

**SAN DIEGO POLICE DEPARTMENT
PROCEDURE**

DATE: JUNE 1, 2021

NUMBER: 6.34

SUBJECT: POLICE INTERACTION WITH TRANSGENDER
AND GENDER NON-BINARY INDIVIDUALS

RELATED POLICY: 6.01, 6.02, 6.03, 6.04

ORIGINATING DIVISION: PATROL OPERATIONS

NEW PROCEDURE:

PROCEDURAL CHANGE:

SUPERSEDES: **NEW PROCEDURE**

I. PURPOSE

This Department procedure establishes guidelines for interacting with transgender and gender non-binary individuals.

II. SCOPE

This procedure applies to all members of the Department.

III. BACKGROUND

The San Diego Police Department is committed to working with the diverse communities it serves. This Department Procedure is to establish procedures that create mutual understanding, prevent conflict, and ensure the appropriate interaction with transgender and gender non-binary individuals.

California State Senate Bill (SB 179), the Gender Recognition Act, passed and amended state law regarding gender identity. Superior Courts in California are, under certain circumstances, required to grant the petitions of California residents who have requested to change their legal gender from male to female, female to male, or to non-binary. The California Department of Motor Vehicles (DMV) issues Driver's Licenses with the gender category of either "*male, female, or non-binary*" to better match a person's gender identity and gender expression. (Cal. Veh Code §12800(a)(2)).

IV. DEFINITIONS

Biological Sex - Refers to the objectively measurable organs (internal or external), gonadal, hormonal characteristics and chromosomal make-up of an individual.

Cisgender - Refers to a person whose gender identity corresponds with the sex the person had or was identified as having at birth.

Gender binary - The gender binary, also referred to as gender binarism, is the classification of sex and gender into two distinct, opposite and disconnected forms of masculine and feminine. This is the idea that a person who is male is masculine and a person who is female is feminine.

Gender non-binary - A term used to refer to a person who is not exclusively masculine or feminine and whose gender identities are thus outside of the gender binary. A gender non-binary individual may not identify as male or female and may not abide by the social constructs of masculine or feminine. Often but not always, gender non-binary individuals prefer pronouns such as they, them, and theirs.

Gender expression - The manner in which a person represents or expresses one's gender identity to others; for example, external characteristics and behaviors that are socially defined as either masculine or feminine, such as dress, grooming, mannerisms, speech patterns, and social interactions. Social or cultural norms can vary widely and some characteristics that may be accepted as masculine, feminine, both, or neutral in one culture may not be assessed similarly in another.

Gender identity - A person's sense of being a man, a woman, both, or neither.

Intersex - A person who has both male and female sex organs, gonadal or other sex characteristics.

LGBT - Lesbian, Gay, Bisexual and Transgender

Sexual Orientation - A term describing a person's physical and/or emotional attraction to members of the same sex or gender and/or a different sex or gender.

Transgender - An umbrella term used to refer to a person who is born with the genetic traits and anatomy of one gender (i.e., male or female) but self-identifies as another gender (i.e., feminine or masculine). A transgender person can be pre-operative, post-operative, non-operative, or a person who is engaged in any degree of gender expression as the opposite gender.

V. PROCEDURES

- A. The following procedures shall apply during interactions with transgender and gender non-binary individuals:
1. When referring to or talking about a transgender individual's status, the terms "Transvestite" and "Transsexual" are outdated terms and should not be used. The correct term to be used is "Transgender".
 2. Address transgender individuals by their preferred name and use their preferred gender binary or gender non-binary pronouns appropriate to the individual's gender self-identity and expression.
- B. Any training for Department members on the subject of LGBT diversity shall be consistent with California State Assembly Bill (AB 2504).
- C. Department members shall not assume a person's transgender status or sexual orientation based solely on their appearance. Department members may receive visual or verbal cues about a person's gender identity during their interaction with transgender or gender non-binary individuals.
- D. If a Department member obtains any of the following visual or verbal cues and becomes aware of an individual's transgender or gender non-binary status, the following shall apply:
1. When a person identifies himself/herself as transgender, the Department member shall accept their expressed gender identity and shall not question it.
 2. When a person identifies themselves as gender non-binary, the Department member shall accept their expressed gender identity and shall not question it.
 3. When a person identifies as transgender, refer to them by the pronoun that matches their gender identity or by which they would like to be referred (she / her / hers or he / him / his).
 4. When a person identifies as gender non-binary, refer to them by the pronouns that match their gender identity or by which they would like to be referred (they, them, and theirs).
 5. A DMV identification or any other government-issued form of identification (such as a passport), shall not be acceptable as an initial proof of an individual's gender identity as it can often reflect the gender from which the individual is transitioning (as part of the transition process) and not the biological gender or gender identity the individual possesses.

6. Government-issued forms of identification may only be acceptable as initial proof of gender identity in the absence of self-identification by the individual or in the absence of some other obvious visual cues of expression of gender identity.
7. Any government-issued forms of identification shall only be acceptable as proof of identity, regardless of gender identity in the case of reporting, such as completing a Field Interview, Case Report, Officer's Report, Citation, CHP 555 Collision Report and any other San Diego Police report requesting to list one's legal name and legal gender or sex.
8. Any information obtained about an individual's transgender status or gender non-binary status (e.g., preferred name and pronoun) should be documented and provided to relevant Department members for the purpose of ensuring continuity of appropriate treatment (e.g., in the narrative of any police report). The officer shall not refer to the person's legal gender or legal name in the narrative of the report if the individual requests a preferred name and gender be used. The officer shall document the preference in the narrative (e.g., "The Victim Smith identifies as a transgender female and will be referred to as her preferred name, Smith and as female throughout this report.>").
9. The mention of the transgender status should be noted in the narrative of the report to avoid confusion if the individual's presentation may differ when appearing in court, or if their legal name and gender differs from their gender identity or gender expression, and;
10. Under no circumstances shall Department members disclose to non-involved persons an individual's transgender or gender non-binary status. A "need to know" basis shall guide decisions about the disclosure to other Department personnel.
11. Non-traditional gender identities and gender expressions do not constitute reasonable suspicion or *prima facie* evidence that an individual is attempting to conceal their identity. They simply do not conform to the social constructs of masculine or feminine gender standards.
12. Non-traditional gender identities and gender expressions do not constitute reasonable suspicion or *prima facie* evidence that an individual is engaging in or has engaged in prostitution or any other crime.

