March 21, 2023

10:00 AM

Teams Meeting

**Members in Attendance Public Session:**

William Sorrell, Chair – Governor Appointed

Brian Searles – Governor Appointed

Karim Chapman – Governor Appointed

Rachel Lawler – Governor Appointed

Maira Tungatarova – Governor Appointed

Christopher Louras – Governor Appointed

Shawn Pratt – Governor Appointed

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

Glen Boyde – Proxy for Nicholas Deml, Dept of Corrections

Justin Stedman – Proxy for Commissioner Herrick, VT Fish & Wildlife

Erin Jacobsen – Proxy for Attorney General Charity Clark

Timothy Lueders-Dumont – Proxy for VT State’s Attorney & Sheriff’s ED John Campbell

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

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

Jamielee Bedard – Vermont Police Academy

Jennifer Firpo – Vermont Police Academy

Ken Hawkins – Vermont Police Academy

Brock Marvin – Vermont Police Academy

Lindsay Thivierge – Vermont Police Academy

Jennifer Hier – Vermont Police Academy

Daniel Pennington – Vermont Police Academy

Kim McManus – State’s Attorney & Sheriff’s

Doug Allen – Chief, Colchester Police Department

James Blanchard – Lt., Manchester Police Department

Larry Eastman – Deputy Chief, Barre Police Department

Tim Gould – Lt., Vermont State Police

Norma Hardy – Chief, Brattleboro Police Department

William Humphries – Chief, Fair Haven Police Department

Jason Covey – Sgt., Middlebury Police Department

Randall Johnson – Chief, Dover Police Department

Tucker Jones – Department of Public Safety

Barbara Kessler - Captain, VSP

Maurice Lamothe – Chief, St Albans Police Department

Steve Laroche – Chief, Milton Police Department

Frank Scalise – Lt., Milton Police Department

Michael Thomas – Chief, Shelburne Police Department

Michael Akerlind – Sgt., Colchester Police Department

Patrick Owens – Chief, Manchester Police Department

Patrick Foley – Chief, Williston Police Department

Robbie Blish – Chief, Woodstock Police Department

Robert Montgomery – Chief, Killington Police Department

Ron Hoague – Chief, Essex Police Department

Michael Scruggs – Chief, Thetford Police Department

Braedon Vail – Chief, Barre City Police Department

Wayne Briggs – Chief, Fairlee Police Department

Skyler Genest – Chief, Department of Liquor Control

Shawn Burke – Chief, South Burlington Police Department

**Call to Order:**  *Vermont Criminal Justice Council Chair, William Sorrell* 10:02.

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

**Minutes from January 24, February 1, and February 21, 2023, meeting minutes**:

Minutes from January 4, 2023, no discussion.

Minutes from February 1, 2023, meeting - edit date on meeting minutes to reflect the 1st. On page 2 under the review of Category A, B, and C misconduct it says that category B1 discipline can be imposed by the Council with limited exceptions – appearance of excessive use of force, chokehold, or failure to intervene. This should read “category B1 discipline cannot be imposed”.

Minutes from February 21, 2023, no discussion.

Motion to approve all three sets of minutes with an amendment to the February 1st minutes, made by Erin Jacobsen, second by Cassie Burdyshaw, no discussion on the motion, all in favor.

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

Last Friday was crossover - bills must be out of the committees and sent over to the other body as of crossover. There is no guarantee that the bills will be taken up during this current session of the legislature.

The budget big bill and the capital bill are among the exceptions that will be taken up this week.

Testimony was given to both appropriations committees in both chambers. We have a decent chance of having the Governors recommend appropriated to for us, which includes two new Fair and Impartial Policing positions, and the three-year curriculum study and revision.

