



BURLINGTON POLICE DEPARTMENT
DEPARTMENT DIRECTIVE
DD03 Fair and Impartial Policing
Reviewed and published March 10, 2020

CONTENTS:

- I. Purpose
- II. Policy
- III. Definitions
- IV. Policing Impartially
- V. Community Relations
- VI. Responding to Bias-based Reports or Reports Regarding Bias from the Community
- VII. Due Process and Immigration Enforcement
- VIII. Training and Compliance
- IX. Accountability and Supervision
- X. Additional Guidance regarding Due Process and Immigration Enforcement

I. PURPOSE

The purpose of this policy is to require that all employees 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. Officers will act first and foremost in the best interests of our community and our mission when dealing with undocumented foreign nationals who come to the Department for help or to make reports, giving full priority to public safety and justice concerns. Nothing in the Burlington Police Department (BPD) Fair and Impartial Policing policy is intended to violate federal law.

II. POLICY

- A. Employees are prohibited from engaging in biased policing. This means no member of the BPD shall take actions based on any person's personal characteristics or immigration status, except as described below, in the services our employees provide to the community in connection with our law enforcement activities. To achieve this objective 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.
- B. It is essential to the mission of the BPD that victims report crimes and fully cooperate in investigations; that witnesses come forward and provide testimonial evidence; that persons report suspicious activity and other information to reduce crime and disorder; and that help is summoned when needed. These activities must be undertaken without hesitation and without fear that the victim, witness, or reporting person will be subject to

prosecution or deportation for no reason other than immigration status. Because of this and because federal law does not require law enforcement agencies to ask about the immigration status of crime victims/witnesses, it is the policy of the BPD that Burlington officers will not ask any person about their immigration status, unless necessary to the ongoing investigation of a criminal offense for which there is probable cause.

- C. Citizenship, immigration status, national origin, race, and ethnicity should have no bearing on an individual's treatment in the BPD's custody or interactions with the public. Immigration status or perceived immigration status, including the existence of an 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. Furthermore, personal characteristics and/or immigration status shall not be used as a criteria for citation, arrest, or continued custody under Rule 3 of the Vermont Rules of Criminal Procedure.
- D. Local law enforcement does not have the authority to enforce federal civil immigration laws. Therefore, it is the policy of the BPD that its police officers shall not enforce civil immigration laws.

III. DEFINITIONS

- A. **Biased policing.** Conduct by law enforcement officers motivated by an individual's actual or perceived or self-identified personal characteristics.
- B. **Personal characteristics.** These include actual or perceived race, ethnicity, national origin, color, gender, sexual orientation, gender identity, marital status, mental or physical disability, age, religion and socioeconomic status.
- C. **Immigration status.** Generally refers to the legal rights, if any, of a noncitizen 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, but that 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, is being committed, or is about to occur.
- F. **Member or employee.** Any employee of the Burlington Police Department, regardless of that person's assigned tasks or duties.
- G. **Potential bias incident.** Any interaction or situation that may involve personal characteristics being used as the reason for a person's action.
- H. **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 Control and Enforcement (ICE) [*sic*], and U.S. Customs and Border Patrol (CBP) [*sic*].

IV. POLICING IMPARTIALLY

- A. As required by law, all enforcement actions by Burlington police officers, such as investigation, detentions, traffic stops, arrests, searches and seizures, must be based on reasonable suspicion, probable cause, or other required legal standards, supported by articulable facts, circumstances, and conclusions that support the given action.
- B. Officers are expected to be able to articulate specific facts, circumstances, and conclusions which support the required standard for a given enforcement action. Except as provided below, officers shall not consider the personal characteristics of a person in establishing reasonable suspicion or probable cause, initiating encounters that are not legal detentions, requesting consent to search, or deciding to exercise an official action.
- C. Officers may take into account reported race, ethnicity or other personal characteristics of persons as part of determining a person's identity if the officer receives information the officer considers credible, reliable, and locally relevant that links a person of specific description to the matter requiring police response and is combined with other identifying information.
- D. As required to comply with Title VI of the 1964 Civil Rights Act, officers are expected to utilize professional interpreter services either in person or telephonically when necessary to speak with a person with limited English proficiency.
- E. Officers 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 X applies, the BPD employee shall not ask about the immigration status of the Person for whom interpretation is sought.

