

NOPD CONSENT DECREE MONITOR
NEW ORLEANS, LOUISIANA



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File Number: 37PA-191555

Deputy Superintendent Danny Murphy
Compliance Bureau, New Orleans Police Department
714 Broad Street
New Orleans, LA 70119

Dear Superintendent Murphy:

This letter constitutes confirmation that the Office of Consent Decree Monitor (“OCDM”) has reviewed and provided comments on the revised Chapter 41.13.1 – Interactions with Lesbian, Gay, Bisexual, Transgender, and Questioning Persons. The OCDM has no objection to the policy as revised.

We believe that the revised Chapter 41.13.1 – Interactions with Lesbian, Gay, Bisexual, Transgender, and Questioning Persons, incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD’s obligation to review this policy after a year of implementation to ensure it “provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law.” Consent Decree at ¶ 8.

We appreciate your team’s effort, cooperation, and responsiveness throughout this process.
Very truly

Very truly yours,

David L. Douglass
For SHEPPARD MULLIN RICHTER & HAMPTON LLP*
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CC: HONORABLE SUSIE MORGAN (VIA ELECTRONIC MAIL)
EMILY GUNSTON, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 41.13.1

TITLE: INTERACTIONS WITH LESBIAN, GAY, BISEXUAL, TRANSGENDER, AND QUESTIONING PERSONS

EFFECTIVE:
REVISED:

PURPOSE

This policy governs police interactions with members of the Lesbian, Gay, Bisexual, Transgender, and Questioning (LGBTQ) community.

POLICY STATEMENT

1. Members shall respect and treat all individuals equally regardless of gender identity, gender expression, or sexual orientation.
2. 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.
3. Members are advised that confiscating, citing, and invoicing condoms as evidence for any prostitution-related offenses may compromise public health by creating a disincentive to carry, distribute, share, receive, or keep condoms in order to engage in safer sex practices.
4. This policy should be read in conjunction with **Chapter 41.3, Bias-Free Policing**.

DEFINITIONS:

Definitions relevant to this Chapter include:

Chosen name, title, and pronoun—The forms of address preferred by a transgender or gender non-conforming individual. Officers are required to use a person's chosen name, title, and pronoun, whether or not the individual's chosen forms of address are consistent with the individual's legal name or gender. Officers should note that legal name and gender changes can be difficult or impossible to obtain for some people due to their age, ability to pay, personal safety, barriers posed by government officials and regulations, or a variety of practical considerations.

Gender—Refers to the attitudes, feelings, and behaviors that a given culture associates with a

person's biological sex. Behaviors that are viewed as incompatible with these cultural associations may be considered gender non-conforming.

Gender expression—External manifestations of one's gender identity. Common examples include one's name, pronouns, clothing, haircut, behavior, voice, and body characteristics.

Gender identity—A person's internal, deeply held sense of gender. This internal sense of gender may be different from the sex a person was assigned at birth or the person's physiology or biological sex (i.e., a person may have been assigned the gender of male at birth but may have an internal, deeply held sense of being female). Gender identity may or may not be visible to others or expressed outwardly through a person's chosen pronouns, clothing, haircut, behavior, voice, and body characteristics. Gender identity is an innate characteristic of each person's personality.

Gender non-conforming—An umbrella term used to describe a wide range of variations in physical appearance, characteristics, behaviors, and internal, deeply held senses of gender that do not conform to traditional societal expectations of male or female. This includes non-binary gender identities, meaning an individual identifies as androgynous (both male and female), between male and female, neutral, or not having a gender identity.

Intersex—An umbrella term used to describe a wide range of natural bodily variations. Intersex people 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. People with intersex conditions should not be assumed to be transgender. Note that the term "hermaphrodite" is offensive and should not be used.

LGBTQ—An umbrella term meant to refer to individuals who self-identify as Lesbian (L), Gay (G), Bisexual (B), Transgender (T), or Questioning (Q) their sexual orientation.

Pat-down search/frisk—An external examination of the outer garments of an individual. It is limited to what is necessary to detect weapons and must be based on reasonable, articulable suspicion that the person is armed and dangerous. Pursuant to the "plain-feel doctrine," police may seize contraband discovered in the course of a frisk, but only if the contraband's identity is immediately apparent. An officer may not manipulate objects that are discovered under the clothing to determine whether they are contraband.

Sex/biological sex/sex assigned at birth—Refers to a person's biological or anatomical status as male, female, or intersex. Indicators of biological sex include sex chromosomes, hormones, gonads, internal reproductive organs, and external genitalia.

Sexual orientation—An enduring emotional, romantic, or sexual attraction to other people. A person may be attracted to members of the same, opposite, or both sexes. Examples of sexual orientation include heterosexual, bisexual, gay, and lesbian.

