapter.

9                               \* \* \* Vermont State Police \* \* \*

10          Sec. 3. 20 V.S.A. § 1812 is amended to read:

11          § 1812. DEFINITIONS

12          ~~The following words and phrases, as As used in this title, shall have the~~  
13          ~~following meanings~~ unless otherwise provided:

14               (1) “Commissioner,” means the commissioner of public safety;  
15               Commissioner of Public Safety.

16               (2) “Department,” means the department of public safety; Department of  
17               Public Safety.

18               (3) “Employee,” ~~an employee~~ means a member assigned to a position  
19               other than that of ~~state police;~~ State Police.

20               (4) “Member,” means any employee of the department; person  
21               employed by the Department.

**Comment [BAW16]: Notes:**  
- Definitions need corrected b/c 1) “State Police” can’t be “employees” if “employee” is defined as someone other than State Police; and 2) “Member” can’t be “employee” if “employee” is defined as someone other than State Police, if “member” is supposed to include anyone employed by the Dept.  
  
- See also the use of “member” (ie., anyone employed by Dept.) in 20 V.S.A. § 1923 (internal investigation) set forth in Sec. 4 of this draft.

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1 (5) “~~State police, Police~~” ~~an employee~~ means a member assigned to  
2 police duties and law enforcement.

3 **Sec. 4.** 20 V.S.A. § 1922 is amended to read:

4 § 1922. CREATION OF STATE POLICE ADVISORY COMMISSION;  
5 MEMBERS; DUTIES

6 (a) There is hereby created the ~~state police advisory commission~~ State  
7 Police Advisory Commission, which shall provide advice and counsel to the  
8 ~~commissioner~~ Commissioner in carrying out his or her responsibilities for the  
9 management, supervision, and control of the Vermont ~~state police~~ State Police.

10 (b) The ~~commission~~ Commission shall consist of seven members, at least  
11 one of whom shall be an attorney and one of whom shall be a retired ~~state~~  
12 ~~police~~ State Police officer, to be appointed by the ~~governor~~ Governor with the  
13 advice and consent of the ~~senate~~ Senate.

14 (c) Members of the ~~commission~~ Commission shall serve for terms of four  
15 years, at the pleasure of the ~~governor~~ Governor. Of the initial appointments,  
16 one shall be appointed for a term of one year, two for terms of two years, two  
17 for terms of three years, and two for terms of four years. Appointments to fill  
18 a vacancy shall be for the unexpired portion of the term vacated. The ~~chairman~~  
19 chair shall be appointed by the ~~governor~~ Governor.

**Comment [BAW17]:** Note: Provided for reference, stylistic V.S.A. updates, and in (f), “entitled to” appropriations language.

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1 (d) The creation and existence of the ~~commission~~ Commission shall not  
2 relieve the ~~commissioner~~ Commissioner of his or her duties under the law to  
3 manage, supervise, and control the ~~state police~~ State Police.

4 (e) To ensure that ~~state police~~ State Police officers are subject to fair and  
5 known practices, the ~~commission~~ Commission shall advise the ~~commissioner~~  
6 Commissioner with respect to and review rules concerning promotion,  
7 grievances, transfers, internal investigations, and discipline.

8 (f) Members of the Commission shall be ~~paid~~ entitled to receive per diem  
9 compensation and reimbursement for expenses in accordance with ~~section~~  
10 ~~1010 of Title 32 V.S.A. § 1010.~~

11 Sec. 5. 20 V.S.A. § 1923 is amended to read:

12 § 1923. INTERNAL INVESTIGATION

13 (a)(1) The ~~commission~~ State Police Advisory Commission shall advise and  
14 assist the ~~commissioner~~ Commissioner in developing and making known  
15 routine procedures to ensure that allegations of misconduct by ~~state police~~  
16 State Police officers are investigated fully and fairly, and to ensure that  
17 appropriate action is taken with respect to such allegations.

18 (2) The Commissioner shall ensure that the procedures described in  
19 subdivision (1) of this section constitute an effective internal affairs program in  
20 order to comply with section 2382 of this title.



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1 ~~(b)(1)~~ The ~~commissioner~~ Commissioner shall establish an ~~office of internal~~  
2 ~~investigation~~ Office of Internal Investigation within the ~~department~~  
3 Department, which ~~office~~ shall investigate, or cause to be investigated, all  
4 allegations of misconduct by members of the ~~department~~ Department, except  
5 complaints lodged against members of the ~~internal investigation office~~ Office,  
6 which ~~complaints~~ shall be separately and independently investigated by  
7 officers designated for each instance by the ~~commissioner~~ Commissioner, with  
8 the approval of the ~~state police advisory commission~~ State Police Advisory  
9 Commission.

