



## Background

*BreakOUT!* is an organization that seeks to end the criminalization of lesbian, gay, bisexual, transgender, and questioning (LGBTQ) youth in New Orleans, LA. We are a membership-based group of LGBTQ young people ages 13-24 who are directly impacted by the criminal justice system.

National data has consistently shown that LGBTQ youth are disproportionately targeted by law enforcement, more likely to be arrested, and report being frequently profiled and treated unfairly by the police and other officials.<sup>1</sup> Transgender women of color are more at risk for physical violence in their lives; and at the same time, transgender people are more likely to experience barriers to reporting to law enforcement, not report to law enforcement altogether, and more likely to experience police violence.<sup>2</sup>

In New Orleans, this has been true for generations, with transgender people, specifically transgender women, reporting being stopped for no reason, being assumed by police officers to be criminal for walking down the street, being accused of falsely identifying themselves when presenting I.D.'s inconsistent with their gender expression, being arrested after calling the police for help, being called names and verbally harassed, being approached for sexual favors by members of the NOPD, being sexually assaulted by the NOPD, or having their legal rights abused or undermined in other ways. In fact, several transgender women who live here in New Orleans have told *BreakOUT!* that they are afraid to leave their houses after a certain time, for fear of being stopped unlawfully by the NOPD.

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<sup>1</sup> Multiple sources, most recently discussed in Hammelstein and Brückner, "Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study" *Pediatrics*, 2010 and Amnesty International, *Stonewalled: Still Demanding Respect. Police Abuses Against Lesbian, Gay, Bisexual And Transgender People In The USA* Amnesty international, 2006.

<sup>2</sup> National Coalition of Anti-Violence Programs, "Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer, and HIV-Affected Communities in the United States in 2011: A Report from the National Coalition of Anti-Violence Programs," 2012.

## **Proposed Policy to the NOPD**

In fact, in preliminary results from a survey conducted by our members in the summer of 2011, *BreakOUT!* found that 12 out of 14 young African American transgender women reported experiencing police abuse, harassment, or misconduct by a NOPD officer on the basis of their gender identity, gender expression, or sexual orientation. Further, 15 out of 15 people reported being approached for sex by an NOPD officer.

From 2010 until the conclusion of the United States Department of Justice's (DOJ) investigation of the NOPD, *BreakOUT!* organized hearings with other community organizations for community members to share some of these personal stories of discriminatory and illegal treatment by NOPD officers. Our members met with DOJ investigators and attorneys several times over the course of the investigation, both concerning the police department as well as conditions inside Orleans Parish Prison.

During this time, *BreakOUT!* also developed a video called "We Deserve Better" after meeting with representatives from the NOPD Training Academy and others in the Department. The video features some of our members talking about their experiences with the NOPD along with recommendations for reform. The video was intended for use at officer trainings at the New Orleans Police Academy. While the video was shown for a period of time at the Academy, it is no longer being shown on a regular basis.

The stories our communities relayed via in-person meetings, electronic communication, and video testimony contributed to DOJ's finding that NOPD practices lead to discriminatory treatment of LGBTQ individuals, in particular young African-American transgender women.

Our work also resulted in groundbreaking language in the proposed Consent Decree between the NOPD and the DOJ that specifically states the "NOPD agrees to develop and implement a specific policy to guide officer interactions with members of the LGBT community."<sup>3</sup> The Consent Decree goes on to state, "NOPD agrees that officers shall not construe sexual orientation

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<sup>3</sup> See Proposed Consent Decree, p. 50, Section VIII, Bias Free Policing, Section B., Provision 184.

gender identity or gender expression as reasonable suspicion or probable cause that an individual is or has engaged in any crime , and that officers shall not request identification from or otherwise initiate a contact solely on the basis of sexual orientation or gender identity/ expression."<sup>4</sup> Many of the other provisions mandated in the Consent Decree are also included in this proposed policy, which has been carefully written by *BreakOUT!* youth members in a collective process that has taken over a month to develop.

In accordance with many provisions in the proposed DOJ Consent Decree, in harmony with nationally recognized "best practices," and complimentary to New Orleans' own City Human Rights Ordinances, we present this policy to the NOPD.

## **Definitions**

The following terms are defined as follows:

- 1. Gender Identity and Gender Expression-** A gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual's assigned sex at birth. Gender identity can be thought of as who someone feels they are on the inside; whereas gender expression can be thought of as how someone outwardly expresses that deeply felt internal identity.
- 2. Transgender-** Refers to any person whose identity or behavior differs from traditional gender expectations. Transgender people may or may not change their outward appearance to be more aligned with their gender identity through the use of hormone therapy, surgery, dress, etc.
- 3. Sexual Orientation-** Who someone is attracted to emotionally, physically, romantically, or sexually.

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<sup>4</sup> See p. 50, Section VIII, Bias-Free Policing, Article B., Provision 186.

