

## NOTICE OF HEARING

June 20, 2023

### VCJC PRS Docket No. 20200GD

RE: Hearing to consider imposition of sanctions, up to and including permanent revocation, against the Level III Vermont law enforcement officer certification held by John Grismore.

Please take notice that pursuant to the authority vested in the Vermont Criminal Justice Council under 20 V.S.A. §§ 2401, 2405 and 2406 a hearing will be held before the Council **at the Vermont Fire Academy, 93 Davison Drive, Pittsford, Vermont 05763 and remotely via Microsoft Teams on August 15, 2023 at 9:00AM.**

The hearing will be held as a formal contested case hearing under the Vermont Administrative Procedure Act and will be held to consider the imposition of sanctions, up to and including permanent revocation, against the Vermont law enforcement officer certification held by John Grismore for alleged unprofessional conduct pursuant to 20 V.S.A. § 2401(1)(B) (Category A conduct misdemeanor, simple assault, committed while on duty), 20 V.S.A. § 2401(2)(c) (Category B gross professional misconduct, violation of use of force policy), 20 V.S.A. § 2404(a)(1)(A) (agency investigation of Category A or B conduct), 20 V.S.A. § 2405 (Council sanction procedure), 20 V.S.A. § 2406(a) (permitted Council sanctions) and 20 V.S.A. § 2407 (Limitation on Council sanctions), which are set forth and specified below along with other relevant authority.

- 20 V.S.A. § 2401(1) provides:

(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.

- 20 V.S.A. § 2401 (2)(c) provides:

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

- 20 V.S.A. § 2401(5) provides:

“Unprofessional conduct” means Category A, B, or C conduct.

- 20 V.S.A. § 2404(a)(1)(A) provides:

Agency investigations of Category A and B conduct.

(1)(A) Each law enforcement agency shall conduct a valid investigation of any complaint alleging that a law enforcement officer employed by the agency committed Category A or Category B conduct. An agency shall conclude its investigation even if the officer resigns from the agency during the course of the investigation.

- 20 V.S.A. § 2405:

Except as otherwise provided in this subchapter, the Council shall conduct its proceedings in accordance with the Vermont Administrative Procedure Act. This includes the ability to summarily suspend the certification of a law enforcement officer in accordance with 3 V.S.A. § 814(c).

- 20 V.S.A. § 2406(a) provides:

Generally. The Council may impose any of the following sanctions on a law enforcement officer's certification upon its finding that a law enforcement officer committed unprofessional conduct:

(1) written warning;

(2) suspension, but to run concurrently with the length and time of any suspension imposed by a law enforcement agency with an effective internal affairs program, which shall amount to suspension for time already served if an officer has already served a suspension imposed by his or her agency with such a program;

(3) revocation, with the option of recertification at the discretion of the Council; or

(4) permanent revocation.

It is alleged that you, John Grismore, recklessly and unnecessarily kicked a person in police custody for no legitimate reason and caused that person pain. This action falls into two categories of unprofessional conduct: Category B, a violation of the Statewide Policy on Police Use of Force; and Category A, a misdemeanor act of simple assault while on duty and the act did not involve a legitimate performance of duty in violation of the above identified authority.

Specifically, it is alleged that:

1. John Grismore (referred to herein as "Sheriff Grismore") was employed as a Captain with the Franklin County Sheriff's Department at the time of the alleged assault. He was fired a few days after the incident by then Sheriff Langevin on or about August 09, 2022. A few months later, Sheriff Grismore was elected as Sheriff of Franklin County in November of 2022. To-date, Sheriff Grismore maintains the office of Sheriff of Franklin County.
2. Sheriff Grismore earned his first law enforcement certification in Vermont in 1997. Presently, he holds a Level II law enforcement certification from the Vermont Criminal Justice Council which he received on May 20, 2014.

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3. The Statewide Policy on Police Use of Force (the policy) went into effect on October 01, 2021. At the time of the incident involving Sheriff Grismore and the detainee, the Franklin County Sheriff's Department (FCSD) had adopted the Statewide Policy on Police Use of Force. Sheriff Grismore was fully informed that the policy was in effect at the time of his actions.
4. The policy will be presented in full at the August 15, 2023 hearing. In pertinent part, for the sake of this notice, the policy advises that: "When force is necessary to bring an event or incident under control, officers will use only objectively reasonable force to accomplish lawful objectives."
5. The policy defines "objectively reasonable" as: "Whether the decision by a law enforcement officer to use force was objectively reasonable shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances. A law enforcement officer's failure to use feasible and reasonable alternatives to force shall be a consideration for whether its use was objectively reasonable. The calculus of reasonableness must allow for the fact that police officers are often forced to make split-second decisions about the amount of force that is necessary in a particular situation, in circumstances that are tense, uncertain, dynamic and rapidly evolving. Factors to be considered in determining the objective reasonableness of force include, but are not limited to:
  - The seriousness of the crime or suspected offense;
  - The level of threat or resistance presented by the subject(s) (e.g. proximity to weapons, potential for escape, availability of other resources or officer backup);
  - Whether the subject was posing an immediate threat to officers or a danger to the community;
  - The potential for injury to citizens, officers or subjects (e.g. levels of exhaustion, relative size, strength, skill level, age of suspect versus officer as well as number of officers versus subject(s))."

