

Summary of S.124, as Recommended by Senate Gov Ops (draft 7.2)

An act relating to governmental structures protecting the public health, safety, and welfare [title as recommended]

This bill proposes miscellaneous amendments in the areas of *Law Enforcement, Dispatch, Emergency Medical Services*, and *Public Safety Planning*. What follows is a high-level summary of those amendments.

*** * * LAW ENFORCEMENT * * ***

*** * * Vermont Criminal Justice Training Council * * ***

Technical Correction

Sec. 1 corrects a prior amendment that mistakenly substituted “recruitment” for “recruit”; this amendment returns the statute to how it should read, which is that the Council maintains a uniform standard of (basic) training for *recruits* and (annual) in-service training for certified law enforcement officers (LEOs).

Membership of the Council

Sec. 2 amends Council member appointees and appointors, and increases the Council membership from 12 to 16.

- Aside from 13 specified appointees, the Governor, Senate, and House would each appoint one public member who does not have a law enforcement connection.
- Only the public members would be entitled to per diem compensation as permitted under 32 V.S.A. § 1010. All members are entitled to receive reimbursement of expenses via that statute.

Sec. 3 permits existing members of the Council who would continue to serve under the new membership to serve out the remainder of their existing terms.

Different Training Options

Sec. 4 requires the Council to adopt rules re: alternate routes to certification aside from training provided at the Vermont Police Academy. It also requires the Council to strive to offer courses in different areas of the State and non-overnight courses whenever possible.

Sec. 5 requires the Council to restructure its programs so that on *July 1, 2021*, a Level II LEO can use portfolio experiential learning or CLEP testing to transition to Level III, without needing to restart the certification process.

Sec. 6 requires a Council report to the Gov Ops committees by **Jan. 15, 2021** re: the Council's progress on these requirements.

- It also requires the Council to adopt the required rules by **July 1, 2023**.

Sec. 7 explicitly permits one law enforcement agency to seek certification from the Council for any in-service training it provides to its own officers *or officers of another agency*.

Potential Hiring Agency Duty to Contact Current Agency

Sec. 8 requires a potential hiring law enforcement agency to contact the officer's current law enforcement agency about the officer's performance at the agency, if the officer is still employed there, and requires the current agency to disclose its analysis of the officer's performance there.

- (The law already requires a potential hiring agency to contact the officer's former agency if the officer is no longer employed there, and for that former agency to disclose the reason the officer is no longer employed there.)

Sec. 9 is a transitional provision that waives this requirement in the case of an existing nondisclosure agreement that prohibits this disclosure.

Unprofessional Conduct

Sec. 10, 20 V.S.A. § 2401(2) makes more explicit that the current (A)-(E) list "shall" constitute Category B unprofessional conduct, while "include" means that (A)-(E) is not an exhaustive list. (Current law's use of "such as" may be inferred to mean that (A)-(E) are mere potential examples of Category B conduct.)

Sec. 10, 20 V.S.A. § 2401(2)(C) defines Category B conduct as including excessive use of force *first offense*—rather than *second offense*. This amendment has multiple effects throughout the unprofessional conduct subchapter in regard to the Council being aware of alleged excessive use of force and the ability of the Council to discipline an officer for excessive use of force. That's because, under the current law's use of excessive use of force—*second offense*:

1. Agencies are not reporting to the Council alleged excessive use of force, *first offense* under [§ 2403\(a\)\(1\)\(B\)](#) (re: the requirement to report allegations of Category B), *nor* an agency's termination of an LEO for a *first offense* of excessive use of force under the termination reporting required under [§ 2403\(a\)\(1\)\(C\)](#) (re: the requirement to report a termination for Category B conduct), since excessive use of force, *first offense* does not constitute Category B conduct.
2. The Council is prohibited from taking action against an LEO for a first offense of Category B conduct under [§ 2407\(a\)](#) (limits on Council sanctions), but "offense" is defined in [§ 2407\(b\)](#) as any offense committed by an LEO during the course of his/her certification, including any offenses committed during employment at a previous agency.

- However, because agencies are not currently required to report to the Council *first offenses* of excessive use of force, it is difficult for the Council to track how many excessive uses of force an LEO may have committed.
3. Moreover, because current law defines Category B as including excessive use of force, *second offense*, and because § 2407(a) prohibits the Council from taking action on a **Category B first offense**, that means the Council cannot take action against an LEO until a third known offense of excessive use of force.

