

President's 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

February 9, 2015

Training and Education | Voices of the Community – Women and LGBT People

Streetwise and Safe (SAS) is a New York City based organization focused on profiling, policing and safety of lesbian, gay, bisexual, and transgender youth of color. Along with the Center for American Progress, the Columbia University Center for Gender and Sexuality Law, and the Center for HIV Law and Policy, we coauthored *A Roadmap for Change: Federal Policy Recommendations to Address Criminalization of LGBT People and People Living With HIV*, and plays a leadership role in a national coalition of LGBTQ organizations working toward adoption of its recommendations.

Streetwise and Safe also co-founded, along with BreakOUT! in New Orleans, *Get Yr Rights! A National LGBT Know Your Rights Network*, made up of over 30 LGBTQ youth and youth serving organizations across the country (www.getyrrights.org). We have the privilege of serving on the Steering Committee of Communities United for Police Reform (www.changethenypd.org), a broad-based city-wide campaign to challenge discriminatory policing practices in New York City, and of the Access to Condoms Coalition, a statewide coalition made up of public health, anti-trafficking, LGBT and civil and reproductive rights organizations working to end the use of condoms as evidence in all prostitution-related cases in New York State. For the past three years Streetwise and Safe has also served a member of the LGBT Advisory Panel to the NYPD Police Commissioner.

In order to supplement our testimony today, we refer you to the submission drafted by Streetwise and Safe, endorsed by over 40 local, state and national LGBTQ organizations, and adopted by Lambda Legal in its testimony before for the January 28th Task Force Listening Session on Policy and Oversight, as well as my submission in my capacity as a Senior Soros Justice Fellow focusing on the experiences of women of color, which was endorsed by over 75 organizations and individuals.

INTRODUCTION

To briefly summarize our prior testimony, as documented by researchers, civil and human rights organizations, and LGBT groups, women and LGBTQ people of color share similar experiences of racial profiling and police brutality as other members of communities of color,ⁱ as well as pervasive profiling and discriminatory treatment by local, state and federal law enforcement agents based on actual or perceived gender, gender identity or expression, sexual orientation, and HIV status.ⁱⁱ Investigations of local police departments in New Orleans and Puerto Rico by the U.S. Department of Justice have documented patterns and practices of profiling, discriminatory policing and police brutality against LGBTQ people,ⁱⁱⁱ as have a number of national and local studies.^{iv}

Black women and LGBT people and women and LGBT people of color are also targets of police brutality up to and including police shootings,^v including most recently Jessie Hernandez, a 16 year old Latina killed by Denver police,^{vi} Aura Rosser, a 40 year old Black woman killed by Ann Arbor

police,^{vii} and Tanisha Anderson, a 37 year old Black woman killed by Cleveland police,^{viii} all of whom were killed in the short period of time since this Task Force was established. In the weeks following Eric Garner's killing in New York City, an NYPD officer put Rosan Miller, a Black 27 year-old 5 month pregnant woman in a choke hold as they attempted to arrest her for grilling on the sidewalk,^{ix} Denise Stewart, a Black grandmother who, like Eric Garner, had asthma was dragged naked into a hallway by officers who falsely assumed she was abusing her children,^x Stephanie Maldonado, perceived by NYPD officers to be queer, was thrown to the ground and beaten after being accused of jaywalking in the West Village,^{xi} and another pregnant mother was thrown to the ground in by NYPD officers who then used a TASER on her stomach.^{xii} These are but a few examples of the excessive force to which women and LGBT people of color are submitted on a routine basis, and which must also be at the center of national debates surrounding use of excessive force.

Particular deficiencies exist with respect to police policies, training, education, and oversight with respect to police interactions, searches, and placement of LGBT people in police custody which contribute to routine violations of the rights of women and LGBTQ people, and to reduced safety for our communities. Gender and sexuality-specific forms of racial profiling and discriminatory policing, requiring specific policy, training, education and oversight responses, include:

- Homophobic and transphobic verbal harassment and abuse by law enforcement officers;
- Profiling and discriminatory enforcement of prostitution-related and lewd conduct offenses, including citation of possession or presence of condoms as evidence of intent to engage in prostitution-related or lewd conduct offenses;^{xiii}
- Failure to respect individuals' gender identity and expression when addressing members of the public and during arrest processing, searches, and placement in police custody;
- Unconstitutional and unlawful searches to assign gender, and more invasive and intrusive searches of transgender and gender nonconforming people than non transgender people;
- Dangerous placement and cruel, inhuman and degrading treatment in police custody.

