



VSP-DIR-301

Fair and Impartial Policing

1.0 Purpose

- 1.1 The intent of this policy is to reaffirm the Vermont State Police's commitment to unbiased policing, to clarify the circumstances in which members can consider race, ethnicity, gender or other potentially improper characteristics when making law enforcement decisions, and to reinforce procedures that serve to assure the public that we are providing service and enforcing laws in an equitable and impartial way.

2.0 Definitions

- 2.1 Biased Policing - Conduct by law enforcement officers motivated by an individual's actual or perceived or self-identified personal characteristics.
- 2.2 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."
- 2.3 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).
- 2.4 Personal Characteristics - May include, but are not limited to, race, ethnicity, immigration status, national origin, color, gender, sexual orientation, gender identity, marital status, mental or physical disability, age, religion, and socio-economic status.
- 2.5 Reasonable Suspicion - Suspicion, for which an officer can articulate factual reasons, does not need to rise to the level of probable cause.
- 2.6 Suspicious Activity - Observed behavior reasonably indicative of pre-operational planning related to terrorism or other criminal activity.

3.0 Policy

3.1 It is the policy of the Vermont State Police that the department shall not condone the use of any bias-based policing in the services our employees provide to the community in connection with our law enforcement activities.

4.0 Procedure

4.1 Fair and Impartial Policing: General Principles

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 investigative detentions, traffic stops, arrests, searches and seizures, etc., must be based on reasonable suspicion, probable cause, or other required standards.

1. Members must be able to articulate specific facts, circumstances, and conclusions which support the required standard for enforcement actions.
2. Members may take into account the reported race, ethnicity or other personal characteristics of suspects based on credible, reliable, locally relevant information that links persons of specific description criteria to particular criminal incidents. See [VSP-DIR-425 Interpreter Services](#) for policy on providing qualified interpreter services.
3. Except as provided in 4.1(A)(2) above:
 - a. Members will not consider race, ethnicity, or other personal characteristics in establishing either reasonable suspicion or probable cause.
 - b. Members will not single out or otherwise treat persons differently because of their race, ethnicity, or other personal characteristics. Law enforcement officers may allow for reasonable accommodations to be made for individuals with disabilities.
 - c. Members will not engage in biased based profiling tactics in traffic contacts, field contacts, asset seizure/forfeiture processes, or any other law enforcement function.

4.2 Preventing Perceptions of Biased Policing

- A. In an effort to prevent any misperceptions of biased law enforcement, each member shall do the following when conducting pedestrian and vehicle stops, or otherwise interacting with members of the public:
1. Be courteous and professional;
 2. Identify themselves to the individual (providing name and agency) and state the reason for the stop as soon as practical, unless providing this information will compromise the member's or public safety;
 3. Ensure that the detention is no longer than necessary to take appropriate action for the known or suspected offense, and that the individual understands the purpose of reasonable delays;
 4. Answer any questions the individual may have;
 5. Provide the member's name and duty assignment verbally, when requested. Members may also provide the information in writing or on a business card.
 6. Explain if the member determines that the reasonable suspicion was unfounded (e.g., after an investigatory stop).

4.3 Responding to Bias-Based Reports:

- A. If any member of the agency receives a call for service, whose only foundation has to do with an individual's race, ethnicity, gender, age, perceived or known mental illness, sexual orientation, gender identity, marital status, religion, disability, socioeconomic level, immigration status, or other potentially improper personal characteristics, the employee will attempt to explore if there are any specific behaviors that either constitute reasonable suspicion or probable cause or otherwise call for police response. If no specific behavior is identified, the caller's contact information will be obtained and they will be advised that the member in charge of the shift will contact them.
- B. The member will contact the shift supervisor and provide the circumstances of the call. The shift supervisor will contact the caller and explain that we do not respond to calls for service that are based solely on a person's race, ethnicity, gender, age, perceived or known mental illness, sexual orientation, gender identity, marital status, religion, disability,

socioeconomic level, immigration status, or any other personal characteristics.

