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

November 21, 2023

re: auditor non-compliance with audit requirements, TDCJ Stiles Unit, Texas

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) Stiles Unit conducted by auditor Darla P. O'Connor. We believe that for a number of reasons this audit fails to meet the spirit or letter of the audit requirements. The onsite audit was conducted August 28, 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 October 23, 2023.

Summary of Audit Report Deficiencies

TPI has documented a total of 2,094 incidents of violence against persons housed at Stiles Unit, including 40 that occurred in the past 12 months, a number that is low because most of the people we were writing to at Stiles Unit were moved off the unit in February 2023. Of the total documented incidents, 319 involved non-compliance with some element of the PREA standards, with 5 PREA non-compliance 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, less because of the number of our correspondents transferred from the unit in early 2023.

TPI asserts that there is strong evidence that the most recent PREA audit for Stiles Unit is deficient. The fact that not one allegation of sexual abuse or sexual harassment made during the 12 months preceding the audit date was found to meet the very low "preponderance of evidence" standard speaks volumes. The mischaracterization of the population at Stiles Unit as "male only" means PREA standards such as those reviewing cross-gender viewing and searches were not assessed properly, and the failure to understand what constitutes "protective custody" at Stiles Unit and throughout TDCJ resulted in a failure to properly assess housing as it is

related to lockup for investigations, placement in safekeeping housing, restrictions imposed on safekeeping housing, and other issues related to responding to and preventing sexual abuse and sexual harassment, particularly where it concerns incarcerated LGBTI[1] persons.

Request for Action

We are requesting that:

- Stiles 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 "communicate with community-based or victim advocates who may have insight int relevant conditions in the facility," not just a few large checkbox organizations to claim adherence to the standard.
- Stiles Unit be required to correctly conduct gender-based searches as required under PREA standards and document noncompliance with those standards.
- Stiles Unit staff be required to take additional training in appropriate and professional interactions with LGBTI persons to address deficiencies in professional conduct.
- Additional review of Stiles Unit investigations and documentation that resulted in 100% of the allegations of sexual abuse and sexual harassment during the last 12 months being considered unsubstantiated or unfounded.
- Additional training for Stiles Unit investigating staff in appropriate investigative practices and evidentiary standards.
- Proper reassessment of Stiles Unit's use of protective custody and compliance with documentation requirements for persons in protective custody.
- Stiles 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 Stiles Unit is "males," when in fact this is false. The Stiles Unit houses cisgender males, transgender females, and other persons who may not belong to either of those two populations. The Stiles Unit may incorrectly classify transgender women and other non-male persons as "male," but that is not an accurate description of the populations housed at the unit for PREA assessment purposes. 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.

1. PREA identifies LGBTI as lesbian, gay, bisexual, transgender, and intersex persons. TPI is much more affirming and comprehensive in our understanding of vulnerabilities and marginalization, and as such we include under the LGBTI umbrella all non-cisgender non-hetero-normative persons. We believe this is the only interpretation consistent with the spirit of PREA.

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 females as "males" is an act of violence that not only denies the identity of transgender women and 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 that the auditor falsely stated no persons housed at the unit had ever been placed in segregated housing or isolation for risk of sexual victimization.

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

- PREA § 115.11: The fact that 0 allegations of sexual harassment and sexual abuse over a 12-month period were deemed by Stiles Unit administration to have a greater than 50% chance of occurring is in itself enough to show that instead of "zero tolerance" of sexual abuse and sexual harassment, Stiles Unit in fact has a very high tolerance of sexual abuse and sexual harassment. That the audit was finalized based on this amazingly unbelievable claim shows that the auditor and auditing oversight process is participating in the covering up of sexual abuse and sexual harassment.
- PREA § 115.13: It is generally accepted that TDCJ experiences significant staff shortages, and TPI has a significant number of reports indicating staff shortages during the 12 months prior to the audit.
- PREA § 115.15: Due to the auditor misidentifying the unit as housing only "males," the discussion and assessment of PREA § 115.15 is deficient.
- PREA § 115.31: TPI presents a number of examples showing training, particularly in areas of effective and professional communications with LGBTI persons, is remiss. With such obvious disregard for LGBTI persons, it should be clear that Stiles Unit has difficulty meeting this standard, and certainly does not "exceed" the standard, as the auditor claims.
- PREA § 115.42: The auditor's discussion of this standard is confusing, indicates serious misunderstanding of classification within TDCJ and at Stiles Unit, and in some areas is just wrong (apparently confusing "separate housing," presumably protective custody under PREA, with dedicated housing for LGBTI persons). Stiles Unit also fails to keep persons separated for risk of sexual abuse adequately separate. The multiple inaccuracies in the assessment of PREA § 115.42 indicate a serious deficiency in this report.
- PREA § 115.43: The extent of the misunderstanding of TDCJ housing classification with regard to PREA protective custody in this report indicates a serious deficiency in the

audit findings, and it is hard to imagine how the auditor deemed the facility "meets every provision" of this standard.

