



STATE OF VERMONT
Capitol Police Department

Memorandum

To: Joint Legislative Management Committee

From: Matthew Romei, Chief of Police

Re: Consideration of Rules Committees

Date: 19 November 2019

At the last Joint Legislative Management Committee, the Sergeant at Arms and I were asked to consider the rules committees and how they affect our responsibilities and offer some thoughts on the *possibility* of their demise. I believe that there are innumerable parliamentary reasons for the rules committees to remain, however, I am neither a parliamentarian nor an attorney, so I will not attempt to address those issues. In order to look adequately at the issues that do affect us, first one must look at how the Capitol Police derive authority and direction, and I believe that to be an important diversion.

2 V.S.A. § 70 establishes the Capitol Police Department and gives the Sergeant at Arms appointing (and removal) authority. Capitol Police Officers are granted the same law enforcement powers as any other officer, similar to 24 V.S.A. § 1931 and subsequent statutes, however, this statute does not provide the same job protection as afforded municipal officers. Of note, this statute also provides that officers shall be notaries public, but under a statute that was repealed in 2017 (24 V.S.A. § 442). Finally, it provides that officers will serve as a Deputy Sergeant at Arms. In this last statement, the similarities between the Capitol Police and the enforcement agencies of the Departments of Motor Vehicles, of Fish and Wildlife, and of Liquor and Lottery become apparent. We are three small law enforcement agencies that also enforce a set of rules unique to that agency.

Considering that the Capitol Police work in two overlapping areas, it is important to fully understand how those areas work, and specifically where they overlap. Where we work in Rules Enforcement, we work at the direction, and discretion, of the person in charge of the space. In the chambers and committee rooms, that is the Presiding Officer. In the hallways, common areas, and curtilage of the State House, that is the Sergeant at Arms (Joint Rule 26 d. and e., Senate Rule 15 and House Rule 15). What those rules mean to us is that the person in charge of the space makes the decision what is disorderly or a disturbance, and what the resolution to that event is going to be. Once the person in charge decides on a course of action, the Sergeant at Arms will enforce that decision (2 V.S.A. § 62(a)(1)). Most likely, that will be *the* Sergeant at Arms or a Door Keeper. If none of those are present (i.e. late evening, etc.), then a Capitol Police Officer will enforce those rules as a Deputy Sergeant at Arms.

This is no different than how law enforcement works in *any* State Building, or private property for that matter – the person in charge sets the rules. If we are responding to the Supreme Court or another State Building, we rely on the Court Administrator or Commissioner of Buildings and General Services respectively (or their designees) to make those determinations. 2 V.S.A. § 70(c) directs us to assist the Commissioner of Buildings and General Services in the delivery of law enforcement and security services in the Capitol Complex. We take that to mean the Court Administrator as well. We generally stay out of the security lane absent extraordinary circumstances, but will assist however we can when asked.

This discretionary rulemaking is not unusual but does require the person in charge to make a decision. Once the decision is made, and in the case of the State House, the Sergeant at Arms enforces the decision, if the person does not comply, the next step follows either the trespassing or disorderly conduct routes. These are the two laws that most commonly occupy the overlap between Rule Enforcement and Law Enforcement. What both crimes boil down to is, if you can't follow the rules, you have to leave. In the (very) few times we have expelled someone from the State House, it has been following an incident of Disorderly Conduct, where we either cite and release, or exercise discretion to *not* arrest, but to remove the person from the area. This expulsion is almost always following some type of extensive outburst that cannot be immediately resolved by Door Keepers or the Sergeant at Arms, and never lasts beyond the end of the day.

An oft-cited section of the Vermont Constitution is Chapter II § 8, which guarantees admission to “those who behave decently.” The language is appreciatively vague as to what “decently” means, and thus we are able to apply these two low-level statutes based on the discretion of the person in charge. ***I want to be abundantly clear that any decision to arrest on Disorderly Conduct or Criminal Trespass Charges is only made after extensive consideration, warnings, and where possible, negotiations.*** We take great pains to ensure that we do not impair Constitutional Rights and, indeed, work hard to make sure those rights are protected.

Where the Capitol Police act without invitation is in enforcement of the law above the low-level Disorderly Conduct or Criminal Trespass. Any “violent, tumultuous or threatening behavior” (Disorderly Conduct 13 V.S.A. § 1026(a)(1)), or anything qualifying as Aggravated Disorderly Conduct (13 V.S.A. § 1026(a) witnessed by a Capitol Police Officer will be addressed without invitation. Additionally, any act of physical violence, such as a person jumping the barrier and assaulting a member, would be directly addressed without formal invitation of the presiding officer. We are fortunate that those incidents are exceptionally rare.

Generally, we try to work out issues without “enforcement.” We see this most common while refereeing parking issues. While we do have authority to boot, ticket (\$85 waiver fine), and tow, we find most offenses can be resolved through a phone call. Additionally, we proactively reach out to protest or rally organizers when we know in advance, to introduce ourselves, explain the boundaries of what works and what doesn't, and give them a point of contact. We have (mostly) found great success in this proactive approach. At the end of the day, we *want* people to come, visit, and be heard.

