October 4, 2023

10:00 AM

Teams Meeting

**Members in Attendance Public Session:**

William Sorrell, Chair – Governor Appointed

Brian Searles – Governor Appointed

Shawn Pratt - Governor Appointed

Karim Chapman – Governor Appointed

Christopher Louras – Governor Appointed

James Whitcomb –Proxy for Commissioner Jennifer Morrison, Dept. of Public Safety

Glenn Boyde – Proxy for Commissioner Nick Deml, Dept. of Corrections

Wade Cochran – Proxy for Commissioner Wanda Minoli, Dept. of Motor Vehicles

Christopher Herrick – Commissioner Dept. of Fish and Wildlife

Justin Stedman – Proxy for Commissioner, VT Fish & Wildlife

Erin Jacobsen – Proxy for Attorney General Charity Clark

Timothy Lueders-Dumont – Proxy for Executive Director John Campbell, Dept. of SAS

Xusana Davis –Executive Director, Office of Racial Equity

Mike O’Neil – Proxy for Erin Hodges Vermont Troopers Association

Michael Major – VT Police Association

Jennifer Frank – VT Chief’s Association

Mark Anderson – VT Sheriff’s Association

Trevor Whipple – VT League of Cities and Towns

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

Cassandra Burdyshaw – VT Human Rights Commission

**Other Attendees:**

Heather Simons – Vermont Criminal Justice Council

Christopher Brickell – Vermont Criminal Justice Council

Lindsay Thivierge – Vermont Criminal Justice Council

Ken Hawkins – Vermont Criminal Justice Council

Kim McManus – Vermont Criminal Justice Council

Jennifer Firpo – Vermont Criminal Justice Council

Kenneth Hawkins – Vermont Criminal Justice Council

Brock Marvin – Vermont Criminal Justice Council

Jason Covey – Middlebury Police Department

Darla Mariduena – Human Rights Commission

William Humphries – Fair Haven Police Department

Robert Montgomery – Killington Police Department

Shawn Burke – South Burlington Police Department

Steve Laroche – Milton Police Department

Mandy Wooster – UVM Police Services

Maurice Lamothe – St. Albans Police Department

Matthew Romei- Norwich Police Department

Rich Slusser – Vermont State Police

Rob McKenna – Vermont State Police

Michael Scruggs – Thetford Police Department

Ben Couture – St. Albans Police Department

Amanda Garces – Human Rights Commission

Kevin Geno – Rutland County Sheriff’s Department

802-297-2581

Derrick Tienken – Winhall Police Department

**Call to Order:**  *Vermont Criminal Justice Council Chair, William Sorrell* 10:00.

**Additions or deletions to Agenda:** *Vermont Criminal Justice Council Chair, William Sorrell*

Motion made by Bill Sorrell to add the Canine Committee Report after the Level IIE discussion, Chief Frank seconds, no discussion, all in favor. Erin Jacobsen moves to amend the agenda to include a vote for the Level IIE discussion, Brian Searles seconds, no discussion, all in favor.

**Meeting minutes from September 19, 2023** - *Vermont Criminal Justice Council Chair, William Sorrell*

Brian Searles makes a motion to approve the minutes as circulated, second by Cassie Burdyshaw, all in favor.

**Act 56 Work Group -** *Vermont Criminal Justice Council, Christopher Louras*

Act 56 – On or before December 15, 2023 the Criminal Justice Council in consultation with the Department of Human Resources, the Office of Professional Regulation, and a nationally recognized organization that is a subject matter expert in the field of law enforcement professional regulation, shall report to the House Committee on Government Operations and Military Affairs and the Senate Committee on Government Operations on the following: whether the current statutes pertaining to unprofessional conduct with the statute being VSA 202401 should be amended to apply to all off duty conduct of law enforcement officers. The VSA, 20 VSA 2401 is referenced as the unprofessional conduct for Category A Category B and Category C violations of policy that could result in decertification for law enforcement officers.

