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To cite this article: Andrea J. Ritchie & Delores Jones-Brown (2017) Policing Race, Gender, and Sex: A Review of Law Enforcement Policies, *Women & Criminal Justice*, 27:1, 21-50, DOI: [10.1080/08974454.2016.1259599](https://doi.org/10.1080/08974454.2016.1259599)

To link to this article: <http://dx.doi.org/10.1080/08974454.2016.1259599>



Published online: 26 Jan 2017.



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Policing Race, Gender, and Sex*: A Review of Law Enforcement Policies

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Growing attention to the unique ways in which women of color's bodies are racially profiled and policed has prompted questions concerning gender-specific impacts of law enforcement practices. Arrest statistics, patterns of enforcement, and high-profile cases of police violence against Black women and other women of color suggest that gaps in policy and implementation will disproportionately affect women of color. In the current research, the policies of 36 police departments across the country were examined to ascertain the degree to which they address profiling, police sexual misconduct, and other gendered experiences of policing. The findings reveal considerable divergence in attention to regulating police behavior in the context of interactions with women and lesbian, gay, bisexual, and transgender (LGBT) people, exposing important gaps in police policies, and highlight a need for further research and action specifically focused on intersectional factors at play in the context of policing women's bodies.

Keywords racial profiling, police violence, police misconduct, gender, sexuality

INTRODUCTION

The past year has brought unprecedented attention to policing of Black women's bodies in the context of the broader public discourse surrounding racial profiling and police use of force sparked by the police killings of Mike Brown, Eric Garner, and Freddie Gray. Sandra Bland's July 2015 death in police custody following a traffic stop in Plainview, Texas; a videotape that came to light several months later of a violent assault on a young Black woman by a school resource officer at Spring Valley High in Columbus, South Carolina; and the trial of Oklahoma City police officer Daniel Holtzclaw for sexual assault of 13 Black women and girls in

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*In this context, policing gender refers to enforcement of social norms and expectations regarding appearance, behavior, and expression commonly associated with men and women. Policing sex refers to regulation of sexual acts and sexuality.

Color versions of one or more figures in the article can be found online at www.tandfonline.com/wwcj.

December 2015 further fueled calls for action around Black women's experiences of profiling and police violence.

Unfortunately, these cases were not isolated incidents, but rather are reflective of broader trends in which Black women and other women of color experience similar forms of racial profiling and police violence as do Black men. In addition, women's¹ bodies are policed in uniquely gendered ways, deeply informed by race, gender, gender identity, sexuality, motherhood, and poverty (Crenshaw & Ritchie, 2015; Ritchie, 2006, 2016; Ritchie, forthcoming). These experiences call into question whether existing police policies and contemplated reforms are sufficient to address gender-specific forms, contexts, and consequences of racial profiling and police violence.

This paper examines the policies of 36 police departments across the United States, including the majority of the nation's top 30 law enforcement agencies based on the number of officers on the force.² The goal of the research was to ascertain the degree to which departments have adopted policies in six areas that existing literature, summarized below, suggests uniquely or disproportionately affect women of color: (1) racial profiling; (2) confiscation or citation of presence or possession of condoms as evidence of intent to engage in prostitution-related offenses; (3) police sexual misconduct; (4) interactions with lesbian, gay, bisexual, and transgender (LGBT) people; (5) use of force against pregnant women; and (6) provisions for children when a parent or guardian is arrested.

In addition to mapping the degree to which law enforcement agencies across the country are formally addressing the policing of women's bodies through policy making in these areas, existing policies are compared to reforms that have already been suggested by experts and advocates and that have already been adopted in some jurisdictions.

LITERATURE REVIEW

Racial Profiling

Although racial profiling data reported by federal and state governments are rarely, if ever, disaggregated by both race and gender, nationally, Lundman and Kaufman (2003, p. 215) found that where the experiences of women of color are analyzed separately from those of men of color, "for both men and women there is an identical pattern of stops by race/ethnicity." Recent analysis of stop data reported by the New York City Police Department (NYPD), one of the jurisdictions with the most extensive data collection on this practice in the country, found that racial disparities in stops and frisks are virtually identical for women and men. Black and Latina women make up 81% of the total number of women stopped by the NYPD, while Black and Latino men made up 85% of the total number of men stopped (Crenshaw & Ritchie, 2015) (Figure 1). Although not all stops result in arrests, racial disparities persist in the numbers of women arrested. Over a 10-year period, Black and Latina women consistently made up more than 80% of arrests among women in New York City, despite making up just over 50% of the population (Women of Color Policy Network, 2003).

Women also experience unique forms of gender- and sexuality-based racial profiling, rooted in gendered stereotypes of women of color as sexually deviant, promiscuous, and bad mothers (Humphries, 1999; Manatu, 2003; Ritchie, forthcoming; Roberts, 2002; Roberts, 1997).



FIGURE 1 Racial disparities in police stops in New York City from 2009-2014. Source: Crenshaw and Ritchie (2015).

For instance, profiling of women of color as drug couriers has specifically been reported in the context of law enforcement practices associated with the “war on drugs” (Ritchie, forthcoming; Humphries, 1999; Roberts, 1997). Once profiled, police routinely violate women’s bodies through unlawful and degrading strip searches and body cavity searches aimed at finding drugs (American Civil Liberties Union, Break the Chains, and the Brennan Center at NYU, 2005; Ritchie, 2006, 2016; Ritchie, forthcoming; U.S. General Accounting Office, 2000). Women of color are also routinely profiled as being engaged in prostitution-related offenses and offenses relating to child welfare (Berlatsky, 2014; Judge & Wood, 2014; Roberts, 2002). For women, racial profiling is also often accompanied by gender-specific forms of police misconduct: for instance, women interviewed for a *New York Times* article on stop and frisk spoke of officers going through their bra and underwear, and throwing their birth control pills, tampons, and sanitary pads found in their purses to the ground on the street, as well as sexual innuendos and inappropriate touching by police officers during stops (Ruderman, 2012).

Condoms as Evidence

Policing of prostitution is a primary gender-specific context for racialized policing of the bodies, sexuality, and reproductive autonomy of women and LGBT people of color. Confiscation or citation of the possession or presence of condoms as evidence of intent to engage in prostitution-related offenses is a common tool used in prostitution enforcement (Human Rights Watch, 2012; Shields, 2012). This policing practice disparately affects women of color and lesbian, gay, bisexual, transgender, and queer (LGBTQ) people of color who are disproportionately stopped and searched by police and routinely profiled as being engaged in prostitution-related offenses based on age-old stereotypes framing Black women and other

women of color, along with LGBTQ people, as inherently sexually deviant and promiscuous (Ritchie, forthcoming; Manatu, 2003; Mogul, et al. 2011).

The practice of using condoms found in a pocket, purse, or premises as a basis for police harassment, arrest, and prosecution creates a powerful disincentive to carrying, distributing, and sharing condoms among populations at high risk for police profiling and discriminatory targeting, many of whom are also at high risk for HIV and other sexually transmitted infections (Human Rights Watch, 2012; Shields, 2012; PROS Network & Tomppert, 2012). Community-based research indicates that awareness of this practice leads more than half of people surveyed to not carry condoms at some point for fear of arrest and harassment (PROS Network & Tomppert, 2012). Advocates also report that it encourages people engaged in the trafficking of people in the sex trades to deny access to condoms to people they are exploiting, placing trafficking victims at further risk for sexually transmitted infections and unwanted pregnancy (Burke, 2012; Human Rights Watch, 2012).

Police officers' use of condoms present on or near women's bodies as evidence of their criminal conduct thus represents both direct and indirect interference by the state with women's sexual and reproductive autonomy and ability to protect themselves, as well as public health, with disproportionate impacts on women of color profiled and targeted by prostitution enforcement (Human Rights Watch, 2012). The vast majority of police department policies are silent on the propriety of the practice, enabling its unfettered use. Given the recognized gravity of the impacts of this practice, in terms of its implications for private and public health, such silence can be deadly and warrants further examination with an eye toward creating explicit policies within police departments.

