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

December 12, 2023

re: auditor noncompliance with audit requirements, Beto 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) Beto Unit conducted by auditor James Kenney and Corrections Consulting Services, LLC. TPI has been working with incarcerated persons since 2013, mainly trans and queer persons in the Texas prison system.[1] 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 October 31 through November 3, 2023, so where specific data are given in the audit report, these reflect the auditor's report of "facts" at that time. The final audit report was submitted November 27, 2023.

Summary of Audit Report Deficiencies

TPI has documented a total of 152 incidents of violence against persons housed at Beto Unit, including 7 that occurred in the past 12 months. Of the total documented incidents, 26 involved noncompliance with some element of the PREA standards, with 4 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.

Significant problems with the general audit information include:

- Per audit entry 10, the auditor only contacted one "community-based organization," and did not contact any local or Texas organizations. This is not compliant with audit requirements.

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.

- Per audit entries 47 and 69, not one person housed at Beto Unit during the on-site visit had ever been placed in segregated housing for risk of sexual victimization. This indicates misrepresentation of what constitutes "segregated housing" by TDCJ staff, and a failure of due diligence on the part of the auditor to adequately assess this issue.
- Per audit entry 66, only 3 transgender persons were interviewed, even though 13 were reported housed at the unit during the on-site visit; the minimum number of interviews required when auditing a facility this size is 4.
- Per audit entry 67, only 3 persons reporting sexual abuse in this facility were interviewed, even though 4 were housed at the unit during the on-site visit; the minimum number of interviews required when auditing a facility this size is 4.
- Per audit entry 95, not even 1 of 43 allegations of sexual abuse by staff and other incarcerated persons was substantiated. Such unbelievable claims require further justification.
- Per audit entry 97, 0 of 6 allegations of sexual harassment by other incarcerated persons were substantiated, and there were reported to have been not one allegation of sexual harassment from staff. As with audit entry 95, such claims require further justification.

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

- PREA § 115.15: The provisions under this standard were not assessed properly because the auditor misrepresented persons housed there as "male incarcerated individuals only."[2] TPI also has documentation of a cross-gender search at the unit during the audit period.
- PREA § 115.21: The auditor reported that staff determine whether or not to offer access to a forensic medical exam, which is not in compliance with the standard that **all** survivors of sexual abuse be offered access to a forensic medical exam.
- PREA § 115.31: TPI has documented evidence of training failures that contradict the auditor's assessment of compliance with this standard and call into question this assessment. TPI also questions the auditor's ability to assess this standard due to the auditor's repeated misgendering of transgender persons in this report.[3]
- PREA §§ 115.34, 115.71, and 115.72: The fact that not one out of 49 allegations of sexual abuse and sexual harassment were substantiated indicates problems related to training

2. Even the auditor admits this is a false statement when under the discussion of PREA § 115.42, the auditor admitted "interviewing three transgender female individuals."
3. National PREA Resource Center training materials covering "Unit 5: Effective and Professional Communication with Inmates," notes specifically that "[u]sing the correct pronoun is a way to show respect and to demonstrate acknowledgment of their gender identity. Best practices suggest that transgender females . . . be addressed as 'she' and referred to as 'her' [and] [t]ransgender males . . . should be addressed as 'he' and referred to as 'him.'" The auditor does not seem to have learned this. Reference is here made to this PREA training document: https://www.prearesourcecenter.org/sites/default/files/content/unit_5_powerpoint_0.pdf.

in specialized investigations, the investigation process, and use of inappropriate evidentiary standards.

- PREA §§ 115.43 and 115.68: The auditor completely fails to understand and properly evaluate PREA protective custody, as it is used and misused in TDCJ as an agency and at Beto Unit specifically.
- PREA § 115.62: In spite of 43 allegations of sexual abuse at Beto Unit in the 12 months preceding the audit, the auditor simply accepted the administration's claim that there were no "notifications of substantial risk of imminent sexual abuse . . . received during the previous 12 months." This indicates a failure to appropriately audit protection duties.

The auditor found that 3 standards were exceeded and 34 were met. However, the auditor also noted that out of 49 investigations of sexual abuse and sexual harassment, not one was substantiated; unbelievably, not one report of staff-on-incarcerated person sexual harassment was even documented. These data should call into question the validity of the audit in its entirety.