* House Government Operations Committee Bills-
  + Consider the issuance of a final relief from abuse order against a law enforcement officer to be a Category B violation. But to add such issuance to the exceptions under Category B, thereby allowing the Council to take disciplinary action as it relates to certification of an officer.
  + Annually under that bill the Council shall gather and report to the legislature the aggregate data on the numbers of cases involving domestic and sexual violence as of January 15th after the year of the data collected.
    - House government operations committee raised the issue of whether just going with the named exceptions gives us the authority to take action for a Category B1 violation where the facts warrant gross professional misconduct. There was pushback from law enforcement on granting the Council the authority. Some on House Government Operations were supportive but felt that it needed more time for consideration.
  + Proposed changes VCJC requested – *Deputy Director Chris Brickell* 
    - Requested to have language stricken that requires on or before December 31st of 2018 officers receive a minimum standard of four hours of Fair and Impartial Policing. The VCJC is doing a curriculum overhaul and moving to a competency-based training model, it does not want to be hours dependent.
    - Requested change to requirements for ARIDE. There has been a push to get everyone trained since it was mandated but DUI is a prerequisite that is not mandated. Requested change would adopt Council rules that determine what officers, if any, will need to have ARIDE.
    - Requested legislative update to the race data collection mandated reporting areas of the statute to include date, time, and location of the stop.
    - Currently an executive officer potentially hiring a candidate has to only reach back to the current or former law enforcement agency, language was requested to include executives hiring to reach back to all law enforcement agencies in Vermont that have had the officer in their employ.
    - The last request was to change the deadline for adopting rules for an alternate path to certification to July 1st of 2025.
* *Erin Jacobsen* – The context of the Bill that passed out of House Government Operations (230907) was the domestic violence fatality review commissions report in addition to provisions which include:
  + LEAB updates to the Domestic Violence involving law enforcement model policy, they have until January 2024 to complete this provision.
  + All state, county, and municipal law enforcement agencies shall adopt the Domestic violence involving law enforcement model policy that LEAB issues on or before July 1st 2024.
  + The relief from abuse order provision was a recommendation in the DV fatality report, it is no longer a final issuance of an RFA that will bring the conduct before the Council or that it is a Category A violation. Now the focus is on the conduct itself. When trying to determine what the conduct would be, language was pulled from the RFA statute.
    - It was decided that it would be a Category B1 violation meaning that the first time this officer commits this conduct the council can consider sanctions. The violation of the “Domestic Violence involving Law Enforcement Model Policy” would also be a B1 violation.
    - The conduct language taken from statute is ‘attempting to cause or causing physical harm to a family or household members or placing a family or household member in fear of imminent serious physical harm.’ This conduct could happen on or off duty and still be a Category B violation. Testimony included sentiment that all Category B violations should include off duty conduct.
* *Karen Tronsgard Scott* – No disagreements with everything that has been presented. Thank you to everyone that participated in the process, we kept recentering our shared goals. This took a lot of shared work and commitment. I want to share my appreciation for the members we worked with from this Council that listened carefully to the advocacy community.
* *Erin Jacobsen* There was a lot of agreement about the most salient issues. All the stakeholders agreed that there were current limitations on the Council’s ability to sanction officers involved with abusive conduct of family and household members. Everyone wanted the change and agreed but it became how do we move forward in a way that makes sense for everybody. It was a good process, and we will continue that.
* *Bill Sorrell* – Both the Network and the AG’s office were supportive of expanding the authority of the Council to take action when the facts warranted on a first offense B violation, we appreciated that support. Our testimony was that we had a limitation of authority for the council on only certain on-duty behaviors, but that authority should be broader.

The Sheriff’s Bill- *Overview given by Sheriff Mark Anderson*.

Draft 4.3 passed Friday. The Sheriff’s association opposed the bill and provided up to eight hours of testimony towards a mutual effort in reforms around sheriff’s and improving the system.

* The bill tells Sheriff’s they are responsible for something they have no way to fund.
* Takes away or puts significant guardrails on how chairs can operate financially which may cripple the system, meaning Sheriff’s couldn’t contract.
* Requires Sheriff to contract with courts to provide court security which will be an issue if staff cannot be hired. This bill may also jeopardize hiring.
* Some are constitutional issues so the committee will be dealing with prop one as well.

We would like to see it operationalized or the advocates for the portions they want are probably not going to like the outcomes as we will be crippled.

* *Chair Bill Sorrell –* Sheriff’s unlike state police or municipal police are constitutional officers under our state constitution. Sheriffs were law enforcement back in the 18th and 19th century and that largely remains true in certain counties in the State. In other counties it is very different and sheriff’s primarily transport prisoners and traffic control. The legislature will start the process which takes several years to amend the constitution in certain aspects as it relates to the authority and or independence of sheriffs. For example, a sheriff’s certification status – if we take action on the certification of a sheriff for conduct and we revoked the certification then the sheriff can continue to do their duties without the ability to engage in law enforcement.
* *Deputy Director Chris Brickell* – The senate bill authorized two additional categories within Category B that was designed to capture potential bad behavior on behalf of sheriff’s, and they would be added to the categories gross negligence or willful misconduct in the performance of duties. The abuse of power is granted to law enforcement officer certification pursuant to section 2358. The council didn’t take a stand on this however those actions are things that would likely already be captured within professional regulation.
  + A sheriff who is a duly elected person would still maintain their position and be able to run the sheriff’s agency where any other law enforcement agent in Vermont would essentially lose their job because they wouldn’t have their authority anymore.

