



# FAIR AND IMPARTIAL POLICING

FIP SUB-COMMITTEE PROGRESS REPORT

DECEMBER 15, 2023

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## **ACKNOWLEDGMENTS**

The recommendations put forth to the Vermont Criminal Justice Council have been formulated through the combined endeavors of the individuals listed below.

### **Vermont Criminal Justice Council**

#### **fair and impartial policing Sub-committee members**

Chair: Amanda Lucía Garcés

Vice Chair: Barbara Kessler, Vermont State Police

Tabitha Moore, Founder, Rutland Area Branch of the NAACP

Co. Justin Stedman, Vermont Department of Fish and Wildlife

Lt. Gregg Jager, South Burlington Police

Xusana Davis, Director of Racial Equity

Karen Tronsgard-Scott, Vermont Network DOMV/sexual Violence

Glenn Boyde, Department of Corrections

Rachel Lawler, Howard Center

Timothy Lueders-Dumont – State’s Attorney and Sheriff’s

### **Office of the Vermont Attorney General**

Erin Jacobsen

Julio Thompson

### **Community Advocates**

Migrant Justice

Vermont ACLU

## INTRODUCTION

This report is respectfully submitted by the Fair and Impartial Policing Subcommittee (hereafter subcommittee) to the Vermont Criminal Justice Council.

This report aims to present an overview of the sub-committee's progress in advancing recommendations for the 2017 Fair and Impartial Policing Policy. To contextualize our work, we will begin by tracing the historical evolution and previous endeavors that have paved the way for our current efforts. The comprehensive submission from the sub-committee not only underscores our unwavering dedication to the task at hand but also illuminates the extensive collaborative efforts involving a multitude of parties and a diverse range of expertise.

It has been clear that all the parties involved in this process believe that discrimination, in all its forms, should play no part in the proper administration of justice and public safety in Vermont. Fair and impartial policing is imperative to effectively administer justice, to protect the public, and to build trust between law enforcement and the communities that they have sworn to serve and protect.

To truly accomplish State and local public safety goals and outcomes, all members of our communities should feel comfortable engaging with law enforcement without fear that they will face amplified scrutiny on the basis of personal characteristics or immigration status. People who are members of immigrant and migrant communities and individuals and families who are black, indigenous, and people of color deserve protection and an opportunity to thrive in our State.

While fair and impartial policies will not undo historical harms, improving fair and impartial policies is a basic step that all communities should undertake.

## FAIR AND IMPARTIAL POLICY REVIEW HISTORY

### **Act. 193 of 2014**

This legislation sets forth the timeline for the Criminal Justice Council (Formerly known as VCJTC) to formulate and adopt a model fair and impartial policing policy. Moreover, it mandated all law enforcement agencies to gather data regarding traffic stops.

This legislation was the outcome of extensive advocacy spanning multiple years by organizations including Migrant Justice, ACLU, Justice for All, and various other groups dedicated to eliminating racial disparities in law enforcement. Under the guidance of the present Deputy Director of the Criminal Justice Council, Christopher Brickell, the approach was all-encompassing, involving numerous dialogues with diverse stakeholders including the Vermont Human Rights Commission to successfully finalize [the model policy in 2016](#).

During Donald Trump's presidency, the 2016 model policy underwent reevaluation, leading to the scaling back of certain safeguards for immigrant workers and resulting [in the current policy](#).

### **Act 41 of 2019**

Act 41 of 2019 requires the Criminal Justice Council to collaboratively review the fair and impartial policing policy, in consultation with others, including the Attorney General and the Human Rights

Commission. The review process as intended in Act 41 is to determine if any updates are needed and should take place on January 1<sup>st</sup> of each even-numbered year.

There have been no updates to the model policy since its revision in 2017 but a process to review and update the policy began in late 2019. Here is a chronological history of that process.

### **The ‘Ad-hoc Committee’**

In the latter part of 2019, both the Council and advocates reached an agreement to [revise the](#) statewide Fair and Impartial Policing model policy, with the aim of enhancing its clarity and user-friendliness. The consensus was that the policy would benefit from being more concise and transparent. This was seen as advantageous for law enforcement personnel, as it would be more accessible for officers, and also for advocates, who could more effectively hold officers accountable through a well-defined document. It's worth noting that the primary intent was not to make significant changes to the regulations initially outlined in the original 2017 model policy. However, it's important to acknowledge that much has evolved including the inauguration of a new United States president and administration and the fact that considerable time has elapsed since the initial work began in late 2019.

