



# Vermont Criminal Justice Council

## Council Meeting Minutes

August 2, 2023  
9:30 AM  
Teams Meeting

### **Members in Attendance Public Session:**

William Sorrell, Chair – Governor Appointed  
Shawn Pratt - Governor Appointed  
Christopher Louras – Governor Appointed  
Brian Searles – 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  
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  
Sadie Donovan – Proxy for Jennifer Poehlmann, Center for Crime Victim Services  
Cassandra Burdyslaw – VT Human Rights Commission  
Mark Anderson – Vermont Sheriff’s Association  
Mike Major – VT Police 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  
Kenneth Hawkins – Vermont Criminal Justice Council  
Dan Pennington - Vermont Criminal Justice Council  
Jennifer Firpo - Vermont Criminal Justice Council  
Brock Marvin - Vermont Criminal Justice Council  
Wesley Lawrence – Theriault & Joslin  
Braedon Vail – Barre City Police Department  
Patrick Owens – Manchester Police Department  
Loretta Stalnaker – Royalton Police Department  
James Whitcomb – Vermont State Police  
Shawn Burke – South Burlington Police Department  
David Fox – Rutland County Sheriff’s Department  
Ryan Palmer – Windsor County Sheriff’s Department  
Mandy Wooster – UVM Police Services  
Steve Laroche – Milton Police Department  
Jeff Burnham – Springfield Police Department  
Kevin Geno – Rutland County Sheriff’s Department  
Michael Thomas – Shelburne Police Department



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Jason Covey – Middlebury Police Department  
Robert Montgomery – Killington Police Department

**Call to Order:** *Vermont Criminal Justice Council Chair, William Sorrell 9:33.*

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

### **Docket Numbers 20201OG and 2020SVX - Associate General Counsel Kim McManus**

- Considering a stipulation agreement relating to the LIII certification status of former St Albans Police Officer Michael Malinowski.
  - o Fall and winter of 2020 then Sgt. Malinowski had a series of disciplinary events which resulted in three separate complaints for Category B conduct from the St. Albans Police Department prior to the second and third offense.
  - o The professional regulation subcommittee made a Category B first offense finding in docket#2020XPF which involved dishonesty during an internal investigation.
  - o The professional regulation subcommittee reviewed the two additional cases 20201OG and 2020SVX and found that Sgt. Malinowski had violated a number of departmental policies.
  - o Sergeant Malinowski engaged in prohibited category B conduct by virtue of lying during an internal investigation, failing to follow a direct order from his supervisor, sleeping while on duty, and unlawfully assisting in the removal of property from a person.
- The permanent revocation presented to the Council, if approved, would reflect the revocation date of July 18, 2023, and would be sent to Chair Sorrell for final signatures.
- *Discussion Ensued: Bill Sorrell* – He is no longer with St. Albans Police Department, and he is no longer working in law enforcement, correct?
- *Kim McManus* – Correct he left St. Albans Police Department in January 2021 and has not been working in law enforcement since, nor does he plan to return to law enforcement.
- *Bill Sorrell* – Is there any concern on whether the Council has the authority to retroactively revoke a certification. Would it be safer to have the effective date of revocation as today?
- *Kim McManus* – If the Council agrees we can change the date, the respondent agreed to the July 18<sup>th</sup> date.
- *Bill Sorrell* – I am comfortable with the stipulated date; we will consider the stipulated agreement as presented.
- Mark Anderson moves to approve the stipulated agreement for permanent revocation of Michael Malinowski's law enforcement certification as of July 18, 2023, Erin Jacobsen seconds, no discussion on the motion, all in favor.

### **General Discussion – Vermont Criminal Justice Council Chair, Bill Sorrell**

- Co Vice Chair Kevin Lane is retiring and Lt. Col. James Whitcomb from VSP is his replacement representing the Commissioner of Public Safety.
  - o Heartfelt thanks were given to Major Lane.



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- Lt. Col. James Whitcomb introduction.
- Major Lane thanks and gratitude extended to the Council.
- Voting for a new Co-Vice Chair will happen at the next meeting, if you are interested, please let Heather or Chris know.

### **Hearing Signed Order** – *Vermont Criminal Justice Council Chair Bill Sorrell*

- Scheduled contested hearing involving Sheriff Grismore set for August 15<sup>th</sup> in person.
- Order was issued a few weeks ago saying any pre-hearing motion should be filed by August 1. A motion was filed by his attorney Robert Kaplan on behalf of Sheriff Grismore asking for a continuance to mid-October due to schedule and hiring of an expert on police use of force.
- The continuance was agreed upon and a hearing will be scheduled by mid-October.
- *Discussion Ensued: Mark Anderson* – Scheduling order shows the name Robert Grismore, his name is John Grismore.
- *Bill Sorrell* – We will operate under his real name, thank you for raising that for the record.
  - Malinowski is the third or fourth permanent revocation with a repeat category B violation and the Council under existing law is not authorized to take any action regarding certification on the first Category B. This matter was raised with the legislature and is being reviewed by the Act56 working group.

