January 24, 2023

10:00 AM

Teams Meeting

**Members in Attendance Public Session:**

William Sorrell, Chair – Governor Appointed

Brian Searles – Governor Appointed

Shawn Pratt – Governor Appointed

Rachel Lawler – Governor Appointed

Maira Tungatarova – Governor Appointed

Christopher Louras – Governor Appointed

Karim Chapman – Governor Appointed

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

Glenn Boyde – Proxy for Nicholas Deml, Dept of Corrections

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

Chris Herrick - Commissioner, VT Fish & Wildlife

Erin Jacobsen – Proxy for Attorney General Susanne Young

Timothy Lueders Dumont – Proxy for ED John Campbell, States Attorney & Sheriffs

Xusana Davis –Executive Director, Office of Racial Equity

Erin Hodges – VT Trooper’s Association

Michael Major – VT Police Association

Jennifer Frank – VT Chief’s Association

Jennifer Harlow – Proxy for Sheriff Mark Anderson, VT Sheriff’s Association

Thomas Mozzer – VT State Employee 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:**

Wesley Lawrence – Theriault & Joslin

Christopher Brickell – Vermont Police Academy

Lindsay Thivierge – Vermont Police Academy

Kurt Kuehl – Attorney General’s Office

Ethan Weinstein – VTDigger

802-342-2468 - CRG

Megan Campbell – Attorney Generals Office

Jamielee Bedard – Vermont Police Academy

Mike Donoghue - VTDigger

**Call to Order:**  Vermont Criminal Justice Council Chair, William Sorrell 9:00

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

**Stipulation Agreement for 20205DO:**  Vermont Criminal Justice Council Chair, William Sorrell

Sheriff William Bohnyak, Orange County Sheriff’s Department

*Summary of the Case:*

* Sheriff Bohnyak assigned a member of his department, a deputy sheriff who has a Level II certification to the Special Investigative Unit in Orange County.
* Level II certified officers have significantly less training than the 16-week Basic Academy course for Level III officers.
* The scope of authority for Level II officers is limited in terms of the criminal matters that they may investigate, including many felonies that are listed in the stipulated agreement, including sexual assault and lewd and lascivious conduct.
* The Special Investigative Unit in Orange County, as with other counties around the state, are called upon to investigate sex crime matters. Sheriff Bohnyak assigned the deputy sheriff in question to the special unit.
* A complaint was registered that the deputy sheriff in question was investigating felony sex crimes matters, including sexual assault, sexual assault with a child, lewd and lascivious conduct, and others.
* When Sheriff Bohnyak was questioned, he initially indicated that he thought the deputy sheriff was appropriately certified to conduct the investigation, and that he thought that he had submitted a request that the status be acknowledged. In fact, there was no such request that was filed by the sheriff and an investigation by Academy staff verified that the deputy sheriff in question had been assigned and had investigated a number of matters that they were not appropriately trained, nor legally able to investigate.
* The Professional Regulation Committee discussed this matter in a number of meetings.
* The subcommittee ultimately felt that the matter was ready for final adjudication, and a hearing before this Council.
* The subcommittee authorized assistant AG Kurt Kuehl to attempt to resolve the matter satisfactorily to the Professional Regulation Subcommittee and to Sheriff Bohnyak, who was represented by legal counsel. An agreement was reached and has been presented for consideration.

*To protect due process members of the Professional Regulation Committee are not able to participate in the decision on whether to uphold or agree to or reject the stipulated agreement.*

*Questions about the proposed stipulation in open session if council members go into the executive session they will be joined by Legal Counsel Wesley Lawrence:*

* Q: It states in the warning that the respondents shall successfully complete the scope of authority training delivered for Level II officers, the sheriff's retiring at the end of January is that for the sheriff to complete training, or is that for the sheriff to complete training to understand what a certified Level II officer can do?
  + A: If the Sheriff decides to retire as Sheriff but continues on as a law enforcement officer the subcommittee wanted to make sure that he attended specifically the training that discusses the scope of practice.

*No further discussion.*

**Executive Session:** Anthony Facos makes the motion to go into executive session, seconded by Mike Major. No discussion on the motion: all were in favor, and none opposed.

