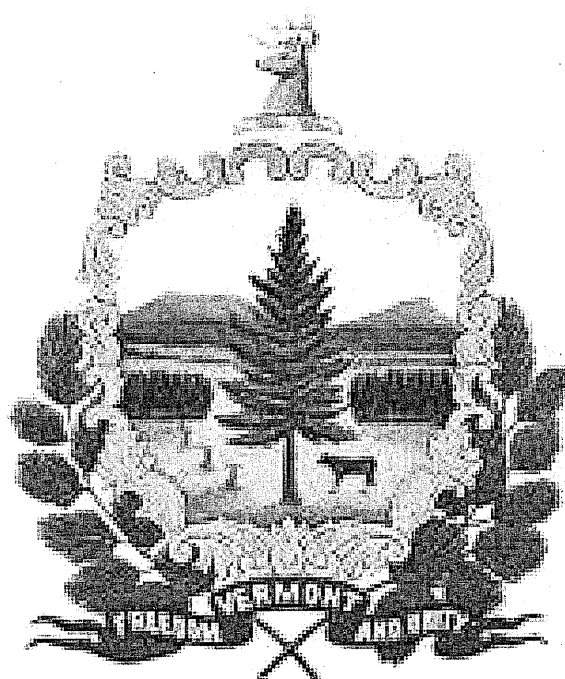


Guidance to Vermont Cities & Towns Regarding Immigration Enforcement



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PREAMBLE

“Every person within this state ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which one may receive in person, property or character; every person ought to obtain right and justice, freely, and without being obliged to purchase it; completely and without any denial; promptly and without delay; conformably to the laws.”

Vermont Constitution, Chapter 1, Article 4

Purpose and Policy

The purpose of this document is to provide guidance to local governments and law enforcement in Vermont as they consider policies regarding enforcement of federal immigration law, and cooperation and information sharing with federal immigration authorities.

The foundational purpose of any government is to protect the rights, security and safety of those who come within its jurisdiction. Local elected officials and law enforcement agencies in Vermont are dedicated to promoting and preserving public safety while protecting vulnerable communities and persons. Vermont's dedication to these principles is evident in recent efforts to address bias in policing and craft standards that afford fair treatment to everyone who finds themselves under the protection of Vermont's laws and constitution. A relationship of trust between law enforcement officials and immigrants will promote public safety throughout Vermont by encouraging all persons, whether Vermont residents or not, to report crimes and cooperate with criminal investigations.

Without adopting indefinable labels such as "sanctuary" city or town, this document provides guidance to those municipalities that are considering adopting policies to govern how municipal law enforcement personnel should interact with federal immigration officials.

Please note that 8 U.S.C. § 1373 prohibits state and local governments from restricting the ability of state and local officials to share certain information with federal immigration authorities. These Model Provisions are intended to fully comply with the lawful requirements of 8 U.S.C. § 1373. It should be noted that President Trump's Executive Order No. 13768, Enhancing Public Safety in the United States (January 25, 2017), provides that if a jurisdiction willfully refuses to comply with that statute, it may lose federal law enforcement grants except as deemed necessary for law enforcement purposes by the U.S. Attorney General or the Secretary of the Department of Homeland Security.¹

¹ *Id.*, § 9(a) ("In furtherance of this policy, the Attorney General and the [DHS] Secretary, in their discretion and to the extent consistent with law, shall ensure that jurisdictions that willfully refuse to comply with 8 U.S.C. 1373 (sanctuary jurisdictions) are not eligible to receive Federal grants, except as deemed necessary for law enforcement purposes by the Attorney General or the Secretary."). The Executive Order – "Enhancing Public Safety in the Interior of the United States" Exec. Order 13,768, 82 Fed. Reg. 8799 (Jan. 25, 2017) – is available online at <https://www.federalregister.gov/documents/2017/01/30/2017-02102/enhancing-public-safety-in-the-interior-of-the-united-states>.

Local Government Authority under State Law

The legal authority of Vermont's cities, towns and other municipalities derives from express or implied grants of authority from the State. If there are reasonable doubts about whether the State has granted legal authority to a municipality, the question must be resolved in favor of the State.² Ch. I, Art. 5 of the Vermont Constitution provides “[t]hat the people of this state by their legal representatives, have the sole, inherent, and exclusive right of governing and regulating the internal police of the same.”

In the context of immigration enforcement, this means that the scope of municipalities' legal authority to provide law enforcement services is based upon whatever grants of authority have been provided to them by the State of Vermont. For example, one Vermont statute, 24 V.S.A. § 291a, authorizes Sheriff's Departments to contract with the State or with federal agencies to provide law enforcement or related services. The statute does not mention immigration, and to date, no Sheriff's Department in Vermont has sought to enter into any contract relating to immigration enforcement.

