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

March 13, 2024

re: auditor noncompliance with audit requirements, TDCJ Coffield 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) Coffield Unit conducted by auditor Lynni O'Haver and PREA Auditors of America, now 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 over three days from January 10 through 12, 2024, so where specific data are given in the audit report, these reflect the auditor's report of "facts" at that time.

TPI notes that for a facility with more than 2,500 persons (current population of Coffield Unit given in the audit report was 4,005), just the interviews with incarcerated persons and staff are estimated to take 3.4 days, or 33.7 hours, so it appears that this audit, conducted in three days at most with no additional support staff, was conducted without allowing sufficient time to meet all the audit obligations for the on-site investigations.

The final audit report was submitted January 30, 2024, and posted online approximately March 8, 2024.

TPI would like to stress that many of the deficiencies discussed in this report document failures to comply with the Auditor Certification Agreement, including at a minimum General Responsibilities I.b. and I.c.; Auditor Certification Requirements V.b. and V.g.; and the PREA Audit Methodology VI.a. The Auditor Handbook states:

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.

> Auditors who do not satisfy their certification requirements are subject to remedial or disciplinary action, up to and including suspension or decertification. Full details regarding the PREA Audit Oversight Program are provided in Section VII of this Handbook.

TPI also contends the claim that the auditor does not have a conflict of interest due to their employment with Corrections Consulting Services, LLC (CCS). Previously, it appears that CCS only did PREA audits, and as such, at least superficially, it complied with PREA § 115.402 because presumably the auditor employer, from which the auditor receives direct benefits, had not "received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within the three years." On it's web site, CCS now lists services such as "accreditation support," "policy and procedure review," "security audits," "staff training," and "technology integration" in addition to "PREA auditing." Thus it is obvious that CCS is providing services that may be considered a conflict of interest and activities that may include an auditor auditing their own work or their employer's work, that may provide a conflict of interest to auditors it employs or contracts with, and that it may be conducting PREA audit services in violation of PREA § 115.402. Even if no current existing contractual obligations are in effect, a conflict of interest could exist in the understanding that PREA audits showing full or near full compliance could engender additional contracts between the agency and CCS. TPI feels it is highly unlikely that a conflict of interest does not exist. Although the Auditor Handbook states that auditors are personally accountable in such situations, the opportunity for conflicts of interest in this case are too great to be ignored.

The Auditor Handbook states that

> Because PREA auditors are DOJ-certified, they are in a unique position of public trust with the ability to impact public confidence in the integrity of the PREA audit function. Many stakeholders rely on this audit process and its results, including federal, state, local, and private agencies that operate or oversee confinement facilities; facility staff; treatment and service providers; community-based advocacy organizations; courts; attorneys; and people in confinement and their families.

Such potential for conflicts of interest do not engender public trust, but instead strongly indicate a pay-for-compliance service that is focused on profitability, not accountability.

Additionally, Ms. O'Haver served as a Sheriff in Florida for 23 years up until November 2021. TPI believes any current or recent connection with a prison system to be a potential 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 this potential conflict of interest. Additionally, audit funding must be separate from the system being audited to avoid this conflict of interest.

Summary of Audit Report Deficiencies

TPI has documented a total of 190 incidents of violence against persons housed at Coffield Unit, including 11 that occurred in the past 12 months. Of the total documented incidents, 13 involved noncompliance with some element of the PREA standards. We have not received any incidents we could demonstrate violate PREA standards within the last 12 months. However, 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. TPI is filing this letter of complaint based on information we have received; this should in no way be taken as a complete inventory of abuses occurring at Coffield Unit, nor should it be considered a complete inventory of PREA deficiencies.

The Department of Justice (DOJ) has provided guidelines to use person-first language such as "persons in confinement" or "confined person." This is discussed in the 2022 Auditor Handbook, and the handbook notes that the PREA Management Office and the PREA Resource Center "are shifting the way we identify people who are incarcerated by using person-first language." That this auditor ignores this shift by continuing to use terms like "offender" throughout this report (there are 677 uses of "offender" in the final report) is unacceptable, and it helps substantiate the bias and conflict of interest concerning this auditor, as noted above. There is no excuse for every new document completed under the aegis of the PREA compliance system to not follow person-first practices.

TPI has documented a number of inaccuracies and deficiencies with the general audit information provided. The most significant problems identified include:

- The facility is falsely described as housing males only, in spite of the auditor documenting persons of other genders at the unit.
- **Audit entry 10:** The auditor failed to contact appropriate community-based organizations.
- **Audit entry 47:** The auditor falsely states that 0 persons at the unit had been placed in segregated housing due to risk of sexual victimization.
- **Audit entry 58:** The auditor failed to conduct the minimum targeted interviews.
- **Audit entry 66:** The auditor failed to conduct the minimum number of interviews with transgender and intersex persons, and failed to do appropriate due diligence to identify additional transgender and intersex persons at the facility.
- **Audit entry 67:** The auditor failed to conduct the minimum number of interviews with persons who reported sexual abuse in the facility. The person who was counted but who denied being a member of the target population should have been replaced by identifying one of the other at least five persons in this target population who were available.

- **Audit entry 69:** The auditor failed to conduct the minimum number of interviews with persons who had been placed in segregation due to risk of sexual violence, and failed to do due diligence to identify persons in this target population.