6. On or about August 7, 2022, a use of force incident occurred in the holding cell room of FCSD. Two deputies, Karry Andileigh and Chris Major, witnessed their supervisor, Sheriff Grismore, utilize a degree of force that they believed was unnecessary given the totality of the circumstances. They notified their chain of command of the use of force incident.
7. On or about August 08, 2022, then Sheriff Langevin placed Sheriff Grismore on administrative leave, assigned the department's internal investigation to Detective Sergeant Mark Lauer, and referred the matter to the Franklin County State's Attorney's office.
8. The Franklin County State's Attorney's Office requested that the Vermont State Police (VSP) conduct a criminal investigation.
9. After the criminal investigation was completed and a one count information for simple assault was filed in Vermont Superior Court, Franklin Unit, the Vermont Criminal Justice Council conducted its own internal investigation.
10. Below is a summation of the facts regarding the assault as found in FCSD's internal investigation, VSP's probable cause affidavit for case no. 22A1005125, and the Council's internal investigation report. Any facts and/or witnesses contained within any of the aforementioned reports, but not included below, may be used at Sheriff Grismore's future Council Hearing regarding these allegations of unprofessional conduct.

### **The Alleged Incident**

11. On August 7, 2022, Deputies Andileigh and Major brought Mr. Jeremy Burrows to FCSD for processing incident to an arrest. The deputies placed Mr. Burrows in a holding area with his hands cuffed behind his back and his ankles shackled to a bar beneath a bench. Deputy Major set his body camera down in the holding cell area so that Mr. Burrow's processing would be recorded.
12. Sheriff Grismore was not scheduled to work at FCSD on August 7, 2022. However, he went into work that day to catch up on paperwork. According to the processing video and statements later obtained from Deputies Andileigh and Major, Mr. Grismore watched from the doorway of the holding cell as Andileigh and Major secured Mr. Burrows to the

bench with ankle shackles. Mr. Grismore then spoke with both Andileigh and Major about the arrest of Mr. Burrows. The earlier arrest had involved some use of force at the time of arrest. The deputies also relayed that Mr. Burrows had spit at Deputy Major.

13. While the arresting officers were outside of the holding cell speaking with Mr. Grismore, the processing video shows that Mr. Burrow stands up, take a few steps, and then falls on his face. Mr. Burrows was unable to interrupt his descent since his hands were restrained behind his back.
14. Deputies Andileigh and Major enter the holding cell area and carefully lift Mr. Burrows from the floor. After a few attempts, Mr. Burrows is able to put weight on his legs and with the officers' assistance, fully stands up. The deputies then guide him to a seated position on the bench.
15. Deputies Andileigh and Major begin to move away from Mr. Burrows when he stands up and leans toward Deputy Major. Deputy Major extends his arm toward Mr. Burrows, placing his open hand on Mr. Burrows chest; simultaneously, creating space between the two and preventing Mr. Burrows from falling again. Deputy Andileigh moves to Mr. Burrows's right side and places her hands on Mr. Burrows's right shoulder and arm.
16. Deputy Andileigh appears to apply pressure to Mr. Burrow's right side while she informs him that he needs to sit down. Deputy Major states that he will need to add additional shackles if Mr. Burrow does not sit down. Deputy Major keeps his arm raised, palm on Mr., Burrow's chest, as Mr. Burrow continues to lean closer to Deputy Major.
17. At this point in time, the processing video shows Sheriff Grismore enter the holding cell wearing casual clothing – shorts, t-shirt, hiking boots, and a baseball hat. Deputy Major catches sight of Sheriff Gismore and asks him whether he has a key. Sheriff Grismore does not answer the question but moves quickly to a standing position behind, and in between, the two deputies. Sheriff Grismore places his right hand on Deputy Major's left shoulder, lifts his right leg and kicks Mr. Burrows in the lower abdomen area with enough force that Mr. Burrows feet leave the ground as he is pushed back into a seated position.
18. Sheriff Grismore's foot remains on Mr. Burrows's lower abdomen, and his foot appears to pulse two times, pushing into Mr. Burrows's abdomen, as Sheriff's Grismore audibly

commands Mr. Burrows to sit down. Mr. Burrow then says, “I caught you on camera, you queer.”

