**Remote Meeting Location:** Microsoft Teams.

**Physical Meeting Location:** Vermont Department of State’s Attorneys and Sheriff’s, 110 State Street, 2nd Floor, Montpelier, VT 05633-6401.

**Agenda:**

1. Call to order.

Meeting called to order at 11:07AM

Sufficient participation to meet, not sufficient to approve minutes from July 6, will approve once we have a quorum of those present at July 6 meeting.

In attendance:

Evan Meenan, State’s Attorneys and Sheriffs designee, Chair

Jay Greene (they/them), Racial Equity Policy and Research Analyst, Office of Racial Equity (taking minutes and recording on behalf of Executive Director of Racial Equity Xusana Davis)

Rep. Karen N. Dolan, Essex Junction, House Corrections and Institutions Committee

Sen. Corey Parent, Franklin County

Christopher Brickell, Deputy Director of Vermont Criminal Justice Council (VCJC)

Tucker Jones, Department of Public Safety (DPS) Attorney

Erin Jacobson, Office of the Attorney General (AGO) Designee (Co-Director of AGO Community Justice program)

Jason Humbert (he/him), Assistant AG, sitting in on behalf of VCJC

Marshall Pahl (he/him), Deputy Defender General and Chief Juvenile Defender

Sheriff Mark Anderson, VT Sheriff's Association designee  
Joined later in the meeting: Chief Brian Peete

1. Approval of the Minutes from the Committee’s July 6, 2022 organizational meeting.

Sheriff Mark Anderson: motion to approve the minutes, Evan Meenan seconds.

All approved July 6, 2022 minutes with verbal "aye" vote

1. Review of Committee’s charge from Act 161 (2022) Sec. 2(c): “The Giglio Database Study

Committee shall study the appropriate structure and process to administer a law enforcement officer information database designed to facilitate the disclosure of potential information by prosecutors pursuant to legal obligations.”

Evan Meenan shared his screen to show S.250/Act 161 as passed.

Two important takeaways from Committee's charge:

1. Purpose of the database will be the same as earlier versions-assist prosecutors in satisfying discovery obligations (there was some conversation about whether there should be a publicly available database, but the immediate ask is to focus on helping prosecutors meet discovery)
2. "Legal obligations" for prosecutors to disclose evidence to defendants-will be discussed next

Erin Jacobsen: It sounds like the statutory charge assumes that we will be recommending a database of some kind, not whether to recommend a database.

Evan Meenan: Yes, the language of the statute does imply that. Implicit questions we could answer as well but need to stick to the core questions first.

Marshall Pahl: need to answer question of whether it's accessible to the public before we can answer the other questions-the answers to the questions asked in statute will be totally different depending on whether this is a public vs. non-public database.

Evan Meenan: we have 2 directions-could jump right into the question of public vs. non-public, or we could say to the legislature that we'll answer the questions narrowly and let the legislature make final decisions.

Marshall Pahl: where does the assumption come in that it's not a public database?

Evan Meenan: Subsection C-"to facilitate the disclosure of potential impeachment information by prosecutors pursuant to legal obligations". Legislative discussions about the formation of a database before the bill was turned into a study commission sparked debates over the location and function of the database, whether there should be a database at all.

Marshall Pahl: if this was just supposed to be by/for prosecutors, the prosecutors could set it up themselves-this is something bigger than by or for prosecutors (what would be the point of this committee if not by/for prosecutors?)

Evan Meenan: the earlier versions of the bill set up this structure-if you are a Law Enforcement Agency (LEA), and your officer engages in conduct that falls within an enumerated list of dishonest behaviors, then you must report that conduct to the VCJC. The VCJC will put that info into a Giglio database, then prosecutors could access the database and find out whether or not there is any info about the officers testifying relevant to their case and figure out whether to disclose it. There were conversations about whether or not the database SHOULD be publicly accessible during the legislative process.

Rep. Dolan: remembering conversations in the legislature-her understanding is that all attorneys do not have uniform access to this conversation. If something happens in one area, attorneys across the state will know what is happening. Having a database ensures uniform access across the state. Getting the database is the first step, then make recommendations about public access. Curious to hear about attorney's perspective-how are they accessing the info if it's not in a database right now.

