

COLCHESTER POLICE DEPARTMENT

SUBJECT: Citizen Complaints & Internal Investigations

EFFECTIVE DATE: July 12, 2018

NUMBER:

G.O. #2

SPECIAL INSTRUCTIONS: rescinds G.O. #27 and portions of G.O. #10 related to "Incident Reports – Censurable Conduct"

REEVALUATION DATE: as needed

APPROVED:

J. Monahan #190

NO. PAGES: 6

ATTACHMENTS: Appendices A thru I inclusive

POLICY: Establishment of procedures for investigating complaints and allegations of employee misconduct is vital to maintaining the public trust. It is the policy of this Department to invite citizens to bring forward complaints about the conduct of its employees whenever that citizen believes an employee acted improperly. A review and corrective process has been established which balances the department's ability to address citizen concerns and take appropriate corrective action as necessary, while protecting employees from unwarranted criticism for properly discharged duties. Complaints regarding all CPD employees will be investigated in accordance with the procedures described herein, and in a manner consistent with any applicable collective bargaining agreement, or Town Employee Handbook.

CONTENTS:

- I. Origin of Allegations/Charges
- II. Rights & Obligations of the Employee
- III. Internal Investigation Process
- IV. Authority of the Chief

I. ORIGIN OF ALLEGATIONS/CHARGES

- A. Allegations and/or charges of misconduct, violations of Department Rules or Regulations or laws (both on and off duty) may be initiated from within or outside of the Department. Every such allegation and/or charge will be reviewed by a Command Staff member (rank of LT or higher). CPD will accept complaints from any source.
- B. An employee electing to lodge a complaint against another employee may verbally transmit the complaint to his/her immediate supervisor. The supervisor shall notify the Chief of Police, via the chain of command.
- C. A citizen verbally lodging a complaint or charge against an employee will be asked to document the complaint or charge by filling out a "Citizen's Complaint Form," which requires the name, address and telephone number of the complainant and a brief statement describing the incident. If the complaining citizen elects not to document his/her complaint or charge, the

officer receiving the complaint shall obtain pertinent facts and refer the complaint to the Officer in Charge, who shall fill out the "Citizen Complaint Form" with as much information as is available. All complaints must be reported to the Chief of Police.

- D. Every effort shall be made to facilitate the convenient, courteous and prompt receipt and processing of citizen complaints. Any employee who interferes with, discourages or delays the making of such complaints shall be subject to disciplinary action up to and including immediate termination.
- E. This policy does not apply to minor misunderstandings on the part of a complainant, which can be quickly resolved with an explanation of State law and/or Department policy. Such minor misunderstandings may be resolved by the Officer in Charge and should be documented via an e-mail to the Chief of Police. If the complaining citizen is not satisfied with this resolution, he/she may complete a "Citizen's Complaint Form."
- F. A "Citizen's Complaint Form" and the accompanying cover letter explaining the process for filing citizen's complaints shall be available to the public at all times (Appendices E & F).
- G. The Chief of Police will determine if it is necessary to commence an internal investigation. Such investigation will be assigned to a supervisor, to act as the investigator. A copy of all relevant information will be provided to the designated investigator.
 - 1. Sometimes there is not enough information available to determine if a complaint is a minor misunderstanding or something more serious or complex that requires an internal investigation.
 - 2. When it is unclear if an internal investigation is required, the Chief of Police may order an "administrative review" to gather further information. An administrative review is a cursory investigation into the allegations to determine if there are potential violations of department rules, general orders or laws.
 - 3. The involved employee will be notified of the administrative review. He/she will be interviewed by the investigating officer. Participation and truthfulness during the administrative review are required.
 - 4. The investigating officer will complete a brief narrative of the administrative review. After review, the Chief of Police will determine whether the incident requires an internal investigation or can be resolved with no further investigation.
 - 5. Any time an allegation of felonious criminal behavior is made against a member of CPD, it shall be referred to an outside agency for investigation.
 - 6. Allegations of criminal behavior against other Town employees or officials shall be thoroughly and impartially investigated by CPD unless a conflict of interest or unusual circumstances exist, in which case an outside agency will be contacted for assistance.