**Use of Force Policy Review and Update**- *Deputy Director Chris Brickell*

Department of Public Safety had some concerns with the language in the current use of force, statewide policy that was derived through the Governor’s Executive Order. The order mandated that there be a statewide use of force policy which was largely crafted by DPS with collaboration from a number of entities and partnerships.

* Under Page 31 Section 6, Special Situations and welfare checks, it established when an officer arrives on scene that they determine whether or not a person poses a risk to themselves or others, if the answer is yes they should take that person into custody.
  + For Law Enforcement – when we say protective custody as it relates to alcohol and one as it relates to a mental health situation. Due to this a couple of municipal agencies have taken someone into protective custody when it was relative to a mental health status and didn’t take the appropriate action.
    - Clarify protective custody language to intoxication, and mental health custody to temporary custody.
    - Discussion outlines the statutory requirements and how they play out.
* *Cassandra Burdyshaw* – It is my understanding that some law enforcement agencies have embedded social workers that sometimes respond to these scenarios. I saw in the language the requirement for the law enforcement officer to identify themselves, should this language include making sure the officer also identified anyone who is with them, which I think has been a concern for people who have received such visits.
* *Chris Brickell* – That is not identified in this policy. This is an effort to clarify under mental health concerns what a law enforcement officer has the authority to do and that is to take temporary custody of that person while applying for a warrant for a mental health evaluation.
* *Rachel Lawler* – In order to be consistent with 7505 I would like to have the language specify that either a law enforcement officer or a mental health professional. To answer Cassie, it is not typically not the embedded folks that are capable of writing up the EE’s we would loop in the crisis agent within our agency who takes care of that. It is not clear to me in the first paragraph of the discussion that once the individual is taken into temporary custody that they can’t lawfully be transported to the hospital even while the EE is being written up, it appears that its delineating that. Unless someone is in protective custody which I hear only pertains to drugs or alcohol or an emergency evaluation has been granted, then law enforcement can’t bring someone to the hospital which in my mind would present an undue burden on law enforcement agency especially smaller ones who may not have the space to safety hold someone who’s at immediate risk of harming themselves. Furthermore, I don’t think that’s necessarily the most appropriate place to be, putting someone who is in a mental health crisis. In the hospital for instance, they can chemically or physically restrain someone for their own safety if that were the circumstance. Whereas law enforcement would feasibly be putting someone in a cell handcuffed and could have to sit with that individual for four to five hours while the EE process takes place.
* *Chair Sorrell -* Are you proposing a change to the policy as it is currently drafted?
* *Rachel Lawler –* I would like the language to be consistent with the EE statute and specifically in the section that it does not necessarily need to be the officer applying for any EE, law enforcement do not have the training or resource access to do this. Also, the phrase “should consider” is a bit vague and it doesn’t line up with that training slide that was provided. On the slide it is more definitive that an officer should create a plan that is more in line with the former language used in that section. Yes, I would like to see those changes.
* *Chair Sorrell –* Where does this go for alterations?
* *Chris Brickell –* Logistically this was more for discussion and perhaps referral from the Council with some suggested changes back to DPS.
* *Karim Chapman* –I would love to see language that offers an alternative to not always have to go through law enforcement or the emergency room. Peer organizations throughout the state have stepped in, been a part of on-scene and really helped and supported to save the county and the state money for not having someone go to the emergency room and spend thousands of dollars a night to be in the ER. I understand there are some situations that may need law enforcement but some alternative language to people getting support other than the hospital or jail should be considered.
* *Kevin Lane –* There is discretion for law enforcement to use alternate means or other resources that are out there and that’s usually flushed through the dispatch centers or as the case is evolving as they learn more. We want all partners engaged and helping and law enforcement is not the only answer. We will take this back, DPS would like a vote and to make these changes. We are certainly willing and want to hear voices and concerns that there are other areas where we can improve it, I am happy to take those suggestions and have those conversations. Our attorney Tucker Jones helped draft this and can go through some of the legal questions.
* *Tucker Jones –*The narrow issue is to make sure that the language at the bottom of page 31, more accurately reflects what the law says in Title 18. The change proposed was to track the 7505 language as directly as possible and we didn’t discuss mental health professionals in this language in large part because this use of force policy only applies to law enforcement officers. The terminology that gets changed is ultimately up to the Council.
* *Chair Sorrell* – Take up at next month’s meeting to ensure all voices are heard and consensus is reached on specific language. The Department of Mental Health might want to have an opportunity to weigh in through its council representative.

