April 3, 2024

10:00 AM

Zoom Meeting

**Members in Attendance Public Session:**

William Sorrell, Chair – Governor Appointed

Brian Searles – Governor Appointed

Scott LaValley - Governor Appointed

Shawn Pratt (Bennington Martens) - Governor Appointed

Daniel Guerra - Governor Appointed

Jennifer Morrison, Commissioner, Dept. of Public Safety

James Whitcomb –Proxy for Commissioner Jennifer Morrison, Dept. of Public Safety

Glenn Boyde – Proxy for Commissioner Nick Deml, Dept. of Corrections

Chris Herrick – Commissioner Christopher Herrick, VT Fish & Wildlife

Justin Stedman – Proxy for Commissioner Christopher Herrick, VT Fish & Wildlife

Julio Thompson – Proxy for Attorney General Charity Clark

Lori Vadakin – Proxy for Commissioner Emily Hawes, Department of Mental Health

Scott Davidson – Proxy for Commissioner Wanda Minoli, DMV

Xusana Davis –Executive Director, Office of Racial Equity

Jay Greene – Proxy for Executive Director of Racial Equity

Kelly Price (982 iPhone 12)– Vermont State Employees Association

Mark Anderson –Vermont Sheriff’s Association

Jennifer Harlow – Proxy for Vermont Sheriff’s Association

Tim Lueders Dumont – Proxy for E.D. John Campbell, States Attorney & Sheriff’s

Mike O’Neil – VT Troopers Association

Tom Chenette – Vermont Police Association

Jennifer Frank – VT Chiefs Association

Trevor Whipple – VT League of Cities and Towns

Karen Tronsgard Scott – Executive Director, VT Network DOMV/Sexual Violence

Jennifer Poehlmann – Executive Director, Center for Crime Victim Services

Sadie Donovan – Proxy for E.D. Jennifer Poehlmann, Center for Crime Victim Services

