



Impact Justice, PREA Resource Center
1342 Florida Avenue NW
Washington, DC 20009

March 11, 2023

re: auditor noncompliance with audit requirements, TDCJ Clements Unit

To the PREA Resource Center:

Trans Pride Initiative (TPI) is filing an objection to the acceptance of the audit report for the Texas Department of Criminal Justice (TDCJ) Clements Unit conducted by auditor Gregory Winston. We believe that for a number of reasons this audit fails to meet the spirit or letter of audit requirements. The onsite audit was conducted November 9 through 11, 2022, so where specific data is given in the audit report, it reflects the auditor's report of "facts" at that time. The final audit report was submitted January 25, 2023.

Summary of Audit Report Deficiencies

TPI has documented a total of 513 incidents of violence against persons housed at Clements Unit, including 117 that occurred in the past 12 months. Of those, 92 incidents involved violation of some element of the PREA standards, with 19 PREA violations in the last 12 months. Our data is not comprehensive for the unit but only encompasses what is reported to us, so it should be considered only a small portion of the incidents of violence, including sexual violence, that is actually occurring.

Although TPI does not have as much data for Clements Unit as we do for some other TDCJ facilities, we feel there is sufficient data available to question compliance in some areas and to indicate the most recent PREA audit is deficient. There are indications the unit does not comply with PREA § 115.15, that training is insufficient in terms of proper and professional treatment of LGBTI¹ persons under PREA § 115.31, that the auditor failed to properly assess compliance with PREA §§ 115.61 and 115.67.

Request for Action

We are requesting that:

1. PREA identifies LGBTI as lesbian, gay, bisexual, transgender, and intersex persons. TPI is much more affirming and comprehensive in our understanding and use of this definition to include all non-cisgender non-hetero-normative persons, which we believe is consistent with the spirit of PREA.

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- Clements Unit be required to conduct a subsequent audit to address deficiencies in the audit referenced above;
- the auditor be required to follow PREA § 115.401(o) and publicly document each organization and advocacy group contacted, as well as a general description of the data provided, and if no entities were contacted to justify that deficiency;
- Clements Unit be required to address corrective actions for any issues determined to be non-complaint; and
- the subsequent report document the data identified by community-based organizations and community advocates to show compliance with PREA § 115.401(o).

Details of Audit Report Deficiencies

The audit report states that the population at the Clements Unit is “Males,” when in fact this is false. The Clements Unit houses cisgender males, transgender females, and other persons who may not belong to either of those two populations. The Clements Unit may abusively classify transgender women and other non-male persons as “male,” but that is not an accurate description for PREA assessment purposes of the populations housed. To identify transgender females as “males” is an act of violence that not only denies the existence of transgender persons but also encourages violence, sexual harassment, and sexual abuse of transgender persons by dismissing our core identity.

Audit entry 10 states that the auditor did not attempt to communicate with community-based organizations or victim advocates who provide services to this facility or may have insight into relevant conditions in the facility. PREA § 115.401(o) clearly states that “[a]uditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.” TPI was not contacted concerning the information we have about Clements Unit. That information can even be easily downloaded without contacting us at our web page for auditors: https://tpride.org/projects_prisondata/prea.php.

Audit entries 43 and 44 indicate that at the time of the audit, there were 0 lesbian, gay, and bisexual persons at the unit, and there were 0 transgender and intersex persons at the unit. This is in part shown to be false by the auditor’s own later data concerning interviews with LGBTI persons at the unit (see audit entry 65, indicating the auditor talked to 3 of 0 persons identified as lesbian, gay, or bisexual, and audit entry 66 that states the auditor spoke with 6 of the 0 transgender persons). TPI exchanged approximately 51 letters with 17 persons, 11 of whom have identified as transgender, one as gender diverse, one as cisgender, and 4 unknown between August and December 2022, also indicating this reported figure by the auditor is false.

This indicates the unit, the PREA auditor, and the PREA Resource Center by accepting this audit findings are manipulating the data that is being collected under the responsibilities of these entities to fulfill PREA data collection requirements. This failure is at best misrepresenting LGBTI persons, and at worst is deliberate manipulation of PREA data collection responsibilities.



Audit entries 45 and 46 indicate that 0 incarcerated persons had reported sexual abuse in the facility and 0 incarcerated persons had disclosed prior sexual victimization during risk screening at the facility. TPI has documented 4 incidents of sexual abuse and 5 incidents of sexual abuse reported to us during the 12 months preceding March 10, 2023, so we find it hard to believe either of these data were accepted as true. Audit entry 45 is also contradicted by audit entry 67, which indicates 4 of the 0 persons who had reported sexual abuse were interviewed, as well as other audit data. And audit entry 46 is contradicted by audit entry 68, which stated 5 of the 0 persons who had disclosed prior sexual victimization were interviewed, as well as other audit data. Inaccuracies such as this indicate the entire audit report should be questioned for its accuracy.

