

1 S.192

2 Introduced by Senator White

3 Referred to Committee on

4 Date:

5 Subject: Professions and occupations; law enforcement officers; Office of

6 Professional Regulation; Vermont Criminal Justice Training Council

7 Statement of purpose of bill as introduced: This bill proposes to transfer the

8 professional regulation of law enforcement officers from the Vermont Criminal

9 Justice Training Council to the Office of Professional Regulation.

10 An act relating to transferring the professional regulation of law
11 enforcement officers from the Vermont Criminal Justice Training Council
12 to the Office of Professional Regulation

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

14 * * * Transfer to OPR * * *

15 Sec. 1. 3 V.S.A. § 122 is amended to read:

16 § 122. OFFICE OF PROFESSIONAL REGULATION

17 The Office of Professional Regulation is created within the Office of the
18 Secretary of State. The Office shall have a director who shall be appointed by
19 the Secretary of State and shall be an exempt employee. The following boards
20 or professions are attached to the Office of Professional Regulation:

21 * * *

1 (48) Law Enforcement Officers

2 Sec. 2. 26 V.S.A. chapter 103 is added to read:

3 CHAPTER 103. LAW ENFORCEMENT OFFICERS

4 Subchapter 1. General Provisions

5 § 5301. PURPOSE AND EFFECT

6 In order to safeguard the life and health of the people of this State, a person
7 shall not practice, or offer to practice, as a law enforcement officer unless
8 currently licensed under this chapter.

9 § 5302. DEFINITIONS

10 As used in this chapter:

11 (1) “Category A conduct” means:

12 (A) A felony.

13 (B) A misdemeanor that is committed while on duty and did not
14 involve the legitimate performance of duty.

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

16 (i) simple assault, second offense;

17 (ii) domestic assault;

18 (iii) false reports and statements;

19 (iv) driving under the influence, second offense;

20 (v) violation of a relief from abuse order or of a condition
21 of release;

1 (vi) stalking;

2 (vii) false pretenses;

3 (viii) voyeurism;

4 (ix) prostitution or soliciting 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 willful failure to comply with a State-required policy or substantial deviation
11 from professional conduct as defined by the law enforcement agency's policy
12 or if not defined by the agency's policy, then as defined by rules adopted by
13 the Office, such as:

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

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

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

18 (D) biased enforcement; or

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

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

3 (A) intentionally exceeding the scope of practice for an officer’s
4 certification level;

5 (B) knowingly making material false statements or reports to the
6 Office or Council;

7 (C) falsification of Office or Council documents;

8 (D) intentional interference with Office or Council investigations,
9 including intimidation of witnesses or misrepresentations of material facts;

10 (E) material false statements about certification or licensure status to
11 a law enforcement agency;

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

14 (G) intentional failure to conduct a valid investigation or file a report
15 as required by this chapter; or

16 (H) failure to complete annual in-service training required by the
17 Council.

18 (4) “Certification” means the document issued by the Council that
19 verifies that a law enforcement officer has successfully completed the
20 Council’s initial basic training or annual in-service training requirements, or

1 such a document issued by another entity with training requirements
2 substantially similar to those of the Council as determined by the Director.

3 (5) "Council" means the Vermont Criminal Justice Training Council.

4 (6) "Director" means the Director of the Office of Professional
5 Regulation.

6 (7) "Effective internal affairs program" means that a law enforcement
7 agency does all of the following:

8 (A) Complaints. Accepts complaints against its law enforcement
9 officers from any source.

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

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

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

1 (E) Civilian review. Provides for review of officer discipline by
2 civilians, which may be a selectboard or other elected or appointed body, at
3 least for the conduct required to be reported to the Office under this chapter.

4 (8) “Executive officer” means the highest-ranking law enforcement
5 officer of a law enforcement agency.

6 (9) “Law enforcement agency” means the employer of a law
7 enforcement officer.

