

**VERMONT CRIMINAL JUSTICE COUNCIL,
PROFESSIONAL REGULATION SUBCOMMITTEE**

UNPROFESSIONAL CONDUCT COMPLAINT AND INVESTIGATION PROCEDURES

1. Authority:

These procedures are adopted pursuant to 3 V.S.A. §§ 801(b)(8), 835.

2. Purpose:

These procedures outline how unprofessional conduct reports and complaints are received, reviewed, investigated and processed by the Vermont Criminal Justice Council (“Council”), Professional Regulation Subcommittee (“Subcommittee”) pursuant to 20 V.S.A. Chapter 151, Subchapter 2.

3. Definitions:

3.1 The terms “Unprofessional conduct,” “Category A conduct,” “Category B conduct,” “Category C conduct,” “valid investigation,” “invalid investigation,” “prohibited restraint” and “chokehold” if used herein shall be defined as set forth in 20 V.S.A. § 2401.

3.2 For purposes of Category B conduct (first offense), the phrase “first offense” shall be construed to mean an offense emanating from and/or related to a single act reviewed by the Subcommittee for which the Subcommittee first concluded that the particular officer engaged in unprofessional conduct, regardless of how many policy violations are identified through investigation.

3.3 Category B conduct, as defined in 20 V.S.A. § 2401(2), will exist if the following three elements are met: (1) gross professional misconduct; (2) engaged in while on duty or while exercising the authority of the State; (3) that involves a willful failure to comply with a State-required policy or that involves a substantial deviation from the conduct required by the employing law enforcement agency’s policies or the Council’s policies.

3.3.1 The phrase “gross professional misconduct” shall be construed to mean conduct that demonstrates a flagrant, wanton, intentional or reckless disregard of a law enforcement officer’s professional responsibilities and lacks any reasonable justification in law or policy, which: jeopardizes the health, safety or welfare of any individual including another officer; violates any individual’s legal rights; involves the disparate treatment of any individual or community, or the provision of law enforcement services to any individual or community that is disproportionate to other similarly situated individuals or communities, based on race, creed, color, national origin, marital status, sex, sexual orientation, gender identity or age; or involves any

other conduct that may undermine the public's confidence in the law enforcement profession. Examples of gross professional misconduct include but are not limited to: sexual harassment involving physical contact or misuse of position; misuse of official position for personal or economic gain; excessive use of force under authority of the State; biased enforcement; use of electronic criminal records database for personal, political, or economic gain; placing a person in a prohibited restraint; and failing to intervene and report to a supervisor when an officer observes another officer employ a prohibited restraint or use excessive force.

3.3.2 The phrase "on duty" shall be construed to mean any period when an officer is designated by the officer's employing agency to exercise law enforcement authority, or provide other services, as part of the officer's official duties.

3.3.3 The phrase "while exercising the authority of the State" shall be construed to mean any period when a law enforcement officer is not on-duty but is engaged in activities that could only be authorized by virtue of the officer holding a Vermont law enforcement certification and maintaining employment with a Vermont law enforcement agency.

3.3.4 The term "willful" shall be construed to mean voluntary, knowing or intentional.

3.3.5 The phrase "substantial deviation" shall be construed to mean a departure that is significant enough to materially undermine proper and effective law enforcement operations.

4. Reporting Requirements:

4.1 Category A conduct: A law enforcement agency (through its executive officer or the chair of its civilian review board) must submit a report to the Council's Executive Director ("Executive Director") within ten (10) business days after each of the following: (1) a court's finding of probable cause that one of the agency's law enforcement officers engaged in Category A conduct; (2) any court decision or findings of fact or verdict regarding allegations that one of the agency's law enforcement officers committed Category A conduct; (3) the agency's termination of the officer for Category A conduct; and/or (4) the officer's resignation while under investigation for Category A conduct. The Executive Director shall report to the Criminal Division of the Attorney General's Office and to the State's Attorney of jurisdiction any allegations that an officer committed Category A conduct.