I have included below the rules and statutes that I believe address your specific questions about what impact the Rules Committees have on our area of operation. I think that going forward, there does need to be a committee that meets regularly for us to query with issues and questions, especially getting those questions answered well in advance of a crisis moment when possible. Whether that remains Joint Rules or is reassigned to some other committee is entirely the call of the General Assembly.

2 V.S.A. § 62. Legislative duties

(a) The Sergeant at Arms shall:

- (1) execute orders of either house, the Committee on Joint Rules, or the House or Senate Committee on Rules;
 - (2) maintain order among spectators and take measures to prevent interruption of either house or any committee thereof;
 - (3) arrange for special meetings and conferences at the State House;
 - (4) provide for the distribution of mail to all legislators;
 - (5) schedule the time for the use of rooms for committee meetings and hearings;
 - (6) maintain in a good state of repair and provide security for all furniture, draperies, Rugs, desks, and other furnishings kept in the State House;
 - (7) provide for the establishment of a cafeteria and supervise its operation;
 - (8) perform such other duties for the benefit of the legislators as may be required by any duly authorized committee thereof.
- (b) He or she or any person in his or her employ shall not accept any compensation or gift for his or her services other than his or her salary. If he or she or any person in his or her employ violates this provision, he or she shall be fined \$25.00.
- (c) The Sergeant at Arms shall not be responsible for structural repairs, capital improvements, or building maintenance for the State House (as the term maintenance is defined in 29 V.S.A. § 159) or for the use, upkeep, or maintenance of the State House grounds

2 V.S.A. § 63. Salary

- (a) The salary for a newly elected Sergeant at Arms shall be set by the Joint Rules Committee and annually thereafter, this compensation shall be adjusted in accordance with any annual increase provided for legislative employees, unless otherwise determined by the Joint Rules Committee.

2 V.S.A. § 64. Employment of assistants; Capitol Police; training; uniforms and equipment

(a) The Sergeant at Arms may, subject to the rules of the General Assembly, employ such employees as may be needed to carry out the Sergeant at Arms' duties. These may include assistants, custodians, doorkeepers, guides, messengers, mail and room assignment clerks, security guards, and pages. Compensation for such employees shall be determined by the Joint Rules Committee, except that prior to the beginning of any legislative session, compensation for a person who fills the same temporary position that he or she filled during the preceding session and, in the case of a person newly employed to fill a temporary position, the rate of compensation shall be established initially by the Sergeant at Arms at a rate not to exceed the rate established for the person who held that position during the preceding legislative session. Persons employed under this section shall be paid in the same manner as members of the General Assembly. The Commissioner of Finance and Management shall issue his or her warrant in payment of compensation approved under this section.

(b) 3 V.S.A. chapter 13 shall not apply to employees of the Sergeant at Arms unless this exception is partially or wholly waived by the Joint Rules Committee consistent with the rules of the General Assembly. Any waiver may subsequently be rescinded in whole or in part.

(c) At State expense and with the approval of the Sergeant at Arms, Capitol Police officers shall be provided with training and furnished uniforms and equipment necessary in the performance of their duties, and such items shall remain the property of the State.

2 V.S.A. § 70. Capitol Police Department

(a) Creation. The Capitol Police Department is created within the Office of the Sergeant at Arms. The Sergeant at Arms shall appoint and may remove, at his or her pleasure, individuals as Capitol Police officers, one of whom shall be appointed to serve as Chief. All such positions shall be exempt State employees. The Chief shall supervise the officer force under the direction of the Sergeant at Arms. Such appointments and all oaths or affirmations shall be in writing and filed with the Sergeant at Arms. An officer shall also serve as a Deputy Sergeant at Arms and as a notary public pursuant to 24 V.S.A. § 442.

(b) Powers; training.

(1) A Capitol Police officer shall have all the same powers and authority as sheriffs and other law enforcement officers anywhere in the State, which shall include the authority to arrest persons and enforce the civil and criminal laws, keep the peace, provide security, and serve civil and criminal process. For this purpose, a Capitol Police officer shall subscribe to the same oaths required for sheriffs.

(2) Notwithstanding any other provision of law to the contrary, a Capitol Police officer shall be a Level II or Level III law enforcement officer certified by the Vermont Criminal Justice Training Council pursuant to the provisions of 20 V.S.A. chapter 151, except that the Chief of the Capitol Police shall be a Level III certified law enforcement officer.

(c) Coordination of Capitol Complex security. The Capitol Police Department shall provide security within the State House and assist the Commissioner of Buildings and General Services in providing security and law enforcement services within the Capitol Complex, pursuant to the memorandum of understanding required by 29 V.S.A. § 171(f).