Sexual Misconduct

There is currently no official data on prevalence of police sexual misconduct. However, research based on surveys of media reports and criminal and civil cases indicates that police officers sexually harass and assault women with alarming frequency (Stinson, Liederbach, Brewer, & Mathna, 2014; International Association of Chiefs of Police, 2011; Cato Institute, 2010; Irlbeck & Walker, 2002, 2003).

In 2010 the Cato Institute's National Police Misconduct Statistics and Reporting Project concluded that sexual assault and misconduct was the second most frequently reported form of police misconduct after excessive force, representing 9.3% of complaints analyzed. More than half of officers involved in reported sexual misconduct were alleged to have engaged in forcible nonconsensual sexual conduct. More than half of serious incidents analyzed alleged police sexual misconduct with minors (Cato Institute, 2010).

A more recent yearlong investigation by the Associated Press revealed more than 1,000 cases over a 6-year period in which law enforcement officers' licenses had been revoked as a result of sexual misconduct (Sendensky & Merchant, 2015). Two earlier studies of law enforcement license revocations in Missouri and Florida found that sexual misconduct was the basis for revocations in almost 25% of cases (Goldman & Puro, 2001). A survey of law enforcement officials in the St. Louis, Missouri, metropolitan area concluded that officers report sexual misconduct to be common, yet criminal justice officials have done little to control the problem (Maher, 2003).

As early as 1995, Kraska and Kappeler identified a spectrum of police sexual misconduct based on a review of media reports, court opinions, and interviews with law enforcement agents

and antiviolenace advocates. Almost a decade later, Irlbeck and Walker found police sexual harassment and misconduct to be pervasive during traffic stops and in police cadet programs intended to engage youth (Irlbeck & Walker, 2002, 2003). A 2006 investigation of sexual misconduct by *The Philadelphia Inquirer* found that police sexual misconduct also takes place in the context of responses to calls for assistance or investigation of domestic violence or sexual assault (Phillips & McCoy, 2006).

According to the International Association of Chiefs of Police, which issued guidance on the subject in 2011, police sexual misconduct takes many forms, ranging from sexual harassment to forcible rape (International Association of Chiefs of Police, 2011). It can include inappropriate or sexual comments made to passersby, during traffic or street stops, in the context of searches, or while an individual is in police custody; unnecessary contacts or actions taken for personally and/or sexually motivated reasons such as unwarranted call backs to crime victims, making a traffic stop to get a closer look at the driver, or pressuring individuals to provide their phone number or other contact information in order to contact them for non-law enforcement purposes; extortion of sexual favors in exchange for promises of leniency; inappropriate touching during stops, searches, and detention; inappropriate questions or conversation about individuals' sexual orientation, up to and including implicit and explicit threats of sexual assault made to lesbian and bisexual women to "correct" their sexual orientation; unlawful strip searches, including searches to assign gender based on anatomical features or simply to humiliate or degrade; and forcible or coercive sexual conduct, including rape (International Association of Chiefs of Police, 2011; Amnesty International, 2005; Kraska & Kappeler, 1995).

Young women, women of color, homeless and low-income women, lesbian and transgender women, women who are or are perceived to be engaged in drug or sex trades, and immigrant women have been found to be particularly vulnerable to sexual misconduct by law enforcement (BreakOUT, 2014; Lambda Legal, 2014; Stinson et al., 2014; Grant, Mottet, & Tanis, 2011; Stoudt, Fine, & Fox, 2011; Amnesty International, 2005; Fine et al., 2003; Kraska & Kappeler, 1995). Both Kraska and Kappeler (1995) and Stinson et al. (2014) describe how structural relations of power in law enforcement interactions facilitate police sexual misconduct, requiring systemic responses (International Association of Chiefs of Police, 2011).

Police Interactions With LGBTQ People

Research recently summarized by the Movement Advancement Project (2016) and the National Association for the Advancement of Colored People (NAACP; 2014) found that, in addition to many of the same forms of racial profiling and discriminatory policing practices experienced by other members of communities of color, nationwide, LGBTQ people of color experience gender- and sexuality-specific forms of profiling and police brutality (Mogul, Ritchie, & Whitlock, 2011; Amnesty International, 2005). In addition, 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 and discriminatory policing of LGBTQ people (U.S. Department of Justice, 2011a, 2011b). Similarly, a number of local organizations have documented department-specific patterns of profiling and discriminatory treatment and homophobic and transphobic physical and sexual violence by police against LGBTQ people,

particularly LGBTQ people of color (BreakOUT!, 2014; Make the Road New York, 2012; Galvan & Bazargen, 2012).

In a recent national survey of more than 3,000 LGBTQ people conducted by Lambda Legal, a quarter of respondents who had in-person contact with police reported at least one type of misconduct, including false arrests or verbal, physical, or sexual harassment or assault. LGBTQ youth, people of color, and low-income people, as well as transgender people, were much more likely to report an experience of at least one type of police misconduct or harassment (Lambda Legal, 2014). In addition, LGBTQ people of color were five times more likely to be asked about their immigration status by law enforcement than were white survey respondents (Lambda Legal, 2014).

Across the country, nonheterosexual youth are more likely to be stopped by the police and experience greater criminal justice sanctions not explained by greater involvement in violating the law (Himmelstein & Brückner, 2011). The National Transgender Discrimination Survey conducted by the National LGBTQ Task Force and National Center for Transgender Equality in 2010 found that 22% of transgender respondents who interacted with police reported harassment, 6% physical assault, and 2% sexual assault by police officers (Grant et al., 2011). Transgender and gender-nonconforming³ people in particular frequently report unlawful searches conducted by police for the purposes of assigning a gender based on anatomical features, as well as being housed in sex-segregated police holding facilities based on the sex they were assigned at birth, often placing them at significant risk for violence (Movement Advancement Project, 2016; BreakOUT, 2014; Make the Road New York, 2012; National Prison Rape Elimination Commission, 2011; Mogul et al., 2011; Amnesty International, 2005; Coolman, Glover, & Gotsch, 2005). In addition, LGBTQ people report profiling and discriminatory enforcement of prostitution-related and lewd conduct offenses; failure to respect their gender identity and expression during arrest processing, searches, and placement in police custody; sexual harassment and assault by law enforcement officers; and denial of assistance or police protection (Movement Advancement Project, 2016; Mogul et al., 2011; Amnesty International, 2005). Moreover, because they experience disproportionate rates of poverty, LGBTQ youth and adults are disproportionately affected by policing practices targeting homeless people, public housing residents, and low-income communities (Quintana, Rosenthal, & Krehely, 2011; Queers for Economic Justice, 2010).

Police interactions with LGBTQ people thus represent critical sites of regulation of gender- and sexually nonconforming bodies, in which borders of the gender binary and normative sexualities are literally enforced through police questioning, search, and detention practices. Until recently, very few departments offered guidance or oversight to police officers with respect to interactions with LGBTQ people.

Use of Force Against Pregnant Women

There is currently no official data on the prevalence of use of force against pregnant women. However, use of TASERS against pregnant women has been the subject of several high-profile cases and has been critiqued by Amnesty International (2008). Recent media reports document a number of instances of use of excessive force against pregnant women, in some cases resulting in miscarriage or harm to mothers and their babies (Ritchie, forthcoming; Crenshaw & Ritchie,

2015). Other areas of concern include rear handcuffing, police takedown tactics, and use of physical force to the abdomen.

Children of Parents Taken Into Police Custody

According to Nell Bernstein (2005, p. 3), nationwide “the majority of police departments have no written protocol delineating officers’ responsibility to the children of arrested parents, and those protocols that do exist vary widely in their wording and their implementation.” A study commissioned by the California state legislature found that in 80% of cases, parents arrested who are sole caretakers of the children left behind are women, generally arrested for either a drug -or economic-related crime (Nieto, 2002). Given disproportionate rates of arrest and incarceration for women of color, the absence of policy in this arena has a disproportionate impact on mothers and children of color.

