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DISCLAIMER
The information contained in this guide is not legal advice. If you have questions or concerns about a specific situation, you should speak to an attorney in your area. The information contained in this guide is as up-to-date and accurate as possible at the time of publication, but laws and circumstances are constantly changing. If you have questions specific to your situation, contact Transgender Law Center’s Legal Information Helpdesk at www.transgenderlawcenter.org/legalinfo.

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UNDERSTAND YOUR REALITY:
NOTES ABOUT THIS GUIDE

This guide is intended to briefly outline your rights when it comes to interacting with law enforcement officers and share some examples of the reality that law enforcement officers often disregard peoples’ rights. This guide is designed for transgender, nonbinary, and gender-nonconforming people, but a lot of the information will be helpful to others. This guide is not intended to replace your life experience, common sense, or ability to determine what makes you safest in any particular situation. You know best how to keep yourself safe, so trust your instincts. If you know you will have to interact with law enforcement, it is best to have trusted friends and family accompany you or be prepared to provide you support.

We keep us safe.

Throughout this guide we use the terms ‘law enforcement’ and ‘law enforcement officer’ as general terms that include but are not limited to city and state police officers as well as federal agents. This includes local and state police, Federal Bureau of Investigation (FBI) agents, Immigration and Customs Enforcement (ICE) agents, Customs and Border Protection (CBP) agents, Department of Homeland Security (DHS) agents, investigators from a prosecutor’s office, and most other government employees tasked with enforcing laws. Generally, your rights remain the same regardless of the law enforcement entities you are interacting with.

CAUTION!

Non-citizens with valid immigration documents are required by law to show them to law enforcement officers who enforce immigration laws (ICE & CBP). ICE and CBP have greater authority to stop and question people they believe are non-citizens. Regardless of status, never give false immigration documents to law enforcement officers. If you have concerns, you should speak to an experienced immigration attorney.

The mechanisms for enforcing your rights when law enforcement has disregarded them can often be complex and inaccessible. Even when complaints are made, the outcome (if any) is rarely adequate. When law enforcement officers are responsible for holding other law enforcement officers accountable, the results can be unsatisfying to the people and communities who have been wronged. If you are interested in filing a complaint against a law enforcement officer, Transgender Law Center has created a guide—Reporting Law Enforcement Abuse: A Guide for Transgender People.
BE PREPARED FOR AN INTERACTION

Even if you have no intention of interacting with law enforcement, an encounter may be unavoidable. There are many ways that law enforcement insert themselves into our lives. Law enforcement officers regularly target and harass transgender people as well as Black, brown, poor, immigrant, disabled, and/or queer people. Transgender people tend to be active in our communities and are more likely to organize and attend protests, which may put us in close contact with law enforcement. Transgender people often socialize in public spaces and law enforcement often heavily monitor the spaces where we socialize. Additionally, transgender people, particularly Black, brown and poor women and femmes, are more likely to experience interpersonal violence which often leads to law enforcement intervention.

The reality is that Black, brown, disabled, poor, and transgender people are disproportionately surveilled by law enforcement. When a person holds more than one of these identities, their chances of encountering law enforcement increases.

While some interactions with law enforcement are completely unforeseen, you may have some time to prepare for a potential interaction. Let’s take time now to consider how an interaction might play out so you can feel more confident and prepared.

**SITUATIONS WHERE LAW ENFORCEMENT INTERACTIONS ARE LIKELY**

- Living in or visiting an over-policed neighborhood;
- Attending a protest or other large, public gathering;
- Someone has accused you, a family member, or someone in your home of committing a crime;
- You wish to report a crime to law enforcement;
- You use social media with ‘public’ settings, accept ‘friend requests’ from people you do not know (social media is often monitored by law enforcement or their informants); or
- You post material on social media that may draw law enforcement attention, such as supporting ‘radical’ political views or police accountability measures, or posting pictures of weapons, drugs, money, or violence (real or pretend).