4.2 Category B conduct: A law enforcement agency (through its executive officer or the chair of its civilian review board) must submit a report to the Executive Director within ten (10) days after each of the following events: (1) the agency receives a credible complaint against the officer that alleges that the officer committed Category B conduct; (2) the agency issues a report or findings of a valid investigation finding that the officer committed Category B conduct; and/or (3) the agency receives any decision or findings, including

findings of fact or verdict, regarding allegations that the officer committed Category B conduct, including a hearing officer decision, arbitration, administrative decision, or judicial decision, and any appeal therefrom. Note: Reporting is required for all Category B (first offense) conduct, even when law enforcement agencies retain the sole right to determine an appropriate sanction for such conduct, provided a valid investigation had been conducted.

4.3 Category C conduct: A law enforcement agency (through its executive officer or the chair of its civilian review board) should submit a report to the Executive Director within ten (10) business days of discovering any potential Category C conduct.

4.4 Termination/Resignation of Officer Related to Unprofessional Conduct: A law enforcement agency (through its executive officer or the chair of its civilian review board) must submit a report to the Executive Director within ten (10) business days of: (1) the agency's termination of an officer for Category A or Category B conduct; or (2) an officer's resignation from the agency while under investigation for unprofessional conduct.

4.5 A law enforcement agency (through its executive officer or the chair of its civilian review board) shall ensure that any report described in Sections 4.1-4.4 above will be accompanied by a copy of any relevant documents associated with the report, including any findings, decision, the agency's investigative report, associated investigative materials (such as body worn camera video footage, written and audio/video recorded witness statements) and copies of relevant State and/or agency policies in effect at the time of the conduct subject to investigation.

5. Complaints:

5.1 The Executive Director shall accept from any source, and in any form, complaints alleging a law enforcement officer committed unprofessional conduct.

5.2 If the complaint alleges an officer engaged in Category A or Category B conduct and if the Executive Director deems such complaint credible, the Executive Director shall refer such complaint to the executive officer of the law enforcement agency that employs the officer. Such agency shall be responsible for conducting a valid investigation, which must be concluded by such agency even if the officer resigns during the investigation. Further, the Executive Director shall report to the Criminal Division of the Attorney General's Office and to the State's Attorney of jurisdiction any credible complaint the Executive Director receives that an officer committed Category A conduct.

5.3 If the complaint alleges that an officer engaged in Category C conduct, the Subcommittee shall investigate such complaint.

5.4 A law enforcement agency must refer to the Executive Director any unprofessional conduct complaints made against a law enforcement officer who is the executive officer of that agency. The Subcommittee shall cause to be conducted an alternate course of investigation of any such complaint.

5.5 Notwithstanding a law enforcement agency's valid investigation, the Subcommittee may investigate a complaint, or cause a complaint to be investigated, if the officer resigned before a valid investigation had begun or was completed by the agency that had employed the officer.

6. Investigations:

6.1 Subcommittee: The Subcommittee (comprised of Council members appointed for such purpose), with staff assistance as necessary from the Executive Director and/or designee, an assigned investigator (if any) and an assigned legal counsel: (1) will investigate each complaint required by law to be investigated by the Council; and (2) may investigate: (a) any complaint for which the Subcommittee determines a law enforcement agency did not conduct a valid investigation, (b) any complaint concerning a former executive officer of a law enforcement agency who is not then currently employed by any other law enforcement agency and (c) any complaint concerning an officer who resigned before a valid investigation had begun or was completed by the law enforcement agency that employed the officer. After a complaint or other report subject to Council investigation is received, the Subcommittee will discuss the matter and plan the investigation. An officer named in an unprofessional conduct complaint investigation shall cooperate with the Subcommittee through the course of its review of any such investigation. The Subcommittee may direct an officer to provide the Subcommittee a written response to, and/or appear before the Subcommittee or assigned investigatory staff to address, any complaint subject to investigation.

6.2 Confidentiality:

6.2.1 The Council, its hearing officer (if any) and Council staff shall keep confidential information regarding unprofessional conduct complaints, investigations, proceedings, and related records, except for the information required or permitted to be released under 20 V.S.A. § 2409.

6.2.2 The Council, its hearing officer (if any) and Council staff may disclose any information regarding unprofessional conduct complaints to any person as directed by an order from a court of competent jurisdiction, or to a State or federal law enforcement agency in the course of its investigation provided the agency agrees to maintain the confidentiality of the information consistent with 20 V.S.A. § 2409.

