



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

November 15, 2023

re: auditor noncompliance with audit requirements, Estelle 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) Estelle Unit conducted by auditor Latera M. Davis. 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 March 15, 2023, 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 September 8, 2023.

Summary of Audit Report Deficiencies

As of the date of this letter, TPI has documented a total of 414 incidents of violence against persons housed at Estelle Unit, including 49 that occurred in the past 12 months. Of the total documented incidents, 101 involved noncompliance with some element of the PREA standards, with 5 PREA noncompliance issues documented 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 Estelle Unit as we do for some other TDCJ facilities (we have only relatively recently begun receiving reports from the unit, and our first documented incident occurred in 2020), we feel there is sufficient data available to question compliance in some areas and to indicate the most recent PREA audit is deficient. Areas of major concern include misrepresenting the gender of persons housed at Estelle Unit and how that misrepresentation affects compliance; inappropriate investigations of sexual violence,



including use of improper evidentiary standards; and failures to appropriately screen incarcerated persons housed at Estelle Unit and make use of screening information.

Request for Action

We are requesting that:

- Estelle Unit be required to conduct a subsequent audit to address deficiencies in the audit discussed in this letter;
- 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;
- Estelle Unit be required to correctly conduct gender-based searches as required under PREA standards and document noncompliance with those standards;
- Estelle Unit staff be required to take additional training in appropriate and professional interactions with LGBTI persons to address deficiencies in professional conduct and additional training in appropriate investigative practices and evidentiary standards;
- Estelle Unit be monitored for abusive practices in the collection and use of screening data, and particularly in the provision of separate showers for transgender persons; and
- Estelle Unit be required to address corrective actions for any issues determined to be non-complaint.

Details of Audit Report Deficiencies

The audit report states that the population at the Estelle Unit is “males,” when in fact this is false. The Estelle Unit houses cisgender males, transgender females, and other persons who may not belong to either of those two populations. The Estelle 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 at the unit. 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. Refusal to affirm a person’s gender dehumanizes the person, and dehumanization is a significant step in excusing and justifying institutional harm and violence. 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, as well as other PREA standards. To identify transgender women as “males” is an act of violence that not only denies the identity of transgender women and possibly nonbinary persons, but also encourages violence, sexual harassment, and sexual abuse of transgender persons by dismissing our core identity.

Significant problems with the general audit information include:



- The auditor only contacted two community-based organizations, and never contacted TPI nor did the auditor access the online information TPI makes available for auditors. Thus the auditor failed to comply with PREA § 115.401(o).
- The auditor falsely states that 0 persons housed at Estelle Unit have ever been placed in segregated housing. This indicates the auditor does not understand how TDCJ manipulates housing designations, nor did the auditor do sufficient research to attempt to understand how TDCJ manipulates these designations. This is a major audit deficiency that calls into question the validity of the entire audit.
- The auditor failed to interview the minimum required number of persons identified as lesbian, gay, or bisexual in conducting the audit.
- The auditor failed to interview persons placed in segregated housing, accepting without question Estelle Unit staff's false claim that there were none housed at the unit.

Significant problems with the assessment of compliance with audit standards include:

- PREA § 115.13: TDCJ has for many years shown that they cannot keep their units adequately staffed, and Estelle Unit is likely operating at about 50% staff capacity, calling into questions compliance with this standard.
- PREA § 115.15: Failure to recognize actual genders of persons housed at Estelle Unit means that Estelle Unit is not in compliance with this standard and that cross-gender searches are being conducted but improperly excused.
- PREA § 115.31: Due to the number of problems reported to TPI about basic failures of Estelle Unit staff to act appropriately and professionally in interactions with transgender persons, it seems highly doubtful that Estelle Unit is in compliance with this standard, at least in areas of training for respectful and professional treatment of transgender persons.
- PREA § 115.34: TPI has documented what are clear examples of improper investigations. With the number of issues identified, and even with "corrective actions," it is clear that Estelle Unit fails to meet compliance with this standard, as the auditor claims.
- PREA § 115.41: The auditor documented failures to ask about prior experience of sexual abuse, and failures to address concerns about potential sexual abusers, as well as other issues from staff related to the screening process, even noting that "PREA assessment was not completed at all or in a timely manner.
- PREA § 115.42: Estelle Unit exhibited clear problems providing appropriate use of screening information, including providing required separate showers for transgender persons. TPI feels it is irresponsible, unprofessional, absolutely unacceptable that Estelle Unit was assessed as being "fully compliant" with the PREA § 115.42 standard.



- PREA § 115.43: The problems with assessing compliance with this standard are numerous, and I will refer to the discussion of this standard below. Again, TPI feels it is irresponsible, unprofessional, absolutely unacceptable that Estelle Unit was assessed as being “fully compliant” with the PREA § 115.43 standard.
- PREA § 115.72: Extremely low substantiation rates for allegations of sexual abuse and sexual harassment call into question the level of evidentiary standard being used to assess these allegations. This issue is discussed in detail below. TPI finds it highly unlikely that Estelle Unit is actually in compliance with this standard
- PREA §§ 115.11, 115.16, 115.21, 115.52, 115.61, 115.67, 115.68, 115.82, 115.83: Each of these standards also had problems that indicate possible deficiencies.

General Audit Information

Audit entry 10 states that the auditor contacted two community-based organizations, which were:

- Just Detention
- National Rape Crisis Center

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.” This does not limit that contact to one or two advocates, nor does it limit contacts to entities that are party to an MOU, nor does it limit it to such national organizations as the auditor deemed sufficient. At a minimum, the Texas Association Against Sexual Assault should have been contacted, but was not. TPI also was not contacted concerning the information we have about Estelle Unit, and no reference to our data freely available online was made. For auditor convenience, that information can even be easily viewed and downloaded at our web page for auditors: https://tpride.org/projects_prisondata/prea.php. This audit does not meet compliance requirements under PREA § 115.401(o).

Audit entry 47 states that 0 persons housed at the unit had ever been placed in segregated housing or isolation for risk of sexual victimization. This represents a major failure to document and audit segregated housing, or protective custody under PREA. **This also indicates a failure to investigate and understand how segregated housing is defined confusingly (and appears to be purposefully manipulated by TDCJ to cause confusion) and a failure to perform due diligence in confirming such a claim that no person housed at Estelle Unit had ever been placed in segregated housing or isolation for risk of sexual victimization. This will be discussed further under PREA § 115.43.**

Audit entry 65 notes that 2 persons identified as lesbian, gay, or bisexual were interviewed. According to Table 2 in the Auditor Handbook, the minimum number of interviews for a unit with the overall population of Estelle Unit, which has a population of over 2,500, should have been at least 3.