Sec. 10, 20 V.S.A. § 2403(a)(1)(B) eliminates the current law language that an agency only report alleged Category B conduct *if it is deemed credible by the executive officer of the agency as a result of a valid investigation*, and instead requires an agency to report ***credible complaints*** of alleged Category B conduct.

- Under the current law, the Council may not be aware of all complaints of LEO conduct that may rise to the level of Category B conduct.
- By amending this phrase, the Council would be made aware of all allegations of Category B conduct and could thereafter check in with the agency on the status of its investigation, which would provide more Council oversight of a complaint against an LEO and the LEO agency's valid investigation of it.

***** Vermont Crime Information Center *****

Uniform Definitions for Criminal Record Data

Sec. 11 requires the VCIC to establish and provide training on a uniform list of definitions for LEOs to use in entering data into their agency's system of records (Spillman or Valcour), and requires every LEO to use those definitions when entering data.

***** Law Enforcement Advisory Board *****

Recodifying the LEAB and Revising its Membership

Sec. 12 repeals the LEAB from its current place in law because T.24 (municipal law) is not the appropriate location.

Sec. 13 recodifies the LEAB in its appropriate place in law because it is placed in the chapter of T.20 (public safety) that is re: the Department of Public Safety (since the LEAB was originally created "within the Department of Public Safety.")

- It also adds to the LEAB membership:
 1. the Director of the Enforcement Division of the Department of Fish and Wildlife;
 2. the Director of the Enforcement and Safety Division of the Dept. of Motor Vehicles;
 3. the Chief of the Capitol Police Department; and
 4. a law enforcement officer appointed by VSEA.
- Accordingly, this section updates what constitutes a quorum; and makes other technical corrections.

Sec. 14 requires Leg. Council to make any necessary statutory revisions re: the LEAB recodification and explicitly states that any other references to the LEAB's prior statute shall be deemed to be references to the recodified statute.

LEAB 2021 Report on Access to Law Enforcement

Sec. 15 requires the LEAB in its 2021 report to specifically recommend ways that towns can increase access to law enforcement services.

***** Department of Public Safety; Dispatch *****

DPS Dispatch Rules and Technical Corrections

Sec. 16, 20 V.S.A. § 1871(b) eliminates outdated language requiring the Commissioner of Public Safety to be appointed for a term of six years.

Sec. 16, 20 V.S.A. § 1871(i) requires the Commissioner of Public Safety to adopt rules that provide the rates DPS charges to perform dispatch functions.

- (Sec. 17 provides the rule adoption deadline and application of these rules.)

Sec. 16 also repeals 20 V.S.A. § 1873, which purports to allow the Governor to remove the Commissioner of Public Safety only after charges, a hearing (if the Comm'r requests), and for specific reasons.

- The SCOV in State v. Lynch, 137 Vt. 607 (1979) held that this statute was superseded by 3 V.S.A. § 2004 as the later enacted statute in irreconcilable conflict with 20 V.S.A. § 1873, since 3 V.S.A. § 2004 allows the Governor to remove his/her appointees at pleasure. Therefore, this statute has been sitting in law since 1979 but without any effect and should be repealed.

Sec. 16, 20 V.S.A. § 1875 corrects the name of DPS' Law Telecommunications Special Fund.

Sec. 17 requires DPS to finally adopt its rules re: dispatch rates by **July 1, 2021**, but requires the rules to provide a minimum of three years following adoption before the rates they contain are imposed.

***** EMERGENCY MEDICAL SERVICES *****

Substituting Department of Health for State Board of Health

Throughout, Sec. 18 substitutes the Department of Health for the State Board of Health so that it is the Department that divides the State into EMS districts and issues licenses for ambulance services and first responder services.

Ambulance Service License Eligibility Criteria

Sec. 18, 24 V.S.A. § 2681 requires ambulance service license and renewal applicants to provide their services in a nondiscriminatory manner, similar to the requirement for home health services. DoH is required to adopt rules re: this issue.

HRAP Addressing EMS Resources

Sec. 19, 18 V.S.A. § 9405 requires the Green Mountain Care Board to identify priorities re: EMS resources and needs in the State’s Health Resource Allocation Plan (HRAP), and Sec. 20, 18 V.S.A. § 909(f) requires the EMS Advisory Committee to identify those resources and needs and report them to the GMCB.

Technical Corrections: EMS Personnel Affiliation with Affiliated Agencies; other

The General Assembly in 2020, Act 100 eliminated the requirement for EMS personnel to be credentialed by their affiliated agency (EMS personnel still have to be licensed, and licensure includes a requirement to also be nationally certified.)