Request for Action

We are requesting that:

- This auditor be barred from further audits where any LGBTI persons may be housed based on the repeat misgendering of transgender persons in this audit. The ban should remain in effect until the auditor can demonstrate respectful communications with LGBTI persons. We also question whether this person should continue to function as a PREA trainer, as noted on the National PREA Resource Center web site.
- Beto Unit be required to conduct a subsequent audit to address deficiencies in the audit discussed in this letter.
- The Beto Unit audit reflect the actual population of the unit, not TDCJ's abusive definition of the population as "male only." This concerns compliance with PREA § 115.15 and other standards that include gender-based considerations.
- Beto Unit be required to offer access to forensic medical exams to "all victims of sexual abuse," as per PREA § 115.21. TDCJ should be required to appropriately modify noncompliant policy as well. Failure of either would result in noncompliance.
- Beto Unit be reassessed for actual compliance with training, especially in light of this auditor's obvious bias against transgender persons and inability to appropriately assess such compliance. This concerns compliance with PREA § 115.31 and other standards.
- Beto Unit be reassessed for its actual use of investigative practices and use of evidentiary standards instead of it's claims of compliance that are directly contradicted by the failure

to substantiate even one allegation of sexual abuse or sexual harassment. This concerns compliance with PREA §§ 115.34, 115.71, 115.72, and possibly other standards.

- Beto Unit be reassessed for the actual use of segregated housing and protective custody rather than assessed on it's misrepresentation of these designations. This concerns compliance with PREA §§ 115.43, 115.68, and possibly other standards.
- Beto Unit be reassessed for how it addresses protection duties. This concerns compliance with PREA § 115.62, as well as other standards.
- Beto Unit audits be required to provide the minimum required number of interviews, as per the auditor handbook.
- The auditor be required to follow PREA § 115.401(o) and contact each entity that may have significant information about Beto Unit, including TPI's publicly available documentation and PREA compliance issues at Beto Unit.

Details of Audit Report Deficiencies

The audit report states that the auditor reports no conflict of interest, however, the auditor has connections with the jail system in Florida, a particularly abusive state regarding the treatment of trans and queer persons. TPI feels strongly that this statement from the auditor is almost certainly false. The auditor appears to be currently paid staff at a county jail, and is associated with a statewide sheriff's association. TPI believes any current or recent connection with a prison system in the past three years to be a definite conflict of interest. PREA §§ 115.401(c) and (d) prohibit an auditor from receiving financial compensation from the agency being audited within three years prior to and after the audit, which is warranted but not sufficient. Due to the "we protect our own" mentality common among persons affiliated with prison operations, TPI believes that auditors should be barred from receiving any financial compensation directly or indirectly from any prison operator or associated agency, past or present, due to conflict of interest. Additionally, audit funding must be separate from the system being audited to avoid conflict of interest.

TPI also notes that in spite of claims on the National PREA Resource Center web site to be a trainer for PREA compliance, this auditor misgenders transgender persons multiple times throughout this report. For someone with this level of understanding of the PREA standards, such misgendering is not a simple oversight, but should be considered intentional and deliberate harm. Deliberate misgendering of trans persons is violence; TPI believes the behavior of this auditor, taking into account that the level of training this person claims provides ample evidence that this misgendering is deliberate, should be considered sexual harassment.

The audit report states that the population at the Beto Unit consists of "males," when in fact this is false. The Beto Unit houses cisgender males, transgender females, and other persons who may not belong to either of those two populations. The Beto Unit—and this auditor—may abusively 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. 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, cross-gender pat-down searches of female persons, as well as other PREA standards. To identify transgender females as "males"—or to identify transgender males as "females"—is an act of violence that not only denies the identity of transgender women and transgender men and nonbinary persons, but also encourages violence, sexual harassment, and sexual abuse of transgender persons by dismissing our core identity.

General Audit Information

Audit entry 10 states that the auditor contacted only one "community-based organization," which was:

- Just Detention International

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 advocate, nor does it limit contacts to entities that are party to an MOU. Just Detention International is not even based in Texas, and there is little chance that the organization has information relevant to the unit being audited. This appears to be simply a proforma effort by the auditor to fill in a point of contact, thus failing the auditor's responsibility under PREA. TPI was not contacted concerning the information we have about Beto 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 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 Beto 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 66 notes that 3 persons identified as transgender or intersex were interviewed. According to Table 2 in the Auditor Handbook, the minimum number of interviews for a unit with the overall population of Beto Unit should have been 4. As per audit entry 44, there were 13 transgender and intersex persons at Beto Unit during the on-site visit. The auditor handbook is very specific about this requirement being "the absolute minimum number of persons

confined in the facility that the auditor is required to interview during an audit." No reason or justification for the failure to meet the minimum recommendation was provided, thus this deficiency means the audit did not meet minimum requirements.

Audit entry 67 notes that 3 persons who reported sexual abuse in this facility were interviewed. According to Table 2 in the Auditor Handbook, the minimum number of interviews for a unit with the overall population of Beto Unit should have been 4. As per audit entry 45, there were 4 persons at Beto Unit during the on-site visit. The auditor handbook is very specific about this requirement being "the absolute minimum number of persons confined in the facility that the auditor is required to interview during an audit." No reason or justification for the failure to meet the minimum recommendation was provided, thus deficiency means the audit did not meet minimum requirements.

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.[4] 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.