Erin Jacobsen: Public transparency is key to public trust of government. If we're not contending with the question of public access from the beginning and the outcome is a non-public database, there will be years of litigation and the outcome could be public disclosure

Sheriff Mark Anderson: important given diversity of people representing the committee that we have an objective review of what currently exists. VT Digger has a public database of Giglio letters. The Office of Professional Regulation registry managed by the VCJC also exists, which not a lot of people understand or fully understand how to access (issues with VCJC rulemaking processes due to reorganization of VCJC.) NH has an Attorney General's Office database that was confidential to New Hampshire State Attorneys up until recently, now there is a "bizarre" public accountability system in New Hampshire. Next question: do we recommend that the database be public, not public, or a hybrid thereof where certain information is public, and some information is not public?

Sheriff Anderson, continued: Final comment-local state's attorney has access to all the letters but may not be aware of officers with Giglio letters in other counties in Vermont (lack of due diligence in reporting from prior jurisdictions where an officer has served when an officer changes location.)

Jay Greene: speaking for myself, not sure if Executive Director of Racial Equity Xusana Davis agrees with me-it is my understanding that one of the functions that a public facing Giglio database could serve is enhancing law enforcement officer (LEO) accountability through fear of publicity acting as a deterrent to LEO misconduct.

1. Overview of *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), V.R.Cr.P. 16, V.R.Cr.P. 16.2, and V.R.P.C. 3.8. (Presentation by Chair Evan Meenan)

* Brady Case: 1963
  + Vermont prosecutors bound by this Supreme Court decision
  + Defendant asked for key witness statements from the government, but one key witness statement where co-defendant admitted to committing the offense was not given to Brady so he could help defend himself
  + "…the suppression by the prosecution of evidence favorable to an accused upon request violates due process…irrespective of the good faith or bad faith of the prosecution"
  + Evan Meenan had a case where a LEO did not disclose a report, even though the report existed at the beginning of the case, and the report documented the defendant's confession
  + Judge said that Evan Meenan could not use the report, despite the report existing, because it was withheld from the defense. Trial proceeded without the report.
* Giglio case: 1972
  + Info about a witness was not provided to a defendant
  + Information indicated key witness got a plea deal for testifying against the defendant
  + Gave the Supreme Court the opportunity to clarify the Brady ruling-suppression of material evidence is a violation of due process, clarified that when we're talking about info that may assist the defendant, that info also includes info that can affect the credibility of a witness (this is where the connection to LEO dishonesty is made-prosecutors have a responsibility to disclose when a LEO has a history of dishonesty that could impact their testimony if they were involved in the defendant's case)
  + Brady/Giglio decisions inform VT rules of practice
* Rule 16-State providing information TO a defendant
  + As soon as there is a not guilty plea, upon request
  + Anything that might help a defendant defend themselves, they are entitled to receive from the prosecution
  + If there is no request, prosecutors must provide the information as soon as possible after the not guilty plea
  + Includes "any information which tends to negate the guilt of the defendant" (including Giglio evidence related to witness character, includes any information held by LEAs)
* Rule 16.2-expands on Rule 16
  + The requirement of disclosure is a continuing obligation, prosecutors must continuously turn over any evidence that is discovered
  + If the information is not turned over to the defense, the evidence may be suppressed, or the case could be dismissed
* Rule 3.8 Special responsibilities of prosecutors
  + Criminal prosecutors must make timely disclosures of ALL information that tends to mitigate an offense or negate the guilt of a defendant
  + That includes any evidence that impacts witness credibility, including LEO credibility
  + Sanctions for failing to do so could include losing license to practice law

Evan Meenan: Any feedback or thoughts from others with experience practicing law?

Sheriff Mark Anderson: do these letters apply just to law enforcement?

Evan Meenan: one of the things to address is type and scope of information to put in the database.