As early as 1994, the American Bar Association’s Center on Children and the Law found that while the numbers of arrests of mothers was increasing, law enforcement agencies provided no consistent training or policy about what to do with children when a parent is arrested (American Bar Association Center on Children and the Law, 1994). A 2002 report similarly found that two-thirds of responding California agencies did not have a written policy providing guidance to officers regarding what to do with a child upon arrest of their caretaker, and only 13% required officers to inquire as to whether an arrestee has dependent children, even when children are present at the scene of the arrest (Nieto, 2002). Almost a decade later, a 2010 Michigan study found that close to 60% of departments surveyed had no policy in place relating to minor children of an arrestee (Neville, 2009). As a result, “[t]he way children are handled after a parent is arrested varies from ignoring them, leaving them with a neighbor, [and] leaving them alone with the promise that someone will be back from the store shortly” (Bernstein, 2005, p. 13). Policies that do exist vary widely in how they define covered “minors,” in some cases explicitly allowing officers to leave children as young as 10 alone indefinitely (Bernstein, 2005, p. 16).

The absence of policies has racially disparate impacts. A Minnesota study found that “in some counties, large numbers of African American children were placed in out of home care” when their parents were arrested on charges unrelated to child abuse and neglect, prompting legislation requiring law enforcement agencies to work with parents who are arrested to identify kinship care for children to avoid the need for out-of-home placement (Miller & Esenstad, 2015).

METHODOLOGY

A 10-question survey was developed and disseminated to law enforcement agencies inquiring about policies concerning racial and other forms of profiling, the use of condoms as evidence of intent to engage in prostitution-related offenses, police sexual misconduct, interactions with LGBTQ people, use of force against pregnant women, and policies governing the handling of children when their primary caregiver is arrested. The survey questions are reproduced in Appendix 1. Survey respondents were also asked to submit relevant written policies where available.

The survey was distributed to agencies participating in a meeting on gender bias in policing, hosted by the Police Executive Research Forum, as well as to partners of the Center for Policing

Equity and the Center on Race Crime and Justice at John Jay College. Eight departments submitted complete responses to the survey. Responding agencies were diverse in size, location, and populations served and included one campus-based law enforcement agency. However, survey respondents did not include any departments from the western region of the country and were made up primarily of mid-sized departments (Table 1).⁴

In light of the low number of responses despite repeat outreach efforts, the data reported by agencies were supplemented by an Internet search of publicly available information from police department websites. This search resulted in the inclusion of relevant policies from an additional 28 departments (Table 2).⁵ Examination of policies available online included a review of the table of contents of policy manuals for relevant provisions as well as electronic searches for relevant keywords including “profiling,” “bias,” “gender,” “sexual,” “rape,” “pregnant,” “condom,” “lesbian,” “transgender,” and “child.” In total, 36 survey responses and departmental policies were reviewed (Figure 2).

For the question concerning whether a department has a policy explicitly prohibiting sexual misconduct against members of the public, affirmative responses given by survey respondents were retained even if the policy provided only referenced sexual misconduct among employees.⁶ Where departmental policies were collected from the Internet, an affirmative response to this question was only recorded where the policy explicitly referenced on-duty sexual conduct with members of the public.

TABLE 1
Survey Respondents

<i>City</i>	<i>Department Size (Full-Time Sworn Personnel)^a</i>	<i>Population Served^b</i>	<i>Region</i>	<i>Notes</i>
Austin, Texas	2,300 ^c	912,791	Southwest	State capital
Boston, MA	2,121	665,884	Northeast	State capital, 19th largest department in the United States
Prince George's County, MD	1,639	904,430	Mid-Atlantic	Second largest county in Maryland, 27th largest department in the United States
Montgomery County, MD	1,121	1,030,447	Mid-Atlantic	Largest county in Maryland, 40th largest department in the United States
Richmond, VA	750 ^d	217,853	Mid-Atlantic	State capital
Chattanooga, TN	n/a	173,778	Southeast	
University of Wisconsin- Madison, WI	n/a	43,193 ^e	Midwest	University police department
Scottsdale, AZ	n/a	230,512	Southwest	Suburban police department

Note. ^aUnless otherwise noted, figures in this column are drawn from Brian A. Reaves, *Local Police Departments, 2013: Personnel, Policies, and Practices*, Office of Justice Programs, U.S. Department of Justice, NCJ 248677, Appendix Table 2 (May 2015).

^bFigures in this column are drawn from the American Community Survey, U.S. Census (2014).

^cAustin Police Department website: <http://www.austintexas.gov/department/police>.

^dCity of Richmond Police Department website FAQ: <http://www.richmondgov.com/Police/Faq.aspx>.

^eUniversity of Wisconsin-Madison website: <http://www.wisc.edu/about/facts/>.

TABLE 2
Departmental Policies Reviewed Online

City	Department Size (Full-Time Sworn Personnel) ^a	Population Served ^b	Region	Notes
New York City, NY	34,454	8,491,079	Northeast	Largest police department in the country
Chicago, IL	12,042	2,722,389	Midwest	2nd largest police department
Los Angeles, CA	9,920	3,928,864	West	3rd largest police department
Philadelphia, PA	6,515	1,560,297	Northeast	4th largest police department
Washington, DC	3,865	658,893	Mid-Atlantic	6th largest police department
Phoenix, AZ	2,979 ^c	1,537,058	Southwest	Top 30
Las Vegas, NV	2,743	613,599	Southwest	Top 30
Milwaukee, WI	2,294	599,642	Midwest	Top 30
San Francisco, CA	2,158	852,469	West	Top 30
Honolulu, HI	2,076		West	Top 30
Atlanta, GA	1,940	456,002	South	Top 30
Columbus, OH	1,849	835,957	Midwest	Top 30
Charlotte-Mecklenberg, NC	1,766	809,958	South	Top 30
Denver, CO	1,383	663,862	Southwest	Top 50
Seattle, WA	1,285	668,342	West	Top 50
New Orleans, LA	1,261	384,320	South	Top 50
Louisville, KY	1,220	612,780	South	Top 50
Cincinnati, OH	986	298,165	Midwest	Top 50
Albuquerque, NM	971	557,169	Southwest	Top 50
Tampa, FL	954	358,699	South	Top 50
Portland, OR	952	619,360	West	Top 50
Wichita, KS	862	388,413	Midwest	
Minneapolis, MN	840 ^d	407,207	Midwest	
Omaha, NE	821	446,599	Midwest	
Myrtle Beach, SC	275 ^e	29,992	South	
Burlington, VT	100 ^f	42,211	Northeast	
Missoula, MT	n/a	69,821	West	
Fayetteville, NC	n/a	203,948	South	

Note. ^aBrian A. Reaves, *Local Police Departments, 2013: Personnel, Policies, and Practices*, Office of Justice Programs, U.S. Department of Justice, NCJ 248677, Appendix Table 2 (May 2015).

^bAmerican Community Survey, U.S. Census.

^chttps://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/78tabledatadecpdf/table-78-state-cuts/table_78_full_time_law_enforcement_employees_arizona_by_city_2012.xls.

^d<http://www.ci.minneapolis.mn.us/police/about/index.htm>.

^e<http://www.cityofmyrtlebeach.com/police.html>.

^f<https://www.burlingtonvt.gov/Police>.

FINDINGS

All departments examined had a policy banning racial profiling. Fewer than a quarter prohibited profiling based on gender, gender identity, or sexual orientation. Although departments generally had a policy explicitly prohibiting sexual harassment and misconduct among employees, more than half had no policy explicitly prohibiting police sexual misconduct against members of the public. Similarly, a majority of the departments' policies failed to specifically address the

orientation, religion, socioeconomic status, disability, or other similar personal characteristics attributed to an individual as a member of such a group:

- Making discretionary decisions during the course of an enforcement activity (CALEA 1.2.7)
- Initiating a traffic stop, detention, or other law enforcement activity
- Targeting particular individuals or groups

Members shall not consider a person's gender identification as reasonable suspicion or prima facie evidence that the individual is, or has, engaged in a criminal act, including prostitution.¹⁰

A number of departments, like Louisville, explicitly prohibit profiling based on gender identity in the context of prostitution enforcement. Conversely, the Tampa Police Department outlines situations in which consideration of gender or age is explicitly permitted when it is an element of an offense:

Detention, interdiction, targeting, selection, or special enforcement efforts directed toward an individual based solely or partially on the race, ethnic origin, gender, age, economic status, or sexual orientation of any individual, except when gender or age is an element of a suspected offense, i.e., exposure of breasts (applicable only to females) and underage drinking (applicable only to minors).¹¹

Departmental profiling policies also differ in scope of activities covered. For instance, the University of Wisconsin-Madison police department sets forth a comprehensive ban on profiling extending beyond initial stops and detentions to decisions regarding searches, asset seizures, and forfeiture. The policy reads:

“Bias profiling” refers to any police-initiated action that relies on the race, ethnicity, national origin, religion, sexual orientation, gender, or physical ability of an individual rather than the behavior of that individual or information that leads the police to a particular individual who has been identified as being engaged in or having been engaged in criminal activity.

and:

Employees shall be strictly prohibited from engaging in bias-based profiling when conducting any law enforcement activity, to include traffic and field contacts, searches, investigatory detentions, asset seizure, and forfeiture proceedings.

