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H.872

Introduced by Committee on Government Operations and Military Affairs

Date:

Subject: Internal security and public safety; Vermont Criminal Justice Council;
unprofessional conduct

Statement of purpose of bill as introduced: This bill proposes to make
miscellaneous updates to the powers of the Vermont Criminal Justice Council
and the duties of law enforcement officers.

An act relating to miscellaneous updates to the powers of the Vermont
Criminal Justice Council and the duties of law enforcement officers

It is hereby enacted by the General Assembly of the State of Vermont:

Sec. 1. 20 V.S.A. § 2355 is amended to read:

§ 2355. COUNCIL POWERS AND DUTIES

(a) The Council shall adopt rules with respect to:

* * *

(10) a definition of criminal justice personnel and criminal justice
training for purposes of this title; ~~and~~

(11) the contents and application of the Law Enforcement Officers’
Code of Conduct;

1 (12) permitting its Executive Director to grant up to a 60-day waiver to a
2 law enforcement officer who has failed to meet ~~his or her~~ the officer's annual
3 in-service training requirements but who is able to complete those training
4 requirements within the time period permitted by the Executive Director; and

5 (13) Advanced Roadside Impaired Driving Enforcement training
6 programs and requirements for Levels I, II, and III law enforcement
7 certification, including minimum hours of training, prerequisites, and time
8 periods for completion.

9 * * *

10 Sec. 2. 20 V.S.A. § 2371 is added to read:

11 § 2371. STATEWIDE POLICY; LAW ENFORCEMENT OFFICERS' CODE
12 OF CONDUCT

13 (a) Creation and modification of Code. The Council shall create,
14 implement, and modify by rule a statewide policy known as the Law
15 Enforcement Officers' Code of Conduct or Code. This Code effectuates the
16 principle that law enforcement officers serve the communities of Vermont and
17 protect all persons against illegal acts in a manner consistent with the high
18 degree of responsibility and respect for human dignity required by the
19 profession.

1 (b) Application. Each law enforcement officer, as a condition for obtaining
2 and maintaining certification, shall comply with the provisions of the Law
3 Enforcement Officers’ Code of Conduct.

4 (c) Code contents. The Law Enforcement Officers’ Code of Conduct shall
5 prohibit the following categories of conduct:

6 (1) criminal conduct, including conduct defined as “Category A
7 conduct” in section 2401 of this title;

8 (2) untruthfulness, including in the course of criminal investigations,
9 in law enforcement agencies’ internal affairs investigations, in Council
10 investigations, in matters before a tribunal, and in the preparation
11 administration, or taking of any official examination conducted by a law
12 enforcement agency of the Council;

13 (3) misuse of official position, including:

14 (A) sexual misconduct and harassment;

15 (B) misuse of property and evidence;

16 (C) solicitation, taking, and giving of bribes; and

17 (D) use of electronic criminal records database for personal,
18 political, or economic gain;

19 (4) discrimination and biased enforcement;

20 (5) unlawful use of force while on duty or under the authority of the
21 State, pursuant to section 2368 of this title, including failure to intervene and

1 report to a supervisor observation of unlawful use of force by another law
2 enforcement officer; and

3 (6) domestic violence, while on duty or off duty, including
4 attempting to cause or causing physical harm to a family or household
5 member, or placing a family or household member in fear of imminent serious
6 physical harm, or violating the Domestic Violence Involving Law Enforcement
7 Model Policy adopted pursuant to section 2365 of this title.

8 (d) Supplemental professional conduct policies.

9 (1) To the extent any provisions of this section or the adopted Code
10 conflicts with the provisions of any law enforcement agency's own policies,
11 the provisions of this chapter and the adopted Code shall prevail.

12 (2) A law enforcement agency may adopt additional professional
13 conduct policies, provided that these are not in conflict with the provisions of
14 this chapter or the adopted Code.

15 Sec. 3. LAW ENFORCEMENT OFFICERS' CODE OF CONDUCT;

16 ADOPTION

17 On or before December 31, 2024, the Council shall adopt by rule the Law
18 Enforcement Officers' Code of Conduct.

19 Sec. 4. 20 V.S.A. § 2401 is amended to read:

20 § 2401. DEFINITIONS

21 As used in this subchapter:

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(2) “Category B conduct” means ~~gross professional misconduct amounting to actions on duty or under authority of the State, or both, that involve a 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 shall include:~~ or the Law Enforcement Officers’ Code of Conduct.

