



<b>Fair and Impartial Policing</b>	Related Policies: Traffic Enforcement/Use of Force
<p>This policy is for internal use only and does not enlarge an employee's civil liability in any way. The policy should not be construed as creating a higher duty of care, in an evidentiary sense, with respect to third party civil claims against employees. A violation of this policy, if proven, can only form the basis of a complaint by this department for non-judicial administrative action in accordance with the laws governing employee discipline.</p>	
<p>Applicable Vermont Statutes/Rules: 20 V.S.A. §2366 Vermont Criminal Justice Training Council Fair and Impartial Policing Policy</p>	
Date Adopted: January 11, 2021	Date Reviewed:

**I. PURPOSE**

The purpose of this policy is to require that all Bennington Police Department (BPD) members conduct policing in a fair and impartial manner, to clarify the circumstances in which officers can consider personal characteristics, 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.

**II. POLICY**

Employees are prohibited from engaging in biased policing. This means no member of the BPD shall take action 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.

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 immigration status should have no adverse bearing on an individual's treatment in the custody of the BPD. Enforcement of civil immigration law is a federal responsibility and agencies should not engage in such enforcement except as otherwise outlined in this policy or its attached procedures. 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 the personal characteristics or immigration status.

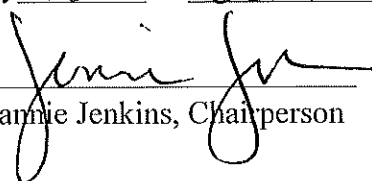
To achieve these objectives the BPD will implement a combination of best practices including but not limited to: hiring, in-service training, policy development, supervision, reporting and investigative processes, appropriate discipline, and community outreach/partnerships. Best practices will be developed with the Vermont Criminal Justice Training Council, with input from Vermont Attorney

General's Office and Human Rights Commission and reviewed on a biennial basis [20 V.S.A. §2366(a)(2)].

### III. DEFINITIONS

- A. "Biased policing" is conduct by law enforcement officers motivated by an individual's actual or perceived or self-identified personal characteristics.
- B. "Personal/characteristics": May include but are not limited to actual or perceived race, ethnicity, national origin, color, gender, sexual orientation, gender identity, marital status, mental or physical disability, mental illness, addictions age, religion, homelessness, and socio-economic status.
- C. "Immigration status": Generally, refers to the legal rights, if any, of a non-citizen to enter or remain in this country. Examples include, without limitation, "lawful permanent resident," "temporary worker," "refugee," and "undocumented."
- D. "Reasonable suspicion": Suspicion, for which an officer can articulate factual reasons, does not need to rise to the level of probable cause.
- E. "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.
- F. "Member" or "employee": any person employed by the BPD, regardless of their assigned tasks, duties or rank.
- G. "Federal immigration authorities": federal agencies, department or employees or contractors thereof, tasked with enforcement of immigration law and border entry, including without limitation, the Department of Homeland Security (DHS), Immigration Control and Enforcement (ICE), and U.S. Customs and Border Patrol (CBP).
- H. "Police Services": Sometimes referred to as community caretaking functions, these are actions and activities that may not directly include enforcement of the law but that contribute to the overall well-being and safety of the public. These include, but are not limited to, such tasks as assistance at fire scenes, traffic accidents, and medical emergencies; lifesaving services; crime prevention; preventive patrol; traffic control; public information; education; and similar activities.

This policy is adopted by the Select Board of the Town of Bennington, Vermont, this day 12 of October, 2021 and is effective until amended or repealed

  
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Jeannie Jenkins, Chairperson

## 1. PROCEDURES

### A. Policing Impartially:

- a. As required by law, all 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 other or relevant exigent circumstances, supported by articulable facts, circumstances, and conclusions that support the given action.
- b. The Bennington Police Department 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 and is combined with other identifying information.
- c. 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. The Bennington Police Department shall not contact federal immigration authorities for interpretation services, unless a clear emergency requires it and qualified interpretation services are not available through any other means. Unless one of the exceptions included in Section XIII applies, the Officer shall not ask about the immigration status of the person for whom interpretation is sought.

### B. Community Relations:

To cultivate and foster transparency and trust with all communities, the Bennington Police Department 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 him/herself to 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 Bennington Police Department conveys the purpose of the reasonable delays;
- d. Provide the Bennington Police Department's Officer's name verbally when requested. The Bennington Police Department Officer 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.