- H. Whenever an internal investigation is commenced, the affected employee will be notified in writing that he/she is the subject of investigation and what the nature of the allegation(s) is, and shall be afforded any other notice as may be necessary under a relevant collective bargaining agreement.
- I. The Department will comply with legislative mandates as found in Act 56 of 2017 and 20 VSA 2401. (Appendices G, H & I)

II. RIGHTS AND OBLIGATIONS OF THE EMPLOYEE

Internal investigations shall be conducted in an impartial and objective manner. The purpose is to determine all facts relevant to the matter, whether or not such facts may be favorable or unfavorable to the individual concerned or the agency.

All employees are required to be cooperative, impartial and truthful when asked for information concerning the matter under investigation.

The rights and obligations of employees who are under investigation and subject to interrogation for any reason which could reasonably lead to disciplinary action are set forth below:

- A. The employee will be informed in writing prior to the interview that he/she is a subject in the investigation, and will be informed of the nature of the investigation. The employee shall also be informed of his/her rights and responsibilities relative to the investigation (Appendices A & B).
- B. All interrogations shall be limited in scope to activities, circumstances, events, conduct or acts, which pertain to the incident that is the subject of the investigation. An employee may be requested to participate in other investigative processes that are specifically directed and narrowly related to the internal investigation.
- C. Except for submitting to drug or alcohol screenings based on reasonable suspicion, no employee shall be compelled to take a polygraph, participate in a photo or live line-up, or submit to medical or laboratory examinations during the course of an internal investigation initiated pursuant to this policy.
- D. Employees may be asked to provide other records that are reasonably related to the allegations being investigated. Such records may include financial records, phone records, etc.
- E. Internal investigations shall normally be completed within thirty days. The time required may vary from case to case based on the nature of the allegation(s) and the complexity of the investigation. Therefore, if additional time is necessary to complete the investigation, the Chief of Police may authorize an extension of up to sixty days, for a maximum time limit of ninety days.

- F. No information gained during the course of an internal investigation can be used in a criminal prosecution. Information gained during the course of an internal investigation shall be confidential to the extent allowed by law.
- G. At the conclusion of the investigation, the employee has a right to written findings as well as a copy of the investigative report and supporting material.

III. INTERNAL INVESTIGATION PROCESS

A. Organization:

The Chief of Police shall assign a LT to oversee each internal investigation. The LT shall staff the investigation with as many officers as required. In unusual circumstances, the Chief may ask for assistance from an outside agency or consultant to conduct an internal investigation. In all instances involving CPD personnel, CPD policies and procedures shall be followed.

- B. The Chief of Police shall keep the Lieutenants advised of all incoming complaints, unless a LT is the subject of the complaint. The Chief of Police will be notified as soon as feasible by the affected supervisor of any complaint that may result in an internal investigation. Any complaint regarding the conduct of the Chief of Police shall be referred to the Town Manager's Office.

C. Procedure:

1. This policy does not relieve Supervisors of their responsibilities for the prompt investigation of all alleged acts of misconduct or other breaches of discipline by their subordinates. Minor complaints (i.e. rudeness) may be investigated by a line supervisor for the purpose of conducting an administrative review.
2. An administrative review is not considered an internal investigation as defined by this policy.
3. A LT will commence any internal investigation so directed by the Chief of Police. The Department shall investigate any allegation of criminality on the part of an employee or of any conduct that could result in discipline more substantial than a written reprimand.
4. Employees conducting internal investigations shall have freedom of movement and authority to question all personnel regarding infractions of Departmental policy, procedure, or rules and regulations in reference to any ongoing investigation.
5. CPD members participating in an investigation conducted pursuant to this policy and conducted in accordance with proper procedures and policies will not be retaliated against for such participation.

