October 5, 2022

10:00 AM

Teams Meeting

**Members in Attendance Public Session:**

William Sorrell, Chair – Governor Appointed

Maira Tungatarova – Governor Appointed

Christopher Louras – Governor Appointed

Shawn Pratt – Governor Appointed

Major Kevin Lane – Vice Chair, Proxy for Commissioner Michael Schirling, Public Safety

Glen Boyde – Proxy for Nicholas Deml, Dept of Corrections

Anthony Facos – Proxy for Commissioner Wanda Minoli, Department of Motor Vehicles

Justin Stedman– Proxy for Commissioner Chris Herrick, VT Fish, and Wildlife

Erin Jacobsen – Proxy for Attorney General Susanne Young

Evan Meenan - Proxy for John Campbell, Executive Director, States Attorney & Sheriff’s

Jay Green – Proxy for Xusana Davis, Executive Director, Office of Racial Equity

Erin Hodges – VT Trooper’s Association

Michael Major – VT Police Association

Mark Anderson – VT Sheriff’s Association

Trevor Whipple – Vermont Leagues of Cities and Towns

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

Cassandra Burdyshaw – VT Human Rights Commission

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

**Other Attendees:**

Heather Simons – Vermont Police Academy

Christopher Brickell – Vermont Police Academy

Lindsay Thivierge – Vermont Police Academy

Ken Hawkins – Vermont Police Academy

Jennifer Firpo – Vermont Police Academy

Jamielee Bedard – Vermont Police Academy

Jennifer Hier – Vermont Police Academy

Amanda Garces – Director of Policy, Education, and Outreach, HRC, FIP Chair

Megan Campbell – Assistant Attorney General

Patrick Owens – Chief, Manchester Police Department

George Merkel – Chief, Vergennes Police Department

David Fox – Sheriff, Rutland County Sheriff’s Department

Braedon Vail – Chief, Barre City Police Department

Tim Gould – Lieutenant, Vermont State Police

Robert Montgomery – Chief, Killington Police Department

Paul Talley – Lieutenant, St Albans Police Department

Brian Peete – Chief, Montpelier Police Department

Larry Eastman – Deputy Chief, Barre City Police Department

Jennifer Frank – Chief, Windsor Police Department

Bill Humphries – Chief, Fair Haven Police Department

Barb Kessler – Captain, Vermont State Police

James Pontbriand - Chief, Berlin Police Department

Shawn Burke – Chief, South Burlington Police Department

Kevin Geno – Lieutenant, Rutland County Sheriff’s Department

Matt Romei – Chief, Vermont Capitol Police Department

**Call to Order:**  Vermont Criminal Justice Council Chair, William Sorrell 10:01

**Additions or deletions to Agenda:**  No additions or deletions

**Minutes from September 13, 2022, contested hearing**:

* Page 3 the incorrect statement, *the officer pulled over the vehicle,* should be removed.
* Page. 4, first line, last word; it reads conductor and should be, conduct or.

Motion to approve as amended by Mark Anderson and seconded by Evan Meenan

No discussion, all in favor, one abstinence by Trevor Whipple (who was not in attendance 9/13)

9/13 Hearing minutes approved

**Minutes from September 21, 2022, meeting**:

Motion to approve by Erin Jacobsen, and second by Cassie Burdyshaw. No discussion, all were in favor. 9/21 meeting minutes approved.

**Legislative Update:**  Vermont Criminal Justice Council Chair, William Sorrell & Vermont Criminal Justice Council Executive Director, Heather Simons

* Council members were provided a YouTube link of Deputy Auditor Tim Ashe discussing the audit on law enforcement training records.
  + Issues were pointed out that have been discussed in the past.
  + The Council was complimented by the Deputy Auditor for openness to the audit and a commitment to do better.
  + Issues with limited staff and professional regulation. The council and particularly staff, have to decide there are only so many hours in a day and how to allocate those hours.
  + Lack of policies and procedures to be aware of law enforcement entity changes in policies.
* We were not invited to participate or present to the oversight committee.
* We will use the audit to make a case to the legislature this January.
* Joint Justice Oversight acknowledged there is no one on JJO from a committee of jurisdiction, they are going to recommend a representative from house and senate be on Justice Oversight.