- PREA § 115.68: Discussion of this standard involves many of the same issues noted under PREA §§ 115.42 and 115.43, indicating deficiency in meeting this standard as well.
- PREA §§ 115.71 and 115.72: The auditor accepted Stiles Unit's claim that 100% of all sexual abuse and sexual harassment allegations at the facility during the 12 months prior to the audit had less than 50% or less chance of having occurred. Such a claim is simply unbelievable. The assessment that Stiles Unit meets this standard is simply false.

The auditor found that three standards were exceeded and 38 standards met. Based on the following detailed discussions, TPI feels that this is not the accurate.

General Audit Information

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

- Just Detention International
- Rape and Incest of Southeast Texas
- Rape, Abuse & Incest Nation Network

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 a few major advocates or well-known entities, nor does it limit contacts to entities that are party to an MOU. TPI was not contacted concerning the information we have about Stiles 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.

Audit entry 45 states that the auditor noted 6 incarcerated persons at the unit had "reported sexual abuse that occurred in the facility." This is very low number, representing just 0.2% of the population of 2819 that the auditor reported during the audit. This indicates either or both a failure to accurately document allegations of sexual abuse, and staff manipulation of reports of sexual abuse.

Audit entry 46 states that the auditor noted only 9 incarcerated persons at the unit "who reported prior sexual victimization during risk screening." Again, this is a very low number, representing 0.3% of the population of 2819 that the auditor reported during the audit. And again, this indicates either or both a failure to accurately document allegations of sexual abuse, and staff manipulation of reports of sexual abuse.

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 Stiles Unit had ever been placed in segregated housing or isolation for risk of sexual victimization. This will be discussed further under PREA § 115.43. The failure to understand how TDCJ uses (and misuses) applications of segregated housing is made explicit in **audit entry 69,** where the auditor blindly takes unit administration at their word that there were "none here." Stiles Unit has long housed persons in safekeeping designation, and although in early 2023 many were transferred from the unit, not all were, and the number of safekeeping designated persons increased through the year. Safekeeping absolutely constitutes "segregated housing" and is often done due to "risk of sexual victimization," so safekeeping should have been considered in this category, but safekeeping is not the only way TDCJ places persons at risk of sexual victimization in segregated housing.

We would also direct the auditor to the 2023 audit for TDCJ Estelle Unit, where the auditor at least rightly identified persons placed in restrictive housing after alleging sexual abuse as "segregated housing or isolation for risk of sexual victimization."

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.[2] As with **audit entry 47,** this 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. TPI is absolutely certain there were persons at Stiles at the time of the audit who at that time or in the past had been placed in segregated housing for risk of sexual victimization.

Audit entry 95 provides outcomes of administrative investigations into sexual abuse allegations during the previous 12 months. It should be noted that **audit entry 92** shows incarcerated persons reported 54 allegations of sexual abuse by staff and other incarcerated persons, and 34 were investigated criminally. The administrative investigations found 0 substantiated, 48 unsubstantiated, and 6 unfounded. That is, **100% of the allegations were found to have 50% chance or less 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 0% of the allegations were substantiated. This indicates a failure of the administrative investigations to adequately assess evidence in allegations of sexual abuse, and a failure of the auditor to identify this problem and pursue an explanation of what appears to be a failure to properly investigate allegations.

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 incarcerated persons reported 21 allegations of sexual harassment, all by other incarcerated persons (amazingly Stiles Unit reports that there were 0 reports of sexual harassment by staff!),

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

and 0 were investigated criminally. The administrative investigations found 0 substantiated, 20 unsubstantiated, and 1 unfounded. That is, **100% of the allegations were found to 50% chance or less 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 0% of the allegations were found substantiated. This indicates a failure of the administrative investigations to adequately assess evidence in allegations of sexual harassment, and a failure of the auditor to identify this problem and pursue an explanation of what appears to be a failure to properly investigate allegations.

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 Stiles Unit and the agency overall through policy 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 against it" or "because we have training against it." This excuse covers up and may even encourage violence 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. **At Stiles Unit, this problem is grossly and horrifically illustrated by the fact that in the 12 months prior to this audit, not one allegation of sexual abuse or sexual harassment was substantiated. And the audit process is shown to be nothing more than another cog in the machinery of systemic violence by the auditor's complete failure to question this, and by the complete failure of auditing oversight to identify this as a problem.**

In all, TPI has documented just in our small amount of data 73 incidents of sexual abuse at Stiles Unit. How many of these have been covered up by TDCJ administrative manipulation, ineffective auditing, and incompetent oversight?

Recent samples of TPI reports that involve PREA noncompliance include:

- December 2020 – January 2021, Sexual Assault, subject reports being forced to provide oral and anal sex multiple times for her cellmate, under threat of assault.

- August 22, 2021, Sexual Assault, subject reports she was drugged and raped while at the Stiles Unit traveling on medical chain.
- May 20, 2022, Sexual Assault, subject states she was raped on May 20, 2022, by another incarcerated person, and that she did not go to the hospital for forensic evidence collection until **about seven hours later.** No further details were provided except that the subject reports being notified, apparently by the **PREA Ombudsman Office, that she had denied the allegation, which she reports is not true** (one example of how staff manipulate reports of sexually abusive behavior is by falsely claiming survivors denied their report).
- June 6, 2022, Sexual Assault, subject notes that around June 6 (presumably 2022), her partner beat her in a cell with a cane until it broke. The subject then states that her partner inserted the broken end of the cane into her anus. She noted that that was not the first or last time he had raped her. No dates are provided, but she described being forced to eat feces and drink urine as well, and being choked to unconsciousness during sex. She also notes being too scared to report abuse issues. Others reported the sexual assault of June 6, and when she was asked about it June 10, she had bruises on her face and legs, but was sent back to her cell when she said she was fine because she was afraid to report the assailant. However, she said it was pretty common knowledge among the guards that the assailant was abusing her.

