



3/27/2024

Vermont Criminal Justice Council FIP Sub-Committee Report

On February 20, 2024, the FIP Sub-Committee convened at the behest of the Criminal Justice Council to address concerns raised in response to the final recommended policy of the FIP sub-committee. Unanimously, the FIP-Sub Committee voted to establish an Ad-hoc Sub-committee tasked with reviewing these concerns and proposing a course of action for the FIP sub-committee. The following individuals were appointed to the Ad-hoc sub-committee: Amanda Garces (Vermont Human Rights Commission), Erin Jacobson (Attorney General’s Office), Falko Schilling (ACLU), Chief Jennifer Frank (Windsor, VT Police), Kim McManus (Vermont Criminal Justice Council), Will Lambeck (Migrant Justice), and Xusana Davis (Office of Racial Equity).

Their objective was to furnish comprehensive recommendations to the sub-committee. Attorney Kim McManus presented her review, and the committee thoroughly deliberated on all points raised. Detailed responses to the submitted documents are provided below.

On March 20, the FIP-Sub-committee reconvened to assess the documentation. After conducting a thorough review, discussions unfolded concerning potential amendments, ultimately leading to the approval of some of the recommendations. The recommendations for each point can be found detailed in the document below and have been included in the policy attached to this document.

Additionally, the AGO Proposal from the report dated December 15, 2023 has been updated to address an earlier omission (highlighted in red) Additionally, in response to a concern by Chief Frank, an amendment has been incorporated into the proposal (highlighted in yellow).

Section VI.7. “[agency members] shall not provide federal immigration authorities any information about an individual, *other than that regarding their citizenship or immigration status* and there is justification on the grounds of

1. *public safety or officer safety (imminent risk of physical injury to subject, officer, or third party), and state and local authorities are unable to provide urgent assistance in time; or*
2. *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 visa).*

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

Changes proposed by AD-Hoc Sub-Committee			
#1	TL-D	Introduction, second paragraph, second sentence – shouldn’t this be “should have no adverse bearing on an Agency’s interactions with an individual.” Certainly, there is heightened concern if someone is in	The Ad-Hoc Sub-Committee has reached consensus on making this change.

		custody but interactions outside of the custodial realm should also apply, I would think	
#4	TL-D	Section II(a) – Instead of deleting “other,” I would replace “other relevant exigent circumstances” with “other relevant legal standard.” Otherwise, this would be underinclusive of the applicable law and legal rules and does not take into account things like the consent and community caretaking exceptions to the warrant requirement, which are not exigent circumstances.	The Ad-Hoc Sub-Committee has reached consensus to insert “law” before enforcement. With this clarification, TLD’s suggestion to insert “other relevant legal standards” for “exigent circumstances” would be taken care of.
#5	TL-D	Section II(b) – after “particular criminal incidents” I would add “or other matters under investigation.” For example, law enforcement could be engaged in a welfare check or search for a missing person where there is no suspicion of criminal wrongdoing and should be able to consider all available information when trying to locate that person who is missing.	The Ad-Hoc Sub-Committee has reached consensus to include “or other matters under investigation”.
#7	TL-D	Section II(d) – Only refers to Immigration Status, if the defined term is going to be “Citizenship or Immigration Status,” that phrase should be used instead.	The Ad-Hoc Sub-Committee has reached consensus to make this change. Amanda will work to make the change to the document.
#14	TL-D	Section IX(c) last sentence – Isn’t the “regulating authority” the VCJC? And, VCJC is the only entity that can revoke an officer’s certification. I think that is what this is saying but just flagging.	The Ad-Hoc Sub-Committee has reached consensus to include VCJC here.
Ad-Hoc had no consensus			
#5	Chiefs	A concern that the "comments" sections read more like personal opinion or was feeding into political rhetoric than actionable directives in a policy. The example provided was in reference to: <i>Comment: The mere presence of ICE or CBP officials on the premises or their vehicles in the [Agency's] parking lot may create unnecessary confusion and apprehension in the community and undermine the [Agency's] efforts to build</i>	The Ad-Hoc Committee hasn't reached a consensus on this matter. The Attorney General's office included comments as a compromise to accommodate the language proposed by the Migrant Justice community. It was also to illustrate and write things in plain languages to be easy to train to.