Audit entry 47 states that the “total number of [incarcerated persons] who were ever placed in segregated housing/isolation for risk of sexual victimization in the facility” as 0. It is absurd that anyone could accept that as an accurate reflection of the use of segregated housing at Clements Unit. Audit entry 69 indicates there were no persons at Clements Unit who had ever been placed in segregation for risk of sexual victimization, and attributes this to unit administration claiming there were “none here,” an egregiously blatant falsehood meant only to cover up the frequency with which persons are placed in segregation within TDCJ. This appears to be a narrow, manipulative, and disingenuous definition of such housing as only referring to safekeeping designated persons, who are not housed at Clements Unit. That narrow use is certainly not reflective of the spirit or letter of PREA standards concerning segregated housing.

Audit entry 98 indicates the total number of sexual abuse files reviewed was 20, comprised of 20 sexual abuse investigations involving only incarcerated persons and 5 involving staff, which is actually a total of 25.

PREA § 115.15 discussion, cross-gender strip and body cavity searches

The audit states that “Clements Unit does not conduct cross-gender strip searches or cross-gender visual body cavity searches except when performed by medical practitioners” and that the auditor “verified through staff interviews that no cross-gender strip searches or visual body cavity exams have occurred.”

Regardless of whether a person is assigned to a facility designated as “male” or “female,” if that person is identified as transgender in the prison system or facility, then searches by persons of a gender different from the incarcerated person’s self-identified gender are cross-gender searches unless a waiver documenting search preference has been signed. Failure to respond accordingly in an audit is a failure to properly assess whether or not cross-gender searches are conducted at a facility. Misclassifying, in this case, transgender females as “males” is participation by the auditor in violence against transgender persons, and acceptance of that misclassification by the PREA Resource Center is encouraging and abetting violence against transgender persons and should not be considered compliant with PREA standards.



TPI does not record cross-gender visual body cavity searches in exigent circumstances or performed by medical staff as incidents of violence, so all documented cross-gender strip and cross-gender visual body cavity searches recorded were reported to have not involved exigent circumstances, and all were performed by non-medical staff. Totals for violations of this standard at Clements Unit reported to TPI are 1 in the last 12 months and 12 in the last 36 months. See the discussion of PREA 115.15 in the attached Clements Unit data report for details about these reports.

The audit report states that Clements Unit only houses “male inmates.” As noted above, this not only erases the existence of trans persons, this type of misclassification and erasure of transgender persons encourages violence against trans persons, including sexual abuse and sexual harassment. Further, this misapplication of the PREA standards allows the auditor to ignore violations under 115.15(b), cross-gender pat-down searches of female persons.

If the facility allows cisgender males and transgender males to conduct pat-down searches of transgender females, then the facility permits cross-gender pat-down searches of female incarcerated persons unless the incarcerated transgender female has completed a waiver allowing such searches. Cisgender males and transgender males are not the same gender as cisgender females and transgender females.

All pat-down searches of incarcerated cisgender females and transgender females by cisgender males or transgender males constitute pat-down searches of female incarcerated persons conducted by male staff.

The failure by the auditor to document that the unit houses transgender females also results in deficient assessment of 115.15(c), requiring that the facility document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female incarcerated persons.

It is highly likely that if a facility houses incarcerated transgender females in units designated for incarcerated male persons, or if a facility houses incarcerated transgender males in units designated for incarcerated female persons, then these are not appropriately documented.

Regardless of whether a facility is designated as “male” or “female,” if the facility allows persons of a gender different from an incarcerated person’s self-identified gender to conduct strip searches and visual body cavity searches, then these are cross-gender searches except in cases where the incarcerated person has completed a waiver allowing such searches. If the facility does not document all these as cross-gender strip searches and cross-gender visual body cavity searches, then any policy requiring such documentation is not being followed.

The audit report states that incarcerated persons shower, change clothing, and perform bodily functions without non-medical staff of the “opposite” gender viewing their breasts, buttocks, or genitalia except in exigent circumstances or incident to cell checks.

This policy is discriminatory toward nonbinary gender persons as it only addresses “male” and “female” genders as “opposite” genders, thus erasing nonbinary identities.



Regardless of whether a facility is designated as “male” or “female,” this policy covers “opposite” genders of “male” and “female,” including cisgender and transgender males as opposite to cisgender and transgender females. If the facility does not have policies and procedures that enable incarcerated persons to shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia except in exigent circumstances — including cisgender and transgender males viewing transgender females, and cisgender and transgender females viewing transgender males, except in cases where a waiver has been completed by the incarcerated person — the facility is not compliant with this policy.

