

ESSEX POLICE DEPARTMENT
Department Directive



Date Issued: November 19, 2003 September 1, 2014 July 1, 2016 October 23, 2019 March 31, 2023 June 20, 2024	Number: 1.3.3
<p style="text-align: center;">Work Rules Fair and Impartial Policing</p>	<p style="text-align: center;">New</p> <p style="text-align: center;">▶ Amends</p> <p style="text-align: center;">Rescinds</p>
Authorized Signature: <u style="display: inline-block; width: 300px; text-align: center;"><i>Ron Hoague</i></u> Chief of Police	
<p><i>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.</i></p>	
Date Implemented: 06/20/24	Review Date: 01/01/2026

1.0 PURPOSE

1.1 The purpose of this policy is to require that all members of the Essex Police Department conduct policing in a fair and impartial manner, to clarify the circumstances in which officers can consider personal characteristics or citizenship 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. Essex Police is required to adopt each component of the Vermont Criminal Justice Council's model fair and impartial policing policy. Essex Police may adopt additional components.

2.0 INTRODUCTION

2.1 Employees are prohibited from engaging in biased policing. This means no member of the Essex Police shall take actions based on any personal characteristics or citizenship or immigration status, except as described below, in

the services our employees provide to the community in connection with our law enforcement activities.

- 2.2 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 citizenship or immigration status should have no adverse bearing on an agency's interactions with an individual. Enforcement of civil immigration law is a federal responsibility, and agencies should not engage in such enforcement except as otherwise outlined in this policy. 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 their personal characteristics or citizenship or immigration status.
- 2.3 To achieve these objectives, Essex Police Department will implement a combination of best practices in areas including but not limited to: hiring, in-service training, policy development, supervision, reporting and investigative processes, appropriate discipline, and community outreach/partnerships.

3.0 POLICY

3.1 Definitions

- 3.1.1 **Biased policing:** is conduct by law enforcement officers motivated by an individual's actual or perceived or self-identified personal characteristics.
- 3.1.2 **Personal characteristics:** May include but is not limited to actual or perceived identity, race, ethnicity, national origin, color, gender, sexual orientation, gender identity, marital status, mental or physical disability, age, religion and socio-economic status.
- 3.1.3 **Citizenship or Immigration status:** Generally refers to the legal rights, if any, of a non-citizen to enter or remain in this country, or to exercise certain rights (e.g., vote in federal elections). Examples of status include, without limitation, "lawful permanent resident," "temporary worker," "refugee," and "undocumented."
- 3.1.4 **Reasonable suspicion:** Suspicion, for which an officer can articulate factual reasons, does not need to rise to the level of probable cause.
- 3.1.5 **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.

- 3.1.6 **Member or employee:** any employee employed by Essex Police Department, regardless of their assigned tasks or duties.
- 3.1.7 **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 and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP).

3.2 Policing Impartially

- 3.2.1 As required by law, all law 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 relevant exigent circumstances, supported by articulable facts, circumstances, and conclusions that support the given action.
- 3.2.2 Essex Police members 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 or other matters under investigation and is combined with other identifying information.
- 3.2.3 Personal characteristics shall not be used as a reason to arrest someone instead of citing them and shall not impact the decision on whether to seek continued custody pursuant to Vermont Rule of Criminal Procedure 3.
- 3.2.4 Citizenship or immigration status shall not be used as reason to arrest someone instead of citing them and shall not impact the decision on whether to seek continued custody pursuant to Vermont Rule of Criminal Procedure 3, except that criminal liability for offenses where one's citizenship, or immigration status, is an essential element is a factor that may be considered in a Rule 3 determination.
 - 3.2.4.1 Example: An individual convicted of a violent felony is removed by immigration authorities after serving their sentence. Unlawful re-entry by that individual may result in substantial prison time – 10 years or more. Those factors may be considered because the prospect of long incarceration can be relevant to case-by-case evaluation of flight risk.
 - 3.2.4.2 Note that per Section 6.0 of this Policy, Essex Police do not have authority to investigate civil immigration laws and that Essex Police members shall not ask about or investigate a person's citizenship

or immigration status unless information regarding citizenship or immigration status is an essential element of a crime.