While state law does authorize municipalities to enter into agreements with other municipalities to provide police services,³ the State has not granted Vermont municipalities the legal authority to enter into independent contracts or otherwise arrange with the federal government to enforce federal customs or immigration law. Moreover, the State retains the legal authority to prohibit or limit municipalities from performing such federal duties.⁴

Local Law Enforcement Authority Under Federal Law

Nationwide unless authorized by state law to make a criminal arrest, municipalities may perform immigration-related activities only with express authorization from federal immigration authorities, which operate within the U.S. Department of Homeland Security (DHS) and its sub-components, Immigration and Control Enforcement (ICE) and U.S. Customs and Border Patrol (CBP).

² *Morse v. Vt. Div. of St. Bldgs.*, 136 Vt. 253, 255 (1978) (citing *City of S. Burlington v. Vt. Elec. Power Co.*, 133 Vt. 438 (1975); *Univ. of Vt. St. Agric. Coll. v. City of Burlington*, 131 Vt. 70, 75 (1973)).

³ 24 V.S.A. § 1938. The statute does not authorize agreements with federal authorities to provide such services.

⁴ The Vermont Legislature is currently considering a Senate bill (S. 79) that would generally require gubernatorial approval for any state or local government entity to enter into immigration-related agreements with federal authorities under 8 U.S.C. § 1357(g) or 19 U.S.C. § 1401(i). Agreements under those statutes are discussed at pp. 5-7 below.

Section 287(g) and Similar Programs

DHS's authority to enter into working agreements with state or local law enforcement agencies stems from a number of federal laws. One of the better-known federal laws is Section 287(g) of the Immigration and Nationality Act ("INA"),⁵ which Congress added in 1996. Although neither the State of Vermont nor any Vermont municipality nor any Sheriff's Department has ever entered into such an agreement, it is worthwhile to understand how such agreements work — particularly given the Trump Administration's expressed desire to expand its Section 287(g) program.

Section 287(g) authorizes DHS to delegate immigration enforcement power to state or local government agencies. Specifically, the law provides that DHS may seek state or local assistance in the functions of the "investigation, apprehension, or detention of aliens in the United States."⁶ These arrangements are detailed in Memoranda of Agreement (MOAs) signed by DHS and the concerned state or local law enforcement agency.

Before delegating federal immigration authority to state or local law enforcement, DHS must determine the agency is qualified and provide the affected officers with comprehensive training on federal immigration law. Thereafter, approved and trained officers perform immigration-related duties under DHS supervision. DHS does not compensate state or local governments for performing this work.⁷

Congress has authorized DHS to enter various other forms of partnerships with federal law enforcement — including task forces relating to human trafficking or child exploitation. One broader program, somewhat similar to the Section 287(g) program, known as the Title 19 Officer Designation Program, authorizes DHS to designate state or local law enforcement to act as designated customs officers pursuant to an MOA with the concerned state or local agency.⁸ This designation provides local law enforcement with broad authority to enforce a sweeping variety of federal laws without compensation to the local department. In many instances, this program is focused on smuggling and narcotics interdiction. However, DHS retains the authority to expand the duties of designated customs officers to include various aspects of immigration enforcement.

⁵ Section 287(g) is codified in the United States Code (U.S.C.) as 8 U.S.C. §§ 1357(g), which is part of the INA, 8 U.S.C. §§ 1101, et seq. Although the legal citations are interchangeable, the statute is more commonly referred to as Section 287(g).

⁶ 8 U.S.C. § 1357(g).

⁷ 8 U.S.C. § 1357(g)(1)-(3).

⁸ 19 U.S.C. § 1401(i).

Absent a legally-authorized agreement to perform immigration- and customs-related duties on behalf of DHS, there are limited circumstances where state or local law enforcement agencies may enforce immigration laws on their own.⁹ The agencies and their employees may, but are not required to, communicate with immigration enforcement agencies regarding the immigration status of an individual¹⁰ and cooperate with immigration enforcement agencies in their investigation, detention, and removal of individuals unlawfully present in the United States.¹¹

Current Status of Section 287(g) Program

President Trump's Executive Order No. 13768, Enhancing Public Safety in the United States (January 25, 2017)¹² directs the Secretary of DHS to reinstitute agreements under the 287(g) program. DHS does not currently have any valid agreement with any locality in the United States to enforce immigration laws. Nor has DHS promulgated new rules for the 287(g) program.