- C. The shift supervisor should attempt to educate the caller on the fair and impartial policing policy and philosophy. They should also explain that The Vermont state Police responds to behaviors/actions of individuals that appear suspicious, threatening, illegal, etc. and not to situations based solely on a person's characteristics/attributes as defined above. The shift supervisor will document this interaction via an RMS report. In the case of a call for service that is based solely on a caller's suspicion that an individual present in Vermont is an undocumented foreign national, the supervisor shall inform the caller that federal authorities are primarily responsible for enforcing federal immigration law.
- D. See [VSP-DIR-521 Bias Related Incidents](#) for policy on receipt of report of a potentially biased or hate-motivated incident.

4.4 Matters Relating to Immigration and Citizenship Status

A. General Policies:

1. An individual's presence in the United States without proper documentation or authority, standing alone, when that individual has not been previously removed, is not a criminal violation. Therefore, members may not initiate an investigation based solely on information or suspicion that an individual is in the United States without authorization and proper documentation. Detecting or apprehending such individuals is not a law enforcement priority for the Vermont State Police.
2. Members do not have authority to investigate civil immigration laws and members shall not ask questions about or investigate a person's citizenship or immigration status unless information regarding citizenship or immigration statute is an essential element of the crime.
3. Accordingly, except as noted below, members should not use agency resources, equipment or personnel for the purpose of detecting or apprehending individuals whose only violation of law is that they are present in the United States without authorization and proper documentation.

4. Members shall not stop, investigate, detain or question an individual solely for the purpose of determining whether the individual is in the United States without authorization and proper documentation.
5. Because it is often difficult to determine whether someone is crossing the border to obtain safety and lawful status, members should not presume unauthorized border crossing implicates Vermont, as opposed to federal interests. Some individuals crossing the border outside of an authorized checkpoint may be seeking asylum and receive federal permission to remain in the United States. VSP enforcement of alleged “unlawful entry” may create the misconception that the Agency is involved in immigration enforcement and undermine partnerships with local communities.
6. The following do not on their own establish reasonable suspicion of a criminal offense and are not sufficient to warrant an investigation:
 - a. Personal characteristics, including limited English Proficiency;
 - b. Citizenship or Immigration status;
 - c. Presence in the United States without authorization or formal documentation; and
 - d. Proximity to the border.
7. The foregoing elements in combination with others may contribute to reasonable suspicion. As noted in Section 4.1, A. 2., personal characteristics may be considered only where there is credible, reliable, locally relevant, temporally specific information that links a person or specific description to criminal incidents and is combined with other identifying information.

B. Inquiries Concerning Citizenship and Immigration Status

1. Members should not ask an individual about their immigration status when investigating a civil violation. If a member needs to identify an individual and that individual does not have identification, the member may use whatever tools, including federal databases, are reasonably necessary to identify the individual under the circumstances. Identification methods may include a foreign passport, consular identification, or other government-issued documents that

are reasonably reliable, subject to the same reasonable scrutiny and follow-up for authentication as any other forms of identification.

2. Members may ask an individual about their immigration status under the following circumstances:
 - a. If the member is conducting a criminal investigation or an investigation of suspicious activity based on reasonable suspicion AND the immigration status of the suspect is relevant to the investigation, provided that the investigation is initiated for a reason or reasons independent of information or suspicion that an individual is (or individuals are) in the United States without proper authorization in violation of the civil provisions of federal immigration law; or
 - b. After a suspect has been arrested for a criminal violation and an inquiry into the suspect's immigration status is necessary to the ongoing criminal investigation or the arrest.