**Body Worn Camera:**  Chief Shawn Burke, South Burlington PD & Captain Barb Kessler, VSP

* A highlighted copy of the Body Worn Camera policy was sent out for review.
* When the policy was operationalized, some issues were discovered.
* There are four issues:
  + 1. Framing the overall policy in line with others.
  + 2. More clear guidance to our officers to ensure the video capture is what the residents of the state of Vermont want.
  + 3. Officer privacy- The buffering language to include video and audio for 30 seconds is concerning. No other profession has constant surveillance in the workplace.
  + 4. Alignment with public records- retention and preserving data that is needed for an indefinite period of time (officer involved shooting, major incidents, serious felony offenses, active missing persons cases, homicide).

*Explanation of 30 second buffering*

* When the camera is powered on, it begins recording. The camera can overwrite a portion memory, that time frame can be set from 0-1minute, depending on the storage and battery life.
* Widely used as 30 second video overwrite, meaning it will start recording 30 seconds prior to turning on.
* Concern: Camera is always on and always affixed to a person, regardless of the situation even if it may be private. When the camera gets turned on content 30 seconds prior to being turned on will be recorded. The video only capture has served Vermont well, audio recording feels like an overreach.
  + Recommend changing to only 30 seconds of video.

*Discussion ensued*

* *Redlined progression of changes to the policy were requested and provided to the council.*
* All revisions will be decided and then voted on by the Council. Is the vote urgent? How often should changes be made? Who makes those changes?
  + Current version is not operational since the inception of the policy.
  + Because of the pace of technology this will be a policy to be revisited frequently.
  + This policy was a legislative mandate that the Council had to approve. The LEAB will make any changes and apprise the Council of those changes.
* The human rights commission expressed concern over buffering because the audio is an important component and may impact the ability to fully assess allegations of discrimination.
  + Agencies all use different technology and they each have different buffering period availability. Some may not have audio.
  + When its public records request there is latitude for redaction but not when it’s a criminal investigation. That is a concern of the profession and an overreach of government.
* 20 VSA 2369 by Statute the Council is now entrusted with the development and creation of the policy.
* 20 VSA 2369 also references that anyone who uses a body worn camera shall abide by the policy. Current policy only states law enforcement, would like the policy to extend to others such as non-sworn animal control officers.
* This policy should determine when a recording is made, how it is preserved and when it should not be made. Agency heads should be able to recognize issues specific to their agency.
  + Can an agency decide whether or not to follow the policy?
    - Any agency that deploys a camera is required to follow the policy. They can decide whether or not to deploy cameras.
    - Can have an enterprise-wide policy that is broad but then narrowly instructs agencies to develop their own policy.
      * Agencies have some latitude for nuances, but the Council would still need to approve the overall policy.
  + In the audit changes to policy were cited as not being approved by the Council.
    - The proposed policy includes language that the VCJC approved policy is the model policy therefore individual agency policies must contain certain elements or if it goes in conflict the VCJC policy takes precedence. We need to also provide clear guidance as to what is acceptable.
    - Compliance in regard to what exactly is expected will be critical because agencies that are non-compliant cannot have access to the training facility and Council resources.
      * In our next annual submission affidavit, we will have to submit actual policies that fall under the purview of the Council, and they will be reviewed each year.
* This should become minimum standard model policy that agencies work off of, if you want to go further you may do that to better serve its constituency.

*Changes to wording of policy*

* Section 1 use of body worn cameras Section D1 at the beginning of any *other* investigative…what does *other* refer to?
  + Needs to be omitted
  + *Further conversation around importance of red-lined copy*
* Number 3 section 1 missing the word “and”– Agency heads are responsible for ensuring that all body worn cameras are equipped with a buffering feature *and* have such feature activated.
  + Keep in mind for review
* Section 3 storage and retention subsection B number 6: “serious felony offenses” – should it be defined or qualified what constitutes as a serious felony offense for consistency.
  + That may need to pivot to the big 12.
* Montpelier PD has a cellphone-based body worn camera system and while there is the capability to do a 30 second buffer the constant visual filming drains the battery. We do not have the ability to institute the 30 second buffer due to limitations in technology.
  + LEAB will consider this on review.