29 V.S.A. § 182 Capitol Complex Definition

(1) "Capitol complex" means all of the land and buildings in the city of Montpelier, excluding so much of State Street as lies within the boundaries thereof, enclosed within the following described bounds: commencing at the juncture of Taylor Street, so-called, and north line of the Winooski River, thence northerly along the westerly line of Taylor Street, crossing state Street and continuing northerly along the westerly line of the extension of Taylor Street, crossing Court Street at an angle to the westerly line of Greenwood Terrace, thence continuing northerly along the westerly line of Greenwood Terrace to a point on a line extension of the southerly line of Mather Terrace, thence westerly along the aforesaid line extension to Mather Terrace, thence westerly along the southerly line of Mather Terrace and Terrace Street to the intersection of Terrace Street and the easterly line of Bailey Avenue, thence southerly along the easterly line of Bailey Avenue crossing State Street and continuing along the easterly line of Bailey Avenue extension to the Winooski River, thence easterly along the northerly line of the Winooski River to the point of the beginning.

Vermont Constitution Chapter II § 8. [DOORS OF GENERAL ASSEMBLY TO BE OPEN]

The doors of the House in which the General Assembly of this Commonwealth shall sit, shall be open for the admission of all persons who behave decently, except only when the welfare of the State may require them to be shut.

Joint Rule 26. Public Conduct in the State House

- (a) Persons in the State House shall refrain from:
- (1) loud or unusual noise or profanity;
 - (2) running, crowding, pushing or shoving;
 - (3) any other conduct which creates a risk of harm to any person or which would disrupt essential governmental operations;
 - (4) any conduct which obstructs entrances, walks, corridors, elevators, cafeterias, offices or stairways.
- (b) Banners, signs and placards may be permitted in the State House, except in the House and Senate chambers, under the following conditions:
- (1) No sticks, rods or similar devices may be used to support a banner, sign or placard.
 - (2) Banners, signs and placards may not be carried or held in such a way as to obstruct another's view or to endanger the safety of another.
- (c) No person while in the State House shall carry a firearm or other dangerous or deadly weapon or an explosive, openly or concealed, except for official purposes.
- (d) The presiding officers shall have general supervision over their respective Chambers, and the Chairs of Committees shall have general supervision over their respective committee rooms or hearing rooms, and in the case of a disturbance or disorderly conduct or other violation of this rule, may order the Sergeant-at-Arms to restore order or to clear the area.
- (e) The Sergeant-at-Arms shall have general supervision over the conduct of the public within the State House building, including but not limited to its entrances, walks, corridors, elevators, cafeteria, offices and stairways, and shall maintain order therein and, if necessary, take measures to prevent disruption of essential governmental operations, consistent with this joint rule and all other rules of the General Assembly.

Senate Rule 15 and House Rule 15 (Order in Chambers, Galleries)

- Senate Rule 15 - The President, among other duties shall preserve order, and in case of disorder may clear the galleries. All questions of order shall be decided by the President, whose decision shall be final, unless a senator immediately appeals, and such appeal is sustained by a majority vote of the senators present.
- House Rule 15 - The Speaker among other duties shall preserve order and in case of disorder may clear the galleries. The Speaker shall decide all questions of order and decisions shall be final unless a member immediately appeals and the appeal is sustained by a vote of the members present.

Senate Rule 89 and House Rule 86 (Media, Recording in Chambers)

Senate Rule 89. The presiding officer may make temporary or permanent arrangements for the use or non-use of any portion of the Senate Chamber by members of the news media including the press, television and radio. The taking of pictures on the floor of the Senate Chamber during a session thereof and/or machine recording of the proceedings are prohibited except by permission of the presiding officer had and obtained; and all apparatus and paraphernalia used in connection therein must be placed where the same will be used, before the opening of the session involved.

House Rule 86. The taking of pictures on the floor of the House and the machine recording of the proceedings during a session thereof are prohibited except by previous permission of the presiding officer. When permission is given, all equipment to be used must be placed where it will be used before the opening of the sitting involved. The use of telephones or allowing telephones to ring in the House Chamber during a session thereof, is prohibited.

Senate Rules 92-96 Executive Sessions

Miscellaneous Senate and House Rules of similar topics:

SR 101, HR 90 (c) – Sexual Harassment

SR 102, HR 90(b) – Ethics

SR 103, HR 14a. – Disclosure

SR 104, HR 90a. – State House Interns/Employees/Assistants

HR 90 (a) Discrimination

House Rule 84 (Admission to the Well of the House)

No person may be admitted within the well of the House except the Governor, Lieutenant Governor, State Treasurer, Secretary of State, Auditor of Accounts, Attorney General, members of the Senate, Justices of the Supreme Court, Superior Judges, District Judges, Senators and Representatives in Congress, former Governors, Lieutenant Governors, Justices of the Supreme Court, Superior Judges, District Judges and members of the General Assembly, District Judges and Attorneys of the United States, members of other State Legislatures, Secretary and Assistant Secretary of the Senate, Secretary of Civil and Military Affairs, and Executive Clerk; and other persons as the Speaker may allow.

House Rule 87 (Use of Chamber for other purpose)

Use of the Hall of Representatives for other than statutory purposes may be authorized by the Committee on Rules, if the request for such use is made while the General Assembly is in session. If the request is made while the General Assembly is in adjournment for more than seven days, the Sergeant at Arms may authorize such use, with the permission of the Speaker.