

1 S.25

2 Introduced by Senator White

3 Referred to Committee on

4 Date:

5 Subject: Public safety; law enforcement officers; professional regulation;

6 Vermont Criminal Justice Training Council

7 Statement of purpose of bill as introduced: This bill proposes to amend

8 statutes regarding the Vermont Criminal Justice Training Council's

9 professional regulation of law enforcement officers.

10 An act relating to the professional regulation of law enforcement officers by  
11 the Vermont Criminal Justice Training Council

12 It is hereby enacted by the General Assembly of the State of Vermont:

13 \* \* \* Vermont Criminal Justice Training Council \* \* \*

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

15 CHAPTER 151. VERMONT CRIMINAL JUSTICE TRAINING COUNCIL

16 Subchapter 1. General Provisions

17 § 2351. CREATION AND PURPOSE OF COUNCIL

18 (a) In order to promote and protect the health, safety, and welfare of the

19 public, it is in the public interest to provide for the creation of the Vermont

20 Criminal Justice Training Council.

1 (b) The Council is created to encourage and assist municipalities, counties,  
2 and governmental agencies of this State in their efforts to improve the quality  
3 of law enforcement and citizen protection by maintaining a uniform standard  
4 of ~~recruit~~ recruitment and in-service training for law enforcement officers,  
5 ~~including members of the Department of Public Safety, Capitol Police officers,~~  
6 ~~municipal police officers, constables, correctional officers, prosecuting~~  
7 ~~personnel, motor vehicle inspectors, State investigators employed on a~~  
8 ~~full time basis by the Attorney General, fish and game wardens, sheriffs and~~  
9 ~~their deputies who exercise law enforcement powers pursuant to the provisions~~  
10 ~~of 24 V.S.A. §§ 307 and 311, railroad police commissioned pursuant to~~  
11 ~~5 V.S.A. chapter 68, subchapter 8, and police officers appointed to the~~  
12 ~~University of Vermont's Department of Police Services.~~

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

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

18 § 2351a. DEFINITIONS

19 As used in this chapter:

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

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

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

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

18           § 2352. ~~CREATION OF COUNCIL~~ MEMBERSHIP

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

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





1 Executive Director, ~~may~~ to grant up to a 60-day waiver to a law enforcement  
2 officer who has failed to meet his or her annual in-service training  
3 requirements but who is able to complete those training requirements within  
4 ~~that 60-day period~~ the time period permitted by the Executive Director.

5 \* \* \*

6 § 2358. MINIMUM TRAINING STANDARDS; DEFINITIONS

7 \* \* \*

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

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



1           (5) Sheriffs' officers. A sheriff shall notify the ~~council~~ Council of the  
2 appointment or removal of a deputy or other law enforcement officer employed  
3 by that sheriff's department.

4           (b) Notification required by this section shall include the name of the  
5 constable, police chief, police officer, deputy, or other law enforcement officer,  
6 the date of appointment or removal, and the term of office or length of  
7 appointment, if any.

8           (c) A report required by this section may be combined with any report  
9 required under subchapter 2 of this chapter.

10 § 2362a. POTENTIAL HIRING AGENCY; DUTY TO CONTACT

11           FORMER AGENCY

12           (a)(1) Prior to hiring a law enforcement officer who has been employed at  
13 another law enforcement agency, the executive officer of a potential hiring law  
14 enforcement agency shall:

15                   (A) require that officer to execute a written waiver that explicitly  
16 authorizes the officer's last law enforcement agency employer to disclose the  
17 reason that officer is no longer employed by that agency; and

18                   (B) contact that former agency to determine that reason and provide  
19 to that agency a copy of that written waiver.

20           (2) An officer who refuses to execute the written waiver shall not be  
21 hired by the potential hiring agency.





1                   (vi) stalking;

2                   (vii) false pretenses;

3                   (viii) voyeurism;

4                   (ix) prostitution;

5                   (x) distribution of a regulated substance;

6                   (xi) simple assault on a law enforcement officer; or

7                   (xii) possession of a regulated substance, second offense.