**Public Session:** Vermont Criminal Justice Council Chair, William Sorrell

*In the executive session, the Council had the opportunity to ask questions or make comments.*

Timothy Lueders-Dumont makes a motion to move for acceptance of the stipulated agreement as presented to the Council, Erin Jacobsen second. No discussion on the motion: all were in favor, and none opposed.

*(Voting Members: Brian Searles, Rachel Lawler, Christopher Louras, Kevin Lane, Glenn Boyde, Anthony Facos, Erin Jacobsen, Timothy Lueders-Dumont, Xusana Davis, Erin Hodges, Michael Major, Jennifer Harlow, Sadie Donovan, Thomas Mozzer, and Cassandra Burdyshaw. Also, eligible to vote in the event of a tie – William Sorrell).*

Chair Sorrell expressed appreciation for Kurt Kuehl from the AG's office for his work in this matter.

**Legislative Updates:** Vermont Criminal Justice Council Chair, William Sorrell

*Members of the Council who are on the Professional Regulation subcommittee may now fully participate.*

Chair Sorrell was invited last week to appear before the House Government Operations Committee, joined by Chris Brickell. Distributed to the Council is the Vermont Criminal Justice Council legislative reading briefing document that was provided to both the House and Senate government operations committees in preparation for our testimony. Those are available to watch on their YouTube channels.

* Thank you to Xusana Davis and Kevin Lane for their work on that document.

Governor's budget address included some of our asks:

* Our budget requests to the administration were submitted in December, just before Christmas, the ask included several new positions and three-year funding for curriculum review and accreditation.
  + Accreditation $1.4 million over 3 years the governor recommended now we must make the case to the appropriations committees and then to both chambers to hopefully approve that spending.
  + Two new positions in the fair and impartial policing area.

**Identified Legislative Issues:** Vermont Criminal Justice Council Deputy Director, Chris Brickell

* Act 56: Category C, or another potential category when it comes to holding an officer accountable. If a subcommittee recommends decertification, there is a hearing.
  + If this hearing decertifies a Sheriff, it does not mean they lose their elected position, they are still the elected sheriff.
  + In some cases, for a Chief a municipality could decide to keep their chief employed as an administrative chief and not an actual law enforcement officer. So, by decertification, the Council is taking away their authority to perform law enforcement functions, but it doesn't mean that they can't, in the case of a chief or a sheriff, still run their agencies.
  + Bill S17 starts to address some of those issues with sheriffs.

*Questions Ensued:* Make sure we are careful when we are crafting our language that the request to the legislature is specific to decertified officers as a result of misconduct.

* Hiring someone from out of state who might not be certified. The expectation is still that they would become certified.
  + Hiring a chief, you might have a director position in the interim until they can complete their certification requirements.
* Title 20 2362 (A) is relative to a potential hiring agency hiring somebody from another agency.
  + If an officer is seeking to go to another agency, they have to sign off on a waiver that allows their training records and their history at that department to follow them and be made available to the potential hiring agency.
  + If that officer does not sign that waiver, they cannot be hired.
  + The law requires that the agency head who's looking to hire goes to the current employer of that officer or the former employer of that officer to seek that waiver and get that background information on their potential hire.
    - It does not require an agency head to go any further.

*Questions Ensued:* Does it have to be the agency head, or could it be somebody who's doing a background investigation, contacting that other agency?

* The statutory language is the agency head.
* Has there been any discussion about accountability for not fulfilling that requirement?
  + Potentially a Category C violation, a question on a process for a staff attorney when they are on board.
* Category B violation 1st offense.
  + The statutory language says that the Council can take no action. A letter goes out from the Executive Director notifying the officer and their agency head that they had been found guilty of professional misconduct by the subcommittee.
  + The letter now includes a 10-day period for that officer’s due process, and it allows them to come back to the subcommittee, alone or with counsel, and to present any other evidence necessary to the subcommittee for reconsideration.
    - There's been some conversation on part of the Council about wanting to create that due process so that when an officer reaches a Category B second offense, the Council isn't hearing two potential category B violations.
    - Current process: If the officer follows the B1 process and if that officer were to contest a Category B 2nd offense or more, they will go to a hearing.
      * They would not be able to litigate the first category B1 because they had been given due process.

*Questions Ensued:* Why go through the time and expense of litigating the Category B1 issue when they can be afforded a hearing before the Council?