The ad-hoc Committee was formed to produce the new draft. The committee consisted of the following people and organizations:

David Scherr from the Attorney General's Office (No longer with the Attorney General)  
Chief Brickell (Former Chief of Brandon who now serves as the Deputy Director for the CJC)  
Major Ingrid Jonas and Captain Julie Scribner representing the Vermont State Police (Both retired)  
Bor Yang, Executive Director for the Vermont Human Rights Commission (No longer with the HRC)

Advocates invited:

Will Lambek, Migrant Justice  
Lia Ernest, ACLU

From December 2019 to June 2021, the ad-hoc committee faced numerous challenges that led to interruptions in their meetings. Personnel changes were one of the key factors contributing to these disruptions. Despite these challenges, the ad-hoc committee persevered in their efforts to achieve their objectives.

On July 6, 2021, the ad hoc committee successfully finalized the proposed redraft of the model policy. This marked a significant milestone in their work, and the policy was sent to the Council's Fair and Impartial Policing (FIP) Committee for its consideration. Given the ad-hoc committee focus on clarification rather than substantial changes, Migrant Justice and ACLU communicated their inability to fully support the final policy recommendation resulting from the ad-hoc committee efforts but made important and substantial contributions to the ad hoc policy recommendations.

### **The FIP-Sub-Committee**

The ad hoc committee finalized the proposed redraft during the summer of 2021. In August of the same year, the draft was presented to the Council's Fair and Impartial Policing Sub-committee for evaluation. David Scherr led the presentation of the modifications. During this presentation, Mr. Scherr clarified that he wasn't seeking an immediate decision from the committee to either approve or reject the changes on behalf of the Criminal Justice Council. Instead, he was merely outlining the progress that had been made up to that point.

Unfortunately, due to the ad hoc committee's perception of being bound by a stringent timeline, they were unable to thoroughly engage with the modifications Migrant Justice was proposing. Given this

context, during the public comment session of the August 2021 meeting, Migrant Justice delivered a presentation urging the FIP Sub-Committee to consider incorporating their preferred revisions into the policy.

While the Committee appreciated all the work that had been accomplished regarding both the proposed update and Migrant Justice suggestions, they were not prepared to recommend the changes to the Criminal Justice Council at their September meeting. Instead, they agreed to put further discussions on hold until a meeting between Migrant Justice and the Attorney General's Office could be organized.

The committee engaged in a series of discussions with Migrant Justice, ACLU, and the Attorney General's Office over the course of several meetings. At a certain juncture, the committee conducted a vote on a subset of recommendations in, opting to endorse some while leaving others aside. The intention was to forward this work to the CJC. However, the committee confronted significant challenges arising from a lack of clarity regarding their mission concerning the policy. This absence of a well-defined and precise understanding of their objectives resulted in confusion and uncertainty among committee members, as well as the subsequent resignations of both the chair and vice chair.

In December 2021, Migrant Justice delivered a presentation to the Criminal Justice Council. However, despite these interactions, no further substantial actions were undertaken at that time.

The absence of clear guidance hindered the Fair and Impartial Committee's ability to adequately respond to the community's requests. The renewed commitment from the Executive Director of the Council to support the committee's effort led the committee to reengage with the work in August of 2022.

After devoting several months to reviewing and actively engaging with the policy, our sub-committee arrived at the decision to ask for the collaboration of the Attorney General's Office, Migrant Justice, and the ACLU. The purpose of this collaboration was to gain clarity on the permissible extent to which the Attorney General's office could contribute to establishing a consensus document. The Chair of the FIP sub-committee supported the efforts. Multiple delays occurred due to the necessity of waiting for the confirmation of the new Attorney General. The confirmation was crucial as the incoming Attorney General needed to thoroughly review and grant endorsement for the work. Additionally, unforeseen obstacles such as scheduling conflicts and the unexpected flood, further contributed to the complexity of the process.

Despite these hurdles, the FIP sub-committee successfully concluded its review and conducted a vote on the policy document on November 20, 2023. Attached, you will find a polished version of the policy incorporating the recommended changes, along with a version highlighting the tracked changes. Additionally, a document containing Timothy Lueders-Dumont questions and suggestions is included. Unfortunately, due to time constraints, the committee was unable to address those within our timeframe.

The policy document attached to this report represents the final recommendations of the FIP sub-committee. These recommendations include five provisions that deviate from the language presented by the ad-hoc committee in July 2021. For three of these provisions, the sub-committee reached consensus to recommend language supported by both the Attorney General's Office and Migrant Justice

1. Provisions regarding immigration status as a factor in Rule 3 determinations (II.d)

2. Provisions detailing when and under what circumstances law enforcement agencies may investigate suspected violations of federal criminal immigration laws (V.b and V.c)
3. Provisions detailing when and under what circumstances law enforcement agencies may grant access to individuals in custody to federal immigration agents (VI.a and VI.b)

For two remaining provisions, the FIP sub-committee reviewed competing proposals, the first adopted by nine jurisdictions across the state (the “Winooski model”) and the second proposed by the Attorney General’s Office (“AGO Proposal”). In both instances, a plurality of sub-committee members recommended adoption of the Winooski model, while a minority recommended adoption of the AGO proposal.

