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

March 26, 2024

re: auditor noncompliance with audit requirements, Connally Unit

To the PREA Resource Center:

Trans Pride Initiative (TPI) is filing this objection to the audit report for the Texas Department of Criminal Justice (TDCJ) Connally Unit conducted by auditor Cynthia Swier and Corrections Consulting Services, LLC, formerly PREA Auditors of America. 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 the audit requirements. The onsite audit was conducted January 24 through 26, 2024, the final audit report was submitted February 24, 2024, and it was posted publicly on or about March 19, 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.a., V.b. and V.g.; and the PREA Audit Methodology VI. The Auditor Handbook states:

> 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.

The deficiencies we have identified, which may not represent a complete list of audit deficiencies, are detailed in the following pages of this letter.

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.

Contents

TPI Data for Connally Unit

TPI has documented a total of 908 incidents of violence against persons housed at Connally Unit, including 287 that occurred in the past 12 months. Of the total documented incidents, 288 involved noncompliance with some element of the PREA standards, with 91 PREA

noncompliance issues documented in the last 12 months, and 147 in the last 36 months, which would be approximately since the last PREA audit.[2] 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 Connally Unit, nor should it be considered a complete inventory of PREA deficiencies.

Summary of Deficiencies

TPI has documented issues concerning the qualifications of the auditor, the conduct of the onsite audit, inaccuracies in the audit report, and deficiencies with the assessment of compliance with PREA standards in this report. The most significant problems identified include:

- The auditor fails to affirm in the final audit report that the contents of the report are accurate and that there is no conflict of interest. TPI asserts that the contents are not accurate, and that there is indeed auditor conflict of interest.
- The auditor appears to have not spent sufficient time at the unit during the onsite visit to meet audit obligations, and this is reflected in problems noted in the final report.
- The auditor falsely claims that Connally Unit houses only "males."
- The auditor failed to contact sufficient community-based organizations, as required.
- Multiple conflicts in data presented (unlikely claims of target population sizes; conflicting claims that target populations did not exist at the facility, and interviews with supposedly nonexistent members of these target populations; false claims about segregated housing; incomplete and conflicting data concerning investigations of sexual violence). See also notes about conflicting information concerning PREA §§ 115.64, 115.71, 115.72, and 115.73.
- The auditor failed to conduct the minimum number of targeted interviews required (20 required; 15 interviewed).
- The auditor failed to conduct the minimum number of interviews with persons who reported sexual abuse in the facility (4 required; 1 interviewed, but at least 2 available).
- The auditor failed to conduct the minimum number of interviews with persons who disclosed prior sexual victimization (3 required; 1 interviewed, but at least 63 available).
- PREA § 115.11: The issues documented in this letter indicate it is very unlikely that Connally Unit complies with this PREA standard.

2. These data are all available at the Trans Pride Initiative web site. General information and all incidents of violence are available via our Prison Data Explorer (https://tpride.org/projects_prisondata/index.php), and specific PREA related data for each facility is available via our auditor data tool (https://tpride.org/projects_prisondata/prea.php).

- PREA § 115.13: Severe staff shortages at Connally Unit and throughout TDCJ indicate it is very unlikely Connally Unit complies with this PREA standard.
- PREA § 115.15: Based on TPI data, TPI experience with the procedures at Connally Unit, and the clear fact that the auditor did not properly audit this standard, Connally Unit cannot be assessed as meeting PREA § 115.15.
- PREA § 115.21: Based on information in TDCJ's own policy, which against PREA requirements allows staff to determine if a forensic exam is warranted, it appears that Connally Unit does not meet compliance with this standard.
- PREA § 115.22: Due to missing, incomplete, or contradictory data concerning investigation of allegations of sexual violence, Connally Unit cannot be determined to meet compliance with this standard.
- PREA § 115.31: Due to incomplete auditing of this standard by the auditor as well as TPI data that indicates a failure to comply, Connally Unit cannot be determined to meet compliance with PREA § 115.31.
- PREA § 115.33: The auditor presents unexplained conflicting data concerning the evaluation of compliance with this standard. Due to these issues, it cannot be determined whether or not Connally Unit meets compliance with this standard.
- PREA § 115.34: Based on the questionable assessment by the auditor and TPI's reports of ineffective investigations, it cannot be determined whether or not Connally Unit complies with the PREA § 115.34 standard.
- PREA § 115.41: Due to what appears to be problematic TDCJ policy, it cannot be determined whether or not Connally Unit complies with this standard.
- PREA § 115.42: Based on multiple issues with this audit assessment, our knowledge and experience with TDCJ practices in general and at Connally Unit, and documented instances of noncompliance, Connally Unit cannot be determined to meet compliance with this standard.
- PREA § 115.43: The auditor fails to fully address issues of protective custody as used in TDCJ, and appears to manipulate the interpretation of this standard and Connally Unit compliance. The auditor also fails to identify that many people at Connally Unit—both at the time of the onsite audit and during the 12-month audit period—were in housing at the facility that constitutes PREA "protective custody." Based on information provided in this audit, data that TPI has documented for Connally Unit, and the auditor's failure to address the scope of PREA protective custody, TPI asserts that Connally Unit cannot be assessed as meeting compliance with the PREA § 115.43 standard.

