

Police in the United States Harassing, Assaulting and Unlawfully Arresting Transgender Women Based On Their Gender Identity

Reporting Organizations

The Transformative Justice Law Project of Illinois (TJLP) is a collective of activists, social workers and attorneys who provide support, advocacy and free legal services to poor and street based transgender people in Illinois. TJLP's work is based around the core values of gender self-determination, commitment to a long-term goal of prison abolition and dedication to resisting state sponsored systems of control through transformative justice and community empowerment models.

I. Issue Summary

In the United States, transgender women are harassed, assaulted and unlawfully arrested by police officers based on their gender identity. In instances of lawful arrest, transgender women¹ are subjected to assaults, destruction of property and humiliation and degradation. A recent, nationwide study found that 29% of the transwomen who responded have experienced harassment assault by police due to gender bias. 20% have been harassed, 6% have been physically assaulted and 3% have been sexually assaulted.² As compared to overall victims of police violence, transgender women are **four** times more likely to experience police violence and **six** times more likely to experience physical violence when interacting with the police. When compared to non-transgender victims of police violence, transgender women are **3.7** times more likely to experience police violence and **7** times more likely to experience physical violence when interacting with the police.³

Transgender women, particularly transgender women of color, are unlawfully stopped by police for a number of reasons, one of the most prevalent being assumptions that transgender women are, largely because of their gender identity, sex workers.⁴ Police profiling of transgender women in the United States has become so prevalent that it has earned the descriptor "walking while trans", which describes the experience of transgender women being stopped, questioned and frisked by police in public spaces, regardless of their activity. Transgender women

¹ Transgender refers to people whose gender identity does not correlate with the sex assigned to them at birth. This can be expressed through clothing, gender affirming medical treatment, a change of name, or other alterations, visual and non-visual, that a person chooses in order to express their gender identity.

² Injustice At Every Turn: A Report on the National Transgender Discrimination Survey
http://www.transequality.org/Resources/ntds_full.pdf

³ Hate Violence Against Gay, Lesbian, Bisexual, Transgender, Queer (LGBTQ) and HIV-Affected in the United States in 2013, National Coalition of Anti-Violence Programs

⁴ Sex worker refers to a person who exchanges sexual acts for money, gifts or other resources.

report being “stopped, harassed, verbally, sexually and physically abused and arrested” even if there is no basis for the stop and arrest.⁵

Transgender people are often perceived as deceptive or using their gender identity as a tool for evasion, and this can lead to police officers groping them to determine their “real” gender; referring to them as men or removing their clothing, wigs and accessories without cause. This is especially common if the woman’s ID lists her gender as male. Some states require cost prohibitive and medically unnecessary surgeries in order for the gender marker to be changed and some women simply choose not to change it. Depending on the state, it is likely to highly likely that a transgender woman will not have a female gender marker on her ID.

Cities such as Los Angeles⁶ and Chicago have implemented new police protocol regarding the search, questioning and arrest of transgender people which prohibit actions such as a frisk to ascertain someone’s sex or requests to remove appearance related-items that would not be made of a non-transgender person. Simply because these protocols exist does not mean they are being implemented or followed.

While being assumed to be a sex worker is one of the primary reasons transgender women are stopped by police, police also stop them for supposedly violating vague laws that are infrequently enforced against non-transgender people, like loitering or smoking a cigarette too close to a non-smoking area. Another pretense used by officers to stop transgender women is bathroom use. Although there are no laws governing who is allowed to use gendered bathrooms, transgender women have been detained, up to and including arrest, for using the women’s bathroom in a public place. Some of the experiences transgender women have experienced during stops, frisks, and arrests include⁷:

- Being forced to trade sex in order to avoid arrest
- Having their genitals groped, both over and under their clothes
- Being forced to show their genitals to law enforcement officer(s)
- Sexual assault, including assault by multiple officers, with objects like police batons and at gunpoint
- Punching and hitting, sometimes resulting in broken bones
- Being forced to remove some or all of their clothing to “prove” their gender

⁵ Joey Mogul, et al., *Queer Injustice*, pg. 61 (Beacon Press, 2011). *See also* http://www.nytimes.com/2013/04/07/nyregion/arrests-by-the-fashion-police.html?_r=0

⁶ Los Angeles and Chicago Police Departments Protocol, <https://docs.google.com/file/d/0BxpCwP0UjPjKUKlJSXp1OFRGOXc/edit?pli=1>, <http://directives.chicagopolice.org/directives/data/a7a57b38-1394a4ae-75313-94a4-b606a68cfab99615.html>,

⁷ Stonewalled: Police Abuse and Misconduct Against Lesbian, Gay, Bisexual and Transgender People in the US, Amnesty International, 2005 <http://www.amnesty.org/en/library/asset/AMR51/122/2005/en/2200113d-d4bd-11dd-8a23-d58a49c0d652/amr511222005en.pdf>

- Extreme verbal humiliation and degradation, including being called a faggot and other sexual slurs
- Being forced to take a mug shot photo topless in an attempt to discredit a transwoman's gender identity
- Having driver's licenses, state IDs and other forms of necessary identification thrown out or discredited because an officer feels the gender listed is "fraudulent"
- Being forced to remove a shirt and bra and jump up and down until her breasts jiggled⁸

These physically violent, humiliating and degrading acts can occur at the site of the stop or arrest, but frequently occur at a second site, to which the woman is transported in a squad car by an officer working alone, or in the squad car itself. Following what can be hours of abuse, the woman is then brought to the police station for booking.