Audit entry 95 provides the outcomes of administrative investigations of sexual abuse allegations during the previous 12 months. **Audit entry 92** shows incarcerated persons reported 43 allegations of sexual abuse by staff and other incarcerated persons, and 0 were investigated criminally. The administrative investigations found 0 substantiated, 23 unsubstantiated, and 20 unfounded. That is, 100% of the allegations were found to have less than a 51% 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 0% of the allegations were found substantiated. This indicates a failure of the administrative investigations to collect or 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 investigations of sexual harassment allegations during the previous 12 months. **Audit entry 93** shows incarcerated persons reported 6 allegations of sexual harassment by other incarcerated persons (none were even alleged from staff, and amazing claim in itself), and 0 were investigated criminally. The administrative investigations found 0 substantiated, 6 unsubstantiated, and 0 unfounded. That is, 100% of the allegations were found to have less than a 51% 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 0% of the (amazingly low number of) allegations were found substantiated. This indicates a failure of the administrative investigations to adequately collect and assess evidence in

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

allegations of sexual harassment, possibly staff interference with the reporting 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 requirements that reflect the PREA goal of "zero tolerance of sexual abuse and sexual harassment" at the Beto Unit and the agency overall through policy implementation and management. Policy is certainly essential to reaching such goals, but policy alone is inadequate, and how policy is implemented 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 even encourage violence such as sexual abuse and sexual harassment by providing a means of simply ignoring such violence through improper investigations. That certainly seems to be the case at Beto Unit because 100% of all reports of sexual abuse and sexual harassment in the 12 months prior to this audit were unfounded or unsubstantiated.

Due to the above and our work in general at Beto 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 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. Although, as the auditor notes, staff are required to work additional hours to meet some minimum requirements, Beto Unit has been staffed at less than 50% for security personnel in the past, and it is likely that minimum requirements are often not met. Extended work hours can also mean reduced diligence. These facts are not addressed by the auditor.

Due to our experience with the TDCJ system in general and Beto Unit individually, TPI doubts this unit fully complies with PREA § 115.13.

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

The PREA standards state that Beto 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 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 as "males" is inappropriate, is noncomplaint 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.

Further, TPI is aware of a cross-gender search that occurred at Beto Unit on April 14, 2023, which occurred during the period covered by this audit. However, the auditor parrots the administration's claim that "no cross-gender strip searches or body cavity searches were performed in the previous 12 months at the Beto Unit," a false statement. This indicates both the Beto Unit administration is falsifying PREA data, and the auditor did not perform due diligence during the audit (or ignored this evidence due to bias against transgender persons). Had the auditor accessed TPI's data on Beto Unit, the auditor would have had this report.

Concerning PREA § 115.15(b), if the facility allows cisgender males and transgender males and nonbinary staff to conduct pat-down searches of transgender females, then the facility permits cross-gender pat-down searches of female incarcerated persons unless the incarcerated transgender female has completed a waiver allowing such searches. Cisgender males and transgender males, as well as nonbinary persons, are not the same gender as cisgender females and transgender females. All pat-down searches of incarcerated cisgender females and transgender females by cisgender males or transgender males constitute pat-down searches of female incarcerated persons by male staff. The auditor, by not only refusing to identify transgender females among the transgender persons housed at the unit, but also by entirely erasing the transgender persons housed at the unit in stating that "Beto Unit houses male incarcerated individuals only"—an absolutely and definitively false statement—is participating in violence against transgender women, and failing to adequately assess compliance with PREA § 115.15(b).

The failure by the auditor to document that the unit houses transgender females and nonbinary 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. The auditor claims that "there were zero such searches conducted over the previous 12 months," when again, had the auditor performed the audit with due diligence, the auditor would have had a specific example in addition to the implied examples that are the result of TDCJ practice in this matter.

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," the refusal to acknowledge the gender of transgender persons also results in a failure to meet this standard.[5] Again we reference the auditor's failure to recognize the gender of transgender persons housed at the unit as failure to fully assess compliance with this standard.

In the discussion of PREA § 115.15(e), the auditor again revealed bias against transgender persons by misgendering all who may identify as a non-masculine gender, addressing trans women and nonbinary trans persons with only masculine pronouns. Such bias should disqualify an auditor from all audits involving LGBTI persons.

PREA § 115.21 discussion, evidence and forensic medical examinations

In the discussion of PREA § 115.21, the auditor quotes the appropriate policy and references statements from select staff interviews appropriately parroting those policies. However, the auditor also quotes from TDCJ OIG-7.13, stating that staff will "determine if a forensic medical examination will be offered."

In the discussion of PREA § 115.71(c), the auditor notes that the Beto Unit warden stated "current protocol is to have the incarcerated individual victim transported to the hospital for a forensic examination performed by a SANE nurse **if it appeared to be warranted**" (emphasis added). This statement from the warden was not included in the discussion of PREA § 115.21, a significant omission.

5. 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 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.

