

VERMONT CRIMINAL JUSTICE TRAINING COUNCIL
FAIR AND IMPARTIAL POLICING POLICY

12/7/17

PURPOSE

The purpose of this policy is to require that all [agency or department] conduct policing in a fair and impartial manner, to clarify the circumstances in which officers can consider personal characteristics, or immigration status, when making law enforcement decisions and to reinforce processes and procedures that enable us to provide services and enforce laws in an equitable and impartial way. [Agency] is required to adopt each component the Vermont Criminal Justice Training Council's model fair and impartial policing policy. [Agency] may adopt additional components.

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.

Because partnership with Vermont residents is the most effective way to ensure public safety, maintaining the public's trust is a primary concern. To secure this trust personal characteristics, or immigration status, should have no adverse bearing on an individual's treatment in [Agency's] custody. Enforcement of civil immigration law is a federal responsibility and agencies should not engage in such enforcement except as otherwise outlined in this policy. Vermont residents are more likely to engage with law enforcement and other officials by reporting emergencies, crimes, and acting as witnesses; to participate in economic activity; and to be engaged in civic life if they can be assured they will not be singled out for scrutiny on the basis of the personal characteristics or immigration status.

To achieve these objectives [agency or department] will implement a combination of best practices including but not limited to: hiring, in-service training, policy development, supervision, reporting and investigative processes, appropriate discipline, and community outreach/partnerships.

POLICY

I. Definitions

"Biased policing" is conduct by law enforcement officers motivated by an individual's actual or perceived or self-identified personal characteristics.

"Personal characteristics": May include but is not limited to actual or perceived identity, race, ethnicity, national origin, color, gender, sexual orientation, gender identity, marital status, mental or physical disability, age, religion and socio-economic status.

"Immigration status": Generally refers to the legal rights, if any, of a non-citizen to enter or remain in this country. Examples include, without limitation, "lawful permanent resident," "temporary worker," "refugee," and "undocumented."

“Reasonable suspicion”: Suspicion, for which an officer can articulate factual reasons, does not need to rise to the level of probable cause.

“Probable cause”: Facts or circumstances that would lead a reasonable person to believe that a crime has been committed, or is being committed, or is about to occur.

“Member” or “employee”: any employee employed by [agency/department], regardless of their assigned tasks or duties.

“Federal immigration authorities”: federal agencies, departments, or employees or contractors thereof, tasked with enforcement of immigration law and border entry, including without limitation, the Department of Homeland Security (DHS), Immigration Control and Enforcement (ICE), and U.S. Customs and Border Patrol (CBP).

II. Policing Impartially

- 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.
- b. [Agency members] may take into account reported race, ethnicity or other personal characteristics of persons based on credible, reliable, locally relevant, temporally specific information that links a person of specific description to particular criminal incidents and is combined with other identifying information.
- c. Under federal and state law, law enforcement agencies are required to provide qualified interpretation services, either in person or telephonically, to any person in need of it. [Agency members] shall not contact federal immigration authorities for interpretation services, unless a clear emergency requires it and qualified interpretation services are not available through any other means. Unless one of the exceptions included in Section VIII applies, the [agency member] shall not ask about the immigration status of the person for whom interpretation is sought.

III. Community Relations

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:

- a. Be courteous and professional;
- b. 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;
- c. 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;

- d. Provide [agency member's] name verbally when requested. [Agency members] may also provide the information in writing or on a business card;
- e. In addition to the above, officers should answer relevant questions the person may have if doing so will not compromise safety and/or the investigation.

IV. Responding to Bias-Based Reports or Reports Regarding Bias from the Community

- a. If any [agency member or employee] receives a call for service that appears to be based solely on an individual's perceived personal characteristics or immigration status, the [agency member] will attempt to ascertain if there are other circumstances or facts that would constitute reasonable suspicion or probable cause. If the complainant can offer no further information, the complainant will be advised that the shift supervisor will be in contact at the first opportunity.
- b. The shift supervisor should attempt to familiarize the caller with the [agency or department] Fair and Impartial Policing policy. If the caller is concerned about the person's perceived immigration status, the caller should be referred to federal authorities.
- c. At the conclusion of the call, the shift supervisor will document the contact using [agency's] incident report system.
- d. If an [agency member] receives a report of a potentially biased or hate-motivated incident, [agency] shall either dispatch an officer to evaluate the complaint or refer the caller to the officer in charge.

V. Training

- a. The [agency/department] will ensure that, at a minimum, all members and employees are compliant with Council and legislative requirements regarding fair and impartial policing training.
- b. Additional trainings may include but not be limited to instruction on anti-bias, power and privilege, non-English speaking communities, undocumented communities, and victim/witness services.

VI. Accountability and Compliance

- a) The process for making a complaint shall be readily available to the public. Reasonable efforts should be made to accommodate language barriers.
- b) All [agency members] are required to promptly report allegations, complaints or knowledge of biased policing or suspected violations of this policy to their supervisor and the department's internal investigation function. Where appropriate, employees are required to intervene at the time the biased policing incident occurs.
- 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.¹
- d) Violations of the policy shall result in appropriate disciplinary action as set forth in the [agency's/ department's] rules and regulations. Supervisors shall ensure that all

employees in their command are familiar and in compliance with the content of this policy. Supervisors will be alert for and respond to indications of potential biased policing.

