

MONTCLAIR POLICE DEPARTMENT

POLICY & PROCEDURES



SUBJECT: BIAS-BASED POLICING

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BY THE ORDER OF:
Chief of Police Todd M. Conforti

PURPOSE The purpose of this policy is to codify this department's procedures and practices concerning bias-based policing, bias-based profiling, and discriminatory practices. This policy also maintains this department's policy and procedures for dealing with transgender, LGBTQ+, non-binary, and gender non-conforming persons

POLICY It is the policy of the Montclair Police Department to prevent and prohibit the practice of bias-based policing, bias-based profiling and other discriminatory practice by employees of this department. Bias-based policing, biased based profiling, and discriminatory profiling are violative of the Equal Protection Clause of the 14th Amendment to the United States Constitution and in direct contravention of *New Jersey Attorney General Directive 2005-01* and *New Jersey Attorney General Directive 2019-03*.

No Montclair police officer or civilian employee, while operating under the authority of the laws of the State of New Jersey, shall engage in or tolerate any practice or act constituting bias-based policing or bias-based profiling.

Officers and civilian employees shall not harass or discriminate against individuals based on their actual or perceived gender identity, gender expression and/or sexual orientation, including by using offensive or derogatory words to describe LGBTQ+ individuals.

PROCEDURES

I. DEFINITIONS

- A. For purposes of this policy, the following terms are defined:
1. Bias-based policing is the detention, interdiction, or other disparate treatment of an individual or class of individuals on the basis of their race, color, gender, creed, national origin, ethnicity, ancestry, religious beliefs, age, marital status, sexual orientation, gender identify, gender expression, LGBTQ+ status, physical or mental disability. Other synonymous terms include, racially influenced policing, discriminatory profiling, racial profiling, etc.
 2. Cisgender: A person whose gender assigned at birth (sometimes referred to as sex assigned at birth) matches their gender identity. For instance, if a person was assigned female at birth, and self-identifies as a woman or girl, that person is cisgender.
 3. Citizen contact is a consensual encounter between an agency employee and a member of the public, initiated by either party, wherein the person is free to terminate the encounter at any time.
 4. Chosen name is a name selected by a person for themselves that is different from the name the person was given at birth. An individual may have chosen a new name for themselves that more accurately reflects their gender identity (actual or perceived) or expression.
 5. Chosen pronouns are pronouns that a person chooses to use for themselves in line with their gender identity (actual or perceived). For example, 'she/her'; 'he/his'; and 'they/them'.
 6. Detain or detention is the act of stopping or restraining a person's freedom to leave; approaching and questioning a person outside the realm of a consensual encounter, or stopping a person suspected of being personally involved in criminal activity.
 7. Field interview/investigative detention is the brief detainment of a person, whether on foot or in a vehicle, based upon reasonable suspicion for the purposes of determining the individual's identity and resolving an officer's suspicions.
 8. Gender assigned at birth: The gender that someone was thought to be at birth, typically recorded on the original birth certificate; the gender someone was assigned at birth may or may not match their gender identity.
 9. Gender binary: A societal construction of gender that accords two discrete and opposing categories – male or female.
 10. Gender identity is a person's internal, deeply held sense of gender. Unlike gender expression, gender identity is not visible to others.
 11. Gender expression: A person's gender-related appearance and behavior, whether or not stereotypically associated with the person's gender

assigned at birth. It is the manner in which a person represents or expresses their gender to others, such as through their behavior, clothing, hairstyles, activities, voice, or mannerisms.

