

Memorandum

TO: ALL DEPARTMENT PERSONNEL

FROM: David Tindall
Acting Chief of Police

**SUBJECT: DUTY MANUAL ADDITIONS:
TRANSGENDER OR INTERSEX
INDIVIDUALS**

DATE: February 9, 2021

APPROVED

Memo# 2021-004

BACKGROUND

The purpose of the following policy additions are to establish procedures for handling interactions with transgender or intersex members of the public and the Department. Training Bulletin 2021-004 provides additional information and guidance on all LGBTQ+ interactions.

For the purposes of this policy, the following definitions apply:

Gender Expression: An individual's external social characteristics and behaviors related to gender (such as name, pronouns, appearance, dress, mannerisms, speech, and social interactions), which may be perceived as masculine, feminine, androgynous, etc.

Gender Identity: An internal sense of one's own gender (e.g. woman, man, non-binary, genderfluid, etc.) One's gender identity is not outwardly visible to others and not determined by a person's anatomy. Every person has a gender identity.

Intersex: An umbrella term used for variations in sex characteristics in which a person is born with a reproductive or sexual anatomy that does not fit the typical definitions of male or female. Variations may appear in a person's chromosomes, genitals, or reproductive organs like testes or ovaries. Some intersex traits are discovered at birth, while others may not be discovered until puberty or later in life. Just like other people, an intersex person may identify as male, female, or non-binary, and may be lesbian, gay, bisexual, or straight.

Transgender: Individuals with a gender identity that is different from the sex assigned to them at birth (e.g. a woman who was assigned male at birth). Some individuals who would fit this definition of transgender do not identify themselves as such and identify simply as men and women – consistent with their gender identity. The guidance discussed in this policy applies to whether or not a particular individual self-identifies as transgender.

Transgender Man: A man who was assigned female at birth.

Transgender Woman: A woman who was assigned male at birth.

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The following Duty Manual sections are being revised and added to ensure best practices are met for inclusivity and to maintain the dignity and respect of all transgender or intersex individuals.

ANALYSIS

The Duty Manual has been revised to reflect changes described below. Additions are shown in *italics and underlined*. Deletions are shown in ~~strike through~~ form.

L 2911 STRIP SEARCH PROCEDURE - GENERAL:

Revised 2-9-21

All strip searches, visual and physical body cavity, shall be conducted at the San Jose Police Department's Pre-Processing Center (PPC), unless prior authorization is obtained from the watch commander. Strip searches shall be conducted in an area of privacy so that the search cannot be observed by persons not participating in the search. In addition, only an officer of the same sex may strip search a suspect.

However, if the arrestee is transgender or intersex, officers will follow the SJPD Pre-Processing Manual policy and procedures applicable to transgendered or intersex arrestees which are as follows:

All strip searches of transgender or intersex arrestees will be done in the order of the following parameters:

1. By two officers of the gender requested by the transgender or intersex arrestee.
2. If the arrestee does not specify a preference, then the search will be done by two officers of the same gender as the transgender or intersex arrestee's gender expression ~~presentation~~, (e.g., a transgender man ~~female-to-male~~ arrestee expressing no preference should be searched by two male officers).
3. If gender expression ~~presentation~~ or identity is not clear to the officer(s) arrestee, the arrestee will be searched by one female and one male officer, until such time as the gender expression or identity becomes clear. At that point, the search will be done by two officers of the same gender as the transgender or intersex arrestee's gender expression or identity.

Under no circumstances is any officer to touch the breasts, buttocks or genitalia of the person being searched.

- Persons are considered to be participating in the search if their official duties requires them to be present at the time the search is conducted (California Penal Code §4030(~~m~~)).
- Pursuant to Penal Code §4030(m), Any person who knowingly and willfully authorizes or conducts a strip search, visual or physical body cavity, in violation of California Penal Code §4030(~~m~~) is guilty of a misdemeanor.

L 5110 **CURSORY SEARCHES OF TRANSGENDER OR INTERSEX INDIVIDUALS:**

Added 2-9-21

Officers shall not search an individual for the purpose of viewing or assigning gender based on the person's anatomy or genitalia. Searches of transgender or intersex individuals shall not be more or less invasive than those of other individuals, nor shall they be conducted for any demeaning or harassing purpose.

A transgender or intersex individual may request to be searched by a male or female officer. If circumstances permit, officers should abide by this request. However, cursory searches of transgender or intersex individuals may be conducted by an officer of either gender.

L 9019 **NAME AND PRONOUN USAGE FOR TRANSGENDER OR INTERSEX INDIVIDUALS:**

Added 2-9-21

Department members shall address transgender and intersex individuals using the names, pronouns, and titles of respect appropriate to the individual's gender identity, as expressed by the individual. Department members should be aware that individuals' names, pronouns, and titles may change between one interaction and the next, and shall always use those used by the individual.

If it is unclear what gender the person identifies as, Department members may politely and discreetly (e.g. out of the immediate presence of others) ask individuals what name and/or gender pronoun they use. Members shall not challenge this identity or request names previously used unless necessary for investigative and/or legal identification purposes.

Department members shall not inquire about an individual's anatomy or medical history for the purpose of assigning an individual a gender based on anatomy.

R 1613 **REPORT WRITING FOR TRANSGENDER OR INTERSEX INDIVIDUALS:**

Added 2-9-21

When writing a report involving a transgender or intersex individual whose legal name and/or legal gender do not correspond with their chosen name and/or gender identity, Department members shall use the individual's legal name and legal gender on the Entities Page. The chosen name shall be added as an AKA on the Entities Page. In addition, the first paragraph of the narrative shall include a statement identifying the individual as their chosen name and/or gender identity.

Example: Victim Terrance Smith is a transgender woman who identifies as "Tamera Smith" and she will be referred to as such throughout the remainder of this report.

Throughout the remainder of the report, Department members shall use the chosen name and/or gender identity when referring to the individual.

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ORDER

Effective immediately, all Department personnel shall adhere to the above Duty Manual sections.



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Acting Chief of Police

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