

WILMINGTON POLICE DEPARTMENT POLICIES & PROCEDURES

SUBJECT: USE OF BODY WORN CAMERAS

EFFECTIVE DATE: ??-??-????

REVIEW DATE: 5-10-2021

APPROVED: Matthew Murano
Chief of Police

NOTE: This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.

Purpose: Body Worn Cameras are intended to record police-citizen interactions. These recordings serve many purposes including enhancing agency transparency, accountability and public trust while documenting emergency responses and crime scenes, collecting evidence and more. This policy provides consistent guidance statewide for how and when body cameras will be used by officers of the Wilmington Police Department. It also provides consistent guidance on storage, retention and release of recordings.

Definitions as used in this policy:

Body Worn Camera (BWC): An electronic device capable of capturing audio and visual recordings worn on a person's body.

Wilmington Police Officer or sworn member: A Wilmington Police Officer with the authority to conduct searches and make arrests. Referred to as "officer" in this policy.

Lethal force incident: Whenever an officer uses lethal force (whether the subject is injured or not); and, any incident where an officer takes action that results in death or serious bodily injury to a person.

Recordings: Refers to files captured by BWCs.

Subject of the video footage: Any identifiable officer or any identifiable suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the body camera recording, and shall not include people who only incidentally appear on the recording.

Use of force: Any action beyond verbal commands and compliant handcuffing by an officer that is intended to control, restrain or overcome the resistance of another. This includes any action that results in death, injury, or complaint of injury or pain that persists beyond the use of a physical control hold. Force also includes the use of a weapon (including pointing of a firearm at a person) or empty-handed control and restraint tactics against a member of the public.

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Video footage or file: any images or audio and metadata recorded by a body camera.

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1. Use of BWCs
2. Equipment & Training
3. Storage, Retention & Release of recordings

SECTION 1. USE OF BWCs

(a) Only sworn officers shall be permitted to wear a BWC.¹ BWCs shall be worn in a location and manner consistent with the manufacturer's recommendations that maximize the camera's ability to capture video and audio footage of the officer's activities. BWCs are not intended to be used surreptitiously. Specifically, officers should not conceal the presence of a body worn camera, nor shall they attempt to utilize the body camera to record in secret unless so authorized by a judicial order.

(b) Both the video and audio recording functions of the body camera shall be activated in any of the following situations:

(1) Whenever an officer arrives on scene at a call for service.

(2) At the beginning of any other investigative or enforcement encounter between an officer and a member of the public, except that when an immediate threat to the officer's life or safety makes activating the camera impossible or dangerous. The officer shall activate the camera at the first reasonable opportunity to do so.

(3) During all requests made in the field to conduct a search and during the performance of the search, including K-9 searches.

(4) During administration of Miranda warnings and any response when in the field.

(5) At any incident that the officer reasonably anticipates may be confrontational or result in the need to use force.

Except as noted in section (c)(1) & (c)(3) below, the body camera shall not be deactivated until the encounter has fully concluded and the officer leaves the scene.

(c) Notwithstanding the requirements of subsection (b):

(1) Prior to entering a private residence, or premise where there is a reasonable expectation of privacy, without a warrant or in non-exigent circumstances, an officer shall notify the occupant(s) of use of the body camera and ask if continued use is acceptable. If the occupant says no, the sworn officer shall immediately discontinue use of the body camera.

¹ *Non-sworn employees hired specifically to perform ancillary law enforcement functions, such as Community Service Officers, may be authorized to wear BWCs. Also, undercover law enforcement officers are not expected to wear BWCs.*

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- (2) If entering a private residence pursuant to a search warrant or in exigent circumstances, or during the completion of any custodial arrest, use of the body worn camera shall continue regardless of consent being granted.
- (3) When interacting with an apparent crime victim, an officer shall, as soon as practical, notify the apparent crime victim of body camera usage and ask if continued use is acceptable. If the apparent crime victim says no, the officer shall immediately discontinue use of the body camera.
- (4) Unless the encounter occurs in a location where there is an expectation of privacy, an officer does not have an obligation to cease a body camera recording when interacting with an individual suspected of involvement in unlawful conduct, even if the individual requests the recording to be stopped.
- (d) In instances where the individual requests the officer to discontinue the use of a body camera made pursuant to subsection (c), and the responses thereto, shall be recorded by the body camera prior to discontinuing use of the body camera.

DISCONTINUING OR NOT STARTING A RECORDING:

- (e) There are occasions where an officer should not initiate a recording; or, if an audiovisual recording has been initiated, the officer may determine it necessary to pause or stop the recording prior to the conclusion of the event. If the officer pauses or stops a recording, they shall document the reason for the termination or suspension of the recording. Acceptable reasons for discontinuing recording or activating the mute feature include:
 - (1) During on scene conferences between officers, supervisors, advocates, clinicians, EMS personnel, attorneys, etc. where the officer determines the conference would violate confidentiality, privacy or individual rights.
 - (2) Conferences between officers and supervisors that might compromise this or further investigations or would otherwise impede law enforcement efforts or strategy.
 - (3) Encounters with undercover officers or confidential informants.
 - (4) If a person reporting a crime or assisting with an investigation requests to remain anonymous, the recording may be stopped.
 - (5) During times of prolonged waiting absent citizen contact such as waiting for a tow truck, funeral home or similar.
 - (6) Officers are expected to be respectful of individual's dignity and use sound judgments as to when and how the device will be used. Officers will try to avoid recording persons who are nude or have genitalia exposed, and officers will refrain from activating recordings in places where a reasonable expectation of privacy exists such as locker rooms, dressing rooms, rest rooms and similar unless such recording is necessary for a legitimate law enforcement purpose.
 - (7) Recordings shall not be made to record personal activities such as meal breaks or conversations with other officers, supervisors or staff outside of the scope of ongoing field activities.
 - (8) Recordings are not expected during innocuous activities such as taking telephone complaints, foot patrols, security assignments, providing directions, non-enforcement roadside assistance, humane destruction of a wounded animal, traffic control, providing unlocks and similar.

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(9) See sections c.(1) and c.(3) above regarding recording inside residences or other places where citizens have a reasonable expectation of privacy.

Recording should resume as soon as one of the above reasons no longer exists.

PROHIBITIONS ON USE OF BWCS:

(f) Officers shall not activate a body camera while on the grounds of any public, private or parochial elementary or secondary school, nor within a hospital or medical facility except when responding to an imminent threat to life or health or when a use of force is anticipated. This prohibition does not prevent officers from using BWCS as recording devices as part of an investigatory interview in a private setting within a school or medical environment.

(g) Officers shall avoid using body cameras to record for the sole purpose of gathering intelligence information on First Amendment protected activities such as speech, associations, or religion. This shall not be construed to limit lawful use of body cameras to record investigative encounters between an officer and a member of the public or activity that raises an articulable suspicion of possible on-going or imminent criminal conduct.

(h) Officers shall not run recordings through facial recognition or automated analysis programs without appropriate judicial review, except for automated redaction processes which are not for the purpose of identification or comparison to any other source.

REVIEW OF RECORDINGS:

(i) Except as otherwise prohibited (see section j. below), an officer may review BWC recordings prior to writing reports about incidents or arrests.

(j) In situations that result in an officer involved shooting, or death or serious bodily injury to a member of the public due to the actions of an officer, the officer shall not review any recordings or be provided an account of any recordings of the incident prior to being interviewed or writing a report, unless doing so is necessary, while in the field, to address an immediate threat to life or safety.

(k) See appendix A for procedures following a lethal force incident.

SECTION 2: EQUIPMENT & TRAINING

RESPONSIBILITIES OF OFFICERS:

(a) Prior to start of each shift officers are responsible for checking their body camera equipment to be sure it is operational, fully charged and free of any defects. Officers shall report any malfunctioning equipment to a supervisor, seek a replacement if available, and make a log note or other written notation of the date and time equipment malfunction was discovered.

1. During interactions where there is an expectation that the body camera would be activated, an officer should periodically check the body camera to assess that it is functioning properly.

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(b) In the event a body camera either fails to activate and begin recording or fails to cease recording, the officer will describe this, along with any additional relevant details, in a written report.

(c) Officers are responsible for “tagging” each recording appropriately. The tags or categories of files correspond to its retention period; therefore, officers must take extreme care to properly categorize each recording. Intentionally “mistagging” recordings will result in appropriate disciplinary action.

(d) Officers shall transfer data from their assigned BWC to the Wilmington Police Department’s storage as soon as practical, but no less than prior to use by another officer and/or prior to the capacity of the device being reached.

(e) Under no circumstances shall an officer erase, edit, alter, duplicate share or otherwise distribute any recordings on their device except as allowed by this policy. Only a system administrator is authorized to delete or edit files pursuant to section 3 of this policy. Only designated staff are authorized to duplicate and distribute copies of recordings pursuant to section 3 of this policy.

(f) Should any officer or employee fail to adhere to the recording requirements contained in this policy, intentionally interfere with a body camera’s ability to accurately capture video footage, or otherwise manipulate the video footage captured by a body camera during or after its operation, appropriate disciplinary action shall be taken.

RESPONSIBILITIES OF AGENCY HEADS:

(g) Each agency is responsible for providing training on the proper use of equipment to include the contents of this policy, instruction on operation of the BWC, how and when to transfer files, proper identification and proper “tagging” of recordings.

(h) Agencies shall provide instruction to officers on how to report and replace malfunctioning equipment.

(i) Agency supervisors may review recordings for the purpose of ensuring compliance with established policies, verifying the equipment is functioning properly, to identify any areas in which additional training or guidance is required and to identify material that would be appropriate for training.

(j) Agency heads are responsible for ensuring that all BWCs that are equipped with a “buffering” feature have such feature activated and set to record and retain at least the most recent 30 seconds of video and audio prior to an officer’s activation of the BWC.

(k) Agency heads are responsible to ensure that the retention schedule listed in section 3 below is followed.

SECTION 3: STORAGE, RETENTION and RELEASE:

STORAGE:

(a) Agencies are responsible for ensuring the secure storage of all recordings made by their employees. All recordings or files are the property of this agency and shall only be used for official purposes.

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RETENTION & RELEASE:

(b) At a minimum, all recordings shall be held in accordance with the State's record retention act for law enforcement records. [See VT State Archives & Records Administration's specific record schedule for this agency]. When appropriate and not exempt under 1 V.S.A. 317, recordings shall be released, or released with redaction, upon request to members of the public or media.

(c) Should any employee intentionally fail to adhere to the retention requirements contained in this policy, appropriate disciplinary action shall be taken.

(d) Agencies shall make a good faith effort to locate recordings of interest to the public. If recordings exist of an interaction or event captured by a BWC and that interaction or event is identified with reasonable specificity, the agency will make that recording(s) available for review or release consistent with 1 V.S.A. 317 and any other applicable records release schedule.

(e) Recordings shall not be divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose.

(f) In the event that an agency authorizes access to stored footage by a vendor such as a technician, information technology staff, etc. they shall not be permitted to access, view, copy, alter, or delete footage unless in accordance with this policy and at the express direction of the agency.

(g) The following retention guidelines are in addition to the requirements of the specific record schedule for the Wilmington Police Department. When a BWC fails to capture some or all of the audio or video of an incident due to malfunction, displacement of camera, or any other cause, any audio or video footage that is captured shall be treated the same as any other recording as described in this policy.

(1.) 14 (fourteen) days - In instances where a body camera is activated mistakenly and records no discernable human activity, such footage may be permanently deleted after 14 days by the law enforcement agency. The time, date, length of recording, assigned body camera designator, and a brief summary of the image depicted shall be documented in some fashion by the law enforcement agency prior to permanent deletion.

