February 21, 2023

9:00 AM

Teams Meeting

**Members in Attendance Public Session:**

William Sorrell, Chair – Governor Appointed

Brian Searles – Governor Appointed

Rachel Lawler – Governor Appointed

Maira Tungatarova – Governor Appointed

Christopher Louras – Governor Appointed

Glenn Boyde – Proxy for Commissioner Nicholas Deml, Department of Corrections

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

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

Timothy Lueders-Dumont - Proxy for John Campbell, E.D., States Attorney & Sheriff’s

Xusana Davis – Executive Director, Office of Racial Equity

Mark Anderson – VT Sheriff’s Association

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

Cassandra Burdyshaw – VT Human Rights Commission

Trevor Whipple – VT League of Cities and Towns

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

Jennifer Frank – VT Chief’s Association

Karim Chapman – Governor Appointed

Shawn Pratt – Governor Appointed

**Other Attendees:**

Heather Simons – Vermont Police Academy

Christopher Brickell – Vermont Police Academy

Lindsay Thivierge – Vermont Police Academy

James Park – Vermont Police Academy

Ken Hawkins – Vermont Police Academy

Armina Medic – Attorney General’s Office

Megan Campbell – Assistant Attorney General, Prosecutor

Wesley Lawrence – Theriault & Joslin, legal counsel

802-342-2468 – Christopher Louras

Mandy Wooster – Public Safety

Jennifer Firpo – Vermont Police Academy

Guest

**Call to Order:**  Vermont Criminal Justice Council Chair, William Sorrell 9:11

**Additions or deletions to Agenda:**  If we go into an executive session a link will be sent to everyone. When voting we will do a roll call vote. In the general discussion, we will be speaking about some matters before the legislature. Motion to approve agenda by Chris Louras, second by Mark Anderson, all in favor.

**Stipulation Agreement for 2020YFJ:**  Vermont Criminal Justice Council Chair, William Sorrell and Assistant AG Megan Campbell

* Christopher Matott, a former officer with the Winooski Police Department.

*Summary of the Case:*

* First certified by the Council on 11/21/2014 and holds a Level III certification.
* 2/20/2020 Mr. Matott was arraigned on a charge of misdemeanor domestic assault with the underlying charge referred to an offense committed on July 12, 2019, alleged that Mr. Matott had willfully caused a family or household member to fear imminent or serious bodily injury in violation of 13 VSA 1042.
* At his arraignment Mr. Matott was released on conditions of release. Condition 14 prohibited contact with his partner involved in the domestic assault in person, via telephone, in writing by email, or through a third person regardless if he was in jail or released. He signed a copy on February 20, 2020.
* March 23rd by stipulation by the parties involved conditions were amended that allowed Mr. Matott and his partner involved in the underlying domestic charge to contact via text for the purposes of discussing parent-child contact and it allowed them to have incidental contact during exchanges. It was made clear that Mr. Matott was not allowed to be alone during any of the parent-child contact exchanges.
* On June 4, 2020, Mr. Matott was arraigned on a new criminal conviction of a violation of conditions of release. It was alleged that he had had contact between April 4- April 30 of 2020 in violation of the amended conditions of release.
* There was a second violation of the conditions of release on April 19, 2021, at that time he had again violated the conditions of release (March 14, 2021).
* On September 29, 2022, Mr. Matott pled to these charges (pled means to enter a plea of either no contest or guilty). At that hearing, the parties agreed on a factual basis to support the charges. The factual basis is outlined in paragraph 15 of the stipulated agreement that was sent to council members.
* Mr. Matott also agreed to the factual basis of the violations of conditions of release with regard to his contact.
* These convictions meet the definition of Category A conduct under Council Laws, they are both misdemeanors that are actionable under Category A, even though they were committed off duty.
* The PRS was able to negotiate the stipulation with Mr. Matott whereby he agreed that he committed these offenses, and he has been convicted. The parties agreed that given the severity of the underlying conduct, the appropriate sanction would be permanent revocation that would be effective today if you agreed with the stipulation with no opportunity to recertify.
* Mr. Matott separated from Winooski PD and is not currently employed in Vermont.