V. COMMUNITY RELATIONS

To cultivate and foster transparency and trust, each officer shall do the following when conducting pedestrian and vehicle stops, or otherwise interacting with the public:

- 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 practical, unless providing this information will compromise officer or public safety.
- C. Ensure that the detention is no longer than necessary to take appropriate action for the known or suspected offense, and that the person understands the purpose of reasonable delays.

- D. Provide the officer's name and badge number verbally when requested. Officers may also provide the information in writing or on a business card.

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.

VI. RESPONDING TO BIAS-BASED REPORTS OR REPORTS REGARDING BIAS FROM THE COMMUNITY

- A. If any BPD employee receives a call for service that appears to be based solely on an individual's perceived personal characteristics or immigration status, the employee 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's contact information will be obtained, and the complainant will be advised that the Officer in Charge (OIC) of the shift will be in contact.
- B. The employee will contact the OIC and explain the circumstances of the call. The OIC should attempt to familiarize the caller with the BPD's Fair and Impartial Policing policy and explain that the BPD responds to actions that appear to be crimes and not to situations that are based on someone's personal characteristics.
- C. At the conclusion of the call, the OIC will ensure that the contact is documented using the BPD's incident report system.
- D. If an employee receives a report of a potential bias incident, the BPD shall either dispatch an officer to evaluate the complaint or refer the caller to the OIC.

VII. DUE PROCESS AND IMMIGRATION ENFORCEMENT

- A. BPD employees do 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 present in Vermont. Building trust between police and all residents is vital to the public safety mission of the BPD. Policing in a fair and impartial manner is essential to building such trust. Therefore, officers shall not use an individual's personal characteristics as a reason to ask about, or investigate, a person's immigration status. Officers may inquire about immigration status only when it is necessary to the ongoing investigation of a criminal offense for which there is probable cause. Officers shall not use individual personal characteristics to ask about immigration status.
- B. Burlington police officers are not charged with enforcing and will not enforce civil immigration laws, where the only violation of law is presence in the United States without authorization or documentation. This includes not initiating or prolonging stops based on 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. Similarly, officers shall not facilitate the detention of undocumented individuals or individuals suspected of being undocumented by federal immigration authorities solely for suspected civil immigration violations.

- C. Because local police officers are not required to enforce “administrative warrants,” “immigration detainers,” and “requests for notification” issued by ICE officers will not detain individuals based on any of these documents alone or comply with requests for notification.
- D. Unless ICE or CBP agents have a judicially-issued criminal warrant, or members have a legitimate law-enforcement purpose exclusive of the enforcement of civil immigration laws, members shall not grant ICE or CBP agents access to individuals in BPD custody.

VIII. TRAINING AND COMPLIANCE

- A. The BPD 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 instruction on anti-bias, power and privilege, non-English speaking communities, undocumented communities, and victim/witness services.

IX. ACCOUNTABILITY AND SUPERVISION

- A. Accountability is a vital element of policing. Police agencies 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. The means for making a complaint about biased policing shall be readily available to the public. Reasonable efforts should be made to accommodate language barriers.
- B. 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. The BPD will report to the Criminal Justice Training 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.
- C. All members of this agency are required to promptly report allegations, complaints or knowledge of biased policing or suspected violations of this policy to their supervisor. Where appropriate, employees are required to intervene at the time the biased policing incident occurs.
- D. Shift supervisors will accept any complaint from the public regarding any provision of this policy and shall follow the agency’s procedure for handling citizen’s complaints.
- E. The BPD shall ensure that all employees are familiar and in compliance with the content of this policy. Violations of the policy shall result in appropriate disciplinary action as set

forth in the BPD's 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.

