



DEPARTMENT OF PUBLIC SAFETY MEMORANDUM



TO: POLICE DIVISION **DATE:** April 3, 2019
FROM: ANTHONY F. AMBROSE
PUBLIC SAFETY DIRECTOR **NUMBER:** 19-191
SUBJECT: IMPLEMENTATION OF GENERAL ORDER 19-03 **FILE REF:** PUB 4 x REL 1
RE: LGBTQ COMMUNITY & POLICE INTERACTIONS

General Order 19-03, LGBTQ Community & Police Interactions, is hereby effective immediately. This Order establishes procedures for Division members in their interactions with members of the LGBTQ (Lesbian, Gay, Bisexual, Transgender and Questioning) community by spelling out relevant terms, providing gender classification procedures, professional guidelines and search, arrest, detention and transportation procedures. Furthermore, this Order establishes the position of LGBTQ Liaison.

All Division personnel shall become familiar with and comply with the tenets of this General Order and shall acknowledge receipt and compliance via PowerDMS, no later than April 30, 2019.

BY ORDER OF:

ANTHONY F. AMBROSE
PUBLIC SAFETY DIRECTOR



NEWARK POLICE DIVISION GENERAL ORDER



SUBJECT:
LGBTQ Community & Police Interactions

GENERAL ORDER NO.
19-03

SUPERSEDES:
NEW

DATED:
April 3, 2019

RELATED POLICIES:

Bias-Free Policing G.O. 17-06

Searches With or Without a Search Warrant G.O. 18-15

Municipal Arrest Processing Section G.O. 16-03

Biased Incidents Investigations G.O. 03-01

This Order consists of the following numbered sections:

I. PURPOSE

II. POLICY

III. DEFINITION OF TERMS

IV. GENDER CLASSIFICATION PROCEDURES

V. PROFESSIONAL GUIDELINES

VI. SEARCHES, ARREST, DETENTION & TRANSPORTATION

VII. LGBTQ LIAISON

VIII. EFFECT OF THIS ORDER



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I. PURPOSE

The purpose of this policy is to establish policies and procedures for interactions with members of the Lesbian, Gay, Bisexual, Transgender, and Questioning community.

II. POLICY

It is the policy of the Newark Police Division that all decisions and actions by members shall be fair, impartial, and free of bias and unlawful discrimination. This policy shall be read in conjunction with ***G.O. 17-06, Bias-Free Policing***.

Members of the Newark Police Division shall treat all persons equally, regardless of gender identity, gender expression, or sexual orientation. Members shall recognize that gender identity, gender expression, and sexual orientation do not constitute reasonable suspicion or evidence that a person has engaged in any crime.

III. DEFINITION OF TERMS

- A. **Bisexual** – A person emotionally, romantically or sexually attracted to more than one sex, gender or gender identity though not necessarily simultaneously, in the same way or to the same degree.
- B. **Deadnaming** – Referring to a person who's transgender by the name they used before they transitioned. This is also described as referring to someone by their "birth name" or "given name".
- C. **Gay** – A person who is emotionally, romantically or sexually attracted to members of the same gender.
- D. **Gender** – A person's actual or perceived sex, which also includes a person's gender identity, self-image, appearance, behavior, or expression, whether or not that gender identity, self-image, appearance, behavior, or expression is different from that traditionally associated with the legal sex assigned to that person at birth.
- E. **Gender Expression** – External appearance of one's gender identity, usually expressed through behavior, clothing, haircut or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.
- F. **Gender Identity** – One's innermost concept of self as male, female, a blend of both or neither – how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth.
- G. **Gender Non-conforming** – A broad term referring to persons 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.



