

**Subchapter 2: Unprofessional Conduct**

**§ 2401. Definitions**

As used in this subchapter:

(1) "Category A conduct" means:

(A) A felony.

(B) A misdemeanor that is committed while on duty and did not involve the legitimate performance of duty.

(C) Any of the following misdemeanors, if committed off duty:

(i) simple assault, second offense;

(ii) domestic assault;

(iii) false reports and statements;

(iv) driving under the influence, second offense;

(v) violation of a relief from abuse order or of a condition of release;

(vi) stalking;

(vii) false pretenses;

(viii) voyeurism;

(ix) prostitution or soliciting prostitution;

(x) distribution of a regulated substance;

(xi) simple assault on a law enforcement officer; or

(xii) possession of a regulated substance, second offense.

(2) "Category B conduct" means gross professional misconduct amounting to actions on duty or under authority of the State, or both, that involve willful failure to comply with a State-required policy or substantial deviation from professional conduct as defined by the law enforcement agency's policy or if not defined by the agency's policy, then as defined by Council policy, and shall include:

(A) sexual harassment involving physical contact or misuse of position;

(B) misuse of official position for personal or economic gain;

(C) excessive use of force under authority of the State, first offense;

(D) biased enforcement;

(E) use of electronic criminal records database for personal, political, or economic gain;

[ Subdivision (2)(F) effective until October 1, 2021; see also subdivision (2)(F) effective October 1, 2021 .]

(F) placing a person in a prohibited restraint;

[ Subdivision (2)(F) effective October 1, 2021; see also subdivision (2)(F) effective until October 1, 2021 .]

(F) placing a person in a chokehold;

[ Subdivision (2)(G) effective until October 1, 2021; see also subdivision (2)(G) effective October 1, 2021 .]

(G) failing to intervene and report to a supervisor when the officer observes another officer placing a person in a prohibited restraint or using excessive force.

[ Subdivision (2)(G) effective October 1, 2021; see also subdivision (2)(G) effective until October 1, 2021 .]

(G) failing to intervene and report to a supervisor when the officer observes another officer placing a person in a chokehold or using excessive force.

(3) "Category C conduct" means any allegation of misconduct pertaining to Council processes or operations, including:

(A) intentionally exceeding the scope of practice for an officer's certification level;

(B) knowingly making material false statements or reports to the Council;

(C) falsification of Council documents;

(D) intentional interference with Council investigations, including intimidation of witnesses or misrepresentations of material facts;

(E) material false statements about certification status to a law enforcement agency;

(F) knowing employment of an individual in a position or for duties for which the individual lacks proper certification;

(G) intentional failure to conduct a valid investigation or file a report as required by this subchapter; or

(H) failure to complete annual in-service training requirements.

(4) "Effective internal affairs program" means that a law enforcement agency does all of the following:

(A) Complaints. Accepts complaints against its law enforcement officers from any source.

(B) Investigators. Assigns an investigator to determine whether an officer violated an agency rule or policy or State or federal law.

(C) Policies. Has language in its policies or applicable collective bargaining agreement that outlines for its officers expectations of employment or prohibited activity, or both, and provides due process rights for its officers in its policies. These policies shall establish a code of conduct and a corresponding range of discipline.

(D) Fairness in discipline. Treats its accused officers fairly, and decides officer discipline based on just cause, a set range of discipline for offenses, consideration of mitigating and aggravating circumstances, and its policies' due process rights.

(E) Civilian review. Provides for review of officer discipline by civilians, which may be a selectboard or other elected or appointed body, at least for the conduct required to be reported to the Council under this subchapter.

(5) "Unprofessional conduct" means Category A, B, or C conduct.

(6)(A) "Valid investigation" means an investigation conducted pursuant to a law enforcement agency's established or accepted procedures.

(B) An investigation shall not be valid if:

(i) the agency has not adopted an effective internal affairs program;

(ii) the agency refuses, without any legitimate basis, to conduct an investigation;

(iii) the agency intentionally did not report allegations to the Council as required;

(iv) the agency attempts to cover up the misconduct or takes an action intended to discourage or intimidate a complainant; or

(v) the agency's executive officer is the officer accused of misconduct.

