



**State of Vermont**  
**Department of Public Safety**  
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December 15, 2017

Alan R. Hanson  
Acting Assistant Attorney General  
U.S. Department of Justice  
Office of Justice Programs  
Washington, D.C. 20531

Dear Acting Assistant Attorney General Hanson:

I am writing in response to your letter dated November 15, 2017 (the "DOJ Letter"), in which the Department of Justice ("DOJ") requests that I address whether Vermont has laws, policies, or practices that violate 8 U.S.C. § 1373. As set forth more fully below, the State's laws, policies, and practices do not violate section 1373.

## **I. Background**

The Vermont Department of Public Safety and the Vermont State Police ("VSP") have historically enjoyed an outstanding and collaborative working relationship with our federal law enforcement colleagues, including the U.S. Border Patrol and the Immigration and Customs Enforcement. This close working relationship continues to this day and plays an integral and essential role in keeping Vermont safe.

In Vermont, the Vermont Criminal Justice Training Council ("VCJTC") is a statutorily created, independent council whose duties include establishing rules and policies with respect to training and certification of law enforcement officers in Vermont. 20 V.S.A. § 2355. Vermont statute requires that the VCJTC create a model fair and impartial policing policy ("Model Policy") for Vermont law enforcement, and also requires that each law enforcement agency adopt its own fair and impartial policing policy.<sup>1</sup> In 2003, VSP, a division of the Department of Public Safety and the Byrne JAG grantee, created and implemented a fair and impartial policing policy.

During the 2017 legislative session, the Vermont General Assembly passed two acts into law, both of which required Vermont law enforcement to fully comply with 8 U.S.C. § 1373. One of these acts further required that the VCJTC Model Policy also comply with this federal statute.

As set forth more fully below, this letter addresses the following issues in response to the DOJ Letter: (1) recent Vermont statutory changes and subsequent revisions to the VCJTC Model Policy, all of which ensure compliance with section 1373; (2) relevant provisions of the VSP policy, which also comply with federal immigration law; and (3) the unambiguous interpretation and application of "savings clauses" in Vermont.

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<sup>1</sup> Those law enforcement agencies that fail to adopt adequate fair and impartial policing policies are deemed to have adopted the VCJTC Model Policy. 20 V.S.A. § 2366(a), (b).

## **II. Vermont Statutes Mandate Compliance with Federal Law and Abolish Noncompliant Policies and Practices as a Matter of Law**

The DOJ Letter expresses concern that two sections of the VCJTC Model Fair and Impartial Policing Policy together with certain provisions of 20 V.S.A. § 2366 violate 8 U.S.C. § 1373(a) and (b).<sup>2</sup> However, because recent changes to Vermont law now mandate that policies and practices in this State comply with the lawful requirements of section 1373, DOJ's concerns are unfounded.

During the 2017 Vermont legislative session, the Vermont General Assembly passed two acts requiring compliance with section 1373's lawful requirements: Act 5 and Act 54. Section 2 of Act 5, which was signed into law on March 28, 2017 and is codified in Title 20, states:

Nothing in this section is intended to prohibit or impede any public agency from complying with the lawful requirements of 8 U.S.C. §§ 1373 and 1644. To the extent any State or local law enforcement policy or practice conflicts with the lawful requirements of 8 U.S.C. §§ 1373 and 1644, said policy or practice is, to the extent of such conflict, abolished.

20 V.S.A. § 4651(d). Accordingly, as of March 2017, any and all law enforcement policies and/or practices which violated the lawful requirements of section 1373 were abolished as a matter of law.

Similarly, Act 54, which governs law enforcement practices and policies relating to fair and impartial policing, also amended Vermont law to ensure such policies and practices comply with section 1373. In this regard, Act 54 amended 20 V.S.A. § 2366 to add a provision essentially identical to that quoted above, abolishing any noncompliant practice or policy in existence in Vermont at that time.<sup>3</sup> Of particular importance, Act 54 also mandated review of the VCJTC Model Policy to ensure compliance with federal law:

[T]he Criminal Justice Training Council, in consultation with the Attorney General, shall review and modify the model fair and impartial policing policy to the extent necessary to bring the policy into compliance with 8 U.S.C. §§ 1373 and 1644.