**Comment [BAW18]:** *Note:* Is it accurate that OII is for all DPS “members” (which under 20 V.S.A. § 1812 means any person employed by the Dept.), or is it only meant for State Police? . SPAC approves officers to investigate OII “members” under (b), and has access to OII records under (d)(1).

10 (2) The head of the ~~internal affairs unit~~ Office shall report all allegations  
11 and his or her findings as to such allegations to the ~~commissioner~~  
12 Commissioner. The head of the ~~internal affairs unit~~ Office also shall  
13 immediately report all allegations to the ~~state’s attorney~~ State’s Attorney of the  
14 county in which the incident took place, ~~to the attorney general~~ Attorney  
15 General, and ~~to the governor~~ Governor, unless the head of the ~~unit~~ Office  
16 makes a determination that the allegations do not include violation of a  
17 criminal statute. The head of the ~~internal affairs unit~~ Office shall also report  
18 the disposition of all cases so reported to the ~~state’s attorney~~ State’s Attorney,  
19 ~~attorney general~~ Attorney General, and ~~governor~~ Governor.

**Comment [BAW19]:** Revision accurate?

**Comment [BAW20]:** [same question]

**Comment [BAW21]:** [same question]

**Comment [BAW22]:** [same question]

20 (c)(1) The ~~office of internal investigation~~ Office of Internal Investigation  
21 shall maintain a written log with respect to each allegation of misconduct

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1 made. The log shall document all action taken with respect to each allegation,  
2 including a notation of the person or persons assigned to the investigation, a  
3 list of all pertinent documents, all action taken, and the final disposition of  
4 each allegation.

5 (2) Failure of any member of the ~~department~~ Department to report to the  
6 ~~office of internal investigation~~ Office an allegation of misconduct known to  
7 ~~such the member;~~ shall be grounds for disciplinary action by the ~~commissioner~~  
8 Commissioner, including dismissal.

9 (d) Records of the ~~office of internal investigation~~ Office of Internal  
10 Investigation shall be confidential, except:

11 (1) The ~~state police advisory commission~~ State Police Advisory  
12 Commission shall, at any time, have full and free access to such records; ~~and~~

13 (2) The ~~commissioner~~ Commissioner shall deliver such materials from  
14 the records of the ~~office of internal investigation~~ Office as may be necessary to  
15 appropriate prosecutorial authorities having jurisdiction;

16 (3) ~~The~~ Director of the State Police shall report to the Vermont Criminal  
17 Justice Training Council as required by 20 V.S.A. § 2383; and

18 (3)(4) The ~~state police advisory commission~~ State Police Advisory  
19 Commission shall, in its discretion, be entitled to report to such authorities as it  
20 may deem appropriate, ~~or~~ to the public, or ~~to~~ both, to ensure that proper action  
21 is taken in each case.

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\* \* \* Law Enforcement Advisory Board \* \* \*

Sec. 6. REPEAL

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

Sec. 7. 20 V.S.A. § 1818 is added to read:

§ 1818. LAW ENFORCEMENT ADVISORY BOARD

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

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

(1) the Commissioner of Public Safety;

(2) the Director of the Vermont State Police;

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

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

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

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

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- 1           (7) a member of the Vermont Police Association appointed by the  
2 President of the Association;
- 3           (8) the Attorney General or designee;
- 4           (9) a State’s Attorney appointed by the Executive Director of the  
5 Department of State’s Attorneys and Sheriffs;
- 6           (10) the U.S. Attorney or designee;
- 7           (11) the Executive Director of the Vermont Criminal Justice Training  
8 Council;
- 9           (12) the Defender General or designee;
- 10           (13) one representative of the Vermont Troopers’ Association or its  
11 successor entity, elected by its membership;
- 12           (14) a member of the Vermont Constables Association appointed by the  
13 President of the Association;
- 14           ~~(15) the Commissioner of Fish and Wildlife or designee;~~
- 15           ~~(16) the Commissioner of Motor Vehicles or designee; and~~
- 16           (15) a member of the law enforcement officers represented by the  
17 Vermont State Employees Association or its successor entity, elected by the  
18 law enforcement officer members; and
- 19           (16) the Executive Director of the Vermont Network Against Domestic  
20 and Sexual Violence or designee.

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1       (b) The Board shall elect a Chair and a Vice Chair, which shall rotate  
2       among the various member representatives. Each member shall serve a term of  
3       two years. The Board shall meet at the call of the Chair. A quorum shall  
4       consist of six members, and decisions of the Board shall require the approval  
5       of a majority of those members present and voting.

6       (c) The Board shall undertake an ongoing formal review process of law  
7       enforcement policies and practices with a goal of developing a comprehensive  
8       approach to providing the best services to Vermonters, given monies available.  
9       The Board shall also provide educational resources to Vermonters about public  
10       safety challenges in the State.

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

17       Sec. 8. RECODIFICATION

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

