

DC TRANS COALITION

Testimony before the DC Council Committee on Public Safety and the Judiciary regarding

Department of Corrections Oversight

March 12, 2010

Council member Mendelson and members of the Committee on Public Safety and the Judiciary, I testify today on behalf of the DC Trans Coalition (DCTC), a grassroots, community organization of transgender, transsexual and gender non-conforming people and their allies, dedicated to the protection and advancement of the rights of the entire transgender, transsexual and gender non-conforming community of the District of Columbia.

As you are aware, on February 20, 2009, the Department of Corrections (DOC) issued its Program Statement 4020.3 on Gender Classification and Housing. This policy was the result of direct negotiations between DCTC and other organizations with Attorney General Peter Nickles and staff at the DOC. Trans persons face extremely high rates of abuse and sexual assault while incarcerated, and this policy is of vital importance to ensure their safety while they are in the District's custody. Yet as Council member Jim Graham noted in a letter to our organization in March 2009, the policy implemented by DOC has left several important questions unanswered.<sup>1</sup>

The policy mandated specific training for DOC personnel on dealing with trans individuals; guaranteed provision of gender identity appropriate undergarments, toiletries, and trans related medical care; as well as the creation of a new committee to address and determine the housing assignments for trans inmates. However, subsequent attempts made by DCTC to work with and support the DOC to ensure implementation of the policy have been consistently rebuffed and ignored. As such, in October 2009, we wrote to DOC director Devon Brown with a series of questions regarding implementation of the policy to date and to ascertain how and when the policy would be evaluated.<sup>2</sup>

While the DOC did claim that a trans community volunteer had been appointed to serve on the Transgender Committee, and confirmed that staff training had taken place, other questions were left entirely ignored and unanswered. For example, when asked whether medical personnel used by the DOC are capable of dealing with the specifics of trans-related healthcare (such as the proper provision of hormone therapy) the DOC's response was painfully vague and circumvented the specific training element of the policy wherein DOC medical professionals are "deemed competent" simply because they have had "medical education, training and licensure." Needless to say, merely having a medical education and licensure, of which speaks nothing to one's ability and knowledge in all medical specialties.<sup>3</sup>

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<sup>1</sup> See letter from Council member Jim Graham to DCTC member Jason Terry, dated March 10, 2009. See also: J. Rhodes Perry and Jason A. Terry, "Better Treatment for Trans Inmates," *The Washington Blade*, March 13, 2009, available online at [www.dctranscoalition.org](http://www.dctranscoalition.org).

<sup>2</sup> Letter from DC Trans Coalition to Devon Brown, dated October 21, 2009.

<sup>3</sup> Letter from DOC Director Devon Brown and Attorney General Peter Nickles to DCTC member Jason Terry, dated October 27, 2009.

Subsequently, the DCTC filed a Freedom of Information Act request that revealed that the DOC was, in fact, disingenuous when they had maintained that the Transgender Committee had been meeting to make all transgender housing determinations, as stipulated in program statement 4020.3. The DOC's response to that request revealed that the agency had, instead, been simply using a waiver form for trans inmates, of which only provides the option to choose between either the male or female general populations. Given that the policy makes no mention of this kind of waiver, it is unclear to us what the purpose the waiver serves or in what context it is provided to an inmate. Moreover, if the waiver is being used in lieu of an inmate appearing before the Transgender Committee, then this directly undermines the right guaranteed by the housing policy for trans inmates to express their perception of their vulnerability in the general jail population. Finally, while the policy clearly stipulates that trans individuals are to be duly noted during intake and within their files, DOC officials dubiously claim that they are unable to maintain such statistics as they lack the "proper software."<sup>4</sup> Such activities lead us to doubt DOC's commitment to ensuring the safety of its trans inmates and to obeying the policies required of them.

Director Brown and Attorney General Nickles also claimed in October 2009 that community members would be convened to evaluate implementation of the trans housing policy and to discuss areas for improvement, yet no plans seem to exist. At this juncture, the only information we have been able to glean about the treatment of trans persons in prison has been directly from the incarcerated individuals themselves, few of whom have been willing to volunteer information about their experiences. Furthermore, while we have provided the DOC with a list of qualified volunteers to serve on the Transgender Committee, only one volunteer has been appointed. Importantly, the policy dictates that the committee must meet within 72 hours of any trans inmate entering the jail. While all other members of the Committee are paid DOC staff members, this single volunteer is unlikely to be available for all cases, making it clear that to a larger pool of volunteers is paramount to ensure the Transgender Committee is never without a community advocate.

Unfortunately, Director Brown's and the DOC's behavior is not surprising. During the meetings we have secured with Director Brown and his staff in order to work through these issues, we have been faced with profound disrespect and unprofessionalism, wherein members of his staff have literally fallen asleep during several meetings and productive discussions breaking down into Director Brown hurling insults at us rather than engage productively. As you will recall, the only way we were able to secure a policy regarding trans inmates was through testifying directly before this committee at the confirmation hearing for Attorney General Nickles in the fall of 2008. That summer, rather than abide by the Human Rights Act, Nickles and the DOC attempted a regulatory end-run around it by carving out an exemption for custodial agencies in order to avoid working through these critical issues.

We therefore ask the Council to exercise aggressive oversight of the DOC at this time. We believe that the DOC should be compelled to address the concerns raised by our community about the policy and its implementation. The DOC should also immediately provide all the information necessary for community advocates to fully evaluate the policy's implementation to

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<sup>4</sup> Letter from DOC Records, Information and Privacy Officer Oluwasegun Obebe to DCTC member Alison Gill, in response to DCTC's FOIA request, dated February 2, 2010.

date and to engage in dialogue with DOC and the Attorney General on making any necessary improvements. In addition, we request that DOC clarify the purpose of the transgender housing waivers and immediately find ways to conclusively track the number of trans individuals who go through DOC's intake procedures. We also ask that the Council request the DC Inspector General to investigate the extent to which DOC is abiding by its transgender classification and housing policy. Finally, we would like to see DOC's FY 2011 budget request specifically outline plans to implement and evaluate the transgender classification and housing policy. While this may seem like an unusual request, we are now convinced that unless the Council forces the DOC to act transparently and in good faith, it will be impossible to hold DOC accountable for its actions.

We look forward to working in partnership with our government counterparts to ensure that the District's Human Rights Act is fully enforced – including in our jails – and appreciate your continued leadership on the important issues facing the trans community.

Thank you.