As will be further discussed in the next section, the VCJTC Model Policy's review-and-modification process has since been completed, and the language the DOJ Letter deems problematic is no longer part of the VCJTC Model Policy or has otherwise been amended to ensure the policy complies with federal law.

Lastly, Act 54 further amended 20 V.S.A. § 2366(a)—a statutory subsection referenced in your letter—to guarantee that law enforcement agencies adopt the VCJTC Model Policy or policies of their own that reflect each component of the Model Policy. If an agency adopts an inadequate policy or, presumably, fails to adopt a policy, an agency is considered to have adopted the Model Policy in full. *Id.* Since the VCJTC Model Policy is statutorily mandated to comply with section 1373, no Vermont law enforcement agency policy can be at odds with section 1373.

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<sup>2</sup> Under subsection (a), a Vermont government entity or official may not restrict or prohibit a governmental entity or officer from sending to or receiving from federal immigration authorities "information regarding the citizenship or immigration status, lawful or unlawful, of any individual." 8 U.S.C. § 1373(a). Also, with respect to information concerning immigration status, an agency or person may not prohibit or restrict the following: "(1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service. (2) Maintaining such information. (3) Exchanging such information with any other Federal, State, or local government entity." *Id.* § 1373(b)(1)–(3).

<sup>3</sup> Subsection 2366(f), which became effective May 31, 2017, now states: "Nothing in this section is intended to prohibit or impede any public agency from complying with the lawful requirements of 8 U.S.C. §§ 1373 and 1644. To the extent any State or local law enforcement policy or practice conflicts with the lawful requirements of 8 U.S.C. §§ 1373 and 1644, that policy or practice is, to the extent of the conflict, abolished." 20 V.S.A. § 2366(f).

Thus, by legislative mandate, Vermont has abolished any practice or policy in conflict with section 1373's lawful requirements. And under the same mandate, the VCJTC Model Policy, upon which law enforcement agency policies will be based, must also comply with section 1373. As presented below, that Model Policy does in fact comply.

### III. The VCJTC Model Policy Complies with Section 1373

The DOJ Letter expresses concern that specific parts and language in the VCJTC Model Policy violate section 1373. However, the language quoted in the DOJ Letter reflects an earlier version of the Model Policy that is no longer in effect. Based on interim and final revisions to the Model Policy, which were effective on November 20, 2017 and December 12, 2017, respectively, the VCJTC Model Policy fully complies with section 1373.<sup>4</sup>

With respect to DOJ's concern that Part 8.1.3 of the VCJTC Model Policy potentially restricts the sending of information regarding immigration status of victim and witnesses to the Department of Homeland Security ("DHS"), this language was removed from both the interim and final versions of the Model Policy. Thus, even assuming DOJ's interpretation of this provision is correct, removal of this language should allay DOJ's concerns. Additionally, both the interim and final Model Policies clarify that any restriction on communications regarding the immigration status of any individual, including victims/witnesses, does not apply to communications with government agencies about citizenship or immigration status that are governed by 8 U.S.C. §§ 1373 and 1644. *See* Model Fair and Impartial Policing Policy, Part VIII(A)(b) (effective Nov. 20, 2017) and Model Fair and Impartial Policing Policy, Parts VII(d), X(d), and Savings Clause (effective Dec. 12, 2017).

DOJ also expresses concern that Part 8.3.2 of the Model Policy, which addressed the utilization of federal databases to establish an individual's identity, unduly restricts the sending or requesting of information regarding immigration status. This language was similarly removed from the both the interim and final Model Policies. Moreover, the Model Policy clarifies that any restriction on contact with federal officials, for the purpose of identifying an individual, "does not prohibit any communication governed by [section 1373]." *See* Model Fair and Impartial Policing Policy, Part VII(d) (effective Dec. 12, 2017). Accordingly, DOJ's articulated concerns with respect to Part 8.3.2 can no longer be justified.

Additionally, the final Model Policy repeatedly clarifies that its provisions do not apply to any communications governed by section 1373. *See id.* Parts VIII, IX, XI. And lastly, the policy concludes with a "Savings Clause," which again reiterates that an agency adopting the Model Policy shall not violate section 1373. *See id.* (Savings Clause). Thus, in accordance with legislative mandates, the abovementioned revisions to the Model Policy ensure compliance with section 1373.<sup>5</sup>

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<sup>4</sup> The interim Model Policy was issued by the VCJTC in direct response to and to address the concerns raised in the DOJ Letter.

