

Hi Gail,

In preparation for Thursday afternoon's SGO Hearing related to an Agency of Public Safety and the ongoing role and authority of the Vermont Criminal Justice Council with or without the creation of a Public Safety Agency, Senator White asked Interim Executive Director Sheets and me to provide language to the SGO confirming the independence of the VCJC, its role in the professional regulation of Vermont law enforcement officers as well as its hiring of the Executive Director and other leadership positions at the Vermont Police Academy.

Please see below for submission to the Committee, VCJC reactions to the February draft language of legislation creating an Agency of Public Safety as well as proposed statutory language relating to issues mentioned above. The language below was shared with Legislative Counsel.

Please let us know if the SGO wishes more from us or proposed statutory language in a different format.

Thank you.

Bill Sorrell

From: Humbert, Jacob

Sent: Monday, February 22, 2021 5:42 PM

To: Amerin Aborjaily <AAborjaily@leg.state.vt.us>

Subject: RE: Vermont Criminal Justice Council; draft Agency of Public Safety bill

Amerin:

Thank you for forwarding your most recent draft bill language re: the Agency of Public Safety. As directed by VCJC Chair Bill Sorrell, I am reaching out to relay the VCJC's comments/suggested revisions to such draft bill. (Please note that I am forwarding the below by virtue of my assignment to provide the VCJC with general counsel services, and am not doing so for or on behalf of the Office of the Attorney General. Any questions related to the Office of the Attorney General's position on draft or pending legislation should be directed to AGO Chief of Staff Charity Clark.)

1. Page 2, lines 17-19 (Section 2: new 3 V.S.A. § 6002): This section indicates that the Agency would "investigate statewide incidents of police officer uses of force and police misconduct allegations." That appears inconsistent with the draft bill's proposed new 3 V.S.A. § 6003(c) discussed below in comment 2. To help preserve VCJC independence, Chair Sorrell proposes that the text instead read the Agency would ". . . provide administrative and operational support for boards, commissions and councils attached to the Agency for administrative support ~~and including those boards, commissions and councils that~~ investigate statewide incidents of police officer uses of force and police misconduct allegations and. . .".
2. Page 4, lines 18-21 and Page 5, lines 1-3 (Section 2: new 3 V.S.A. § 6003(c)): This new subsection provides as follows:

Notwithstanding subsection (a) of this section, the Criminal Justice Council shall retain and exercise all powers and functions given to the Council by law other than those of an administrative nature, including the power to develop training and training delivery methodology, administer professional standards, conduct investigations and hearings, to adjudicate law enforcement officer conduct, and to issue and enforce orders, in the manner and to the extent provided by law.

This statement of VCJC independence is qualified by the reference to powers and functions “of an administrative nature.” As the term “administrative” could be subject to various interpretations, Chair Sorrell recommends that the bill be revised to expressly identify the specific powers and functions given to the VCJC by law that are to be otherwise assumed instead by the Agency Secretary.

3. Page 10, lines 5-10 (Section 2: new 3 V.S.A. § 6054(c)): This new subsection provides:

- (c) Notwithstanding subsections (a) and (b) of this section:
- (1) the Secretary shall appoint the Director of the Vermont Criminal Justice Council in consultation with the Council; and
 - (2) the Director shall not be under the direction and control of the appointing authority except with regard to the budget and other administrative powers and functions given to the Director or the Council by law.

The VCJC wishes to retain the authority to appoint the VCJC Executive Director. To that end, Chair Sorrell recommends that subsection (c)(1) be revised to instead read as follows: “the Vermont Criminal Justice Council shall appoint the Executive Director.”

Chair Sorrell further requests that this subsection (c)(2): (1) reference “Executive Director” for consistency’s sake; and (2) again as the “administrative” reference could be subject to various interpretations, cross reference to the new 3 V.S.A. § 6003(c) (if revised as contemplated in comment 2 above).