- 4. Intersex-** A person with an intersex condition is born with sex chromosomes, external genitalia, or an internal reproductive system that is not considered "standard" for either male or female. \*While this policy does not specifically address intersex individuals, we encourage the NOPD to contact the Intersex SNA or another intersex rights advocacy group for recommendations for policy reforms.
- 5. LGBT-** Lesbian, gay, bisexual, and transgender.
- 6. Biological sex-** The sex assigned to someone at birth, can refer to genitalia or chromosomal make-up.
- 7. Members-** In this context, "members" refers to all officers or staff of the NOPD.

### **General Provisions for LGBT Individuals**

1. Members shall not use individual's gender identity, gender expression, or actual or perceived sexual orientation as reason for stopping an individual. The same holds true for racial profiling. This kind of profiling includes prohibiting members from assuming that African American transgender women are sex workers when simply walking down the street or that masculine-presenting African American women (for example, "studs") are necessarily violent or "thugs."<sup>5</sup>
2. Members shall not require proof of an individual's gender or inquire about intimate details of an individual's genitalia to determine an individual's biological sex or anatomy.
3. Members shall not use language that is demeaning to another person, in

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<sup>5</sup> See Proposed Consent Decree, p. 50, Section VIII, Bias-Free Policing, Article B., Provision 186 and p. 38, Section V, Stops, Searches, and Arrests, Article B., Provision 127 and Section V, Article C., Provision 142.

particular, language aimed at a person's actual or perceived gender identity, gender expression, or sexual orientation. This includes "he-she," "dyke," "faggot," "punk," "it," "shim," or any other derogatory term.<sup>6</sup> Likewise, members shall not engage in any sexual harassment of the public, both on and off duty.

4. Members shall address all individuals, including transgender-identified individuals, by the name and gender pronoun they prefer to be called.<sup>7</sup>

5. If it is unclear what gender the person identifies as, members shall politely ask individuals what gender pronoun they prefer and if there is a name they would like to be called.

6. Members shall note the preferred name and gender pronoun for individuals on any forms that result, such as arrest forms, to minimize other members from having to ask the individual each time throughout the duration of the interaction.

7. When a situation arises where there is a question or doubt about gender identification, the member shall politely inquire how the individual wishes to be addressed (e.g., Sir, Miss, Ms., Mr., he, she) and the name by which the individual wishes to be addressed.<sup>8</sup> This name shall be noted on all police reports and documents if it differs from the individual's legal name.

8. Members shall not consider someone's preferred gender name as an "alias" or "nickname" or accuse them of falsely identifying themselves. Similarly, if an individual has had their name or gender marker legally changed, members shall not question this or ask for an individual's birth name or birth sex.

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<sup>6</sup> See Proposed Consent Decree, p. 50, Section VII, Bias-Free Policing, Article B., Provision 185.

<sup>7</sup> See Proposed Consent Decree, p. 50, Section VII, Bias-Free Policing, Article B., Provision 185.

<sup>8</sup> See Proposed Consent Decree, p. 50-51, Section VII, Bias-Free Policing, Article B., Provision 187.

9. When an individual self-identifies as being a transgender or preferring another pronoun or name, members shall not question this identity.

10. Transgender individuals shall be allowed to use the restroom in accordance with their gender identity while in police custody. Similarly, individuals shall not be stopped for “using the wrong restroom” in public, including in bus stations or in shelters.

### **Complaints and Calls for Service Involving LGBT Individuals**

1. The NOPD shall track all concerns and complaints concerning the quality of police services on the basis of gender identity, gender expression, or sexual orientation and make this data publicly available and accessible.<sup>9</sup>

2. Copies of all complaints against members concerning the quality of police services on the basis of gender identity, gender expression, or sexual orientation shall be brought to the attention of *BreakOUT!* and the Independent Police Monitor.

3. A member shall not fail to respond to a call for service or complaint on the basis of the gender identity, gender expression, or sexual orientation of the caller or complainant. This is to ensure that members do not fail to respond to individuals, fail to investigate crimes, or fail to take requests or complaints seriously on the basis of someone’s actual or perceived LGBT status, including calls to report cases of domestic violence.<sup>10</sup>

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<sup>9</sup> See Proposed Consent Decree, p. 51, Section VIII, Bias-Free Policing, Article B., Provision 188 and p. 105, Section XVIII, Transparency and Oversight, Article A., Provisions 427-429 and p. 98, Section XVII, Misconduct Complaint Intake, Investigation, and Adjudication, Article F., Provision 394 and p. 105, Section XVII, Article M., Provision 426.

<sup>10</sup> See Proposed Consent Decree, p. 58, Section IX, Policing Free of Gender Bias, Introduction and Article B., Provision 214.

