April 3, 2024

1:30 PM

Zoom Meeting

**Members in Attendance Public Session:**

William Sorrell, Chair – Governor Appointed

Karim Chapman (Life Intervention)– Governor Appointed

Brian Searles – Governor Appointed

Scott LaValley - Governor Appointed

Shawn Pratt (Bennington Martens) - Governor Appointed

Ann Schroeder – Proxy for Daniel Guerra Windham County NAACP

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 (iPhone)– Proxy for Commissioner Wanda Minoli, DMV

Xusana Davis –Executive Director, Office 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

Jennifer Firpo – Vermont Criminal Justice Council

Will Lambek – Migrant Justice

Matthew Birmingham –Vermont State Police

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

Abel Luna – Migrant Justice

Matthew Romei – Norwich Police Department

Matthew Sullivan – Swanton Police Department

Trevor Colby – Essex County Sheriff’s Department

John Grismore – Franklin County Sheriff’s Department

Travis Bingham – Newport Police Department

Robert Montgomery- Killington Police Department

Loretta Stalnaker – Royalton Police Department

Lance Burnham – Vermont State Police

Peter Hull – Colchester Police Department

Eric Nordenson – Montpelier Police Department

Ron Hoague – Essex Police Department

Justin Huizenga – Winooski Police Department

Patrick Foley – Williston Police Department

Michael Scruggs – Thetford Police Department

Jeff Burnham – Springfield Police Department

Tony Facos – US Attorney’s Office

Jaye Johnson – Counsel, Governor Phil Scott

Migrant Justice

Audi Guha – VT Digger

Jason Covey – Middlebury Police Department

Braedon Vail – Barre City Police Department

Rachel – Migrant Justice

SafeSpace Advocates

Joe Folsom – Fox News

Maya Tsukazaki – Vermont Bar Foundation

Laura Prabucki – Fox News

Zoom User

Lance

Chris

Rosemary

EG

**Call to Order:**  VCJC Chair Bill Sorrell 1:30 PM

**Additions or Deletions to the Agenda:** No additions or deletions to the agenda as presented.

**FIP Policy**: *Associate General Counsel Kim McManus:*

At the end of the last meeting Chair Sorrell had asked Julio Thompson from the Attorney General’s Office, Tim Lueders Dumont from the State’s Attorney and Sheriff’s Office, Chief Jennifer Frank representing the Chiefs, and Kim McManus to see if there were any potential edits or alternate language to propose. As you recall the FIP subcommittee had proposed language for Section 6, subsection 7C and the Attorney General has also proposed language for that section. We met last evening and were joined by Will Lambek from Migrant Justice, Jim Whitcomb, Wilda White, and Lance Burnham from the Department of Public Safety. What we came to was the two proposals before you. The subcommittee worked for a very long time fashioning the language that they did, and they believe in that language and the Attorney General’s office believes equally in the language they have presented. The question still remains, does the Council accept the recommended language by the FIP committee or the recommended language by the Attorney General’s office.

*A summary was given of the proposed language for recommendation 5 that was presented last meeting (April 3, 2024) as well as the issues to contemplate with each set of proposed language. Discussion Ensued.*

*Brian Searles:* What is the relationship between a functioning entity of state government and the Attorney General’s office on these matters, either advising us on language like this or perhaps defending the council if there’s some kind of civil action?

*Bill Sorrell –* Typically various departments and entities in state government look to the AG’s office for legal opinions on matters. If and when the state is sued in the matter, then the Attorney General’s office represents the states’ interests. We are free to reject the opinion of the AG’s office but if the council is sued (or some other entity in state government) then it would be in all likelihood the AG’s office would be representing whatever entity was sued.

*Julio Thompson –* I would add an additional role. The FIP statute specifies a role for the Attorney General’s office to consult with the CJC to determine whether individual agencies’ versions of their FIP policy is in compliance with the model policy. We view it with an eye towards the language in part in the FIP statute that refers to those two federal immigration statutes, 1373 and 1644. Ultimately the responsibility lies with the CJC, and the AG plays the additional role of consulting with the CJC on compliance.

*Ann Schroeder –* I am wondering what the Vermont Law School says about this and why it is not in effect. The Vermont Law School says that the AGO’s proposed broad exception for safety is neither required by law nor advisable for policy reasons. Neither federal law nor Vermont law require that the Criminal Justice Council make such an exception for law enforcement to call federal immigration enforcement in a situation of public safety or officer safety. This policy, this exception is a policy that could be either overused and/or misused and I wonder why we are not listening to this?