(2.) 90 (ninety) days - Recordings shall be retained for no less than ninety days if the recording captures an interaction or event involving:

- i. response to calls for service where no enforcement action occurs;
- ii. traffic stops with no enforcement action taken beyond a written warning;
- iii. traffic stops with enforcement action taken shall be kept until the civil case is closed;
- iv. police-citizen interactions that do not involve enforcement action, a search or seizure;

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(3.) 3 (three) years - Recordings shall be retained for no less than three (3) years if the recording captures an interaction or event involving:

i. any use of force;

ii. a recording related to any incident in which a member of the public has made a complaint against an agency employee;

iii. recording(s) used in disciplinary action against an employee shall be held for a minimum of three years from the completion of the disciplinary action;

iv. recordings shall also be retained for no less than three (3) years if a longer than normal retention period is voluntarily requested by the officer whose body camera recorded the video footage or their supervisor, or any officer who is a subject of the recording, if the officer or supervisor reasonably asserts the video footage has evidentiary or exculpatory value;

v. recordings shall be retained for no less than three years upon written request from a member of the public who is a subject of the recording, the next of kin of a subject who is deceased, or the parent/guardian of a juvenile who is a subject.

(4.) 7 (seven) years – Recordings shall be retained for no less than seven (7) years if the recording captures an interaction or event involving:

i. Recordings related to misdemeanor arrests or non-violent felony arrests (or longer if the case is not resolved in this time frame);

(5.) Recording related to the following will be retained indefinitely and require manual deletion:

i. Use of force incidents resulting in injury or allegation of injury;

ii. Officer involved shootings;

iii. Major incidents such as mass arrests;

iv. Serious felony offenses;

v. Homicide cases;

vi. Active missing persons cases.

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(h) Whenever an officer equipped with a BWC is involved in, a witness to, or within audio or sight range of a police use of force that results in a death or serious bodily injury including discharge of a firearm for other than humane destruction of an animal, or when any officer conduct becomes the subject of a criminal investigation:

a. Such officer's body camera shall be immediately seized by the officer's agency or department, or the agency or department conducting the related criminal investigation, and maintained in accordance with the rules governing the preservation of evidence;

b. All files on the seized body camera shall be maintained in accordance with the rules governing the preservation of evidence; and

c. The procedure referenced in Appendix A "*Lethal force incident procedures and statewide policy on review of BWC recordings following lethal force incidents*".

(i) BWC footage may only be offered as evidence by any government entity, agency, department or prosecutorial office, in accordance with established rules of evidence.

(j) Whenever doing so is necessary to protect personal privacy, the right to a fair trial, the identity of a confidential source or crime victim, or the life or physical safety of any person appearing in video footage, redaction technology may be used to obscure the face and other personally identifying characteristics of that person, including the tone of the person's voice, provided the redaction does not interfere with a viewer's ability to fully, completely, and accurately comprehend the events captured on the video footage.

(k) This policy is publicly available on this agency's website or by contacting the agency.

(l) Nothing in this policy shall be read to contravene any laws governing the maintenance, production, and destruction of evidence in criminal investigations and prosecutions.

Appendix A - Use of Force Policy on lethal force post-incident procedures and statewide policy on review of BWC recordings following lethal force incidents

INTRODUCTION:

Impartial and thorough investigation of officer involved shootings and other serious use of force incidents is essential to ensure police accountability, transparency and to maintain public trust. The following procedure is to be followed whenever an officer is involved in a lethal force incident (see definition below).

Among other things, this document describes the transition from an officer(s) being the investigator to that officer(s) becoming the subject of parallel investigations (administrative and potential criminal) in the wake of a lethal force incident. It also provides clear direction on the use of BWC recordings in the wake of a lethal force incident.

DEFINITIONS:

Chief Executive Officer (CEO): Means the person in control of a police agency, normally the Chief, Colonel or Sheriff.

Lethal force incident: Whenever an officer uses lethal force (whether the subject is injured or not); and, any incident where an officer takes any action that results in death or serious bodily injury to a person. Hereinafter referred to as "incident".

Public Safety Statement: A statement given at the scene of a lethal force incident, or as soon as practical, that allows the on-scene investigation to continue once the involved officer(s) leaves the area. It is a brief statement provided to the on-scene supervisor. The statement should include initial information such as type of force used; location of injured or dead person(s); description of any outstanding subject(s) including direction and mode of travel, known weapons, clothing description, etc.; description and location of any known victims, witnesses or evidence; and, any other information necessary to ensure officer and public safety and assist in the apprehension of outstanding suspects.

PROCEDURE:

When an incident covered by this policy occurs:

- A. Officers should take actions necessary to render the scene safe.
- B. When necessary, officers shall immediately summon emergency medical services and immediately provide appropriate medical attention.
- C. The ranking officer on scene shall assume incident command, and immediately request the response of a supervisor. Upon arrival, the supervisor shall take control of the incident scene.
- D. The incident location should be secured for purposes of investigation and evidence preservation.
- E. The involved officer(s) will provide a Public Safety Statement prior to leaving the scene when practical. The Public Safety Statement should be made as contemporaneously to the event as possible.
- F. The involved officer(s) should be removed from the scene to a secure location or a medical treatment facility if necessary. An officer or other support person should be assigned to stay with the involved officer(s). If available, a Peer Officer Support Team (POST) member or similar crisis response staff should be assigned this task. The support person should avoid conversations about the incident and instead focus on the officer's health and well being.

Appendix A (continued)

G. To maintain the integrity of the investigation those involved should not discuss the incident amongst themselves. This excludes communication with family, legal counsel, mental health personnel, medical personnel or union representation. Employees should be encouraged to refrain from watching or listening to the news, social media or podcasts regarding the incident in which they were involved.

H. Appropriate personnel should be contacted, including but not limited to the CEO, the VT State Police Major Crime Unit, the State's Attorney's Office and POST members or counselors as necessary.

I. At the direction of the Major Crime Unit, the involved officer(s) shall be photographed, and any injuries documented prior to the end of the shift. All BWC or other recordings of the incident shall be preserved as evidence by the home agency. The home agency will be asked to provide all video, audio, phone and radio transmission recordings of the entire incident to the Major Crimes Unit. Additionally, the officer(s)' firearm or other tools used in the incident will be collected and preserved as evidence. The CEO will determine if and when a replacement firearm will be issued to the involved officer(s).

J. When practical, the involved officer may walk through the scene to assist Major Crimes Unit with their location at the time lethal force was used and/or leading up to lethal force.

K. Involved officers shall **not** be allowed to view their body-worn camera footage prior to being interviewed by the Major Crime Unit, nor will they be permitted to review any other recordings of the incident or have them described by others. (See below for additional detail)

VT STATE POLICE INVESTIGATION:

When a Vermont law enforcement agency is involved in a lethal force incident, there are multiple priorities that must be considered. First and foremost, the agency must ensure public safety by cooperating with any investigation that seeks to identify person(s) who violate State or Federal law. Further, the agency has an obligation to its community to be as transparent and accountable as possible. Agencies also have an obligation to their employees who have the right to be treated fairly and in accordance with applicable collective bargaining agreements. There are times in the wake of a lethal force incident, when the officer(s) becomes the focus of a criminal investigation to assess compliance with the law.

Officers involved in lethal force incidents are afforded the same constitutional rights as any person under criminal investigation. It is preferable for transparency that officers participate in the Major Crime Unit's investigative process.

The following procedure is the statewide practice for Major Crime Unit review of lethal force incidents:

1. Officer(s) provides a public safety statement at the scene.
2. Officer(s) do not review BWC or other recordings of the incident, nor are they given an account of any recordings by anyone.
3. Officer and their attorney meet with investigators to provide an initial statement unaided by recordings or other information surrounding the incident.
4. Following this statement, the officer and their attorney may review the officer's BWC or cruiser camera footage and or other video that would show the officer's perspective at the time force was used.
5. The officer and their attorney may then provide investigators with additional information.

Appendix A (continued)

Discrepancies between an officer's unaided and aided statements following an incident are expected. The science of memory in the wake of a stressful or traumatic event is extensive and points to numerous physiological phenomena during acutely stressful situations (I.e. auditory exclusion and tunnel vision) being common causes of discrepancies.

ADMINISTRATIVE INVESTIGATION:

Whenever an officer uses lethal force, the home agency will initiate a parallel administrative investigation. The CEO of the home agency may request an independent review or investigation by an outside entity. Even if an outside entity is used, the administrative investigation is different from a potential criminal investigation in that the involved officer(s) is/are compelled to participate in the administrative investigation process as a condition of employment. The administrative investigation will be conducted in compliance with 20 V.S.A. Sections 2401(4) and 2402 and any other applicable law or regulation of the Vermont Criminal Justice Council.

In the event that an outside law-enforcement agency with jurisdiction (normally the VSP Major Crime Unit) initiates an investigation into the incident for the purpose of determining if there is criminal liability, the administrative investigation should occur after the criminal investigation and decisions by the Attorney General's Office and the State's Attorney's Office are complete.

The administrative investigator will interview the involved officer(s) and witnesses, and review all available evidence, information and statements. The administrative investigator may use information obtained as part of the criminal investigation but may **not** provide any information from the administrative investigation to criminal investigators or prosecutors. All applicable collective bargaining agreements will be followed during an administrative investigation.

The officer shall be kept informed of the progress of the administrative investigation and upon completion, notified in writing of the outcome.

The CEO or designee shall notify the State's Attorney, relevant municipal/state legal counsel, and any duly appointed police oversight body (in executive session) of the administrative investigation's outcome. If the investigation concludes a necessity to report to the VCJC, it shall be done without delay.

RECOMMENDATIONS PRIOR TO RETURN TO DUTY:

The officer(s) should be placed on administrative leave or assigned to administrative duties with no enforcement responsibilities pending completion of the criminal investigation and decision about prosecution by both the Attorney General's Office and the State's Attorney's Office.²

- a. If the VSP investigation results in criminal charges, the prosecuting agency shall be in control of the record and control release until such charges are resolved.
- b. If the VSP investigation does not result in criminal charges, the home agency resumes its controlling role as the keeper of the record.

² *Keeping an officer on admin duty may not be feasible in some agencies. The CEO should carefully evaluate the circumstances and consult with the State's Attorney and Attorney General's Office prior to returning the officer to duties that may involve enforcing laws/ordinances or using force.*

Appendix A (continued)

It is strongly recommended that the CEO direct the officer to obtain psychological follow-up for post-incident trauma and that the agency pays for such services. With prior approval from the CEO, an officer may seek psychological follow-up from a licensed professional of their choice. At least an initial psychological follow-up should be completed before the officer is reassigned to duty.

RELEASE OF BWC OR OTHER RECORDINGS IN THE WAKE OF A LETHAL FORCE INCIDENT:

Recordings, or portions thereof, taken during the course of these significant incidents do become public pursuant to public records law. In the wake of an incident, ensuring due process for every person involved is essential. The question of releasing recording is not *if*, but *when*.

Following lethal force incidents, it is not uncommon for multiple agencies to possess copies of BWC or other recordings. For instance, the home agency, the Vermont State Police and the State's Attorney's Office or Attorney General's Office may all have copies of the relevant recordings. This can create confusion, duplication of effort and expense as well as inconsistency when presented with public information requests for release of the footage. Because multiple copies of digital recordings will exist, the following guidance is intended to identify the agency with the superordinate interest at certain stages post-incident.

When an outside agency (usually VSP) conducts a criminal investigation, the investigating agency will provide the home agency with a letter requesting preservation of all evidentiary items and describing the investigative process. Recordings are considered evidence in a criminal investigation. While the criminal investigation is ongoing, VSP (or other outside agency) is in control of the record and, in consultation with prosecutors, will control release of recordings until the investigation is complete and the case has been reviewed by both the Attorney General's Office and the State's Attorney's Office.

- a. If the VSP investigation results in criminal charges, the prosecuting agency shall be in control of the record and control release until such charges are resolved.
- b. If the VSP investigation does not result in criminal charges, the home agency resumes its controlling role as the keeper of the record.

