

**VERMONT CRIMINAL JUSTICE TRAINING COUNCIL
FAIR AND IMPARTIAL POLICING POLICY**

PURPOSE

The purpose of this policy is to communicate the requirement that all [agency or department] conduct policing in a fair and impartial manner, to clarify the circumstances in which officers can consider personal characteristics 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.

POLICY

Employees are prohibited from engaging in biased policing. This means no member of [this agency] shall take actions based on any personal characteristics, except as described below, in the services our employees provide to the community in connection with our law enforcement activities. To achieve this objective [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.

CONTENT

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”: Refers to an individual’s lawful or unlawful presence in this country.

“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.

II. Policing Impartially

- A. As required by statutes, Chapter I, Article 11 of the Vermont Constitution and Amendment IV of the United States Constitution, 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 required legal standards.**
- B. [Agency members] must be able to articulate specific facts, circumstances, and conclusions which support the required standard for a given enforcement action.**
- C. [Agency members] may take into account reported race, ethnicity or other personal characteristics of persons based on credible, reliable, locally relevant information that links a person of specific description to particular criminal incidents.**
- D. [Agency members] should comply with Title VI of the 1964 Civil Rights Act and utilize professional interpreter services either in person or telephonically when necessary to speak with a person with limited English proficiency.**
- E. Under federal and state law, law enforcement agencies are required to provide qualified interpretation services to any person in need of it. [Agency members] shall not contact federal authorities for interpretation services, unless a clear emergency requires it and licensed 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 required.**

III. Community Relations

To cultivate and foster transparency and trust, each [agency member] shall do the following when conducting pedestrian and vehicle stops or otherwise interacting with the public:

- 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 practical unless providing this information will compromise officer or public safety;**
- C. Ensure that the detention is no longer than necessary to take appropriate action for the known or suspected offense and that the person understands the purpose of 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.**

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. Due Process and Immigration Enforcement

- A. Building trust between police and all residents is vital to the public safety mission of [Agency]. Policing in a fair and impartial manner is essential to building such trust. Therefore, [Agency members] shall not use an individual's personal characteristics as a reason to ask about, or investigate, a person's immigration status. When contacting members of the public, [Agency members] may inquire about immigration status only when it is necessary to the ongoing investigation of a criminal offense (this restriction does not apply to interactions with government agencies).
- B. Immigration is a federal policy issue between the United States government and other countries, not local or state entities and other countries. Federal law does not grant local and state agencies authority to enforce civil immigration law. Similarly, state law does not grant local and state agencies authority to enforce civil immigration laws. [Agency members] shall not dedicate [agency] time or resources to the enforcement of federal immigration law where the only violation of law is presence in the United States without authorization or documentation. This prohibition does not apply to communications with government agencies about citizenship or immigration status that are governed by 8 U.S.C. §§ 1373 and 1644.
- C. The Constitution's 4th Amendment Right against unreasonable search and seizure applies equally to all individuals residing in the United States. Therefore, [agency members] shall not initiate or prolong stops based on civil immigration matters, such as suspicion of undocumented status. Similarly, [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 prohibition does not apply to communications with government agencies about citizenship or immigration status that are governed by 8 U.S.C. §§ 1373 and 1644.
- D. "Administrative warrants," "immigration detainers," and "requests for notification" issued by Immigration and Customs Enforcement (ICE) have not been reviewed by a neutral magistrate and do not have the authority of a judicial warrant. Therefore, [agency members] shall not comply with such requests.

VI. Training and Compliance

- 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.
- C. Violations of the policy shall result in appropriate disciplinary action as set forth in the [agency's/ department's] rules and regulations.

VII. Accountability and Supervision

- A. Accountability is a vital element of policing. Police agencies are better able to achieve the goals of protecting the public safety, enhancing the quality of neighborhood life, and serving community needs if the communities they serve trust them. The process for making a complaint shall be readily available to the public.
- B. All members of this agency 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. Shift supervisors will accept any complaint from the public regarding any provision of this policy and shall follow the agency's procedure for handling citizen's complaints.
- D. Supervisors shall ensure that all employees in their command are familiar and in compliance with the content of this policy. Supervisors will be alert and respond to indications of potential biased policing.

VIII. Additional Guidance Regarding Due Process and Immigration Enforcement

A. VICTIM AND WITNESS INTERACTION

The following guidelines are based on best practices and offer guidance on how to best support crime victims/witnesses and to ensure procedural justice and enhance trust between the police and community.