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

20 (11) “License” means a current authorization granted by the Director,
21 permitting the practice as a law enforcement officer.

1 (12) “Office” means the Office of Professional Regulation.

2 (13) “Unprofessional conduct” means Category A, B, or C conduct.

3 (14)(A) “Valid investigation” means an investigation conducted
4 pursuant to a law enforcement agency’s established or accepted procedures.

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

6 (i) the agency has not adopted an effective internal affairs
7 program;

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

10 (iii) the agency intentionally did not report allegations to the
11 Office as required;

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

14 (v) the agency’s executive officer is the officer accused of
15 misconduct.

16 § 5303. PROHIBITIONS; OFFENSES

17 (a) It shall be a violation of this chapter for any person, including any
18 corporation, association, or individual, to:

19 (1) sell or fraudulently obtain or furnish any law enforcement degree,
20 diploma, certification, license, or any other related document or record or to
21 aid or abet therein;

1 (2) practice law enforcement under cover of any degree, diploma,
2 registration, certification, license, or related document or record illegally or
3 fraudulently obtained or signed or issued unlawfully or under fraudulent
4 representation;

5 (3) practice as a law enforcement officer unless licensed or otherwise
6 authorized to do so under the provisions of this chapter;

7 (4) represent himself or herself as being licensed or otherwise
8 authorized by this State to practice as a law enforcement officer or use in
9 connection with a name any words, letters, signs, or figures that imply that a
10 person is a law enforcement officer when not licensed or otherwise authorized
11 under this chapter;

12 (5) practice as a law enforcement officer during the time a license or
13 authorization issued under this chapter is suspended or revoked; or

14 (6) employ an unlicensed or unauthorized person to practice as a law
15 enforcement officer.

16 (b) Any person violating this section shall be subject to the penalties
17 provided in 3 V.S.A. § 127.

18 § 5304. EXEMPTIONS

19 The following shall not require a license under this chapter:

20 (1) The furnishing of assistance in the case of an emergency or disaster.

1 § 5312. ADVISOR APPOINTEES

2 (a)(1) In consultation with the Executive Director of the Council, the
3 Secretary of State shall appoint three persons for five-year staggered terms to
4 serve at the Secretary's pleasure as advisors in matters relating to law
5 enforcement. One of the initial appointments shall be for less than a five-year
6 term.

7 (2) An appointee shall have not less than three years' experience as a
8 law enforcement officer immediately preceding appointment; shall be licensed
9 as a law enforcement officer in Vermont; and shall be actively engaged in the
10 practice of law enforcement in this State during incumbency.

11 (b) The Director shall seek the advice of the law enforcement advisor
12 appointees in carrying out the provisions of this chapter.

13 Subchapter 3. Licenses

14 § 5321. ELIGIBILITY FOR LICENSURE

15 An applicant for licensure shall demonstrate that he or she has a current,
16 valid certification.

17 § 5322. LICENSURE RENEWAL

18 (a)(1) In order to renew his or her license, a law enforcement officer shall
19 demonstrate that he or she has a current, valid certification. A license shall be
20 renewed biennially upon application and payment of the required fee. Failure
21 to comply with the provisions of this section shall result in suspension of all

1 privileges granted to the licensee, beginning on the expiration date of the
2 license.

3 (2) A license that has lapsed shall be renewed upon payment of the
4 renewal fee and the late renewal penalty.

5 (b) The Director may adopt rules necessary for the protection of the public
6 to assure the Director that an applicant whose license has lapsed or who has
7 not worked for more than three years as a law enforcement officer is
8 professionally qualified for licensure renewal. Conditions imposed under this
9 subsection shall be in addition to the requirements of subsection (a) of this
10 section.

11 § 5323. APPLICATIONS

12 Applications for licensure and license renewal shall be on forms provided
13 by the Director. Each application shall contain a statement under oath showing
14 the applicant's education, experience, and other pertinent information and shall
15 be accompanied by the required fee.