In summary, while all departments studied had policies prohibiting racial profiling, substantially fewer had policies addressing the full scope of racialized gender- and sexuality-based profiling experienced by women and LGBTQ people of color documented in the literature.

Condoms as Evidence

Only 11% ($n = 4$) of departments had policies addressing the use of condoms as evidence of intent to engage in prostitution-related offenses (Figure 3). In response to the survey, the

Does your agency have a policy or practice with respect to the confiscation and citation of the presence or possession of condoms as evidence of intent to engage in prostitution-related offenses?

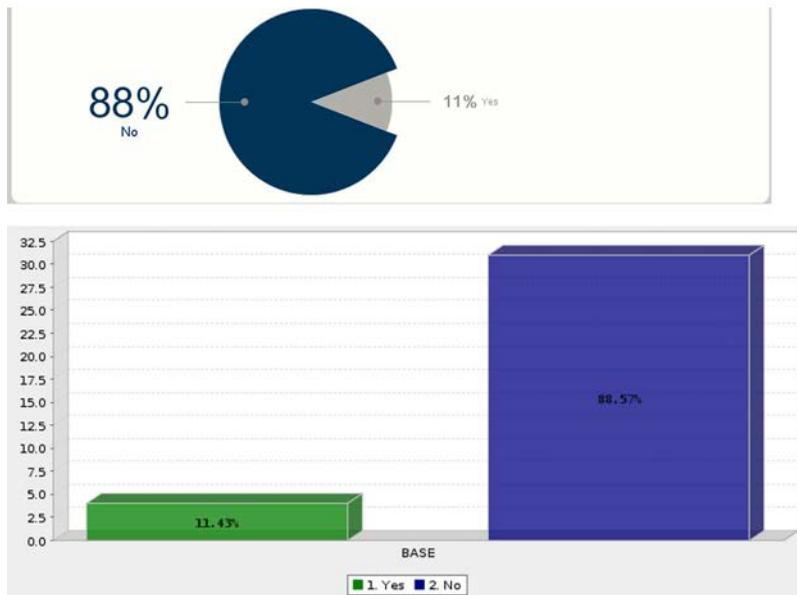


FIGURE 3 Policies with respect to use of condoms as evidence.

Montgomery County Police Department reported that it has no formal policy on the subject of the use of condoms as evidence, but stated:

There is a practice that if the presence of condoms, along with other facts that would support a charge of prostitution or prostitution-related offenses, that those condoms would be seized as evidence. The mere possession of condoms would not support a charge of prostitution or related offenses.

Years of advocacy by public health, reproductive rights, anti-trafficking, anti-violence, LGBT, civil rights, and sex workers’ rights groups, bolstered by the findings of a 2012 Human Rights Watch report, has produced legislative and policy change on this issue in select jurisdictions. In 2015, New York State lawmakers passed legislation that prohibits the introduction into evidence of condoms as evidence of certain prostitution-related offenses.¹² A year earlier, responding to pressure from a broad coalition of advocates, the NYPD promulgated a policy providing that:

Uniformed members of the service are advised that invoicing condoms as arrest evidence for some prostitution-related offenses may compromise public health by creating a disincentive for high-risk populations, especially sex workers, to carry condoms in order to engage in safer sex practices. As an organization committed to supporting public health within our broader public safety mission, the Department recognizes the importance of balancing public health with public safety considerations. Therefore, it is important for uniformed members of the service to know when to invoice condoms as safekeeping.¹³

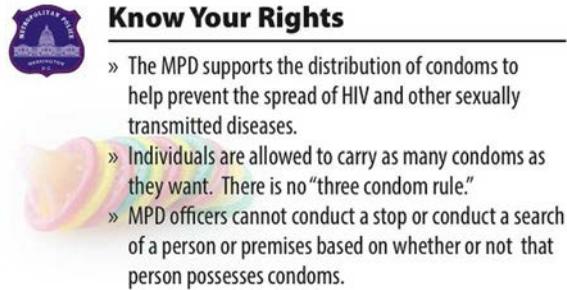


FIGURE 4 Metropolitan Police Department condom “Know Your Rights” card.

The policy instructs officers to not invoice condoms as arrest evidence of several prostitution-related offenses but allows for a broad exception for “exceptional circumstances.”¹⁴ The District of Columbia’s Metropolitan Police Department’s policy is articulated on palm cards handed out to members of the public (Figure 4). The San Francisco Police Department has stated that:

It shall be [d]epartment [p]olicy to not confiscate, photograph, or otherwise document possession of open/unopened condoms.¹⁵

In 2012, the President’s Advisory Council on AIDS (PACHA) issued a resolution urging elimination of condoms and other HIV-prevention tools as a basis for criminal prosecution or sentence enhancement.¹⁶ The President’s Task Force on 21st Century Policing urged police departments to follow the PACHA recommendation and cease using possession of condoms as evidence of vice.¹⁷

Sexual Misconduct

The majority of departments have no policies or training in place explicitly addressing this issue (Figure 5). More than half ($n = 22$) of departments studied had no policy explicitly addressing police sexual misconduct against members of the public, and just over a third ($n = 15$) of the departments had a policy. For the eight departments that participated in the survey, in many instances policies submitted in conjunction with survey responses prohibited sexual harassment and misconduct among police department employees or as a condition of employment but made no specific mention of on-duty sexual misconduct involving members of the public. As a result, the number of departments recorded as having a policy addressing police sexual misconduct against members of the public is likely a slight overrepresentation of the actual number.

Among departments whose policies explicitly address on-duty sexual misconduct against members of the public, there was considerable variation. Some, such as Richmond, Virginia, have a stand-alone policy articulating a prohibition on all on-duty sexual activity and explicitly setting forth disciplinary measures:

SEXUAL ACTIVITY ON DUTY—Engaging in sexual activity while on duty is prohibited. (Engaging in sexual activity while on duty is harmful to the Department’s reputation and a breach of the public’s trust. It is prima facie evidence of neglect of duty.)

Does your agency have a policy or training specifically addressing sexual harassment or misconduct against members of the public by law enforcement officers?

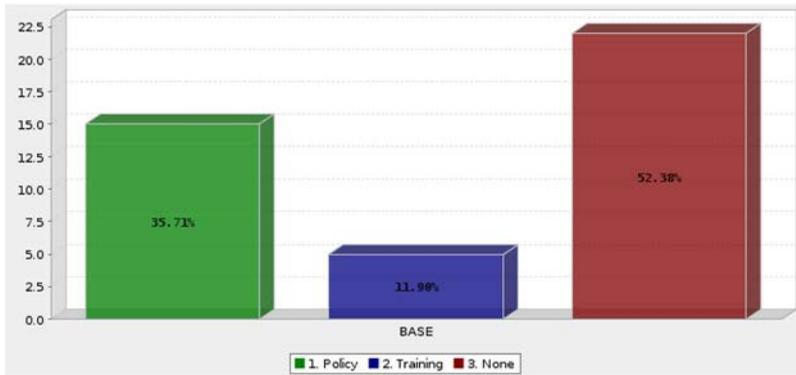


FIGURE 5 Sexual misconduct policies.