- 3.2.5 Personal characteristics and/or citizenship 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 a Community Justice Center.
- 3.2.6 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.

4.0 Community Relations

- 4.1 To cultivate and foster transparency and trust with all communities, each Essex Police member 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:
 - 4.1.1 Be courteous and professional;
 - 4.1.2 Introduce themselves to the 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;
 - 4.1.3 Ensure that a detention is no longer than necessary to take appropriate action for the known or suspected offense and the Essex Police member conveys the purpose of the reasonable delays;
 - 4.1.4 Provide Essex Police member's name verbally when requested. Essex Police members may also provide the information in writing or on a business card;
 - 4.1.5 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.

5.0 Establishing Identity

- 5.1 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).

- 5.2 Absent reasonable suspicion of unlawful activity, department members shall not require that passengers in motor vehicles provide identification or other documents. If requesting such documents, Essex Police members will state that passengers are not required to provide them. A passenger not providing identification does not constitute reasonable suspicion of unlawful activity. In no instance shall the enforcement of civil immigration law be a reason to request identification or other documents (See Section 6.0).
- 5.3 In instances when a standardized form has a field requesting an individual's social security number, Essex Police members may request such information for the purposes of establishing identity. An individual not providing a social security number does not on its own constitute reasonable suspicion of unlawful activity. The absence of a social security number is not indicative of citizenship or immigration status. In no instance shall the enforcement of civil immigration law be a reason to request a social security number.
- 5.4 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. Any contact with federal immigration authorities to determine an individual's identity must comply with guidance regarding interactions with Federal Immigration Officers in Section 7.0.

6.0 State / Local Enforcement Authority / Priorities and Federal Immigration Law

- 6.1 The trust and cooperation of immigrant communities is essential to prevent and solve crimes and maintain the safety and security of all. The U.S. Constitution's Fourth Amendment and the Vermont Constitution's Article 11 rights against unreasonable search and seizure apply equally to all individuals in Vermont.
 - 6.1.1 Essex Police members do not have authority to enforce federal civil immigration law. Mere presence in the United States without authorization – for example, residing in the country with an expired visa – is a civil violation and may not be subject to investigation.
 - 6.1.2 Though Essex Police members have authority to enforce federal criminal law, enforcement of federal criminal immigration law is generally not a priority for Essex Police. Accordingly, Essex Police members should not make warrantless arrests, detain individuals, facilitate the detention of

individuals, or otherwise expend resources investigating or enforcing unlawful entry or unlawful reentry cases unless such actions are (1) necessary to ensure public safety or officer safety (imminent risk of physical injury to subject, officer, or third party) or (2) integral to the investigation of criminal offenses unrelated to immigration law.

6.1.2.1 Comment: Some individuals crossing the border outside of an authorized checkpoint may be seeking asylum and receive federal permission to remain in the United States. Because it is often difficult to determine whether someone is crossing the border to obtain safety and lawful status, Essex Police members should not presume that unauthorized border crossing implicates Vermont, as opposed to federal interests. Essex Police enforcement of alleged “unlawful entry” may create the misconception that the Agency is involved in immigration enforcement and undermine partnerships with local communities.

6.1.3 The following do not on their own establish reasonable suspicion of a criminal offense and are not sufficient to warrant an investigation:

6.1.3.1 Personal characteristics, including Limited English Proficiency

6.1.3.2 Citizenship or Immigration status,

6.1.3.3 Presence in the United States without authorization or formal documentation, and

6.1.3.4 Proximity to the border.

6.2 These elements in combination with others may contribute to reasonable suspicion. As noted in Section II(b), personal characteristics may be taken into account only where there is 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.

6.2.1 In interacting with all people,* including suspects, crime victims, and witnesses, Essex Police members shall **not**:

6.2.1.1 Ask about or investigate a person’s citizenship or immigration status unless information regarding citizenship or immigration status is an essential element of the crime (such as human trafficking).

6.2.1.1.1 In so doing, Essex Police members will never use individual personal characteristics to ask about, investigate, or presume citizenship or immigration status. For example, they cannot ask someone about

citizenship or immigration status merely on the basis of race, color, or perceived national origin.