- PREA § 115.51: TPI documentation indicates significant failures by Connally Unit staff to respond to reports of sexual violence or potential sexual violence. Based on this audit report, it cannot be determined whether or not Connally Unit meets this standard.
- PREA § 115.61: TPI provides several examples of Connally Unit staff failing to meet their reporting duties and disclosing protected information. Based on our information and the failure of the auditor to address such issues, Connally Unit cannot be found to meet compliance requirements for PREA § 115.61.
- PREA § 115.67: TPI has documented a number of issues concerning retaliation for reporting sexual abuse and sexual harassment at Connally Unit, so the fact that the auditor claims there were none in 12 months is questionable. Due to these issues, Connally Unit cannot be found to meet compliance requirements for PREA § 115.67.
- PREA § 115.68: TPI documentation appears to contradict the auditor's claims made in the evaluation of Connally Unit for compliance with this standard. Additionally, the auditor's discussion does not address significant parts of compliance with PREA § 115.68. Based on these, Connally Unit cannot be found to meet compliance with this standard.
- PREA § 115.71: Conflicting information and the auditor's own report of interviewee statements indicate Connally Unit may not be in compliance with this standard. Based on these issues, it cannot be determined whether or not Connally Unit meets the PREA § 115.71 standard.
- PREA § 115.72: Discussion of compliance with this standard by the auditor does not address significant indications that Connally Unit does not meet the PREA § 115.72 standard. Based on this, Connally Unit cannot be found to meet compliance with this standard.
- PREA § 115.73: The auditor's own statements concerning this assessment are too confusing and contradictory to determine whether or not Connally Unit meets the PREA § 115.73 standard.
- PREA § 115.78: TPI has evidence that the auditor's statement in this discussion that there were no persons accused of falsely reporting sexual abuse at Connally Unit is false. I addition, the case we know about was overturned, indicating the discipline was pursued in violation of this standard. Based on this information, it cannot be determined that Connally Unit meets the PREA § 115.78 standard.
- PREA § 115.86: The auditors own statements indicate Connally Unit cannot be assessed as meeting this standard.

Request for Action

TPI requests that the following deficiencies be addressed:

- Auditor Cynthia Swier and Corrections Consulting Services be assessed for whether or not the auditor meets PREA qualifications, and whether there is a conflict of interest.
- A PREA auditor be required to make up clear deficiencies in this audit:
  - The auditor be required to conduct the minimum number of required interviews for Connally Unit, 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 Connally Unit, including TPI's publicly available documentation and PREA compliance issues at Connally Unit.
- The final report be amended to reflect the actual population of the unit, not TDCJ's abusive definition of the population as "males" only. This concerns compliance with PREA § 115.15 and other standards that include gender-based considerations.
- Connally Unit be required to define corrective actions to address deficiencies in the audit discussed in this letter, including:
  - Addressing actual staff shortages and their impact on safety in the assessment of PREA § 115.113.
  - Properly audit compliance with PREA § 115.15.
  - Address deficiencies in compliance with PREA § 115.21.
  - Address missing, incomplete, and contradictory data in the assessment of PREA § 115.22.
  - Properly audit compliance with PREA § 115.31.
  - Address conflicting data concerning the assessment of PREA § 115.33.
  - Properly audit compliance with PREA § 115.34.
  - Address deficiencies in compliance with PREA § 115.41.
  - Address deficiencies and properly audit compliance with PREA § 115.42.
  - Address deficiencies and properly audit compliance with PREA § 115.43.
  - Properly audit compliance with PREA § 115.51.
  - Address deficiencies and properly audit compliance with PREA § 115.61.
  - Address deficiencies and properly audit compliance with PREA § 115.67.
  - Address deficiencies and properly audit compliance with PREA § 115.68.
  - Address deficiencies and properly audit compliance with PREA § 115.71.
  - Address deficiencies and properly audit compliance with PREA § 115.72.
  - Properly audit compliance with PREA § 115.73.

- Address deficiencies and properly audit compliance with PREA § 115.78.
- Address deficiencies in compliance with PREA § 115.86.

Detailed Discussion of Audit Deficiencies

TPI notes that the auditor did not affirm in the audit report that the contents of the report are accurate, nor did the auditor affirm that there is no conflict of interest, nor did the auditor affirm that personally identifiable information was excluded. TPI believes that the failure to assert these auditor certifications means that this audit should not be accepted as final.

Auditor Qualification Issues

TPI cannot know whether the auditor failed to certify that no conflict of interest exists because the auditor cannot certify that or because of oversight, but TPI strongly believes that the auditor does have a definite conflict of interest due to two conditions.