First offense is 6–10 day suspension, 2nd is 11-day–demotion, 3rd is termination.¹⁸

Other departments, such as Fayetteville, North Carolina, combine policies prohibiting sexual, racial, and religious verbal and physical harassment among employees and toward members of the public:

5.6.0 Sexual, Ethnic, Racial or Religious Harassment–No employee shall intentionally subject any citizen or fellow employee to any verbal or physical harassment of a sexual, ethnic, racial, or religious nature.¹⁹

Some, like Montgomery County, Maryland, relied on policies applying to all employees of a locality:

County employees must not subject other employees, contractors, consultants, citizens, applicants, customers, or clients to sexual harassment. An employee who is found to have engaged in sexual harassment will be subject to appropriate disciplinary action, which may include dismissal.

...

[S]exual harassment includes, but is not limited to, requests for sexual favors; the use of threats or force to obtain sexual favors; sexual propositions or innuendo; suggestive comments; sexually oriented teasing or joking; jokes about gender-specific traits; unwelcome or uninvited touching, patting, pinching, or brushing against another’s body; obscene spoken or written language; obscene gestures; and display of offensive or obscene printed or visual material.²⁰

The Montgomery County policy is unique in the degree of detail offered with respect to prohibited conduct. Conversely, some policies, like Washington, DC’s Metropolitan Police Department’s, are somewhat vague as to what is proscribed:

Officers shall ... [n]ot conduct themselves in an immoral, indecent, lewd, or disorderly manner or in manner which might be construed by an observer as immoral, indecent, lewd, or disorderly.²¹

Some policies provide for exceptions to prohibitions on on-duty sexual contact, presumably for the purposes of enforcement of sexual offenses. For instance, the policy in Louisville, Kentucky, provides:

5.1.21 SEXUAL ACTIVITY

Unless necessary in the performance of official duty and with the approval of the member's commanding officer, members are prohibited from soliciting, or engaging in, sexual conduct or activity:

- While on-duty.
- In a police vehicle under control of the department.
- In, or at, a police or governmental facility.

It also specifically articulates locations where sexual conduct is prohibited to include departmental vehicles and facilities.²²

The most comprehensive policy with respect to police sexual misconduct located was from Cleveland, Tennessee, a jurisdiction racked by sexual misconduct scandals.²³ It provides:

All employees of the Cleveland Police Department shall refrain from any behavior or communication that would likely be construed as lewd, lascivious, or otherwise sexually inappropriate.

- A) Employees shall not misuse their position with the Cleveland Police Department to coerce, persuade, force, or initiate sexual contact or penetration with anyone.
- B) While on duty, employees shall not engage in any form of sexual activity or penetration or participate in sexually motivated behaviors for the purpose of self-gratification.
- C) Employees shall not use any city facility, vehicle and property, or information system to initiate or participate in a sexual act with another or engage in voyeuristic behavior that is sexually motivated.
- D) Unless the employee can demonstrate a legitimate departmental interest in such conduct, such as a recognized policy investigation into criminal activity or employee misconduct, employees shall refrain from any communications of sexually inappropriate material, electronic or otherwise, while on duty.
- E) Officers shall not conduct any stop or investigation that is personally or sexually motivated and falsely veiled as a legal and warranted action within policy. Furthermore, all employees shall avoid inappropriate or unnecessary search, frisk, or pat-downs. (Violation of this policy is a Class A violation.)
- F) Employees should refer to Tennessee Code Annotated 39-13-501 for definitions of sexual contact and penetration.²⁴

Louisville, Kentucky, departmental policies also explicitly address compliance with Prison Rape Elimination Act (PREA) regulations in "holding facilities and police detention rooms":

Sexual harassment and/or abuse in confinement is unacceptable in any circumstances and is a dangerous threat to facility security. The LMPD [Louisville Metropolitan Police Department] shall not tolerate any form of sexual harassment and/or abuse.

All members who have contact with detainees shall receive initial training on the PREA and the department’s harassment/sexual harassment/sexual abuse and discrimination policy (refer to SOP 2.10).

If a departmental member has been identified as the perpetrator, another member of the department shall be responsible for assuming control of the detainee, including processing, interviewing, transporting, and any other law enforcement activities involving the detainee, including completing any reports and investigating the incident.

If a member has been found to have engaged in sexual harassment and/or abuse with a detainee, disciplinary action, including, but not limited to, termination may result.²⁵

Interactions With LGBTQ People

Departments varied widely with respect to existence and scope of policies governing interactions with LGBTQ people. Thirty percent of departments ($n = 21$) had a policy prohibiting discrimination based on sexual orientation and gender. Fewer explicitly addressed how to interact with LGBTQ individuals, particularly when in police custody: 16% percent ($n = 11$) had a policy mandating respect for gender identity when addressing individuals, 14% ($n = 10$) prohibited searches to assign gender, almost 9% ($n = 6$) addressed safe placement of LGBTQ detainees, and particularly transgender people, and two explicitly addressed access to hormone treatment while in police custody (Figure 6).

In addition to anti-profiling provisions specifically prohibiting inappropriate reliance on sexual orientation and gender identity, several departments, including Chicago, Illinois, and Louisville, Kentucky, explicitly provide that:

Does your agency have a policy governing interactions with lesbian, gay, bisexual and transgender (LGBT) people? Please check all that apply.

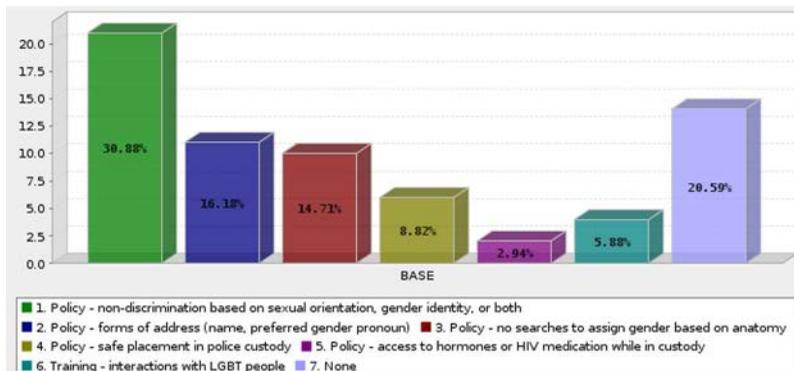


FIGURE 6 LGBT policies.

Members shall not stop, detain, frisk, or search any person in whole or in part for the purpose of determining that person's gender or in order to call attention to the person's gender expression.²⁶

The New Orleans Police Department policy also provides that officers "shall not fail to respond to a call for service or complaint on the basis of the caller or complainant's actual or perceived gender identity, gender expression, or sexual orientation."²⁷ The Boston Police Department sets forth comprehensive guidance for officers with respect to modes of address, calls for service, frisks, and searches:

Officers shall address transgender individuals by the individual's adopted name. This is true even if the individual has not received legal recognition of the adopted name. In addressing or discussing a transgender person, officers will use pronouns appropriate for that person's gender identity (e.g., she, her, hers for a prisoner who is male-to-female; he, him, his for a prisoner who is female-to-male). If officers are uncertain about which pronouns are appropriate, then officers will respectfully ask the individual.

No officer shall fail to respond to a call for service based on the gender identity or expression of the caller.

...

Additionally, a search or frisk shall not be performed for the sole purpose of determining an individual's anatomical gender, and transgender individuals shall not be subject to more invasive search or frisk procedures than non-transgender individuals.

...

When booking a transgender prisoner, the Booking Officer will include the prisoner's adopted name (i.e., name that the individual uses in self-reference) in the booking, either as the primary name or as the "also known as" (a.k.a.) name.

...

All searches of the transgender prisoner's person will be conducted by two officers of the gender requested by the transgender prisoner, whenever possible. If two officers of the preferred gender are not available, the search shall nonetheless be conducted by two available officers. If the prisoner does not specify a preference, then the search will be conducted by officers of the same gender as the transgender prisoner's gender expression.²⁸

New York City's policy mandates that if an individual was not searched by an officer of the gender requested or consistent with their gender identity, the reason for not doing so will be recorded in the command log. It also provides that individuals be held in sex-segregated police facilities according to their gender identity absent a request to the contrary by the individual or a safety concern.²⁹ With respect to confidentiality, Chicago police department policy prohibits members of the service from disclosure of "an individual's TIGN [trans, intersex, and gender nonconforming] identity to other arrestees, members of the public, or non-Department members, absent a proper law enforcement purpose."³⁰

Does your agency have a policy or training governing use of force against pregnant women?

