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Legal Translations: Police Harassment in San Francisco (originally published in the Bay Area Reporter, San Francisco, California)

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Q – I sometimes have police officers calling me by the wrong pronoun or harassing me because I am transgender. What rights do I have? What can I do?

A – The good news is that San Francisco is home to several organizations and agencies working to protect people from being harassed and/or abused by police officers. The bad news is that your experiences are all too common. In 2000, the National Coalition of Anti-Violence Programs reported that police and private security officers are the perpetrators in almost 50% of the hate violence claims submitted by transgender people in San Francisco (*Anti-Lesbian, Gay, Transgender, and Bisexual Violence 2000*). This percentage is especially alarming considering that the laws and policies of San Francisco explicitly forbid this kind of conduct.

What rights do I have?

San Francisco Police Officers are city employees and are therefore prohibited by city ordinance from discriminating against you based on your gender identity. In addition, SFPD internal regulations and a recently adopted resolution of the San Francisco Police Commission govern how an officer is supposed to address and treat someone who is transgender. While the effect of these laws and regulations makes harassment based on your gender-identity unlawful, they do not necessarily make it rare.

Verbal Harassment

A discriminatory officer may attempt to harass or intimidate you by purposefully referring to you by your old name or the wrong gender pronoun. This kind of conduct is most commonly associated with harassment of women in the Tenderloin and Mission neighborhoods. However, it has also happened to transgender men and women and genderqueer folks when we are pulled over for traffic violations, arrested as part of a political protest, or even when we ourselves have called the police for assistance. And because transgender men of color are targets for racial profiling, they are likely to disproportionately experience this kind of harassment.

As stated above, this kind of conduct is prohibited by San Francisco city ordinances and police department internal regulations. According to the Office of Citizen Complaints, an officer is required to address you by the pronoun most appropriate to your gender presentation. If the officer does not know which pronoun to use she or he is required to ask you which pronoun you prefer and to conform her or his conduct accordingly.

Furthermore, SFPD general orders require police officers to address you by either the name on your identification or the name you regularly use if you have not had your identification corrected to reflect your gender identity. In investigative circumstances where the officer needs to determine if you had a prior name or is attempting to clarify the name on your identification, she or he may *respectfully* ask gender and name related questions. Once those questions have been answered, however, the officer must refer to you by the name you regularly use.

Physical Harassment

“Pat-down”

Sometimes, an officer will go beyond verbal harassment. The most common form of physical harassment is a so-called “genitalia check.” If an officer is legally detaining you, she or he has some limited right to do a physical “pat-down.” (Generally, this conduct is allowed when the officer reasonably fears for personal or public safety.) The officer, however, has no right to grab your groin in an attempt to determine what kind of genitalia you have. Any officer who does this is not only violating San Francisco rules and statutes, but also your Federal Constitutional Rights.

Strip Search

The next level of physical harassment is often the deliberate use of a strip search to degrade and humiliate the subject. If you are in police custody after an arrest, the police do have a limited right to conduct a strip search. Generally, this can be done only if the officer is searching for a weapon or contraband and you have been arrested on a felony charge. And even then, the search should be done in private by an officer whose gender presentation matches yours. If this would be uncomfortable for you, you should request that the search be done by someone of the other gender or a medical professional.

What can I do?

Confrontation on the Street

Once you know your rights, it would be great if you were able to assert them every time you come in contact with a police officer. However, many people are uncomfortable confronting cops. Police can be intimidating and abuse can begin and end before you even have a chance to think. Sometimes, it is only after a confrontation that you realize that what was done to you was unlawful. Because of this, confronting a discriminatory officer may not always be possible.

Furthermore, confronting an officer on the street is not always the best idea. It is not uncommon for low-level harassment or violence to escalate when you challenge an officer’s authority. If you are alone with an officer or if you are outnumbered, you should consider the very real possibility that standing up to her or him could lead to physical violence. While this possibility should not keep you from asserting your rights, it should encourage you to consider when, where, and how to assert them.

You’re not powerless, however. One thing you can do is take notice of the facts of the harassment. Concentrate on when the abuse starts and when it stops. Try to remember what you or your companion(s) were doing during the incident. And most importantly remember

everything you can about the officer or officers involved. Even if you are unable to get their name or shield number, try to remember what they looked like so that you can describe them later.

Filing an official complaint

If you are harassed or abused by an officer, it is possible to file a complaint with the San Francisco Office of Citizen Complaint (OCC). The goal behind this process is to create citizen oversight of the police department. It also serves another purpose. It allows you to tell someone your story, make the abusive officer answer some questions from the city, and make a record of the complaint. If this type of process will help you come to peace with the harassment or violence, you should strongly consider this route. However, if your goal is either serious punishment for the officer or monetary compensation for you, you might be frustrated and disappointed by the outcome. The OCC can be reached at (415) 557-7711.

Making a private record and getting information on legal representation

The Bay Area PoliceWatch project of the Ella Baker Center for Human Rights operates a police abuse documentation and lawyer referral service. By calling them at (415) 951-4844 x24, you can create a record of the abuse you suffered and get basic information about your rights and remedies. The *confidential* information you provide to PoliceWatch will be useful in compiling statistics and making future policy recommendations to the city and police commission. Your testimony may also be helpful for someone else's civil or criminal defense case involving the same officer(s). When warranted, PoliceWatch will refer your case to experienced police misconduct attorneys. However, because of the difficulties of filing a civil suit in police harassment and abuse cases, PoliceWatch is unable to refer all complaints to attorneys.

Creating a Community Response

TransAction is a grass-roots community group formed to expose and end police violence against the transgender community. They can provide support to survivors of police violence and advice on how to organize the community to fight back. TransAction, a program jointly sponsored by the Ella Baker Center and Community United Against Violence, can be reached at (415) 777-5500 x315. You can also use this same phone number to file an incident report with, and get support from, the Hate Violence project of CUAV. Your report will help CUAV track incidents of bias-motivated violence and will contribute to statistics like the one cited at the beginning of this column.

You may be getting the idea that there is no one step you can take to protect yourself from police harassment. I'd agree with you. However, the above agencies and organizations work toward that goal on a daily basis. By working with one or more of them, you will be taking an important step toward promoting and enhancing your right to live free of police harassment and abuse.