12. Gender non-conforming: A person whose gender expression does not conform to traditional gender expectations. Not all gender non-conforming people identify as transgender.
13. Gender transition: A process during which a person begins to live according to their gender identity, rather than the gender they were assigned at birth. Gender transition looks different for every person. Possible steps in a gender transition may or may not include changing one's clothing, appearance, and name, and in some cases, changing identification documents or undergoing medical treatments. The steps each person takes depend on their individual needs and access to resources.
14. Intersex: A person whose biological sex characteristics may not fit medical definitions of male and female. These characteristics may include, but are not necessarily limited to, internal reproductive organs, external genitalia, and sex chromosomes
15. LGBTQ+ is an acronym that represents lesbian, gay, bisexual, transgender, and questioning individuals. The Q can also stand for queer. As the plus sign shows, this list is not meant to be exhaustive and, as used in this policy, the umbrella term also includes non-binary, gender non-conforming, and intersex individuals.
16. Non-binary is a term often used by people whose gender is not exclusively male or female. The term also captures those with more than one gender or with no gender at all.
17. Protected class – includes race, color, gender, creed, national origin, ethnicity, ancestry, religious beliefs, age, marital status, sexual orientation, gender identify, gender expression, LGBTQ+ status, physical or mental disability, or liability for service in the armed forces of the United States.
18. Queer: A term that, although pejorative when used with intent to insult (historically and at present), is increasingly used by members of the LGBTQ+ community as a broad umbrella under which sexual and gender minorities may identify.
19. Questioning: A term some people use when they are in the process of exploring their sexual orientation or gender identity.
20. Reasonable suspicion – is suspicion that goes beyond a mere hunch but, is based upon a set of articulable facts and circumstances that would warrant a reasonable person to believe that an infraction of the law has been committed, is about to be committed, or is in the process of being committed by a person or persons under suspicion. Reasonable suspicion can be based on the observations of a police officer combined with his or her training and experience and/or reliable information provided by credible outside sources.

21. Search is looking for or seeking out that which is otherwise concealed from view.
22. Sexual orientation: A person's romantic, emotional, or sexual attraction to members of the same or different gender. Common terms used to describe sexual orientation include but, are not limited to, straight, lesbian, gay, bisexual, and asexual. Sexual orientation and gender identity are different: gender identity refers to one's internal knowledge of their gender, while sexual orientation refers to whom one is attract
23. Stop is the restraining of a person's liberty by physical force or a show of authority.
24. Transgender is an umbrella term for people whose gender identity and/or gender expression differs from what is typically associated with the sex they inherited at birth. People under the transgender umbrella may describe themselves using one or more of a wide variety of terms, including transgender.
 - a. Transgender man: A term for a transgender person who was assigned female at birth but, identifies as a man.
 - b. Transgender woman: A term for a transgender person who was assigned male at birth but, identifies as a woman.
25. Unknown, as used in this policy, is when the person's gender has not been disclosed and is otherwise unknown.

II. GENERAL

- A. In accomplishing the mission of this department, officers must not take enforcement actions based upon an individual's or class of individuals' protected class (i.e., race, color, gender, creed, national origin, ethnicity, ancestry, religious beliefs, age, marital status, sexual orientation (actual or perceived), gender identity (actual or perceived), gender expression (actual or perceived), LGBTQ+ status, liability for service in the armed forces, physical or mental disability).
- B. Bias-based policing of persons by employees of this department is strictly prohibited in detention, interdiction, traffic contacts, field contacts, and asset seizure and forfeiture.
- B. Absent a valid warrant, reasonable suspicion, or probable cause, race, color, gender, creed, national origin, ethnicity, ancestry, religious beliefs, age, marital status, sexual orientation (actual or perceived), gender identity (actual or perceived), gender expression (actual or perceived), LGBTQ+ status, physical or mental disability (unless a danger to themselves or others) will not be a factor in determining whether to interdict, detain, stop, arrest or take a person into custody.
- C. Unless in response to a specific report of criminal activity, race, color, gender, creed, national origin, ethnicity, ancestry, religious beliefs, age, marital status, sexual orientation (actual or perceived), gender identity (actual or perceived), gender expression (actual or perceived), LGBTQ+ status, physical or mental disability (unless a danger to themselves or others) will not be a factor in determining the existence of probable cause to arrest a person.

