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Police and the Criminalization of LGBT People

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19.1 Introduction

Discussion of policing in the context of lesbian, gay, bisexual, and transgender (LGBT) people* conjures images of the 1969 Stonewall riot, when LGBT people at a bar in New York City rose to resist police harassment, which had been a regular feature of gay bars and nightclubs at the time, along with police bribing to ensure that those clubs remained open.¹ Today, a tension remains between the need for police protection against LGBT- focused hate crimes and the reality of persistent police targeting of marginalized members of the LGBT community. Meanwhile, after the success of the marriage equality movement and against the backdrop of unjustified police killings of people of color, conversations within LGBT communities have shifted. They have turned more urgently to intersecting forms of discrimination, including race and class. For example, at several 2017 LGBT pride marches, protestors objected to the presence of police, including LGBT police officers marching in the parade, holding banners that read “No Pride in Police Violence.”² Simultaneously, the landscape of LGBT interactions with police since Stonewall has changed due to factors like more openly LGBT officers serving in law enforcement agencies across the country,³ changes in laws and public attitudes toward LGBT people,⁴ and shifts in policing strategies to emphasize LGBT community engagement.⁵ This chapter describes the experiences of LGBT people with law enforcement, which include discriminatory targeting, harassment, and violence, as well as potential remedies such as community engagement and the revision of local and federal policies.

19.2 Police and the Criminalization of LGBT People

Historically, LGBT people were intentionally and systematically targeted by law enforcement based on their sexual orientation and/ or gender expression. Specifically, until 2003, when the US Supreme Court found sodomy laws unconstitutional in *Lawrence v. Texas*,⁶ sexual contact between two people of the same- sex was subject to criminal prosecution. Police surveillance of known “cruising” areas for gay men has crossed the line into entrapment time and again, and concerted targeting of gay and bisexual men continues in some places today.⁷ Furthermore, laws

* This chapter uses the acronym “LGBT” to refer to lesbian, gay, bisexual, and transgender people. There are some instances where the acronym “LGBTQ” is

used, where the “Q” refers to queer. We use this only when the survey instrument included that option.

that criminalized dressing in attire of “the opposite sex” swept the United States in the late 19th century,⁸ targeting LGBT people outside the context of sexual conduct.⁹ This history of persecution of LGBT people based on these laws is intertwined with the history of policing LGBT communities.

19.2.1 Sodomy and Cross- Dressing Laws

Anti- sodomy laws criminalized consensual sex between individuals of the same sex and prohibited specific sexual acts regardless of the sex of the actors.¹⁰ Beginning in the mid-20th century, however, sodomy laws came to be used most frequently against men engaged in sexual relationships with other adult men.¹¹ Laws that regulated cross- dressing were used to target not only transgender people who identified and dressed in attire that differed from their sex assigned at birth, but also lesbians, if they appeared too masculine, and gay men, if they appeared too feminine, in the eyes of police officers.

In 1962, Illinois became the first state in the United States to repeal its law criminalizing sodomy.¹² At the time, every other state had laws criminalizing some forms of consensual sex between adults,¹³ which were upheld as recently as 1986 by the US Supreme Court in *Bowers v. Hardwick*.¹⁴ In 2003, thirty-ix states and the District of Columbia had either repealed their anti- sodomy laws or had such laws ruled unconstitutional by state courts, removing the criminalization of consensual sex between adults.¹⁵ Finally, in 2003, the US Supreme Court ruled in *Lawrence v. Texas* that the government could not interfere with personal relationships and private activity between consenting adults.¹⁶ In theory, this historic decision removed the criminal threat that millions of gay, lesbian, and bisexual men and women lived with – raids on gay bars, fear of police entrapment, and more.

Yet the reality on the ground after *Lawrence* remains more complicated. As of 2016, fifteen states still had not repealed laws criminalizing private consensual sexual behavior between adults of the same sex.¹⁷ Most of these laws do not discriminate against LGBT people explicitly (though two states, Kentucky and Texas, *specifically* criminalize same- sex activity), but the very existence of these laws sends a troubling message. Continuing to outlaw conduct that has been *explicitly* deemed unconstitutional tells LGBT people that states are still willing to flout the directives of the highest court of the land for the explicit purpose of conveying moral disapproval, and the law can’t protect them.¹⁸ It also subjects them to the risk of being arrested and jailed by police officers intent on following state law. Even though a reviewing court would ultimately hold that such an arrest violated their constitutional rights, such a victory would ring hollow as compared with the discomfort, embarrassment, and danger that they would have faced from being arrested and jailed.