Transgender women, especially transgender women of color, are a vulnerable population as there are few laws or regulations in place providing protections for them despite studies showing that they are at a higher risk of violence from police. The Convention Against Torture, through incorporation of other treaties, prohibits cruel, inhuman and degrading treatment enacted upon citizens by public officials. This includes mental and physical suffering, anguish, humiliation, fear or debasement. Sexual assault, physical assault, degradation, forced nudity public humiliation and harassment are just some of the acts that transgender women experience at the hands of law enforcement officers in the United States. Having your body beaten and invaded, being groped and harassed for no other reason than your gender identity, coercion into sexual acts for fear of arrest all contribute to feelings of fear, suffering and humiliation and are in violation of the Convention.

II. Concluding Observations

In 2006, the Committee recommended that "the State Party should ensure that reports of brutality and ill treatment of members of vulnerable groups by its law-enforcement personnel are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished." The United States did not respond.

III. U.S. Government Report

In its 2013 report to the Committee Against Torture, the United States briefly responded to the Committee's question regarding police brutality toward

⁸ Transgender Woman Settles Lawsuit With Boston Over Treatment During 2010 Arrest
<http://www.boston.com/news/local/massachusetts/2013/02/05/transgender-woman-settles-lawsuit-with-boston-over-treatment-during-arrest/jldg4ZWAzhEU5srQSiYANI/story.html>

vulnerable groups. It stated two particular Acts allow the Attorney General to bring civil actions to eliminate patterns or practices of law enforcement misconduct. Additionally, it stated that the Department of Justice has the authority to initiate criminal investigations of excessive force used by law enforcement and that the law prohibiting such excessive force protects vulnerable populations the same as it would protect any individual. The United States has also increased training (Paragraph 242). There has been no known action, however, by the Department of Justice on this problem.

IV. The CAT Committee General Comments and List of Issues

The Committee addressed issues of excessive force by law enforcement in its List of Issues Submitted by the Committee in 2009, asking the United States if it had implemented adequate monitoring systems for law enforcement officials and if steps have been taken to ensure that reports of police brutality are appropriately investigated and, when applicable, prosecuted.⁹

V. Other UN Body Recommendations

In a report to the United States General Assembly on human rights in Myanmar, the Special Rapporteur recommended that the government investigate accounts of police brutality against transgender women.¹⁰ The Human Rights Committee, in its concluding observations on the sixth report of the Russian Federation, expressed concern regarding harassment of transgender people by police and recommends providing appropriate training to law enforcement officials.¹¹

In 2008, a report discussing racial profiling by law enforcement of transgender women in the United States was submitted to the Committee on the Elimination to End Racial Discrimination. The Committee did not address the report in its concluding observations.

VI. Recommended Questions

1. How do law enforcement agencies monitor field investigations and transportation in agency vehicles?
2. For states that have policies in place regarding the treatment of transgender women during stops and/or arrests, how are they enforced? Are there non-law enforcement persons reviewing it?

VII. Suggested Recommendations

⁹ Committee Against Torture List of Issues Prior to Submission Of the Fifth Periodic Report of the United States <http://www.ushrnetwork.org/sites/default/files/catlistofissues2010.pdf>

¹⁰ Situation of Human Rights in Myanmar, 68th Session, United Nations General Assembly http://www.ohchr.org/documents/countries/mm/a-68-397_en.pdf

¹¹ Concluding Observations of the Human Rights Committee, Russian Federation, <http://www.refworld.org/pdfid/4b2603442.pdf>

1. States should have a policy in place that disallows searching in order to determine a persons' gender, and gender should be self-determined by the individual being stopped, searched or arrested, not by their ID or genitals.
2. States should have a system in place that is not affiliated with law enforcement that monitors reports of police brutality against transgender women. Accountability to an outside force is needed.
3. States should not permit solo police officers to transport transgender arrestees to booking. It should be required that another officer or an advocate be present in the car.
4. States should provide comprehensive training to law enforcement officers on transgender issues, including information on why an individual's gender presentation and gender marker on their ID might not match, sensitivity to transgender issues and awareness that breaking policies in place will be taken seriously.

This Report is Endorsed By the Following Organizations and Scholars

Josephine Hutchins, Susan Elizabeth Shepard, Caty Simon; Editors; T&S, a sex worker run policy and media website

Jodie M. Dewey, PhD; Chicago, Illinois

The National Coalition of Anti-Violence Programs