January 16, 2024

9:00 AM

Zoom Meeting

**Members in Attendance Public Session:**

William Sorrell, Chair – Governor Appointed

Karim Chapman (Life Intervention) – Governor Appointed

Scott LaValley - Governor Appointed

Daniel Guerra - Governor Appointed

Christopher Louras – Governor Appointed

James Whitcomb –Proxy for Commissioner Jennifer Morrison, Dept. of Public Safety

Glenn Boyde – Proxy for Commissioner Nick Deml, Dept. of Corrections

Justin Stedman – Proxy for Commissioner, VT Fish & Wildlife

Erin Jacobsen – Proxy for Attorney General Charity Clark

Lori Vadakin – Proxy for Commissioner Emily Hawes, Department of Mental Health

Xusana Davis –Executive Director, Office of Racial Equity

Jennifer Frank – VT Chief’s Association

Kelly Price (982 iPhone 12)– Vermont State Employees Association

Mark Anderson – VT Sheriff’s Association

Mike O’Neil – VT Troopers Association

Trevor Whipple – VT League of Cities and Towns

Karen Tronsgard Scott – Executive Director, VT Network DOMV/Sexual Violence

Sadie Donovan – Proxy for Jennifer Poehlmann, Center for Crime Victim Services

Cassandra Burdyshaw – VT Human Rights Commission

Amanda Garces – Proxy for Cassandra Burdyshaw, Human Rights Commission

**Other Attendees:**

Heather Simons – Vermont Criminal Justice Council

Christopher Brickell – Vermont Criminal Justice Council

Kim McManus – Vermont Criminal Justice Council

Lindsay Thivierge – Vermont Criminal Justice Council

Jamielee Bedard – Vermont Criminal Justice Council

Jennifer Firpo – Vermont Criminal Justice Council

Kenneth Hawkins – Vermont Criminal Justice Council

Jennifer Hier – Vermont Criminal Justice Council

Austin Bach – Vermont Criminal Justice Council

Will Lambek – Migrant Justice

Norma Hardy – Chief of Police Brattleboro Police Department

Derrick Tienken – Chief of Police, Winhall Police Department

Stephen Laroche – Milton Police Department

Anthony Cambridge – Chief of Police, Hinesburg Police Department

Skyler Genest – Chief, Department of Liquor and Lottery

Enrique Balcazar – Migrant Justice

Mike Thomas – Chief of Police, Shelburne Police Department

Annie Noonan– Director, VT Dept of State’s Attorney & Sheriffs

Mark Belisle – Windsor County Sheriff’s Office

Scott Clouatre – Chief of Police, Randolph Police Department

Rossy JM – Migrant Justice

Abel Luna – Migrant Justice

Rachel – Migrant Justice

Ann Schroeder

Kevin Lane

Mark#2469

iPhone

**Call to Order:**  VCJC Chair Bill Sorrell 9:00

Motion to add Chris Louras to the agenda made by Bill Sorrell.

**Approval of prior minutes:** *Vermont Criminal Justice Council Chair William Sorrell -*Motion to accept minutes from November 1, 2023, made by Chris Louras, seconded by Mark Anderson, no discussion, all in favor. Motion passed.

**Chris Louras**: *Vermont Criminal Justice Council Chair William Sorrell -*Chris Louras is a Governor appointed council member; he is not open to being reappointed for another up to three-year term. This will be his last scheduled meeting before his term is over if the Governor accepts the resignation, if not then February meetings will be the last.

**Vice Chair Nomination:** *Vermont Criminal Justice Council Chair William Sorrell* **–** Karen Tronsgard Scott nominated Erin Jacobsen to serve as co-vice chair to replace Xusana Davis. Second by Jennifer Frank. All in favor. Erin thanked the Council for the opportunity and took a moment to thank Chris Louras for the work done in the Act 56 workgroup.

**Fair and Impartial Policing Policy:** *Vermont Criminal Justice Council FIP Subcommittee Chair Amanda Lucia Garces-*Amanda walked the Council through the proposed policy from the subcommittee. The Council received three documents. 1. The first report received includes a side-by-side comparison of the 2017 FIP policy (left) and the proposed changes from the FIP subcommittee (right). 2. A clean version of the policies. 3. History of the FIP policy review from 2017 to present day.

