

# VERMONT CRIMINAL JUSTICE TRAINING COUNCIL

## FAIR AND IMPARTIAL POLICING POLICY

December 2017



## POLICY GOALS

- Prevent biased enforcement
- Promote public safety and ensure equal and fair protection for all people in Vermont, including immigrant communities
- Provide clear, concise, and usable direction for law enforcement
- Achieve compliance with all applicable laws, as required by the Vermont Legislature

## POLICY HIGHLIGHTS

- Creates a definition of “biased policing”
- Sec. 1, Definitions:

*“Biased policing” is conduct by law enforcement officers motivated by an individual’s actual or perceived or self-identified personal characteristics.*

# POLICY HIGHLIGHTS

- Prohibits biased enforcement and ensures personal characteristics or immigration status alone are not used as a basis for law enforcement actions.
- *Introduction:*

*Employees are prohibited from engaging in biased policing. This means no member of [this agency] shall take actions based on any personal characteristics, or immigration status, except as described below, in the services our employees provide to the community in connection with our law enforcement activities.*

**See also, Section II: Policing Impartially**

## POLICY HIGHLIGHTS

- States clearly that all law enforcement actions are to be based on reasonable suspicion and probable cause.
- Sec. II.a:

*As required by law, all enforcement actions by law enforcement officers, such as investigation, detentions, traffic stops, arrests, searches and seizures, etc. must be based on reasonable suspicion, probable cause or other or relevant exigent circumstances, supported by articulable facts, circumstances, and conclusions that support the given action.*

# POLICY HIGHLIGHTS

- Clarifies that biased policing will constitute grounds for discipline, up to and including loss of license, and the internal investigation will continue even if the officer leaves the agency before it's complete.
- Sec. VI.c:

*State law requires all Vermont law enforcement agencies to conduct valid investigations of alleged biased law enforcement, even if the named member or employee resigns. Effective July 1, 2018, [the Agency] is required to report to the Criminal Justice Training Council instances in which officers have willfully engaged in biased law enforcement or substantially deviated from policies prohibiting such enforcement. The regulating authority may, in turn, impose sanctions up to revocation of officers' certification.*

# POLICY HIGHLIGHTS

- Recognizes importance of police/community relations (Sec. III):

*To cultivate and foster transparency and trust with all communities each [agency member] shall do the following when conducting pedestrian and vehicle stops or otherwise interacting with members of the public unless circumstances indicate it would be unsafe to do so:*

*Be courteous and professional;*

*Introduce him/herself to person (providing name and agency affiliation), and state the reason for the stop as soon as practicable unless providing this information will compromise officer or public safety, or a criminal investigation;*

*Ensure that a detention is no longer than necessary to take appropriate action for the known or suspected offense and the [agency member] conveys the purpose of the reasonable delays;*

- *Sec. X references victim/witness interaction and establishes priorities*

## POLICY HIGHLIGHTS

- States that VT law enforcement officers do not have the authority to enforce civil immigration offenses. (Sec. VIII):

### Federal Civil Immigration Law: Stops, Detention, Arrests and Administrative Warrants/ Detainers

[Agency members] do not have authority to enforce federal civil immigration law. The Constitution's Fourth Amendment and the Vermont Constitution's Article 11 right against unreasonable search and seizure apply equally to all individuals residing in Vermont.

## POLICY HIGHLIGHTS

- Prohibits inquiring of an individual about their immigration status except where necessary to investigate a crime. (Sec. VIII.a):

*[Agency members] will not inquire of a person about that person's immigration status unless it is necessary to the ongoing investigation of a criminal offense. Agency members shall not use individual personal characteristics to ask about or investigate immigration status*

## POLICY HIGHLIGHTS

- Prohibits officers from prolonging stops for the purpose of investigating civil immigration offenses or allowing federal authorities to do so. (Sec. VIII.c)

*[Agency members] shall not initiate or prolong stops for the purpose of enforcing civil immigration matters, such as suspicion of undocumented status, nor shall they prolong stops for the purpose of allowing federal immigration authorities to conduct such investigation.*

# POLICY HIGHLIGHTS

- Prohibits agencies from holding individuals for civil immigration offenses. (Sec. VIII.d)

*[Agency members] shall not arrest or detain any individual based on an immigration "administrative warrant" or "immigration detainer." These documents have not been issued or reviewed by a neutral magistrate and do not have the authority of a judicial warrant. In addition, these documents do not meet the probable cause requirements of the Fourth Amendment and Article 11 of the Vermont Constitution.*

## POLICY HIGHLIGHTS

- Prohibits personal characteristics or immigration status alone from being considered factors in referrals to pre-charge pre-court processes. (Sec. VIII.g)

*Personal characteristics and/or immigration status, including the existence of a civil immigration detainer, shall not affect the detainee's ability to participate in pre-charge or police-initiated pre-court processes such as referral to diversion or a Community Justice Center.*