6. During the course of any internal investigation, all relevant police records and police reports shall be made immediately available to the investigators upon their request.
 7. Upon completion of investigations, the investigator will forward a report and all supporting documentation to the supervising LT. The LT shall review all materials and make recommendations on findings and discipline to the Chief of Police.
- D. Record Keeping: The Chief of Police shall maintain a complete record of complaints. These records shall be maintained separate from all other department records and shall be strictly confidential.
- E. The Chief of Police shall be responsible for the following, regarding follow up with the original complainant:
1. The complainant shall be advised when their complaint is received.
 2. When reasonable to do so, as determined by the Chief, the complainant will be periodically informed as to the status of their complaint.
 3. Reasonable efforts will be made to advise the complainant when the complaint has been resolved. No details of discipline shall be released, but the complainant will be advised what findings were made.
- F. The Support Services LT shall annually compile a statistical summary of all complaints investigated. This summary shall include the number of internal investigations and the category of disposition of each. This summary shall be made available to agency employees and the Town Manager upon request. If a trend indicating the need for training is detected, the summary's author shall make appropriate recommendations to the Training Unit and the Chief of Police. The conduct of subsequent training shall be in the sole discretion of the Chief of Police.

IV. AUTHORITY OF THE CHIEF OF POLICE

- A. The Chief of Police shall:
1. Review every case to determine the appropriate disposition.
 2. Make a finding, using the following recommended categories of disposition:
 - Unfounded** - The investigation indicates that the act or acts complained of did not occur or failed to involve police personnel.
 - Exonerated** - Acts reported did occur, but were justified, lawful and proper.
 - Non-sustained** - Investigation fails to disclose sufficient evidence to clearly prove or disprove the allegations made in the complaint.

Sustained - The investigation disclosed sufficient evidence to clearly prove the allegations made in the complaint.

Non-involved - The investigation establishes that the individual named in the complaint is not involved in the alleged incident.

3. Any employee named in a complaint will be notified in writing as to the findings.
 - B. Disciplinary or corrective action, up to and including termination may result from the investigation of a complaint pursuant to this policy. The type of corrective or disciplinary action will be dictated by the facts of the given situation and will be determined consistent with the relevant collective bargaining agreement, Town personnel policy and CPD policies and procedures.
 - C. Any discipline as a result of an internal investigation will be documented and a copy kept in the employee's personnel file.
 - D. Should an incident occur which is, in the opinion of the Officer in Charge, of such magnitude that immediate action is necessary, the OIC may immediately relieve the employee from duty for the balance of his/her shift. The OIC shall notify the appropriate Bureau LT and prepare a report before the end of shift.

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**COLCHESTER POLICE DEPARTMENT
ADMINISTRATIVE INTERVIEW NOTIFICATION**

Person to be interviewed/questioned:

Location of interview:

Before asking any questions, I am advising you of the Colchester Police Department's Internal Investigation policy and your responsibility as an employee of the Colchester Police Dept.

An Internal Investigation or Admin Review is about a violation of the Police Department's Rules & Regulations, not a criminal matter.

The purpose of the interview is to ask for responses that will help in determining whether disciplinary action is warranted. The answers furnished may be used in disciplinary proceedings that could result in administrative action against you and any other employee of the Colchester Police Department, including reprimand, demotion, suspension or dismissal.

All questions about the performance of official duties must be answered completely and truthfully. Disciplinary action, including dismissal, may be undertaken if the employee refuses to answer completely and truthfully. [Colchester Police Department's Rules - Rule 24, Truthfulness & Rule 17, Conduct Unbecoming.]

No answers given or any information gained by this administrative interview may be admissible against you in any criminal proceeding.

You may have the presence of an attorney or anyone of your choice on a consulting basis. However, there will be no interference with the interview by either party.