16 § 5324. LICENSURE GENERALLY

17 The Director shall issue a license or renew a license, upon payment of the
18 fees required under this chapter, to an applicant or licensee who has
19 satisfactorily met all the requirements of this chapter.

1 § 5325. FEES

2 Applicants and persons regulated under this chapter shall pay those fees set
3 forth in 3 V.S.A. § 125(b).

4 Subchapter 4. Investigations, Reports, and Unprofessional
5 Conduct Sanctions

6 § 5331. INVESTIGATIONS

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

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

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

17 (2)(A) The Office shall accept from any source complaints alleging a
18 law enforcement officer committed unprofessional conduct and, if the Director
19 deems such a complaint credible, he or she shall refer any complaints
20 regarding Category A or Category B conduct to the executive officer of the

1 agency who employs that officer, and that agency shall conduct a valid
2 investigation.

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

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

11 (c) Office and Council investigations of Category C conduct.

12 (1) The Office shall investigate allegations of Category C conduct
13 pertaining to Office processes.

14 (2) The Council shall investigate allegations of Category C conduct
15 pertaining to Council processes.

16 § 5332. LAW ENFORCEMENT AGENCIES; DUTY TO REPORT

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

1 (A) Category A.

2 (i) There is a finding of probable cause by a court that the officer
3 committed Category A conduct.

4 (ii) There is any decision or findings of fact or verdict regarding
5 allegations that the officer committed Category A conduct, including a judicial
6 decision and any appeal therefrom.

7 (B) Category B.

8 (i) The agency receives a complaint against the officer that, if
9 deemed credible by the executive officer of the agency as a result of a valid
10 investigation, alleges that the officer committed Category B conduct.

11 (ii) The agency receives or issues any of the following:

12 (I) a report or findings of a valid investigation finding that the
13 officer committed Category B conduct; or

14 (II) any decision or findings, including findings of fact or
15 verdict, regarding allegations that the officer committed Category B conduct,
16 including a hearing officer decision, arbitration, administrative decision, or
17 judicial decision, and any appeal therefrom.

18 (C) Termination. The agency terminates the officer for Category A
19 or Category B conduct.

20 (D) Resignation. The officer resigns from the agency while under
21 investigation for unprofessional conduct.

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

5 (b) The Director shall report to the Attorney General and the State's
6 Attorney of jurisdiction any allegations that an officer committed Category A
7 conduct.

8 § 5333. PERMITTED OFFICE SANCTIONS

9 (a) Generally. The Office may impose any of the following sanctions on a
10 law enforcement officer's license upon its finding that a law enforcement
11 officer committed unprofessional conduct:

12 (1) written warning;

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

18 (3) revocation, with the option of relicensure at the discretion of the
19 Office; or

20 (4) permanent revocation.

1 (b) Intended revocation; temporary voluntary surrender.

2 (1)(A) If, after an evidentiary hearing, the Office intends to revoke a law
3 enforcement officer's license due to its finding that the officer committed
4 unprofessional conduct, the Office shall issue a decision to that effect.

5 (B) Within 10 business days from the date of that decision, such an
6 officer may voluntarily surrender his or her license if there is a pending labor
7 proceeding related to the Office's unprofessional conduct findings.

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

15 (2) If an officer fails to voluntarily surrender his or her license in
16 accordance with subdivision (1) of this subsection, the Office's original
17 findings and decision shall take effect.

18 § 5334. LIMITATION ON OFFICE SANCTIONS; FIRST OFFENSE OF

19 CATEGORY B CONDUCT

20 (a) Category B conduct; first offense. If a law enforcement agency
21 conducts a valid investigation of a complaint alleging that a law enforcement

1 officer committed a first offense of Category B conduct, the Office shall take
2 no action.

3 (b) "Offense" defined. As used in this section, an "offense" means any
4 offense committed by a law enforcement officer during the course of his or her
5 licensure, and includes any offenses committed during employment at a
6 previous law enforcement agency.

