

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 the
18 Attorney General shall be responsible for prosecuting unprofessional conduct
19 cases 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 after 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 officer’s
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 after the
15 date the hearing officer reports his or her findings of fact and conclusions of
16 law to the Council or within 30 days after 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 after 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~~ after the date of that ~~decision~~
21 order, such an officer may voluntarily surrender his or her certification if the

1 hearing officer determined under subdivision 2405(c)(4)(B) of this subchapter
2 that 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's
5 concluding that the law enforcement 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 whom the officer is detaining, arresting, or otherwise holding in custody or
12 who the officer knows is being detained, arrested, or otherwise held in custody
13 by 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”

4

5

6 (Committee vote: _____)

7

8

Representative _____

9

FOR THE COMMITTEE