* If the Council did not afford that process and that officer was decertified, and they disagreed with it, they still haven't appealed to the Supreme Court for that decision.
* The Council did not need to provide that due process that the subcommittee was already doing because it's a first offense and the Council can’t take any action.
* Having a Category B1 on their record puts that officer in very real jeopardy should they have a second B violation.
* This could be a statutory change or a Rules change depending on the recommendation of the Council.
  + Rules Committee will make a recommendation, and if the whole Council doesn't think that's a good recommendation, then we'll act accordingly.
* The last issue: when a record is expunged, the record no longer exists.
  + If that matter has not come before the Professional Regulation Subcommittee after the resulting conviction of an officer of a potential category A conduct, then the subcommittee cannot look at any of that evidence, any of that investigation.
    - This process may need a legislative fix or some sort of judicial process, whereupon a conviction notification is made to the Council.

*Questions Ensued:* A category A violation is a finding of probable cause.

For example, an officer is charged with aggravated assault on someone in custody and goes to a jury trial, and there is a finding of not guilty. There's still been probable cause found, can the Professional Regulation Subcommittee not consider the alleged conduct because there was no conviction?

* Yes. The subcommittee is required to look at the Internal Affairs investigation by the agency that has hired them.
  + The agency that's employing the officer puts its internal affairs investigation on hold while the criminal case is being investigated.
  + That is often on hold until adjudication.
    - The officer is not going to provide any information to the subcommittee because they are under criminal investigation until that's adjudicated.
    - There was a conviction, and now the conviction has gone away, now the Professional Regulation Subcommittee cannot take any action.
      * The Professional Regulation Subcommittee could direct the Council investigator to go back and reinvestigate the conduct that took place, but all of the things such as the statements, the affidavit, and the interviews, would no longer be available.
      * when you get a deferred sentence, and you successfully complete it, all of the court records, all the police records are sealed, and then it's like they no longer exist.
    - Should we be asking the legislature to amend the statute to make an exception in the case of a law enforcement officer who is convicted of a crime?
      * Last year the legislature took up a presumptive expungement bill. Discussions need to be had between a representative of the Council and the legislature.
      * We should be mindful that we currently have laws that make carve-outs possible for youthful offenders. The age is well into the 20s, and so some of our law enforcement officers would fall within that category.
      * The point of expungement and sealing is to be able to help people move on with their lives and, for example, move into the workforce.
        + The bill last year was not about presumptive expungement, but rather streamlining our record clearance laws to have much more of a focus on sealing. Just like civilians, we also want officers to be able to make mistakes and then make amends and be able to move on.
      * The majority of states attorneys are in favor of a ceiling regimen for some of the concerns that have been pointed out.
      * Brady Giglio- the same kind of issues occur where the constitutional duty of the prosecution to submit that material to the defendant for their due process rights, is running up against the expungement law in Vermont.
        + States attorney’s office will add annual training to include issues discussed around law enforcement officers as subjects of criminal prosecution and their case resolution.
* ARIDE (Advanced Roadside Impaired Driving Enforcement)
  + The majority of law enforcement officers are trained through the Academy (LIII) where they receive DUI training and DUI certification.
  + They practice on the road for two or three years. Get experience in standardized field sobriety testing and then return for ARIDE training.
  + ARIDE is the step between DUI and DRE certification.
  + In 2015, the Council voted to have ARIDE training as part of advanced training for all level three officers within three years of their certification.
    - Officers would be DUI trained, get experience, become ARIDE trained, and move towards DRE training.
  + In 2020, cannabis legislation that was not signed, moved forward and it stated ALL law enforcement officers will be ARIDE certified (this includes Level II officers).
    - In order to be an ARIDE instructor, you have to be a DRE instructor. Before you can teach ARIDE, you have to go through the DRE process, become a DRE instructor, and then come back and instruct ARIDE.
    - Currently, there are only five certified ARIDE instructors.
  + The Academy has been working to get all law enforcement officers trained in ARIDE to meet the legislative mandate.
    - There aren't enough ARIDE instructors to handle the number of officers.
    - DUI is not a mandatory course for law enforcement certification. It used to be done in post-basic, but now it’s incorporated into the basic training.
    - LII officers or out-of-state transfers coming in as agency heads, are taking DUI and ARIDE but they will not be doing road work or patrol work.
    - Council consideration to seek a legislative fix to go back to the Council vote of 2015, where there was a requirement for level three officers once they're fully certified within three years to get ARIDE training.
* NPI update
  + A lot of statistical analysis can't be done because of missing data submitted by agencies.
  + NPI is examining how to correct the submission process on the collection of data and what should be collected outside of the legislative mandate.
  + NPI will be suggesting that the Council look at a possible legislative fix in the mandate to include the stop date, time, and location in the collection of traffic data.
  + NPI report will be coming out by early March.

