



# **VCJC Act-56 Reference Guide**

**Vermont Criminal Justice Council  
Vermont Police Academy**

**Resource for Agencies**

*08/24/2021*

---

## Act 56 Overview and Process

The Vermont Criminal Justice Council has responsibility for certifying law enforcement officers in Vermont.

**Officer:** An Act 56 complaint filed with the Vermont Criminal Justice Council against an officer will cause a representative of the VPA to gather all available internal investigative reports, criminal investigative reports, and court records. These records will then be presented to the Executive Director of The Police Academy for his or her review and consideration before being recommended to the Professional Regulation Subcommittee.

**Agency Head:** An Act 56 complaint filed with the Vermont Criminal Justice Council of an Agency head or Town Manager will cause an investigator employed by the Vermont Criminal Justice Council to conduct an investigation. These records will then be presented to the Executive Director of The Police Academy for his or her review and consideration before being recommended to the Professional Regulation Subcommittee.

**Professional Regulation Subcommittee:** The Subcommittee consists of five representatives from the council, both professional and civilian. Members meet weekly to review Act56 allegations.

**Category B 1st offense:** The Professional Regulation Subcommittee reviews all Act56 allegations. After review of an allegation if a determination is made that the alleged conduct reached the level of a Category B 1st offense the alleged and their agency head will receive a letter of determination.

**Category A, B2, C:** If the Professional Regulation subcommittee determines an officer's certification is subject to disciplinary action under a Category A, Category C, or Category B second offense; the gathered file will be forwarded to the full council for a hearing against the officer's certification with the Vermont Criminal Justice Council.

**The Vermont Criminal Justice Council:** The council acts as a neutral, independent hearing officer for the state in an effort to avoid a state agency acting as investigator, prosecutor, and decision maker. If discipline is determined to be warranted by the council, the disciplinary actions available to be imposed by the Executive Director of the Vermont Police Academy are probation, suspension or revocation (permanent) of the officer's certification. If an officer decides to surrender his or her certification, the surrender is permanent.

A VCJC investigation is NOT a criminal investigation and the VCJC is not a law enforcement agency. If an officer has committed a criminal offense, that information should first be reported to law enforcement agency that has jurisdiction to investigate the offense.

The Council shall have the authority to suspend or revoke the certification of any person for the following reasons:

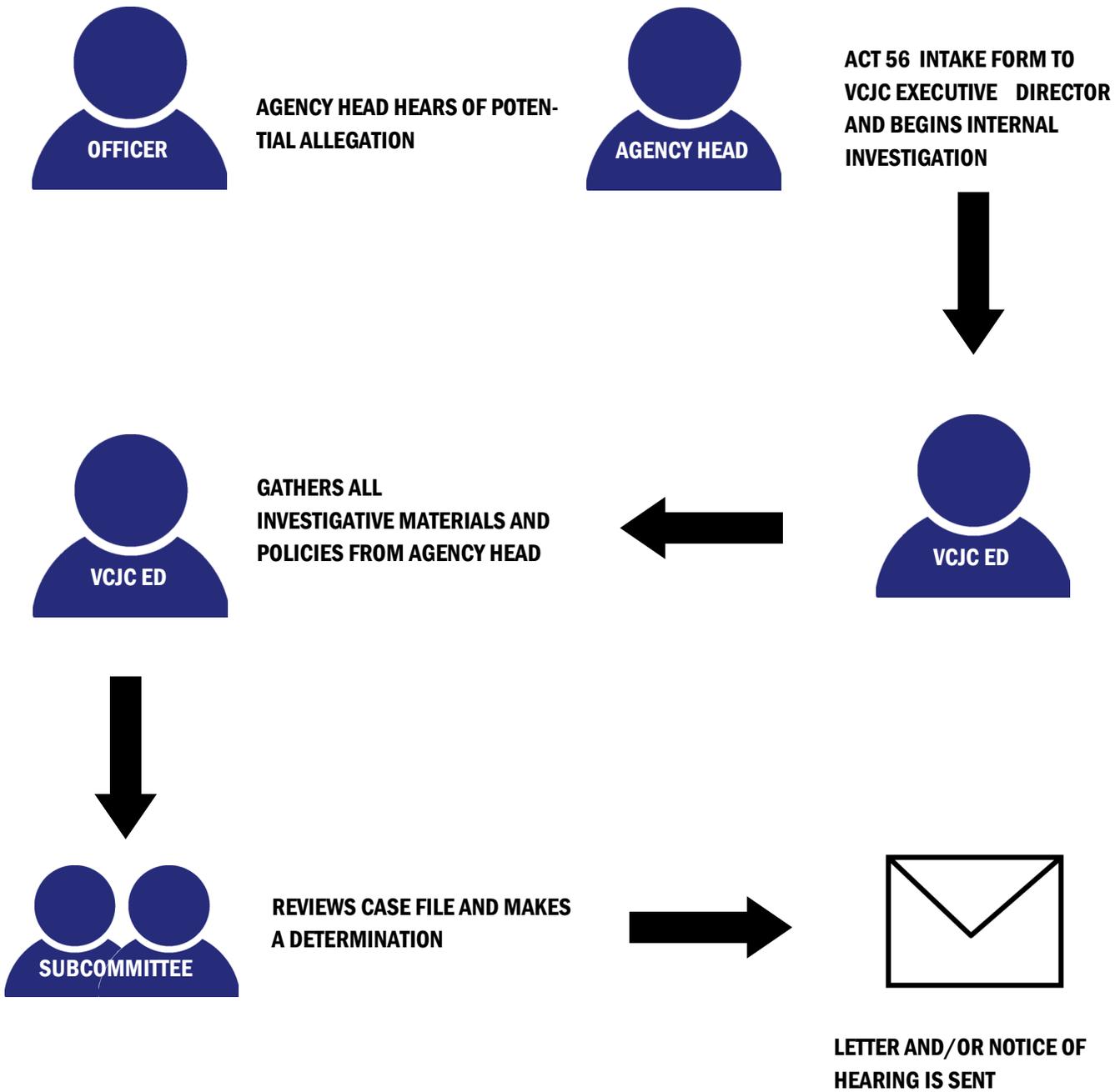
Community members must file all complaints to the agency with which they have the complaint.

