

VERMONT CRIMINAL JUSTICE COUNCIL
FAIR AND IMPARTIAL POLICING POLICY
AS ADOPTED BY CHESTER POLICE DEPARTMENT

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VERMONT CRIMINAL JUSTICE COUNCIL FAIR AND IMPARTIAL POLICING POLICY

Effective Date: April 23, 2024

This Fair and Impartial Policing policy was amended by the Vermont Criminal Justice Council on June 05, 2024. It replaces the Policy amended by the Vermont Criminal Justice Council on April 23, 2024.

PURPOSE

The purpose of this policy is to require that all sworn members of Chester Police Department conduct policing in a fair and impartial manner, to clarify the circumstances in which officers can consider personal characteristics or citizenship or immigration status 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. Chester Police is required to adopt each component of the Vermont Criminal Justice Council's model fair and impartial policing policy.

INTRODUCTION

Employees are prohibited from engaging in biased policing. This means no member of Chester Police shall take actions based on any personal characteristics or citizenship or immigration status, except as described below, in the services our employees provide to the community in connection with our law enforcement activities.

Because partnership with Vermont residents is the most effective way to ensure public safety, maintaining the public's trust is a primary concern. To secure this trust, personal characteristics or citizenship or immigration status should have no adverse bearing on an agency's interactions with an individual. Enforcement of civil immigration law is a federal responsibility, and agencies should not engage in such enforcement except as otherwise outlined in this policy. Vermont residents are more likely to engage with law enforcement and other officials by reporting emergencies, crimes, and acting as witnesses; to participate in economic activity; and to be engaged in civic life if they can be assured they will not be singled out for scrutiny on the basis of their personal characteristics or citizenship or immigration status.

To achieve these objectives Chester Police Department will implement a combination of best practices in areas including but not limited to: hiring, in-service training, policy development, supervision, reporting and investigative processes, appropriate discipline, and community outreach/partnerships.

POLICY

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.

“Citizenship or Immigration status”: Generally refers to the legal rights, if any, of a non-citizen to enter or remain in this country, or to exercise certain rights (e.g., vote in federal elections). Examples of status include, without limitation, “lawful permanent resident,” “temporary worker,” “refugee,” and “undocumented.”

“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.

“Federal immigration authorities”: federal agencies, departments, or employees or contractors thereof, tasked with enforcement of immigration law and border entry, including without limitation the Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP).

II. Policing Impartially

- a. As required by law, all law enforcement actions by law enforcement officers, such as investigations, detentions, traffic stops, arrests, searches and seizures, etc., must be based on reasonable suspicion, probable cause or relevant exigent circumstances, supported by articulable facts, circumstances, and conclusions that support the given action.

- b. Chester Police Department members may take into account reported race, ethnicity or other personal characteristics of persons based on credible, reliable, locally relevant, temporally specific information that links a person of specific description to particular criminal incidents or other matters under investigation and is combined with other identifying information.
- c. Personal characteristics shall not be used as a reason to arrest someone instead of citing them and shall not impact the decision on whether to seek continued custody pursuant to Vermont Rule of Criminal Procedure 3.
- d. Citizenship or immigration status shall not be used as reason to arrest someone instead of citing them and shall not impact the decision on whether to seek continued custody pursuant to Vermont Rule of Criminal Procedure 3, except that criminal liability for offenses where one's citizenship, or immigration status, is an essential element is a factor that may be considered in a Rule 3 determination.
 - 1. (Example: An individual convicted of a violent felony is removed by immigration authorities after serving their sentence. Unlawful re-entry by that individual may result in substantial prison time – 10 years or more. Those factors may be considered because the prospect of long incarceration can be relevant to case-by-case evaluation of flight risk.)
 - 2. Note that per Section V of this Policy, Chester Police Department members do not have authority to investigate civil immigration laws and that Chester Police Department members shall not ask about or investigate a person's citizenship or immigration status unless information regarding citizenship or immigration status is an essential element of a crime.
- e. Personal characteristics and/or citizenship or immigration status, including the existence of a civil immigration detainer, shall not affect the detainee's ability to participate in pre-charge or police-initiated pre-court processes such as referral to diversion or a Community Justice Center.
- f. Under federal and state law, law enforcement agencies are required to provide qualified interpretation services, either in person or telephonically, to any person in need of it.