[ Subdivision (7) effective until October 1, 2021; see also subdivision (7) effective October 1, 2021 .]

(7) "Prohibited restraint" means the use of any maneuver on a person that applies pressure to the neck, throat, windpipe, or carotid artery that may prevent or hinder breathing, reduce intake of air, or impede the flow of blood or oxygen to the brain.

[ Subdivision (7) effective October 1, 2021; see also subdivision (7) effective until October 1, 2021 .]

(7) "Chokehold" means the use of any maneuver on a person that employs a lateral vascular neck restraint, carotid restraint, or other action that applies any pressure to the throat, windpipe, or neck in a manner that limits the person's breathing or blood flow. (Added 2017, No. 56, § 1, eff. July 1, 2018; amended 2019, No. 147 (Adj. Sess.), § 5, eff. Sept. 1, 2020; 2021, No. 27, § 5, eff. Oct. 1, 2021.)

#### **§ 2402. Law enforcement agencies; duty to adopt an effective internal affairs program**

(a) Each law enforcement agency shall adopt an effective internal affairs program in order to manage complaints regarding the agency's law enforcement officers.

(b) The Council shall create an effective internal affairs program model policy that may be used by law enforcement agencies to meet the requirements of this section. (Added 2017, No. 56, § 1, eff. July 1, 2018.)

#### **§ 2403. Law enforcement agencies; duty to report**

(a)(1) The executive officer of a law enforcement agency or the chair of the agency's civilian review board shall report to the Council within 10 business days if any of the following occur in regard to a law enforcement officer of the agency:

(A) Category A.

(i) There is a finding of probable cause by a court that the officer committed Category A conduct.

(ii) There is any decision or findings of fact or verdict regarding allegations that the officer committed Category A conduct, including a judicial decision and any appeal from a decision.

(B) Category B.

(i) The agency receives a credible complaint against the officer that alleges that the officer committed Category B conduct.

(ii) The agency receives or issues any of the following:

(I) a report or findings of a valid investigation finding that the officer committed Category B conduct; or

(II) any decision or findings, including findings of fact or verdict, regarding allegations that the officer committed Category B conduct, including a hearing officer decision, arbitration, administrative decision, or judicial decision, and any appeal from such a decision.

(C) Termination. The agency terminates the officer for Category A or Category B conduct.

(D) Resignation. The officer resigns from the agency while under investigation for unprofessional conduct.

(2) As part of his or her report, the executive officer of the agency or the chair of the civilian review board shall provide to the Council a copy of any relevant documents associated with the report, including any findings, decision, and the agency's investigative report.

(b) The Council shall provide a copy of any report and the relevant documents provided with it to the Council Advisory Committee, which shall recommend any appropriate action to take in regard to a law enforcement officer who is the subject of that report.

(c) The Executive Director of the Council shall report to the Attorney General and the State's Attorney of jurisdiction any allegations that an officer committed Category A conduct. (Added 2017, No. 56, § 1, eff. July 1, 2018; amended 2019, No. 166 (Adj. Sess.), § 15, eff. Oct. 1, 2020; 2021, No. 20, § 164.)

#### **§ 2404. Investigations**

(a) Agency investigations of Category A and B conduct.

(1)(A) Each law enforcement agency shall conduct a valid investigation of any complaint alleging that a law enforcement officer employed by the agency committed Category A or Category B conduct. An agency shall conclude its investigation even if the officer resigns from the agency during the course of the investigation.

(B) Notwithstanding the provisions of subdivision (A) of this subdivision (1), a law enforcement agency shall refer to the Council any unprofessional conduct complaints made against a law enforcement officer who is the executive officer of that agency.

(2)(A) The Council shall accept from any source complaints alleging a law enforcement officer committed unprofessional conduct and, if the Executive Director of the Council deems such a complaint credible, he or she shall refer any complaints regarding Category A or Category B conduct to the executive officer of the agency who employs that officer, and that agency shall conduct a valid investigation.