Members of law enforcement who receive information about a potential Act 56 violation must submit an initial intake form with the Executive Director ([form here](#)).

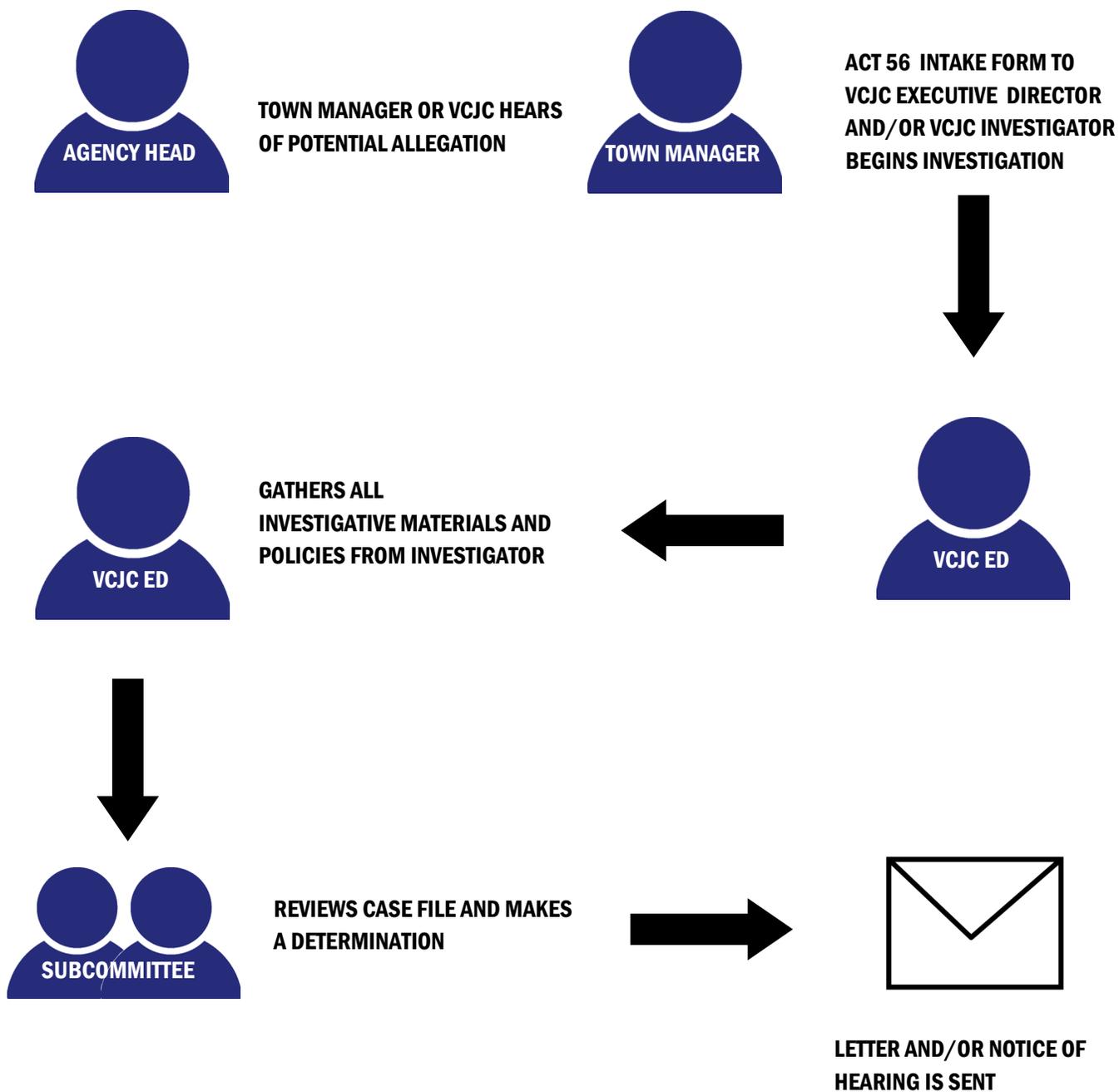
**Important Note:** As part of this process all agencies are required to contact prior agencies when hiring a new officer. It is incumbent upon the agency that no longer employs an officer to report any and all Act 56 allegations as well as any other performance issues.