Technically, prosecutors must disclose underlying info related to witness' credibility

Example: you can't just give the defendant a letter that states that an officer tampered with evidence-need the actual evidence of misconduct to fulfill Rule 16 (example: body worn camera footage of LEO tampering with evidence)

Brady/Giglio letters are a permanent reminder of LEO misconduct, letter was sent to defense attorneys of the county in which the LEO serves

If for some reason this LEO becomes a witness, the prosecutor knows that they need to get the original evidence of misconduct to fulfill the disclosure rules

Frequently Brady letters are fatal to a LEO’s career because they won't be called to testify on cases if they have a known history of past misconduct

Letters given to ACLU Vermont as part of Public Records Request, ACLU Vermont now has public-facing database where people can request info on Brady/Giglio letters in Vermont

Rep. Karen Dolan: how are you going to track and access this info if it's just communicated by email. Also, how is this being implemented elsewhere-how can we learn from other jurisdictions?

Evan Meenan: How do we make sure every prosecutor has access to what they're required to disclose to defendants? Answer is that you send the actual evidence of misconduct to the database, not just the letters.

Chris Brickell: is there a time limit to how long this info stays in the database-do the letters cease to exist once the specific case where misconduct occurred is over?

Evan Meenan: if any witness has a prior conviction, the rules of evidence only look back a certain amount of time (depends on whether something may be admissible to evidence-different question from discovery obligations.) Under the rules of discovery, prosecutors arguably still have to notify a defendant of a (theoretical) expungement for tampering with evidence.

Questions came up during legislative process about appeal process for inaccurate accusations, what about protected health information, other sensitive information?

Sheriff Mark Anderson: how much investigation is performed by a prosecutor once they believe they need to issue a Giglio/Brady letter-is the process fair? What about unproven allegations? If the officer is ultimately exonerated, are they exonerated from a Giglio/Brady letter?

Evan Meenan: agrees, this database might be a great resource for prosecutors and for the public, but it itself will not dictate what a prosecutor's discovery obligations are (can't use "it wasn't in the database" as an excuse) You might end up in situations where the prosecutor discloses information not contained in the database to the defendant in a case.

Sheriff Mark Anderson: Suggests we contemplate the database as a non-public for the purpose of serving the prosecutors, when this tool serves both purposes it presents due process issues for officers who get Giglio/Brady letters when evidence exists to the contrary.

Evan Meenan: public vs. non-public is something that folks can give some thought to and discuss at next meeting.

Chief Brian Peete: need a recommendation of uniformity as to what offenses/behaviors mean that a Giglio/Brady letter is needed. Now there is no uniformity, depends on the prosecutor. Standardization of level of expectations for Giglio letter is needed.

Evan Meenan: prior versions of bill included list of behaviors, would like to get a look at prior versions of S250/Act 161 to see the list of behaviors originally suggested by the bill.

1. Discussion of decision points in Act 161 (2022) Sec. 2(c): (to be continued at next meeting, did not have sufficient time today)

1. *The appropriate department or agency to manage the administer the database;*
2. *The type and scope of information maintained in the database;*
3. *Any gatekeeping functions used to review information before it is entered into the database;*
4. *Any due process procedures to dispute information entered into the database;*
5. *How to securely maintain the database;*
6. *The appropriate access to the database;*
7. *The confidentiality of the information maintained in, or accessed from, the database; and*
8. *The resources necessary to effectively administer and maintain the database.*

1. Opportunity for Public Comment.

No members of the public attended the meeting.

1. Set agenda for next meeting(s).

Evan Meenan will make 8/24 agenda-start with public/private question, hope that helps with the discussion, but please email Evan Meenan if anyone has agenda items to add

1. Motion to Adjourn.

 Movement to Adjourn: Sheriff Mark Anderson, motion passed with verbal "aye" votes all around at 12:02PM.

**Next Meeting Date(s):** August 24, 2022 (9 a.m. to 10 a.m.); September 22, 2022 (1 p.m. to 2 p.m.); October 19, 2022 (2 p.m. to 3 p.m.); and November 17, 2022 (1 p.m. to 2 p.m.).