8                   (2) "Category B conduct" means gross professional misconduct  
9                   amounting to actions on duty or under color of authority, or both, that involve  
10                   substantial deviation from professional conduct as defined by the law  
11                   enforcement agency's policy or if not defined by the agency's policy, then as  
12                   defined by Council policy, such as:

13                   (A) sexual harassment involving physical contact or misuse of  
14                   position;

15                   (B) misuse of official position for personal or economic gain;

16                   (C) excessive use of force under color of authority, second offense;

17                   (D) biased enforcement; or

18                   (E) use of electronic criminal records database for personal, political,  
19                   or economic gain.

20                   (3) "Category C conduct" means any allegation of misconduct  
21                   pertaining to Council processes or operations, including:

1           (A) intentionally exceeding the scope of practice for an officer's  
2           certification level;

3           (B) knowingly making material false statements or reports to the  
4           Council;

5           (C) falsification of Council documents;

6           (D) intentional interference with Council investigations, including  
7           intimidation of witnesses or misrepresentations of material facts;

8           (E) material false statements about certification status to a law  
9           enforcement agency;

10           (F) knowing employment of an individual in a position or for duties  
11           for which the individual lacks proper certification;

12           (G) intentional failure to file a report as required by this  
13           subchapter; or

14           (H) failure to complete annual in-service training requirements.

15           (4) "Effective internal affairs program" means that a law enforcement  
16           agency does all of the following:

17           (A) Complaints. Accepts complaints against its law enforcement  
18           officers from any source.

19           (B) Investigators. Assigns an investigator to determine whether an  
20           officer violated an agency rule or policy or State or federal law.

1           (C) Policies. Has language in its policies or applicable collective  
2           bargaining agreement that outlines for its officers expectations of employment  
3           or prohibited activity, or both, and provides due process rights for its officers  
4           in its policies. These policies shall establish a code of conduct and a  
5           corresponding range of discipline.

6           (D) Fairness in discipline. Treats its accused officers fairly, and  
7           decides officer discipline based on just cause, a set range of discipline for  
8           offenses, consideration of mitigating and aggravating circumstances, and its  
9           policies' due process rights.

10           (E) Civilian review. Provides for review of officer discipline by  
11           civilians, which may be a selectboard or other elected body, at least for the  
12           conduct required to be reported to the Council under this subchapter.

13           (5) "Unprofessional conduct" means Category A, B, or C conduct.

14           (6)(A) "Valid investigation" means an investigation conducted pursuant  
15           to a law enforcement agency's established or accepted procedures.

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

17           (i) the agency has not adopted an effective internal affairs  
18           program;

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

1                   (iii) the agency intentionally did not report allegations to the  
2 Council as required;

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

5                   (v) the agency's executive officer is the officer accused of  
6 misconduct.

7                   § 2402. LAW ENFORCEMENT AGENCIES; DUTY TO ADOPT AN  
8                   EFFECTIVE INTERNAL AFFAIRS PROGRAM

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

12                   (b) The Council shall create an effective internal affairs program model  
13 policy that may be used by law enforcement agencies to meet the requirements  
14 of this section.

15                   § 2403. LAW ENFORCEMENT AGENCIES; DUTY TO REPORT

16                   (a)(1) The executive officer of a law enforcement agency or the chair of the  
17 agency's civilian review board shall report to the Council within 10 business  
18 days if any of the following occur in regard to a law enforcement officer of the  
19 agency:

1           (A) The agency receives a complaint against the officer that, if  
2           deemed credible by the executive officer of the agency as a result of a valid  
3           investigation, alleges that the officer committed unprofessional conduct.

4           (B) The agency receives or issues any of the following:

5                 (i) a report or findings of an investigation into allegations that the  
6                 officer committed Category A or Category B conduct;

7                 (ii) any decision or findings, including findings of fact or verdict,  
8                 regarding allegations that the officer committed Category A or Category B  
9                 conduct, including a hearing officer decision, arbitration, administrative  
10                decision, or judicial decision, and any appeal therefrom; or

11                (iii) a finding of probable cause that the officer committed  
12                Category A conduct.

