



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

February 11, 2022

re: assault of incarcerated person by staff, unnecessary use of force, [REDACTED] [REDACTED], TDCJ
[REDACTED]

To the Texas Board of Criminal Justice Ombudsman Director:

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

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



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.

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

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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.



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 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

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.



Specialty Clinic consultant to make that determination in order to excuse or cover up the continued harm TDCJ is by this act condoning.

Issue Summary

Ms. [REDACTED] reports she was assaulted by Captain [REDACTED] and other staff on September 28, 2021, when leaving a disciplinary hearing and while in hand restraints.

Request for Redress

This is not the first report of violence we have received about Captain [REDACTED] toward incarcerated persons. I am requesting an investigation into the behavior of Captain [REDACTED] against Ms. [REDACTED] and as a pattern of abusive behavior against incarcerated persons.

I am requesting that Captain [REDACTED] receive training in the appropriate and professional treatment of incarcerated persons, and removal from all job duties that place Captain [REDACTED] in situations that provide opportunities to assault or otherwise mistreat incarcerated persons until such time that Captain [REDACTED] can demonstrate appropriate application of such training.

I am requesting that if a disciplinary case was written against Ms. [REDACTED] for assaulting an officer, while she was in hand restraints, that the case be overturned and expunged from her record.

I am requesting a unit transfer for Ms. [REDACTED] so that she no longer has to fear for her safety around Captain [REDACTED].

Description of Issue

Ms. [REDACTED] states that on September 28, 2021, she attended disciplinary court, which was being run by Captain [REDACTED]. Ms. [REDACTED] states that when she entered the room where court was being held, Captain [REDACTED] asked her if she had written a grievance against him in the past, and when she answered in the affirmative, Captain [REDACTED] then stated that after that day she would not file a grievance against him again.

Ms. [REDACTED] reports that during the hearing, she objected to a statement made by the charging officer, and in response Captain [REDACTED] told her to leave the hearing. As she was leaving, and while in hand restraints, Ms. [REDACTED] states that Captain [REDACTED] struck her in the back of her head, knocking her across a desk. She states that Captain [REDACTED] then pushed her to the ground and began striking her, with a Sergeant [REDACTED], Lieutenant [REDACTED], Officer [REDACTED], and two other staff present joining in the assault.

Ms. [REDACTED] indicates she was given a false case for assaulting an officer as cover for the assault against Ms. [REDACTED].

The subject reports feeling that her life is in danger being on the same unit as Captain [REDACTED].



Conclusion

Ms. [REDACTED] reports she was assaulted by Captain [REDACTED] and other staff on September 28, 2021, when leaving a disciplinary hearing and while in hand restraints.

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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,

TPI Incident Number(s)

- 2021-00343, Assault
- 2021-00344, False case

Nell Gaither, President
Trans Pride Initiative