This procedure is intended to provide clarity to involved agencies, members of the public and media and to avoid confusion and unnecessary duplication of effort to process requests for recordings. Nothing in this guidance is intended to shield recordings from public examination. There are numerous factors that impact the release of body-worn camera or other recordings of a serious incident. It is not possible to create a definitive timeline for the release of recordings given the number of legal, investigative, operational, and external factors that bear on events on a case by case basis. Footage should be released as soon as practical in consultation with investigators, prosecutors, and organizational leaders. Whenever possible, release will occur within 30 days of the incident.

Body Camera Statewide Policy

Purpose: Body Worn Cameras are intended to record police-citizen interactions. These recordings serve many purposes including enhancing agency transparency, accountability and public trust while documenting emergency responses and crime scenes, collecting evidence and more. This policy provides consistent guidance statewide for how and when body cameras will be used by law enforcement. It also provides consistent guidance on storage, retention and release of recordings.

This policy shall apply to any Vermont law enforcement agency that chooses to equip their officers with Body Worn Cameras.

Definitions as used in this policy:

Body Worn Camera (BWC): An electronic device capable of capturing audio and visual recordings worn on a person's body.

Law enforcement officer or sworn member: A Vermont law enforcement officer with the authority to conduct searches and make arrests. Referred to as "officer" in this policy.

Lethal force incident: Whenever an officer uses lethal force (whether the subject is injured or not); and, any incident where an officer takes action that results in death or serious bodily injury to a person.

Recordings: Refers to files captured by BWCs.

Subject of the video footage: Any identifiable law enforcement officer or any identifiable suspect, victim, detainee, conversant, injured party, or other similarly situated person who appears on the body camera recording, and shall not include people who only incidentally appear on the recording.

Use of force: Any action beyond verbal commands and compliant handcuffing by a law

enforcement officer that is intended to control, restrain or overcome the resistance of another. This includes any action that results in death, injury, or complaint of injury or pain that persists beyond the use of a physical control hold. Force also includes the use of a weapon (including pointing of a firearm at a person) or empty-handed control and restraint tactics against a member of the public.

Video footage or file: any images or audio and metadata recorded by a body camera.

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SECTION 1. USE OF BWCs

- (a) Only sworn officers shall be permitted to wear a BWC.¹ BWCs shall be worn in a location and manner consistent with the manufacturer's recommendations that maximize the camera's ability to capture video and audio footage of the officer's activities. BWCs are not intended to be used surreptitiously. Specifically, officers should not conceal the presence of a body worn camera, nor shall they attempt to utilize the body camera to record in secret unless so authorized by a judicial order.
- (b) Both the video and audio recording functions of the body camera shall be activated in any of the following situations:
 - (1) Whenever an officer arrives on scene at a call for service.
 - (2) At the beginning of any other investigative or enforcement encounter between an officer and a member of the public, except that when an immediate threat to the officer's life or safety makes activating the camera impossible or dangerous. The officer shall activate the camera at the first reasonable opportunity to do so.

¹ *Non-sworn employees hired specifically to perform ancillary law enforcement functions, such as Community Service Officers, may be authorized to wear BWCs. Also, undercover law enforcement officers are not expected to wear BWCs.*

- (3) During all requests made in the field to conduct a search and during the performance of the search, including K-9 searches.
- (4) During administration of Miranda warnings and any response when in the field.
- (5) At any incident that the officer reasonably anticipates may be confrontational or result in the need to use force.

Except as noted in section (c)(1) & (c)(3) below, the body camera shall not be deactivated until the encounter has fully concluded and the officer leaves the scene.

(c) Notwithstanding the requirements of subsection (b):

- (1) Prior to entering a private residence, or premise where there is a reasonable expectation of privacy, without a warrant or in non-exigent circumstances, an officer shall notify the occupant(s) of use of the body camera and ask if continued use is acceptable. If the occupant says no, the sworn officer shall immediately discontinue use of the body camera.
- (2) If entering a private residence pursuant to a search warrant or in exigent circumstances, or during the completion of any custodial arrest, use of the body worn camera shall continue regardless of consent being granted.
- (3) When interacting with an apparent crime victim, an officer shall, as soon as practical, notify the apparent crime victim of body camera usage and ask if continued use is acceptable. If the apparent crime victim says no, the officer shall immediately discontinue use of the body camera.
- (4) Unless the encounter occurs in a location where there is an expectation of privacy, an officer does not have an obligation to cease a body camera recording when interacting with an individual suspected of involvement in unlawful conduct, even if the individual requests the recording to be stopped.

(d) In instances where the individual requests the officer to discontinue the use of a body camera made pursuant to subsection (c), and the responses thereto, shall be recorded by the body camera prior to discontinuing use of the body camera.

DISCONTINUING OR NOT STARTING A RECORDING:

- (e) There are occasions where an officer should not initiate a recording; or, if an audiovisual recording has been initiated, the officer may determine it necessary to pause or stop the recording prior to the conclusion of the event. If the officer pauses or stops a recording, they shall document the reason for the termination or suspension of the recording. Acceptable reasons for discontinuing recording or activating the mute feature include:
- (1) During on scene conferences between officers, supervisors, advocates, clinicians, EMS personnel, attorneys, etc. where the officer determines the conference would violate confidentiality, privacy or individual rights.
 - (2) Conferences between officers and supervisors that might compromise this or further investigations or would otherwise impede law enforcement efforts or strategy.
 - (3) Encounters with undercover officers or confidential informants.
 - (4) If a person reporting a crime or assisting with an investigation requests to remain anonymous, the recording may be stopped.
 - (5) During times of prolonged waiting absent citizen contact such as waiting for a tow truck, funeral home or similar.
 - (6) Officers are expected to be respectful of individual's dignity and use sound judgments as to when and how the device will be used. Officers will try to avoid recording persons who are nude or have genitalia exposed, and officers will refrain from activating recordings in places where a reasonable expectation of privacy exists such as locker rooms, dressing rooms, rest rooms and similar unless such recording is necessary for a legitimate law enforcement purpose.
 - (7) Recordings shall not be made to record personal activities such as meal breaks or conversations with other officers, supervisors or staff outside of the scope of ongoing field activities.
 - (8) Recordings are not expected during innocuous activities such as taking telephone complaints, foot patrols, security assignments, providing directions, non-enforcement roadside assistance, humane destruction of a wounded animal, traffic control, providing unlocks and similar.
 - (9) See sections c.(1) and c.(3) above regarding recording inside residences or other places where citizens have a reasonable expectation of privacy.

Recording should resume as soon as one of the above reasons no longer exists.

PROHIBITIONS ON USE OF BWCS:

- (f) Officers shall not activate a body camera while on the grounds of any public, private or parochial elementary or secondary school, nor within a hospital or medical facility except when responding to an imminent threat to life or health or when a use of force is anticipated. This prohibition does not prevent officers from using BWCS as recording devices as part of an investigatory interview in a private setting within a school or medical environment.
- (g) Officers shall avoid using body cameras to record for the sole purpose of gathering intelligence information on First Amendment protected activities such as speech, associations, or religion. This shall not be construed to limit lawful use of body cameras to record investigative encounters between an officer and a member of the public or activity that raises an articulable suspicion of possible on-going or imminent criminal conduct.
- (h) Officers shall not run recordings through facial recognition or automated analysis programs without appropriate judicial review, except for automated redaction processes which are not for the purpose of identification or comparison to any other source.

REVIEW OF RECORDINGS:

- (i) Except as otherwise prohibited (see section j. below), an officer may review BWC recordings prior to writing reports about incidents or arrests.
- (j) In situations that result in an officer involved shooting, or death or serious bodily injury to a member of the public due to the actions of an officer, the officer shall not review any recordings or be provided an account of any recordings of the incident prior to being interviewed or writing a report, unless doing so is necessary, while in the field, to address an immediate threat to life or safety.
- (k) See appendix A for procedures following a lethal force incident.

SECTION 2: EQUIPMENT & TRAINING

RESPONSIBILITIES OF OFFICERS:

- (a) Prior to start of each shift officers are responsible for checking their body camera equipment to be sure it is operational, fully charged and free of any defects. Officers shall report any

malfunctioning equipment to a supervisor, seek a replacement if available, and make a log note or other written notation of the date and time equipment malfunction was discovered.

- a. During interactions where there is an expectation that the body camera would be activated, an officer should periodically check the body camera to assess that it is functioning properly.
- (b) In the event a body camera either fails to activate and begin recording or fails to cease recording, the officer will describe this, along with any additional relevant details, in a written report.
- (c) Officers are responsible for “tagging” each recording appropriately. The tags or categories of files correspond to its retention period; therefore, officers must take extreme care to properly categorize each recording. Intentionally “mistagging” recordings will result in appropriate disciplinary action.
- (d) Officers shall transfer data from their assigned BWC to the agency’s storage as soon as practical, but no less than prior to use by another officer and/or prior to the capacity of the device being reached.
- (e) Under no circumstances shall an officer erase, edit, alter, duplicate share or otherwise distribute any recordings on their device except as allowed by this policy. Only a system administrator is authorized to delete or edit files pursuant to section 3 of this policy. Only designated staff are authorized to duplicate and distribute copies of recordings pursuant to section 3 of this policy.
- (f) Should any officer or employee fail to adhere to the recording requirements contained in this policy, intentionally interfere with a body camera’s ability to accurately capture video footage, or otherwise manipulate the video footage captured by a body camera during or after its operation, appropriate disciplinary action shall be taken.

RESPONSIBILITIES OF AGENCY HEADS:

- (g) Each agency is responsible for providing training on the proper use of equipment to include the contents of this policy, instruction on operation of the BWC, how and when to transfer files, proper identification and proper “tagging” of recordings.
- (h) Agencies shall provide instruction to officers on how to report and replace malfunctioning equipment.
- (i) Agency supervisors may review recordings for the purpose of ensuring compliance with

established policies, verifying the equipment is functioning properly, to identify any areas in which additional training or guidance is required and to identify material that would be appropriate for training.

- (j) Agency heads are responsible for ensuring that all BWCs that are equipped with a “buffering” feature have such feature activated and set to record and retain at least the most recent 30 seconds of video and audio prior to an officer’s activation of the BWC.
- (k) Agency heads are responsible to ensure that the retention schedule listed in section 3 below is followed.

SECTION 3: STORAGE, RETENTION and RELEASE:

STORAGE:

- (a) Agencies are responsible for ensuring the secure storage of all recordings made by their employees. All recordings or files are the property of this agency and shall only be used for official purposes.

RETENTION & RELEASE:

- (b) At a minimum, all recordings shall be held in accordance with the State’s record retention act for law enforcement records. [See VT State Archives & Records Administration’s specific record schedule for this agency]. When appropriate and not exempt under 1 V.S.A. 317, recordings shall be released, or released with redaction, upon request to members of the public or media.
- (c) Should any employee intentionally fail to adhere to the retention requirements contained in this policy, appropriate disciplinary action shall be taken.
- (d) Agencies shall make a good faith effort to locate recordings of interest to the public. If recordings exist of an interaction or event captured by a BWC and that interaction or event is identified with reasonable specificity, the agency will make that recording(s) available for review or release consistent with 1 V.S.A. 317 and any other applicable records release schedule.
- (e) Recordings shall not be divulged or used by any law enforcement agency for any commercial or other non-law enforcement purpose.
- (f) In the event that an agency authorizes access to stored footage by a vendor such as a technician, information technology staff, etc. they shall not be permitted to access, view, copy, alter, or delete footage unless in accordance with this policy and at the express direction of the agency.

(g) The following retention guidelines are in addition to the requirements of the specific record schedule for this agency. When a BWC fails to capture some or all of the audio or video of an incident due to malfunction, displacement of camera, or any other cause, any audio or video footage that is captured shall be treated the same as any other recording as described in this policy.

(1.) 14 (fourteen) days - In instances where a body camera is activated mistakenly and records no discernable human activity, such footage may be permanently deleted after 14 days by the law enforcement agency. The time, date, length of recording, assigned body camera designator, and a brief summary of the image depicted shall be documented in some fashion by the law enforcement agency prior to permanent deletion.

