
 <p>Cambridge Police Department</p>	POLICY & PROCEDURES		No. 231
	Subject/Title: Preventing Gender Identity Bias		
	Issuing Authority: 	Review Date: Oct. 30, 2013	Issue Date: Dec. 15, 2013
	Robert C. Haas Police Commissioner	Effective Date: Jan. 6, 2014	Rescinds:
References/ Attachments: Massachusetts Transgender Political Coalition Mass Equality		Accreditation Standards: 1.2.9; 70.3.3; & 72.8.3	

I. PURPOSE:

The purpose of this directive is to describe how members of the Cambridge Police Department will respond to various situations that might involve transgender persons so as to avoid any misinterpretations of bias or disparate treatment. This directive will include the following:¹

- Definitions of transgender, gender identity, gender expression and gender transition;
- Guidelines for interacting with transgender individuals;
- Reinforcement of expectations to treat all persons with dignity, respect and professionalism;
- How to address transgender individuals and the distinction between legal names and preferred names; and
- Arrest situations involving transgender individuals.

II. POLICY:

It is the policy of this police department that:²

- Persons who are transgender - whether they be victims, witnesses, or suspects – shall be treated with dignity and respect, and in any encounters with such individuals, an

¹ CALEA Std. 1.2.9 – *The agency has a written directive governing bias based profiling and, at a minimum, includes the following provisions:*

- a. *a prohibition against bias based profiling in traffic contacts, field contacts, and in asset seizure and forfeiture efforts;*
- b. *training agency enforcement personnel in bias based profiling issues including legal aspects;*
- c. *corrective measure if bias based profiling occurs; and*
- d. *a documented annual administrative review of agency practices including citizen concerns.*

² CALEA Std. 1.2.9 (a)

officer's conduct shall conform to applicable provisions of federal and state law, department rules and regulation and this policy.

- Calls for service or complaints generated by transgender individuals shall be addressed and investigated in a manner that is consistent with all department policies. No officer shall fail to respond to a call for service based on the gender identity and/or gender expression of the caller.

III. GENERAL CONSIDERATIONS & GUIDELINES:

Many transgender people, particularly those who have not received transition related medical care, face major legal and financial obstacles in changing their identity documents (including birth certificates, driver's license, passport, etc.) to reflect their true gender identities. This disconnect between their gender identity and expression and their status on legal documents not only denies transgender people official recognition of their true selves but also exposes them to greater risk of discrimination and harassment in schools, workplaces and other public arenas.

On November 23, 2011, Governor Deval Patrick signed into law H3810, An Act Relative to Gender Identity, and was enacted into law on July 1, 2012. This law adds "gender identity" as a protected class to Massachusetts' legal provisions regarding employment, housing, credit and public education anti-discrimination laws and to the Massachusetts' hate crime law.³ All of these laws also protect several other characteristics, including sexual orientation, disability, sex, age, race, ancestry and religion.

The law allows a person to demonstrate his/her gender identity by providing evidence including: medical history; care or treatment of the gender identity; consistent and uniform assertion of the gender identity; or any other evidence that the gender identity is sincerely held as part of a person's core identity. The law prohibits discrimination on the basis of gender identity regardless of what a person's gender identity is. The law includes several ways that a person may demonstrate his/her identity though it does not require proof for protection. The law does state, however, that a person may not bring a claim of discrimination based on asserting a gender identity for any "improper purpose."⁴

Under state law, a "hate crime" is "any criminal act coupled with overt actions motivated by bigotry and bias, including, but not limited to, a threatened, attempted or completed overt act motivated at least in part by racial, religious, ethnic, handicap, gender, sexual orientation, or gender identity prejudice, or which otherwise deprives another person of his/her constitutional rights by threats, intimidation or coercion, or which seeks to interfere with or disrupt a person's exercise of constitutional right through harassment or intimidation....."⁵

³ Refer to Cambridge Police Department *Policy #505 – Hate Crimes and/or Incidents* for the investigative protocols for these kinds of incidents.

⁴ CALEA Std. 1.2.9 (a)

⁵ Refer to Mass. General Laws, c. 22C, § 32.

As a professional police department that values human dignity and is sworn to uphold and protect the rights and civil protections of all people, officers have committed themselves to taking steps or actions that are designed to ensure fair & impartial treatment of all transgender individuals. To this end, officers of this department will abide by all laws, rules, regulations, practices and procedures that are in place to provide for equal protections.⁶

