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Date: January 15, 2021

To: The House and Senate Committees on Government Operations

From: The Attorney General's Office, Prepared by Julio Thompson, Assistant Attorney General and Director of the Civil Rights Unit; and David Scherr, Assistant Attorney General and Co-Director of the Community Justice Division

Re: Progress Report to the Legislature Pursuant to Section 16 of Act 166

In accordance with Section 16(3) and (4) of Act 166, the Office of the Attorney General presents this progress report regarding the development of models of civilian oversight of law enforcement and ways to report law enforcement misconduct.

Act 166 assigned the Attorney General's Office (AGO) two tasks, each closely related to the other. The first is to recommend, in consultation with stakeholders, one or more models of civilian oversight of law enforcement to the Legislature. Act 166, Section 16(3). The second is to identify a central point of contact for reporting allegations of law enforcement officer misconduct, and to identify how those allegations should be handled, also in consultation with stakeholders. Act 166, Section 16(4).¹

¹ The relevant sections of Act 166 read:

(3) Models of civilian oversight. The Office of Attorney General shall consult with the Council, the Human Rights Commission, the Vermont League of Cities and Towns, the Vermont Law School Center for Justice Reform, statewide racial justice groups, statewide groups representing individuals with lived experience of a mental health condition or psychiatric disability, and other interested parties to recommend one or more models of civilian oversight of law enforcement.

These issues are closely related, and we intend to submit a single final report that encompasses both.

In this progress report we outline our approach to seeking broad professional and community input on the many complex questions involved with law enforcement accountability. The National Association of Civilian Oversight of Law Enforcement reports there are approximately 150 different civilian oversight entities in the United States. No two oversight entities are the same, in part because many were developed in response to each community's specific needs and may reflect compromises made to account for resource and governance restraints.

In a similar vein, the AGO anticipates hearing a broad range of Vermonters' concerns and proposals as well as practical considerations relating to resource constraints and local governance issues. We do not anticipate views on any issue will be unanimous but do expect there will be opportunities for developing broad consensus on key issues relating to law enforcement accountability and community confidence in the agencies that serve them. We hope the process will not only provide the Legislature with a series of concrete recommendations, but also lift the voices of Vermonters who have been left out of important conversations about public safety and community service.

Upon completion of the forums described in Section I below, the AGO will provide the Legislature an interim progress report with an estimated timeline for completion of the project.

I. The Consultative Process for Producing Recommendations

To meet the goals stated above, the AGO is engaged in a three-part outreach and communication process with stakeholders, the communities they represent, and Vermonters at large.

Stage one comprises direct outreach to representatives of named stakeholders, stage two will be a series of public forums, and stage three will include a process of drafting recommendations and soliciting input on the drafts using a public portal.

The first stage of this outreach is well underway. It comprises discussions with representatives of the stakeholder groups named in Section 16(3) and (4). These discussions have included both ideas about both process and substance. Indeed, the process we are conducting arose in part from the conversations with stakeholders. Assistant attorneys general have had at least introductory

(4) Reporting allegations of law enforcement misconduct. The Office of Attorney General shall consult with the Council, the Human Rights Commission, the American Civil Liberties Union, statewide racial justice groups, statewide groups representing individuals with lived experience of a mental health condition or psychiatric disability, and other interested parties in order to identify a central point for reporting allegations of law enforcement officer misconduct, which may be the Council or another entity, and how those allegations should be handled.

discussions with representatives of the Human Rights Commission, the Vermont League of Cities and Towns, the Vermont Law School Center for Justice Reform, racial justice groups, groups representing individuals with lived experience of a mental health condition or psychiatric disability, the American Civil Liberties Union, and the Vermont Criminal Justice Training Council. These conversations will continue throughout the entire outreach process.

Because these issues directly affect the operation of local governments and law enforcement agencies, the AGO will also continue to seek regular input from law enforcement professionals and local officials — many of whom have already invested considerable effort into examining these very issues.