19.3 Entrapment of Gay Men by Law Enforcement Officers

Public spaces where sexual activity may take place, such as public parks and restrooms, are frequently subject to heightened police scrutiny. In 2013, an undercover sheriff's deputy in East Baton Rouge, Louisiana, met another man at a public park.¹⁹ The deputy asked the man if he'd like go back to his place for "some drinks and some fun." Even though he engaged in no illegal activity, the man was subsequently arrested as part of an effort by city law enforcement to target gay men in public parks. Other departments focus on restrooms in transportation terminals, such as the Port Authority Bus Terminal frequently targeted by the New York City Police Department.²⁰ However courts don't always approve of these law enforcement tactics. In 2016, a lewd behavior prosecution of a gay man was dismissed after a California court found that the Long Beach Police Department engaged in conduct to target and entrap gay men, acting with animus in targeting them, and inaccurately citing unfounded community complaints of lewd behavior to justify the entrapment.²¹

Websites and other online applications for people seeking sexual partners can also be targeted for monitoring. The company owning the male escort website "Rentboy," for example, was raided by the FBI in 2015.²² Police may focus their attention on same-sex activities, even though similar sexual contact between opposite-sex couples doesn't draw police attention.

People arrested for same-sex solicitation have been charged with crimes carrying more severe penalties than those arrested for opposite-sex solicitation. Research finds that people who were soliciting same-sex sex were prosecuted using more punitive laws than people who were soliciting sex from individuals of a different sex, often resulting in increased punishments, including registration as a sex offender.²³ For example, in Louisiana, more than 900 people faced these stiffer penalties, including mandatory sex offender registration, due to the discriminatory, more punitive charges brought against people engaged in same-sex solicitation; courts ultimately found that this violated equal protection. Convictions related to solicitation, public indecency, or similar charges have grave consequences, particularly when they mandate that individuals register as sex offenders.²⁴ Sex offender registration carries enormous stigma and can have a negative lifelong impact on housing and employment opportunities.²⁵ Those forced to register have faced threats, experienced physical violence, and have been denied access to homeless shelters and drug treatment programs due to this highly stigmatized status.

19.4 Intersectionality and Policing: Disproportionate Criminalization of LGBT People

While few laws today explicitly target LGBT people, many laws and law enforcement tactics disproportionately affect people of color, homeless individuals, and/ or those who live in low-income communities of color.²⁶ And because LGBT people exist across all races, ethnicities, and economic groups,²⁷ these tactics impact LGBT people. LGBT youth are in fact significantly overrepresented among youth experiencing homelessness,²⁸

rendering them more likely to be on the street. As a result, they experience disproportionate enforcement of low-level offenses, such as loitering, sleeping outside, or panhandling. In response to workplace and economic discrimination, vulnerable LGBT adults, especially transgender women of color, may seek work through underground economies, exposing themselves to higher risk of police interaction and enforcement of drug laws or anti-prostitution ordinances.

19.4.1 Impact of Quality-of-Life Policing on LGBT People

Over the past 30 years, law enforcement officials have prioritized a policing strategy called quality-of-life policing, in which officers focus on enforcing public nuisance statutes as a way to deter more serious crime.²⁹ Although there are a variety of policing approaches under this general philosophy, typically the focus is on policing minor crimes like graffiti, littering, not paying fares for public transit, and unlicensed street vending. When pursued with urgency and severity, the theory is that such policing prevents neighborhood deterioration and more violent crimes related to drug sales and gang activities.³⁰

In some communities, quality-of-life policing is part of a broader community policing strategy, which relies on community organizations and community members to be attentive to activities in their neighborhoods and to act as partners in improving safety.³¹ However, in other areas, quality-of-life policing is used as a tactic to appear tough on crime, with little community engagement or dialogue. In such communities, aggressive policing tactics can break down community trust in law enforcement, rather than improve it.³²

These policies criminalize many public behaviors, such as making noise or sleeping or drinking in public.³³ Some members of the LGBT community can be particularly affected by increased enforcement of quality-of-life ordinances. For example, for LGBT youth for whom home is not a safe or supportive place, congregating in public spaces may be the only available route to socializing and connecting with other LGBT people. Yet just being out in public can put them at risk of being criminalized.³⁴ In particular, young LGBT people of color often are perceived as “out of place” in traditionally gay neighborhoods, which are frequently predominantly White.³⁵ And because of the wide discretion under many quality-of-life ordinances, police often arrest individuals for violations such as “loitering with intent to solicit,” with disproportionate impact on those who do not conform to social norms concerning sexuality and gender expression.³⁶

Police departments do not use these policies across an entire jurisdiction, but rather in specific neighborhoods, based on crime data, public perceptions, or concern from residents.³⁷ For example, groups of LGBT young people congregating near an LGBT center may be targeted through curfew enforcement campaigns or anti-loitering efforts, even if they are otherwise complying with the law. In New York City’s West Village, a neighborhood with a predominantly White LGBT community (just 8% of residents are African American or Latino/ a), 77% of individuals stopped by

police in 2011 were African American or Latino/a.³⁸ While the data about police stops do not include sexual orientation or gender identity identification, it is likely that many of the people of color stopped by police in this predominantly LGBT neighborhood are themselves LGBT.