VII. Establishing Identity

- a. [Agency members] may make attempts to identify any person they detain, arrest, or who come into the custody of the [Agency].
- b. Acceptable forms of identification, which must include a photograph of the individual, include, but are not limited to, driver's licenses from any U.S. state or foreign country, government-issued IDs by a U.S. jurisdiction, foreign passports, and consular ID cards. All identification is subject to reasonable scrutiny and follow-up for authentication consistent with the provisions of this policy.
- c. An individual shall not be stopped or detained solely for the purpose of establishing his or her identity. However, if the individual has already been stopped for a lawful purpose, he or she may be subject to objectively reasonable additional detention in order to establish identity (e.g., inquiry into identity during the course of a lawful traffic stop).
- d. In exercising their discretion to use federal resources to establish an individual's identity, [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 trust and cooperation of all victims/witnesses. Contact with federal authorities made to determine an individual's identity is restricted to the purpose of determining his or her identity, though this provision does not prohibit any communication governed by 8 U.S.C. §§ 1373 and 1744. See Section XI below.

Due Process, Immigration and Citizenship Matters

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.

- 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. This directive does not apply to communications governed by 8 U.S.C §§ 1373 and 1644. See Section XI below.
- b. [Agency members] shall not facilitate the detention of undocumented individuals or individuals suspected of being undocumented by federal immigration authorities for suspected civil immigration violations. This directive does not apply to communications governed by 8 U.S.C §§ 1373 and 1644. See Section XI below.
- 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.

- 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.
- e. [Agency members] shall not hold for, or transfer people to, federal immigration agents unless the federal agents provide a judicial warrant for arrest. An immigration detainer is not a warrant and is not reviewed by a judge, and therefore is not a lawful basis to arrest or detain anyone. Valid criminal warrants of arrest, regardless of crime, shall not be confused with immigration detainers. This provision does not affect the proper handling of arrests and detentions associated with judicially-issued criminal arrest warrants.
- 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.
- 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.

IX. Federal Criminal Law: Border Crossings

[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. (Generally speaking, unauthorized entry is a misdemeanor and unauthorized re-entry following prior deportation or immigration removal is a felony.) All laws and constitutional rights applicable to criminal investigations apply to the enforcement of federal criminal law.

However, mere unauthorized presence in the country (e.g., overstaying a visa) is not a federal crime, but a civil infraction.

- a. 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. (For example, they cannot ask someone about immigration status merely on the basis race, color, or perceived national origin.) This directive does not apply to communications governed by 8 U.S.C §§ 1373 and 1644. See Section XI below. If an [agency member] is contacted by federal authorities please refer to Section XI, Collaboration with Federal Immigration Officers.

X. Victim and Witness Interaction

The cooperation of immigrant communities is essential to prevent and solve crimes and maintain the safety and security of all residents. The following provisions are intended to support crime victims/witnesses and enhance trust between the police and community.

- a. [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.
- b. 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).
- c. If a victim/witness is also a suspect, [agency members] should follow the provisions in Section VII related to stops, detention and arrest and Section VIII(a) related to ongoing criminal investigations.
- d. [Agency members] will ensure that individual immigrants and immigrant communities understand that full victim services are available to documented and undocumented victims/witnesses. [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.
- e. [Agency members] may, in appropriate situations, advise an individual that if they are undocumented they may be eligible for a temporary visa.ⁱⁱ

XI. Collaboration with Federal Immigration Officers

[Agency members] have no obligation to communicate with federal immigration authorities regarding the immigration or citizenship status of any individual. Two federal statutes, 8 U.S.C §§ 1373 and 1644, provide that local and state agencies and officials may not prevent or restrict their employees from communicating with other government officials (for example, ICE or CBP) regarding an individual's "citizenship or immigration status". [Agency and members] shall apply this policy in a manner consistent with the lawful operation of these two statutes.

- a. Information about an individual that is outside the scope of Sections 1373 and 1644 (*i.e.*, information other than "citizenship or immigration status") should not be shared with federal immigration authorities unless there is justification on the grounds of (i) public safety, (ii) officer safety, or (iii) law enforcement needs that are not related to the enforcement of federal civil immigration law.
- b. 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.
- c. [Individual Agency members] are not permitted to accept requests by ICE or other agencies to support or assist in operations that are primarily for civil immigration

enforcement. This directive does not apply to communications governed by 8 U.S.C §§ 1373 and 1644.

- d. Unless ICE or Customs and Border Patrol (CBP) agents have a judicially-issued criminal warrant, or [Agency members] have a legitimate law enforcement purpose exclusive of the enforcement of civil immigration laws, [Agency members] shall not propose granting ICE or CBP agents access to individuals in [Agency's] custody.

SAVINGS CLAUSE

Pursuant to 8 U.S.C §§ 1373 and 1644, [Agency] may not prohibit, or in any way restrict, any government agent or official from sending to, or receiving from, federal immigration authorities information regarding the citizenship or immigration status, lawful or unlawful, of any individual. [Agency] also may not prohibit, or in any way restrict, the sending, receiving, maintaining, or exchanging information regarding the immigration status of any individuals. Nothing in this policy is intended to violate 8 U.S.C §§ 1373 and 1644.

ⁱ VT Act 56 (2016), *codified in* 20 V.S.A. § 2402(2) (biased enforcement as Category B unprofessional conduct), § 2403 (duty to report to Council), . § 2404 (duty to investigate) and § 2406 (Council-issued sanctions).

ⁱⁱ For example, an individual might qualify for a U, S, or T visa if they are a victim or material witness to certain serious offenses.