

## Durham Police Department

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### **POLICY #:26.1.1.1a**

### **SUBJECT: Standards of Conduct, Workplace Harassment and Discrimination, LGBTQ Specifications**

NOTE: This written directive is for the internal governance of the Durham Police Department, and as provided by RSA 516:36, is not intended and should not be interpreted to establish a higher standard of care in any civil or criminal action than would otherwise be applicable under existing law.

## **PURPOSE**

The relationship between law enforcement and groups such as the Lesbian, Gay, Bisexual and Transgender (LGBT) communities has been fraught with suspicion and misunderstanding. In keeping with the Mission Statement and Core Values of the Durham Police Department, it is important for us to foster partnerships that address, directly and indirectly, bigotry and ignorance. In the delivery of needed law enforcement and police services, we must work together to develop an atmosphere of understanding, respect and trust within our community. This policy establishes guidelines and operating procedures for all personnel when interacting with the LGBTQ community including transgender, intersex, and gender nonconforming individuals.

## **POLICY**

Durham Police Department personnel will exhibit professionalism and courtesy during all interactions with members of the public and fellow employees including: transgender, intersex or gender nonconforming individuals.

## **PROCEDURE**

### **Definitions:**

**Designated Sex (synonymous with Sex Assigned at Birth):** The sex one is labeled at birth, generally by a medical or birthing professional, based on a cursory examination of external and/or physical sex characteristics such as genitalia and cultural concepts of male and female sexed bodies. Sex designation is used to label one's gender identity prior to self-identification.

**Gender Identity:** One's internal sense of being a man, woman, neither of these, both, or other gender(s). Everyone has a gender identity. For transgender individuals, their sex assigned at birth and their gender identity are not necessarily the same.

**Gender Expression:** How one chooses to express one's gender identity to others through behavior, clothing, hairstyle, voice, body characteristics, etc. Gender expression may change over time and from day to day, and may or may not conform to an individual's gender identity.

**Gender Nonconforming:** A gender expression or identity that is outside or beyond a specific culture or society's gender expectations. Or, a term used to refer to individuals or communities who may not identify as transgender, but who do not conform to traditional gender norms. May be used in tandem with other identities.

**Intersex:** A general term used to describe a variety of conditions in which a person is born with a variation in sex characteristics, including chromosomes, reproductive anatomy and/or genitals, and therefore cannot be distinctly identify within the binary sexes. Not all transgender individuals are intersex and not all intersex individuals are transgender, some individuals are both.

**LGBTQ:** An acronym for lesbian, gay, bisexual, transgender and queer or questioning.

**Gender Affirming Surgery:** Surgical procedures that alter or change physical sex characteristics in order to better express a person's inner gender identity. Surgery may include removal of the breasts, augmentation of the chest, or alteration or reconstruction of genitals. Also called *Gender Confirming Surgery* or *Sex Re-assignment Surgery* (SRS).

**Transgender (often referred to as Trans):** An umbrella term describing a diverse community of individuals whose gender identity differs from that which they were assigned at birth; 2) Expressions and identities that challenge the binary male/female gender system.

## Verbal Communication

- In accordance with procedures detailed herein, personnel will treat members of the LGBTQ community as any other member of the community; but, will also take steps to ensure that transgender, intersex and gender nonconforming individuals are treated in a manner appropriate to the individual's gender identity, which may be different from the sex that the individual was assigned at birth or listed on their official government-issued identification.

## Determining an Individuals Gender Identity

- Personnel may make an initial assumption about an individual's gender identity based upon the individual's general appearance, including clothing, body characteristics, behavior, voice, and/or hair cut/style. Such assumptions may be incorrect; thus, steps must be taken to ensure that all individual's rights are carefully guarded against harassment or discrimination.
- During contact with any person, should the individual disclose a transgender, intersex, or gender non-conforming identity or if questions arise about an individual's gender identity, Durham Police Department personnel will respectfully ask how the individual identifies.