  The subject said her partner was locked up June 18, 2022 (she does not say if it was due to the June 6 assault, but implied that it was), and when a sergeant searched the assailant's cell, he removed the cane, stingers, and a bag of green state soap, but she reports that he left homemade glass pipes, fingers from gloves that held drugs, a large magnet in a sock kept as a weapon, and other contraband.
- April 5, 2023, Sexual Assault, a third party reports that the subject was raped during the first part of April by a general population incarcerated person who fell out of place to sexually abuse the subject, who was housed in safekeeping. Most safekeeping persons had been removed from Stiles unit in February 2023, after a similar incident. Such incidents seem to be an on-going problem at Stiles Unit.

Due to our work in general at Stiles Unit and our many reports received of violence and sexually abusive behavior, as well as reports of manipulation and covering up of incidents of violence at Stiles Unit, TPI is certain that Stiles Unit does not fully comply with PREA § 115.11, and that a valid audit would reflect that.

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 many of their units. Many units in the system are operating at less than 50 percent security staff, some as low as 30 percent. 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.

Our most recent data for Stiles Unit is that in August 2022, they were operating at just under 50% security positions filled. Staffing at many units has declined since that time. TDCJ uses mobile teams of staff that they can send to various units, which can provide an appearance of being more fully staffed than they actually are for audits and other oversight manipulation. TPI has documented staffing issues at Stiles Unit from late 2021 and throughout 2022 (our reports declined after that probably due to many of our correspondents being transferred in February 2023) that include:

- Probable guard shortage that resulted in multiple general population persons going into safekeeping area and into safekeeping occupied cells.
- Probable guard shortage that resulted in safekeeping persons showering with general population. The subject seems to say safekeeping persons were sitting in the day room for hours with general population persons while waiting for showers.
- Subject states that since coming back to Stiles in November 2018, they have not been to any chronic care medical appointments. They say that there is no staff available for escorts. We recorded this for 2022, when it was reported to TPI; that is a long time for no chronic care appointments.
- Subject states that on 3 Building they are not being allowed hourly in-and-outs as required by policy, and it is sometimes four or five or more hours between in-and-outs due to staff shortages. The subject also states that no guards are at their duty posts to allow for in-and-outs (or emergencies, although this is not mentioned by the subject).
- Subject states that for the last several days, outside high temperatures have been in the upper 90s, and access to respite areas in 3 Building safekeeping, which is mostly LGBTI persons, has been refused by both guards and supervisors. Further, they are being given ice water at most twice a day, and in general only once per day. The subject notes that security is "barely even present, only for counts/passing of meals, which means security checks are not being done."

We will also point out that the reason most safekeeping persons were removed from Stiles Unit in February 2023 was for more of what was described above—namely a lack of staff resulting in general population coming in to safekeeping housing.

Due to our work in general at Stiles Unit and our many reports of staff shortages and the safety concerns raised by those shortages at Stiles Unit, TPI has serious doubts that this unit fully complies with PREA § 115.13, and doubts that a thorough audit would consider that it did.

PREA § 115.14 discussion, youthful incarcerated persons

Although TPI does not specifically address youthful incarceration issues, the audit response to PREA § 115.14 seems to completely fail to address this standard. It is unclear how this audit response was allowed to remain in a final report, and such problems cast doubt on the validity of the entire audit: that an entire section was overlooked begs the question of what else was similarly overlooked.

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

The PREA standards state that Stiles 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."

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 non-compliant 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 as "males" is inappropriate, is non-complaint 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.

The auditor stated that "[d]uring formal interviews and informal conversations with inmates, each inmate confirmed they had never been part of a cross gender search." Over many years of working with persons housed on Stiles Unit, TPI finds it incredible that this could include responses from transgender persons unless the question were asked in a manner that denied a transgender person's true gender or manipulated their answer.

Concerning PREA § 115.15(b), if the facility allows cisgender males and transgender males to conduct pat-down searches of transgender females and nonbinary persons, then the facility permits cross-gender pat-down searches of female incarcerated persons unless the incarcerated transgender female or nonbinary person has completed a waiver allowing such searches. Cisgender males and transgender males are not the same gender as cisgender females and transgender females, or are they the same gender as nonbinary persons. 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 auditor, by abusively identifying all transgender females housed at the unit as "males," is participating in violence against transgender women.

The failure by the auditor to document that the unit houses transgender females 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.

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 persons also results in a failure to meet this standard.

The auditor stated that "[e]very inmate interviewed confirmed they were able to dress without being viewed by staff of the opposite gender." TPI again asserts that based on many years of working with persons housed on Stiles Unit, it is absolutely unbelievable that this could include responses from transgender persons unless the question were asked in a manner that denied a transgender person's true gender and coerced a response that simply aligns with the gender of the unit.