* Do we as a council want to hold law enforcement officers accountable for any off-duty conduct?
  + *Committee is trending towards no, but it should apply to off duty conduct but only for those issues that impact the ability of law enforcement officers to perform their duties in public.*
    - *Impacts on public trust.*
* Does the scope of Category B need to be amended so that we can take action on the first offense?
  + *Committee has not come to the conclusion that we want to include the first offense. Considering amending the list of items that are considered to be Category B to include a Council code of conduct related to VSP Code of Conduct.*
* Any other recommendations deemed appropriate by the Vermont Criminal Justice Council.
  + In order to maintain the highest professional standards for those in law enforcement the committee is focusing on behaviors that the community and the Council feel need to be addressed when officers don’t need to be officers anymore.

The committee anticipates bringing something to the full Council in November for review before the December deadline. The recommendations will be sent as soon as the work group approves, well in advance of the next meeting.

*Discussion Ensued:*

*Bill Sorrell -* Will the review committee give us examples of conduct that will trigger the off-duty conduct provision.

*Chris Louras* - One example is truthfulness, if someone lies in the course of their duties that will be possible grounds for decertification but if they are lying to a family member, that will not result in decertification. However, if someone lies about discrimination that is done outside of their duties but could injure a protected class that is the type of behavior that could be reviewed by the Professional Regulation Subcommittee.

*Erin Jacobsen -* Chris has done a fantastic job as chair. What Chris is talking about is in line with employment law and professional regulation issues. There needs to be a nexus between off duty conduct and employment in order to justify any disciplinary action by the employer against an employee for conduct that is present in other professions such as medical or legal.

*Chris Louras –* Kevin Rushing from the Office of Professional Regulation has been regularly attending our meetings and providing input. The Department of Human Resources recognized that we are dealing with issues regarding statute, but they want to see what the end result is before they weigh in, but the Commissioner is apprised.

*Bill Sorrell –* Under the statute we have to engage with a national organization? Have we been doing that?

*Chris Louras –* Yes, early on we were dealing with IADLEST (International Association of Directors of Law Enforcement Standards and Training).

*Bill Sorrell –* In off duty conduct you mentioned that the certain conduct might give the employer’s authority to take action, is that the trigger for the Council to have authority too, and is that a prerequisite? For example, the media story of off duty Vermont State Police that were engaged in online games that showed racial/gender/sexual orientation disparaging remarks and one or more troopers separated from state employment. Is that the kind of conduct the study committee thinks would trigger the authority of the Council?

*Chris Louras –* Yes. That incident contributed to the drafting of legislation.

*Mike O’Neil -* The Code of Conduct we looked at includes discrimination and if conduct was shown to be discriminatory it would open them up to action by the Council with some type of sanction on their certification.

*Chris Louras –* Another discussion point, the potential legalities around officers who choose to voluntarily give up their certification. Is that something the Council wants to look at and advise the legislature on as that may be a way to reduce the impact on the Council and the Professional Regulation Subcommittee. Will it have the same impact if the certification is removed from them.

**Level IIE -** *Executive Director VCJC, Heather Simons and Vermont Criminal Justice Council co-vice-chair, Chief Jennifer Frank*

*Heather Simons -* The Council has heard about the Level IIE, Chief Frank will review what is being proposed again. I support this, whatever strategies we can bring to the table for short term relief for staffing with law enforcement agencies, we should be considering, and a lot of thought and planning went into this, it was vetted by all the Chiefs and Sheriffs. Whether it is a proposal from TAC for Level II proposal or modular training we are bumping up against challenges at the Academy. We want to say yes to everything, and we will be revisiting discussions around classroom space and staffing. I appreciate the work of the Chiefs and Sheriffs in coming up with a solution. This may be different in a year or two or three but for now it seems like a healthy way to solve some problems.

*Chief Frank –* The Level IIE program was created out of H765 and S124 that allowed Level II officers to transition into a higher certification level. It was called IIE and if officers worked a minimum of 3000 hours and have performed duties consistent with investigation enforcement, criminal, juvenile, and motor vehicles laws, they can apply to this program. The Level IIE program was sunset by the Council in July of 2015 now there is a small group of officers in limbo. At the time we promised there would be a transition from II to III, but it never came to fruition.