- If the person discloses a transgender, intersex, or gender non-conforming identity or if questions arise about an individual's gender identity, Durham Police Department personnel will respectfully ask what pronouns the individual uses, such as: she, her, hers; he, him, his; they, them, their. An effort should be made to use such pronouns whenever reasonable.
- Regardless of the individual's public appearance, personnel should address transgender, intersex and gender nonconforming individuals by their chosen name rather than the name which is on their government-issued identification; and, personnel should use the situationally specific pronoun regardless of the sex indicated on government-issued identification. However, **all police reports will include the name and gender affirmed by government issued identification on the face sheet; all other names and gender shall be listed as aliases.** Once the name affirmed by government identification is identified in the narrative, the writer may complete the report using the persons chosen name. In order to ensure clarity in such a transition, the following example [or similar] is recommended for use in a report: "John Doe, hereafter referred to as JANE..."

## Discriminatory References

- No member of the Durham Police Department shall refer to any individual in a derogatory manner; this prohibition specifically includes derogatory references due to gender identity or gender expression. All Durham Police Department personnel understand that there are many terms transgender, intersex or gender nonconforming individuals use to describe themselves; Durham Police Department personnel will mirror the language used by the individual when such reference is not generally/socially derogatory.

## Gender Classification on Written Departmental Documents

- Members of the Durham Police Department preparing or completing a written document regarding a transgender, intersex or gender nonconforming arrestee, victim, witness, reporting party or any other individual, shall classify the individual's sex on the document as the individual's sex listed on their official government-issued identification.
- In the event that the individual does not have their official identification (e.g. driver's license, state ID, passport, etc.), in their possession, employees should ask the individual what sex is listed on their identification. The individual's answer and the employee's verification through dispatch provided by the individual should be used to determine the appropriate manner in which to classify the individual's sex on the document.
- Any name used by the individual other than what is listed on their official government-issued identification card, will be recorded as an alias. It is permissible to identify the alias as the preferred name for use or reference in the report narrative.
- Narrative reporting shall include appropriate gender expression for any person that identifies differently than what appears on official government documents. Once the name affirmed by government identification is identified in the narrative, the writer may complete the report

using the persons chosen name. In order to ensure clarity during such transition, the following example is recommended for use in a police report: “John Doe, hereafter referred to as JANE....”

## **General Gender Classification Procedures**

- In compliance with all other applicable sections in this manual, employees searching, arresting or transporting a transgender, intersex or gender nonconforming individual, or performing similar official actions or duties (excluding preparation of written documents) in connection with such individuals, shall interact with the individual and apply the appropriate department procedures based upon the individual's gender identity.

## **Arrest and Booking Room Procedures**

- If the transgender person identifies as either male/female, they shall be searched by an on-duty Durham Police Officer or booking specialist of the identified gender if such gender specific officers are both on-duty and available. If staffing allows for options, inquire of the transgender person which gender they would prefer to be searched by. If time and safety issues permit, the arresting officer may delay a search until a gender specific officer is available. However, any delay is temporary and not without limits. If such a delay is applied to the circumstance, the arresting officer shall not allow the arrested person to be alone without a police officer physically present in the room for any period of time until a complete custodial search has been conducted.

*Generally, this section shall not apply to pat frisk searches conducted in the field pursuant to arrest or pre-arrest Terry Pat Frisk; in those instances, the officer shall conduct a pat frisk of the transgender person as they would any prisoner or suspicious person under the circumstances. If a gender specific officer is present, the arresting officer may yield and permit the second officer to conduct a field custodial search or pre-arrest Terry pat frisk.*

- Removal of items related to the gender identity of a transgender, intersex, or gender nonconforming individual (such as prosthetics, clothing and wigs) shall only be performed as needed for compliance with established departmental policies and procedures regarding searches, arrests, transport and processing of arrestees. Any items removed should be indicated in the report. The manner of removal shall comply with departmental policies and procedures, and shall be consistent with the removal of similar items from individuals who are not transgender, intersex or gender nonconforming.
- For the instance when the purpose(s) for removing items are satisfied by temporary removal, the individual shall be permitted to wear the removed items if/when all applicable policies and procedures are complete, and reasonable safety concerns are resolved. This can include but is not limited to wigs, clothing, and prosthetics.
- Where permanent removal is required, the handling and storage of removed items shall be consistent with the handling and storage of similar items pursuant to departmental policy and procedure.

