


PEMBERTON POLICE DEPARTMENT					
VOLUME: 3	CHAPTER: 29	# OF PAGES: 8			
SUBJECT: LAW ENFORCEMENT WITH TRANSGENDER INDIVIDUALS					
EFFECTIVE DATE: June 1, 2020	ACCREDITATION STANDARDS:	REVISION DATE	PAGE #		
BY THE ORDER OF: Chief David King					
SUPERSEDES ORDER #:					

PURPOSE The purpose of this directive is to provide basic guidance to personnel and to codify standardized procedures regarding Law Enforcement Interactions with Transgender Individuals.

POLICY It is the policy of the Pemberton Township Police Department to be in compliance with all statutes, contemporary criminal procedure, Attorney General and Prosecutor Guidelines and Directives when interacting with transgender individuals and that they be treated with dignity and respect.

Law enforcement officers across the state understand that we may never violate the rights of the individuals we interact with, including the rights of LGBTQ+ people, and we take those obligations seriously. So as other law enforcement agency policies have done, this Directive begins by clarifying a series of protocols that officers must follow in order to avoid engaging in such impermissible harassment or discrimination, as well as to ensure that we treat all individuals with respect and in accordance with their legal rights.

PROCEDURES

I. GENERAL REQUIREMENTS AND RESPECTFUL COMMUNICATION

A. General Requirements

1. Law enforcement officers shall not harass or discriminate against Individuals based on their actual or perceived gender identity or expression and/or sexual orientation, including by using offensive or derogatory words to describe LGBTQ+ individuals. To avoid engaging in such discrimination, law enforcement officers shall not:
 - a. Fail to respond to, delay responding to, or treat as less important, any call or request for service or assistance because of the individual's actual or perceived gender identity or expression and/or sexual orientation;
 - b. Consider a person's actual or perceived gender identity or expression and/or sexual orientation as a basis for reasonable suspicion, or as prima facie evidence that the individual is, has, or is about to engage in a crime; or
 - c. Stop, question, search, arrest, or detain any individual, or subject any individual to more invasive search procedures:
 - i. Because of that individual's actual or perceived gender identity or expression and/or sexual orientation;
 - ii. Because that individual used a restroom that the officer knows was consistent with that individual's gender identity or expression; or
 - iii. In order to determine that individual's genitals or anatomy, or to assign gender.

In other words, an officer may not consider a person's gender identity or expression and/or sexual orientation as a factor in deciding whether that person may be involved in criminal activity, or in deciding how to treat that person, except when an officer is pursuing specific leads in an ongoing criminal investigation or is trying to determine whether an individual matches the description in a B.O.L.O. ("Be On the Lookout"). What this provision does is expand the same non-discrimination rule that exists for race and ethnicity to gender identity or expression and/or sexual orientation.

2. Law enforcement officers shall not inquire about details of a person's sexual practices, genitalia or anatomy, unless:
 - a. Doing so is necessary to the ongoing criminal investigation; or
 - b. The individual raises the issue without prompting by the officer, and the officer's inquiries are tailored to ensure the individual's safety and dignity during a law enforcement interaction.

- c. For additional information on the appropriate language to use, and on the definition of the term LGBTQ+, see Appendix A to this Directive.
 - d. Under the New Jersey Law Against Discrimination, individuals may use a restroom or changing room that is consistent with their gender identity or expression, regardless of the gender they were assigned at birth and/or their anatomical characteristics.
3. Law enforcement officers shall not disclose an individual’s LGBTQ+ status or gender assigned at birth to members of the public, unless:
 - a. A proper law enforcement purpose requires such disclosure, and the officer documents that purpose in writing; or
 - b. The individual agrees to such disclosure.

Nothing in this provision prevents an officer from respectfully asking someone, “What pronouns do you use?” to ascertain their gender identity in an effort to ensure that an individual’s rights and dignity are protected, as laid out in Appendix A to this Directive.

