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VACOP position on S.192 as of March 21, 2018

The following brief is in response to the version of the bill now under consideration by House Gov Ops, with testimony expected on March 22 & 23.

The Vermont Association of Chiefs of Police (VACOP) is concerned that this issue has become unnecessarily complicated. Our position is:

Relative to the matter of law enforcement **Licensing**:

- Licensing is not necessary to achieve the goal of public transparency and accountability. It has become clear that any move to OPR is redundant and creates more problems than it solves. Therefore, we support keeping ACT 56 (De-Certification investigations) with the Academy/VCJTC. Funding should be through a State Appropriation. We understand that this is not the current direction of this discussion, so in the spirit of collaboration, we offer the below recommendations.

- If the legislature disagrees with this, ACT 56 functions for de-certification and some Internal Affairs investigations could be directed to OPR outside the realm of licensing. Create within OPR an Office for Law Enforcement Discipline for the purpose of investigating the conduct violations set forth in Act 56 and for recommending action to the VCJTC regarding an officer's certification. Fund the positions necessary to the program with a state appropriation.

- **VACOP fundamentally objects to the payment of fees for this or for licensing as we are not for profit government agents, conducting business for the good of the Vermont community.**

- Should House Gov Ops continue to move forward with consideration of licensing under S.192***, we respectfully request that the following be included:

1. Build in processes that minimize disruption in the criminal justice system and harm to third party victims. See solutions below:

- a. Amend the language in 5324 to make clear that the license does not actually expire until 45 days following the date written notice is provided by OPR to the Officer and the Officer's employer (Chief Executive Officer) stating that the Officer failed to timely renew the License. [The current language contemplates that the license immediately expires if Officer doesn't timely renew and THEN Notice is sent.]

- b. Consider language that prohibits discovery or collateral court attacks in the license - this may need to be explored with the State's Attorneys.

- c. Prohibit OPR (to include through rule making) from embedding professional standards within the Application. VACOP strongly believes that all rules and certification standards are within the purview of the VCJTC.**

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- d. Finally, add language that makes clear that only the VCJTC determines the standards for certification. Any legislation should prohibit OPR from creating new standards by rule, application processes or otherwise.
 2. Reduce or eliminate any fees associated with law enforcement licensure **and** delay the effective date to 2020 **and** extend the period of licensure from two years to at least four years. All 2019 budgets are locked in and a delay to 2020 allows agencies to budget for the fees.

**** Explanation:** Licensing was supposed to be about paying a fee and affirming possession of a valid Certification from the Academy. The understanding was that the Academy (VCJTC) sets the professional requirements and OPR merely issues the license. That is in fact expressly stated in the bill--license shall issue upon payment of a fee, Academy Certification and application. It got murkier when OPR explained that there are professional standards embedded in the application. Originally OPR stated that there were three standards or questions. In later communications OPR stated that there are several more questions upon which licensing may hinge. VACOP is concerned that OPR and/or the legislature will add other universal licensing requirements that may have unintended and injurious impacts on law enforcement. Law enforcement as a profession is unique in that prior to obtaining certification officers have undergone an extensive finger print supported background investigation, interviews, and a polygraph. And, no other profession faces, as part of their job, the daily scrutiny of the criminal defense bar in connection with a criminal case (i.e. discovery, deposition or cross examination). Having any additional application questions cedes to OPR the power to decide what additional standards an officer must meet in order to be licensed. Under current language, OPR, not the employer or the Academy (VCJTC), decides whether an officer is licensed and should continue to be licensed depending upon how an officer answers the question.

In keeping with the original intent, the solution is to require the Council to embed some or all of these questions in the Certification process (or alternatively rely upon the Council's word that it will do so) so that all Certified LEOs are current with child support, taxes etc. This leaves the VCJTC and/or employing LEA in charge of who gets hired or Certified based upon a candidate's answers. False representations or failing to self-report would subject the officer to de-certification proceedings under Act 56. These proceedings would allow for due process, as opposed to a well-intentioned bureaucrat's determination that licensure/re-licensure shouldn't occur.

***** VACOP** recognizes that considerable resource has been put into this topic. We are concerned that the processes under consideration change with every new draft. We strongly believe that the relevant stakeholders (Council, Academy, Sheriffs, Chiefs, Trooper's Assoc., VSEA-LE union, VPA, VLCT and OPR) to form a work group under the guidance of the AG (or appointee) could work together with the assistance of the AG's office to determine how licensing could be implemented without having unintended negative consequences for police officers and the communities they serve. Using the AG brings a lawyer to the table that has the skill set to create a process that both satisfies due process requirements and addresses everyone's concerns. Therefore, if the Legislature insists upon the licensing component at OPR, VACOP respectfully requests that the House Gov Ops committee table further consideration and send this matter to a summer study session.