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- H. Gender Transition** – Refers to the period during which an individual takes steps to change their physical characteristics and/or gender expression to be consistent with their gender identity. It can include changing their name, taking hormones, having surgery or changing legal documents such as a driver's license.
- I. Intersex** – An umbrella term used to describe a wide range of natural bodily variations. Intersex persons are born with or develop characteristics that do not seem to fit the conventional definitions of male or female. These characteristics can include chromosomes, genitals, hormones and more. Persons with intersex conditions should not be assumed transgender. **Note: The term hermaphrodite is offensive and should not be used.**
- J. Lesbian** – Refers to women who are emotionally, romantically or sexually attracted to other women.
- K. LGBTQ** – An umbrella term to refer to persons who self-identify as Lesbian (L), Gay (G), Bisexual (B), Transgender (T), and Questioning (Q).
- L. Nonbinary/Gender Fluid** - An adjective that describes a person who does not identify as either a man or a woman, but identifies their gender as encompassing multiple genders or as outside the man/woman system of gender classification.
- M. Queer** – Historically used as an epithet/slur against people whose gender, gender expression and/or sexuality do not conform to dominant expectations, the term has been reclaimed as a celebration of not fitting into societal norms. Queer has also been embraced as a radical and anti-assimilationist stance that captures multiple aspects of identities.
- N. Sex** – A person's biological or anatomical identity as male, female or intersex.
- O. Sexual Orientation** – A term to describe a person's attraction to people of the same and/or different sex.
- P. Transgender** – An umbrella term for persons whose gender identity and/or expression is different from cultural expectations based on the sex they were assigned at birth. Being transgender does not imply any specific sexual orientation. Therefore, transgender persons may identify as straight, gay, lesbian, bisexual, etc.

IV. GENDER CLASSIFICATION PROCEDURES

When a person identifies himself/herself as a gender, which may be in conflict with their physical appearance, officers shall respect the expressed gender and **not** question it. If the person does not self-identify, the following guidelines shall apply:



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- A. When the intention of a person's gender presentation is clear to a reasonable person (based on attire and other cues), use this as a basis for gender determination.
- B. When a person's sex is unclear or the officer is uncertain of the person's gender identity, it is appropriate to inquire, politely, how the individual wishes to be addressed.
- C. In arrest situations, where the legal and/or birth name must be obtained for identification and arrest processing procedures, the legal or birth name shall be documented on the DPI:800 (Arrest Report) in Box #10, as an alias to ensure proper identification procedures for the arrest. Officers shall avoid "deadnaming" during this process.
- D. All information obtained about a person's transgender status (e.g., preferred name and pronoun) should be documented and provided to relevant Division members to ensure continuity of appropriate treatment.
- E. Under no circumstances shall Division members disclose to non-involved persons that a person is transgender. The disclosure of this information shall be on a "need to know" basis.

V. PROFESSIONAL GUIDELINES

A. Division members SHALL:

- 1. Accept a person's gender expression or self-expressed gender identity and interact with the individual in a professional and courteous manner.
 - a. Address every person by his/her preferred name, title, and pronoun. When the person does not self-identify and his/her gender is not clear to a reasonable person, or the officer is uncertain, the officer may professionally and directly ask the person what name and, if necessary, gender pronoun he or she uses.
 - b. When persons self-identify as transgender or state his/her gender identity, officers shall not question this identity.
- 2. Take the appropriate steps to address complaints of biased or discriminatory policing consistent with *G.O. 17-06 (Bias-Free Policing)*.
 - a. Notify a supervisor to respond to the scene to review the circumstances and determine the appropriate course of action.
 - b. Initiate an Investigation of Personnel (IOP), documenting the allegations and all actions taken.



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NOTE: An allegation of bias-based or discriminatory policing occurs whenever, from the perspective of a reasonable person, an individual complains that an officer treated him, her, or someone else differently because of gender, actual or perceived gender identity, or actual or perceived sexual orientation.