Audit entry 69 states that the total number of interviews with persons “who are or were ever placed in segregated housing/isolation for risk of sexual victimization per the risk protocol was 0.¹ According to Table 2 in the Auditor Handbook, the minimum number of interviews for a unit with the overall population of Estelle Unit, which has a population of over 2,500, should have been at least 2. The auditor reported that Estelle Unit staff said there were “none here,” and acceptance of that false information without question casts doubt on all other aspects of this audit.

TPI is aware of persons at Estelle Unit who are currently and have been segregated in the past due to risk of sexual victimization. As with **audit entry 47**, this also indicates a failure to investigate and understand how segregated housing is manipulated by TDCJ to cause confusion; **this will be discussed further under PREA § 115.43**. It should also be noted that any allegation of sexual abuse or sexual harassment in TDCJ involves locking up the person making the allegation in segregated housing during the Inmate Protection Investigation (IPI).²

Audit entry 95 provides the outcomes of administrative investigation of sexual abuse allegations during the previous 12 months. It should be noted that **audit entry 92** shows 15 abuse allegations against staff and 28 against prisoners were reported, and 11 were investigated criminally. The administrative investigations into the 43 allegations found 4 substantiated, 32 unsubstantiated, and 10 unfounded. Thus about 9% were substantiated, and 91% were deemed to have less than 50% chance of having occurred. According to PREA § 115.72, the agency “shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated,” yet the fact that 89% and 93% of the allegations were found unsubstantiated or unfounded indicates a failure of the administrative investigations to adequately assess evidence in allegations of sexual abuse.

Audit entry 97 provides the outcomes of administrative investigation of sexual harassment allegations during the previous 12 months. It should be noted that **audit entry 93** shows 26 allegations were reported. The administrative investigations found 6 substantiated, 20 unsubstantiated, and 1 unfounded (the difference in totals is not explained). Based on the 27 administrative investigation results provided, about 22% were substantiated and 78% deemed to have less than 50% chance of having happened. Although this is somewhat better than the sexual abuse investigations, again it is plausible to question whether allegations of sexual harassment are also being assessed at a higher evidentiary standard than PREA allows. This indicates a likely failure of the administrative investigations to adequately assess evidence in allegations of sexual harassment.

PREA § 115.11 discussion, zero tolerance of sexual abuse and sexual harassment

PREA § 115.11 provides technical requirements that reflect the PREA goal of “zero tolerance of sexual abuse and sexual harassment” at the Estelle Unit and the agency overall through policy

1. Note that the protocol mentioned in the instructions is the additional questions to be asked, not how to select these persons.

2. The auditor does address this latter issue in a manner that should be adopted across TDCJ.



implementation and management. Policy is certainly essential to reaching such goals, but policy alone is inadequate, and actual implementation may even increase harm.

In TPI's experience, policy concerning protections for marginalized persons, as implemented by governmental agencies concerning law enforcement and the justice system, are commonly implemented in a manner that reinforces existing structural discrimination and harm. One very common example of how this works is when harmful practices are pointed out and the agency or responsible party states something to the effect "that does not happen because we have policy that prohibits it" or "because we have training against it." This excuse covers up and may even encourage harms such as sexual abuse and sexual harassment by providing a means of covering up such violence.

Similarly, claims that issues are "investigated," when it is clear the investigations have little or no merit due to the number of instances where allegations are dismissed, also function to cover up and may also encourage violence such as sexual abuse and sexual harassment by providing a means of simply ignoring such violence through improper investigations. Deficiencies in investigations such as those identified in audit entries 95 and 97 above are examples.

Due to our work with persons housed at Estelle Unit and the general lack of professionalism indicated in communications with persons housed at the unit, TPI has doubts that this unit fully complies with PREA § 115.11.

PREA § 115.13 supervision and monitoring

PREA § 115.13 requires the unit to maintain adequate staff to operate effectively and to "protect inmates against sexual abuse." TDCJ has long shown that they cannot hire or maintain adequate staffing levels at most of their units. Many units in the system are operating at less than 50 percent security staff, some as low as 30 percent. Estelle was noted to have had security staffing at about 50% in August 2022, and many facilities have lost staff since that time. TPI has received reports from a number of units that incarcerated persons may not even see a security staff person for hours at a time, and that one staff person may be the only assigned staff person for an entire building or wing. Although positions may be filled during an audit, that may not be the case on days when the unit is not being audited.

TPI has received reports of no security staff in housing areas for six hours, and that incarcerated persons in some areas were given free reign of buildings for several hours with no guards present. This has been typical of increased staffing issue complaints across the TDCJ system.

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

The PREA standards state that Estelle Unit staff "shall not conduct cross-gender strip searches or cross-gender visual body cavity searches . . . except in exigent circumstances or when performed by medical practitioners." The auditor claims that 0 cross-gender strip searches were conducted at the unit in the last 12 months.



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 strip and visual body cavity searches by persons of a gender different from the incarcerated person’s self-identified gender are cross-gender searches, and are noncompliant with PREA standards unless a waiver documenting search preference allowing a cross-gender search has been signed.

Failure to recognize this fact in an audit is a failure to properly assess whether or not cross-gender searches are conducted at a facility. As discussed above, misclassifying transgender females and non-binary transgender persons as “males” is inappropriate, is noncompliant with PREA § 115.15(a), and furthermore may constitute participation by the auditor in violence against transgender persons. Acceptance of that misclassification by the PREA Resource Center is encouraging and abetting violence against transgender persons, and that too should not be considered compliant with PREA standards.

Concerning PREA § 115.15(b), 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 incarcerated females 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. The auditor claims that Estelle Unit is an “all-male facility,” which is patently false and clearly covers up violation of PREA § 115.15(b). In addition, by refusing to identify transgender females, the auditor is participating in violence against transgender women.

Although the auditor stated that “[t]here was identified concern with the facilities [sic] practice on searching transgender and intersex inmates. It was reported that intersex and transgender inmates at the Estelle facility are only searched by male staff no matter what their preference or request. . . . A memo was provided to Estelle Unit Personnel on the agency procedure for conducting cross-gender searches, which include exigent searches. No further action is needed.” However, based on the auditor’s own refusal to acknowledge the gender of transgender persons, it is highly questionable whether the “memo” was sufficient, and TPI feels it should be clear that the statement “[n]o further action is needed” is absolutely false.

