

1 TO THE HOUSE OF REPRESENTATIVES:

2 The Committee on Government Operations to which was referred Senate
3 Bill No. 250 entitled “An act relating to law enforcement data collection and
4 interrogation” respectfully reports that it has considered the same and
5 recommends that the House propose to the Senate that the bill be amended as
6 follows:

7 First: In Sec. 1, 20 V.S.A. § 2366, in subdivision (e)(1)(A), by striking out
8 the word “driver” and inserting in lieu thereof “~~driver~~ individual”

9 Second: By striking out Sec. 2, 20 V.S.A. § 2370, in its entirety and
10 inserting in lieu thereof a new Sec. 2 to read as follows:

11 Sec. 2. 20 V.S.A. § 2370 is added to read:

12 § 2370. LAW ENFORCEMENT OFFICER INFORMATION DATABASE

13 (a) Purpose. The purpose of this section is to create a law enforcement
14 officer information database that catalogues potential impeachment
15 information concerning law enforcement agency witnesses or affiants and
16 enables a prosecutor to disclose such information consistently and
17 appropriately under the obligations of *Giglio v. United States*, 405 U.S. 150
18 (1972), and its progeny.

19 (b) Database. The Vermont Criminal Justice Council shall **create and**
20 maintain a database cataloging any potential impeachment information

1 concerning a law enforcement officer. Potential impeachment information
2 may include:

3 (1) any finding of misconduct that reflects upon the truthfulness or
4 possible bias of the law enforcement officer, including a finding of a lack of
5 candor during a criminal, civil, or administrative inquiry or proceeding;

6 (2) any past or pending criminal charge brought against the law
7 enforcement officer where the allegations relate to the truthfulness, bias, or
8 integrity of the officer;

9 (3) any allegation of misconduct bearing upon truthfulness, bias, or
10 integrity that is the subject of a pending investigation;

11 (4) any prior findings by a judge that a law enforcement officer testified
12 untruthfully, made a knowing false statement in writing, engaged in an
13 unlawful search or seizure, illegally obtained a confession, or engaged in other
14 misconduct;

15 (5) any misconduct finding or pending misconduct allegation that either
16 casts a substantial doubt upon the accuracy of a law enforcement officer as a
17 witness, including testimony, that a prosecutor intends to rely on to prove an
18 element of any crime charged or that might have a significant bearing on the
19 admissibility of prosecution evidence;

20 (6) information that may be used to suggest that the law enforcement
21 officer is biased for or against a defendant; or

1 (7) information that reflects that the law enforcement officer’s ability to
2 perceive and recall truth is impaired.

3 (c) Duty to report.

4 (1) A law enforcement officer shall report any information required to
5 be catalogued under this section to the executive officer or designee of the
6 employing law enforcement agency.

7 (2) A law enforcement agency’s executive officer or designee shall
8 report any information required to be catalogued under this section to the
9 Council within 10 business days after discovering the information.

10 (3) A law enforcement agency’s executive officer or designee shall
11 provide updates to the Council concerning law enforcement officer information
12 to ensure accuracy, as appropriate.

13 (d) Procedure to preclude or remove information from database.

14 (1) Within 10 days, a law enforcement officer shall be notified by the
15 law enforcement agency’s executive officer or designee when information
16 concerning the officer is reported to the Council pursuant to subdivision (c)(2)
17 of this section.

18 (2) A law enforcement officer may petition the Council to prevent
19 information from being catalogued in the database or to remove information
20 from the database.

1 (3) The Council may hold a hearing to determine whether the petitioning
2 officer’s information should be precluded or removed. Reasons for preclusion
3 or removal include allegations that cannot be substantiated, are not credible, or
4 have resulted in the exoneration.

5 (4) Unless otherwise provided in this subsection, the Council shall
6 conduct its proceedings in accordance with the Vermont Administrative
7 Procedures Act.

8 (e) Accessibility. The database shall be accessible to the State’s Attorney
9 of any county of this State or designee and the Attorney General of this State
10 or designee for the purpose of complying with the disclosure obligations of
11 *Giglio v. United States*, 405 U.S. 150 (1972), and its progeny. The database
12 shall be accessed through a search of the identity of the law enforcement
13 officer. When law enforcement officer information is accessed through the
14 database, the State’s Attorney or designee, or the Attorney General or
15 designee, shall inquire with the relevant law enforcement agency or officer to
16 ensure accuracy of the information. This database shall not be accessible to
17 anyone not listed in this subsection.

18 (f) Confidentiality. The database, documents, materials, or other
19 information in possession or control of the Council that are obtained by or
20 reported to the Council under this section shall be confidential by law and
21 privileged, shall not be subject to subpoena, and shall not be subject to

1 discovery or admissible in evidence in any private civil action. The Council is
2 authorized to use the database, or related documents, materials, or other
3 information, in furtherance of the Council’s official duties pursuant to this
4 section. Unless otherwise authorized by law, the Council shall not disclose the
5 database or make related documents, materials, or other information public
6 without the prior written consent of the law enforcement agency and the law
7 enforcement officer. Neither the Council nor any person who received
8 documents, materials, or other information shared under this section shall be
9 required to testify in any private civil action concerning the database or any
10 confidential documents, materials, or information subject to this section.
11 Nothing in the section shall exempt the Council, a State’s Attorney, or the
12 Attorney General from disclosing public records pursuant to 1 V.S.A.
13 chapter 5, subchapter 3.

14 (g) Rules and guidance. The Council may adopt rules to implement the
15 provisions of this section. The Council may also provide guidance to law
16 enforcement agencies and officers to comply with the provisions of this
17 section.

18 Third: By striking out Sec. 3, 13 V.S.A. § 5585, in its entirety and inserting
19 in lieu thereof a new Sec. 3 to read as follows:

20 § 5585. ELECTRONIC RECORDING OF A CUSTODIAL
21 INTERROGATION

1 (a) As used in this section:

2 (1) “Custodial interrogation” means any interrogation:

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

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

9 * * *

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

16 (4) “Statement” means an oral, written, sign language, or nonverbal
17 communication.

18 (b)(1) A custodial interrogation that occurs in a place of detention
19 concerning the investigation of a felony or misdemeanor violation of ~~chapter~~
20 ~~53 (homicide) or 72 (sexual assault)~~ of this title shall be electronically recorded
21 in its entirety. Unless impracticable, a custodial recording occurring outside a

1 place of detention concerning the investigation of a felony or misdemeanor
2 violation of this title shall be electronically recorded in its entirety.

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

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

7 (A) exigent circumstances;

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

9 (C) interrogations conducted by other jurisdictions;

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

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

16 (F) equipment malfunction.

17 * * *

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2 (Committee vote: _____)

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Representative _____

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FOR THE COMMITTEE