6.2.1.2 Initiate or prolong stops for the purpose of enforcing civil immigration matters.

6.2.1.3 *As explained in Section 7.0 below, federal immigration law permits a narrow category of voluntary communications with federal immigration authorities — i.e., those regarding citizenship or immigration status.

6.2.2 Essex Police members will ensure that individual immigrants and immigrant communities understand that full victim services are available to documented and undocumented victims/witnesses. Essex Police members may, in appropriate situations, advise an individual that, if they are undocumented, they may be eligible for a temporary visa. 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.

7.0 Interactions with Federal Immigration Officers

7.1 Limited Application of Federal Immigration Law.

7.1.1 Essex Police members have no legal obligation to communicate with federal immigration authorities.

7.1.2 However, 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 federal immigration authorities regarding an individual's citizenship or immigration status.

7.1.3 As noted in Section I above, information regarding "citizenship or immigration status" refers **only** to an individual's legal rights, if any, to enter or remain in this country, or to exercise certain rights (e.g., vote in federal elections).

7.1.4 As a result, Sections 1373 and 1644 permit state and local authorities to decide whether or when to limit communications with federal immigration authorities regarding **other** types of information about individuals, such as:

<ul style="list-style-type: none"> • Physical appearance; 	<ul style="list-style-type: none"> • Vehicle / license plate information;
<ul style="list-style-type: none"> • Current whereabouts; 	<ul style="list-style-type: none"> • SSN or lack thereof;
<ul style="list-style-type: none"> • Places of residence, work, or education; 	<ul style="list-style-type: none"> • Family relationships; or
<ul style="list-style-type: none"> • Telephone number; 	<ul style="list-style-type: none"> • Custody status, release date/time; or court dates

7.1.5 In this light, Essex Police has determined that certain legally-permitted restrictions on interactions with federal immigration officers will aid in its mission to serve all Vermonters, including immigrant communities, and ensure trust and cooperation. Those lawful restrictions are described below:

7.1.5.1 Restricted Access to Essex Police facility. Unless federal immigration agents have a judicially-issued criminal warrant or a legitimate law enforcement purpose exclusive of the enforcement of civil immigration laws, Essex Police members shall not:

7.1.5.1.1 grant immigration authorities access to individuals located in otherwise-restricted portions of an Essex Police facility absent a court-approved search or arrest warrant relating to alleged crimes;

or

7.1.5.1.2 permit immigration authorities to use Essex Police facilities for investigative interviews.

7.1.5.2 Restricted Access to individuals outside of Essex Police facility. Unless federal immigration agents have a judicially-issued criminal warrant or a legitimate law enforcement purpose exclusive of the enforcement of civil immigration laws, department members who have an individual in their custody shall not grant or otherwise facilitate immigration authorities' access to the individual.

7.1.5.2.1 However, this section shall not be construed to require members to affirmatively interfere with a federal official's lawful authority to interview, detain, or arrest (with or without a warrant) an individual — e.g., by using force or physically blocking the official.

- 7.1.5.2.2 Instead, Essex Police members asked to grant access to an individual in their custody (e.g., requests made during a traffic stop) shall respond to the official that they intend to complete their stop first, without interruption – unless it would be unlawful for them to provide that response (e.g., making such statements in an effort to intentionally facilitate an escape of a person subject to lawful arrest).
- 7.1.5.2.3 Essex Police members who are unsure how to proceed in a given situation should immediately contact a supervisor (if available) for guidance, provided they do not unreasonably prolong the stop.
- 7.1.5.3 Comment: As noted above, the Essex Police Department does not participate in civil immigration enforcement and expects its members to try to swiftly and safely complete their law enforcement duties (e.g., issue a traffic citation) and move on, leaving immigration enforcement to the appropriate authorities. Maintaining focus on state or local enforcement serves to build and maintain community confidence in the Essex Police Department.
- 7.1.5.4 Additional Restrictions. In addition, Essex Police members shall not:
 - 7.1.5.4.1 Initiate or prolong stops to allow federal immigration authorities to investigate suspected civil immigration violations.
 - 7.1.5.4.2 Hold people for, or transfer people to, federal immigration agents, unless the agents provide a judicial warrant for arrest.
 - 7.1.5.4.3 Stop, detain, arrest, or transfer someone on the basis of requests from federal immigration agents such as "administrative warrants" and "immigration detainers." Such requests have not been issued or reviewed by a neutral magistrate and do not have the authority of a judicial warrant. They do not meet the probable cause requirements of the Fourth Amendment and Article 11 of the Vermont Constitution and are therefore not a lawful basis to arrest or detain anyone.

