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Understanding Gender-Biased Policing: Police Misconduct, Domestic Violence, and Sexual Assault

In cities and states across the country, advocates and activists are calling for an end to discriminatory policing against people of color, women, LGBT people, people with disabilities, and immigrants. They are working to reform police practices that put lives in danger and undermine our system of justice.

In this era of reform, new attention must be paid to the problem of gender-biased policing, specifically the improper, discriminatory, and unlawful ways in which law enforcement officials respond to or commit crimes involving domestic violence and sexual assault. Voices across the country—including the U.S. Department of Justice, anti-violence and civil rights advocates, and law enforcement leaders—have sounded the alarm on police practices and policies that are premised on pernicious gender stereotypes about survivors of violence. Gender-biased policing not only denies victims of domestic violence and sexual assault the equal protection of the law and protection from harm, but also destroys trust between law enforcement and the communities they serve.

This briefing paper defines and provides examples of gender-biased policing, suggests ways for police departments to address bias that may underlie certain practices, and policies and offers steps advocates can take to work toward police reform.

Defining Gender-Biased Policing

Gender-biased policing is a term used to capture certain law enforcement practices that are rooted in (conscious or unconscious) gender stereotypes, have a discriminatory and disproportionate impact on women, and subject women and LGBT people to harassment, violence, or hostility by police officers.

Gender-biased policing occurs most often in cases of domestic violence and sexual assault. Examples of gender-biased policing include:

- Failing to properly investigate or misclassifying domestic violence and sexual assault complaints before a full investigation is conducted because of the victim's gender, sexual orientation, dress, sexual history, criminal history, emotional state, or appearance;
- Failing to test sexual assault kits in a timely fashion;
- Discounting intimate partner violence against LGBT individuals because it is committed against a same-sex partner;
- Harassing transgender people, particularly trans women of color, because of their gender identity;
- Failing to hold police officers accountable and permitting them to remain in positions of power when they have committed domestic violence or have used their position to sexually harass or assault.

The Prevalence of Gender-Biased Policing

There is little doubt that many police officers across the country do their jobs with professionalism, integrity, and care. At the same time, investigations by the Department of Justice, advocates, and others have revealed the chronic and systemic patterns of bias that exist in police departments when individuals, predominantly women but also some men, seek police assistance in domestic violence and sexual assault cases.

The following examples of gender-biased policing are only the tip of the iceberg.

- **The *Detroit Police Department* for years failed to process more than 11,000 rape kits.** This occurred, in part, because of police reports that questioned the victims' credibility; rape survivors were commonly assumed to be prostitutes and adolescents were assumed to be lying.¹

The Prevalence of Gender-Biased Policing continued...

- **The Metropolitan Police Department of Washington D.C. engaged in practices that resulted in misclassified or undocumented sexual assault cases.** There were no police incident reports for a substantial number of cases recorded by a hospital as having been reported to the police and officers utilized poor interviewing techniques including one who went so far as to ask a rape victim if her assailant was good at oral sex.²
- **The Missoula (Montana) Police Department failed to employ key investigative practices that would have safeguarded potential evidence and protected the rights of victims.** The MPD did not obtain timely and credible statements from witnesses and suspects; engaged in investigative and interview practices that often discouraged victims from participating in investigations; made numerous statements reflecting stereotypes such as telling a woman who was gang raped that it “was probably just a drunken night and a mistake” and repeatedly asking her if she had said no and to reenact how she had said no; failed to institute any policy guidance on responding to sexual assault and instead left the conduct of investigations entirely subject to the discretion of MPD detectives.³
- **The New Orleans Police Department systematically failed to properly investigate domestic violence cases, did not address police harassment of LGBT individuals, and underreported the number of rape crimes that occurred in the city.** For example, the NOPD reported that there were more homicides than rapes despite the fact that the opposite is true in most cities across the country; regularly shut down investigations of sex crimes by classifying sexual assault complaints as “miscellaneous” or “non-criminal” cases because the victim had a history of mental disability or prostitution or lied about being arrested in the past; and did not provide specific guidance on how to investigate domestic violence cases and assigned only three detectives to the Domestic Violence Unit, relying on untrained district officers to carry out the majority of the casework.⁴
- **The Philadelphia Police Department downgraded thousands of rapes and other sex crimes to a noncriminal category.** In doing so, the PPD precluded a full and complete investigation of the crime and victims were never advised that their complaints had been shelved.⁵

The Prevalence of Gender-Biased Policing continued...

Gender-biased policing also includes sexual assault or domestic violence committed by police officers that goes unpunished or is ignored within the law enforcement agency.

Police departments and the federal government do not consistently track this problem, but there is no doubt it is a serious issue in many departments. In fact, a report found that sexual misconduct was the second most frequently reported form of police misconduct.⁶

- **The *Puerto Rico Police Department* rarely took action when their own officers committed domestic violence, allowing 84 officers who had been arrested two or more times for domestic violence to remain active on the force.⁷**
- **The *Associated Press*, in a yearlong investigation of sexual misconduct by law enforcement, uncovered 1,000 officers who lost their badges in a six-year period for rape and other sexual assault. AP concluded that the number was unquestionably an undercount because it represented only officers whose licenses were revoked and not all states take such action. Additionally, some states offered no records because they have no statewide system to decertify officers for misconduct. Even among states that provided records, some reported no officers removed for sexual misconduct even when cases were identified in news stories or court records. Lawyers and police chiefs told the AP that some departments remain silent about improprieties, allowing officers to resign, keep their certification, or switch to other jobs.⁸**

These cases and investigations, which barely scratch the surface, demonstrate that gender-biased policing is a significant problem in police departments across the country.

The Impact of Gender-Biased Policing: Perpetuating Violence, Undermining Our Criminal Justice System

Almost

20% of women

and about

1.7% of men

have experienced rape in their lifetimes⁹



Nearly a quarter of women

experience domestic violence in their lifetime

More than

ONE MILLION WOMEN

are survivors of domestic violence every year¹⁰

Women of color and LGBT individuals

experience disproportionately high rates of domestic violence and sexual assault¹¹



Calls regarding **domestic violence** constitute the

single largest category of calls

received by police departments, making up half of all calls in some communities¹²

44% of lesbian women

and

61% of bisexual women

have experienced rape, physical violence, and/or stalking by an intimate partner¹³

The Impact of Gender-Biased Policing continued...

When police officers rely on outdated and discredited stereotypes to shame or dismiss victims and fail to fully investigate a claim of sexual violence, those officers undermine efforts to end violence by discouraging victims from coming forward and allowing abusers to continue to commit crimes with impunity.

The experience of gender-biased policing causes tremendous and rippling damage in the lives of victims, families, and entire communities. When officers commit sexual assaults or domestic violence yet remain on the force or go unpunished, it delegitimizes the authority of the law enforcement agency (often in communities where tensions may already exist) and can strain and shatter the community's confidence and trust in the criminal justice system.

When survivors of sexual violence remain silent for fear of being revictimized by law enforcement officers, the violence can escalate and lead to homicide of the victim as well as children, family members, and responding law enforcement officers.¹⁴

Gender-biased policing of domestic violence and sexual assault cases perpetuates the cycle of violence, harms individuals and families, destabilizes communities, undermines the criminal justice system, and puts lives at risk.

Two recent surveys revealed that:



believed that police **“sometimes”** or **“often”** do not believe victims or blamed victims for the violence

and



reported that police **“sometimes”** or **“often”** do not take allegations of sexual violence seriously¹⁵



felt **less safe** after calling the police

and



reported that they **would not** call the police in the future for domestic violence¹⁶

Our Federal Laws Prohibit Gender-Biased Policing

The United States Constitution

The Equal Protection Clause of the U.S. Constitution prohibits selective or discriminatory enforcement of the law based on a prohibited ground—including sex, race, and national origin. Law enforcement practices that systematically fail to protect certain communities or fail to treat some crimes (such as domestic violence or sexual assault) as seriously as other crimes violate the equal protection guarantee.¹⁷

The Due Process Clause imposes a duty on law enforcement where a police officer created or knew of a dangerous situation and affirmatively increased the victim's risk of danger.¹⁸ Courts have found violations of due process where law enforcement officers committed sexual violence in the course of official duty,¹⁹ implicitly but affirmatively condoned domestic violence,²⁰ or subjected a victim to heightened risk of sexual violence as a result of police action.²¹

Federal Statutes

Police departments frequently receive federal funding through the Safe Streets Act,²² and the Violence Against Women Act.²³ These laws prohibit discrimination based on sex and other grounds, including law enforcement practices that disparately impact women. In addition, Title VI of the Civil Rights Act of 1964 prohibits recipients of federal funding from discriminating based on race or national origin, which can apply in cases involving police discrimination against victims of domestic or sexual violence who are racial minorities, immigrants, and/or limited English proficient individuals.²⁴

Additionally, the Department of Justice is authorized, pursuant to the Violent Crime Control and Law Enforcement Act of 1994 (Section 14141),²⁴ to investigate police departments for engaging in a pattern or practice of conduct that would violate victims' rights to equal protection, due process, or non-discrimination under federal laws such as the Safe Streets Act.

Taking Steps to Stop Gender-Biased Policing

Eliminating gender bias in law enforcement is possible. The efforts to end this type of discriminatory policing received a major lift when, in December 2015, the Department of Justice released Guidance on identifying and preventing gender bias in law enforcement response to sexual assault and domestic violence.²⁶ But there is much more to do. Activists, concerned members of the community, civil rights and anti-violence organizations, law enforcement officials, and others can work together in the following ways:

- Meet with leaders of law enforcement agencies to ensure that every agency has:
 - Clear, written, updated policies on handling sexual assault and domestic violence crimes so that victims are treated with respect and cases are properly classified and thoroughly investigated;
 - Trauma-informed, regular training for officers about implicit biases effective police responses to sexual assault and domestic violence crimes;
 - Systems of accountability in place to ensure that officers follow policies and are both promoted and penalized according to their performance;
 - An effective procedure in place for holding officers accountable if they commit sexual assaults or domestic violence and written policies that proactively address such incidents, including reporting to the state licensing board, prosecutor's office, internal affairs, and/or other relevant agency;
 - Mechanisms to collect, review, and share data on how sexual assault and domestic violence cases were investigated and resolved, and the incidence of and responses to domestic violence and sexual assaults committed by police officers.
- Ensure that any investigation of police practices or police misconduct, by the Department of Justice or state, local or independent agencies or civilian oversight bodies, includes an examination of both law enforcement response to domestic violence and sexual assault cases and domestic violence and sexual assault committed by police officers.
- Organize roundtables to discuss with community members and law enforcement how police departments can integrate the principles outlined in the Department of Justice Guidance on "Identifying and Preventing Gender Bias in Law Enforcement Response to Sexual Assault and Domestic Violence," into their policies and practices.

Conclusion

Across the country, community members and groups, governments, public institutions, and law enforcement leaders and agencies are engaging in serious and substantial efforts to improve the practice and culture of policing. Reforming the current system means demonstrating legitimacy and building trust between law enforcement and the communities they serve and protect. This can only happen when discriminatory policing is identified, acknowledged, and rooted out.

Gender-biased policing is discriminatory policing. It is a form of police misconduct that re-traumatizes the victim, undermines public safety, and destroys trust between law enforcement and the broader community. And because women of color are disproportionately affected by sexual assault and domestic violence, the perception and reality of racial bias in policing is also ever-present in many instances of gender-biased policing.

But we can end discriminatory policing. We can bring it out of the shadows and into focus, and ensure that survivors of domestic violence and sexual assault, and their families and communities, receive justice and dignity.

Resources:



Department of Justice Guidance on Identifying and Preventing Gender Bias in Law Enforcement

<http://1.usa.gov/1ZaiHie>



Responses From The Field Sexual Assault, Domestic Violence, and Policing (Highlights & Full Report)

www.aclu.org/responsesfromthefield



Department of Justice Identifying And Preventing Gender Bias Resources

<http://1.usa.gov/1XvPMm>



Using the DOJ Guidance as a Tool to Reform Gender-Biased Policing

<https://www.aclu.org/other/aclu-advocacy-guide-implementing-doj-guidance-gender-biased-policing>

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- ⁸ Matt Sedensky & Nomaan Merchant, *Hundreds of Officers Lose Licenses over Sex Misconduct*, ASSOCIATED PRESS, Nov. 1, 2015, available at <http://bigstory.ap.org/article/fd1d4d05e561462a85abe50e7eaeed4ec/ap-hundreds-officers-lose-licenses-over-sex-misconduct>; Philip M. Stinson et al., *Police Sexual Misconduct: A National Scale Study of Arrested Officers*, Criminal Justice Faculty Publications (2014), http://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1029&context=crim_just_pub.
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- ¹⁹ See, e.g., *Rogers v. City of Little Rock*, 152 F.3d 790, 793-94, 797 (8th Cir. 1998); *Jones v. Wellham*, 104 F.3d 620, 628 (4th Cir. 1997); *Haberthur v. City of Raymore*, 119 F.3d 720, 724 (8th Cir. 1997).
- ²⁰ *Balistreri v. Pacifica Police Dep't*, 901 F.2d at 701 (9th Cir. 1988); *Okin*, 577 F.3d at 430; *Pearce*, 766 F. Supp. 2d at 374-75; *Arteaga*, 2010 WL 1611377, at *6.
- ²¹ *Wood*, 879 F.2d at 586.
- ²² Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d(c)(1) (2006).
- ²³ Violence Against Women Act of 1994, 42 U.S.C. §§ 3796gg-1 and 3796hh.
- ²⁴ Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d – 2000d-7 (2008).
- ²⁵ Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.
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