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RICHMOND POLICE DEPARTMENT GENERAL ORDER

NUMBER:
RPD 056

SUBJECT: Bias-Free Policing

EFFECTIVE DATE:

TBD

PURPOSE

The purpose of this policy is to require that all Richmond Police Members 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. Richmond Police Department is required to adopt each component of the Vermont Criminal Justice Training Council's model fair and impartial policing policy, Richmond Police may adopt additional components. *Nothing in the Richmond Police Department Fair and Impartial Policing policy is intended to violate federal law.*

INTRODUCTION

Employees are prohibited from engaging in biased policing. This **means** no member of Richmond Police Dept, 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** Richmond'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 their personal characteristics or immigration status.**

To achieve these objectives, the Richmond Police Dept. 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": conduct by law enforcement officers motivated by an individual's actual or perceived or self-identified personal characteristics.

"Personal characteristics": May include but are 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 county. 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 Richmond Police 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. Richmond Police Members may take into account 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. Richmond Police 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 Richmond Police members 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 Richmond Police 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 Richmond Police member conveys the purpose of the reasonable delays;
- d. Provide Richmond Police members name verbally when requested.
Richmond Police 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 Richmond Police member receives a call for service that appears to be based solely on an individual's perceived personal characteristics or immigration status, the Richmond Police 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 the** Richmond Police Department's 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 the Richmond Police Department's report system.
- d. If a Richmond Police member receives a report of a potentially biased or hate-motivated incident the Richmond Police Department shall either dispatch an officer to evaluate the complaint **or refer** the caller to the officer in charge.

V. Training

- a. The Richmond Police 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 Richmond Police **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 Richmond Police Department 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.

d. Violations of the policy shall result in appropriate disciplinary action as set forth in the Richmond Police 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.

¹VT 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).

VII. Establishing Identity

a. Richmond Police members may make attempts to identify any person they detain, arrest, or who come into the custody of the Richmond Police Department.

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 or 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 and individual's identity, Richmond Police members should remain mindful that (1) their enforcement duties do not include civil **immigration enforcement** and (2) the Richmond Police Department **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

Richmond Police 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. Richmond Police 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. Richmond Police 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. Richmond Police 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. Richmond Police 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. Richmond Police 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.** **In assessing whether to seek continued custody under Vermont Rule of Criminal Procedure 3, Richmond Police Members shall not presume that undocumented individuals necessarily present a risk of flight.** Instead, such **judgements 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. 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.

f. 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. Furthermore, personal characteristics and/or immigration status shall not be used as a criteria for citation, arrest, or continued custody under Rule 3 of the Vermont Rules of Criminal Procedure.

IX. Federal Criminal Law: Border Crossings

Richmond Police 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**.

Richmond Police Department employees shall not make warrantless arrests or detain individuals on suspicion of "unlawful entry," unless the suspect is apprehended in the process of entering the United States without inspection.

- a. As stated in Section VIII(a), Richmond Police 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 of 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 a Richmond Police 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. Richmond Police 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. Richmond Police 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)**. If a victim/witness is also a suspect, Richmond Police Members **should follow the provisions** in Section VII related to stops, detention and arrest and Section VIII(a) related to ongoing criminal investigations.
- d. Richmond Police Members will ensure that individual immigrants **immigrant communities understand that full victim services are available to documented and undocumented victims/witnesses**. Richmond Police 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. S §1373, Richmond Police**

Members should remain mindful that (1) their **enforcement duties** do not include **civil immigration enforcement** and (2) the **Richmond Police Department stands by its mission to serve all Vermonters, including immigrant communities, and to ensure the trust and cooperation of all victims/witnesses.**

Richmond Police Department employees shall not share information about crime victims/witnesses with federal immigration authorities, unless it is with the individual's consent.

e. Richmond Police Members may, in appropriate situations, advise an individual that if they are undocumented they may be eligible for a temporary visa.

XI. Collaboration with Federal Immigration Officers

a. No information about an individual shall be shared with federal immigration authorities unless necessary to an ongoing investigation of a felony, for which there is probable cause, and the investigation is unrelated to the enforcement of federal civil immigration law. Such information includes but is not limited to the individual's custody status, release date/time, court dates, whereabouts, residence, employment, identification numbers, appearance, telephone number, and familial relations.

Richmond Police 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". Richmond Police 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 of §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. Richmond Police 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 Richmond Police Members have a legitimate law enforcement purpose exclusive of the enforcement of civil immigration laws,** Richmond Police Members shall not propose granting ICE or CBP agents access to individuals **in Richmond's** custody.

SAVINGS CLAUSE Pursuant to 8 U.S.C. § 1373 and 1644, Richmond Police Department 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. Richmond Police Department 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**), SS 2403 (duty to report to Council), §S2404 (duty to **investigate**) and SS 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 . . .

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1, 2014

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2018