Do you understand what I have said? _____

Do you have any questions about what I have said? _____

Do you understand that by not answering my questions you would be violating the Rules & Regulations of the Colchester Police Department - Rule 17: Conduct Unbecoming - the failure to cooperate with an Internal Investigation? _____

Acknowledgement of Administrative Inquiry Procedures:

I have had the above statement of the Administrative Inquiry Procedures read to me. I fully understand my responsibilities as an employee of the Colchester Police Department.

SIGNATURE: _____ **DATE:** _____ **TIME:** _____

INVESTIGATOR'S SIGNATURE: _____ **DATE:** _____ **BADGE #** _____

**COLCHESTER POLICE DEPARTMENT
INTERNAL INVESTIGATION NOTIFICATION**

I.A. # _____

TO: _____

FROM: _____

SUBJECT: Internal Investigation

DATE: _____

You are hereby notified that you are the subject of an internal investigation being conducted by this department.

The nature of the investigation is as follows:

Name, rank and assignment of the officer in charge of the investigation:

Witnesses that have been interviewed thus far are:

Please acknowledge receipt of a copy of this memorandum.

OFFICER: _____

DATE: _____

WITNESS: _____

The officer under investigation has the right to have an attorney or other responsible representative of their choice present during interrogation.

COLCHESTER POLICE DEPARTMENT
INTERNAL INVESTIGATION REPORT (format)

TO **DATE:**
FROM:
SUBJECT:
ACCUSED: **DOE, John J., Officer**
Uniform Services Bureau
(If more than one officer, list all accused officers.)

COMPLAINANT: **JONES, Joe G.**
1234 Neighborhood Street
Your Town, VT 05499
Phone: 555-2234

VICTIM: (Use only if complainant is different from victim.)

ALLEGATION: 1) **CONDUCT UNBECOMING A POLICE OFFICER**
(Give allegation heading corresponding with written directive.)
To wit: JONES alleges that DOE called him a "son of a #&*#" during a traffic stop.
2) **LIST ALL OTHER ALLEGATIONS**

INVESTIGATOR: **LT. D. SMITH, Uniform Services Bureau**

SUMMARY OF COMPLAINT: Summarize complaint.

REPORT OF INVESTIGATION: Use this area to explain the investigation and what was found during investigation.

ENCLOSURES SECTION

(This section will list all documented material here, i.e., Police Report, photos, witness statements, etc.)

1. Memorandum dated May 7, 1990, from _____ to _____ directing this investigation.
2. Letter of complaint from JONES, Joe G.
3. Police Report, 00-12345, dated March 3, 1990.
4. Photo of damage to police cruiser #118.
5. Memorandum dated May 7, 1990, to Officer John J. Doe from Lt. D. Smith, advising him of this investigation in accordance with Departmental Procedure.
6. Transcript of recorded statement from Officer John Doe.

**COLCHESTER POLICE DEPARTMENT
CITIZEN'S COMPLAINT ADMINISTRATIVE
COVER SHEET**

Date Received _____ Complainant _____

Intake Supervisor _____ Incident Date & Time _____

Location of Incident _____

Employee(s) Involved _____

Incident Category:

Admin Review? _____ Internal Investigation? _____ IA# _____

Date Initial Letter Sent to Complainant _____

Assigned Investigator _____ Date assigned _____

Reviewing Supervisor _____ Date _____

Date Reviewed by COP _____ Disposition _____

Date Closed with Employee(s) _____

Date Closure Letter Sent to Complainant _____

Notes:



Jennifer Morrison
Chief of Police

COLCHESTER POLICE DEPARTMENT

P.O. Box 37
835 Blakely Road
Colchester, Vermont 05446

Business: 802-264-5556
Fax: 802-264-5561

The Colchester Police Department is dedicated to ensuring a safe and vibrant community for the citizens and visitors of the Town of Colchester. Maintaining order, enforcing the law and providing emergency response services can sometimes place our employees in situations where conflicts or questions arise. Protecting every citizen's civil rights is of paramount importance to us as we go about safeguarding our community.

