



IACP LAW ENFORCEMENT POLICY CENTER

Interactions with Transgender and Gender-Nonconforming Individuals

Concepts and Issues Paper

August 2018

I. INTRODUCTION

A. Purpose of Document

This is a stand-alone document designed to explore the primary issues surrounding law enforcement interactions with transgender and gender-nonconforming (T/GNC) individuals. The goal of the document is to provide law enforcement executives with guidance on the topic and items for consideration when developing policies and training related to T/GNC individuals. This document reinforces the overall tenet of policing that all members of the public shall be treated with dignity and respect, regardless of the individual's gender identity, expression, or other individual demographics.¹

B. Background

According to the National Coalition of Anti-Violence Programs, T/GNC persons are at a significantly higher risk of abuse, including discrimination, harassment, intimidation, and violence than are gender-conforming individuals.² Based on findings from the 2015 U.S.

Transgender Survey, the largest survey to date examining the experiences of transgender people in the United States, more than half of respondents who had interactions with law enforcement officers who thought or knew they were transgender reported experiencing some form of mistreatment.³

However, efforts to improve attitudes about T/GNC persons among the general public and law enforcement officers have expanded. This has been accomplished through implementation of law enforcement policies and training, as well as through specific efforts to connect with T/GNC communities by means of law enforcement–community advocacy programs. In addition, T/GNC discrimination is a form of sex-based discrimination,⁴ prompting then-Deputy Attorney General James Cole to comment on the importance of educating “law enforcement about the transgender communities they serve... and enhance law enforcement outreach capabilities to the transgender communities by addressing sensitivities, stereotypes, and expectations.”⁵ As a result, the U.S.

¹ See the IACP *Model Policy and Concepts & Issues Paper on Unbiased Policing* available at http://www.theiacp.org/model-policy/model_policy/unbiased-policing

² National Coalition of Anti-Violence Programs, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Intimate Partner Violence in 2015* (New York: New York City Gay and Lesbian Anti-Violence Project, 2016), https://avp.org/wp-content/uploads/2017/04/2015_ncavp_lgbtqipvreport.pdf and Emily Waters, Chai Jindasurat, and Cecilia Wolfe, *Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Hate Violence in 2015* (New York: National Coalition of Anti-Violence Programs, 2016).

³ See Sandy E. James et al., *The Report of the 2015 U.S. Transgender Survey, Executive Summary* (Washington, DC: National Center for Transgender Equality, December 2016), www.ustranssurvey.org.

⁴ See “Sex-Based Discrimination,” United States Equal Employment Opportunity Commission, <https://www.eeoc.gov/laws/types/sex.cfm>

⁵ U.S. Department of Justice, “Deputy Attorney General James M. Cole Delivers Remarks at the Community Relations Service Transgender Law Enforcement Training Launch,” press release, March 27, 2014, <http://www.justice.gov/opa/speech/deputy-attorney-general-james-m-cole-delivers-remarks-community-relations-service>.

Department of Justice (DOJ) now offers a training video on programs and protocols for working with T/GNC communities.⁶

Biases and prejudices in both the general public and law enforcement are typically based on misconceptions and lack of understanding surrounding T/GNC individuals. As a result, communications between law enforcement and T/GNC persons can be strained. Even though a T/GNC person might not have had any negative experiences with law enforcement, their views of law enforcement may be influenced by the experiences of others or media reporting.

Without question, there are some common operational concerns associated with law enforcement interactions with T/GNC individuals. Interactions between these two groups can present a unique set of challenges for both parties. For example, officers may be confused over an individual's gender as recorded on government-issued identification documents in comparison with the individual's appearance that may suggest the opposite gender. As such, officers may be uncertain about whether to address the individual using masculine or feminine pronouns. However, these concerns can be addressed through increased awareness and training that is developed and/or provided by individuals familiar with the T/GNC community.

II. CONSIDERATIONS

A. Terminology⁷

The sex of an individual is assigned at birth based on the appearance of a baby's genitalia. Gender identity, one's innermost sense of being as male, female, a blend of both or neither, may or may not correspond with the assigned sex at birth. While everyone has a gender identity, transgender individuals typically experience their gender identity or expression as different from cultural

⁶ U.S. Department of Justice, "Justice Department Releases New Training Video for Law Enforcement on Interacting with Transgender Community," press release, August 25, 2016, <https://www.justice.gov/opa/pr/justice-department-releases-new-training-video-law-enforcement-interacting-transgender>.

