

VERMONT CRIMINAL JUSTICE COUNCIL
FAIR AND IMPARTIAL POLICING POLICY

Commented [KM1]: This policy is not an adoption of the VCJC's model policy. The VCJC name should be removed and replaced with Richmond Police Department.

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Effective Date: April 23, 2024

PURPOSE

The purpose of this policy is to require that all members of [agency or department] conduct policing in a fair and impartial manner, to clarify the circumstances in which officers can consider personal characteristics or citizenship 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 of the Vermont Criminal Justice Council’s model fair and impartial policing policy. [Agency] may adopt additional components. Nothing in the [Agency] Fair and Impartial Policing policy is intended to violate federal law.

Commented [KM2]: There is nothing wrong with this sentence but it does not obviate or undo the section of this policy that violates federal law

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 citizenship 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 citizenship or immigration status should have no adverse bearing on an agency’s interactions with an individual. 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 citizenship or immigration status.

To achieve these objectives [agency or department] will implement a combination of best practices in areas 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.

“Citizenship or Immigration status”: Generally refers to the legal rights, if any, of a non-citizen to enter or remain in this country, or to exercise certain rights (e.g., vote in federal elections). Examples of status 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 and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP).

II. Policing Impartially

- a. As required by law, all law enforcement actions by law enforcement officers, such as investigations, detentions, traffic stops, arrests, searches and seizures, etc., must be based on reasonable suspicion, probable cause 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 or other matters under investigation and is combined with other identifying information.
- c. Personal characteristics and/or citizenship or immigration status shall not be used as a reason to arrest someone instead of citing them and shall not impact the decision on whether to seek continued custody pursuant to Vermont Rule of Criminal Procedure 3.
- d. Personal characteristics and/or citizenship 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.
- e. 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.

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 themselves to the 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. Establishing Identity

- a. An individual shall not be stopped or detained solely for the purpose of establishing identity. However, if the individual has already been stopped for a lawful purpose, the individual 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).
- b. Absent reasonable suspicion of unlawful activity, [agency members] shall not require that passengers in motor vehicles provide identification or other documents. If requesting such documents, [agency members] will state that passengers are not required to provide them. A passenger not providing identification does not constitute reasonable suspicion of unlawful activity. In no instance shall the enforcement of civil immigration law be a reason to request identification or other documents (See Section V).
- c. In instances when a standardized form has a field requesting an individual's social security number, [agency members] may request such information for the purposes of establishing identity. An individual not providing a social security number does not on its own constitute reasonable suspicion of unlawful activity. The absence of a social security number is not indicative of citizenship or immigration status. In no instance shall the enforcement of civil immigration law be a reason to request a social security number.
- d. 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. Any contact with federal immigration authorities to determine an individual's identity must comply with guidance regarding Interactions with Federal Immigration Officers in Section VI.

V. State / Local Enforcement Authority / Priorities and Federal Immigration Law

The trust and cooperation of immigrant communities is essential to prevent and solve crimes and maintain the safety and security of all. The U.S. Constitution's Fourth Amendment and the Vermont Constitution's Article 11 rights against unreasonable search and seizure apply equally to all individuals in Vermont.

- a. [Agency members] do not have authority to enforce federal *civil* immigration law. Mere presence in the United States without authorization – for example, residing in the country with an expired visa – is a *civil* violation and may not be subject to investigation.
- b. Though [agency members] have authority to enforce federal *criminal* law, enforcement of federal criminal immigration law is generally not a priority

for [Agency]. Accordingly, [Agency] members should not make warrantless arrests, detain individuals, facilitate the detention of individuals, or otherwise expend resources investigating or enforcing unlawful entry or unlawful reentry cases.

Comment: Some individuals crossing the border outside of an authorized checkpoint may be seeking asylum and receive federal permission to remain in the United States. Because it is often difficult to determine whether someone is crossing the border to obtain safety and lawful status, [Agency] members should not presume that unauthorized border crossing implicates Vermont, as opposed to federal interests. [Agency] enforcement of alleged “unlawful entry” may create the misconception that the Agency is involved in immigration enforcement and undermine partnerships with local communities.

- d. In interacting with all people, including suspects, crime victims, and witnesses, [agency members] shall **not**:
 - 1. Ask about or investigate a person’s citizenship or immigration status unless information regarding citizenship or immigration status is an essential element of the crime (such as human trafficking).
 - i. In so doing, [agency members] will never use individual personal characteristics to ask about, investigate, or presume citizenship or immigration status. For example, they cannot ask someone about citizenship or immigration status merely on the basis of race, color, or perceived national origin.
 - 2. Initiate or prolong stops for the purpose of enforcing civil immigration matters.
- e. [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] may, in appropriate situations, advise an individual that, if they are undocumented, they may be eligible for a temporary visa. 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.