6.2.3 Any Executive Director report to the Criminal Division of the Attorney General's Office and to the State's Attorney of jurisdiction regarding any allegations that an officer committed Category A conduct shall likewise be deemed confidential pursuant to 20 V.S.A. § 2409.

7. Suspension Prior to Completion of an Investigation:

7.1 Summary Suspension: Pursuant to 20 V.S.A. § 2405 and 3 V.S.A. § 814(c), the Subcommittee may find that certain alleged misconduct poses so grave a threat to the public health, safety, or welfare that emergency action must be taken. In such a case, the Subcommittee will request a special meeting of the Council and recommend that the Council order summary suspension of the law enforcement officer's certification, pending a hearing under 3 V.S.A. § 814(c). If the Council orders summary suspension, a hearing will be scheduled as soon as practical.

8. Disposition by the Subcommittee:

8.1 Once the Subcommittee determines that the investigation is complete, it shall pursue one of three possible dispositions, described in Sections 8.1.1, 8.1.2 or 8.1.3.

8.1.1 Conclude the Investigation: If after investigation, the Subcommittee, in consultation with the Executive Director and/or designee, an assigned investigator (if any) and assigned legal counsel, determines that the facts established by the investigation do not support any finding of unprofessional conduct or support a finding of Category B (first offense) conduct for which no Council sanction is permitted under 20 V.S.A. § 2407, then the Subcommittee may conclude the investigation. The case will be closed without further action. The Executive Director shall provide notice to the officer and the officer's agency of such case closure due to a finding of no unprofessional conduct or Category B (first offense) conduct for which no Council sanction is permitted under 20 V.S.A. § 2407. A concluded investigation may be reopened if new evidence is received or a new and related complaint is made.

8.1.2 Settlement: If, after investigation, the Subcommittee determines that the facts established by the investigation present cause for pursuing charges of unprofessional conduct, the Subcommittee may explore the possibility of stipulated settlement and consent order, as established in a Stipulation. Recommended Stipulations should include a concession of wrongdoing by the officer, terms and conditions, an understanding that this concession may be relied on by the Council in case the officer is later found to have engaged in unprofessional conduct, and an understanding that this final disposition of the complaint is public and that the Council may report that disposition to the International Association of Law Enforcement Standards and Training National Decertification Index.

8.1.2.1 The Stipulation will be deemed finalized only upon acceptance by the Council. If the Subcommittee recommends a disposition in the form of a Stipulation, the Council may direct the Subcommittee to change the terms of the Stipulation. If a Stipulation is not accepted by the Council within a reasonable time, the Subcommittee may pursue a Notice of Hearing.

8.1.3 Notice of Hearing: If after investigation, the Subcommittee, in consultation with the Executive Director and/or designee, an assigned investigator (if any) and assigned

legal counsel, determines that the facts established provide a basis to allege unprofessional conduct, such conduct is not Category B conduct (first offense) for which the Council may not by law impose a sanction and a settlement cannot be reached or is not warranted on the facts, the Subcommittee shall direct the filing of a Notice of Hearing by the Executive Director.

8.1.4 The Executive Director shall commence each unprofessional conduct proceeding by serving a Notice of Hearing upon the subject law enforcement officer (“Respondent”) via certified mail/return receipt requested. If service cannot be accomplished by certified mail, the Executive Director will make reasonable attempt to accomplish service by regular mail or by personal service within the state, if feasible. The Notice shall schedule a hearing no sooner than thirty (30) days after service. A continuance may be granted upon request for good cause as determined by the Council. The Executive Director shall send copies of the Notice to the assigned attorney representing the State in the matter and to the Respondent’s attorney if any.

8.1.5 Subcommittee members shall not participate as voting members of the Council, or participate or appear in any deliberative or executive session of the Council, related to any unprofessional conduct proceeding that implicates any matter related to the Respondent considered during such member’s service on the Subcommittee.

9. Continuity of Operations: In the absence of the Executive Director and unless otherwise directed by the Council, the Director of Administration shall be responsible for all Executive Director functions described herein.