*Kim McManus –* It is important to reiterate today with the exceptions, it’s up to the council to choose those exceptions. It is the beginning clause that is the concern about being in line with federal law, that is the legal issue. The second part is, what will those exceptions be, there are two proposals in front of you. A third proposal could be suggested that mixes and matches those two proposals. The issue that Ann raised is the Attorney General’s exceptions have a public safety exception, meaning that local or state law enforcement could call federal immigration for assistance if they felt they were an imminent risk and there is no viable local alternative. The exception does not exist is the subcommittee’s proposal.

*Jennifer Morrison makes a motion to approve the subcommittees fifth recommendation as it exists, second by Jennifer Frank. Roll call vote:* **6 yes** *(Scott LaValley, Ann Schroeder, Lori Vadakin, Xusana Davis, Amanda Garces, Karen Tronsgard Scott)***, 15 no** *(Brian Searles, Karim Chapman, Jennifer Morrison, Glenn Boyde, Scott Davidson (voting by email), Chris Herrick, Julio Thompson, Tim Lueders Dumont, Mike O’Neil, Tom Chenette, Jennifer Frank, Jennifer Harlow, Kelly Price, Trevor Whipple, Sadie Donovan)***.** The proposal from the FIP Subcommittee is rejected.

*Julio Thompson moves to accept the proposed revision as submitted by the Attorney General’s Office, seconded by Brian Searles.* Mark Anderson requested clarification on if the council votes this motion down will the existing policy stand for this section. Kim McManus clarified that we would continue on with other section votes and when it came time to vote on the policy as a whole if the new policy is not approved, then our existing policy remains in effect. Amanda Garces also stated that the AGO’s proposed language has been a part of the FIP subcommittees’ conversations for many years and we should move forward with one of the options presented by the subcommittee. Julio Thompson discussed the rationale behind the AGO’s proposed language.

*Roll Call Vote:* **8 yes** *(Brian Searles, Karim Chapman, Scott LaValley, Glenn Boyde, Lori Vadakin, Julio Thompson, Amanda Garces, Karen Tronsgard Scott)***, 11 no** *(Ann Schroeder, Jennifer Morrison, Tim Lueders-Dumont, Mike O’Neil, Tom Chenette, Jennifer Frank, Jennifer Harlow, Kelly Price, Trevor Whipple, Scott Davidson (voted by email), Chris Herrick)* **2 Abstentions** *(Xusana Davis, Sadie Donovan).* The proposal from the AGO’s is rejected.

*Julio Thompson moves to propose that the council accept the AGO’s proposed language but replacing the phrase imminent risk with articulable risk, second by Amanda Garces, open for discussion.*

*Tim Lueders Dumont –* The AGO proposal was not set forth in the subcommittee in terms of where it came from, if it had been put forward for a vote in the subcommittee I would have voted ‘no’ there as well because there was some concern at the subcommittee level about whether officers would understand how to work this in a step by step. Also, the piece at the end about “shall consult with a supervisor unless doing so would unreasonably extend the individuals custodial detention” there is a lot baked into that. There needs to be the ability for the policy to be applicable, useable, and understandable for a recruit graduating from the academy.

*Jennifer Morrison –* Understanding that we are also trying to get through proposal #4 and the important work the group has done over a long period of time I offer a friendly amendment to clean up the first sentence ‘if other than’ because it is confusing to me, and I can’t imagine how a first-year police officer by themselves in the middle of the night would make sense of that. The second friendly amendment would be in the highlight at the bottom that Tim Lueders Dumont spoke to that it says, “members shall consult with a supervisor, if available…”. Those two amendments along with what Julio has offered as changing imminent to articulable.

*Julio Thompson –*With respect to the language at the bottom the genesis for that language came to us from police leaders and research we did in other agency policies in different parts of the country. I view both suggestions as friendly amendments. The phrasing in the first part, since it’s a general prohibition about sharing any information, (except information concerning citizenship or immigration status) would be fine. I agree in spirit with the idea of consulting with a supervisor if available recognizing that some there are some departments that do not have them available. I accept the commissioners’ friendly amendments.

*Amanda Garces –* I would like to always put in motion in a conversation when new recruits are brought up, I think it is our duty to train police. Everyone should be reasonably trained in the policies they are set to do. Because I seconded the motion, I would like to continue with the first motion which is to change the imminent risk and then vote on it, as the rest of the language.