Moreover, although no official data currently exists, research indicates that sexual harassment and assault of women and LGBT people by police officers occurs with alarming frequency, yet the vast majority of departments have no policies or training explicitly addressing this issue.^{xiv}

RECOMMENDATIONS

1) Establish federal and nationwide standards and training with respect to treatment of LGBTQ people in police custody

While training and education are critical, without clear policies on which to base officer training, accompanied by effective discipline and oversight, impacts on individual officer behavior will be limited, and structural and systemic change cannot be achieved.

For instance, in the absence of clear guidance to officers with respect to determination of gender for the purposes of arrest processing, searches and placement in police custody, along with a clear statement as to the unconstitutional and impermissible nature of searches for the purpose of assigning gender, no matter how much sensitivity and cultural competency training officers receive with respect to LGBT communities, transgender and gender nonconforming people will continue to experience unconstitutional searches and invasive questioning in order to assign gender based on anatomical features, ongoing assaults on their human dignity, and dangerous and degrading

placement in police custody based on anatomy rather than safety. In particular, 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 nonconforming arrestees—are both constitutionally prohibited and widespread.^{xv}

While the Department of Justice has created model training with respect to how to address transgender individuals during police interactions, **we urge the Department to go further, and, in consultation with LGBTQ advocates who have successfully advocated for local policies, issue national standards and training for federal, state and local law enforcement agencies offering guidance concerning police interactions, forms of address, searches, placement, and access to medication for LGBTQ people in police custody consistent with the provisions of consent decrees entered into with the New Orleans Police Department and best practices in other departments, and to condition receipt of federal funding on adoption and enforcement of such policies.**

In order to ensure that policies, training, education and oversight effectively improve the safety of women and LGBTQ people, they must be developed in partnership with community-based organizations working directly with individuals affected by discriminatory and abusive policing practices.

For instance, where members of transgender communities were directly involved in creating policies and training every single officer of the San Francisco Police Department, complaints of police misconduct against transgender people decreased.^{xvi} As part of a team of transgender advocates and LGBT organizations who drew on policies in place in San Francisco and jurisdictions across the U.S. to develop and negotiate comprehensive changes to the NYPD's Patrol Guide which have served as a model to departments across the country, Streetwise and Safe has seen firsthand how the involvement of members of LGBT communities, and particularly transgender people and organizations directly organizing and representing transgender people, was essential to the development of effective policies and training to protect the rights of LGBT people who come into contact with police. Similarly, under the aegis of the Department of Justice's consent decree with the New Orleans Police Department, LGBTQ youth of color directly impacted by discriminatory policing practices played an essential role through our partners at BreakOUT in developing both policies and a video directly informed by their experiences to be shown to all new recruits. A similar process involving transgender advocates, LGBT service providers and community-based organizations has successfully taken place in Los Angeles, and is currently underway in Atlanta.

In a number of instances, community-based organizations have also been directly involved in ensuring compliance with these policies. For instance, BreakOUT has been certified as an official intake site for the Independent Police Monitor, which takes complaints against NOPD officers, thereby increasing the likelihood that individuals whose rights under existing training and policies have been violated will come forward without fear of further discrimination or retaliation. Streetwise and Safe monitors compliance with NYPD policies and training through its know your rights trainings and outreach to LGBTQ youth and adults, and has asked the newly established NYPD Inspector General to conduct an independent audit of their implementation. These experiences can serve as models for effective training and education of police departments based on sound policies developed in collaboration with directly affected communities.