Cassandra Burdyshaw – VT Human Rights Commission

Amanda Garces –Proxy for Cassandra Burdyshaw VT Human Rights Commission

**Other Attendees:**

Christopher Brickell – Vermont Criminal Justice Council

Kim McManus – Vermont Criminal Justice Council

Lindsay Thivierge – Vermont Criminal Justice Council

Ken Hawkins – Vermont Criminal Justice Council

Jamielee Bedard – Vermont Criminal Justice Council

Brock Marvin – Vermont Criminal Justice Council

Jennifer Hier – Vermont Criminal Justice Council

Jennifer Firpo – Vermont Criminal Justice Council

Nick Stewart – Vermont Criminal Justice Council

Austin Bach – Vermont Criminal Justice Council

Will Lambek – Migrant Justice

Matthew Birmingham –Vermont State Police

Stephen Laroche –Milton Police Department

Ann Schroeder - Windham County NAACP

Kevin Lane – VCJC Contractor

Scott Clouatre – Randolph Police Department

Wilda White – Department of Public Safety

Patrick Owens –Manchester Police Department

James Pontbriand- Berlin Police Department

Michael Henry – Hardwick Police Department

Paul Doucette – Bennington Police Department

Matthew Romei – Norwich Police Department

Pierre Gomez – Northfield Police Department

Matthew Sullivan – Swanton Police Department

James Blanchard – Manchester Police Department

John Grismore – Franklin County Sheriff’s Department

Travis Bingham – Newport Police Department

Robert Montgomery- Killington Police Department

Lance Burnham – Vermont State Police

Peter Hull – Colchester Police Department

Maurice Lamothe – St. Albans Police Department

Michael Arbogast – Dover Police Department

Ron Hoague – Essex Police Department

Justin Huizenga – Winooski Police Department

Cristian Santos- Migrant Justice

Enrique Balcazar – Migrant Justice

Thomas Williams – Chester Police Department

Joel Pierce – St. Johnsbury Police Department

Rossy JM – Migrant Justice

Patrick Foley – Williston Police Department

Brian Kilcullen – Rutland City Police Department

SafeSpace Anti-Violence Program

John Poleway – Capitol Police Department

Ben Couture – St. Albans Police Department

SAPD Wetherby – St. Albans Police Department

David Fox – Shelburne Police Department

William Humphries – Fair Haven Police Department

Michael Scruggs – Thetford Police Department

Michael Warren – Vermont Secretary of State

Jeff Burnham – Springfield Police Department

Ryan Palmer – Windsor County Sheriff’s Department

Jon Murad – Burlington Police Department

Tony Facos – US Attorney’s Office

Darla Mariduena – Human Rights Commission

Migrant Justice

Audi Guha – VT Digger

Jason Covey – Middlebury Police Department

Braedon Vail – Barre City Police Department

SafeSpace Advocates

Joe Folsom – Fox News

Brett Stokes – Vermont Law School

Maya Tsukazaki – Vermont Bar Foundation

Laura Prabucki – Fox News

Zoom User

Ellen Schwartz

Claireh4

Tobin

Cristian

Rosemary

Rachel

**Call to Order:**  VCJC Chair Bill Sorrell 10:00

**Additions or Deletions to the Agenda:** No additions or deletions to the agenda as presented. Comments will be made prior to FIP policy is reviewed and discussed.

**Approval of Meeting Minutes:** *Brian Searles made a motion to accept the minutes from the March 7 meeting minutes of 2024, second by Trevor Whipple, all in favor.*

**Council Updates:** *Vermont Criminal Justice Council - Chair*

* Executive Director Simons is out sick and will not be in attendance today.
* Erin Jacobsen has resigned from the state to become Chief of Staff to Burlington Mayor, Emma Mulvaney-Stanak. The representative for the AG’s office for the FIP policy will be Julio Thompson. The permanently assigned proxy will be Domenica Padula.

**FIP Policy**: *Vermont Criminal Justice Council Chair Bill Sorrell*

* A timeline and history of the FIP policy was given.
* The process for policy review and voting was outlined.
  + There are five recommendations coming from the FIP Subcommittee, we will vote on each individually.
  + There will be a vote on some minor changes throughout.
  + Then we will vote for the entirety of the policy.

*Associate General Counsel Kim McManus:* **Recommendation one** from the subcommittee: Immigration status should not be a factor in Rule 3 determination (Page 4/5 Section 2D of the proposed policy).

Jennifer Frank made a motion to approve the first recommendation as proposed by the subcommittee, Karen Tronsgard Scott seconds, open for discussion. Jim Whitcomb asked if the vote is for inclusion of the language into the policy not approval of the component on its merits alone. Chair Sorrell provided clarity that it is only for the inclusion of the language. Vote taken, all in favor.

*Associate General Counsel Kim McManus:* **Recommendation 2** from the subcommittee: Details when law enforcement agencies may investigate potential violations of Federal criminal and immigration law **–** Page 7 Section 5B and 5C proposed language.

Brian Searles makes a motion to accept recommendation 2 as proposed by the subcommittee, seconded by Cassie Burdyshaw, open for discussion. Jennifer Frank wanted to note that in the comment section, on behalf of the chiefs, this does not limit state and local trespass laws. Vote taken, all in favor.

*Associate General Counsel Kim McManus:* **Recommendation 3** from the subcommittee: When and how law enforcement may grant access to individuals in state or local custody to federal immigration agencies **–** Page 9 Section 6A and 6B proposed language.This is broken down into two sections: when the person is within an agency’s facility and when a person may be in an agency’s custody but outside of the facility.

The 2017 policy disallowed local law enforcement from granting federal agents access to individuals and local law enforcement in custody unless federal agents had a judicially issued criminal warrant or a legitimate law enforcement purpose exclusive of the enforcement of civil immigration laws. The proposal in front of you changes the language to “restricts access for federal agents to otherwise restricted portions of an agency’s facility.” The premise clause before the exceptions is very important. It states that the exceptions don’t apply if there is a legitimate law enforcement purpose exclusive of the enforcement of civil immigration laws. It contracts where a federal agent can be in a facility.

Page 7/8 Section 6A proposed language. *“Access to [Agency] facility”.* Page 8 Section 6B proposed language: *“Access to individuals outside of [Agency] facility”.*

*Discussion Ensued: James Whitcomb –* In regard to Director Raymond’s question in the documentation, Kim can you speak to concerns about ICAC (Internet Crimes Against Children Task force) and what he wrote as far as having restrictions.