Concerning PREA § 115.15(e), the auditor seems to be confused about what this provision entails. PREA § 115.15(e) concerns the prohibition against examining a transgender or intersex incarcerated person to determine genital configuration. It is not clear why the auditor failed to address this audit item.

TPI believes the discussion of PREA § 115.15 is very deficient, and that the finding of this audit that Stiles Unit "meets every provision" of the standard is not supported by the report.

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 to indications and reports of sexual abuse and sexual harassment, and professional communication. Regardless of training policy, if the training is not put into practice, not appropriately overseen, and not properly assessed in audits, the policy has little meaning.

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.

   Regardless of whether a facility is designated as "male" or "female," this standard 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.

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 incarcerated LGBTI persons. Recent issues related to a failure to appropriately train staff in effective and professional communication, indicating deficiencies in this training, include:

- Subject reports that during a strip search, a person that may be with Gang Investigations made an inappropriate comment that the subject "got nice ass" and "he got some big breasts."
- Subject states that a captain took her top from her in front of the 3 Building chow hall and forced her to walk back to 3 Building housing without a top on, exposing her breasts. The subject states that the captain "only mess [with] safekeeping."
- Subject reports that on or shortly after arrival at Stiles Unit, they were given a talk by medical staff that called LGBTI persons "punks" and apparently denigrated trans and queer persons and characterized all as "diseased."
- Subject states that their area was searched, and the subject was called a "punk" during their strip search by a sergeant. The subject indicates a necklace bought from commissary was taken without confiscation papers. The subject reported that sergeant told all in the housing section that "if their stuff gets taken it's the punk's fault because we're taking up too much of their time with our their 'special privileges.'"

In the discussion of PREA § 115.31(b), the auditor mischaracterizes the population and training as "tailored specifically to the male inmate population." This is patently wrong. Stiles unit houses many non-male persons, including trans women and nonbinary trans persons. Failure by the auditor to recognize this very obvious fact is directly related to a failure to adequately audit Stiles Unit.

Based on the clear fact that the auditor did not evaluate the actual training need and target of Stiles Unit, the evaluation of Stiles Unit as meeting this standard would be deficient, but the auditor's evaluation that Stiles Unit actually "exceeds the standard" when the auditor did not even appropriately recognize the needs and targets of that training is irresponsible.

PREA § 115.42 discussion, use of screening information

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

PREA §§ 115.42(a) and (b) concern classification decisions and program access and separation of persons at high risk of sexual victimization from persons who are at risk of being sexually abusive, and that these decisions are made on an individual basis.

Apparently in an attempt to mostly deny that persons at Stiles Unit are held separately due to risk of sexual victimization, the auditor makes at least two false statements.

First, the auditor states that "the PC and the USPPM . . . indicated that LGBTI inmates are housed within the general population unless specific issues are present and only then the appropriate staff will meet with the inmate and address the concerns." This statement is false in the case of safekeeping persons, whom TDCJ attempts to both claim are housed separately due to risk of sexual or other victimization and claim are not housed separately but are housed in general population to avoid documenting the separation, as required under PREA.

The auditor follows that by stating "[d]uring an interview with LGBTI inmates, all reported they were housed in general population and were not currently, nor had they ever been, housed in a housing unit designed for only LGBTI inmates." These two issues are in no way comparable. Additionally, if the auditor asked interview questions in such a leading way as to imply only a dedicated housing unit specifically for incarcerated LGBTI persons would constitute "separate" housing, that is intentional manipulation by the auditor.

Granting the possibility that perhaps the auditor was confused on this point, this may not have been intentionally malicious manipulation of interview questions, but regardless, such confusion on the part of the auditor indicates a failure to adequately audit Stiles Unit. However, the auditor continued that "[t]he Auditor reviewed an inmate roster and confirmed that all LGBTI inmates were housed in the general population." This immediately following the problematic statement above indicates the auditor is either incredulously wrong about the assessment of this point or maliciously manipulating the statement.

Additionally, this is again a false statement if any person was reviewed who is designated for safekeeping housing. Blind acceptance of TDCJ staff claims that all persons are housed in "general population" when that is false and a claim made to avoid reporting requirements is a failure by the auditor to assess the unit appropriately.

As far as separation of persons vulnerable to sexual victimization from those at risk of being sexually abusive, TPI has documented a number of incidents over the years that indicate general population persons are allowed to enter safekeeping housing (which is against policy), with two recent examples being:

- Subject states that an unnamed sergeant is letting a general population person come into the safekeeping housing area to shower.
- Subject is in safekeeping housing, but a general population person was able to walk into safekeeping, call out the subject's name, then assault him. The subject reports that he filed an emergency grievance, but no one came to get his statement for investigation. At a UCC meeting not long after, the subject was told a sergeant said the subject refused the investigation, which he denies doing.

As stated earlier in this complaint, in February 2023 (which would have been encompassed in the audit period for this report), many safekeeping persons were transferred from Stiles Unit exactly due to this reason: a general population person was allowed into safekeeping and in this case was not found for several days and assumed to have escaped. Reports to TPI indicate the

general population person was found in a cell with a trans woman, but those reporting were not certain if sexual contact during those several days was consensual or not.