- Sec. 20 in several places makes technical corrections maintain reference to EMS personnel still needing to be affiliated with an affiliated agency.
 - (Via 24 V.S.A. § 2651(16), an “affiliated agency” means an ambulance service or first responder service, including a fire department, rescue squad, police department, ski patrol, hospital, or other entity licensed to provide EMS services.)

Other technical corrections are made throughout Sec. 20, such as to use the defined term “emergency medical treatment.”

Three Levels of EMS Instructors

Sec. 20, 18 V.S.A. § 906(1) requires DoH to establish by rule at least three levels of EMS instructors and the education required for each level.

Alternative to NREMT Psychomotor Skills Testing for EMRs and EMTs

Sec. 20, 18 V.S.A. § 906(10)(C)(i) allows for demonstration of skills competencies as part of education approved by DoH in order to test the psychomotor skills of EMRs and EMTs as an alternative to the current rule requirement to do so by taking the NREMT psychomotor examination.

New Entry-Level Vermont EMS First Responder Certification

Sec. 20, 18 V.S.A. § 906(11) requires DoH to establish by rule an entry-level certification for Vermont EMS first responders.

DoH Sunset Reviews of EMS Continuing Competency Requirements

Sec. 20, 18 V.S.A. § 906d requires DoH to conduct sunset reviews of the continuing competency requirements for EMS personnel and amend its rules or propose statutory amendments any requirements are not necessary for public protection.

- (This same requirement is recommended for other professional regulatory entities in 2020, S.233 (uniform licensing standards).

EMS Advisory Committee and Education Council

Sec. 20, 18 V.S.A. § 909(e)(6) requires the EMS Advisory Committee to include in its annual report info re: the annual number of mutual aid calls to an EMS area that come from outside that area.

Sec. 20, 18 V.S.A. § 909(f) requires the EMS Advisory Committee to identify EMS resources and needs and inform the GMCB for the GMCB's HRAP revisions addressed in Sec. 19.

Sec. 20, 18 V.S.A. § 909(g) requires the EMS Advisory Committee to establish an EMS Education Council from among its members to sponsor EMS training or education programs and to provide advice to DoH regarding the standards for licensure.

Adding Certified Vermont EMS First Responders and Licensed EMRs to Current Financial Allocations

Sec. 21 amends the list of the EMS professionals for whom training programs are funded by adding this bill's new certified Vermont EMS First Responders and the existing licensed EMRs.

Transitional Provisions

Sec. 22 provides transitional provisions to implement the EMS changes.

- Subsec. (a) requires rules to be adopted by **July 1, 2021** unless otherwise provided.

- Subsec. (b) provides that the new “nondiscriminatory” standards for ambulance licenses apply beginning on *July 1, 2021* or upon the adoption of DoH rules, whichever is later.
- Subsec. (c) transitions existing EMS Instructor/Coordinator licensees into the correct level consistent with the new scopes of practice that will be established for instructors once DoH adopts rules establishing the new instructor levels.
- Subsec. (d) requires DoH to consult with the EMS Advisory Committee, UVM, and other relevant stakeholders to develop the new Vermont EMS First Responder certification in order to establish it by *July 1, 2021*.
- Subsec. (e) requires DoH to conduct its first sunset review in conjunction with the rulemaking required by this act.

*** * * PUBLIC SAFETY PLANNING * * ***

Town Public Safety Plans

Sec. 23 requires towns to have a public safety plan. It provides the process to do so, which corresponds to the current law requirement for a town to conduct an annual assessment of its capacity to perform emergency functions in response to an all-hazards incident.

- This new public safety plan requirement would require a town to describe how it will address the regular law enforcement, fire, EMS, and dispatch resources, needs, scarcities, costs, and problems within the town, which may include partnering with one or more other municipalities or entities to address those issues.

Sec. 24 requires each town to undertake the public safety planning process so that each town has adopted a public plan by *July 1, 2023*.

ACCD Public Safety Planning Grants

Sec. 25 appropriates \$100,000 to ACCD in FY21 for three public safety planning grants for the purpose of fostering regional public safety planning.

- Regional organizations may apply for these grants.
- A grant shall be for a maximum of three years and shall not exceed \$35,000.
- Grants shall be provided to grantees in different geographic regions of the State.
- A grantee shall be required to report annually to the Gov Ops and Appropriations committees with data re: their planning process and expected result.

Effective Date: July 1, 2020