Maintaining the public's trust is crucial to our success. We take this responsibility very seriously, and have a process in place to address complaints from the public about how we accomplish the mission of community safety. We encourage community members to report improper employee conduct. These complaints will be dealt with in a prompt, open and professional manner.

Our complaint process is established to investigate concerns and complaints regarding the performance of our employees. This process helps us to determine if training or corrective action is needed. It also serves to protect employees from unwarranted criticism while properly performing their duties.

The first step in our process is to meet with an on duty supervisor to address your questions or concerns and to document the events that transpired. If you are unable to come to police headquarters, you can call 264-5555 and ask to speak to a supervisor. We can send a supervisor to meet with you, or in unusual cases, we can accept your complaint via mail, email or phone. Your concerns will be evaluated and forwarded to a Lieutenant for review. Many concerns can be resolved quickly, but some require a lengthy investigation to resolve. At the conclusion of the internal review process, you will be contacted and informed of the disposition.

Please feel free to contact the office of the Chief of Police during normal business hours if you have any questions regarding this procedure.

On behalf of the Colchester Police Department,

A handwritten signature in black ink that reads "Jennifer Morrison".

Jennifer Morrison
Chief of Police



CITIZEN'S COMPLAINT FORM

NAME: _____ DATE OF REPORT _____

ADDRESS: _____ HOME PHONE: _____

WORK PHONE: _____ INCIDENT DATE: _____ INCIDENT TIME: _____

LOCATION OF INCIDENT: _____

OFFICER(S) INVOLVED (if known): _____

DESCRIPTION OF COMPLAINT (be detailed, use reverse side or additional paper if necessary):

WITNESSES TO INCIDENT:

NAME: _____ ADDRESS: _____ PHONE _____

NAME: _____ ADDRESS: _____ PHONE _____

NAME: _____ ADDRESS: _____ PHONE _____

SIGNATURE: _____

DATE: _____

Return completed form to the Officer in Charge

Act 56 Reference guide

July 2018

Appendix G

Act 56 of 2017, relating to the Professional Regulation of Law Enforcement Officers by the Vermont Criminal Justice Training Council, has changed the landscape of law enforcement accountability in Vermont. This document is intended to be a brief reference for agency heads and officers, but in no way is intended to be a comprehensive review of the contents of Act 56; it is the responsibility of agency heads to ensure they're familiar with the law.

The Act becomes effective July 1, 2018.

What constitutes professional misconduct?

Professional misconduct is broken down into three categories:

Category A: Crimes committed both on and off duty. This includes all felonies, all misdemeanors committed on-duty, and a list of misdemeanors committed off-duty.

Category B: Gross professional misconduct "...amounting to actions on duty or under color of authority, or both, that involve willful failure to comply with a State-required policy or substantial deviation from professional conduct..." as defined by the agency's or Council's policy. There is a list in the Act, but the list illustrates examples and is not intended to exclude other conduct.

Category C: Misconduct related to Council processes, such as falsifying training records, intentionally exceeding scope of practice for a given certification level, intentional failure to conduct a valid investigation, etc.

Agencies must also report terminations for Category A or B conduct, or resignations, if the officer resigns while under investigation.

What is the agency's responsibility to investigate?

Act 56 requires that all agencies have what has been termed an "effective internal affairs program" and must conduct a "valid investigation". The parameters of each are as follows:

Effective internal affairs program

- Accepts complaints from any source
- Assigns an investigator to determine if a violation took place
- Has language in policy or bargaining agreements that establish a code of conduct and a corresponding range of discipline
- Provides fairness in discipline
- Provides for civilian review

Valid investigation:

- Any investigation conducted pursuant to the agency's procedures, which must include the effective internal affairs program.

An investigation will not be considered valid if any of the following apply:

- The agency did not adopt the effective internal affairs program
- The agency refuses, without legitimate basis, to conduct an investigation
- The agency intentionally failed to make reports to the Council as required
- The agency attempts to cover up the misconduct and/or does anything to discourage a complainant
- The agency's executive officer is the officer accused of misconduct

A model policy is available for agencies to download here:

<http://vcjtc.vermont.gov/content/model-internal-affairs-policy>

If, for whatever reason, an agency will not or cannot conduct a valid investigation, it is still the agency's responsibility to cause the investigation to be made.