(2.) 90 (ninety) days - Recordings shall be retained for no less than ninety days if the recording captures an interaction or event involving:

- i. response to calls for service where no enforcement action occurs;
- ii. traffic stops with no enforcement action taken beyond a written warning;
- iii. traffic stops with enforcement action taken shall be kept until the civil case is closed;
- iv. police-citizen interactions that do not involve enforcement action, a search or seizure;

(3.) 3 (three) years - Recordings shall be retained for no less than three (3) years if the recording captures an interaction or event involving:

- i. any use of force;
- ii. a recording related to any incident in which a member of the public has made a complaint against an agency employee;
- iii. recording(s) used in disciplinary action against an employee shall be held for a minimum of three years from the completion of the disciplinary action;
- iv. recordings shall also be retained for no less than three (3) years if a longer than normal retention period is voluntarily requested by the officer whose body camera recorded the video footage or their supervisor, or any officer who is a subject of the recording, if the officer or supervisor reasonably

asserts the video footage has evidentiary or exculpatory value;

- v. recordings shall be retained for no less than three years upon written request from a member of the public who is a subject of the recording, the next of kin of a subject who is deceased, or the parent/guardian of a juvenile who is a subject.

(4.) 7 (seven) years – Recordings shall be retained for no less than seven (7) years if the recording captures an interaction or event involving:

- i. Recordings related to misdemeanor arrests or non-violent felony arrests (or longer if the case is not resolved in this time frame);

(5.) Recording related to the following will be retained indefinitely and require manual deletion:

- i. Use of force incidents resulting in injury or allegation of injury;
- ii. Officer involved shootings;
- iii. Major incidents such as mass arrests;
- iv. Serious felony offenses;
- v. Homicide cases;
- vi. Active missing persons cases.

(h) Whenever an officer equipped with a BWC is involved in, a witness to, or within audio or sight range of a police use of force that results in a death or serious bodily injury including discharge of a firearm for other than humane destruction of an animal, or when any officer conduct becomes the subject of a criminal investigation:

- a. Such officer's body camera shall be immediately seized by the officer's agency or department, or the agency or department conducting the related criminal investigation, and maintained in accordance with the rules governing the preservation of evidence;
- b. All files on the seized body camera shall be maintained in accordance with the rules governing the preservation of evidence; and
- c. The procedure referenced in Appendix A "*Lethal force incident procedures and statewide policy on review of BWC recordings following lethal force incidents*".

(i) BWC footage may only be offered as evidence by any government entity, agency, department or prosecutorial office, in accordance with established rules of evidence.

- (j) Whenever doing so is necessary to protect personal privacy, the right to a fair trial, the identity of a confidential source or crime victim, or the life or physical safety of any person appearing in video footage, redaction technology may be used to obscure the face and other personally identifying characteristics of that person, including the tone of the person's voice, provided the redaction does not interfere with a viewer's ability to fully ,completely, and accurately comprehend the events captured on the video footage.
- (k) This policy is publicly available on this agency's website or by contacting the agency.
- (l) Nothing in this chapter shall be read to contravene any laws governing the maintenance, production, and destruction of evidence in criminal investigations and prosecutions.

##

Appendix A - DRAFT Statewide Use of Force Policy on lethal force post-incident procedures and statewide policy on review of BWC recordings following lethal force incidents

INTRODUCTION:

Impartial and thorough investigation of officer involved shootings and other serious use of force incidents is essential to ensure police accountability, transparency and to maintain public trust. The following procedure is to be followed whenever an officer is involved in a lethal force incident (see definition below).

Among other things, this document describes the transition from an officer(s) being the investigator to that officer(s) becoming the subject of parallel investigations (administrative and potential criminal) in the wake of a lethal force incident. It also provides clear direction on the use of BWC recordings in the wake of a lethal force incident.

DEFINITIONS:

Chief Executive Officer (CEO): Means the person in control of a police agency, normally the Chief, Colonel or Sheriff.

Lethal force incident: Whenever an officer uses lethal force (whether the subject is injured or not); and, any incident where an officer takes any action that results in death or serious bodily injury to a person. Hereinafter referred to as “incident”.

Public Safety Statement: A statement given at the scene of a lethal force incident, or as soon as practical, that allows the on-scene investigation to continue once the involved officer(s) leaves the area. It is a brief statement provided to the on-scene supervisor. The statement should include initial information such as type of force used; location of injured or dead person(s); description of any outstanding subject(s) including direction and mode of travel, known weapons, clothing description, etc.; description and location of any known victims, witnesses or evidence; and, any other information necessary to ensure officer and public safety and assist in the apprehension of outstanding suspects.

PROCEDURE:

When an incident covered by this policy occurs:

- A. Officers should take actions necessary to render the scene safe.
- B. When necessary, officers shall immediately summon emergency medical services and immediately provide appropriate medical attention.
- C. The ranking officer on scene shall assume incident command, and immediately request the response of a supervisor. Upon arrival, the supervisor shall take control of the incident scene.
- D. The incident location should be secured for purposes of investigation and evidence preservation.
- E. The involved officer(s) will provide a Public Safety Statement prior to leaving the scene when

practical. The Public Safety Statement should be made as contemporaneously to the event as possible.

F. The involved officer(s) should be removed from the scene to a secure location or a medical treatment facility if necessary. An officer or other support person should be assigned to stay with the involved officer(s). If available, a Peer Officer Support Team (POST) member or similar crisis response staff should be assigned this task. The support person should avoid conversations about the incident and instead focus on the officer's health and well being.

G. To maintain the integrity of the investigation those involved should not discuss the incident amongst themselves. This excludes communication with family, legal counsel, mental health personnel, medical personnel or union representation. Employees should be encouraged to refrain from watching or listening to the news, social media or podcasts regarding the incident in which they were involved.

H. Appropriate personnel should be contacted, including but not limited to the CEO, the VT State Police Major Crime Unit, the State's Attorney's Office and POST members or counselors as necessary.

I. At the direction of the Major Crime Unit, the involved officer(s) shall be photographed, and any injuries documented prior to the end of the shift. All BWC or other recordings of the incident shall be preserved as evidence by the home agency. The home agency will be asked to provide all video, audio, phone and radio transmission recordings of the entire incident to the Major Crimes Unit. Additionally, the officer(s)' firearm or other tools used in the incident will be collected and preserved as evidence. The CEO will determine if and when a replacement firearm will be issued to the involved officer(s).

J. When practical, the involved officer may walk through the scene to assist Major Crimes Unit with their location at the time lethal force was used and/or leading up to lethal force.

K. Involved officers shall **not** be allowed to view their body-worn camera footage prior to being interviewed by the Major Crime Unit, nor will they be permitted to review any other recordings of the incident or have them described by others. (See below for additional detail)

VT STATE POLICE INVESTIGATION:

When a Vermont law enforcement agency is involved in a lethal force incident, there are multiple priorities that must be considered. First and foremost, the agency must ensure public safety by cooperating with any investigation that seeks to identify person(s) who violate State or Federal law. Further, the agency has an obligation to its community to be as transparent and accountable as possible. Agencies also have an obligation to their employees who have the right to be treated fairly and in accordance with applicable collective bargaining agreements. There are times in the wake of a lethal force incident, when the officer(s) becomes the focus of a criminal investigation to assess compliance with the law.

Officers involved in lethal force incidents are afforded the same constitutional rights as any person under criminal investigation. It is preferable for transparency that officers participate in the Major Crime Unit's investigative process.

The following procedure is the statewide practice for Major Crime Unit review of lethal force incidents:

1. Officer(s) provides a public safety statement at the scene.
2. Officer(s) do not review BWC or other recordings of the incident, nor are they given an account of any recordings by anyone.
3. Officer and their attorney meet with investigators to provide an initial statement unaided by recordings or other information surrounding the incident.
4. Following this statement, the officer and their attorney may review the officer's BWC or cruiser camera footage and or other video that would show the officer's perspective at the time force was used.
5. The officer and their attorney may then provide investigators with additional information.

Discrepancies between an officer's unaided and aided statements following an incident are expected. The science of memory in the wake of a stressful or traumatic event is extensive and points to numerous physiological phenomena during acutely stressful situations (I.e. auditory exclusion and tunnel vision) being common causes of discrepancies.

ADMINISTRATIVE INVESTIGATION:

Whenever an officer uses lethal force, the home agency will initiate a parallel administrative investigation. The CEO of the home agency may request an independent review or investigation by an outside entity. Even if an outside entity is used, the administrative investigation is different from a potential criminal investigation in that the involved officer(s) is/are compelled to participate in the administrative investigation process as a condition of employment. The administrative investigation will be conducted in compliance with 20 V.S.A. Sections 2401(4) and 2402 and any other applicable law or regulation of the Vermont Criminal Justice Council.

In the event that an outside law-enforcement agency with jurisdiction (normally the VSP Major Crime Unit) initiates an investigation into the incident for the purpose of determining if there is criminal liability, the administrative investigation should occur after the criminal investigation and decisions by the Attorney General's Office and the State's Attorney's Office are complete.

The administrative investigator will interview the involved officer(s) and witnesses, and review all available evidence, information and statements. The administrative investigator may use information obtained as part of the criminal investigation but may **not** provide any information from the administrative investigation to criminal investigators or prosecutors. All applicable collective bargaining agreements will be followed during an administrative investigation.

The officer shall be kept informed of the progress of the administrative investigation and upon completion, notified in writing of the outcome.

The CEO or designee shall notify the State's Attorney, relevant municipal/state legal counsel, and any duly appointed police oversight body (in executive session) of the administrative investigation's outcome. If the investigation concludes a necessity to report to the VCJC, it shall be done without delay.

RECOMMENDATIONS PRIOR TO RETURN TO DUTY:

The officer(s) should be placed on administrative leave or assigned to administrative duties with no enforcement responsibilities pending completion of the criminal investigation and decision about prosecution by both the Attorney General's Office and the State's Attorney's Office.²

It is strongly recommended that the CEO direct the officer to obtain psychological follow-up for post-incident trauma and that the agency pays for such services. With prior approval from the CEO, an officer may seek psychological follow-up from a licensed professional of their choice. At least an initial psychological follow-up should be completed before the officer is reassigned to duty.

RELEASE OF BWC OR OTHER RECORDINGS IN THE WAKE OF A LETHAL FORCE INCIDENT:

Recordings, or portions thereof, taken during the course of these significant incidents do become public pursuant to public records law. In the wake of an incident, ensuring due process for every person involved is essential. The question of releasing recording is not *if*, but *when*.

Following lethal force incidents, it is not uncommon for multiple agencies to possess copies of BWC or other recordings. For instance, the home agency, the Vermont State Police and the State's Attorney's Office or Attorney General's Office may all have copies of the relevant recordings. This can create confusion, duplication of effort and expense as well as inconsistency when presented with public information requests for release of the footage. Because multiple copies of digital recordings will exist, the following guidance is intended to identify the agency with the superordinate interest at certain stages post-incident.

When an outside agency (usually VSP) conducts a criminal investigation, the investigating agency will provide the home agency with a letter requesting preservation of all evidentiary items and describing the investigative process. Recordings are considered evidence in a criminal investigation. While the criminal investigation is ongoing, VSP (or other outside agency) is in control of the record¹⁷ and, in consultation with prosecutors, will control release of recordings until the investigation is complete and the case has been reviewed by both the Attorney General's Office and the State's Attorney's Office.

- a. If the VSP investigation results in criminal charges, the prosecuting agency shall be in control of the record and control release until such charges are resolved.
- b. If the VSP investigation does not result in criminal charges, the home agency resumes its controlling role as the keeper of the record.