First is their employment with Corrections Consulting Services, LLC (CCS). It appears that CCS previously only conducted PREA audits, and as such auditors may have been in compliance with PREA § 115.402 because presumably the auditor's 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 indicating a direct conflict of interest, a conflict of interest could exist in the understanding that PREA audits showing full compliance would likely encourage additional contracts between the agency and CCS. CCS appears to have a vested interest in assuring it's audits find full compliance for current and future opportunities. TPI feels it is highly unlikely that a conflict of interest does not exist.**

Additionally, the auditor appears to be currently employed as an Assistant Warden with the for-profit prison entity Management Training Corporation. The auditor also was employed for 25 years with the Florida prison system. TPI believes any current or recent connection with a prison system—especially for-profit prison operators—to be a 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.

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. Even if the letter of the PREA standard is followed, the spirit of avoiding conflicts of interest that degrade public trust is not.

Audit Conduct Issues

The onsite audit was conducted from January 24 through 26, 2024, or a maximum total of three days.

TPI notes that for a facility with more than 1,001 persons, just the interviews with incarcerated persons and staff are estimated to take 3 days, or 30.3 hours. That does not count time for physical observation of the facility and its housing units, review of investigation files, and other onsite requirements. As the Auditor Handbook explains,

> In addition to the time estimated to complete the interviews with persons confined in the facility and staff, auditors must also account for a thorough site review (observations, tests of critical functions, and informal conversations with individuals confined in the facility and staff), supplemental documentation selection and review, and in-briefs and out-briefs with facility/agency staff. The time required for a thorough site review will range depending on the size of the facility, the complexity of the facility and its processes, and the number of support staff involved. Auditors must allow adequate time to perform all the required activities necessary to complete a thorough site review.

It appears that this audit was conducted without allowing sufficient time to meet all the audit obligations. **Audit entries 115 and 116** document that the auditor received no assistance from other persons that would count toward total hours spent for the audit.

Audit Report Issues

The 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.” This auditor ignores this shift by continuing to use terns like “offender” throughout this report. In fact, the word “offender” is used over 50 times by the auditor (not including references to TDCJ policy titles

that may still include the word). Although use of the word "inmate" may be considered acceptable because that is the term TDCJ currently uses, continued use of the derogatory term "offender" is not acceptable. There is no excuse for every new document completed under the aegis of the PREA compliance system to not follow person-first practices.

The DOJ has instructed the PREA Management Office and the PREA Resource Center to use gender-inclusive pronouns "they/them/theirs" in their resources rather than he and she to be inclusive of nonbinary persons. This auditor ignores this practice by continuing to use terns "he" and "she" and "he/she" exclusively throughout this report. There is no excuse for every new document completed under the aegis of the PREA compliance system to not use gender-appropriate and gender-inclusive pronouns.

The auditor found that 0 standards were exceeded and 41 were met. No corrective actions were documented. The Auditor Handbook states that "the PREA audit was built on the assumption that full compliance with every discrete provision would, in most cases, require corrective action," and that the "DOJ expects that corrective action will be required in most cases." The fact that the auditor found no need for any corrective actions—especially when TPI has documented so many problems both in this report and through our data collection for Connally Unit—should also be considered in the assessment of a deficient audit.

Audit Information Issues

The audit report states that the population at the Connally Unit consists of "males," when in fact this is false. The Connally Unit houses cisgender males, transgender females, and other persons who may not belong to either of those two populations. The Connally 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 transgender 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.

Audit entry 10 states that the auditor contacted 1 community-based organization, the Guadalupe Valley Family Violence Shelter "regarding the services they provide" to persons incarcerated at Connally Unit.

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**"

(emphasis added). 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 other violence at TDCJ facilities. TPI was not contacted concerning the information we have about Connally 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 entries 36-48 concern the population characteristics at Connally Unit on the first day of the onsite audit. These are useful for reference in discussing the numbers of interviews with persons representing the various population characteristics, presented in **audit entries 53-70.**

Audit entry 38 states that there was 1 incarcerated person with a physical disability at Connally Unit on the first day of the onsite audit. TPI has no way to dispute that number, but points out that such a low number seems unlikely.

Audit entry 39 states that there were 0 incarcerated persons with a cognitive of functional disability at Connally Unit on the first day of the onsite audit. Again, TPI has no way to dispute that number, but such a low number seems unlikely. In addition, the auditor claims in **audit entry 61** to have interviewed 1 person with a cognitive or functional disability. Such discrepancies call into question the overall veracity of data in this report.

Audit entry 43 states that there were 155 incarcerated persons identifying as lesbian, gay, or bisexual at Connally Unit on the first day of the onsite audit, and **audit entry 44** states that there were 155 incarcerated persons identifying as transgender or intersex at Connally Unit on the first day of the onsite audit. It seems unlikely that the exact same number of persons who identify as lesbian, gay, or bisexual identified as transgender or intersex, and this calls into question whether the same total was used to identify all non-heteronormative persons instead of breaking out these populations as required under PREA.

Audit entry 47 states that 0 persons had ever been placed in segregated housing or isolation for risk of sexual victimization at Connally Unit on the first day of the onsite audit, but TPI knows this number to be inaccurate. Additionally, the auditor stated in **audit entry 69** that 2 persons meeting this population characteristic were interviewed, which calls into question the veracity of data presented by the auditor.

