



Policing and the LGBTQ community

Law enforcement's treatment of the LGBTQ community has historically been marked by bias and discrimination, often sanctioned by the state.¹ Today, homophobia and transphobia remain rampant in most, if not all, law enforcement agencies. LGBTQ people of color, transgender women of color, and non-binary people face compounding discrimination due to race, gender, and gender identity. Below is an overview of common issues faced by members of the LGBTQ community in interactions with law enforcement.

Over-policing: The LGBTQ community faces disparate levels of policing. Across the country, gay, lesbian, and bisexual youth are more likely to be stopped by the police and experience greater criminal justice sanctions not explained by greater involvement in violating the law or engaging in transgressive behavior.² A national survey of LGBT people found that 73% of LGBT people and people living with HIV reported face-to-face contact with law enforcement in the past five years.³ In a 2012 report of LGBTQ communities of color in Jackson Heights, Queens, New York, 54% of LGBQ respondents reported having experienced a police stop and 59% of transgender respondents reported that they had been stopped by police.⁴

Studies show this may be, at least in part, attributable to “broken windows” policing tactics and the criminalization of poverty. Members of the LGBTQ community are more likely to live in poverty and experience higher unemployment and homelessness than non-LGBT people due to systemic discrimination in education, employment, and housing.⁵ And in turn, “[i]ndividuals living in poverty have a substantially higher rate of involvement with the juvenile and criminal justice systems.”⁶

Homophobia and Transphobia: Few police departments have policies governing their interactions with people who are LGBTQ or non-binary, and homophobia and transphobia are rampant within police departments. Officers frequently misgender or make offensive comments to LGBTQ people in

¹ In 2003, when the Supreme Court ruled that laws criminalizing sodomy were unconstitutional in *Lawrence v. Texas*, 539 U.S. 558 (2003), many states were enforcing anti-sodomy laws. A decade later, more than a dozen states still had not repealed the laws, refusing to do so to express continued moral disapproval of same-sex relationships.

² Kathryn E. W. Himmelstein & Hannah Brückner, *Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study*, 127 *Pediatrics* (no. 1) 49-57 (2011).

³ Lambda Legal, *Protected and Served? Survey of LGBT/HIV Contact with Police, Courts, Prisons, and Security.* Preliminary Findings (2012), available at <https://www.lambdalegal.org/protected-and-served>

⁴ Make the Road New York, *Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights*, 4 (2012), available at https://maketheroadny.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf

⁵ Jamie M. Grant et al., *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011), available at http://endtransdiscrimination.org/PDFs/BlackTransFactsheetFINAL_090811.pdf.

⁶ Brenda Smith et al., *Policy Review and Development Guide: Lesbian, Gay Bisexual, Transgender, and Intersex People in Custodial Settings*, Nat'l Inst. Of Corrs. (2015), available at https://info.nicic.gov/sites/info.nicic.gov/lgbti/files/lgbti-policy-review-guide-2_0.pdf



interactions. And even in departments that have policies for interactions with LGBTQ people, ongoing training and accountability are needed.

Rampant homophobia and transphobia within agencies leads to LGBTQ people of color, transgender people, and youth experiencing particularly high rates of harassment and discrimination by law enforcement.⁷ In a 2012 report of interactions between transgender Latina women and law enforcement in Los Angeles County, two-thirds of the women reported verbal harassment by law enforcement.⁸ In a 2015 survey of transgender people throughout the United States, of respondents who interacted with police in the prior year and believed the officer thought or knew they were transgender, 58% reported some form of mistreatment; 49% involved officers consistently using the wrong gender pronouns, 20% involved other verbal harassment, and 19% involved officers asking questions about gender transition.⁹ In a survey of sex workers in Baltimore, more than two-thirds (70%) of trans sex workers reported being verbally or emotionally harassed by police and over half (56%) reported police had made transphobic remarks to them.¹⁰

Even in cases in which transgender people are victims of crime, law enforcement agencies misgender them in internal and news reports, alienating the victim's friends and family, increasing distrust with the very community whose cooperation they need, and hampering their own ability to successfully resolve the investigation. In 2018 in Orange County, Florida, sheriff's deputies investigating the murder of Sasha Garden, a black trans woman, misgendered her in initial police reports, after being informed of her gender identity and refused to correct their initial report after pleas from Ms. Garden's friends to do so.¹¹

Similarly, after the murders of three black transgender women, and the non-fatal shooting of a fourth transgender woman, in Jacksonville, Florida, the police department repeatedly refused to use their correct pronouns in reports to the media.¹² These intentional refusals to accurately use the correct

⁷ Christina Mallory, Amira Hasenbush & Brad Sears, Discrimination and Harassment by Law Enforcement Officers in the LGBT Community, Williams Institute (2015), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Mallory-Sears-Govt-Contractors-Non-Discrim-Feb-2012.pdf>

⁸ Frank Galvan & Mosen Bazargan, Interactions of Latina Transgender Women with Law Enforcement (2012), available at <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Galvan-Bazargan-Interactions-April-2012.pdf>

⁹ Sandy E. James et al., The Report of the 2015 U.S. Transgender Survey, Nat'l Center for Transgender Equality, 186 (2016), available at <https://www.transequality.org/sites/default/files/docs/USTS-Full-Report-FINAL.PDF>

¹⁰ Katherine Footer et al., Police-Related Correlates of Client-Perpetrated Violence Among Female Sex Workers in Baltimore City, Maryland, 109 Am. J. Pub. (no. 2) 289-295 (2019).

¹¹ Colin Wolf and Monivette Cordeiro, A Transgender Woman Died Today and How It Was Reported Was Awful, Orlando Weekly (July 19, 2018), available at <https://www.orlandoweekly.com/Blogs/archives/2018/07/19/a-transgender-woman-died-in-orlando-today-and-how-it-was-reported-was-awful>.

¹² Lucas Waldron & Ken Schwencke, Deadnamed, ProPublica (Aug. 10, 2018), available at <https://www.propublica.org/article/deadnamed-transgender-black-women-murders-jacksonville-police-investigation>.



names and pronouns of victims of crime illustrate the transphobia within their department that impedes their ability to effectively serve the transgender members of their community.

Profiling: LGBTQ people, particularly transgender women of color and LGBTQ youth of color, are persistently profiled by law enforcement as being engaged in sex work. They are stopped and arrested for prostitution-related crimes, even when they are not engaged in sex work. A study by Human Rights Watch found that transgender women were subjected to constant harassment, verbal abuse, and stops for suspicion of prostitution.¹³ For LGBTQ people, police stops “are often a result of profiling, targeting [people] for the way they look, what they are wearing, and where they are standing, rather than on the basis of any observed illegal activity.”¹⁴

In a 2015 survey, of respondents who said they believed officers thought or knew they were transgender, 33% of Black transgender women and 30% of multiracial transgender women reported that an officer assumed they were sex workers.¹⁵ Transgender women frequently report that police assume they are participating in sex work, simply because condoms are found during a frisk.¹⁶ Transgender people report being stopped and searched for condoms “while walking home from school, going to the grocery store, and waiting for the bus.”¹⁷ Thus, every day activities become invitations for police stops and harassment, leading to disproportionate interactions with the criminal legal system and further abuse therein.

Sexual Violence: A survey of LGBTQ youth in New Orleans found that 59% of transgender youth surveyed had been asked for a sexual favor by the police in New Orleans, along with 12% of non-transgender LGBTQ youth.¹⁸ LGBT youth in a New York City survey were more than twice as likely to report negative sexual contact with police in the past six months, compared to non-LGBT youth.¹⁹ Among Latina transgender women in Los Angeles County, 24% report being sexually assaulted by law enforcement.²⁰ In a recent study of sex workers in Baltimore whose results were released in early 2019, more than half (62%) of trans sex workers reported being sexually harassed or assaulted by police, and

¹³ Human Rights Watch, *Sex Workers at Risk: Condoms as Evidence of Prostitution in Four U.S. Cities*, (2012) available at http://www.hrw.org/sites/default/files/reports/us0712ForUpload_1.pdf

¹⁴ *Id.*

¹⁵ James, *supra* n.9 at 14.

¹⁶ Human Rights Watch, *supra* n. 11.

¹⁷ *Id.* at 2.

¹⁸ BreakOUT!, *We Deserve Better: A Report on Policing in New Orleans By and For Queer and Trans Youth of Color*, (2014) available at

<https://static1.squarespace.com/static/58ba8c479f7456dff8fb4e29/t/5ad61be22b6a2806771bb448/1523981349224/WE+DESERVE+BETTER+REPORT.pdf>

¹⁹ Brett G. Stoudt, Michelle Fine & Madeline Fox, *Growing Up Policed in the Age of Aggressive Policing Policies* 56 N.Y.L. Sch. L. Rev. 1331 (2011) available at <http://www.nylslawreview.com/wp-content/uploads/sites/16/2012/04/56-4.Growing-up-Policed-in-the-Age-of-Aggressive-Policing-Policies.Stoudt-Fine-Fox.pdf>

²⁰ Galvan, *supra* n.8.



nearly half (43%) reported police had been their “clients” in the past three months.²¹ The frequency of this egregious abuse of police authority is alarming.

Failures to investigate or inadequate responses to reports of crime: In the 2015 U.S. Transgender Survey, 57% of respondents said they would feel uncomfortable asking the police for help if they needed it.²² Yet, even when they do report crimes to law enforcement, many LGBTQ people report receiving an inadequate response.

In a survey of LGBTQ and HIV+ individuals, HIV+ respondents and transfeminine respondents reported having experienced police neglect of physical assault at higher rates than other LGBTQ people: 73% of HIV+ personal assault victims and 70% of transfeminine respondents say they experienced police neglect of their physical assault complaint, compared to 59% of HIV-negative physical assault victims and 60% percent of cisgender (non-transgender or gender nonconforming (TGNC)) assault victims.²³ Similarly, TGNC and people of color reported indifference or a lack of proper response to property crime (58% of TGNC respondents, 59% of African-American respondents, 62% of Latina/o respondents, and 70% of Native American respondents).²⁴ This contributes to the distrust members of the LGBTQ community, particularly people of color, feel towards law enforcement.

Conclusion: The above issues are not exhaustive of the issues that LGBTQ people face in their interactions with law enforcement, but rather, are an overview of the most common issues faced because of a person’s sexual orientation or gender identity. The order in which issues are presented is not intended to convey any hierarchy of significance. For additional information, please email Puneet Cheema, Staff Attorney, Lambda Legal at pcheema@lambdalegal.org, and Mateo de la Torre, Racial and Economic Justice Policy Advocate, National Center for Transgender Equality at mdelatorre@transequality.org.

²¹ Footer, *supra* n.10.

²² James, *supra* n.9 at 14.

²³ Lambda Legal, “Protected & Served,” <https://www.lambdalegal.org/protected-and-served/police#2a>.

²⁴ *Id.*