



WASHTENAW COUNTY

OFFICE OF THE PROSECUTING ATTORNEY

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POLICY DIRECTIVE 2021-13: POLICY REGARDING INTERACTIONS WITH TRANSGENDER, INTERSEX, AND GENDER NONCONFORMING PERSONS

I. Introduction and Background

It is the mission of the Washtenaw County Prosecutor's Office to protect the rights of everyone involved in the criminal legal system, and to pursue justice evenhandedly—irrespective of sex, race, gender, sexual orientation, gender identity, religion, national origin, immigration status, and socioeconomic status. That responsibility begins with the day-to-day interactions with the people we serve. Everyone in Washtenaw County deserves the confidence that their Prosecutor's Office represents them, respects them, and is working for them.

For members of our transgender, intersex, and gender-nonconforming communities, that respect begins with the simple act of addressing people in a manner consistent with their gender identity. Addressing people consistent with their gender identity is not simply a matter of basic courtesy (though it is that). When people are “misgendered”—i.e., when they are referred to in a manner that is different from their gender identity—many feel stigmatized.¹ That, in turn, can have adverse impacts on a person's mental health and sense of well-being.² And studies have repeatedly demonstrated that when people are “misgendered” by an institution, they are far less likely to trust that institution in the future. One study, for example, showed that 29% of young transgender people avoid using medical services for fear that they would be misgendered by medical professionals.³

That dynamic is fully applicable to the criminal legal system. Studies have repeatedly demonstrated that transgender, intersex, and gender-nonconforming persons “tend to underreport their victimization or crime against them due to lack of trust, lack of respect, and negative perceptions” from people in the criminal legal system.⁴ That lack of trust in the criminal legal

¹ See, e.g., Kevin A. McLemore, *Experiences with Misgendering: Identity Misclassification of Transgender Spectrum Individuals*, 14 *Self & Identity* 51 (2015).

² *Id.*

³ Scimex, *Using The Wrong Gender Pronouns Can Harm The Health of Trans Individuals* (Mar. 2, 2020), available at <https://www.scimex.org/newsfeed/using-the-wrong-gender-pronouns-can-harm-the-health-of-trans-individuals>.

⁴ DeLisa Shundra Hamilton, *Transgender and Gender Nonconforming Individuals' Perceptions of the Criminal*

system is particularly disturbing in light of an observed uptick in hate crimes that were motivated by gender identity. In 2019, the FBI's Uniform Crime Report documented a 20% increase in hate-crime incidents motivated by gender identity.⁵ Even more troubling: reporting hate crimes to the FBI is not mandatory, so these numbers are likely only a fraction of such violence.

It is therefore a top priority for the Prosecutor's Office to treat transgender, intersex, and gender-nonconforming individuals with respect and dignity in *all* interactions. This is a matter of basic decency, and of public safety. When transgender, intersex, and gender nonconforming individuals know that they will be treated with dignity and respect by law enforcement, they will feel more comfortable reporting when they have been the victim of a crime. They will be more likely to serve as a witness in a case. And that makes all of us safer.

Accordingly, as outlined below, **all employees of the Washtenaw County Prosecutor's Office are responsible for creating an atmosphere where transgender, intersex, and gender nonconforming persons are treated with respect and dignity.** Employees' responsibilities under this Policy Directive include, but are not limited to, addressing all people in conformance with their gender identity and/or gender expression.

It bears emphasis that this Policy is only the beginning. Creating a community where everyone feels safe and respected will take time and effort by actors across the criminal legal system. The Washtenaw County Prosecutor's Office, however, is fully committed to protecting the rights of everyone in our LGBTQ communities. Among other things, the Prosecutor's Office has partnered with Fair Michigan—a leading LGBTQ advocacy, education, and outreach organization—to facilitate the prosecution of crimes that target LGBTQ individuals. What is more, under Legal Guidance 2021-01⁶, the Prosecutor's Office will charge, under Michigan's Ethnic Intimidation Law, qualifying crimes that are motivated by an individual's sexual orientation and gender identity. Ensuring that all members of the Washtenaw County community feel respected by the Prosecutor's Office will only help facilitate these efforts.