VI. Interactions with Federal Immigration Officers

a. Limited Application of Federal Immigration Law: [Agency members] have no legal obligation to communicate with federal immigration authorities. In this light, [Agency] has determined that certain legally-permitted restrictions on interactions with federal immigration officers will aid in its mission to serve all Vermonters, including immigrant communities, and ensure trust and cooperation. Those lawful restrictions are described below:

b. Restricted Access to [Agency] facility. Unless federal immigration agents have a judicially-issued criminal warrant or a legitimate law enforcement purpose exclusive of the enforcement of civil immigration laws, [Agency] members shall not:

- i. grant immigration authorities access to individuals located in otherwise-restricted portions of an [Agency] facility absent a court-approved search or arrest warrant relating to alleged crimes; or
- ii. permit immigration authorities to use [Agency] facilities for investigative interviews.

c. Restricted Access to individuals outside of [Agency] facility. Unless federal immigration agents have a judicially-issued criminal warrant or a legitimate law enforcement purpose exclusive of the enforcement of civil immigration laws, [Agency] members who have an individual in their custody shall not grant or otherwise facilitate immigration authorities' access to the individual.

1. [Agency] members who are unsure how to proceed in a given situation should immediately contact a supervisor (if available) for guidance, provided they do not unreasonably prolong the stop.

Comment: As noted above, the [Agency] does not participate in civil immigration enforcement and expects its members to try to swiftly and safely complete their law enforcement duties (e.g., issue a traffic citation) and move on, leaving immigration enforcement to the appropriate authorities. Maintaining focus on state or local enforcement serves to build and maintain community confidence in the [Agency.]

d. Additional Restrictions. In addition, [agency members] shall not:

1. Initiate or prolong stops to allow federal immigration authorities to investigate suspected civil immigration violations.
2. Hold people for, or transfer people to, federal immigration agents, unless the agents provide a judicial warrant for arrest.

3. Stop, detain, arrest, or transfer someone on the basis of requests from federal immigration agents such as "administrative warrants" and "immigration detainers." Such requests have not been issued or reviewed by a neutral magistrate and do not have the authority of a judicial warrant. They do not meet the probable cause requirements of the Fourth Amendment and Article 11 of the Vermont Constitution and are therefore not a lawful basis to arrest or detain anyone.
4. Request or accept assistance from federal immigration authorities for interpretation services, unless a clear emergency requires it and qualified interpretation services are not available through any other means.
5. Conduct or participate in enforcement activities intended to locate and detain undocumented immigrants without reasonable suspicion or probable cause of a crime, unless acting in partnership with a federal agency as part of a formal agreement entered into by the governor.
6. Facilitate the detention of individuals by federal immigration authorities for suspected civil immigration violations.
7. Share any information about an individual with federal immigration authority, unless
 - a. 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; or
 - b. with the consent of the individual, for the purposes of obtaining a U, S, or T visa.

Prior to providing such information [agency] members shall consult with a supervisor if available, unless doing so would unreasonably extend the individual's custodial detention.

8. Contact federal immigration authorities to determine an individual's identity, unless the individual does not present an acceptable form of identification and [agency member] has reason to believe that such authorities will be able to verify the individual's identity.

Commented [KM3]: While the explanation of 8 USC 1373 and 1644 that appears in section VI(a) of VCJC's model policy is informative it is not required for compliance. The removal of the majority of that section is fine. However, the removal of the parenthetical from the first clause of Richmond's FIP Policy Section VI(7) is problematic. Section VI(7) as currently written in this policy is in direct contradiction to 8 USC 1373 and 1644. The VCJC understands that in removing the parenthetical, RPD wishes to require more restrictions on its employees communications with federal agents as allowed by 20 VSA 2366(a)(1). However, there is a limit to the restrictions, and that limit is that the policy or practice of an agency may not violate federal law. The VCJC carefully considered this upper limit when it approved the model policy in April 2024. The VCJC considers the parenthetical removed by RPD to be a component of the model policy. As such, the parenthetical, or some language that acknowledges or carves out that RPD may not wholesale restrict its employees from communicating with federal agents "information regarding citizenship or immigration status," needs to be added to this section for this section to be compliant.

- i. The individual's personal characteristics are not a reason to believe that federal authorities will be able to verify the individual's identity.
 - ii. [Agency members] shall not provide any information except information necessary to establish identity. For example, an [agency member] shall not provide the location of the individual.
9. Accept requests by federal immigration authorities to support or assist in civil immigration enforcement.

VII. 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 citizenship 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's] Fair and Impartial Policing policy. If the caller is concerned about the person's perceived citizenship or immigration status, the caller should be advised that [agency] does not have authority to investigate or enforce civil immigration law.
- 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.

VIII. Training

- a. The [agency] 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.

IX. 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 Council instances in which officers have willfully engaged in biased law enforcement or substantially deviated from policies prohibiting such enforcement. The Vermont Criminal Justice Council 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] 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.

This Fair and Impartial Policing policy was approved by the Vermont Criminal Justice Training Council on April 23, 2024.

¹ VT Act 56 (2016), *codified in* 20 V.S.A. § 2401(2)(D) (biased enforcement as Category B unprofessional conduct), § 2403 (duty to report to Council), § 2404 (duty to investigate), and § 2406 (Council-issued sanctions).