*Kim McManus –* The clause at the beginning of A and B has the “unless legitimate law enforcement purpose exclusive of the enforcement of civil immigration laws”. Since he stated clearly that they’re in the business of enforcing civil immigration laws he did not have an issue with this section. He does have two other recommendations for potential changes.

*Cassie Burdyshaw makes a motion to approve the third recommendation as presented, second by Xusana Davis, open for discussion.*

*Jennifer Frank –* There is concern from the Chiefs based on the comment in this section, which is not the policy component. This concern was brought forward to the Subcommittee and the Working Group. The comment talks about the presence of ICE (or other officials) in our parking lots and some of the other statements made about other uses of our facilities. To have a comment that specifically says federal law enforcement officials are not welcome to use the same facilities and parking lots that are open to any individual, is unnecessary and runs against inclusivity. The policy portion that is directing officers on what they should or shouldn’t do is the point of a policy or procedure.

*Kim McManus –* The comment does not hold the weight of the policy; the comment was to raise awareness that their presence may have an impact on your community, and it was offered as a compromise to a previous request.

*Bill Sorrell:* So, an officer would not be disciplined if they were in violation of the comment? The comments are there to provide depth to the substantive provisions?

*Brian Searles –* The first time I read this comment I thought it was unnecessary although I understand that at a base level that may have an effect. I would remind folks that we are talking about public property and that the purpose of a parking lot is often shared with other public facilities.

*Jim Whitcomb –* We have similar concerns as Chief Frank I would like to see this comment removed from the policy.

*Julio Thompson – Comment on how the context got into the policy –* There are a number of provisions in the policy, including provisions that have been there since 2017 that are more for guidance and purpose rather than prescription, for example the start of section 5. The idea here is that there is a discussion of access and a reminder that just the presence of immigration authorities connecting with law enforcement can create that apprehension.

*Scott LaValley –* It is a comment but usually comments have an expectation. What is the expectation when these federal agencies are on the premises for appropriate legal reasons as identified in other the proposals? What is the expectation of where they are supposed to park?

*Xusana Davis* –I think the acknowledgment of one branch of government about the shortcomings, failures, or harm created by other parts of the government sometimes is warranted and sometimes is appropriate and I think it’s more a reflection of the actions of those partners and acknowledging the human toll of that.

*Amanda Garces –* The bottom line is I don’t think anyone disagrees with the actual comment which is, the presence causes unnecessary confusion and apprehension to communities. This comment is part of thinking outside of our power and what do these things mean for the communities that we work with. It’s being able to see those conversations and look back at this policy and those comments within, to give thought to different communities.

*Sadie Donovan –* I agree with Chief Frank, I think the comment should be taken out.

*Commissioner Morrison –* If an agency did not incorporate the comment from the policy would they be out of compliance? Comments put color on the policy but are not the actual policy. I think we could either remove the comment and carry forward with a vote that would likely see this recommendation across the finish line, or the council could agree that an agency would not be out of compliance if they did not include the comment language in their policy.

*Mike O’Neil –* I agree with many of the people, we would support the policy change in section 3, but we do not support the comment and it would be difficult to support the whole change of three without removing the comment.

*Tim Lueders-Dumont –* For the Council to consider, instead of the word “mere” perhaps the inclusion of the word “persistent” because persistent federal immigration authority presence at a local law enforcement agency or state police barracks would weigh into the side of having community harm but mere presence might be less than incidental.

*Cassie Burdyshaw –* I would like to speak about why I do support the comment. Some people have said something along the lines of this comment leaves a “sour feeling in this document”. For me, even though I can’t fully feel this perspective, the sourest feeling involved is for the people who are members of our community who feel unwelcome and feel physically unsafe. They have all these deep reactions to the presence, whether it is mere or sustained, of ICE or CBP officials. That’s why the comment is important for me and why I think it makes sense to include it, understanding that it is not a mandate that someone can’t use the bathroom or park there, but rather it is a hopefully helpful statement to share with everybody who’s going to incorporate this policy so that it will be a point of discussion. So, I motion for the adoption of all of the language, my second choice would be to make the suggested change, and my least preferred option would be to adopt the policy language without comment.

