

Overview of Current Provisions re: Law Enforcement Unprofessional Conduct

I. Pre-2017, Act No. 56

[2017, Act No. 56](#) significantly revised the State’s professional regulation of law enforcement officers (LEOs). Prior to Act 56 – the unprofessional conduct provisions of which became effective on July 1, 2018 – the Vermont Criminal Justice Training Council could only decertify an LEO, and decertification was only possible if an LEO was convicted of a felony or did not comply with annual in-service training.¹ These were the only bases for the State to take action against an LEO’s certification.

II. Current Law

2017, Act No. 56 added the statewide unprofessional conduct standards applicable to all LEOs that are now in current law. These provisions are now set forth in [20 V.S.A. chapter 151, subchapter 2](#) (Vermont Criminal Justice Training Council; unprofessional conduct).

To summarize, this subchapter defines LEO unprofessional conduct; requires a law enforcement agency to investigate allegations of LEO unprofessional conduct and report its findings to the Council; and permits the Council to impose a range of sanctions on an LEO’s certification.² The following provides further details of these provisions.

Unprofessional conduct. Unprofessional conduct is separated into three categories, as defined in [20 V.S.A. § 2401\(1\)-\(3\)](#):

- *Category A* is re: crimes. It’s defined as any felony; a “misdemeanor that is committed while on duty and did not involve legitimate performance of duty,” and a specified list of misdemeanors if committed off-duty that includes domestic assault, DUI second offense, distributing a regulated substance, and possession of a regulated substance, second offense.
- *Category B* means “gross professional misconduct amounting to actions on duty or under color of authority, or both, that involve willful failure to comply with a State-required policy or substantial deviation from professional conduct as defined by the law enforcement agency’s policy or if not defined by the agency’s policy, then as defined by Council policy” and includes a list of examples³ that includes misuse of official position for personal or economic gain, excessive use of force second offense,⁴ and biased enforcement.
- *Category C* relates to Council processes, and includes falsifying Council documents and intentional failure to conduct a valid investigation.

¹ See 2017, Act No. 56, former 20 V.S.A. § 2355(a)(11) and (12).

² The Council is currently structured as a 12-member board of appointees. See [20 V.S.A. § 2352](#).

³ [SGO’s S.124](#) would clarify that the current list shall constitute Category B, rather than the list being one of examples.

⁴ SGO’s S.124 would change this to excessive use of force, *first offense*.

Investigations. Via [20 V.S.A. § 2404](#):

- Each law enforcement agency is required to conduct a “valid investigation” of any complaint alleging one of its LEOs committed Category A or B conduct, except that a law enforcement agency is required to refer to the Council any complaint made against the agency’s executive officer.
- If the Council receives a complaint, the Council refers it to the LEO’s agency (unless it’s re: the executive officer).
- The Council investigates allegations of Category C conduct.
- [20 V.S.A. § 2401\(6\)](#) defines “valid investigation.”

Effective internal affairs program. Via [20 V.S.A. § 2402](#), each agency must adopt an effective internal affairs program. 20 V.S.A. § 2401(4) defines this to include:

- Accepting complaints from any source
- Assigning an investigator to investigate whether an LEO violated agency rule or policy or State or federal law
- Policies re: a code of conduct and range of discipline
- Fairness in discipline
- Civilian review

Reporting to Council. Via [20 V.S.A. § 2403](#), each agency is required to report to the Council:

- *Category A.* A finding of probable cause or decisions, findings of fact, or verdicts re: Category A.
- *Category B.*
 - The agency receives a complaint “if deemed credible by the executive officer of the agency as a result of a valid investigation” that alleged an LEO committed Category B.⁵
 - The agency receives or issues a report the LEO committed Category B.
 - The agency receives or issues a decision or findings re: allegations the LEO committed Category B.
- *Termination.* The agency terminates the LEO for Category A or B.
- *Resignation.* The LEO resigns while under investigation for unprofessional conduct.

Council sanctions.

- Council conducts proceedings in accordance with VAPA, including summary suspension authority. [20 V.S.A. § 2405](#).
- Council may warn, suspend, or revoke an LEO’s certification. [20 V.S.A. § 2406](#).
- Council is prohibited from sanctioning an LEO for a first offense of Category B. [20 V.S.A. § 2407](#).

Accessibility and confidentiality. [20 V.S.A. § 2409](#) requires the Council to maintain a public register of all complaints, but an LEO’s identifying info is only made public once charges or a stipulation is filed.

⁵ SGO’s S.124 would change this to a report if the agency “receives a credible complaint” alleging the LEO committed Category B.