- a. Federal law does not require law enforcement agencies to ask about the immigration status of crime victims/witnesses. It is essential to the mission of the [agency/department] that victims report crimes and fully cooperate in investigations; that witnesses come forward and provide testimonial evidence; that persons report suspicious activity and other information to reduce crime and disorder; and that help is summoned when needed. These activities must be undertaken without hesitation and without fear that the victim, witness, or reporting person will be subject to prosecution or deportation for no reason other than immigration status.
- 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 the victim/witness is also a crime suspect and immigration status is necessary to the criminal investigation. [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 and that [agency members] do not ask victims/witnesses about their immigration status nor will they report immigrants or the immigration status of victims/witnesses to the Department of Homeland Security.

- c. Therefore, [Agency members] will act first and foremost in the best interests of our community and our mission when dealing with undocumented foreign nationals who come to the agency/department for help or to make reports, giving full priority to public safety and justice concerns.

B. IMMIGRATION STATUS:

- a. [Agency member's] suspicion about any person's civil immigration status shall not be used as a basis to initiate contact, detain, or arrest that person. The exception to this would be in those instances where the agency member is working with Federal partners in the Stone Garden program or similar Federal initiatives.
- b. [Agency members] may not inquire **of a person** about **that** person's civil immigration status unless civil immigration status is necessary to the ongoing investigation of a criminal offense. It is important to emphasize that [Agency] should not use a person's characteristics as a reason to ask about civil immigration status.
- c. [Agency members] 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. Arrest for "unlawful entry" after a person is already within the United States is outside the arrest authority of Vermont officers.

C. 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. An individual should not be stopped or detained solely for the purpose of establishing his or her identity. [Agency members] may utilize federal databases in attempts to establish an individual's identity. [Agency members] shall utilize federal databases in attempts to establish an individual's identity only when all other attempts to identify the person have failed. Contact with federal authorities made to determine an individual's identity is restricted to the purpose of determining his or her identity.

D. CIVIL IMMIGRATION WARRANTS:

- a. [Agency members] shall not arrest or detain any individual based on a civil immigration warrant, including DHS Forms I-200, I-203, I-205, and any administrative warrants listed in the National Crime Information Center Database (NCIC). These federal administrative warrants are not valid warrants for Fourth Amendment purposes because they are not reviewed by a judge or any neutral magistrate. Moreover, federal regulations direct that only federal immigration officers can execute said warrants. Finally, Vermont law enforcement agencies do not have any authority to enforce civil immigration law.

E. RESTRICTIONS ON COLLABORATION WITH FEDERAL IMMIGRATION OFFICERS:

- a. [Agency members] shall not contact CBP or ICE for assistance on the basis of a suspect's or arrestee's race, ethnicity, **or** national origin.
- b. **[Agency members] shall not prolong any stop in order to investigate immigration status or to allow CBP or ICE to investigate immigration status.**
- c. **Sweeps intended solely to locate and detain undocumented immigrants shall not be conducted unless acting in partnership with a Federal agency as part of a formal partnership.** [Agency members] are not permitted to accept requests by ICE or other agencies to support or assist in operations that are primarily for immigration enforcement. **This prohibition does not apply to communications with government agencies about citizenship or immigration status that are governed by 8 U.S.C. §§ 1373 and 1644.**

F. USE OF RESOURCES:

- a. [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 (Form I-247, I-247D, I-247N, or I-247X) is not a warrant and is not reviewed by a judge, and therefore 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 General Order does not affect the proper handling of arrests and detentions associated with criminal arrest warrants.
- b. Unless ICE or Customs and Border Patrol (CBP) agents have a criminal warrant, or [Agency members] have a legitimate law enforcement purpose exclusive to the enforcement of immigration laws, ICE or CBP agents shall not **offer** access to individuals in [Agency's] custody, and [Agency members] shall not expend public time or resources responding to ICE or CBP **regarding an individual's personally identifiable information other than citizenship or immigration status (e.g. residence, place of employment, court, or release dates).**
- c. **Citizenship, immigration status, national origin, race, and ethnicity should have no bearing on an individual's treatment in [Agency's] custody. Immigration status or perceived immigration status, including the existence of an immigration detainer, shall not affect the detainee's ability to participate in pre-charge or police-initiated pre-court processes. Furthermore, immigration status or perceived immigration status shall not be used as a criteria for citation, arrest, or continued custody Rule 3 of the Vermont Rules of Criminal Procedure.**