



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

February 23, 2022

re: failure to respond to threats and harassment, staff coerced extortion of sex for protection,
██████ ██████, TDCJ # ██████

To the Texas Board of Criminal Justice Ombudsman Director:

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

After arriving at McConnell Unit late in 2021, Ms. [REDACTED] reports facing threats of harm and harassment by other incarcerated individuals, with one appearing to be responsible for most of the verbal abuse. Numerous reports to McConnell Unit Safe Prisons staff resulted in no actions to address the situation. Instead, Ms. [REDACTED] was given a disciplinary case for trading sex for protection, which was made necessary only due to TDCJ staff refusing to address the situation.

Request for Redress

We are requesting that disciplinary case [REDACTED] against Ms. [REDACTED] be overturned, her custody and line class be restored, and the case be expunged from her record.

We are requesting that appropriate actions be taken to ensure the violence and intimidation that Ms. [REDACTED] has been subjected to—and that Sergeant [REDACTED] and Ms. [REDACTED] not only refused to address but also participated in—ceases immediately.

We are requesting that Ms. [REDACTED] be monitored monthly for retaliation and further violence from Sergeant [REDACTED], Ms. [REDACTED], and other staff and incarcerated persons for a minimum of 180 days.

We are requesting that Sergeant [REDACTED] be removed from any position that involves interaction with trans and queer persons or that includes opportunities to deny persons their right to be free from excessive and cruel treatment during their incarceration.

We are requesting that Sergeant [REDACTED] be investigated for coercing incarcerated persons under his custody to participate in sexual acts in exchange for protection.

We are requesting that Sergeant [REDACTED] receive training in the appropriate and responsible application of measures preventing excessive and undue harm to incarcerated persons, and that his exclusion from all job duties involving interaction with trans and queer persons extend until he can demonstrate the capacity to implement such training fully and responsibly.

We are requesting that Ms. [REDACTED] (spelling uncertain) be removed from any position that involves interaction with trans and queer persons or that includes opportunities to deny persons their right to be free from excessive and cruel treatment during their incarceration.

We are requesting that Ms. [REDACTED] be investigated for coercing incarcerated persons under her custody to participate in sexual acts in exchange for protection.

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Description of Issue

Ms. [REDACTED] reports that she was transferred to the McConnell Unit, where she was custody class G1 and Line Class S2, apparently assigned to one of McConnell's dorms.

Ms. [REDACTED] reports that she has been experiencing threats and harassment from other incarcerated persons in her housing area since shortly after arriving at McConnell Unit. The threats are described as coming from two persons, but most examples provided were attributed to one of those persons. We have the bed number assignments for the two primary perpetrators of violence, but we will not provide them here due to numerous experiences of TDCJ staff releasing identifying information to persons threatening our correspondents.

Ms. [REDACTED] reports that the verbal abuse had become severe enough that by December 8, 2021, she reported the issues to Sergeant [REDACTED]. Ms. [REDACTED] reports that Sergeant [REDACTED] stated he would address the problem, but there was no change in the abuse to indicate Sergeant [REDACTED] made any attempt to resolve the harassment.

Ms. [REDACTED] reports that on December 13, she returned to McConnell unit safe prisons to follow up with Sergeant [REDACTED], and learned that he had gone on vacation. Since the issue had not been addressed, Ms. [REDACTED] reported the problems to Ms. [REDACTED] (spelling uncertain).

Ms. [REDACTED] reports that subsequent to notifying [REDACTED] and [REDACTED], instead of abating, the verbal threats and abuse increased, and became more intense when they went on Covid-19 lockdown on January 4, 2022. That day or soon thereafter, the main person threatening her told her she could not leave her bunk area, she could not go to the dayroom, she could not sit at tables or benches in the dorm area, she could not take showers, and she could not get in line for food, indicating participation in any of these daily essential activities would be at the risk of her safety.

In one example of a threat during the Covid-19 lockdown, Ms. [REDACTED] reports the person reached over to her bunk in an apparent show of how easily she could be physically touched and harmed, and stated "You fucking faggot, what did I tell you about the showers, stay out of them."

On January 9, Ms. [REDACTED] reports the same person stated "What are you doing faggot. . . . I don't want your faggot ass up here. I don't want you anywhere around me."

On January 13, Ms. [REDACTED] reports the same person again showed how easily he could physically contact her while stating "What are you looking at, you faggot? I told you to look at the ground when I walk by."

On January 17, 2022, Ms. [REDACTED] reports sending I-60s to the warden, to a Captain [REDACTED], and again to unit safe prisons. She reports that she did not receive a response from any of those parties.



On January 19, Ms. [REDACTED] notes that the housing area came off the Covid-19 lockdown, and she again went to Sergeant [REDACTED] to request help and prevent further escalation in the threat of violence against her, and [REDACTED] claimed he would look at video from the housing area.

On January 20, 2022, Ms. [REDACTED] reports that there still was no change to the level of threats and abuse, indicating no action had been taking by TDCJ staff to address the antagonizing behavior.

The complete inaction on the part of TDCJ staff—in particular Sergeant [REDACTED] and safe prisons staff Ms. [REDACTED]—without question coerced Ms. [REDACTED] to accept an offer of protection in exchange for sexual favors on or about January 23. Had even the smallest effort to address the situation been made by [REDACTED] or [REDACTED], the sexual misconduct would have been averted. Instead of seeking a disciplinary case against Ms. [REDACTED], Sergeant [REDACTED] and Ms. [REDACTED] should be investigated as accessories to extortion for sexual favors for their role in coercing Ms. [REDACTED] to trade sexual favors for the protection that [REDACTED] and [REDACTED] were refusing in violation of PREA compliance requirements.

Ms. [REDACTED] reports that on January 25, she once again talked to Ms. [REDACTED] and Sergeant [REDACTED], certainly with the thought that if they would finally address the issue she would not be forced to continue to trade sexual favors for protection being refused by TDCJ staff with the responsibility for her safety. Instead, she was further victimized by [REDACTED] and [REDACTED], who instead of addressing the problem they had exacerbated, they further harmed her by giving her a disciplinary case for taking necessary steps for her safety.

We understand that Ms. [REDACTED] was demoted from G1 to G4 and her time earning status reduced to S4. If this is true, then the punishment is in violation of TDCJ policy allowing reduction of up to two levels of time earning status for a Code 20.3 disciplinary case.

Conclusion

After arriving at McConnell Unit late in 2021, Ms. [REDACTED] reports facing threats of harm and harassment by other incarcerated individuals, with one appearing to be responsible for most of the verbal abuse. Numerous reports to McConnell Unit Safe Prisons staff resulted in no actions to address the situation. Instead, Ms. [REDACTED] was given a disciplinary case for trading sex for protection, which was made necessary only due to TDCJ staff refusing to address the situation.

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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,

Nell Gaither, President
Trans Pride Initiative

TPI Incident Numbers

- 2021-00516, Harassment
- 2021-00517, Failure to respond (five counts)
- 2022-00070, Extortion
- 2022-00070, PREA noncompliance, 115.61
- 2022-00071, Manipulate report
- 2022-00071, PREA noncompliance, 115.61

cc: TDCJ Safe Prisons Manager
TDCJ PREA Ombudsman
TDCJ Office of the Inspector General
TDCJ Region IV Director