In addition, Connally Unit houses safekeeping designated persons, and that is considered segregated housing or "protective custody" under PREA; in some cases, safekeeping may also be "involuntary protective custody" under PREA. 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 by TDCJ (and appears to be purposefully manipulated to cause confusion) and a failure to perform due

diligence in confirming such a claim that 0 persons housed at Connally 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 entries 53-70 concern the numbers of random and targeted interviews with persons representing the various population characteristics at Connally Unit. The Auditor Handbook is very specific that the minimum numbers provided in the handbook are "the absolute minimum number of persons confined in the facility that the auditor is required to interview during an audit," and that "[e]ven when an auditor is unable to conduct the minimum number of targeted interviews (e.g., the facility does not house a certain targeted population), the auditor must select additional persons confined in the facility in order to meet the minimum threshold." Failures to identify persons for target interviews and confirm unit data around target populations cast doubt on all claims (or acceptance of counts provided by the unit administrative staff) for all target populations.

Audit entry 58 states that 15 targeted interviews with incarcerated persons were conducted at Connally Unit. According to Table 2 in the Auditor Handbook, the minimum number of interviews for a unit with the overall population of Connally Unit should have been 20. The auditor thus failed to conduct the minimum number of targeted interviews required for this audit.

Audit entry 61 notes that 1 person with a cognitive or functional disability was interviewed by the auditor. However, in **audit entry 39,** the auditor claimed that there were 0 persons at this unit with a cognitive or functional disability. Such discrepancies call into question the veracity of data provided in this report.

Audit entry 67 notes that 1 person who reported sexual abuse in this facility was interviewed by the auditor. According to Table 2 in the Auditor Handbook, the minimum number of interviews for a unit with the overall population of Connally Unit should have been 4. The auditor also stated in **audit entry 45** that 2 persons housed at Connally Unit on the first day of the onsite audit reported sexual abuse in this facility. The auditor thus failed to conduct the minimum number of interviews required for this audit, which should have included both of the 2 persons fitting this target population documented as housed at the facility during the onsite audit.

Audit entry 68 notes that 1 person who disclosed prior sexual victimization was interviewed by the auditor. According to Table 2 in the Auditor Handbook, the minimum number of interviews for a unit with the overall population of Connally Unit should have been 3. The auditor documented in **audit entry 46** that 63 persons meeting this target population were housed at the facility at the time of the onsite audit. The auditor thus failed to conduct the minimum number of interviews required for this audit.

Audit entry 69 states that 2 persons who had ever been placed in segregated housing or isolation for risk of sexual victimization where interviewed by the auditor. However, in **audit**

entry 47, the auditor had stated there were 0 persons at Connally Unit that met this population characteristic. This discrepancy calls into question the veracity of data provided in this report.

In addition, as noted in **audit entry 47,** these issues also indicate 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 70 provides the auditor's claim that "[m]any of the [incarcerated persons] that fell in the targeted areas were interviewed with more than one or two protocols. The interviews with the appropriate protocols were conducted, however, they were not all able to be counted in these numbers."

This does not justify the deficiency in conducting the minimum number of targeted interviews, and in fact is clearly counter to explicit instructions in the Auditor Handbook, which states:

> This number [the minimum number of targeted interviews, which was 20 targeted interviews for Connally Unit] refers to the minimum number of targeted interviewees that the auditor is required to interview during an audit. Importantly, **the requirement refers to the minimum number of individuals who are required to be interviewed, not the number of protocols used.** Thus, in cases where an auditor uses multiple protocols during one interview, it will only count as one interview for the purpose of meeting the overall threshold for targeted interviews [emphasis added].

The auditor thus failed to conduct the minimum number of targeted interviews required for this audit.

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 33 allegations of sexual abuse by staff and other incarcerated persons, and there were 33 administrative investigations. Per **audit entry 95,** administrative investigations found 0 substantiated, 26 unsubstantiated, 3 unfounded, 0 ongoing, **and apparently 4 unknown because no data is provided.** Based on the incomplete data provided, which covers 29 of 33 investigations, 100% of the investigations 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 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.

These data are incomplete because the auditor failed to provide outcomes for 4 of 33 reported investigations of sexual abuse, indicating the unit may have failed to investigate 4 reports or failed to appropriately document four reports. TPI also notes that several other conflicting counts for these are given throughout this report.

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 17 allegations of sexual harassment by staff and other incarcerated persons, and there were 17 investigations. Per **audit entry 97,** administrative investigations found 0 substantiated, 17 unsubstantiated, 0 unfounded, and 0 ongoing. 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% percent of the allegations were found substantiated. This indicates a failure of the administrative investigations to adequately assess evidence in allegations of sexual harassment, and a failure of the auditor to identify this problem and pursue an explanation of what appears to be a failure to properly investigate allegations.

PREA Compliance Assessment Issues

PREA § 115.11, 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 Connally 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 not one, not a single one, of the 50 allegations of sexual abuse and sexual harassment were substantiated using a relatively low preponderance of evidence standard is a case in point.**

Due to the specific issues outlined in this letter as well as our work in general with persons housed at Connally Unit, TPI finds it very unlikely 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, including many over the 12 months preceding this audit, that incarcerated persons may not even see a security staff person for hours at a time, and that one staff person may be the only assigned staff person for an entire building or wing. Although positions may be filled during an audit, that may not be the case on days when the unit is not being audited. TPI finds it very unlikely Connally Unit fully complies with PREA § 115.13.