PREA § 115.21(c) states that **all** survivors of sexual abuse shall be offered access to forensic medical examinations, not that staff should determine if access is warranted. Both OIG-7.13 and the Beto Unit warden indicate that is not being done either at the agency level or at Beto Unit, but instead staff are deciding whether to offer the survivor access to a forensic medical examination. Based on this conflicting information, it is not possible to determine if Beto Unit is compliant with PREA § 115.21 or not.

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.

The auditor provides a glowing presentation of staff compliance with PREA § 115.31(a), but TPI has documented at least two incidents of noncompliance with this provision in the last 12 months, and if we have documented that many, there are certainly others. In October 2022, a captain pulled our correspondent, a gay man, out for an interview related to a threat of violence. The correspondent reports that the captain asked if the correspondent was afraid, and the correspondent answered affirmatively. The captain then commented "just like a faggot." On April 12, 2023, another correspondent, a transgender woman, was transferred to Beto Unit, where she was forced to strip in front of men and subjected to verbal harassment during the strip search. Regardless of the auditor's failure—or refusal—to identify such incidents in reviewing PREA compliance with training requirements, these incidents indicate serious failures in staff training concerning appropriate respect for and treatment of LGBTI persons at Beto Unit.

Regarding compliance with §115.31(b), if training does not include use of preferred names and pronouns of transgender persons, then training is not tailored to the gender of the persons incarcerated at the facility. However, since the auditor abusively misgenders trans women and nonbinary trans persons with masculine pronouns, it is apparent that this auditor would not even be able to recognize such compliance failures. Certainly since the auditor again here erases the existence of transgender persons by claiming "Beto Unit houses male incarcerated individuals only," the point is proven by the auditor's own statements.

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. However, the fact that 0 of 49 incidents involving allegations of sexual abuse and sexual harassment were substantiated indicates a problem with this training. Instead, it appears that training under this standard may be more directed toward how to manipulate and dismiss or cover up allegations of sexual abuse and sexual harassment.

Certainly the fact that the captain, possibly the same person the auditor refers to in the discussion of this standard as heavily involved in these investigation, finds it acceptable to refer to LGBTI persons as "faggots" indicates a distinct bias in training.

PREA § 115.42 discussion, use of screening information

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

Concerning compliance with 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 in TDCJ, 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. This is not compliant with PREA § 115.42(c), and we have yet to see an auditor adequately assess compliance with this provision.

Concerning provision 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 note that if they report issues, those are either dismissed or ignored, or addressed by locking the person in restrictive housing, likely with little or no property, for a week or more while an "investigation" is conducted then found unsubstantiated at best. 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. TPI feels it is inadequate to simply parrot policy in support of meeting this standard, as is done by this auditor, and it must be supported by genuine questions about the efficacy of the process to incarcerated persons. Due to the importance of this provision, it would seem that if there were no trans persons who had been at the unit more than six months during the on-site visit, which the auditor reports, some effort should have been made to review past compliance instead of simply dismissing this and saying Beto was compliant with PREA § 115.42(d).

Concerning the auditor's discussion of PREA § 115.42(e), it is absolutely unacceptable and an act of violence that the auditor misgenders the transgender persons in this report. The auditor's blatant violence against transgender persons, as evidenced by this discussion, should disqualify this auditor from any further PREA audits where LGBTI persons may be houside. The auditor refers to "three transgender female individuals," then abusively—in what should be considered sexual harassment in this report—refers to them repeatedly as males. It is not possible for this auditor to assess compliance with any LGBTI component of the PREA standards.

The discussion of PREA § 115.42(f) continues the auditor's sexual harassment of the transgender women interviewed except for a single use of "she." Once again, this auditor is not competent to assess compliance with any LGBTI component of the PREA standards.

Although not addressed or discussed by the auditor under the discussion of 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).[6] 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.

PREA § 115.43 discussion, protective custody

PREA § 115.43 concerns segregation practices for persons at high risk of sexual victimization. The auditor's discussion of compliance with this standard thoroughly fails. Much of the discussion does not even address what it should.

PREA § 115.43(a) concerns the placement of persons at high risk for sexual victimization in involuntary segregated housing, and that all alternatives to such housing shall be considered before deciding on such placement. If involuntary segregated housing is used prior to such an assessment, it should be for no more than 24 hours.

To discuss Beto Unit's compliance with this standard, the auditor blindly parrots TDCJ's reference to "protective safekeeping," which is seldom if ever used as an immediate means of separating a person from risk for sexual victimization, and is highly unlikely to ever be provided for only 24 hours.

The auditor continues to quote TDCJ's confusing description by stating that "[i]f the assessment cannot be completed immediately, the unit may hold the [incarcerated person] in involuntary segregated housing while completing the assessment, for no long than 24 hours." Presumably, the "assessment" here referenced is for protective safekeeping, but as protective safekeeping is a classification change (custody classification P6 and P7) that must be approved by the State Classification Committee, it is misleading to indicate that "assessment" is made within a span of 24 hours.

