

No. 161. An act relating to law enforcement data collection and interrogation.

(S.250)

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

Sec. 1. 20 V.S.A. § 2366 is amended to read:

§ 2366. LAW ENFORCEMENT AGENCIES; FAIR AND IMPARTIAL
POLICING POLICY; RACE DATA COLLECTION

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(4) The data provided pursuant to subdivision (3) of this subsection shall be posted electronically in a manner that is analyzable and accessible to the public on the receiving agency's website and clear and understandable. The receiving agency shall also report the data annually ~~to the General Assembly,~~ on or before December 1, to the House and Senate Committees on Government Operations and on Judiciary and the Executive Director of Racial Equity. The report shall detail how the data is collected, how the data is accessible, how the data is used by the law enforcement agency, a review of the data to determine if additional data criteria is needed, and any recommendations to improve data collection and use.

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Sec. 1a. DEPARTMENT OF PUBLIC SAFETY; LAW ENFORCEMENT

DATA COLLECTION; REPORT

(a) On or before November 1, 2023, the Department of Public Safety shall submit a report concerning the ability of law enforcement agencies to collect data during law enforcement encounters. The report shall specify:

(1) the data currently collected, including law enforcement's capabilities and methods of collection;

(2) any suggested data collection criteria;

(3) any impediments to collecting data;

(4) proposed remedies to resolve any impediments; and

(5) a recommended definition of "law enforcement encounter."

(b) The report shall be submitted to the House and Senate Committees on Government Operations and on Judiciary and the Executive Director of Racial Equity.

(c) It is the intent of the General Assembly that the report's definition of "law enforcement encounter" and data criteria suggestions should be considered for codification into law by the General Assembly during the 2024 legislative session.

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.

(b) Membership. The Giglio Database Study Committee shall be composed of the following members:

(1) two current members of the House of Representatives, not from the same political party, who shall be appointed by the Speaker of the House;

(2) two current members of the Senate, not from the same political party, who shall be appointed by the President Pro Tempore;

(3) the Commissioner of the Department of Public Safety or designee;

(4) the Executive Director of the Vermont Criminal Justice Council or designee;

(5) the President of the Vermont Sheriffs' Association or designee;

(6) the President of the Vermont Association of Chiefs of Police or designee;

(7) the Executive Director of the Vermont Office of Racial Equity;

(8) the Attorney General or designee;

(9) the Executive Director of the Department of State's Attorneys and Sheriffs or designee; and

(10) the Defender General or designee.

(c) Powers and duties. 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 impeachment information by prosecutors pursuant to legal obligations. The Committee shall study the following:

(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 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.

(d) Report. On or before December 1, 2022, the Giglio Database Study Committee shall submit a written report with legislative recommendations to the House and Senate Committees on Government Operations.

(e) Assistance. The Giglio Database Study Committee shall have the administrative, technical, and legal assistance of the Vermont Criminal Justice Council and any other stakeholders interested in assisting with the report.

(f) Meetings.

(1) The Executive Director of the Office of Racial Equity or designee shall call the first meeting of the Committee to occur on or before July 15, 2022.

(2) The Executive Director of the Office of Racial Equity shall select a chair from among its members at the first meeting.

(3) The Committee shall meet six times.

(4) A majority of the membership shall constitute a quorum.

(5) The Giglio Database Study Committee shall cease to exist on December 15, 2022.

(g) Compensation and reimbursement. For attendance at meetings during adjournment of the General Assembly, a legislative member of the Giglio Database Study Committee shall be entitled to per diem compensation pursuant to 2 V.S.A. § 23 for not more than six meetings. These payments shall be made from monies appropriated to the General Assembly.

Sec. 3. 13 V.S.A. § 5585 is amended to read as follows:

§ 5585. ELECTRONIC RECORDING OF A CUSTODIAL

INTERROGATION

(a) As used in this section:

(1) “Custodial interrogation” means any interrogation:

(A) involving questioning by a law enforcement officer that is reasonably likely to elicit an incriminating response from the subject; and

(B) in which a reasonable person in the subject's position would consider ~~himself or herself~~ the person to be in custody, starting from the moment a person should have been advised of ~~his or her~~ the person's Miranda rights and ending when the questioning has concluded.