Of further note, the new 3 V.S.A. § 6054(b)– from which § 6054(c) provides an exception– states “No rule or policy may be issued by a director of a division without the approval of the appointing authority.” But, under the draft bill, it appears the VCJC will not be a division of the Agency and the VCJC Executive Director will not be a director of any such division. So, Chair Sorrell wishes to highlight that it is not clear why the new 3 V.S.A. § 6054(c) would need to establish an exception to that which is provided in new 3 V.S.A. § 6054(b); and even if the VCJC was a division and subsection (b) applied, it is not clear how subsection (c) would in any way alter or qualify the limitation set forth in subsection (b), which means this passage introduces ambiguity into the draft bill.

4. Page 12, lines 8-20 (Section 3): This transition section provides:

- (a) All financial assets and liabilities of the Criminal Justice Council and Vermont Police Academy, including all appropriations associated with the

positions transferred pursuant to subsection (b) below, shall transfer to the Agency of Public Safety.

(b) All authorized positions and equipment, supplies and inventory of the Criminal Justice Council are transferred to the Agency of Public Safety.

(c) The Criminal Justice Council shall have the administrative, technical, and legal assistance of the Agency of Public Safety.

(d) The rules of the Criminal Justice Council shall become a subtitle under the rules of the Agency of Public Safety.

Subsections (a), (b) and (d) are problematic from a VCJC perspective and should not be included in the draft bill. Chair Sorrell's position is that VCJC's financial assets and liabilities, as well as its positions, equipment, supplies and inventory, should remain VCJC's own; further, the VCJC rules should remain VCJC rules, meaning the VCJC would retain its rulemaking authority set forth in 20 V.S.A. § 2355(a).

5. Page 14, lines 13-21 (Section 6): This general transition section provides:

The Secretary of Public Safety, in consultation with the Secretary of Administration, the Commissioner of Finance and Management, the Commissioner of Human Resources, the Executive Director of the Criminal Justice Council, the Chair of the Criminal Justice Council, the Executive Director of the Enhanced 911 Board, the Secretary of the Agency of Transportation and the Commissioners of the Departments of Motor Vehicles, Fish and Wildlife, Liquor and Lottery and their directors of enforcement, shall take any action necessary to enable the organizational modernization and consolidation of state law enforcement divisions and resources.

Chair Sorrell wishes to express concerns that this transition section could undermine the VCJC's independence. Indeed, this section authorizes and directs the Agency Secretary to take "any action necessary to enable the organizational modernization and consolidation of state law enforcement divisions and resources." Because the Secretary is to consult with the VCJC Chair and VCJC Executive Director, one can presume that the VCJC's operations will be subject to change by the Secretary based on such authority.

6. Page 14, lines 5-8 (Section 7: new 20 V.S.A. § 2355): This section proposes to revise § 2355(c)(1) as follows:

(c)(1) The Council shall ~~appoint, subject to the approval of the Governor,~~ advise on and assist the Secretary with the selection of an Executive Director ~~who shall be an exempt State employee, and who shall hold office during the pleasure of the Council.~~

The VCJC wishes to retain its current independence to employ the Executive Director. As a result, Chair Sorrell requests that the existing 20 V.S.A. § 2355(c)(1) be left intact.

7. Page 14, lines 11-13 (Section 7: new 20 V.S.A. § 2355): This section proposes to revise § 2355(c)(2)(B) as follows:

(B) The Executive Director may appoint officers, employees, agents, and consultants as he or she may deem necessary and prescribe their duties, with the approval of the Secretary in consultation with the Council.

The VCJC wishes to retain its current independence to employ staff and contract for services without the approval of the Secretary. As a result, Chair Sorrell requests the existing 20 V.S.A. § 2355(c)(2)(B) be left intact.

Please let me know your thoughts related to the above. I would also greatly appreciate seeing any revised draft bill that will be presented to Senate Government Operations, so I can forward it Chair Sorrell for his information.

Thank you.

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