C. Additional Considerations

1. Members who have reason to believe that an illegal border crossing has occurred may ask a suspect about their immigration status consistent with 2(a) or 2(b) above;
 2. Members operating near the Canadian border may solicit the support of federal law enforcement in connection with state law matters if reasonably necessary to protect officer and/or public safety; and
 3. Members operating near the Canadian border may make inquiries consistent with sections (A) and (B) above.
- D. Members shall not arrest or detain any individual based on an immigration "administrative warrant" or "immigration detainer." These documents have not been issued or reviewed by a neutral magistrate and do not have the authority of a judicial warrant. In addition, these documents do not meet the probable cause requirements of the Fourth Amendment and Article 11 of the Vermont Constitution.
- E. Members shall not hold for, or transfer people to, federal immigration agents unless the federal agents provide a judicial warrant for arrest. As stated above, an immigration detainer is not a warrant and is not reviewed by a judge, and therefore is not a lawful basis to arrest or detain

an individual. Valid criminal warrants of arrest, regardless of crime, shall not be confused with immigration detainers. This provision does not affect the proper handling of arrests and detentions associated with judicially-issued criminal arrest warrants.

- F. Members shall not initiate or prolong stops for the purpose of enforcing civil immigration matters, such as suspicion of undocumented status, nor shall member prolong stops for the purpose of allowing federal immigration authorities to conduct such investigations.
- G. Personal characteristics shall not be used as a reason to arrest someone rather than citing them.
- H. In assessing whether to seek continued custody under Vermont Rules of Criminal Procedure 3, members shall not presume that undocumented individuals necessarily present a risk of flight. Instead, such judgments shall be made on the facts presented in each case, rather than made simply on the basis of immigration status. In addition, personal characteristics shall not impact the decision on whether to seek continued custody under Rule 3 of Vermont's Rules of Criminal Procedure.
- I. 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.
- J. Members will ensure that individual immigrants and immigrant communities understand that full victim services are available to documented and undocumented victims/witnesses. Members may, in appropriate situations, advise an individual that, if they are undocumented, they may be eligible for a temporary visa. For example, an individual might qualify for a U, S, or T visa if they are a victim or material witness to certain serious offenses.
- K. This policy is not intended to impair relationships with federal authorities, compromise officer safety, or hinder local, state or federal law enforcement priorities. It is not intended to change the Vermont State Police's cooperation and coordination with federal authorities to enhance border security.

4.5 Establishing Identity

- A. If a member needs to identify an individual and that individual does not have identification, the member may use whatever tools, including federal databases, are reasonably necessary to identify the individual under the circumstances. Identification methods may include a foreign passport, consular identification or other government-issue documents that are reasonably reliable, subject to the same reasonable scrutiny and follow-up for authentication as any other forms of identification.
- B. A member shall not contact federal immigration authorities to determine an individual's identity, unless the individual does not present an acceptable form of identification and the member has reason to believe that such authorities will be able to verify the individual's identity.
 - 1. The individual's personal characteristics are not a reason to believe that federal authorities will be able to verify the individual's identity.
 - 2. Members shall not provide any information except information necessary to establish identity. For example, members shall not provide the location of the individual.
- C. Absent reasonable suspicion of unlawful activity, members shall not require that passengers in motor vehicles provide identification or other documents. If requesting such documents, 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.
- D. In instances when a standardized form has a field requesting an individual's social security number, members may request such information for the purposes of establishing identity. An individual not providing a social security number does not on 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.

4.6 Interactions with Federal Immigration Officers

A. General Policies

1. Members are not obligated to communicate with federal immigration authorities regarding the immigration or citizenship status of any individual.
2. 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 other government officials such as ICE or CBP regarding an individual's citizenship or immigration status.
3. "Citizenship or immigration status" refers only to an individual's legal rights, if any, to enter or remain in this country or to exercise rights (e.g., vote in federal elections).
4. "Citizenship or immigration status" does not include other types of information such as physical appearance; current whereabouts; places of residence, work or education; telephone number; vehicle/license plate information; social security number or lack thereof; family relationship; and/or custody status, release date/time, or court dates.
5. Information about an individual that falls within the scope of 8 U.S.C. §§ 1373 and 1644 may be shared with federal immigration authorities.
6. Information outside the scope of 8 U.S.C. §§ 1373 and 1644 may be shared with federal immigration authorities if sharing such information is justified 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.
7. Sweeps intended solely to locate and detain undocumented immigrants without reasonable suspicion or probable cause of a crime shall not be conducted unless acting in partnership with a federal agency as part of a formal agreement entered into by the governor.
8. Members are not permitted to accept requests by ICE or other agencies to support or assist in operations that are primarily for civil immigration enforcement. This directive does not apply to communications governed by 8 U.S.C. §§ 1373 and 1644.