Because quality-of-life policing grants extensive discretion to individual law enforcement officers, underlying biases can easily come to bear in interactions between people and police.³⁹ For example, *profiling* – the practice of relying on an individual’s characteristics to predict whether or not that individual will engage in criminal activity⁴⁰ – may become more prevalent and go unchecked. When law enforcement officials use profiling, they are not focusing on evidence of wrongdoing, but are instead reverting to identity-based assumptions, which carry with them great risk for bias and discrimination based on race, sexual orientation, gender identity, and class status.

In this way, LGBT people of color, low-income LGBT people, and other marginalized members of the LGBT community become subject to more police surveillance and interaction. In a survey of LGBTQ youth in New Orleans, 87% of youth of color had been approached by the police compared to just 33% of White youth.⁴¹ An analysis of nationally representative data found that LGBTQ youth were at increased risk of police stops compared to their non-LGBTQ peers.⁴² Similarly, a 2012 report by the Center for Constitutional Rights regarding the New York City Police Department’s stop-and-frisk practices found that “LGBTQ/G NC [Gender Nonconforming] communities are heavily impacted by stops and frisks. Several people interviewed for the report described stops where police treated them in a cruel or degrading manner because of their actual or perceived sexual orientation, gender identity, or gender expression.”⁴³

In many places, quality-of-life policing has resulted in increased police presence and aggressive enforcement of minor offenses, including poverty-related infractions. People experiencing homelessness, including the estimated 20–40% of youth experiencing homelessness who identify as LGBT,⁴⁴ can find themselves caught in a cycle of arrests and jail time as they are ticketed or arrested for sleeping in public, panhandling, or urinating in public. Of LGBTQ youth engaged in survival sex in New York City in 2012–13, 70% had been arrested at least once in their lifetime, frequently for offenses other than prostitution, such as drug possession, jumping the turnstile, or trespassing.⁴⁵ In fact, only 9% had been arrested on prostitution-related charges. In focus groups of young people in New York who identified as LGBTQ and questioning, several youth said they’d been ticketed for putting their feet on a subway seat, sitting in a playground after dark, or dressing in a way that officers found offensive.⁴⁶

Police often subject transgender and gender nonconforming people to extra scrutiny specifically because of their gender nonconformity. For example, law enforcement may seek to regulate use of restrooms by gender or scrutinize identity documents that do not match the officer’s perception of the person’s gender. In Los Angeles, Latina lesbians have been profiled by police as being members of a gang because of their appearance, behavior, and clothing such as baggy pants, which did not conform to gender norms.⁴⁷

A 2005 Amnesty International report found that police officers frequently assume that transgender women, particularly transgender women of color, are sex workers based on stereotypes concerning transgender status and race when they are standing, walking, or driving in particular neighborhoods, even with no other evidence of wrongdoing.⁴⁸ According to the 2015 US Transgender Survey, 15% of Black transgender women reported being profiled by police as sex workers when they were not engaged in sex work.⁴⁹ Human Rights Watch examined policing in New Orleans and found that transgender women were subjected to constant harassment, verbal abuse, and stops for suspicion of prostitution; these women also were sometimes asked for sex in exchange for leniency.⁵⁰ Some transgender women report that police assume they are participating in sex work, simply because they are “walking while transgender”⁵¹ or conducting routine daily tasks in the neighborhood.⁵²

19.4.2 Policing Sex Work

Because LGBT people generally attract more scrutiny than less stigmatized groups, LGBT people who are engaged in sex work⁵³ are more likely than their non- LGBT counterparts to be targeted for prostitution- related offenses. Of transgender people in the National Transgender Discrimination Survey who reported engaging in sex work, more than three-quarters (79%) reported interactions with police. Demonstrating the intersectionality of stigmatized identities, transgender people of color were more than twice as likely to be arrested for engaging in sex work than White transgender people.⁵⁴

In a number of cities and counties, police officers use the possession of condoms as evidence of prostitution.⁵⁵ Among New York City LGBTQ youth who engaged in survival sex, 15% reported that condoms found during a stop, question, or frisk were used by police to justify lengthy questioning or arrests for prostitution-related offenses.⁵⁶ Among respondents to the 2015 US Transgender Survey who had been arrested for solicitation, 44% reported that condoms in their possession were used as evidence of sex work.⁵⁷ According to a 2012 report by Make the Road New York based on a survey of 300 people of color from Queens, transgender interviewees reported “stops that seem to be without basis but in which the police officers later justified the stop by charging the person with prostitution-related offenses because condoms were found in their possession.”⁵⁸

Not only does this practice infringe on privacy rights, it discourages individuals from carrying condoms, undermining efforts to reduce transmission of HIV and other sexually transmitted infections. Transgender women and young gay and bisexual men of color, populations who are vulnerable to HIV infection,⁵⁹ are forced into a dilemma: risk arrest with condoms or risk sex without protection.

