

Appendix A. Sample Policy: Police-LGBTQ+ Interactions

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Draft Sample Policy for Law Enforcement Interactions with LGBT Individuals

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Purpose

This policy provides officers and other agency employees with guidance with respect to interactions with, and searches, arrest processing and detention of lesbian, gay, bisexual and transgender and gender-nonconforming (LGBT) persons so that officers and other members of the agency can interact with LGBT people in an appropriate, respectful and unbiased manner.

Policy

It is the policy of this agency to apply and administer all programs, initiatives, and activities without discriminating on the basis of race, color, ethnicity, national origin, religion, gender, disability, sexual orientation, gender identity, or gender expression.

Factors such as a person's race, sex, sexual orientation, gender, gender identity, gender expression, age, dress, unusual or disheveled or impoverished appearance do not alone justify even a brief detention, a request for identification, or an order to move on, nor do general complaints from residents, merchants or others.

Agency employees shall be professional and courteous to all members of the public, including lesbian, gay, bisexual, transgender and gender-nonconforming persons. The policy of this agency is to interact with such persons in an unbiased, fair and respectful manner at all times, including when initiating stops, responding to requests for assistance, verifying identification, performing searches, arrests, transportation, and detention.

Any substantiated claim of misconduct or harassment or violation of these policies may result in discipline up to and including termination of the members' employment, civil penalties, or other punitive actions as deemed appropriate.

Terminology

Gender Identity: An individual's internal, deeply held sense of gender. Unlike gender expression (see below), gender identity is not visible to others.

Gender Expression: External manifestations of gender; frequently expressed through one's name, pronouns, clothing, haircut, behavior, voice, or body characteristics.

Sexual Orientation: A term describing a person's attraction to members of the same sex and/or a different sex, often termed lesbian, gay, bisexual, heterosexual, pansexual or asexual.

Transgender (adj.): A term for people whose gender identity, expression or behavior is different from those typically associated with their assigned sex at birth. Transgender is a broad term and is appropriate for anyone to use. "Trans" is shorthand for "transgender." (Note: transgender is correctly used as an adjective, not a noun, thus "transgender people" is appropriate but "transgenders" is often viewed as disrespectful.)

Intersex: "Intersex" is an umbrella term used to describe a wide range of natural bodily variations. Intersex people are born with a reproductive or sexual anatomy and/or chromosome pattern that does not seem to fit typical definitions of "male" or "female." In some cases, intersex traits are visible at birth, while in others they are not apparent until puberty. Some intersex variations may not be visibly apparent at all. People with intersex conditions should not be assumed to be transgender. [Note: "Hermaphrodite" is an offensive and out-of-date term that should not be used.]

Profiling, discrimination, and verbal harassment interactions and forms of address

1. Members of the department shall address the public using names, pronouns and titles of respect appropriate to the individual's gender identity as expressed by the individual. Members will respectfully treat transgender, intersex and gender-nonconforming individuals in a manner appropriate to the individual's gender identity and/or expression, which may be different from their sex assigned at birth or what is listed on their official government-issued identification. Respectful treatment includes:
 - a. Using pronouns as requested by the individual (e.g. "she, her" for an individual who requests she/her pronouns; "he, his" for an individual who requests he/his pronouns; "they, them" for an individual who requests "they/them" pronouns.)

- b. Addressing all individuals, including transgender-identified individuals, by the name and gender pronoun they currently use. Members should be aware that individuals' names may change between one interaction and the next, and always use the name currently used by individuals.
 - c. If it is unclear what gender the person identifies as, members shall politely and discreetly ask individuals what gender pronoun and name they use.
 - d. When an individual self-identifies as transgender or states the name they use or gender, members shall not challenge this identity or request names previously used unless there is reasonable suspicion, supported by specific articulable facts linked to a specific suspect, time, place and circumstance, that such information is necessary for investigative purposes. Individuals shall not be penalized or suffer retaliation for clarifying name and pronoun usage by members of the department.
2. Members shall not:
- a. Request identification or otherwise initiate contact solely based on actual or perceived sexual orientation or gender identity or expression;
 - b. Inquire about intimate details of an individual's sexual practices, genitals, anatomy or medical history for the purpose of assigning an individual a gender based on anatomy;
 - c. Use language that is demeaning or derogatory to another person, in particular, language aimed at a person's actual or perceived gender identity, gender expression, or sexual orientation. This includes "he-she," "tranny," "faggot," "punk," "it," "shim," "thing," "dyke," "bull-dagger" or any other derogatory term;
 - d. Engage in any sexual harassment or assault of members of the public, while on or off duty, as defined by the department's policy on sexual misconduct; or
 - e. Consider an individual's gender identity, gender expression, or actual or perceived sexual orientation as a reason to stop, question, search or arrest that individual, a basis for reasonable suspicion, or as prima facie evidence that the individual is, has, or is about to engage in a crime, including, but not limited to, prostitution or lewd conduct.
3. Officers should be aware that the presence of needles may be indicative of prescribed hormone treatment and/or therapy and is not necessarily indicative of illegal drug possession or use, or drug paraphernalia.

