EFFECTIVE JUNE 4th 2014
SHERIFF BOHNYAK

# Vermont Attorney General's Proposed Policy: Bias-Free Policing

## Introduction and Purpose

The purpose of this proposed policy is to provide guidance to law enforcement officers regarding the appropriate use of certain criteria, such as race, sex, or ethnicity in their decisionmaking. While such criteria are legally relevant in certain circumstances, their misuse may violate the law or substantially impair law enforcement's relationship with the community it serves. Far from hampering energetic and focused law enforcement, bias-free policing creates an environment in which community members work closely with agencies to solve problems together.

## A. Bias-Free Policing: General Principles

I. 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, such as those applicable to DUI checkpoints and the like.

a. Law enforcement officers must be able to articulate specific facts, circumstances, and conclusions which support the required standard for enforcement actions.

b. Law enforcement officers may take into account the reported race, ethnicity or other Personal

Criteria of suspects based on credible, reliable, locally-relevant information that links persons of specific description criteria to particular criminal incidents.

II. Except as provided in I.b. above:

a. Law enforcement officers will not consider race, ethnicity, or other Personal Criteria in establishing either reasonable suspicion or probable cause.

b. Law enforcement officers will not single out or otherwise treat persons differently because of their race, ethnicity, or other Personal Criteria.

III. "Personal Criteria" may include, but are not limited to, race, ethnicity, immigration status, national origin, color, gender, sexual orientation, gender identity, mental or physical disability, religion, and socio-economic level.

## B. Disclosure of Confidential Information

I. General Rule; Concerns About Victim And Witness

a. To further a criminal justice system that affords protection to all persons and fosters confidence and respect for our legal system, it is essential that victims report crimes and fully cooperate in investigations; that witnesses come forward and provide testimonial and other evidence; that persons report suspicious activity and other information to reduce crime and disorder; and that help is summoned when needed.

b. To that end, law enforcement officers should not disclose Confidential Information regarding members of the community where such disclosure may (a) jeopardize individuals' health, welfare, or safety, or (b) lead crime victims or witnesses not to cooperate with law enforcement efforts.

c. In this context, "Confidential Information" may include, but is not limited to, sexual orientation, gender identity, receipt of public assistance, immigration status, national origin, physical or mental condition, status as a victim of domestic violence or sexual assault, or status as a crime witness.

II. Exception; Investigations and Prosecution of Unlawful Activity

a. Law enforcement officers may disclose Confidential Information in cases where the information is material to the advancement of:

1. Investigations or prosecutions of violations of the law; or,

2. Homeland security and public safety.

## C. Immigration Status Inquiries: Concerns About Persons Not Suspected of Unlawful Activity

I. To effectively serve all communities and to ensure trust and cooperation of all victims and witnesses, law enforcement officers, unless otherwise appropriate (*e.g.*, agencies' investigations of suspected human trafficking or investigations of hate-motivated crimes), should not ask about, or investigate the immigration status of crime victims or witnesses. Where such inquiries are appropriate, officers should explain the reasons for making them— unless doing so would compromise the investigation or officer safety.

II. Law enforcement officers should ensure that individual immigrants and immigrant communities understand that full victim services are available to victims and witnesses, whether documented or undocumented. Law enforcement officers should communicate that they are there to provide assistance and to ensure safety, and not to cause the removal / deportation of victims or witnesses.

III. Law enforcement officers will act first and foremost in the public safety interests of our communities and our essential mission to serve and protect when dealing with undocumented foreign nationals who require help from or who make reports to law enforcement officers, giving full priority to public safety and justice concerns.

## Commentary Regarding Immigration Status Inquiries and Disclosure

In light of the strong Vermont and federal 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.

The federal government prioritizes for arrest, detention, prosecution, and removal of those undocumented nationals who pose a danger to national security or a risk to public safety. The highest priority is given to those undocumented nationals engaged in or suspected of terrorism or espionage; convicted of crimes, subject to outstanding criminal warrants; and fugitives.

Federal law does not *require* state and local law enforcement officers to ask about the immigration status of crime victims or witnesses. The U.S. Department of Justice, in public documents, has expressed concern that inquiries about and reports of the immigration status of individuals falling outside the categories defined in the preceding paragraph, could hamper rather than assist the federal government in its enforcement of immigration laws.

This proposed policy limits the circumstances under which an inquiry regarding immigration status will be made. This policy also indicates that disclosure will also only occur under certain limited circumstances. Thus, absent one of the enumerated exceptions, law enforcement officers should not disclose immigration status information to the person's employer, health care providers, or federal immigration authorities.

Law enforcement officers should always seek to identify a person suspected of a civil or criminal violation. Officers should inquire into immigration status only when that information is necessary to properly identify such a person. Accurate identification information is important for the appropriate functioning of the justice system.

Finally, 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) and may be more likely to encounter the high-risk individuals or activities described above. This proposed policy is 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 bias that may be unlawful or that may unnecessarily reduce willingness to cooperate with law enforcement efforts. Such sentiments can serve to hinder officers' overall mission.

## D. Complaints, Violations, and Discipline

I. Accountability is a vital element of policing. Law enforcement officers 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. To fulfill its mission to "protect and serve," law enforcement agencies must thus implement strategies that improve community trust, including effective accountability procedures.

II. There must be visible and readily accessible complaint redress systems responsive to individual complainants. Complainants are entitled to know the outcome of their complaints, and, consistent with appropriate and applicable statutes and personnel policies, the public is entitled to information about the number and resolution of complaints levied against police departments.

III. Violations of this policy shall result in disciplinary action as set forth in the law enforcement agency's rules and regulations.

IV. Supervisors shall ensure that all law enforcement officers in their command are familiar and in compliance with the content of this policy.

ORANGE COUNTY SHERIFF DEPARTMENT

On June _____, 2014 I received and read the Vermont Attorney General's Proposed Policy: Bias-Free Policing.

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Signature Date