*In response to legislative issues presentation:*

* The Council will set aside the issue of the deferred sentence agreements for law enforcement.
  + A request has been made for the AGO and the SAs, and we should try to be mindful of those.
  + There’s a limited number of cases. When they are high-profile cases, it may be no big deal. But for ones that are more under the radar, we can do a better job.
  + No objection to the suggestion of seeking legislative consideration of changes as it relates to ARIDE and the mandatory reporting of the stop data and the other matters mentioned.

In the governor's recommendation, two of the three fair and impartial policing positions we requested are approved by the Governor and recommended to the legislature.

* A full-time instructor and a data analyst.
* This will eliminate the need for outside contractors to analyze and present the race data.
* These positions will help support the auditor’s recommendations.

There was also a request that we take over and get funding from the state to budget for the half-time domestic violence instructor.

* Half of the full-time position at the Academy is funded through a set of fines and fees that go into the Domestic Violence Special fund, and that fund has been decimated during COVID and so the Center for Crime Victim Services made a request that that cost is transferred into the General Fund.

1.4 million for three-year funding of the accreditation process including curriculum assessment.

* Community members and nonprofit members of the Council who are willing to offer testimony to the legislature would be very compelling. Let Chris or Lindsay know if you are willing to testify on behalf of the Council.

**Community Outreach PRS –** *Vermont Criminal Justice Council member and PRS member, Karim Chapman, and PRS chair Trevor Whipple*

* Karim started a discussion during a Professional Regulation Subcommittee meeting which the subcommittee found very valuable with two key focal points:
  + The Criminal Justice Council's website be a tool that the general public could use to submit a complaint or concern. The complaint section was therefore moved to the main page so it is more easily accessible.
    - There is also the ability to remain anonymous for those that are concerned about retaliation, immigration status, or any other number of concerns.
* Karim expressed some concerns that the general public around our state may not be aware of the professional regulation process, how it works, and how the public can access the Council as a resource.
  + Develop a plan for the Council to conduct regionalized presentations that are publicly announced.
    - Community members can come in and ask questions about Act 56, the process, and what is being done.
    - Other subcommittees, members, and member organizations of the Council would take part and allow the general public an opportunity to become aware of what the Council does, what subcommittees and work groups do as a part of the Council, how the member organizations fit in as stakeholders and how the Council impacts law enforcement training and therefore the general public.

*Discussion ensued:*

* S 124, created this Council and calls for us to consult with stakeholders to issue guidance as to what surplus military equipment Vermont law enforcement may solicit or accept from the US military and what equipment they should not be seeking or not accept from the military.
* If we have different workshops in different parts of the state we could be accomplishing several different things at the same time - professional regulation, surplus military equipment guidance, facial recognition policy guidance, race data collection, and accreditation.
* It's not just the public that's confused, council members and police officers aren't fully aware of the role of the new Council. Recently, a press report on a Burlington initiative to have more citizen control of the police disciplinary process. The report used an example that other professions are subject to professional regulation and why shouldn't the police be? They were apparently unaware of the role that we play.
* The more partners we could bring into it, the better we would be and a broad panel to be able to answer questions from the community.

**General Discussion:** Heather continues to improve. She's getting engaged particularly with Chris, Lindsay, and myself on Council matters. We remain hopeful that her recovery from long COVID issues continues in a positive direction and that we have her back as our Executive Director and fully active before too long in the future.

A press release will go out today about the action we took on the Bohnyak matter.

**Motion to Adjourn:** Brian Searles makes a motion to adjourn, Kevin Lane seconded, no discussion on the motion. None opposed.

The next scheduled meeting is on the 1st of February.