This procedure is intended to provide clarity to involved agencies, members of the public and media and to avoid confusion and unnecessary duplication of effort to process requests for recordings. Nothing in this guidance is intended to shield recordings from public examination. There are numerous

² Keeping an officer on admin duty may not be feasible in some agencies. The CEO should carefully evaluate the circumstances and consult with the State's Attorney and Attorney General's Office prior to returning the officer to duties that may involve enforcing laws/ordinances or using force.

factors that impact the release of body-worn camera or other recordings of a serious incident. It is not possible to create a definitive timeline for the release of recordings given the number of legal, investigative, operational, and external factors that bear on events on a case by case basis. Footage should be released as soon as practical in consultation with investigators, prosecutors, and organizational leaders. Whenever possible, release will occur within 30 days of the incident.

##

No. 166. An act relating to governmental structures protecting the public health, safety, and welfare.

(S.124)

It is hereby enacted by the General Assembly of the State of Vermont:

* * * Vermont Criminal Justice Council * * *

Sec. 1. 20 V.S.A. chapter 151 is redesignated to read:

CHAPTER 151. VERMONT CRIMINAL JUSTICE ~~TRAINING~~ COUNCIL

Sec. 2. VERMONT CRIMINAL JUSTICE COUNCIL; PURPOSE;

CONFORMING REVISIONS

(a) In order to fully reflect all of its powers and duties, which relate to training, certifying, and professionally regulating law enforcement officers, the Vermont Criminal Justice Training Council is renamed the Vermont Criminal Justice Council.

(b) When preparing the Vermont Statutes Annotated for publication, the Office of Legislative Counsel shall replace “Vermont Criminal Justice Training Council” with “Vermont Criminal Justice Council,” provided that those revisions have no other effect on the meaning of the affected statutes.

Sec. 3. 20 V.S.A. § 2351 is amended to read:

§ 2351. CREATION AND PURPOSE OF COUNCIL

(a) In order to promote and protect the health, safety, and welfare of the public, it is in the public interest to provide for the creation of the Vermont Criminal Justice ~~Training~~ Council.

(b) The Council is created to:

(1) encourage and assist municipalities, counties, and governmental agencies of this State in their efforts to improve the quality of law enforcement and citizen protection by maintaining a uniform standard of ~~recruitment~~ basic training for law enforcement applicants and in-service training for law enforcement officers; and

(2) maintain statewide standards of law enforcement officer professional conduct by accepting and tracking complaints alleging officer unprofessional conduct, adjudicating charges of unprofessional conduct, and imposing sanctions on the certification of an officer who the Council finds has committed unprofessional conduct.

(c) The Council shall offer and approve continuing programs of instruction in up-to-date methods of law enforcement and the administration of criminal justice.

(d) It is the responsibility of the Council to encourage the participation of local governmental units in the program and to aid in the establishment of adequate training facilities.

Sec. 4. 20 V.S.A. § 2352 is amended to read:

§ 2352. COUNCIL MEMBERSHIP

(a)(1) The Vermont Criminal Justice ~~Training~~ Council shall consist of:

(A) the Commissioners of Public Safety, of Corrections, of Motor Vehicles, ~~and~~ of Fish and Wildlife, and of Mental Health;

(B) the Attorney General;

(C) the Executive Director of the Department of State's Attorneys and Sheriffs;

(D) the Executive Director of Racial Equity;

(E) a member of the Vermont Troopers' Association or its successor entity, elected by its membership;

~~(D)~~(F) a member of the Vermont Police Association, elected by its membership; and

~~(E)~~(G) ~~five additional members appointed by the Governor.~~

~~(i) The Governor's appointees shall provide broad representation of all aspects of law enforcement and the public in Vermont on the Council.~~

~~(ii) The Governor shall solicit recommendations for appointment from the Vermont State's Attorneys Association, the Vermont State's Sheriffs Association, the Vermont Police Chiefs Association, and the Vermont Constables Association~~ a member of the Chiefs of Police Association of Vermont, appointed by the President of the Association;

(H) a member of the Vermont Sheriffs' Association, appointed by the President of the Association;

(I) a law enforcement officer, appointed by the President of the Vermont State Employees Association;

(J) an employee of the Vermont League of Cities and Towns, appointed by the Executive Director of the League;

(K) an individual appointed by the Executive Director of the Center for Crime Victim Services;

(L) an individual appointed by the Executive Director of the Human Rights Commission;

(M) an individual appointed by the Executive Director of the Vermont Network Against Domestic and Sexual Violence; and

(N) seven public members, appointed by the Governor, who shall not be law enforcement officers or have a spouse, parent, child, or sibling who is a law enforcement officer, current legislators, or otherwise be employed in the criminal justice system.

(i) At least one of these members shall be a mental health crisis worker.

(ii) At least one of these members shall be an individual with a lived experience of a mental health condition or psychiatric disability.

(iii) At least two of these members shall be chosen from among persons nominated by the Vermont chapters of the NAACP, and each of these members shall represent a different Vermont NAACP chapter. In order to assist the Governor in making these appointments, each Vermont chapter of the NAACP shall nominate at least three individuals for these gubernatorial appointments.

(2) A member's term shall be three years.

(3) The Governor shall appoint the Chair of the Council from among the members set forth in subdivisions (1)(D) and (K)–(N) of this subsection.

* * *

(c) The members of the Council shall be entitled to receive no per diem compensation for their services but shall be allowed their actual and necessary and reimbursement of expenses incurred in the performance of their duties as permitted under 32 V.S.A. § 1010 from monies appropriated to the Council.

* * *

Sec. 5. TRANSITIONAL PROVISION TO ADDRESS NEW COUNCIL
MEMBERSHIP

(a) Any existing member of the Vermont Criminal Justice Council who will serve on the Council under its new membership as set forth in Sec. 4 of this act may serve the remainder of his or her term in effect immediately prior to the effective date of Sec. 4.

(b) The new membership of the Council shall be appointed on or before December 1, 2020.

Sec. 6. 20 V.S.A. § 2355 is amended to read:

§ 2355. COUNCIL POWERS AND DUTIES

(a) The Council shall adopt rules with respect to:

(1) the approval, or revocation thereof, of law enforcement officer training schools and off-site training programs, which shall include rules to

identify and implement alternate routes to certification aside from the training provided at the Vermont Police Academy;

* * *

(b)(1) The Council shall conduct and administer training schools and offer courses of instruction for law enforcement officers and other criminal justice personnel. The Council shall offer courses of instruction for law enforcement officers in different areas of the State and shall strive to offer nonovernight courses whenever possible.

(2) The Council may also offer the basic officer's course for ~~pre-service~~ preservice students and educational outreach courses for the public, including firearms safety and use of force.

* * *

Sec. 7. 20 V.S.A. § 2358 is amended to read:

§ 2358. MINIMUM TRAINING STANDARDS; DEFINITIONS

* * *

(b) The Council shall offer or approve basic training and annual in-service training for each of the following three levels of law enforcement officer certification in accordance with the scope of practice for each level, and shall determine by rule the scope of practice for each level in accordance with the provisions of this section:

(1) Level I certification.

* * *

(2) Level II certification.

* * *

(3) Level III certification.

* * *

(c)(1) All programs required by this section shall be approved by the Council.

(2) The Council shall structure its programs so that on and after July 1, 2021, a Level II certified officer may use portfolio experiential learning or College Level Examination Program (CLEP) testing in order to transition to Level III certification, without such an officer needing to restart the certification process.

(3) Completion of a program shall be established by a certificate to that effect signed by the Executive Director of the Council.

* * *

Sec. 8. COUNCIL; REPORT ON CHANGES IN TRAINING OPTIONS;

RULE ADOPTION DEADLINE

(a) Report. On or before January 15, 2021, the Executive Director of the Vermont Criminal Justice Council shall provide a verbal progress report to the Senate and House Committees on Government Operations regarding the Council's:

(1) plan to replace some of its overnight law enforcement training requirements at the Robert H. Wood, Jr. Criminal Justice and Fire Service

Training Center of Vermont (the Police Academy), including its 16-week residential basic training, with nonovernight training and training in other areas of the State, in accordance with 20 V.S.A. § 2355(b)(1) in Sec. 6 of this act, and shall specifically address any plans it has to offer training by remote means; and

(2) changes in the structure of its programs to enable a law enforcement officer to transition from Level II to Level III certification as required by 20 V.S.A. § 2358(c)(2) in Sec. 7 of this act.

(b) Rules. On or before July 1, 2023, the Council shall finally adopt the rules regarding alternate routes to certification required by 20 V.S.A. § 2355(a)(1) in Sec. 6 of this act, unless that deadline is extended by the Legislative Committee on Administrative Rules pursuant to 3 V.S.A. § 843(c).

Sec. 8a. COUNCIL; REPORT ON RESOURCES NEEDED TO OPERATE

On or before January 15, 2021, the Executive Director of the Vermont Criminal Justice Council shall report to the House and Senate Committees on Appropriations and on Government Operations specifying the resources the Council needs to fully operate as set forth in law, including the resources it needs to implement the provisions of this act. The Executive Director shall specifically detail in this report any additional appropriations or positions it needs to fully operate and provide a narrative to explain the basis for those needs.

Sec. 9. 20 V.S.A. § 2359 is added to read:

§ 2359. COUNCIL SERVICES CONTINGENT ON AGENCY

COMPLIANCE

(a) On and after January 1, 2022, a law enforcement agency shall be prohibited from having its law enforcement applicants or officers trained by the Police Academy or from otherwise using the services of the Council if the agency is not in compliance with the requirements for collecting roadside stop data under section 2366 of this chapter, the requirement to report to the Office of Attorney General death or serious bodily injuries under 18 V.S.A. § 7257a(b), or the requirement to adopt, follow, or enforce any policy required under this chapter.

(b) The Council shall adopt procedures to enforce the requirements of this section, which may allow for waivers for agencies under a plan to obtain compliance with this section.

Sec. 10. 20 V.S.A. § 2361 is amended to read:

§ 2361. ADDITIONAL TRAINING

(a) Nothing in this chapter prohibits any ~~State~~ law enforcement agency; ~~department, or office or any municipality or county of the State~~ from providing additional training beyond basic training to its personnel where no certification is requested of or required by the Council or its Executive Director.

(b) ~~The head of a State agency, department, or office, a municipality's chief of police, or a sheriff~~ executive officer of a law enforcement agency may seek

certification from the Council for any in-service training he ~~or~~, she, or his or her designee may provide to ~~his or her employees~~ law enforcement officers of his or her agency or of another agency, or both.

Sec. 11. 20 V.S.A. § 2362a is amended to read:

§ 2362a. POTENTIAL HIRING AGENCY; DUTY TO CONTACT
CURRENT OR FORMER AGENCY

(a)(1) Prior to hiring a law enforcement officer ~~who is no longer employed at his or her last law enforcement agency~~, the executive officer of a potential hiring law enforcement agency shall:

(A) require that officer to execute a written waiver that explicitly authorizes the officer's:

(i) current law enforcement agency employer to disclose its analysis of the officer's performance at that agency, if the officer is still employed at that agency; or

(ii) last law enforcement agency employer to disclose the reason that officer is no longer employed by that agency, if the officer is not currently employed at an agency; and

(B) contact that ~~former~~ agency to ~~determine that reason~~ obtain that disclosure and provide to that agency a copy of that written waiver.

(2) An officer who refuses to execute the written waiver shall not be hired by the potential hiring agency.

(b)(1)(A) If that current or former agency is a law enforcement agency in this State, the executive officer of that current or former agency or designee shall disclose to the potential hiring agency in writing its analysis of the officer's performance at that agency or the reason the officer is no longer employed by the former agency, as applicable.

(B) The executive officer or designee shall send a copy of the disclosure to the officer at the same time he or she sends it to the potential hiring agency.

(2) Such a current or former agency shall be immune from liability for its disclosure described in subdivision (1) of this subsection, unless such disclosure would constitute intentional misrepresentation or gross negligence.

(c) A potential hiring agency that receives a disclosure under subsection (b) of this section shall keep the contents of that disclosure confidential.