TPI has documented a number of inaccuracies and deficiencies with the assessment of compliance with PREA standards in this report. The most significant problems identified include:

- **PREA § 115.15:** The auditor failed to appropriately audit the unit for cross-gender strip and body cavity searches. Compliance with this standard is not supported and cannot be determined based on what is provided in this report.
- **PREA § 115.31:** The auditor makes what appear to be biased statements about respectful and professional considerations of transgender persons. Such statements indicate this audit may have additional problems that TPI does not have the data to evaluate.
- **PREA § 115.42:** The auditor misrepresents how screening information is actually used in TDCJ facilities and in the agency. Compliance with this standard is not supported and cannot be determined based on what is provided in this report, especially given the level of misinformation presented here.
- **PREA § 115.43:** The auditor misrepresents how protective custody is provided in TDCJ, and fails to investigate TDCJ's misrepresentation of "protective safekeeping" as the only housing that meets PREA "protective custody" requirements. Compliance with this standard is not supported and cannot be determined based on what is provided in this report, especially given the level of misinformation presented here.
- **PREA § 115.62:** The auditor fails to appropriately consider protection duties and appears to somehow conflate those duties with TDCJ protective safekeeping. Compliance with this standard is not supported and cannot be determined based on what is provided in this report.
- **PREA § 115.68:** The auditor again seems to falsely equate PREA protective custody with TDCJ protective safekeeping and TDCJ safekeeping designation, and the auditor fails to assess actual post-allegation protective custody. Compliance with this standard is not supported and cannot be determined based on what is provided in this report.
- **PREA § 115.72:** The auditor does not present any supporting information that indicates the preponderance of evidence standard is used in administrative investigations, and in fact provides objective evidence that such a standard is likely not used. Compliance with this standard is not supported and cannot be determined based on what is provided in this report.
- **PREA § 115.76:** The auditor documents that only one staff sexual abuse of an incarcerated person was documented, but two persons were terminated for such abuses. This does not necessarily mean non-compliance with this standard, but indicates

additional problems with either reporting or investigating sexual violence at Coffield Unit.

- **PREA § 115.86:** The auditor states that there were 19 incident reviews conducted, which would not be compliant with the standard, yet the auditor claimed compliance. Thus compliance with this standard is not supported and cannot be determined based on what is provided in this report.

The auditor found that 0 standards were exceeded and 37 were met. TPI believes this assessment to be deficient.

Request for Action

TPI requests that the following deficiencies be addressed:

- The auditor must meet minimum number of interviews, and conduct due diligence to identify members of the populations even if the facility has not identified those members.
- The auditor must appropriately audit cross-gender and body cavity searches according to gender, as per PREA § 115.15.
- The auditor must appropriately address anti-transgender bias in the assessment of training curricula, as per PREA § 115.31.
- The auditor must appropriately audit how screening information is actually used in the facility, as per PREA § 115.42.
- The auditor must accurately assess PREA protective custody and how such housing and protections are appropriately and inappropriately provided at the facility, as per PREA §§ 115.43, 115.62, and 115.68.
- The auditor must substantiate that inordinately low rates of incident substantiation actually meet the preponderance of evidence standard for investigations, as per PREA § 115.72.
- The auditor must identify and explain discrepancies such as the claim that only one staff sexual abuse incident was reported but two persons were terminated in the discussion of PREA § 115.76.
- The auditor must address how a claim that 19 incident reviews satisfies the requirement to conduct incident reviews of all 20 substantiated and unsubstantiated sexual abuse incidents, as per PREA § 115.86.
- Coffield Unit must conduct a subsequent audit to address deficiencies in the audit discussed in this letter.

- Coffield Unit audit must 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.

Details of Audit Report Deficiencies

The audit report states that the population at the Coffield Unit consists of "males," when in fact this is false. The Coffield Unit houses cisgender males, transgender females, and other persons who may not belong to either of those two populations. The Coffield Unit 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," Just Detention International, which is certainly not local to the state and has little direct experience with TDCJ issues.

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 is a broadly inclusive definition, and it places the onus on the auditor to identify and contact organizations and advocates with information about the facility. TPI is well known to have information about sexual violence and conditions at TDCJ facilities. TPI was not contacted concerning the information we have about Coffield Unit, and no reference to our data readily 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. Because TPI is well known to have relevant data for PREA audits, and because this data is readily available online, the failure to include data from TPI can only be viewed as deliberate omission by the auditor.

Audit entry 44 states that there were 2 incarcerated persons identifying as transgender or intersex at the unit. TPI feels this number may be inaccurate because few units that meet PREA conditions for housing transgender persons only house one or two of the approximately 2,000 transgender identified persons in TDCJ custody, and that does not include personswho may be

gender nonconforming but not identified with the TRGEN marker TDCJ uses to identify transgender persons. The Auditor Handbook also states that auditors should "use interviewing opportunities with other persons . . . to explore whether there are members of the targeted populations in the facility not identified by facility staff." Because we have no way to demonstrate that this number is inaccurate, we simply note that this number seems improbable, and we will address the failure to do appropriate targeted interviews below. TPI also suggests that if the auditor had spent the suggested minimum time for the on-site portion of the audit, this deficiency may have been adequately addressed.

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 Coffield 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 demonstrated by the responses in **audit entries 92 through 98,** discussing the numbers and investigation of sexual violence at the unit. It is very near ubiquitous in TDCJ that when there is a sexual violence allegation, the person making the allegation is placed in segregated housing as a result of their report of violence, which meets the PREA definition of being placed in segregated housing or isolation for risk of sexual victimization. According to online descriptions, Coffield Unit does not house any safekeeping status persons, but safekeeping is absolutely not the only way TDCJ places persons at risk of sexual victimization in segregated housing.