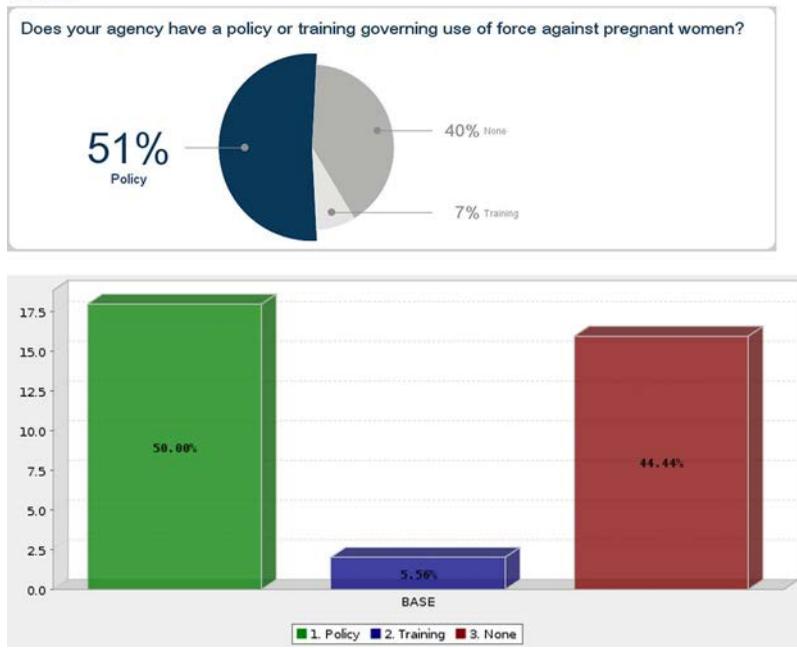


FIGURE 7 Use of force and pregnant women.

Use of Force Against Pregnant Women

Departmental use of force policies vary in the degree to which they specifically address use of force against pregnant women. Half of departments studied ($n = 18$) explicitly address use of force against pregnant women in their policies and procedures (Figure 7). Generally speaking, policies relate primarily to use of TASERs and restraints and do not address other uses of force, “takedowns,” or handcuffing.

For instance, the Boston, Massachusetts,³¹ and Scottsdale, Arizona, police departments have policies regarding handcuffing and detention of pregnant women,³² respectively, but do not address other uses of force. The Seattle, Washington, police department has a policy concerning rendering medical aid immediately after use of force against a pregnant woman and offers supervisors the option of requesting heightened investigation of such incidents but does not explicitly identify the types of force or restraint that should or should not be used against pregnant women.³³

With respect to use of TASERS and other electronic control devices (ECDs), the following policies are illustrative. Louisville, Kentucky, provides that they shall not be used:

on obviously pregnant women, elderly persons, young children, and visibly frail persons, unless an exigent circumstance exists.³⁴

Some, like Cincinnati, Ohio, offer greater specificity:

Officers should avoid using the TASER on obviously pregnant females and those individuals under the age of 7 or over the age of 70 due to the potential for these individuals to fall when incapacitated by the TASER, unless the encounter rises to the level of a deadly force situation.³⁵

Others require that officers “consider other available force options prior to deploying an ECD on potentially at risk individuals such as pregnant women; the elderly, frail, or infirm; and small children.”³⁶ Some, like the Phoenix Police Department, require that the options be articulated:

Employees will avoid using ECDs against the following subjects, unless officers can articulate other reasonable force options have been tried or were unlikely to succeed:

- * Female subjects known to be pregnant or who are visibly pregnant
- * Elderly subjects
- * Young children
- * Handcuffed prisoners³⁷

The Minneapolis, Minnesota, department policy explicitly cites adverse public reaction to use of force against pregnant women as a basis for requiring heightened justification:

Officers must consider the possible heightened risk of injury and adverse societal reaction to the use of [conducted energy devices (CEDs)] upon certain individuals. Officers must be able to articulate a correspondingly heightened justification when using a CED upon:

- Persons with known heart conditions, including pacemakers or those known to be in medical crisis
- Elderly persons or young children
- Frail persons or persons with very thin statures (i.e., may have thin chest walls)
- Women known to be pregnant³⁸

Children of Parents Taken Into Custody

Only one department of the 36 studied—San Francisco—had a policy explicitly providing guidance on handling of children of arrested parents. Ironically, some departments have detailed policies with respect to what to do with pets present when a person is arrested, but no similar instruction with respect to children. For instance, the Milwaukee Police Department provides that:

ARRESTED PERSONS

When a person is arrested while in possession of an animal, arrangements shall be made to release such animal to a relative of the prisoner or other responsible person.³⁹

DISCUSSION AND CONCLUSION

The results of this review reveal that relatively few departmental policies specifically address unique forms of police regulation of women's bodies, movements, reproductive and sexual autonomy and integrity, gender identities, sexualities, or rights as parents. Findings from the current research reveal that a minority of police departments examined have policies in place specifically addressing the ways in which women's bodies are regulated by police in a number of contexts identified by the literature as sites of policing of women's bodies. In addition, the scope and specificity of such policies vary widely, further contributing to divergence in police practices across the country. The research was constrained by a number of factors that limit our ability to extrapolate from the results, including small sample size, low number of survey responses, and uneven distribution of departments by both size and geography. Nevertheless, the results strongly suggest a need for action at the federal, state, and local levels to address the ways in which law enforcement agencies are participating in the policing and regulation of women's bodies and reproduction.

A number of jurisdictions have adopted promising policies aimed explicitly at addressing women's experiences of policing, some of which have been endorsed as best practices by the President's Task Force on 21st Century Policing, as well as by advocacy groups such as the NAACP and the Police Executive Research Forum. Departments and advocates alike can draw on these models to advance protections for women in police interactions in their jurisdictions and to promote action across the country.

For instance, both policy makers and advocates have advanced more comprehensive profiling bans at the national level. In 2014 the U.S. Department of Justice issued guidance to federal law enforcement agencies expanding the federal ban on racial profiling to include a prohibition against use of gender, gender identity, and sexual orientation "to any degree, except that officers may rely on the listed characteristics in a specific suspect description."⁴⁰ Sponsors of the federal End Racial Profiling Act of 2015 followed suit shortly thereafter, expanding the proposed legislation's ban on racial profiling to include profiling based on gender, gender identity, and sexual orientation.⁴¹ The U.S. Department of Justice has also included provisions specific to profiling based on sexual orientation and gender identity in consent decrees entered into with localities under investigation for engaging in a pattern and practice of constitutional violations. For instance, the New Orleans Police Department Consent Decree provides:

The [New Orleans Police Department] agrees that officers shall not construe sexual orientation, gender identity, or gender expression as reasonable suspicion or probable cause that an individual is or has engaged in any crime and that officers shall not request identification from or otherwise initiate contact solely based on sexual orientation or gender identity or expression.⁴²

The Final Report of the President's Task Force on 21st Century Policing, issued in May of 2015, recommends that law enforcement agencies:

adopt and enforce policies prohibiting profiling and discrimination based on race, ethnicity, national origin, religion, age, gender, gender identity/expression, sexual orientation, immigration status, disability, housing status, occupation, or language fluency.⁴³

Finally, the NAACP advocates that local jurisdictions adopt model legislation, based on legislation enacted in New York City in 2013, which prohibits:

any law enforcement action against an individual by a law enforcement officer that relies, to any degree, on actual or perceived race, color, ethnicity, religion, national origin, gender identity or expression, sexual orientation, immigration or citizenship status, language, disability (including HIV status), housing status, occupation, or socioeconomic status in initiating law enforcement action against an individual, rather than any law enforcement action that relies on a specific suspect description-based notification, an individual's behavior or other trustworthy information or circumstances, relevant to the locality and timeframe, that links a person or persons to suspected unlawful activity (NAACP, 2014).

