



The Entrapment & Harassment of LGBTQ+ People

Who?

Anyone can be a victim of entrapment, but **gay men, transgender individuals, and sex workers experience exceptionally higher rates of harassment and entrapment by police officers.**

What?

Entrapment has two key elements:

1. A government or legal official must induce the crime, often through pressure, intimidation, persuasion, threats, and/or harassment
2. The individual must have had no previous inclination or intention to engage in illegal behavior

Entrapment is illegal but isn't prosecuted as a crime. Entrapment exists in a gray area because though it is technically illegal, police officers or public officials that commit entrapment against an innocent individual are not prosecuted.

Entrapment IS a valid defense in a court of law. This means an innocent individual who behaved illegally due to entrapment can use the defense of entrapment to avoid being convicted of that crime. Of course, this is only possible if the victim has the legal insight and financial privilege to pursue litigation.

When/Where? Policy entrapment of the LGBTQ and sex-worker communities is a decades-old problem and continues today. While the laws and parameters for arrest may have evolved over time, the pursuit of harassment and entrapment by law enforcement agents has not. These are just a glimpse into the **countless examples of entrapment throughout history:**

- In 1919, FDR was the Assistant Secretary to the Navy. In this role, he enlisted operatives to entrap gay men serving in the Navy, leading to the arrest and imprisonment of over 20 sailors.¹
- In 1950, it was illegal for nightclubs to allow homosexuals to congregate. However, police officers would attend New York City nightclubs and flirt with men they presumed to be gay. Once these patrons responded to the flirtation by expressing interest in sexual behavior, the officers would make arrests for breaking the law and occasionally even shut down the business where the flirtation occurred.²

¹ Sherry Zane; "I did It for The Uplift of Humanity and The Navy: Same-Sex Acts and The Origins of The National Security State, 1919–1921." *The New England Quarterly* 2018; 91 (2): 279–306.

² George Chauncey; "The Forgotten History of Gay Entrapment." *The Atlantic* 2019.

<https://www.theatlantic.com/ideas/archive/2019/06/before-stonewall-biggest-threat-was-entrapment/590536/>

- In 2014, New York City's Port Authority was successfully sued for falsely arresting LGBTQ men using public restrooms at the bus terminal. It was found that Port Authority police officers targeted men they perceived to be gay and lied about observing these men commit lewd acts to increase their arrest statistics.
- In 2017, a sex worker named Rachel told Vice reporters she felt violated and terrified after a customer she had just had sex with revealed he was a police officer and attempted to arrest her. Rachel only avoided arrest by sensing the officer was behaving strangely and refusing to take his money after having sex with him.³

Why?

- Sexuality has always been controlled and moderated, either through policing, policy, or societal norms. Entrapment is just another way non-heteronormative sexual behavior and proclivities are policed and punished.
- Targeting marginalized groups allows police to get away with entrapment because sex workers, queer folks, and other minoritized people are already dismissed or looked down upon by society at large.

How can you help?

1. **Advocate for your state to employ objective tests for entrapment**
 - a. Objective entrapment policies look at the behavior of the police officer and determine whether the police officer's actions would induce a normally law-abiding person to commit a crime.
 - b. Subjective tests of entrapment place the burden of proof on defendants to prove they would not otherwise commit a crime. Entrapment defenses are less likely to succeed under subjective standards.
2. **Increase awareness of language utilized to describe arrests made via entrapment**
 - a. "Sting operations" or "undercover officer" are often used to describe incidents of entrapment. Note that sting operations and undercover officers can also be legally employed in situations when entrapment is not present, but you can use these phrases as a warning to look at the story more closely.
 - b. Pay particular attention to arrests pertaining to sex work, public indecency, and selling illegal substances
3. **Raise awareness!**
 - a. Tell 3 people you know about how entrapment is used to wrongfully discriminate against marginalized groups
 - b. Share some of the historical examples above with friends or family unfamiliar with the history of harassment against LGBTQ and sex worker communities in this country
 - c. Circulate news stories about entrapment when they occur in real-time

³ Sirin Kale; "Police Are Allegedly Sleeping with Sex Workers Before Arresting Them." *VICE*, 2017.
<https://www.vice.com/en/article/59mbkx/police-are-allegedly-sleeping-with-sex-workers-before-arresting-them>