Regardless, actual practice is that a person that indicates a high risk for sexual victimization that requires a quick response is nearly always placed in restrictive housing—either defined as such or called something else such as "transient housing" but is essentially the same—that comprises "protective custody" under PREA, and often constitutes "involuntary protective custody." That is in nearly every case what happens when someone reports sexual abuse, and often when someone reports sexual harassment. So according to data provided elsewhere in this report, presumably there were approximately 49 such "assessments" in the 12 months prior to the audit. Yet the auditor accepts Beto Unit administration's claim that "there have been zero incarcerated individuals placed in involuntary segregation over the previous 12 months as a means to separate them from likely abusers." This seems to be allowing TDCJ's manipulation of this issue by apparently claiming either that no one was placed in "protective safekeeping"

6. 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.

custody at Beto (which does not have protective safekeeping housing); it could indicate that not one of the 49 reports of sexual abuse and sexual harassment resulted in a separation of the person experiencing sexual violence from their alleged abuser.

What is more likely is that all or nearly all of the 49 reports of sexual abuse or sexual harassment resulted in the person reporting being placed in restrictive housing for "inmate protection investigation" (IPI).[7] That placement constitutes protective custody under PREA, and in some cases is voluntary protective custody, in some cases is involuntary protective custody.

Thus the auditor failed to assess all parts of this provision: There was no actual assessment of which persons were placed in segregated housing (probably most of the 49 reports resulted in this) and thus there cannot be an assessment of which resulted in involuntary placement in segregated housing, and there was no audit assessment of the consideration of alternatives if any were in such placement for more than 24 hours. We will refer to the 2023 PREA audit report for TDCJ Estelle Unit for acknowledgment that this type of housing constitutes PREA protective custody, and also for the waiver that was established to allow persons to avoid such protective custody during IPI investigations if in their view it is not necessary.

The auditor continued the discussion of provision a by stating that "the auditor reviewed institution records and found no incarcerated individuals housed that were assessed to be at a high risk for victimization." That statement does not comport with 43 allegations of sexual abuse. Even granting the unbelievable finding that none of those reports were substantiated, at least some of these individuals should have been considered at high risk during the period between the report of sexual abuse and the conclusion of the investigation. It is unclear how any auditor could make such a claim unless this auditor is making the claim that only persons in "protective safekeeping" are to be considered as experiencing high risk.

This audit should be found deficient in it's assessment of compliance with PREA § 115.43(a).

PREA § 115.43(b) concerns access to various activities and programs for persons in segregated housing due to a risk of sexual victimization. The auditor again refers to "protective safekeeping," which again is parroting TDCJ misguidance, and again is not the only form of segregation that constitutes protective custody under PREA. The auditor then does rightly refer to restrictive housing, and claims that restrictions are documented, which seems to contradict the statement for PREA § 115.43(a) that there were no persons in restrictive housing for PREA actions. The auditor seems to say there are no persons classified as protective safekeeping (P6 and P7) at the unit and that restrictive housing at Beto is limited, so the auditor could not

7. Elsewhere in the audit report, the auditor refers to placement in "transient housing," which is in actuality very similar to restrictive housing, just under a different name. Transient housing is often in a building where persons with disciplinary cases or punishments are held, and because the reporting person is often immediately placed in separate housing, they lose control of their property, and thus it is stolen or "lost." Forced placement in involuntary custody for reporting sexual violence is a major impediment to willingness to report, and it is almost certain that TDCJ continues this practice—and tries to obscure this practice from oversight. The threat of being locked up, regardless of what term is used, is an effective means of reducing the number of reports of sexual violence.

confirm compliance with PREA § 115.43(b). The auditor should have assessed whether persons in restrictive housing for more than 24 hours because they were at high risk of experiencing sexual violence, which would have included at least some if not most of the persons reporting sexual abuse, had access to the various activities and programs defined in PREA, but it is not clear that the auditor considered that.

This audit should be found deficient in it's assessment of compliance with PREA § 115.43(b).

PREA § 115.43(c) states that persons placed in involuntary segregated housing should be so housed only until an alternative is arranged, and such placement should not ordinarily last more than 30 days. In TDCJ, this generally would refer to safekeeping designation (custody classification P2 though P5) or restrictive housing due to risk of sexual victimization that lasts more than 30 days.[8] Instead, the auditor confuses the issue by referring to "protective safekeeping," and provides what is almost certainly a false statement, as per the above discussion, that "there have been zero incarcerated individuals placed in involuntary segregation over the previous 12 months as a means to separate them from likely abusers."

The auditor reports that the Beto Unit warden stated "that involuntary segregation is not used at Beto to protect those incarcerated individuals that are at risk for victimization." This may be interpreted as claiming that none of the 43 allegations of sexual abuse resulted in a person being placed in involuntary segregation, but what is more likely is this is an attempt to imply PREA's "involuntary protective custody" only refers to TDCJ "protective safekeeping," a claim often attempted by TDCJ administration. Compliance with this provision, since Beto Unit does not house safekeeping or protective safekeeping designated persons, would entail looking at whether any of the restrictive housing for risk of sexual violence lasted more than 30 days. Since the auditor failed to assess that, this audit should be found deficient in it's assessment of compliance with PREA § 115.43(c).