7 § 5335. INVALID INVESTIGATIONS

8 Nothing in this subchapter shall prohibit the Office from causing a
9 complaint to be investigated or taking disciplinary action on an officer's
10 license if the Office determines that a law enforcement agency's investigation
11 of the officer's conduct did not constitute a valid investigation.

12 Sec. 3. CREATION OF TWO NEW POSITIONS WITHIN THE OFFICE OF
13 PROFESSIONAL REGULATION

14 (a) To support the administration of law enforcement officer professional
15 regulation set forth in Sec. 2 of this act, there is created the following positions
16 within the Secretary of State's Office of Professional Regulation:

17 (1) one classified investigator; and

18 (2) one exempt attorney.

19 (b) Any funding necessary to support the positions created under
20 subsection (a) of this section shall be derived from the Office's Professional
21 Regulatory Fee Fund, with no General Fund dollars.

1 (c) As used in this section, an “effective internal affairs program” means
2 that a law enforcement agency does all of the following:

3 (1) Complaints. Accepts complaints against its law enforcement
4 officers from any source.

5 (2) Investigators. Assigns an investigator to determine whether an
6 officer violated an agency rule or policy or State or federal law.

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

12 (4) Fairness in discipline. Treats its accused officers fairly, and decides
13 officer discipline based on just cause, a set range of discipline for offenses,
14 consideration of mitigating and aggravating circumstances, and its policies’
15 due process rights.

16 (5) Civilian review. Provides for review of officer discipline by
17 civilians, which may be a selectboard or other elected or appointed body, at
18 least for the conduct required to be reported to the Council under this
19 subchapter.

1 Sec. 6. 20 V.S.A. § 2362 is amended to read:

2 § 2362. REPORTS

3 (a) Within ten business days:

4 (1) Elected constables. A town, village, or city clerk shall notify the
5 Council, on a form provided by the Council, of the election, appointment to fill
6 a vacancy under 24 V.S.A. § 963, expiration of term, or reelection of any
7 constable.

8 (2) Appointed constables and police chiefs. The legislative body of a
9 municipality or its designee shall notify the Council of the appointment or
10 removal of a constable or police chief.

11 (3) Municipal police officers. A police chief appointed under 24 V.S.A.
12 § 1931 shall notify the Council of the appointment or removal of a police
13 officer under the police chief's direction and control.

14 (4) State law enforcement officers. The appointing authority of a State
15 agency employing a law enforcement officer shall notify the Council of the
16 appointment or removal of a law enforcement officer employed by that agency.

17 (5) Sheriffs' officers. A sheriff shall notify the Council of the
18 appointment or removal of a deputy or other law enforcement officer employed
19 by that sheriff's department.

20 (b) Notification required by this section shall include the name of the
21 constable, police chief, police officer, deputy, or other law enforcement

1 officer; the date of appointment or removal; and the term of office or length
2 of appointment, if any.

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

5 Sec. 7. REPEALS

6 The following are repealed in Title 20:

7 (1) In chapter 151 (Vermont Criminal Justice Training Council), the
8 subchapter 1 (General Provisions) designation.

9 (2) In chapter 151, subchapter 2 (Unprofessional Conduct).

10 Sec. 8. 2017 Acts and Resolves No. 56, Sec. 2 is amended to read:

11 Sec. 2. TRANSITIONAL PROVISIONS TO IMPLEMENT THIS ACT

12 (a) Effective internal affairs programs.

13 (1) Law enforcement agencies. On or before July 1, 2018, each law
14 enforcement agency shall adopt an effective internal affairs program in
15 accordance with 20 V.S.A. ~~§ 2402(a) in Sec. 1 of this act~~ § 2360(a).

16 (2) Vermont Criminal Justice Training Council. On or before
17 April 1, 2018, the Vermont Criminal Justice Training Council shall adopt an
18 effective internal affairs program model policy in accordance with
19 20 V.S.A. ~~§ 2402(b) in Sec. 1 of this act~~ § 2360(b).