B. Respectful Communication

Transgender individuals’ chosen names and pronouns are critical to their dignity and identity. Law enforcement officers therefore shall:

1. Address individuals using their chosen names that reflect their gender identity even if the name is not the one that is recognized on official legal records and even if that name changes over time as well as their chosen pronouns;
2. Include chosen names and chosen pronouns in all relevant documentation, as discussed further in Appendix A to this Directive; and
3. Use chosen names and pronouns in any communications about that individual with members of the public, including with the press, except where doing so would disclose an individual’s LGBTQ+ status in violation of Part I.A.3, and except where necessary in legal filings and in communications about those filings.

Law enforcement officers should also be aware that the proper language and terms have evolved over time—and may continue to evolve in the future. To help guide officers regarding the proper language to use, Appendix A includes a list of defined terms, which will be updated as necessary, as well as terms to avoid. Officers should familiarize themselves with the Appendix.

II. INTERACTIONS BASED ON GENDER

In the vast majority of interactions between law enforcement and the general public, gender is irrelevant: a law enforcement officer will have no occasion to treat men or women any differently whether they are a suspect, victim, or witness. But some interactions do turn on an individual's gender. Such interactions can include certain non-exigent custodial strip searches (in which crossgender searches are prohibited), as well as gender-segregated detention in police stations.

The general rule under this Directive is simple: whenever the action that an officer takes depends at least in part on an individual's gender, then that action shall be performed in accordance with the individual's gender identity, regardless of the gender that individual was assigned at birth and/or their anatomical characteristics, including but not limited to the examples outlined below. In other words, officers must treat a transgender woman as they would treat any other woman, and they must treat a transgender man as they would treat any other man.

A. Conducting Searches

1. For the purpose of conducting a search, officers shall treat a transgender woman as they would treat any other woman, and officers shall treat a transgender man as they would treat any other man, regardless of the gender that individual was assigned at birth and/or their anatomical characteristics.
 - For most searches, the gender of the person being searched will not be relevant because the search may be conducted by officers of any gender. That includes, but is not limited to, searches conducted under exigent circumstances—such as an immediate search in the field for weapons, when officer and public safety are paramount—and searches incident to arrest. Under this Provision, nothing will change for these kinds of searches: as before, a male officer can search a man or a woman (transgender or cisgender), and a female officer can search a man or a woman (transgender or cisgender).
 - But certain searches exist for which cross-gender searches are prohibited (e.g., non-exigent custodial strip searches) and where the gender of the person being searched thus matters. In those cases, where only a female officer can search a cisgender woman and only a male officer can search a cisgender man, then it is also the case that only a female officer can search a transgender woman and only a male officer can search a transgender man.
2. Nothing in this Directive, including in Part II.A.1, prevents a law enforcement officer from respectfully asking a transgender individual as to their preference with respect to the gender of the searching officer, documenting that preference, and performing searches in accordance with that preference, if authorized by the relevant state, county, or local law enforcement agency.
3. Law enforcement officers shall never require transgender, non-binary, and gender nonconforming individuals to remove appearance-related items (such as prosthetics, bras, clothes, undergarments, wigs, chest binders, or cosmetic items) during a search unless all individuals, regardless of gender, would be required to remove such items during that

search. As for any individual, officers may require the removal of such items when necessary to ensure the safety and security of any person, but should take care when practicable to remove the items in a respectful, non-invasive, and private manner.

B. Transportation

In most cases, law enforcement officers either transport one arrestee at a time or transport multiple arrestees together without regard to gender. However, where law enforcement officers are segregating individuals by gender when transporting them, law enforcement shall:

1. Transport individuals according to their gender identity or expression, regardless of the gender that individual was assigned at birth and/or their anatomical characteristics, unless they request otherwise as laid out in Part II.B.