The failure by the auditor to document that the unit houses transgender females and non-binary transgender persons also results in deficient assessment of PREA § 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. Claims that Estelle Unit is an “all-male facility” again are clearly erroneous.

Concerning PREA § 115.15(d), which provides that incarcerated persons be allowed “to shower, perform bodily functions, and change clothing without staff of the opposite [sic] gender viewing their breasts, buttocks, or genitalia,”³ the refusal to acknowledge the gender of transgender

3. TPI notes that this standard is discriminatory toward nonbinary gender persons as it only addresses “male” and “female” genders as “opposite” genders, thus erasing nonbinary identities. Such erasure is another means of dehumanization, again, an important step in excusing and justifying institutional harm and violence.



persons also results in a failure to meet this standard. Failing to recognize this is a clear deficiency in this audit.

PREA § 115.15(f) covers training in the conduct of cross-gender pat-down searches and searches of transgender and intersex incarcerated persons in a professional and respectful manner. As stated above, the auditor reported that “[t]here was some identified concern with the facilities [sic] practice on searching transgender and intersex inmates. It was reported that intersex and transgender inmates at the Estelle facility are only searched by male staff no matter what their preference or request. . . . A memo was provided to Estelle Unit Personnel on the agency procedure for conducting cross gender searches, which include exigent searches. No further action is needed.” Again, TPI objects that a memo is sufficient.

We can also specifically report that in 2022, TPI documented an abusive strip search by the Estelle Unit safe prisons manager.

The subject [TPI client] reports that she was made to fully strip, including removing her bra, and she has never been forced to remove her bra during a routine annual shakedown.

The subject reports that she was ordered to be strip searched by a male, including removing her bra. She initially refused and a field sergeant told her she had to. The subject asked for a female guard to be present and was refused. Eventually a guard said that the Safe Prisons Manager had said the subject must remove her bra.

The subject only consented because the male who stripped her convinced her that he was gay and would block all view into her cell (improper search incident 2022-00586). He then laughed at her and told her she was a male (misconduct incident 2022-00587).

In another 2022 example concerning PREA § 115.15(d), “the subject reports that a guard, a cisgender male, entered the shower of a trans woman while she was dressing. No announcement of cross-gender staff presence was noted as being made.” The same survivor further describes the staff harassment on July 8, 2022:

The subject reports that she was allowed into the shower at 6:24am, during the time scheduled for trans persons to shower, and at 6:31am, a guard entered the shower while she was showering to observe her. The guard had been told by transgender persons outside the shower waiting their turn that someone was in there showering, but he ignored their information.

The guard then continued to stare at the subject while telling her that she was not supposed to be in the shower (this is the established time for trans persons to shower), and that she had to leave so he could shower people he was escorting. The guard refused to provide his name, and no announcement of cross-gender staff presence was noted.

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, and cisgender and transgender females as “opposite” to cisgender and transgender males. 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.



As the subject was leaving the area, one of the cisgender males that were now in the shower staging area made statements and touched the subject in a sexually suggestive manner. Disrespect by guards for trans persons often elicits and encourages sexual harassment or other violence from non-trans incarcerated persons, but because the subject did not identify this as sexual harassment, it is not logged as such.

The subject reports that the same guard who had entered her shower and stared at her on July 8, 2022 (incident 2022-00466) entered the shower with her. "I was surprised to discover that this officer had followed me inside, but I was able to return to the front of the shower area, just inside of the locked door, before having undressed." The subject states that the guard, who again was not wearing a name tag in any visible location, waited around in the adjacent necessities area for a few minutes before finally leaving the shower area so she could shower.

It is absolutely egregious that the auditor concludes "the agency and facility is [*sic*] fully compliant with the standard."

PREA § 115.16 discussion, incarcerated persons with disabilities and who are limited English proficient

Although this is not an area which TPI staff feel we have expertise, the number and extent of the problems documented in the audit indicate without doubt the auditor inappropriately found that Estelle Unit to be "fully complaint with" this standard.

PREA § 115.21 discussion, evidence protocol and forensic medical examinations

The auditor states in discussing compliance with PREA § 115.21(a) that "One hundred percent of the interviewed staff were aware of *some* of the agency's protocols." That is extremely vague and manipulative, and it brings into question whether the auditor's statement that "the facility is in compliance with the provisions of this standard" reflects reality.

The auditor states in discussing compliance with PREA § 115.21(e) that "All of the inmates who reported sexual abuse stated that their facility did not allow them to contact anyone."

Regardless of whether this is a reference to the fact that Estelle Unit does not have a Memorandum of Understanding with a survivor advocacy organization, the implication is that communication about their experience with outside persons is being prevented. This statement is highly concerning and demands explanation, and may constitute noncompliance with PREA § 115.53 as well.

For these reasons, it seems that the auditor was in error in the claims that Estelle Unit is "fully compliant" with this standard.

PREA § 115.31 discussion, employee training

PREA § 115.31 concerns training related to zero tolerance for sexual abuse and sexual harassment, the rights of incarcerated persons to be free from sexual abuse and sexual harassment, appropriate responses indications and reports of sexual abuse and sexual harassment, and professional communication.



In 2022, TPI documented several issues that indicate training at Estelle Unit is woefully inadequate.

- A lieutenant refused to let a trans woman out of her cell telling her that she had to look and act like a man or she will not be allowed out. The subject stated that she was wearing new shorts and tee shirts, not altered, and she was not behaving in any way that should draw attention to her. The lieutenant also provided a fake name to her.
- Separate showers for trans persons were intermittently being denied, and lower ranking staff continually and persistently complaint that the procedure is cumbersome and unnecessary, and that trans persons are requesting unnecessary accommodations.
- Warden Lamb inferred to the transgender woman noted above that she brought on the lieutenant's harassment by being out as transgender.
- An bisexual intersex individual with gynocomastia was left in a holding cell for more than an hour with only boxers for clothing. When the subject asked for some clothing, the subject was told that was a stupid question.

These issues, especially the comments from a warden, call into question whether the auditor was accurate in assessing the unit as "fully compliant" with the training requirements.

PREA § 115.34 discussion, specialized training in investigations

TPI has little means of monitoring compliance with PREA § 115.34, which covers training in the conduct of sexual abuse investigations.

The auditor notes under the discussion of PREA § 115.22(a) that "An overwhelming number of inmates reported not trusting the investigation process and that investigators would lead the inquiry with statements such as 'I know it didn't happen.' It was also reported that evidence was not always investigated, and that the investigator would brush them off; overall the process for the inmates did not feel thorough."