These "misunderstandings" and inaccuracies and missing information on the part of the auditor constitute a serious deficiency in this audit.

Specifically concerning PREA § 115.42(c), the auditor states that incarcerated persons "shall be assigned to protective safekeeping only until an alternative means of separation from likely abusers is arranged, for no longer than 30 days." This grossly misrepresents TDCJ's use of restrictive housing, safekeeping designation, protective safekeeping, and other segregation practices, as discussed more fully under PREA § 115.43.

The auditor continues by asserting that "during the past twelve months there have been no inmates placed into involuntary administrative or punitive segregation in accordance with this standard, specific to a period longer than 30-days, while awaiting alternative placement." This is confusing, and it misrepresents the fact that some people in safekeeping housing are in that placement involuntarily, and often are there involuntarily for more than 30 days. If this is referring to persons segregated due to allegations of sexual abuse against others, then perhaps this is appropriate if one accepts the facility's claim that 100% of all allegations of sexual abuse and sexual harassment had a 50% or less chance of having happened, but as we have discussed above and will discuss below, that claim should not be accepted.

The auditor simply accepted the unit PREA manager's false statement that "there have not been any inmates placed in protective custody in the past twelve months. Consequently, no inmates could be interviewed relative to this provision." This failure to understand what constitutes "protective custody" under PREA, the manipulation of such definitions by TDCJ staff, and the deliberate manipulation of those definitions to evade PREA requirements constitutes as well egregious deficiencies on the part of the auditor.

Additionally, it seems in support of PREA § 115.42(c), the auditor mentions in the initial PREA § 115.42 discussion that "the gender identification of each inmate is initially determined by their legal sex assignment, generally at birth; however, from that point forward every inmate is individually assessed and classified to ensure the safety of the inmate, as well as the safety of the inmate population." TPI strongly objects to this statement as inaccurate and incomplete. TPI notes that based on reporting to us, we only know 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, as asserted with no evidence by the auditor.

Concerning PREA § 115.42(d), TPI has often heard from incarcerated transgender persons throughout TDCJ that the twice yearly assessments by UCC are cursory and ineffective. Reports generally convey that staff make it clear that they are simply there to check off the items they

are required to ask, and many persons have noted that if they report issues, those are either dismissed or ignored, or addressed by locking the person noting concern in restrictive housing, likely with little or no property, for a week or more while an "investigation" is conducted then found unsubstantiated. The process appears seldom conducive to meeting the spirit of the PREA standard, and instead may offer staff opportunities to discourage reports of sexual victimization risks by their behavior during the reviews. TPI feels it is inadequate to simply parrot policy in support of meeting this standard, as is done by the auditor, and it must be supported by genuine questions put to incarcerated persons about the efficacy of the process.

For 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).[4] 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.

Due to the number of problems with this audit of Stiles Unit compliance with PREA § 115.42, TPI feels the assessment that the unit "meets every provision of the standard" is clearly wrong.

PREA § 115.43 discussion, protective custody

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

The auditor begins the discussion of this standard by stating "The Auditor interviewed the USPPM specific to this issue and it was confirmed there have not been any inmates placed in protective custody in the past twelve months." This statement is absolutely false, and it is unacceptable that the auditor accepts this false statement without question or investigation.

The rest of the discussion of the provisions under this standard are all deficient because they all utterly fail to actually assess protective custody in policy and in practice within TDCJ. The following examples attest to this failure to appropriately audit the standard at Stiles Unit:

- PREA § 115.43(a)
    - Misrepresents PREA protective custody: 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. . . ." "Protective safekeeping" is certainly not the only "protective custody" in TDCJ or at Stiles Unit.
    - False statement: "If the assessment cannot be completed immediately, the unit may hold the offender in involuntary segregated housing while completing the assessment, for no longer than 24 hours." Holding in restrictive housing during an investigation is often involuntary protective custody, and often lasts longer than 24 hours.

4. This generally would be the case even if the unit claims that opportunities for separate showers are provided because during lock downs and staff shortages, those opportunities are some of the first to be overlooked.

- Misleading statement: "during the past twelve months there have been no inmates placed into involuntary administrative or punitive segregation in accordance with this standard." This standard has nothing to do with administrative segregation (which TDCJ claims no longer exists in the system because it has renamed it "restrictive housing") or punitive segregation. This statement is not relevant to the standard.
- False statement: "Consequently, no inmates could be interviewed relative to this standard." TPI knows that there were persons in safekeeping housing at Stiles Unit during the onsite audit. Some of the persons designated for safekeeping housing were very likely to have been so designated involuntarily. It is also highly likely that some persons were in restrictive housing due to ongoing investigations of allegations of sexual violence. This too would apply to considerations under this standard.