**Professional Regulation:**  Vermont Criminal Justice Council, Deputy Director, Christopher Brickell

* There are 59 active cases: 12 are ready for review with the Professional Regulation Subcommittee (PRS) (6 Category A, 3 Category B second offense, and 3 Category B).
* 32 pending cases (17 are category A, 15 are category B).
* For a Category A there are things that the subcommittee has to wait for, such as: 10 are awaiting adjudication.
  + If there is a criminal offense, agencies cannot do an internal until the criminal investigation is complete.
  + Because PRS relies on the internal investigations for review there is a waiting period.
  + 7 investigations are still awaiting files from agencies. An agency will notify the PRS of an investigation but then the PRS has to wait for those files to arrive before reviewing the complaint.
* Investigations that are to be completed by the Council: There are 9 category C (Council processes) 6 category C from community (outside law enforcement).
  + Our contracted investigator is in the midst of doing an investigation and has completed one investigation which resulted in a no finding.
* There are 65 cases completed. (43 of them are Category B offense where the Council does not take action therefore will not be reviewed by the Council).
  + In 8 of the 65 cases, it was determined that no action should be taken. We received some complaints prior to 2018 and some came after that when an investigation occurred by an agency, they may have identified that the time frame was outside of Act 56 standards.
  + 14 cases where there were no findings of any wrongdoing.
* 12 cases we have identified that are ready for hearing. One of those cases was the stipulation agreement that was met and decided on during the September 13th date.
* Next hearing dates are November 10, December 6, and December 13. These dates were picked because Academy staff need to line up a schedule that works for attorneys representing the council and the attorneys who will be prosecuting the case.
* The subcommittee and all staff heard loudly that the last stipulation agreement needed to contain more information. This has been improved upon in the next Notice of Hearing to be received by the Council.
  + When scheduling the hearing dates, we are choosing to err on the side of caution and anticipate that a hearing will occur and that they will take at least one day.
    - Concurrently staff will work with counsel on potential stipulation agreements that may save time.

Chair Sorrell wanted to acknowledge and express public appreciation that the current Attorney General Susanne Young responded to our request to get us more legal assistance due to the demands put on Jacob. They have provided us with additional attorneys.

*Questions regarding B1 offenses*

Will cases that are scheduled for hearing that contain Category B second offenses cause us to review Category B 1 offenses?

* Notice of hearing will include the information about the B1 so that the Council and respondent have a full understanding and a defense can be mounted if needed.
* There currently is not a process for an officer to be heard and to contest the B1 finding. That process is changing moving forward and the officer will now have the opportunity to defend the first category B offense and present any additional information.
  + This does not apply to older cases.
    - Currently officers do not have an opportunity to appeal a first offense B violation to the Council. That may be part of the hearing and the B1 will be litigated at that time.

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

Accreditation and the joint report effects everything we do going forward.

* Accreditation – We have to do an RFP, but we have received a checklist on what we have to do to meet the minimum requirements.
  + Accreditation influences how we respond to the audit and ties into the joint report with the DOC.
* Feasibility report with DOC due in October around partnering in certification and decertification, a joint effort on what it would take.
  + DOC has a robust plan for their curriculum development including compliance and internal infrastructure for decertification.
    - Police and Corrections both have academies, but they are very different.
  + Our audit response moves towards national accreditation and international certification so our instructors can train anywhere in the world.
* We don’t want to head in one direction and get in the way of another initiative.
  + Written entrance exam and Accreditation requires a job task analysis. This could potentially slow us down and burden agencies with two lengthy surveys.
  + We will need at least 1 or 2 positions and a major project director if we get resourced and the Council approves.
* Joint report with DOC – we can offer feasibility for the future. Corrections is headed in a different direction. They will be ready to talk about that in early November.
  + DOC requested more time for the report, they believe they are pretty close. Then the Council can have a say on what needs to occur.
  + *Chair Sorrell: More advance time for the Council the better.*
  + Certification assessment and accreditation is the perfect yardstick to measure curriculum development which means more resources. DOC will get us what we need, and we can add our section to it.

**General Discussion:** None

Motion to adjourn made by Mike Major and seconded by Evan Meenan, all in favor.

Meeting Adjourned 11:28.