This guide is meant to familiarize you with a broad overview of your rights during an interaction with law enforcement. We hope that this information is useful to you and that this knowledge will empower you to keep you and your loved ones safe.
YOUR RIGHTS DURING AN INTERACTION & THE REALITIES

YOU HAVE THE RIGHT TO BE FREE FROM DISCRIMINATION

You have the right to be treated with respect by law enforcement officers. Most law enforcement agencies are explicitly prohibited from discriminating against people because of their sex. When a law enforcement agency receives federal funding, which most agencies do, they are required to comply with certain federal nondiscrimination policies. While few law enforcement departments have explicit nondiscrimination policies protecting transgender people, courts have consistently interpreted discrimination ‘on the basis of sex’ to include discrimination directed at transgender people.

People with disabilities also have a right to effective communication. If you are disabled, federal, state, and local law enforcement agencies must ensure you have equal access to the agency’s activities, information, and services as people without disabilities. Agencies must provide “aids and services” when needed to communicate effectively with people with disabilities—this could include a qualified sign language interpreter, screen reader compatible documents, a qualified speech-to-speech transliterator, or a number of other communication methods depending on the needs of the person.

You have the right to ask law enforcement officers to address you by the name you regularly use and by your stated pronouns. Officers should not use derogatory language toward you, needlessly yell at you, or physically restrain you without a reason. If you are searched, you have the right to request a same-gender search or ‘pat down.’

You have the right to effective communication that you can understand. Federal law enforcement agencies and law enforcement agencies that receive federal funds must take steps to ensure people with limited English proficiency (LEP) have access to the agency’s activities, information, and services. The steps an agency must take to ensure people with LEP have access to services will depend on the situation. If the interaction involves important information or potentially serious consequences, it is likely the agency should provide an interpreter and/or translate written materials.

1 A few of the laws that prohibit discrimination by federally-funded law enforcement agencies are the Police Misconduct Statute (34 U.S.C. § 12601); Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.); and the Office of Justice Programs Statute (34 U.S.C. § 10228).
REALITY

Law enforcement officers regularly misgender, deadname, harass and abuse transgender people. Transgender people are regularly stopped by law enforcement officers for no reason and subjected to disrespectful, discriminatory treatment. Law enforcement officers regularly disregard the communication and comprehension needs of LEP and disabled people. In the moment, you may not feel safe to assert your rights or you may just try to end the interaction as quickly as possible—that’s okay. You know what’s best for you and you do not need to challenge disrespectful, discriminatory treatment in the moment to deserve to be treated with dignity.

In general, whether you want to make a complaint or not, it is important to keep track of as many facts as possible during a law enforcement interaction. Important facts include where, when, and what discriminatory treatment happened during the interaction, as well as names and descriptions of law enforcement officers, and their badge or vehicle numbers. In general, we remember the most detail immediately after an interaction occurs. Some people like to write things down while others might prefer to make a voice memo or leave themselves a voicemail with the information—however you keep track of things it is best to do it as soon as possible after an interaction. More information about how to record information is below.

YOU HAVE THE RIGHT TO END THE INTERACTION

In most circumstances, you should limit interactions with law enforcement as much as possible. Though you are not required to answer law enforcement officers’ questions, officers are often angered by anything they think is a challenge to their authority. Providing limited information, such as your name and an identity document, can sometimes be the quickest way to end an interaction. Be cautious. The more you say, the more information you give an officer and the more likely it is that a law enforcement officer can twist your words and use them against you or someone you care about.

The longer you speak to an officer, the more comfortable they feel, and the less comfortable you feel. Studies show that the longer a person talks with an officer, the less likely they are to stop talking and assert their right to remain silent. Even if you know you have done nothing wrong, you are providing them information they may use against you or someone else.
REALITY

Law enforcement officers will likely approach you with either a friendly or accusatory attitude. With the friendly attitude, a law enforcement officer will start with simple questions and make it seem as though they are ‘just curious’ and you are ‘really helping them out.’ While the interaction may start out ‘friendly,’ it can quickly turn, and you may become the target of their questions. With an accusatory attitude, a law enforcement officer will attempt to get you to answer questions to ‘prove’ you haven’t done anything wrong and ‘don’t have anything to hide.’ While it may seem reasonable to try to explain yourself, any information you offer will almost certainly be twisted and used against you.

