

# POLICY 7

## Fair and Impartial Policing: LGBTQ+ Youth

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### PURPOSE

Ensure that: 1) the civil rights of LGBTQ+ youth are respected in interactions with law enforcement; and 2) law enforcement

officers respond to these youth in a developmentally appropriate, trauma-informed, equitable manner.

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### POLICY

This policy furthers the commitment to fair and impartial enforcement of the law and the protection of youths' constitutional and statutory rights. It also prohibits the use of law enforcement authority that subjects LGBTQ+ youth to bias-based policing.

Officers are prohibited from engaging in bias-based policing of youth in law enforcement actions including, but not limited to, investigative detentions, pedestrian and vehicle stops, arrests, searches, and property seizures. This policy provides guidance to officers about how to conduct youth interactions consistent with these prohibitions.

This policy should be understood and implemented in conjunction with other relevant policies in this policy compendium, including:

- [Policy 2: Investigatory Stops, Non-Custodial Interviews, and Search and Seizure of Youth,](#)
- [Policy 3: Arrest, Transport, Booking, and Temporary Custody](#)
- [Policy 4: Miranda Warnings, Waiver of Rights, and Youth Interrogations](#)
- [Policy 5: Use of Force with Youth,](#)
- [Policy 6: Fair and Impartial Policing of Youth: Race, National Origin, and Immigration Status,](#)

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# REASONS FOR YOUTH SPECIFIC POLICIES

## Why Fair and Impartial Policing of LGBTQ+ Youth is Important

- Research and surveys indicate that LGBTQ+ youth are more likely to be stopped by law enforcement and tend to experience greater criminal sanctions (e.g. court referrals, detention and incarceration) that are not explained by higher levels of offending by these youth.
- Surveys indicate that LGBTQ+ youth—particularly if they are Black or Latinx—may be more likely to be arrested at a young age.
- Studies indicate that LGBTQ+ youth, and transgender youth in particular, are often assumed by officers to be sex workers.
- LGBTQ+ youth are disparately represented among detained and incarcerated youth: they represent 5 to 7% of the general population and 15 to 20% of system involved youth.
- Research indicates that LGBTQ+ youth do not trust officers, especially Black LGBTQ+ youth and transgender and/or nonbinary youth, who have expressed deep distrust of law enforcement based on their direct or vicarious experiences.
- Once stopped, LGBTQ+ youth are vulnerable to negative sexual conduct by law enforcement; a study indicated that 59% of transgender youth and 12% of non-transgender youth in one city had been propositioned for sexual favors by officers. In New York City, LGBTQ+ youth reported higher levels of negative sexual contact with officers than non-LGBTQ+ youth.
- LGBTQ+ youth should be protected from law enforcement searches that are an effort to ascertain the youth's "true" gender.
- LGBTQ+ youth may encounter law enforcement due to family abandonment, homelessness, and runaway status, which can result in youth referral to the child welfare system, and the potential risk of placement with caregivers who are not prepared to serve LGBTQ+ youth.
- LGBTQ+ youth who need gender affirming care may fear that law enforcement officers will report families who support this care to child welfare authorities, potentially placing youth at risk of being removed from supportive families and pressured to change their sexual orientation or gender identity.

Additional source and background information for this policy can be found in the [Appendix to Policy 7](#).

# DEFINITIONS

## **AGENCY**

This law enforcement agency.

## **BIAS-BASED POLICING OF YOUTH**

Use of a youth's actual or perceived race, color, ethnicity or national origin, religion, disability,<sup>1</sup> gender, gender identity or sexual orientation as a motivating factor in initiating or justifying law enforcement action against the youth, rather than the youth's behavior or other information or circumstances that link the youth to suspected unlawful activity.

## **GENDER EXPRESSION**

External appearance of gender identity, usually expressed through behavior, clothing, body characteristics or voice, and which may or may not conform to socially defined behaviors and characteristics typically associated with being either masculine or feminine.

## **GENDER IDENTITY**

The innermost concept of self as male, female, a blend of both or neither— how individuals perceive themselves and what they call themselves. Gender identity can be the same or different from the sex assigned at birth.

## **LGBTQ+**

Individuals who identify as lesbian, gay, bisexual, transgender, nonbinary, intersex, questioning, and queer.