C. Responding to Bias-Based Reports or Reports Regarding Bias from the Community

- a. If any Bennington Police Department Officer or member receives a call for service that appears to be based solely on an individual's perceived personal characteristics or immigration status, the Bennington Police Department 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 Bennington Police Department's 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 in writing, the contact using the Bennington Police Department CAD system.
- d. If the Bennington Police Department receives a report of a potentially biased or hate-motivated incident, the Bennington Police Department shall either dispatch an officer to evaluate the complaint with the Supervisor or refer the caller to the officer in charge.
- e. All potentially biased or hate-motivated incidents will be logged into the Hate Crimes Database maintained by the State's Attorney General's Office.

D. Training

- a. The Bennington Police Department will ensure that, at a minimum, all members and employees are compliant with the Vermont Criminal Justice Council and legislative requirements regarding fair and impartial policing training.
- b. Additional training shall include but not be limited to instruction on anti-bias, power and privilege, non-English speaking communities, undocumented communities, and victim/witness services.

## E. 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. The Bennington Police Department is 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 Officer or member resigns. Effective July 1, 2018, the Bennington 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 regulating authority may, in turn, impose sanctions up to revocation of officers' certification.<sup>i</sup>
- d. Violations of the policy shall result in appropriate disciplinary action as set forth in the Bennington Police Department's policies and procedures. 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.

## F. Establishing Identity

- a. The Bennington Police Department may make attempts to identify any person they detain, arrest, or who come into the custody of the Bennington Police Department.
- 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. All identification is subject to reasonable scrutiny and follow-up for authentication consistent with the provisions of this policy.
- c. An individual shall not be stopped or detained solely for the purpose of establishing his or her identity. However, if the individual has already been stopped for a lawful purpose, he or she 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).

- d. In exercising their discretion to use federal resources to establish an individual's identity, the Bennington Police Department should remain mindful that (1) their enforcement duties do not include civil immigration enforcement and (2) the Bennington Police Department stands by its mission to serve all Vermonters, including immigrant communities, and to ensure trust and cooperation of all victims/witnesses. Contact with federal authorities made to determine an individual's identity is restricted to the purpose of determining his or her identity, though this provision does not prohibit any communication governed by 8 U.S.C. §§ 1373 and 1744. See Section XI below.

#### Due Process, Immigration and Citizenship Matters

#### G. Federal Civil Immigration Law: Stops, Detention, Arrests and Administrative Warrants/ Detainers

The Bennington Police Department does not have authority to enforce federal civil immigration law. The Constitution's Fourth Amendment and the Vermont Constitution's Article 11 right against unreasonable search and seizure apply equally to all individuals residing in Vermont.

- a. The Bennington Police Department will not inquire of a person, about that person's immigration status, unless it is necessary to the ongoing investigation of a criminal offense. Agency members shall not use individual personal characteristics to ask about or investigate immigration status. This directive does not apply to communications governed by 8 U.S.C §§ 1373 and 1644. See Section XI below.
- b. The Bennington Police Department shall not facilitate the detention of undocumented individuals or individuals suspected of being undocumented by federal immigration authorities for suspected civil immigration violations. This directive does not apply to communications governed by 8 U.S.C §§ 1373 and 1644. See Section XI below.
- c. The Bennington Police Department shall not initiate or prolong stops for the purpose of enforcing civil immigration matters, such as suspicion of undocumented status, nor shall they prolong stops for the purpose of allowing federal immigration authorities to conduct such investigation.
- d. The Bennington Police Department 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. The Bennington Police Department shall not hold for, or transfer people to, federal immigration agents unless the federal agents provide a judicial warrant for arrest. 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 anyone. 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. In assessing whether to seek continued custody under Vermont Rule of Criminal Procedure 3, the Bennington Police Department 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 be used as a reason to arrest someone instead of citing them, and personal characteristics shall not impact the decision on whether to seek continued custody pursuant to Vermont Rule of Criminal Procedure 3.
- g. Personal characteristics and/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 the Center for Restorative Justice.

#### H. Federal Criminal Law: Border Crossings

The Bennington Police Department has the authority to enforce federal criminal law. Unauthorized border crossings by persons who are not U.S. citizens or nationals can be a federal crime. (Generally speaking, unauthorized entry is a misdemeanor and unauthorized re-entry following prior deportation or immigration removal is a felony.) All laws and constitutional rights applicable to criminal investigations apply to the enforcement of federal criminal law.