When an officer separates from an agency they **MUST notify** the Vermont Criminal Justice Council

## Act 56 Overview and Process Officer (Graphic)



## Act 56 Overview and Process Agency Head (Graphic)



---

## Act 56 Timeline

### Case Review

Allegation of Act56 is reported to the Executive Director (via [Act 56 Intake Form](#))

The Executive Director, Chair of the Professional Regulation Subcommittee ,and/or the Director of Administration determines the applicability to statute.

The case is referred back to the Agency for investigation or the case is assigned to an internal investigator.

The case is investigated and all policies, investigative materials, and body camera footage is sent to the Executive Director with the [Act 56 Completion form](#).

The case is presented to the Professional Regulation Subcommittee for review.

The Professional Regulation Subcommittee will make a determination . The determination is followed by a notification letter being sent to the alleged and agency head or representative.

The subcommittees determination will also be posted to the Vermont Police Academy website Professional Regulation register.

If a case falls under a Category A, B2, or C violation, a notice of hearing will also be sent out. The Council will then receive notification of the hearing.

## What constitutes professional misconduct?

Professional misconduct is broken down into three categories:

**Category A:** Crimes committed both on and off duty. This includes all felonies, all misdemeanors committed on-duty, and a list of misdemeanors committed off-duty.

**Category B:** Gross professional misconduct “...amounting to actions on duty or under color of authority, or both, that involve willful failure to comply with a State-required policy or substantial deviation from professional conduct...” as defined by the agency’s or Council’s policy. There is a list in the Act, but the list illustrates examples and is not intended to exclude other conduct.

**Category C:** Misconduct related to Council processes, such as falsifying training records, intentionally exceeding scope of practice for a given certification level, intentional failure to conduct a valid investigation, etc.

Agencies must also report terminations for Category A or B conduct, or resignations, if the officer resigns while under investigation.

What is the agency’s responsibility to investigate?

Act 56 requires that all agencies have what has been termed an “effective internal affairs program” and must conduct a “valid investigation”. The parameters of each are as follows:

Effective internal affairs program

Accepts complaints from any source

Assigns an investigator to determine if a violation took place

Has language in policy or bargaining agreements that establish a code of conduct and a corresponding range of discipline

Provides fairness in discipline

Provides for civilian review

Valid investigation:

Any investigation conducted pursuant to the agency’s procedures, which must include the effective internal affairs program.

An investigation will not be considered valid if any of the following apply:

The agency did not adopt the effective internal affairs program

The agency refuses, without legitimate basis, to conduct an investigation

The agency intentionally failed to make reports to the Council as required

The agency attempts to cover up the misconduct and/or does anything to discourage a complainant

The agency’s executive officer is the officer accused of misconduct

A model policy is available for agencies to download here: <http://vcjtc.vermont.gov/content/model-internal-affairs-policy>

If, for whatever reason, an agency will not or cannot conduct a valid investigation, it is still the agency’s responsibility to cause the investigation to be made.

---

**If the officer resigns prior to the start of the internal investigation or before it's completed, the agency is still required to conduct as much of the investigation as possible.**

In all cases where the agency head is the subject of the allegation, the Council will cause the investigation to be conducted.

Should the Council receive a complaint of Category A or B misconduct instead of the law enforcement agency, the Executive Director will refer the complaint to the agency head and, for complaints of Category A conduct, the state's attorney of jurisdiction, except in those instances where the agency head is the subject of the complaint.