PREA § 115.43(d) states that if involuntary segregation is provided under PREA § 115.43(a), the unit must document the safety concern and why no alternative is appropriate. In the TDCJ system, this generally concerns involuntary placement in safekeeping designation (custody levels P2 through P5). Once again, the auditor fails to assess this by referring instead to "protective safekeeping" as the only housing that meets involuntary segregation or involuntary protective custody under the PREA standards. This audit should be found deficient in it's assessment of compliance with PREA § 115.43(d).

PREA § 115.43(e) requires assessment every 30 days for persons in involuntary segregation or involuntary protective custody. The auditor again confusingly claims that the need for segregation is noted on restrictive housing forms, then apparently states there are no protective safekeeping persons at the unit. It is clear that the auditor did not actually audit compliance

8. To avoid going over 30 days, TDCJ often changes the designation, sometimes moving the person, sometimes not. So someone may be in "restrictive housing" for 30 days, then they are in "transient housing" for 30 days, then they may go back to "restrictive housing." This technically avoids violation of standards, but the cell may be the same or essentially similar housing, an actual violation of the standards.

with this provision, so this audit should be found deficient in it's assessment of compliance with PREA § 115.43(e).

The following is a more detailed discussion of the various types of segregation that are most likely to meet PREA's definition of "protective custody."

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 Rule[9] 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 for safety reasons, and "protective custody" and "involuntary protective custody" as separate housing for the purpose of providing immediate safety.[10] However, the discussion makes it clear that all these terms refer to separating the person from endangerment by placement in separate housing, and that all of these are considered "protective custody." 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 § 115.41(d)(9) that the incarcerated person's own views of vulnerability taken into account, considerations of whether separate housing is "voluntary" or "involuntary" may change over time as the person's views about the need for protective custody changes.

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 to which TPI does not have access. 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

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

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 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 TDCJ classification 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. TPI believes such statements should be considered deliberate and intentional efforts to manipulate PREA data collection and PREA audits.

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."[11] Once in safekeeping, incarcerated persons see reduced access to job opportunities, educational and training programs, and other benefits that may be offered to

11. 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/.

persons not in safekeeping status.[12] 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, 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. TDCJ's insistence that "housing" instead of the safekeeping designation kept her from the program should be considered deliberate manipulation to avoid PREA compliance.

On paper, safekeeping persons may be able to access all the benefits of general population, but in practice the safekeeping population is often segregated in abusive ways 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 some who initially agreed to the designation may later see no need for continued safekeeping designation. Certainly a person's understanding of their own vulnerability and need for safekeeping can change over time. If the person on safekeeping does not agree they have a continuing need for safekeeping status, then they are in involuntary protective custody, and the documentation requirements under PREA must be met.

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—at least initially. However, it is certainly not something a person can request or

12. 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.

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.

Thus safekeeping designation is definitely a type of "protective custody" under the PREA standards, and may be considered "involuntary protective custody" requiring documentation and on-going assessments of continuing need for PREA compliance.

Lockup for reporting sexual violence: TDCJ seems to go to some effort to indicate only "protective safekeeping" (custody classification P6 and P7) constitutes "protective custody" or "involuntary protective custody" for PREA purposes, and it can be but appears to be seldom used for that in actual practice. As explained above, "safekeeping designation" is definitely "protective custody" under PREA, and may also constitute "involuntary protective custody." Likewise, lockup for reporting sexual violence is "protective custody" under PREA, and often constitutes "involuntary protective custody" under PREA. 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).[13] 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 was 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 (this is often the consequence of being locked up immediately, without being allowed to pack their property, so ostensibly they are not "denied" their property, although that and property loss are effects of the action). 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. Such lockups may be called "restrictive housing," "transient housing," and other terms. Clearly such treatment discourages reports of sexual victimization.

This discussion shows that without a doubt, TDCJ "protective safekeeping" is absolutely not the only classification that meets the "protective custody" definition under the PREA standards, nor is it the only classification that can be considered "involuntary protective custody." This discussion should also show the extent of the manipulation that TDCJ administration has engaged in to deliberately misrepresent PREA compliance and mislead PREA auditors. Without a doubt, protective custody and involuntary protective custody is sometimes necessary and of great benefit to survivors of sexual abuse and those threatened with sexual victimization. But TDCJ manipulates this practice for the benefit of the agency—and without necessary transparency, often causes great harm and compounds the sexual violence a survivor has experienced by adding personal and systemic violence from the staff and agency.

13. This term has varied over time. What is current called an IPI was until recently an OPI for "offender protection investigation," and in the past has been known as an LID, or "life in danger" investigation.