<sup>5</sup> Your November 15, 2017 letter notes concerns with a suggestion in a guidance document that 8 U.S.C. § 1373 "may not constitutionally prohibit state and local governments from maintaining confidentiality policies directly serving sovereign state interests." *See* Guidance to Vermont Cities & Towns Regarding Immigration Enforcement, Vermont Attorney General (March 2017). This guidance is not legally binding, cannot trump Vermont law, and, to the extent it is in conflict with Vermont law, any policy or practice based on such guidance is no longer valid or of consequence. *See* 20 V.S.A. § 2366(f) (effective May 31, 2017); *see also* 20 V.S.A. § 4651(d) (effective March 28, 2017).

Moreover, the guidance correctly notes "8 U.S.C. § 1373 prohibits state and local governments from restricting the ability of state and local officials to share certain information with federal immigration authorities." *See* Guidance to Vermont Cities & Towns Regarding Immigration Enforcement at 3; *see also id.* at 8. The above-cited sentence, when read in context, recognizes that unanswered questions remain with respect to the full scope of section 1373. *Id.* at 9–10 (quoting *City of New York v. United States*, 179 F.3d 29 (2d Cir. 1999)).

#### **IV. Vermont State Police Policies Do Not Restrict Communication with Federal Immigration Agencies About Immigration Status and Citizenship**

The Vermont State Police (“VSP”), which falls under the Department of Public Safety, adopted a Fair and Impartial Policing policy several years ago.<sup>6</sup> This policy, VSP-DIR-301, fully complies with federal law, including 8 U.S.C. § 1373. Specifically, VSP’s policy neither prohibits nor in any way restricts the maintenance or intergovernmental exchange of information regarding the immigration status of private individuals. Of note, VSP-DIR-301 specifically requires communication with other government entities regarding immigration status in certain circumstances. VSP policy directs members to communicate with other governmental entities: “[i]f 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.” *Id.* Thus, VSP policy not only complies with section 1373 by the absence of prohibitions on the exchange of information, but its policy exceeds mere compliance by encouraging communication with federal governmental agencies in appropriate circumstances.

VSP policy also specifically addresses immigration along Vermont’s border and the need for collaboration and cooperation with our federal partners. In this regard, VSP members “operating near the Canadian border who have reason to believe that an illegal border crossing has immediately occurred may ask a suspect about his or her immigration status.” *See* VSP-DIR-301, 4.4(3). Additionally, “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 . . . members operating near the Canadian border may make inquiries consistent with [other sections of VSP policy].” *Id.*

Finally, VSP’s Fair and Impartial Policing policy VSP-DIR-301, section 4.4(4), clarifies that the intent of the policy is not to impair relationships with federal authorities or hinder federal law enforcement priorities, and “is not intended to change the Vermont State Police’s cooperation and coordination with federal authorities to enhance border security.” *See* VSP-DIR-301, 4.4(4). Because VSP policy explicitly authorizes certain communication between members and other individuals, and encourages the solicitation of support of federal law enforcement when appropriate, there is no basis to conclude that VSP policy violates section 1373.

Likewise, VSP policy on assistance to immigrant victims and witnesses complies with federal law. This policy, VSP-DIR-305, does not prohibit VSP members from sharing citizenship or immigration information with federal authorities as may be required by section 1373.<sup>7</sup> In fact, Vermont law, in conjunction with VSP policy, encourages law enforcement cooperation with the federal government when assisting immigrant victims. For example, Vermont law enforcement officers investigating human trafficking likely will share immigration and citizenship information with DHS in their efforts to assist such victims or potential victims. *See* 13 V.S.A. § 2663(b) (process for law enforcement assistance in the completion and execution of appropriate United States Citizenship and Immigration Service forms); 22 U.S.C. § 7105. Accordingly, VSP policies relating to immigration not only comply with section 1373 but also encourage lawful cooperation and coordination with federal agencies.

#### **V. Savings Clauses are Unambiguous and Communicated through Agency Policies**

The DOJ Letter also requests that I address the interpretation and application of “savings clauses” in Vermont. I assume that the reference to “savings clauses” encompasses provisions such as the final “Savings Clause” in the Model Policy (referenced above in section III), and 20 V.S.A. § 2366(f) and 20 V.S.A. § 4651(d), all of which mandate compliance with section 1373 and abolish practices or policies in conflict with section 1373. Such clauses as they exist in Vermont—both in statute and in policy—are unambiguous in

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<sup>6</sup> The Vermont State Police Fair and Impartial Policing Policy, VSP-DIR-301, is attached as Attachment A.

