



VCJC Fair and Impartial Policing Subcommittee Minutes August 25, 2023

FIP SUB-COMMITTEE

August 25th, 2023

VIA ZOOM

FIP Sub-Committee Members Present

Amanda Garcés (Chair), Barbara Kessler (Co-chair), Gregg Jager, Justin Stedman, Karen Tronsgard-Scott, Tabitha Moore, Tim Lauders-Dumont, Xusana Davis.

Others

Will Lambek, Migrant Justice (invited), Christopher Brickell, VCJC (invited), Erin Jacobson, AGO (invited), Jennifer Firpo, Daniel Bennett, Lia Ernst, Ann Schroeder, Enrique, Rossy, and other members of Migrant Justice.

Interpreter

Madeline Sharrow (Migrant Justice)

Meeting notes recorded by Amanda Garces

Agenda

1. Call to Order: Chair Garces
2. Introductions
3. Public Comment
4. FIP Policy AG's Office, ACLU, and Migrant Justice Recommendations (possible vote and next steps)
5. Approval of prior meeting minutes: FIP Minutes June 9th, 2023
6. Public Comment
7. FIP Training
8. Motion to adjourn

Meeting called to order at 10:08 a.m.

- Introductions

Public Comment

Jennifer Firpo, academy coordinator, would like to invite members of the Sub-Committee to provide input on two new positions within the Academy. Lindsey has requested that any committee members who have thoughts regarding important qualities or relevant experience for these positions share them via email. Lindsay will then incorporate these insights into her ongoing work.

Ann Schroeder, Wyndham, No mas PoliMigra, supporting Migrant Justice

Ann asked the committee to remove mentions of 1373 and 1644 from the new FIP version. She learned that the statutes were added during the Clinton administration in 1996.

Ann discusses how in 2016, the Fair and impartial policing (FIP) policy was implemented, which did not mention these statutes. The FIP policy underwent improvements and was approved by the Attorney General's office. While some circuit courts deemed statutes 1373 and 1644 unconstitutional, the Second Circuit Court, including Vermont, has not.

However, Connecticut, also part of the Second Circuit, lacks mention of these statutes in its own laws. Connecticut has been considered a sanctuary state, with guidelines like the Trust Act (Public Acts 1920 and 1923) regulating its cooperation with ICE.

Ann explains that the state's responsibility to cooperate with federal immigration aligns with the anti-commandeering doctrine, a principle grounded in Supreme Court rulings since 1992's 10th Amendment. This doctrine holds that federal policies cannot be imposed on states or municipalities. Although certain provisions in the Immigration and National Act permit states to assist federal enforcement, they are not obligated to do so under the 10th Amendment and the Prince ruling.

Ann concludes by questioning why a simple sentence suffices for compliance in Vermont but not for other policies, emphasizing that stating non-violation of federal law adequately defines state responsibilities.

FIP Policy Feedback and Recommendations (Invited Attorney General's office, Migrant Justice, and ACLU)

Document: Comparison Document

Appreciation to Erin Jacobson, Julio Thompson, and Will Lambeck for getting us here.

Will Lambeck, Migrant Justice: They have engaged in a thorough examination of the policy with Erin, Julio, Amanda, and other stakeholders over the past few months, with the aim of moving towards consensus. Their goal is for the state to adopt a policy that embodies a consensus opinion on certain provisions. While Migrant Justice believes they have made significant progress in reaching consensus about 99% they believe that just as consensus is important, they want make sure the policy provides protections for immigrant communities in this state.

While they believe they have made significant progress, they acknowledge that the final two provisions to be discussed still lack full consensus. Although there has been movement from the Attorney General's office and their presented language is an improvement over the current model policy, it falls short of providing necessary protections.

Will mentions conducting a detailed analysis of instances involving police and immigration enforcement on immigrant Vermonters over the last five years. They evaluate whether the proposed language could have prevented collaborations leading to detentions and deportations. If the language proves effective,

they are willing to support it. However, if it does not suffice to prevent such instances, they express their inability to support it and will communicate this clearly.

Erin Jacobson, Attorney General's office: Erin expressed deep appreciation for the individuals involved in a complex process over several months, acknowledging the patience shown by everyone and also emphasized their commitment to getting right.

Erin mentioned the goal of the Attorney General's office and their statutory requirement to be consulted by the council any time the policy is considered for reviews and updates. In doing that, our goal was to strengthen the protections from what the current policy is, but also to create a document that communicates clearly to law enforcement and the public about policing policy, as well as a document that provides clear notice to law enforcement and their supervisors about what kinds of actions could be sanctionable by the Council.

Finally, Erin pointed that the Attorney General's office is the state lawyer, so that they also have to be thinking about all of these changes in the context of current federal law in the Second Circuit and our state statutes. The FIP statute is at 20 BSA 2366 and subsection F, which was added in 2017, states that nothing in this section, meaning the fair and impartial policing section of the title, is intended to prohibit or impede any public agency from complying with the lawful requirements of eight USC 1373. In 1644, to the extent any state or local law enforcement policy or practice conflicts with the lawful requirements of eight USC 1373 and 1644, that policy or practice is, to the extent of the conflict, Abolish. So that's the context and I think we can, we can go forth and I'm excited to talk about all the places where we have consensus and then hear what the committee wants to do.