The Fifth Amendment of the United States Constitution says you do not have to implicate yourself in a crime—where the ‘right to remain silent’ comes from. The Sixth Amendment says you have a right to an attorney if arrested. You are the person who must exercise your right to remain silent and to request legal representation. Though contradictory, you must say out loud that you are ‘asserting your right to remain silent.’ It is also never too early to request a lawyer. The idea that “only guilty people ask for a lawyer” is absolutely false. People who know their rights ask for a lawyer and otherwise remain silent.

You have a right to remain silent in all situations with law enforcement. However, law enforcement officers are not obligated to tell you that until they have formally placed you under arrest and begin questioning you. Even when an officer has not told you that you have the right to remain silent, anything you say to them can be used against you or someone in your community.

REALITY

Staying silent is difficult when it feels like a law enforcement officer has all the power in the situation. If you feel compelled to answer questions, try to keep your responses as short as possible. Keep responses to five words or fewer. One tip for staying silent, and calm, is to slowly count your breath—as you breathe in, count ‘one, two, three, four’ and then another ‘one, two, three, four’ as you breathe out. Taking slow, intentional breaths can calm your nervous system and reduce feelings of stress or anxiety. It may be difficult to stay silent, but if you can do it, it’s worth it. You are fighting for yourself by remaining silent in this moment.

TIPS IF YOU ARE STOPPED

If a law enforcement officer stops you, your first question should be, “Am I free to leave?” If the officer says ‘yes,’ leave. Continue to ask this question and assert your right to stay silent and a lawyer until the law enforcement officer either says “yes, you are free to leave” or that you are under arrest.

Directly asking a law enforcement officer, “Am I free to leave?” may be difficult. Imagine some other ways you have gotten out of uncomfortable conversations: “I’m really in a hurry and don’t have time to talk right now.” “My friend is waiting for me, I need to get to them.” “I’m late for an appointment, can I please go?” Be cautious and use reasons that are true—lying to a law enforcement officer is considered a crime in some cases and could be used as a reason to stop and/or search a person. Do your best to limit conversation and end the interaction as soon as possible so that you can safely be on your way.
YOU HAVE THE RIGHT TO RECORD AN INTERACTION

You have a First Amendment right to record interactions with law enforcement while they are performing their official duties in public, but regulations related to asserting that right vary state by state. It can be important to record an interaction with law enforcement so that you have an independent record of what happened. If it feels safe to do so, it is advisable to tell a law enforcement officer that you are, or plan to, record the interaction. An officer does not have the right to delete video recordings or pictures from your phone.

To ensure only you have access to your phone, it is best to lock your phone with a passcode, not just with your fingerprints or facial recognition. A law enforcement officer cannot force you to provide your phone’s passcode. However, if you are detained or arrested, an officer may legally be able to use your fingerprint or facial recognition to unlock and search your phone.

If someone else is recording the interaction and you have already been told you may not leave, you may want to ask again, “Am I free to leave?” or say for the recording, “I have been told I am not free to leave.”

If recording causes the interaction to escalate, there are several things you can do to try and de-escalate the situation:

- Always try your best to remain calm and speak in a normal tone of voice.
- Explain that recording is about you not the officer—“I’m just taking video for my records” or “I feel safer when I’m able to record.”
- Point your camera away from the officer or at the ground but continue recording. While you may not get a good video of the situation, this may feel less confrontational and you may still have an audio recording.
- It may feel safest to stop recording altogether. If stopping recording will end the interaction, that may be the best thing to do.

REality

Recording an interaction can escalate the situation (an officer begins to yell at you, invades your personal space, threatens to arrest you, etc.). Remember that any escalation is not your fault or the fault of others recording. If you are able to end the interaction quickly, there may be no need to record.
THINGS TO CONSIDER IF AN INTERACTION GOES POORLY

Unfortunately, interactions with law enforcement often go poorly. Transgender people report disproportionately high rates of mistreatment by law enforcement officers. Common forms of mistreatment include misgendering, verbal harassment, and invasive, unnecessary questions about a person’s gender. It is common for law enforcement officers to assume transgender women are engaged in sex work or other criminalized activity. In addition, transgender people are disproportionately physically and sexually assaulted by law enforcement officers.\(^2\)

If an interaction with a law enforcement officer starts to go poorly, try to remain calm. Keeping calm, taking deep breaths, or pausing before engaging further may help you de-escalate the situation and will help you remember important details that may be useful to you. Most law enforcement officers have little or no training in de-escalation. It is often in your best interest to attempt to de-escalate the situation, if you are able. Vision Change Win has some helpful de-escalation tips in their Community Safety Toolkit, starting on page 16.

