

Deliverable #1: Substantive comment in answer to the language of Act 161 (2022): recommendations as to a database to assist “prosecutors,” and specifically as to the 8 questions below as requested by the Legislature (If there is outside research or published studies etc. on this topic that you would like included in the appendix, please send that over as well). As discussed, please feel free to comment on the more expanded discussion as well.

i. The appropriate department or agency to manage and administer the database;

VCJC: The study committee discussed the possibility of the Vermont Criminal Justice Council (VCJC) managing and administering the database. The Council is charged with establishing rules, regulations, and standards for certification of law enforcement, as well as with serving as a resource for improving “the quality of citizen protection” and administering the [Professional Regulation Register](#). So the job of maintaining a Giglio database seems squarely within the VCJC’s area of expertise. Furthermore, the Council was recently reconstituted and expanded to include additional and more diverse stakeholders, and Council meetings are open to the public with comments and questions from the public invited at each meeting. For all of these reasons, the AGO would support the VCJC managing and administering the Giglio database.

OPR: The study committee also discussed whether the Office of Professional Regulation (OPR) in the Secretary of State’s Office might be an appropriate office to manage and administer the database. We heard from Director Hibbert that this could potentially work, but that the OPR would need additional resources. As well, there would be some operational challenges, including those related to public records requests. Acknowledging all of this, and assuming sufficient resource allocation, the AGO would support having OPR manage and administer the database because of its expertise related to professional regulation and the public perception that the Secretary of State’s Office is a fair and neutral government agency.

DSAS: Lastly, the committee learned that at least one government-administered Giglio “database” of sorts already exists, and that is the list of *Brady/Giglio* letters that is maintained by the Department of States Attorneys and Sheriffs (DSAS).¹ That list of letters is organized by date, officer last name, and county of the State’s Attorney who authored the letter. The list includes both local law enforcement and state police. At this point, the list is not public-facing and is not easily searchable. While having the DSAS manage and administer the Giglio database may provide operational efficiencies, the

¹ The ACLU recently began collecting and publishing Giglio letters. The ACLU obtains such letters through public records requests. Because of this, the SAS list is more up-to-date than the ACLU list.

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DSAS office might not be seen as neutral as the Secretary of State's Office, nor as accessible to the public as either the Secretary of State's Office or VCJC. For these reasons, the AGO could perhaps support the DSAS housing the database, but that would depend on other factors, such as accessibility of the data to the public and the opinions of other key stakeholders.

ii. The type and scope of information maintained in the database;

Included in the database should be:

- Officer name
- Department they were working for at the time of the misconduct
- Brief description of the misconduct or any official statement (e.g., Loudermill letter, letter of imposition, etc.)
- Date of the misconduct
- The *Brady/Giglio* letter itself
- Supporting documents, such as affidavits, police reports, etc.
- Link to any report(s) of misconduct in the VCJC's Professional Regulation Registry

iii. Any gatekeeping functions used to review information before it is entered into the database;

All public-facing information posted to the database should exclude (or be redacted of) any identifying information that pertains to victims, witnesses, or other civilians. Likewise, any other protected information should be redacted. (What is protected information remains to be determined and depends in part on what database information is public-facing, what information could be disseminated in response to a public records act request, and what information can never be shared with the public.) Finally, all identifying information about the listed officer should be nonpublic until the end of any grievance process.

iv. Any due process procedures to dispute information entered into the database;

The AGO acknowledges that placement in a Giglio database can lead to negative consequences for the officer's career and reputation. Therefore, the AGO would support procedural protections for officers that include: written notice of placement on the list, an opportunity to refute allegations, and modification of any successfully-refuted information or removal of the officer's name from the list. The name of an officer placed on the list could be nonpublic until the end of any grievance process. Possible arbiters of

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grievances include a court or the Vermont Labor Relations Board (VLRB). Whatever the forum, the proceedings could be kept under seal.

v. How to securely maintain the database;

This question would best be answered by ADS and the agency administering the database. As well, the level of security required will depend on the level of public access.

vi. The appropriate access to the database;

The main purpose of any Giglio database is to assist prosecutors in meeting their constitutional obligations by providing consistent, statewide access to potentially exculpatory information. But as many members of the committee have acknowledged, a Giglio list will be of “high value” to the public and could increase public trust of law enforcement through additional governmental transparency. With both of these goals in mind, the AGO supports public access to the database, but with two different levels of access:

- The first level of access is through a public-facing database and includes:
 - Officer name
 - Department the officer was working for at the time of the alleged misconduct
 - General description of the reason for inclusion on the list (e.g., “Truthfulness,” “Dereliction of Duty,” “Excessive Force.”)
 - Date of the alleged misconduct
 - *Brady/Giglio* letter
- The second level of access is for attorneys/prosecutors and includes supporting documents like case files, police reports, letters of imposition.
- Some supporting documents that are part of the second level of access might still be publicly accessible through a public record request to either the custodian of the Giglio database or to the appropriate agency that generated the records (depending on the scope of the record maintained by the custodial agency.)

vii. The confidentiality of the information maintained in, or accessed from, the database;

See above regarding what is included in the public-facing database and how any “level two” information would need to be redacted before being disseminated in response to a public records request.

viii. The resources necessary to effectively administer and maintain the database.