TPI has also documented problems related to investigations and the apparent lack of rigorous training in proper investigative procedures. In 2022, a gay man with a development disability (educational attainment in the system documented as 3.2, IQ in system documented as 62) reported with assistance from others that the safe prisons sergeant tried repeatedly in February and March to extort the subject by threatening a case for sexual misconduct unless the subject provided information about contraband trafficking on the unit. The subject refused, and the safe prisons sergeant wrote a case for sexual misconduct on March 17, although the alleged incident actually took place and was known to have taken place by the staff person on February 9, 2022.

Another person reported that a unit major pulled the subject out about an allegation of sexual violence, but the major was one of the persons named in the allegation of misconduct. The major claimed that the PREA ombudsman office asked her to investigate the allegation she was accused of, clearly a conflict of interest. It is not known if this conflict of interest was proposed



by the PREA ombudsman office of if the major was lying about what was requested by the PREA ombudsman office.

Major investigation abuses such as these indicate that it is questionable whether or not the facility is “fully compliant” with this training standard, as is testified by the auditor.

PREA § 115.41 discussion, screening for risk of victimization

PREA § 115.41 concerns screening of incarcerated persons for their risk of experiencing or perpetrating sexual abuse.

The auditor notes that several incarcerated person reported questions about prior sexual abuse, endangerment, and sexual orientation were “asked at other facilities but not here.”

In the discussion of PREA § 115.33, the auditor notes that during intake, not all persons were being told they have a right to not be sexually abused or sexually harassed, nor were they all told how to report allegations of sexual abuse and sexual harassment at Estelle Unit, nor were they informed about their right to report anonymously (some staff did not even know that). The auditor also noted that intake staff asked questions about sexual orientation inappropriately during the intake process. It is not explained why this manipulation of the screening process was not mentioned by the auditor in the discussion of PREA § 115.41(d), where it is also relevant, perhaps more so.

The auditor noted that “the PREA assessment was not completed at all or in a timely manner” and that staff “did not provide all of the requested documentation of inmate assessments.”

The auditor reports that 2,019 persons were screened for risk of sexual victimization within 72 hours of intake, but does not provide comparative data conveying the significance of that number to this PREA requirement. Since there were, per the auditor, 2,872 persons housed at Estelle the day the audit began, this means that at least 853 either had not been screened at the time of the audit or had been at the unit less than 72 hours. The auditor fails to state how many of that 853 had been at the unit less than 72 hours and how many were thus not screened appropriately, the only numbers relevant in this assessment. This indicates possible manipulation of audit data by the auditor, providing data that is not actually relevant in the assessment of compliance.

The auditor notes that reassessments in compliance with PREA § 115.41(f) appeared to be seldom completed. It appears that at least 30 reassessments were delinquent during the on-site audit.

Supplementing these failures at screening is a complaint TPI has received that a trans woman wrote numerous I-60s to the unit PREA manager beginning May 2022 identifying as transgender, receiving no response. The person was following standard TDCJ Policy SPPOM-03.02 for identifying as transgender. At the end of the month, the PREA manager told her to stop sending I-60s and that she was already designated as transgender (although policy states she should have an interview to “validate” her identity). However, the subject later found out



that she had not been designated appropriately, and additional I-60s sent through the end of August were being ignored.

It is unclear why, in discussing intake and assessment interview questions, the auditor specified “gay, lesbian, bisexual” and left out transgender identity (although including lesbian identity in what the auditor claims is an “all-male” facility), and the only reason may be prejudice by the auditor against trans-identified persons, meaning their identity is not even important enough to question on intake.⁴ That begs the question about whether monitoring and “corrective actions” were also trans exclusionary as a result of auditor bias.

Clearly, even with the “corrective actions,” Estelle Unit does not meet PREA standards for documenting and assessing the risk of incarcerated persons at the unit for sexual abuse and sexual harassment. It is not clear why this auditor claimed Estelle Unit is “in compliance with the standard.”

PREA § 115.42 discussion, use of screening information

PREA § 115.42 concerns how sexual abuse risk screening information is used to help ensure safety.

The auditor reported that of the six transgender persons interviewed at Estelle Unit, only one did not express “concern about their treatment.”

The auditor reported that “most” transgender persons interviewed expressed concerns that they were not provided an opportunity to shower separate, and required under PREA § 115.42(f)

The auditor reported that “most” transgender persons interviewed expressed concerns that staff have “compromised their safety by announcing to other inmates that it is transgender shower time” and other “staff comments [that] have made other inmates aware” of their transgender status, in likely violation of, at a minimum PREA §§ 115.11(a), 115.15(a), 115.15(d), 115.31, 115.41(i), and possibly Health Insurance Portability and Accountability Act regulations.

In addition to the auditor’s notes, TPI has documented issues related to noncompliance with PREA §§ 115.42(a) and (b). A transgender woman reported that on and prior to May 21, 2022, she was designated as safekeeping status but was being housed in a general population pod that included G2 persons except for four P2 (safekeeping minimum custody) persons and one G4 (medium custody) person, all of whom would go to the day room together, ate together, and went to recreation together. This was in the high security area, but general population and safekeeping persons are not supposed to be housed together (Texas Government Code 501.112); that is the definition of safekeeping, that they need separate housing outside general population. The transgender woman reported that on May 21, 2022, the “they (the pod boss) rolled all the doors at 8:30 for dayroom” while she was asleep, and a person in her housing area

4. The PREA Standards in Focus specify that “staff must affirmatively ask inmates about their sexual orientation and gender identity by inquiring directly if they identify as lesbian, gay, bisexual, transgender, or intersex” in the screening questions, indicating selective and prejudicial audit standards by the auditor.



rigged her the door to not lock when it closed, and raped her at knife point. The subject stated this is the third time she has been raped in TDCJ custody.

Concerning PREA § 115.42(c), TPI notes that based on reporting to us, we only have heard of a single transgender or intersex incarcerated person NOT housed according to their gender assigned at birth, and our information indicates that person has had genital surgery. Thus TDCJ appears to have, in practice, a blanket rule of making housing assignments for transgender and intersex persons based on genital configuration, not on a case-by-case basis. Nothing is done via auditing to address this issue.

Concerning PREA § 115.42(f), TPI notes that for two-person cells where the shower is in the cell, if one of the persons is transgender or intersex and one is not, that housing is not in compliance with 115.42(f). If both persons are transgender or intersex, such housing may comply with this standard if both persons housed in the cell agree that the housing arrangement is acceptable, but only for as long as both persons housed in the cell agree that the arrangement is acceptable.