PREA § 115.15, Cross-Gender Viewing and Searches

The PREA standards state that Connally 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.

In contrast to the auditor's claims that there were "no searches of this kind . . . conducted at the facility over the past twelve months," TPI has documented at least one cross-gender search, and it can be almost certain, with the number of transgender persons housed at Connally Unit, that there are other such occurrences not being reported to us. In our known report:

> The subject reports that on January 4, 2024, a guard falsely claimed that the subject had a razor blade and sprayed her with chemical agent (unnecessary use of force 2024-00012). Two sergeants then placed the subject in SOS housing, apparently making statements that this was in retaliation for her report about the sexual abuse by another guard a few days earlier (retaliation incident 2024-00047; see also prior incidents 2023-00169, 2023-00488, and 2024-00046). . . . In a subsequent letter, the subject reports that at some point (not clear if this was while in SOS detention or after), she was placed in a 2x2 foot cell, stripped completely naked, given a bottle to urinate in, and refused food.

Concerning PREA § 115.15(b), if the facility allows cisgender males, 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 or cisgender 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 persons housed at the unit, but by entirely erasing their existence with the statement that "no female inmates are housed at the facility," 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. Once again, by stating that "female inmates are not housed at the facility," the auditor is erasing the existence of any transgender females housed at Connally Unit.

Concerning PREA § 115.15(d), which provides that incarcerated persons be allowed "to shower, perform bodily functions, and change clothing without staff of the opposite [*sic*] gender viewing their breasts, buttocks, or genitalia,"[3] the refusal to acknowledge the gender of transgender persons also results in a failure to properly assess compliance with this standard.

Based on these deficiencies, TPI asserts that this audit did not adequately evaluate compliance at Connally Unit, and it cannot be determined that Connally Unit meets compliance requirements for this standard.

PREA § 115.21, Evidence Protocol and Forensic Medical Examinations

The auditor states in the discussion of PREA § 115.21(a) that OIG-7.13 outlines the evidence protocol for "obtaining usable physical evidence for administrative proceedings and criminal prosecutions." However, TDCJ OIG-7.13 states that staff will "determine if a forensic medical

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

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

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 or at Connally Unit, but instead staff are deciding whether to offer the survivor access to a forensic medical examination. Although it could be claimed that OIG only investigates criminal allegations, this auditor states that OIG establishes the evidence collection protocol followed for both administrative and criminal investigations. Even if TDCJ and OIG claim that the direction concerning forensic evidence collection applies only to criminal investigations, the potential for confusion and misapplication of that policy is too great to be considered compliant with this standard. Based on this, it is not possible to consider that Connally Unit—or indeed any unit that relies on OIG-7.13 to define its approach to providing forensic medical exams—is compliant with PREA § 115.21.

PREA § 115.22, Referrals of Allegations for Investigations

PREA § 115.22(a) states that "an administrative or criminal investigation [shall be] completed for all allegations of sexual abuse and sexual harassment." The audit report indicates in **audit entry 92** that 15 allegations of sexual abuse by other incarcerated persons were documented and investigated administratively, and 18 allegations of sexual abuse by staff were documented and investigated administratively. **Audit entry 95** supports that claim for investigations of sexual abuse by other incarcerated persons: claiming 0 allegations were ongoing, 1 unfounded, 14 unsubstantiated, and 0 substantiated, for a total of 15. However, audit entry 95 only addresses 14 of the 18 investigations of sexual abuse by staff: claiming 0 allegations were ongoing, 2 unfounded, 12 unsubstantiated, and 0 substantiated, for a total of 14. That means 4 are left unaccounted for. Further, although 1 criminal investigation is reported for an allegation of sexual abuse by staff, no data are provided for whether that investigation was ongoing, unfounded, unsubstantiated, or substantiated. No explanation for these discrepancies is found anywhere in the report, so it cannot be confirmed that Connally unit is ensuring that "an administrative or criminal investigation is completed for all allegations of sexual abuse and sexual harassment." For this reason, TPI asserts that Connally Unit cannot be found to meet the PREA § 115.22 standard.

PREA § 115.31, 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 PREA § 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. If the training does not recognize the actual affirming gender of transgender persons, which may be different than the gender designation of the unit to which they are

assigned, then training is not tailored to the gender of persons at the facility. Because the auditor states "the facility houses only male inmates and as such the staff received training tailored to male inmates," that is confirmation that Connally Unit does not meet the PREA § 115.31(b) provision, and instead should be considered to be providing training that is contrary to both the letter and the spirit of PREA objectives.