This question would best be answered by the agency administering the database. As noted above, information in a Giglio database will be of high value to the public, and so additional resources may be needed to respond to an increase in Public Records Act requests—not only by the agency charged with administering the database, but possibly also for law enforcement agencies and States Attorney’s offices who may have to field requests as the agencies who initially generated the records.

Deliverable #2: If you would like to send a formal comment under letterhead of your agency, department, or organization that you would like included in the appendix and considered. This too may inform the report itself.

The AGO is not submitting a formal comment at this time.



State of Vermont
Department of Public Safety
45 State Drive
Waterbury, Vermont 05671-2101

To: Giglio Database Study Committee
From: Commissioner Jennifer Morrison, Department of Public Safety
Date: 11/16/2022
Re: Memorandum for inclusion in Giglio Database Study Committee report

In the spring of 2022, the Senate and House Committees on Government Operations considered establishing a law enforcement officer information database that “catalogues potential impeachment information” and “enables a prosecutor to disclose such information consistently and appropriately” See [S. 250 as passed by the Senate](#), § 2. The Department of Public Safety sent two memorandums to the House Committee on Government Operations concerning this proposal on [April 21](#) and [April 28](#). The Department identified several concerns with the bill, including the categories of potential impeachment information, the gatekeeping process, and the lack of due process mechanisms to challenge the information in the database. For these reasons, the Department recommended that the matter be studied further, and the final bill established a Giglio Database Study Committee to do so. See [2022, No. 161](#), § 2.

The basic charge for the Study Committee was to “study the appropriate structure and process to administer a database designed to catalogue potential impeachment information concerning law enforcement agency witnesses or affiants to enable a prosecutor to disclose such information consistently and appropriately” [2022, No. 161, § 2\(a\)](#). This charge and prior drafts of S. 250 appear to focus more on the law enforcement-to-prosecutor disclosure process, and less on the prosecutor-to-defense disclosure process. A threshold issue is whether this focus is correct. The Department is not aware of any identified concerns with the law enforcement-to-prosecutor disclosure process for impeachment information.¹ Rather, the Department is aware of concerns regarding the consistency and inter-county sharing of “Brady letters” disclosed by prosecutors to defense attorneys.² These letters are typically issued by prosecutors to all defense

¹ Law enforcement witness impeachment information often arises from discovery information (affidavits, videos, etc.) provided by law enforcement officers to prosecutors in the normal course of a criminal case. Additionally, the Executive Director of the Vermont Criminal Justice Council is obligated by law to report to the Attorney General and the State’s Attorney of jurisdiction any allegations that an officer committed Category A criminal conduct. See 20 V.S.A. § 2403(c). Finally, the Vermont State Police must immediately report all allegations of misconduct involving a violation of a criminal statute to the State’s Attorney of the county in which the incident took place. See *id.* § 1923(b)(2).

² See the 2020 VTDigger series, “[Tarnished Badge](#),” and a 2022 VPR article, “[Prosecutors flagged 13 Vermont cops for potential credibility issues last year](#).”

attorneys in a particular county when the prosecutor identifies a credibility concern about a law enforcement officer that transcends a particular case. These letters are a historical practice in Vermont derived from a prosecutor's constitutional and ethical obligations to disclose witness impeachment information. In the Department's view, any inquiry into a potential database relating to the prosecutorial disclosure of law enforcement impeachment information should address the role of Brady letters in practice today.

The Tarnished Badge series in VTDigger [listed the following "surprises"](#) about these letters:

- "No one is tracking these credibility issues across Vermont's 14 counties."
- "There are no requirements for maintaining Brady letters as years go by."
- "When an elected county prosecutor leaves office, there is no system for relaying those letters to the next prosecutor."
- "Vermont has no centralized database where all the lists and letters are stored. That prompts questions about what information may follow an officer who's moving from one department to another."
- "The degree to which prosecutors write such letters and include officers' names on lists is inconsistent. The numbers are higher in Rutland, Chittenden and Washington counties, while others, such as Franklin County, report no such letters or any officers appearing on a list."

