



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

June 9, 2022

re: failure to address endangerment, failure to accept report of sexual abuse, failure to protect from retaliation for report of sexual abuse, [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 Lewis 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 does not 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

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



reflect implementation (and has notably failed to address such abuse by the PREA Ombudsman Office and the Patient Liaison Program), 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.

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, including sexual 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

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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.



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 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.

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.⁷

Issue Summary

After being sexually assaulted on April 26, 2022, Ms. [REDACTED] was manipulated by unit safe prisons staff to report a threat and endangerment rather than the sexual assault. This manipulation resulted in a lack of documentation of sexual abuse and the subsequent endangerment being unsubstantiated, with Ms. [REDACTED] continuing to be in danger due to the failure of staff to follow PREA training and requirements to respond to reports of sexual abuse. Ms. [REDACTED] was then refused any opportunity to report the sexual abuse that the unit safe prisons staff should have documented in the first place. Due to her reports, Ms. [REDACTED] is currently in danger due to threats from her assailant and the inability—or unwillingness—of unit staff and TDCJ administration to prevent and protect her from retaliation.

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.

7. 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.



Request for Redress

We are requesting that no “investigation” by staff at Lewis Unit be accepted as a legitimate investigation due to the clear manipulation that has already occurred in response to the sexual abuse against Ms. [REDACTED], as well as the egregious history of manipulation of abuses of incarcerated persons by unit staff and TDCJ administration overall.

We are requesting an immediate transfer for Ms. [REDACTED]. Claims that TDCJ has halted all unit transfers are will be documented as a failure to respond appropriately to an issue of endangerment as TDCJ is using their inability to manage persons in their custody as an excuse to cause further harm to persons facing endangerment. That is not acceptable.

We are requesting that the sexual assault that Ms. [REDACTED] has tried to report be accepted, documented as an incident of sexual abuse under PREA requirements, and investigated.

We are requesting investigation into the conduct of Ms. [REDACTED] and other staff participating in the manipulation of the report of sexual abuse by Ms. [REDACTED] for intentional violation of PREA requirements to document and address reports of sexual abuse.

We are requesting training for Lewis Unit safe prisons staff and all other staff noted in this complaint, including Senior Warden [REDACTED] [REDACTED], in the proper application and requirements under PREA Standards, with a focus on the accurate and proper response to “any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment.”

Description of Issue

Ms. [REDACTED] reports that on April 26, 2022, she and her assailant, who was known to her, got into an argument, and afterwards the assailant entered her cell and choked Ms. [REDACTED] to the point of almost losing consciousness, then began sexually assaulting her, penetrating her anally. Ms. [REDACTED] reports she was able to call out, which prompted the assailant to stop the assault and leave.

Ms. [REDACTED] reports an emotional breakdown after the assault, but within a few hours she determined that she would report the assault. Ms. [REDACTED] reports first talking to a guard at a pill window or other medical distribution location and trying to report the sexual assault. In violation of PREA training and PREA Standard § 115.61(a) requiring “all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment,” the guard told Ms. [REDACTED] to return to her housing area instead of providing a proper response to a report of sexual abuse.

Ms. [REDACTED] reports that on the way back to her housing area, she saw an unidentified nurse and tried to report the sexual assault. The nurse told Ms. [REDACTED] to wait, and provided no further assistance, again violating PREA training and PREA Standard § 115.61(a) requiring “all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment.”

Only when Ms. [REDACTED] informed mental health staff was the issue referred to unit safe prisons.



It is not clear if Ms. [REDACTED] spoke to a Ms. [REDACTED] in unit safe prisons the same day or later, but Ms. [REDACTED] reports that a Ms. [REDACTED], who took the report, “kept asking me if I was sure that I wanted to say I was raped because it would get [name redacted for safety and to avoid retaliation] a possible charge and maybe possible retaliation from his gang.” This indicates manipulation by Ms. [REDACTED] to cover up sexual assault at Lewis Unit and falsify data collection related to sexual abuse and required under PREA.