**Rules Committee Presentation:**  *Vermont Criminal Justice Council, HRC Council Member Cassandra Burdyshaw*

* An overview was given of the history of the Rules Subcommittee since 2021.
* Rules Subcommittee did an organizational overhaul, the current rules are not organized into chapters, the order was changed for better flow. Made substantive changes that reflected the new composition of the Council.
  + Acknowledging two vice chairs, one who is law enforcement and one who is not.
  + Requirement for a quorum of 13 with exception for professional regulation hearings which would set the quorum to nine in the new rules.
  + New rule defines the role of the professional regulation subcommittee.
  + Require forms for waiver requests, permit referrals to the waiver committee and require waiver decisions to be written.
  + Allow law enforcement officers to request a hearing to contest the finding of a first category B offense instead of currently only for the second category B offense.
  + Placeholder rules to show that the council is working on them – regional training and alternate routes to certification.
* *Chair Sorrell* – Through discussion the rules committee felt that in the instance of officer B1 violations the Council would give a right to appeal on the first violation in a more timely manner so that two or three or more years down the road when and if there is a second B violation then it doesn’t have to be litigated.
* *Trevor Whipple* – Page 11 on background and character check under F(i)(i) when talking about prior offenses or prior actions it says “if the following conduct is identified during a polygraph examination” what if those eight acts are identified prior to a polygraph examination? Do those automatically exclude someone? If so, I would ask for more granular definition on #4 distribution of controlled substances.
* *Justin Stedman* – Rule 13 page 8 (a-d) (I-IV). Field Training Officers (A&B) B allows the executive director to suspend any of the instructors for violations. It looks like this only applies to FTO’s and I don’t think that is the intent of how this is structured (B) should be (e). Concerned because with the expansion of the council we are supposed to have more voices, but the changes seem to be counter to that because now in the current Rule 13 instead of the Council they are all the Executive Director.
  + Rule 8, which is the waiver rule, the Council delegates its authority to a subcommittee to make decisions on behalf of the Council. That same language could be applied to the new Rule 13 so that the Council could weigh in on instructors in various areas. I would like the old rule to be considered.
  + Lastly, Rule 9 references that a written decision of the executive director or a committee of the council can be appealed. There are varying differences in rules where some rules say the executive director or the Council has to issue a written opinion and other places where it doesn’t. There should be consistent language throughout.

*Chair Sorrell* – We will review these suggestions at the next Rules meeting.

**Staff Attorney Introduction:**  *Vermont Criminal Justice Council Chair, William Sorrell*

After a lengthy process we are delighted to introduce our new staff attorney Kim McManus who is currently with the State’s Attorney’s Office in Addison County.

Kim McManus gave a brief background and expressed excitement for the new role.

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

* Feedback from Rules discussion – The process of how we select instructors and certify instructors is certainly something to consider in the process. Any confusion about where the authority should be could get flushed out through the assessment process and the curriculum review which ties into the audit and skills-based instructor certification program.
* It is appropriate for an executive director or deputy director to approve instructors; I can’t remember a time when the council voted on or reviewed instructor files.
* *Justin Stedman*  - I think we are missing an opportunity to stay true to the directive of including more voices by going to a sole authority, I think the language in Rule 8 where the Council defers authority to the subcommittee would be ideal in this situation where more voices and representation of constituents is allowed.
* *William Sorrell* – The committee did discuss this matter months ago but the feeling of the members at the time on the committee was that choosing an instructor was too far in the weeds that it may not be an efficient use of time for the full council and because we give the right to appeal the decision of any number of decision by the executive director to the full council in the proposed rules. We will discuss it again in the next two weeks.
* *Heather Simons -* First RFP for a Job Task Analysis was going to be posted on the 12th, but the VCJC received some incredibly helpful assistance from Director Davis’s office with language to include in the RFP.
  + Inclusive language will be in all RFP’s and contracts going forward.
* Curriculum review won’t be done in a vacuum. Looking froward to meeting with the Chiefs regarding what this might look like and a timeline on how they can participate.
* Executive chair for the North East section of IADLEST interested in working with Vermont on initiative for northeast doing a full review, assessment, and professional regulation. Directors who want to join in and participate in small sections or just find out what we are doing to possibly move it along in other states.

**General Discussion:** *Timothy Lueders-Dumont* – There are some gaps in filling the SIU investigator position particularly in two counties that have been pointed out in Franklin and Orange. Under 20 VSA 2358 the Council can waive, under certain circumstances, the requirement that you have to be Level III certified to be SIU work.. Is it still an option and what does the council think?

Waiver subcommittee will discuss this and report back at a future meeting.

Motion to adjourn made by Mark Anderson, seconded by Timothy Lueders-Dumont all in favor.

Meeting Adjourned 11:45.