If the officer resigns prior to the start of the internal investigation or before it's completed, the agency is still required to conduct as much of the investigation as possible.

In all cases where the agency head is the subject of the allegation, the Council will cause the investigation to be conducted.

Should the Council receive a complaint of Category A or B misconduct instead of the law enforcement agency, the Executive Director will refer the complaint to the agency head and, for complaints of Category A conduct, the state's attorney of jurisdiction, except in those instances where the agency head is the subject of the complaint.

The Council will investigate all allegations of Category C misconduct.

Where do the reports go?

All reports of professional misconduct are made to the Council, specifically, to the Executive Director. In the event the E.D. is not available, the report can be made to either the Director of Administration or the Director of Training. Though the first instance of a Category B offense is handled by the agency and is not subject to action by the Council, the report must still be made

so that the Council and law enforcement agencies will have the ability to identify second and subsequent offenses.

Reports must be made in writing, by the agency head or designee.

What are the time frames for reporting and what needs to be included with the report?

Category A Offenses: The agency is required to report Category A conduct within 10 days of a finding of probable cause by a court. Related documents--any and all relevant documents associated with the report and/or investigation, including the agency's investigative report—must be provided with the report.

Category B Offenses: Must be reported within 10 business days after the agency receives the complaint, if deemed credible by the agency head. Related documents--any and all relevant documents associated with the report and/or investigation, including the agency's investigative report—must be provided when completed.

Category C Offenses: Must be reported within 10 business days after the agency head becomes aware of the misconduct.

What happens to the reports?

The prosecutor for the Council is ultimately responsible for determining whether or not the conduct rises to the level of Professional Misconduct. If the prosecutor decides it does not, the Council takes no further action; if the prosecutor decides it does, then the Council begins the hearing process.

What happens if the prosecutor determines that the conduct rises to the level of Professional Misconduct?

The VT Administrative Procedures Act (APA) requires due process before an officer can be decertified, or be subject to any sort of official sanction by the certification entity, in this case, the Council. Due process consists of notifying the officer of the allegation, the proposed action by the Council, informing the officer of the proposed date/time of any hearing, and affording the officer the opportunity to present a defense. The Council will ensure that agency heads are kept informed as the process moves forward. No action is taken against an officer's certification until the conclusion of the hearing, or unless the officer waives the right to the hearing and accepts the proposed sanction.

Can the Council suspend an officer's certification prior to a hearing?

Under fairly narrow circumstances, the Council can suspend an officer's certification ahead of a hearing if it can be demonstrated that, should the officer retain their certification, it poses an imminent threat to the public.

What sanctions can the Council impose?

Act 56 established a range of sanctions that the Council may impose: written warning, suspension, revocation with the option of recertification at the Council's discretion, and permanent revocation.

Can the officer surrender his/her certification?

After the hearing, if the Council finds that certification revocation is appropriate, and if the officer is also involved in or is going to begin a labor appeal process, the officer may voluntarily surrender the certification pending the outcome of the process. The Council will revisit the revocation at the conclusion of the labor process, but is not bound by that outcome.

How does an officer appeal the Council's decision?

By VT law, any appeal of a Council decision must go to the VT Supreme Court.

Is there a public record kept of reports and Council actions?