## Transporting Transgender, Intersex and Gender Nonconforming Individuals

- When transporting transgender, intersex or gender nonconforming individuals, officers shall designate the individual listed by the sex on their official identification. Employees will continue communicating to the individual in accordance with the person's gender identity, and follow departmental procedures on the basis of their identification. These same principles shall also apply during the prisoner transportation process and in compliance with applicable prisoner transportation procedures found elsewhere in this manual.
- The employee should ascertain if the individual would like their gender identity communicated to the jail when transfer takes place. Any time a transgender person is transferred to another facility, the "Transfer of Custody" form shall note how the person identifies if the individual wants that information shared.
- When transported to another facility or to the custody of another police agency, Durham Police Officers will notify the receiving person at the receiving facility or agency that the person is wearing a wig or prosthetic. **If for officer safety reasons the item must be removed prior to transport, the item(s) shall be secured, and transported with the detainee. The decision to re-apply such articles will be let to the policies and/or procedures of the receiving agency or facility following intake.**

## Employment Considerations (i)

- The Durham Police Department is committed to employing qualified people regardless of sexual orientation, identification or expression. The Durham Police Department shall not refuse to hire or discharge or discriminate in any way in compensation, terms, conditions or privileges of employment because of sexual orientation, identification or expression.
- In compliance with other sections of this manual, members of the LGBTQ community employed by the Durham Police Department shall be free of harassment and discrimination

## Public Accommodations (ii)

- The Durham Police Department shall provide rest facilities and locker/storage facilities, accommodations, advantages and privileges to all employees without discrimination.
- The Durham Police Department shall not refuse, withhold or deny access to accommodations, advantages or privileges of public accommodations to visitors of the station that identify as LGBTQ.

## Reporting Violations

- In compliance with other sections of this manual, all members of the Durham Police Department, regardless of rank, position or sworn status shall accept complaints of violations of this section regardless of the time or location that such allegations are made. If a ranking sworn officer is available/on-duty to take the complaint, that is the *preferred* method; but, no person shall be turned away or asked to return another time.

- All allegations of violations of this directive, including those made anonymously or by persons who may be impaired by alcohol, drugs or illness shall be accepted for investigation.
- Allegations of violations of this directive shall be accepted in any form, including verbally.
- It is desirable that allegations of officer or agency misconduct related to a violation of this directive be taken in writing from the complainant in the first instance. As much detail as possible should be sought by the department member taking the complaint; and, whenever possible, such information should be reduced to writing by the complainant. If the complainant is unwilling or unable to complete a written statement that details the nature and allegations of a complaint, the receiving department member shall reduce the information to writing. Every effort shall be made to affirm that the written information is reflective of the complainants understanding of the allegations.
- Regardless of whether the complainant reduces the allegations to writing, the receiving department member shall complete a detailed report of what was said, observations made and other details relevant to the intake of the complaint. If such allegations are taken by a sworn officer and the complaint was also captured as a body worn camera image, the receiving officer(s) must alert the chain of command that such images are available for review.

## Staff Training

- Upon promulgation of this directive, all department members will receive training on its' contents and intent. At least annually thereafter, every member shall complete documented roll call training on this directive.