**Approval of Minutes:** Edit to minutes Mike O’Neil is representing the Vermont Troopers Association. Motion to approve the amended minutes of the June 2023 meeting made by Brian Searles, seconded by Cassie Burdyshaw, no discussion on the motion, all in favor.

- Erin Jacobsen, James Whitcomb, and Mark Anderson abstained due to not being in attendance at the June meeting.

### **Hearing Walkthrough** – *Therault & Joslin, VCJC Legal Counsel, Wesley Lawrence*

- Brief history of Council contested hearings.
- Wesley is the Council’s counsel and will assist the council during a hearing including handling witnesses, helping with decisions, discussions about evidence coming in, and drafting a decision. The Council decides the appropriate sanction and that ranges from nothing to revocation of a certification. Kim McManus will be the prosecuting attorney in the hearings. Process will work better in person.
  - Order of events: Kim presents the case, deliberations after the close of evidence. Pretrial, prehearing motion, objections to witnesses or evidence deliberations we may have to do in executive session and excuse members of the public and the respondent.
    - Executive Session virtually would consist of a Teams room.
  - Case proceeds like a bench trial before a superior court or a criminal court. Attorneys may give opening statements including case overview, alleged violations and response, and defenses and responses.



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- Kim calls witness first and ask questions through direct examination. The respondent's attorney could object, and we would have to decide whether or not to move on.
  - The respondent's attorney will have an opportunity to cross examine the witness and objections are also allowed.
- This process will occur until the final witness is called. The respondent then has the opportunity to call any witnesses and the same process will occur again.
- When no witnesses are left each side will have the opportunity to present closing statements.
- Deadlines will then be set to submit proposed findings of fact and conclusions of law (the decisions they would like to see and the supporting evidence).
- VCJC legal counsel will write the decision after receiving the findings and conclusions.
- The VCJC would convene to meet and deliberate before deciding. The written decision is circulated to the Council for their approval and then in public session the Council would vote. If approved, that becomes the decision of the Council.
- *Examples were given on the types of witnesses that could be heard from.*
- *Discussion ensued: Bill Sorrell* – If the defense puts on a case, Kim as the prosecutor would potentially offer testimony or evidence rebutting the defense case that is presented. There is no rule that prevents the Council from allowing a rebuttal so the evidence may not be totally closed when the defense has presented its case to the Council. We will have to deliberate for some period of time after the close of evidence.
  - We may give the attorneys two weeks to submit written findings or written arguments for our consideration. It may be another week before the Council meets to make a decision and then we would have an open session.
  - Members of the professional regulation subcommittee are not allowed to participate in the deliberation and decisions of the Council so having a quorum will be very important.
- *Kim McManus* – Any Council members who have additional questions reach out to Wesley by email or phone.
- *Erin Jacobsen* – Who makes determinations about any kind of evidentiary objections? Who plays the role of the judge.
- *Wesley Lawrence* – The Chair would rule on objections in consultation with me if needed. Some may be complicated and require us to go into executive session.
- *Bill Sorrell -Examples were given on overruling or granting objections-* There may be an objection raised because the criminal case is pending. That may take more consideration than just overruled or granted.

**Rules Presentation** - Associate General Counsel Kim McManus, VCJC Rules Chair  
Cassandra Burdyslaw

*Bill Sorrell* – Brief history of the Rules Subcommittee that began in 2021. Some areas of the rules will be placeholders for things that are undergoing further review.

*Kim McManus* – March 21<sup>st</sup> meeting feedback led to additional changes:



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- Every decision is appealable, that was made consistent throughout.
- Rule 13 Standards for Instructors for approved law enforcement certification courses –
  - Simplified and removed distinctions between different course instructors. Instructors will now follow the same process of applying.
  - Approval will be the Executive Director in consult with training staff and subject matter experts.
  - Section B - Instructors have to be sponsored by their agency head. The agency head sends a letter endorsing the applicant's competency and professionalism, and the applicant's capacity for working respectfully with a variety of individuals in a learning environment.
  - Section D - Provides instructors the "how to" on applying for a position and what is needed to become an instructor.
  - Section H – Gives the Executive Director the ability to suspend an instructor for cause and then the next steps if they wish to continue that suspension or revoke their ability to be an instructor.
  - Section J – All certification decisions shall be in writing.
- *Mark Anderson* - Section H – R13 should read Rule 13.
- *Jim Whitcomb* – Concern expressed over what happens when we enact the rules and will instructors be certified through this process?
- *Kim McManus* – It will take us months to get this approved and internally we are working on guidelines for instructors so we will be ahead of this.
- *Heather Simons* – In regard to any of the rules and instructor development or criteria everything we are doing is in line with the accreditation process. We will give lots of notice and guidance.
- *Kim McManus* – Rule 14
  - Section F – Background and Character Check – clarifying language stating that a candidate will be excluded from basic training if any of the previous conduct is identified during the background and character check.
    - *Jim Whitcomb* – Are we referring to the Agency Head who makes this decision? Should this be more clearly defined?
    - *Kim McManus* – It is stated in the initial paragraph that it should be conducted by the candidate's perspective agency.
    - *Mark Anderson* - The general process is that the agency head will be facilitating any hiring process. The forms submitted as part of the application tie the agency head to the applicant. We also took into consideration a drug-free workplace guidance and current practice and belief. I wouldn't be opposed but I also don't think it needs to be changed.
    - *Bill Sorrell* – This clarification and discussion will be in the minutes from today if this is ever challenged.
    - *Trevor Whipple* - As written is it necessarily vague? If an agency head makes a hiring decision that is not wise and the executive director can overrule that decision, it may be a safety valve for the future.
    - *Heather Simons* – We are the agency that does the training, and the hiring authority does the vetting. I have had past concerns about how we