The Council will investigate all allegations of Category C misconduct.

**Where do the reports go?**

All reports of professional misconduct are made to the Council, specifically, to the Executive Director. In the event the E.D. is not available, the report can be made to either the Director of Administration or the Director of Training. Though the first instance of a Category B offense is handled by the agency and is not subject to action by the Council, the report must still be made so that the Council and law enforcement agencies will have the ability to identify second and subsequent offenses.

Reports must be made in writing, by the agency head or designee.

**What are the time frames for reporting and what needs to be included with the report?**

**Category A Offenses:** The agency is required to report Category A conduct within 10 days of a finding of probable cause by a court. Related documents--any and all relevant documents associated with the report and/or investigation, including the agency's investigative report--must be provided with the report.

**Category B Offenses:** Must be reported within 10 business days after the agency receives the complaint, if deemed credible by the agency head. Related documents--any and all relevant documents associated with the report and/or investigation, including the agency's investigative report--must be provided when completed.

**Category C Offenses:** Must be reported within 10 business days after the agency head becomes aware of the misconduct.

**What happens to the reports?**

The VT Administrative Procedures Act (APA) requires due process before an officer can be decertified, or be subject to any sort of official sanction by the certification entity, in this case, the Council. Due process consists of notifying the officer of the allegation, the proposed action by the Council, informing the officer of the proposed date/time of any hearing, and affording the officer the opportunity to present a defense. The Council will ensure that agency heads are kept informed as the process moves forward. No action is taken against an officer's certification until the conclusion of the hearing, or unless the officer waives the right to the hearing and accepts the proposed sanction.

### Can the Council suspend an officer's certification prior to a hearing?

Under fairly narrow circumstances, the Council can suspend an officer's certification ahead of a hearing if it can be demonstrated that, should the officer retain their certification, it poses an imminent threat to the public.

### What sanctions can the Council impose?

Act 56 established a range of sanctions that the Council may impose: written warning, suspension, revocation with the option of recertification at the Council's discretion, and permanent revocation.

### Can the officer surrender his/her certification?

After the hearing, if the Council finds that certification revocation is appropriate, and if the officer is also involved in or is going to begin a labor appeal process, the officer may voluntarily surrender the certification pending the outcome of the process. The Council will revisit the revocation at the conclusion of the labor process, but is not bound by that outcome.

### How does an officer appeal the Council's decision?

By VT law, any appeal of a Council decision must go to the VT Supreme Court.

### Is there a public record kept of reports and Council actions?

Act 56 requires the Executive Director to prepare and maintain a public register of all complaints that contains the following:

#### **For reports received but do not rise to the level of professional misconduct:**

The date and nature of the complaint (but not the officer's identity)

A summary of the completed investigation

#### **For reports on which the Council will take action, the above information with the additions described below:**

The name and business address of the law enforcement officer

Formal charges, providing they have been served or a reasonable effort to serve them has been made

Findings, conclusions, and order of the Council

Exhibits admitted at the hearing

Transcript, if made

Any stipulation filed with the Council

If applicable, any final disposition by the VSC

**For more information on statute 20 V.S.A. § 2401 [click here](#) or see pages 10 and 11.**

## Act 56 Forms

### [Act 56 Intake Form](#)

This form can be found on our website—please use the most updated form from the site and do not save to your desktop.

 <b>Vermont Criminal Justice Council Act 56 Professional Regulation Intake Form</b>	
<small>This professional regulation intake form must be submitted to the Vermont Criminal Justice Council, to the Executive Director, within 10 days of notification of the alleged offense. The subsequent form <a href="#">Act 56 Submission of Completed Investigatory Form</a> will then be completed and submitted with an internal investigation determination.</small>	
Agency:	Date:
Date Complaint Received:	
Reporting Official Name:	
Officer(s) named in complaint:	
Brief Summary of Alleged Misconduct:	
Internal Investigation Commenced: (If Applicable)	Date:
***Submit all related documentation with this form***	
<small>VCJC, Act 56 Professional Regulation Intake Form 8/21</small>	

### [Act 56 Completion Form](#)

This form can be found on our website—please use the most updated form from the site and do not save to your desktop.