TPI notes that we have received reports from Estelle Unit of failures to provide separate showers going back to April 2020. Recent examples of issues with transgender persons not receiving separate showers include that trans persons were not able to get separate showers at all between February 5 and 22, 2022. After grievances were filed, this issue was improved somewhat, but separate showers were still only sporadic. On April 14, 2022, it was reported to us that a new procedure was implemented, but it only allowed the separate showers from 6 to 7am at one shower, the process was problematic in that to get a shower, one had to get out of their cell around 5am and would not return till about 9am. Only about two of the six trans women who wanted separate showers were getting them. The process seems to have been a barrier to compliance.

Also reported to us was that they had started showering trans persons together⁵ as a group, but were not checking to determine if everyone in the group was identified as transgender, which would not be “separate” under any interpretation of PREA § 115.42(f). We also have a report that from June 23 to July 15, during the heat of the summer, while wing of the unit was on precautionary Covid-19 quarantine, no separate showers were provided for trans persons, but during this period, group showers for cisgender persons were run daily.

TPI feels it is irresponsible, unprofessional, absolutely unacceptable that Estelle Unit was assessed as being “fully compliant” with the PREA § 115.42 standard.

PREA § 115.43 discussion, protective custody

PREA § 115.43 concerns segregation practices for persons at high risk of sexual victimization.

5. It is not clear that this is compliant with PREA because PREA does not state whether “separate from other inmates” means separate from non-transgender persons or separate from all persons. Taken at its most plain meaning, this should be separate from all other incarcerated persons, regardless of their identity.



The auditor states that “the number of [incarcerated persons] at risk of sexual victimization who were held in involuntary segregated housing in the past 12 months for one to 24 hours awaiting completion of assessment” was 0. This data is patently false.

The auditor makes it abundantly clear that the auditor has no idea how TDCJ and Estelle Unit use and manipulate “protective custody” by her statement parroting TDCJ manipulation that incarcerated persons “at high risk for sexual victimization shall not be placed in protective safekeeping unless an assessment of all available alternatives has been made,” indicating a complete lack of understanding of safekeeping and protective safekeeping as well as other types of protective custody and involuntary segregated housing used in TDCJ and at Estelle Unit.

To the auditor’s credit, she does identify the initial placement in involuntary protective custody after a report of sexual victimization rightfully as involuntary protective custody requiring documentation under § 115.43(b). If the proposed form waiving forced involuntary protective custody is actually used, then that would be a significant improvement in the current practice of forced involuntary segregation that TPI has received many complaints about, including complaints that it discourages reporting PREA violations, and should be adopted systemwide.

The auditor reports that a “warden designee” claimed Estelle Unit “does not have segregated housing.” That again is patently false. Estelle Unit has safekeeping housing, and safekeeping housing is segregated housing, and although it is sometimes voluntary, safekeeping designation may also be provided involuntarily.

The auditor curiously notes in reference to PREA § 115.43(b), that “[d]uring the onsite inspection the auditor did not observe any separate housing for residents who may identify as gay, lesbian, bisexual, or transgender.” That seems to be assessing PREA § 115.42(g), not PREA § 115.43(b). As the auditor has already established that persons were held in involuntary protective custody in excess of 24 hours without access to “programs, privileges, education, and work opportunities,” this is a failure by the auditor to accurately assess Estelle Unit’s failure to comply with PREA § 115.43(b), and may represent a manipulation of the audit findings. This item as issue here is neither dedicated housing nor the updated process that allows persons to waive involuntary protective custody “for protection,” but is whether the unit will complete documentation as required under PREA § 115.43(b).

In discussing PREA § 115.43(c), the auditor again falsely parrots the Estelle Unit staff’s claim that there are no persons in “involuntary segregated housing” because the unit “does not have segregated housing,” wrongly exempting safekeeping housing from “segregated housing.”

Regarding PREA § 115.43(e), the auditor again falsely claims compliance by blindly accepting the claim by TDCJ that safekeeping designation does not constitute involuntary segregated housing. Again, in some cases safekeeping is voluntary segregated housing, and in some cases it is involuntary. But a claim that compliance is met because safekeeping housing does not involve



involuntary segregated housing—implied here because of its omission—fails audit requirements to evaluate compliance with this standard.

In support of TPI's position, we clearly document in our data on Estelle Unit that there was in 2022 a gay man placed in safekeeping status over his objections, which constitutes involuntary protective custody. We don't see too many such new designations because TDCJ has made it extremely difficult for persons to be designated for safekeeping status, but that this occurred during the audit period (this is reported to have occurred April 28, 2022) and was either not found or not identified as a noncompliance issue indicates deficiency in the audit.

Regardless of policy, reports to TPI indicate that placement in involuntary segregation due to immediate endangerment seldom considers any other options outside involuntary segregation. This practice in effect serves to punish persons for reporting endangerment and to discourage reporting. For this reason, TPI supports the implementation of a waiver to avoid such actions, if the waiver is actually used.

TPI correspondence relates that some units have a blanket prohibition against safekeeping designated persons being assigned job duties, even when there is no endangerment from the job assignment and work assignments are desired by the incarcerated person. It is unclear what and how Estelle Unit may follow this practice, but this, like the prohibitions cited by the auditor for involuntary protective custody during an investigation, may fail to comply with PREA § 115.43(b). Safekeeping designation also results in exclusion from many programs, privileges, education, and work opportunities, with TDCJ claiming that it is not protective custody that prohibits the exclusion but the lack of safekeeping housing on units with those programs. That is a specious claim at best. Regardless, safekeeping designation is the cause of the exclusion, and the exclusion must be documented according to provision b requirements. TPI believes these requirements are not being met by claiming it is not safekeeping that causes the exclusion.

Again, TPI feels it is irresponsible, unprofessional, absolutely unacceptable that Estelle Unit was assessed as being "fully compliant" with the PREA § 115.43 standard.