**Stipulation Agreement for 2020ZUZ:**  Vermont Criminal Justice Council Chair, William Sorrell, and Deputy Director Christopher Brickell

* Christopher Mason, a former officer with the Manchester Police Department.

*Summary of the Case:*

* Certified in 2005 as a Level III officer, during the course of his employment with Manchester PD they received a report that there had been a relief from abuse order issued against Officer Mason.
* Officer Mason was put on Administrative Leave in October 2020.
* A separate criminal investigation was opened.
* In November 2020 Officer Mason resigned and he is no longer employed as a law enforcement officer and has not been since that time.
* Criminal charges were brought against Officer Mason.
* He pled to three separate charges that are listed in the Stipulation of Facts order that was sent to the Council with the Stipulation Agreement.
* The stipulated agreement was part of his plea agreement. January 9th the court accepted his plea agreement. As part of that plea agreement, the prosecutor of Windham County asked for permanent decertification of the officer within 6 months of accepting the guilty plea. That was part of his probation conditions.
* There had been a stipulation agreement that had been drafted by AAG Humbert who no longer provides services to the Council, so he was not able to agree to anything that the Professional Regulation Subcommittee wanted. The agreement before you was subsequently drafted by the defense attorney and Deputy Director Brickell on behalf of the Subcommittee, and they reviewed and approved the stipulation before it was sent to the Council.
* The stipulation is a guilty plea of one count of reckless endangerment, one count of simple assault, and one count of cruelty to a child.
* This stipulation would also amount to a permanent decertification with no opportunity to recertify.
* It was not negotiated by an attorney on our behalf but it meets the legal content for the defense attorney for Mr. Mason and the AG.
* The victim was contacted, and they wholeheartedly accepted the terms of this stipulation.

*Questions ensued:* Jacob Humbert is still with the AAG.

Is there a concern from our counsel as to the form of this stipulation agreement in the event there is a challenge by an attorney later on? This agreement was drafted from the boilerplate that Jacob had created, and it was sent to Wesley to make sure it met legal standards and it was approved. It was also approved by Mason’s counsel.

* Why was there no citation to the specific provision of Category A misconduct. It is clear it was off-duty conduct. The original charge was a domestic assault that falls under Category A, but the actual plea agreement is in the findings of fact and the negotiated settlement of simple assault and not domestic assault.
  + Moving forward a citation should be clear if a matter is on duty or off duty.

*The council determined it was not necessary to enter into an executive session.*

Motion for the VCJC to approve the stipulation and consent order regarding Christopher Matott docket number 2020YFJ made by Brian Searles, second by Mark Anderson. No discussion on the motion, all are in favor to hold a roll call vote.

*Brian Searles, Maira Tungatarova, Christopher Louras, Kevin Lane, Glenn Boyde, Anthony Facos, Justin Stedman, Erin Jacobsen, Timothy Lueders-Dumont, Xusana Davis, Mark Anderson, Sadie Donovan, Cassandra Burdyshaw. Aye Vote*

*Rachel Lawler (conflict of interest and will abstain)*

***Vote: 13 yes, 1 abstention***

Had it been a tie vote Chair Sorrell would have voted aye. The Chair’s personal sentiment was the conduct was reprehensible and he is happy that the council has revoked the certification of former officer Matott.

Motion for the VCJC to approve the stipulation and consent order regarding Christopher Mason docket number 2020ZUZ made by Mark Anderson, second by Christopher Louras. No discussion on the motion, all are in favor to hold a roll call vote.

*Brian Searles, Rachel Lawler, Maira Tungatarova, Christopher Louras, Kevin Lane, Glenn Boyde, Anthony Facos, Justin Stedman, Erin Jacobsen, Timothy Lueders-Dumont, Xusana Davis, Mark Anderson, Sadie Donovan, Cassandra Burdyshaw.*

***Vote: 14 yes***

Thanks to Megan Campbell for bringing the first case to the Council and thanks to Chris Brickell for bringing the second case to us. The Chair would have voted a strong aye vote if it had made it to a tie vote.

