

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Government Operations to which was referred Senate  
3 Bill No. 192 entitled “An act relating to transferring the professional regulation  
4 of law enforcement officers from the Vermont Criminal Justice Training  
5 Council to the Office of Professional Regulation” respectfully reports that it  
6 has considered the same and recommends that the House propose to the Senate  
7 that the bill be amended by striking out all after the enacting clause and  
8 inserting in lieu thereof the following:

9 Sec. 1. 20 V.S.A. § 2405 is amended to read:

10 § 2405. COUNCIL HEARING AND SANCTION PROCEDURE

11 (a) Generally. Except as otherwise provided in this subchapter, ~~the Council~~  
12 all proceedings under this subchapter shall conduct its proceedings be  
13 conducted 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 (b) Prosecutor.

17 (1) An Assistant Attorney General assigned by the Office of Attorney  
18 General shall be responsible for prosecuting unprofessional conduct cases  
19 under this subchapter.

1           (2) The burden of proof shall be on the State to show by a  
2           preponderance of the evidence that a law enforcement officer has engaged in  
3           unprofessional conduct.

4           (c) Hearing officer.

5           (1) The Council shall appoint a hearing officer, who shall be an attorney  
6           admitted to practice law in this State, to conduct any unprofessional conduct  
7           hearing under this subchapter. The Council shall choose the hearing officer  
8           from a list of hearing officers provided by the Office of Professional  
9           Regulation.

10           (2) The hearing officer may administer oaths and exercise powers  
11           properly incidental to the conduct of the hearing.

12           (3) Any hearing officer sitting in an unprofessional conduct case shall  
13           do so impartially and without any ex parte knowledge of the case in  
14           controversy.

15           (4)(A) The hearing officer shall issue findings of fact and conclusions of  
16           law regarding the prosecutor's charges of unprofessional conduct.

17           (B) For the purposes of subdivision 2406(b)(1)(B) of this subchapter,  
18           the hearing officer shall determine at the hearing and shall include in his or her  
19           findings of fact whether there is a pending labor proceeding related to any  
20           unprofessional conduct that the hearing officer concludes a law enforcement  
21           officer committed.

1           (5)(A) The hearing officer shall report the findings of fact and  
2           conclusions of law to the Council within 30 days of the conclusion of the  
3           hearing, unless the Council grants an extension. The provisions of 3 V.S.A.  
4           § 811 regarding proposals for decision shall not apply to the hearing office  
5           report.

6           (B) The hearing officer’s findings and conclusions shall be binding  
7           on the Council; provided, however, that the Council may request that the  
8           hearing officer make clarifications or additional findings.

9           (6) The hearing officer shall act as counsel to the Council during its  
10          sanction hearing.

11          (d) Council.

12          (1) The Council shall hold a sanction hearing based on the hearing  
13          officer’s findings of fact and conclusions of law. Unless the Council grants an  
14          extension, the Council shall hold its sanction hearing within 30 days of the date  
15          the hearing officer reports his or her findings of fact and conclusions of law to  
16          the Council or within 30 days of the date the hearing officer makes  
17          clarifications or additional findings under subdivision (c)(5)(B) of this section,  
18          whichever occurs later.

19          (2) Unless the Council grants an extension, the Council shall issue its  
20          sanction order within 10 days of its sanction hearing.

1 Sec. 2. 20 V.S.A. § 2406 is amended to read:

2 § 2406. PERMITTED COUNCIL SANCTIONS

3 (a) Generally. The Council may impose any of the following sanctions on  
4 a law enforcement officer's certification upon ~~its finding~~ a hearing officer's  
5 conclusion that a law enforcement officer committed unprofessional conduct:

6 (1) written warning;

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

12 (3) revocation, with the option of recertification at the discretion of the  
13 Council; or

14 (4) permanent revocation.

15 (b) Intended revocation; temporary voluntary surrender.

16 (1)(A) If, after ~~an evidentiary~~ a sanction hearing, the Council intends to  
17 revoke a law enforcement officer's certification due to ~~its finding~~ a hearing  
18 officer's conclusion that the officer committed unprofessional conduct, the  
19 Council shall issue ~~a decision~~ an order to that effect.

20 (B) Within 10 business days from the date of that ~~decision~~ order,  
21 such an officer may voluntarily surrender his or her certification if the hearing

1 officer determined under subdivision 2405(c)(4)(B) of this subchapter that  
2 there is a pending labor proceeding related to the ~~Council's~~ unprofessional  
3 conduct ~~findings~~ the hearing officer concluded the law enforcement officer  
4 committed.

5 (C) A voluntary surrender of an officer's certification shall remain in  
6 effect until the labor proceeding and all appeals are finally adjudicated or until  
7 the officer requests a final sanction hearing, whichever occurs first, and  
8 thereafter until the Council's final sanction hearing on the matter. At that  
9 hearing, the Council may modify its ~~findings and decision~~ sanction order on  
10 the basis of additional evidence set forth in the labor proceeding decision, but  
11 shall not be bound by any outcome of the labor proceeding.

12 (2) If an officer fails to voluntarily surrender his or her certification in  
13 accordance with subdivision (1) of this subsection, the Council's original  
14 ~~findings and decision~~ sanction order shall take effect.

15 Sec. 3. 20 V.S.A. § 2410 is amended to read:

16 § 2410. COUNCIL ADVISORY COMMITTEE

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

19 (1) The Committee shall specifically:

20 (A) advise and assist the Council in developing procedures to ensure  
21 that allegations of unprofessional conduct by law enforcement officers are

1 investigated fully and fairly, and to ensure that appropriate action is taken in  
2 regard to those allegations; and

3 (B) recommend to the Council any appropriate sanctions to impose  
4 on a law enforcement officer's certification upon a hearing officer concluding  
5 that the officer committed unprofessional conduct.