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(3) "Place of detention" means a building or a police station that is a place of operation for the State police, a municipal police department, county sheriff department, or other law enforcement agency that is owned or operated by a law enforcement agency at which persons are or may be questioned in connection with criminal offenses or detained temporarily in connection with criminal charges pending a potential arrest or citation.

(4) "Statement" means an oral, written, sign language, or nonverbal communication.

(b)(1) A custodial interrogation that occurs in a place of detention concerning the investigation of a felony or misdemeanor violation of ~~chapter 53 (homicide) or 72 (sexual assault)~~ of this title shall be electronically recorded in its entirety. Unless impracticable, a custodial interrogation occurring outside a place of detention concerning the investigation of a felony or misdemeanor violation of this title shall be electronically recorded in its entirety.

(2) In consideration of best practices, law enforcement shall strive to record simultaneously both the interrogator and the person being interrogated.

(c)(1) The following are exceptions to the recording requirement in subsection (b) of this section:

(A) exigent circumstances;

(B) a person's refusal to be electronically recorded;

(C) interrogations conducted by other jurisdictions;

(D) a reasonable belief that the person being interrogated did not commit a felony or misdemeanor violation of ~~chapter 53 (homicide) or 72 (sexual assault)~~ of this title and, therefore, an electronic recording of the interrogation was not required;

(E) the safety of a person or protection of ~~his or her~~ the person's identity; and

(F) equipment malfunction.

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Sec. 4. STUDY ON DECEPTIVE AND COERCIVE METHODS OF LAW
ENFORCEMENT INTERROGATION; REPORT

(a) The Joint Legislative Justice Oversight Committee shall study the use of deceptive and coercive interrogation tactics employed by law enforcement in the State of Vermont. In particular, the study shall consider:

(1) when providing false facts about evidence to a suspect during an interview conducted after the commission of a crime results in an involuntary confession or admission to the crime;

(2) when confessions or admissions to crimes procured by providing a defendant with false facts should be inadmissible;

(3) the appropriate age and circumstances to prohibit coercive techniques in cases involving juveniles;

(4) the use of the interrogation and interviewing techniques, including the Reid Technique of Investigative Interviews and Advanced Interrogation Techniques, by law enforcement; and

(5) legislation, initiatives, or programs for the General Assembly and law enforcement to consider to improve current practices.

(b) The Committee shall have the administrative, technical, and legal assistance of the Office of Legislative Counsel. The Committee may have the assistance of the Vermont Criminal Justice Council in drafting the report, along with any other stakeholders interested in assisting. On or before December 1, 2022, the Committee shall submit a report in the form of proposed legislation, if any.

Sec. 5. 20 V.S.A. § 2222 is amended to read:

§ 2222. FEDERAL LAW ENFORCEMENT OFFICERS; POWER OF
ARREST FOR VERMONT CRIMES

(a) For purposes of this section, “a certified federal law enforcement officer” means a federal law enforcement officer who:

(1) is employed as a law enforcement officer of the federal government

as:

(A) a special agent, border patrol agent, or immigration inspector of the Immigration and Naturalization Service, U.S. Department of Justice; ~~or~~

(B) an officer or inspector of the U.S. Customs Service of the Department of the Treasury; ~~and~~ or

(C) a special agent, inspector, or member of the police service of the U.S. Department of Veterans Affairs;

(2) has satisfactorily completed a course of study in Vermont laws and criminal procedures approved by the Vermont Criminal Justice Council, at the expense of the officer's agency;

(3) has been certified by the Commissioner of Public Safety pursuant to subsection (b) of this section; and

(4) has taken an oath administered by the Commissioner of Public Safety or by the Commissioner's designee to uphold the Constitution of the State of Vermont.

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Sec. 6. EFFECTIVE DATE

This act shall take effect on July 1, 2022.

Date Governor signed bill: June 1, 2022