- PREA § 115.43(b)
  - Misleading statement: in assessing access to "programs, privileges, education, and work opportunities" and compliance with required documentation of denied access, the auditor claims that "during the past twelve months there have been no inmates placed into involuntary administrative or punitive segregation in accordance with this standard." As stated above, that is misleading and inappropriate to the standard assessment.
  - Misleading statement: the auditor "confirmed there have not been any inmates placed in protective custody in the past twelve months." Apparently this refers to "protective safekeeping," but that is not the only segregated housing that constitutes "protective custody" under PREA.
  - False statement: "Consequently, no inmates could be interviewed relative to this provision." TPI knows that there were persons in safekeeping housing at Stiles Unit during the onsite audit. Some of the persons designated for safekeeping housing were very likely to have been so designated involuntarily. It is also highly likely that some persons were in restrictive housing for investigating allegations of sexual violence. This too would apply to considerations under this standard.
- PREA § 115.43(c)
  - False statement: in addressing whether persons had been in protective custody for more than 30 days, the auditor only considered "protective safekeeping" as protective custody by stating that incarcerated persons "shall be assigned to protective safekeeping only until an alternative means of separation from likely abusers is arranged, for no longer than 30 days."
  - Misleading statement: "during the past twelve months there have been no inmates placed into involuntary administrative or punitive segregation in accordance with

this standard, specific to a period longer than 30-days, while awaiting alternative placement." This standard has nothing to do with administrative segregation (which TDCJ claims no longer exists in the system because it has renamed it "restrictive housing") or punitive segregation. This statement is not relevant to the standard.

  - False statement: "during the past twelve months there have been no inmates placed into involuntary administrative or punitive segregation in accordance with this standard, specific to a period longer than 30-days, while awaiting alternative placement." This seems to claim that no one had been in housing that constitutes protective custody under PREA for more than 30 days, but that is false. TPI knows that there were persons in safekeeping housing longer than 30 days at Stiles Unit during the onsite audit. Some of the persons designated for safekeeping housing were very likely to have been so designated involuntarily. It is also possible that some persons were in restrictive housing for investigating allegations of sexual violence for more than 30 days. This too would apply to considerations under this standard.
  - False statement: "there have not been any inmates placed in protective custody in the past twelve months." See above.
  - False statement: "Consequently, no inmates could be interviewed relative to this provision." See above.

- PREA § 115.43(d)
  - Misleading statement: "If a protective safekeeping housing assignment is made pursuant to Section III.C.3, the unit shall clearly document: a. The basis of the concern for the offender's safety; and b. The reason no alternative means of separation can be arranged." TDCJ's "protective safekeeping" is not the only housing designation that meets PREA's protective custody standard.
  - False statement: "during the past twelve months there have been no inmates placed into involuntary administrative or punitive segregation in accordance with this standard, specific to a period longer than 30-days, while awaiting alternative placement." TPI knows that there were persons in safekeeping housing longer than 30 days at Stiles Unit during the onsite audit. Some of the persons designated for safekeeping housing were very likely to have been so designated involuntarily. It is also possible that some persons were in restrictive housing for investigating allegations of sexual violence for more than 30 days. This too would apply to considerations under this standard.
  - False statement: "Consequently, no inmates could be interviewed relative to this provision." See above.
- PREA § 115.43(e)

- False statement: concerning that "every 30 days, the unit shall conduct a review to determine if there is a continuing need for separation of the offender from the general population," the auditor falsely claimed that "[d]uring the past twelve months there have been no inmates placed into protective custody in accordance with this standard." Persons in safekeeping housing, including those who are in safekeeping as a form of involuntary protective custody, are not reviewed every 30 days for the continuing need for separation.
- Misleading statement: "This [the above bullet point] was confirmed via the USPPM interview." The USPPM probably responded by providing information only about TDCJ protective safekeeping, and the auditor failed to investigate whether or not that was an accurate response meeting PREA compliance.
- False statement: "Consequently, no inmates could be interviewed relative to this provision." TPI knows that there were persons in safekeeping housing at Stiles Unit who had been in safekeeping housing for more than 30 days at the time of the onsite audit. Some of the persons designated for safekeeping housing were very likely to have been so designated involuntarily. It is also possible that some persons were in restrictive housing for investigating allegations of sexual violence for more than 30 days. These persons could have been interviewed for whether or not their continuing need for such housing was assessed every 30 days.

TPI first provides the following discussion in general about TDCJ protective custody, then provides a more detailed explanation about how TDCJ overall manipulates housing to avoid required documentation and oversight required under PREA.

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. This is protective custody under PREA, and TPI refers here to the TDCJ Estelle Unit audit for recognition of this fact and a possible means of addressing PREA requirements in such situations by offering a waiver of restrictive housing.

Concerning high risk of sexual victimization that is not imminent, TDCJ refuses safekeeping designation too often, and in the assessment of alternatives nearly always claims a unit transfer will solve problems that persist across units.

TPI correspondents relate that some units have blanket prohibitions 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. Safekeeping designation also results in exclusion from many programs, privileges, education, and work opportunities, with TDCJ claiming disingenuously that it is not protective custody that prohibits the exclusion but the lack of housing (meaning a 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.

Although we have no direct reports, TPI believes it is highly unlikely that TDCJ provides a review of each person in safekeeping designated housing every 30 days to determine the continuing need for separation.