2) Establish federal and national standards and training for prevention, documentation, and responding to sexual assault by law enforcement officers

As documented by the International Association of Chiefs of Police, (IACP), the Cato Institute, Amnesty International, and independent researchers, sexual harassment and assault by law enforcement officers is an often invisible but pervasive practice requiring the immediate adoption and effective enforcement of policies, training, oversight and disciplinary practices.^{xvii}

As the IACP concludes, without clear policies explicitly prohibiting and preventing sexual harassment and misconduct by police officers with respect to members of the public, sexual harassment and assault will continue to take place with impunity, in spite of existing training concerning professional courtesy and respect. Sexual misconduct, while not justified by any lawful purpose, is by no means an isolated phenomenon, facilitated by the considerable authority vested in law enforcement officers, and therefore requires a specific policy, training and oversight response by law enforcement agencies.^{xviii}

We therefore urge the Department of Justice to develop, in consultation with advocates for women and LGBTQ communities, model policies and training aimed at documenting, preventing, and addressing sexual harassment, abuse, and assault by federal, state and local law enforcement agents which are consistent with the recommendations of the International Association of Chiefs of Police, and to condition federal funding on adoption and effective enforcement of such policies. Additionally, the U.S. Department of Justice should **aggressively pursue enforcement of existing PREA standards for police lock-ups**, including requirements relating to training and education.

3) Pass, effectively implement, and enforce LGBTQ-inclusive anti-profiling measures

Sensitivity training and cultural competency must have as their foundation strong and enforceable anti-profiling legislation and anti-discrimination provisions. Accordingly,

- The Administration should immediately **expand the protections of the Guidance for Federal Law Enforcement Agencies** issued by the U.S. Department of Justice in December 2014 to reach all federal and federally funded law enforcement activities, including and especially those that target Muslim, Arab, Sikh and South Asian communities and take place at our borders. Federal law enforcement agents should be mandated to attend training created in consultation with organizations working with directly affected communities providing clear examples of prohibited profiling practices and clearly outlining the consequences of failing to follow the guidance.
- Consistent with Title VI of the Civil Rights Act of 1964, the Safe Streets Act of 1968, the Violence Against Women Act of 1994 (as amended), and consistent with the Department of Justice's authority to adopt reasonable requirements for the effective use of federal funds consistent with statutorily authorized program goals, local law enforcement agencies should be required, as a condition of receipt of federal funding, to **adopt, effectively implement, provide training on, and enforce prohibitions against profiling consistent with the Guidance for Federal Law Enforcement Agencies on the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation and Gender Identity** issued by the U.S. Department of

Justice in December 2014. These requirements should include an **independent enforcement mechanism** accessible to members of the public.

- The Administration should work with Congress toward the passage of an **End Racial Profiling Act that includes protections against profiling on the basis of gender, sexual orientation, and gender identity and requires training and education of officers on prohibited profiling as a condition of receipt of federal funding.**
- The Department of Justice should, consistent with the recommendation of the Presidential Advisory Commission on HIV/AIDS, **issue and publicize guidance and model training to federal, state and local law enforcement agencies condemning the reliance on mere possession or presence of condoms as evidence of intent to engage in criminal activity,** and encourage agencies to adopt policies prohibiting this practice and to train local law enforcement officers accordingly.
- The Department of Justice should, in consultation with organizations made up of and advocating on behalf of homeless people, **issue guidance and model trainings to state and local governments** on the constitutionality and cost-effectiveness of adoption and enforcement of ordinances criminalizing ordinary life-sustaining activities in public spaces, and develop and disseminate model training governing interactions with homeless people;

As evidenced by the use of a prohibited chokehold by NYPD officers against Eric Garner and against Rosann Miller just a few days after Garner was killed, even the existence of clear policies and training will not ensure safety or prevent violations of the rights of people who come into contact with police. Incidents such as these, and countless others like them, underscore the importance of effective prevention, oversight and discipline when training and education are ignored and policies are violated. In order to ensure that training and education result in real changes to police interactions with women and LGBTQ people, and a meaningful reduction of instances of police brutality and other violations of constitutional rights, there must be effective oversight of police departments and disciplinary procedures that will ensure that training and education is accompanied by compliance.