GATHER AS MUCH INFORMATION AS POSSIBLE

Interactions with law enforcement can be destabilizing, but it is important to record as much information about the interaction as quickly as possible. This information may be useful if you decide to file a formal complaint or, if possible, file a lawsuit. If you decide to file a complaint, Transgender Law Center has created a guide to assist you—Reporting Law Enforcement Abuse: A Guide for Transgender People.

Once you are in a safe place, start recording as much information about the interaction as possible. Sometimes dictating to your cell phone, leaving yourself a voicemail or writing an email to yourself is a good way to capture this information if you do not have access to paper.

SOME INFORMATION THAT COULD BE USEFUL:

- Where were you?
- Were there any businesses in view?
- How did the interaction begin?
- Who was with you?
- What did the officer/officers look like?
- What were their names (last names are often on the chest of uniforms)?
- What were their badge, identification, and/or patrol car numbers?
- What do the patches on their sleeves look like?
- What did their overall uniforms look like?
- Do you remember if there was a body camera?
- What happened that led to the interaction?
- What did their car look like?
- How did the officers treat you?
Take note of the time of day, the date, and where you are (address, street name, or closest intersection).

If you are still in the location where the interaction occurred, look around for witnesses who might be able to make a statement to support your version of events—get their names and contact information. If you are at a protest, look for a National Lawyers Guild Legal Observer (usually wearing a neon green hat). Legal Observers are trained to be your witness.

Check to see if there are any cameras in the area that may have recorded the interaction. If you are able, speak to the owners of the cameras as soon as possible—footage may only be stored for a short amount of time.

Most importantly—breathe. Try to remain calm and do what you can to keep yourself safe.

If you are injured, seek medical attention and ask your medical provider to keep detailed records. Take pictures of your injuries as soon as possible and be sure to keep any medical records. A tip for photographs—put something in the photo to measure the size of the injury, and a current newspaper or date stamp on the camera to confirm the date. If your property is damaged, be sure to take pictures or otherwise document the damage.

The more information you are able to gather, the more power you will have to file a complaint and defend yourself against false accusations law enforcement may make against you.

**IF YOU ARE NOT FREE TO LEAVE**

If you are stopped by a law enforcement officer and you ask, “Am I free to leave?” and the officer says “No” you should ask, “Am I under arrest?” If you are not under arrest, the law enforcement officer should allow you to leave. If you are being arrested, you should not attempt to argue with law enforcement officers or attempt to explain yourself. You should say, “I wish to remain silent and I want to speak to a lawyer.”

Sometimes a law enforcement officer may ask you a question like, “What do you think I stopped you for?” Do not answer this question. Remember that you do not need to answer any question. Anything you say can be used against you, even if you are trying to explain that you have done nothing wrong. Instead, just ask if you are free to leave and otherwise try to remain silent.

**REALITY**

It may be difficult or feel unsafe to ask these questions. A law enforcement officer may not let you leave, but also refuse to say whether you are under arrest. Try to remain calm and, if it feels safe, continue to ask if you are free to leave or use some of the tips provided in the ‘Right to End the Interaction’ Section: tell the officer you need to be somewhere, tell them a friend is waiting on you, etc.
TRANSGENDER PEOPLE & LAW ENFORCEMENT INTERACTIONS: RIGHTS & REALITIES

IF YOU ARE BEING DETAINED

If a law enforcement officer has a ‘reasonable suspicion’ that someone was involved in a crime, the officer can stop the person while the potential crime is investigated. If an officer has (1) stopped you, (2) said you are not free to go, and (3) you have not been accused of committing a crime or placed under arrest, you are being detained.

Law enforcement officers may be able to detain someone for a short amount of time as part of an official investigation. You should not be detained for an unreasonable amount of time, just long enough for officers to complete a brief investigation. What is a ‘reasonable’ amount of time will depend on the specific circumstances of the situation but an officer should be working diligently to confirm or eliminate whatever suspicion initiated the stop.