TDCJ Manipulation of "protective custody" designations

PREA § 115.43 covers the separation or segregation of persons at high risk for sexual victimization, and the section uses several terms that provide opportunities for manipulation of the standard. These include "protective custody," "segregated housing," and "involuntary segregated housing." None of these are specifically defined in PREA § 115.5 general definitions, nor are definitions provided in the FAQ available online via the National PREA Resource Center. The PREA Final Rule⁶ also does not provide definitions. In discussing this section, the Final Rule appears to use "segregated housing" and "involuntary segregated housing" to refer somewhat more generally to any type of separate housing, and "protective custody" and "involuntary protective custody" as separate housing for the purpose of providing safety.⁷

6. Federal Register (2012): vol. 77 no. 119, Fed. Reg. page 37106-37232 (June 20, 2012).

7. Federal Register (2012): vol. 77 no. 119, Fed. Reg. page 37154-37155 (June 20, 2012).



However, the discussion makes it clear that all these terms refer to separating the person from endangerment by placement in separate housing. For the sake of consistency, TPI will refer here to all separation for investigations of alleged sexual abuse or due to assessment as being at risk for sexual abuse to be “protective custody.” If the person being segregated agrees with the segregation, that segregation will be “voluntary protective custody”; if the person being segregated does not agree with the segregation, that segregation will be “involuntary protective custody.” TPI also asserts that due to the requirement at PREA § 115.14(d)(1) that the incarcerated person’s own views of vulnerability be given serious consideration, considerations of what is “voluntary” or “involuntary” may change over time.

The following discussion provides definitions and descriptions of a number of types of protective custody in use in TDCJ. All of these should be considered “protective custody” for PREA § 115.43 purposes because all can be used to separate persons at risk of sexual victimization.

Protective safekeeping: “Protective safekeeping” is defined in the TDCJ *Classification Plan* as being “for offenders who require the highest level of protection in a more controlled environment than other general population offenders, due to threats of harm by others or a high likelihood of victimization.” This designation is more fully discussed in the *Protective Safekeeping Plan*, a document that is not made public and that TPI does not have access to. Protective safekeeping is also identified as custody levels P6 and P7, with P7 having more restrictions. We should point out that one way TDCJ makes this confusing can be seen in this definition, where they compare persons in protective safekeeping to “other general population” persons. This allows TDCJ to claim even protective safekeeping is not actually “segregation” because it is “general population.” However, TDCJ protective segregation is very separate, and there are only about three units in the TDCJ system that a house persons designated for protective safekeeping.

This designation, based on reports from the one person with a P6 designation that we have been in contact with, is mainly used for persons who are politicians and other high-profile figures, persons with law enforcement history, and persons who have testified against powerful syndicates or cartels. This person did not mention anyone being in there due to a risk of sexual victimization, although there certainly could be. TDCJ protective safekeeping is absolutely separate from all other TDCJ populations, with no mixing outside P6 and P7. As far as TPI is aware, protective safekeeping is never recommended for only a risk of sexual victimization. We have never heard of any person being designated as “protective safekeeping” due to sexual violence. This contrasts with TDCJ responses to PREA auditors that tend to indicate this is the only “protective custody” meeting PREA § 115.43 requirements. All discussions we are aware of related to separation due to the potential for sexual victimization focus on “safekeeping status” (P2 through P5), not “protective safekeeping” (P6 and P7).



TPI has seen many audit reports that appear to simply accept TDCJ's implied or stated claims that the only legitimate PREA § 115.43 "protective custody" in the system is TDCJ protective safekeeping. That is far from true.

Safekeeping status: Safekeeping designation or status is defined in the TDCJ Classification Plan as:

a status assigned to offenders who require separate housing within general population due to threats to their safety, vulnerability, a potential for victimization, or other similar reasons. Prison offenders in safekeeping are also assigned a principal custody designation, including safekeeping Level 2-P2 [minimum custody], safekeeping Level 3-P3 [minimum custody], safekeeping Level 4 -P4 [medium custody], and safekeeping Level 5-P5 [closed custody].

Safekeeping status is sought by incarcerated persons who experience vulnerabilities, including vulnerabilities related to sexual violence. However, safekeeping status is provided only in relatively few cases, and some people experience sexual violence over and over and are refused safekeeping status because of the length of their incarceration, their body size, or in some cases being "too intelligent," regardless of the threats of sexual violence and even experiences of sexual violence.⁸ Once on safekeeping status, incarcerated persons see reduced access to job opportunities, educational and training programs, and other benefits that may be offered to persons not in safekeeping status.⁹ In one example, TPI advocated for a transgender woman who was denied education opportunities due to her safekeeping status, even though she tried for several years to be released from safekeeping status. When TPI filed a complaint, we were told that her safekeeping status did not prevent her from entering the education program, and that she had been accepted for the program, but could not access it because there was no housing for her on any unit where that program was offered. The more complete explanation was that there was no *safekeeping* housing on the units where the program was offered. Perhaps in a warped sense of logic it may be said that safekeeping was not the reason she was denied, it is entirely disingenuous to claim that safekeeping status did not prevent her from entering the program. Her safekeeping status was finally relinquished after our complaint, and she entered the program. That was the only impediment to her participation in that program.

Officially, safekeeping persons can access all the benefits of general population, but in practice the safekeeping population is often segregated at meals, recreation, and other unit movement and programs; and in some cases they are kept from some or all work assignments, this apparently being unit-level practice at some units, depending on the administration of the moment. These prohibitions are sometimes used to harass persons on safekeeping, who are often identified as "snitches" and LGBTQI persons (intended as a derisive reference).

8. Some reports from our correspondents note that they are told they do not qualify for safekeeping because they are "too smart" or similar reasons. Zollicoffer v. Livingston (4:14-cv-03037) also documents the extensive measures TDCJ goes to in avoiding safekeeping designation: <https://www.courtlistener.com/docket/4394368/zollicoffer-v-livingston/>.

9. Note that just as TDCJ confusingly describes "protective safekeeping" as "general population," safekeeping designation is also considered "general population" even though safekeeping housing is separate from general population because housing sections are designated for safekeeping persons only.



Safekeeping persons are denied access to educational opportunities, training programs, and other benefits, often by claiming the denial is not because of the safekeeping designation but for other reasons such as housing, as noted above.

TDCJ also seems to claim that safekeeping designation is not “protective custody” under PREA § 115.43, and that only “protective safekeeping” is “protective custody.” This claim is absolutely not consistent with practice.

Likewise, TDCJ seems to claim that safekeeping is not “involuntary protective custody,” apparently because in most cases, people request or agree to be placed in safekeeping designation. However, it is certainly not something a person can request or volunteer for and be assigned, and in many cases requests for removal of the safekeeping designation are denied, sometimes even after outside advocacy for removal of the safekeeping designation.