- C. The stop or detention of any person(s) or vehicle(s) that is not based on factors related to a violation or violations of the laws and ordinances of the United States, State of New Jersey, County of Essex, Township of Montclair, BOLO, or in response to the police community caretaking function is prohibited.
- D. Officers shall not search a person, their effects, or vehicle based upon race, color, gender, creed, national origin, ethnicity, ancestry, religious beliefs, age, marital status, sexual orientation (actual or perceived), gender identity (actual or perceived), gender expression (actual or perceived), LGBTQ+ status, physical or mental disability (unless a danger to themselves or others).
- E. Race, color, gender, creed, national origin, ethnicity, ancestry, religious beliefs, age, marital status, sexual orientation (actual or perceived), gender identity (actual or perceived), gender expression (actual or perceived), LGBTQ+ status, physical or mental disability (unless a danger to themselves or others) shall not be a factor in any asset forfeiture proceedings.
- F. Nothing in this directive shall be construed in any way to prohibit officers from taking into account a person's race, color, gender, creed, national origin, ethnicity, ancestry, religious beliefs, age, marital status, sexual orientation (actual or perceived), gender identity (actual or perceived), gender expression (actual or perceived), LGBTQ+ status, physical or mental disability (unless a danger to themselves or others), or liability for service in the armed forces, when such attributes are used to describe characteristics that identify a particular individual or individuals who is/are the subject of a law enforcement investigation; or who is/are otherwise being sought by a law enforcement agency in furtherance of a specific investigation or prosecution. Officers can consider such attributes (actual or perceived) as a factor when pursuing specific leads in an ongoing criminal investigation or is trying to determine whether a person matches the description in a B.O.L.O. (be on the lookout).
- G. No officer will fail to respond to, delay responding to, or treat as less important, any call or request for service or assistance because of a person's race, color, gender, creed, national origin, ethnicity, ancestry, religious beliefs, age, marital status, sexual orientation (actual or perceived), gender identity (actual or perceived), gender expression (actual or perceived), LGBTQ+ status, physical or mental disability.
- H. The intentional altering or concealing of any information related to enforcement actions by an officer when based on bias-based policing or discriminatory profiling factors is prohibited.
- I. Officers shall avoid using terms that are designated to harm or offend individuals based on their gender identity or gender expression. Examples include:
 - 1. Hermaphrodite – the preferred term is intersex person;
 - 2. Sex change, pre-operative, post-operative – the preferred terms are transition or transitioning;
 - 3. Transgender as a noun (e.g., transgenders, a transgender) or as a verb (e.g., transgendered) – instead, use the word as an adjective (e.g., transgender person);

4. Slurs that serve to demean LGBTQ+ individuals (e.g., she-male, he-she, it, transvestite, trannie/tranny, dyke, faggot, gender-bender, etc.).

III. INTERACTIONS WITH TRANSGENDER PEOPLE

- A. All personnel shall interact with transgender people and the transgender community in a professional, respectful and courteous manner. This includes transgender juveniles. This directive does not affect any other provisions in applicable directives and laws covering the processing and handling of juveniles
- B. Officers shall not treat a person's transgender status or appearance as a basis of suspicion or as evidence of a crime or offense.
- C. A person is considered transgender when either of these two conditions is met:
 1. A person explicitly informs the officer(s) that the person is a transgender person; or
 2. An officer has good reason to believe that the person is a transgender person. Good reason may be based on the individual's gender appearance and presentation, reasonable observation, background checks, third party information, prior interaction, and/or routine policing procedures.
- D. If gender expression (actual or perceived) does not clearly indicate a transgender person's identity, officers may politely and respectfully ask how the person wishes to be addressed. For example, officers may ask a transgender person which name and pronoun the person prefers.
 1. When a person self-identifies as a transgender person, officers should not question this identity or ask about the person's transition status. Officers shall not engage in any argument, disagreement, or debate regarding a person's self-identification as a transgender person.
 2. If officers do question such self-identification or ask about a person's transgender status, officers should have compelling, professional, articulable reason for having done so. These reason(s) shall be thoroughly documented in the corresponding investigation report.
 3. Officers shall not ask questions or make statements about a transgender person's genitalia, anatomy, breasts, sexual practices, or transition status. If an officer does ask such questions or make such statements, it shall be necessary to do so because of the ongoing criminal investigation or if 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. That officer shall have a compelling, professional, and articulable reason for having done so. The reason(s) shall be thoroughly documented in the investigation report.
- E. Whether or not the name on a person's driver's license or identification card coincides with the person's gender identity, an officer shall address or refer to the person by the name that the person has used to identify him or herself. An officer shall also use the pronouns consistent with the name provided by the person.