3. In accordance with *Bias Incidents Investigations (G.O. 03-01)*, the initial responding officer shall determine if a bias incident has occurred. An offense is bias-based if the motive for the commission of the offense or unlawful act is racial, religious, ethnic or pertains to *sexual orientation* or handicap.

a. The responding officer will:

- i. Request that a field supervisor respond to the scene.
- ii. Complete standard police reports, documenting method of operation or unusual characteristics of incident.
- iii. Notify appropriate investigative unit.
- iv. Prepare a Supplementary Bias Incident Offense Report (UCR B1 Rev 7/87)
- v. Refer the victim and witnesses to the Essex County Prosecutor's Office of Victim-Witness Advocacy, as appropriate, at (973) 621-4707.

b. The field supervisor shall:

- i. Supervise the preliminary response and investigation.
- ii. Determine if the potential exists for further acts of violence.
- iii. Arrange for immediate increase in patrols throughout affected area.
- iv. Attempt to verify if the occurrence is a confirmed bias incident.
- v. Request Command Operations Center Captain or Precinct Commander to the scene as appropriate.

B. Division members are prohibited from:

1. Stopping, detaining, frisking, or searching any person in whole or part for the purpose of determining that person's gender or in order to call attention to the person's gender expression;
2. Considering a person's gender identity as reasonable suspicion or prima facie evidence that the individual is or has engaged in a crime, including prostitution;
3. Disclosing a person's sexuality to other arrestees, members of the public, or other Division members, absent a proper law enforcement purpose;
4. Using language that a reasonable person in the same situation, would consider demeaning or derogatory, in particular, language aimed at a person's actual or perceived gender identity or expression or sexual orientation to demean or embarrass;



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5. Seeking or requiring proof (i.e. identification or certificate of a name change) of a person's identity to use that person's preferred title or pronoun. However, proof of identity may be required for law enforcement purposes, such as checking a driver's license;
6. Failing to provide police services on any basis related to the caller or complainant's actual or perceived gender identity or sexual orientation;
7. Requesting the removal of identity-related items, such as prosthetics, clothing, wigs, or cosmetics, that are beyond the scope of standard interactions with citizens or conflict with Division policy;
8. Requesting identification or otherwise initiating contact, with any person solely because of actual or perceived sexual orientation, gender expression, or gender identity; or
9. Demeaning, disputing, challenging, criticizing or retaliating against anyone for clarifying the name or pronouns that he/she would prefer members to use. This also includes "deadnaming".

VI. SEARCHES, ARRESTS, DETENTIONS and TRANSPORTATION

A. SEARCHES

1. The Newark Police Division strictly prohibits members from considering a person's demographic category in determining whether to conduct a search or to seek a search warrant. Searches of people based solely on a demographic category are illegal. Members may only use demographic categories to describe a specific person where the description is from a trustworthy source that is relevant to the locality and time. (*from G.O. 18-15, Searches With or Without a Search Warrant*).
2. Under no circumstances shall members frisk or search any person to determine that person's biological sex, to determine the status of, view, or touch the person's genitals.
3. An officer of the **preferred sex (as the person being searched)** will conduct the search, when practical, based on the Gender Classification Procedures of this general order.

NOTE: An exception to this guideline will be if exigent circumstances make it necessary to conduct an immediate search of the person for weapons, contraband or other objects that may pose a danger to the person themselves, the public or officers.

4. Prior to searching a person, the officer shall ask the person what gender officer they are most comfortable with searching them.



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5. In **Terry Frisk** situations, officers must take into account the reasonableness of any delay created by waiting for another officer. If an officer of the preferred gender is not available within a reasonable amount of time, officers shall proceed with the frisk.
 - a. Officers should be aware that a transgender person's possession of hypodermic needles may be indicative of prescribed hormone treatment and/or therapy and is not necessarily indicative of illegal drug possession or use. Prior to the issuing of any summons, the officer shall attempt to verify if the individual has a prescription for the hypodermic needle.
 - b. Officers shall not rely on the mere presence of condoms as the sole basis for reasonable suspicion or probable cause that an individual has engaged or intends to engage in prostitution.
 - c. Officers **will not** conduct more invasive frisks of transgender persons than would be required for any other person.
6. **Custodial Searches**
 - a. The gender of the Division member(s) performing custodial searches of individuals, including searches incident to arrest or prior to transport, will be based on the preferred gender of the detainee, when feasible.
 - b. When requested by a transgender individual, a Division member of the individual's gender identity or expression will be present, when practical, to observe the custodial search.
 - c. Officers **will not** conduct more invasive searches of transgender persons than would be required for any other person.
 - d. Requests to remove items related to a person's appearance, such as wigs and cosmetics, shall be consistent for all persons, regardless of gender expression or gender identity, while in police custody.