Lockup for reporting sexual violence: TDCJ seems to go to some effort to indicate only “protective safekeeping” constitutes “protective custody” or “involuntary protective custody” for PREA purposes. As explained above, “safekeeping designation” may also constitute “involuntary protective custody,” but so is lockup for reporting sexual violence. In almost every report we have had documenting a TDCJ response to a report of sexual abuse, the person reporting is placed in a separate cell and isolated for an Inmate Protection Investigation (IPI). This probably generates documentation that “all available alternatives” have been reviewed, but in practice it is an automatic action that is done even if the person reporting states definite reasons that they are in no further danger. It even happens when someone reports sexual abuse at a different unit and there is no conceivable danger at the current unit. In these cases, there is certainly no legitimate evaluation of “all available alternatives,” regardless of staff claims or policy. IPI lockups also routinely last for more than 24 hours, and are often handled as disciplinary actions, with the person often being strip searched and their property taken. Since IPI lockups are usually in the same areas as restrictive housing, they also routinely entail the same security restrictions that apply to those being held for disciplinary reasons.

It should be clear that this treatment means the threat of being locked up discourages people from reporting sexual victimization.

PREA § 115.52 discussion, exhaustion of administrative remedies

PREA § 115.52 concerns filing complaints related to sexual violence. The auditor notes that in the 12 months preceding the audit, 14 grievances were filed, but only 10 reached a final decision within 90 days. The agency can claim a 70-day extension if needed, but PREA § 115.52(d)(3) notes the agency “shall notify” the grievant of the extension and expected date of final decision; the auditor also notes that some final decisions took longer than the allowed extension. The auditor reports that “[t]he agency does not notify an inmate in writing when the agency files for an extension, including notice of the date by which a decision will be made. It was further reported that sexual abuse/harassment and emergency grievances are not eligible for extensions.” Thus there seems to be several compliance issues related to PREA § 115.52, yet



with no comment on noncompliance or corrective actions, the auditor claims that “the agency and facility is fully compliant with the standard.” This certainly seems to be a problematic conclusion.

PREA § 115.61 discussion, staff and agency reporting duties

PREA § 115.61(b) states that staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary, as specified in agency policy, to make treatment, investigation, and other security and management decisions. The auditor indicates that staff understand this requirement, but TPI has documented at least two failures to follow this policy during the audit period.

In May 2022, a person was waiting to be transferred to a hospital for a SANE exam when an incarcerated person told another incarcerated person that the person waiting was responsible for another person being locked up for a sexual violence allegation. Since only staff had been told of the incident, only staff could have disclosed this information.

In another example, it was reported to TPI that on September 2022, a TPI client reported to a guard that someone on the section was threatening to sexually abuse another person on the section. The next day, the person making the threats was observed talking to a guard, saying “they said I was going to rape somebody,” and the guard pointed to the TPI client.

As with all policy, it is only as good as it’s implementation, and these examples indicate problems with implementation that should have been documented and should have called into question whether the facility is “fully compliant” with PREA § 115.61.

PREA § 115.67 discussion, agency protection against retaliation

TPI has documented issues not compliant with PREA § 115.67, including a May 2022 incident involving retaliation by other incarcerated persons, and a July 2022 issue of a guard retaliating for a grievance about sexual harassment. In the May 2022 incident, affiliates of a person who sexually abused a TPI client came to his cell and accused him filing false charges without staff interference. Concerning the July 2022 issue, the incarcerated person had filed a sexual harassment complaint against a lieutenant earlier. She was pretty sure the lieutenant was not allowed in her housing area, but that month he came several times, standing a few feet away from her in a manner that she took as threatening. She said that he was always accompanied by a sergeant, so other ranking officers knew of and apparently approved of the lieutenant’s behavior as well.

The auditor stated that four incarcerated persons who had reported sexual abuse “felt protected enough against possible revenge.” It is not clear if “protected enough [from] revenge” means “protected against retaliation,” but qualified language like that often indicates additional information not revealed, and can indicate manipulated questions in an interview with the intent of getting an acceptable response that avoids necessary closer scrutiny.



TPI questions whether the auditor's assessment that the "facility is fully compliant" with PREA § 115.67 is accurate.

PREA § 115.68 discussion, post-allegation protective custody

As with the discussion under PREA §§ 115.42 and 115.43, TDCJ engages in egregious manipulation of what constitutes "protective custody" through contradictory claims about "protective safekeeping" and "safekeeping designation." Also, in TPI's experience, TDCJ automatically places all or almost all persons who report sexual abuse in involuntary segregated housing (restricted housing for inmate protection investigation, or IPI) regardless of whether there are alternatives to such placement or not.

The auditor states that the number of incarcerated persons surviving sexual abuse that were held in involuntary segregated housing in the last 12 months for 1 to 24 hours to have been 0, and that is highly likely to be false. In fact, TPI has documentation that at least one person met this description.

The auditor states that the number of incarcerated persons surviving sexual abuse that were held in involuntary segregated housing in the last 12 months for more than 30 days to have been 0, but if any persons were designated for safekeeping against their wishes, then that statement is false.

The auditor states that case files for incarcerated persons reporting sexual abuse and held in involuntary segregated housing in the past 12 months that included both a statement for the facility's concern and reasons why alternative means of separation was 0. That documents that the facility is highly likely to be failing to comply with PREA § 115.43 requirements.

As with our discussion under PREA § 115.43, it is good that the auditor identified the involuntary protective custody in response to a report of sexual violence, but the failure to identify safekeeping housing potential involuntary protective custody is a failure to fully assess compliance with PREA § 115.68. For that reason, TPI finds it highly problematic that the auditor found Estelle Unit to have met this standard.

PREA § 115.72 discussion, evidentiary standards

The auditor reports that investigative staff interviewed for compliance with this standard "stated that the standard used to substantiate allegations of sexual abuse or sexual harassment *include* a preponderance of evidence" (emphasis added). Standard 115.72 requires that no higher than a preponderance of evidence be used, and it is not at all clear that to "include" a preponderance of evidence means no higher evidentiary standard is used.

The auditor reports 15 sexual abuse allegations against staff and 28 against prisoners were filed during the 12 months before the audit. The administrative investigations into the 43 allegations found 4 substantiated, 32 unsubstantiated, and 10 unfounded. Thus about 9% were substantiated, and 91% were deemed to have less than 50% chance of having occurred. According to PREA § 115.72, the agency "shall impose no standard higher than a



preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated,” yet the fact that 89% and 93% of the allegations were found unsubstantiated or unfounded indicates a failure of the administrative investigations to adequately assess evidence in allegations of sexual abuse.