Bathroom use

1. Individuals shall not be stopped, questioned, or arrested for using a single-sex restroom, including in bus stations or shelters, on the basis of a belief that the individual's gender expression does not match the gender designation of the single-sex restroom.
2. While in police custody, transgender, intersex and gender-nonconforming individuals shall be allowed to use the restroom in accordance with their gender identity. However, if the individual has safety concerns with using the restroom, that individual may use the restroom they feel will be safest for them.

Police reports and other official documents

1. Members shall note the name and gender pronoun currently used by individuals as "name and pronoun used" in memo books and on departmental forms, such as arrest forms. All officers shall use the listed "name and pronoun used" when referring to a person in police custody. Members shall not consider or document the name an individual currently uses as an "alias" or "nickname." All departmental forms shall allow a space for "Name used" and "Legal Name (if different from above), in addition to any spaces currently designated for "alias."
 - a. If a question or doubt arises about gender identification, the member of the department shall politely and discreetly inquire how the individual wishes to be addressed (e.g., Sir, Miss, Ms., Mr., he, she, they) and the name by which the individual wishes to be addressed. This name shall be noted on all police reports and documents in a box designated "name and pronoun used" if it differs from the individual's legal name.
 - b. If an individual has legally changed their name or gender marker, members shall not question this or ask for an individual's name or sex assigned at birth in the absence of reasonable suspicion, supported by specific articulable facts, linked to a particular suspect, time, place and circumstances, that the information is necessary for investigative purposes.
2. Transgender people who present a gender or name that differs from the gender or name on their identification documents or in official databases are typically expressing their gender identity and should not be presumed to be knowingly misrepresenting information concerning their name or gender, and should not be charged with false personation or analogous offenses solely on that basis.

Responses to violence

1. A member shall not fail to respond to a call for service or complaint on the basis of the gender identity, gender expression, and/or sexual orientation of the caller or complainant.
2. A member shall not fail to respond to an individual, fail to investigate crimes, or fail to take requests or complaints seriously on the basis of someone's actual or perceived sexual orientation, gender identity or expression, including calls to report cases of domestic, sexual, homophobic or transphobic violence.
3. When responding to calls for service relating to domestic violence, assault, harassment or other concerns, members shall not make assumptions about which individual(s) may be victims and/or suspects based on their race, ethnicity, national origin, religion, gender identity, gender expression, and/or sexual orientation, disability, immigration status or housing status.

Frisks

1. Under no circumstances shall members of the department frisk any person for the purpose of viewing or assigning gender based on the person's anatomy or genitalia or for any demeaning or harassing purpose.
2. Transgender, intersex, and gender-nonconforming individuals shall not be subject to more invasive frisk procedures than other individuals in the field or in police holding facilities.
3. Where circumstances permit, an individual may request to be frisked by a male or female officer. In exigent circumstances, the officer is not required to comply with the request.

Searches

1. Under no circumstances shall members of the department conduct a search of any person, including searches premised on an individual's consent, for the purpose of viewing or assigning gender based on the person's anatomy or genitalia or for any demeaning or harassing purpose.
2. Transgender, intersex, and gender-nonconforming individuals shall not be subject to more invasive searches than other individuals in the field or in police holding facilities.
3. Before searching an individual when no other lawful basis exists for the search other than an individual's consent, members shall inform the individual of their right to refuse a search, and ask for the written or recorded consent of the individual to be searched. If no such consent is provided, then no search will be conducted.

4. Before conducting any search of an individual in the field or at a police holding facility, officers conducting the search will ask the individual to be searched their preference with respect to the gender of the officer conducting the search (i.e. a trans woman may prefer to be searched by female members of the department). This request will be honored absent exigent circumstances, which shall be documented in writing as set forth below. This provision does not apply to frisks conducted to ensure officer safety.
 - a. If exigent circumstances exist, then the default should be for the individual to be searched by a female officer, unless a male officer is explicitly requested prior to or during the search. A search of a transgender, gender non-conforming, or intersex person by an officer sharing the same gender identity shall be considered a same-sex search for purposes of the Prison Rape Elimination Act (PREA) and any other applicable law.
 - b. If no officer of the gender requested is available, then members shall:
 - i. Summon an officer who is of the gender requested by the individual to conduct the search; and if no such officer is available within a reasonable time frame or the individual's request is not honored for any other reason, the member shall document in the command log the individual's preference with respect to the gender of the officer performing the search, and the reason the individual's preference was not honored.
 - ii. If an officer of the same sex is not available to conduct a legally justified strip search, then such a search may only be conducted in private by a physician as a last resort.
5. At no time shall a member refuse to search someone based on actual or perceived gender identity or gender expression.

