



Vermont Criminal Justice Council

Council Meeting Minutes

July 6, 2023
9:00 AM
Teams Meeting

Members in Attendance Public Session:

William Sorrell, Chair – Governor Appointed
Shawn Pratt - Governor Appointed
Rachel Lawler – Governor Appointed
Karim Chapman – Governor Appointed
Christopher Louras – Governor Appointed
Kevin Lane – Vice Chair, Proxy for Commissioner Jennifer Morrison Public Safety
Glenn Boyde – Proxy for Commissioner Nicholas Deml, Dept of Corrections
Scott Davidson – Proxy for Commissioner Wanda Minoli, Dept. of Motor Vehicles
Chris Herrick – Commissioner, VT Fish & Wildlife
Kathleen Hentcy – Proxy for Commissioner Emily Hawes, Department of Mental Health
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
Jennifer Frank – VT Chief’s Association
Trevor Whipple – VT League of Cities and Towns
Kelly Price – VT State Employees Association
Sadie Donovan – Proxy for Jennifer Poehlmann, Center for Crime Victim Services
Cassandra Burdyshaw – VT Human Rights Commission
Mark Anderson – Vermont Sheriff’s Association

Other Attendees:

Heather Simons – Vermont Criminal Justice Council
Christopher Brickell – Vermont Criminal Justice Council
Lindsay Thivierge – Vermont Criminal Justice Council
Kim McManus – Vermont Criminal Justice Council
Wesley Lawrence – Theriault & Joslin
Gordon Dritschilo – Rutland Herald
George Contois – Orange County Sheriff’s Department

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

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

Introduction to Process - Associate General Counsel Kim McManus

- Brief summary of statutes that govern the Council in how we are holding the meeting and what gives the Council the ability to take action.
 - o A government agency cannot suspend or revoke a person’s professional license or certification without a hearing.
 - o Administrative Procedures Act allows an agency to suspend or revoke a person's professional license or certification pending further investigation and pending



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the hearing that we would usually have had happen prior to the suspension. This action is called a summary suspension (summarily) which means without the customary formalities (completed investigation, notice of hearing, officer would receive notification of a hearing, contested hearing with evidence presented). The Council is expressly provided the mechanism to suspend a law enforcement certification prior to that hearing.

- Summary suspension is permitted if the Council finds that public health safety or welfare imperatively requires this emergency action.
- Staff will continue to work with officers to bring them into compliance.
- This is just a meeting to see if the Council approves of the professional regulation subcommittees recommendation for suspension.

Questions ensued: Chris Herrick – Is there a time limit on the length of this summary suspension?

Kim McManus – Administrative Procedures Act states that if an agency takes this action that it needs to schedule a hearing as soon as practical. Council summary suspension approval will then go to the professional regulation subcommittee and ask if they require further information to complete the investigation. Then a hearing would be noticed (30 days) and a hearing would be scheduled promptly. If either subject officer wishes to appeal the decision today, they can do that per council rule. That would trigger a hearing sooner than the Professional Regulation Subcommittee hearing.

Docket Number 2020OQ0 - Associate General Counsel Kim McManus

- Information presented to the Professional Regulation Subcommittee - Constable Floyd Morey applied for a waiver for his firearms training due to a medical issue that has impacted his ability to use his trigger finger. Morey has been working with the waiver subcommittee to find a solution to enable him to operate his firearm safely. However, he has not been able to use his firearms safely and therefore be able to complete his in-service firearms training.
 - The Professional Regulation Subcommittee and Waiver Subcommittee both noted that Mr. Morey is very anxious to find an alternative way to pass his firearms qualification.
 - The Professional Regulation Subcommittee reviewed a memo from the waiver subcommittee, the training records that shows Constable Morey is non-compliant with his firearms training and they reviewed the waiver submitted.
 - Both subcommittees concluded that a law enforcement officer who is unable to pass firearms training should not be able to act in his law enforcement capacity until training is completed.
 - The subcommittee upheld the Executive Director's decision to temporarily suspend Constable Morey, Friday June 30th.
 - The subcommittee made a recommendation to the Council that Constable Morey's certification be summarily suspended pending a hearing. It is requested that the Council issue the following order:



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- *The Vermont Criminal Justice Council finds that Constable Morey's physical inability to operate his firearm safely, which precludes him currently from completing his annual in-service firearm training, inhibits his abilities to safely exercise his law enforcement authority as a Level 2 certified law enforcement officer and as such creates a public safety issue that warrants a suspension of his level two law enforcement certification prior to a hearing, the Council takes this action pursuant to Title 20, Section 2405, Title 3, Section 415(c) the suspension of Constable Morey's certification remains in effect until either a hearing is held before the Council or Constable Morey enters into an agreement with the Council regarding the status of his certification or Constable Morey completes his firearm in service training and submits proof of that training to the Professional Regulation Subcommittee. The Professional Regulation Subcommittee in consultation with the executive director may rescind this suspension order upon proof that the required annual in-service training has been completed satisfactorily.*
 - It was important for the subcommittee for you all to hear that the subcommittee did appreciate Constable Morey working very hard to try to complete his training just that he is unable to at this time, but that once he is able to complete his training, the expectation is that the suspension would be lifted.
- *Discussion Ensued: Kelly Price* –Vermont state game warden and certified firearms instructor. I agree with the current decision and that the inability to handle your side arm safely and properly while on duty is of the utmost importance for the officer and the public.
- Xusana Davis moves to approve and adopt the proposed order, Chris Herrick seconds, no discussion on the motion, all in favor.
 - It was confirmed that Constable Morey was notified of today's summary suspension and that he was not in attendance.

Docket Number 2020FGN - Associate General Counsel Kim McManus

- Information presented to the Professional Regulation Subcommittee – Sheriff George Contois applied for a waiver for his Use-of-Force training. Sheriff Contois shared concerns about his physical well-being if he were to partake in the physical scenarios of a use-of-force training. The waiver committee denied his request to forgo his use-of-force training requirement.
 - The Waiver Subcommittee send a memo to the professional regulation subcommittee stating that they found that the inability to train to standards in this important area equates to an inability to perform the physical requirements of use of force. They asked the professional regulation subcommittee to consider as soon as possible whether Sheriff Contois's failure to meet compliance for his use of force training constitutes grounds for decertification.



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- The Professional Regulation Subcommittee reviewed the memo from the waiver subcommittee on Monday July 3rd, they reviewed Sheriff Contois's training record that shows he is incomplete for this use-of-force training hours for 2022.
 - Sheriff Contois was actively performing law enforcement duties while deficient in this mandated annual in-service training.
 - The subcommittee upheld the Executive Director's decision to temporarily suspend Sheriff Contois, Friday June 30th.
 - The subcommittee made a recommendation to the Council that Sheriff Contois's certification be summarily suspended pending a hearing. It is requested that the Council issue the following order:
 - *The Vermont Criminal Justice Council finds that Sheriff Contois has not completed his use of force training for calendar year 2022. Sheriff Contois recently requested that his use of force training requirement be waived in its entirety. The waiver committee denied that request. The Council finds that the lack of compliance for the mandated use of force training inhibits Sheriff Contois's ability to safely exercise his law enforcement authority as a Level 3 certified law enforcement officer to such a degree that it creates a public safety issue that warrants a suspension of his Level 3 law enforcement certification prior to a hearing, the Council takes this action pursuant to Title 20, Section 2405 and Title 3, Section 415(c). The suspension of Sheriff Contois's certification remains in effect until either a hearing is held before the Council or Sheriff Contois enters into an agreement with the Council regarding the status of a certification or Sheriff Contois completes his use of force in service training and submits proof of that training to the Professional Regulation Subcommittee. The Professional Regulation Subcommittee, in consultation with the executive director, may rescind this suspension order upon proof that the required annual in-service training has been completed satisfactorily.*
- Kelly Price moves to approve and adopt the proposed order, Chris Louras seconds, discussion on the motion,
 - *Discussion Ensued: Tim Lueders Dumont* –I will be abstaining from this vote for structural staff reasons. It is possible the SAS office will have to work with the sheriff on different issues but there are statutory gaps to resolve and some ambiguity in situations like this.
Mark Anderson – Not announcing abstention but rather a perceived conflict of interest. I am the President of the Vermont Sheriff's Association and Sheriff Contois is a member. I do not personally feel I have a conflict. I have had a long understanding as a certified law enforcement officer that when I complete my training my certification continues. If I am lapsing in a training due to illness or injury then it expires, it seems this is not the case.