**General Discussion:** Vermont Criminal Justice Council Chair, William Sorrell

* Sarah Robinson will be testifying this afternoon at House Government Operations in regard to the DV Fatality review commission report.
* Every year 17 members view domestic violence fatalities from the prior year. They have a thorough review which includes officers on scene, victims, and families.
* Every year their recommendations are published. This year they made several recommendations.
  + What do we do with law enforcement officers who engage in DV but are not arrested or adjudicated but are subject to an RFA? RFA’s are issued in civil court, and it is not criminal. Recommendation requests that the legislature expands Category A to expand to include the issuance of an RFA.
  + AGs office is in strong support of the findings and recommendations in the Domestic Violence Fatality Review Commission report.
  + Could fit within a Category B violation – there are limited circumstances where a Category B violation (chokehold or excessive force) could trigger Council action on an officer’s certification status for the first B violation.
* Currently the bill as drafted says that issuance of an RFA order would be Category A conduct, it needs to be amended to make clear - it is being subject to a final relief from abuse order.
  + This should be Category A conduct only because Category B seems to be around policies, employment, and expected conduct. Category A is about harm to others.
  + There may be a conflict between this bill and H41 which provides for the expansion of restorative justice programming for many domestic violence cases to include pre-charge.
    - No conflict H41 will be very victim-centered.
    - Do confidentiality provisions within H41 preclude the reporting of an allegation of Domestic Violence pursuant to 230907?
      * Under H41 a case is pre-charged such as a community referral or from a law enforcement officer. That would be referred to the restorative justice center. There will be confidentiality rules ad provisions that kick in and it will be victim driven.
        + If the victim doesn’t want it to go through the criminal justice system, and wants it resolved in a different way that is what the community justice center and the domestic violence agency will resolve. Confidentiality rules will apply.
        + Things will shift depending on which part of the criminal justice system is being talked about. An abuser will not be able to use the community justice center to avoid consequences in the criminal justice system.
      * Is there a provision under 23907 requiring the law enforcement officer subject to a final relief from abuse order, to notify their employer and the Council? Or is there an obligation for the Court to apprise the Council?
        + The legislature might consider whether it comes from the officer themselves. There could be a provision for the employer to be mandated to report to the Council.

The purpose is not to end careers it is to fix a problem.

* + - * + Would be in favor of notification to the council if an officer is subject to the issuance of an RFA. There is a wish that the current Act 56 had language that allowed an emergency suspension of certification upon further review.
    - Should the issuance of an RFA be a Category A? Issuance of a relief from abuse order is done based on the legal standard of preponderance of the evidence. Everything else in Category A is criminal – proof beyond a reasonable doubt. Hopefully, an agency head would put the officer on administrative leave.
      * Is there less proof required? This could potentially end someone’s career. What is the due process to the officer?
        + Should this be under Category B and allow the Council the ability to take action on a first offense such as with excessive use of force?
        + Preponderance of evidence is not a higher standard than beyond a reasonable doubt.

Probable cause in the administrative realm is a very low standard. Any fraction about 50% beyond a reasonable doubt is close to 100%. A preponderance of the evidence is effectively what a reasonable person might find adequate to support that something happened.

In criminal law it is harder to establish a higher burden of proof. We don’t need beyond a reasonable doubt to bring someone within the ambit of our jurisdiction to consider allegations, but probable cause is incredibly low and easy.

Preponderance of evidence standard is the usual standard of proof in state administrative adjudications.

* + - * + A final Relief From Abuse order can be incredibly difficult to get. 50.1% doesn’t sound like a high bar but it often is. Category B conduct contemplates conduct on duty under the authority of the state which does not fall into this category. Category A does include off-duty conduct. When you get to a charge for domestic assault or harming a child or sexual assault, more damage has been done than at the stage where relief from abuse order is granted.

The earlier in the process that the Council can consider this conduct may help the officer get the support they may need to address what is happening.