The Executive Order directs the DHS Secretary to enter into Section 287(g) Program agreements with the Governors of the States as well as local officials, "to empower State and local law enforcement agencies across the country to perform the functions of an immigration officer in the interior of the United States to the maximum extent permitted by law." The Executive Order explains that this "authorization shall be in addition to, rather than in place of, Federal performance of these duties." Further, the President instructed the Secretary to structure the agreements under Section 287(g) "in the manner that provides the most effective model for enforcing Federal immigration laws and obtaining operational control over the border for that jurisdiction."

ICE and CBP Detainers and Applicable Law

ICE and CBP often submit to state or local law enforcement written requests, often called "immigration detainers" or "detainers" asking them to hold

⁹ 8 U.S.C. § 1324(c) (ability to arrest individual for criminal acts under INA of harboring certain aliens); 8 U.S.C. § 1252c (ability to arrest aliens who are unlawfully present in the United States and were previously removed after being convicted of a felony once unlawful immigration status has been confirmed by ICE). State law governing the authority to arrest does not distinguish between Vermont crimes, federal crimes, or crimes under the laws of other states. V.R.Cr.P. 3; *State v. Towne*, 158 Vt. 607, 630 (1992).

¹⁰ 8 U.S.C. §§ 1373 and 1644.

¹¹ 8 U.S.C. § 1357(g)(10).

¹² Executive Order No. 13768, Enhancing Public Safety in the Interior of the United States, *supra* note 1 and accompanying text.

individuals in custody for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) in order for ICE or CBP to determine if they will take them into custody for lawful immigration purposes and to transfer them into the hands of federal officers.

The INA makes clear that a detainer *is a request* from the immigration agency. The law imposes no legal obligation or authority on a local law enforcement agency to detain an individual.¹³ Thus, a law enforcement agency's cooperation with a detainer from immigration authorities is *strictly voluntary and not mandatory*. The forms currently used by ICE state that detainees are voluntary.¹⁴

Further, a state or local law enforcement agency receiving an ICE or CBP detainer must be mindful of state¹⁵ and federal¹⁶ constitutional prohibitions against unreasonable searches and seizures.¹⁷ If a law enforcement agency complies with an immigration agency's request and detains an individual for longer than necessary for the law enforcement agency's own purposes, the continued detention of the individual constitutes a further seizure of the person that must be legally justified by, for example, probable cause that the individual committed a criminal offense and is subject to removal from the United States. Importantly, it is *not* a criminal offense for an individual to be unlawfully present in the United States.¹⁸ Unlawful presence *alone* is a civil, not criminal, violation and complying with a detainer request on this basis alone will not meet the warrant requirement under the Constitution. However, a properly obtained judicial warrant or an exception to the warrant requirement would satisfy both the Fourth Amendment and Article 11.

A law enforcement agency's cooperation with a detainer request in violation of the Fourth Amendment could result in the imposition of monetary damages against the local agency.¹⁹ Law enforcement agencies must comply with Vermont and Federal constitutional obligations in responding to immigration detainer requests.

¹³ *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014).

¹⁴ DHS Form I-247D, Immigration Detainer - Request for Voluntary Action.

¹⁵ Vt. Const., Ch. I, Art. 11

¹⁶ U.S. Const., Amend. IV.

¹⁷ See *Morales v. Chadbourne*, 793 F.3d 208 (1st Cir. 2015); *Miranda-Olivares v. Clackamas Cnty.*, 2014 U.S. Dist. LEXIS 50340 (D. Or. April 11, 2014).

¹⁸ *Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012).

¹⁹ See *Santos v. Frederick Cty. Bd. of Comm'rs.*, 725 F.3d 451, 464-66, 470 (4th Cir. 2013).

Collecting and Sharing Information and Applicable Law

ICE and CBP often ask state or local law enforcement agencies for information about detained individuals in order to determine their removability or whether to take custody of them. Whether agencies provide such information absent a request is purely voluntary.

At the same time, a federal statute, 8 U.S.C. § 1373, provides that state and local governments may not prohibit their employees from sharing information about the citizenship or immigration status of an individual.

§ 1373 Communication between governmental agencies and the Immigration and Naturalization Service

(a) In general

Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities
Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

- (1)** Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
- (2)** Maintaining such information.
- (3)** Exchanging such information with any other Federal, State, or local government entity.

A similar federal statute, 8 U.S.C. § 1644 provides that state and local agencies may not be prohibited from such information sharing.

§ 1644 Communication between State and local government agencies and Immigration and Naturalization Service

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the

United States.

These statutes do not mandate the collection of information nor forbid policies that prohibit the sharing of other, non-public or confidential information about an individual. Two important consequences follow from the limited scope of § 1373 and § 1644.