The Prosecutor's Office would like to thank Fair Michigan for its guidance and assistance on this Policy Directive. This Policy Directive mirrors those that are already in place in Wayne and Ingham Counties, and those policies were used as a template in the creation of this Policy.

II. Policy Directive

Justice System at 5 (2019), available at

<https://scholarworks.waldenu.edu/cgi/viewcontent.cgi?article=8288&context=dissertations>.

⁵ Dan Avery, *Anti-transgender hate crimes soared 20 percent in 2019*, NBC News (November 17, 2020), available at <https://www.nbcnews.com/feature/nbc-out/anti-transgender-hate-crimes-soared-20-percent-2019-n1248011>

⁶ See Washtenaw County Prosecutor's Office, *Legal Guidance 2021-01: Hate Crimes Based on Sexual Orientation/Gender Identity*, available at <https://www.washtenaw.org/DocumentCenter/View/19590/Legal-Guidance-Hate-Crimes-Based-on-Sexual-OrientationGender-Identity->.

1. **All Employees of the Prosecutor’s Office Will Treat Transgender, Intersex, and Gender Nonconforming Persons With Dignity and Respect:** As detailed below, all employees of the Washtenaw County Prosecutor’s Office will exhibit professionalism and courtesy during interactions with each other and the community, including transgender, intersex, or gender nonconforming individuals.

For purposes of this policy, “employees” includes anyone employed by, or acting on behalf of, the Washtenaw County Prosecutor’s Office, including but not limited to (a) the elected Prosecuting Attorney, (b) the Chief Assistant Prosecuting Attorney, (c) First Assistant Prosecuting Attorneys, (d) Assistant Prosecuting Attorneys, (e) Victim Advocates, (f) Legal Assistants, (g) Administrative Assistants, (h) the office manager, (i) investigators, (j) interns, and (k) anyone who is acting on behalf of the Washtenaw County Prosecutor’s Office pursuant to a volunteer agreement.

2. **Definitions:** The following definitions are applicable to this Policy Directive, and should be used and relied upon in future interactions with transgender, intersex, and gender nonconforming individuals:

Designated Sex (Synonymous with “Sex Assigned at Birth”): An individual’s sex (male or female) determined at birth based upon the individual’s genitals, reproductive organs and/or chromosomes, and designated on the individual’s birth certificate.

Gender Identity: An individual’s innate, deeply felt psychological identification as being a man or a woman, which may or may not correspond to the sex assigned to the individual at birth (as listed on the individual’s birth certificate). Everyone has a gender identity.

Gender Expression: An individual’s public manifestation of being male or female through external characteristics and behaviors, such as clothing, haircut, body characteristics, voice, and speech patterns. “Gender expression” is determined by using stereotypical notions of what it means to appear as a man, a woman, masculine and feminine. Sometimes transgender people seek to make their gender expression match their gender identity, rather than matching their sex assigned at birth.

Gender Nonconforming: A description meaning that an individual’s gender expression is different from the stereotyped expectations of how the individual should look or act based upon the individual’s sex assigned at birth.

Intersex: A general term used to describe a variety of conditions in which a person is born with a variation in sex characteristics, including chromosomes, reproductive anatomy, and/or genitals, and therefore cannot be distinctly identified as male or female. For example, a person may be born with genitalia that appear female, but with internal anatomy that is predominantly male. Being intersex is different from being transgender, the term “intersex” is not synonymous with the term “transgender.”

Sex Assigned at Birth (Synonymous with “Designated Sex”): An individual’s sex (male or female) determined at birth based upon the individual’s genitals, reproductive organs and/or chromosomes, and designated on the individual’s birth certificate.

Sex Reassignment Surgery (SRS): The surgical procedures used to medically assist an individual’s transitioning from one sex to another. A person can be transgender and not have SRS. Not all transgender people choose to or can afford to have SRS. “SRS” is a preferred term as compared with the term “sex change operation”.

