

S.143

Introduced by Senator Ram Hinsdale

Referred to Committee on

Date:

Subject: Law enforcement; civil procedure; civil rights; corrections

Statement of purpose of bill as introduced: This bill proposes to create a private right of action for individuals whose State constitutional rights are allegedly violated by law enforcement officers. This bill also prohibits law enforcement officers, law enforcement agencies, labor unions, and others acting on behalf of law enforcement from entering contracts providing for the provision of law enforcement services for private or public entities while off duty. Law enforcement officers are also prohibited from endorsing political candidates while on duty or otherwise performing law enforcement duties. Finally, this bill provides that individuals experiencing incarceration shall have access to telephone calls at no expense.

An act relating to miscellaneous changes to civil rights reforms, law enforcement activity, and correctional services

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

Sec. 1. 12 V.S.A. chapter 190 is added to read:

CHAPTER 190. PRIVATE RIGHT OF ACTION AGAINST LAW

ENFORCEMENT OFFICERS; DEPRIVATION OF STATE

CONSTITUTIONAL RIGHTS

§ 5607. LIABILITY OF LAW ENFORCEMENT OFFICERS

(a) As used in this section:

(1) “Law enforcement agency” has the same meaning as in 20 V.S.A.

§ 2351a.

(2) “Law enforcement officer” has the same meaning as in 20 V.S.A.

§ 2351a.

(b) An individual injured or damaged by the commission or omission of any act of a law enforcement officer acting under authority of the State, or within the scope of authority of a law enforcement agency, that violates the individual’s rights, privileges, or immunities guaranteed under the Constitution of the State of Vermont may bring an action for damages or equitable relief against the law enforcement officer.

(c)(1) A law enforcement officer’s bad faith in the commission or omission of any act subject to subsection (b) of this section shall be considered in the assertion of qualified immunity as a defense to suit or liability in any action brought pursuant to this chapter.

(d) In any action for damages brought pursuant to this chapter, the maximum liability of a law enforcement officer shall be \$500,000.00 to any one individual and the maximum aggregate liability shall be \$2,000,000.00 to all individuals arising out of each occurrence.

(1) As of July 1, 2024 and on July 1 of each successive year, the maximum recovery limits shall be increased for the cost of living. The increase in the cost of living shall be measured by the percentage increase as of August of the immediately preceding year over the level as of August of the previous year of the Consumer Price Index for All Urban Consumers: U.S. city average for all items, or its successor index, as published by the U.S. Department of Labor or its successor agency, with the amount of increase rounded to the nearest multiple of \$10,000.00.

(2) The maximum recovery limit outlined in subdivision (1) of this subsection shall not be adjusted downward because of a decrease in the cost of living. The Vermont Department of Financial Regulation or designee shall publish on or before May 1 of each year the adjusted maximum recovery limit that shall take effect the following July 1.

(e) This chapter does not allow any insurance carrier or other entity to bring an action to recover against a law enforcement officer for any payments made as a result of any private insurance contract between the carrier or entity and a law enforcement officer.

(f) The remedies provided for in this chapter are not exclusive and shall be in addition to any other remedies prescribed by law or available pursuant to common law.

(g) A court may award reasonable attorney's fees and other litigation costs reasonably incurred in any action brought under this chapter in which the plaintiff substantially prevailed. When a judgment is entered in favor of a defendant, a court may award reasonable attorney's fees and other litigation costs reasonably incurred to the defendant for defending any claims the court finds frivolous.

(h) An action brought pursuant to this section shall be commenced within three years after the cause of action accrues.

§ 5610. INDEMNIFICATION OF LAW ENFORCEMENT OFFICERS

(a) Notwithstanding the provisions of 3 V.S.A. chapter 29, chapter 189 of this title, or 29 V.S.A. chapter 55 to the contrary, a law enforcement agency shall indemnify its law enforcement officer for any liability incurred, and for any judgment or settlement entered against the law enforcement officer, for claims arising pursuant to this chapter.

(b) The maximum liability of a law enforcement agency under this section shall be \$500,000.00 to any one individual and the maximum aggregate liability shall be \$2,000,000.00 to all persons arising out of each occurrence.

(c) If the law enforcement agency determines that the law enforcement officer acted in bad faith and did not act under reasonable belief that the action was lawful, then the law enforcement officer is personally liable for five percent of the judgment or settlement or \$25,000.00, whichever is less, and the law enforcement agency shall be liable for the remaining portion of the judgement or settlement.

(1) A law enforcement agency shall not:

(A) preemptively determine whether a law enforcement officer acted in good faith before the action in question occurs; or

(B) render a determination providing that a law enforcement officer acted in good faith until completion of a documented investigation conducted by the law enforcement agency pursuant to 20 V.S.A. § 2404.

(2) If a law enforcement officer believes that the law enforcement agency violates subdivision (1) of this subsection, the law enforcement officer may submit a complaint to the Vermont Criminal Justice Council for investigation and adjudication pursuant to 20 V.S.A. chapter 151, subchapter 2.