First, the laws do not expressly require any government or law enforcement agency to collect immigration-related information. Thus, state and local governments may prohibit their employees from asking individuals about their immigration status. But law enforcement agencies may inquire about nationality when necessary to allow for consular notification pursuant to the Vienna Convention. Moreover, in some criminal investigations, such as those involving human trafficking or hate crimes, an individual's immigration status may be relevant information and an inquiry would be appropriate.

Second, the laws do not require state or law enforcement authorities to disclose immigration status information to federal authorities or to spend any of their budget or resources providing such information.

In addition, courts have not yet had the opportunity to examine the full scope of § 1373 and § 1644, and there remain questions about whether and to what extent those provisions intrude upon state and local government rights accorded under the Tenth Amendment to the U.S. Constitution. The Tenth Amendment reserves any power not delegated to the federal government to the states. The Amendment may be interpreted to provide government and law enforcement agencies the authority to prohibit or restrict voluntary sharing of information if it interferes with the operations of state and local government.²⁰ To date, there has been only one reported court decision addressing § 1373 and § 1644 and the Tenth Amendment. In that case, decided in 1999, the U.S. Court of Appeals for the Second Circuit held that the Tenth Amendment did not permit New York City to command "passive resistance" to federal law by prohibiting city employees from transmitting information regarding immigration status to federal immigration authorities.²¹ The court acknowledged, however, that state and local governments need to collect information, and guarantee its confidentiality, in order to perform their sovereign functions, and that "preserving confidentiality may in turn require that state and local governments regulate the use of such information by their employees."²² A fair reading of this decision is that § 1373 and § 1644 may not

²⁰ *City of New York v. United States*, 179 F.3d 29 (2nd Cir. 1999).

²¹ *Id.*

²² *Id.* at 37.

constitutionally prohibit state and local governments from maintaining confidentiality policies directly serving sovereign state interests — even if immigration status is included in the class of protected information. Although no court has yet addressed that set of circumstances, the Second Circuit’s decision has been understood by many to provide state and local governments a “safe harbor” in which they may require confidentiality as a means of carrying out their sovereign functions.

The Vermont Public Records Act (PRA) also provides guidance on the type of information a state or local government could restrict from sharing with federal immigration authorities.²³ 1 V.S.A. § 317(c) identifies records and types of information that are exempt from public copying and inspection; including records dealing with the detection and investigation of a crime that disclose information which would constitute an invasion of privacy. Thus, the PRA acknowledges some expectation of privacy with respect to information obtained by state and local governments.²⁴

²³ 1 V.S.A. § 317. Definitions; public agency; public records and documents

(c) The following public records are exempt from public inspection and copying:

- (1) Records which by law are designated confidential or by a similar term.
- (2) Records that by law may only be disclosed to specifically designated persons.

...

(5)(A) Records dealing with the detection and investigation of crime, but only to the extent that the production of such records:

- (i) could reasonably be expected to interfere with enforcement proceedings;
- (ii) would deprive a person of a right to a fair trial or an impartial adjudication;
- (iii) could reasonably be expected to constitute an unwarranted invasion of personal privacy;
- (iv) could reasonably be expected to disclose the identity of a confidential source, including a state, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;
- (v) would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecution if such disclosure could reasonably be expected to risk circumvention of the law;
- (vi) could reasonably be expected to endanger the life or physical safety of any individual.

²⁴ The statement of policy in the PRA provides, in part, that “[a]ll people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer.” 1 VSA § 315(a).

Policy Principles and Considerations for Adopting Policies

The policy principles below offer municipalities and local law enforcement agencies guidance on their ability to prohibit and restrict certain actions with respect to working with the federal government on enforcing federal immigration law. Broadly speaking, and with exceptions, the principles declare that law enforcement will not dedicate time or resources to the enforcement of federal immigration law, and that federal immigration detainer requests should be declined, except under specific circumstances. The model principles also prohibit inquiry into an individual's immigration status for the sole purpose of investigating and enforcing compliance with federal immigration laws.

In 2016, Vermont law required the Vermont Criminal Justice Training Council (VCJTC) to adopt a model Fair and Impartial Policing (FIP) policy,²⁵ and required all law enforcement agencies to adopt a FIP policy incorporating at least the essential elements of that policy. On July 1, 2016, the VCJTC adopted and promulgated the FIP policy. The policy bans racial profiling by law enforcement and contains specific policies ensuring that local law enforcement officers remain uninvolved in the enforcement of civil immigration law. The policy language covers many of the same issues as the policy principles below. For further information, please refer to the FIP policy in Appendix A.