## POLICY HIGHLIGHTS

- Prohibits profiling on the basis personal characteristics when/if enforcing illegal border crossings. (Sec. IX)

*[Agency members] have authority to enforce federal criminal law. Unauthorized border crossings by persons who are not U.S. citizens or nationals can be a federal crime. .. As stated in Section VIII(a), [Agency members] shall not inquire of a person about that person's immigration status unless it is necessary to the ongoing investigation of a criminal offense. Agency members shall not use individual personal characteristics to ask about or investigate immigration status.*

## POLICY HIGHLIGHTS

- Prohibits personal characteristics or immigration status alone from being considered factors in making the decision on whether to release on cite or continue custody. (Sec. VIII.f)

*In assessing whether to seek continued custody under Vermont Rule of Criminal Procedure 3, [agency members] shall not presume that undocumented individuals necessarily present a risk of flight. Instead, such judgments shall be made on the facts presented in each case, rather than made simply on the basis of immigration status. In addition, personal characteristics shall not be used as a reason to arrest someone instead of citing them, and personal characteristics shall not impact the decision on whether to seek continued custody pursuant to Vermont Rule of Criminal Procedure 3.*

## POLICY HIGHLIGHTS

- Establishes protections and assurances for crime victims that their immigration status will not be investigated (except under narrow circumstances), and that they have full access to victim services. (Sec. X)

*[Agency and members] shall not ask about or investigate immigration status of crime victims/witnesses, except as allowed in subsections (b) and (c) below. Federal law does not require law enforcement officers to ask about the immigration status of crime victims/witnesses.*

*To effectively serve immigrant communities and to ensure trust and cooperation of all victims/witnesses, [agency members] will not ask about, or investigate, immigration status of crime victims/witnesses unless information regarding immigration status is an essential element of the crime (such as human trafficking).*

## POLICY HIGHLIGHTS

- Establishes parameters around working with federal immigration authorities, sweeps for the sole purpose of detaining undocumented immigrants prohibited without Governor's approval. (Sec. XI)

*Sweeps intended solely to locate and detain undocumented immigrants without reasonable suspicion or probable cause of a crime shall not be conducted unless acting in partnership with a federal agency as part of a formal agreement entered into by the governor.*

# REMAINING POINTS OF DISAGREEMENT

- Use of immigration status for Rule 3 decisions

Advocates want an absolute ban on use of immigration status for Rule 3 decisions regarding continued custody

CJTC language:

*... [agency members] shall not presume that undocumented individuals necessarily present a risk of flight. Instead, such judgments shall be made on the facts presented in each case, rather than made simply on the basis of immigration status. In addition, personal characteristics shall not be used as a reason to arrest someone instead of citing them, and personal characteristics shall not impact the decision on whether to seek continued custody pursuant to Vermont Rule of Criminal Procedure 3.*

## REMAINING POINTS OF DISAGREEMENT

- Advocates want an absolute ban on enforcing illegal border crossings unless person is apprehended in the process (note that this language was never an essential component of the current policy).
- CJTC position: Given that VT law enforcement officers can enforce federal criminal law, and illegal border crossing are a federal crime, VT LEO's can investigate and, if necessary, enforce after establishing reasonable suspicion or probable cause. Personal criteria alone cannot constitute RS or PC.

# REMAINING POINTS OF DISAGREEMENT

- Advocates want the following language added to the section addressing victims and witnesses:

“Agency members shall not share information about crime victims/witnesses with federal immigration authorities, unless it is with the individual’s consent.”

- CJTC Position: Such language would put the policy in violation of federal law. Have proposed instead,

*“[Agency members] should communicate that they are there to provide assistance and to ensure safety, and not to deport victims/witnesses. In considering whether to contact federal authorities pursuant to 8 U.S.C. § 1373, [Agency members] should remain mindful that (1) their enforcement duties do not include civil immigration enforcement and (2) [the Agency] stands by its mission to serve all Vermonters, including immigrant communities, and to ensure the trust and cooperation of all victims/witnesses.*”

## REMAINING POINTS OF DISAGREEMENT

- CJTC, in order to stay compliant with federal law, changed “...shall not give ICE or CBP agents access to individual in [Agency’s] custody.” to “...shall not offer...”
- Advocates wanted to return to prior language.
- CJTC: “...shall not propose granting ICE or CBP agents access to individuals in [Agency’s] custody.”

## REMAINING POINTS OF DISAGREEMENT

- Advocate language: “No information about an individual shall be shared with federal immigration authorities unless necessary to an ongoing investigation of a federal felony, for which there is probable cause, and the investigation is unrelated to the enforcement of federal civil immigration law.”
- CJTC language: “No information about an individual should be shared with federal immigration authorities unless there is a law enforcement, public safety, or officer safety reason to do so that it not related to the enforcement of federal civil immigration law.”