(d) Notwithstanding any provision of this section to the contrary, to the extent that a law enforcement officer's portion of a judgment or settlement is uncollectable from the law enforcement officer, the law enforcement agency or the law enforcement agency's insurance shall satisfy any such uncollected amount of the judgment or settlement.

Sec. 2. 20 V.S.A. chapter 151 is amended to read:

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§ 2351a. DEFINITIONS

As used in this chapter:

(1) “Executive officer” means the highest-ranking law enforcement officer of a law enforcement agency.

(2) “Extra-duty contract” means an agreement in which a law enforcement officer or constable who exercises law enforcement authority pursuant to 24 V.S.A. § 1936a performs off-duty law enforcement services for a public or private entity.

~~(2)~~(3) “Law enforcement agency” means the employer of a law enforcement officer.

~~(3)~~(4) “Law enforcement officer” means a member of the Department of Public Safety who exercises law enforcement powers; a member of the State Police; a Capitol Police officer; a municipal police officer; a constable who exercises law enforcement powers; a motor vehicle inspector; an employee of the Department of Liquor and Lottery who exercises law enforcement powers; an investigator employed by the Secretary of State; a Board of Medical Practice investigator employed by the Department of Health; an investigator employed by the Attorney General or a State’s Attorney; a fish and game warden; a sheriff; a deputy sheriff who exercises law enforcement powers; a

railroad police officer commissioned pursuant to 5 V.S.A. chapter 68, subchapter 8; a police officer appointed to the University of Vermont's Department of Police Services; or the provost marshal or assistant provost marshal of the Vermont National Guard.

(5) "Law enforcement services" means a law enforcement officer who is certified under section 2358 of this title engaging in the performance of the officer's official duties as prescribed by statute or Council rule.

~~(4)~~(6) "Off-site training" means training provided off the premises of a law enforcement officer training school and approved by the Council under the provisions of section 2355 of this chapter.

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§ 2359. COUNCIL SERVICES CONTINGENT ON AGENCY

COMPLIANCE; GRANT ELIGIBILITY

(a) On and after January 1, 2022, a law enforcement agency shall be prohibited from having its law enforcement applicants or officers trained by the Police Academy or from otherwise using the services of the Council if the agency is not in compliance with the requirements for collecting roadside stop data under section 2366 of this chapter, the requirement to report to the Office of Attorney General death or serious bodily injuries under 18 V.S.A.

§ 7257a(b), or the requirement to adopt, follow, or enforce any policy required under this chapter.

(b) A law enforcement agency shall be prohibited from receiving grants, or other forms of financial assistance, if the agency is not in compliance with the policy established pursuant to section 2371 of this title.

(c) The Council shall adopt procedures to enforce the requirements of this section, which may allow for waivers for agencies under a plan to obtain compliance with this section.

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§ 2371. STATEWIDE POLICY; RESTRICTIONS ON LAW

ENFORCEMENT ACTIVITY

(a) Restriction on extra-duty police contracts. On and after July 1, 2023, a law enforcement officer or agency or agent of an officer or agency, including a labor organization or any other person, shall not enter into an extra-duty contract that requires the provision of law enforcement services on more than one occasion.

(b)(1) Restriction on political endorsements. A law enforcement officer or constable exercising law enforcement authority pursuant to 24 V.S.A. § 1936a shall be prohibited from endorsing any candidate for political office while on duty or exercising law enforcement authority.

(2) Voting and other political activity not restricted. Nothing in subdivision (1) of this subsection shall be construed to infringe or in any other way limit a law enforcement officer or constable exercising law enforcement



authority pursuant to 24 V.S.A. § 1936a from voting in any election or engaging in any other political activity while off duty and not exercising law enforcement authority.

Sec. 3. 28 V.S.A. § 802a is amended to read:

§ 802a. TELEPHONE USE; ~~DEBIT AND COLLECT CALL SYSTEMS~~

(a) Upon admittance to a correctional facility, the inmate shall within 24 hours be allowed access to a telephone for outgoing telephone calls at ~~the~~ no expense ~~of~~ to the inmate.

(b) An inmate shall be allowed easy access in placing ~~collect~~ telephone calls at no expense upon admission to a correctional facility under reasonable conditions determined by the Commissioner, unless the inmate has been prohibited under provisions of section 853 of this title regarding punishment for a breach of the rules and regulations of the correctional facility in which an inmate is confined.

(c) When an inmate requests and receives a list of parties approved to receive telephone calls, the inmate shall be provided ~~the option of using a debit or collect call~~ a system to place such calls at no expense to the inmate. ~~Under the debit system, the inmate shall pay for telephone service at the time of use, and the cost of such service will be automatically deducted from an account maintained by the inmate for that purpose.~~

(d) Any contract to provide telephone services to inmates in State correctional facilities shall be negotiated and awarded in a manner that provides for ~~the lowest reasonable~~ no cost to inmates, to their families, and to others communicating with inmates.

Sec. 4. EFFECTIVE DATE

This act shall take effect on July 1, 2023.