In other words, where individuals are being transported together regardless of gender, this concern does not come into play. But in any case in which transportation is based on gender, such that women are transported with women and men are transported with men, a transgender woman shall be transported with other women, unless she requests otherwise (see Part II.B.2), and a transgender man shall be transported with other men, unless he requests otherwise (see Part II.B.2).

2. Transport a transgender person alone, when requested and when doing so is practicable and ensure that individual's safety. The denial of such request must, where practicable, be reviewed and approved by a supervisor. The denial shall be documented in writing.

C. Detention in Police Stations

Law enforcement officers already take on the obligation of ensuring the safety and care of individuals in their custody, regardless of their gender identity or expression—a requirement that includes detained transgender individuals. The following section will further help law enforcement officers protect the safety of transgender arrestees.

Federal law already establishes different rules for the housing of transgender individuals in adult correctional facilities, juvenile facilities, and lockups—which refers to facilities that have holding cells, cell blocks, or other secure enclosures that are primarily used for the temporary confinement of individuals who have recently been arrested or detained, or who are being transferred to or from a court, jail, prison, or other agency. Because the rules governing housing of LGBTQ+ inmates in correctional facilities falls within the purview of the Department of Corrections (DOC), and the rules governing housing of LGBTQ+ residents in juvenile facilities falls within the purview of the Juvenile Justice Commission (JJC), this Directive addresses lockups in police stations.

1. If detained individuals are held in areas that are segregated on the basis of gender, law enforcement shall:

- a. House, place, or otherwise detain individuals in line with their gender identity or expression, regardless of the gender that individual was assigned at birth and/or their anatomical characteristics unless they request otherwise as laid out in Part II.C.

In other words, a transgender woman shall be housed with other women, unless she requests otherwise (see Part II.C.2), and a transgender man shall be housed with other men, unless he requests otherwise (see Part II.C.2).

- b. Permit individuals to use restrooms consistent with their gender identity or expression, regardless of the gender that individual was assigned at birth and/or their anatomical characteristics.
2. If a facility has available private cells and/or restrooms, law enforcement shall not:
 - a. Refuse to accommodate a request by transgender, non-binary, or gender nonconforming individuals to have a private cell or to use a private restroom, where doing so is practicable and ensures that individual's safety.⁸ The denial of such request must, where practicable, be reviewed and approved by a supervisor. The denial shall be documented in writing.
 - b. Require someone to be housed, placed, or otherwise detained in a private cell or to use a private restroom on the basis of that person's actual or perceived gender identity or expression and/or sexual orientation, absent such a request.
 3. Law enforcement officers shall never deny transgender individuals access to any items (including clothing, personal property, and appearance-related items, like prosthetics, bras, wigs, undergarments, chest binders, and cosmetic items) and/or any programming (including educational programming) that they would allow a cisgender individual of the same gender identity to have, regardless of the gender that individual was assigned at birth and/or their anatomical characteristics.

D. Non-Binary and Gender Non-Conforming Individuals

New Jersey law recognizes that some individuals do not identify or express themselves as strictly male or female. Again, this is irrelevant to the overwhelming majority of law enforcement interactions that do not turn on gender (such as, among other things, an exigent search for weapons to protect officer and public safety). But because some law enforcement interactions do turn on gender, as explained above, the following rules apply in such interactions to ensure the safety of non-binary and gender non-conforming individuals:

Studies show that transgender, non-binary, and gender non-conforming individuals face higher risks of abuse and violence when held in detention than other individuals, and are therefore more likely than other individuals to warrant such accommodations. When a law

enforcement officer is made aware of such risks to a person's safety or well-being, the officer should be particularly sensitive to these concerns.