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- are getting information at the Academy level and not through the proper channels. Agree with it as drafted but also don't hate being clearer.
- *Brian Searles* – Content with how it is, if the executive director has concerns about whether someone should be in attendance at the Academy there would be a collaborative effort with the agency to ensure that didn't continue. That is how it has been done in the past.
  - *Bill Sorrell* – We will keep the language as drafted.
  - *Kim McManus* – Rules 15,17, and 19 around minimum training for Level I, Level II, and Level III should be made flexible for the three-year curriculum review coming up. Changes include removing specific course list language and takes out specific hours.
    - Says the Council establishes the minimum number of hours on an annual basis needed to deliver the core competency curriculum for each of the levels.
      - As we move forward the Executive Director will bring the Council changes suggested for Level I, II, and III, focusing on core competencies for an effective law enforcement officer in the 21<sup>st</sup> century.
      - The Council would put out training schedule dates by September 1<sup>st</sup> for the following year.
      - The change allows us to not be wedded to the hours specifically written in rule and trying to fill hours versus focusing on coursework needed and letting the hours follow.
    - *Mark Anderson* – Under Rule 15 Subsection A – Level I's don't have a curriculum right now but if there was one in the future it says that a Level 1 needs to be under the direct supervision of a fully certified LIII officer. That is inconsistent with the rest of our rules, this should reflect fully certified and remove the LIII.
    - *Kim McManus* – That change would maintain consistency with the other rules. There may be changes as we move forward with our curriculum review.
  - *Kim McManus* – Rule 22 – formerly Rule 13 – Removed the hours requirement. If the Council will require a specific training as part of the minimum hours, then agencies would know that by December so that going into the calendar year they know what they need to do.
    - Officers are given a grace period to complete their training and their ability to request an appeal to the Council.
    - Subsection C, subsection D, we added that it is a potential Category C violation to be out of compliance with the annual in-service (intentional or willful failure).
      - *Mark Anderson* – Are we able to build in an expiration if a person fails to complete the training or request a waiver? It's not misconduct, but a suspension may suggest that.
      - *Kim McManus* – The only place expiration language exists is when you have not worked for a law enforcement agency for three years. We could add it to the rules, there is nothing that limits us from doing that.
      - *Discussion Ensued: Mark Anderson* – I would like to flag this for pass two of the rules.
      - *Bill Sorrell* – Good question as to whether we need statutory authority to automatically impact certification status.



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- *Discussion Ensued: Mark Anderson* - We should have a process that says if you don't complete your hours, if you don't have the sufficient waiver then you can't be working as an officer.
  - Discussion continued regarding Category C conduct of training requirements and what constitutes misconduct – working vs not working when training is not complete.
- *Kim McManus* – Rule 27 B – addition- any decision to suspend or revoke a person's certification shall be made in writing and therefore triggers the ability to appeal that decision.
- *Kim McManus* – Rule 23 – addition – language of decision needs to be in writing.
- *Kim McManus* – Rule 29 – addition – the process that the subcommittee has been doing already the last few months regarding written notification and due process to officers under B1 offenses.
- *Trevor Whipple* – Back to Rule 23 – there is no exclusion for anyone that's been permanently revoked. Should this be clarified to say they can never come back?
  - *Discussion ensued:* Council decided to leave language as drafted.
- *Erin Jacobsen* – Rule 29 – Is the language referencing the Professional Regulation Subcommittee?
  - *Kim McManus* – Language was left broad in case there are changes to the professional regulation process.
- Mark Anderson made a motion to adopt the rules as amended, Cassie Burdyshaw seconded, no discussion on the motion, all in favor.

### **Act 56 Workgroup** – *Vermont Criminal Justice Council Deputy Director, Chris Brickell*

- Report will be made at the next council meeting.

### **General Discussion** – *Vermont Criminal Justice Council Chair, Bill Sorrell*

Mike Major will assign a proxy for the Grismore hearing.

**Motion to adjourn** made by Brian Searles and seconded by James Whitcomb, no discussion, all in favor.

**Meeting Adjourned** 11:38.