(d) A collective bargaining agreement between a law enforcement agency and the exclusive representative or bargaining agent of the law enforcement officers employed by that agency shall not include a prohibition on the exchange of information between the employing agency and another agency about an officer's performance at the employing agency.

Sec. 12. LAW ENFORCEMENT AGENCY; DUTY TO DISCLOSE

(a) The requirement of a current law enforcement agency to disclose its analysis of its law enforcement officer's performance at the agency as set forth in 20 V.S.A. § 2362a(a) and (b) in Sec. 11 of this act shall not apply if there is

a binding nondisclosure agreement prohibiting that disclosure that was executed prior to the effective date of that section.

(b) The provisions in Sec. 11, in 20 V.S.A. § 2362a(d), that prohibit a collective bargaining agreement from including a prohibition on the exchange of information between law enforcement agencies about the performance of a law enforcement officer shall not apply to any collective bargaining agreement that took effect prior to the effective date of that section, but shall apply upon the expiration or termination of such an agreement and shall apply to any collective bargaining agreement that takes effect on or after the effective date of that section.

Sec. 13. 20 V.S.A. § 2368 is added to read:

§ 2368. STATEWIDE POLICY; REQUIRED USE OF BODY CAMERA
POLICY

(a)(1) On and after January 1, 2022, each law enforcement agency that authorizes its law enforcement officers to use body cameras shall adopt, follow, and enforce a model body camera policy established by the Council, and each law enforcement officer who uses a body camera shall comply with the provisions of that policy.

(2) Until the date set forth in subdivision (1) of this subsection, each law enforcement agency that authorizes its law enforcement officers to use body cameras shall adopt, follow, and enforce the Model Body Worn Camera (BWC) Policy established by the Law Enforcement Advisory Board pursuant

to 2016 Acts and Resolves No. 163, and each law enforcement officer who uses a body camera shall comply with the provisions of that policy.

(b) The Council shall incorporate the provisions of this section into training it provides.

Sec. 14. MORATORIUM ON FACIAL RECOGNITION TECHNOLOGY

(a) Until the use of facial recognition technology by law enforcement officers is authorized by an enactment of the General Assembly, a law enforcement officer shall not use facial recognition technology or information acquired through the use of facial recognition technology unless the use would be permitted with respect to drones under 20 V.S.A. § 4622 (law enforcement use of drones).

(b) As used in this section:

(1) “Facial recognition” means:

(A) the automated or semi-automated process that identifies or attempts to identify a person based on the characteristics of the person’s face, including identification of known or unknown persons or groups; or

(B) the automated or semiautomated process by which the characteristics of a person’s face are analyzed to determine the person’s sentiment, state of mind, or other propensities, including the person’s level of dangerousness.

(2) “Facial recognition technology” means any computer software or application that performs facial recognition.

(3) “Law enforcement officer” has the same meaning as in 20 V.S.A.

§ 2351a.

Sec. 15. 20 V.S.A. chapter 151 (Vermont Criminal Justice Council),
subchapter 2 is amended to read:

Subchapter 2. Unprofessional Conduct

* * *

§ 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 therefrom.

(B) Category B.

(i) The agency receives a credible complaint against the officer that, ~~if deemed credible by the executive officer of the agency as a result of a valid investigation,~~ 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 therefrom.

(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.

* * *

Sec. 16. LAW ENFORCEMENT RECOMMENDATIONS

In order to further the goal of defining law enforcement officers as community guardians, the following entities shall report to the Senate and House Committees on Government Operations on or before January 15, 2021 on their progress in regard to the following topics, including any recommendations for legislative action, except that the Criminal Justice Council (Council) shall submit a verbal progress report to those Committees by that date and any recommendations for legislative action on or before March 15, 2021:

(1) Law enforcement officer qualifications.

(A) The Law Enforcement Advisory Board shall recommend universal standards for interviewing and hiring new law enforcement officers in order to recognize applicant qualities that are desirable and those that are not. The Board shall specifically recommend standards that should apply to officers in a supervisory role.

(B) The Council shall consult with the Human Rights Commission, the American Civil Liberties Union, statewide racial justice groups, statewide groups representing individuals with lived experience of a mental health condition or psychiatric disability, and other relevant organizations and individuals in reviewing law enforcement applicants' current written, oral, and psychological examinations for cultural sensitivities and overall appropriateness.

(2) Law enforcement officer training.

(A) The Council, in consultation with the Racial Disparities in the Criminal and Juvenile Justice System Advisory Panel, the Human Rights Commission, the American Civil Liberties Union, statewide racial justice groups, statewide groups representing individuals with lived experience of a mental health condition or psychiatric disability, and other relevant stakeholders, shall review the current requirements for basic and annual in-service training in order to determine whether appropriate training is provided in the areas of cultural awareness, implicit bias, de-escalation, and recognition of and appropriately responding to individuals with a mental health condition or psychiatric disability, and whether that training is embedded into training on other policing policies such as traffic stops and searches.

(B) In consideration of its analysis in subdivision (A) of this subdivision (2), and in reviewing current training requirements and how that training is used in practice, the Council shall recommend any amendments to statutorily required training that may not be necessary for all officers.

(C) The Council, Law Enforcement Advisory Board, and Department of Public Safety shall consult with the Vermont League of Cities and Towns and other interested stakeholders to determine whether:

(i) the Council should be reestablished within a State agency or other oversight entity; and

(ii) there should be more flexibility in the residential and field training required of law enforcement applicants, including whether applicants should be able to satisfy some aspects of basic training through experiential learning.

(3) Models of civilian oversight. The Office of Attorney General shall consult with the Council, the Human Rights Commission, the Vermont League of Cities and Towns, the Vermont Law School Center for Justice Reform, statewide racial justice groups, statewide groups representing individuals with lived experience of a mental health condition or psychiatric disability, and other interested parties to recommend one or more models of civilian oversight of law enforcement.

(4) Reporting allegations of law enforcement misconduct. The Office of Attorney General shall consult with the Council, the Human Rights Commission, the American Civil Liberties Union, statewide racial justice groups, statewide groups representing individuals with lived experience of a mental health condition or psychiatric disability, and other interested parties in order to identify a central point for reporting allegations of law enforcement officer misconduct, which may be the Council or another entity, and how those allegations should be handled.

(5) Access to complaint information. The Council Advisory Committee shall consult with the Secretary of State, the Human Rights Commission, the American Civil Liberties Union, and other interested parties in reviewing

public access to records related to allegations of law enforcement officer misconduct and substantiations of those allegations in order to recommend any changes to current practice.

(6) Body cameras.

(A) The Law Enforcement Advisory Board shall report any changes it deems necessary to the Model Body Worn Camera (BWC) Policy that it established pursuant to 2016 Acts and Resolves No. 163.

(B)(i) The Council shall recommend a model body camera policy for use by law enforcement agencies and officers.

(ii) After consulting with the Secretary of State, the Human Rights Commission, the American Civil Liberties Union, statewide racial justice groups, statewide groups representing individuals with lived experience of a mental health condition or psychiatric disability, and other interested parties, the Council shall specifically recommend policies for responding to public records requests for body camera footage, including any recommended timelines to respond, how and what footage should be redacted, length of footage retention, and storage.

(C) The Department of Public Safety shall consult with the Council and the Law Enforcement Advisory Board to investigate the possibility of a statewide group purchasing contract for law enforcement body cameras and of central storage locations. If the Department recommends such a group, it shall detail its recommended structure and operation.

(7) Military equipment. After an opportunity for community involvement and feedback, the Council shall recommend a statewide policy on law enforcement officers' acquisition of military equipment.

(8) Facial recognition technology. After analyzing any law enforcement needs to use facial recognition technology, analyzing any potential inaccuracies or other limitations in the capacities of that technology, including implicit biases, and an opportunity for community involvement and feedback, the Council shall recommend a statewide policy on law enforcement officers' acquisition and use of facial recognition technology, in light of the moratorium set forth in Sec. 14 of this act. If the Council will recommend the authority for officers to acquire and use facial recognition technology, the Council shall recommend a plan to mitigate any implicit bias that results from the use of that technology.

* * * State Data Collection and Analysis * * *

Sec. 17. STATE OUTCOMES REPORT; GOVERNMENT

ACCOUNTABILITY COMMITTEE; POPULATION-LEVEL
INDICATORS DEMONSTRATING QUALITY OF LIFE FOR
VERMONTERS WHO ARE BLACK, INDIGENOUS, OR PEOPLE
OF COLOR

(a) On or before March 1, 2021, the Government Accountability Committee shall consult with the Executive Director of Racial Equity, the Social Equity Caucus, and the Chief Performance Officer and shall accept

recommendations from other relevant entities in order to approve by that date population-level indicators that demonstrate the quality of life for Vermonters who are Black, Indigenous, or People of Color as those indicators relate to the population-level quality of life outcomes set forth in 3 V.S.A. § 2311(b).

(b) Once those indicators are approved by the Government Accountability Committee, the Chief Performance Officer shall report on those indicators in the State Outcomes Report set forth in 3 V.S.A. § 2311.

Sec. 18. 3 V.S.A. § 2311 is amended to read:

§ 2311. CHIEF PERFORMANCE OFFICER; ANNUAL STATE

OUTCOMES REPORT

(a) Report.

(1) Annually, on or before September 30, the Chief Performance Officer within the Agency of Administration shall submit to the General Assembly a State Outcomes Report demonstrating the State's progress in reaching the population-level outcomes for each area of Vermont's quality of life set forth in subsection (b) of this section by providing data for the population-level indicators that are approved pursuant to the process set forth in subsection (c) of this section.

(2) Vermont's population-level quality of life outcomes are intended to reflect the well-being of all Vermonters, and indicators reported to measure the extent to which outcomes are achieved are intended to represent the experience

of all Vermonters, including and especially Vermonters who are members of marginalized groups.

(b) Vermont population-level quality of life outcomes.

(1) Vermont has a prosperous economy.

(2) Vermonters are healthy.

(3) Vermont's environment is clean and sustainable.

(4) Vermont is a safe place to live.

(5) Vermont's families are safe, nurturing, stable, and supported.

(6) Vermont's children and young people achieve their potential.

(7) Vermont's elders live with dignity and in settings they prefer.

(8) Vermonters with disabilities live with dignity and in settings they prefer.

(9) Vermont has open, effective, and inclusive government.

(10) Vermont's State infrastructure meets the needs of Vermonters, the economy, and the environment.

(c) Approving population-level indicators.

(1) Annually, on or before March 1, a standing committee of the General Assembly having jurisdiction over a population-level quality of life outcome set forth in subsection (b) of this section or the Chief Performance Officer may submit to the Government Accountability Committee a request that any population-level indicator related to that outcome be revised.

(2) If that request is approved by the Government Accountability Committee, the Chief Performance Officer shall revise and report on the population-level indicator in accordance with that approval and this section.

(d) The report set forth in this section shall not be subject to the limitation on the duration of agency reports set forth in 2 V.S.A. § 20(d).

Sec. 19. 3 V.S.A. § 2222 is amended to read:

§ 2222. POWERS AND DUTIES; BUDGET AND REPORT

* * *

(k) The Secretary of Administration or designee shall review all grants from an agency of the State to a ~~local~~ law enforcement agency or constable, and all such grants shall be subject to the approval of the Secretary or designee. The Secretary or designee shall approve the grant only if the law enforcement agency or constable has complied with the race data reporting requirements set forth in 20 V.S.A. § 2366(e) and the death or serious bodily injury reporting requirements set forth in 18 V.S.A. § 7257a(b) within six months prior to the Secretary's or designee's review.

Sec. 20. 20 V.S.A. § 2053 is amended to read:

§ 2053. COOPERATION WITH OTHER AGENCIES

(a) The ~~center~~ Center shall cooperate with other ~~state~~ State departments and agencies, municipal police departments, sheriffs, and other law enforcement officers in this ~~state~~ State and with federal and international law enforcement agencies to develop and carry on a uniform and complete ~~state~~ State, interstate,

national, and international system of records of ~~criminal activities~~ commission of crimes and information.