However, mere unauthorized presence in the country (*e.g.*, overstaying a visa) is not a federal crime, but a civil infraction.

- a. As stated in Section VIII(a), the Bennington Police shall not inquire of a person about that person's immigration status unless it is necessary to the ongoing investigation of a criminal offense. Agency members shall not use individual personal characteristics to ask about or investigate immigration status. (For example, they cannot ask someone about immigration status merely on the basis race, color, or perceived national origin.) This directive does not apply to communications governed by 8 U.S.C §§ 1373 and 1644. See Section XI below. If the Bennington Police Department is contacted by federal authorities please refer to Section XI, Collaboration with Federal Immigration Officers.

## I. Victim and Witness Interaction

The cooperation of immigrant communities is essential to prevent and solve crimes and maintain the safety and security of all residents. The following provisions are intended to support crime victims/witnesses and enhance trust between the police and community.

- a. The Bennington Police Department shall not ask about or investigate immigration status of crime victims/witnesses, except as allowed in subsections (b) and (c) below. Federal law does not require law enforcement officers to ask about the immigration status of crime victims/witnesses.
- b. To effectively serve immigrant communities and to ensure trust and cooperation of all victims/witnesses, the Bennington Police Department will not ask about, or investigate, immigration status of crime victims/witnesses unless information regarding immigration status is an essential element of the crime (such as human trafficking).
- c. If a victim/witness is also a suspect, the Bennington Police Department should follow the provisions in Section VII related to stops, detention and arrest and Section VIII(a) related to ongoing criminal investigations.
- d. The Bennington Police Department will ensure that individual immigrants and immigrant communities understand that full victim services are available to documented and undocumented victims/witnesses. The Bennington Police should communicate that they are there to provide assistance and to ensure safety, and not to deport victims/witnesses. In considering whether to contact federal authorities pursuant to 8 U.S.C. § 1373, the Bennington

Police Department should remain mindful that (1) their enforcement duties do not include civil immigration enforcement and (2) the Bennington Police Department stands by its mission to serve all Vermonters, including immigrant communities, and to ensure the trust and cooperation of all victims/witnesses.

- e. The Bennington Police Department may, in appropriate situations, advise an individual that if they are un-documented they may be eligible for a temporary visa.<sup>ii</sup>

## J. Collaboration with Federal Immigration Officers

The Bennington Police Department has no obligation to communicate with federal immigration authorities regarding the immigration or citizenship status of any individual. 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 (for example, ICE or CBP) regarding an individual's "citizenship or immigration status". The Bennington Police Department shall apply this policy in a manner consistent with the lawful operation of these two statutes.



- a. Information about an individual that is outside the scope of Sections 1373 and 1644 (*i.e.*, information other than “citizenship or immigration status”) should not be shared with federal immigration authorities unless there is justification on the grounds of (i) public safety, (ii) officer safety, or (iii) law enforcement needs that are not related to the enforcement of federal civil immigration law.
- b. 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.
- c. The Bennington Police Department is 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.
- d. Unless ICE or Customs and Border Patrol (CBP) agents have a judicially-issued criminal warrant, or the Bennington Police Department have a legitimate law enforcement purpose exclusive of the enforcement of civil immigration laws, the Bennington Police Department shall not propose granting ICE or CBP agents access to individuals in the Bennington Police Department’s custody.

**SAVINGS CLAUSE**

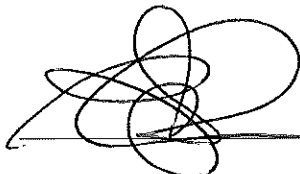
Pursuant to 8 U.S.C §§ 1373 and 1644, the Bennington Police Department may not prohibit, or in any way restrict, any government agent or official from sending to, or receiving from, federal immigration authorities’ information regarding the citizenship or immigration status, lawful or unlawful, of any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

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<sup>i</sup> VT Act 56 (2016), *codified in* 20 V.S.A. § 2402(2) (biased enforcement as Category B unprofessional conduct), § 2403 (duty to report to Council), § 2404 (duty to investigate) and § 2406 (Council-issued sanctions).

<sup>ii</sup> 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.

The policies and procedures outlined above are hereby adopted by the Chief of Police of the Town of Bennington, Vermont this 12 day of OCTOBER, 2021 and is effective as of this date until amended or repealed.



Paul J. Doucette, Chief of Police