

**POLICE
DEPARTMENT**

**MODEL
POLICY**

**ON INTERACTIONS
WITH TRANSGENDER
PEOPLE**



This model policy document reflects national best policies and practices for police officers' interactions with transgender people. The majority of these policies were originally developed by the National LGBT/HIV Criminal Justice Working Group along with a broader set of model policies addressing issues including police sexual misconduct and issues faced by people living with HIV. Specific areas of the original model policy were updated and modified for use as the foundation for NCTE's publication "[Failing to Protect and Serve: Police Department Policies Towards Transgender People](#)," which also evaluates the policies of the largest 25 police departments in the U.S.

This publication contains model language for police department policies, as well as other criteria about policies that should be met for police departments that seek to implement best practices. **The larger Working Group's model policies developed by Andrea J. Ritchie and the National LGBTQ/HIV Criminal Justice Working Group, a coalition of nearly 40 organizations including NCTE,** can be found in the appendices of the Community Oriented Policing Services (COPS) "[Gender, Sexuality, and 21st Century Policing](#)" report.

While these are presented as model policies, they should be adapted by police departments in collaboration with local transgender leaders to better serve their community. **For assistance in policy development and review, please contact Racial and Economic Justice Policy Advocate, Mateo De La Torre, at mdelatorre@transequality.org or 202-804-6045, or ncte@transequality.org or 202-642-4542. NCTE does not charge for these services.**

#1: Availability of Policy on Transgender Interactions:

Department's Transgender policies should be readily accessible to the public at no cost via the Department's website and external search engines. An ideal policy would include all of the following criteria, either in a "Transgender Policy" or cross referenced from other sections within said policy.

#2: Non-Discrimination and Profiling Based on Gender Identity:

Model Policy:

1. 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, or conduct a search to determine a person's anatomy or assign gender.
 - 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 of members of the public, while on or off duty, as defined by the department's policy on sexual misconduct.
 - 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.
2. 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, use or drug paraphernalia.

#3: Non-Discrimination Based on Sexual Orientation:

Model Policy:

Policy must clearly prohibit profiling, harassment, and discrimination based on sexual orientation or perceived sexual orientation. See criteria #2 for recommended policy language.

#4: Non-Binary Recognition:

Best Practice:

Policies and training materials should recognize that not all people identify as male or female.

Note: Model policy language on non-binary identities is included in each of the gender-specific model policies that follow: *Use of Respectful Language, Department Forms/Records, Search Procedures, Transportation, Removal of Appearance Related Items, Bathroom Use, and Training.*

HOW A POLICE DEPARTMENT CAN DESCRIBE NON-BINARY PEOPLE IN EASY-TO-UNDERSTAND LANGUAGE AND GIVE BASIC INFORMATION ABOUT USING PRONOUNS

Most people – including most transgender people – are either male or female. But some people don't neatly fit into the categories of "man" or "woman," or "male" or "female." For example, some people have a gender that blends elements of being a man or a woman, or a gender that is different than either male or female. Some people don't identify with any gender. Some people's gender changes over time.

People whose gender is not male or female use many different terms to describe themselves, with non-binary being one of the most common. Other terms include genderqueer, agender, bigender, and more. None of these terms mean exactly the same thing – but all speak to an experience of gender that is not simply male or female.

Different non-binary people may use different pronouns. Many non-binary people use "they" while others use "he" or "she," and still others use other pronouns. Asking whether someone should be referred to as "he," "she," "they," or another pronoun may feel awkward at first, but is one of the simplest and most important ways to show respect for someone's identity.

#5: Use of Respectful Communication and Language:

Model Policy:

1. Members shall:
 - A. Address the public using names, pronouns and titles of respect appropriate to the individual's gender identity as expressed 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. Respectfully treat trans, 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.
2. Members should be aware that individuals' names may change over time, whether due to marriage, changes in gender identity, or other factors, and should always use the name currently used by individuals.

#6: Department Forms/Records: Name, Gender, and Pronouns

Best Practices:

All departmental forms and records should include a space for "Name currently used (if different from legal name)," and "Legal Name" in addition to any spaces currently designated for "alias." (e.g. a transgender woman might use the name Jane Doe ("Name Currently Used"), her nickname might be JD ("Alias"), and the legal name on her ID might be different ("Legal Name"). Pronouns should be recorded along with "Name Currently Used."