The model language offered by the President's Task Force, Department of Justice consent decree provisions, and the NAACP can and should serve as the basis for law enforcement agencies across the country to create, build on, and expand existing policies in order to limit policing of women's bodies, appearance, movements, and behaviors. Such policies should address the broadest possible scope of activity, prohibiting consideration of actual *or perceived* identities *to any degree* except when linked to a specific and trustworthy description or information, in an enumerated set of contexts ranging from initiating contact to searches, arrest, and asset forfeiture. Policy makers should also follow the lead of departments including specific examples of gender-based profiling, such as profiling in the context of prostitution enforcement. Policies must be not only broad in scope but effectively enforced through careful and regular review of data and documentation relating to law enforcement activities to identify patterns of discriminatory or disparate treatment.

In addition, so long as tools of racially gendered profiling, such as citation of possession or presence of condoms as evidence, alone, or in combination with other factors, to establish intent to engage in any prostitution-related offenses are permitted, women's sexualities and reproductive autonomy will continue to be regulated through police stops, harassment, and arrest, and individuals will be deterred and punished for taking steps to protect themselves and public health. Departments can and should follow the lead of jurisdictions that have taken action to put a stop to this practice in the interests of public health and reproductive autonomy and expand prohibitions on confiscation or citation of condoms as evidence to all prostitution-related offenses, without exception.

Police sexual misconduct, while not justified by any lawful purpose, is by no means an isolated phenomenon and is facilitated by the authority vested in law enforcement officers, thereby requiring a policy response by law enforcement agencies. In 2011, the International Association of Chiefs of Police issued guidance to law enforcement agencies with respect to sexual misconduct by police. The President's Task Force on 21st Century Policing recommended that the U.S. Department of Justice:

promote and disseminate guidance to federal, state, and local law enforcement agencies on documenting, preventing, and addressing sexual harassment and misconduct by local law enforcement agents, consistent with the recommendations of the International Association of Chiefs of Police.⁴⁴

The task force also recommended data collection at the federal level in the context of both police contacts and sexual victimization.⁴⁵

Until the U.S. Department of Justice issues the guidance recommended by the President's Task Force, local departments should nevertheless take action toward putting an end to police regulation of women's bodies through sexual violence by enacting and effectively enforcing policies consistent with the International Association of Chiefs of Police guidance. In addition, departments should affirmatively familiarize themselves with and effectively implement PREA regulations in places of police detention and conduct to audits of compliance by federally appointed monitors.

In the absence of policies prohibiting discrimination based on sexual orientation and gender identity and clear guidance governing the determination of gender for the purposes of arrest processing, LGBT people in the custody of local law enforcement, including in police lock-ups, all too often experience disrespectful treatment; homophobic and transphobic discrimination and abuse; unlawful, unnecessary, and humiliating searches to assign gender; and unsafe placement (Movement Advancement Project, 2016; Mogul et al., 2011; Amnesty International, 2005). Accordingly, the President's Task Force on 21st Century Policing recommends that departments "establish search and seizure procedures related to LGBTQ and transgender populations," noting that:

gender- and sexuality-specific forms of racial profiling and discriminatory policing [include] ... [f]ailure to respect individuals' gender identity and expression when addressing members of the public and during arrest processing, searches, and placement in police custody. Invasive searches should never be used for the sole purpose of determining gender identity, and an individual's gender identity should be respected in lock-ups and holding cells to the extent that the facility allows for gender segregation.⁴⁶

In order to address the multiple ways in which women's gender, gender identity, and sexualities are policed by law enforcement, departmental policies must also provide guidance on non-discrimination in initiation of law enforcement activities and responses to requests for service, forms of address, search and detention practices consistent with gender identity, individual autonomy and safety, prohibitions on searches to assign gender based on anatomical features or to for purposes of discrimination or humiliation, confidentiality, and access to gender-affirming medical treatment while in police custody.

In 2006, the United Nations Human Rights Committee issued a strong recommendation against the use of ECDs against pregnant women, children, and other "vulnerable people" in the context of its review of the U.S. government's compliance with its obligations under the International Convention for Civil and Political Rights.⁴⁷ The Police Executive Research Forum (2009) has questioned the utility of using such devices on pregnant women, among others. Accordingly, in light of the heightened risks to women's bodies and reproductive capacities, departments should adopt explicit guidance to officers prohibiting use of force against people known to be pregnant.

They must also provide clear and specific guidance, informed by consultation with currently and formerly incarcerated parents, with respect to appropriate treatment of children of arrested parents, prioritizing kinship and community care over system involvement. The 2001 study conducted by the California legislative research bureau with respect to police treatment of children of arrested parents urged that the state convene an advisory group on children of

arrested parents; “require local law enforcement, child welfare services, and community-based organizations to collaboratively develop protocols for responding to children of arrestees”; and promote and coordinate local efforts at the state level in order to ensure consistent and effective strategies. It also recommended that the Commission on Peace Officer Standards and Training create training materials pertinent to the arrest of a custodial parent (Nieto, 2002). This blueprint for action could serve as a model for action in other jurisdictions.

Finally, additional research is needed to further document women’s experiences of policing—recognizing that disproportionately this will involve interactions with women of color. Particular attention is needed to documentation of the prevalence, spectrum, and severity of gender- and sexuality-based racial profiling, police sexual misconduct, and use of force against pregnant people; model policies and best practices to address these issues; create effective incentives for adoption and enforcement of best practices; devise strategies for effective implementation and enforcement of policies prohibiting gender-and sexuality-based profiling and police sexual misconduct; and regulation of police interactions with LGBTQ people, pregnant people, and parents (Ritchie, 2015).

ACKNOWLEDGMENTS

The authors wish to acknowledge the support of the Open Society Foundations for this research and the assistance of the Center for Policing Equity and the International Association of Chiefs of Police.

NOTES

1. Throughout this article the terms “woman” or “women” includes both transgender and non-transgender women and women of all sexual orientations.

2. Brian A. Reaves, Local Police Departments, 2013: *Personnel, Policies, and Practices*, Office of Justice Programs, U.S. Department of Justice, NCJ 248677, Appendix Table 2 (May 2015).

3. The term gender-nonconforming is used to describe individuals who may not identify as transgender but whose actual or perceived gender identity or expression is perceived to not be the same as the gender assigned at birth.

4. The term “mid-sized” is used to describe departments with more than 1,000 but fewer than 5,000 officers on the force. Brian A. Reaves, Local Police Departments, 2013: *Personnel, Policies, and Practices*, Office of Justice Programs, U.S. Department of Justice, NCJ 248677, Appendix Table 2 (May 2015).

5. Together, responding departments and departments for which policies were publicly available make up the majority of the top 30 police departments by number of officers in the country and a significant proportion of the top 50 police departments in the country. Among the top 30 police departments in the country, the following departments’ policies are not readily publicly available: Dallas, Texas; Houston, Texas; Baltimore, Maryland; Miami-Dade, Florida; Detroit, Michigan; Memphis, Tennessee; Suffolk County, New York; San Antonio, Texas; Jacksonville, Florida; Indianapolis, Indiana; and Forth Worth, Texas. One potential avenue for future research could include submitting freedom of information law requests for the policies of these departments.

6. Where survey responses were concerned, in an abundance of caution, we elected to defer to departmental interpretation of their policies on sexual misconduct rather than substitute our own based on the language of the policy.

7. Departments prohibiting profiling based on gender, sexual orientation, or both included Minneapolis, Minnesota; Chicago, Illinois; Cleveland, Ohio; Phoenix, Arizona; Las Vegas, Nevada; Honolulu, Hawaii; Atlanta, Georgia; Columbus, Ohio; Louisville, Kentucky; and Fayetteville, North Carolina.

8. Departments prohibiting profiling based on gender identity or expression included Washington, DC; Seattle, Washington; New York City, New York; Los Angeles, California; and San Francisco, California.