20 (b) ~~Alleged law enforcement officer unprofessional conduct. The~~
21 ~~provisions of 20 V.S.A. chapter 151, subchapter 2 (unprofessional conduct) in~~

1 ~~Sec. 1 of this act shall apply to law enforcement officer conduct alleged to~~
2 ~~have been committed on and after the effective date of that subchapter.~~

3 [Repealed.]

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

9 (d) ~~Council rules. The Vermont Criminal Justice Training Council may~~
10 ~~adopt rules in accordance with 20 V.S.A. § 2411 (Council rules) in Sec. 1 of~~
11 ~~this act, prior to the effective date of that section. [Repealed.]~~

12 (e) ~~Council Advisory Committee. The Governor shall make appointments~~
13 ~~to the Council Advisory Committee set forth in 20 V.S.A. § 2410 in Sec. 1 of~~
14 ~~this act prior to the effective date of that section. [Repealed.]~~

15 (f) ~~Annual report of Executive Director. Annually, on or before~~
16 ~~January 15, beginning in the year 2019 and ending in the year 2022, the~~
17 ~~Executive Director of the Vermont Criminal Justice Training Council shall~~
18 ~~report to the General Assembly regarding the Executive Director's analysis of~~
19 ~~the implementation of this act and any recommendations he or she may have~~
20 ~~for further legislative action. [Repealed.]~~

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

7 * * * Vermont State Police * * *

8 Sec. 9. 20 V.S.A. § 1923 is amended to read:

9 § 1923. INTERNAL INVESTIGATION

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

15 (2) The Commissioner shall ensure that the procedures described in
16 subdivision (1) of this subsection constitute an effective internal affairs
17 program in order to comply with section ~~2402~~ 2360 of this title.

18 * * *

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

1 (1) the State Police Advisory Commission shall, at any time, have full
2 and free access to such records;

3 (2) the Commissioner shall deliver such materials from the records of
4 the Office as may be necessary to appropriate prosecutorial authorities having
5 jurisdiction;

6 (3) the Director of the State Police or the Chair of the State Police
7 Advisory Commission shall report to the ~~Vermont Criminal Justice Training~~
8 ~~Council as required by section 2403 of this title~~ Office of Professional
9 Regulation as required by 26 V.S.A. § 5332; and

10 (4) the State Police Advisory Commission shall, in its discretion, be
11 entitled to report to such authorities as it may deem appropriate or to the
12 public, or both, to ensure that proper action is taken in each case.

13 * * * Transitional Provisions, Conforming Revisions, and Effective Date * * *

14 Sec. 10. TRANSITIONAL PROVISIONS

15 (a) Transfer of regulation. On the effective date of this act, a person
16 certified as a law enforcement officer by the Vermont Criminal Justice
17 Training Council under the provisions of 20 V.S.A. chapter 151 shall be
18 deemed licensed as a law enforcement officer by the Office of Professional
19 Regulation under the provisions of 26 V.S.A. chapter 103.

20 (b) Alleged law enforcement officer unprofessional conduct. The
21 unprofessional conduct provisions applicable to law enforcement officers set

1 forth in Sec. 2 of this act shall apply to law enforcement officer conduct
2 alleged to have been committed on and after the effective date of this act.

3 Sec. 11. CONFORMING REVISIONS

4 When preparing the Vermont Statutes Annotated for publication, the Office
5 of Legislative Council shall replace references to law enforcement officers
6 certified by the Vermont Criminal Justice Training Council under 20 V.S.A.
7 chapter 151 with references to law enforcement officers licensed by the Office
8 of Professional Regulation under 26 V.S.A. chapter 103 and make substantially
9 similar revisions as needed for consistency with Secs. 1-3 of this act, provided
10 the revisions have no other effect on the meaning of the affected statutes.

11 Sec. 12. EFFECTIVE DATE

12 This act shall take effect on July 1, 2018.