*Julio Thompson –* I withdraw my original motion and put forward a motion with the edited language for section 6 before us “Share any information (other than information concerning citizenship or immigration status) about…(a) Public Safety or officer safety (articulable risk…members shall consult with a supervisor, if available…”, Trevor Whipple seconds, a comment was made by Brian Searles about the appreciation for the suggestion for a third option.

*Roll Call Vote:* **21 yes, all in favor.**

*Associate General Counsel Kim McManus:* **Recommendation 4** from the subcommittee: Regarding the language about how to reference or not reference the federal statutes. The proposal by the FIP subcommittee is that the statutes are not named in the policy, that we do not reference USC 1373 or 1644, and that there is a sentence in the purpose of the policy at the beginning of the policy that states nothing in the agency’s fair and impartial policing policy is intended to violate federal law. This recommendation passed by a majority vote of the subcommittee, but it did not have consensus.

The Attorney General had a counterproposal, they felt strongly that the federal statutes should be included in certain sections of the policy to reference that policy to make it clear where the federal statute and state policy intersect. The Attorney General’s proposal wanted to underscore that it is perfectly legal to read the federal statute as narrowly as possible, meaning the information sharing is limited to citizenship and immigration status. A few of the sections that the AGO wanted to integrate into the policy explain that a bit more.

Choosing the FIP recommendation of adding the sentence (nothing is intended to violate federal law and not including the statutes) in my opinion, would be confusing to not have the statutes in the policy. Legally my opinion would be that you do not have to have the Attorney Generals language added back in, but I think from a practical standpoint, we are aware the federal statutes exist, we are aware of our state statutes that reference those statutes. It feels unnecessary to pretend they don’t exist by not cross-referencing them in policy.

The Attorney Generals suggestion is that in key places within the policy a reference is made and in some places an explanation of where federal law and state policy meet.

*Ann Schroeder –* There are nine policies that just say what has been recommended by the subcommittee saying that ‘nothing in this policy is intended to violate federal law’, these policies are, to my understanding, in compliance. Wouldn’t it also be in compliance if it were also in the statewide policy.

*Julio Thompson –* Earlier I mentioned that there is a role for the AG’s office to review policies, consult with the CJC and then the CJC determines whether they are in compliance. So, when the AG’s office has received policies from individual agencies, that merely say ‘nothing is intended to violate federal law’, the response of the AG’s office is to send a letter, (on behalf of the CJC), that says if your policy is intended to follow 1373 and 1644 then you will be in compliance and if it doesn’t, you are not. Leaving it out does not mean that the laws aren’t applicable.

*Bill Sorrell –* Julio do you share Kim’s opinion that it may not be legally mandated but more prudent to have the statutory references in the policy?

*Julio Thompson –* Yes, I think it prevents a pitfall for the unwary officer or leadership to be trapped because most people don’t know what 1373 and 1644 are. I think it’s a way of minimizing the risk of misinformation about what policy choices the council has made versus their decision to follow both state and federal law.

*Jennifer Morrison makes a motion to accept the subcommittee’s proposal which is shown as the Winooski Model, second by Chris Herrick, no discussion.*

*Roll Call Vote:* **5 yes** *(Ann Schroeder, Lori Vadakin, Xusana Davis, Amanda Garces, Karen Tronsgard Scott)***, 16 no** *(Brian Searles, Karim Chapman, Scott LaValley, Jennifer Morrison, Glenn Boyde, Scott Davidson (voted by email), Chris Herrick, Julio Thompson, Tim Lueders Dumont, Mike O’Neil, Tom Chenette, Jennifer Frank, Jennifer Harlow, Kelly Price, Trevor Whipple, Sadie Donovan)***.** The Council rejected the Winooski Model language as presented by the FIP Subcommittee.

*Julio Thompson makes a motion to accept the AGO proposal, seconded by Jennifer Frank, discussion ensued: Jennifer Morrison -* So long as the savings clause is specifically referenced in the final policy that we pass I would hope we could streamline some of this. We have to make sure the people that we intend to carry out this policy understand it. I would offer another friendly amendment to send the AGO language to another subcommittee, examine it and come back with a discussion.

*Bill Sorrell –* The Council has a scheduled meeting April 23rd if this friendly amendment to table the discussion is accepted.