13           (C) The agency terminates the officer for Category A or Category B  
14           conduct.

15           (D) The officer resigns from the agency while under investigation for  
16           unprofessional conduct.

17           (2) As part of his or her report, the executive officer of the agency or the  
18           chair of the civilian review board shall provide to the Council a copy of any  
19           relevant documents associated with the report, including any findings,  
20           decision, and the agency's investigative report.

1       (b) The Executive Director of the Council shall report to the Attorney  
2       General and the State's Attorney of jurisdiction any allegations that an officer  
3       committed Category A conduct.

4       § 2404. INVESTIGATIONS

5       (a) Agency investigations of Category A and B conduct.

6           (1)(A) Each law enforcement agency shall conduct a valid investigation  
7       of any complaint alleging that a law enforcement officer employed by the  
8       agency committed Category A or Category B conduct. An agency shall  
9       conclude its investigation even if the officer resigns from the agency during the  
10       course of the investigation.

11           (B) Notwithstanding the provisions of subdivision (A) of this  
12       subdivision (1), a law enforcement agency shall refer to the Council any  
13       unprofessional conduct complaints made against a law enforcement officer  
14       who is the executive officer of that agency.

15           (2)(A) The Council shall accept from any source complaints alleging a  
16       law enforcement officer committed unprofessional conduct and, if the  
17       Executive Director of the Council deems such a complaint credible, he or she  
18       shall refer any complaints regarding Category A or Category B conduct to the  
19       executive officer of the agency who employs that officer, and that agency shall  
20       conduct a valid investigation.

1           (B) Notwithstanding the provisions of subdivision (A) of this  
2           subdivision (2), the Council shall cause to be conducted an alternate course of  
3           investigation if the allegation is in regard to a law enforcement officer who is  
4           the executive officer of the agency.

5           (b) Exception to an agency's valid investigation. Notwithstanding a law  
6           enforcement agency's valid investigation of a complaint, the Council may  
7           investigate that complaint or cause the complaint to be investigated if the  
8           officer resigned before a valid investigation had begun or was completed.

9           (c) Council investigations of Category C conduct. The Council shall  
10          investigate allegations of Category C conduct.

11          § 2405. COUNCIL SANCTION PROCEDURE

12          Except as otherwise provided in this subchapter, the Council shall conduct  
13          its proceedings in accordance with the Vermont Administrative Procedure Act.  
14          This includes the ability to summarily suspend the certification of a law  
15          enforcement officer in accordance with 3 V.S.A. § 814(c).

16          § 2406. PERMITTED COUNCIL SANCTIONS

17          The Council may impose any of the following sanctions on a law  
18          enforcement officer's certification upon its finding that a law enforcement  
19          officer committed unprofessional conduct:

20                 (1) written warning;



1           (2) suspension, but to run concurrently with the length and time of any  
2           suspension imposed by a law enforcement agency with an effective internal  
3           affairs program, which shall amount to suspension for time already served if an  
4           officer has already served a suspension imposed by his or her agency with such  
5           a program;

6           (3) revocation with the option of recertification at the discretion of the  
7           Council; or

8           (4) permanent revocation.

9           § 2407. LIMITATION ON COUNCIL SANCTIONS; FIRST OFFENSE OF

10           CATEGORY B CONDUCT

11           (a) Allegations of Category B conduct; first offense. If a law enforcement  
12           agency conducts a valid investigation of a complaint alleging that a law  
13           enforcement officer committed a first offense of Category B conduct and  
14           concludes that the officer did not engage in that conduct, the Council shall take  
15           no action.

16           (b) "Offense" defined. As used in this section, an "offense" means any  
17           offense committed by a law enforcement officer during the course of his or her  
18           certification, and includes any offenses committed during employment at a  
19           previous law enforcement agency.