Based on the auditor's failure to comprehend even basic components of protective custody as it is used in TDCJ, this audit report should be found deficient in it's assessment of compliance with PREA § 115.43.

PREA § 115.51 discussion, inmate reporting

Concerning 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.

PREA § 115.62 discussion, agency protection duties

PREA § 115.62 states that when an agency learns an incarcerated person is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the incarcerated person. In discussing this provision, the auditor states that Beto Unit "stated that no such notifications of substantial risk of imminent sexual abuse were received during the previous 12 months." This is an amazing statement. So out of 43 allegations of sexual abuse and 6 allegations of sexual harassment over the 12 months prior to this audit, not one of those was taken serious enough to consider that there was a substantial risk of imminent or further sexual abuse. In other words, it appears that the auditor is saying that it is acceptable for the unit administration and investigators to dismiss as unsubstantiated all allegations of sexual violence as soon as they are reported, and to claim that none might conceivably involve a high risk of further sexual abuse. That truly is an amazing statement.

It is inconceivable that this should be accepted as documenting compliance with PREA § 115.62.

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.

The auditor states that at according to agency policy, incarcerated persons are placed in "transient" status pending the completion of an IPI due to an allegation of sexual violence or endangerment. This constitutes protective custody and requires compliance with PREA § 115.43, which includes the following:

- No placement in involuntary segregated housing without an assessment of all available alternatives, and placement in involuntary segregated housing for no more than 24 without such an assessment.

- Persons placed in involuntary segregated housing shall have access to programs, privileges, education, and work opportunities as much as possible, and restrictions require documenting (1) The opportunities that have been limited; (2) The duration of the limitation; and (3) The reasons for such limitations.
- Assignment to to involuntary segregated housing only as long as there are no alternatives, and no more than 30 days.
- When involuntary segregated housing is used, the facility shall clearly document (1) The basis for the facility's concern for the inmate's safety; and (2) The reason why no alternative means of separation can be arranged.

The auditor stated that Beto administration claimed that no person had been placed in involuntary segregation during the prior 12 months. However, as per the auditor's statement from the Beto warden, this appears to be an entirely disingenuous statement that depends on a manipulation of the meaning of protective custody. The auditor simply accepts the claim by the warden that because "Beto does not have a segregation unit [apparently referring to either TDCJ safekeeping housing P2 through P5 or TDCJ protective safekeeping housing P6 and P7] and incarcerated individuals will not be placed in segregation following the reporting of an allegation of sexual abuse."

However, stating that Beto Unit does not have housing designated for P2 through P7 persons does not in any way respond to the question of whether persons reporting sexual violence are or are not placed in protective custody or involuntary protective custody. This is claiming out of 43 reports of sexual abuse, not one was even placed in protective custody. In fact, it is almost certain that at all 49 of those reporting either sexual abuse or sexual harassment were placed in protective custody, and that some of them may have been so placed over their objections, resulting in placement in involuntary protective custody. And some may have been in involuntary protective custody for more than 24 hours. But these were not assessed by the auditor.

This manipulation is probably done by TDCJ staff to both avoid PREA required documentation and to manipulate data that is required for collection under PREA.

Based on this faulty assessment of compliance with PREA § 115.68, it cannot be determined that Beto Unit meets the PREA § 115.68 standard.

PREA § 115.71 discussion, administrative agency investigations

The fact that not one out of 43 allegations of sexual abuse over 12 months was determined to have had more than a coin toss' chance of having happened indicates either evidence collection under PREA § 115.71 was woefully inadequate or a higher evidentiary standard than that required by PREA § 115.72 was used. This issue is discussed more fully under PREA § 115.72.

PREA § 115.72 discussion, evidentiary standards

The auditor reports that a captain claimed investigations use a preponderance of evidence standard, and that a "representative sample" of sexual abuse investigation files support that. However, the fact that not one out of 43 allegations of sexual abuse over 12 months was determined to have had more than a coin toss' chance or having happened indicates either evidence collection under PREA § 115.71 was woefully inadequate or a higher evidentiary standard than that required by PREA § 115.72 was used.

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 Beto Unit, the data are even more remarkable. The auditor noted that for allegations against staff, 0% of 13 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 30 allegations of sexual abuse were substantiated, and 0% of 6 allegations of sexual harassment were substantiated.

Regardless of one's concerns about possible false reporting, these truly and unbelievably 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 indicates a definite issue with the audit. Due to what can be seen from this report, it appears irresponsible, unprofessional, absolutely unacceptable that Beto Unit was assessed as being compliant with the PREA § 115.72 standard.

Conclusion

TPI has documented a total of 152 incidents of violence against persons housed at Beto Unit, including 7 that occurred in the past 12 months. Of the total documented incidents, 26 involved noncompliance with some element of the PREA standards, with 4 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.