Tim: They had shown interest in discussing sections 5 and 6 of a document, particularly focusing on the savings clause. They had suggested that in the larger council, there could be further consideration of this topic, possibly involving the US Attorney's office, which might have been open to discussing interpretations due to the recent change in administration. The speaker had acknowledged that they lacked direct communication on this matter with the US Attorney's office, but they had pointed out that the new general counsel position in the Criminal Justice Council could have explored this avenue. They had emphasized the importance of seeking advice beyond the Attorney General's office due to references to federal law in the discussed sections. They had cited the example of the Connecticut model and had suggested the need to consult with the DOJ or the US Attorney's office for guidance. The speaker had clarified that they didn't intend to initiate a lengthy discussion but had wanted to bring attention to this point.

Fair and Impartial Policing Policy comparison and analysis Document

#1 Access to people in Custody: The Winooski Model is preferable for its clearer and more uniform protection; however, the AGO Proposal would not significantly weaken this protection and, in the interest of consensus, is not opposed by Migrant Justice.

Motion: To adopt the Attorney General Office proposed language for access to people in custody

Moved by: **Tabitha Moore**

Seconded by: **Karen Tronsgard-Scott**

In favor: **Amanda Garcés, Barbara Kessler, Gregg Jager, Justin Stedman, Karen Tronsgard-Scott, Tabitha Moore, Tim Lauders-Dumont, Xusana Davis**

Opposed by:

Motion Passed **Yes**

#2. Criminal immigration law enforcement - The AGO Proposal is acceptable to Migrant Justice

Motion: To approve the AGO proposal under #2 Criminal, Immigration, and Law Enforcement

Moved by: **Karen Tronsgard-Scott**

Seconded by: Xusana Davis

In favor: **Amanda Garcés, Barbara Kessler, Gregg Jager, Justin Stedman, Karen Tronsgard-Scott, Tabitha Moore, Tim Lauders-Dumont, Xusana Davis**

Opposed by:

Motion Passed **Yes**

#3. Rule 3 Custody Determinations: The Winooski Model is preferable for its clearer and more uniform protection; however, the AGO Proposal would not significantly weaken this protection and, in the interest of consensus, is not opposed by Migrant Justice.

The FIP policy document that the committee received by members had an error. It should not contain language referencing risk of flight. section put into Roman numeral 5, subsection 3, then subsection 3 That will be struck from the policy draft.

There was also reference to the pronouns use of pronouns on the Rule 3 determination. Vermont Rules of Criminal Procedure has a committee and Tim will send Tabitha's comment about upgrades to that language.

Motion: To approve the AGO proposal under #2 Criminal, Immigration, and Law Enforcement

Moved by: **Karen Tronsgard-Scott**

Seconded by: Xusana Davis

In favor: **Amanda Garcés, Barbara Kessler, Gregg Jager, Justin Stedman, Karen Tronsgard-Scott, Tabitha Moore, Tim Lauders-Dumont, Xusana Davis**

Opposed by:

Motion Passed **Yes**

#4. When can agents communicate with federal immigration agents:

The discussion revolved around the topic of when law enforcement officers can communicate with federal immigration agents, while distinguishing it from the forthcoming discussion about information related to citizenship or immigration status. These two aspects are intertwined yet treated as separate

matters. The focus was initially on the policy's stance on communication with federal immigration agents without delving into specific information.

The current policy, established in 2017, outlines three exceptions for sharing information: public safety, officer safety, and law enforcement needs unrelated to federal civil immigration law enforcement. In contrast, the Winooski model, adopted by multiple jurisdictions, including police departments and the Addison County Sheriff's Department, takes a more stringent approach. It limits information sharing to ongoing felony investigations with probable cause and directly related to federal civil immigration law.

The Attorney General's office proposal follows the current policy framework but defines key terms. It specifies that public or officer safety involves immediate risk of physical harm when state and local authorities can't provide timely help. It also offers an example of law enforcement needs unrelated to federal civil immigration law.

The discussion continued with the acknowledgment that considerable time was spent on this section. The AG's office and other stakeholders aimed to strike a balanced approach, as evident in their bolded language. Migrant Justice, while not actively opposing the AGO proposal, strongly advocated for the adoption of the language found in the Winooski model. The hope was that the subcommittee would consider this perspective.

After a lengthy discussion of #4 and #5 there was not enough time to make motions and more time was needed. The conversation will resume on September 8th at 10:00 am

The additional agenda items will be revisited then.

1. Approval of prior meeting minutes: FIP Minutes June 9th, 2023
2. FIP Training

Chair Garces asked for volunteers to revise the report. Tim and Barbara volunteered to revise the report.

Motion: To adopt the Attorney General Office proposed language for access to people in custody
Moved by: Karen
Seconded by: Tabitha
In favor: Amanda Garcés, Barbara Kessler, Gregg Jager, Justin Stedman, Karen Tronsgard-Scott, Tabitha Moore, Tim Lauders-Dumont, Xusana Davis
Opposed by:
Motion Passed Yes