



Texas Board of Criminal Justice
PREA Ombudsman Office
P.O. Box 99
Huntsville, TX 77342-0099

January 18, 2022

re: staff sexual assault, staff threats, misconduct against [REDACTED], TDCJ # [REDACTED]

To the Texas Department of Criminal Justice PREA Ombudsman Office:

I am writing on behalf of a transgender woman, Ms. [REDACTED], Texas Department of Criminal Justice (TDCJ) number [REDACTED], currently incarcerated at the Connally Unit.

Trans Pride Initiative (TPI) will continue to reiterate the following as long as TDCJ continues to harm transgender persons by denying their gender identity. The only professional and ethical way to address Ms. [REDACTED] is by using a female title such as Ms. and by using she/her/hers pronouns in referring to her as per training materials for PREA § 115.31,

Pronoun usage is important to consider when working with LGBTI, and especially transgender, inmates

- Using the correct pronoun is a way to show respect and to demonstrate acknowledgment of their gender identity
- Best practices suggest that transgender females . . . be addressed as “she” and referred to as “her”
- Transgender males . . . should be addressed as “he” and referred to as “him”¹

TBCJ Ombudsman letter dated September 2, 2021, identified as related to inquiry 21-6106-04, indicates staff are “trained” to refer to all persons in TDCJ custody as “inmate [last name]” and to use gender neutral pronouns, which although it doesn’t meet training recommendations is better than the total refusal to recognize the existence of trans persons. However, the Ombudsman also used manipulative language to indicate “training” is considered to meet PREA standards. The Ombudsman not only fails to address that “training” very often does not reflect implementation, but also implies that “training” addresses issues of actual harm. Such manipulation is a deliberate act to cover up harm, abuse, and other violence against transgender and other persons in TDCJ custody. The value of “training” can only be measured by its implementation, and to use “training” to cover up inappropriate actions promotes further violence, and arguably supports and even encourages the violence endemic in the system.

1. See the National PREA Resource Center training materials covering “Unit 5: Effective and Professional Communication with Inmates,” available at https://www.prearesourcecenter.org/sites/default/files/content/unit_5_powerpoint_0.pdf



The refusal by TDCJ staff and their contractors to use proper forms of address in referring to transgender persons, and to not only fail to use gender neutral references but to intentionally misgender trans persons in TDCJ custody after their gender identity has been asserted by the inmate and advocates, is without doubt harming transgender persons, and further it encourages violence against trans prisoners. A recent study strongly affirmed that use of chosen names for transgender persons reduces depressive symptoms and suicidal behavior.² For both institutional and non-institutional settings, when a chosen name was used, there was a 5.37% decrease in depressive symptoms, a 29% decrease in suicidal thoughts, and a 56% decrease in suicidal behaviors. Denying an affirming name and pronouns is harm, and TDCJ as well as their contractors who participate in such denial are actively participating in such harm.

This harm stems from and is directly abetted by Joseph Penn and Lannette Linthicum who, with abusive and deliberate intent to harm, intentionally disregard current DSM standards and claim as a means of inculcating and exercising personal bias and medical negligence that gender dysphoria is considered in TDCJ to be a “mental illness.”³ This direct contradiction of the DSM has no purpose but inflict further harm and encourage medical neglect of trans persons.

Additional research has shown that, among other beneficial effects, using appropriately gendered references can help avoid verbal and sexual harassment.⁴ Interactions with law enforcement show that even those tasked with “protection” contribute substantially to harm, with 58% of all law enforcement verbally harassing, physically or sexually assaulting, or otherwise mistreating persons they knew or assumed were transgender.⁵ Using appropriate names and pronouns can be especially important in prison settings, where one study has shown that 80% of gender diverse prisoners report verbal harassment by staff, and 30% report physical or sexual assault by staff.⁶ The latter number is reinforced nationally by James et al. (2016).

The continued and regularly repeated use of language by TDCJ and its contractors that intentionally harms transgender persons constitutes sexual harassment under PREA standards as it includes “[r]epeated verbal comments . . . by a staff member, contractor, or volunteer, including demeaning references to gender.” Occasional mistakes in identifying one’s gender are understandable; repeated misgendering—as is done in letters and emails from both the Office of

2. Russell, S. T., Pollitt, A., Li, G., & Grossman, A. H. (2018). Chosen name use is linked to reduced depressive symptoms, suicidal ideation, and suicidal behavior among transgender youth. *Journal of Adolescent Health, 63*(4):503-505. Available online, doi: 10.1016/j.jadohealth.2018.02.003.
3. CMHC Committee Meeting Minutes, June 16, 2016, wherein Dr. Margarita de la Garza-Graham “asked if gender dysphoria would be classified as a mental illness. Dr. Joseph Penn, Mental Health Director, UTMB replied, yes.” Linthicum implied agreement and support for this abusive practice; not one CMHC Committee member voiced objection to this abuse.
4. Fein, L. A., Salgado, C. J., Alvarez, C. V., & Estes, C. M. (2017). Transitioning transgender: Investigating the important aspects of the transition: A brief report. *International Journal of Sexual Health, 29*, 80-88. Available online, doi:10.1080/19317611.2016.1227013.
5. James, S. E., Herman, J. L., Rankin, S., Keisling, M., Mottet, L., & Anafi, M. (2016). *The Report of the 2015 U.S. Transgender Survey*. Washington, DC: National Center for Transgender Equality.
6. Emmer, P., Lowe, A., & Marshall, R.B. (2011). *This is a Prison, Glitter is Not Allowed: Experiences of Trans and Gender Variant People in Pennsylvania’s Prison Systems*. Philadelphia, PA: Hearts on a Wire Collective.