		<i>and maintain confidence that the [Agency] is truly committed to serving all community members, and is not involved in civil immigration enforcement.</i>	
	Sheriffs	Further, this amendment adds Homeland Security Investigations to the definition of "Federal Immigration Authorities". If they were to be prevented from working with HSI, VT police and sheriff agencies could be hampered during serious criminal investigations such as child internet crimes and human trafficking. VT police and sheriff agencies limit their communications with HSI to only these cases already. If mandated, having federal officers in their buildings or vehicles in their parking lots could be a violation of this policy	The Ad-Hoc Subcommittee recognizes the necessity for training in this area. A comprehensive guidance and training program should address the dynamic nature of agency responsibilities and tasks and the fact that some of those agencies change tasks. It does not agree to remove HIS.
	CF	Section VI -Subsection (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).	Chief Frank had concerns about the order of this section. The sub-committee did not have any recommendations since this was not in question.
Ad-hoc recommends no further changes			
#2	TL-D	Introduction, second paragraph, third sentence – because this policy can't supplant/trump state or federal law – perhaps the policy should include an additional clause that says, "or as required by state or federal law." For this same reason, presumably, Section II(d)(2) could be removed as duplicative.	The Ad-Hoc Sub-committee discussed and doesn't recommend changes.
#3	TL-D	For the Definition of "personal characteristics" – upon our review, the word "identity" is broad -- is there a more detailed description as to what "identity" entails? Perhaps this has been discussed at another meeting prior to my time. Sorry if this has already been covered.	The Ad-Hoc Sub-committee has no issue with the term identity.

#6	TL-D	<p>i. In Sections II(c) and (d) – I have identified at least two potential conflicts with V.R.C.rP. 3.</p> <p>The first is with V.R.C.rP. 3(c)(1), which permits an officer to take a misdemeanor offender into custody when that offender fails to provide satisfactory proof of identity. The policy could state: “except as provided by Rule 3(c)(1)....” Or more broadly “except as other provided by Rule 3 of the Vermont Rules of Criminal Procedure.”</p>	<p>The ad-hoc sub-committee extensively discussed Rule 3 and is satisfied with the current language. Clear guidance and training are necessary to ensure that all individuals understand the terms fully.</p>
	TL-D	<p>The second is with the example in Section II(d). It might be good to add another example where someone’s Citizenship or Immigration status bears on whether they have “ties to the community reasonably sufficient to assure his or her appearance” under V.R.C.rP. 3(c)(4). If such an example is provided, it should clearly be stated that just because someone is not a US Citizen -- it does not mean that they don’t have sufficient community ties. Many people live in Vermont fulltime even though they are not US Citizens, as long as they can provide ties to the community etc. It is important to understand a person’s ties to the community to ensure that they will appear in Court if needed. The policy could state: “except as provided by Rule 3(c)(4)....” Or more broadly “except as other provided by Rule 3 of the Vermont Rules of Criminal Procedure.”</p>	<p>The Ad-hoc believes this should be left to training and guidance. This one was one of three provisions, subcommittee came to consensus on.</p>
#8	TL-D	<p>Section III – I would move the phrase “compromise officer or public safety, or a criminal investigation” to the introductory paragraph of this section. That way, it is clear that Sections III(d) doesn’t apply to undercover investigations.</p>	<p>Ad-hoc sub-committee believes is okay to leave as is.</p>
#9	TL-D	<p>Section IV – see comments relating to Rule 3. There may be situations where law enforcement has a legitimate law enforcement purpose in searching for a person who is a victim of crime or a person who is alleged to have committed a crime or a person who was a witness to a crime. As noted, I would suggest there be legal research done by AGO or the VCJC as to whether law enforcement can legally detain an</p>	<p>No concerns or recommendations from the sub-committee.</p>

		<p>individual when that person’s identity cannot be established (but see Rule 3(c)(1) and (4) – as noted above). But here are a few preliminary concerns:</p> <p>Subsection (a) – I am not an expert, nor can I provide legal advice to this group but this section needs to be scrutinized to ensure its standard matches the existing legal standard.</p>	
#10	TL-D	<p>Section VI -Subsection (b) – there are situations where identity might need to be established absent suspicion of unlawful activity, as noted above, e.g., searching for missing persons or trying to locate a witness to a crime.</p>	<p>The Ad-hoc sub-committee reached a consensus that this language is satisfactory.</p>
#11	TL-D	<p>Sections V and VI as well as the Savings Clause generally – I do not have expertise in this area, but it may be wise to have the VCJC legal counsel research this and try to connect with someone from DOJ to gauge their thoughts on this or the USAO?</p>	<p>Kim will be in conversation and will update the council.</p>
#12	TL-D	<p>Section V(c)(4) last sentence and Section V(c)(3)(1) (the numbering is perhaps out of order) – Per comments above, personal characteristics might be relevant to other legitimate law enforcement functions aside from the investigation of crimes, e.g., searching for missing persons.</p>	<p>The Ad-hoc sub-committee discussed and agreed to not make a change:</p> <p>This section does not prevent an officer from asking about personal characteristics to search for a missing person. It states that you cannot ask or investigate the person’s immigration status unless...immigration status is an essential element of the crime.</p> <p>Nothings in Section 5 would prevent an officer from asking for personal characteristic information, excluding immigration status, to gather either suspect information, witness information or conduct police services outside of investigating criminal behavior and using that information “where there is credible, reliable, locally relevant, temporally specific information</p>