The second stage of this process will be to broaden the scope of community input by a variety of means, including a planned series of eight remotely-conducted public forums. The forums will provide an opportunity for Vermonters to give their input about policies, preferences, and ideas regarding civilian oversight and police regulation. At the forums, the AGO will not take a directive role, such as proposing a single civilian oversight model and asking for public reactions to it. Instead, we will provide a supportive, facilitative role so that participants can offer their own views. For example, the AGO may briefly outline common models for community oversight as a means to prompt community discussion. Similarly, the AGO will continue to point community members toward academic or other resources on the subject of civilian oversight to assist in developing a more informed discussion of these complex issues.

Four forums will be geographically oriented (Southern Vermont, Central Vermont, Northern Vermont, and Chittenden County), and four will be focused on affected communities (BIPOC communities, persons with lived experience of mental health conditions or psychiatric disability, the LGBTQ community, and immigrant communities). The first of these eight forums will likely be held at the beginning of February, and we hope to complete all eight around the middle of the same month.

The AGO recognizes, however, that public input is a time-consuming process that involves difficult discussions. It is therefore open to community proposals for additional means of fostering frank discussion in a safe, supportive environment. In each of our interactions, we ask community members for their suggestions on how to improve our outreach efforts. We thus expect that we will continue to expand our conversations with stakeholder representatives, community members, and law enforcement professionals.

Throughout the input process, the AGO will seek input from law enforcement agencies and any local government groups that have conducted their own assessments of policing needs. Such participation is an essential ingredient for developing consensus-based approaches to systemic change.

The final stage of consultation will involve a collaborative process of drafting a report to the Legislature regarding the outcome of this effort. We will post drafts of the report and invite

feedback from all Vermonters, including those stakeholders identified in Act 166. We will address the feedback and make amendments as appropriate during the drafting process.

By performing this facilitative role, the AGO seeks not only to provide the Legislature with a summary of concrete, community-based proposals for reform, but also to raise the voices of Vermonters who have been left out of important discussions about law enforcement and the justice system.

II. Key Policy Questions

These ongoing discussions address a wide range of policy questions related to civilian oversight models and complaint reporting, including the topics listed below. (This list is not intended to be an exhaustive accounting of the issues, but rather an illustration of the work that lies ahead.)

A. Civilian Oversight Issues

- The extent to which local communities may develop their own civilian oversight entities and if so, how they would interact with any state-, region-, or county-based oversight entities;
- Identifying appropriate means of receiving, classifying, and referring complaints for investigation;
- Public reporting regarding complaints, investigations, and outcomes;
- Access to community-based resources (e.g., advocates, peer support) for victims of police misconduct;
- The role of the victim or complainant in determining how to respond to alleged officer misconduct;
- Means of ensuring equitable community representation in oversight processes;
- Issues relating to oversight models that include civilian investigators, such as:
 - Resources required for staffing, training, and supporting professional investigators;
 - Access to law enforcement agency personnel and evidence;
 - Access to technical support (e.g., computer or crime scene experts);
 - Whether law enforcement agencies may continue to conduct their own, parallel personnel investigations;
 - Pairing civilian and law enforcement investigators; and
 - Confidentiality issues, including those arising in cases that involve joint operations with federal authorities.

- Issues relating to oversight models where civilians review completed investigations to recommend or determine outcome, such as:
 - Resources required for staffing, training, and supporting review role;
 - Types of cases subject to civilian review; and
 - Scope of civilian input.
- Issues relating to civilian auditor models, such as:
 - Resources required for staffing, training, and supporting auditor and team;
 - Scope of auditing role (*e.g.*, training, policy, meeting community priorities);
 - Access to agency personnel and records;
 - Interactions with community; and
 - Data collection and reporting.
- Issues relating to legal proceedings, such as responding to subpoenas of civilian oversight members in criminal or civil court proceedings related to matters they reviewed.

B. Complaint Reporting Issues

- Proposed uses of the collected complaint information, including treatment of unsubstantiated or unresolved allegations;
- Mechanisms for recording and reporting complaint data;
- Mechanisms to address personal privacy or security concerns;
- Addressing definitional issues, such what counts as a “misconduct complaint” for purposes of reporting and investigation;
- Differences, if any, between reporting and investigation of
 - External/public complaints of officer misconduct (*e.g.*, racial profiling); and
 - Internal complaints (*e.g.*, employee complaints of discrimination).
- The role of the victim or complainant in how the complaint should be handled.