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

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

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

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

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

18 (d) Reimbursement. Members of the Committee ~~who are not employees of~~  
19 ~~the State of Vermont and who are not otherwise compensated or reimbursed~~  
20 ~~for their attendance~~ shall be entitled to per diem compensation and  
21 reimbursement of expenses pursuant to as permitted under 32 V.S.A. § 1010

1 for not more than five meetings per year. Such payments shall be derived from  
2 the budget of the Council.

3 Sec. 4. 2017 Acts and Resolves No. 56, Sec. 2 is amended to read:

4 Sec. 2. TRANSITIONAL PROVISIONS TO IMPLEMENT THIS ACT

5 (a) Effective internal affairs programs.

6 (1) Law enforcement agencies. On or before ~~July 1, 2018~~ January 1,  
7 2019, each law enforcement agency shall adopt an effective internal affairs  
8 program in accordance with 20 V.S.A. § 2402(a) in Sec. 1 of this act.

9 (2) Vermont Criminal Justice Training Council. On or before  
10 ~~April 1, 2018~~ July 1, 2018, the Vermont Criminal Justice Training Council  
11 shall adopt an effective internal affairs program model policy in accordance  
12 with 20 V.S.A. § 2402(b) in Sec. 1 of this act.

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

17 (c) Duty to disclose. The requirement for a former law enforcement agency  
18 to disclose the reason that a law enforcement officer is no longer employed by  
19 the agency as set forth in 20 V.S.A. § 2362a in Sec. 1 of this act shall not apply  
20 if there is a binding nondisclosure agreement prohibiting that disclosure that  
21 was executed prior to the effective date of that section.

1           (d) Council rules. The Vermont Criminal Justice Training Council may  
2           adopt rules in accordance with 20 V.S.A. § 2411 (Council rules) in Sec. 1 of  
3           this act, prior to the effective date of that section.

4           (e) Council Advisory Committee. The Governor shall make appointments  
5           to the Council Advisory Committee set forth in 20 V.S.A. § 2410 in Sec. 1 of  
6           this act prior to the effective date of that section.

7           (f) Annual report of Executive Director. Annually, on or before  
8           January 15, beginning in the year 2019 and ending in the year 2022, the  
9           Executive Director of the Vermont Criminal Justice Training Council shall  
10          report to the General Assembly regarding the Executive Director's analysis of  
11          the implementation of this act and any recommendations he or she may have  
12          for further legislative action.

13          (g) Council, OPR; joint report. On or before October 1, 2017, the  
14          Executive Director of the Vermont Criminal Justice Training Council and the  
15          Director of the Office of Professional Regulation (Office) shall consult with  
16          law enforcement stakeholders and report to the Senate and House Committees  
17          on Government Operations on a proposal for the Office to perform duties  
18          related to the professional regulation of law enforcement officers.

1 Sec. 5. 2017 Acts and Resolves No. 56, Sec. 6 is amended to read:

2 Sec. 6. EFFECTIVE DATES

3 This act shall take effect on ~~July 1, 2018~~ January 1, 2019, except:

4 (1) this section and Sec. 2 (transitional provisions to implement this act)  
5 shall take effect on passage; and

6 (2) the following shall take effect on July 1, 2017:

7 (A) in Sec. 1, 20 V.S.A. chapter 151 (Vermont Criminal Justice  
8 Training Council):

9 (i) § 2351 (creation and purpose of Council);

10 (ii) § 2351a (definitions);

11 (iii) § 2352 (Council membership);

12 (iv) § 2354 (Council meetings);

13 (v) § 2355 (Council powers and duties), except that subsection (a)  
14 shall take effect on ~~July 1, 2018~~ January 1, 2019;

15 (vi) § 2358 (minimum training standards; definitions); and

16 (vii) § 2362a (potential hiring agency; duty to contact former  
17 agency);

18 (B) Sec. 3, 20 V.S.A. § 1812 (definitions); and

19 (C) Sec. 4, 20 V.S.A. § 1922 (creation of State Police Advisory  
20 Commission; members; duties).

1 Sec. 6. 13 V.S.A. § 3251 is amended to read:

2 § 3251. DEFINITIONS

3 As used in this chapter:

4 \* \* \*

5 (9) “Law enforcement officer” means a person certified as a law  
6 enforcement officer under the provisions of 20 V.S.A. chapter 151.

7 Sec. 7. 13 V.S.A. § 3259 is added to read:

8 § 3259. SEXUAL EXPLOITATION OF A PERSON IN THE CUSTODY OF  
9 A LAW ENFORCEMENT OFFICER

10 (a) No law enforcement officer shall engage in a sexual act with a person  
11 who the officer is detaining, arresting, or otherwise holding in custody or who  
12 the officer knows is being detained, arrested, or otherwise held in custody by  
13 another officer.

14 (b) A person who violates subsection (a) of this section shall be imprisoned  
15 for not more than five years or fined not more than \$10,000.00, or both.

16 Sec. 8. EFFECTIVE DATES

17 This act shall take effect on passage, except that Secs. 1, 20 V.S.A. § 2405  
18 (Council hearing and sanction procedure); 2, 20 V.S.A. § 2406 (permitted  
19 Council sanctions); and 3, 20 V.S.A. § 2410 (Council Advisory Committee)  
20 shall take effect on January 1, 2019.

1           and that after passage the title of the bill be amended to read: “An act  
2 relating to the Vermont Criminal Justice Training Council’s professional  
3 regulation of law enforcement officers”

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6           (Committee vote: \_\_\_\_\_)

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\_\_\_\_\_

8

Representative \_\_\_\_\_

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FOR THE COMMITTEE