Police officers interact with sex workers frequently for the obvious reason that exchanging money for sex remains a crime in nearly every state. But many scholars, advocates, sex workers, and public health professionals

have come out in favor of decriminalizing sex work altogether, reasoning that criminalization itself causes more problems than it solves.⁶⁰

Meanwhile, efforts to combat human trafficking have captured the public imagination. Governments and law enforcement agencies have responded in turn, addressing situations of forced or coerced labor, many of which are exploitative or abusive. But the zeal around anti-trafficking has also led law enforcement agents working as outdated “vice squads” to rebrand themselves as “anti-trafficking units,” which coheres with popular concerns about trafficking and avails departments of new anti-trafficking funding. In context of the wide-spread use of the term, it is important to note that federal and international definitions of “trafficking” are generally limited to cases involving force, fraud, or coercion. Moreover, trafficking also involves non-sexual labor. Nevertheless, the terms “sex work,” “prostitution,” and “trafficking” are inaccurately used interchangeably. In this way, the increased policing of sex work, under the guise of anti-trafficking concerns, can harm the LGBT people involved in sex work who are consenting adults. Those operating in underground economies, including the sex work economy, are frequently law enforcement targets.

That said, it is also important to note that abusive traffickers often target individuals who are vulnerable, among whom are LGBT youth. Law enforcement should ideally ensure the safety of trafficked victims, rather than compounding the harm they have endured with punitive sanctions or other abusive practices.⁶¹

19.4.3 HIV Criminalization

LGBT people, in particular transgender women and gay and bisexual men of color, are at increased risk of being prosecuted under HIV criminalization laws or sentence enhancements, because they are disproportionately represented among people living with HIV. HIV criminalization laws vary across the country.⁶² Actual HIV transmission is not a requirement under most laws, and many laws criminalize acts that do not transmit HIV, such as spitting.⁶³ Analysis of HIV-specific arrests, charges, and convictions in California found that the vast majority of HIV-specific prosecutions were in the context of solicitation for sex while HIV-positive.⁶⁴ While the HIV-specific criminal laws in California were recently modernized, and the sentence enhancement for sex work while HIV-positive was repealed,⁶⁵ similar laws remain on the books throughout the country.⁶⁶ Thus, LGBT people, who may already be disproportionately targeted for sex work offenses, may then be also more likely to face HIV-specific prostitution sentence enhancements if they test positive for HIV at the time of their arrest. HIV-specific criminal offenses can also result in sex offender registration requirements in some states and can, in some cases, trigger deportation proceedings against noncitizens.⁶⁷

19.5 Mistreatment of LGBT People by Law Enforcement Officers

In addition to being profiled and targeted for arrest under a range of criminal laws, LGBT people experience abuse and mistreatment by law enforcement officers with whom they interact because of their sexual orientation or gender expression. Survey data, court cases, and anecdotal reports document verbal harassment, physical assault, and sexual assault of LGBT people perpetrated by law enforcement officers during arrests or detention. Reports of abuse and mistreatment often involve the most vulnerable individuals within the LGBT population, including LGBT people of color and transgender women.

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Findings from surveys conducted by government entities and non-governmental organizations include:

- A 2014 report by Lambda Legal based on a national survey of 2,376 LGBT people and people living with HIV found that 73% of respondents had face-to-face contact with the police in the past five years.⁶⁸ One-fifth (21%) reported hostile attitudes from officers; 14% reported verbal assault by the police; 3% reported sexual harassment, and 2% reported physical assault.⁶⁹ Police abuse, neglect, and misconduct were consistently reported at higher frequencies by respondents of color and transgender and gender nonconforming respondents.⁷⁰
- A 2012 report found that members of LGBTQ communities of color in Jackson Heights, Queens, New York, reported high rates of harassment and assault by law enforcement.⁷¹ Among those individuals who reported being stopped by police, 51% of all LGBTQ respondents and 61% of transgender respondents reported physical or verbal harassment by police during the stop, compared with 33% of non-LGBTQ respondents.⁷² Some respondents also reported “sexual abuse perpetrated ... by police officers,” including individuals who reported that they were “forced to perform sexual acts under threat of arrest.”⁷³
- A 2012 report examining the interactions of law enforcement with Latina transgender women in Los Angeles County found that these women reported experiencing high rates of discrimination and mistreatment. Two-thirds reported that they had been verbally harassed by law enforcement; 21% reported that they had been physically assaulted, and 24% reported that they had been sexually assaulted.⁷⁴ Additionally, they reported baseless stops and mishandling of complaints that they filed.⁷⁵