X. ADDITIONAL GUIDANCE REGARDING DUE PROCESS AND IMMIGRATION ENFORCEMENT

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

1. To effectively serve immigrant communities and to ensure trust and cooperation of all victims/witnesses, officers will not ask about, or investigate, immigration status of crime victims/witnesses unless the victim/witness is also a crime suspect and immigration status is an essential element of the crime (such as human trafficking).
2. BPD employees will ensure that individual immigrants and immigrant communities understand that full victim services are available to documented and undocumented victims/witnesses. BPD employees shall communicate that they are there to provide assistance and to ensure safety, and not to deport victims/witnesses. BPD Employees shall remain mindful that:
 - a. Their enforcement duties do not include civil immigration enforcement
 - b. The BPD stands by its mission to serve all Vermonters, including immigrant communities, and to ensure trust and cooperation of all victims/witnesses and shall not share information about crime victims/witnesses with federal immigration authorities, unless it is with the individual's consent.
3. BPD employees may, in appropriate situations, advise an individual that if they are undocumented, they may be eligible for a temporary visa.

B. Immigration status.

1. An officer's suspicion about any person's civil immigration status shall not be used as a basis to initiate contact, detain, or arrest that person. The exception to this would be in those instances where the agency member is working with Federal partners in the Stone Garden program or similar Federal initiatives.
2. Officers may not inquire about a person's civil immigration status unless civil immigration status is necessary to the ongoing investigation of a criminal offense for which there is probable cause.
3. Officers shall not make warrantless arrests or detain individuals on suspicion of "unlawful entry," unless the suspect is apprehended in the process of entering the United States without inspection.

C. Establishing identity.

1. Notwithstanding other provisions of this policy, officers may make attempts to identify any person they detain, arrest, or who come into the custody of the Department.
 2. An individual shall not be stopped or detained solely for the purpose of establishing his or her identity. Officers may utilize general federal databases in attempts to establish an individual's identity but shall not involve federal immigration officials in such an inquiry unless necessary. Contact with federal authorities made to determine an individual's identity is restricted to the purpose of determining his or her identity.
 3. Acceptable forms of identification, which must include a photograph of the individual, may include, driver's licenses from a U.S. state or foreign country, government-issued IDs by a U.S. jurisdiction, foreign passports, and consular ID cards.
- D. Civil immigration warrants. Officers shall not knowingly arrest any individual based on a civil immigration warrant, including DHS Forms I-200, I-203, I-205, and any administrative warrants listed in the National Crime Information Center Database (NCIC). 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. Collaboration with federal immigration officers.
1. Officers shall not contact CBP or ICE for assistance solely on the basis of a suspect's or arrestee's race, ethnicity, or national origin.
 2. Officers shall not prolong any detention solely in order to investigate immigration status or to allow CBP or ICE to investigate immigration status.
 3. 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.
 4. No information about an individual shall be shared with federal immigration authorities unless necessary to an ongoing investigation of a felony, for which there is probable cause, and the investigation is unrelated to the enforcement of federal civil immigration law. Such information includes but is not limited to the individual's custody status, release date/time, court dates, whereabouts, residence, employment, identification numbers, appearance, telephone number, and familial relations.
- F. Use of resources. Officers shall not hold for or transfer people to federal immigration agents unless the federal agents provide a judicial warrant for arrest. A civil immigration detainer (Form I-247, I-247D, I-247N, or I-247X) is not a warrant and is not reviewed by a judge and therefore is not a lawful basis to arrest or detain anyone. 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. Valid criminal warrants of arrest, regardless of crime, shall not be confused with

immigration detainees. This policy does not affect the proper handling of arrests and detentions associated with criminal arrest warrants.

- G. Single point of contact. The OIC of each shift shall be the single point of contact for requests for cooperation from federal immigration authorities. The OIC shall document and disclose to the Chief any communication with federal immigration authorities related to immigration violations, including information that individual officers may have disclosed to authorities of their own volition, based on knowledge that was obtained through means in compliance with this policy.
- H. Department communication review. The Chief, or designee, shall review records of communications initiated by officers to federal immigration authorities regarding specific individuals. This review is intended to ensure that officers are not violating this policy in the process of acquiring and/or disclosing this information.

Adopted by vote of the City Council of the City of Burlington on March 9, 2020.

###