TDCJ manipulation of "protective custody" designations

PREA § 115.43 covers the separation or segregation of persons at high risk of 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 Rule[5] 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.[6] 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 violence or due to assessment as being at risk for sexual violence 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 § 115.41(d)(9) that the incarcerated person's own views of vulnerability be taken into account, considerations of whether separate housing 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 [incarcerated persons] who require the highest level of protection in a more controlled environment than other general population [persons], 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

5. Federal Register (2012): vol. 77 no. 119, Fed. Reg. page 37106-37232 (June 20, 2012).
6. Federal Register (2012): vol. 77 no. 119, Fed. Reg. page 37154-37155 (June 20, 2012).

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 safekeeping is very separate, and there are only about three units in the TDCJ system with housing 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 [incarcerated persons] who require separate housing within general population due to threats to their safety, vulnerability, a potential for victimization, or other similar reasons. [Incarcerated persons] 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."[7] 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.[8] In one example, TPI advocated for a transgender woman who was denied education opportunities due to her safekeeping status, even though she tried

7. 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/.

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, but 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.

On paper, safekeeping persons may be able to 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 "punks" and other derogatory terms. Safekeeping persons are denied access to educational opportunities, training programs, and other benefits, sometimes by claiming the denial is not because of the safekeeping designation but for other reasons such as housing, as noted above. On many units, safekeeping housing is on what is called 12 Building, the old administrative segregation building that has limited recreation and still houses persons on disciplinary restriction, meaning safekeeping persons are often subjected to disciplinary conditions.

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 or even the definition of the housing designation. TPI also knows of persons who were placed in safekeeping over their objections. And certainly a person's understanding of their own vulnerability and need for safekeeping can change over time.

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

8. 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.

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. TPI has even documented this happening when someone reported sexual abuse at a different unit and there wass 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.

With these clear deficiencies in the audit, it is unbelievable that Stiles Unit was assessed as "meets every provision of the standard relative to protective custody." It's hard to imagine how this could be further from the truth.

PREA § 115.51 discussion, inmate reporting

PREA § 115.51 covers the means of reporting sexual abuse and sexual harassment.

Regarding PREA § 115.51(b), TPI strongly recommends that advocacy groups documenting and responding to reports of sexual abuse and sexual harassment be allowed to receive sealed mail concerning such issues. The fact that mail room staff are allowed to open and read reports of sexual violence deters accurate and complete reporting to outside agencies. TPI has received over the years numerous claims that knowing their letters about sexual violence can be read by staff deters them from reporting or fully reporting issues.

PREA § 115.52 discussion, exhaustion of administrative remedies

PREA § 115.52 concerns filing complaints related to sexual violence.

With regards to PREA § 115.52(g), TPI has documented a number of instances where TDCJ has manipulated a report of sexual abuse to be consensual sex or manipulated a report in other ways to not only dismiss a good faith report of sexual violence, but then discipline the person reporting sexual abuse for making a good faith report of that abuse. We don't have specific examples during the reporting period for Stiles Unit, but this has occurred often enough that it should be specifically investigated during PREA audits.

PREA § 115.61 discussion, staff and agency reporting duties

PREA § 115.61 covers staff responsibilities to report sexual violence and suspicions of sexual violence. Regardless of the policy in place, policy is meaningless if it is not followed.

Although policy may state that staff are to report sexual violence, TPI has reports of failures to do so at Stiles Unit, such as the client who states that when she tried to report sexual assault, a sergeant and lieutenant told her "Bitch, I don't file OPI [offender protection investigation] for punks, get the fuck out of my face."

TPI finds it highly unlikely Stiles Unit staff should be found to meet the requirements of this standard, but unfortunately we do not have sufficient reports of failures to report violence that we can well illustrate such at this time. Due to the lack of thorough investigation evidenced by this PREA report, TPI feels it is unlikely the audit was thorough enough to support a finding that Stiles Unit "meets every provision of the standard."

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" by making misleading statements about what "protective safekeeping" and "safekeeping designation" are. Also, in TPI's experience, TDCJ automatically places all or almost all persons who report sexual abuse in involuntary protective custody (restricted housing for inmate protection investigation, or IPI) regardless of whether there are alternatives to such placement or not.

In discussing this standard, the auditor claims that "there are multiple housing options available and therefore a sexual abuse victim is not automatically placed in segregation for his [or her] protection." This is a very manipulated and manipulative answer, but in a sense it is also true, just not in the context in which it is given.

Almost always, when a person alleges sexual abuse at Stiles Unit and every other TDCJ facility in TPI's experience, the survivor is placed in protective custody that is often a solitary cell in restrictive housing that very often has the same conditions as disciplinary segregation. That type of "post-allegation protective custody" is automatic and does not comport with "segregation is utilized as a last resort," as the auditor claims.

However, it is very true that safekeeping designation is "segregation . . . as a last resort," and some people try for years to be placed in safekeeping due to repeat sexual abuse across many units. In that sense, this statement is true, and true to the extent that TDCJ and their State Classification Committee deny safekeeping often when it is desired by the survivor and when there is clear evidence of the need.

But TDCJ inappropriately considers "safekeeping designation" not to be "protective custody," so this response from TDCJ staff is actually referring to "protective safekeeping." As mentioned earlier, TPI has never known a person to be placed in TDCJ "protective safekeeping" due to risk of sexual violence.

