

Interacting with Transgender, Gender-Variant, and Nonbinary Individuals

5.22.01 PURPOSE

The San Francisco Police Department (SFPD) recognizes and places a high priority on the rights of all people. This policy establishes a procedure for interacting with Transgender, Gender-Variant and Nonbinary (TGN) individuals.

5.22.02 POLICY

It is the policy of the San Francisco Police Department to treat all persons, whether in custody or not, in a respectful, professional and reasonable manner while maintaining safety and security. Discrimination or harassment of any kind based on actual or perceived gender, gender identity and or gender expression is strictly prohibited. The gender identity of all persons, including members, shall be respected. Referring to a person by their adopted name and treating them in accordance to their gender identity are examples of appropriate treatment; even if they are not legally recognized as such per documentation. Conversations with and regarding the TGN individual shall also conform to these standards.

5.22.03 DEFINITIONS

Gender: Gender is the social construct used to classify a person as man, woman, both or neither. Gender encompasses all relational aspects of social identity, psychological identity and human behavior. Gender includes a person's gender identity and gender expression.

Gender Identity: An individual's sense of being either male, female, both or neither. This may be different from what is traditionally associated with the individual's assigned sex at birth.

Gender Expression: Gender related traits that may or may not be consistent with those traits typically associated with a person's assigned sex at birth. External manifestations of gender, expressed through one's name, pronouns, clothing, haircut, behavior, voice, or body characteristics.

Transgender (Individual): An umbrella term for persons whose gender identity, gender expression, or behavior does not conform to that typically associated with the sex they were assigned at birth.

Gender-Variant: A person whose gender identity or gender expression does not conform to socially defined male or female gender norms.

Nonbinary (Individual): Nonbinary is an umbrella term for people with gender identities that fall somewhere outside of the traditional conceptions of strictly either female or male. People with nonbinary gender identities may or may not use more specific terms to describe their genders, such as agender, genderqueer, gender fluid, two spirit, bigender, pangender, gender nonconforming, or gender variant.

TGN: An acronym for **T**ransgender, **G**ender-Variant, and/or **N**onbinary person. TGN is utilized for ease of reading this policy and for consistency in communication with the San Francisco Sheriff Department; which utilizes the TGN acronym in their policies.

Intersex: Intersex individuals are born with chromosomes, external genitalia, and/or a reproductive system that varies from what is considered “standard” for either males or females. This condition may not become apparent until later in life, such as during puberty. Intersex individuals may identify as male, female or nonbinary.

Sexual Orientation: A person's romantic and/or physical attraction to people of a specific gender or genders.

5.22.04

PROCEDURES

A. Identification

TGN individuals may be identified in the following ways:

1. A person informs a member that they are TGN.
2. A member has reason to believe the individual may be TGN. This may be based on gender-expression, prior interactions, and/or background checks.

When a member is unsure if an individual is TGN, the member should respectfully ask the individual how they identify in terms of gender; if they identify as transgender, gender-variant, or nonbinary and proceed accordingly.

If a situation impedes the opportunity to access a person’s TGN status; use gender neutral terms and/or omit using Sir/ Mr., Ma’am/ Ms. i.e. “You need to step back, please.” Or “Folks, please step back.” Referring to a person as “It” or other derogatory language is dehumanizing and subject to disciplinary action.

Nothing in this policy prohibits an officer from considering factors such as actual or perceived gender identity in combination with other legitimate factors (i.e., weight, age, height, dress, etc.) when obtaining or providing the description of a suspect, victim or witness.

B. Name Usage and Forms of Address

Members shall address TGN individuals by their preferred name and by pronouns appropriate to their gender identity such as he, she or they. The perception of disrespect, usually arising from use of names and pronouns that do not correspond with a TGN individual's gender identity, is the leading cause of complaints against law enforcement by TGN individuals.

Members shall not make assumptions about an individual's sexual orientation based upon an individual's gender expression or identity.

C. Investigative Stops

Members shall handle or investigate calls for service or complaints generated by TGN individuals in the manner consistent with Department policy.

Except when legally necessary, (e.g., citing an arrestee), members shall not require proof of an individual's gender and shall not challenge an individual's gender identity. Members shall not ask questions about intimate details of a person's anatomy to determine an individual's gender without legitimate and articulable reasons. A legitimate and articulable example would include a rape investigation; intimate body part(s) used in the commission of a crime need to be identified for elements of said crime.

D. Detention, Arrest, and Searches of TGN Individuals

Officers may conduct an immediate cursory pat search if the officer reasonably believes the person is armed or dangerous as with any individual (Terry vs. Ohio, 392 U.S. 1). When an officer must conduct a search of a TGN individual beyond the level of a cursory pat search, the TGN individual shall be asked their preference with regard to gender of the member searching them. For example, "What gender officer would you prefer to search you?"

If a member of the TGN individual's preferred gender is not available, the search can be conducted by the officer on scene. Good judgement should be exercised in searching sensitive areas of the subject [breasts, groin and buttocks]. While the SFPD respects the preferred gender of TGN individuals, the SFPD also respects its members' privacy. Accordingly, members shall not specifically callout TGN members for such searches.

If the TGN individual is combative, exercise all necessary officer safety tactics and assign searching officer based on the totality of the circumstances taking into account factors such as size, behavior, displayed fighting skill, etc.