(b)(1) All ~~state~~ State departments and agencies, municipal police departments, sheriffs, and other law enforcement officers shall cooperate with and assist the ~~center~~ Center in the establishment of a complete and uniform system of records relating to the commission of crimes, arrests, convictions, imprisonment, probation, parole, fingerprints, photographs, stolen property, and other matters relating to the identification and records of persons who have or who are alleged to have committed a crime, or who are missing persons, or who are fugitives from justice.

(2) In order to meet the requirements of subdivision (1) of this subsection, the Center, in consultation with the Vermont Crime Research Group, statewide racial justice groups, and statewide groups representing individuals with lived experience of a mental health condition or psychiatric disability, shall establish and provide training on a uniform list of definitions to be used in entering data into a law enforcement agency's system of records, and every law enforcement officer shall use those definitions when entering data into his or her agency's system.

* * * Law Enforcement Advisory Board * * *

Sec. 21. LEAB; REPEAL FOR RECODIFICATION

24 V.S.A. § 1939 (Law Enforcement Advisory Board) is repealed.

Sec. 22. 20 V.S.A. § 1818 is added to read:

§ 1818. LAW ENFORCEMENT ADVISORY BOARD

(a) The Law Enforcement Advisory Board is created within the Department of Public Safety to advise the Commissioner of Public Safety, the Governor, and the General Assembly on issues involving the cooperation and coordination of all agencies that exercise law enforcement responsibilities.

The Board shall review any matter that affects more than one law enforcement agency. The Board shall comprise the following members:

(1) the Commissioner of Public Safety;

(2) the Director of the Vermont State Police;

(3) the Director of the Enforcement Division of the Department of Fish and Wildlife;

(4) the Director of the Enforcement and Safety Division of the Department of Motor Vehicles;

(5) the Chief of the Capitol Police Department;

(6) the Director of the Vermont Criminal Justice Services Division;

(7) a member of the Chiefs of Police Association of Vermont, appointed by the President of the Association;

(8) a member of the Vermont Sheriffs' Association, appointed by the President of the Association;

(9) a representative of the Vermont League of Cities and Towns, appointed by the Executive Director of the League;

(10) a member of the Vermont Police Association, appointed by the President of the Association;

(11) the Attorney General or designee;

(12) a State's Attorney appointed by the Executive Director of the Department of State's Attorneys and Sheriffs;

(13) the U.S. Attorney or designee;

(14) the Executive Director of the Vermont Criminal Justice Council;

(15) the Defender General or designee;

(16) one representative of the Vermont Troopers' Association or its successor entity, elected by its membership;

(17) a member of the Vermont Constables Association, appointed by the President of the Association; and

(18) a law enforcement officer, appointed by the President of the Vermont State Employees Association.

(b) The Board shall elect a chair and a vice chair, which positions shall rotate among the various member representatives. Each member shall serve a term of two years. The Board shall meet at the call of the Chair. A quorum shall consist of 10 members, and decisions of the Board shall require the approval of a majority of those members present and voting.

(c) The Board shall undertake an ongoing formal review process of law enforcement policies and practices with a goal of developing a comprehensive approach to providing the best services to Vermonters, given monies available.

The Board shall also provide educational resources to Vermonters about public safety challenges in the State.

(d)(1) The Board shall meet not fewer than six times a year to develop policies and recommendations for law enforcement priority needs, including retirement benefits, recruitment of officers, training, homeland security issues, dispatching, and comprehensive drug enforcement.

(2) The Board shall present its findings and recommendations in brief summary form to the House and Senate Committees on Judiciary and on Government Operations annually on or before January 15.

Sec. 23. LEAB; RECODIFICATION DIRECTIVE

(a) 24 V.S.A. § 1939 is recodified as 20 V.S.A. § 1818. During statutory revision, the Office of Legislative Counsel shall revise accordingly any references to 24 V.S.A. § 1939 in the Vermont Statutes Annotated.

(b) Any references in session law and adopted rules to 24 V.S.A. § 1939 as previously codified shall be deemed to refer to 20 V.S.A. § 1818.

Sec. 24. LEAB; 2021 REPORT ON MUNICIPAL ACCESS TO LAW

ENFORCEMENT SERVICES

As part of its annual report in the year 2021, the Law Enforcement Advisory Board shall specifically recommend ways that towns can increase access to law enforcement services.

* * * Department of Public Safety; Dispatch * * *

Sec. 25. 20 V.S.A. chapter 113 (Commissioner and Members), subchapter 1 is amended to read:

Subchapter 1. General Provisions

§ 1871. DEPARTMENT OF PUBLIC SAFETY; COMMISSIONER

(a) The ~~department of public safety~~ Department of Public Safety, created by 3 V.S.A. § 212, shall include a ~~commissioner of public safety~~ Commissioner of Public Safety.

(b) The head of the ~~department~~ Department shall be a ~~commissioner of public safety~~ the Commissioner of Public Safety, who shall be a citizen of the United States and shall be selected on the basis of training, experience and qualifications. The ~~commissioner~~ Commissioner shall be appointed by the ~~governor~~ Governor, with the advice and consent of the ~~senate, for a term of six years~~ Senate.

* * *

(i) The ~~commissioner of public safety~~ Commissioner of Public Safety may enter into contractual arrangements to perform dispatching functions for ~~state~~ State, municipal, or other emergency services, ~~establishing charges sufficient to recover the costs of dispatching. Dispatch positions which are fully funded under such contracts may be authorized under the provisions of 32 V.S.A. § 5(b).~~

(j) Charges collected under subsections (e), (f), and (i) of this section shall be credited to the Vermont ~~law telecommunications special fund~~ Law Telecommunications Special Fund and shall be available to the ~~department~~ Department to offset the costs of providing the services.

* * *

§ 1873. ~~REMOVAL OF COMMISSIONER~~

~~During his or her term of office, the governor may remove the commissioner upon charges preferred in writing and after hearing, which shall be a public hearing if the commissioner requests the same, upon the following grounds:~~

~~(1) Incompetency amounting to failure to perform his or her official duties competently;~~

~~(2) Misconduct in office which shall be construed to include:~~

~~(a) failure to be of good behavior;~~

~~(b) participation, directly or indirectly, in a political campaign, rally, caucus or other political gathering, other than to vote. [Repealed.]~~

* * *

§ 1875. RADIO COMMUNICATION SYSTEM

(a) The ~~commissioner~~ Commissioner shall establish a communication system as will best enable the ~~department~~ Department to carry out the purposes of this chapter. This shall include a radio set furnished, on written request, to

the sheriff and ~~state's attorney~~ State's Attorney of each county on a memorandum receipt.

(b)(1) The ~~commissioner~~ Commissioner may charge to all users of telecommunications services managed, maintained, or operated by the ~~department~~ Department for the benefit of the users a proportionate share of the actual cost of providing the services and products inclusive of administrative costs.

(2) Such charges shall be based on a pro rata allocation of the actual costs of services or products, determined in an equitable manner, which shall be representative of services provided to or system usage by individual units of government, including ~~state~~ State, local, and federal agencies or private nonprofit entities.

(3) Such charges shall be credited to the Vermont ~~communication system special fund~~ Law Telecommunications Special Fund and shall be available to the ~~department~~ Department to offset the costs of providing the services.

* * *

Sec. 26. DEPARTMENT OF PUBLIC SAFETY; PROHIBITION ON NEW
CHARGES TO PERFORM DISPATCH FUNCTIONS UNTIL FEE
STRUCTURE ENACTED; RECOMMENDATIONS

(a) In accordance with the amendments to 20 V.S.A. § 1871(i) set forth in Sec. 25 of this act, the Department of Public Safety shall not charge fees in any

contractual arrangements it enters into to perform dispatching functions for State, municipal, or other emergency services until the General Assembly establishes in law a dispatch fee structure for those charges.

(b)(1) On or before March 15, 2021, the Department of Public Safety shall hold at least three public hearings and consult with the Vermont League of Cities and Towns, the Emergency Medical Advisory Committee, the Vermont Police Chiefs Association, the Vermont State Firefighters Association, and local emergency medical services, police, and fire agencies in order to report by that date to the House Committees on Government Operations and on Ways and Means and the Senate Committees on Government Operations and on Finance the Department's recommendations for an equitable dispatch fee structure for the Department to charge for dispatching emergency medical service, police, and fire services, and potential funding mechanisms for those charges that do not rely on property taxes.

(2) If the Department decides to overrule substantial arguments and considerations raised against the equitable dispatch fee structure or potential funding mechanisms it ultimately recommends, the Department shall include in its report a description of those arguments and considerations and the reasons for the Department's decision.

* * * Emergency Medical Services * * *

Sec. 27. 24 V.S.A. chapter 71 is amended to read:

CHAPTER 71. AMBULANCE SERVICES

Subchapter 1. Emergency Medical Services Districts

§ 2651. DEFINITIONS

As used in this chapter:

* * *

(14) "~~State Board~~" means the ~~State Board of Health~~. [Repealed.]

* * *

§ 2652. CREATION OF DISTRICTS

The ~~State Board~~ Department of Health may divide the State into emergency medical services districts, the number, size, and boundaries of which shall be determined by the ~~Board~~ Department in the interest of affording adequate and efficient emergency medical services throughout the State.

* * *

§ 2654. RECORDING DETERMINATION OF DISTRICTS

The ~~State Board~~ Department of Health shall cause to be recorded in the office of the Secretary of State a certificate containing its determination of emergency medical services districts.

* * *

§ 2656. DUTIES AND POWERS OF OFFICERS AND DIRECTORS

(a) The board of directors shall have full power to manage, control, and supervise the conduct of the district and to exercise in the name of the district all powers and functions belonging to the district, subject to such laws or ~~regulations~~ rules as may be applicable.

* * *

§ 2657. PURPOSES AND POWERS OF EMERGENCY MEDICAL
SERVICES DISTRICTS

(a) It shall be the function of each emergency medical services district to foster and coordinate emergency medical services within the district, in the interest of affording adequate ambulance services within the district. Each emergency medical services district shall have powers that include the power to:

* * *

(6) monitor the provision of emergency medical services within the district and make recommendations to the ~~State Board~~ Department of Health regarding licensure, relicensure, and removal or suspension of licensure for ambulance vehicles, ambulance services, and first responder services;

* * *

(b) Two or more contiguous emergency medical services districts by a majority vote of the district board in each of the districts concerned may change the mutual boundaries of their emergency medical services districts.

The district boards shall report all changes in district boundaries to the ~~State Board~~ Department of Health.

* * *

Subchapter 2. Licensing Operation of Affiliated Agencies

§ 2681. LICENSE REQUIRED; AMBULANCE LICENSE REQUIREMENT

(a) A person furnishing ambulance services or first responder services shall obtain a license to furnish services under this subchapter.

(b)(1) In order to obtain and maintain a license, an ambulance service shall be required to provide its services in a manner that does not discriminate on the basis of income, funding source, or severity of health needs, in order to ensure access to ambulance services within the licensee's service area.

(2) The Department of Health shall adopt rules in accordance with the provisions of subdivision (1) of this subsection.

§ 2682. ~~POWERS OF STATE BOARD~~ THE DEPARTMENT OF HEALTH

(a) The ~~State Board~~ Department of Health shall administer this subchapter and shall have power to:

* * *

§ 2683. TERM OF LICENSE

Full licenses shall be issued on forms to be prescribed by the ~~State Board~~ Department of Health for a period of three years beginning on January 1, or for the balance of any such three-year period. Temporary, conditional, or provisional licenses may also be issued by the ~~Board~~ Department.

