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April 12, 2017

The Honorable Richard Sears, Chair
Senate Judiciary Committee
Vermont General Assembly
Statehouse
Montpelier, Vermont

RE: H. 523 Fair & Impartial Policing

Dear Senator Sears and Members of the Committee,

Thank you for the opportunity to comment on this bill. The importance of the proposed changes is, from the HRC's perspective, two-fold. Since the change of administration at the federal level, our immigrant communities are facing unprecedented scrutiny. The fear that this is engendering in these communities—among both those authorized and those who are unauthorized—cannot be understated. People are withdrawing from essential safety net programs such as 3 Squares, and eschewing other important government benefits to which they are entitled. Immigrants are fearful of attending to other basic needs such as sending their children to school, going to the grocery store or bank or attending to medical needs. There is increased the fear that doing so will result in local law enforcement facilitating the removal of individuals through contact with federal immigration authorities. In other states, calls for assistance from law enforcement by immigrants have decreased dramatically due to fear of immigration consequences. This makes us all less safe.

This bill seeks to clarify the legislation passed in 2016 (Act 147). As you are aware, the 2016 amendments to 23 V.S.A. §2366(a) require that all agencies adopt by July 1, 2016 "a fair and impartial policing policy that includes, at a minimum, the elements of the Criminal Justice Training Council (VCJTC) model policy." This was a change from the prior iteration in which agencies had to adopt a policy containing the elements of either the Vermont State Police (VSP) policy or the model policy issued by the Office of the Attorney General (AGO). The change to a single model policy was inserted by this Committee so that there would be a single model policy that all agencies had

to follow, thereby ensuring that people would be treated the same way regardless of where they encountered law enforcement in Vermont.

Act 147 also changed subsection (b) to require that any agency that failed to adopt the model policy would be held to have done so. Prior to that, they were held to have adopted the AGO policy or Vermont State Police policy.

A model policy was created and approved by the VCJTC on June 14, 2016. The model contains "essential" elements and "non-essential" elements. The statute just refers to "elements." The essential and non-essential elements formulation was proposed by the VCJTC to account for the concerns of some law enforcement agencies. Those agencies were concerned that the policy's requirements of noninvolvement with immigration enforcement might be viewed as so-called "sanctuary policies" and put federal funds at risk. The compromise position that the VCJTC chose was to break the policy out into two categories, "essential" and "non-essential" elements. Thus, while an agency is required to have a policy that includes the "essential" elements, it can choose to adopt some or none of the "non-essential" elements and arguably still comply with the statutory requirements. The non-essential elements are all related to noninvolvement with immigration enforcement and ensuring protection of constitutional rights.

The Attorney General's Immigration Task Force's Guidance to Vermont Cities & Towns Regarding Immigration Enforcement is intended to provide information regarding best practices for both ensuring compliance with federal law and protecting the rights, security and safety of those within its jurisdiction. The model FIP policy is an essential component of these efforts. Most of the non-essential elements of the policy are considered best practices for preventing local law enforcement's participation in and use of state and local resources in the enforcement of federal immigration laws.

Given this and the fact that the bi-furcation of the elements has created a patchwork of policies across the state---failing to meet what we understood to be the Senate Judiciary's intention of having a single policy that covers anyone encountering law enforcement anywhere in the State--- it makes sense to have the VCJTC model policy be the entire policy, that is include both the essential and non-essential elements, once the Council and Attorney General have had an opportunity to review the current model policy for compliance with federal law. Otherwise, it places our immigrant communities in the untenable position of being protected in some parts of Vermont and not protected in others.

In addition to having inconsistency about policies containing essential and non-essential elements, other issues have arisen. Some agencies have decided that a policy in existence prior to the July 1, 2016 deadline conforms to the essential elements and therefore have chosen not to adopt the specific model policy language. Other agencies have decided to change the model policy's language as they see fit. Both sets of policies may or may not

conform to the essential elements. This bill addresses these issues by encouraging "consistent fair and impartial practices statewide," and having the Council, in consultation with the Attorney General, review and work with agencies to bring any non-compliant policy into compliance. If that fails, the agency will be held to the model policy terms.

Finally, there is provision in the statute for reviewing and updating the model policy, an important addition since we know that policies are living documents that need to be modified to reflect changed circumstances.

The only issue that we have with the bill as currently drafted is with the dates. We propose the following:

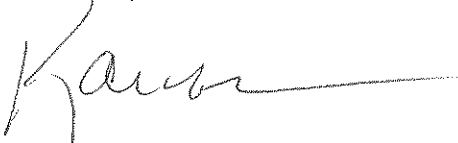
Sec. 3- Combine the actions in (a) and (b) into a single review with all relevant stakeholders so that it is a "one and done" process to be completed by October 1, 2017.

This would allow the date for agencies to adopt the updated policy (Sec. 2, page 2, lines 2-3) to be changed to January 1, 2018.

It is important that we fix this all sooner than later so that we can provide some reassurance to our immigrant communities, at least in this regard. Everyone deserves to feel safe and welcome. Constant fear is toxic and causes trauma.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "Karen", with a long horizontal flourish extending to the right.

Karen L. Richards
Executive Director