- 7.1.5.4.4 Request or accept assistance from federal immigration authorities for interpretation services, unless a clear emergency requires it and qualified interpretation services are not available through any other means.
- 7.1.5.4.5 Conduct or participate in enforcement activities intended to locate and detain undocumented immigrants without reasonable suspicion or probable cause of a crime, unless acting in partnership with a federal agency as part of a formal agreement entered into by the governor.
- 7.1.5.4.6 Facilitate the detention of individuals by federal immigration authorities for suspected civil immigration violations.
- 7.1.5.4.7 Share any information (other than information regarding citizenship or immigration status) about an individual with federal immigration authority, unless
 - 7.1.5.4.7.1 Public safety or officer safety (articulable risk or physical injury to subject, officer, or third party), and state and local authorities are unable to provide urgent assistance in time; or
 - 7.1.5.4.7.2 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).
- 7.1.6 Prior to providing such information Essex Police members shall consult with a supervisor if available, unless doing so would unreasonably extend the individual's custodial detention.
 - 7.1.6.1 Contact federal immigration authorities to determine an individual's identity, unless the individual does not present an acceptable form of identification and an Essex Police member has reason to believe that such authorities will be able to verify the individual's identity.

7.1.6.1.1 The individual's personal characteristics are not a reason to believe that federal authorities will be able to verify the individual's identity.

7.1.6.1.2 Essex Police members shall not provide any information except information necessary to establish identity. For example, a department member shall not provide the location of the individual.

7.1.6.2 Accept requests by federal immigration authorities to support or assist in civil immigration enforcement.

7.1.7 **Essex Police members should understand that disclosures regarding citizenship and immigration status, when unnecessary for state/local law enforcement purposes, may compromise the Essex Police's ability to cultivate and maintain trust with community members and foster positive relationships benefiting all Vermonters.

8.0 Responding to Bias-Based Reports or Reports Regarding Bias from the Community

8.1 If any Essex Police member or employee receives a call for service that appears to be based solely on an individual's perceived personal characteristics or citizenship or immigration status, the Essex Police member 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.

8.2 The shift supervisor should attempt to familiarize the caller with the Essex Police's Fair and Impartial Policing policy. If the caller is concerned about the person's perceived citizenship or immigration status, the caller should be advised that Essex Police does not have authority to investigate or enforce civil immigration law.

8.3 At the conclusion of the call, the shift supervisor will document the contact using Essex Police's incident report system.

8.4 If an Essex Police member receives a report of a potentially biased or hate-motivated incident, Essex Police shall either dispatch an officer to evaluate the complaint or refer the caller to the officer in charge.

9.0 Training

- 9.1 The Essex Police will ensure that, at a minimum, all members and employees are compliant with Council and legislative requirements regarding fair and impartial policing training.
- 9.2 Additional trainings may include, but not be limited to, instruction on anti-bias, power and privilege, non-English speaking communities, undocumented communities, and victim/witness services.

10.0 Accountability and Compliance

- 10.1 The process for making a complaint shall be readily available to the public. Reasonable efforts should be made to accommodate language barriers.
 - 10.2 All Essex Police members are 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.
 - 10.3 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. Effective July 1, 2018, the Essex Police 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 Vermont Criminal Justice Council may, in turn, impose sanctions up to revocation of officers' certification. [VT Act 56 (2016), *codified in* 20 V.S.A. § 2401(2)(D) (biased enforcement as Category B unprofessional conduct), § 2403 (duty to report to Council), § 2404 (duty to investigate), and § 2406 (Council-issued sanctions)]
 - 10.4 Violations of the policy shall result in appropriate disciplinary action as set forth in Essex Police Department'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.
- 11.0 This Fair and Impartial Policing policy was approved by the Vermont Criminal Justice Training Council on April 23, 2024.