Audit entry 58 notes that 17 targeted interviews with incarcerated persons were conducted. According to Table 2 in the Auditor Handbook, the minimum number of interviews for a unit with the overall population of Coffield Unit should have been 25. The Auditor Handbook clearly states that additional random interviews do not substitute for targeted interviews, which this auditor seems to have done:

> If an auditor is unable to identify an individual from one of the targeted populations (e.g., the facility does not house youths under 18) or an individual belonging to a targeted population does not wish to participate in an interview, the auditor must select interviewees from other targeted populations in order to meet the minimum number of targeted interviews.

Thus because there were well over 25 persons in targeted populations of a facility the size of Coffield Unit (according to the auditor's documentation, there were approximately 390 members of targeted populations), 25 targeted interviews should have been conducted.

Audit entry 66 notes that 2 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 Coffield Unit should have been 4. As noted above, TPI feels the

claim that there were only 2 transgender persons at Coffield Unit at the time of the on-site portion of the audit to likely be inaccurate. The Auditor Handbook also states that auditors should "use interviewing opportunities with other persons . . . to explore whether there are members of the targeted populations in the facility not identified by facility staff." The auditor provides no documentation or information concerning this requirement. The Auditor Handbook also states that "a facility that is unable to provide a list of persons confined in the facility who identify as lesbian, gay, bisexual, transgender, intersex, ***or gender nonconforming*** may not be meeting its obligations for screening confined individuals for risk of victimization and abusiveness" (emphasis added). TDCJ identifies transgender persons with the TRGEN indicator, and intersex persons with the INTSX indicator, but we have not been able to determine that gender nonconformity is appropriately documented in the records of persons in TDCJ custody (it is supposedly available in the SPPANS data). Had the auditor appropriately followed auditor guidelines, we feel it is certain that at least two more persons would have been identified to complete the targeted interviews for this population. TPI also notes that no explanation is given about why the minimum number could not be interviewed,[2] as was done for audit entries 61 and 69, so there is no way to identify that the auditor identified this deficiency, nor what actions the auditor took to try to address this deficiency.

Audit entry 67 notes that 4 persons who reported sexual abuse in this facility were interviewed. However, throughout this audit report, the auditor states that one of the persons "denied being a victim of sexual abuse and declined further questioning" (this statement is made nine times in the audit report). There were, according to this same report, five additional persons meeting this target population definition, so the auditor should have identified a different person to interview. According to Table 2 in the Auditor Handbook, the minimum number of interviews for a unit with the overall population of Coffield Unit should have been 4, so since only 3 were effectively interviewed, the audit was deficient in meeting this requirement.

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" was 0.[3] Because audit entries 92 and 93 indicate at least 45 reports of sexual violence occurred during the 12 months preceding the audit, and because within TDCJ it is routine practice to place anyone making an allegation of sexual violence in segregated housing, there is a near certainty that there were at least 45 persons placed in segregated housing at Coffield Unit during the 12 months preceding the audit. As with **audit entry 47,** this indicates a failure to investigate and understand how

2. Such explanation is required as per the Auditor Handbook on page 68: "Where an auditor is unable to meet the interview requirements, the auditor must explain why it was not possible in the post-audit reporting information. For example, even after extensive probing, an auditor may be unable to meet the required number of interviews for a particular targeted population. In such a case, the auditor must describe in the post-audit reporting information the steps they took to identify an individual within the targeted population and the information they obtained through that process (e.g., the auditor's corroboration strategy)."
3. Note that the protocol mentioned in the instructions is the additional questions to be asked, not how to select these persons.

segregated housing is manipulated by TDCJ to cause confusion; this will be discussed further under PREA § 115.43.

Additionally, the fact that the auditor simply accepted the facility's report that there were "none here" indicates a failure to adequately audit placement of persons in segregated housing at the facility.

Audit entry 80 notes that the auditor interviewed "Sexual Assault Forensic Examiner (SAFE) or Sexual Assault Nurse Examiner (SANE) staff," yet most TDCJ facilities do not include trained SAFE/SANE staff. Indeed, under the discussion of PREA § 115.21(c), the auditor states that "The Medical Staff member provided the Auditor with an overview of the procedures if a forensic exam was needed, such services are provided at the nearest local hospital with the forensic exam being completed by a certified SANE Nurse." Although this might be considered a minor inaccuracy, this is one more indication of inaccuracy that casts doubt on the legitimacy of this audit and this auditor.

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 25 allegations of sexual abuse by staff and other incarcerated persons, and 9 were investigated criminally. The administrative investigations found 1 substantiated, 19 unsubstantiated, and 5 unfounded. That is, 96% 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 only 4% of the allegations were found substantiated. This indicates a failure of 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 investigations of sexual harassment allegations during the previous 12 months. **Audit entry 93** shows incarcerated persons reported 20 allegations of sexual harassment by staff and other incarcerated persons, and 0 were investigated criminally. The administrative investigations found 0 substantiated, 19 unsubstantiated, and 1 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 not one of the allegations were found substantiated. This indicates a failure of 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 requirements that reflect the PREA goal of "zero tolerance of sexual abuse and sexual harassment" at the Coffield 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 (see the above discussions of audit entries 95 and 97), 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.

Due to our work in general and the general reports of conditions at Coffield 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.

Our most recent staffing data for Coffield Unit shows that with 264 full-time equivalent corrections officers, the unit was 39% staffed. At current 355 security employees, as reported online, the unit is probably about 52% staffed. It is highly unlikely that a unit only half staffed can legitimately be assessed having "adequate staff to operate effectively and appropriately protect residents from sexual violence."