Ms. [REDACTED] asked if Ms. [REDACTED] could assure that Ms. [REDACTED] would be transferred or otherwise kept safe if she altered her statement according to Ms. [REDACTED] suggestion, and Ms. [REDACTED] indicated to Ms. [REDACTED] that she would by claiming she would talk to Senior Warden [REDACTED]. Ms. [REDACTED] reports that because of Ms. [REDACTED]’ strong suggestion that she not report the sexual abuse, she only reported endangerment and threats.

Ms. [REDACTED] states that about a week later, so approximately May 3, she was seen by Warden [REDACTED], probably for a UCC meeting to convey the outcome of the innate protection investigation (IPI) initiated by Ms. [REDACTED]’ report. Ms. [REDACTED] reports that Senior Warden [REDACTED] denied any knowledge of a request to deal with the issue as promised by Ms. [REDACTED], found the IPI unsubstantiated, and ordered Ms. [REDACTED] back to general population, where she will be in danger from the assailant and his affiliates.

The only way to explain this outcome is that either Ms. [REDACTED] manipulated Ms. [REDACTED] to avoid reporting sexual abuse for that reason and failed to discuss the issue with the warden, or Senior Warden [REDACTED] manipulated the issue to deny both endangerment and sexual abuse.

Ms. [REDACTED] reports that because TDCJ staff manipulated her and improperly denied her the opportunity to report sexual assault, she has since tried to report the sexual assault and been denied. TDCJ and UTMB staff who have subsequently failed to respond to a report of sexual abuse—as per PREA training and PREA Standard § 115.61(a) requiring “all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment”—include Assistant Warden [REDACTED], mental health staff person Mr. [REDACTED], Sergeant [REDACTED], a medical nurse named [REDACTED], and a Sergeant [REDACTED].

Lewis Unit staff and administration have also shown a lack of understanding of PREA training and failure to comply with PREA Standard § 115.61(a) that also requires “all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding . . . retaliation against inmates or staff who reported such an incident [of sexual abuse or sexual harassment]; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.”

Ms. [REDACTED] reports that at least through the end of May she continued to be housed in restrictive housing, where at least she should have been spared from retaliation. She was not. She reports that on April 30, an SSI tried to extort her by claiming he could keep her assailant



and his affiliates from harming her. She reported this to unit safe prisons, which provided no response.

Ms. [REDACTED] reports that on May 28, another person in an adjacent cell was raped by two SSIs who were allowed into the cell.

Ms. [REDACTED] reports that on May 28, her assailant was allowed into restrictive housing to threaten her.

Ms. [REDACTED] is not safe anywhere on Lewis Unit because her assailant is affiliated with a prison organization from which Lewis Unit staff will not and can not adequately provide protection regardless of the housing area. That is proven by the sexual assault in the restrictive housing area and by her actual assailant being able to access her in restrictive housing.

Conclusion

After being sexually assaulted on April 26, 2022, Ms. [REDACTED] was manipulated by unit safe prisons staff to report a threat and endangerment rather than the sexual assault. This manipulation resulted in a lack of documentation of sexual abuse and the subsequent endangerment being unsubstantiated, with Ms. [REDACTED] continuing to be in danger due to the failure of staff to follow PREA training and requirements to respond to reports of sexual abuse. Ms. [REDACTED] was then refused any opportunity to report the sexual abuse that the unit safe prisons staff should have documented in the first place. Due to her reports, Ms. [REDACTED] is currently in danger due to threats from her assailant and the inability—or unwillingness—of unit staff and TDCJ administration to prevent and protect her from retaliation.

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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
Pronouns: she/her/hers
Trans Pride Initiative

cc: TBCJ PREA Ombudsman
TDCJ Classification
TDCJ Region I Director
DOJ CRD, Special Litigation

TPI Incident Numbers

- 2022-00276, Sexual Assault
- 2022-00277, Negligence
PREA violation, 115.61(a)
- 2022-00278, Negligence
PREA violation, 115.31, 115.71(a)
- 2022-00282, Extortion
PREA violation, 115.67(a)
- 2022-00279, Place or leave in danger
PREA violation, 115.34, 115.71(a)
- 2022-00280, Place or leave in danger
PREA violation, 115.67(a)
- 2022-00281, Negligence
PREA violation, 115.31(a)
- 2022-00288, Negligence
PREA violation, 115.61(a)
- 2022-00284, Threat
PREA violation 115.67(a)