All forms and records should include designations for male, female, a gender-neutral designation (such as "non-binary" or the abbreviation "X"), and "Unknown" for instances where the gender of the individual has not been disclosed and is otherwise unknown.

Model Policy:

Members shall:

1. Record an individual's currently used name under "Name Currently Used" in all Department forms and records if different from legal name. Members shall use this name when addressing, recording, or referring to an individual.
2. Record an individual's legal name as stated on government issued ID or other legal paperwork under "Legal Name" in all Department forms and records.
3. Note an individual's gender as "M," "F," "X," or "Unknown" based on the individual's expressed gender identity. If unsure or if the individual has not disclosed, members shall respectfully ask for how the individual identifies regardless of gender marker on government ID.
4. Pronouns shall be recorded as stated by the individual.

Some states and municipalities allow for a gender neutral designation (usually "X") on identification documents. Members shall consider identification with X gender markers as legal forms of identification.

Members shall *not*:

1. Consider or document the name an individual currently uses as an "alias" or "nickname."

#7: Search Procedures:

Model Policy:

1. Under no circumstances shall members of the department frisk or search 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. Trans, intersex, and gender-nonconforming individuals shall not be subject to more invasive searches or frisk procedures than other individuals in the field or in police holding facilities.

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3. Before searching an individual when no other lawful basis exists for the search, members shall inform the individual of their right to refuse a search based on consent (if applicable), and ask for the written 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 or the search involves a frisk conducted to ensure officer safety and there is no time to determine whether the individual would feel safer being searched by a male or female officer, 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 of the same sex as the person's gender identity or of the requested gender shall be considered a proper "same-sex" search for purposes of PREA and any other applicable law.
 - a. If no officer of the gender requested is available, then the 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 or the individual's request is not honored for any other reason, the member shall document 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, in the command log.
 - ii. If an officer of the requested sex is not available to conduct a legally necessary strip search, then such a search may only be conducted in private by a physician as a last resort.

#8: Transportation:

Model Policy:

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. When transporting trans, intersex, and/or gender-nonconforming individuals, members shall transport with other arrestees of the same self-identified gender unless the individual has expressed a safety concern and wish to be transported alone or with people of a different gender.
3. If a person does not identify as male or female, they shall be transported with arrestees of the gender they express to be safest for them.

#9: Officer Sexual Misconduct:

Model Policy:

This department has a zero tolerance policy with respect to sexual harassment, sexual assault, sexual misconduct, sexual abuse, and rape of any member of the public by any member of the department. Engaging in such conduct will be grounds for immediate discipline, up to and including suspension and termination from the force.

1. Members are prohibited from:
 - A. Engaging in any on-duty sexual activity by officers
 - B. Engaging in any on- or off-duty sexual activity using department/city property
 - C. Using official position to coerce, persuade, force, or initiate sexual contact
 - D. Failing to report sexual misconduct
 - E. Performing non-exigent searches of women by male officers
2. Department shall employ the following prevention and oversight measures:
 - A. partner with independent victim service providers to conduct post-arrest exit interviews;
 - B. Conduct regular unannounced supervision;
 - C. Conduct regular "sting" audits for officer sexual misconduct;

- D. Conduct annual independent audits for sexual misconduct compliance;
 - E. Publish annual data on alleged incidents of sexual misconduct
3. Department shall fully incorporates PREA lockup standards.
- A. Abuse Prevention Planning (hiring, training, searches)
 - B. Evidence and Referral Protocols
 - C. Training and Education
 - D. Risk Screening
 - E. Reporting
 - F. Official Response to a Report
 - G. Investigations
 - H. Staff Discipline and Prosecutions
 - I. Medical and Mental Care
 - J. Data Collection and Review
 - K. Audits and Corrective Action

#10: Placement in Temporary Lockup:

Model Policy:

1. In the event that a transgender or gender-nonconforming person is in police custody and held in an area segregated by gender:
 - A. 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 say they will feel most safe.
 - a. Should the individual's assessment of their safety change over the course of detention, they will immediately be moved to a location where they feel safer.
 - B. Unless individuals express a concern for their safety, individuals shall be housed in a manner consistent with their gender identity.
 - a. Safety preference for placement will be documented in writing.
 - b. All placements made that are not in accordance with what the arrested individual specifies would be safest shall be documented in writing, with a detailed explanation for why the safety requests of the individuals were overridden.