* + - * + The best way to stop the abuse is before it begins. This body should redouble efforts to support the work done in S42 (37) which created the emergency provider wellness commission to learn how to deal with job related trauma and issues before harm is done.
        + In Vermont 50% of temporary protection orders are dropped before a permanent order can be issued by a court. Victims of domestic violence are asked to represent themselves in court, its why we can see a drop in those orders.

Most acts of domestic violence are not done on duty. Certain aspects of the job, like the presence of a firearm, enhances the likelihood of serious harm.

There is a common myth that people lie about being a victim of domestic violence, but the actual research shows this is not true.

An RFA is one of the best ways that the State has to recognize that harm has happened and that there is a risk.

An emergency suspension by the Council is a direction we should head in; it is frustrating that the Council has to wait for the outcome of a criminal hearing to weigh in, when the community is asking what we are going to do.

* + - * + Broad frustration with regard to the endorsement of model policies or statewide policies. We are constantly trying to solve problems with a hammer or stick. We would like the state to provide more resources to enable training. There are resources but we can’t afford them. There are systems and training out there to help identify and do training, how do we support agencies in doing that? The centralized model reduces our policies down to the lowest common denominator and that is frustrating as an agency head.

Final order vs. temporary order: if a final order is issued that should be a violation. Once a final order is issued, they can’t be in law enforcement or carry a firearm. Model policy from LEAB is fundamentally in effect to codify a requirement of an agency or an officer to report that they are subject to an order.

* + - * + The last part of 23907 is about a report and data for the Council to aggregate and report back. Do we have the time, resources, and personnel to do that, and if we don’t, can we ask for it?

Should include this and mandated reporting in feedback to the legislature.

* + - * The council should have an exigency option and emergency powers.
        + Under 2405 the Council can do a summary suspension and it is also outlined in the professional regulation subcommittee procedures. This can be done during times when public safety is at risk.
        + Resources are something we sorely lack. Tracking reports within professional regulation, FIP policy updates, and race data collection all fall under a data analyst.
        + Category B – except for limited circumstances that are specified in statute the possibility if the legislature does not want the issuance of an RFA to be within a Category A then a Category B with that specificity would trigger the Council’s authority.

What are the thoughts on asking the legislature to strike the Category B 1 violation and leave it to the discretion of the Council to look at Category B violations to see how Category B should be handled?

* + Sentiment of the Council is that a Relief From Abuse order against a law enforcement officer should trigger the authority of the Council to take action on certification status regardless of if it’s through Category A or B.
* Positive comments were given on the direction of the conversation and what has been done with the resources that have been historically applied.
  + Testimony will underscore the importance of the governor’s recommend.
* Support was given to find a pathway for the Council to take action on a certification in emergency situations so that we don’t have to find new ways to make it right. The system sometimes protects when it shouldn’t and it’s up to us to make it right.
  + What happens when the person being abused has a mental health issue, have we discussed language in the bill to protect them?
  + It is important for officers to be put on warning and then there be some kind of consequence that helps them stop doing what they are doing that is harmful. B1 and B2 are good ways to address things that may not be so serious now but may get serious.
    - This conversation and the conversation in the legislature could have a beneficial impact on the behaviors as there is more awareness.
    - These conversations routinely happen in the Professional Regulation Subcommittee. The Council only has four sanctions but a wide variety of things they can recommend. As long as it’s agreeable to the Council or even the abuser those are all opportunities that exist to make this process better.
    - When we have a case in front of us of an officer committing a crime and the evidence is very clear. Is it up to the department to decide if they should work? There should be a strong push to look at patterns and allow the subcommittee to make a strong decision rather than be put in a loop.

Thanks were expressed for the conversation and for the ways that the Council is showing up for survivors of domestic violence.

*No Council members have expressed that they want to keep Category B1 the first bite of the apple and the Council may not be able to do anything regarding an officer’s certification status the first time through except in limited circumstances.*

Next meeting date is February 1st, next Wednesday.

Motion to adjourn Brian Searles, second Chris Louras – all in favor.

Meeting Adjourned.