

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Government Operations and Military Affairs to which  
3 was referred House Bill No. 251 entitled “An act relating to the issuance of a  
4 *Brady* or *Giglio* letter as misconduct under jurisdiction of the Vermont  
5 Criminal Justice Council” respectfully reports that it has considered the same  
6 and recommends that the bill be amended by striking out all after the enacting  
7 clause and inserting in lieu thereof the following:

8 Sec. 1. 20 V.S.A. § 2401 is amended to read:

9 § 2401. DEFINITIONS

10 As used in this subchapter:

11 (1) “Category A conduct” means:

12 (A) A felony.

13 (B) A misdemeanor that is committed while on duty and did not  
14 involve the legitimate performance of duty.

15 (C) Any of the following misdemeanors, if committed off duty:

16 (i) simple assault, second offense;

17 (ii) domestic assault;

18 (iii) false reports and statements;

19 (iv) driving under the influence, second offense;

20 (v) violation of a relief from abuse order or of a condition of  
21 release;

- 1 (vi) stalking;
- 2 (vii) false pretenses;
- 3 (viii) voyeurism;
- 4 (ix) prostitution or soliciting prostitution;
- 5 (x) distribution of a regulated substance;
- 6 (xi) simple assault on a law enforcement officer; or
- 7 (xii) possession of a regulated substance, second offense.

8 (2) “Category B conduct” means gross professional misconduct  
9 amounting to actions on duty or under authority of the State, or both, that  
10 involve willful failure to comply with a State-required policy or substantial  
11 deviation from professional conduct as defined by the law enforcement  
12 agency’s policy or if not defined by the agency’s policy, then as defined by  
13 Council policy or if not defined by Council policy, then as listed under this  
14 subdivision, and shall include:

- 15 (A) sexual harassment involving physical contact or misuse of  
16 position;
- 17 (B) misuse of official position for personal or economic gain;
- 18 (C) excessive use of force under authority of the State, first offense;
- 19 (D) biased enforcement;
- 20 (E) use of electronic criminal records database for personal, political,  
21 or economic gain;

1 (F) placing a person in a chokehold;

2 (G) failing to intervene and report to a supervisor when the officer  
3 observes another officer placing a person in a chokehold or using excessive  
4 force; or

5 (H) bias, untruthfulness, or failing to disclose other potentially  
6 exculpatory or impeachment evidence subject to disclosure in a criminal  
7 proceeding that undermines the officer’s credibility.

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9 (5) “Undermines” means the commission or omission of any conduct or  
10 statement concerning a material fact that is reasonably likely to affect the  
11 outcome of a criminal, civil, or administrative investigation or proceeding.

12 (6) “Unprofessional conduct” means Category A, B, or C conduct.

13 ~~(6)(7)~~(A) “Valid investigation” means an investigation conducted  
14 pursuant to a law enforcement agency’s established or accepted procedures.

15 (B) An investigation shall not be valid if:

16 (i) the agency has not adopted an effective internal affairs  
17 program;

18 (ii) the agency refuses, without any legitimate basis, to conduct an  
19 investigation;

20 (iii) the agency intentionally did not report allegations to the  
21 Council as required;

1 (iv) the agency attempts to cover up the misconduct or takes an  
2 action intended to discourage or intimidate a complainant; or

3 (v) the agency’s executive officer is the officer accused of  
4 misconduct.

5 ~~(7)~~(8) “Chokehold” means the use of any maneuver on a person that  
6 employs a lateral vascular neck restraint, carotid restraint, or other action that  
7 applies any pressure to the throat, windpipe, or neck in a manner that limits the  
8 person’s breathing or blood flow.

9 Sec. 2. 20 V.S.A. § 2407 is amended to read:

10 § 2407. LIMITATION ON COUNCIL SANCTIONS; FIRST OFFENSE OF  
11 CATEGORY B CONDUCT

12 (a) Category B conduct; first offense. If a law enforcement agency  
13 conducts a valid investigation of a complaint alleging that a law enforcement  
14 officer committed a first offense of Category B conduct, the Council shall take  
15 no action, except that the Council may take action for a first offense under  
16 subdivision 2401(2)(C) (excessive use of force under authority of the State),  
17 2401(2)(F) (placing a person in a chokehold), ~~or~~ 2401(2)(G) (failing to  
18 intervene and report to a supervisor when an officer observes another officer  
19 placing a person in a chokehold or using excessive force), or 2401(2)(H)  
20 (officer credibility undermined) of this chapter.

21 \* \* \*

1       Sec. 3. EFFECTIVE DATE

2           This act shall take effect on July 1, 2023.

3       and that after passage the title of the bill be amended to read: “An act relating  
4       to law enforcement officer credibility issues as misconduct under jurisdiction  
5       of the Vermont Criminal Justice Council”

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11       (Committee vote: \_\_\_\_\_)

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Representative \_\_\_\_\_

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FOR THE COMMITTEE