Reports of abuse and mistreatment have also been documented in court cases, academic journals, and the media.⁷⁶ The reports frequently involve severe verbal and physical harassment. A number of LGBT people reported that officers referred to them by derogatory terms when making arrests or holding them in a detention facility, and many reported that officers used excessive force during arrests.⁷⁷ For example, in 2013 a transgender woman was arrested by officers in Berkeley, California, after her friend had requested that police conduct a health check on the woman.⁷⁸ The officers

reportedly called the woman “it” throughout the arrest and restrained her until her airways were blocked and she lost consciousness.⁷⁹ She died later that day.⁸⁰ Similarly, in 2009, a transgender woman in New York City was mistreated by police when she was arrested and detained for using her father’s discount subway card. The officers reportedly asked her “whether she had a penis or a vagina” and called her a “f- - - - ” and a “transvestite.” They chained her to a fence for 28 hours and refused to allow her to use the restroom during her detention.⁸¹ Other examples include reports of sexual assault. In 2003, for instance, a Native American transgender woman reported that she was raped in an alley by two officers from the Los Angeles Police Department.⁸²

19.6 When LGBT People Seek Assistance from Police

In addition to over-policing of LGBT communities, research has noted underpolicing, defined as the failure to provide a satisfactory level of policing, when LGBT people are the victims of crime.⁸³ LGBT people in the United States continue to experience high levels of homophobic and transphobic violence. According to a 2014 study by the National Coalition of Anti-Violence Projects (NCAVP), transgender women, transgender people in general, LGBT people of color, gay men, and LGBT young people are most at risk for severe violence.⁸⁴ In 2015, 17.7% of individuals involved in hate crime incidents were targeted because of their sexual orientation and 1.7% because of their gender identity.⁸⁵

But despite the high incidence of victimization, NCAVP’s research shows that only 54% of survivors reported their experiences to the police, and only 6% of incidents reported to the police were subsequently classified as a bias crime.⁸⁶ When LGBT people do seek out assistance from law enforcement, their complaint is often not taken seriously or not responded to quickly. Particularly in instances of intimate partner violence or a hate crime, LGBT people are often met with a lack of understanding. In some cases, an LGBT person who was victimized in a hate incident was him/herself charged with a crime for defending themselves against a perpetrator, while the perpetrator was not charged.⁸⁷ LGBT people who report hate crime incidents to the police may themselves become targets of police violence. The 2014 NCAVP survey found that among hate crime survivors, transgender women were 6.1 times more likely to experience physical violence when interacting with police than other violence survivors and 5.8 times more likely to experience police violence, including harassment, threats, and bullying.⁸⁸ LGBT and HIV- affected people of color were 2.4 times more likely to experience police violence than other violence survivors, and LGBTQ and HIV- affected young adults ages 19 to 29 were 2.2 times as likely to experience police violence.⁸⁹

Law enforcement also often fails to adequately address cases of intimate partner violence involving LGBT people.⁹⁰ Rates of domestic and intimate partner violence in same-sex couples are similar to the rates in opposite-sex couples.⁹¹ However, LGBT survivors of domestic violence are frequently arrested or otherwise mistreated if they reach out to the police for help.⁹²

For example, in 2011, a Philadelphia, Pennsylvania man reported that both he and his partner were verbally harassed and physically assaulted by police when he called for help during a domestic dispute.⁹³ According to the man, when police arrived they called the man's partner a "n- - - -" and a "f- - - - ." When the man complained about his handcuffs being too tight, they said "Shut up, you p- - - - f- - - - ." and "let me hear you squeal, f- - - - ." ⁹⁴ Both men received medical treatment for injuries inflicted by the officers.⁹⁵