1. **Conducting Searches:** Officers shall respectfully inquire of non-binary or gender nonconforming individuals as to their preference with respect to the gender of the searching officer and perform searches in accordance with that preference where possible. Any search that is not conducted in accordance with the individual's stated preference must, where practicable, be reviewed and approved by a supervisor. The denial shall be documented in writing.
2. **Transportation:** Officers shall transport such individuals with arrestees of the gender that is safest for them, taking into account which gender that individual expresses to be safest for them. Any transportation that is not done in accordance with the individual's stated preference must, where practicable, be reviewed and approved by a supervisor. The denial shall be documented in writing.
3. **Detention in Police Stations:** Officers shall house, place, or otherwise detain such individuals with individuals of the gender that is safest for them, and allow them to use the restrooms of the gender that is safest for them, taking into account which gender they express to be safest for them. Any placement that is not done in accordance with the individual's stated preference must, where practicable, be reviewed and approved by a supervisor. The denial shall be documented in writing.

III. ACCESS TO MEDICATION

- A. Law enforcement officers shall never handle an individual's request for medical attention with any less urgency or respect because of that individual's actual or perceived gender identity or expression and/or sexual orientation.
- B. Law enforcement officers shall treat prescription hormones like any other prescription medication necessary for an individual's health and wellbeing.
- C. Law enforcement officers shall document the circumstances of any medical treatment pursuant to applicable policies and procedures.

IV. TRAINING AND COMMUNITY ENGAGEMENT

To ensure that law enforcement fully understands the rights of LGBTQ+ individuals and continues to build relationships with the LGBTQ+ community, the following training and community engagement steps shall be taken:

- A. The Division of Criminal Justice shall, by March 1, 2020, develop a training program to explain the requirements of the Directive. This program shall be available through the NJ Learn System or by other electronic means. All state, county, and local law. Officers should also be aware that transgender individuals may possess needles related to their prescribed hormone treatment and/or therapy and that such possession is not necessarily indicative of

illegal possession of drugs or drug paraphernalia. Enforcement agencies shall provide training to all officers regarding the provisions of this Directive before June 1, 2020.

- B. Further, the Division of Criminal Justice shall, by June 1, 2020, and in consultation with groups representing the LGBTQ+ community, create a broader training on LGBTQ+ rights that shall be available through the NJ CLEAR System. That training shall include information about the basics of gender identity, gender expression, sexual orientation, and intersex status; issues affecting the transgender community; and issues relating to implicit bias and cultural humility.
- C. Each County Prosecutor shall, in collaboration with the Division of Criminal Justice, undertake efforts to educate the public about the provisions of this Directive, with a specific focus on strengthening trust between law enforcement and LGBTQ+ individuals. By December 31, 2020, each County Prosecutor shall report to the Attorney General on those public education efforts.
- D. All law enforcement agencies shall seek to establish relationships with organizations focused on LGBTQ+ issues, and other community leaders, to maintain a dialogue about issues affecting LGBTQ+ individuals.

V. OTHER PROVISIONS

- A. **Establishment of policy.** All state, county, and local law enforcement agencies shall, before June 1, 2020, adopt and/or revise their existing policies and practices, consistent with this Directive, either by rule, regulation, or standard operating procedure.
- B. **Non-enforceability by third parties.** This Directive is issued pursuant to the Attorney General's authority to ensure the uniform and efficient enforcement of the laws and administration of criminal justice throughout the state. This Directive imposes limitations on law enforcement agencies and officials that may be more restrictive than the limitations imposed under the United States and New Jersey Constitutions, and federal and state statutes and regulations. Nothing in this Directive shall be construed in any way to create any substantive right that may be enforced by any third party.
- C. **Severability.** The provisions of this Directive shall be severable. If any phrase, clause, sentence, or provision of this Directive is declared by a court of competent jurisdiction to be invalid, the validity of the remainder of the Directive shall not be affected.
- D. **Questions.** Any questions concerning this Directive or its implementation shall be addressed to the Director of the Division of Criminal Justice, or his or her designee.
- E. **Effective date.** This Directive shall take effect on June 1, 2020, to provide an opportunity for law enforcement to be trained on this Directive. Once effective, this Directive shall remain in force unless it is repealed, amended, or superseded by Order of the Attorney General.