‘Reasonable suspicion’ is a legal term that sets the lowest level of ‘proof’ a law enforcement officer must have in order to legally stop and briefly detain someone. For an officer to have ‘reasonable suspicion’ that someone may be involved in criminal activity, they must have facts that support their suspicion—it cannot just be a hunch or a feeling.

REALITY

Law enforcement officers can almost always come up with a ‘reasonable suspicion’ to stop someone. Transgender people, particularly Black, brown, disabled, immigrant, and poor transgender people, are often viewed as potential criminals by law enforcement officers. Additionally, law enforcement officers may detain you for an unreasonable amount of time, or continue to detain you even after it is clear that you have done nothing wrong.

SEARCHES

An officer can perform a ‘pat search’ outside your clothing if they have reason to believe you might have a weapon. However, if an officer wishes to search inside your clothing or belongings, you should say, “I do not consent to be searched.” If you attempt to physically stop an officer from searching you it is likely an arrestable offense.

Again, law enforcement officers can almost always come up with a reason they believe you might have a weapon. It is also common for law enforcement officers to ask you to turn out your pockets or empty your bags. If an officer does not have any reason to believe you have a weapon, especially after a ‘pat search’, you should not have to turn out pockets. Without your consent, an officer needs more than ‘reasonable suspicion’ to look inside your bag. If possible, keep your bag on you, keep your hands out of your pockets, and continue to advise the officer that you “do not consent to be searched.”

It is not uncommon for law enforcement officers to continue to ask questions even after you say you don’t want to answer and to ask for your permission to search your person, car, house, or phone. In most cases, law enforcement cannot search these places without a warrant signed by a judge. Breathe, try to remain calm, and do not give in to the pressure. If you can,
continue to remain silent, except to say that you wish to remain silent, you do not consent to a search, and you want to speak with a lawyer.

REALITY

An officer may end up searching you, even without your permission. While sometimes the safest thing to do is to answer an officer’s questions, it is very important to avoid giving them permission to search you, your car, or your house without a warrant signed by a judge.

IF YOU ARE UNDER ARREST

There are some questions that are fairly standard ‘booking questions’ that law enforcement officers may be allowed to ask you even if you are exercising your right to remain silent. Booking questions may include your given/government name, date of birth, medical conditions, and address. You can choose not to answer these questions by remaining silent, but you should know that not answering these questions may delay you being released.

Whatever you do, do not lie about the answers to booking questions. Giving false answers may cause you to be charged with additional crimes.

NAME & PRONOUNS

Law enforcement officers should address you with the name and pronouns you give them. You may decide to give law enforcement officers other names you have used, such as a given name or other names you have gone by, to avoid accusations that you attempted to hide information or to avoid a delay in being released. Even if you provide law enforcement officers with other names you have used, you can still insist they address you by your current name and use your stated pronouns, even if the name you regularly use is not the name on your current identity documents. Repeated, intentional misgendering and use of an incorrect name can qualify as unlawful discrimination.

Even if you are required to give your name, address, or other identifying information, you should not share your social media handles, websites, or information about organizations you belong to. Do not allow anyone to look through your phone no matter what reason is given. All that information could be used against you.
Sometimes after asking you booking questions, law enforcement officers may present you with a form asking you to waive your right to remain silent and speak with them or ask you if you want to waive your right to remain silent. Answering routine arrest processing questions is not a waiver of your right to remain silent. Reassert that you will not speak to anyone without a lawyer. Do not let the momentum of starting to talk cause you to accidentally waive your rights—continue to exercise your right to remain silent when possible.

If you do not understand everything a law enforcement officer is asking you, reassert your right to an attorney to be present for all questions, procedures, and court appearances. You have a right to speak with someone who can effectively communicate with you or to an interpreter. You should not sign any forms or answer any questions you do not understand.

Remember that while the law enforcement officers may be nice or friendly to you, their only job is to arrest you. They are not your friend or advocate and they cannot “drop” the charges against you once they have placed you under arrest. Your true advocates are you, your community, and your lawyers.