* * *

Sec. 28. 18 V.S.A. § 9405 is amended to read:

§ 9405. STATE HEALTH IMPROVEMENT PLAN; HEALTH RESOURCE
ALLOCATION PLAN

* * *

(b) The Green Mountain Care Board, in consultation with the Secretary of Human Services or designee, shall publish on its website the Health Resource Allocation Plan identifying Vermont's critical health needs, goods, services, and resources, which shall be used to inform the Board's regulatory processes, cost containment and statewide quality of care efforts, health care payment and delivery system reform initiatives, and any allocation of health resources within the State. The Plan shall identify Vermont residents' needs for health care services, programs, and facilities; the resources available and the additional resources that would be required to realistically meet those needs and to make access to those services, programs, and facilities affordable for consumers; and the priorities for addressing those needs on a statewide basis. The Board may expand the Plan to include resources, needs, and priorities related to the social determinants of health. The Plan shall be revised periodically, but not less frequently than once every four years.

(1) In developing the Plan, the Board shall:

(A) consider the principles in section 9371 of this title, as well as the purposes enumerated in sections 9401 and 9431 of this title;

(B) identify priorities using information from:

(i) the State Health Improvement Plan;

(ii) emergency medical services resources and needs identified by the EMS Advisory Committee in accordance with subsection 909(f) of this title;

(iii) the community health needs assessments required by section 9405a of this title;

~~(iii)~~(iv) available health care workforce information;

~~(iv)~~(v) materials provided to the Board through its other regulatory processes, including hospital budget review, oversight of accountable care organizations, issuance and denial of certificates of need, and health insurance rate review; and

~~(v)~~(vi) the public input process set forth in this section;

(C) use existing data sources to identify and analyze the gaps between the supply of health resources and the health needs of Vermont residents and to identify utilization trends to determine areas of underutilization and overutilization; and

(D) consider the cost impacts of fulfilling any gaps between the supply of health resources and the health needs of Vermont residents.

* * *

Sec. 29. 18 V.S.A. chapter 17 is amended to read:

CHAPTER 17. EMERGENCY MEDICAL SERVICES

* * *

§ 903. AUTHORIZATION FOR PROVISION OF EMERGENCY

MEDICAL SERVICES

Notwithstanding any other provision of law, including provisions of 26 V.S.A. chapter 23, persons who are affiliated with an affiliated agency and licensed to provide emergency medical treatment pursuant to the requirements of this chapter and the rules adopted under it are hereby authorized to provide such care without further certification, registration, or licensing.

* * *

§ 904. ADMINISTRATIVE PROVISIONS

(a) In order to carry out the purposes and responsibilities of this chapter, the Department of Health may contract for the provision of specific services.

(b) The Secretary of Human Services, upon the recommendation of the Commissioner of Health, may ~~issue~~ adopt rules to carry out the purposes and responsibilities of this chapter.

* * *

§ 906. EMERGENCY MEDICAL SERVICES DIVISION;

RESPONSIBILITIES

To implement the policy of section 901 of this chapter, the Department of Health shall be responsible for:

(1) Developing and implementing minimum standards for training emergency medical personnel in basic life support and advanced life support, and licensing emergency medical personnel according to their level of training and competence. The Department shall establish by rule at least three levels of emergency medical personnel instructors and the education required for each level.

* * *

(7) Assisting hospitals in the development of programs ~~which~~ that will improve the quality of in-hospital services for persons requiring emergency medical ~~care~~ treatment.

* * *

(9) Establishing requirements for the collection of data by emergency medical personnel and hospitals as may be necessary to evaluate emergency medical ~~care~~ treatment.

(10) Establishing, by rule, license levels for emergency medical personnel. The Commissioner shall use the guidelines established by the National Highway Traffic Safety Administration (NHTSA) in the U.S. Department of Transportation as a standard or other comparable standards, except that a felony conviction shall not necessarily disqualify an applicant. The rules shall also provide that:

* * *

(B) An individual licensed by the Commissioner as an emergency medical technician, advanced emergency medical technician, or a paramedic, who is affiliated with an affiliated agency, shall be able to practice fully within the scope of practice for such level of licensure as defined by NHTSA's National EMS Scope of Practice Model consistent with the license level of the affiliated agency, and subject to the medical direction of the emergency medical services district medical advisor.

(C)(i) Unless otherwise provided under this section, an individual seeking any level of licensure shall be required to pass an examination approved by the Commissioner for that level of licensure, except that any psychomotor skills testing for emergency medical responder, or emergency medical technician licensure shall be accomplished either by the demonstration of those skills competencies as part of the education required for that license level as approved by the Department or by the National Registry of Emergency Medical Technicians' psychomotor examination.

(ii) Written and practical examinations shall not be required for relicensure; however, to maintain licensure, all individuals shall complete a specified number of hours of continuing education as established by rule by the Commissioner. The Commissioner shall ensure that continuing education classes are available online and provided on a regional basis to accommodate the needs of volunteers and part-time individuals, including those in rural areas of the State.

* * *

(E) An applicant who has served as a hospital corpsman or a medic in the U.S. Armed Forces, or who is licensed as a registered nurse or a physician assistant shall be granted a permanent waiver of the training requirements to become a licensed emergency medical technician, an advanced emergency medical technician, or a paramedic, provided the applicant passes the applicable examination approved by the Commissioner for that level of licensure and is affiliated with an affiliated agency.

(F) An applicant who is registered on the National Registry of Emergency Medical Technicians as an emergency medical technician, an advanced emergency medical technician, or a paramedic shall be granted licensure as a Vermont emergency medical technician, an advanced emergency medical technician, or a paramedic without the need for further testing, provided he or she is affiliated with an affiliated agency or is serving as a medic with the Vermont National Guard.

* * *

(11) In addition to the licenses established under subdivision (10) of this section, the Department shall establish by rule an entry-level certification for Vermont EMS first responders.

* * *

§ 906b. ~~TRANSITIONAL PROVISION; CERTIFICATION TO~~
~~LICENSURE~~

~~Every person certified as an emergency medical provider shall have his or her certification converted to the comparable level of licensure. Until such time as the Department of Health issues licenses in lieu of certificates, each certified emergency medical provider shall have the right to practice in accordance with his or her level of certification. [Repealed.]~~

* * *

§ 906d. RENEWAL REQUIREMENTS; SUNSET REVIEW

(a) Not less than once every five years, the Department shall review emergency medical personnel continuing education and other continuing competency requirements. The review results shall be in writing and address the following:

(1) the renewal requirements of the profession;

(2) the renewal requirements in other jurisdictions, particularly in the Northeast region;

(3) the cost of the renewal requirements for emergency medical personnel; and

(4) an analysis of the utility and effectiveness of the renewal requirements with respect to public protection.

(b) The Department shall amend its rules or propose any necessary statutory amendments to revise any emergency medical personnel continuing

education and other continuing competency requirements that are not necessary for the protection of the public health, safety, or welfare.

* * *

§ 909. EMS ADVISORY COMMITTEE; EMS EDUCATION COUNCIL

(a) The Commissioner shall establish the Emergency Medical Services Advisory Committee to advise on matters relating to the delivery of emergency medical services (EMS) in Vermont.

* * *

(e) Annually, on or before January 1, the Committee shall report on the EMS system to the House Committees on Government Operations, on Commerce and Economic Development, and on Human Services and to the Senate Committees on Government Operations, on Economic Development, Housing and General Affairs, and on Health and Welfare. The Committee's reports shall include information on the following:

* * *

(6) the nature and costs of dispatch services for EMS providers throughout the State, including the annual number of mutual aid calls to an emergency medical service area that come from outside that area, and suggestions for improvement;

* * *

(f) In addition to its report set forth in subsection (e) of this section, the Committee shall identify EMS resources and needs in each EMS district and

provide that information to the Green Mountain Care Board to inform the Board's periodic revisions to the Health Resource Allocation Plan developed pursuant to subsection 9405(b) of this title.

(g) The Committee shall establish from among its members the EMS Education Council, which may:

(1) sponsor training and education programs required for emergency medical personnel licensure in accordance with the Department of Health's required standards for that training and education; and

(2) provide advice to the Department of Health regarding the standards for emergency medical personnel licensure and any recommendations for changes to those standards.

Sec. 30. 32 V.S.A. § 8557 is amended to read:

§ 8557. VERMONT FIRE SERVICE TRAINING COUNCIL

(a)(1) Sums for the expenses of the operation of training facilities and curriculum of the Vermont Fire Service Training Council not to exceed \$1,200,000.00 per year shall be paid to the Fire Safety Special Fund created by 20 V.S.A. § 3157 by insurance companies; writing fire, homeowners multiple peril, allied lines, farm owners multiple peril, commercial multiple peril (fire and allied lines), private passenger and commercial auto, and inland marine policies on property and persons situated within the State of Vermont within 30 days after notice from the Commissioner of Financial Regulation of such

estimated expenses. Captive companies shall be excluded from the effect of this section.

* * *

(4) An amount not less than \$150,000.00 shall be specifically allocated to the Emergency Medical Services Special Fund established under 18 V.S.A. § 908 for the provision of training programs for certified Vermont EMS first responders and licensed emergency medical responders, emergency medical technicians, advanced emergency medical technicians, and paramedics.

* * *

Sec. 31. TRANSITIONAL EMS PROVISIONS

(a) Rules. Except as otherwise provided in this act, on or before July 1, 2021, the Department of Health shall finally adopt or amend the rules required by this act, unless that deadline is extended by the Legislative Committee on Administrative Rules pursuant to 3 V.S.A. § 843(c).

(b) Ambulance service licenses. The requirements for initial ambulance service licensure and renewal set forth in 24 V.S.A. § 2681(b) in Sec. 27 of this act shall apply to initial ambulance service license and renewal applicants on and after July 1, 2021 or on and after the effective date of the Department of Health rules adopted pursuant to that section and subsection (a) of this section, whichever date is later.

(c) Existing EMS Instructor/Coordinator licensees. Any person who is licensed as an EMS Instructor/Coordinator under the Department of Health's

Emergency Medical Service Rules in effect immediately prior to the effective date of the rules establishing the new levels of instructor licenses as required by 18 V.S.A. § 906(1) in Sec. 29 of this act shall be deemed to be licensed at the level that is consistent with the scope of practice of the new license levels.

(d) Development of Vermont EMS First Responder certification. The Department of Health shall consult with the EMS Advisory Committee, the University of Vermont's Initiative for Rural Emergency Medical Services, and any other relevant stakeholders in developing the new Vermont EMS First Responder certification required by 18 V.S.A. § 906(11) in Sec. 29 of this act so that certification is established on or before July 1, 2021.

(e) Sunset review of renewal requirements. Pursuant to 18 V.S.A. § 906d (renewal requirements; sunset review) set forth in Sec. 29 this act, the Department of Health shall conduct its first sunset review in conjunction with its rulemaking required by this act and thereafter propose any necessary statutory amendments in accordance with that section.

* * * Public Safety Planning * * *

Sec. 32. REGIONAL PLANNING COMMISSIONS; INVENTORY OF
MUNICIPAL PUBLIC SAFETY RESOURCES

(a) The purpose of this section is to require each regional planning commission to create one inventory identifying the public safety resources of each town within its jurisdiction and to report that inventory to all of its towns

so that each town can better understand the public safety resources that are available to them and how those resources may be shared on a regional basis.

(b) On or before December 31, 2021, each regional planning commission shall create and report to all of the towns within its jurisdiction one inventory identifying all of the public safety resources that each town within its jurisdiction relies upon for its public safety needs. As part of this inventory, the inventory shall identify:

(1) any mutual aid agreements for public safety resources that its towns may have; and

(2) any of its towns that have a public safety plan.

(c) As used in this section, “public safety resources” means the law enforcement, fire, emergency medical service, and dispatch entities that provide their services to a town.

* * * Effective Dates * * *

Sec. 33. EFFECTIVE DATES

This act shall take effect on October 1, 2020, except that:

(1) Sec. 4, 20 V.S.A. § 2352 (Council membership) shall take effect on December 1, 2020; and

(2) Sec. 19, 3 V.S.A. § 2222 (powers and duties; budget and report) shall take effect on January 1, 2021.

Date Governor signed bill: October 7, 2020