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- (i) **354-A: 7 Unlawful Discriminatory Practices.** – It shall be an unlawful discriminatory practice:
- I. For an employer, because of the age, sex, race, color, marital status, physical or mental disability, religious creed, or national origin of any individual, to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate against such individual in compensation or in terms, conditions or privileges of employment, unless based upon a bona fide occupational qualification. In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.
  - II. For a labor organization, because of the age, sex, race, color, marital status, physical or mental disability, creed, or national origin of any individual, to exclude from full membership rights or to expel from its membership such individual or to discriminate in any way against any of its members or against any employer or any individual employed by an employer, unless based upon a bona fide occupational qualification. In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.
  - III. For any employer or employment agency to print or circulate or to cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for employment or to make any inquiry or record in connection with employment, which expresses, directly or indirectly, any limitation, specification or discrimination as to age, sex, race, color, marital status, physical or mental disability, religious creed or national origin or any intent to make any such limitation, specification or discrimination in any way on the ground of age, sex, race, color, marital status, physical or mental disability, religious creed or national origin, unless based upon a bona fide occupational qualification; provided, however, that nothing in this chapter shall limit an employer after the offer of hire of an individual from inquiring into and keeping records of any existing or pre-existing physical or mental conditions. In addition, no person shall be denied the benefit of the rights afforded by this paragraph on account of that person's sexual orientation.
  - IV. For any employee to be required, as a condition of employment, to retire upon or before reaching a specified predetermined chronological age, or after completion of a specified number of years of service unless such employee was elected or appointed for a specified term or required to retire pursuant to Pt. II, Art. 78 of the constitution of New Hampshire. It shall not be unlawful for an employer to:
    - (a) Establish a normal retirement age, based on chronological age or length of service or both, which may be used to govern eligibility for and accrual of pension or other retirement benefits; provided that such normal retirement age shall not be used to justify retirement of or failure to hire any individual; or
    - (b) Require any individual employee to retire on the basis of a finding that the employee can no longer meet such bona fide, reasonable standards of job performance as the employer may have established.
  - V. Harassment on the basis of sex constitutes unlawful sex discrimination. Unwelcome sexual advances, requests for sexual

favors, and other verbal, non-verbal or physical conduct of a sexual nature constitutes sexual harassment when:

- (a) Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment;
- (b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

VI. (a) For the purposes of this chapter, the word "sex" includes pregnancy and medical conditions which result from pregnancy.

(b) An employer shall permit a female employee to take leave of absence for the period of temporary physical disability resulting from pregnancy, childbirth or related medical conditions. When the employee is physically able to return to work, her original job or a comparable position shall be made available to her by the employer unless business necessity makes this impossible or unreasonable.

(c) For all other employment related purposes, including receipt of benefits under fringe benefit programs, pregnancy, childbirth, and related medical conditions shall be considered temporary disabilities, and a female employee affected by pregnancy, childbirth, or related medical conditions shall be treated in the same manner as any employee affected by any other temporary disability.

VII. (a) For any employer not to make reasonable accommodations for the known physical or mental limitations of a qualified individual with a disability who is an applicant or employee, unless such employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of the employer.

(b) For any employer to deny employment opportunities, compensation, terms, conditions, or privileges of employment to a job applicant or employee who is a qualified individual with a disability, if such denial is based on the need of such employer to make reasonable accommodation to the physical or mental impairments of the applicant or employee.

**Source.** 1992, 224:1. 1997, 108:12. 2006, 181:2, eff. Jan. 1, 2007.

Ibid.

- (ii) NH RSA 354-A:2, XIV, "Place of public accommodation" includes any inn, tavern or hotel, whether conducted for entertainment, the housing or lodging of transient guests, or for the benefit, use or accommodations of those seeking health, recreation or rest, any restaurant, eating house, public conveyance on land or water, bathhouse, barbershop, theater, golf course, sports arena, health care provider, and music or other public hall, store or other establishment which caters or offers its services or facilities or goods to the general public. "Public accommodation" shall not include any institution or club which is in its nature distinctly private.

**354-A: 17 Unlawful Discriminatory Practices in Public Accommodations.** – It shall be an unlawful discriminatory practice for any person, being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodation, because of the age, sex, race, creed, color, marital status, physical or mental disability or national origin of any person, directly or indirectly, to refuse, withhold from or deny to such person any of the accommodations, advantages, facilities or privileges thereof; or, directly or indirectly, to publish, circulate, issue, display, post or mail any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities and privileges of any such place shall be refused, withheld from or denied to any person on account of age, sex, race, creed, color, marital status, physical or mental disability or national origin; or that the patronage or custom thereof of any person belonging to or purporting to be of any particular age, sex, race, creed, color, marital status, physical or mental disability or national origin is unwelcome, objectionable or acceptable, desired or solicited. In addition, no person shall be denied the benefit of the rights afforded by this section on account of that person's sexual orientation.

**Source.** 1992, 224:1. 1997, 108:15, eff. Jan. 1, 1998.