Transporting transgender, intersex, and gender-nonconforming individuals

1. All members are required to contact dispatch at the beginning and end of transport and to document mileage from start to finish of each trip to transport arrestees.
2. Members shall transport transgender, intersex, and/or gender-nonconforming individuals with other arrestees of the same gender identity and expression unless the individual has expressed a safety concern and the wish to be transported alone or with people of a different gender identity.

Juveniles in custody

1. This policy shall also apply to juveniles as a complement to any special provisions already in place for juveniles in custody.
2. Members shall not disclose to parents or guardians sensitive information they discover about an individual's gender identity, gender expression, or sexual orientation. This information shall be kept private so as to avoid placing the juvenile at increased risk for violence or rejection in the home, and to allow the juvenile to choose whether to provide the information.

Placement in police custody

1. In the event that a transgender or gender-nonconforming person is in police custody and held in an area designated as single-sex, the individual shall be consulted on where they feel most safe before placement, and every effort will be made to ensure the person will be placed where they will feel most safe. Such safety preference for placement will be documented in writing. Unless individuals express a concern for their safety, individuals shall be housed in a manner consistent with their gender identity. All placements made that are not in accordance with what the arrested individual believes would be safest shall be documented in writing, with a detailed explanation for why the safety requests of the individuals were overridden.
2. Transgender, gender-nonconforming, and intersex individuals shall not be arbitrarily placed in segregated cells solely because of their transgender, gender-nonconforming, or intersex status or for their own protection, unless they have expressly requested to be so placed.
3. Requests to remove appearance-related items shall be consistent across genders while in police custody. Transgender people shall not be asked to remove appearance-related items (such as prosthetics, bras, clothes and undergarments of the presenting gender, wigs, or cosmetic items) if non-transgender individuals are not also required to do so. Whenever practicable, removal of items shall be conducted in private.
4. Transgender, gender-nonconforming, and intersex individuals shall not be handcuffed to railings, chairs, or other devices for any length of time solely because of their transgender, gender-nonconforming, or intersex status or for their own protection.
5. Transgender, gender non-conforming, and intersex individuals shall not be held longer than necessary for processing.

Training

1. The department shall implement full and regular training of new recruits, current members of the department, supervisors, and commanders on this policy and other matters related to the LGB and trans, intersex, and gender-nonconforming community.
2. Trainings shall be led or co-facilitated in meaningful part by members of the LGBT community who have experience with the department and by organizations knowledgeable about these issues and communities.
3. Training on transgender, intersex, and gender-nonconforming issues shall be incorporated throughout all officer trainings, including during search and seizure training and “cultural sensitivity” training. Members shall receive a minimum of a full day of training specifically on transgender, intersex, and gender-nonconforming issues and periodic roll-call trainings or other shorter “refresher” trainings.

Complaints

The following provisions should be added to the relevant agency provisions regarding complaints:

1. The department shall anonymously track all complaints concerning the quality of police services on the basis of gender identity, gender expression, and/or sexual orientation and make this data publicly available and accessible.
2. Copies of all complaints against members concerning the quality of police services on the basis of gender identity, gender expression, and/or sexual orientation shall be brought to the attention of the relevant civilian oversight agency.

Access to medication (including gender-affirming and HIV medications) and medical treatment

The following provisions should be added to the relevant agency policies governing access to medication in police custody:

1. Police must affirmatively ask individuals in custody whether they will need access to prescription medication during the time period before arraignment;
2. People in custody must be informed that if they need medication, they may request to be transported to a local hospital to be assessed by a doctor and administered any required medication. The hospital should issue enough medication to last through the entire arraignment process;

3. If an arrestee possesses prescription medicine at the time of arrest, the police officer who processes the arrest must fill out a Medical Treatment Form, recording the information on the individual's prescription bottle, including the name of the medication and dosing information, as well as the name and telephone number for the pharmacy and the individual's doctor;
4. Medication must be vouchered with personal property;
5. The Medical Treatment Form must accompany the person in custody through the arrest processing and be provided to any paramedic and other healthcare workers the arrestee will encounter in custody;
6. If the person in custody does not have prescription medication on hand but wants information about it to be available to health care workers, the person in custody must be permitted to contact a member of his or her household to bring it to the station, where the police can record prescription bottle information on the Medical Treatment Form;
7. Police must not discourage people in custody who need medication from asking for it by telling them that a trip to the hospital for medication will delay release from custody. Periodic assessments should be conducted to ensure that processes to ensure access to medication do not delay arraignment.

Medical treatment of transgender, intersex, and/or gender-nonconforming people in custody

1. If arrestees are permitted to retain and/or take prescription items while in custody, prescription hormones shall be treated like any other prescription medication necessary for an individual's health and wellbeing.
2. Whenever a transgender, intersex, and/or gender-nonconforming individual expresses a need for medical attention, members shall handle the situation with the same urgency and respect as any medical need or injury, including for injuries sustained during arrest.