



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

February 12, 2022

re: staff retaliation for report of sexual assault, failure to address retaliation and safety, [REDACTED]
[REDACTED], TDCJ # [REDACTED]

To the Texas Department of Criminal Justice PREA Ombudsman Office:

I am writing on behalf of a transgender woman, Ms. [REDACTED] [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

TDCJ 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

-
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] reported sexual assault and subsequent threats by a TDCJ guard, and after initial refusals to respond to the report, in violation of PREA requirement, an investigation was finally initiated that led to the termination of the guard.

We have since learned that at least some of the actions by the guard were already known by staff, and that they were allowing the guard to continue, apparently under the guise of conducting an investigation of the guard. The abuse could have been stopped earlier, but was not, and the failure to stop the abuse was with the compliance of the administration. Upper administration also told Ms. [REDACTED] that the allegations would be unsubstantiated when the investigation had barely begun, indicating interference by upper administration into the investigation.

Ms. [REDACTED] has endured serious and continuing abuse and harassment since her report, and continues to fear for her safety.

Request for Redress

TPI requests that for her safety, Ms. [REDACTED] be transferred from Connally Unit immediately. We refer to PREA § 115.67(b) and its requirement for the “removal of alleged staff or inmate abusers from contact with victims” as the appropriate action to address further retaliation. Failure to recommend and approve a unit transfer will constitute a clear and deliberate intent to cause harm to Ms. [REDACTED] by those failing to recommend and approve such transfer.

We request that Sergeant [REDACTED] and Captain [REDACTED] [REDACTED] (name uncertain) 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 the PREA standards 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.

We request that an investigation be conducted into the deliberate endangerment of persons in TDCJ custody by Connally Unit administration, and the deliberate exposure to sexual abuse, threats, harassment, and other violence.

We request that Sergeant [REDACTED] [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 he receives additional training in what constitutes mistreatment of incarcerated persons, as well as PREA retaliation protocols, and can demonstrate full understanding of these principles.



We request that Captain [REDACTED] receive additional training in PREA's requirements to address retaliation under Section 115.67 and all other pertinent sections dealing with protection persons reporting sexual abuse from retaliation.

Description of Issue

Previously reported issue

Ms. [REDACTED] reported that a guard sexually abused her on or about October 10, 2021. The guard subsequently threatened her, and the threats increased as time went on. After initial reports of the issue, Sergeant [REDACTED] refused to respond as required by PREA standards. A Captain [REDACTED] or possibly [REDACTED] (name not certain) also refused to provide a response as required under PREA standards.

Ms. [REDACTED] was eventually able to report to Captain [REDACTED], who provided the appropriate PREA-required response. As we understand, an investigation has led to the termination of the guard.

Additional information and subsequent harassment

It has come to TPI's attention per information from Ms. [REDACTED] that beginning in October 2021, she was actually acting on behalf of administration that requested undisclosed actions by Ms. [REDACTED], apparently to support an investigation into the conduct of her assailant. Ms. [REDACTED] reports that members of Connally Unit administration were well aware of the assailant's sexual advances and harassment, and could have intervened at any time, but chose not to.

Assistant Warden [REDACTED] [REDACTED] told Ms. [REDACTED] before an investigation had been completed that the allegations would be unsubstantiated, indicating upper administration took an active role in manipulating the outcome of the investigation.

Ms. [REDACTED] faced clear and obvious abuse from staff for reporting the sexual abuse. After reporting the sexual assault to Captain [REDACTED], Ms. [REDACTED] was placed in a lockup cell with her property. About two hours later she was moved to a holding cell in 12 Building by a Sergeant [REDACTED] [REDACTED]. The holding cell was described as about five foot square with a stool affixed in the center, no sink, and no toilet. After enduring sexual abuse and ensuing threats and harassment from her abuser, Ms. [REDACTED] was further abused by Mr. [REDACTED], who forced her to strip for no penological purpose, an action that has no explanation except abuse and retaliation for filing a report of sexual abuse. After pleading with Mr. [REDACTED] and enduring his threats to use chemical agent if she did not strip, she was eventually allowed to keep her underwear on. She was left semi-nude, with no access to a toilet or sink or a place to lay down, without even a paper gown, for approximately 24 hours. This can be nothing but abuse.