The auditor unfortunately accepts the false statement that incarcerated survivors "are allowed to participate in programs, education, and work while being housed in segregation for protection as a sexual abuse victim." We can't imagine what this is referring to because, as

noted above, placement in segregation for an investigation is almost always under disciplinary conditions, safekeeping housing is very often accompanied by severe restrictions in access to various opportunities, and "protective safekeeping" results in denial of almost all opportunities.

The auditor continues to parrot Stiles Unit staff in their false statement that "the facility has not used segregated housing in the past 12-months," (*sic*) which is demonstrably false.

In the discussion of this standard, the auditor again abets Stiles Unit's false statements claiming TDCJ "protective safekeeping" is the only "protective custody" considered under PREA by falsely stating 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 and it is determined there is no available alternative means of separation from likely abusers." The appropriate consideration would include all types of protective custody in use at TDCJ, along with the documentation requirements for when those assignments are involuntary.

In should be clear that the auditor's claim that Stiles Unit "meets every provision of the standard regarding post allegation protective custody" is false.

PREA § 115.71 discussion, administrative agency investigations

Regardless of policy, compliance with PREA § 115.71 must consider outcomes in order to be a valid audit.

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 anywhere in TDCJ. 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.

For Stiles Unit, the data are even more remarkable. The auditor noted that for allegations against staff, 0% of 16 sexual abuse allegations were substantiated, 0 sexual harassment allegations were even reported (an unbelievable claim in itself), and voyeurism allegations were not reported. For allegations against other incarcerated persons, 0% of 38 allegations of sexual abuse were substantiated, and 0% of 21 allegations of sexual harassment were substantiated.

Regardless of one's concerns about possible false reporting, these truly and obviously unbelievable low rates of substantiation indicate a preponderance of evidence is not the standard being used, that it is likely not all allegations are being appropriately reported or investigated, and that those that are being investigated are being manipulated or badly investigated.

It is truly astounding that data like this is not a red flag for an auditor, and that these numbers were just accepted blindly. Due to what can be seen from this report, it appears irresponsible, unprofessional, absolutely unacceptable that Stiles Unit was assessed as being "fully compliant" with the PREA § 115.71 standard.

PREA § 115.72 discussion, evidentiary standards

TPI refers to our previous discussions of the low rate of substantiation in support of the assertion that Stiles Unit is certainly NOT adhering to the standard that no higher than a preponderance of evidence be used in the investigation of sexual abuse and sexual harassment.

TPI finds that the auditor failed to provide any support for their assertion that Stiles Unit "meets every provision of the standard regarding evidentiary standard for administrative investigations."

Conclusion

TPI is filing an objection to the acceptance of the audit report for the TDCJ Stiles Unit conducted by auditor Darla P. O'Connor. We believe that for a number of reasons this audit fails to meet the spirit or letter of the audit requirements. The onsite audit was conducted August 28, 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 October 23, 2023.

As of the date of this letter, TPI has documented a total of 2,094 incidents of violence against persons housed at Stiles Unit, including 40 that occurred in the past 12 months, a number that is low because most of the people we were writing to at Stiles Unit were moved off the unit in February 2023. Of the total documented incidents, 319 involved non-compliance with some element of the PREA standards, with 5 PREA non-compliance 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, less because of the number of our correspondents transferred from the unit in early 2023.

TPI asserts that there is strong evidence that the most recent PREA audit for Stiles Unit is deficient. The fact that not one allegation of sexual abuse or sexual harassment made during the 12 months preceding the audit date was found to meet the very low "preponderance of evidence" standard speaks volumes. The mischaracterization of the population at Stiles Unit as "male only" means PREA standards such as those reviewing cross-gender viewing and searches were not assessed properly, and the failure to understand what constitutes "protective custody" at Stiles Unit and throughout TDCJ resulted in a failure to properly assess housing as it is related to lockup for investigations, placement in safekeeping housing, restrictions imposed on safekeeping housing, and other issues related to responding to and preventing sexual abuse and sexual harassment, particularly where it concerns incarcerated LGBTI persons.

We are requesting that:

- Stiles 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 "communicate with community-based or victim advocates who may have insight int relevant conditions in the facility," not just a few large checkbox organizations to claim adherence to the standard.
- Stiles Unit be required to correctly conduct gender-based searches as required under PREA standards and document noncompliance with those standards.
- Stiles Unit staff be required to take additional training in appropriate and professional interactions with LGBTI persons to address deficiencies in professional conduct.
- Additional review of Stiles Unit investigations and documentation that resulted in 100% of the allegations of sexual abuse and sexual harassment during the last 12 months being considered unsubstantiated or unfounded.
- Additional training for Stiles Unit investigating staff in appropriate investigative practices and evidentiary standards.
- Proper reassessment of Stiles Unit's use of protective custody and compliance with documentation requirements for persons in protective custody.
- Stiles 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 with the goal of making 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: Stiles Unit, by Trans Pride Initiative

cc: Department of Justice, Special Litigation Section
TDCJ CEO Bryan Collier
TDCJ PREA Coordinator Cassandra McGilbra
Stiles Unit PREA Compliance Manager Quisha Moton
Stiles Unit Senior Warden Angela Chevalier