*Migrant Justice Will Lambek – Directions were given on how to participate in a bilingual zoom meeting.*

*Rossy JM with Abel Luna interpreting -* *Comments were provided as a representative of the community*. Comments were in support of the language proposed by the FIP Subcommittee in hopes that migrants do not have to live in fear anymore.

*Will Lambek -* Since 2012 Migrant Justice has been engaging with various bodies in the state of Vermont on fair and impartial policing to ensure that these policies and practices in VT include strong protections for immigrant communities in this state to limit collaboration between local and state law enforcement agencies and Federal deportation agencies. Vermont should not be in the business of deportations. Since 2017 We have been working to close the Trump era loopholes that were placed in the policy. The loopholes have done harm to the immigrant communities in Vermont and the relationship between immigrants and law enforcement. The past two years we have worked closely in the FIP subcommittee in particular with the Attorney General’s office in an attempt to close loopholes and strengthen the policy. We are very proud that the FIP subcommittee has recommended changes to strengthen the State’s model policy. In most instances we have been able to reach compromise and consensus but in two instances we differ in our final analysis from the Attorney General’s office. While the majority of the subcommittee agreed with strengthening the policy there was no full consensus on some of those matters. Two issues:

1. **How to deal with language regarding federal policy:** How does the policy intersect with Federal policy in particular *8 USC 1373 and 8 USC 1644* which place restrictions on limitations of certain types of communication with Federal immigration authorities. The suggestions from the FIP subcommittee reflect policy language that has been adopted by nine jurisdictions around the state. The Winooski Model (*named after the Winooski Police Department that was the first to introduce this language*) has a simple statement *“Nothing in the Fair and Impartial Policing Policy is intended to violate Federal law.”* This is the recommended language from the Fair and Impartial Policing Subcommittee. Alternative language from the Attorney General’s proposal goes into more detail trying to provide specific guidance to law enforcement about how to interact with these federal statutes. This is contested legal terrain. Remains contested at the Federal level but what brought about these lawsuits is a DOJ policy which is no longer in effect. The current DOJ said they are not looking for any department to certify compliance with these federal statutes to grant federal funding. Nine jurisdictions that have adopted this language have not had any negative repercussions; we think this will work on the state level as well.
2. **Standard of permissible communication between law enforcement and federal immigration agencies:** This issue isn’t directly related to 1373 because that statute doesn’t apply to all communication. Two standards; one is stronger and limits all communication except in certain circumstances. 1. When such communication is necessary to the ongoing investigation of a felony for which there is probable cause, and the investigation is unrelated to the enforcement of federal civil immigration law OR with the consent of the individual when it would benefit them in a visa application. 2. The FIP subcommittee and nine jurisdictions recognized there are some instances in which communication is appropriate, but those instances should be extremely limited and there should be a high standard for determining when such communication can happen in order to ensure this principle that Vermont police officers are not in the business of deportation. The Attorney Generals version has a few tweaks but generally remains the same with the following: *“Communication is permissible when its necessary for public safety, officer safety, or law enforcement needs unrelated to the enforcement needs of federal civil immigration law.”*

Migrant Justice is concerned by comments made by a Sheriff in Vermont in which he has stated that he has referred over 20 cases to Federal immigration authorities and that he would “likely call immigration authorities after a traffic stop if he thought the people in the car were undocumented.”

*Attorney General’s Office, Erin Jacobsen – Thank you to all participants and community members. Erin recognizes the reality of migrant communities and the fear they live in and apologizes that that is their reality. The Attorney Generals proposal reflects the law and what the Attorney General is constrained by and ultimately able to defend.*

If the language presented by the FIP subcommittee were adopted, then it is the Attorney General’s opinion that that would be a very difficult policy to defend because in our opinion it conflicts with Federal law. Because of that it conflicts with two provisions in Vermont law. 20 VSA 2366(f) and 20 VSA 4651 (d). They both say *“that the FIP policy requirements are not intended to prohibit or impede any public agency from complying with the lawful requirements of 8 USC 1373 and 8 USC 1644. To the extent that any state or local law enforcement policy or practice conflicts with the lawful requirements of 1873 or 1644, that policy or practice is to the extent of the conflict abolished.”*

In summary - From the AG perspective, whose job it is to be the lawyer for the state of Vermont, the proposal put forth by the FIP subcommittee would conflict with federal law and then be abolished due to the construct of our state law.