Apparently Ms. [REDACTED] was told this was done as per new TDCJ policy. If this is new TDCJ policy, then the policy is nothing but license to abuse and retaliate persons reporting sexual misconduct, and the policy is contrary to PREA standards.



After being released from lockup (it is still unclear why she was released from lockup, and this may have been done to further endanger her by allowing the assailant and his associates easier access to her), on January 22, 2022, Ms. [REDACTED] reported additional harassment by her assailant to Captain [REDACTED]. Ms. [REDACTED] reports that Captain [REDACTED] stated there is no rule that her assailant cannot be around her. This indicates complete lack of understanding of PREA standards related to protection from retaliation. PREA § 115.67(b) states

The agency shall employ multiple protection measures, such as housing changes or transfers for inmate victims or abusers, **removal of alleged staff or inmate abusers from contact with victims**, and emotional support services for inmates or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations [emphasis added].

On or about February 2, 2022, Ms. [REDACTED] was pulled out so that her clothing could be replaced with larger sizes. Regardless of whether the larger sizes bothered Ms. [REDACTED] or not, this is an act that is based on the stereotype that trans women in prison like tight clothing, and giving Ms. [REDACTED] larger clothing, when the clothing she had worn for the last six months had been fine, can only be an effort to further retaliate against her. That the guard escorting her, as reported by Ms. [REDACTED], told her “you know what this is all about” indicates not only retaliation, but that staff will continue to retaliate, harass, and potentially harm Ms. [REDACTED] for reporting the sexual assault and threats by TDCJ staff.

Ms. [REDACTED] reports that she is enduring stares from staff, among whom there is a rumor that her assailant was terminated because he sexually abused her. TDCJ staff’s abusive unofficial motto “we protect our own” will guarantee that abuse will continue. Ms. [REDACTED] reports to us that she continues to fear for her safety.

Conclusion

Ms. [REDACTED] reported sexual assault and subsequent threats by a TDCJ guard, and after initial refusals to respond to the report, in violation of PREA requirement, an investigation was finally initiated that led to the termination of the guard.

We have since learned that at least some of the actions by the guard were already known by staff, and that they were allowing the guard to continue, apparently under the guise of conducting an investigation of the guard. The abuse could have been stopped earlier, but was not, and the failure to stop the abuse was with the compliance of the administration. Upper administration also told Ms. [REDACTED] that the allegations would be unsubstantiated when the investigation had barely begun, indicating interference by upper administration into the investigation.

Ms. [REDACTED] has endured serious and continuing abuse and harassment since her report, and continues to fear for her safety.

TPI requests that for her safety, Ms. [REDACTED] be transferred from Connally Unit immediately. We refer to PREA § 115.67(b) and its requirement for the “removal of alleged staff or inmate abusers from contact with victims” as the appropriate action to address further retaliation.



Failure to recommend and approve a unit transfer will constitute a clear and deliberate intent to cause harm to Ms. [REDACTED] by those failing to recommend and approve such transfer.

We request that Sergeant [REDACTED] and Captain [REDACTED] [REDACTED] (name uncertain) 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 the PREA standards 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.

We request that an investigation be conducted into the deliberate endangerment of persons in TDCJ custody by Connally Unit administration, and the deliberate exposure to sexual abuse, threats, harassment, and other violence.

We request that Sergeant [REDACTED] [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 he receives additional training in what constitutes mistreatment of incarcerated persons, as well as PREA retaliation protocols, and can demonstrate full understanding of these principles.

We request that Captain [REDACTED] receive additional training in PREA's requirements to address retaliation under Section 115.67 and all other pertinent sections dealing with protection persons reporting sexual abuse from retaliation.

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

- 2022-00009, Negligence
- 2022-00010, Leave in danger
- 2022-00022, Retaliation
- 2022-00037, Retaliation

cc: TBCJ Office of the Ombudsman
TDCJ Region IV