The inappropriate training provided at Connally Unit is also supported by incidents documented by TPI during the 12 months prior to the onsite audit:

- October 28, 2023, a transgender woman reports that she informed a guard that she was allergic to peanut butter when given a sack meal with peanut butter in it. During the verbal disagreement that followed and at times later in the day, the guard stated "I'm going to beat you down faggot," and told others that she would not feed others "unless you can make this faggot bitch shut [her] door." The guard also stated "this faggot can write a grievance, nothing will be done," and claimed when the incarcerated person was talking to the help line "they can't help you faggot, but my baby daddy Captain [name redacted] will have you beaten up, raped, or fucked off." All of these clearly indicate training in at least respectful and professional communication at Connally Unit is insufficient and ineffective.
- November 29, 2023, a transgender woman reports that a sergeant observed another incarcerated person at her open-bar cell while he was forcing her to provide oral sex. The sergeant may not have clearly seen what was happening, but indicated he was clearly suspicious and yelled at the person assaulting the transgender woman to leave. This indicates a failure of training in that PREA requires a response on the suspicion that sexual violence may be occurring.
- December 31, 2023 – January 1, 2024, a transgender woman reports that a guard referred to her as "the faggot next door" and later stated to her "right, you're a faggot and you like to suck dick and get fucked" while the guard made obscene gestures, including rubbing his genitals.
- In investigating the above incident, an assistant warden came to the subject's cell and was "hostile, belligerent, and very mad," threatening the subject by saying "do you know what could happen to you in prison," which caused the subject to fear for her safety and refuse to go with the assistant warden to make a statement. The TDCJ Ombudsman Office then manipulated this to claim the subject was uncooperative.

Because Connally Unit is providing training that by the auditor's own report does not meet PREA § 115.31(b), and by reports to TPI that clearly show training in professional and respectful communications with LGBTI persons is not sufficient or effective, TPI strongly asserts that Connally Unit cannot be considered compliant with the PREA § 115.31 standard.

PREA § 115.33, Incarcerated Persons Education

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.

The auditor's support for PREA § 115.33(a) and (b) assessments is questionable. The auditor reports for PREA § 115.33(a) that "The PAQ indicated that 1,647 [incarcerated persons] received information on the zero-tolerance policy and how to report at intake. This is equivalent to 100% of [incarcerated persons] who received this information at intake." Then the auditor reports for PREA § 115.33(b) that "The PAQ indicated that 1504 [incarcerated persons] received comprehensive PREA education within 30 days of intake. This is equivalent to 100%." Aside from the fact that both these claims are meaningless in that they seem to state "100% of the persons receiving these did receive these," there is also the apparent discrepancy in the number of intakes over the last 12 months. If 1,504 persons received "comprehensive PREA education," then that is not 100% of the 1,647 persons also claimed to have gone through intake (the auditor does not stated that only 1,504 persons remained at the unit at least 30 days, requiring the "comprehensive PREA education"). Elsewhere, the auditor states that 1,628 persons were received at the unit and stayed for 72 hours or more (PREA § 115.41(b)). It may be that 1,647 persons went through intake at the facility, 1,628 stayed for 72 hours or more, and 1,504 stayed for 30 days or more, but that is nowhere made clear, so it is only a guess. There is nothing explaining the reason for this apparent discrepancy, nor is there sufficient information to determine what "100%" is 100% of.

Based on these discrepancies and the lack of clarity in what was actually audited here, it cannot be determined whether or not Connally Unit actually meets compliance minimums for PREA § 115.33.

PREA § 115.34, Specialized Training: 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 incidents involving allegations of sexual abuse were substantiated indicates a problem with this training.

Based on the discussion of this standard in the report, the auditor vaguely references training for administrative investigations, but seems to only really address specific training efforts for OIG investigators, which in TPI's experience mainly involve criminal investigations and occasionally staff misconduct. Details are given about the OIG staff training, but the only discussion about administrative investigation training states that the Unit PREA manager and OIG investigator "both received specialized training."

TPI's documentation of issues related to failures to comply with PREA § 115.34 include a January 10, 2024 (just days before the onsite audit), issue where a captain investigating a report of sexual violence complained to the survivor about having to comply with PREA and implied

that housing persons designated for safekeeping at Connally Unit was the cause of the problem (apparently blaming vulnerable persons for assaults against them). The subject, responding to questions about the incidents, "felt badgered" and when asked to write a statement "felt pressured and wrote as little as possible." This treatment does not indicate training is sufficient or effective. And if the auditor's apparent claim that only the Unit PREA manager receives training is accurate, that training is apparently not passed on to others responsible for investigations.

Based on the questionable assessment by the auditor and TPI's reports of ineffective investigations, TPI asserts that it cannot be determined whether or not Connally Unit actually meets compliance minimums for PREA § 115.34.

PREA § 115.41, Screening for Risk of Victimization and Abusiveness

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 out-of-date 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 [incarcerated persons] 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 [incarcerated persons] and require the screening process to consider whether the [incarcerated person] 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 it cannot be determined whether or not Connally Unit—or any other facility operated under TDCJ policy—fully complies with the PREA § 115.41 standard because of this lack of clarity in addressing persons who identify as gender nonconforming and nonbinary.