- **Civilian oversight bodies must be made up of representatives from communities directly impacted by discriminatory policing,** including youth, women, and LGBTQ communities, similar to those established under federal consent decrees with Seattle and Cincinnati, and be **vested with substantial authority, including subpoena power and independent disciplinary authority.** They must also be empowered to **collect and regularly analyze data on a range of police department practices to determine if there are disparities based on race, age, gender, gender identity, or sexual orientation in enforcement practices** and provided with sufficient resources to do so. Information relating to sexual orientation and gender identity of complainants must be collected on a voluntary and anonymous basis, after informed consent, and analyzed separately from any identifying information regarding the complainant.
- Where **special prosecutors** or independent investigatory bodies are established to respond to incidents of police killings and use of excessive force, they should pay special attention to incidents involving women and LGBT of color, and their **jurisdiction should include investigation of allegations of police rape and sexual assault.**

ⁱ National Association for the Advancement of Colored People, *Born Suspect: Stop-and-Frisk Abuses &*

ⁱⁱ Lambda Legal, *Protected and Served? Survey of LGBT/HIV Contact with Police, Courts, Prisons, and Security* (2014) (finding a quarter of respondents to a national survey, and over a third of respondents of color, youth, and transgender respondents, had experienced some form of police harassment), available at www.lambdalegal.org/protectedandserved; 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); 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); 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) (finding law enforcement agents to be among the top three categories of perpetrators of homophobic and transphobic violence reported), available at http://www.avp.org/storage/documents/Reports/2011_NCAVP_HV_Reports.pdf; 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), available at http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf; Amnesty International, *Stonewalled: Police Abuse and Misconduct Against LGBT People in the United States* (Washington: Amnesty International, 2005) (documenting multiple patterns of police profiling, misconduct and violence against LGBT people across the country), available at <http://www.amnesty.org/en/library/asset/AMR51/122/2005/en/2200113d-d4bd-11dd-8a23-d58a49c0d652/amr511222005en.pdf>.

ⁱⁱⁱ U.S. Department of Justice, Civil Rights Division, *Investigation of the New Orleans Police Department*, March 16, 2011; U.S. Department of Justice, Civil Rights Division, *Investigation of the Puerto Rico Police Department*, September 5, 2011.

^{iv} BreakOUT!, *We Deserve Better!* (2014), available at:

<http://www.youthbreakout.org/sites/g/files/g189161/f/201410/WE%20DESERVE%20BETTER%20REPORT.pdf>; 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 Bazargan, *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>;

^v See, e.g., Andrea J. Ritchie, *Law Enforcement Violence Against Women of Color*, in *Color of Violence: The INCITE! Anthology* (South End Press 2006).

^{vi} Michael Roberts, *Jessie Hernandez, Teen Killed By Denver Cops: Protests Over Alleged Police Violence*, http://blogs.westword.com/latestword/2015/01/jessie_hernandez_killed_denver_police.php

^{vii} John Counts, *40 Year Old Woman Fatally Shot By Ann Arbor Police Officer Identified*, MI News November 11, 2014, available at: http://www.mlive.com/news/ann-arbor/index.ssf/2014/11/ann_arbor_police_shooting_name.html

^{viii} Tom Beres, *Woman's Death in Police Custody Ruled a Homicide*, USA Today January 2, 2015, available at: <http://www.usatoday.com/story/news/nation/2015/01/02/womans-death-in-police-custody-ruled-a-homicide/21218595/>

^{ix} Kirstan Conley, Leonica Valentine and Daniel Prendergast, New 'chokehold' video shows NYPD scuffle with pregnant woman July 28, 2014, <http://nypost.com/2014/07/28/new-chokehold-video-shows-nypd-scuffle-with-pregnant-woman/>.

^x John Marzulli, Laura Dimon, Ginger Adams Otis, *Naked Brooklyn woman dragged from apartment, left topless in hallway for minutes by NYPD officers*, August 1, 2014, NY Daily News, available at: <http://www.nydailynews.com/new-york/brooklyn/nypd-officers-drag-naked-brooklyn-woman-apartment-video-article-1.1889292>

^{xi} Jim Hoffer, *Investigation: Woman Claims Police Brutality Against NYPD Officer*, ABC News, August 1, 2014, available at: <http://7online.com/news/investigation-woman-claims-police-brutality-against-nypd-officer/229978/>

