

MONTCLAIR POLICE DEPARTMENT

POLICY & PROCEDURES

SUBJECT: INTERACTIONS WITH PEOPLE IDENTIFYING AS TRANSGENDER

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



PURPOSE To provide guidance to ensure that all Montclair Police Department sworn and non-sworn staff interact with transgender people in a dignified and professional manner.

POLICY It is the policy of the Montclair Police Department to treat all people equally and with respect regardless of their gender expression.

PROCEDURES

I. DEFINITIONS

- A. **Adopted Name:** Non-birth name that a transgender individual uses in self-reference (this may or may not be the individual's legal name)
- B. **Gender Expression:** External manifestations of gender expressed through one's name, pronouns, clothing, haircut, behavior, voice, or body characteristics. Unlike gender expression, gender identity may not be visible to others.
- C. **Gender Identity:** A person's gender-related identity, appearance, or behavior. This may be different from what is traditionally associated with the person's physiology or gender at birth.
- D. **Sex:** An individual's biological or anatomical identity as male, female, or intersex.
- E. **Transgender Individual:** A person whose gender identity differs from their assigned sex.
- F. **Transgender Man or Female-to-Male (FTM):** A person who transitions from female to male, meaning a person who was assigned female at birth, but identifies and lives as male or as a man. A female-to-male individual should be addressed using masculine pronouns (i.e. he, him, his), regardless of surgical status.
- G. **Transgender Woman or Male-to-Female (MTF):** A person who transitions from male to female, meaning a person who was assigned male at birth, but identifies and lives as female or as a woman. A male-to-female individual should be addressed using feminine pronouns (i.e. she, her, hers), regardless of surgical status.
- H. **Intersex:** People who possess or develop physical sex characteristics that do not fit into conventional medical definitions of male or female. This can include chromosomes, genitals, hormones and more. Intersex people have been referred to in the past as "hermaphrodites" However "Intersex" is the preferred term.
- I. **Gender non-conforming:** A person's physical appearance, characteristics and/or behaviors that do not conform to those typically associated with the person's sex at birth or traditional societal gender expression. Some transgender people may not identify as male or female.

II. PROCEDURE

- A. Interactions With Transgender People
 - 1. All employees shall interact with transgender people and the transgender community in a manner that is professional, dignified, respectful, and courteous.
 - 2. Officers shall not treat a person's transgender status or appearance as a basis of suspicions or as evidence of a crime.
 - 3. Officers shall follow the policies governing interactions with transgender people when either of the following conditions are met:

- a. A person explicitly informs an officer that the person is a transgender person.
 - b. 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.
4. If gender expression does not clearly identify a person's identity, an officer may politely and respectfully ask how the person wishes to be addressed. For example, the officer may ask which name and pronoun the person prefers.
 5. When a person self-identifies as a transgender person, officers should not question this identity or ask about the person's transition status. An officer should not engage in any argument, disagreement, or debate regarding a person's self-identification, or ask about a person's transgender status. In the event this happens, the officer shall provide compelling, professional, articulable reason for having done so. The reason(s) shall be properly documented in the officer's report.
 6. An officer should not ask questions or make statements about a transgender person's genitalia, breasts, or transition status. If an officer does ask such questions or make such statements, the officer shall provide a compelling, professional, and articulable reason for having done so. The reason(s) shall be properly documented in writing in the officer's report.
- B. Use of Names
1. All officers and employees shall address and refer to transgender individuals by their adopted name and preferred pronouns.
 2. 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 person has used to identify him or herself. An officer shall also use the pronouns consistent with the name provided by the person.
 3. In addition, when addressing or referring to a transgender individual, employees will use pronouns preferred by the individual. If employees are uncertain about which pronouns are appropriate, employees will respectfully ask the individual which pronouns are preferred.
 - a. *She, her, hers* for an individual who is a transgender woman.
 - b. *He, him, his* for an individual who is a transgender man.
 - c. *They, them, their* for an individual who is gender non-conforming and/or prefers gender-neutral pronouns.
 3. When completing official documents, the arresting officer will include a transgender individual's adopted name as the *Also Known As* (A.K.A) name.

4. When booking a transgender individual into jail, officers will book the individual under the legal name and enter any adopted name as the A.K.A. name.
5. If no identification is available, and the arresting officer cannot determine a transgender individual's legal name, officers will use the adopted name.
6. In the event a transgender person's legal name is required, the person's legal name should be obtained in the following manner:
 - a. Legal Identification, such as a Driver's License.
 - b. The use of Live Scan (i.e.: Criminal Inquiry, Criminal Arrest Record) when justified.
 - c. Ask the person in private. Absent extenuating circumstance, 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 transgender person. If an officer asks a transgender person for his or her legal name in the presence of others, that officer shall provide a compelling, professional, and articulable reason for having done so. The reason(s) shall be properly documented in writing in the officer's report.

