

Presidents' Task Force on 21st Century Policing
Office of Community Oriented Policing Services
U.S. Department of Justice
145 N Street, N.E. 11th Floor
Washington, DC 20530
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Improving Police & Youth Relations | LGBT Youth of Color **Submitted by: Streetwise and Safe**

Streetwise and Safe (SAS) is a New York City organization dedicated to building the leadership, skills, and knowledge of LGBT youth of color who experience criminalization. We conduct “know your rights” workshops specifically tailored to LGBT youth of color where we share critical information about rights in the criminal legal system as well as strategies to increase safety and reduce the harms of interactions with police. SAS works to create opportunities for LGBT youth of color to claim a seat at policy discussion tables as full participants, speak out on their own behalf, act collectively to protect and advance their rights, and demand choices that allow them to maximize their safety, self-sufficiency, and self-determination.

Streetwise and Safe is an active and leading organization in police accountability advocacy efforts at the city, state, and national levels.

I. Introduction

In addition to experiencing many of the same profiling and discriminatory policing practices as other members of communities of color, American Indian and Alaska Native peoples, homeless and low-income communities and immigrants, LGBTQ youth of color often experience gender and sexuality-specific forms of racial profiling and poverty-based policing which require specific policy reforms.ⁱ Gender and sexuality based profiling often takes place in conjunction with and compounding profiling and discriminatory treatment based on race, color, ethnicity, national origin, tribal affiliation, religion, age, immigration status and housing status, among other determinants.

Over the past decade, law enforcement agents have consistently been among the top three categories of perpetrators of homophobic or transphobic violence against LGBT people reported to anti-violence organizations.ⁱⁱ Indeed, in a national survey of LGBT people, a quarter of respondents who had recently had in-person contact with police reported at least one type of misconduct or harassment, including profiling, false arrests, verbal or physical assault, or sexual harassment or assault. LGBT respondents of color and low-income respondents (37%) as well as transgender respondents (39%) were much more likely to report an experience of at least one type of misconduct or harassment.ⁱⁱⁱ Between 20-40% of respondents reported verbal harassment or hostile attitudes, with higher percentages of reports among LGBT people of color, transgender and gender nonconforming people, low-income people and LGBT people under 30.^{iv} LGBT people of color were five times more likely to be asked about their immigration status by law enforcement than white survey respondents.^v

Another national survey found 22% of transgender people who interacted with police report harassment, 6% report physical assault, and 2% report being sexually assaulted by officers.^{vi} In

New York City, LGB youth are more likely to experience negative verbal, physical, and legal contact with the police, and more than twice as likely to experience negative sexual contact in the preceding six months.^{vii} In light of these statistics, it is not surprising that almost half of survey respondents were uncomfortable seeking police assistance.^{viii} Indeed, experiences of police harassment and abuse often extend to circumstances under which LGBT youth and adults are seeking protection from violence. Nearly half of LGBT survivors of violence who seek help from police report misconduct.^{ix}

Across the country, non-heterosexual youth are more likely to be stopped by the police and experience greater criminal justice sanctions not explained by greater involvement in violating the law or engaging in transgressive behavior.^x LGBT people – particularly LGBT youth and people of color – experience pervasive profiling and discriminatory treatment by local, state and federal law enforcement agents based on actual or perceived sexual orientation, gender, gender identity or expression, or HIV status.^{xi, xii, xiii} Improving police and youth relations necessarily requires addressing the concerns of these LGBT youth of color.

II. Recommendations

Pass and implement LGBT-inclusive anti-profiling measures

Within communities of color impacted by racial profiling and harassment at the hands of law enforcement are women and LGBT people of color, LGBT immigrants and low-income LGBT communities. In recent decades there has been increased awareness about how racial profiling impacts this group, and the unique experiences of LGBT people of color are increasingly integrated into wider discussions of racial profiling and discriminatory policing.^{xiv} Be it harassment at the hands of local law enforcement to profiling of LGBT individuals by border patrol agents, LGBT youth of color experience profiling based on race, gender, gender identity, sexual orientation, and immigration status.

In a historic move, the U.S. Department of Justice recently expanded the ban on racial profiling by federal law enforcement agents to also bar the use of sexual orientation, gender, or gender identity, along with national origin and religion, to any degree in the initiation of law enforcement interactions. However, the revised guidance includes broad exceptions that dampen the effect of these important protections, including carve-outs for Customs and Border Patrol, Transportation Security Administration, and certain terror investigations, which are simply unacceptable.

We urge the Administration to expand these protections to reach all federal and federally funded law enforcement activities, including and especially those that target Muslim communities and take place at our borders, which until all too recently were closed to LGBT immigrants.

We also urge the Administration to work with Congress toward the passage of an End Racial Profiling Act that includes protections on the basis of gender, sexual orientation, and gender identity.