Before considering adopting a municipal law enforcement policy, it is worthwhile to summarize local governments' requirements with respect to assisting the federal government in enforcing federal immigration law. Doing so will help ensure that municipalities avoid putting their federal grant funding at risk. Put simply, local governments are under no obligation to enter into memoranda of agreement (MOAs) regarding immigration enforcement with the federal government, nor are they required to detain an individual through a federal "immigration detainer" request.

While federal law does not *require* municipalities to share immigration status information, § 1373 and § 1644 both state that municipal agencies and their employees cannot be *prohibited* from sharing such information. Although the Second Circuit has suggested those two statutes might not apply in all instances, the issue has not been fully resolved by the courts.²⁶ Thus, municipalities **should not** adopt any policies or practices that prohibit or punish voluntary disclosure of immigration status information to federal authorities.

²⁵ See Appendix A.

²⁶ See discussion at p. 8 and n. 20 above.

If your municipality is informed by a federal agency that it is ineligible to receive federal grants as a consequence of adopting the following policy, please contact your municipal attorney and the Vermont Attorney General's Office at (802) 828-3171 immediately.

In addition, if your municipality becomes aware of any allegations of unlawful discrimination or any alleged hate crimes, please contact the Vermont Attorney General's Civil Rights Unit at (802) 828-3657. You may also contact the Unit via e-mail at ago.civilrights@vermont.gov.

Cities and towns should also consult with their attorney for guidance prior to the adoption of such policies.

Principles of Municipal Law Enforcement and Cooperation and Information-Sharing with Federal Authorities

Vermont towns and cities have an interest in furthering a criminal justice system that affords protection to all people and fosters confidence and respect for our legal system. It is essential that victims and witnesses report crimes and fully cooperate in investigations; that witnesses come forward and provide testimonial and other evidence; that people report suspicious activity and other information to reduce crime and disorder; and that help is summoned when needed. Trust between law enforcement agencies and the communities they serve is therefore critical to their law enforcement mission.

To build trust with the communities they serve, Vermont law enforcement agencies have an interest in ensuring that people's confidential information is not disclosed inappropriately. Confidential information may include immigration status alongside other personal characteristics such as sexual orientation, gender identity, receipt of public assistance, national origin, physical or mental condition, status as a victim of domestic violence or sexual assault, or status as a crime witness. This list is not exhaustive. Law enforcement officers should not voluntarily disclose confidential information where such disclosure may (a) jeopardize someone's health, welfare, or safety, or (b) discourage crime victims or witnesses from cooperating with law enforcement efforts.

In light of the strong Vermont public policy against the detention and harassment of authorized visitors, immigrants, and citizens who do not have or carry certain identification documents, inquiry into and disclosure of information regarding immigration status should only occur in limited circumstances.

In light of these principles, Municipal Law Enforcement personnel should consider adhering to the guidelines set forth below. These guidelines are in addition to, and should not be viewed as a substitute for, the VCJTC model FIP Policy set forth in Appendix A. Sections below marked with a double asterisk (**) reflect provisions of the VCJTC model FIP Policy that the VCJTC identified as optional for law enforcement agencies.

It is recognized that Vermont law enforcement agencies located near the Canadian border have more frequent contact with federal customs and border authorities (e.g., United States Border Patrol). The guidelines are not intended either to impair relationships with federal border authorities, compromise officer safety, or hinder local or federal enforcement priorities. Nonetheless, even the most vigorous efforts to ensure public safety must be free of practices that may unnecessarily reduce willingness to cooperate with law enforcement efforts. Such sentiments can serve to hinder the overall mission of protecting public safety.

Municipal Law Enforcement Involvement in Enforcement of Immigration Law

Purpose and Policy: Immigration is a federal policy issue between the United States government and other countries, not local or state entities and other countries. Absent formal agreements with federal immigration agencies, federal law does not grant local and state agencies authority to enforce civil immigration law. Similarly, state law does not grant local and state agencies authority to enforce the civil immigration laws. Therefore, it is the policy of [Municipality/Department] that:

1. [Law Enforcement Officers] shall not stop, question, interrogate, or detain any individual solely for the purpose of enforcing federal immigration laws.
2. [Law Enforcement Officers] shall not inquire about the immigration status of crime victims, witnesses, or others who call or approach the police seeking assistance where such an inquiry is not germane to the investigation of a crime. Where such inquiries are appropriate (e.g., investigations of suspected human trafficking or of hate-motivated crimes), officers should explain the reasons for making them, unless doing so would compromise the investigation or officer safety.
3. [Law Enforcement Officers] shall not use an individual's personal characteristics as a reason to ask about, or investigate, a person's immigration status. [Law Enforcement Agency members] may inquire about immigration status only when it is necessary to the ongoing investigation of a criminal offense.