^{xii} *Watchdog Group: Officer Seen Throwing Pregnant Woman To Ground In Sunset Park*, CBS News, September 23, 2014, available at: <http://newyork.cbslocal.com/2014/09/23/watchdog-group-officer-seen-throwing-pregnant-woman-to-ground-in-sunset-park/>

^{xiii} Florrie Burke (founder of national Freedom Network and recipient of the inaugural Presidential Award for Extraordinary Efforts to Combat Trafficking in Persons from President Barack Obama), *Forced Into Prostitution and Denied a Lifeline*, Huffington Post May 15, 2013, available at: http://www.huffingtonpost.com/florrie-burke/forced-into-prostitution-_b_3279937.html; Human Rights Watch, *Sex Workers at Risk: Condoms as Evidence of Prostitution in Four U.S. Cities*, (2012) available at http://www.hrw.org/sites/default/files/reports/us0712ForUpload_1.pdf; 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>;

^{xiv} Stinson, Philip M.; Liederbach, John; Brewer, Steven L.; and Mathna, Brooke E., *Police sexual misconduct: A national scale study of arrested officers* (2014), Criminal Justice Faculty Publications. Paper 30, available at: http://scholarworks.bgsu.edu/crim_just_pub/30; International Association of Chiefs of Police, *Addressing Sexual Offenses and Misconduct by Law Enforcement Officers: An Executive Guide* (Virginia: International Association of Chiefs of Police, 2011), available at: <http://www.theiacp.org/Portals/0/pdfs/AddressingSexualOffensesandMisconductbyLawEnforcementExecutiveGuide.pdf>; 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), available at http://www.thetaskforce.org/static_html/downloads/reports/reports/ntds_full.pdf; Cato Institute, *National Police Misconduct Reporting Project Annual Report (2010)*, available at: <http://www.policemisconduct.net/statistics/2010-annual-report>; L. Rosetta and N. Carlisle, *Sexual Misconduct by Officers: A Third Might Go Unprosecuted*, Salt Lake City Tribune, October 29, 2006; Nancy Phillips and Craig R. McCoy, *Police Turned Predators*, a series by the Philadelphia Inquirer, August 2006, available at: http://www.philly.com/philly/news/special_packages/inquirer/Police_Turned_Predators.htm; Timothy Maher, *Police Sexual Misconduct: Officers' Perceptions of its Extent and Causality*, Crim. Just. Rev. 28(2): 355 (2003); Fine, M., N. Freudenberg, Y. Payne, T. Perkins, K. Smith, and K. Wanzer, "Anything can happen with police around": Urban youth evaluate strategies of surveillance in public

places. *Journal of Social Issues* 59:141-58 (2003); Irlbeck, Dawn and Samuel Walker. "Police Sexual Abuse of Teenage Girls: A 2003 Update on 'Driving While Female'" University of Nebraska at Omaha, Department of Criminal Justice, Police Professionalism Initiative (June 2003), available at: <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2003.pdf>; Samuel Walker and Dawn Irlbeck, *Driving While Female*, Police Professionalism Initiative, University of Omaha (2002), available at: <http://samuelwalker.net/wp-content/uploads/2010/06/dwf2002.pdf>; R. L. Goldman and S. Puro, *Revocation of Police Officer Certification*, 45 St. Louis L. J. 541, 563, n.142 (2001); Kraska, P. B., and V. E. Kappeler, "To serve and pursue: Exploring police sexual violence against women.," *Justice Quarterly* 12:85-112 (1995).

^{xv} 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; Mogul et al., *supra* note ii; Amnesty International, *supra* note ii; 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>.

^{xvi} Expert opinion of Marcus Arana in *Tikkun v. City of New York*, 05cv9901 (JCF)(KMK)(S.D.N.Y.), August 3, 2009.

^{xvii} Stinson et al., *supra* note xiv; IACP, *supra* note xiv; National LGBTQ Task Force, *supra* note ii; Cato Institute, *supra* note xiv; Amnesty International, *supra* note ii; Samuel Walker and Dawn Irlbeck, *supra* note xiv.

^{xviii} Stinson et al., *supra* note xiv; IACP, *supra* note xiv.