* The AG’s office tried to push the policy as far as possible to be as protective as possible without violating federal law.
* Three of the five proposals were agreed upon. Page five of the report is where there was a divergence of opinion on two of the proposals.
* The AG proposal (beginning on page five of the report) - the AG believes complies with Federal law and provides clarity for law enforcement and those that are training law enforcement.
* Additions made we believe make the policy easier to implement and understand while still complying with the federal law that states that *no State can mandate that their state and local law enforcement officers may not communicate citizenship or immigration* *information to the Fed’s.* This is the part that has been litigated and declared unconstitutional in some places. In the second circuit where we are it has not been declared unconstitutional. Also, the Supreme Court of the United States has declined to consider the question.
* As Attorney General and the lawyer for the State they have to weigh what would happen if there were a policy that under current law would be considered unlawful. We would have to litigate up to the U.S. Supreme Court and we know that we would lose at the second circuit because of present case law. The current composition of the U.S. Supreme Court is not favorable on immigration front.

These were all considerations when putting forward the Attorney Generals proposal in an effort to make it compliant, trainable, and implemented in the field.

*Discussion ensued around the State and U.S Supreme Court processes regarding the constitutionality of 8 USC 1373 and 1644.*

*A summary of what Migrant Justice proposed and what the Attorney General proposed was given by Erin Jacobsen and Will Lambek.*

*Chief Frank commenting on behalf of the Chiefs Association –* There were 15 summary concerns that came from the Vermont Association of Chiefs of Police.

* We need to address the law as it stands now. Until the second circuit court amends that position, we can’t with good conscience ask our officers to knowingly violate federal law.
* We would have a lack of defensible representation for our officers.
* There were 15 concerns, most of the concerns were regarding Federal communication issues. Our northern border chiefs work very closely with border patrol and other federal officials. Those are the backup officers, and closest officers that can provide support for search warrants or responding to a motor vehicle incident.
* There was a concern that two policies were becoming merged together that should be separated: a fair and impartial policing policy and an immigration policy.
* General sentiment is Chiefs not in a position to knowingly ask officers to violate federal law which is more reinforced with a feeling that we would lack defendable representation.
* Because this would be a statewide policy any violation or variance from that would automatically make any officer subject to an Act 56 which could cost an officer their certification.

*Discussion Ensued: Bill Sorrell-* If this matter went to a vote from the subcommittee’s recommendations with the points of conflict, would the Chiefs vote, no?

*Jennifer Frank -* From an ideological perspective the Chiefs support a bias free fair and impartial policing policy, but the policy as currently proposed the Vermont chiefs cannot support moving forward.

*Amanda Garces – Addressing Chiefs concerns around immigration and fair and impartial policing being separated -* when we look at our immigrant communities, we cannot look at them separately they are an integral part of our communities. When they walk down the street, they cannot hide who they are. There are heavy conversations around immigration status because we have seen historically what has happened to community members and that is integral to this policy. The current fair and impartial policing policy was also drafted by a lot of BIPOC community members and advocates that have come together to push our state to do better. This is an opportunity for us to have that moral high ground. We have to think about how we are going to live in Vermont and support our community members who are giving so much of themselves to us.

*Bill Sorrell –* Put off a vote until our next monthly meeting.

*Xusana Davis –* I agree to move this to the next meeting because it is very troubling to me that this has been called for, for years in this State because it carries life and death consequences for people. Part of me is sad and frustrated by the delay and there is so much thought and nuance that went into this policy. We are getting so much information at once as a Council. I was part of that sub-group, so I understand what we are talking about, but I want to make sure the full Council really understands the nuances, especially given some of the comments that we received from the Chiefs association. So, I would agree to moving this to the next meeting but with a huge asterisk that I implore my fellow council members to come really prepared because we need to be coming from an informed perspective. Let’s each work hard individually to understand what we are going to vote on.