Since S. 250 was passed in 2022, the ACLU of Vermont [created a database of all Vermont "Brady letters."](#)³ Additionally, the Department of State's Attorneys and Sheriffs now collects these letters in a central server for access by State's Attorney prosecutors and, upon request, by the public. These actions have addressed the first four "surprises" in the VTDigger series, including the "centralized database" concern. These letters are now available to the public and to State's Attorney prosecutors across counties. Defense attorneys may receive the letters directly from prosecutors, or they may request them from the State's Attorneys' central office.

This development is a significant step toward addressing the concerns that likely prompted the database proposal in S. 250. The Department supports the centralized collection of these letters, and this task has been completed. The Department does not otherwise recommend creating an "intermediary" database between law enforcement officers and prosecutors because no need for such a database has been identified, and because establishing such a database creates unnecessarily complex issues addressed in the Department's April 21 and 28 memorandums to the House Committee on Government Operations.

³ Separately, in May 2022, President Biden issued an [Executive Order](#), which in part instructs the United States Attorney General to create a "National Law Enforcement Accountability Database" by early 2023. State and local law enforcement agencies are encouraged to "contribute to and use" the database.

Finally, the Department notes that Brady letters can have the effect of ending an officer's career and there are no due process mechanisms to challenge the letters, let alone any statewide standards or criteria for issuing them. The Department recommends that state prosecutors consider and adopt a model statewide policy regarding the issuance of Brady letters that addresses these concerns in a manner that acknowledges the independent constitutional offices of the State's Attorneys as well as their ethical and constitutional disclosure obligations.



State of Vermont
Office of the Secretary of State

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James C. Condos, Secretary of State
Christopher D. Winters, Deputy Secretary
S. Lauren Hibbert, Director

November 10, 2022

Giglio Database Study Committee
C/O Timothy Lueders-Dumont, Legislative & Asst Appellate Attorney
Vermont Department of State's Attorneys and Sheriffs
110 State Street
Montpelier, VT 05633

Dear Members of the Giglio Database Study Committee,

Thank you for inviting the Secretary of State's participation in your Committee's meetings as you discuss the important charge set out in Act 161 (2022). The Secretary of State's Office, and in particular, the Office of Professional Regulation (OPR), has been involved in the Committee's discussion for the purpose of determining if OPR is the appropriate governmental body to host, manage, and administer the Giglio database.

Our Office could be an appropriate location for the Giglio Database; however, the entire project is largely outside of our Office's mission. Additionally, the appropriateness of that assignment is dependent on several factors which, to our knowledge, are yet to be determined.

1. The Office needs a clearer understanding about the type and scope of information maintained in the database. We are confident that we have a secure IT structure that is scalable to the needs of the database. However, implementation, costs, and exact placement within the Secretary of State's Office is difficult for us to ascertain without details. Particularly relevant to this consideration is the policy decision on whether there is a private side of the database versus an entirely public database.
2. We need clarity on any gatekeeping functions used to review information before it is entered into the database and relatedly the confidentiality of information maintained in the database. Our Office asks this critical question because it determines the associated staffing levels to maintain the database and to respond to public inquiries.
3. Until the due process procedures for disputing information on the database are solidified it is very difficult to determine what, if any, OPR staff resources will be required. If there is due process with anticipated OPR staff participating in that process, it would understandably add to the demand on OPR resources.

Until the three above policy questions are understood and answered we cannot wholeheartedly say we are the correct governmental body for the database.

Equally importantly, and as discussed before the Committee, OPR depends on a special fund funded only by our licensees. It would be inappropriate to transfer the cost of this database onto our licensees. A General Fund appropriation would be necessary to implement, maintain, and sustain this database. Given the open questions, it is impossible to assess the appropriate General Fund allocation necessary.

We look forward to continuing the conversation.

Sincerely,


Jim C. Condos
Secretary of State


S. Lauren Hibbert
Director, Office of Professional Regulation

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Office of the Executive Director

Timothy Lueders-Dumont

Nov. 17, 2022

Department of State's Attorneys and Sheriffs

110 State Street

Montpelier, VT. 05602

Re: Response to S.250 Brady / Giglio Database study committee

The Vermont Criminal Justice Council appreciates being offered the ability to work through the process of meeting the mandate of Act 161 and having the ability to have input from multiple stakeholders.