One of the persons housed on Coffield Unit reports that in November 2023, a security staff person was fired for not doing security checks overnight. Another correspondent at Coffield Unit describes in July 2023 "staff is daily operating at 31% to 21% capacity. . . Prisoners are crowded into dayrooms for hours at a time (after meals and showers) without adequate access

to toilet facilities. . . . This has resulted in men defecating on themselves. . . . Outside recreation is nearly nonexistent. [Lists several other problematic conditions.] . . . This is an extreme security risk, which could easily lead to a massive riot, which the 'shortage of staff' will not be able to maintain. . . . It is common for [persons in restrictive housing] to go days on end without showers or recreation. . . . It is common for fires to burn and smolder on the run for hours at a time without any attempt at putting them out."

Comments such as these bring into question the veracity of the auditor finding that Coffield Unit is in compliance with PREA § 115.13.

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

The PREA standards state that Coffield 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 noncompliant with PREA § 115.15(a), and furthermore may constitute participation by the auditor in violence against transgender persons. Acceptance of that misclassification by the PREA Resource Center is encouraging and abetting violence against transgender persons, and that too should not be considered compliant with PREA standards.

Concerning PREA § 115.15(b), if the facility allows cisgender males and transgender males 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 fact that the auditor states in this audit report that "the Coffield Unit does not hold female [incarcerated persons]" in spite of identifying at a very minimum two female transgender persons indicates the auditor is participating in violence against transgender women, and failing to adequately assess compliance with PREA § 115.15(b).

The failure by the auditor to appropriately recognize 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 that the facility 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,"[4] the refusal to acknowledge the gender of transgender persons also results in a failure to meet this standard.

PREA § 115.15(f) covers training in the conduct of cross-gender pat-down searches and searches of transgender and intersex incarcerated persons in a professional and respectful manner. Once again, refusal to accept the gender of transgender and gender nonconforming persons means a failure to comply with PREA § 115.15(f). With these several problems, this report does not sufficiently support a finding that Coffield Unit meets PREA § 115.15.

PREA § 115.21 discussion, evidence protocol and forensic medical examinations

TDCJ OIG-7.13 states that staff will "determine if a forensic medical examination will be offered." PREA § 115.21(c) states that **all** survivors of sexual abuse shall be offered access to forensic medical examinations; and PREA § 115.21(e) allows the survivor to request a forensic medical examination. OIG-7.13 indicates that is not being done either at the agency level, but instead staff are deciding whether to offer the survivor access to a forensic medical examination. Based on this conflicting information (excusing the OIG policy as only applying to criminal investigations does not excuse its language indicating that forensic exams are an option that is determined by staff), it is not possible to determine if Coffield 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.

Concerning § 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

4. 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.

the facility. If the training does not recognize the actual affirming gender of transgender persons, which may be different than that of the unit to which they are assigned, then training is not tailored to the gender of persons at the facility.

The auditor states under the discussion of PREA § 115.31 that TDCJ training curricula include "an offender's [*sic*] right to be free from sexual abuse and sexual harassment, including the right to dress, shower, and use toilet facilities out of view of staff of the opposite sex [*sic*]." The auditor here is substituting the word "sex" for PREA's use of "gender. This indicates training curricula that is not in compliance with PREA standards by implying a difference between "sex" and "gender" and using the word "sex" instead of the word "gender." This is in reference to training in compliance to PREA § 115.15(d), but that standard uses the word "gender," not "sex."

The auditor places the phrase "opposite gender" in scare quotes, which is a means of indicating a lack of acceptance of the PREA language and requirements concerning the recognition of all transgender persons' genders.

The auditor reinforces disregard for trans persons and their safety by claiming that TDCJ units are "all-male or all-female," invalidating all claims and rights of transgender persons to self-identify.

These deficiencies indicate auditor bias against the rights of transgender persons in regard to their safety and respect and professional treatment, and in turn represent a failure to adequately audit PREA § 115.31 training requirements. Based on this discussion of PREA § 115.31, it appears that Coffield Unit does not meet the PREA § 115.31 standard.

PREA § 115.33 discussion, PREA education for incarcerated persons

TPI has little means of monitoring compliance with PREA § 115.33, which covers education of incarcerated persons concerning PREA issues. However, the number and extent of misunderstandings about PREA we receive in reports indicates as a whole, TDCJ training in this area is a failure.

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 so few incidents involving allegations of sexual abuse are substantiated indicates a problem with this training.

PREA § 115.41 discussion, screening for risk of victimization

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

TPI asserts that TDCJ PREA compliance policy excludes persons who identify as gender nonconforming and possibly nonbinary. According to the TDCJ Safe Prisons Plan and the PREA Standards, the term transgender refers to "a person whose gender identity (i.e., internal sense of

feeling male or female,) is different from the person's assigned sex at birth." This implies an old definition of "transgender" that does not include nonconforming and nonbinary persons. PREA and the Safe Prisons Plan technically address this by including "gender nonconforming." The PREA Final Rule notes that:

> The standards account in various ways for the particular vulnerabilities of inmates who are LGBTI or whose appearance or manner does not conform to traditional gender expectations. The standards require training in effective and professional communication with LGBTI and gender nonconforming inmates and require the screening process to consider whether the inmate is, or is perceived to be, LGBTI or gender nonconforming. The standards also require that post-incident reviews consider whether the incident was motivated by LGBTI identification, status, or perceived status.