The auditor reports 26 allegations of sexual harassment against other prisoners and staff were filed in the 12 months leading up to the audit. The administrative investigations found 6 substantiated, 20 unsubstantiated, and 1 unfounded (the difference in totals is not explained). Based on the 27 administrative investigation results provided, about 22% were substantiated and 78% deemed to have less than 50% chance of having happened. Although this is somewhat better than the sexual abuse investigations, again it is plausible to question whether allegations of sexual harassment are also being assessed at a higher evidentiary standard than PREA allows. This indicates a likely failure of the administrative investigations to adequately assess evidence in allegations of sexual harassment.

Due to the extremely low rates of substantiated allegations, as reported in the most recent PREA Ombudsman report for calendar year 2021, it is highly unlikely that a preponderance of evidence standard is used. In that report, for allegations against staff, only 3% of 827 sexual abuse allegations were substantiated, 0% of 34 sexual harassment allegations were substantiated, and 0% of 215 voyeurism allegations were substantiated. For allegations against other incarcerated persons, only 2.7% of 411 allegations of “nonconsensual sexual acts” were substantiated, and only 3.8% of 391 reports of “abusive sexual contacts” were substantiated. Regardless of one’s concerns about possible false reporting, these extremely low rates of substantiation indicate a preponderance of evidence is not the standard being used.

TPI does not have access to these data for Estelle Unit, but the auditor did. These data should have been presented in an assessment of whether the evidentiary standard reported to be used seems likely or unlikely. Due to what can be seen from this report, it appears irresponsible, unprofessional, absolutely unacceptable that Estelle Unit was assessed as being “fully compliant” with the PREA § 115.72 standard.

PREA § 115.82 discussion, access to emergency medical and mental health services

PREA § 115.82 requires “timely, unimpeded access to emergency medical treatment and crisis intervention services.” The auditor reports that for four reports of sexual abuse, one person had to wait a week for staff to respond. TPI also has a report that after being sexually abused about 5:30pm on May 19, 2022, he was not taken to the hospital for forensic evidence collection until about 7:15am the following day. He notes trying not to drink any water, but that amount of time without hydration was excessive, and he took a drink about 5:30am. This should also have been documented in the records and files reviewed, and if it was not, it shows manipulation of the report by staff.



Omissions such as this bring into question what else was left out or manipulated, and whether the facility is actually “fully compliant with the standard.”

PREA § 115.83 discussion, ongoing medical and mental health care

PREA § 115.83 requires ongoing medical and mental health care for survivors of sexual abuse in incarceration facilities. The auditor’s auditing of this standard is minimal, and relies mostly on policy reference. However, TPI has documented a case that is probably not in the case files because it was ignored by the unit (the only thing documentation will likely contain for this standard are affirming reports). Had the auditor met requirements under PREA § 115.401(o), the auditor would have additional reports that are significant in this type of audit:

The subject notes that when first arriving at Estelle Unit on about March 4, 2022, she expressed fear and confusion about being transferred back to a unit where she was previously sexually assaulted. A major and another staff person told her at UCC that she would not ever step foot in the building where the sexual assault occurred. But on **June 4, [2022,] she had to go to that building and she had to go near the showers where the sexual abuse happened. She reports that she has not been able to leave her cell since June 8 [communication dated June 12, so five days inclusive] because she cannot stop crying. She asked to see mental health the morning of June 10, but did not receive a reply** [by the June 12 communication; emphasis added].

This certainly does not indicate responsive mental health care for a situation related to unit classification placing her in housing that triggered her because of prior sexual abuse at the facility.

The auditor also states in discussing PREA § 115.83(b) that two survivors of sexual abuse “were offered any type of follow up services,” but it is unclear (there are a number of typographic errors in this report) if that is supposed to read **not** offered any type of follow up services.

The auditor indicates that meeting mental health services consistent with the community level of care under PREA § 115.83(c) only requires offering some sort of unspecified “mental health care.” Once again, had the auditor met requirements under PREA § 115.401(o), the auditor would have additional information relevant to this audit:

The subject states that after the sexual assault against her on January 14, 2022 (see incident 2022-00185), the UTMB counselors have done little to help, certainly nothing near approaching an expected community level of service. The subject notes that she was diagnosed with Rape Trauma Syndrome, but by April 12, they had not even done a follow up with her. She only saw a counselor once after the rape. In a letter from September 2022, the subject notes that unspecified “mental health [staff at Estelle Unit have] told me that they are not trained to help deal with rape victims” and that “Wayne Scott/J4 also states the same that they are not equipped enough to deal with that type of situation.”

It seems questionable that with these examples, as well as what we have documented from many other mental health interactions over the years, that it is likely problematic that this facility was assessed as “fully compliant” with PREA § 115.83.



Conclusion

TPI is filing an objection to the acceptance of the audit report for TDCJ Estelle Unit conducted by auditor Latera M. Davis. 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 March 15, 2023, 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 September 8, 2023.

As of the date of this letter, TPI has documented a total of 414 incidents of violence against persons housed at Estelle Unit, including 49 that occurred in the past 12 months. Of the total documented incidents, 101 involved noncompliance with some element of the PREA standards, with 5 PREA noncompliance issues documented 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 Estelle Unit as we do for some other TDCJ facilities (we have only relatively recently begun receiving reports from the unit, and our first documented incident occurred in 2020), we feel there is sufficient data available to question compliance in some areas and to indicate the most recent PREA audit is deficient. Areas of major concern include misrepresenting the gender of persons housed at Estelle Unit and how that misrepresentation affects compliance; inappropriate investigations of sexual violence, including use of improper evidentiary standards; and failures to appropriately screen incarcerated persons housed at Estelle Unit and make use of screening information.

We are requesting that:

- Estelle Unit be required to conduct a subsequent audit to address deficiencies in the audit discussed in this letter;
- 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;
- Estelle Unit be required to correctly conduct gender-based searches as required under PREA standards and document noncompliance with those standards;
- Estelle Unit staff be required to take additional training in appropriate and professional interactions with LGBTI persons to address deficiencies in professional conduct and additional training in appropriate investigative practices and evidentiary standards;
- Estelle Unit be monitored for abusive practices in the collection and use of screening data, and particularly in the provision of separate showers for transgender persons; and
- Estelle Unit be required to address corrective actions for any issues determined to be non-complaint.



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

Attachment: Information for PREA Auditors: Estelle Unit, by Trans Pride Initiative

cc: Department of Justice, Special Litigation Section
TDCJ CEO Bryan Collier
TDCJ PREA Coordinator Cassandra McGilbra
Estelle Unit Senior Warden Michael Britt
Estelle Unit PREA Manager