Significant problems with the general audit information include:

- Per audit entry 10, the auditor only contacted one "community-based organization," and did not contact any local or Texas organizations. This is not compliant with audit requirements.
- Per audit entries 47 and 69, not one person housed at Beto Unit during the on-site visit had ever been placed in segregated housing for risk of sexual victimization. This indicates misrepresentation of what constitutes "segregated housing" by TDCJ staff, and a failure of due diligence on the part of the auditor to adequately assess this issue.
- Per audit entry 66, only 3 transgender persons were interviewed, even though 13 were reported housed at the unit during the on-site visit; the minimum number of interviews required when auditing a facility this size is 4.
- Per audit entry 67, only 3 persons reporting sexual abuse in this facility were interviewed, even though 4 were housed at the unit during the on-site visit; the minimum number of interviews required when auditing a facility this size is 4.
- Per audit entry 95, not even 1 of 43 allegations of sexual abuse by staff and other incarcerated persons was substantiated. Such unbelievable claims require further justification.
- Per audit entry 97, 0 of 6 allegations of sexual harassment by other incarcerated persons were substantiated, and there were reported to have been not one allegation of sexual harassment from staff. As with audit entry 95, such claims require further justification.

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

- PREA § 115.15: The provisions under this standard were not assessed properly because the auditor misrepresented persons housed there as "male incarcerated individuals only." TPI also has documentation of a cross-gender search at the unit during the audit period.
- PREA § 115.21: The auditor reported that staff determine whether or not to offer access to a forensic medical exam, which is not in compliance with the standard that **all** survivors of sexual abuse be offered access to a forensic medical exam.
- PREA § 115.31: TPI has documented evidence of training failures that contradict the auditor's assessment of compliance with this standard and call into question this assessment. TPI also questions the auditor's ability to assess this standard due to the auditor's repeated misgendering of transgender persons in this report.
- PREA §§ 115.34, 115.71, and 115.72: The fact that not one out of 49 allegations of sexual abuse and sexual harassment were substantiated indicates problems related to training in specialized investigations, the investigation process, and use of inappropriate evidentiary standards.

- PREA §§ 115.43 and 115.68: The auditor completely fails to understand and properly evaluate PREA protective custody, as it is used and misused in TDCJ as an agency and at Beto Unit specifically.
- PREA § 115.62: In spite of 43 allegations of sexual abuse at Beto Unit in the 12 months preceding the audit, the auditor simply accepted the administration's claim that there were no "notifications of substantial risk of imminent sexual abuse . . . received during the previous 12 months." This indicates a failure to appropriately audit protection duties.

The auditor found that 3 standards were exceeded and 34 were met. However, the auditor also noted that out of 49 investigations of sexual abuse and sexual harassment, not one was substantiated; unbelievably, not one report of staff-on-incarcerated person sexual harassment was even documented. These data should call into question the validity of the audit in its entirety.

We are requesting that:

- This auditor be barred from further audits where any LGBTI persons may be housed based on the repeat misgendering of transgender persons in this audit. The ban should remain in effect until the auditor can demonstrate respectful communications with LGBTI persons. We also question whether this person should continue to function as a PREA trainer, as noted on the National PREA Resource Center web site.
- Beto Unit be required to conduct a subsequent audit to address deficiencies in the audit discussed in this letter.
- The Beto Unit audit reflect the actual population of the unit, not TDCJ's abusive definition of the population as "male only." This concerns compliance with PREA § 115.15 and other standards that include gender-based considerations.
- Beto Unit be required to offer access to forensic medical exams to "all victims of sexual abuse," as per PREA § 115.21. TDCJ should be required to appropriately modify noncompliant policy as well. Failure of either would result in noncompliance.
- Beto Unit be reassessed for actual compliance with training, especially in light of this auditor's obvious bias against transgender persons and inability to appropriately assess such compliance. This concerns compliance with PREA § 115.31 and other standards.
- Beto Unit be reassessed for its actual use of investigative practices and use of evidentiary standards instead of it's claims of compliance that are directly contradicted by the failure to substantiate even one allegation of sexual abuse or sexual harassment. This concerns compliance with PREA §§ 115.34, 115.71, 115.72, and possibly other standards.
- Beto Unit be reassessed for the actual use of segregated housing and protective custody rather than assessed on it's misrepresentation of these designations. This concerns compliance with PREA §§ 115.43, 115.68, and possibly other standards.

- Beto Unit be reassessed for how it addresses protection duties. This concerns compliance with PREA § 115.62, as well as other standards.
- Beto Unit audits be required to provide the minimum required number of interviews, as per the auditor handbook.
- The auditor be required to follow PREA § 115.401(o) and contact each entity that may have significant information about Beto Unit, including TPI's publicly available documentation and PREA compliance issues at Beto Unit.

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: Beto Unit, by Trans Pride Initiative

cc: Department of Justice, Special Litigation Section
TDCJ CEO Bryan Collier
TDCJ PREA Ombudsman
TDCJ PREA Coordinator Cassandra McGilbra
Beto Unit Senior Warden Patrick Cooper
Beto Unit PREA manager Beth Bond