(B) Notwithstanding the provisions of subdivision (A) of this subdivision (2), the Council shall cause to be conducted an alternate course of investigation if the allegation is in regard to a law enforcement officer who is the executive officer of the agency.

(b) Exception to an agency's valid investigation. Notwithstanding a law enforcement agency's valid investigation of a complaint, the Council may investigate that complaint or cause the complaint to be investigated if the officer resigned before a valid investigation had begun or was completed.

(c) Council investigations of Category C conduct. The Council shall investigate allegations of Category C conduct. (Added 2017, No. 56, § 1, eff. July 1, 2018.)

#### **§ 2405. Council sanction procedure**

Except as otherwise provided in this subchapter, the Council shall conduct its proceedings in accordance with the Vermont Administrative Procedure Act. This includes the ability to summarily suspend the certification of a law enforcement officer in accordance with 3 V.S.A. § 814(c). (Added 2017, No. 56, § 1, eff. July 1, 2018.)

#### **§ 2406. Permitted Council sanctions**

(a) Generally. The Council may impose any of the following sanctions on a law enforcement officer's certification upon its finding that a law enforcement officer committed unprofessional conduct:

(1) written warning;

(2) suspension, but to run concurrently with the length and time of any suspension imposed by a law enforcement agency with an effective internal affairs program, which shall amount to suspension for time already served if an officer has already served a suspension imposed by his or her agency with such a program;

(3) revocation, with the option of recertification at the discretion of the Council; or

(4) permanent revocation.

(b) Intended revocation; temporary voluntary surrender.

(1)(A) If, after an evidentiary hearing, the Council intends to revoke a law enforcement officer's certification due to its finding that the officer committed unprofessional conduct, the Council shall issue a decision to that effect.

(B) Within 10 business days from the date of that decision, such an officer may voluntarily surrender his or her certification if there is a pending labor proceeding related to the Council's unprofessional conduct findings.

(C) A voluntary surrender of an officer's certification shall remain in effect until the labor proceeding and all appeals are finally adjudicated or until the officer requests a final sanction hearing, whichever occurs first, and thereafter until the Council's final sanction hearing on the matter. At that hearing, the Council may modify its findings and decision on the basis of additional evidence, but shall not be bound by any outcome of the labor proceeding.

(2) If an officer fails to voluntarily surrender his or her certification in accordance with subdivision (1) of this subsection, the Council's original findings and decision shall take effect. (Added 2017, No. 56, § 1, eff. July 1, 2018.)

#### **§ 2407. Limitation on Council sanctions; first offense of Category B conduct**

[ Subsection (a) effective until October 1, 2021; see also subsection (a) effective October 1, 2021 .]

(a) Category B conduct; first offense. If a law enforcement agency conducts a valid investigation of a complaint alleging that a law enforcement officer committed a first offense of Category B conduct, the Council shall take no action, except that the Council may take action for a first offense under subdivision 2401(2)(C) (excessive use of force under authority of the State), 2401(2)(F) (placing a person in a prohibited restraint), or 2401(2)(G) (failing to intervene and report to a supervisor when an officer observes another officer placing a person in a prohibited restraint or using excessive force) of this chapter.

[ Subsection (a) effective October 1, 2021; see also subsection (a) effective until October 1, 2021 .]

(a) Category B conduct; first offense. If a law enforcement agency conducts a valid investigation of a complaint alleging that a law enforcement officer committed a first offense of Category B conduct, the Council shall take no action, except that the Council may take action for a first offense under subdivision 2401(2)(C) (excessive use of force under authority of the State), 2401(2)(F) (placing a person in a chokehold), or 2401(2)(G) (failing to intervene and report to a supervisor when an officer observes another officer placing a person in a chokehold or using excessive force) of this chapter.