*Julio Thompson –* I think it would be feasible to have a vote on just the savings clause and then table the discussion on the above sections at the next meeting. I withdraw my previous motion and *move that the council accept the savings clause today and that we table for the next scheduled session, the remaining sections above it on the AGO proposal, second by Jennifer Morrison, discussion ensued on process.*

*Roll Call Vote:* **18 yes** *(Brian Searles, Karim Chapman, Scott LaValley, Jennifer Morrison, Glenn Boyde, Scott Davidson (voted by email), Chris Herrick, Lori Vadakin, Julio Thompson, Tim Lueders Dumont, Mike O’Neil, Tom Chenette, Jennifer Frank, Jennifer Harlow, Kelly Price, Trevor Whipple, Sadie Donovan, Karen Tronsgard Scott)***, 3 no** *(Ann Schroeder, Xusana Davis, Amanda Garces)***.**

*Kim McManus –* The FIP Subcommittee had five recommendations and during their work they reorganized the policy. In doing so there were some additional changes made that fall outside of the five recommendations.

1. Page 4 in the definitions under Federal immigration authorities, the list of agencies includes Homeland Security Investigations (HSI) this was added by the subcommittee. HSI focuses on enforcing narcotics, child exploitation, money laundering firearms and human trafficking. Many of our state and local officers regularly interact with and seek assistance from HSI. There is concern that keeping that agency in the definition could cause officers to feel like they’re violating the policy when they regularly interact with and seek assistance from HSI.

*Tom Chenette makes a motion to remove HSI from the proposed language, seconded by Julio Thompson, open for discussion.*

*Julio Thompson -* Our position is it should be struck because it is inaccurate, I think it was included based on an outdated understanding of what HSI does.

*Amanda Garces –* We know Homeland Security changes agencies, if we have a new presidency and new administration that now says HSI will be doing immigration enforcement, or it will be included in this type of work and now we have a policy that is excluded.

*Bill Sorrell –* When we finally approve the package of revisions for the policy in accordance with our statutory obligation to do so, we’re supposed to do it every two years that the council will retain control over the statewide policy. If there were a shift that would call for the Council to change the policy, our hands are not tied. That goes for the HSI issue and others as well.

*Roll Call Vote:* **18 yes** *(Brian Searles, Karim Chapman, Scott LaValley, Jennifer Morrison, Glenn Boyde, Scott Davidson (voted by email), Chris Herrick, Lori Vadakin, Julio Thompson, Tim Lueders Dumont, Mike O’Neil, Tom Chenette, Jennifer Frank, Jennifer Harlow, Kelly Price, Trevor Whipple, Sadie Donovan, Karen Tronsgard Scott)***, 3 no** *(Ann Schroeder, Xusana Davis, Amanda Garces)***.**

*Kim McManus –* I just want to point out to the Council the language changes that take place outside of the five recommendations. I don’t think each needs to be individually accepted since at the end you will be voting on the policy as a whole.

1. Wherever the phrase immigration status had been, citizenship was added.
2. Section 2 Policing (a)&(b) –We emphasized in (a) the word law in front of enforcement to make it very clear that that’s what we were talking about. In (b) under other police services, we added the words ‘or other matters under investigation’.
3. Section 4 – establishing identity- - Subsection (b) and (c) were added to this policy. This is regarding when you can ask for somebody’s identification. This is specifically giving guidance about interactions with a motor vehicle that’s in subsection (b). Subsection (c) is regarding when forms have questions about Social Security numbers, how and when somebody would or would not be required to provide that.

*Jennifer Morrison makes a motion that these incidental changes (1 and 2) (except for the section on establishing identity 3) be accepted as explained by Kim, second by Julio Thompson, all in favor* **21-0.**

Section 4 Subsection B establishing identity – *Jennifer Morrison makes a motion to accept Section 4 Subsection B, second by Trevor Whipple, no discussion, all in favor* **21-0.**

Section 4 Subsection C requesting Social Security Numbers – *Jennifer Morrison makes a motion to accept Section 4 Subsection C, second by Julio Thompson, no discussion, all in favor* **21-0.**

An updated policy will be sent out with the decisions made today so that everyone has an updated copy of what it could potentially look like if we reach a final vote at our next meeting. The new policy has been rearranged from 2017, sometimes when things are rearranged, they may seem to take on a different significance. I have pulled out anything that is new and highlighted it.

Thanks were expressed to the subcommittee, partners, and the council for all of their hard work thus far.

*Bill Sorrell moves to adjourn, seconded by Chris Herrick, no discussion, all in favor.*

Meeting adjourned: 3:30