 <b>Vermont Criminal Justice Council Act 56 Submission of Completed Investigatory Form</b>	
<small>This Act 56 Completed Investigatory form must be submitted to the Executive Director at the Vermont Criminal Justice Council. A valid and complete investigation, to include all supporting documentation, must accompany this form.</small>	
Agency:	Date:
Reporting Official Name:	
Officer(s) named in complaint:	Officer Home Address:
Category Violation as Determined by Department or Agency	A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/>
Internal Investigation Completed: (If Applicable)	Date:
If an investigation was not completed state the reason why:	
Criminal Probable Cause Determined: (If Applicable)	Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/>
Date of Determination for Probable Cause:	Date:
Court Where Probable Cause was Determined: (If Applicable)	
Court	County
***Submit all related documentation with this form***	
<b>Confidential: For Internal Use Only</b>	
Internal Tracking Number:	Civilian Y <input type="checkbox"/> N <input type="checkbox"/>
Category Violation as Determined by VCJC Subcommittee	A <input type="checkbox"/> B <input type="checkbox"/> C <input type="checkbox"/> N/A <input type="checkbox"/> Dismissed <input type="checkbox"/>
Sent to Full Council	Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/>
Number of Offense	1 <input type="checkbox"/> 2 <input type="checkbox"/>
Summary of Determination	
<small>VCJC, Act 56 Professional Regulation Completion Form 8/21</small>	

---

## Act 56 Statute

Title 20 : Internal Security And Public Safety

Chapter 151 : Vermont Criminal Justice Council

Subchapter 002 : Unprofessional Conduct

(Cite as: 20 V.S.A. § 2401)

### § 2401. Definitions

As used in this subchapter:

(1) "Category A conduct" means:

(A) A felony.

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

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

(i) simple assault, second offense;

(ii) domestic assault;

(iii) false reports and statements;

(iv) driving under the influence, second offense;

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

(vi) stalking;

(vii) false pretenses;

(viii) voyeurism;

(ix) prostitution or soliciting prostitution;

(x) distribution of a regulated substance;

(xi) simple assault on a law enforcement officer; or

(xii) possession of a regulated substance, second offense.

(2) "Category B conduct" means gross professional misconduct amounting to actions on duty or under authority of the State, or both, that involve 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:

(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 prohibited restraint;

(G) failing to intervene and report to a supervisor when the officer observes another officer placing a person in a prohibited restraint or using excessive force.

---

(3) "Category C conduct" means any allegation of misconduct pertaining to Council processes or operations, including:

- (A) intentionally exceeding the scope of practice for an officer's certification level;
- (B) knowingly making material false statements or reports to the Council;
- (C) falsification of Council documents;
- (D) intentional interference with Council investigations, including intimidation of witnesses or misrepresentations of material facts;
- (E) material false statements about certification status to a law enforcement agency;
- (F) knowing employment of an individual in a position or for duties for which the individual lacks proper certification;
- (G) intentional failure to conduct a valid investigation or file a report as required by this subchapter; or
- (H) failure to complete annual in-service training requirements.

(4) "Effective internal affairs program" means that a law enforcement agency does all of the following:

- (A) Complaints. Accepts complaints against its law enforcement officers from any source.
- (B) Investigators. Assigns an investigator to determine whether an officer violated an agency rule or policy or State or federal law.
- (C) Policies. Has language in its policies or applicable collective bargaining agreement that outlines for its officers expectations of employment or prohibited activity, or both, and provides due process rights for its officers in its policies. These policies shall establish a code of conduct and a corresponding range of discipline.
- (D) Fairness in discipline. Treats its accused officers fairly, and decides officer discipline based on just cause, a set range of discipline for offenses, consideration of mitigating and aggravating circumstances, and its policies' due process rights.
- (E) Civilian review. Provides for review of officer discipline by civilians, which may be a selectboard or other elected or appointed body, at least for the conduct required to be reported to the Council under this subchapter.

(5) "Unprofessional conduct" means Category A, B, or C conduct.

(6)(A) "Valid investigation" means an investigation conducted pursuant to a law enforcement agency's established or accepted procedures.

(B) An investigation shall not be valid if:

- (i) the agency has not adopted an effective internal affairs program;
- (ii) the agency refuses, without any legitimate basis, to conduct an investigation;
- (iii) the agency intentionally did not report allegations to the Council as required;
- (iv) the agency attempts to cover up the misconduct or takes an action intended to discourage or intimidate a complainant; or
- (v) the agency's executive officer is the officer accused of misconduct.

(7) "Prohibited restraint" means the use of any maneuver on a person that applies pressure to the neck, throat, windpipe, or carotid artery that may prevent or hinder breathing, reduce intake of air, or impede the flow of blood or oxygen to the brain. (Added 2017, No. 56, § 1, eff. July 1, 2018; amended 2019, No. 147 (Adj. Sess.), § 5, eff. Sept. 1, 2020.)



*Vermont Criminal Justice Council*

*Vermont Police Academy*

*317 Academy Road*

*Pittsford, VT 05763*