The PREA Standards require under § 115.41(d) that screening for risk of sexual victimization shall consider several factors, including "(7) Whether the inmate **is or is perceived to be** gay, lesbian, bisexual, transgender, intersex, or **gender nonconforming**" (emphasis added). If TDCJ risk screening markers include only LGBTI, TRGEN, and INTSX. To be compliant with this requirement, gender nonconforming and nonbinary persons must be included in one of these categories, with TRGEN being the category generally most appropriate for risk assessment. TPI notes that SPPOM-03.01 screening in Section II for "Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI), and Gender Non-conforming" persons does not provide a coding entry for gender nonconforming persons. Questions 9 and 10 on Attachment E only include lesbian, gay, bisexual, heterosexual, transgender, and intersex. Section IV follow-up questions only address the "perceived to be" portion of this requirement, not the "is" portion. Therefore, it appears that TDCJ policy makes it easy to exclude considerations of vulnerability for gender nonconforming and nonbinary persons.

TPI asserts that this issue means TDCJ does not meet the PREA § 115.41 standard.

PREA § 115.42 discussion, use of screening information

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

The auditor states under the discussion of PREA § 115.42(a) that "a transgender or intersex offender's [*sic*] own views on safety is [*sic*] given consideration during this process [determining housing assignment] and if placed in protective custody, such placement is done at the request of the offender [*sic*] or solely based on the offender's [*sic*] classification level." This wholly misrepresents the general practice in TDCJ regarding not just transgender persons, but all persons in TDCJ custody. It is very common for any individual reporting sexual abuse or sexual harassment to be placed in protective custody for IPI (inmate protection investigation), which is protective custody under PREA. This is often done in spite of strong objections to such placement by the reporting person. If this use of the phrase "protective custody" is referring to safekeeping, then it is very seldom that a person is referred to safekeeping at their request, and even TDCJ policy (see UCP-02.03) implies or outright requires that persons experience threats

or abuses multiple times, addressed by cell changes or unit transfers, before placement in safekeeping is considered. The requirement that safekeeping considerations must be based on "objective evidence of sexual extortion or victimization" means that many such requests are denied due to claims that the evidence provided is not sufficient to warrant safekeeping designation. This statement from the auditor seriously misrepresents practice and policy in the TDCJ system.

Concerning PREA § 115.42(c), TPI notes that based on reporting to us, we only have heard of a single transgender or intersex incarcerated person NOT housed according to their gender assigned at birth 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.

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 (which is protective custody under PREA, and is often involuntary protective custody), 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.

Concerning PREA § 115.42(f), TPI notes that for two-person cells where the shower is in the cell, if one of the persons is transgender or intersex and one is not, that housing is not in compliance with 115.42(f).[5] 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.

In the discussion of PREA § 115.43(a), the auditor states that persons "at high risk for sexual victimization shall not be placed in protective safekeeping unless an assessment of all other available alternatives has been made and it is determined that there are no available alternatives means of separation from likely abusers."

This is factually correct only in that this is an accurate quote of the TDCJ PREA/Safekeeping Plan, but this statement misrepresents the manner in which PREA protective is considered withing TDCJ, and this does not address PREA § 115.43(a), which states that persons "at high

5. 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.

risk for sexual victimization shall not be placed in **involuntary segregated housing** unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers" (emphasis added). TDCJ protective safekeeping is not by any means the only way that persons are placed in involuntary protective custody, so this misrepresentation by the auditor is clearly a failure to fully audit PREA compliance at Coffield Unit.

The auditor also contradicts this statement in the discussion of PREA § 115.62, stating that the Coffield Unit warden reported that "upon learning an offender [*sic*] is subject to a substantial risk of imminent sexual abuse . . . that offender is immediately removed from the area. The offender victim's housing preference is considered, however the decision on his ultimate placement is driven by the need for protection from possible abuse and/or retaliation." This type of housing also refers to protective custody, and if done against the request of the survivor, is involuntary protective custody.

Additionally, under the PREA § 115.43(a) discussion, the auditor reports that the Coffield Unit warden reiterated the reference to the use of protective safekeeping at Coffield Unit, which as far as TPI can tell, does not provide protective safekeeping housing. The claim that some persons are kept in protective safekeeping for only a short time also entirely misrepresents TDCJ protective safekeeping. That designation, represented as custody levels P6 and P7, is rarely provided, and when provided it is highly unlikely to be rescinded due to the nature of the conditions that warranted P6/P7 classification.

Regardless of policy, reports to TPI indicate that placement in PREA involuntary protective custody 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. Concerning high risk of sexual victimization that is not imminent but may warrant protective custody, TDCJ refuses safekeeping designation too often, and in the assessment of alternatives nearly always claims a unit transfer will solve problems even when those problems persist across units.

Under the discussion of PREA § 115.43(b), the auditor reports that compliance with that standard is only related to TDCJ protective safekeeping. Again, relegating consideration of PREA § 115.43(b) compliance to only TDCJ protective safekeeping represents a failure to audit compliance with protective custody requirements under PREA § 115.43(b).

In this discussion, the auditor seems to somewhat address persons in safekeeping housing (classifications P2 through P5), but according to this audit report and TDCJ records TPI can access, Coffield Unit does not house safekeeping persons. It is not clear what the auditor is actually auditing when asking a staff person "who supervises offenders [*sic*] in segregated housing" about persons "placed in segregated housing for protection from sexual abuse or after having alleged sexual abuse, what restrictions are placed on the offender [*sic*]." Although this appears to ask what happens when a person is placed in segregated housing after alleging sexual violence, the auditor reports a response that does not address the question: "The Facility

Staff Member articulated that offenders [*sic*] **placed in safekeeping** do not have restrictions and retain the same privileges as offenders [*sic*] in general population housing" (emphasis added). This is, as will be discussed below, a false statement, and this statement does not explain all types of protective custody under PREA § 115.43, and appears to address a type of housing that does not even exist at Coffield Unit.