*Trevor Whipple –* Speaking from the professional regulation subcommittee point of view. When a complaint is filed, we look at the policy to see if an officer has in fact violated that policy and to have a comment, of this nature, in the policy that isn’t binding on the officer its editorializing albeit important. I don’t disagree with the spirit of the comment, I think it’s a training issue I think it’s part of the training to the policy but having it in the policy makes it confusing for officers and also potentially to the Act 56 subcommittee, because it is not binding. I would vote in opposition to leaving the comment in.

*Jen Frank –*I think there are two elements we need to remember; one is about relationships. When folks in our communities have concerns, they reach out to us and we can explain we are a municipal lot that is open to all people, and we are inclusive of that. I think we are forgetting that the very opening paragraph addresses the sentiment that we are not enforcing immigration law. To make a comment like this though, begins to parcel out different groups and organizations. Why are we stopping at ICE and CBP? Let’s list all of the potential groups that can make anyone in our communities feel unsafe. It’s unnecessary, it’s not a part of our policy and there is no reason for it.

*Kim McManus –* I wanted to return to Commissioner Morrison’s question about whether agencies could remove the comment. The controlling statute for the fair and impartial policing policy reads that agencies must adopt all the components of our policy. I believe that the comment would be considered a component. I would not recommend passing this with the comment with the option to remove the comment. However, the reverse is doable per our statute in that if this were passed without comment, agencies per statute are allowed to provide other restrictions. If an agency wishes to add that comment back in for its agency that would be permissible.

*Jim Whitcomb* – Made a motion to amend the policy to remove the comment, seconded by Mike O’Neil, open for discussion.

*Julio Thompson - C*ompliance with the statute 20 VSA 2366 *–* In 2017 when the model policy was enacted, the inclusion of each component did not necessarily mean taking the words verbatim from the VCJC but rather the AG could do an individualized review where they would look at each policy and see whether the language conveyed the substance of the policy. The statute says that the Criminal Justice Council in consultation with the Office of Attorney General shall review the policies of law enforcement agencies. If the Council in consultation with the Office of Attorney General finds a policy does not comply, then the council would work with the law enforcement agency or constable to bring the policy into compliance.

*Karen Tronsgard Scott –* Does this comment fly in conflict with local municipalities policies in who gets to park in parking lots? Do towns have policies about public spaces and who gets to park there?

*Scott Davidson -* From a law enforcement perspective, if I receive a policy and my chief gives it to me, I want it to be clear, understandable and something that I can follow that I understand clearly. As a community member I want law enforcement to understand the policy, follow the policy, and be successful. Adding commentary that is unclear, ambiguous or causes this much concern to have this much dialogue isn’t policy and we probably shouldn’t move forward with it, so I agree with the motion.

*Trevor Whipple –* At VLCT we get a lot of questions from municipalities about how we can control public spaces and we are very careful. We have done a lot of camping in public spaces, and I can assure you that control of a parking lot would come down to how they are using it and not who it is. If you meet the basic guidelines of the rules of the parking lot, then you can use it.

*Roll call vote to remove the comment* – **16 yes** *(Brian Searles, Scott LaValley, Jim Whitcomb, Glenn Boyde, Scott Davidson, Chris Herrick, Lori Vadakin [with training], Julio Thompson [with training], Tim Lueders-Dumont, Mike O’Neil, Tom Chenette, Jennifer Frank, Jennifer Harlow, Kelly Price, Trevor Whipple, Sadie Donovan)*; **5 no,** *(Daniel Guerra, Shawn Pratt, Xusana Davis, Cassie Burdyshaw, Karen Tronsgard Scott).*

*Bill Sorrell –Pending Motion to approve the third proposal with the comment in question removed. All in favor 21-0.*

*Associate General Counsel Kim McManus:* There are two more recommendations from the subcommittee that did not pass with consensus. The last recommendation will come first. **Recommendation 5** from the subcommittee: Section 6 subsection C, and section 7 on page 9. We are in the same section of interacting with federal immigration authorities, this section proposes the language: “In addition, agency members shall not”, and then subsection 7 currently reads “share any information about an individual with federal immigration authorities unless (and then there are two exceptions).” It is my opinion that this current language is in direct conflict with federal law. The Attorney General proposed counter language to this section, “Share any information, if other than citizenship or immigration status…” is not in conflict with federal law. This is the first issue the council needs to contemplate.