- E. A transgender individual's use of the restroom, bathroom, locker room or any other kind of facility whatsoever shall be governed by the following guidelines:
1. All persons within the jurisdiction of this state are free and equal, and no matter what their sex, race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status are entitled to the full and equal accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever. Cal. Civ. Code §51(b).
 2. California Civil Code section 51(e)(5) defines "Sex" to include, but not be limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth. "Sex" also includes, but is not limited to, a person's gender. "Gender" means sex, and includes a person's gender identity and gender expression. "Gender expression" means a person's gender-related appearance and behavior whether or not stereotypically associated with the person's assigned sex at birth.
 3. All Department members are required to follow Civil Code Section §51(b) during their regular duties. No criminal enforcement shall take place where any persons within the jurisdiction of this state are being denied services or accommodations, advantages, facilities, privileges, or services in all business establishments of every kind whatsoever based on their sex (including a person's gender identity and gender expression), race, color, religion, ancestry, national origin, disability, medical condition, genetic information, marital status, sexual orientation, citizenship, primary language, or immigration status.
 4. California Civil Code section 51(b) also applies to all persons who are within any city facility.
 5. Non-traditional gender identities and gender expressions do not constitute reasonable suspicion or *prima facie* evidence that an individual is engaged in trespassing, loitering or voyeurism while within a public restroom or locker room.
- F. In addition to the requirements of Department Procedures 4.01 and 6.01, during pat downs and searches of transgender or gender non-binary individuals, the following shall apply:
1. A search or pat down shall not be performed for the sole purpose of determining an individual's anatomical gender.

2. Transgender and gender non-binary individuals shall not be subject to more invasive search or frisk procedures than non-transgender or cisgender individuals based solely on transgender or gender non-binary status.
 3. Officers shall not inquire about an individual's sex anatomy or surgical status when determination of an individual's gender status and knowledge of an individual's genitalia is unnecessary for an investigation. Such inquiries are generally prohibited. An inquiry of an individual's anatomy or surgical status may be made for purposes of, but not limited to, sex crime investigations (where the victim's anatomy was involved) or criminal investigation resulting in injury to the victim's genitalia.
 4. Requests to remove appearance-related items, such as prosthetics, clothing that conveys gender identity, wigs, and cosmetics, shall be consistent with requirements for the removal of similar items for non-transgender or cisgender individuals, or at the request of the transgender or gender non-binary individual.
 5. When an arresting officer has reason to believe the arrestee is a transgender person or gender non-binary person, the officer shall specifically inform the arrestee that, as with any other arrestee, he/she/they must be searched. The officer shall ask the arrestee if there is a preference to be searched by a male or female officer. If the arrestee's gender request can be reasonably and expeditiously accommodated without risk to officer safety, the request should be granted.
 6. If an arrestee has stated that he/she/they is intersex, the officer shall ask the arrestee if there is a preference to be searched by a male or female officer. If the arrestee's gender request can be reasonably and expeditiously accommodated without risk to officer safety, the request should be granted.
- G. When transporting transgender persons or gender non-binary individuals, the following shall apply:
1. When transporting a transgender individual whose gender identity is female, all procedures in Department Procedures 6.01 section XI and 1.49 section I apply.
 2. In addition to recording the transport with their BWC, officers transporting transgender or gender non-binary individuals as passengers or prisoners shall notify the radio dispatcher of their beginning mileage and ending mileage. The exceptions to this

requirement are the procedures listed in Department Procedure 6.01 section X. C. 5.

- H. When booking transgender persons or gender non-binary individuals into a jail facility, the following shall apply:
1. Officers shall confirm the transgender or gender non-binary arrestee's gender identity and ask the arrestee into which jail facility they prefer to be booked. The officer shall then transport the arrestee to the preferred jail facility and document this in their report. An inquiry on an arrestee's gender identity is only required when the officer reasonably believes the person is transgender or gender non-binary.
 - a. When an arrestee is uncooperative, an arresting officer may rely on other factors in making a determination as to the appropriate booking facility, including the arrestee's gender expression (such as appearance, dress, mannerisms and speech) or gender listed on a government ID.
 - b. After arrival at the preferred jail facility, the San Diego County Sheriff's Department Jail Population Management Unit (JPMU) will screen all transgender or gender non-binary arrestees. During the screening process, JPMU will make the ultimate determination of in which jail facility the transgender or gender non-binary arrestee will be housed, and will facilitate the transport to a different facility if necessary.
 2. Often transgender individuals take medications as part of their transition. Missing doses or coming off those medications can be life threatening to the individual.
 - c. The officer should make every reasonable attempt to recover medications for the individual and take those medications to the jail facility with their personal property.
 - d. If the officer cannot retrieve the medications, a list of current medications should be gathered and given to the nurse at the jail facility.

VI. RESOURCES

For more information, please contact the San Diego Police Department Transgender Community Liaison Officer or the LGBT Community Liaison Officer.

Please visit;

<https://www.sandiego.gov/police/contact/chiefs-advisory-board-liasons>