End the use of condoms as evidence of all prostitution-related crimes

One of the avenues through which LGBT youth of color experience harassment at the hands of law enforcement is police departments' use of condoms as evidence of prostitution-related

crimes. In a number of places across the country, police and prosecutors regularly engage in the practice of using or confiscating condoms on persons, their businesses, or as evidence of prostitution-related crimes.^{xv} Confiscating or listing condoms as evidence of intent to engage in prostitution-related offenses is a gender- and sexuality-specific form of racial profiling resulting in the harassment of LGBT youth and adults of color, as well as women of color more generally, who are disproportionately profiled as trading sex.

Continued use of the mere possession or presence of condoms as evidence acts as a powerful incentive for LGBT youth not to carry condoms, as well as for exploiters to deny access to condoms to those they are exploiting – placing trafficking victims at even greater risk. The threat of arrest for possession or presence of condoms also creates a disincentive to sharing and distributing condoms among and to youth in the sex trades, putting their health and lives at risk.

We urge the Administration to work with the Department of Justice issue and publicize guidance condemning the reliance on mere possession or presence of condoms as evidence of intent to engage in criminal activity, and encouraging local law enforcement agencies to adopt policies prohibiting this practice.

Consistent with the resolution of the Presidential Advisory Commission on HIV/AIDS, we urge the administration to work with the Department of Justice and the Centers for Disease Control to develop, disseminate, publicize, and promote guidance to state lawmakers and prosecutors to adopt legislation and policies that would eliminate the practice of using possession or presence of condoms as the basis of criminal prosecutions or sentence enhancements.

Set nationwide standards for treatment of LGBT people in custody

Women and LGBT people in the custody of local law enforcement, including in police lock-ups, all too often experience unlawful searches and sexual assaults.^{xvi} Sexual harassment, sexual assault, and rape take place in police cars and vans.^{xvii} Searches conducted by police officers on the street or in police detention facilities for the purposes of assigning a gender to detainees based on anatomical features—or simply to ogle or humiliate transgender and gender non-conforming arrestees—are both constitutionally prohibited and widespread.^{xviii} LGBT youth and adults often experience such unlawful and invasive searches as state-sanctioned sexual assaults.

We urge the Administration to work with the Department of Justice to aggressively pursue enforcement of existing PREA standards for police lock-ups, and to extend the definition of “lock-ups” contained in the PREA regulations to include police cars and other temporary locations of police detention. We also urge the Administration to work with the Department of Justice to amend PREA regulations to include an explicit prohibition on searches for the sole purpose of determining genital characteristics in police lock-ups.

Finally, the Department of Justice should promulgate guidance for local law enforcement agencies relating to placement, searches, and interactions with transgender and gender non-conforming individuals consistent with those contained in NOPD and PRPD consent decrees, and make adoption of policies consistent with the guidance a condition of receipt of Federal funding.

ⁱ See Brett G. Stoudt, Michelle Fine, and Madeline Fox, *Growing Up Policed in the Age of Aggressive Policing Policies*, 56 N.Y.L. Sch. L. Rev. 1331 (2011) (LGB youth are more likely to experience negative verbal, physical, and legal contact with the police, and more than twice as likely to experience negative sexual contact in preceding six months.); Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, *Queer (In)Justice: The Criminalization of LGBT People in the United States* (Boston: Beacon Press, 2011); Kathryn E. W. Himmelstein and Hannah Brückner, “Criminal-Justice and School Sanctions Against Nonheterosexual Youth: A National Longitudinal Study,” *Pediatrics* 127 (1) (2011): 49-57 (non-heterosexual youth more likely to be stopped by the police and experience greater criminal justice sanctions not explained by greater involvement in violating the law or engaging in transgressive behavior.); “Stonewalled: Police Abuse and Misconduct Against LGBT People in the United States” (Washington: Amnesty International, 2005), available at

<http://www.amnesty.org/en/library/asset/AMR51/122/2005/en/2200113d-d4bd-11dd-8a23-d58a49c0d652/amr511222005en.pdf>.

ⁱⁱ National Coalition of Anti-Violence Programs, “Hate Violence Against Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Communities in the United States in 2010” (New York: National Coalition of Anti-Violence Programs, 2011), available at

http://www.avp.org/storage/documents/Reports/2011_NCAVP_HV_Reports.pdf.

ⁱⁱⁱ Lambda Legal, “Protected and Served? Survey of LGBT/HIV Contact with Police, Courts, Prisons, and Security,” Preliminary Findings (2012).

^{iv} Lambda Legal, “Protected and Served? Survey of LGBT/HIV Contact with Police, Prisons, Courts, and Schools,” Treatment by the Police (2014).

^v Id.

^{vi} Jaime M. Grant, Lisa A. Mottet, and Justin Tanis, “Injustice at Every Turn: A Report of the National Transgender Discrimination Survey” (Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force, 2011).