B. Restricted Access to VSP facility

1. Unless federal immigration agents have a judicially issued criminal warrant or a legitimate law enforcement purpose exclusive of the enforcement of civil immigration laws, members shall not:
 - a. Grant immigration authorities access to individuals located in otherwise restricted portions of a VSP facility absent a court-approved search or arrest warrant relating to alleged crimes; or
 - b. Permit immigration authorities to use VSP facilities for investigative interviews.

C. Restricted Access to Individuals Outside of VSP Facility

1. Unless federal immigration agents have a judicially issued criminal warrant or a legitimate law enforcement purpose exclusive of the enforcement of civil immigration laws, members who have an individual in their custody shall not grant or otherwise facilitate immigration authorities' access to the individual.
2. 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 VSP is focused on public safety and state/local enforcement, rather than civil immigration enforcement.
3. Members are not required 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. Rather, 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 to intentionally facilitate an escape of a person subject to lawful arrest).
4. Members who are unsure how to proceed in each situation should immediately contact a supervisor (if available) for guidance, provided they do not unreasonably prolong the stop.

4.7 Compliance

- A. The Vermont State Police is committed to providing periodic cultural training for its members. Fair and Impartial Policing training will be conducted annually for all members. It is the goal of this Department to ensure that all employees are sensitive to, and aware of, cultural diversity issues and what constitutes biased policing.
- B. The Vermont State Police is committed to the vigorous investigation of complaints of this nature and violations of this policy shall result in disciplinary action.
- C. Additionally, the Vermont State Police has processes in place to review all video related to reported use of force, pursuit, and vehicle searches. The opinions and recommendations of each respective committee are forwarded to the Vermont State Police Office of Professional Development for review.

4.8 Supervision and Accountability

- A. Supervisors shall ensure that all members in their command are familiar with the content of this policy and are operating in compliance with it. Supervisors should randomly review records such as reports or video/audio recordings, or otherwise monitor the conduct of the members in their command for the purpose of ensuring compliance with this policy and to identify training issues.
- B. Upon request from a member of the public, members will explain how a person should make a complaint regarding an officer's conduct. Reasonable efforts should be made to accommodate language barriers in compliance with [VSP-DIR-425 Interpreter Services](#).
- C. All members are required to report allegations, complaints, or knowledge of a suspected violation of this policy in accordance with [VSP-GEN-205 Receipt, Reporting and Investigation of Allegations](#).
- D. The Department shall investigate alleged violations of this policy in accordance with the provisions of [VSP-GEN-205 Receipt, Reporting and Investigation of Allegations](#).
- E. Members are required to annually review the Office of Professional Development training segment related to Fair and Impartial Policing.

4.9 Annual Review

- A. The Vermont State Police Fair and Impartial Policing Committee will convene annually to review current policies, practices, and citizen concerns regarding fair and impartial policing.
 - 1. A documented annual administrative review will be completed to include activities with potential for bias, including but not limited to, traffic and field contacts, asset forfeiture efforts, citizen complaints, and any corrective action taken.

4.10 Savings Clause

- A. Pursuant to 8 U.S.C §§ 1373 and 1644, Vermont State Police may not prohibit, or in any way restrict, any government agent or official from sending to, or receiving from, federal immigration authorities' information regarding the citizenship or immigration status, lawful or unlawful, of any individual. Vermont State Police also may not prohibit, or in any way restrict, the sending, receiving, maintaining, or exchanging information regarding the immigration status of any individual. Nothing in this policy is intended to violate 8 U.S.C §§ 1373 and 1644.

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