* Chiefs and Sheriffs came together and examined both sets of curricula, and all the statutes and there were a series of chapters that couldn’t be addressed (53, 60, 71) these are not included in the IIE standard and would be required in order to achieve what is allowable for a IIE to investigate from certification level.
* By getting this additional training not only will we be filling vacancies that we have within our law enforcement community, but we will also take those folks that are already almost there and get them the training they need in a modular style.
* We would implement the pilot program within 12 months, which gives us three academies to try. To apply the IIE officer would have to have the support of their Chief or they would not qualify for the program. There are about 15 or 16 officers around the state that would qualify for this program. If they are accepted into the program they sit in the back of the classroom, no more than 2-3 in a class. At the end of all of their required training they would take the Academy final exam. If they can’t pass the exam, then they can’t move on to the Level III certification.
* This is the first program we have ever presented that has unanimous approval by all chiefs and sheriffs.

*Discussion ensued:*

*Bill Sorrell –* Is this pilot project consistent with our curriculum revision project?

*Heather Simons –* Yes, the entire curriculum and how we deliver it will be reviewed, including the content and functionality.

*Bill Sorrell –* Is this under the authority of the Executive Director or do we have to take a vote?

*Kim McManus –* Per statute (2020) the Council should vote –“Creating a system for LII should be approved by the Council” so we should err on the side of caution to include Level IIE.

*Bill Sorrell – Erin Jacobsen moves to amend the agenda to make this a Council vote, Brian Searles second, no discussion, all in favor.*

*Mark Anderson makes a motion for the Council to approve the Level IIE pilot program, second by Brian Searles, no discussion.*

Roll call vote Brian Searles (yes), Karim Chapman (yes), Chris Louras (yes), Shawn Pratt (yes), Jim Whitcomb (yes), Glenn Boyde (yes), Wade Cochran (yes), Chris Herrick (yes), Erin Jacobsen (yes), Tim Lueders Dumont (yes), Mike O’Neil (yes), Mike Major (no), Jenn Frank (yes), Mark Anderson (yes), Trevor Whipple (yes), Sadie Donovan (yes), Cassie Burdyshaw (yes). Xusana Davis abstains as she did not hear the content or explanation of the motion.***(16 aye, 1 nay, 1 abstain).***

**Canine Committee –** *Vermont State Police, Canine member, Rich Slusser*

*Rich Slusser –* The standards are originally from the 1990’s and they have been ‘cut and pasted’ over the years. We discovered contradictions and loopholes, so we decided to start over. The foundation is NESPAC standards (New England State Police Administrative Conference) well known throughout the country and then we made revisions to make them Vermont specific. The new requirements for trainers and handlers are stronger, it will make it better for the dogs to be police dogs and there is more oversight.

*Bill Sorrell –* Is there consensus from the committee on the standards.

*Rich Slusser –* Yes in February we voted to adopt them.

*Bill Sorrell -* ­Are there any opposing views?

*Rich Slusser* – Everything that has been done has been through our subcommittee because we know about the dogs. We have not put out to agencies. The consensus was with us as the subject matter experts.

*Bill Sorrell –* Kim, have you had the opportunity to review those standards.

*Kim McManus –* I have not, I received them today so I will be taking a look at them.

*Bill Sorrell* – I would just ask law enforcement or anyone if they have any feedback. Let’s tentatively take action on this at the November or December meeting.

*Jim Whitcomb –* I think this is an excellent opportunity for the Academy through the Executive Director to present this information to department leads/heads. There is a lot of work that has been done but this is an example of work product which should go out for a feedback period so they can review and comment.

*Heather Simons* – Great timing we also have an RFP to go out for a Canine assessment of the program. Rich makes a good point that the K9 committee members are the subject matter experts, and we rely on them for the content and feedback. However, the Executive Director and the Council need to provide the performance metrics, the measurements, and create infrastructures for accountability, safety, and defendable training. We need to train and right now they are waiting on a patrol school, and they are getting anxious about when we can produce training in a timely way, and I have clogged that up with questions on capacity.