(b) "Offense" defined. As used in this section, an "offense" means any offense committed by a law enforcement officer during the course of his or her certification, and includes any offenses committed during employment at a previous law enforcement agency. (Added 2017, No. 56, § 1, eff. July 1, 2018; amended 2019, No. 147 (Adj. Sess.), § 5, eff. Sept. 1, 2020; 2021, No. 27, § 6, eff. Oct. 1, 2021.)

#### **§ 2408. Invalid investigations**

Nothing in this subchapter shall prohibit the Council from causing a complaint to be investigated or taking disciplinary action on an officer's certification if the Council determines that a law enforcement agency's investigation of the officer's conduct did not constitute a valid investigation. (Added 2017, No. 56, § 1, eff. July 1, 2018.)

#### **§ 2409. Accessibility and confidentiality**

(a) It is the purpose of this section both to protect the reputation of law enforcement officers from public disclosure of unwarranted complaints against them and to fulfill the public's right to know of any action taken against a law enforcement officer when that action is based on a determination of unprofessional conduct.

(b) All meetings and hearings of the Council shall be subject to the Open Meeting Law.

(c) The Executive Director of the Council shall prepare and maintain a register of all complaints, which shall be open to public inspection and copying, except as may be exempt under the Public Records Act, and which shall show:

(1) with respect to any complaint, the following information:

(A) the date and the nature of the complaint, but not including the identity of the law enforcement officer; and

(B) a summary of the completed investigation; and

(2) only with respect to a complaint resulting in filing of charges or stipulations or the taking of disciplinary action, the following additional information:

(A) the name and business addresses of the law enforcement officer;

(B) formal charges, provided that they have been served or a reasonable effort to serve them has been made;

(C) the findings, conclusions, and order of the Council;

(D) the transcript of the hearing, if one has been made, and exhibits admitted at the hearing;

(E) any stipulation filed with the Council; and

(F) any final disposition of the matter by the Vermont Supreme Court.

(d) The Council, its hearing officer, and Council staff shall keep confidential any other information regarding unprofessional conduct complaints, investigations, proceedings, and related records except the information required or permitted to be released under this section.

(e) A law enforcement officer charged with unprofessional conduct shall have the right to inspect and copy the investigation file that results in the charges against him or her, except for any attorney work product or other privileged information.

(f) Nothing in this section shall prohibit the disclosure of any information regarding unprofessional conduct complaints pursuant to an order from a court of competent jurisdiction, or to a State or federal law enforcement agency in the course of its investigation, provided the agency agrees to maintain the confidentiality of the information as provided in subsection (d) of this section. (Added 2017, No. 56, § 1, eff. July 1, 2018.)

#### **§ 2410. Council Advisory Committee**

(a) Creation. There is created the Council Advisory Committee to provide advice to the Council regarding its duties under this subchapter.

(1) The Committee shall specifically advise and assist the Council in developing procedures to ensure that allegations of unprofessional conduct by law enforcement officers are investigated fully and fairly, and to ensure that appropriate action is taken in regard to those allegations.

(2) The Committee shall be advisory only and shall not have any decision-making authority.

(b) Membership. The Committee shall be composed of five individuals appointed by the Governor. The Governor may solicit recommendations for appointments from the Chair of the Council.

(1) Four of these members shall be public members who during incumbency shall not serve and shall have never served as a law enforcement officer or corrections officer and shall not have an immediate family member who is serving or has ever served as either of those officers.

(2) One of these members shall be a retired law enforcement officer.

(c) Assistance. The Executive Director of the Council or designee shall attend Committee meetings as a resource for the Committee.

(d) Reimbursement. Members of the Committee who are not employees of the State of Vermont and who are not otherwise compensated or reimbursed for their attendance shall be entitled to per diem compensation and reimbursement of expenses pursuant to 32 V.S.A. § 1010 for not more than five meetings per year. Such payments shall be derived from the budget of the Council. (Added 2017, No. 56, § 1, eff. July 1, 2018.)

#### **§ 2411. Council rules**

The Council may adopt rules to implement the provisions of this subchapter. (Added 2017, No. 56, § 1, eff. July 1, 2018.)