Most local law enforcement agencies receive federal funding. As a condition of receiving this funding, agencies agree to refrain from discriminating on the basis of sex or other protected characteristics. While the law is still developing, courts and federal agencies interpret “sex” to include discrimination against transgender people and that repeated, intentional misgendering and use of an incorrect name can be unlawful discrimination. Additionally, a number of states and cities have nondiscrimination laws that apply to local law enforcement agencies and prohibit discrimination against transgender people. Some law enforcement agencies, including some police departments, have internal nondiscrimination policies that prohibit discrimination against transgender people.
Jails, prisons, and detention facilities are not safe for anyone, but are especially dangerous for transgender people. Almost all law enforcement agencies place people based on their genitals or sex assigned at birth even when such a placement is inconsistent with the law or an agency’s policies. Transgender people are often placed in solitary cells or isolated places in a facility, even when that is not their desire or what might keep them safest. It is also a reality that legitimate complaints about safety are often doubted or ignored.

There are federal laws that aim to prevent mistreatment of transgender people in jails and prisons, and many states and local agencies have additional laws and policies towards this end. On the federal level, the Prison Rape Elimination Act (PREA) establishes certain standards for jails and prisons across the country to prevent sexual assault and harassment. PREA includes several provisions that specifically address transgender people in jails and prisons.

PROTECTIONS IN JAILS AND PRISONS

If you are arrested, law enforcement officers have an obligation to ensure you are detained safely. Jails, prisons, and detention facilities are required to have procedures for you to report abuse, both by other people being detained and by staff. Facilities staff are required to take your safety concerns seriously.
Surviving a negative, harmful, or violent encounter with law enforcement can be traumatic and you may need time to recover and process what happened. Your health and safety are priorities. Below are a few resources you can access if you need support. Reaching out to community, friends, and family can help break the isolation that people often feel after a traumatic event. You are important and deserve to be taken care of and supported.
IMMEDIATE SUPPORT
TRANS LIFELINE
877-565-8860
https://translifeline.org/

NATIONAL COALITION OF ANTI-VIOLENCE PROGRAMS
https://avp.org/ncavp-members/

FORGE
https://forge-forward.org/

CENTERLINK LGBT COMMUNITY CENTER DIRECTORY
https://www.lgbtcenters.org/LGBTCenters

ADDITIONAL RESOURCES
#8TOABOLITION
https://www.8toabolition.com/

AMERICAN CIVIL LIBERTIES UNION (ACLU)
https://www.aclu.org/

ACLU AFFILIATES (FIND YOUR LOCAL AFFILIATE)
https://www.aclu.org/about/affiliates

ACLU – PRISON RAPE ELIMINATION ACT (PREA) TOOLKIT: END THE ABUSE – PROTECTING LGBTI PRISONERS FROM SEXUAL ASSAULT

BLACK & PINK
https://www.blackandpink.org/

CENTER FOR CONSTITUTIONAL RIGHTS
https://ccrjustice.org/

CREATING LAW ENFORCEMENT ACCOUNTABILITY & RESPONSIBILITY (CLEAR) PROJECT
https://www.cunyclear.org/

CRITICAL RESISTANCE
http://criticalresistance.org/

MOVEMENT FOR BLACK LIVES
https://m4bl.org/

NATIONAL BAIL FUND NETWORK – DIRECTORY OF COMMUNITY BAIL FUNDS
https://www.communityjusticeexchange.org/nbfn-directory

NATIONAL LAWYERS GUILD – KNOW YOUR RIGHTS RESOURCES
https://www.nlg.org/know-your-rights/

NEIGHBORHOOD FUNDERS GROUP’S LIST OF ORGANIZATIONS ADDRESSING POLICE ACCOUNTABILITY AND RACIAL JUSTICE
https://www.nfg.org/resources/organizations-addressing-police-accountability-and-racial-justice-0

SOLITARY WATCH – SOLITARY CONFINEMENT AND THE LAW FACT SHEET

TGI JUSTICE PROJECT
http://www.tgiip.org/

UNITED STATES DEPARTMENT OF JUSTICE – PRISON RAPE ELIMINATION ACT – PRISONS AND JAIL STANDARDS