

April 17, 2019

Re: H. 518 – An act relating to fair and impartial policing

Dear Members of the Senate Judiciary Committee:

The ACLU of Vermont¹ writes in support of H. 518 and the amendment to that bill proposed by the Vermont Human Rights Commission (HRC).



As we testified last week, the ACLU-VT believes that (1) the current model Fair and Impartial Policing Policy (FIPP) is insufficiently protective and contains too many loopholes and concessions to federal overreach; and that (2) even that insufficient policy has not been effectively adopted and implemented. While H. 518, as passed by the House, does not address some of these fundamental concerns, it is a step in the right direction.

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H. 518 is quite simple.

Julie Kalish
President

First, it makes explicitly clear what we believed was already the case in existing law: the model policy establishes a baseline set of protections that all agencies are required to adopt, and individual agencies may choose to include stronger, more robust protections in their own policies. We will continue to advocate for the statewide baseline to be raised and for Vermont to further disentangle itself from immigration enforcement, but, in the meantime, we support this bill because it assures agencies that they can adopt policies more reflective of their values without falling afoul of Vermont law.

James Lyall
Executive Director

Second, the bill gets the State out of the business of determining whether any individual agency's FIPP conflicts with federal law; the Criminal Justice Training Council (CJTC) and the Attorney General's Office (AGO) will assess only whether each policy includes each component of the model policy. This provision ensures that agencies can exercise the flexibility afforded them by the first provision while protecting the State against threats, reasonable or otherwise, to withhold certain federal funds.

Together, these amendments would represent an improvement over the current state of law.

But experience over the years demonstrates that, beyond the letter of the law, we need to pay much more attention to FIPP implementation. For example, many agencies have policies that are years out of date and do not contain, or make any attempt to match, the components of the current model policy. We understand that the AGO plans to take steps to better address this problem and appreciate that H. 518 would impose clear deadlines on the AGO/CJTC to ensure

¹ The ACLU of Vermont is a non-partisan membership organization that works to defend the individual rights and liberties guaranteed in the United States and Vermont Constitutions through lobbying, litigation, and public education. The ACLU has 8,000 members in Vermont and millions of members, activists, and supporters nationwide.

compliance. But when—notwithstanding multiple iterations of model FIPPs over the years—some agencies still have policies that are five, six, or even eight years out of date, we must do more. Another area where we have fallen short is training. It is our understanding that nobody was being trained on the immigration components of the FIPP, and it is not clear that a real fix has been identified.

Because of these years-long problems of implementation, we support the HRC's proposed amendment because it would provide an effective tool to assist agencies in coming into compliance with the law. The amendment's enforcement mechanism is really quite modest: it permits the HRC to provide technical assistance in finding and fixing deficiencies. To the extent the CJTC or individual law enforcement agencies object to specific language in this proposed amendment, we are more than happy to work with them on revising the language—but we strongly believe that the HRC's assistance is a necessary and overdue corrective to the problems of implementation that have plagued the FIPP process for too long.

Thank you for your ongoing work on this important topic, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

A handwritten signature in black ink, appearing to read 'Lia Ernst', with a stylized, cursive script.

Lia Ernst
Staff Attorney
ACLU of Vermont