With that in mind we have participated in the discussion of Act 161 to determine what information is provided, who it is for, and public availability of the disclosure of Brady / Giglio letters or "database". As this information is to ensure prosecutors meet their discovery obligations, we recognize partial information already exists within the Department of State's Attorneys and Sheriffs. This system as we understand it exists in the context of a folder containing Brady/Giglio letters that could be accessed publicly. This material is not however a comprehensive collection of all Brady/Giglio material. Additionally there is a desire by the legislature to study several key points; appropriate access to the database, confidentiality, gatekeeping functions, and resources.

As an entity that houses a database regarding material related to the professional regulation of law enforcement officers, it would appear as a good fit to house such information. Should the proper agency for housing of Brady/Giglio letters rest within the VCJC, we can easily receive and post letters sent to us for public transparency. Should a database be desired, we would have concerns over the content required for the database, gatekeeping functions, due process for those reported to us, and a clear understanding of what Brady/Giglio letters contain, and equally as important what they do not. Discussion also involved the potential of utilizing the National Decertification Index, a national registry that houses information related to certificate or license revocation actions relating to officer misconduct. There is no current standard process utilized by NDI.

Discussion of the site data.vermont.gov was reported to have significant structure and functionality with the ability to perform analytics. This is an option of an already existing database that would also serve the need of public transparency, once standards for inclusion were in place.

We will continue to work as partners to find the best solutions for the location and standardization of how Material is collected and shared, but are mindful of the legitimate resources needed to successfully implement the needed gatekeeping functions and ongoing maintenance of such information.

Respectfully,

Christopher Brickell

Deputy Director

Vermont Criminal Justice Council





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TO: Timothy Lueders-Dumont
Legislative and Assistant Appellate Attorney
Department of State's Attorneys and Sheriffs

November 16, 2022

FROM: Chief Brian R. Peete
President, Vermont Association of Chiefs of Police

SUBJECT: RE: Vermont Giglio Database Study Committee, Act 161 (2022) Sec 2(c)

Act 161 (S.250) created the Giglio Database Study Committee, directed to study the creation and administration of a law enforcement officer information database designed to facilitate the disclosure of potential impeachment information by prosecutors pursuant to legal obligations.

As the Study Committee finalizes its report, the Vermont Association of Chiefs of Police (VACOP) would like to present the Committee with information and recommendations that we ask both the Committee and Legislation consider. This information is presented based on the specific subsections as listed in the Act. Foremost, VACOP wishes to note that "Giglio" is a legal requirement for officers of the court, specifically prosecutors, to disclose any evidence that may call into question the credibility of any individual testifying in trial or impediment of an investigation to ensure a defendant's right to a fair trial. This is information that potentially pertains to impeachment of a witness, and not a definite finding of misconduct committed by an officer or witness. Therefore, a "Giglio Database," by definition cannot be an official documentation where there is a formal process that has found an officer (or otherwise witness) is not credible and therefore not able to necessarily fulfill their role as a law enforcement officer. Any potential records regarding a department's findings to an officer's misconduct are housed with the department and not the State's Attorney's office. Act 161 was only intended for how any such database could be used by the Prosecutors to fulfill their Brady/Giglio duties.

a. The appropriate department or agency to manage and administer the database; *VACOP has no position as to which agency should be tasked to maintain such a database. VACOP believes the spirit and intent of this legislation is to improve police legitimacy by ensuring the public has ready unfettered access of information related to the credibility of a law enforcement officer, especially if such information impacts an officer's ability to honorably serve. It is VACOP's position that this documentation be simplified into two categories within a public facing system: Officers who have been de-certified (something Vermont already provides, see <https://www.iadlest.org/our-services/ndi/about-ndi>), and law enforcement professionals who are the subject of an existing "Giglio" letter. Ultimately, we strongly caution for the state to be mindful of the time, effort, and costs necessary to maintain such systems. Should such a system be*

implemented, the state must provide ample funding to whichever agency is deemed as responsible to manage it.

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b. The type and scope of information maintained in the database;

Foremost, Legislators could consider adding any “Giglio” letters to Category B or Category C reportable as outlined in Title 20 VSA 2403. The Criminal Justice Council’s process is a viable solution which can be incorporated within this framework. Other options could include incorporating a system which has two categories: A De-certification List could contain the names of officers who were de-certified, the agency (agencies) the officer worked for, Date of de-certification, and brief summarization as to why the officer was de-certified. This summary could be listed in three classifications: 1) Commission of any crime defined by Vermont statute or federal law as a felony or misdemeanor, 2) Any act or conduct which is prejudicial to the policy or rule or regulations of the department or city personnel plan, 3) Any act which affects the employee’s credibility and thereby their ability to work within a law enforcement capacity. A “Giglio” list could contain the name of the law enforcement professional (NOTE: there may be non-sworn personnel employed by a department who may have “Giglio” letters), the date the letter was issued by the State’s Attorney, and a PDF document of said letter. Should a member of the public want additional information, they can easily contact the applicable agency for public records. These systems should not be encompassing disciplinary clearing houses as the judicial system, which already shares all relevant information to Defense (see “Brady”), is the primary branch which can act on issues related to officer credibility.

c. Any gatekeeping functions used to review information before it is entered into the database;

In addition to any other offices as determined by the state, the department of the individual of whom the letter was issued should be allowed to review the information prior to it being entered into any system.

d. Any due process procedures to dispute information entered into the database;

No “Giglio” letter should be made public until all due process has been completed. VACOP recommends the individual alleged to have violated an issue impacting credibility be a) informed of notice that they are being investigated regarding their credibility, b) be supplied with the applicable State Attorney’s decision, c) be allowed to appeal that decision to small panel or legal-based court to determine if the infraction indeed affects an officer’s credibility and warrants a career-ending letter. If the appeal is denied, the “Giglio” letter should be fully expunged. VACOP recommends the model Internal Affairs policy (Section II.3) to be updated to include “Giglio” letters as an area of concern addressed by the IA process. This would allow for the applicable agency to fully investigate, to include an interview of the subject employee, and come to findings. Findings can then be appealed through the normal/applicable labor process. VACOP acknowledges the generation of a “Giglio” letter is based on prosecutorial discretion, but it strongly recommends the state defines acts which affect credibility to be used as guidance for State’s Attorneys, as well as adopting a statewide, universal policy which clarifies the standards of which a Giglio letter should be written. There must be reasonable uniformity. Currently, only one county has a “Giglio” policy, and there is no statewide consistency as to what behavior or action constitutes generation of a letter. VACOP also recommends law enforcement professionals with existing “Giglio” letters issued by a Vermont State’s Attorney be allowed to pursue an appeal should an appeals process be implemented. It should be defined and noted by this study group in its end product that an officer with a “Giglio” letter can still file criminal charges in a case, especially in cases where they are not witnesses through a gathering of facts. “Giglio” letters may be a cause for termination in some agencies, it may not be a cause in others, and the state has no specific guidance in this area.

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- e. How to securely maintain the database; *VACOP has no position as to which agency should maintain this database. VACOP strongly cautions for the state to be mindful of the time, effort, and costs necessary to maintain such systems. Should such a system be implemented, the state must provide ample funding to whichever agency is deemed as responsible to manage it.*
- f. The appropriate access to the database; *VACOP does not recommend such a system be a final clearing house for derogatory or disciplinary information on all law enforcement officers and staff in the state. VACOP also notes that any information deemed potentially exculpatory by a State's Attorney (at the Attorney's discretion) be provided to the defense in accordance with federal law (Brady). Such materials could remain within systems accessible only for officers of the court, as the judicial system is tasked with taking action with exculpatory or impeachable information. Access to any "Giglio" database could be limited to end-result information (see para b), once any appeals process has been exhausted.*
- g. The confidentiality of the information maintained in, or accessed from, the database; *Any redactions should be in accordance with public records request laws. Only summarized information could be released once any appeals process has been exhausted (see para b).*
- h. The resources necessary to effectively administer and maintain the database; *VACOP strongly cautions for the state to be mindful of the time, effort, and costs necessary to maintain such systems. Should such a system be implemented, the state must provide ample funding to whichever agency is deemed as responsible to manage it. Whichever agency is tasked with administration and maintenance of the system would be in the best position to inform the legislation as to what resources are necessary. Furthermore, VACOP strongly and unapologetically believes the demand for transparency, equity, and accountability is system-wide and should not just be limited to law enforcement. For true legitimacy and public confidence, issues potentially relating the credibility of any persons within the justice system should be readily available for public consumption. As such, any credibility-related list should include ALL officers of the court, defense attorneys, and potentially law makers as legislators have passed laws that have historically contributed to decades of oppression and inequality. VACOP believes an impartial entity, such as a truly independent Inspector General is an option that should be explored by the legislature.*

VACOP also wishes to highlight the current professional regulation systems recently adopted by the Legislature have recently gone into effect, and will have a strong impact on the discussions surrounding transparency and accountable of those working within the law enforcement profession. VACOP strongly urges for the Legislature to pause the adoption of any new processes and/or methodically structure and stagger any new additional laws so to gauge the effectiveness of the oversight laws and measures that have already been passed within the last three years.

Sincerely,

Brian R. Peete
President, Vermont Association of Chiefs of Police

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