Survey data indicate that negative experiences are common among LGBT people who seek help from law enforcement, both in situations involving intimate partner violence and when reporting other types of crimes. In response to the 2015 NCAVP survey, 12% of intimate partner violence survivors who called the police reported that police were hostile toward them.⁹⁶ Sometimes, the survivor can be charged with a crime if they tried to defend themselves. According to NCAVP, police incorrectly arrested LGBT and HIV- affected survivors of intimate partner violence in 31% of cases in which they interacted with law enforcement.⁹⁷ Similarly, a 2014 Lambda Legal report found that many LGBT survey respondents who had been victims of crime experienced inadequate responses from law enforcement officers: 62% of those who experienced physical assault, 49% of those who were a victim of property crime, 41% of those who experienced intimate partner violence, and 39% of those who were victims of sexual assault reported that the police failed to fully address their complaint.⁹⁸ Further, 205 respondents reported that they had filed a complaint about police misconduct in the past five years, and the majority said their complaint was not fully addressed by those to whom they reported the misconduct,⁹⁹ though that is fairly typical for police misconduct complaints.¹⁰⁰

19.7 Opportunities for Advancing Trust and Justice

Since Stonewall, efforts to improve police relationships with LGBT communities have been undertaken to varying degrees, including adoption and implementation of local non- discrimination and anti- harassment policies, recruitment and hiring of openly LGBT officers, trainings for law enforcement on LGBT issues, and assigning officers to liaise with the LGBT community.¹⁰¹ However, the research summarized above indicates the need for better and stronger interventions at all levels of policymaking to ensure that LGBT people are protected from harassment, discrimination, and profiling by law enforcement and to enhance trust and engagement between law enforcement and LGBT communities. Specifically, the following are opportunities for advancing more equitable and less discriminatory policing.

19.7.1 Changes in Department Policies and Practices

Policies That Prohibit Profiling Based on Sexual Orientation and Gender Identity

Law enforcement departments should consider adopting policies that prohibit officers from profiling citizens based on their sexual orientation or gender identity. Some major metropolitan police forces have already

established LGBT- inclusive, anti-bias profiling policies including the Chicago Police Department,¹⁰² the Los Angeles Police Department,¹⁰³ New York City Police Department,¹⁰⁴ the Phoenix Police Department,¹⁰⁵ and the San Francisco Police Department.¹⁰⁶ Along with other changes in procedures and policies as described in this section, these policies could reduce incidents of profiling by law enforcement, particularly against LGBT people of color who are vulnerable to intersecting forms of discrimination based on their race, sexual orientation, and gender identity.

Guidelines on Interacting with the LGBT Community

Law enforcement departments should also consider adopting specific guidelines to ensure that officers are appropriately and respectfully interacting with LGBT citizens, and that LGBT citizens feel comfortable approaching law enforcement for help. These guidelines could address topics such as responding to hate violence against LGBT individuals, handling reports of intimate partner violence within same- sex relationships, using correct names and pronouns for transgender people, securing appropriate transportation and housing for people based on safety and gender identity, and prohibiting personal searches for the purpose of assigning gender based on anatomical features. Several major metropolitan police departments have already implemented these types of guidelines which could serve as model policies for other departments, including Boston,¹⁰⁷ Chicago,¹⁰⁸ Los Angeles,¹⁰⁹ Miami,¹¹⁰ New York City,¹¹¹ Philadelphia,¹¹² San Francisco,¹¹³ and Washington DC.¹¹⁴

Trainings for Law Enforcement

Trainings for law enforcement focused on eliminating discrimination and harassment based on sexual orientation and gender identity within police interactions would likely reduce incidents of police misconduct involving LGBT citizens and increase trust between law enforcement and LGBT communities. The trainings could include general sensitivity and diversity issues or could focus on more specific issues that impact the LGBT community, such as hate violence and intimate partner violence. Trainings could be incorporated into police academy education or continuing officer education, and could be implemented at times when they might be particularly salient, such as around the time of pride parades or after high profile crimes involving LGBT victims. Police departments in a number of localities have implemented sexual orientation- and gender identity-specific trainings in a variety of contexts.¹¹⁵

Outreach and Liaisons to the LGBT Community

Law enforcement departments should create LGBT liaison positions within their departments to facilitate interactions between police officers and the LGBT community. LGBT liaisons can send the message to LGBT community members that their reports will be competently addressed by law enforcement personnel who understand the issues they face. For example, the Washington DC Metropolitan Police Department's LGBT Liaison Unit has been credited with increased reporting of incidents of intimate partner violence and hate crimes against LGBT people.¹¹⁶ The district's Gay and

Lesbian Liaison Unit was created in response to several incidents of police harassment against LGBT people and a growing concern that hate crimes against LGBT people were underreported.¹¹⁷ In the year following the appointment of LGBT liaison officers, the reporting of hate crimes nearly doubled.¹¹⁸ Additionally, no incidents involving same-sex intimate partner violence had been reported before the unit was created, but the department investigated 460 such cases in the twelve years following the unit's creation.¹¹⁹ A number of other law enforcement departments across the country have also appointed liaisons to the LGBT community including departments in Atlanta,¹²⁰ Boise,¹²¹ Cincinnati,¹²² Dallas,¹²³ Fargo, North Dakota,¹²⁴ New York City,¹²⁵ and San Francisco.¹²⁶