			that links a person of specific description to particular criminal incidents and is combined with other identifying information.”
#13	TL-D	Section VII(d) – The AGO may want to look at this to determine whether they want to include a note about sending a copy of the incident to the AGO’s bias incident coordinator for follow-up.	The AGO discussed and prefers to not include this recommendation.
#1	VT Chiefs	Concern that the policy was an immigration policy and not a FIP policy. Leading to a request for all immigration related references to be "stripped" from the document.	The committee read the concern raised, recognizing it as broader than specific policy lines. No recommendations are made,.
#2	VT Chiefs	A question was raised requesting clarity on the juxtaposition of the terms "plurality" and "minority."	The committee read the concern raised, recognizing it as broader than specific policy lines. No recommendations are made,
#3	Chiefs	A stated belief that immigration status was central to application of Rule 3 in that an undocumented person has enhanced risk of flight, and if not risk of flight, then a lower chance of detection and location if they did flee.	The ad-hoc sub-committee emphasized the importance of distinguishing between different Terms. Rule 3, which pertains to community ties, should be addressed without requiring disclosure of immigration status. Providing clear guidance and training can effectively address this issue.
#4	VT Chiefs	Recommendation that Section III be striped entirely and addressed under the jurisdiction of department policies	This section has been a standing policy since 2017. Ad-hoc does not make this recommendation.
#6	Vt Chiefs	Concern was expressed with section IV subsection b. reference "shall not require that passengers in motor vehicles provide identification or other documents." As this may not always be restricted: As it reads, "A passenger not providing identification..." - needs to be more specific - "does not in and of itself create a violation..." etc. i.e. you have to have a reason to compel identification, this was read by some Chiefs as if restricted so that one could never compel a passenger to identify themselves.	Ad-Hoc Sub-committee agreed that the language is not confusing when read as a whole and does not require the additional language suggested in chiefs’ comment #6

#7	VT Chiefs	Border community Chiefs expressed that while they do not want to discourage victims and witnesses from cooperating with police, they disagree with ideological policy that cannot be practically applied regarding criminal activity. They work closely with Border Patrol in that they are the closest backup officers on calls who additionally assist when executing search warrants, etc.	The committee acknowledges the concern raised, recognizing it as broader than specific policy lines. The FIP committee has already conducted a vote on the Migrant Justice Vs. AGO proposal.
#8	Chiefs	Reference page 6 under Section V. This relates to not being able to know if individuals crossing the border outside POEs are seeking asylum. This is still a criminal violation and should not be referenced in policy.	The committee read the concern raised, recognizing it as broader than specific policy lines. The FIP committee has already conducted a vote on the Migrant Justice Vs. AGO proposal
#9	VT Chiefs	Border Patrol often releases individuals into the northern communities after processing them, without notification to local law enforcement. Open communication with federal partners is essential to prevent adverse enforcement outcomes. Any limitation or perceived limitation of communication in Policy will only complicate criminal enforcement issues.	The committee acknowledges the concern raised, recognizing it as broader than specific policy lines. The FIP committee has already conducted a vote on the Migrant Justice Vs. AGO proposal.
#10	VT Chiefs	The FIP policy "blurs the line between civil and criminal violations."	The committee read the concern raised, recognizing it as broader than specific policy lines. No recommendations are made,
#11	VT Chiefs	Section V - Strike the first sentence from the opening paragraph as it was perceived to be unnecessary and argumentative.	The Ad-hoc sub-committee recommends retaining the first opening paragraph.
#12	VT Chiefs	Sub Section b. - remove the word "imminent". The protection of public safety and order might not rise to the "imminent" time frame.	The Ad-hoc sub-committee discussed the matter and recommends retaining the word 'imminent'.
#13	VT Chiefs	Sub Section c, d and e, were recommended to be stricken in their entirety, with the focus on FIP rather than investigative techniques	The committee acknowledges the concern raised, makes no recommendations.
#14	VT Chiefs	Reference Section VI- Some expressed a belief that it is their choice as to whom they allow to use their interview rooms and facilities.	The committee read the concern raised, makes no recommendations.
#15	VT Chiefs	Section IX- Their was a recommendation to strike in its entirety and include a "Refer to the IA Policy" line.	Ad-hoc recommends no changes. This has been a provision since the inception of the policy.