<sup>7</sup> VSP-DIR-305 is attached as Attachment B.

interpretation and application. These clauses make it clear that adopted policies and practices do not prohibit local and state law enforcement officers from sharing citizenship or immigration status with federal authorities. Vermont's adoption of laws and policies containing "savings clauses" therefore removes any doubt that Vermont prohibits or in any way restricts the exchange of information covered by 8 U.S.C. § 1373.

The requirements of the Model Policy are communicated to Vermont law enforcement officers and employees through agency policy and through training and instruction. As part of its basic course of instruction for police cadets, the VCJTC includes a block of instruction on fair and impartial policing practices which encompasses Model Policy requirements. The VCJTC also periodically provides such instruction to veteran officers as part of its certification process. Similarly, the VSP requires each officer to certify that he/she has read and understands the VSP Fair and Impartial Policing Policy. The VSP also has designated a senior level uniform position as the Director of fair and impartial policing. This individual provides instruction on these issues and is available to answer questions which may arise in connection with the policy, including compliance with section 1373.

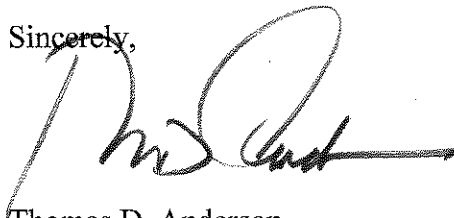
#### **VI. Compliance with Section 1373 in FY2017**

Finally, per your request, I assure that the Vermont Department of Public Safety ("DPS") is currently in compliance with section 1373, and DPS will continue to comply with section 1373 for FY2016 award funds. Additionally, should the Department of Justice grant an award to DPS for FY2017, DPS will comply with section 1373 throughout the period of such award.

To reiterate, the Vermont Department of Public Safety, the Vermont State Police and Vermont law enforcement will continue to comply with their lawful obligations under federal law. At the same time, Vermont law enforcement will continue to reflect the values and priorities of Vermonters, including seeking the cooperation of immigrant communities in solving crimes and ensuring the safety of all those residing in Vermont, while preserving Vermont's rights under the United States Constitution, including the Tenth Amendment.

Please let me know if I can provide additional information in response to your request.

Sincerely,

A handwritten signature in black ink, appearing to read "T. Anderson", is written over a horizontal line.

Thomas D. Anderson  
Commissioner of Public Safety

**VSP-DIR-301****Fair and Impartial Policing**

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**1.0 PURPOSE**

1.1 The intent of this policy is to reaffirm the Vermont State Police commitment to unbiased policing, to clarify the circumstances in which members can consider race, ethnicity, gender or other potentially improper criteria 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 POLICY**

2.1 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.

**3.0 DEFINITIONS**

(1) "Personal Criteria" 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, religion, and socio-economic level.

(2) "Suspicious activity" is defined as "Observed behavior reasonably indicative of pre-operational planning related to terrorism or other criminal activity." As with investigations of civil violations, 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.

**4.0 PROCEDURE****4.1 Fair and Impartial Policing: General Principles**

(1) 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.

(A) Members must be able to articulate specific facts, circumstances, and conclusions which support the required standard for enforcement actions.

(B) Members 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.

(2) Except as provided in 4.1(1)(B) above:

(A) Members will not consider race, ethnicity, or other personal criteria 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 criteria. Law enforcement officers may allow for special 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

In an effort to prevent any misperceptions of biased law enforcement, each member shall do the following when conducting pedestrian and vehicle stops:

(1) be courteous and professional;

(2) identify himself/herself 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:

(1) 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 criteria, the employee will attempt to explore if there are any specific behaviors that call for police response. If no specific behavior is identified, the caller's contact information will be

obtained and he/she will be advised that the member in charge of the shift will contact him/her.

(2) 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 other potentially improper personal criteria.

(3) The shift supervisor should attempt to educate the caller on our fair and impartial policing policy and philosophy. He/she should also explain that we respond 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.