*Trevor Whipple* –The VLCT would also appreciate the time to consult with our legal counsel. I would encourage other representatives to consult with their legal counsel as well. One potential concern is that if there were litigation because something in this policy was found to be in violation of federal law there may not be insurance coverage for that. There may be an exemption and the community itself would bear that. We know it’s a fine line and we want to support all members of our community.

*Cassandra Burdyshaw –* The Human Rights Commission will support the full recommendation from the subcommittee. I have no objection to allowing people to digest the large amount of information with the caveat that it will be up for a vote as the people who need it the most have been waiting for us to take action.

*Too many changes were made to the original policy, a track change version is not available.*

**Level III Curriculum Topics:** *Vermont Criminal Justice Council Director of Training, Ken Hawkins*

* Annual Requirement of the Council to vote on the minimum number of hours for each of the training topics, Council rule language was reviewed.
* Total number of hours for the current curriculum is 832.5 hours.
* Review of current curriculum disciplines and their topic areas and hours.

*Discussion Ensued: Bill Sorrell –* How does what we are doing right now impact potential changes coming from the JTA and Curriculum Review?

* This speaks to the next twelve months of training while the larger process is ongoing. As recommendations come from IADLEST those should be presented to the Council. Small changes may occur that do not affect the overall vote of approval if it is approved today.

*Kelly Price -* What major changes have occurred from past practices if any? Moving forward, what would you like to see in addition to what was just presented?

* The only significant changes are the location and timing of classes in the schedule. Courses offered earlier in the program (e.g. first aid/CPR, fair and impartial policing) to prep students for scenario-based training.
* No hours have changed except the active shooter block has been removed from Patrol Procedures and moved to post basic.
* Moving forward, the IADLEST project I hope will continue to offer more hands-on training in a model of talk, teach, do.

*Kelly Price –* Will there be an increase in Firearms fundamentals to make sure recruits are well prepared in the most dangerous aspect of their jobs, to self and community?

* Week 9 (Firearms and Driving week) the repetition and muscle memory and practical application during that week needs to be spread out the duration of the 17 weeks. The training model should look like smaller bits of information spread out. We will see what the IADLEST recommendations are at the conclusion of the JTA and curriculum review.

*Mark Anderson* – Is there a consideration for why we are including training that is often obtained through Level II training in the standard Level III program (e.g. DUI)?

* Including DUI training in the Level III program was because of the ARIDE legislative mandate that would require all officers to obtain ARIDE training. A pre-requisite is DUI to this mandate. Changes to the legislative mandate are being reviewed as it pertains to training.

*Request for Academy staff to review the basic versus the post-basic courses for duplicative trainings.*

*Chief Frank moved to accept the curriculum as presented, second by Mark Anderson, all in favor.*

**Constitutional Amendment:** *Vermont Criminal Justice Council Chair, William Sorrell*

The legislature asked the Council to review a potential constitutional amendment, Bill will testify today at 1 P.M.

* A constitutional amendment requires two votes in two separate biennia of the legislature. This is year two of the session. If it passes in this session, then in the next session it would likely be approved and then moved to a statewide vote.
* State constitution would be amended to allow the General Assembly to establish by law qualifications for individuals to be elected to certain county offices and it would also abolish the office of High Bailiff.
* This is enabling legislation that will allow the legislature if it becomes part of the constitution to establish by law qualifications for the election to and holding of office and removal from such office for failure to meet or maintain qualifications for the assistant judges, sheriff, states attorney, and probate judges.
* The legislature has heard from a number of stakeholders on this matter some have spoken in favor of the proposal, some have declined to take a position and the sheriff’s have expressed opposition to the proposal.
* Our actions could potentially impact Sheriff’s, most notably Sheriff Grismore because he is a constitutional officer and there is nothing in the constitution that requires certification. Actions on his certification do not remove him from office, he would need to be impeached.