1     § 2408. INVALID INVESTIGATIONS

2             Nothing in this subchapter shall prohibit the Council from causing a  
3             complaint to be investigated or taking disciplinary action on an officer's  
4             certification if the Council determines that a law enforcement agency's  
5             investigation of the officer's conduct did not constitute a valid investigation.

6     § 2409. ACCESSIBILITY AND CONFIDENTIALITY

7             (a) It is the purpose of this section both to protect the reputation of law  
8             enforcement officers from public disclosure of unwarranted complaints against  
9             them and to fulfill the public's right to know of any action taken against a law  
10            enforcement officer when that action is based on a determination of  
11            unprofessional conduct.

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

14            (c) The Executive Director of the Council shall prepare and maintain a  
15            register of all complaints, which shall be open to public inspection and  
16            copying, except as may be exempt under the Public Records Act, and which  
17            shall show:

18                 (1) with respect to any complaint, the following information:

19                     (A) the date and the nature of the complaint, but not including the  
20                     identity of the law enforcement officer; and

21                     (B) a summary of the completed investigation; and

1           (2) only with respect to a complaint resulting in filing of charges or  
2           stipulations or the taking of disciplinary action, the following additional  
3           information:

4                   (A) the name and business addresses of the law enforcement officer  
5           and the complainant;

6                   (B) formal charges, provided that they have been served or a  
7           reasonable effort to serve them has been made;

8                   (C) the findings, conclusions, and order of the Council;

9                   (D) the transcript of the hearing, if one has been made, and exhibits  
10           admitted at the hearing;

11                   (E) any stipulation filed with the Council; and

12                   (F) any final disposition of the matter by the Vermont Supreme  
13           Court.

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

1       (f) Nothing in this section shall prohibit the disclosure of any information  
2       regarding unprofessional conduct complaints pursuant to an order from a court  
3       of competent jurisdiction, or to a State or federal law enforcement agency in  
4       the course of its investigation, provided the agency agrees to maintain the  
5       confidentiality of the information as provided in subsection (d) of this section.

6       § 2410. COUNCIL ADVISORY COMMITTEE

7       (a) Creation. There is created the Council Advisory Committee to provide  
8       advice to the Council regarding its duties under this subchapter.

9               (1) The Committee shall specifically advise and assist the Council in  
10       developing procedures to ensure that allegations of unprofessional conduct by  
11       law enforcement officers are investigated fully and fairly, and to ensure that  
12       appropriate action is taken in regard to those allegations.

13               (2) The Committee shall be advisory only and shall not have any  
14       decision-making authority.

15       (b) Membership. The Committee shall be composed of five individuals  
16       appointed by the Governor. The Governor may solicit recommendations for  
17       appointments from the Chair of the Council.

18               (1) Four of these members shall be public members who during  
19       incumbency shall not serve and shall have never served as a law enforcement  
20       officer or corrections officer and shall not have an immediate family member  
21       who is serving or has ever served as either of those officers.

1           (2) One of these members shall be a retired law enforcement officer.

2           (c) Assistance. The Executive Director of the Council or designee shall  
3 attend Committee meetings as a resource for the Committee.

4           (d) Reimbursement. Members of the Committee who are not employees of  
5 the State of Vermont and who are not otherwise compensated or reimbursed  
6 for their attendance shall be entitled to per diem compensation and  
7 reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than  
8 five meetings per year. Such payments shall be derived from the budget of the  
9 Council.

10       § 2411. COUNCIL RULES

11           The Council may adopt rules to implement the provisions of this  
12 subchapter.

13       Sec. 2. TRANSITIONAL PROVISIONS TO IMPLEMENT THIS ACT

14           (a) Effective internal affairs programs.

15           (1) Law enforcement agencies. On or before January 1, 2018, each law  
16 enforcement agency shall adopt an effective internal affairs program in  
17 accordance with 20 V.S.A. § 2402(a) in Sec. 1 of this act.

18           (2) Vermont Criminal Justice Training Council. On or before  
19 October 1, 2017, the Vermont Criminal Justice Training Council shall adopt an  
20 effective internal affairs program model policy in accordance with  
21 20 V.S.A. § 2402(b) in Sec. 1 of this act.