The auditor also accepts Coffield Unit staff's claim that "[d]uring the 12 months prior to the audit, . . . there were no offenders [*sic*] at risk of sexual victimization being assigned to involuntary segregated housing." It is typical for persons alleging sexual abuse or sexual harassment to be placed in segregated housing for investigation of the report, so it is very difficult to believe that of the 45 reports of sexual harassment and sexual abuse reported for the prior 12 months, not one of those persons reporting the violence was placed in protective custody. This again indicates a failure to appropriately audit PREA § 115.43(b).

In the discussion of PREA § 115.43(d), the auditor again misrepresents the standard being audited by substituting "protective safekeeping" for the PREA term "protective custody." Again, this indicates a failure to appropriately audit PREA § 115.43(d).

Based on these very clear deficiencies in the audit, this report cannot be considered to show that Coffield Unit meets the PREA § 115.43 standard.

TDCJ manipulation of "protective custody" designations

PREA § 115.43 covers the separation or segregation of persons at high risk for sexual victimization, and the section uses several terms that provide opportunities for manipulation of the standard. These include "protective custody," "segregated housing," and "involuntary segregated housing." None of these are specifically defined in PREA § 115.5 general definitions, nor are definitions provided in the FAQ available online via the National PREA Resource Center. The PREA Final Rule[6] also does not provide definitions for these terms. 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.[7] 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

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

separate housing is "voluntary" or "involuntary" may change over time as the person's views about the need for protective custody changes. This is mainly applicable to TDCJ safekeeping and protective safekeeping designations as these are long-term classifications.

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 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 a 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."[8] Once in safekeeping, incarcerated persons see reduced access to job opportunities, educational and training programs, and other benefits that may be offered to persons not in safekeeping status.[9] In one example, TPI advocated for a transgender woman who was denied education opportunities due to her safekeeping status, even though she tried for several years to be released from safekeeping status. When TPI filed a complaint, we were told that her safekeeping status did not prevent her from entering the education program, and that she had been accepted for the program, but could not access it because there was no housing for her on any unit where that program was offered. The more complete explanation was that there was no ***safekeeping*** housing on the units where the program was offered. Perhaps in a warped sense of logic it may be said that safekeeping was not the reason she was denied, 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 availability" 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

8. Some reports from our correspondents note that they are told they do not qualify for safekeeping because they are "too smart" or similar reasons. Zollicoffer v. Livingston (4:14-cv-03037) also documents the extensive measures TDCJ goes to in avoiding safekeeping designation: https://www.courtlistener.com/docket/4394368/zollicoffer-v-livingston/.
9. Note that just as TDCJ confusingly describes "protective safekeeping" as "general population," safekeeping designation is also considered "general population" even though safekeeping housing is separate from general population because housing sections are designated for safekeeping persons only.

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 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. Protective safekeeping can be involuntary protective custody for PREA purposes, 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).[10] 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 being strip searched and their property taken (this is often the consequence of

10. 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.

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 serves to discourage 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, in some cases with what should be considered fully knowledgeable participation of the 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.

PREA § 115.51 discussion, inmate reporting

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

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 § 115.52 discussion, exhaustion of administrative remedies

PREA § 115.52 concerns filing complaints related to sexual violence.

Concerning 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 do not have specific examples during the reporting period for Coffield Unit, but this has occurred often enough that it should be specifically investigated during PREA audits.

PREA § 115.53 discussion, access to outside confidential support services

Since at least September 2023, TDCJ has, through their own policy changes, created incredible backlogs in the processing of physical and digital communications. This interference is so great, and has directly affected TPI in our communication with at least one survivor of sexual abuse (that we know of so far) that it should be examined for PREA § 115.53 compliance. That this auditor did not discuss the enormous problems with communications at this time should be

considered a deficiency of this audit. Whether this issue affects compliance cannot be determined without discussion of the situation.

PREA § 115.62 discussion, agency protection duties

In the discussion of PREA § 115.62(a), the auditor apparently equates designation for TDCJ protective safekeeping (custody classification P6 and P7) as equivalent to the PREA requirement for an immediate response by referring to the TDCJ Safe Prisons/ PREA Plan statement that persons "at high risk for sexual victimization shall not be placed in protective safekeeping unless an assessment of all other available alternatives has been made . . . [and] for no longer than 24 hours." This does not in any way address PREA § 115.62(a) requirements for protection.

The auditor also states unquestioningly that, even though there were 45 reports of sexual abuse and sexual harassment for the period, "[d]uring the 12 months prior to the audit, the facility reported . . . there were no offenders [*sic*] at risk of imminent sexual abuse." It does not seem possible that both these statements are true—unless the finding that nearly 100% of all allegations of sexual abuse and sexual harassment were a foregone conclusion on the part of unit administration in each of those 45 cases.

Based on these findings, a claim that Coffield Unit meets PREA § 115.62 standard is deficient.

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 violence in involuntary protective custody (restricted housing for inmate protection investigation, or IPI) regardless of whether there are alternatives to such placement or not.

In the discussion of PREA § 115.68(a), the auditor again refers to protective safekeeping as if that is the only housing within TDCJ that constitutes protective custody. This is patently false.

The auditor also uses a term "protective management" in this section. TPI staff have never seen this term used before in relation to housing at TDCJ, so we are not sure what it specifically refers to, although the auditor parenthetically defines it as "placed in segregated housing for protection," which means protective custody under PREA. That action does routinely take place in TDCJ, and probably happened for each of the 45 reported incidents of sexual harassment and sexual abuse during the previous 12 months, in spite of the unit claims that no person was placed in protective custody. The auditor also repeats inaccurate claims that anyone in such protective custody retains "the same privileges as offenders [*sic*] in general population housing." In fact, such housing is generally in housing areas that are subjected to disciplinary restrictions, and those same restrictions are in practice applied to all that are housed there.

