

BAW; last updated 3/26/18

Summary of S.192

An Act Relating to Transferring the Professional Regulation
of Law Enforcement Officers from the Vermont Criminal Justice Training Council
to the Office of Professional Regulation
as Passed Senate

I. Overview

- S.192 would transfer the professional regulation of law enforcement officers from the Vermont Criminal Justice Training Council (Council) to the Secretary of State's Office of Professional Regulation (OPR).
- Currently, the Council's main duty is training and certifying all law enforcement officers in the State, and OPR's main duty is to professionally regulate approximately 50 professions through licensure, investigating complaints, and adjudicating charges of unprofessional conduct.
- S.192 continues the work the General Assembly did last year, when it enacted H.22 into law. H.22 – now [2017, Act No. 56](#) — did several main things:
 - It established what constitutes unprofessional conduct for all certified law enforcement officers in the State.
 - It also established the requirements for a law enforcement agency to investigate complaints against its officers, when complaints must be reported to the Council, and the sanctions the Council could impose if it found after a hearing that an officer committed unprofessional conduct.
- Act 56 has an effective date of July 1, 2018.
- The issue Act No. 56 addressed is that, under law, the Council only has the ability to decertify an officer, and decertification is only possible if the officer was convicted of a felony or failed to complete the required annual in-service training. [20 V.S.A. § 2355\(11\) and \(12\)](#). [Council Rule 19](#) also provides for decertification due to a certification issued as a result of fraud or error.
 - In other words, current statutory law fails to recognize as unprofessional conduct on a statewide level any law enforcement officer conduct that does not rise to the level of a felony conviction, such as biased enforcement, excessive use of force, or any misdemeanor conviction.

- Since Act 56 would substantially change the Council’s oversight of certified law enforcement officers, the act also required the Council and OPR to meet during adjournment to determine whether OPR should be the entity to professionally regulate officers. [2017, No. 56, Sec. 2\(g\)](#) (pg. 23). Their [report to the Committees on Government Operations](#) was that yes, OPR should perform this function.
- Therefore, S.192 would transfer the duty to professionally regulate officers from the Council to OPR, while essentially maintaining all of the professional standards for officers that the General Assembly enacted last year in Act 56.
- Under the bill, officers would still need to obtain and maintain their certification with the Council. Maintaining a Council certification requires completing annual in-service training. However, an officer would also need to obtain and maintain a license to practice from OPR. Maintaining an OPR license would require an officer to renew his or her license once every two years, which requires:
 - showing that the officer is certified by the Council;
 - paying a \$200 biennial renewal fee;
 - completing the OPR renewal application, which includes a statement of good standing that all professionals regulated by the State must complete regarding:
 - unpaid judgments, [4 V.S.A. § 1110](#);
 - restitution, [13 V.S.A. § 7043a](#);
 - child support, [15 V.S.A. § 795](#); and
 - taxes, [32 V.S.A. § 3113](#).
- Because the Council statutes are in Title 20, whereas the OPR profession statutes are in Title 26, the bill repeals the T.20 statutes set to take effect this July and recodifies them in T.26.
- OPR’s professional regulation of law enforcement officers would begin on January 1, 2019 (rather than Act 56’s July 1, 2018 effective date), giving OPR extra time to prepare for this profession.

II. Section-by-Section Summary

- Sec. 1 adds law enforcement officers to the statutory list of professions that OPR regulates.
- Sec. 2 adds the law enforcement chapter to Title 26. Sec. 2 transfers Act 56’s Title 20 provisions to this OPR Title 26 chapter, as amended in relation to OPR’s administration of the profession. Here are highlights:
 - § 5302(1)-(3). Act 56 defined three categories of unprofessional conduct – Category A, B, and C – and the definitions of those categories are repeated here.
 - § 5302(7). As in Act 56, all law enforcement agencies have to have an “effective internal affairs program” in order to investigate complaints against their officers.
 - (E). One change to the definition of an “effective internal affairs program” in S.192 is to require the assistant judges of a county to appoint the required civilian review board for sheriffs.
 - § 5302(10) defines the universe of the certified law enforcement officers in this State, all of whom would be subject to OPR’s professional regulation.
 - § 5302(14) defines what it means for an agency to conduct a valid investigation.
 - §§ 5303 and 5304 contain standard OPR language regarding prohibited, unlicensed conduct and exemptions from licensure.
 - *Subchapter 2* contains standard OPR language for the duties of the Director of OPR in an OPR advisor profession.
 - § 5312. As an advisor profession, the Secretary of State will appoint three law enforcement officer advisors to give advice in regulating the profession. The Secretary is required to consider representation

among different sized law enforcement agencies in making the appointments.