1 (1) "Commissioner;" means the commissioner of public safety;  
2 Commissioner of Public Safety.

3 (2) "Department;" means the department of public safety; Department of  
4 Public Safety.

5 (3) "Employee;" an employee assigned to a position other than that of  
6 state police; means a person employed by the Department.

7 (4) "Member;" any employee of the department; means a sworn  
8 employee assigned to the State Police.

9 (5) "State police; Police" an employee assigned to police duties and  
10 means the sworn law enforcement officers who are employees of the  
11 Department.

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

13 § 1922. CREATION OF STATE POLICE ADVISORY COMMISSION;

14 MEMBERS; DUTIES

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

19 (b) The ~~commission~~ Commission shall consist of seven members, at least  
20 one of whom shall be an attorney and one of whom shall be a retired ~~state~~

1 ~~police~~ State Police officer, to be appointed by the ~~governor~~ Governor with the  
2 advice and consent of the ~~senate~~ Senate.

3 (c) Members of the ~~commission~~ Commission shall serve for terms of four  
4 years, at the pleasure of the ~~governor~~ Governor. Of the initial appointments,  
5 one shall be appointed for a term of one year, two for terms of two years, two  
6 for terms of three years, and two for terms of four years. Appointments to fill  
7 a vacancy shall be for the unexpired portion of the term vacated. The ~~chairman~~  
8 Chair shall be appointed by the ~~governor~~ Governor.

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

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

16 (f) Members of the Commission shall be ~~paid~~ entitled to receive per diem  
17 compensation and reimbursement for expenses in accordance with ~~section~~  
18 ~~4010 of Title 32~~ V.S.A. § 1010.



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

2 § 1923. INTERNAL INVESTIGATION

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

8 (2) The Commissioner shall ensure that the procedures described in  
9 subdivision (1) of this subsection constitute an effective internal affairs  
10 program in order to comply with section 2402 of this title.

11 (b)(1) The ~~commissioner~~ Commissioner shall establish ~~an office of internal~~  
12 ~~investigation~~ the Office of Internal Investigation within the ~~department~~  
13 Department, which ~~office~~ shall investigate, or cause to be investigated, all  
14 allegations of misconduct by members of the ~~department~~ Department, except  
15 complaints lodged against members of the ~~internal investigation office~~ Office,  
16 which ~~complaints~~ shall be separately and independently investigated by  
17 officers designated for each instance by the ~~commissioner~~ Commissioner, with  
18 the approval of the ~~state police advisory commission~~ State Police Advisory  
19 Commission.

20 (2) The head of the ~~internal affairs unit~~ Office shall report all allegations  
21 and his or her findings as to such allegations to the ~~commissioner~~

1 Commissioner. The head of the ~~internal affairs unit~~ Office also shall  
2 immediately report all allegations to the ~~state's attorney~~ State's Attorney of the  
3 county in which the incident took place, ~~to the attorney general~~ Attorney  
4 General, and ~~to the governor~~ Governor, unless the head of the ~~unit~~ Office  
5 makes a determination that the allegations do not include a violation of a  
6 criminal statute. The head of the ~~internal affairs unit~~ Office shall also report  
7 the disposition of all cases so reported to the ~~state's attorney~~ State's Attorney,  
8 ~~attorney general~~ Attorney General, and ~~governor~~ Governor.

9 (c)(1) The ~~office of internal investigation~~ Office of Internal Investigation  
10 shall maintain a written log with respect to each allegation of misconduct  
11 made. The log shall document all action taken with respect to each allegation,  
12 including a notation of the person or persons assigned to the investigation, a  
13 list of all pertinent documents, all action taken, and the final disposition of  
14 each allegation.

15 (2) Failure of any member of the ~~department~~ Department to report to the  
16 ~~office of internal investigation~~ Office an allegation of misconduct known to  
17 ~~such the~~ the member, shall be grounds for disciplinary action by the ~~commissioner~~  
18 Commissioner, including dismissal.

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