⁷ These definitions have been replicated or adapted from definitions presented by the National Sexual Violence Resource Center and Pennsylvania Coalition Against Rape, *Talking about Gender & Sexuality: Sexual Violence & Individuals Who Identify as LGBTQ*, 2012, <http://www.nsvrc.org/publications/nsvrc-publications-guides/talking-about-gender-sexuality>; Office on Violence Against Women, "Sexual Assault," updated July 23, 2018, <https://www.justice.gov/ovw/sexual-assault>; Office for Victims of Crime, *Responding to Transgender Victims of Sexual Assault*, https://www.ovc.gov/pubs/forge/about_why.html; The Human Rights Campaign, "Glossary of Terms," <http://www.hrc.org/resources/glossary-of-terms>; Federal Bureau of Investigation, "Rape Addendum," *Crime in the United States, 2013*, <https://ucr.fbi.gov/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/rape-addendum/>.

expectations associated with their assigned sex at birth.⁸ For example, individuals assigned female at birth who experience their gender identity as male may feel more comfortable wearing masculine clothing and acting in ways that society typically regards as male. These people identify as men. An individual's external manifestations and appearance of gender identity, frequently expressed through one's name, behavior, pronouns, clothing, hair, behavior, voice, or body characteristics are referred to as "gender expression." Gender expression may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.⁹

The term "gender nonconforming" is a broad term referring to people who do not behave in a way that conforms to the traditional expectations of their gender, or whose gender expression does not fit neatly into a category. This term may apply to transgender persons, but it may also apply to others whose outward appearance, dress, and manner is inconsistent with their sex assigned at birth, but who do not necessarily identify as transgender. Related terms include genderqueer, nonbinary, androgynous, and gender-variant.

T/GNC persons may or may not be lesbian, gay, or bisexual. Sexual orientation describes a person's inherent or immutable emotional, romantic, or sexual attraction to other people, but is not a matter of gender identity. While some refer to the lesbian, gay, bisexual, and transgender community (LGBT) collectively, this document focuses on concerns specific to T/GNC people.

Transgender persons may also alter their bodies to align with their gender identity by going through what is referred to as transitioning. Transition may include such procedures as hormonal therapy, facial hair removal, the implantation of prosthetics, and sometimes, but not always, gender affirming surgery.

B. Forms of Address

In some cases, on initial contact, an officer may be unsure about the gender identity of a T/GNC person. As such, the officer may choose to use the person's gender expression and presentation to initially determine how to address the individual, such as the use of pronouns and terms like "miss," "sir," "him," or "her." If there is any doubt, agencies may elect to instruct officers to inquire as to the individual's preferred form of address. In some cases, individuals may inform officers how they would like to be addressed, either by an appropriate pronoun or by

⁸ Note: transgender is correctly used as an adjective, not a noun. Thus "transgender people" is appropriate but "transgenders" is often viewed as disrespectful.

⁹ Some individuals may wish to use the pronouns "they/them." Throughout this document, "they" is used as both a singular and plural pronoun.

the name they ordinarily use. In these instances, officers should honor the request of the individual rather than rely on the perceptions of the individual's gender or the sex designation on government-issued licenses or other forms of identification. The individual's chosen name should be used at all times to address the individual. Officers should not ask individuals for information regarding their anatomy, surgical history, or sexual practices absent an articulable and compelling need—and should not ask such questions for the purpose of determining a person's gender.

Agencies should address how an individual's chosen name, if different from their legal name, should be documented. For instance, on incident, arrest, or other reports, the person's legal name may be used and the chosen name listed separately in a manner otherwise designated by agency policy. Reports should use pronouns consistent with the person's gender identity, as would be used when talking to the person. Derogatory terms or names should never be used in conversations or in writing. Also, terms such as "pre-op," "post-op," or "non-op," may be considered offensive by many persons and may relay information that is privileged between a transgender person and their medical provider.

Finally, officers as well as other agency employees, should respect the privacy of T/GNC individuals. This includes limiting conversations about a T/GNC individual's gender to persons who have a need to know, such as a transporting officer or another officer who assumes custody of the individual, such as a booking and/or holding facility assignment officer.

C. Arrests, Searches, and Transportation

Agency training should reinforce that officers should not stop an individual on the assumption that the person is engaged in a crime, to include prostitution, based only on physical appearance or the manner in which the individual expresses their gender identity. In addition, officers should not use gender identity or gender expression as the sole basis for initiating a contact, or in determining whether reasonable suspicion or probable cause exists to conduct a warrantless search, seek a search warrant, or affect an arrest.