- ~~(A) sexual harassment involving physical contact or misuse of position;~~
- ~~(B) misuse of official position for personal or economic gain;~~
- ~~(C) excessive use of force under authority of the State, first offense;~~
- ~~(D) biased enforcement;~~
- ~~(E) use of electronic criminal records database for personal, political, or economic gain;~~
- ~~(F) placing a person in a chokehold;~~
- ~~(G) failing to intervene and report to a supervisor when the officer observes another officer placing a person in a chokehold or using excessive force;~~

1 ~~(H) while on duty or off duty, attempting to cause or causing physical~~
2 ~~harm to a family or household member, or placing a family or household~~
3 ~~member in fear of imminent serious physical harm; or~~

4 ~~(I) while on duty or off duty, a violation of the Domestic Violence~~
5 ~~Involving Law Enforcement Model Policy adopted pursuant to section 2365 of~~
6 ~~this title.~~

7 * * *

8 Sec. 5. 20 V.S.A. § 2407 is amended to read:

9 § 2407. LIMITATION ON COUNCIL SANCTIONS

10 (a) ~~Council sanctions; first offense~~ Offenses of Category A and certain
11 Category ~~B~~ C conduct. After a valid investigation of Category A and Category
12 ~~B~~ C conduct made pursuant to section 2404 of this title concludes, the Council
13 may impose a sanction for a first or subsequent offense of: Category A or C
14 conduct.

15 ~~(1) Category A conduct as defined in subdivision 2401(1) of this title; or~~

16 ~~(2) the following instances of Category B conduct as defined in~~
17 ~~subdivision 2401(2) of this title:~~

18 ~~(A) sexual harassment involving physical contact pursuant to~~
19 ~~subdivision 2401(2)(A) of this title;~~

20 ~~(B) excessive use of force under authority of the State pursuant to~~
21 ~~subdivision 2401(2)(C) of this title;~~

1 ~~(C) placing a person in a chokehold pursuant to subdivision~~
2 ~~2401(2)(F) of this title;~~

3 ~~(D) failing to intervene and report to a supervisor when an officer~~
4 ~~observes another officer placing a person in a chokehold or using excessive~~
5 ~~force pursuant to subdivision 2401(2)(G) of this title;~~

6 ~~(E) attempting to cause or causing physical harm to a family or~~
7 ~~household member, or placing a family or household member in fear of~~
8 ~~imminent serious physical harm pursuant to subdivision 2401(2)(H) of this~~
9 ~~title; or~~

10 ~~(F) a violation of the Domestic Violence Involving Law Enforcement~~
11 ~~Model Policy adopted pursuant to section 2365 of this title pursuant to~~
12 ~~subdivision 2401(2)(I) of this title.~~

13 (b) First offense of Category B conduct. After a valid investigation of
14 Category B conduct made pursuant to section 2404 of this title concludes, the
15 Council may impose a sanction for a first offense of Category B conduct only
16 to the extent the sanction does not surpass any disciplinary action taken against
17 the law enforcement officer by the law enforcement agency for the same
18 alleged conduct, unless:

19 (1) the law enforcement officer is terminated for the same alleged
20 conduct or resigns;

1 (2) the alleged conduct is committed by a law enforcement agency's
2 executive officer;

3 (3) pursuant to section 2408 of this title, the law enforcement agency
4 fails to conduct a valid investigation of the alleged conduct; or

5 (4) the disciplinary action taken against the law enforcement officer by
6 the law enforcement agency is clearly unreasonable considering the following
7 factors:

8 (A) the nature and seriousness of the offense;

9 (B) the law enforcement officer's job level, certification level, and
10 type of employment;

11 (C) the law enforcement officer's past disciplinary record;

12 (D) the law enforcement officer's work record;

13 (E) the effect of the offense on the law enforcement officer's ability
14 to perform satisfactorily;

15 (F) the consistency of the penalty with those imposed upon other
16 similarly situated law enforcement officers;

17 (G) the consistency of the penalty with any applicable agency table
18 of penalties;

19 (H) the notoriety of the offense or its impact on the reputation of the
20 law enforcement agency or law enforcement agencies as a whole across the
21 State;

- 1 (I) the clarity of notice;
2 (J) the potential for the law enforcement officer’s rehabilitation;
3 (K) mitigating circumstances surrounding the offense; and
4 (L) the adequacy and effectiveness of alternative sanctions to deter
5 such conduct in the future.

6 ~~(c) Council action; second~~ Second or subsequent offense of ~~certain other~~
7 Category B conduct. After a valid investigation of Category B conduct made
8 pursuant to section 2404 of this title concludes, the Council may impose a
9 sanction for ~~an~~ a second or subsequent offense of Category B conduct ~~not~~
10 ~~specified in subdivision (a)(2) of this section only for the second or subsequent~~
11 ~~offense.~~

12 ~~(e)(d)~~ “Offense” defined. As used in this section, an “offense” means any
13 offense committed by a law enforcement officer during the course of the law
14 enforcement officer’s certification, and includes any offenses committed
15 during employment at a current or previous law enforcement agency.

16 Sec. 6. EFFECTIVE DATES

17 This act shall take effect on passage, except that Sec. 2 (20 V.S.A. § 2371),
18 Sec. 4 (20 V.S.A. § 2401), and Sec. 5 (20 V.S.A. § 2407) shall take effect on
19 January 1, 2025.