III. Community Relations

To cultivate and foster transparency and trust with all communities, each Chester Police Department member shall do the following when conducting pedestrian and vehicle stops or otherwise interacting with members of the public unless circumstances indicate it would be unsafe to do so:

- a. Be courteous and professional;
- b. Introduce themselves to the person (providing name and agency affiliation), and state the reason for the stop as soon as practicable unless providing this information will compromise officer or public safety or a criminal investigation;
- c. Ensure that a detention is no longer than necessary to take appropriate action for the known or suspected offense and the [agency member] conveys the purpose of the reasonable delays;
- d. Provide department members name verbally when requested. Department members may also provide the information in writing or on a business card;
- e. 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. Establishing Identity

- a. An individual shall not be stopped or detained solely for the purpose of establishing identity. However, if the individual has already been stopped for a lawful purpose, the individual may be subject to objectively reasonable additional detention in order to establish identity (*e.g.*, inquiry into identity during the course of a lawful traffic stop).
- b. Absent reasonable suspicion of unlawful activity, [agency members] shall not require that passengers in motor vehicles provide identification or other documents. If requesting such documents, [agency members] will state that passengers are not required to provide them. A passenger not providing identification does not constitute reasonable suspicion of unlawful activity. In no instance shall the enforcement of civil immigration law be a reason to request identification or other documents (See Section V).
- c. In instances when a standardized form has a field requesting an individual's social security number, Chester Police may request such information for the purposes of establishing identity. An individual not providing a social security number does not own its own constitute reasonable suspicion of unlawful activity. The absence of a social security number is not indicative of citizenship or immigration status. In no instance shall the enforcement of civil immigration law be a reason to request a social security number.
- d. 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. All identification is subject to reasonable scrutiny and follow-up for authentication consistent with the provisions of this policy. Any contact with federal immigration authorities to determine an

individual's identity must comply with guidance regarding Interactions with Federal Immigration Officers in Section VI.

V. State / Local Enforcement Authority / Priorities and Federal Immigration Law

The trust and cooperation of immigrant communities is essential to prevent and solve crimes and maintain the safety and security of all. The U.S. Constitution's Fourth Amendment and the Vermont Constitution's Article 11 rights against unreasonable search and seizure apply equally to all individuals in Vermont.

- a. Chester Police members do not have authority to enforce federal civil immigration law. Mere presence in the United States without authorization – for example, residing in the country with an expired visa – is a civil violation and may not be subject to investigation.
- b. Though Chester Police members have authority to enforce federal criminal law, enforcement of federal criminal immigration law is generally not a priority. Accordingly, officers should not make warrantless arrests, detain individuals, facilitate the detention of individuals, or otherwise expend resources investigating or enforcing unlawful entry or unlawful reentry cases unless such actions are (1) necessary to ensure public safety or officer safety (imminent risk of physical injury to subject, officer, or third party) or (2) integral to the investigation of criminal offenses unrelated to immigration law.
- c. The following do not on their own establish reasonable suspicion of a criminal offense and are not sufficient to warrant an investigation:
 1. Personal characteristics, including Limited English Proficiency
 2. Citizenship or Immigration status,
 3. Presence in the United States without authorization or formal documentation, and
 4. Proximity to the border.

These elements in combination with others may contribute to reasonable suspicion. As noted in Section II(b), personal characteristics may be taken into account only where there is credible, reliable, locally relevant, temporally specific information that links a person of specific description to particular criminal incidents and is combined with other identifying information.

- d. In interacting with all people,* including suspects, crime victims, and witnesses, officers shall **not**:
 1. Ask about or investigate a person’s citizenship or immigration status unless information regarding citizenship or immigration status is an essential element of the crime (such as human trafficking).
1. Initiate or prolong stops for the purpose of enforcing civil immigration matters.

*As explained in Section VI. below, federal immigration law permits a narrow category of voluntary communications with federal immigration authorities — *i.e.*, those regarding citizenship or immigration status.

VI. Interactions with Federal Immigration Officers

a. Limited Application of Federal Immigration Law.

Two federal statutes, 8 U.S.C. §§ 1373 and 1644, provide that local and state agencies and officials may not prevent or restrict their employees from communicating with federal immigration authorities regarding an individual’s citizenship or immigration status.¹

As a result, Sections 1373 and 1644 permit state and local authorities to decide whether or when to limit communications with federal immigration authorities regarding ***other*** types of information about individuals, such as:

• Physical appearance;	• Vehicle / license plate information;
• Current whereabouts;	• SSN or lack thereof;
• Places of residence, work, or education;	• Family relationships; or
• Telephone number;	• Custody status, release date/time; or court dates

Restricted Access to individuals outside of a facility. Unless federal immigration agents have a judicially-issued criminal warrant or a legitimate law enforcement purpose exclusive of the enforcement of civil immigration laws, [Agency] members who have an individual in their custody shall not

¹ [Agency members] should note that accurately determining an individual’s citizenship or immigration status can be difficult in the absence of clear documentation and immigration law expertise. Moreover, making a mistake in this arena may undermine community confidence that [the agency] is focused on public safety and state/local enforcement, rather than civil immigration enforcement.

grant or otherwise facilitate immigration authorities' access to the individual.