IV. DEFINITIONS:

- A. **Sex:** For purposes of this directive, the word “sex” shall refer to an individual’s biological or anatomical identity as male or female.
- B. **Gender Identity:** A person’s gender-related identity, appearance or behavior, whether or not it is different from that traditionally associated with the person’s physiology or assigned sex at birth.⁷ Gender-related identity may be shown, but is not limited to, medical history, care or treatment of the gender-related identity; consistent and uniform assertion of the gender-related identity or any other evidence that the gender-related identity is sincerely held, as part of a person’s inner sense of being or core identity.
- C. **Gender Expression:** External characteristics and behaviors that are socially viewed as masculine or feminine. Gender expression is the external manifestation of one’s gender identity.
- D. **Transgender:** An umbrella term for people who transition from one gender to another and/or people who challenge social expectations of how they should look, act, or identify based on their birth sex. This can include a range of people including: male-to-female (MTF) or female-to-male (FTM) transgender people and more generally, anyone whose gender identity or expression differs from conventional expectations of masculinity or femininity.
- E. **Gender Transition:** A personal process a transgender person goes through when they begin to live and identify publicly as the gender they see themselves as. This process involves a social transition, which can include a person changing gender expression, such as clothes and hairstyle; pronoun; and possibly their first name, to be reflective of the gender they are transitioning to. This process may also include support from therapist and a medical transition, which can be hormone replacement therapy and/or sex reassignment surgery.
- F. **Transgender Individual:** A person whose gender identity differs from his/her assigned sex at birth.

⁶ Refer to Cambridge Police Department *Policy #230 - Addressing Bias-based Policing*.

⁷ Refer to Mass. General Laws, c. 4, § 7.

- G. Preferred Name:** Non-birth name that a transgender individual uses in self-reference (this may or may not be in the individual's legal name).

V. FORMS OF ADDRESS:

- A. Determining How to Address a Transgender Individual:** Whenever a person identifies him/herself as transgender, the officer should respect the expressed gender and should not question it.
- B. Addressing Transgender Individuals:** Officers shall address transgender individuals by the person's preferred name even if the individual has not received legal recognition of the preferred name. In addressing or discussing a transgender person, officers will use pronouns appropriate for that person's gender identity. If officers are uncertain about which pronouns are appropriate, then officers will respectfully ask the individual.
- C. When An Individual Does Not Self-Identify:** If while during an encounter an individual does not self-identify as transgender, the following guidelines should apply:
1. 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.
 2. When the officer is not certain of the person's gender identity, it is appropriate to inquire how the individual wishes to be addressed (e.g., sir or ma'am) and the name by which the individual wishes to be addressed. This name shall be noted as an "also known as" (AKA) on any police reports if it differs from the individual's legal name.
 3. If a transgender person is unwilling to provide information that enables the officer(s) to know what name and/or gender is preferable, then the officer(s) should make a determination about the person's gender based on the person's gender expression (i.e., clothing, language, demeanor, etc.) and any other evidence available to the officer(s). For example, if the person is clearly dressed like a woman and presenting as a woman, then the person should be recognized and addressed as a woman. A driver's license or any other government-issued form of identification (such as a passport) shall only be acceptable as initial proof of gender identity in the absence of self-identification by the individual or some other obvious expression of gender identity.

VI. STOP, FRISK & THRESHOLD INQUIRIES:

- A. Adherence to Department Policy:** There will be no distinction as to the underlying reasons and/or thresholds as to when to conduct stops, frisks and threshold inquiries of transgender persons as there would be for any other individual.⁸
- B. General Prohibitions When Conducting Field Searches:** Officers are prohibited from engaging in the following activities while engaged in stop, frisks and threshold inquiries of transgender persons:⁹
1. A search or frisk performed for the sole purpose of determining an individual's anatomical sex;
 2. Subjecting a person to a more intrusive search or frisk than what would be conducted on non-transgender individuals;
 3. Questioning the gender identity expressed by the individual or the gender marker included on an individual's identification documents;
 4. Inquire about the intimate details of an individual's anatomy or surgical status to determine an individual's gender because no proof of an individual's gender is required. This requirement can change for purposes of booking, as addressed in applicable policies regarding booking procedures; or
 5. Request a transgender person to remove appearance-related items, such prosthetics, clothing that conveys gender identity, wigs, cosmetics which are not in conformance with requirements for the removal of similar items for non-transgender individuals.

VII. ARREST SITUATIONS:

- A. Arrest Guidelines:** Transgender individuals may be arrested in situations where an officer has the right to make an arrest.¹⁰
- B. Booking Process:** When processing a transgender individual after arrest, officers shall treat all transgender detainees with some degree of care and custody precautions as they would with any other arrestee, and ensure that all standards of the police lockup facility are maintained.¹¹

⁸ Refer to Cambridge Police Department *Policy #424.1 - Field Stops, Frisks and Threshold Inquiries*.

⁹ CALEA Std. 1.2.9 (a)

¹⁰ Refer to Cambridge Police Department *Policy #440 - Arrest Guidelines*.

¹¹ Refer to Cambridge Police Department *Policy #665 - Prisoner Processing & Safeguarding Persons under Department Control*.