Likewise, every statement in this audit report discussing “opposite” genders and gender in general erases the existence of both nonbinary persons and, because of the way it is used in this report, trans females as well.

The audit report states that all employees are trained in “how to properly search transgendered [*sic*] and intersex inmates,” but the nature of that training and what the auditor is considering appropriate is not provided.

The National PREA Resource Center has stated (see <https://www.prearesourcecenter.org/sites/default/files/library/115.15.pdf>) that when conducting pat-down searches of transgender persons, “[a] case-by-case determination of the most appropriate staff member to conduct the search is necessary and should take into consideration the gender expression of the inmate.” In addition, four options are in current practice for searches of incarcerated transgender and intersex persons: “1) searches conducted only by medical staff; 2) pat searches of adult inmates conducted by female staff only, especially given there is no prohibition on the pat searches female staff can perform (except in juvenile facilities); 3) asking inmates/residents/detainees to identify the gender of staff with whom they would feel most comfortable conducting the search; and 4) searches conducted in accordance with the inmate's gender identity.” This means that a blanket rule that a person is searched or pat-searched by the gender of the unit to which they are assigned is not appropriate. If the training referenced in the audit report does not comply with the above options, then the training is not adequate and should be considered non-compliant.

PREA § 115.31 discussion, employee training

The audit report states that Clements Unit “meets the requirements of the standard,” in this case covering PREA training.

TPI documents general failure to implement training due to an apparent lack of understanding of PREA standards, and specific failure to communicate effectively and professionally with LGBTI incarcerated persons. For Clements Unit, we have documented 1 general failure to implement PREA training in the past 12 months, and 2 in the past 36 months. We have documented 2 incidents of unprofessional, ineffective, or abusive communication reported to



TPI in the past 12 months, and 13 in the past 36 months. Individual incident details can be found in the accompanying TPI Clements Unit data report.

PREA § 115.61 discussion, staff reporting

The audit report notes that the auditor reviewed policy and 20 reports of incidents, and from these “determined the facility meets the requirements” of this standard.

However, a review as described cannot properly assess reports that staff ignore and fail to respond to. TPI has documented 1 failure to respond to a report of sexual violence in the last 12 months, and 6 failures to respond in the past 36 months. Details can be found in the accompanying TPI Clements Unit data report.

PREA § 115.67 discussion, protection against retaliation

The audit report states that there were no incidents of retaliation in the past 12 months.

TPI documents reports of failures to protect persons reporting or participating in the reporting or investigation of sexual violence from retaliation, and we have documented 3 reports in the past 12 months, 4 in the past 36 months, and 6 overall in our records. Details about individual incidents can be found in the accompanying TPI Clements Unit data report.

PREA § 115.78 discussion, disciplinary sanctions

The audit report states that policy prohibits disciplining incarcerated persons making good faith reports of prohibited conduct.

TPI has found that TDCJ in general violates this standard regularly. TPI has documented 1 incident of discipline for a good faith report of sexual abuse in the past 36 months, and 2 in all our data, which we are pretty sure is a significant under count for this unit.

Conclusion

TPI has documented a total of 513 incidents of violence against persons housed at Clements Unit, including 117 that occurred in the past 12 months. Of those, 92 incidents involved violation of some element of the PREA standards, with 19 PREA violations in the last 12 months. Our data is not comprehensive for the unit but only encompasses what is reported to us, so it should be considered only a small portion of what is actually occurring.

We feel there is sufficient data available to question compliance in some areas and to indicate the most recent PREA audit is deficient. There are indications the unit does not comply with PREA § 115.15, that training is insufficient in terms of proper and professional treatment of LGBTI persons under PREA § 115.31, that the auditor failed to properly assess compliance with PREA §§ 115.61 and 115.67.

We are requesting that:

- Clements Unit be required to conduct a subsequent audit to address deficiencies in the audit referenced above;



- the auditor be required to follow PREA § 115.401(o) and publicly document each organization and advocacy group contacted, as well as a general description of the data provided, and if no entities were contacted to justify that deficiency;
- Clements Unit be required to address corrective actions for any issues determined to be non-complaint; and
- the subsequent report document the data identified by community-based organizations and community advocates to show compliance with PREA § 115.401(o).

I hope that these issues can be addressed in the interest of increasing the safety of all trans and queer persons, and in the interest of more full compliance with PREA standards requiring “zero tolerance toward all forms of sexual abuse and sexual harassment” and legitimate instead of specious efforts to prevent, detect, and respond to such conduct.

Sincerely,

Nell Gaither, President
Pronouns: she/her/hers
Trans Pride Initiative

cc: Department of Justice, Special Litigation Section
TDCJ PREA Ombudsman