1. However, this section shall not be construed to require members to affirmatively interfere with a federal official's lawful authority to interview, detain, or arrest (with or without a warrant) an individual — e.g., by using force or physically blocking the official.
2. Instead, Chester Police members asked to grant access to an individual in their custody (e.g., requests made during a traffic stop) shall respond to the official that they intend to complete their stop first, without interruption – unless it would be unlawful for them to provide that response (e.g., making such statements in an effort to intentionally facilitate an escape of a person subject to lawful arrest).
3. Agency members who are unsure how to proceed in a given situation can immediately contact a supervisor (if available) for guidance, provided they do not unreasonably prolong the stop.

Comment: As noted above, Chester Police expects its members to try to swiftly and safely complete their law enforcement duties (e.g., issue a traffic citation) and move on, leaving immigration enforcement to the appropriate authorities. Maintaining focus on state or local enforcement serves to build and maintain community confidence.

d. Additional Restrictions. In addition, agency members shall not:

1. Initiate or prolong stops to allow federal immigration authorities to investigate suspected civil immigration violations.
2. Hold people for, or transfer people to, federal immigration agents, unless the agents provide a judicial warrant for arrest.
3. Stop, detain, arrest, or transfer someone on the basis of requests from federal immigration agents such as "administrative warrants" and "immigration detainers." Unless they not meet the probable cause requirements of the Fourth Amendment and Article 11 of the Vermont Constitution and are therefore a lawful basis to arrest or detain anyone.
4. Conduct or participate in enforcement activities intended to locate and detain undocumented immigrants without reasonable suspicion or probable cause of a crime, unless acting in partnership with a federal agency as part of a formal agreement entered into by the governor.

6. Facilitate the detention of individuals by federal immigration authorities for suspected civil immigration violations.
7. Share any information about an individual with federal immigration authority, unless there is justification on the grounds of
 - a. Public safety or officer safety (articulable risk or physical injury to subject, officer, or third party), and state and local authorities are unable to provide urgent assistance in time; or
 - b. Law enforcement needs that are not related to the enforcement of federal civil immigration law (e.g., individual may be a human trafficking victim, a crime victim, or witness entitled to a T, U, or S visas).

Prior to providing such information agency members shall consult with a supervisor if available, unless doing so would unreasonably extend the individual's custodial detention.

8. Contact federal immigration authorities to determine an individual's identity, unless the individual does not present an acceptable form of identification and an agency member has reason to believe that such authorities will be able to verify the individual's identity.
 - i. The individual's personal characteristics are not a reason to believe that federal authorities will be able to verify the individual's identity.
 - ii. Agency member shall only provide information necessary to establish identity.
9. Accept requests by federal immigration authorities to support or assist in civil immigration enforcement.

**** Members should understand that disclosures regarding citizenship and immigration status, when unnecessary for state/local law enforcement purposes, may compromise an agency's ability to cultivate and maintain trust with community members and foster positive relationships benefiting all Vermonters.**

VII. 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

- citizenship 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 Chester Police's Fair and Impartial Policing policy. If the caller is concerned about the person's perceived citizenship or immigration status, the caller should be advised that local law enforcement does not have authority to investigate or enforce civil immigration law.
 - c. If an agency member receives a report of a potentially biased or hate-motivated incident, dispatch shall either dispatch an officer to evaluate the complaint or refer the caller to the officer in charge.

VIII. Training

- a. The Chester Police 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.

IX. Accountability and Compliance

- a. The process for making a complaint shall be readily available to the public. Reasonable efforts should be made to accommodate language barriers.
- b. All agency members 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. State law requires all Vermont law enforcement agencies to conduct valid investigations of alleged biased law enforcement, even if the named member or employee resigns. Effective July 1, 2018, Chester Police Department is required to report to the Criminal Justice Council instances in which officers have willfully engaged in biased law enforcement or substantially deviated from policies prohibiting such enforcement. The Vermont Criminal Justice

Council may, in turn, impose sanctions up to revocation of officers' certification.²

- d. Violations of the policy shall result in appropriate disciplinary action as set forth in these rules and regulations. Supervisors shall ensure that all employees in their command are familiar and in compliance with the content of this policy. Supervisors will be alert for and respond to indications of potential biased policing.

² VT Act 56 (2016), *codified in* 20 V.S.A. § 2401(2)(D) (biased enforcement as Category B unprofessional conduct), § 2403 (duty to report to Council), § 2404 (duty to investigate), and § 2406 (Council-issued sanctions).