PREA § 115.42, Use of Screening Information

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

One way that TDCJ attempts to address safety issues and comply with PREA § 115.42(a) and 115.43 is through the use of safekeeping designation. Safekeeping designation is for persons "who require separate housing . . . due to threats to their safety, vulnerability, a potential for victimization, or other similar reasons." TPI receives many general reports that staff allow general population persons inappropriate access to safekeeping housing, thus putting persons in safekeeping areas in danger. (Appropriate access might be to perform custodial duties, but the more appropriate means of conducting custodial duties in safekeeping housing is by using safekeeping designated persons for these duties.) One person provided TPI a list of dates and times they documented inappropriate access to Connally Unit safekeeping housing by general population persons over a period of several days to show how regular this problem is:

- March 21, 2023: 7:28am
- March 21, 2023, 9:25am
- March 21, 2023, 10:44am
- March 21, 2023, 10:52am
- March 21, 2023,11:10am
- March 21, 2023, 12:07pm
- March 21, 2023, 12:30pm
- March 21, 2023, 12:44pm
- March 21, 2023, 12:52pm
- March 21, 2023, 1:53pm
- March 21, 2023, 3:09pm
- March 22, 2023: 8:12am
- March 22, 2023: 8:29am
- March 22, 2023: 8:58am
- March 22, 2023: 10:55am
- March 22, 2023: 11:15am
- March 22, 2023: 8:10pm
- March 23, 2023: 8:19am
- March 23, 2023, 9:46am
- March 23, 2023, 8:24pm
- March 24, 2023, 6:53am
- March 24, 2023, 7:15am
- March 24, 2023, 7:43am
- March 24, 2023, 8:22am
- March 24, 2023, 9:00am
- March 24, 2023,9:25am
- March 24, 2023, 9:52am
- March 24, 2023, 10:23am
- March 24, 2023, 11:15am
- March 24, 2023, 12:59pm

- March 24, 2023, 1:23pm
- March 24, 2023, 2:01pm
- March 24, 2023, 6:00pm

Although safekeeping designation is not a specific PREA-defined requirement, TDCJ uses safekeeping designation to support its claim of compliance with PREA and specifically PREA § 115.42. It should be clear that such regular violation of the claims, as reported by the auditor, of "keeping separate [incarcerated persons] at high risk of being sexual [*sic*] abused from those at high risk of being sexually abusive" shows Connally Unit is not adequately enforcing provisions to keep persons separate. That this is happening in safekeeping designated housing areas—where such separation is required by specific TDCJ policy—means that any claims that persons are actually kept separate by less specific means would not be as effective, and probably are much less so. Since the auditor does not mention safekeeping housing, the auditor is apparently asserting that this separation happens through some magical means that we have yet to determine.

Concerning PREA § 115.43(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.

Concerning PREA § 115.43(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; at worst, it will be determined "unfounded" with the risk of a disciplinary case for making a good-faith report. 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 and its regurgitation by staff in support of meeting this standard, as is done by this auditor, and it must be supported by genuine investigation into the efficacy of the process for incarcerated transgender and intersex 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).[4] If both persons are transgender or intersex, such housing may comply with this standard if both persons housed in the cell agree that the housing arrangement is acceptable, but only for as long as both persons housed in the cell agree that the arrangement is acceptable.

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

Based on these issues identified, TPI asserts that Connally Unit does not fully meet the PREA § 115.42 standard.

PREA § 115.43, Protective Custody

PREA § 115.43 concerns segregation practices for persons at high risk of sexual victimization. The auditor's discussion of this standard indicates a serious misunderstanding of housing designations and the use of segregation within TDCJ and at Connally Unit.

Concerning PREA § 115.43(a), the auditor appears to misrepresent what the PREA standards say, and in doing so, manipulates the interpretation of this standard and Connally Unit compliance. PREA § 115.43(a) states, in part, that incarcerated persons "at high 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." The auditor misrepresents this in the audit report as "that the agency does not place inmates at high risk for sexual victimization in involuntary **restrictive housing** unless an assessment of all available alternatives has been made and no alternative is available to separate the inmate from likely abusers" (emphasis added). In TDCJ and at Connally Unit, "restrictive housing" is certainly one type of protective custody, but it is not the only type, nor is it the only type that may be done involuntarily. Additionally, this apparent effort to define TDCJ restrictive housing as the equivalent to PREA protective custody misrepresents the aims of PREA to address segregation and limits the audit to a kind of classification instead of addressing segregation. And that misrepresents this audit of PREA compliance.

The auditor goes on to describe policy specifically for TDCJ restrictive housing designation, but fails to address other types of protective custody clearly defined in TDCJ policy. And continuing the ruse, the auditor states that "[a]ccording to the PAQ, there have been no [incarcerated persons] at risk of sexual victimization who were held in involuntary segregated housing in the past 12 months," regardless of the fact that out of the 50 allegations of sexual abuse and sexual harassment that occurred over the past 12 months, it is likely that all or almost all were placed in protective custody, and at least some placements may have been involuntary.

Regardless of policy, reports to TPI indicate that placement in involuntary segregation due to immediate endangerment of sexual violence 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, TDCJ refuses safekeeping designation too often, and in the assessment of alternatives nearly always claims a unit transfer will solve problems that persist across units.