1. Language regarding federal policy

Karen Tronsgard Scott motion to accept the Winooski model, second by Amanda Garces,

In favor:

Yes (5) : *Tim Lueders-Dumont, Xusana Davis, Karen Tronsgard Scott, Amanda Garces, Tabitha Moore*

No (3): *Dan Bennett, Justin Stedman, Gregg Jager*

Abstain (1): *Glenn Boyde*

<b>Winooski model</b>	<b>AGO Proposal</b>
<p>Purpose: <i>“Nothing in the [Agency] Fair and Impartial Policing policy is intended to violate federal law.”</i></p>	<p>Section V.d.2 <i>“This directive does not apply to communications governed by 8 U.S.C §§ 1373 and 1644 (See Savings Clause below).”</i></p> <p>Section VI preamble. <i>“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 federal immigration authorities regarding an individual’s citizenship or immigration status.</i></p> <p><i>“[Agency members] should note that accurately determining an individual’s citizenship or immigration status can be difficult in the absence of clear documentation and immigration law expertise. Moreover, making a mistake in this arena may undermine community confidence that [the Agency] is focused on public safety and state/local enforcement, rather than civil immigration enforcement.</i></p> <p><i>“However, nothing in federal law prevents [Agency] from prohibiting communication with immigration authorities regarding matters other than citizenship and immigration status.”</i></p> <p>Section VI (preamble to subsections 6-8): <i>“The following directives do not prohibit voluntary communication with federal immigration authorities specifically regarding an individual’s</i></p>



*citizenship or immigration status, nor do they require such communication. Taking that into account, [agency members] shall not:*

*Section VI.8. "As noted in the definitions section above, information regarding "citizenship or immigration status" refers only to an individual's 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) Citizenship or immigration status does not include, for example: the individual's custody status, release date/time, court dates, whereabouts, residence, employment, identification numbers, absence of social security number, appearance, vehicle description, license plate number, telephone number, and familial relations."*

*Section VI Comment: "[Agency members] should keep in mind that although disclosing information about an individual's citizenship or immigration status may be necessary in connection with a limited number of criminal investigations (e.g., human trafficking), in many other instances such disclosure may generate significant negative consequences for victims, witnesses, and our valued immigrant communities. More broadly, such unnecessary disclosure can undermine the ability of [the Agency] and its members to develop and sustain trust with community members and build positive relationships that serve all Vermonters."*

*Savings Clause: "Pursuant to 8 U.S.C §§ 1373 and 1644, [Agency] 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. [Agency] also 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 the lawful requirements of 8 U.S.C §§ 1373 and 1644."*

2. Provisions regarding the standard for permissible communication with federal immigration agencies

Karen Tronsgard Scott motion to accept number four Winooski model minus the bracketed language (“other information related...”), second by Amanda Garces,

All in favor:

Yes (4) : Xusana Davis, Karen Tronsgard Scott, Amanda Garces, Tabitha Moore

No (3): Dan Bennett, Justin Stedman, Tim Lueders-Dumont

Abstain (2): Glenn Boyde, Gregg Jager

<b>Winooski model</b>	<b>AGO Proposal</b>
<p>Section VI.7. “[agency members] shall not share any information about an individual with federal immigration authorities, unless</p> <ol style="list-style-type: none"> <li>1. 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</li> <li>2. with the consent of the individual, for the purposes of obtaining a U, S, or T visa</li> </ol>	<p>Section VI.7. “[agency members] shall not provide federal immigration authorities any information about an individual, unless [Agency] members consult with a supervisor prior to sharing such information, provided that this does not prolong an individual’s custodial detention, and there is justification on the grounds of</p> <ol style="list-style-type: none"> <li>1. public safety or officer safety (imminent risk of physical injury to subject, officer, or third party), and state and local authorities are unable to provide urgent assistance in time; or</li> <li>2. law enforcement needs that are not related to the enforcement of federal civil immigration law (e.g., individual may be a human trafficking victim, a crime victim, or witness entitled to a T, U, or S visa).</li> </ol>

We submit our collective recommendations for the Vermont Criminal Justice council's consideration ahead of the impending full Council meeting. Recognizing that the new council's legal counsel will be conducting an analysis, we would like to encourage the legal counsel to reach out with any questions or concerns. We also hope for active participation from community advocates and other committee members in the ongoing discussion.