Stop/Terry stop—A brief, minimally intrusive detention of a subject, including the occupants of a vehicle, during which a reasonable person in the subject's position would not feel free to leave, as defined in *Terry v. Ohio*, 392 U.S. 1. To justify a stop, the officer must have reasonable suspicion. For purposes of this Chapter, the terms "stop" and "Terry stop" are used interchangeably, and shall include detentions, investigatory stops, seizures, and field interviews. The stop must be based on what the officer knew before the stop. Information learned during a stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, but it cannot provide the justification for the original stop.

Transgender or "trans"—An umbrella term used to describe a person whose gender identity and/or gender expression is different from those typically associated with the sex they were

assigned at birth. “Trans” is shorthand for “transgender.” Some transgender people may undergo surgery and/or take hormones to change their bodies, but not all transgender people can or will take those steps, and a transgender identity is not dependent on medical procedures. “Transitioning” is a term often used to describe the time period when transgender individuals begin publicly living and identifying as the gender consistent with their gender identity. The term “transgender” should only be used as an adjective—i.e., it is appropriate to say “a transgender individual” or “transgender people,” but saying “a transgender” or “some transgenders” would often be viewed as disrespectful.

Transgender man—A person who transitions from female to male, meaning a person who was assigned female at birth but identifies and lives as male or as a man. Unless the individual prefers different pronouns, a transgender man should be addressed using masculine pronouns (i.e., he, him, his).

Transgender woman—A person who transitions from male to female, meaning a person who was assigned male at birth but identifies and lives as female or a woman. Unless the individual prefers different pronouns, a transgender woman should be addressed using feminine pronouns (i.e., she, her, hers).

LGBTQ PERSONS-GENERAL PROVISIONS

5. Members shall treat **ALL** persons with courtesy, professionalism and respect, regardless of gender, gender identity, gender expression, or sexual orientation.
6. Domestic calls involving LGBTQ persons shall be handled as per NOPD domestic violence policy (see **Chapter 42.4 – Domestic Violence**).
7. Officers are specifically prohibited from using demeaning, harassing, intimidating, or derogatory language regarding or toward LGBTQ individuals. In general, officers shall refrain from using language that references a person’s sexual orientation, gender identity, or gender expression (other than appropriate pronouns), except as provided in this policy.
8. Officers will accept an individual’s gender expression or self-expressed identity and interact with the individual in accordance with NOPD policy for the individual’s gender identification. For example, an individual who self-identifies as a female will be treated in accordance with the search and seizure policies as they apply to females. Respectful treatment includes:
 - (a) Officers shall address every individual by his/her chosen name, title, and pronoun. When the individual 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 discreetly ask the subject what name and, if necessary, gender pronoun he or she uses.
 - (b) Officers should be aware that individuals’ names may change between one interaction and the next, and use the name currently preferred by the individual.
 - (c) When individuals self-identify as transgender or state his/her gender identity, officers shall not question this identity.
 - (d) Officers shall not demean or retaliate against anyone for clarifying the name or pronouns that he/she would prefer officers to use.

9. Officers shall not require proof (i.e. identification or certificate of a name change) of an individual's identity to use that person's chosen name, title, or pronoun. Proof of identity may be required for other law-enforcement purposes, however, such as checking a driver's license.
10. Officers may utilize apparently credible suspect descriptions involving sexual orientation or gender expression in establishing reasonable suspicion or probable cause. However, gender expression or sexual orientation may not be utilized as the sole basis for reasonable suspicion or probable cause. Absent an apparently credible suspect description, officers shall not use an individual's gender expression or sexual orientation to any extent in forming reasonable suspicion or probable cause that an individual is or has engaged in prostitution or any other crime.
11. Officers shall not request identification, or otherwise initiate a contact, with any person solely on the basis of actual or perceived sexual orientation or actual or perceived gender identity.
12. Officers shall not fail to respond to a call for service or complaint on the basis of the caller's or complainant's actual or perceived gender identity or sexual orientation.

STOPS AND SEARCHES

13. Under no circumstances shall officers frisk or search any person solely for the purpose of determining that person's biological sex or to view or touch the person's genitals. At no time shall an officer refuse to search someone based on his/her actual or perceived gender identity or sexual orientation.
14. Officers shall adhere to the guidelines of **Chapter 1.2.4, Search and Seizure**. When same-gender searches are required by law, officers shall respect the gender identification expressed by the individual to be searched.
15. Absent exigent circumstances, two officers shall be present for strip searches of transgender individuals. All of the officers shall be of the same gender as the individual's self-identification (see **Chapter 1.2.4, Search and Seizure**).
16. In accordance with **Chapter 1.2.4**, an officer (or officers) of the same gender as the self-expressed gender of a transgender individual shall conduct any search of that individual. However, when exigent circumstances do not exist and the person to be searched expresses a preference for an officer of a different gender to conduct the search, the officer shall make a reasonable effort to summon an officer of that gender to conduct the search in accordance with **Chapter 1.2.4**. Officers shall follow the following instructions:
 - (a) For *Terry* frisks, officers must take into account the reasonableness of any delay created by waiting for another officer. If an officer of the identified gender is not available within a reasonable amount of time, officers shall proceed with the search.
 - (b) When in doubt regarding any searches of a transgender individual, officers should consult a supervisor prior to searching.
 - (c) Officers shall record any search of a transgender individual (other than a strip search) on body-worn camera in accordance with NOPD policy (see **Chapter 41.3.10**).

17. Officers shall not refuse to search or frisk a transgender individual merely because the person identifies as transgender.
18. Officers shall not subject transgender persons to more invasive or more frequent frisk procedures due to actual or perceived gender identity.
19. Requests to remove items related to a person's appearance, such as prosthetics, wigs, and cosmetics, shall be consistent for non-transgender and transgender persons while subjects are in police custody.
20. Officers should be aware that a transgender person's possession of needles may be indicative of prescribed hormone treatment and/or therapy and is not necessarily indicative of illegal drug possession or use, or of possession of drug paraphernalia.
21. Officers are advised that mere possession of a condom or condoms does not establish reasonable suspicion or probable cause of a prostitution or sex-related offense. Accordingly:
 - (a) Officers shall not cite or rely on the mere presence or possession of condoms to any degree as the sole basis for reasonable suspicion or probable cause to believe that an individual has engaged or intends to engage in any prostitution-related offense.
 - (b) Members shall not seize unused condoms except where the items are evidence in a criminal investigation.
22. Any individual being detained or arrested shall provide officers with his/her legal name. Officers shall not charge and/or arrest an individual for falsely identifying himself/herself when a subject advises the officer he/she wished to be referred to under a different pronoun and name from his/her legal name.
23. All paperwork (i.e., report, citations, GIST, etc.) shall be completed using a subject's legal name. If a person's chosen name, title, or pronoun differs from his or her legal name, that information shall be recorded as "name and pronoun used" on all reports or documents. Officers shall not use "aka" ("also known as") to indicate this distinction.
24. Nothing in this Chapter shall require any officer to document a contact that would not otherwise require reporting.

BATHROOM USE

25. Individuals shall not be stopped, questioned, or arrested for using a gender-segregated restroom on the basis that officers believe the individual's gender expression does not match the gender designation of the gender-segregated restroom.
26. Individuals shall not be stopped, questioned, or arrested for using a single-sex public restroom, including in bus stations or in shelters, solely on the basis of gender identity or expression.
27. When safe and appropriate under the circumstances and while in NOPD custody, transgender, intersex and gender-nonconforming individuals shall be allowed to use the restroom in accordance with their gender identity. If, however, an individual has safety concerns with using the restroom, that individual may use the restroom he or she feels will be safest for that person.

ARREST PROTOCOL

28. Information about an individual's transgender status should be kept on a need-to-know basis to ensure the privacy of the individual is respected. However, all information the arresting officer obtains (including pronoun preference and preferred name) concerning the arrested person may be passed on to the transporting officers and backup or any officer who is interacting with the individual.
29. All prescription medications, including hormone medication, shall be turned over to Central Lock-Up when the subject is placed in its custody.

TRANSPORTATION OF TRANSGENDER ARRESTEES

30. When transporting a transgender, intersex, and/or a gender nonconforming individual together with other individuals suspected or accused of committing separate crimes, officers shall transport the individual with other arrestees of the same gender identity and expression unless the individual has expressed a safety concern and wishes to be transported alone or with people of a different gender.

JUVENILES

31. Officers shall respect the privacy of juveniles and shall not disclose information about their gender identity or sexual orientation to their parents or guardians, except as it directly relates to the reason for the juvenile subject's detention. Officers should be aware that disclosing this information to parent or guardians may put the juvenile at increased risk for violence or rejection in the home.

MEDICAL TREATMENT

32. Whenever an LGBTQ person expresses a need for medical attention, members shall handle the situation with the same urgency and respect as any other illness or injury, including for injuries sustained during an arrest.
33. When a request is made for medical attention for an illness or injury, including injuries or perceived injuries made during an arrest, officers shall contact Communication Services and request EMS or transport the subject, if under arrest, to a medical facility.

DISCRIMINATION COMPLAINTS

34. If a person alleges bias-based or discriminatory policing, the officer shall call a supervisor to the scene to review the circumstances and determine an appropriate course of action. For purposes of this policy, an allegation of bias-based or discriminatory policing occurs whenever, from the perspective of a reasonable officer, a person 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.
35. Officers shall attend yearly training on this policy and other matters related to the LGBTQ community in New Orleans, in accordance with best practices and using relevant information collected by community members. This training shall be incorporated into the Department's bias-free policing training (see Chapter 41.13). Training on LGBTQ issues shall also be incorporated into training on arrests, stops, searches, and seizures.
36. Comments on, and review of, this Chapter shall be solicited from members of the LGBTQ community annually.