#### 4.4 Matters Relating to Immigration and Citizenship Status

##### (1) General Policies:

(A) Detecting or apprehending individuals whose only violation of law is that they are foreign citizens present in the United States without authorization and proper documentation is not a law enforcement priority for the Vermont State Police. 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.

(B) 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.

(C) 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.

##### (2) Inquiries Concerning Citizenship Status

(A) Members should not ask an individual about his or her 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.

(B) With regard to investigations involving criminal offenses or suspicious activity, a member may ask an individual about his or her immigration status under the following circumstances:

- i) 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
- ii) After a suspect has been arrested for a criminal violation.

(3) Notwithstanding the provisions in sections 1 and 2, above,

(A) members operating near the Canadian border who have reason to believe that an illegal border crossing has immediately occurred may ask a suspect about his or her immigration status;

(B) 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

(C) members operating near the Canadian border may make inquiries consistent with sections (1) and (2) above.

(4) 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 Compliance

(1) The Vermont State Police are 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.

(2) 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.

(3) Additionally, the Vermont State Police has in place committees to review all video tapes on 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.

#### 4.6 Supervision and Accountability

(1) 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.

(2) Upon the request from a member of the public, members will explain how a person should make a complaint regarding an officer's conduct.

(3) All members are required to report allegations, complaints, or knowledge of a suspected violation of this policy in accordance with VSP-GEN-205, of the Department's Rules and Regulations.

(4) The Department shall investigate alleged violations of this policy in accordance with the provisions of VSP-GEN-205, of the Department's Rules and Regulations.

(5) Members are required to annually review the Office of Professional Development training segment related to Fair and Impartial Policing.

#### 4.7 Annual Review

1) 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.

Effective December 10, 2003

Revised May 15, 2009

Revised July 15, 2011

Revised November 4, 2011

Revised June 18, 2014

The Vermont State Police Manual is not intended to apply in any criminal or civil proceeding outside of internal Department proceedings. No policy included in this publication should be construed as creating a higher legal standard of safety or care in an evidentiary sense with respect to third party claims. Violations of law will form the basis for civil and criminal sanctions in a recognized judicial setting.





## VSP-DIR-305

### Victim's Assistance

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#### 1.0 Purpose

- 1.1 This agency recognizes that law enforcement is dependent upon the aid of crime victims and witnesses in order to hold criminals accountable for their actions. It is desirable to gain the cooperation of victims and witnesses, thereby enhancing the agency's ability to make arrests that will result in criminal prosecution.

#### 2.0 Policy

- 2.1 To provide sensitive, fair, and high quality services to crime victims and witnesses.

#### 3.0 Procedure

##### 3.1 Victim and Witness Contact

- A. All victims and witnesses shall be treated with courtesy, sensitivity, and respect.
- B. Members shall make reasonable efforts to inform victims of crime of available services. Victims and witnesses will be offered a safe and friendly location for providing statements or other investigatory processes. Members shall ensure continued safety by reviewing safety planning with victims/witnesses when appropriate.

##### 3.2 Analysis of Needs and Available Services

- A. All Vermont State Police members are charged with providing high quality assistance to victims and witnesses consistent with section 3.1 of this policy.
- B. The Vermont Victim Assistance Program provides each county with a Victim Advocate Service that is available to all crime victims and witnesses. The Victim Advocate is engaged in an ongoing evaluation of the needs of crime victims and available services.

- C. The Vermont State Police shall maintain a close working relationship with all victim service agencies and their respective advocates.

### 3.3 Procedures for Victim/Witness Assistance

- A. The Vermont State Police will ensure the confidentiality of victims and witnesses, and their role in case development, to the extent allowed by law.
- B. Victim/Witness assistance information shall be available to the public 24 hours a day through the department's Public Safety Answering Points (PSAPs). Dispatchers shall provide callers with appropriate referrals from the list below:
  - 1. Medical Attention - an ambulance or referral to one of the local hospitals.
  - 2. Counseling - Women's Rape Crisis Center, Women Helping Battered Women (WHBW), Crisis, or other agencies.
  - 3. Emergency Financial Assistance - Referral to the Department of Social Welfare or the Victim/Witness Advocate of the State's Attorney Office, or the Vermont Center for Crime Victim Services (Victim Compensation).
  - 4. Legal - Referrals will be made when appropriate to individuals needing assistance in civil restraining orders to appropriate community based agencies. Immigration related referrals shall be made to the Vermont Refugee Assistance Program.
  - 5. For all other requests, the dispatcher shall attempt to provide an appropriate referral from the telephone lists maintained within each PSAP, including a referral to the 211 service.