## **PROCEDURAL JUSTICE FOR YOUTH**

Procedural justice is predicated on four core principles. Officers: 1) treat people with dignity and respect regardless of social status, 2) give people voice during interactions, 3) use neutral and transparent decision-making as well as explanations for the officer's actions, and 4) treat people in a lawful and trustworthy manner.<sup>2</sup> SFY believes that an additional two core principles are merited for interactions with youth: 1) express concern and care for the youth's well-being and safety, and 2) do not take advantage of the youth's lack of status and power to their disadvantage.

1. Disability-based discrimination in policing is addressed in [Policy 8: Policing of Youth With Disabilities, Experiencing Mental Health Crises, or Impaired By Drugs or Alcohol](#).

2. Tom Tyler is the author of the term procedural justice. His definition was first published in *Why People Obey the Law*. (New Haven, CT: Yale University Press, 1990). He further explained this theory in "Procedural Justice, Legitimacy and the Effective Rule of Law," *Crime & Justice*, vol. 30, 2003, pp.283-357. JSTOR, <http://www.jstor.org/stable/1147701>. The operation and impacts of law enforcement's use of Procedural Justice are available on the U.S. Department of Justice website at: <https://cops.usdoj.gov/proceduraljustice>.

## TRAUMA

As defined by the U.S. Department of Health and Human Services, individual trauma results from an event, series of events, or set of circumstances that is experienced by an individual as physically or emotionally harmful or life threatening and that has lasting adverse effects on the individual's functioning and mental, physical, social, emotional, or spiritual well-being.

## TRAUMA-INFORMED

A trauma-informed **officer**: 1) anticipates that exposure to and experience of trauma is widespread, 2) realizes that the impacts of trauma often lead to reactive, survival behaviors; 3) recognizes hallmarks of traumatic responses, which are often shaped by a perspective of powerlessness, and 4) responds by considering the role trauma may play in a person's response while taking steps to avoid re-traumatization.

A trauma-informed law enforcement **agency** supports its officers' trauma-informed responses by promoting awareness of and training about trauma, policies that require training for trauma-informed skills with the public and among officers.

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# PROCEDURE

## I. Fair and Unbiased Treatment<sup>3</sup> of LGBTQ+ Youth

### A. Obligation Under the Law to Provide Fair and Unbiased Treatment

Officers shall address youth using the names, pronouns, and courtesy titles appropriate to the youth's gender identity as expressed by the youth.

1. Officers will treat transgender, intersex, and gender-nonconforming youth in a manner appropriate to the youth's gender identity and/or expression, which may be different from their sex assigned at birth or what is listed on their official government-issued identification.
2. With the exception of Agency personnel or, when necessary for a law enforcement purpose, other agency partners, officers shall not disclose information about the youth's gender identity/expression or sexual orientation; disclosing this

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3. Although not youth-specific, the U.S. Department of Justice identified several major metropolitan law enforcement agency policies that have adopted "bias-based profiling prohibitions" that include sexual orientation and gender identity. See Copple, James E., and Patricia M. Dunn, Gender, Sexuality, and 21st Century Policing: Protecting the Rights of the LGBTQ+ Community. Washington, DC: Office of Community Oriented Policing Service at 16-17 (2017) [Gender, Sexuality and 21st Century Policing: Protecting the Rights of the LGBTQ+ Community](#)

information should be based on the youth's choice and efforts to avoid placing a youth at increased risk for violence.

3. Officers shall not express—verbally, in writing, or by other gesture—any prejudice or derogatory views of a youth's sexual orientation, gender expression, or gender identity.

## **B. Prohibition on Profiling LGBTQ+ Youth**

Officers shall not:

1. Use a youth's perceived sexual orientation, gender expression, or gender identity as a basis for reasonable suspicion to stop, question, request identification, pat frisk, search, or arrest a youth,
2. Use a youth's perceived sexual orientation, gender expression, or gender identity as prima facie evidence that the youth is committing, has committed, or is about to commit a crime or delinquent offense, including but not limited to prostitution or lewd conduct,
3. Conduct a search or frisk to determine a youth's anatomy or define gender,
4. Inquire about intimate details of a youth's sexual practices, genitals, anatomy, or medical history,
5. Use language that is demeaning or derogatory regarding a youth's actual or perceived gender identity, gender expression, or sexual orientation,
6. Engage in any sexual harassment of or sexual overtures to LGBTQ+ youth while on or off duty,
7. Stop, question, or arrest LGBTQ+ youth for using a gender-segregated restroom, locker room, or other gender-segregated space based on the officer's belief that the youth's gender expression does not match the gender designation of the gender-segregated area.