*Bill Sorrell –* Rich when you speak to the subcommittee, please express thanks for all of their hard work.

**Executive Director Updates –** *Executive Director VCJC, Heather Simons*

* The big news for today was the Level IIE conversation as it signifies a new versatility that we have been wanting to provide to agencies.
* We postponed the team review for IADLEST law enforcement questions and that announcement will go out to agency heads and we can reconfigure maybe a larger group because we have some time.
* Lindsay and I will complete an annual report. We want to create something that we can separate into sections depending on the audience.
* Chief Frank, Sheriff Anderson, and Lt. Col. Whitcomb have been very supportive and are providing feedback with what information agency heads would like to get from me and I think we have agreed on a format.
* We have postponed the retreat as the facilitators are not available in November, we plan on hosting the Council retreat for December 5th.
* We should expect to have one or two agenda items on hearing dates where we don’t have a lot to do.
* There are a few of us working on a project director position that would report to me or be a position at the academy. It would be an IDT (inter-departmental Transfer) from Public Safety as they are the owners of the grant money of $1.5 million regarding accessible training and perhaps a commuter academy.

*Bill Sorrell –* Where are we with the two fair and impartial policing positions?

*Heather Simons* – We will have those very soon; the canine position will be posted today.

*Chris Louras –* I am looking at the Fiscal Year Budget 2022 and there was a $100,000 scenario for de-escalation, was that ever purchased?

*Lindsay Thivierge –* We have purchased the simulator upgrade, and additions, and we are utilizing it for training.

*Chris Louras –* Is that part of annual training or is that solely for the use of the full-time attendees?

*Ken Hawkins –* The simulator is available for any agency to use at any time.

*Chris Louras –* How easy is it to see if agencies are taking advantage of this ongoing training?

*Ken Hawkins –* That would only be available with their yearly attestations, we don’t currently have a specific box that asks if they have come down to use the simulator and what category they are using it for.

*Chris Louras –* Is there any recertification for law enforcement in de-escalation or only firearms? It is important that officers are proficient in their weapons.

**General Discussion** - *Vermont Criminal Justice Council Chair, Bill Sorrell*

* Our next scheduled meeting is the 17th of October which we originally envisioned to be the first contested hearing; but the hearing has been moved back a month to allow time to retain a use of force expert. There may be a stipulation agreement for the 17th, but we will notify everyone closer to the date.
  + The Use of Force expert will present evidence to the Council.
  + There will be a pre-hearing conference to get an idea how many witnesses are called by either side.
  + Even with time limitations the hearing may not promptly wrap up. After the evidence is closed there will be a week or ten days or two weeks for written submissions to us and then we will meet in closed session to review, deliberate, and decide.
* Professional Regulation Subcommittee does not act on contested hearings.
* November 14th will be the hearing date. (Brian Searles will not be available on that date).

*Discussion ensued:*

* As an overview - Hearing starts at 9AM*.* The attorney for the Sheriff and Kim as prosecutor will give opening statements then it will go to witnesses for both sides and if there is time closing arguments orally. If there is not, then written arguments would be submitted and we would give them 10-14 days. We would then reconvene as a Council, deliberate, and go into open session to take a vote.
* *Mark Anderson -* What is the purpose of the multi days hearings? Couldn’t we receive written arguments beforehand so that we can deliberate when the testimony is fresh in our minds?
* *Bill Sorrell* - I would direct attorneys to advise whether they would you like an opportunity to submit post hearing arguments. I would assume they would both want that opportunity to reflect and argue eloquently. There may be some issues of law that come up that they would want to present as well.
* *Mark Anderson –* I believe this should mimic a civil jury trial model and best practices so we can accomplish these things in a timely manner.

Council Governor appointees - memberships terms expire January 1, 2024. I have not heard from the Governor’s office on whether the Governor wants those appointed to stay but for those of us who are, we should be thinking about whether or not we are willing to serve. If we are not, we should apprise the Governors office before the end of the year.

**Motion to adjourn** made by Mark Anderson and seconded by Chris Louras, no discussion, all in favor.