*Mark Anderson made a motion that the Council take no position on Proposition One, second by Kelly Price, discussion ensued.*

*Erin Jacobsen –* The Council should not take a position on the judges or states attorney, but we could take a position on Sheriff’s.

*Mark Anderson – Speaking for the Sheriff’s* – We have three choices, we can support, oppose, or take no position with comments. The CJC has authority over certification and professional regulation. Sheriffs have as one of their duties law enforcement responsibilities and credentials. We have already exercised the removal of a sheriff’s certification for the purpose of Act 56. Outside of the purview of the Council are numerous other duties that the Sheriff’s are responsible for which are not law enforcement duties. To the extent that the Council oversees law enforcement broadly, the concern that I have is that the Council will be pulled into a discussion with regard to things that the Council generally has no purview of. Sheriff’s support transparency and accountability and in the case of Sheriff Grismore the Sheriff’s called for him to resign and the Governor asked him to resign. There are constitutional remedies that can cause the removal of the sheriff that are being explored. What Proposition 1 does is say we are going to look at County elected offices to decide what is or isn’t appropriate for the voters. It ignores state offices where there have also been documented issues (e.g. Governor’s office EB5 scandal). There are conversations on if the auditor, Secretary of State, or other state offices needs to have any credentials or qualifications. It starts to set up an interesting system in which at the whim of the legislature they could cause for the elimination of access to a public office on political foundation (e.g. Florida removal of State’s Attorneys).

If the goal is to make impeachment easier, then it would make sense to work on the impeachment portions although that may not be acceptable as it would leave other state offices vulnerable. Proposition one disenfranchises voters, and it sets up a circumstance that is unique and potentially unconstitutional if viewed in the construct of our current constitution.

*Bill Sorrell –* I believe the legislature values our opinion as the Council. How much a Sheriff is paid is not in the wheelhouse of the Council but in the matter of who should or should not be certified to be able to do their job is something that falls under the purview of the Council.

*Further discussions were had regarding support for or opposition to the current motion.* There was an attempt to come to a compromise on ensuring voices are heard as it pertains to Sheriffs but taking no position in matters that do not. Comments were made by James Whitcomb, Erin Jacobsen, Mark Anderson, Kelly Price, Heather Simons, Chris Louras, Jennifer Frank, and Bill Sorrell.

***Vote on the motion:*** *Kelly price – no (stated he supports Mark Anderson’s position), Cassandra Burdyshaw – abstain, Chris Louras – yes, Erin Jacobsen – no, Glen Boyde- Yes, Jim Whitcomb- yes, Lori Vadakin – no, Mark Anderson – yes, Mike O’Neil – yes, Sadie Donovan – no, Scott LaValley – yes, Chief Frank – yes, Trevor Whipple – yes, Karim Chapman – yes.* ***Total Vote: 10 yes, 1 abstain, 3 no -*** *Majority of the quorum determines the council’s stance.*

**Executive Director Updates:** *Vermont Criminal Justice Council Executive Director Heather Simons*

* Next meeting we would like to walk through the various levels of certification and how it relates to the Job Task Analysis and the larger project with IADLEST. We will be looking at what makes sense to keep in basic training and what makes sense to move.
* There will be another announcement about the JTA this afternoon to law enforcement to contribute and participate in this survey. The questions are designed to assess what the job is, in the opinion of law enforcement. Law enforcement leadership will then be weighing in on how this impacts the direction of recommendations to what certifications should look like and what job descriptions should look like.
* Communication change we have made; my updates will be getting more detailed in writing to the Council. The feedback I have received is there is a little too much mystery and I want to be sensitive to that.
* We would like to get specific about clarity of roles with each position.
* There was a discussion at Chiefs and Sheriff’s meeting, that helped me determine what agencies need to hear from me on.
* There is a recertification of firearms instructors required that we were not able to deliver. I have approved a waiver so that all instructors can obtain the training and remain in compliance.
* Welcomed a new member of the Council, Lori Vadakin from the Department of Mental Health.

*No quorum for the stipulated agreements*

Motion to adjourn: Sheriff Mark Anderson moved, second by Erin Jacobsen. All in favor.

Meeting adjourned: 11:50