The second issue to be decided is the language of the proposed exceptions. The proposed language currently before you: “(a) necessary to an ongoing investigation of a felony for which there is a probable cause, and the investigation is unrelated to the enforcement of federal civil immigration law or with the consent of the individual for the purposes of obtaining a U, S, or T visa.” A number of agencies (including Commander Raymond from ICAC) have raised an issue with (a) that often when you begin investigating a crime you may not know yet whether it’s a felony or a misdemeanor. This current language could create issues for law enforcement who may be reaching out to federal agencies for assistance in investigating criminal matters. ICAC also pointed out under the work they do; a number of sexual assault crimes fall under a larger umbrella that are not just felonies.

Alternatively, the AG’s office has suggested language for these two exceptions for when law enforcement can contact federal agents. The concerns that ICAC raised yesterday, the language “law enforcement needs” would address his concerns of their agency, and others, being able to work on their cases.

*Discussion Ensued: Julio Thompson –* It’s not just a matter of the two federal statutes (8 USC 1373 and 1644), Vermont has two state laws; one is the FIP statute 20 VSA 2366 and the other is 20 VSA 4561. These laws say that the state of Vermont locally or as a state can’t have a policy for law enforcement that conflicts with the lawful requirements of these federal statutes 1373 and 1644, and that to the extent that they conflict, they are abolished. So, if the Council adopts a policy that is in conflict with the federal law by operation of Vermont law, it’s a statutory strike through and the state agencies that are subject to the policy would not be able to avoid compliance with the federal law.

*Tom Chenette –* As a member of ICAC task force and USI I can’t emphasize enough the importance of the partnership with the Homeland Security Investigations. There had been assurances that HSI was going to be struck from the policy section under definitions of federal immigration authorities. I would argue that there are other federal law enforcement entities (FBI, DEA, ATF) who in theory could enforce federal immigration law, but in reality, they do not and HSI does not. I would be in support of the AGO language.

*Trevor Whipple –* Putting on the Act 56 lens I have significant concerns. If we were to approve this as it is written now, we would have a conflict of federal law which then Vermont law tells us any provision of this policy that is in conflict is abolished. So why would we want to adopt a policy that will be mandated by all law enforcement officers that can’t be enforced?

*Jennifer Frank* – There are two language issues. It’s not only that language component regarding the federal statute but also the terms we are using. We need to look here for the officers who are actually going to be applying this policy on its face. There is a terms matter: probable cause, versus reasonable suspicion, versus articulable suspicion. In order to get to probable cause, someone must conduct an investigation. But this statement says that necessary for an ongoing investigation, we would have had to have already established probable cause. You can’t establish probable cause without doing the investigation. Furthermore, how does an officer apply something that using our own terminology and definitions as defined by state statute, are naturally in conflict. Per this policy, you can’t conduct the investigation unless you’ve established probable cause.

*Bill Sorrell -* Typically under our law it’s a prosecutor that determines that there’s probable cause after reviewing an investigation and the court has to agree that there is probable cause before the prosecution can go forward.

*Kim McManus –* I just wanted to clarify that Chief Frank’s concerns are for the current proposed language and that the AGO’s language would not create the issue that Chief Frank is pointing out. To comment on Tom Chenette’s issue: Commander Raymond raised two issues with me about how to make sure ICAC’s work is not disturbed. One would be to remove HSI from the definition or he gave me some other places where carve-out would need to occur to make sure the intent of the policy would not interrupt ICAC’s work going forward. So, it is possible to vote on this section without us addressing the definition section (which we would address later).

*Julio Thompson –* I would recommend tabling this issue until Friday. There are aspects of things that have been said about the AG’s position that I don’t think have been added. The language that’s proposed here that’s been highlighted by General Counsel is language our office said we would recommend in case the council was otherwise going to accept proposal 5. Our offices previously pointed out that there are any number of violent offenses that are misdemeanors including stalking, simple assault, and some criminal threats. We previously articulated concerns that limiting that, law enforcement may have concerns as a matter of practice, that is a matter of complying with federal law about limiting their interactions to other crimes, state crimes that may involve public safety that have public safety implications.

*Discussion Ensued about next steps and Roberts Rules of order.*

*Bill Sorrell moves to adjourn until 1:30 on Friday April 5, 2024, seconded by Brian Searles, no discussion, all in favor.*

Meeting adjourned: 12:17