Transgender (often referred to as “Trans”): An umbrella term for people whose gender identity differs from their sex assigned at birth. The term includes transsexuals, cross-dressers and many gender nonconforming individuals (not everyone whose appearance or behavior is gender nonconforming will identify as transgender).

3. **Applicability:** This Policy applies to all individuals with whom the Prosecutor’s Office may come into contact, including (but not limited to) victims; witnesses; defendants; attorneys; family members of a victim, defendant, or witness; job applicant; or members of the public.
4. **Verbal Communication:** Employees will treat transgender, intersex, and gender nonconforming individuals in a manner consistent with the individual’s gender identity, which may be different from the sex that the individual was assigned at birth or the sex that is listed on their official government-issued identification.
5. **Determining an Individual’s Gender Identity:** Employees may make an initial assumption about an individual’s gender identity based upon the individual’s general appearance, including clothing, body characteristics, behavior, voice, and hairstyle. Regardless of the individual’s appearance, however, employees should use pronouns that match the individual’s gender identity (e.g. “she” and “her” for an individual whose gender identity is female; “he” and “him” for an individual whose gender identity is male; “they” and “them” for an individual whose gender identity is nonbinary). If an individual asks an employee to use different pronouns when referring to the individual, the employee will use the pronouns requested by the individual.

When requested, employees should address transgender, intersex, and gender nonconforming individuals by their chosen name rather than the name which is on their government-issued identification.

Questions related to preferred pronouns should be asked in a respectful manner. If an individual does not want to discuss their gender identity with an employee, the employee will be respectful of the individual’s preference not to discuss their gender identity.

6. **Discriminatory References:** Employees shall not refer to any person in a derogatory manner because of their gender identity or gender expression. Any employee who refers to a person

in a derogatory manner because of their gender identity or gender expression may be subject to discipline.

- 7. Gender Classification on Departmental Documents:** Employees entering information into a Washtenaw County Prosecutor's Office database regarding a transgender, intersex, or gender nonconforming victim, witness, suspect, defendant, reporting party, or any other individual will classify the individual's sex and name as listed on their official government-issued identification. Any name used by the individual other than what is listed on his or her official government issued identification card (e.g. a chosen name) will be noted in the file.

In the narrative portions of OnBase, in correspondence with individuals, and in the narrative portions of legal documents, employees will use an individual's gender identity, corresponding pronouns, and chosen name (e.g., charging decision sheets, case notes, briefs, motions). Employees should provide an explanation within the document if necessary, to avoid confusion or to assure that other employees are aware of the individual's gender identity, corresponding pronouns, and chosen name.

Because some correspondence is generated automatically from certain Washtenaw County Prosecutor's Office databases, if an employee is aware that a victim, witness, suspect, defendant, reporting party, or any other individual is transgender, intersex, or gender nonconforming and has a gender identity, corresponding pronouns, or a chosen name that is different from their official government-issued identification, the employee will inform the Victim's Advocates, so that correspondence with the individual can reflect their gender identity, corresponding pronouns, and chosen name as applicable.

- 8. Supervisor Responsibilities:** This Policy is applicable to all employees. Employees with supervisory duties will set the standard for professionalism and courtesy and provide a model for other employees to follow. Employees who are supervisors will ensure that this policy is followed by employees within the supervisor's division.

All employees will conduct themselves professionally and courteously when interacting with each other and the community and shall follow this policy when interacting with transgender, intersex, and gender nonconforming individuals.

ADDITIONAL ASSISTANCE

Washtenaw County First Assistant Prosecuting Attorney Christina Hines is the vertical prosecutor and community liaison for hate crimes and bias incidents in Washtenaw County. If you have questions about this policy or if you would like to learn more about interactions with transgender, intersex, and gender nonconforming individuals, you may contact Christina Hines at hinesc@washtenaw.org.

A handwritten signature in black ink that reads "Eli Savit". The signature is written in a cursive style with a prominent flourish at the end of the word "Savit".

Eli Savit
Prosecuting Attorney, Washtenaw County

March 31, 2021