Policies Prohibiting Discrimination Against Law Enforcement Personnel

Developing a diverse police force that reflects the characteristics of the community can increase trust and positive interactions between law enforcement and the citizens they serve. Having LGBT officers is an important part of developing a diverse police force and meeting the needs of the LGBT community. As Professor Roddrick Colvin explained, LGBT officers can

enhance an agency's understanding of the lesbian, gay, bisexual and transgender (LGBT) community, and of the challenges of policing within this community. A police agency can more effectively respond to issues like intimate partner violence, public sex environments ... prostitution, hate and bias crimes, bullying and gay youth homelessness when openly lesbian and gay officers are integrated into policing.¹²⁷

The US Department of Justice has also recognized the importance of LGBT diversity among police forces, requiring in a consent decree with the Los Angeles Police Department that the department "mak[e] greater use of community-oriented policing training models that take into account factors including ... cultural diversity, which shall include training on interactions with persons of different ... sexual orientations" and to "continue to prohibit discriminatory conduct on the basis of ... sexual orientation."¹²⁸

Search and Seizure Procedures Related to LGBT Populations

In 2015, President Obama's Task Force on 21st Century Policing released its final report aimed at building public trust while reducing crime.¹²⁹ The report included several LGBT-specific recommendations, including that departments adopt some of the types of policies and practices discussed above, such as anti-profiling policies and LGBT-inclusive trainings for officers.¹³⁰ The report also recommended that departments establish search and seizure procedures related to LGBT and transgender populations and adopt as policy the recommendation from the President's Advisory Council on HIV/ AIDS to cease using the possession of condoms as the "sole evidence" of vice.¹³¹ Unfortunately, the recommendations did not go so far as to assert that condoms should be inadmissible even when other evidence exists, so as not to discourage their use. Nevertheless, departments could adopt these policies to reduce the disparate impact of

using condoms as evidence of prostitution on transgender women and young gay and bisexual men of color – populations who are not only particularly vulnerable to bias-based profiling but also at increased risk of HIV infection and prosecution under HIV criminalization laws.

19.7.2 Change Through Federal Interventions and Standards

In addition to vital work taking place at the community level, positive change – as well as potential setbacks – exist at the national level as well. Through enforcement and expansion of federal laws and policies, the federal government has an important role to play in LGBT policing matters.

Enforcement of Federal Laws Through Investigations and Consent Decrees The Civil Rights Division of the US Department of Justice has the power to enforce

the civil prohibition on a “pattern or practice” of policing that violates the Constitution or other federal laws. Pattern-or-practice cases begin with investigations of allegations of systemic police misconduct and, when the allegations are substantiated, end with comprehensive agreements designed to support constitutional and effective policing and restore trust to communities.¹³²

The Department of Justice can improve relationships between police departments and the LGBT community and reduce instances of discriminatory policing by responding to allegations of systemic police misconduct involving LGBT individuals. The Department of Justice’s response to allegations of police misconduct in the city of New Orleans offers one example. In May 2010, the Department of Justice launched an investigation of the New Orleans Police Department for several violations of federal law. These included allegations that transgender women were improperly targeted and arrested for prostitution and that young people, people of color, and LGBT people frequently were stopped, targeted, booked, and arrested for minor infractions – and disproportionately charged with “solicitation of a crime against nature.”¹³³ Under the latter offense, people were punished for solicitation of oral or anal sex with a five-year prison sentence and mandatory sex offender registration for a period of 15 years to life.¹³⁴ To fight these practices, LGBT young people, primarily youth of color from an organization called BreakOUT, launched a “We Deserve Better” campaign,¹³⁵ providing research, testimony, and resources to support the issuance of a consent decree. The youth also participated in a broader effort to advance a “People’s Consent Decree,” calling for an end to abusive practices.

As a result, the Department of Justice and the New Orleans Police Department entered an agreement under a consent decree in July 2012.¹³⁶ Under the decree, the police department was required to update policies and procedures and train officers to ensure that they enforce the law effectively and constitutionally. It addressed topics ranging from use of force to vehicle pursuit to warrantless searches and was considered the most extensive decree issued by the Department of Justice to date. Under the decree, officers can no longer stop and frisk individuals without

reasonable suspicion of a crime; and they cannot use race, sexual orientation, gender, or gender identity (among other characteristics) as the basis for stop- and- frisk policing and arrest. The decree explicitly states that the department will treat LGBT individuals with courtesy, professionalism, and respect and prohibits officers from using harassing, intimidating, or derogatory language regarding or toward LGBT individuals.

However, Department of Justice priorities may be shifting under the Trump Administration, putting these protections at risk. In a memorandum from Attorney General Jeff Sessions entitled, "Supporting Federal, State, Local and Tribal Law Enforcement," the Department of Justice was directed to review all existing and contemplated consent decrees, in part to ensure that "the misdeeds of individual bad actors ... not impugn or undermine the legitimate and honorable work that law enforcement officers and agencies perform in keeping American communities safe."¹³⁷ Such statements indicate that the Department of Justice in this administration may seek to prioritize the protection of police officers and their use of discretion, which may be to the detriment of those communities with a history of abuse by law enforcement. While the New Orleans consent decree has already been judicially approved thereby requiring court intervention to change it, other open investigations and consent decrees under negotiation are subject to the new Department of Justice priorities.¹³⁸

Expansion of Federal Bans on Bias-Based Profiling

In 2014, the US Department of Justice issued an update to its policy prohibiting profiling by federal law enforcement agencies and officers.¹³⁹ The updated policy clarified that federal law enforcement officers are prohibited from using sexual orientation and gender identity, among other characteristics, to any degree during routine traffic stops and other "ordinary" law enforcement situations.¹⁴⁰

Congress could strengthen and expand protections from bias-based profiling of all citizens, including LGBT citizens, by passing the End Racial Profiling Act. The End Racial Profiling Act would require federal law enforcement agencies to maintain "adequate policies and procedures designed to eliminate racial profiling," and also require state, local, and tribal law enforcement agencies to certify that they maintain such policies and procedures as a condition of receiving federal funding through the Edward Byrne Memorial Justice Assistance Grant Program or the "Cops on the Beat" program.¹⁴¹ The Act defines "racial profiling" to include profiling based on gender identity or sexual orientation.¹⁴² Passage of this act with the explicit inclusion of sexual orientation and gender identity would expand the current Department of Justice anti- profiling policy to state, local, and tribal law enforcement departments across the country, ensuring that LGBT people are protected from bias- based profiling by law enforcement agencies at all levels of government. In particular, the law would likely reduce incidents of police misconduct against LGBT people of color and transgender individuals, who are often stopped and profiled by police because of discriminatory stereotypes related to their appearance.

Non-Discrimination Requirements for COPS Grant Recipients

The COPS Office is a sub- agency of the US Department of Justice.¹⁴³ The COPS Office issues grants under several different programs that advance community policing efforts across the nation.¹⁴⁴ For example, the COPS Hiring Program provides funds to hire law enforcement officers that specialize in community policing;¹⁴⁵ and the Community Policing Development program provides funds for development of effective community policing strategies.¹⁴⁶ Through its grant programs, the COPS Office has “provided funding to more than 13,000 of the nation’s 16,000 law enforcement agencies.”¹⁴⁷ Recipients of COPS grants are currently prohibited from discriminating against law enforcement personnel and citizens based on race, religion, national origin, sex, disability, and age.¹⁴⁸

The US Department of Justice could revise the non- discrimination requirements for recipients of COPS grants to include sexual orientation and gender identity.¹⁴⁹ Given the extensive financial and community reach of the COPS Office, these requirements could have a substantial impact on community policing policies and practices in police forces throughout the nation. This would likely not only lead to better treatment of LGBT community members but also greater safety and community buy- in from LGBT people in the communities that are policed.

19.8 Conclusion

Harmful policing strategies and tactics push far too many LGBT people, particularly young, low-income and LGBT people of color, into the criminal justice system. This has resulted in disproportionate numbers of incarcerated sexual minorities in prisons and jails as well as an over-representation of sexual minorities among youth in custody.¹⁵⁰

In addition to the discriminatory harms LGBT people themselves face, negative interactions with law enforcement – involving misconduct, harassment, assault, sexual victimization, and discrimination – also result in weaker trust in law enforcement. As a result, LGBT victims of violence are less likely to report incidents to police and have their complaints fully addressed.¹⁵¹ This cycle diminishes the effectiveness of police in serving communities¹⁵² and reduces community trust and cohesion.

Once in the system, LGBT individuals face longer sentences, sexual victimization, improper housing, harassment, and inadequate access to needed healthcare services.¹⁵³ Unfortunately, LGBT- specific problems often continue following release, including discriminatory housing and employment, the limitation of parental rights, and the overuse of sex offender registries. Improving policing at the outset is therefore essential for LGBT people and their families in the long run. Until a comprehensive approach to understanding and respecting the rights and needs of all LGBT people is embraced by law enforcement, these harms are far too likely to continue.

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