B. ARRESTS

1. An arrestee's sex shall be classified as it appears on the person's government-issued identification card. If the sex on the identification card is in contrast with how the arrestee self-identifies, the officer shall list them by their gender identity in Box #23 of the Arrest Report.
2. All paperwork shall be completed using the arrestee's preferred name. If the arrestee's preferred name differs from their legal or given name, the legal or given name shall be recorded as an alias in the Arrest Report (DPI:800) in Box #10.



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3. The arresting officer shall document in the Arrest Report (DPI:800) in Box #45 if the arrestee identifies him/herself as transgender.
4. Officers shall respect the privacy of juveniles who are arrested. Information about their gender identity or sexual orientation shall not be disclosed to their parents or guardians, except as it directly relates to the reason for their detention. Disclosing this information to parents or guardians may put the juvenile at increased risk for violence or rejection in the home. Officers shall consult with the juvenile to determine which pronoun they should use when communicating with the parent or guardian.
 - a. LGBTQ youth are at increased risk of homelessness as a result of being forced out of their homes or running away from their homes due to rejection, abuse, or conflict over the youth's gender identity or sexual orientation.
 - b. Division members shall seek to determine if the youth feels safe returning to the care of their parents or guardians. If a youth expresses legitimate concerns for their safety, Division members shall contact Child Protection and Permanency.
5. In the event that there is uncertainty regarding the appropriate classification of an arrestee's gender, a supervisor will be consulted for further guidance on the appropriate classification (e.g. In situations in which the arrestee does not have identification, and will not speak to officers, supervisors can attempt to establish communication necessary to make a determination of the arrestee's gender).

C. DETENTIONS

1. Whenever practicable, transgender arrestees shall be asked if they prefer to be housed in a single-person cell.
2. In the event that a transgender person requires immediate medical care or medication, including hormone therapy, Emergency Medical Services (EMS) shall be notified immediately and the arrestee shall be taken to the appropriate medical facility for treatment.

D. TRANSPORTATION

1. When transporting a transgender and/or gender nonconforming person together with other individuals accused of committing separate crimes, officers shall transport the person with other arrestees of the same gender identity and expression, unless the person has expressed a safety concern and wishes to be transported alone or with people of a different gender.
2. When custody of the person is transferred to another agency, the officer will verbally advise the receiving agency that the person is transgender.



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VII. LGBTQ LIAISON

- A. The Newark Police Division shall appoint liaison(s) to serve as the contact point between the Division and the LGBTQ community. They will collaborate with the LGBTQ community on events and issues of interest and monitor the Division's response to LGBTQ-related crimes. The liaison(s) shall support the Division's ongoing efforts to foster a strong partnership with the LGBTQ community and provide critical feedback. The LGBTQ liaison(s) shall:
1. Report directly to the Community & Clergy Affairs Commander
 2. Establish relationships with organizations throughout the City.
 3. Attend LGBTQ community meetings, as appropriate.
 4. Contact LGBTQ victims of suspected biased crime, when appropriate.
 5. Provide monthly reports of community feedback, events attended and any LGBTQ-related information.

VIII. EFFECT OF THIS ORDER

All Division Orders, Memoranda, and sections of Rules and Regulations concerning the interaction with LGBTQ individuals that are inconsistent with this policy are hereby rescinded and repealed.

By Order of:

ANTHONY F. AMBROSE
PUBLIC SAFETY DIRECTOR