The auditor also included a curious statement in this section, implying that persons alleging sexual violence would be placed in safekeeping designation temporarily during an

investigation. This indicates a misunderstanding by the auditor, or misrepresentation by TDCJ staff (or both), concerning how safekeeping works.

> The Auditor conducted an interview with the Facility Warden regarding offenders [*sic*] who alleged sexual abuse. Offenders [*sic*] who have made an allegation of sexual abuse and have stated that they are in fear for their safety will be placed in segregated housing (Safekeeping), either voluntarily or involuntarily, on a temporary basis until a review can be conducted to verify the extent of the danger. The incident is reviewed as soon as possible, and the offender will be released from segregation as soon as it can be determined that the offender is no longer in imminent danger, or as soon as alternative means of separation from an alleged abuser can be arranged.

TPI once again asserts that not all segregated housing is safekeeping designation; and safekeeping designation is never temporary but a long-term classification designation.

Based on these points of confusion or misdirection, it cannot be stated that compliance with PREA § 115.68 was actually determined here, and thus the audit on this point is deficient.

PREA § 115.71 discussion, administrative agency investigations

TPI will limit our comments on compliance with PREA § 115.71 as it concerns administrative investigations by stating that it seems unlikely that if the standards were actually followed, there would not be a near 100% failure to substantiate allegations of sexual abuse and sexual harassment.

PREA § 115.72 discussion, evidentiary standards

One element of PREA § 115.72 requires that no standard higher than a preponderance of the evidence (greater than a 50 percent chance of occurrence—essentially equal to a coin toss) be used in substantiating an allegation of sexual abuse.

It is difficult to understand why anyone would consider a claim that the preponderance of evidence standard was truthfully adhered to when out of 45 reports of sexual harassment and sexual abuse, only one of those reports had a greater that 50/50% chance of occurring. That claim means that only one of those had even a coin toss's chance of having occurred. For that to be accepted, there must be serious manipulation of the evidence on the part of the investigators, done with the complicity of any auditor that accepts such claims as fact without substantial investigation and support.

Due to the extremely low rates of substantiated allegations, as reported in the most recent PREA Ombudsman report for calendar year 2022, it is highly unlikely that a preponderance of evidence standard is used anywhere in TDCJ. In that report, for allegations against staff, only 5% of 563 sexual abuse allegations were substantiated, 4% of 81 sexual harassment allegations were substantiated, and 0% of 168 voyeurism allegations were substantiated. These dismal accountability ratings are actually an improvement over the prior year. Amazingly, TDCJ seriously claims that almost half (261 of 563, or 46%) of the allegations of staff on incarcerated persons sexual abuse were false reports, a statement truly beyond belief.

For allegations against other incarcerated persons, only 1.4% of 432 allegations of "nonconsensual sexual acts" were substantiated, and only 4.3% of 368 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 anywhere in the TDCJ system.

For Coffield Unit, the auditor noted that for allegations against staff, 12.5% of 8 sexual abuse allegations were substantiated (this "high" rate of substantiation was because 1 incident was 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 17 allegations of sexual abuse were substantiated, and 0% of 20 allegations of sexual harassment were substantiated—this states that not one allegation had a greater chance of occurring than a coin toss.

Regardless of one's concerns about possible false reporting, these 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 Coffield Unit was assessed as being compliant with the PREA § 115.72 standard.

PREA § 115.76 discussion, disciplinary sanctions for staff

In the discussion of PREA § 115.76(d), the auditor notes that "[t]he facility reported two staff violations or terminations of the agency's sexual abuse or sexual harassment polices during the 12 months prior to the audit." The auditor added that an interview with human resources staff "confirmed that Coffield Unit had two staff members violate or were terminated for violating the agency's policy against sexual abuse or sexual harassment during the past 12 months."

Yet only one incident of sexual abuse was substantiated for the data TDCJ provided for Coffield Unit for this audit. This discrepancy requires further explanation, and appears to indicate manipulation of data provided under PREA reporting requirements. If the single report of sexual abuse that was substantiated resulted in two terminations, it would seem worth reporting. If a report of sexual abuse or sexual harassment was not substantiated but resulted in a termination, then that is further indication of a failure to use appropriate evidentiary standards. If an incident of sexual abuse or sexual harassment resulted in a termination, but no report was generated, that is a manipulation of PREA reporting requirements. If one of the terminations was the result of staff actions against other staff, that either should have been explained or was not appropriate for reporting in the PREA audit.

The comments from the auditor in this section may not indicate a failure to comply with PREA § 115.76, but certainly call into question the data and reporting provided by Coffield Unit.

PREA § 115.86 discussion, sexual abuse incident reviews

In discussing PREA § 115.86(b), the auditor reports that 19 incident reviews of alleged sexual abuse were completed, noting one review was not done because the incident was unfounded. This could refer to the 19 reports of sexual harassment that were documented, not the 25 reports of sexual abuse that were reported, or it may refer to the 19 unsubstantiated sexual abuse allegations.

It is not clear whether the auditor only looked at something for sexual harassment reports instead of sexual abuse reports, if the wrong numbers were documented in the audit report, or if something else was assessed for compliance with this standard. Regardless, this discussion does not show compliance with PREA § 115.86, and thus the audit must be considered deficient for this standard.