C. Search of Transgender People

1. All officers and employees shall recognize and place a high priority on the rights of all individuals guaranteed under the Constitution and laws of New Jersey. Under no circumstances may an officer frisk, search, or otherwise touch any person for the purpose of obtaining information about that person's gender status. All officers shall comply with all existing laws, AG Guidelines, AG Directives, Essex County Prosecutor's Office Directives, and department policies regarding search and seizure. Under no circumstances shall transgender people be subject to more invasive search procedures than non-transgender people.
2. Officers shall not use transgender status by itself for a lawful basis for a stop, search, or arrest.
3. Officers shall not conduct any searches to determine an individual's sex.
4. Officers shall not subject transgender individuals to more invasive pat-down and/or search procedures than non-transgender individuals.
5. Two officers shall be present for searches of transgender individuals except if under emergency circumstances as determined by a supervisor. During this exception one officer may perform a search and document the reason for doing so.

6. Absent exigent circumstances, before performing any level of search of transgender individuals, officers will inform them of the right to express a preference for the gender of the officer who will conduct the search.
 7. When feasible, officers shall record the following information on Mobile Digital Video Recorder (MDVR):
 - a. The advisement and request for preference
 - b. The individual's response
 - c. Whether or not the request was granted
 - d. Reason for not granting the request, if applicable
 8. If the transgender individual has a preference, at least one officer of the gender requested will conduct the search, whenever possible.
 9. Officers must take into account the reasonableness of any delay created by waiting for another officer. If an officer of the preferred gender is not available, officers shall proceed with the search with supervisor approval.
 10. If the transgender individual does not specify a preference, at least one officer of the same gender as the transgender individual's gender expression will conduct the search. Example: A male officer would search a transgender man who indicates no preference for the search.
 11. When in doubt regarding any searches of a transgender individual, officers will call a supervisor to the scene prior to searching.
- D. Officers Will Transport and House Transgender Individuals Alone, Whenever Possible
1. Absent exigent circumstances, officers shall transport transgender individuals alone in accordance with department policy. When necessary, additional officers shall be called to the scene to assist with transporting transgender individuals.
 2. Officers will house transgender suspects/prisoners in the holding cell alone.
 3. If there are no individual holding cells available, a supervisor will make arrangements for the transgender suspect/prisoner to have a cell, be transported, or released.
- E. Processing of Transgender Arrestees
1. Appearance-related items, including but not limited to, prosthetics, clothes, wigs, or make-up should routinely not be confiscated or removed from transgender people unless such items present a safety hazard, impede the administration of medical attention, are needed for evidentiary reasons, or are designated for removal in accordance with the **Montclair Police Department Municipal Detention Facility Policy**, or applicable regulations as outlined in N.J.A.C. 10A:34. If an officer confiscates or removes a transgender person's appearance-related items, that officer shall provide compelling, professional,

and articulable reason for having done so. The reason(s) shall properly documented in the officer's report.

- F. When Transferring Custody of Transgender Individuals, Officers Will Relay Information
 - 1. When officers transport a transgender individual to the Essex County Adult Correctional Center or otherwise transfer custody to another law enforcement agency, the officers will verbally advise the receiving agency/officer that the individual is transgender.
 - 2. The officer will relay any other relevant identification related information, including how the individual would like to be addressed.
- G. Juvenile Transgender Individuals
 - 1. All interactions with juvenile transgender individuals shall conform to the mandates set out by this policy. This policy does not affect any other provisions outlined in applicable directives and laws covering the processing and handling of juveniles.
- H. Protection of Privacy
 - 1. Under no circumstances should an officer disclose that a person is transgender to non-police personnel or to other non-relevant agency personnel. If an officer does disclose such information, that officer shall provide a compelling, professional, and articulable reason for having done so. The reason(s) shall be properly documented in the officer's report.
- I. Medical Treatment of Transgender Arrestees
 - 1. 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 required in connection with any other medical need, illness, or injury experienced by any other detainee or arrestee.
- J. Confidentiality of Records and Data
 - 1. 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 provide a compelling, professional, and articulable reason for having done so. The reason(s) shall be properly documented in the officer's report.