Interactions with T/GNC persons that involve arrests, searches, transportation, or booking can also present questions about appropriate law enforcement protocols. The objectives in all these actions is to safeguard the person from physical harm and abuse and to perform required law enforcement procedures in a respectful and courteous manner.

During a stop for law enforcement purposes, officers should respect the gender identity of the individual, whether that is determined by gender expression and presentation, self-identification by the individual, or by

means of a governmentally issued identification document when otherwise undetermined. A search or frisk should not be conducted for the sole purpose of viewing the person's anatomy or genitalia, assigning gender, or for any demeaning or harassing purpose. In addition, an officer should not perform a more invasive search or frisk than would be conducted for non-transgender and gender-conforming persons under the same or similar circumstances.

When a frisk or search is required, the officer should follow their agency's policy. In the case of an arrest, the individual should be informed that standard law enforcement protocol requires that a search be conducted on everyone who is arrested and that handcuffs be applied prior to being placed in a transport vehicle.

When developing policies and procedures related to T/GNC persons, agencies should consider transportation concerns. For instance, for safety reasons, agencies may elect to transport T/GNC individuals separately from any other arrestees when reasonably possible. If this is not practical, agencies may choose to transport the T/GNC individual with other individuals with the same gender identity. If a transportation van is used, agency policy should consider whether the T/GNC individual should be the only passenger or, if this is not reasonably possible, the only passenger on one side of the van. If the transporting officer is other than the arresting officer, all information concerning the person obtained by the arresting officer, including gender identity, should be passed along to the transporting officer.

In general, it is recommended that the T/GNC person should not be automatically designated as "at risk" on the arrest report, unless they or the officer indicate that the individual may be subject to harassment or hostility at a holding facility. This information should accompany the transporting officer and be provided to any other officer who assumes custody, such as a booking officer or other person who may make decisions on a jail cell assignment or temporary placement in a holding area.

T/GNC persons should be searched during the booking process as any other prisoner. However, agencies should consider their policies related to any appearance-related items, such as prosthetics, clothing that conveys gender identity, and wigs and cosmetics. In general, this should be consistent with requirements for removal of similar items by non-transgender and gender-conforming persons. Agency policy should also address the procedures for assigning T/GNC individuals to holding facilities. One option is to assign T/GNC arrestees to an individual cell or holding area when possible. If this is not possible, officers should follow their agency's policy for conducting prisoner

risk assessments and resulting placement determinations,¹⁰ which may include assigning the individual according to their gender identity.

D. T/GNC Liaison Services

Some law enforcement agencies, particularly those with sufficient personnel and related resources, have found it useful to create a T/GNC liaison unit. For example, the Washington, DC, Metropolitan Police Department has created such a unit in order to enhance interactions between law enforcement and T/GNC communities.

The unit can serve as the point of contact for any issues that may arise concerning contacts among officers, other agency employees, and T/GNC persons. The unit may make recommendations on changes in agency policies and procedures affecting T/GNC persons, serve as a resource to other officers, and respond to questions or concerns from the T/GNC community about agency policies and procedures.

The unit may also be the focal point for ensuring that agency policies and procedures relating to interactions with T/GNC persons are fully explained to officers and employees. Training is essential to ensure that officers have a full understanding of the basis for policies and protocols in this area. Assistance in such training may be requested from agencies that have already developed such courses, such as the Chicago, Illinois, Police Department, as well as the previously referenced video available through the DOJ Community Relations Services.¹¹

Acknowledgment

This document was developed by the IACP Law Enforcement Policy Center with cooperation and assistance from the National Center for Transgender Equality.

Every effort has been made to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. Readers outside of the United States should note that, while this document promotes procedures reflective of a democratic society, its legal basis follows United States Supreme Court rulings and other federal laws and statutes.

Law enforcement administrators should be cautioned that no “model” policy can meet all the needs of any given law enforcement agency. Each law enforcement agency operates in a unique environment of court rulings, state laws, local ordinances, regulations, judicial and administrative decisions and collective bargaining agreements that must be considered, and should therefore consult its legal advisor before implementing any policy.

This document is not intended to be a national standard.

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¹⁰ See the IACP *Model Policy and Concepts & Issues Paper on Holding Facilities* available at <http://www.theiacp.org/model-policy/model-policy/holding-facilities/> for more information on suggested procedures regarding “at-risk” prisoners.

¹¹ United States-based agencies should consult applicable Prison Rape Elimination Act (PREA) standards. More information is available at <http://www.theiacp.org/Elimination-of-Sexual-Abuse-in-Confinement-Initiative> and www.prearesourcecenter.org.