Conclusion

TPI is filing this letter of complaint based on information we have received; this should in no way be taken as a complete inventory of abuses occurring at Coffield Unit, nor should it be considered a complete inventory of PREA deficiencies. TPI has documented a number of inaccuracies and deficiencies with the general audit information provided. The most significant problems identified include:

- The facility is falsely described as housing males only, in spite of the auditor documenting persons of other genders at the unit.
- **Audit entry 10:** The auditor failed to contact appropriate community-based organizations.
- **Audit entry 47:** The auditor falsely states that 0 persons at the unit had been placed in segregated housing due to risk of sexual victimization.
- **Audit entry 58:** The auditor failed to conduct the minimum targeted interviews.
- **Audit entry 66:** The auditor failed to conduct the minimum number of interviews with transgender and intersex persons, and failed to do appropriate due diligence to identify additional transgender and intersex persons at the facility.
- **Audit entry 67:** The auditor failed to conduct the minimum number of interviews with persons who reported sexual abuse in the facility. The person who was counted but who denied being a member of the target population should have been replaced by identifying one of the other at least five persons in this target population who were available.
- **Audit entry 69:** The auditor failed to conduct the minimum number of interviews with persons who had been placed in segregation due to risk of sexual violence, and failed to do due diligence to identify persons in this target population.

TPI has documented a number of inaccuracies and deficiencies with the assessment of compliance with PREA standards in this report. The most significant problems identified include:

- **PREA § 115.15:** The auditor failed to appropriately audit the unit for cross-gender strip and body cavity searches. Compliance with this standard is not supported and cannot be determined based on what is provided in this report.
- **PREA § 115.31:** The auditor makes what appear to be biased statements about respectful and professional considerations of transgender persons. Such statements indicate this audit may have additional problems that TPI does not have the data to evaluate.
- **PREA § 115.42:** The auditor misrepresents how screening information is actually used in TDCJ facilities and in the agency. Compliance with this standard is not supported and cannot be determined based on what is provided in this report, especially given the level of misinformation presented here.
- **PREA § 115.43:** The auditor misrepresents how protective custody is provided in TDCJ, and fails to investigate TDCJ's misrepresentation of "protective safekeeping" as the only housing that meets PREA "protective custody" requirements. Compliance with this standard is not supported and cannot be determined based on what is provided in this report, especially given the level of misinformation presented here.
- **PREA § 115.62:** The auditor fails to appropriately consider protection duties and appears to somehow conflate those duties with TDCJ protective safekeeping. Compliance with this standard is not supported and cannot be determined based on what is provided in this report.
- **PREA § 115.68:** The auditor again seems to falsely equate PREA protective custody with TDCJ protective safekeeping and TDCJ safekeeping designation, and the auditor fails to assess actual post-allegation protective custody. Compliance with this standard is not supported and cannot be determined based on what is provided in this report.
- **PREA § 115.72:** The auditor does not present any supporting information that indicates the preponderance of evidence standard is used in administrative investigations, and in fact provides objective evidence that such a standard is likely not used. Compliance with this standard is not supported and cannot be determined based on what is provided in this report.
- **PREA § 115.76:** The auditor documents that only one staff sexual abuse of an incarcerated person was documented, but two persons were terminated for such abuses. This does not necessarily mean non-compliance with this standard, but indicates additional problems with either reporting or investigating sexual violence at Coffield Unit.

- **PREA § 115.86:** The auditor states that there were 19 incident reviews conducted, which would not be compliant with the standard, yet the auditor claimed compliance. Thus compliance with this standard is not supported and cannot be determined based on what is provided in this report.

The auditor found that 0 standards were exceeded and 37 were met. TPI believes this assessment to be deficient.

Request for Action

TPI requests that the following deficiencies be addressed:

- The auditor must meet minimum number of interviews, and conduct due diligence to identify members of the populations even if the facility has not identified those members.
- The auditor must appropriately audit cross-gender and body cavity searches according to gender, as per PREA § 115.15.
- The auditor must appropriately address anti-transgender bias in the assessment of training curricula, as per PREA § 115.31.
- The auditor must appropriately audit how screening information is actually used in the facility, as per PREA § 115.42.
- The auditor must accurately assess PREA protective custody and how such housing and protections are appropriately and inappropriately provided at the facility, as per PREA §§ 115.43, 115.62, and 115.68.
- The auditor must substantiate that inordinately low rates of incident substantiation actually meet the preponderance of evidence standard for investigations, as per PREA § 115.72.
- The auditor must identify and explain discrepancies such as the claim that only one staff sexual abuse incident was reported but two persons were terminated in the discussion of PREA § 115.76.
- The auditor must address how a claim that 19 incident reviews satisfies the requirement to conduct incident reviews of all 20 substantiated and unsubstantiated sexual abuse incidents, as per PREA § 115.86.
- Coffield Unit must conduct a subsequent audit to address deficiencies in the audit discussed in this letter.
- Coffield Unit audit must 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.

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

Sincerely,

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

cc: Department of Justice, PREA Management Office
TDCJ CEO Bryan Collier
TDCJ PREA Ombudsman
Coffield Unit Senior Warden Juan Garcia
Coffield Unit PREA Manager Dacquirre Davis
Pete Flores, Chair, Senate Committee on Criminal Justice
Phil King, Vice-Chair, Senate Committee on Criminal Justice
Juan "Chuy" Hinojosa, Senate Committee on Criminal Justice
Joe Moody, Chair, House Criminal Jurisprudence Committee
David Cook, Vice-Chair, House Criminal Jurisprudence Committee
Salman Bhojani, House Criminal Jurisprudence Committee