- F. In the event a transgender person's legal name is required and, absent extenuating circumstances, an officer should ask the person for his or her legal name in a one-on-one situation. If the contact is in a group environment, the officer should ask the person to step outside the group to obtain the legal name to protect the privacy interests of the person.
- G. Whenever a transgender person who is detained in custody requires or expresses a need for medical attention or medication (including, but not limited to hormone therapy), an officer shall respond to and address the need with the same urgency and respect as required in connection with any other medical need, illness, or injury experienced by any other detainee or arrestee.
- H. Appearance-related items, including but not limited to, prosthetics, bras, clothes, undergarments, wigs, chest binders, or makeup should not be confiscated or removed from transgender people unless such items present a safety hazard, impede the administration of medical attention, or are needed for evidentiary reasons.
 - 1. If an officer confiscates or removes a transgender person's appearance-related items, that officer shall have compelling, professional, and articulable reason for having done so. The reason(s) shall be thoroughly documented in the corresponding investigation report.
 - 2. Mug shots will be taken depicting the person's appearance at the time of arrest (e.g., officers shall not require a transgender person to remove a wig, etc.)
- I. Under no circumstances should an officer disclose that a person is transgender to non-law enforcement personnel or to other non-relevant agency personnel. If an officer does disclose such information, that officer shall have a compelling, professional, and articulable reason for having done so. The reason(s) shall be thoroughly documented in the corresponding investigation report.
- J. If a person has self-identified as transgender, this information may be recorded in public documents. If an officer does record such information in any public document, that officer shall have a compelling, professional, and articulable reason for having done so. The reason(s) shall be thoroughly documented in the corresponding investigation report.
- K. All reports and data fields shall refer to a transgender person's name as shown on official documents. The person's chosen name shall be listed as an alias or 'also known as' (AKA). The narrative will identify an individual's legal name and 'chosen name'. Chosen names and chosen gender pronouns will be used throughout the narrative.
- L. Under no circumstances shall an officer frisk, search, or otherwise touch any person for the purpose of obtaining information about that person's gender status. Officers shall comply with all existing directives, laws, New Jersey Attorney General directives and guidelines and Essex County Prosecutor's Office directives regarding search and seizure. Under no circumstances shall transgender people be subjected to more invasive search procedures than non-transgender people.

- M. 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 the detective/investigator and public safety are paramount, and searches incidental to arrest.
1. Nothing will change for these kinds of searches. 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).
 2. 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.
 3. Certain searches exist for which cross-gender searches are prohibited (e.g., non-exigent custodial strip searches) and when the gender of the person being searched thus matters (see subsection II.O below).
- N. Transport a transgender arrestee alone, when requested and when doing so is practicable and ensures that individual's safety. If a transgender person must be transported with other arrestees, he/she shall be transported according to their gender identity or expression, regardless of the gender that the individual was assigned at birth and/or their anatomical characteristics.
- O. When conducting pre-confinement, strip, or body cavity searches:
1. Officers shall respectfully ask transgender persons for their preference with respect to the gender of the searching officer and document that preference in the investigation report and with the approval of a supervisor to perform search in accordance with that preference.
 2. If the transgender person refuses to provide such preference, searches shall be performed by an officer of the same sex in accordance with the individual's gender identity, regardless of the gender that individual was assigned at birth and/or his/her anatomical characteristics.
 3. These requirements also apply to the licensed medical professional conducting a body cavity search.
- P. When housing transgender or gender non-binary persons in temporary detention, officers shall 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 (e.g., a transgender woman shall be housed with other women, unless she requests otherwise and a transgender man shall be housed with other men, unless he requests otherwise (see subsection II.P.1 below).
1. If a facility has available private cells and/or restrooms, officers shall not:
 - a. Refuse to accommodate a request by transgender, non-binary, or gender non-conforming individuals to have a private cell or to use a

- private restroom, when doing so is practicable and ensures that individual's safety.
- 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.
 - c. Unless impracticable, the denial of such request must be reviewed and approved by a supervisor. The denial shall be documented in writing.
- Q. Officers shall 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.