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2. Transgender, gender-nonconforming, and intersex individuals shall not:
 - A. 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.
 - B. 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.
 - C. be held longer than necessary for processing.

#11: Access to Medical Care in Lockup:

Model Policy:

1. Prescription hormones shall be treated like any other prescription medication necessary for an individual's health and wellbeing.
2. Whenever a trans, 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.

#12: Removal of Appearance Related Items:

(e.g. prosthetics, bras, clothes, undergarments, wigs, chest binders, or cosmetic items)

Model Policy:

1. Transgender people shall not be asked to remove appearance-related items (such as prosthetics, bras, clothes, undergarments, wigs, chest binders, or cosmetic items), regardless of where they are housed, if non-transgender individuals of the same gender identity are not also required to do so.
 - A. If the individual does not identify as male or female, they should be allowed to keep appearance-related items regardless of placement, unless the items are disallowed for all arrestees regardless of gender.
 - B. Whenever practicable, removal of items shall be conducted in private.

#13: Bathroom Use:

Model Policy:

1. Trans, intersex, and gender non-conforming individuals shall not, on the basis of gender identity or expression, be stopped, questioned, or arrested for using a gender-segregated or single-sex restroom including public restrooms.
2. Trans, intersex and gender-nonconforming individuals shall be allowed to use the restroom in accordance with their gender identity or where they feel the most safe while in police custody.

#14: Use of condoms as evidence for prostitution-related offenses:

Many people participate in sex work, drug sales, and other activities that are currently criminalized (“underground economy”) to earn an income, or in exchange for food, a place to sleep, or other goods or services. The commercial sex trade exists in a variety of forms, including street-based and online sex work. Participation in the sex trade is often higher among those who have faced family rejection, poverty, or unequal opportunities in employment, housing, and education. Numerous studies have documented higher levels of participation in sex work among transgender people, and in particular people of color and those facing homelessness or poverty.

Model Policy:

Members of the service are advised that confiscating, citing, and invoicing condoms as arrest evidence for any prostitution-related offenses may compromise public health by creating a disincentive for individuals to carry, distribute, share, or receive condoms in order to engage in safer sex practices.

Members shall *not*:

1. Confiscate unused condoms from individuals under any circumstances.
2. Cite or rely on the presence or possession of condoms to any degree as the basis for reasonable suspicion or probable cause to believe that an individual has engaged in or intends to engage in any prostitution-related charge, including patronizing, promoting, maintaining a premise, or trafficking.

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3. Comment on the presence or possession of unused condoms, or ask individuals questions regarding the purpose and intended use of condoms, or regarding their sexual practices.
 4. Harass individuals or businesses engaged in the distribution of condoms, or threaten to use presence or possession of condoms as a basis for ongoing harassment or initiation of any law enforcement action.

#15: Training:

Best Practices:

1. The department should 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 should 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 trans, intersex, and gender-nonconforming issues should be incorporated throughout all officer trainings, including during search and seizure training and “cultural sensitivity” training.
4. Members should receive 8 hours of training specifically on trans, intersex, and gender-nonconforming issues and periodic roll-call trainings or other shorter “in-service” trainings.

#16: Immigration Enforcement Cooperation:

Best Practices:

NCTE encourages Police Departments to work with their local communities to establish comprehensive immigration and oversight policies and mechanisms for their jurisdiction. The following criteria are meant as a starting point to describe the overall position of the Department towards the communities they police.

Members shall *not*:

1. Honor civil immigration notification and hold requests from USDHS (“detainer requests”) by continuing to hold in custody without a judicial warrant an individual who is eligible for release on a criminal matter, or by sharing that individual’s information, including release date, with USDHS for purposes of aiding them with civil immigration enforcement.
2. Take police action for the purposes of determining immigration status.
3. Inquire about individuals’ immigration status, country of birth, or first language.

Members shall:

1. Provide police services to all persons, including those who are undocumented, to ensure a safe environment.

#17: Civilian Oversight:

Best Practices:

Independent oversight bodies should:

1. Be a standing body, independent of both law enforcement and political interference.
2. Have the authority to initiate and conduct investigations independently, including subpoena power and the authority to impose discipline up to and including terminating an officer for misconduct.
3. Report annually on the types of complaints received and their dispositions, and work collaboratively with community members and organizations to address issues and situations related to the community, even when official reprimand or discipline was not implemented.
4. Accept and investigate anonymous complaints, whether filed by the individual or by third parties/organizations on their behalf.



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