- *Subchapter 3* addresses the OPR license that an officer will need in order to practice.
 - § 5321. Obtaining a license — in addition to an annual Council certification — will be a new requirement for officers. An officer will need to show that he or she is certified by the Council, and complete the OPR initial application or renewal form.
 - § 5322. While maintaining Council certification is an annual requirement, OPR’s license renewal cycle is once every two years.
 - § 5323. In the OPR initial application and biennial renewal forms, an applicant will need to provide evidence of his or her certification, pay the fee, and complete the form (*see above*).
 - § 5324(b) and (c) address the validity of an officer’s acts on third persons – such as the validity of an arrest – if an officer working for an agency fails to renew his or her license on time.
 - Aside from standard OPR practice of giving repeated notice of an upcoming renewal starting six weeks in advance of the renewal deadline, this subsection gives officers an extra 30 days following the deadline to renew – and provides that an officer’s acts on others will be considered valid at law during that timeframe – with OPR providing written notice to the officer, the head of his or her agency, and the Council if there is a failure to renew.
 - § 5325. The fees applicable to officer licenses are the same as the other OPR advisor professions, as set forth in [3 V.S.A. § 125\(b\)](#): \$100 for an initial application, and \$200 for a biennial renewal.
 - § 5326. An officer’s home address and personal telephone and email address obtained by OPR would need to be kept confidential and would be exempt under the Public Records Act.

- *Subchapter 4* is in regard to investigating and reporting complaints, and OPR's sanctions it could impose after a hearing upon a finding of unprofessional conduct. These are Act 56 provisions, except with reference OPR. To summarize:
 - § 5331. Each agency investigates its own officers for alleged Category A or B conduct, and any such complaints OPR receives about an officer will be referred to the officer's agency for investigation, unless the officer is the highest-ranked officer, in which case, OPR will investigate.
 - OPR would also be able to investigate if an officer resigns before the agency's investigation began or was completed.
 - OPR and the Council would investigate alleged Category C conduct, which generally pertain to their administrative functions.
 - § 5332. An agency must report to OPR regarding alleged unprofessional conduct at specified times, depending on the category of conduct at issue. The agency would need to provide OPR with a copy of its investigative report.
 - §§ 5333 and 5334 provide the sanctions OPR is permitted to impose on an officer's license after a hearing and upon a finding of unprofessional conduct. These are the same sanctions enacted under Act 56.
 - § 5335 provides that nothing prohibits OPR from conducting its own investigation or imposing sanctions if an officer's agency failed to conduct a valid investigation.
- Sec. 3 would create two new positions in OPR in order to administer this new law enforcement licensing chapter: an attorney and an investigator. Like other OPR expenses, these positions would be paid for through OPR's licensing fees, with no General Fund dollars.

- Sec. 4 requires the Council to share necessary info with OPR.
- Sec. 5 requires each agency to adopt an effective internal affairs program, and requires the Council to adopt a model program that agencies could use to meet this requirement. This requirement already existed in Act 56 and is just being statutorily relocated in S.192, since Act 56 placed it in the Council's unprofessional conduct subchapter, which would be repealed by S.192.
- Sec. 6 deletes reference to that repealed Council unprofessional conduct subchapter, and Sec. 7 directly repeals it.
- Sec. 8 makes conforming revisions to Act 56's session law, in accordance with the transfer to OPR.
- Sec. 9 amends the Vermont State Police internal investigation statute in accordance with the transfer to OPR.
- Sec. 10 provides transitional provisions.
 - *Subsec. (a)* provides that on the effective date of January 1, 2019, an officer certified by the Council shall be deemed licensed by OPR ***upon payment to OPR of the initial \$100 license fee.*** Therefore, an officer (or his or her agency on the officer's behalf) would need to pay \$100 to OPR by the end of this year.
 - *Subsec. (b)* provides that the new definitions of unprofessional conduct will apply to officer conduct committed on and after the effective date of January 1, 2019.
- Sec. 11 directs Leg. Council to make statutory revisions to refer to licensed officers, so long as the revisions have no effect on the meaning of the statutes.

- Sec. 12 requires OPR's advisor appointees to be appointed within 60 days of the bill's passage, and allows OPR to begin rulemaking on passage so that the rules can be ready as soon as possible for when OPR's regulation begins in January.
- Sec. 13 provides the effective dates, which in *subdivision (b)(2)* specifies that the Council's current ability to decertify for felony convictions remains in effect until OPR's professional regulation begins on January 1, 2019.