4. Law enforcement personnel who interact with crime victims whose presence in the United States is currently unauthorized should be aware that there may be immigration relief available based on a person's status as a crime victim and inform them that resources may be available.
5. Given competing state and local investigative and prosecutorial priorities, [Law Enforcement Officers] shall not dedicate time or resources to the enforcement of federal immigration law.
6. ** Unless ICE or CBP agents have a criminal warrant, or [Agency members] have a legitimate law enforcement purpose exclusive to the enforcement of immigration laws, ICE or CBP agents shall not be given access to individuals in [Agency's] custody, and [Agency members] shall not expend public time or resources responding to ICE or CBP inquiries or communicating with ICE or CBP by providing information beyond what is available to the general public under open records laws.**
7. Nothing in this Policy shall preclude any Municipality, department, agency, commission, officer or employee from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:
 - a) Sending such information to, or requesting or receiving such information from, the ICE and CBP;
 - b) Maintaining such information;
 - c) Exchanging such information with any other federal, state, or local government entity.

Response to Federal Immigration Detainer Requests

Purpose and Policy: The Vermont Constitution provides that no person shall be arrested and detained unless upon a warrant or pursuant to an exception to the warrant requirement.

1. [Law Enforcement Officers] should not enforce an ICE detainer from a federal agency to detain or transfer an individual for immigration enforcement or investigation unless the request is accompanied by a judicial warrant or a recognized exception to the warrant requirement.
2. ** [Law Enforcement Officers] shall not arrest or detain any individual based on a civil immigration warrant, including DHS Forms I-200, I-203, I-205, and any administrative warrants listed in the National Crime Information Center Database (NCIC). These federal administrative warrants have not been reviewed by a judge or any neutral magistrate. Moreover,

federal regulations direct that only federal immigration officers can execute such warrants. Finally, Vermont law enforcement agencies do not have any authority to enforce civil immigration law.**

3. If a detainer is accompanied by a judicial warrant, the detainer and warrant shall be provided to the individual named in those documents. The named individual shall be given an opportunity to consult an attorney.

Responsibility Regarding Sharing Information With Federal Immigration Law Enforcement Agencies

Purpose and Policy: It is the policy of [Municipality/Department] to cooperate with federal law enforcement whenever doing so is consistent with state law or required by federal law. However, recognizing the limited resources of each agency, [Municipality/Department] resources shall not be used solely for the purpose of collecting information for federal immigration enforcement agencies or local agencies carrying out immigration enforcement activities.

1. [Municipality/Department] shall not use funds, personnel or resources to collect any information regarding an individual's immigration status unless necessary to an ongoing criminal investigation.
2. Nothing in this policy shall be interpreted to prohibit or restrict any government entity or official from sending to, or receiving from, federal immigration authorities, information regarding the citizenship or immigration status, lawful or unlawful, of an individual pursuant to Sections 1373 and 1644 of Title 8 of the United States Code.
3. [Law Enforcement Officers] may not be prohibited or in any way restricted from providing information regarding the immigration status of any individual to federal immigration authorities or maintaining such information. In disclosing the immigration status of an individual to federal immigration authorities, the [Municipal / Department] employee making the disclosure should make a record that specifically articulates whether the information was requested by federal immigration authorities, and if, so:
 - a) whether disclosure of that individual's immigration status to federal authorities was in the public safety interests of the community, and if so, how;
 - b) whether disclosure advanced the agency's essential mission to serve and protect equally all individuals who are present in the community, and if so, how; and

- c) the anticipated effect of disclosure on any ongoing investigation involving that individual.

Nothing in this policy shall prohibit any employee or agency from responding to or providing information pursuant to a valid judicial subpoena.

VERMONT CRIMINAL JUSTICE TRAINING COUNCIL
FAIR AND IMPARTIAL POLICING POLICY

PURPOSE

The purpose of this policy is to communicate the requirement that all [agency or department] conduct policing in a fair and impartial manner, to clarify the circumstances in which officers can consider personal characteristics 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.

POLICY

Employees are prohibited from engaging in biased policing. This means no member of [this agency] shall take actions based on any personal characteristics, except as described below, in the services our employees provide to the community in connection with our law enforcement activities. To achieve this objective [agency or department] will implement a combination of best practices including but not limited to: hiring, in-service training, policy development, supervision, reporting and investigative processes, appropriate discipline, and community outreach/partnerships.

CONTENT

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.

“Immigration status”: Refers to an individual’s lawful or unlawful presence in this country.

“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.

