

Table of Contents

PURPOSE	2
INTRODUCTION	2
POLICY	3
I. Definitions	3
II. Policing Impartially	3
III. Community Relations	4
IV. Establishing Identity	5
V. Federal Immigration Law	6
VI. Interactions with Federal Immigration Officers	7
VII. Responding to Bias-Based Reports or Reports Regarding Bias from the Community	10
VIII. Training	10
IX. Accountability and Compliance	10

VERMONT CRIMINAL JUSTICE COUNCIL
FAIR AND IMPARTIAL POLICING POLICY

Effective Date: [To be updated upon Council approval]

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 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] policy is intended to violate 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 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 [Agency'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 [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), Homeland Security Investigations (HSI), Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP).

II. Policing Impartially

- a. As required by law, all 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 and is combined with other identifying information.
- c. Personal characteristics 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. Immigration status shall not be used as 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, except that criminal liability for offenses where one's immigration status is an essential element is a factor that may be considered in a Rule 3 determination.
 - 1. (Example: An individual convicted of a violent felony is removed by immigration authorities after serving their sentence. Unlawful re-entry by that individual may result in substantial prison time – 10 years or more. Those factors may be considered because the prospect of long incarceration can be relevant to case-by-case evaluation of flight risk.)
 - 2. Note that per Section V of this Policy, [Agency members] do not have authority to investigate civil immigration laws and that [agency members] shall not ask about or investigate a person's immigration status unless information regarding immigration status is an essential element of a crime.
- e. 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. 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. 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 unless such actions are (1) necessary to ensure public safety or officer safety (imminent risk of physical injury to subject, officer, or third party) or (2) integral to the investigation of criminal offenses unrelated to immigration law.

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.

- c. The following do not on their own establish reasonable suspicion of a criminal offense and are not sufficient to warrant an investigation:
 1. Personal characteristics, including Limited English Proficiency
 2. Citizenship or Immigration status,
 3. Presence in the United States without authorization or formal documentation, and
 4. Proximity to the border.

These elements in combination with others may contribute to reasonable suspicion. As noted in Section II(b), personal characteristics may be taken into account only where there is 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.

- d. In interacting with all people, including suspects, crime victims, and witnesses, [agency members] shall **not**:
 - 1. Ask about or investigate a person's immigration status unless information regarding 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 immigration status. For example, they cannot ask someone about 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

[Agency members] have no legal obligation to communicate with federal immigration authorities. [Agency] has determined that certain restrictions on interactions with federal immigration officers will aid in its mission to serve all Vermonters, including immigrant communities, and ensure trust and cooperation. Accordingly, [agency] members shall restrict access by federal immigration officers as follows:

- a. **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.

Comment: The mere presence of ICE or CBP officials on the premises or their vehicles in the [Agency's] parking lot may create unnecessary confusion and apprehension in the community and undermine the [Agency's] efforts to build and maintain confidence that the [Agency] is truly committed to serving all community members, and is not involved in civil immigration enforcement.

b. **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. However, this section shall not be construed to require members to affirmatively interfere with a federal official's lawful authority to interview, detain, or arrest (with or without a warrant) an individual — e.g., by using force or physically blocking the official.
2. Instead, [Agency], members asked to grant access to an individual in their custody (e.g., requests made during a traffic stop) shall respond to the official that they intend to complete their stop first, without interruption — unless it would be unlawful for them to provide that response (e.g., making such statements in an effort to intentionally facilitate an escape of a person subject to lawful arrest).
3. [Agency] members who are unsure how to proceed in a given situation should immediately contact a supervisor 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.]

- c. **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 authorities, 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, or
 - b. with the consent of the individual, for the purposes of obtaining a U, S, or T visa
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.
- 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 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 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 regulating authority 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 [date to be determined].

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).