the Ombudsman and the PREA Ombudsman Office and in conversations with TDCJ and contractor staff—in spite of extensive evidence of harm, including increased mental health issues and suicidal ideation, is nothing less than intentional and premeditated sexual harassment for the sole purpose of carrying out violent and forced adherence to gender stereotypes by the agency.

Supporting the intentional use of forced anti-transgender stereotypes, we cite a letter dated January 30, 2019, from staff in the TDCJ Patient Liaison Program—after referring to a transgender woman several times as “he”—claimed that “pronoun usage in relation to the offender is not under the purview of this office.” The Patient Liaison Program, by misgendering transgender persons as they did in this letter, is encouraging and participating in harm of transgender persons clearly indicated in literature as inappropriate medical policy that causes harm; thus, Patient Liaison Program staff bear responsibility for the abusive treatment they are promoting.⁷

As noted above, this insistence may be considered to fail PREA requirements to protect transgender persons, who are at increased risk for sexual abuse and other violence, and may constitute an Eighth Amendment violation. A recent statement of interest by the DOJ concerns Eighth Amendment violations by prison systems like TDCJ that refuse to adequately consider the safety of transgender persons in their custody:

Prison officials have an obligation under the Eighth Amendment to the U.S. Constitution to protect all prisoners from sexual abuse and assault by assessing the particular risks facing individual prisoners and taking reasonable steps to keep them safe. *Farmer v. Brennan*, 511 U.S. 825, 843-45 (1994). This duty includes transgender prisoners. . . . Prison officials violate the Constitution by [] categorically refusing to assign transgender prisoners to housing that corresponds to their gender identity even if an individualized risk assessment indicates that doing so is necessary to mitigate a substantial risk of serious harm, and (2) failing to individualize the medical care of transgender prisoners for the treatment of gender dysphoria.⁸

Please also refer to CMHC Policy G-51.11, which states “[o]nly the designated GD [Gender Dysphoria] Specialty Clinic consultant may make or confirm a diagnosis of GD for an offender.” TDCJ’s insistence on denying gender identity by failing to follow professional expectations and using inappropriate pronouns and other references on request from trans persons—especially those persons diagnosed with gender dysphoria—is dismissing the singular authority of the GD Specialty Clinic consultant to make that determination in order to excuse or cover up the continued harm TDCJ is by this act condoning.

7. For example, Ehrenfeld & Gridley (2016) notes that failure to use appropriately gendered names and pronouns in healthcare settings often increases trauma and creates unnecessary suffering. Ehrenfeld, J., & Gridley, S. (2016). Education creates welcoming environment for transgender patients. *ED Management: The Monthly Update on Emergency Department Management*, 28, 90-93.

8. Leary, P.D. et al.(2021). Statement of Interest of the United States, *Diamond v. Ward et al.*, Case 5:20-cv-00453-MTT, Document 65.



Issue Summary

Ms. [REDACTED] reports sexual assault by TDCJ staff, a guard named Mr. [REDACTED], on or about October 10, 2021. She reports threats then and since by Mr. [REDACTED] if she reported his actions, and increasing confrontation in recent weeks.

Ms. [REDACTED] also reports refusal by at least two Connally Unit senior staff, Sergeant [REDACTED] and Captain [REDACTED], to provide appropriate investigation and protection after the report.

Request for Redress

TPI requests that Mr. [REDACTED] be immediately prevented from all further contact with Ms. [REDACTED], directly or indirectly.

We request that Mr. [REDACTED] be removed from all job duties that may provide any opportunity for further sexual assault of persons in TDCJ custody, particularly LGBTQ and intersex persons.

We request that for her safety, Ms. [REDACTED] be transferred from Connally Unit immediately.

We request that Mr. [REDACTED]' actions as reported by Ms. [REDACTED] be investigated and that appropriate disciplinary action follow.

We request that Sergeant [REDACTED] and Captain [REDACTED] be removed from all duties that involve supervisory or decision-making authority concerning the safety and well-being of persons in TDCJ custody, particularly LGBTQ and intersex persons, until they receive additional training in PREA and can demonstrate full understanding of the need and value of complete and thorough PREA compliance, including the need for protection from retaliation due to reports of sexual misconduct.

In a related matter, we also request that the guard named Mr. [REDACTED] be prevented from contacting Ms. [REDACTED], directly or indirectly. We also request that Mr. [REDACTED] be removed from all job duties that provide him an opportunity to threaten, harass, inappropriately touch, or assault Ms. [REDACTED] or any other transgender person.