II. Policing Impartially

- A. As required by statutes, Chapter I, Article 11 of the Vermont Constitution and Amendment IV of the United States Constitution, all enforcement actions by law enforcement officers, such as investigation, detentions, traffic stops, arrests, searches and seizures, etc. must be based on reasonable suspicion, probable cause or other required legal standards.
- B. [Agency members] must be able to articulate specific facts, circumstances, and conclusions which support the required standard for a given enforcement action.
- C. [Agency members] may take into account reported race, ethnicity or other personal characteristics of persons based on credible, reliable, locally relevant information that links a person of specific description to particular criminal incidents.
- D. [Agency members] should comply with Title VI of the 1964 Civil Rights Act and utilize professional interpreter services either in person or telephonically when necessary to speak with a person with limited English proficiency.
- E. Under federal and state law, law enforcement agencies are required to provide qualified interpretation services to any person in need of it. [Agency members] shall not contact federal authorities for interpretation services, unless a clear emergency requires it and licensed interpretation services are not available through any other means. Unless one of the exceptions included in Section VIII applies, the [agency member] shall not ask about the immigration status of the person for whom interpretation is required.

III. Community Relations

To cultivate and foster transparency and trust, each [agency member] shall do the following when conducting pedestrian and vehicle stops or otherwise interacting with the public:

- A. Be courteous and professional;
- B. Introduce him/herself to person (providing name and agency affiliation), and state the reason for the stop as soon as practical unless providing this information will compromise officer or public safety;
- C. Ensure that the detention is no longer than necessary to take appropriate action for the known or suspected offense and that the person understands the purpose of 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.

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. 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 or department] Fair and Impartial Policing policy. If the caller is concerned about the person's perceived immigration status, the caller should be referred to federal authorities.
- 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.

V. Due Process and Immigration Enforcement

- A. Building trust between police and all residents is vital to the public safety mission of [Agency]. Policing in a fair and impartial manner is essential to building such trust. Therefore, [Agency members] shall not use an individual's personal characteristics as a reason to ask about, or investigate, a person's immigration status. [Agency members] may inquire about immigration status only when it is necessary to the ongoing investigation of a criminal offense.
- B. Immigration is a federal policy issue between the United States government and other countries, not local or state entities and other countries. Federal law does not grant local and state agencies authority to enforce civil immigration law. Similarly, state law does not grant local and state agencies authority to enforce civil immigration laws. [Agency members] shall not dedicate [agency] time or resources to the enforcement of federal immigration law where the only violation of law is presence in the United States without authorization or documentation.
- C. The Constitution's 4th Amendment Right against unreasonable search and seizure applies equally to all individuals residing in the United States. Therefore, [agency members] shall not initiate or prolong stops based on civil immigration matters, such as suspicion of undocumented status. Similarly, [agency members] shall not facilitate the detention of undocumented individuals or individuals suspected of being undocumented by federal immigration authorities for suspected civil immigration violations.
- D. "Administrative warrants," "immigration detainers," and "requests for notification" issued by Immigration and Customs Enforcement (ICE) have not been reviewed by a neutral magistrate and do not have the authority of a judicial warrant. Therefore, [agency members] shall not comply with such requests.

VI. Training and Compliance

- A. The [agency/department] 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.
- C. Violations of the policy shall result in appropriate disciplinary action as set forth in the [agency's/ department's] rules and regulations.

VII. Accountability and Supervision

- A. Accountability is a vital element of policing. Police agencies are better able to achieve the goals of protecting the public safety, enhancing the quality of neighborhood life, and serving community needs if the communities they serve trust them. The process for making a complaint shall be readily available to the public.**
- B. All members of this agency 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. Shift supervisors will accept any complaint from the public regarding any provision of this policy and shall follow the agency's procedure for handling citizen's complaints.**
- D. Supervisors shall ensure that all employees in their command are familiar and in compliance with the content of this policy. Supervisors will be alert and respond to indications of potential biased policing.**

VIII. Additional Guidance Regarding Due Process and Immigration Enforcement

A. VICTIM AND WITNESS INTERACTION

The following guidelines are based on best practices and offer guidance on how to best support crime victims/witnesses and to ensure procedural justice and enhance trust between the police and community.