^{vii} Brett G. Stoudt, Michelle Fine, and Madeline Fox, *Growing Up Policed in the Age of Aggressive Policing Policies*.

^{viii} Jaime M. Grant, Lisa A. Mottet, and Justin Tanis, “Injustice at Every Turn”; see also National Coalition of Anti-Violence Programs, “Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate Violence in 2012” (New York: National Coalition of Anti-Violence Programs, 2013): 9, available at

http://www.avp.org/storage/documents/ncavp_2012_hvreport_final.pdf.

^{ix} National Coalition of Anti-Violence Programs, “Lesbian, Gay, Bisexual, Transgender, Queer and HIV-Affected Hate Violence in 2012.”

^x Kathryn E. W. Himmelstein and Hannah Brückner, “Criminal-Justice and School Sanctions Against Nonheterosexual Youth.”

^{xi} Brett G. Stoudt, Michelle Fine, and Madeline Fox, *Growing Up Policed in the Age of Aggressive Policing Policies* (LGB youth are more likely to experience negative verbal, physical, and legal contact with the police, and more than twice as likely to experience negative sexual contact in preceding six months.); Kathryn E. W. Himmelstein and Hannah Brückner, “Criminal-Justice and School Sanctions Against Nonheterosexual Youth” (Non-heterosexual youth more likely to be stopped by the police and experience greater criminal justice sanctions not explained by greater involvement in violating the law or engaging in transgressive behavior).

^{xii} Amnesty International, “Stonewalled: Police abuse and misconduct against lesbian, gay, bisexual and transgender people in the U.S.” (2005), available at <http://www.amnesty.org/en/library/info/AMR51/122/2005>

^{xiii} Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock, *Queer (In)Justice: Make the Road* New York, “Transgressive Policing: Police Abuse of LGBTQ Communities of Color in Jackson Heights” (New York: Make the Road, 2012), available at

http://www.maketheroad.org/pix_reports/MRNY_Transgressive_Policing_Full_Report_10.23.12B.pdf; Frank H. Galvan and Mohsen Bazargen, “Interactions of Latina Transgender Women with Law Enforcement” (Los Angeles: Bienestar, 2012), available at <http://williamsinstitute.law.ucla.edu/wp-content/uploads/Galvan-Bazargan-Interactions-April-2012.pdf>; BreakOUT!, “BreakOUT!’s Proposed LGBTQ Policy for NOPD” (2012), available at http://www.youthbreakout.org/sites/g/files/g189161/f/BreakOUT!%20Proposed%20Policy_0.pdf.

^{xiv} National Association for the Advancement of Colored People, “Born Suspect: Stop-and-Frisk Abuses & the Continued Fight to End Racial Profiling in America,” (2014), available at http://action.naacp.org/page/-/Criminal%20Justice/Born_Suspect_Report_final_web.pdf

^{xv} Acacia Shields, “Criminalizing Condoms: How Policing Practices Put Sex Workers at IV Services at Risk in Kenya, Namibia, Russia, South Africa, the United States, and Zimbabwe” (New York: Open Society Foundations,

2012), available at <http://www.opensocietyfoundations.org/reports/criminalizing-condoms>; PROS Network and Leigh Tomppert, "Public Health Crisis: The Impact of Using Condoms as Evidence of Prostitution in New York City" (New York: PROS Network and Sex Workers Project, 2012), available at <http://sexworkersproject.org/downloads/2012/20120417-public-health-crisis.pdf>; Human Rights Watch, "Sex Workers at Risk: Condoms as Evidence of Prostitution in Four U.S. Cities" available at http://www.hrw.org/sites/default/files/reports/us0712ForUpload_1.pdf

^{xvi} National Prison Rape Elimination Commission, "National Prison Rape Elimination Commission Report" (2011), available at http://static.nicic.gov/UserShared/2013-03-29_nprec_finalreport.pdf

^{xvii} Amnesty International, "Stonewalled: Police abuse and misconduct against lesbian, gay, bisexual and transgender people in the U.S." (2005), available at <http://www.amnesty.org/en/library/info/AMR51/122/2005>

^{xviii} Amnesty International, "Stonewalled"; Alex Coolman, Lamar Glover, and Kara Gotsch, "Still in Danger: The Ongoing Threat of Sexual Violence against Transgender Prisoners" (Los Angeles and Washington: Stop Prisoner Rape and ACLU National Prison Project, 2005), available at <http://www.justdetention.org/pdf/stillindanger.pdf>; Terry Schuster and Will Harrell, "Prisons: The Next Frontier for LGBTI Rights," *The Life of the Law*, August 9, 2013, available at <http://www.lifeofthelaw.org/prisons-the-next-frontier-for-lgbti-rights/>