Description of Issue

Ms. [REDACTED] reports that approximately October 10, 2021, a TDCJ guard named Mr. [REDACTED] "coerced me out of fear" to touch his genitals and masturbate him. She reports that Mr. [REDACTED] threatened her by stating that if she said anything, he would create issues for her. Although the threat was vague, its intent to seriously harm or cause serious harm for reporting the sexual misconduct was very clear.

Ms. [REDACTED] did not report the issue for about three months, but she reports that in recent weeks, Mr. [REDACTED] began appearing in her housing area and in common use areas where she was present, and she states he would harass her and tell her to "watch out." The threat to "watch out" may be superficially vague, but Ms. [REDACTED] understood it to mean Mr. [REDACTED] would assault her or have her assaulted if she did anything to report his actions or that he otherwise did not like. It is not clear at this time if the threats were intended to keep Ms.



████████ quiet about the initial sexual assault or intended to coerce her into additional sexual acts performed for Mr. ██████████.

On January 11, 2022, due to the escalating endangerment evident from Mr. ██████████, Ms. ██████████ states that she reported the issues. Ms. ██████████ notes that she was told by a Sergeant ██████████ that there was nothing she could do about the incidents. This is a direct refusal to comply with PREA standards for zero tolerance of sexual harassment and sexual abuse in TDCJ, and to thoroughly and fully investigate reports of sexual misconduct.

Ms. ██████████ reports that Sergeant ██████████ sent Ms. ██████████ to talk to a Captain ██████████ (spelling uncertain). Ms. ██████████ reports that Captain ██████████ told her that because the safe prisons staff were out sick, she could not file for an offender protection investigation (OPI). This again is a direct refusal to comply with PREA standards for zero tolerance of sexual harassment and sexual abuse in TDCJ. This also fails to comply with PREA requirements for an appropriate response and investigation into all allegations of sexual abuse and sexual harassment, as well as appropriate measures to protect all persons reporting sexual misconduct from retaliation.

Instead of protecting Ms. ██████████ from retaliation, either or both Sergeant ██████████ and Captain ██████████ allowed information about Ms. ██████████'s report to be conveyed to Mr. ██████████. Ms. ██████████ states that shortly after speaking with Captain ██████████ and returning to her cell, Mr. ██████████ came to Ms. ██████████'s housing area and directly approached her cell, asking if she had reported him and again threatening Ms. ██████████.

We note also that Ms. ██████████ has previously reported harassment from a guard named Mr. ██████████ beginning about October 24, 2021 and extending at least into December 2021. This is not the first set of complaints we have heard about Mr. ██████████. It appears that Connally Unit and Senior Warden ██████████ have serious issues assuring professional conduct by TDCJ staff, and assuring adherence to PREA standards.

Conclusion

Ms. ██████████ reports sexual assault by TDCJ staff, a guard named Mr. ██████████, on or about October 10, 2021. She reports threats then and since by Mr. ██████████ if she reported his actions, and increasing confrontation in recent weeks.

Ms. ██████████ also reports refusal by at least two Connally Unit senior staff, Sergeant ██████████ and Captain ██████████, to provide appropriate investigation and protection after the report.

TPI requests that Mr. ██████████ be immediately prevented from all further contact with Ms. ██████████, directly or indirectly.

We request that Mr. ██████████ be removed from all job duties that may provide any opportunity for further sexual assault of persons in TDCJ custody, particularly LGBTQ and intersex persons.

We request that for her safety, Ms. ██████████ be transferred from Connally Unit immediately.



We request that Mr. [REDACTED]' actions as reported by Ms. [REDACTED] be investigated and that appropriate disciplinary action follow.

We request that Sergeant [REDACTED] and Captain [REDACTED] be removed from all duties that involve supervisory or decision-making authority concerning the safety and well-being of persons in TDCJ custody, particularly LGBTQ and intersex persons, until they receive additional training in PREA and can demonstrate full understanding of the need and value of complete and thorough PREA compliance, including the need for protection from retaliation due to reports of sexual misconduct.

In a related matter, we also request that the guard named Mr. [REDACTED] be prevented from contacting Ms. [REDACTED], directly or indirectly. We also request that Mr. [REDACTED] be removed from all job duties that provide him an opportunity to threaten, harass, inappropriately touch, or assault Ms. [REDACTED] or any other transgender person.

We look forward to receiving communication from your office that this issue is being addressed in a manner that will move the agency closer to ending the TDCJ-sanctioned discrimination and abuse of transgender persons, which in addition to constituting violence in itself, encourages violence from TDCJ staff and other incarcerated persons and fails to meet PREA guidelines requiring zero tolerance of sexual abuse and sexual harassment.

Sincerely,

Nell Gaither, President
Trans Pride Initiative

TPI Incident Numbers

- 2021-00490, Sexual Assault
- 2022-00008, Threat
- 2022-00009, Negligence
- 2022-00010, Leave in danger
- 2022-00011, Threat

cc: TBCJ Office of the Ombudsman
TDCJ Region IV
TDCJ Office of the Inspector General