9. Boston Police Department Rules and Procedures. Rule 113A. Bias Free Policing Policy.

10. Louisville Metro Police Department Standard Operating Procedures. SOP 8.8. Biased Law Enforcement Practices.
11. Tampa Police Department Standard Operating Procedures 536.1. *Profiling*.
12. New York State Assembly Bill 3007B, New York State Senate Bill 2007B, signed into law by Governor Andrew Cuomo on April 13, 2015.
13. NYPD Interim Order 21, June 6, 2014.
14. *ibid*.
15. San Francisco Police Department Bulletin 15-019.
16. PACHA, Resolution on Ending Federal and State HIV-Specific Criminal Laws, Prosecutions, and Civil Commitments, available at <http://hivlawandpolicy.org/resources/resolution-ending-federal-and-state-hiv-specific-criminal-laws-prosecutions-and-civil>.
17. President's Task Force on 21st Century Policing. 2015. *Final Report of the President's Task Force on 21st Century Policing*. Recommendation 2.12. Washington, DC: Office of Community Oriented Policing Services.
18. Richmond Police Department General Order 1-1.
19. Fayetteville Police Department Written Directives and Operating Procedures, 5.6.0, Sexual, Ethnic, Racial or Religious Harassment.
20. Montgomery County Policy on Sexual Harassment, on file with author.
21. General Order 201-26, Metropolitan Police Department.
22. Louisville, Kentucky, Police Department Standard Operating Procedure 5.1.
23. Cleveland police officer accused of sexually assaulting a woman in a Gatlinburg cabin, August 7, 2015, available at <http://www.timesfreepress.com/news/breakingnews/story/2015/aug/07/cleveland-police-rocked-yet-another-sexual-allegation/318733/>.
24. Cleveland Police Department General Orders, 5-MM Sexual Misconduct.
25. Louisville, Kentucky, Police Department Standard Operating Procedure 8.30.
26. Chicago Police Department General Order G02-01-03; Louisville Police Department Standard Operating Procedure 8.47.
27. New Orleans Police Department Policy 402, available at <http://getyrrights.org/wp-content/uploads/2014/06/New-Orleans-LA.pdf>.
28. Boston Police Department, Police Commissioner's Special Order Number SO 14-024, 07/22/2014.
29. New York City Police Department Patrol Guide Provisions 208-05 and 210-08.
30. Chicago Police Department General Order G02-01-03.
31. Boston Police Department Rules and Procedures, Rule 315.
32. Scottsdale Police Department Operations Orders DO 8244.
33. Seattle Police Department Manual 8.400.
34. Louisville Police Department Standard Operating Procedure 9.1.
35. Cincinnati Police Department Procedure Manual 12.545.
36. Albuquerque Police Department Procedural Orders 2.52.
37. Phoenix Operations Order 1.5.
38. Minneapolis, MN 5-314.02 USE OF CONDUCTED ENERGY DEVICES (CED)–SUBJECT FACTORS (10/01/10).
39. Milwaukee SOP 2007-05.
40. U.S. Department of Justice, *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity*, December 2014. Unfortunately, the guidance provides for broad exceptions, including in the context of immigration enforcement and law enforcement activities relating to national security.
41. United States Congress. End Racial Profiling Act of 2015. 114th Cong. H.R. 1933. S. 1038. Washington: GPO, 2015.
42. *United States of America v. City of New Orleans*, 12 cv. 1924, Consent Decree Regarding the New Orleans Police Department at ¶186 (E.D.La July 24, 2012).
43. President's Task Force on 21st Century Policing. 2015. *Final Report of the President's Task Force on 21st Century Policing*. Recommendation 2.13. Washington, DC: Office of Community Oriented Policing Services.
44. President's Task Force on 21st Century Policing. 2015. *Final Report of the President's Task Force on 21st Century Policing*. Recommendation 2.13.3. Washington, DC: Office of Community Oriented Policing Services.

45. President's Task Force on 21st Century Policing. 2015. *Final Report of the President's Task Force on 21st Century Policing*. Recommendation 2.13.1-2. Washington, DC: Office of Community Oriented Policing Services.
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APPENDIX 1: SURVEY INSTRUMENT

Dear Law Enforcement Professional:

You are invited to participate in a survey on law enforcement policies and practices with respect to officer interactions with women and LGBT people. Please complete the survey by no later than September 30, 2015.

In May of 2015, the President's Task Force on 21st Century Policing released its final report, featuring a number of recommendations relevant to law enforcement interactions with women and LGBT people, including recommendations that departments develop, adopt, implement, and enforce policies with respect to racial and other forms of profiling, sexual harassment, and assault by law enforcement agents and interactions with lesbian, gay, bisexual, and transgender people. In 2011, the International Association of Chiefs of Police (IACP) issued an executive guidance for addressing sexual misconduct by law enforcement agents.

With a view to supporting law enforcement agencies in implementing the recommendations of the President’s Task Force, this survey, distributed in cooperation with the Center for Policing Equity and the Center for Race, Crime, and Justice at John Jay College, will gather information from law enforcement agencies across the country about their current policies and practices governing:

- Racial and other forms of profiling
- Sexual harassment and assault of members of the public by law enforcement officers
- Compliance with PREA standards for police lock-ups
- Interactions with lesbian, gay, bisexual, and transgender (LGBT) people
- Determination of gender for purposes of arrest processing, search, and detention
- Ensuring safety of LGBT people, and particularly transgender people, in police custody
- Use of possession or presence of condoms as evidence of intent to engage in prostitution-related offenses
- Use of force against pregnant women
- Safekeeping of children who are present when a parent is taken into custody

It will take approximately 30 minutes to complete the questionnaire. As you respond to the questions, you will be asked to upload any relevant policies or training materials.

Survey results will be used to generate guidance, model policies, and best practices that will be disseminated to law enforcement agencies.

If you have questions at any time about the survey or the procedures, please contact andrea.jritchie@gmail.com.

Thank you very much for taking the time to complete this survey. Please start with the survey now by clicking on the Continue button below.

1. Contact Information:

Name of Law Enforcement Agency: *

Location *

Please enter the contact information for the person completing this survey below:

First Name * :

Last Name * :

Address 1 * :

Address 2 :

City * :

State * :

Zip * :

Phone * :

Email Address * :

2. Does your agency have a policy prohibiting racial and other forms of police profiling? *

Yes

No

If your agency has a policy prohibiting racial and other forms of profiling, please upload it here:

3. Does your agency have a policy or training specifically addressing sexual harassment or misconduct against members of the public by law enforcement officers? *

Policy

Training

None

If your agency has a POLICY on sexual harassment and misconduct, please upload here:

If your agency has TRAINING materials on sexual harassment and misconduct, please upload here:

4. What measures is your agency taking to comply with federal regulations for police lock-ups under the Prison Rape Elimination Act?

If your agency has a policy, plan, or protocol for ensuring compliance with the federal regulations for police lock-ups under the Prison Rape Elimination Act, please upload it here:

5. Has your agency been audited for compliance with the federal regulations for police lock-ups under the Prison Rape Elimination Act (PREA)? *

Yes

No

6. If your agency has been audited for compliance with the federal regulations for police lock-ups under the Prison Rape Elimination Act, please upload it here:

7. Does your agency have a policy governing interactions with lesbian, gay, bisexual, and transgender (LGBT) people? Please check all that apply. *

Policy: Nondiscrimination based on sexual orientation, gender identity, or both

Policy: Forms of address (name, preferred gender pronoun)

Policy: No searches to assign gender based on anatomy

Policy: Safe placement in police custody

Policy: Access to hormones or HIV medication while in custody

Training: Interactions with LGBT people

None

If your agency has a POLICY specifically addressing officer interactions with LGBT people, please upload here:

If your agency has TRAINING materials specifically addressing officer interactions with LGBT people, please upload here:

8. **Does your agency have a policy or practice with respect to the confiscation and citation of the presence or possession of condoms as evidence of intent to engage in prostitution-related offenses?**

Yes

No

If yes, please describe your agency's policy or practice:

If your agency's policy or practice regarding the confiscation or citation of possession or presence of condoms as evidence of intent to engage in prostitution-related offenses is available, please upload it here:

9. **Does your agency have a policy or training governing use of force against pregnant women? ***

Policy

Training

None

If your agency has a policy governing use of force against pregnant women, please upload here:

If your agency has TRAINING MATERIALS on use of force against pregnant women, please upload here:

10. **Does your agency have a policy or training with respect to handling of children present when a parent is taken into custody? ***

Policy

Training

None

If you have a policy governing the handling of children present when a parent is taken into custody, please upload it here: