

**JOHN F. CAMPBELL,
ESQ.
EXECUTIVE
DIRECTOR**



110 State Street
Montpelier, VT
05633-6401

PHONE: (802) 828-
2891

FAX: (802) 828-2881

**STATE OF VERMONT
OFFICE OF THE EXECUTIVE DIRECTOR
DEPARTMENT OF STATE'S ATTORNEYS & SHERIFFS**

TO: House Committee on Government Operations
Senate Committee on Government Operations
Office of the Vermont Speaker of the House
Office of the Vermont President Pro Tempore

FROM: Tim Lueders-Dumont, Esq., Legislative and Assistant Appellate Attorney,
Vermont Department of State's Attorneys and Sheriffs, Chair, *Brady/Giglio*
Database Study Committee

RE: *Brady/Giglio* Database Study Committee Report (2022, Act 161, Sec. 2)

DATE: November 30, 2022

I. INTRODUCTION

Act 161 ("the Act")¹ of the 2022 legislative session established the "Giglio"² Database Study Committee" ("the Committee"). The Committee's charge was to explore the appropriate structure and process to administer a "law enforcement officer information" database designed to facilitate the disclosure of potential exculpatory and impeachment information by prosecutors pursuant to their legal and ethical obligations.³

¹ 2022 Acts and Resolves No. 161, Sec. 2; or 2022, Act 161, Sec. 2.

² *Giglio v. United States*, 405 U.S. 150 (1972) ("Giglio") and *Brady v. Maryland*, 373 U.S. 83 ("Brady") are two separate Supreme Court Cases that, together, created the "*Brady/Giglio*" doctrine and rule.

³ See *2022 Acts and Resolves No. 161 Sec. 2*. ("GIGLIO DATABASE; STUDY COMMITTEE; REPORT (a) Creation. There is created the Giglio Database Study Committee 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 under the obligations of *Giglio v. United States*, 405 U.S. 150 (1972), and its progeny.")

The Legislature specifically asked the Committee to address eight issues in its study:

- (1) the appropriate department or agency to manage and administer the database;
- (2) the type and scope of information maintained in the database;
- (3) any gatekeeping functions used to review the 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.

II. GIGLIO DATABASE STUDY COMMITTEE

The Committee was composed of the following individuals representing their respective agencies, departments, or organizations:

- Representative Thomas Burditt, Vermont House of Representatives
- Representative Karen N. Dolan, Vermont House of Representatives
- Senator Philip Baruth, Vermont State Senate;
- Senator Corey Parent, Vermont State Senate;
- Tucker Jones, Attorney, Vermont Department of Public Safety;
- Christopher Brickell, Deputy Director of Vermont Criminal Justice Council;
- Mark Anderson, Windham County Sheriff, Vermont Sheriffs' Association;
- Chief Brian Peete, Montpelier Police Department, Vermont Association of Chiefs of Police;
- Chief Jennifer Frank, President, Vermont Association of Chiefs of Police;
- Xusana Davis, Executive Director of Racial Equity, Office of Racial Equity;
- Erin Jacobsen, Co-Director of the Community Justice Program, Office of the Attorney General;
- Evan Meenan, Deputy State's Attorneys (Chair from July 2022-October 2022);
- Tim Lueders-Dumont, Department of State's Attorneys and Sheriffs (Chair from October 2022-December 2022); and
- Marshall Pahl, Deputy Defender General, and Chief Juvenile Defender, Office of the Defender General.

The Committee also received assistance and input from:

- Lindsay Thivierge, Director of Administration at the Vermont Criminal Justice Council;
- Jay Greene, Racial Equity Policy and Research Analyst, Office of Racial Equity;
- Mike O'Neil, President of the Vermont Troopers' Association; and,
- Lauren Hibbert, Director, Office of Professional Regulation, Vermont Secretary of State's Office.

The Committee met on seven occasions, holding its first meeting on July 6, 2022 and its final meeting on November 29, 2022. At the initial meeting, Xusana Davis, Executive Director of the Vermont Office of Racial Equity, appointed Evan Meenan, Senior Appellate Attorney, Department of State's Attorneys and Sheriffs, to serve as Chairperson. Timothy Lueders-Dumont, Deputy State's Attorney, Department of State's Attorneys and Sheriffs, succeeded Attorney Meenan as Chairperson for the final three meetings of the Committee.

III. BACKGROUND

Committee members noted that careful and thorough consideration of Act 161's eight questions would be challenging given the limited number of meetings predetermined by the Act. In addition, while the Act appears to contemplate the potential creation of a database designed to help prosecutors satisfy their constitutional and ethical discovery obligations to defendants, some members of the Committee questioned whether some portion of the database should be accessible to the public to inform the public about instances of law enforcement misconduct. As explained in the following section of this report, instances of police misconduct are not necessarily coextensive with behaviors bearing on an officer's bias and credibility that prosecutors must disclose in discovery.

The Committee agreed that the answers to the eight questions in the Act will depend in part upon whether the legislature intends the database to include all instances of law enforcement misconduct and be available to the public. Some members of the Committee anticipate that more resources may be required to create and maintain such a database due to the legally recognized confidentiality of some materials that could contain information detailing alleged officer misconduct.

While some members of the Committee noted a concern that the language and presumed legislative intent of Act 161 conflated the broad issue of police misconduct as compared to prosecutors' professional and ethical obligations in the discovery process,⁴ other members of the Committee were in support of a database designed for the public. Further detailed below, there was a lack of consensus amongst Committee members concerning the intent of the Act and the eight questions. Committee members noted that further legislative input may be helpful and instructive for future study of this topic.

IV. PROFESSIONAL & ETHICAL DUTIES OF PROSECUTORS UNDER BRADY/GIGLIO

In *Brady v. Maryland*, the United States Supreme Court held that the prosecution's failure to disclose "exculpatory" evidence to a defendant violates the defendant's due process rights regardless of whether the prosecution acted in good faith or bad faith: "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due

⁴ V.R.Prof.Cond. 3.8; V.R.Cr.P. 16; *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972).

process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.”⁵ In *Giglio v. United States*, the United States Supreme Court held that the exculpatory evidence prosecutors must disclose includes “*impeachment*” information indicating that a witness may not be credible or may be biased.⁶

The two cases, *Brady* and *Giglio*, are viewed, in practice, as one doctrine. A reference to “*Brady*” is a reference to “*Giglio*” and vice versa. In a strict reading, the term “*Brady* material” refers to *exculpatory* evidence or information that a defendant could use to make his conviction less likely or a lower sentence more likely. The term “*Giglio* material” refers to material that a defendant could use to *impeach* a key government witness.

It has become the practice of some prosecutors around the country, including in Vermont, to issue what are sometimes referred to as *Brady/Giglio* letters when they learn of information indicating that a law enforcement officer has acted in a way that calls into question their credibility.⁷

In Vermont, the discovery obligations established in *Brady* and *Giglio* are fully encapsulated by Rule 3.8 of the Vermont Rules of Professional⁸ and Rule 16 of the Vermont Rules of Criminal Procedure.⁹ Copies of *Brady*, *Giglio*, Rule 3.8, and Rule 16 are attached to this report, amongst other resources.

The law and rules above, in addition to those resources attached to this report, establish a prosecutor's duties and obligations to a criminal defendant. They are not now, nor have they been in the past, viewed as a mechanism to highlight all police misconduct publicly. The Committee discussed that not all acts of police misconduct would necessarily be included in a *Brady/Giglio* database—only those incidents that fell under the umbrella of the doctrine, related to impeachment and exculpatory material, requiring disclosure in a particular criminal case.

⁵ *Brady v. Maryland*, 373 U.S. 83 (1963).

⁶ The legal principles established in *Brady* have expanded over the years in subsequent cases, most notably in *Giglio v. United States*, where the United States Supreme Court extended *Brady* to include the responsibility to disclose information that could impeach a witness.

⁷ The Department of State’s Attorneys and Sheriffs have asked, on an ongoing basis, that each State’s Attorney submit any *Brady/Giglio* letters in their possession to the Office of the Executive Director at the Department of State’s Attorneys and Sheriffs so that all letters authored by State’s Attorneys could be kept in a file for use by all State’s Attorneys and Deputy State’s Attorneys. It should be noted that the file maintained by the Department does not include any material or letters from the Office of the Vermont Attorney General, nor should the Department’s file be construed to summarize all *Brady/Giglio* letters or material. The Department only maintains, on file, what it has been sent by State’s Attorneys.

⁸ See V.R.Prof.Cond. 3.8 (“[A prosecutor in a criminal case] ... shall make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense and to the tribunal all unprivileged mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal ...”).

⁹ See V.R.Cr.P. 16.

V. THE COMMITTEE'S DRAFT RESPONSE TO ACT 161'S EIGHT QUESTIONS

The Committee discussed Act 161's eight questions and agreed to collect separate written comments and responses from Committee¹⁰ members for inclusion in the report for each of the eight questions. The Committee also received substantive responses from stakeholders who were not appointed members of the Committee.

The decision to collect the comments of individual Committee members was agreed upon by all members because there was a lack of consensus among all members as to the substance of each of the eight questions. As noted above, there was also a lack of consensus as to whether a potential database should be designed for prosecutors or for the public, or both. Notably, Legislative members of the Committee noted a preference to review a compilation of the separate responses of Committee members as the most helpful pathway for the Committee to proceed, especially if the General Assembly is to consider any legislative action or further study.

The following Committee-member-entities and other stakeholder-groups submitted responses, which are either summarized below, attached to the report, or both:

- 1. The Vermont Association of Chiefs of Police (“VACOP”)** submitted a response which is attached to this report as a formal comment in the appendix and summarized below;¹¹
- 2. The Office of the Attorney General (“AGO”)** submitted comments noting that the AGO's response might be subject to change given a transition in that office and based upon further discussion during the legislative session;
- 3. The Vermont Criminal Justice Council (“VCJC”)** submitted both a formal response, attached in the appendix, and submitted responsive information concerning each of the eight questions, summarized below;¹²
- 4. The Vermont Department of Public Safety (“DPS”)** submitted a response which is attached to this report as a formal comment in the appendix;¹³
- 5. The Vermont Office of Racial Equity (“ORE”)** submitted a response, which is summarized below, and attached in the appendix;¹⁴

¹⁰ Not all committee members submitted separate responses. For example, the Department of State's Attorneys and Sheriffs did not submit a separate response. The Department chaired the meetings, compiled the responses of committee members and drafted the report but did not submit separate responses to each question. The Department viewed its role as facilitator and does not presently see a need to create a new database. Individual State's Attorneys may have their own perspectives concerning the creation of a new database. The Department does not presently see the need for creation of a new system or database for prosecutors to perform their discovery duties to defendants as required under *Brady/Giglio* and Vermont's discovery laws and rules.

¹¹ See Appendix A.

¹² See Appendix B.

¹³ See Appendix C.

¹⁴ See Appendix D.

6. **The Office of Professional Regulation (“OPR”)**, of the Secretary of State’s Office, while not an appointed Committee member, submitted public comment which is attached to this report in the appendix;¹⁵
7. **The Vermont Troopers’ Association (“VTA”)**, while not an appointed Committee member, submitted public comment¹⁶ which is attached to this report in the appendix; and,
8. **Other committee members** who did not submit a separate response may have also provided substantive comments during the course of discussions that took place during meetings – those comments are captured in the minutes of each meeting which are attached to this report.

Below is a compilation of responses to each of the eight questions¹⁷ which should be viewed in concert with the appendix which includes the formal comment of Committee members, further resources, and responsive information.

(1). Act 161 Question #1: The appropriate department or agency to manage and administer the database?

- **VACOP Response to Question #1 (see appendix for formal comment):**
 - o *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.*
- **AGO Response to Question #1:**
 - o *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*

¹⁵ See Appendix E.

¹⁶ See Appendix L.

¹⁷ In addition to statutory committee members, the Office of Professional Regulation and the Vermont Troopers’ Association submitted public comments which are substantive and included in the appendix.

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). 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 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.*

- VCJC Response to Question #1 (see appendix for formal comment):

- *The content of such Brady / Giglio information does not constitute a database as such. While the Department of State's Attorneys and Sheriffs has a list of "letters", it is not an all-inclusive list. Material other than letters may also constitute Brady/Giglio content shared by attorneys. The state of Vermont also owns data.vermont.gov which is a robust site that houses much data for public consumption. The VCJC could host the database on our website, however resources would need to be allocated for gatekeeping functions related to the database to consider redactions, receiving updates on cases of expungements etc.*

- DPS Response to Question #1 (see appendix for formal comment):

- *The Department of Public Safety provided a memorandum to the Giglio Database Study Committee included in the appendices to this report. This memorandum provides the Department's perspective on the policy considerations underlying a database "to catalogue potential impeachment information concerning law enforcement agency witnesses or*

affiants....” 2022, No. 161, § 2(a). 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 Department does not oppose public access to these letters; they are already considered public records, and one non-governmental organization has created a public database of them. However, 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 adopt a 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.

- **ORE Response to Question #1 (see appendix for formal comment):**
 - *The Vermont Criminal Justice Council was created to “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” pursuant to 20 V.S.A. §2351.(Vermont Statutes Online) Furthermore, an earlier draft of the enabling legislation which passed the Vermont Senate, S.250, assigned the responsibility for maintaining the database to the Vermont Criminal Justice Council.(Vermont Senate)*
- **OPR Response to Question # 1:**
 - *See appendix for comment from OPR. Note that OPR is not an appointed member of the Committee.*
- **VTA Response to Question # 1:**
 - *See appendix for comment from VTA. Note that VTA is not an appointed member of the Committee.*

(2). Act 161 Question #2: The type and scope of information maintained in the database?

- **VACOP Response to Question #2 (see appendix for formal comment):**
 - *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.

- **AGO Response to Question #2:**
 - *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 itself¹⁸*
 - *Supporting documents, such as affidavits, police reports, etc.*
 - *Link to any report(s) of misconduct in the VCJC's Professional Regulation Registry*

- **VJCJ Response to Question # 2 (see appendix for formal comment):**
 - *This concern has continued throughout these meetings. Brady/Giglio letters should be maintained in the database. Other such information leading to question an officer's credibility are also available by means other than a public letter from a prosecutor. The material provided is currently at the discretion of the attorney.*

- **DPS Response to Question #2 (see appendix for formal comment):**
 - *See response to Question #1 and appendix for formal comment.*

- **ORE Response to Question #2 (see appendix for formal comment):**
 - *According to an early draft of the Act 161 Giglio Committee's enabling legislation, S.250, the information the Vermont Senate intended to be collected included:*
 - *"(1) any finding of misconduct that reflects upon the truthfulness or possible bias of the law enforcement officer, including a finding of a lack of candor during a criminal, civil, or administrative inquiry or proceeding;*

¹⁸ Note from the Department of State's Attorneys and Sheriffs: the drafting of a Brady/Giglio "letter" by a prosecutor is not mandatory under the law. Brady/Giglio requires the disclosure of Brady/Giglio material to a defendant but that does not require the drafting of a letter. In practice, many elected State's Attorneys in Vermont memorialize Brady/Giglio content in letters – but it is not required or standardized. It should be noted that the Department of State's Attorneys and Sheriffs is not aware of any Brady/Giglio letters, policies, or procedures that are maintained by the Office of the Vermont Attorney General.

- *(2) any past or pending criminal charge brought against the law enforcement officer;*
- *(3) any allegation of misconduct bearing upon truthfulness, bias, or integrity that is the subject of a pending investigation;*
- *(4) any prior findings by a judge that a law enforcement officer testified untruthfully, made a knowing false statement in writing, engaged in an unlawful search or seizure, illegally obtained a confession, or engaged in other misconduct;*
- *(5) any misconduct finding or pending misconduct allegation that either casts a substantial doubt upon the accuracy of a law enforcement officer as a witness, including testimony, that a prosecutor intends to rely on to prove an element of any crime charged, or that might have a significant bearing on the admissibility of prosecution evidence;*
- *(6) information that may be used to suggest that the law enforcement officer is biased for or against a defendant; or*
- *(7) information that reflects that the law enforcement officer's ability to perceive and recall truth is impaired"*
- *The earlier version of S.250 as passed by the Vermont Senate did not specify the format under which the information listed above was to be maintained. That lack of specificity in the original bill about the format of information to be disclosed has been a key source of discussion among the members of the Act 161 Giglio Study Committee.*
- *ACLU Vermont already maintains a publicly available database of Giglio/Brady letters that they have collected via public records request to the Department of State's Attorneys and Sheriffs. (ACLU Vermont 2020) The question is not whether the public should have access to Giglio letters, but how much other material besides the letters themselves should be maintained within the database. The Office of Racial Equity is of the opinion that the maximum amount of information that is already publicly available by public records request should be made available with the fewest possible barriers to access for the general public. People have the right to know whether the officers serving their communities have been accused of misconduct that rises to the level of meriting a Giglio/Brady disclosure letter.*
- *The information currently available to the public via the ACLU Vermont's online Brady Letter Database includes:*
 - *the date the letter was issued*
 - *the name of the officer*
 - *the law enforcement agency for which the officer worked at when the letter was issued*
 - *the name of the State's Attorney in whose office the letter was created,*
 - *the county in which the State's Attorney serves*
 - *a copy of the publicly available Brady letter*
- *That is the minimum amount of information available via public records request that must be held in a publicly available format in the proposed Giglio/Brady database.*

- **OPR Response to Question # 2:**
 - *See appendix for comment from OPR. Note that OPR is not an appointed member of the Committee.*
- **VTA Response to Question # 2:**
 - *See appendix for comment from VTA. Note that VTA is not an appointed member of the Committee.*

(3). Act 161 Question # 3: Any gatekeeping functions used to review information before it is entered into the database?

- **VACOP Response to Question #3 (see appendix for formal comment):**
 - *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.*
- **AGO Response to Question #3:**
 - *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.*
- **VCJC Response to Question # 3 (see appendix for formal comment):**
 - *Notification to the officer and a process to challenge or review before it is entered into a “database” should one be created.*
- **DPS Response to Question #3 (see appendix for formal comment):**
 - *See response to Question #1 and appendix for formal comment.*
- **ORE Response to Question #3 (see appendix for formal comment):**
 - *Giglio/Brady letters should not be published in a database until after law enforcement officers are given a chance to appeal the decision to give the officers an opportunity to respond to any potential inaccuracies in the information contained within the Giglio/Brady letter (that is, due process protections).*
- **OPR Response to Question # 3:**
 - *See appendix for comment from OPR. Noe that OPR is not an appointed member of the Committee.*

- **VTA Response to Question # 3:**
 - *See appendix for comment from VTA. Note that VTA is not an appointed member of the Committee.*

(4). Act 161 Question #4: Any due process procedures to dispute information entered into the database?

- **VACOP Response to Question #4 (see appendix for formal comment):**
 - *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.*
- **AGO Response to Question #4:**
 - *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*

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

- **VCJC Response to Question #4 (see appendix for formal comment):**
 - *Officers should be afforded an opportunity to appeal or respond to an attorney's decision, if such a process is implemented. A guide by which attorneys follow with uniformity as to what information classifies as Brady/Giglio worthy.*
- **DPS Response to Question #4 (see appendix for formal comment):**
 - *See response to Question #1 and appendix for formal comment.*
- **ORE Response to Question #4 (see appendix for formal comment):**
 - *All members of the Giglio Database Committee have thus far agreed that there should be a process through which officers who have letters in the database should be allowed to dispute the information entered into the database. Housing the database within the Vermont Criminal Justice Council would allow officers to rely on VCJC procedures for a fair dispute process. VCJC procedures include oversight by members of communities most impacted by law enforcement misconduct.*
- **OPR Response to Question # 4:**
 - *See appendix for comment from OPR. Note that OPR is not an appointed member of the Committee.*
- **VTA Response to Question # 4:**
 - *See appendix for comment from VTA. Note that VTA is not an appointed member of the Committee.*

(5). Act 161 Question #5: How to securely maintain the database?

- **VACOP Response to Question #5 (see appendix for formal comment):**
 - *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.*
- **AGO Response to Question #5:**
 - *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.*
- **VCJC Response to Question #5 (see appendix for formal comment):**
 - *Again as a "database" does not currently exist, the collected information would need to meet the needs of security of and access to the information.*

Costs associated with that security would require resources and the staff time to devote to understand those costs.

- **DPS Response to Question #5 (see appendix for formal comment):**
 - *See response to Question #1 and appendix for formal comment.*
- **ORE Response to Question #5 (see appendix for formal comment):**
 - *Experts in the Agency of Digital Services must be entrusted with determining the specifics of how to securely maintain the database once it is constructed.*
- **OPR Response to Question # 5:**
 - *See appendix for comment from OPR. Note that OPR is not an appointed member of the Committee.*
- **VTA Response to Question # 5:**
 - *See appendix for comment from VTA. Note that VTA is not an appointed member of the Committee.*

(6). Act 161 Question #6: The appropriate access to the database?

- **VACOP Response to Question #6 (see appendix for formal comment):**
 - *VACOP does not recommend such as 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.*
- **AGO Response to Question #6:**
 - *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.)*
- **VCJC Response to Question #6 (see appendix for formal comment):**
 - *Again if access is to remain for prosecutors to meet their legal obligations of disclosure, the process of sharing the information already exists. If it is to become a database for public transparency and consumption, it will involve many other obligations for redactions, expungements, appeals, and other related concerns. It will also need to be a true “database.”*
- **DPS Response to Question #6 (see appendix for formal comment):**
 - *See response to Question #1 and appendix for formal comment.*
- **ORE Response to Question #6 (see appendix for formal comment):**
 - *We propose two levels of access to the database. The first level is the publicly available information, which has already been published by ACLU Vermont. The second level would be information that would be required to be disclosed under the Vermont Rules of Criminal Procedure, but would not be available via public records request. The second level of access would only be available to prosecutors and law enforcement agencies to facilitate disclosure to defense attorneys. Defense attorneys would be invited to access only the relevant information that would need to be disclosed to them by prosecutors under the Vermont Rules of Criminal Procedure.*
- **OPR Response to Question # 6:**
 - *See appendix for comment from OPR. Note that OPR is not an appointed member of the Committee.*
- **VTA Response to Question # 6:**
 - *See appendix for comment from VTA. Note that VTA is not an appointed member of the Committee.*

(7). Act 161 Question #7: The confidentiality of the information maintained in, or accessed from, the database?

- **VACOP Response to Question #7 (see appendix for formal comment):**
 - *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 question #2 response].*

- **AGO Response to Question #7:**
 - *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.*
- **VCJC Response to Question #7 (see appendix for formal comment):**
 - *After completion of any redaction process, access should conform with the public records request laws, after an appeals process by an officer who is the subject of a Brady/Giglio letter.*
- **DPS Response to Question #7 (see appendix for formal comment):**
 - *See response to Question #1 and appendix for formal comment.*
- **ORE Response to Question #7 (see appendix for formal comment):**
 - *Only material that is publicly available via records request should be housed within the publicly accessible portion of the database. Additional materials could be housed in the database that are only accessible to prosecutors and law enforcement agencies to facilitate disclosure to defense attorneys under the Vermont Rules of Criminal Procedure. See answer to vi [#6] for details.*
- **OPR Response to Question # 7:**
 - *See appendix for comment from OPR. Note that OPR is not an appointed member of the Committee.*
- **VTA Response to Question # 7:**
 - *See appendix for comment from VTA. Note that VTA is not an appointed member of the Committee.*

(8). Act 161 Question #8: the resources necessary to effectively administer and maintain the database?

- **VACOP Response to Question #8 (see appendix for formal comment):**
 - *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.

- **AGO Response to Question #8:**
 - *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.*

- **VCJC Response to Question #8 (see appendix for formal comment):**
 - *Appropriate funding must be made available if locating the database at a location other than where it currently exists, or on the data.vermont.gov site. A mandate to house the database other than in its current form must include the additional resources for maintaining it.*

- **DPS Response to Question #8 (see appendix for formal comment):**
 - *See response to Question #1 and appendix for formal comment.*

- **ORE Response to Question #8 (see appendix for formal comment):**
 - *It is vital that the legislature give the VCJC sufficient resources to administer and maintain the database. This may include the addition of administrative staff, staff with the applicable knowledge of database security, and technical assistance from the Agency of Digital Services as requested by the VCJC. The resources could include the temporary assistance of a project manager from the Agency of Digital Services Enterprise Portfolio Management Office to assist the VCJC with setting up the database.*

- **OPR Response to Question # 8:**
 - *See appendix for comment from OPR. Note that OPR is not an appointed member of the Committee.*

- **VTA Response to Question # 8:**
 - *See appendix for comment from VTA. Note that VTA is not an appointed member of the Committee.*

VI. CONCLUSION

As noted above, the Committee agreed to collect separate written comments and responses from Committee¹⁹ members for inclusion in the report for each of the eight questions. The decision to collect the comments of individual Committee members was agreed upon by all members because there was not a consensus among all members as to the substance of each of the eight questions.

Likewise, the Committee discussed whether the Act's eight questions would require further study by the General Assembly and stakeholders with expertise. For example, if a misconduct database is created and intended for use beyond what is required by *Brady/Giglio*,²⁰ Committee members agreed that the eight questions might require further discussion, study, input, and expertise closely related to legal and public policy questions regarding labor and employment issues.²¹

In sum, the Committee could not come to a consensus but provides the resources and responses, noted above and attached, in response to the Act and in support of future discussion.

¹⁹ Not all committee members submitted separate responses.

²⁰ *Brady/Giglio* requires that prosecutors disclose impeachment and exculpatory information to defendants. *Brady/Giglio* does not require that prosecutors disclose impeachment and exculpatory information to the public.

²¹ The Department of State's Attorneys and Sheriffs notes that further study should include input from at least the following entities: the Vermont Association of Chiefs of Police, the Vermont Criminal Justice Council, the Vermont State Employees' Association, the Vermont Troopers' Association, any and all labor unions that represent any members of the Vermont law enforcement community, the Vermont League of Cities and Towns, Municipal Police Departments and Agencies, the Attorney General's Office, the Office of Professional Regulation, the Vermont Department of Public Safety, the Vermont Department of State's Attorneys and Sheriffs, and the Vermont Sheriff's Association. Questions concerning employment law, labor law, constitutional due process, internet technology security and maintenance, rulemaking, resources, logistics, and staffing must be a part of any discussion of a public facing system.

VII. APPENDIX GUIDE

As noted above, for further substantive information, access to formal comments and responses from Committee members, additional resources, and the minutes²² from each meeting, please see the attached appendix. In addition, the Vermont Criminal Justice Council will be posting the Committee's final report and the appendix to the report on its webpage.

- **Appendix A** (Formal Comment and Response: *Vermont Association of Chiefs of Police*)
- **Appendix B** (Formal Comment and Response: *Vermont Criminal Justice Council*)
- **Appendix C** (Formal Comment and Response: *Vermont Department of Public Safety*)
- **Appendix D** (Formal Comment and Response: *Vermont Office of Racial Equity*)
- **Appendix E** (Resource Material: Comment from the *Office of Professional Regulation, Office of the Vermont Secretary of State*)
- **Appendix F** (Resource Material: *Minutes of the Committee*)
- **Appendix G** (Resource Material: *Copy of Enabling Legislation, 2022, Act 161, Sec. 2.*)
- **Appendix H** (Resource Material: *Copy of Applicable Caselaw, Brady/Giglio*)
- **Appendix I** (Resource Material: *Brady-Giglio Guide for Prosecutors, American College of Trial Lawyers*)
- **Appendix J** (Resource Material: *Applicable Rules of Criminal Procedure and Rules of Professional Conduct, relating to Brady/Giglio*)
- **Appendix K** (Resource Material: *Washington County Policy Memorandum on the "Assessment, management, and disclosure of exculpatory and impeachment information in criminal prosecutions (with special emphasis on law enforcement)."*)
- **Appendix L** (Resource Material: *Vermont Troopers' Association Response to Act 161's Eight Questions*)

²² The minutes from each meeting were posted, and will remain, on the Vermont Criminal Justice Council's webpage, linked here: [Vermont Giglio Database Study Committee | Criminal Justice Council \(https://vcjc.vermont.gov/vermont-giglio-database-study-committee\)](https://vcjc.vermont.gov/vermont-giglio-database-study-committee).