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Kim McManus – The statute does not say explicitly that you expire when you aren't in compliance. The statute says that a lack of compliance can be a Category C conduct violation, but no officer is decertified until the Council takes an action to either suspend or revoke that certification. The only place where expiration is stated in statute is when an officer has gone more than three years without working. The professional regulation subcommittee brought up this concern as well, it may be part of the discussion for the Act56 subcommittee for clean-up language. If there was a head of agency that saw this lack of compliance, they would take action to have that law enforcement officer perform his or her duties until compliance was achieved, which would be the normal course of action.

Mark Anderson – We should flag this issue for the council for statutory or rule amendment. Is this a punitive or non-punitive matter?

Kim McManus – Non-punitive, this is a safety issue for the public and the officer and maintaining the standards of the profession. There are avenues for Sheriff Contois or anyone else in this situation to remedy this.

Bill Sorrell – This order presented does not mandate that this matter come back before the full council unless there is an appeal filed and a hearing. This allows for an agreement between the subject of the proceeding and the professional regulation subcommittee.

Scott Davidson – Looking for clarification – if we have someone that has an injured finger and they can't operate a firearm, we place them on administrative leave or light duty. The firearm is relieved from the officer, but they continue to work in an administrative function. Is there an opportunity for administrative light duty or suspension for the sheriff?

Kim McManus – With the suspension Sheriff Contois can perform his administrative duties. Sheriff Contois is the agency head and that is his decision to make, we do not have the authority to put him on administrative duty nor do we have another agency to go to, to make that request. From the Council perspective this is our current avenue for responding to a safety concern. This is a unique situation.

Chris Herrick – When you were going through the order you cited three options. One was remaining suspended until a hearing, enter into an agreement, or successfully complete the training. What will an agreement look like?

Kim McManus - An agreement could look like Sheriff Contois agrees that he will not perform his law enforcement duties until XY, and Z is completed. It would likely look very much like what we're asking in the third option.

Kelly Price – Sheriff's do not need to hold certification to hold their position as Sheriff, correct?

Kim McManus – Correct

George Contois - I was going to participate with Sheriff Mark Poulin this morning and I was halfway out the door ready to participate. So, I think this is going to be a moot point because by noontime or thereabouts, I will be back in compliance. The reason I wasn't in compliance is I was out of out of the area. Last week I received half of the certification from Chief Stalnaker, which is the oral portion of



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the use of force. So, my concerns were mainly from my physician who said it's not a good idea.

Mark Anderson – Can the outcome of today create any liability for the Council or the Academy?

Wesley Lawrence – Well, anything can give rise. Our obligation is to simply look at what are the requirements of licensure, partially set by statute and administrative rule. If we're in compliance with those and taking whatever action, we do there wouldn't be much basis.

Mark Anderson – Have there been other circumstances where we have granted waivers for people for use of force training or is this different?

Kim McManus – We have granted waivers for use of force, for a limited amount of time and usually connected with military leave or something that prevents them from completing the training within the calendar year,

Chris Brickell – We need proper documentation that the training has occurred and not just a verbal communication.

All in favor of the motion to approve the order as read to the Council. Karim Chapman, Shawn Pratt, Jennifer Frank, Tim Lueders-Dumont, Mark Anderson, and Trevor Whipple abstain. 14(approve) and 6(abstain)

Bill Sorrell – It is likely that the hearing that we have scheduled for the second week in August will be our first contested hearing.

Kelly Price – I would have liked to have heard a little more detail.

Bill Sorrell – Your point is well taken. In discussing what today might look like we were trying to strike a balance between sensitivity of sharing health information and the fact that this was a summary suspension and not a full hearing. We didn't feel that it was necessary for all the pieces of information to make a call on the certification status absent the requisite training and/or the ability to engage in use of force.

Chris Louras – Were these individuals identified by staff or did they approach the waiver subcommittee.

Bill Sorrell – Staff approached the waiver subcommittee with the waiver requests then the matters were referred to the professional regulation subcommittee.

George Contois – I want to be certain that when we send in certification for use of force this afternoon that I will be relieved of suspension.

Bill Sorrell – The professional regulation subcommittee in consultation with the executive director and yourself. Those responsible for this process will deal expeditiously with a change in status if the facts warrant that.

George Contois – It is difficult after a century in law enforcement that I can't carry a firearm, it's debilitating if you understand what it is to be a police officer this long and lose your certification.

Bill Sorrell – I understand, that underscores the importance of taking the required training and remaining in good standing.

Motion to adjourn made by Chris Louras and seconded by Scott Davidson, no discussion, all in favor.

Meeting Adjourned 9:58.