### 3.4 Assisting Immigrant Victims/Witnesses

- A. To effectively service immigrant communities and to ensure trust and cooperation of all victims/witnesses, members will not ask about, or investigate immigration status of crime victims/witnesses. Federal law does not require law enforcement officers to ask about the immigration status of crime victims/witness. Although communication with federal

immigration authorities regarding victim/witness immigration status is permitted, it is not required under 8 U.S.C. §§ 1373 and 1644.

- B. Members will ensure that individual immigrants and immigrant communities understand that full victim services are available to documented and undocumented victims/witnesses.
- C. Members should communicate that they are here to provide assistance and to ensure safety, not to deport victims/witnesses, and that members do not ask victims/witnesses about their immigration status unless obtaining information regarding immigration status is relevant to the criminal investigation (for example, in human trafficking investigations). In instances where the victim/witness is also a suspect, please refer to VSP-DIR-301 4.4.2, Inquiries Concerning Citizen Status.

### 3.5 Assistance During Preliminary Investigation

- A. In addition to investigating alleged criminal incidents, members should seek to provide assistance to the victims of crime and the persons who witness criminal behavior. During the preliminary investigation of any incident, the investigating member shall seek to:
  - 1. Ensure victim/witness safety and to create a safety plan when appropriate.
  - 2. Provide the victim/witness information regarding available services. Depending on the nature of the incident, the following referrals may be appropriate: counseling, medical attention, emergency shelter, victim advocacy, or compensation programs.
  - 3. Provide the victim/witness with the case number and information regarding subsequent steps, if any, in the processing of the case.
  - 4. Provide the victim/witness with the appropriate number to call to report additional information or to receive information about the status of the case.
  - 5. Remind the victim/witness to immediately report any further threats or intimidation from the suspect or the suspect's friends or family.
  - 6. Victims/Witnesses who express specific reasons for fearing future intimidation or victimization should be referred to either Family

Court for a Relief from Abuse Order or the State's Attorney Office for Conditions of Release.

- B. When appropriate, any reports received of further victimization or intimidation of victims/witnesses should be investigated as a separate incident.

### 3.6 Assistance During Follow-Up Investigation

- A. During the follow up investigation, most of the victim assistance will be the responsibility of the State's Attorney Office Victim Advocate. The Victim Advocate maintains contact with victims until final case disposition to inform them of all court hearings and, if necessary, to provide transportation for the victim to attend. Other services available include, but are not limited to, arranging for daycare so the victim can attend court hearings, arranging for counseling, and assisting with shelter.
- B. The Victim Advocate is mandated by state law to explain to all victims and witnesses the procedures involved in the prosecution of their case and their role in this procedure.
- C. The investigating member shall schedule necessary lineups and additional interviews with the victim or witness. If needed, transportation can be arranged through the Victim Advocate.
- D. Property take as evidence from a victim or witness shall be returned as promptly as possible. The Victim Advocate frequently fields requests for return of property and is available to explain to victims and witnesses the evidentiary value of their property if it is necessary to hold the item for trial.

### 3.7 Notification of Victim Upon Arrest or Change in Custody

- A. When a suspect is arrested for any crime, the arresting member should attempt to determine if the victim wants to be notified of any subsequent change in custody status. If the victim indicates he/she would like to be notified, members should complete the form provided by the Victim Advocate with the victim's name, address, and phone number.
- B. If the suspect is bailed out prior to arraignment, the booking officer at Corrections is responsible for notifying the victim listed on the sheet.

- C. If the suspect's custody status changes at arraignment, the Victim Advocate is responsible for notifying the victim. If, at any time after incarceration, the custody status of the suspect changes (escape, furlough, etc.), the Department of Corrections is responsible for notifying the victim.

#### 4.0 Resources

##### 4.1 Assisting Immigrant Victims of Domestic Violence – Law Enforcement Guide (pdf).

Effective October 1, 1987

Revised July 1, 1990

Revised December 1, 1997

Revised April 15, 2009

Revised September 5, 2014

Revised July 7, 2017

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