



Testimony of M. Dru Levasseur before the Committee on Public Safety and the Committee on Civil Rights of the New York State Assembly

Chair, Richard Gottfried

April 30, 2009

Good Morning, Chairman Gottfried and members of the Assembly's Committee on Public Safety and Committee on Civil Rights. My name is M. Dru Levasseur. I am a Staff Attorney at Transgender Legal Defense & Education Fund, also known as TLDEF. TLDEF is a nonprofit law office located on the Bowery in Manhattan. TLDEF's mission is to confront prejudice against transgender people and to fight for their civil rights. It is committed to ending discrimination based on gender identity and expression and achieving equality for transgender people through public education, test-case litigation, direct legal services, community organizing, and public policy efforts.

The term "transgender" is used to describe persons whose gender identity or gender expression differs from traditional gender norms. This may include people who are living full or part-time in a gender other than the gender they were assigned at birth. In the course of our work, we hear from many members of the transgender community in New York City who have interacted with law enforcement. Our experience tells us that stop and frisk procedures present special problems for transgender people. First, transgender people are subject to more frequent stop and frisk procedures than people who are not transgender. Many transgender people report that officers construe their gender identity or gender expression as reasonable suspicion or prima facie evidence that they are engaged in criminal activity when they are not. According to a

study by Amnesty International, transgender women and LGBT youth report that they experience harassment, violence, or arrest by NYPD officers for quality of life offenses, often based on nothing more than mere presence in public spaces.<sup>1</sup> Transgender women particularly report frequent police profiling and false arrests for loitering with intent to prostitute.<sup>2</sup> These findings have been corroborated by the National Coalition of Anti-Violence Programs.<sup>3</sup>

Every person has the right to use public streets and public places as long as he or she does not engage in criminal activity. Factors such as a person's race, sex, sexual orientation, gender, gender identity, gender expression, age, dress, unusual or disheveled or impoverished appearance do not alone justify even a brief detention, a request for identification, or an order to move on, nor do general complaints from residents, merchants or others unrelated to actual criminal activity.

Many transgender people use a name or present in a gender that is different from that on their identification or in government records. Through our Name Change Project, we have helped more than 200 transgender community members with the legal name change process, but we are acutely aware of our own limited resources, and the fact that there remain many community members who have not legally changed their names or taken steps to conform the gender markers on their identification to match their gender presentation. Using one's preferred name and dressing in one's preferred gender does not constitute any crime. Transgender people who present a gender or name that differs from the gender or name on their ID or in official

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<sup>1</sup> Stonewalled: Police Abuse and Misconduct of Lesbian, Gay, Bisexual and Transgender People in the U.S. at 15-18, 36, Amnesty International, AMR 51/122/2005 (2005).

<sup>2</sup> Stonewalled: Police Abuse and Misconduct of Lesbian, Gay, Bisexual and Transgender People in the U.S. at 15-18, Amnesty International, AMR 51/122/2005 (2005).

<sup>3</sup> Stonewalled: Police Abuse and Misconduct of Lesbian, Gay, Bisexual and Transgender People in the U.S. at 15-18, 36, Amnesty International, AMR 51/122/2005 (2005).

databases typically are expressing their gender identity, which is protected under the New York City's Human Rights Law.<sup>4</sup>

Nevertheless, many transgender people report that when stopped, often merely for appearing transgender in public, officers have required “proof” of their gender and have challenged their gender identity. Additionally, many transgender people throughout report verbal and sexual harassment by NYPD officers, including the use of slurs such as “he/she,” “freak,” and “faggot.”<sup>5</sup>

Transgender people also report being subject to more invasive procedures than people who are not transgender. Officers have asked questions about intimate details of a person's anatomy with no legitimate reason for doing so. Additionally, we have heard reports that transgender individuals' breasts or genitals are inappropriately touched during pat downs and other searches, at times accompanied by obscene sexual and/or derogatory comments about the person's body, gender or sexual orientation.<sup>6</sup>

These searches are ostensibly conducted to “determine the gender” of an arrestee, but people report that they are often done merely to satisfy an officer's curiosity, or to demean and humiliate a transgender person, rather than being performed because of a reasonable suspicion that a transgender person is concealing a weapon, contraband, or evidence.<sup>7</sup> Often, transgender people have been frisked for the sole purpose of the officer determining that person's gender or to view or touch their genitals.

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<sup>4</sup> See Guidelines Regarding “Gender Identity” Discrimination, A Form of Gender Discrimination Prohibited by the New York City Human Rights Law (Title 8 of the Administrative Code of the City of New York).

<sup>5</sup> Stonewalled: Police Abuse and Misconduct of Lesbian, Gay, Bisexual and Transgender People in the U.S. at 49, Amnesty International, AMR 51/122/2005 (2005).

<sup>6</sup> Stonewalled: Police Abuse and Misconduct of Lesbian, Gay, Bisexual and Transgender People in the U.S. at 54, 56-57, Amnesty International, AMR 51/122/2005 (2005).

<sup>7</sup> Stonewalled: Police Abuse and Misconduct of Lesbian, Gay, Bisexual and Transgender People in the U.S. at 54, 56-57, Amnesty International, AMR 51/122/2005 (2005).

Transgender people must be protected from what amounts to harassment and abuse in the guise of stop and frisk. Policy changes and comprehensive training must be implemented.

Being transgender is not illegal and should not be cause for more frequent or more invasive stop and frisk procedures. When a frisk is constitutionally warranted, transgender people deserve to be protected from over-intrusive searches that violate their privacy and constitutional rights.

Other jurisdictions have added clear protections for transgender individuals with regard to stop and frisk procedures, including Seattle, the District of Columbia, San Francisco, and Toronto.<sup>8</sup> For example, the District of Columbia added specific procedural guidelines for stop and frisk situations involving transgender individuals.<sup>9</sup> These guidelines require officers to respect the gender identification expressed or presented by individuals and prohibit search or frisk for the sole purpose of determining an individual's anatomical gender.<sup>10</sup> Similarly, the San Francisco policy prohibits officers from asking questions about intimate details of a person's anatomy to determine an individual's gender without legitimate and articulable reasons for doing so.<sup>11</sup> The policy also requires officers to address transgender individuals by their chosen, preferred, and/or gender appropriate names, and to use pronouns appropriate to the gender asserted and/or expressed.<sup>12</sup>

New York City should follow the lead of these jurisdictions and ensure that transgender people are treated with the same respect and dignity as all other New Yorkers.

We appreciate the opportunity to testify before you about this issue. Thank you.

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<sup>8</sup> See King County Department of Adult and Juvenile Detention, Adult Divisions, General Policy Manual, 6.003.07; D.C. General Order 501-02. Handling Interactions with Transgender Individuals; Model Protocols for the Treatment of Transgender Persons in County Jails, National Lawyers' Guild & City & County of San Francisco Human Rights Commission, August 7, 2002; Department Bulletin 03-243 from Alex E. Fagan, Chief of Police, S.F. Police Dep't. (Dec. 22, 2003); Toronto Police Service Procedure Information Sheet – Search of Persons. Appendix “C” – Procedure 01-02 – Transgender/Transsexual Persons; D.C. Metro. Police, GO-PCA-501.02(V)(C)(1)(b)(2) (Oct. 16, 2007).

<sup>9</sup> D.C. General Order 501-02. Handling Interactions with Transgender Individuals.

<sup>10</sup> D.C. General Order 501-02. Handling Interactions with Transgender Individuals.

<sup>11</sup> Department Bulletin 03-243 from Alex E. Fagan, Chief of Police, S.F. Police Dep't. (Dec. 22, 2003).

<sup>12</sup> Department Bulletin 03-243 from Alex E. Fagan, Chief of Police, S.F. Police Dep't. (Dec. 22, 2003).