IV. RESPONSIBILITIES

- A. Supervisors of all ranks and assignments are responsible for providing effective supervision to reasonably monitor those under their command to ensure compliance with this policy and to take or recommend corrective action where indicated. Corrective action includes, but is not limited to:
 - 1. Counseling;
 - 2. Training;
 - 3. Punitive discipline (up to and including termination).
- B. Regardless of assignment, supervisors shall take or recommend corrective action if an employee, even when that employee is not under their direct command, does not appear to be in compliance with this policy.
- C. Employees witnessing behavior contrary to this policy are required to take immediate action to end the behavior.
 - 1. Employees must immediately report their knowledge of the incident to their immediate supervisor in writing.
 - 2. If their supervisor is the subject of the report or in the absence of their supervisor, the employee must report it to another supervisor, or directly to the Chief of Police or the internal affairs supervisor.
- D. Officers who cannot make objective judgments uninfluenced by prejudicial views or attitudes, intolerance to or preference for certain individuals that are unrelated to the situation shall, as soon as reasonably possible, request that another officer assume responsibility for the matter.
 - 1. Unless exigent circumstances exist, officers shall not engage in a law enforcement matter when it involves a family member, friend, or relative to the degree that the officer's objectivity may be or may appear to be compromised.

2. Officers personally involved in such instances shall summon other officers for assistance or intervention when reasonably possible unless the officer is the victim of a crime.
- E. All agency personnel will complete mandated training courses issued by the Division of Criminal Justice regarding the LGBTQ+ community, this training may be delivered electronically and will be included as part of the employee's training file.
 - F. Officers will receive initial training regarding cultural diversity and the prohibition against bias-based policing, including legal aspects. Officers shall also receive triennial refresher training. This shall include a review of this policy and the procedures for mandatory data reporting associated with motor vehicle and pedestrian stops.
 - G. All investigations of bias-based policing, profiling, and/or discriminatory practices shall be conducted in accordance with this department's policy on internal affairs.

II. ADMINISTRATIVE REVIEW

- A. The Office of Professional Standards shall conduct an annual administrative review of this agency's practices, citizen concerns and community concerns regarding bias-based policing, profiling and other discriminatory practices.
 1. The Office of Professional Standards supervisor shall analyze available statistical data, citizen complaint history and applicable written directives to determine whether policy, training, equipment, or disciplinary issues should be addressed.
 2. The annual administrative review should be completed by February 15. The Chief of Police shall cause any remedial action as recommended in the annual review.

III. DATA COLLECTION

- A. Officer-initiated vehicle stops and pedestrian stops (field interviews) shall be recorded completely as indicated on the *Officer Initiated Stop Record Log* (APPENDIX A) in addition to normal record keeping procedures in CAD.
- B. All patrol officers are required to complete an *Officer Initiated Stop Record Log* and submit them for supervisory review. Only the following personnel are exempt from completing an *Officer Initiated Stop Record Log*.
 1. Supervisors;
 2. Investigative personnel;
 3. Specialized plain-clothes details (i.e., burglary detail, anti-crime, etc.).
- C. Only the patrol officer who initiates the stop is required to complete the data for that stop. Back up officers shall not complete the data entry for the stop.
- D. Officers shall determine the race, ethnicity, gender, and age through visual observation, information provided on documents, and their professional judgment.

This information is not to be asked from the person being stopped if solely for data collection purposes.

- E. The *NCIC Code Manual* provides the basis for determining the race of persons.
 - 1. Race descriptors:
 - a. A – Asian or Pacific Islander – a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian sub-continent or the Pacific islands
 - b. B – Black (African-American)– a person having origins in any of the black racial groups of Africa.
 - c. I – American Indian or Alaskan Native – a person having origins in any of the original peoples of the Americas and maintaining cultural identification through tribal affiliations or community recognition.
 - d. W – White – a person having origins in any of the original peoples of Europe, North Africa, or Middle East.
 - e. U – Unknown (when race cannot be determined).
 - 2. Sex/gender codes:
 - a. Male;
 - b. Female;
 - c. Unknown (when sex/gender cannot be determined).
 - 3. Ethnicity codes:
 - a. Hispanic;
 - b. Non-Hispanic;
 - c. Unknown (when ethnicity cannot be determined).
- F. The uniform division commander is responsible to assign administrative personnel to transcribe this data into a searchable database for analysis.