## **C. Obligation to Respond to Calls for Service**

Officers must:

1. Respond to calls for service made by LGBTQ+ youth,
2. Investigate complaints by LGBTQ+ youth in the same manner and using the same standards as applied to anyone else, including reports of intimate partner violence and child abuse, even if the alleged motivation of the violence or abuse is the victim's LGBTQ+ status.

#### **D. TAKING LGBTQ+ YOUTH INTO CUSTODY**

1. Where feasible, officers will ask youth the gender of the officer they would prefer to a conduct the pat down and attempt to assign an officer to conduct the pat down in accordance with youths' wishes.

If no such officer is available or the youth's request is not honored for any other reason, the officer shall document the youth's preference with respect to the gender of the officer performing the pat down, and the reason the youth's preference was not honored.

2. Officers should explain how a pat down will proceed prior to conducting it.
3. Officers shall transport and hold youth in custody in a safe environment that takes into account where the youth is likely to feel most safe and who else is present in that setting.<sup>4</sup>
  - Officers will monitor LGBTQ+ youth in custody.<sup>5</sup>
  - Officers will document as well as explain to the youth any deviation from holding or detaining youth in the setting of their preference.
4. When a youth's government-issued identification is not consistent with their self-reported name, the officer shall not charge the youth with providing false information or obstruction of justice unless the officer has a reasonable basis to conclude that the youth intended to conceal their identity.

## **II. Accountability**

### **A. Supervisors shall ensure that all personnel in their command are familiar with the content of this policy and operate in compliance with it.**

1. Officers will provide information on how to make a complaint of bias-based policing to any youth who seeks to complain on their own behalf, or any other person who seeks to complain on behalf of a youth.
2. If the person is unwilling to make a complaint directly to the officer, the officer shall inform the person about procedures to contact a supervisor, or about another means within the Agency to make or file a complaint.

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4. See Washington D.C. Metropolitan Police Department General Order PCA 501-02, Handling Interactions with Transgender Individuals at 9 (2015) (prohibiting transgender juvenile arrestees from being taken to any police district or any other unit and requiring that all transgender juveniles placed under arrest or taken into custody for questioning shall be taken directly to a specified juvenile processing center.)

5. See [Policy 3: Arrest, Transport, Booking, and Temporary Custody](#), Section V.A.; see also, San Francisco, California Police Department, Department General Order 5.22 (2018) at 3, Interacting with Transgender, Gender-Variant, and Nonbinary Individuals.

3. Supervisors shall ensure that no retaliation, intimidation, coercion, or adverse action is taken against any person, including a member of the Agency, who disclosed information and/or participates in the investigation of a complaint.

**B. The Agency will hold officers accountable for any violations of this policy.**

1. Officers and employees who have observed or are aware of officers who have engaged in bias-based policing must report such incidents to a supervisor and through any existing Agency internal investigations protocol.<sup>6</sup> Officers and employees must provide all information known to them before the end of the shift during which they observed or become aware of the bias-based policing.
2. The Agency will investigate and resolve allegations of bias-based policing in accord with the Agency's supervision and disciplinary processes.
3. The Agency will investigate and resolve allegations that officers or employees knew of incidents of bias-based policing but did not report them. Supervisors will use the Agency's supervision and/or disciplinary processes to hold officers and employees accountable for failing to report bias-based policing.
4. The Agency will protect officers and employees who report allegations of bias-based policing from retaliation and harassment.
5. The Agency will investigate any situations in which officers used language, displayed symbols, or made gestures commonly viewed as offensive to, or indicative of, bias-based policing.

### **III. Response to Calls for Service and Complaints Based on Bias Against Youth**

Officers shall not take law enforcement action based on information from members of the public about youth that—based on the totality of circumstances of the incident—officers know or should know is the product of, or motivated by, bias based on any of the personal characteristics listed above in the definition of Biased-based Policing of Youth.

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6. See Policy 12: Transparency and Accountability.