19. Sheriff Grismore responds by stating either, “I don’t” or “I don’t care,” and removes his foot. A moment later, Mr. Burrows stands up and says, “I caught you on camera.” Deputy Andileigh, who was still on Mr. Burrow’s right side, reiterates that he needs to sit down. At this time, Deputy Major had moved a few feet away to access additional shackles.
20. Within a second or two of Mr. Burrows standing up, Sheriff Grismore raises his right leg and kicks Mr. Burrows in the lower abdomen, forcing Mr. Burrows into a seated position. Upon the kick’s impact, Mr. Burrows yells loudly, “oh!”
21. Deputy Andileigh then moves from Mr. Burrows’s right side to his left, crossing between Mr. Burrows and Sheriff Grismore. Sheriff Grismore then walks swiftly out of the room.
22. When later interviewed about the incident, Deputy Andileigh stated that she moved between Sheriff Grismore and Mr. Burrows to prevent Sheriff Grismore from kicking Mr., Burrows again.
23. Sheriff Grismore returns a few second later with a white mesh, spit hood in his hand. As he approaches Mr. Burrows, the detainee can be heard yelling “Tell him to get away from me, tell him to get away from me!” Sheriff Grismore places the hood over Mr. Burrows’s head. In response, Mr. Burrows’s says, “I haven’t spit. I haven’t done nothin’ wrong.” Sheriff Grismore stops his exit from the room, and counters, “you just tried spittin’ at me!” Mr. Burrows repeats to the other two deputies, “I didn’t spit at him. I give up.” The processing video then shows Sheriff Grismore nod his head and leave the room.
24. Sheriff Grismore has stated on several occasions that his use of force was justified because he feared for the safety of his deputies and that he feared for his own safety. Specifically, he believed that Mr. Burrows was going to spit at the deputies and/or himself.
25. It is unclear in the processing video whether Mr. Burrows was attempting to spit, or whether he exhibited any behavior that might be construed as preparing to spit on any of the officers while the officers tried to return him to a seated position. Nonetheless, during the entirety of the interaction between Sheriff Grismore and Mr. Burrows, Mr. Burrows’s hands were restrained behind his back and his legs were shackled at his ankles. Mr. Burrows movements were severely limited.

26. Neither Deputy Andileigh nor Major reported any concern that Mr. Burrow might spit on them in the holding cell. They both stated that while attempting to return him to a seated position they were not concerned for their safety, nor did they believe that Mr. Burrows would spit upon them. Even if there was a concern that Mr. Burrows might spit upon an officer, spitting would not create an imminent risk of physical injury to anyone in the room nor lead a reasonable officer to perceive that the action could cause a risk of death or seriously bodily injury.
27. Sheriff Grismore's behavior on August 7, 2022 in the FCSD's holding cell was disproportionate to the conceived concerns and an unreasonable use of force given the totality of the circumstances. His actions violated the Statewide Use of Force Model Policy constituting a Category B violation, first offense, that is actionable by the Council. 20 V.S.A. §§ 2401(2)(C), 2407(a).

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28. Mr. Burrows, when interviewed by Vermont State Police regarding the incident on August 7, 2022 at FCSD, stated that he felt pain when he was kicked by Sheriff Grismore. He described his pain as a six on a pain scale of one to ten.
29. On October 24, 2022, John Grismore was arraigned on a charge of one count simple assault, 20 V.S.A. § 1023(a)(1), in Docket No. 22-CR-09841 in Vermont Superior Court, Criminal Division, Franklin Unit. He pled not guilty at arraignment.
30. The charging Information for that offense reads as follows: "John Grismore, in the County of Franklin, at St. Albans, on or about August 7, 2022, recklessly caused bodily injury to another, TO WIT, Jeremy Burrows, in violation of 13 V.S.A § 1023(a)(1)."
31. As noted earlier, Sheriff Grismore was not scheduled to work on August 07, 2022. However, he was in his office on that day, by his own words, catching up on paperwork. He then intervened, in his capacity as a law enforcement officer, in the detention of Mr. Burrows as he believed that his subordinates, Deputies Andileigh and Major, needed his assistance. Sheriff Grismore was, in effect, on duty on August 7, 2022 when he kicked Mr. Burrows.
32. Sheriff Grismore recklessly kicked a detainee causing the person pain. The Vermont Superior Court, Franklin Unit found probable cause for one count of simple assault, 13

V.S.A. § 1023(a)(1). He committed this misdemeanor while on duty and his behavior did not involve a legitimate performance of duty. As such, Sheriff Grismore's conduct constitutes a Category A violation of unprofessional conduct, and that violation is sanctionable by the Vermont Criminal Justice Council pursuant to 20 V.S.A. § 2401(1)(C)(ii) and (v)

The Council shall determine whether such alleged violations set forth above re: VCJC PRS Docket Nos. 20200GD did occur as specified herein.

The hearing shall be conducted by the Council in accordance with the Vermont Administrative Procedure Act (3 V.S.A. §§ 809-816). Pursuant to 3 V.S.A. § 809(c), you shall have an opportunity by yourself or through your attorney to appear at said hearing to present evidence and argument on all issues involved in this case and bring before the Council all pertinent facts that you believe will have a bearing on the issues involved in this case.

All correspondence and documents pertaining to this matter should be sent to the Vermont Criminal Justice Council, 317 Academy Road, Pittsford, Vermont, 05763, to my attention.

Dated June 20, 2023 at Pittsford, Vermont.

Vermont Criminal Justice Council

A handwritten signature in black ink that reads "Heather Simons". The signature is written in a cursive, slightly slanted style.

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Executive Director, Heather Simons