1. The Booking Officer will process transgender prisoners, including persons held in protective custody and juveniles held in custody, according to normal booking procedures as outlined within the applicable policies.
 2. When booking a transgender prisoner, the Booking Officer will include the prisoner's preferred name (i.e., name that the individual uses in self-reference) in the booking, either as the primary name or as the alias name.
 3. If no identification is available, then the Booking Officer will use the preferred name for booking purposes, either as the primary or the alias name. The prisoner's birth name will be used only if it is the prisoner's legal name or it is required by a legitimate law enforcement purpose, including but not limited to, a prior arrest record.
- C. Searches:** All searches of the transgender prisoner will be conducted by an officer of the gender requested by the transgender prisoner. If the prisoner does not specify a preference as to his/her sexual identity, then the search will be conducted by officers of the same gender as the transgender prisoner's gender expression (e.g., a female-to-male prisoners expressing no preference should be searched by a male officer). All searches will be performed in accordance with the prescribed procedures.¹²
- D. Refusal to Search:** An officer will not refuse to search a transgender arrestee based upon the arrestee identifying him/herself as a transgender.
- E. Holding Cell:**¹³ When detaining a transgender arrestee, the Booking Officer will confer with the Shift Commander as to which cell the arrestee will be placed. Because there is sufficient isolation between the cells, a transgender arrestee will be given the preference as to whether he/she will be placed in either a male or female cell, unless there are extenuating circumstances for selecting one type of cell over the other. This is particularly true, if in the opinion the arresting officer the arrestee should be placed in an isolation cell for the protection of the detainee against self-harm or when a detainee has a positive Q-5.¹⁴
1. Whenever officers of the opposite sex interact with a transgender individual while the individual is being held, two officers will attend to the individual. This precaution is for the protection of the arrestee and the officers involved.

¹² Refer to Cambridge Police Department *Policy #665 – Detainee Booking Process*.

¹³ CALEA Std. **72.8.3** – *A written directive specifies procedures for supervision of detainees of a sex opposite that of the supervising staff member.*

¹⁴ Refer to Cambridge Police Department *Policy #660 – Holding Facility Operations*.

VIII. PRISONER TRANSPORTATION:¹⁵

Whenever possible, a transgender prisoner shall be transported alone from the scene of an arrest provided there are no security or safety concerns. Any other transports involving a transgender individual will be separate and apart from any other detainees (e.g., transportation to or from court or the hospital, if not by ambulance). All such prisoner transportation will be done in accordance with all applicable department policies and procedures.¹⁶

IX. TRAINING & ADMINISTRATIVE REVIEW:

A. Training of Personnel:¹⁷ All personnel will receive training on legal aspects concerning gender identity, an orientation on gender identity, and on procedures and protocols for preventing gender identity discrimination at the time when they are hired.

1. The department will also provide training to all department personnel on a periodic basis for the purpose of providing updates on the transgender community, procedural changes, and other relevant orientation in the form of roll call briefings, training bulletins, and in-service training.
2. The Training/Certification Unit will be responsible for keeping accurate records on all trainings that are provided on these issues.

B. Administrative Review:¹⁸ It will be the responsibility of the Professional Standards Unit to conduct an annual review of all documented incidents involving persons of the transgender community, to include any and all complaints that might be lodged against officers of this department. Also, track any reported hate crimes reports that might have been committed against members of the transgender community. As part of that annual review, the report will contain the following information:

1. A summary of all incidents that occurred during the course of the calendar year, breaking the summary into four distinct sections:
 - a. Incidents involving known calls for service (regardless of the involvement of the transgender individuals, with the exception of arrests or Protective Custody detentions, and hate crime incidents);
 - b. Incidents involving arrests or Protective Custody detentions;

¹⁵ CALEA Std. **70.3.3** – *A written directive prescribes procedures for transporting detainees in special situations.*

¹⁶ Refer to Cambridge Police Department *Policy #650 – Transportation of Detainees & Policy #651 Transporting & Guarding Detainees Requiring Hospitalization.*

¹⁷ CALEA Std. **1.2.9 (b)**

¹⁸ CALEA Std. **1.2.9 (c)**

- c. Any complaints that might have been filed against officers by persons of the transgender community; and
 - d. Any reported incidents when it is suspected to be a hate crime.
2. An analysis as to whether there were any identified patterns or trends, any disparate treatment, and whether there are any other issues that might be identifiable from the administrative review
3. Recommendations as to whether there should be any changes to existing department practices, policies, and/or procedures. This would also include any training recommendations.
4. If there are no identifiable patterns or trends among any of the four summary categories, the report should reflect that fact.
5. The annual review is to be submitted to the Police Commissioner within thirty (30) days of the conclusion of the preceding calendar year (in other words, by no later January 30th of each year).
6. Although there is an annual reporting requirement, nothing in this section precludes any Commanding Officer or Professional Standards Unit from reporting to the Police Commissioner any concerns relative to any potential bias or disparate treatment of members of the transgender community.