- a. Federal law does not require law enforcement agencies to ask about the immigration status of crime victims/witnesses. It is essential to the mission of the [agency/department] that victims report crimes and fully cooperate in investigations; that witnesses come forward and provide testimonial evidence; that persons report suspicious activity and other information to reduce crime and disorder; and that help is summoned when needed. These activities must be undertaken without hesitation and without fear that the victim, witness, or reporting person will be subject to prosecution or deportation for no reason other than immigration status.**
- b. To effectively serve immigrant communities and to ensure trust and cooperation of all victims/witnesses, [agency members] will not ask about, or investigate, immigration status of crime victims/witnesses unless the victim/witness is also a crime suspect and immigration status is necessary to the criminal investigation. [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] should communicate that they are there to provide assistance and to ensure safety, and not to deport victims/witnesses and that [agency members] do not ask victims/witnesses about their immigration status nor will**

they report immigrants or the immigration status of victims/witnesses to the Department of Homeland Security.

- c. **Therefore, [Agency members] will act first and foremost in the best interests of our community and our mission when dealing with undocumented foreign nationals who come to the agency/department for help or to make reports, giving full priority to public safety and justice concerns.**

B. IMMIGRATION STATUS:

- a. **[Agency member's] suspicion about any person's civil immigration status shall not be used as a basis to initiate contact, detain, or arrest that person. The exception to this would be in those instances where the agency member is working with Federal partners in the Stone Garden program or similar Federal initiatives.**
- b. **[Agency members] may not inquire about a person's civil immigration status unless civil immigration status is necessary to the ongoing investigation of a criminal offense. It is important to emphasize that [Agency] should not use a person's characteristics as a reason to ask about civil immigration status.**
- c. **[Agency members] shall not make warrantless arrests or detain individuals on suspicion of "unlawful entry," unless the suspect is apprehended in the process of entering the United States without inspection. Arrest for "unlawful entry" after a person is already within the United States is outside the arrest authority of Vermont officers.**

C. ESTABLISHING IDENTITY:

- a. **[Agency members] may make attempts to identify any person they detain, arrest, or who come into the custody of the [Agency].**
- b. **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. An individual should not be stopped or detained solely for the purpose of establishing his or her identity. [Agency members] may utilize federal databases in attempts to establish an individual's identity. [Agency members] shall utilize federal databases in attempts to establish an individual's identity only when all other attempts to identify the person have failed. Contact with federal authorities made to determine an individual's identity is restricted to the purpose of determining his or her identity.**

D. CIVIL IMMIGRATION WARRANTS:

- a. **[Agency members] shall not arrest or detain any individual based on a civil immigration warrant, including DHS Forms I-200, I-203, I-205, and any administrative warrants listed in the National Crime Information Center Database (NCIC). These federal administrative warrants are not valid warrants for Fourth Amendment purposes because they are not reviewed by a judge or any neutral magistrate. Moreover, federal regulations direct that only federal immigration officers can execute said warrants. Finally, Vermont law enforcement agencies do not have any authority to enforce civil immigration law.**

E. RESTRICTIONS ON COLLABORATION WITH FEDERAL IMMIGRATION OFFICERS:

- a. [Agency members] shall not contact CBP or ICE for assistance on the basis of a suspect's or arrestee's race, ethnicity, national origin, or actual or suspected immigration status.
- b. **[Agency members] shall not prolong any stop in order to investigate immigration status or to allow CBP or ICE to investigate immigration status.**
- c. **Sweeps intended solely to locate and detain undocumented immigrants shall not be conducted unless acting in partnership with a Federal agency as part of a formal partnership.** [Agency members] are not permitted to accept requests by ICE or other agencies to support or assist in operations that are primarily for immigration enforcement.

F. USE OF RESOURCES:

- a. [Agency members] shall not hold for or transfer people to federal immigration agents unless the federal agents provide a judicial warrant for arrest. An immigration detainer (Form I-247, I-247D, I-247N, or I-247X) is not a warrant and is not reviewed by a judge, and therefore not a lawful basis to arrest or detain anyone. Valid criminal warrants of arrest, regardless of crime, shall not be confused with immigration detainers. This General Order does not affect the proper handling of arrests and detentions associated with criminal arrest warrants.
- b. Unless ICE or Customs and Border Patrol (CBP) agents have a criminal warrant, or [Agency members] have a legitimate law enforcement purpose exclusive to the enforcement of immigration laws, ICE or CBP agents shall not be given access to individuals in [Agency's] custody, and [Agency members] shall not expend public time or resources responding to ICE or CBP inquiries or communicating with ICE or CBP by providing information beyond what is available to the general public under open records laws.
- c. **Citizenship, immigration status, national origin, race, and ethnicity should have no bearing on an individual's treatment in [Agency's] custody. Immigration status or perceived immigration status, including the existence of an immigration detainer, shall not affect the detainee's ability to participate in pre-charge or police-initiated pre-court processes. Furthermore, immigration status or perceived immigration status shall not be used as a criteria for citation, arrest, or continued custody Rule 3 of the Vermont Rules of Criminal Procedure.**