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S.192

Senator Pearson moves that the bill be amended by striking out all after the enacting clause and inserting in lieu thereof the following:

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

§ 2405. COUNCIL HEARING AND SANCTION PROCEDURE

(a) Generally. Except as otherwise provided in this subchapter, ~~the Council~~ all proceedings under this subchapter shall conduct its proceedings be conducted in accordance with the Vermont Administrative Procedure Act.

This includes the ability to summarily suspend the certification of a law enforcement officer in accordance with 3 V.S.A. § 814(c).

(b) Prosecutor.

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

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

(c) Hearing officer.

(1) The Council shall appoint a hearing officer, who shall be an attorney admitted to practice law in this State, to conduct any unprofessional conduct hearing under this subchapter. The Council shall choose the hearing officer

1 from a list of hearing officers provided by the Office of Professional
2 Regulation.

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

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

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

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

15 (5) The hearing officer shall report the findings of fact and conclusions
16 of law to a Council Disciplinary Panel within 30 days after the conclusion of
17 the hearing, unless the Council grants an extension. The provisions of
18 3 V.S.A. § 811 regarding proposals for decision shall not apply to the hearing
19 officer's report.

1 (d) Council Disciplinary Panel.

2 (1) The Council shall appoint on a case-by-case basis a Council
3 Disciplinary Panel to make sanction recommendations based on the hearing
4 officer’s findings of fact and conclusions of law. The Panel shall comprise six
5 members of the Council, at least half of whom shall not be law enforcement
6 officers, and all of whom shall be balanced in regard to labor and management
7 positions to the greatest extent practicable.

8 (2)(A) Unless the Council grants an extension, the Panel shall meet and
9 make sanction recommendations within 10 days after the date the hearing
10 officer reports his or her findings of fact and conclusions of law to the Panel.

11 (B) Unless the Council grants an extension, the Panel shall issue its
12 sanction recommendations to the hearing officer within 10 days after its
13 meeting.

14 (3) The hearing officer shall not be bound by the Panel’s sanction
15 recommendations, which shall be advisory only.

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

17 § 2406. ~~PERMITTED COUNCIL~~ HEARING OFFICER SANCTIONS

18 (a) Generally. ~~The Council~~ Within 10 days after receiving the Council
19 Disciplinary Panel’s sanction recommendations, the hearing officer may
20 impose any of the following sanctions on a law enforcement officer’s

1 certification upon ~~its finding~~ his or her conclusion that a law enforcement
2 officer committed unprofessional conduct:

3 (1) written warning;

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

9 (3) revocation, with the option of recertification at the discretion of the
10 Council; or

11 (4) permanent revocation.

12 (b) Intended revocation; temporary voluntary surrender.

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

18 (B) Within 10 business days ~~from~~ after the date of that ~~decision~~
19 order, such an officer may voluntarily surrender his or her certification if the
20 hearing officer determined under subdivision 2405(c)(4)(B) of this subchapter
21 that there is a pending labor proceeding related to the ~~Council's~~ unprofessional

1 conduct ~~findings~~ the hearing officer concluded the law enforcement officer
2 committed.

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

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

14 Sec. 3. REPEAL

15 20 V.S.A. § 2410 (Council Advisory Committee) is repealed.

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

17 Sec. 2. TRANSITIONAL PROVISIONS TO IMPLEMENT THIS ACT

18 (a) Effective internal affairs programs.

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

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

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

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

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

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

20 (f) Annual report of Executive Director. Annually, on or before
21 January 15, beginning in the year ~~2019~~ 2020 and ending in the year ~~2022~~ 2023,

1 the Executive Director of the Vermont Criminal Justice Training Council shall
2 report to the ~~General Assembly~~ House and Senate Committees on Government
3 Operations regarding the Executive Director's analysis of the implementation
4 of this act and any recommendations he or she may have for further legislative
5 action.

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

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

13 Sec. 6. EFFECTIVE DATES

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

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

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

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

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

21 (ii) § 2351a (definitions);

- 1 (iii) § 2352 (Council membership);
2 (iv) § 2354 (Council meetings);
3 (v) § 2355 (Council powers and duties), except that subsection (a)
4 shall take effect on ~~July 1, 2018~~ January 1, 2019;
5 (vi) § 2358 (minimum training standards; definitions); and
6 (vii) § 2362a (potential hiring agency; duty to contact former
7 agency);
8 (B) Sec. 3, 20 V.S.A. § 1812 (definitions); and
9 (C) Sec. 4, 20 V.S.A. § 1922 (creation of State Police Advisory
10 Commission; members; duties).

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

12 § 3251. DEFINITIONS

13 As used in this chapter:

14 * * *

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

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

18 § 3259. SEXUAL EXPLOITATION OF A PERSON IN THE CUSTODY OF

19 A LAW ENFORCEMENT OFFICER

20 (a) No law enforcement officer shall engage in a sexual act with a person
21 whom the officer is detaining, arresting, or otherwise holding in custody or

1 who the officer knows is being detained, arrested, or otherwise held in custody
2 by another officer.

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

5 Sec. 8. EFFECTIVE DATES

6 This act shall take effect on passage, except that:

7 (1) Secs. 1, 20 V.S.A. § 2405 (Council hearing and sanction procedure)
8 and 2, 20 V.S.A. § 2406 (permitted hearing officer sanctions) shall take effect
9 on January 1, 2019; and

10 (2) Sec. 3 (repeal of 20 V.S.A. § 2410 (Council Advisory Committee))
11 shall take effect on July 1, 2018.

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