If the TGN individual's preference could not be honored, the preference and reason why it could not be honored shall be documented in an incident report if one is generated.

Appearance related items, including but not limited to, prosthetics, clothes, wigs, or make-up should not be confiscated or removed from TGN individuals unless such items present a safety hazard, impede the administration of medical attention, or are needed for evidentiary reasons.

E. Transport

If a TGN individual is transported, follow the policy set forth in DGO 02.01, Rule 36, in reference to providing Dispatch with your starting and ending location and mileage.

F. Strip Search Policy for TGN Individuals

Authorization from a supervisor shall be obtained prior to the strip search. Such authorization shall be documented on SFPD form 305 and SFPD Form XXX “Voluntary Gender Identity Statement of Preference Form”.

Two Officers shall be present for strip searches of TGN individuals consistent with other strip searches. TGN individuals shall be asked their preference with regard to gender of the member searching them. For example, “What gender officer would you prefer to search you?”

Strip Search conditions:

1. A member will take all reasonable measures to minimize the extent to which strip searches intrude on an individual's privacy.
2. All strip searches shall be conducted in a private location, such that persons not participating in the search cannot observe the person being searched.
3. Prior to the strip search being conducted, a member must explain the process to the custody/detainee.
4. All members present at a strip search shall be of the same gender identity as the person being searched except in emergency situations consistent with other strip searches.
5. Members shall not touch the breasts, buttock, genitalia or body cavities of the person being searched.
6. The member shall accept the persons' declaration of gender identity as truthful before initiating the search. Documentary identification and/or anatomical features are not to be used as indicators of a person's gender identity.
 - a. A TGN custody/detainee must be offered a preference for the strip search:
 - i. A member whose gender identity is male
 - or
 - ii. A member whose gender identity is female

Note- The lack of a nonbinary option does not suggest that nonbinary members do not exist, rather a reasonable accommodation for such an officer is not currently practicable as nonbinary members have rights to privacy.

- b. Members are permitted to ask the custody/detainee questions about their gender identity prior to a strip search. The permitted questions are as follows:
 - i. What name would you like to be referred to as?
 - ii. What gender officer would you prefer to search you?

c. Where the member has an articulable reason to doubt the custody's/detainee's self-identification, the member shall defer to the watch commander for final determination.

i. When the watch commander overrides the custody/detainees Voluntary Gender Identity Statement of Preference for TGN strip search form, the watch commander shall author a statement for report; articulating the reason(s) for the decision to override the request of the TGN custody/detainee's regarding their strip search preference.

d. Whenever a custody/detainee meets the criteria for a strip search but is non-compliant, the member will notify the on duty watch commander immediately.

G. Restroom Use

If a TGN individual requests use of the restroom, they should be escorted by a member of the TGN individual's gender preference if available. As with any custody, officer safety protocol shall be followed.

H. Holding Cell and Booking Area

TGN individuals shall not be detained in a holding cell or in the booking area at any district station. Members shall arrange transportation of such arrestees to the appropriate detention facility as soon as practicable (same as the precautions taken for juveniles).

I. Booking, Citation and Release

For documentation purposes, a member shall write an individual's name as it appears on the most current driver's license, state identification card, passport or other form of legal identification. If the arrestee identifies themselves using a different name, the member shall list that name in the "Also Known As" (AKA) section of relevant paperwork.

Additionally, for documentation purposes, members shall use the sex designation listed in the most current driver's license, state identification card, passport or other form of legal identification. Some Government and State issued forms of identification have a 3rd gender marker for individuals who are intersex or nonbinary. California currently recognizes three gender identifications: "X" for nonbinary, "M" for male and "F" for female.

Note: The TGN policies do not apply to state mandated Stop Data Collection System (SDCS) derived from AB 953. Specifically in regards to SDCS, Section 3 "Officer Perception of Person Stopped" -six categories must be completed, based on officer "perception" at time of violation or decision to stop an individual; not upon conversation or interaction. Among the categories, perceived gender and perceived to be LGBT; are mandated fields to be completed with no option for unknown.

The TGN policy purpose is to gather the necessary information from an individual; to interact with them competently, compassionately, and professionally. Some of the ways in which

members actively eliminate identity profiling are stated in this policy; examples include - Members are not to make an assumption of a person's sexual orientation. -Members are to ask for clarity relating to gender identity issues when appropriate. It is imperative to prevent bias and bias building behavior in addition to preferential or discriminatory treatment. The ethical dilemma when attempting to complete the SDCS state mandated data collection format, is in contrast with some of these best practices. For clarity TGN policy cannot be used to fill out the SDCS form.

J. Protection of Privacy

Information regarding an individual's TGN status should be kept on a need-to-know basis to ensure the privacy and confidentiality of the TGN individual is respected.

K. TGN Juveniles

All interactions with juvenile TGN individuals shall conform to the mandates set out by this policy. When investigating, arresting, or transporting a juvenile, the juvenile's actual or perceived gender identity, gender expression, or sexual orientation should not be discussed with parents or guardians without the juvenile's consent, unless it directly pertains to the case. Refer to Booking & Detention Manual and DGO 7.01 and 7.02 regarding Juvenile detentions.