**Searching LGBT Individuals**

1. Under no circumstances shall members of the NOPD search any person solely for the purpose of determining that person's anatomy or genitalia, or to attempt to determine that person's biological sex.<sup>11</sup>
  
2. LGBT individuals shall not be subject to more invasive searches or frisk procedures than non-LGBT individuals.<sup>12</sup>
  
3. Before searching an individual, members shall:
  - i. Ask for written consent of the individual to be searched and inform them of their rights to refuse a search.<sup>13</sup>
  - ii. Ask by which gender the individual would prefer to be searched (i.e. A transgender woman may prefer to be searched by female members of the NOPD.)<sup>14</sup>
  
4. If the individual would prefer to be searched by either a man or a woman member of the NOPD and there is no member of that gender present, then the members shall:
  - i. Summon an officer who is of the gender requested by the individual to conduct the search; and
  - ii. Document the individual's preference to be searched by another gender and the summoning of another member to the scene.
  
5. At no time shall a member refuse to search someone based on their actual

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<sup>11</sup> See Proposed Consent Decree, p. 50, Section VIII, Bias-Free Policing, Article B., Provision 187.

<sup>12</sup> See Proposed Consent Decree, p. 50, Section VIII, Bias-Free Policing, Article B., Provision 187.

<sup>13</sup> See Proposed Consent Decree, p. 39, Section V, Stops, Searches, and Arrests, Article B., Provision 129, 131.

<sup>14</sup> See Proposed Consent Decree, p. 50, Section VIII, Bias-Free Policing, Article B., Provision 187.

or perceived gender identity, gender expression, or sexual orientation.

**Arrests**

1. All information that the arresting officer obtains (including pronoun preference and preferred name) concerning the individual shall be passed on to the transporting officers and backup or any officer who is interacting with the individual. However, information about an individual's transgender status should be kept on a "need-to-know" basis to ensure the individual's privacy and confidentiality is fully respected.
  
2. The arresting officer shall understand that an LGBT individual, particularly transgender individuals, may experience violence, abuse, and harassment from other arrestees once in the custody of law enforcement, juvenile bureau, jails, and prisons.
  
3. Therefore, members must mark on any documents given to other officers at booking or intake that the individual may be at increased risk for abuse or violence while in custody. However, information about an individual's transgender status should be kept on a "need-to-know" basis to ensure the individual's privacy and confidentiality is fully respected.
  
4. In the event that an arrestee is in police custody and held in an area that is segregated by gender, the individual shall be consulted on where they feel most safe before placement and that shall be taken into serious consideration when determining placement. This includes if transgender people feel most safe housed in accordance with their gender identity.
  
5. Transgender individuals shall not be asked to remove appearance-related items (such as prosthetics, clothes and undergarments of the presenting gender,



wigs, or cosmetic items) if non-transgender individuals are not also required to do so. Requests to remove appearance-related items shall be consistent across genders while in police custody.

6. All members are required to document mileage from start to finish of each trip to transport arrestees.

### **Handling Juvenile Transgender Arrestees**

1. This policy shall also apply to juveniles as a compliment to any special provisions already in place for juvenile arrestees.
2. Members shall not disclose sensitive information they discover about an individual's gender identity, gender expression, or sexual orientation to parents or guardians. This information shall be kept private so the juvenile can inform their parent themselves and not be put at increased risk for violence or rejection in the home. Communication about the individual with the parent or guardian post-arrest shall not be the responsibility of the member.

### **Medical Treatment of Transgender Arrestees**

1. If an individual is arrested and allowed to take prescription items with them, prescription hormones shall be treated like any other serious prescription medication necessary for an individual's health and wellbeing.
2. Whenever a LGBT individual expresses a need for medical attention, members shall handle the situation with the same urgency and respect as any other illness or injury, including for injuries sustained during arrest.

**Training**

1. The NOPD shall implement full LGBT training on this policy and other matters related to the LGBT community in New Orleans, in accordance with “best practices” and using national data, as well as information collected from local community members who have direct experience with the NOPD. Members of the community with experience with the NOPD shall be involved in officer trainings in meaningful ways. The video “We Deserve Better” shall also be shown to all members in training.<sup>15</sup>
2. Training on LGBT issues shall be incorporated throughout all officer trainings, including during Search and Seizure Training and Cultural Sensitivity Training. Members shall receive 8 hours of training specifically on LGBT issues and periodic roll-call trainings or other shorter “refresher” trainings.<sup>16</sup>

**Additional Oversight Provisions**

1. Cameras shall be placed on each individual officer, especially those on foot patrol in the French Quarter or horseback, to ensure all interactions are recorded. Cameras on cars are not sufficient in their scope and officers frequently take individuals outside of camera view during police interactions.
2. At no time shall members ask for sexual favors from the public or engage in illegal activity with members of the public. All such cases should be referred to the District Attorney for prosecution and any officer found to be in violation of this policy shall be automatically terminated.

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<sup>15</sup> See Proposed Consent Decree p. 48, Section VII, Bias-Free Policing, Article A., Provision 177, b. and p. 68, Section XII, Academy and In-Service Training, Article C., Provision 259 and Article E., Provision 266 and Section X, Community Engagement, Article A., Provision 226.

<sup>16</sup> See Proposed Consent Decree p. 49, Section VII, Bias-Free Policing, Article B., Provision 180 and Article A., Provision 177 and p. 45, Section V, Stops, Searches, and Arrests, Article F., Provision 162.