Act 56 requires the Executive Director to prepare and maintain a public register of all complaints that contains the following:

For reports received but do not rise to the level of professional misconduct:

- The date and nature of the complaint (but not the officer's identity)
- A summary of the completed investigation

For reports on which the Council will take action, the above information with the additions described below:

- The name and business address of the law enforcement officer
- Formal charges, providing they have been served or a reasonable effort to serve them has been made
- Findings, conclusions, and order of the Council
- Exhibits admitted at the hearing
- Transcript, if made
- Any stipulation filed with the Council
- If applicable, any final disposition by the VSC



ACT-56
Conduct Reporting Form

Agency:	Date:		
Reporting Official Name:			
Date Complaint Received:	Date:		
Category of Offense:	A <input checked="" type="checkbox"/>	B <input checked="" type="checkbox"/>	C <input checked="" type="checkbox"/>
Internal Investigation Policy in Place:	YES <input checked="" type="checkbox"/>	NO <input checked="" type="checkbox"/>	
Internal Investigation Commenced (If Applicable):	YES <input checked="" type="checkbox"/>	NO <input checked="" type="checkbox"/>	
Internal Investigation Completed (If Applicable):	YES <input checked="" type="checkbox"/>	NO <input checked="" type="checkbox"/>	
Probable Cause Determined (If Applicable):	YES <input checked="" type="checkbox"/>	NO <input checked="" type="checkbox"/>	
Date of Determination:	Date:		
Court Where Probable Cause Was Determined (If Applicable):			

*****Submit all related documentation with this form*****

Criminal Justice Training Council

317 Academy Road
 Pittsford, VT 05763
 Phone: 802 483 6228

The Vermont Statutes Online

Title 20 : Internal Security And Public Safety

Chapter 151 : Vermont Criminal Justice Training Council

Subchapter 002 : Unprofessional Conduct

(Cite as: 20 V.S.A. § 2401)

[Section 2401 effective July 1, 2018.]

§ 2401. Definitions

As used in this subchapter:

(1) "Category A conduct" means:

(A) A felony.

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

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

(i) simple assault, second offense;

(ii) domestic assault;

(iii) false reports and statements;

(iv) driving under the influence, second offense;

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

(vi) stalking;

(vii) false pretenses;

(viii) voyeurism;

(ix) prostitution or soliciting prostitution;

(x) distribution of a regulated substance;

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

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

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

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

- (B) misuse of official position for personal or economic gain;
- (C) excessive use of force under color of authority, second offense;
- (D) biased enforcement; or
- (E) use of electronic criminal records database for personal, political, or economic gain.

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

- (A) intentionally exceeding the scope of practice for an officer's certification level;
- (B) knowingly making material false statements or reports to the Council;
- (C) falsification of Council documents;
- (D) intentional interference with Council investigations, including intimidation of witnesses or misrepresentations of material facts;
- (E) material false statements about certification status to a law enforcement agency;
- (F) knowing employment of an individual in a position or for duties for which the individual lacks proper certification;
- (G) intentional failure to conduct a valid investigation or file a report as required by this subchapter; or
- (H) failure to complete annual in-service training requirements.

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

- (A) Complaints. Accepts complaints against its law enforcement officers from any source.
- (B) Investigators. Assigns an investigator to determine whether an officer violated an agency rule or policy or State or federal law.
- (C) Policies. Has language in its policies or applicable collective bargaining agreement that outlines for its officers expectations of employment or prohibited activity, or both, and provides due process rights for its officers in its policies. These policies shall establish a code of conduct and a corresponding range of discipline.
- (D) Fairness in discipline. Treats its accused officers fairly, and decides officer discipline based on just cause, a set range of discipline for offenses, consideration of mitigating and aggravating circumstances, and its policies' due process rights.
- (E) Civilian review. Provides for review of officer discipline by civilians, which may be a selectboard or other elected or appointed body, at least for the conduct required to be reported to the Council under this subchapter.

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

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

(B) An investigation shall not be valid if:

- (i) the agency has not adopted an effective internal affairs program;
- (ii) the agency refuses, without any legitimate basis, to conduct an investigation;
- (iii) the agency intentionally did not report allegations to the Council as required;
- (iv) the agency attempts to cover up the misconduct or takes an action intended to discourage or intimidate a complainant; or
- (v) the agency's executive officer is the officer accused of misconduct. (Added 2017, No. 56, § 1, eff. July 1, 2018.)