The auditor's discussion of PREA § 115.43(b) indicates noncompliance with this provision, but avoids identifying the noncompliance. PREA § 115.43(b) requires specific documentation when programs, privileges, education, and work opportunities are limited due to placement in segregated housing (involuntary or voluntary). The auditor appears to claim that only restrictive housing meets

the PREA definition of protective custody, and states that access to programs for persons in restrictive housing is "modified due to their status," and that "the housing log is documented with the nature of the programs, education and privileges and if and how it is modified." That does not appear to fully meet the PREA § 115.43(b) requirements that state:

> If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document:
>
> (1) The opportunities that have been limited;
>
> (2) The duration of the limitation; and
>
> (3) The reasons for such limitations.

Claiming that something is noted on the housing log does not appear to meet the requirements of this provision.

In addition, the auditor states under the discussion of PREA § 115.43(b) that "there were no [incarcerated persons] in segregated housing for risk of sexual victimization or who allege to have suffered sexual abuse during the dates of the on-site audit" when in fact that statement is false. One of TPI's correspondents was in segregated housing during the onsite audit, and had been in segregated housing for a series of issues, including sexual assaults:

- November 8, 2023, sexual assault.
- November 10, 2023, retaliation for trying to report the sexual assault; finally placed in segregated housing.
- November 29, 2023, sexual assault while in segregated housing.
- December 31, 2023, and January 1, 2024, sexual harassment by staff while in segregated housing.
- January 4 through 7, 2024, moved from segregated housing to SOS due to false report of self-harm, possibly in retaliation for sexual harassment complaint against staff. Note that allegations of self-harm generally are addressed by placement in CDO, or constant direct observation, but SOS is a new designation that does not require mental health monitoring and is often used as punishment under the guise of "behavior modification."
- Approximately March 7, 2024, finally transferred from Connally Unit.

All of these housing assignments on and after November 10, 2023, constitute segregated housing, and they are all related to sexual violence and retaliation for reports of sexual violence, even if the designations in TDCJ technically may not have been "restrictive housing" but designations like "inmate protection investigation," "security observation status," or "transit." All of these are segregated housing, all constitute PREA protective custody except possibly the SOS housing for four days, but that still was ultimately the result of an allegation of sexual violence and related to the report of sexual violence.

Lastly concerning PREA § 115.43(b), TPI correspondence relates that some units have a blanket prohibition against safekeeping designated persons being assigned job duties, even when there

is no endangerment from the job assignment and work assignments are desired by the incarcerated person. Even though the auditor failed to recognize safekeeping designation as a type of housing that can be provided as PREA protective custody, Connally Unit does provide safekeeping housing, and limitations related to that housing designation must be addressed under the PREA § 115.43(b) assessment. Safekeeping designation also results in exclusion from many programs, privileges, education, and work opportunities, with TDCJ claiming that it is not protective custody that prohibits the exclusion but the lack of safekeeping housing on units with those programs. That is a specious claim at best. Regardless, safekeeping designation is the cause of the exclusion, and the exclusion must be documented according to PREA § 115.43(b) requirements. TPI believes these requirements are not being met by claiming it is not safekeeping that causes the exclusion.

PREA § 115.43(c) notes that involuntary segregated housing should not exceed 30 days. The auditor's discussion of PREA § 115.43(c) reiterates the misinformation equating PREA protective custody or segregated housing to TDCJ restrictive housing, failing to identify that there can be other means of effecting PREA involuntary protective custody or involuntary segregated housing. It can almost be guaranteed that some of the persons in safekeeping designated housing are there involuntarily, and have been in such involuntary segregated housing far more than 30 days. Although the specific example provided above was not "involuntary," that provides an example of how TDCJ manipulates PREA data and compliance by claiming segregated housing, which is sometimes involuntary, is not PREA segregated housing because TDCJ calls it "inmate protection investigation" housing, or "pending outcome," or "transit." All of these can include PREA protective custody and involuntary protective custody.

In the discussion of PREA § 115.43(d), the auditor makes what is almost certainly a false statement that in the last 12 months, no persons were housed in involuntary segregated housing at Connally Unit. The auditor's statement that no one was housed in restrictive housing for more than 30 days does not address this provision about holding someone in involuntary segregated housing for more than 30 days, and also fails to identify alternate means of segregating persons, as discussed above.

This discussion should clearly show that compliance with PREA § 115.43 was not at all adequately assessed, and that it is highly unlikely that Connally 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[5] 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,

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

and "protective custody" and "involuntary protective custody" as separate housing for the purpose of providing immediate safety.[6] 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 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

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

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."[7] 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.[8] 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.

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

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 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).[9] 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 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, 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, Incarcerated Persons Reporting

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

TPI notes that we had a report of an incident where a Connally Unit staff person refused assistance for someone when requested, and three days later that person died by suicide. On December 29, 2023, a person who was apparently transgender and may have had developmental deficiencies was released from suicide watch to P5 custody at Connally Unit. On January 3, 2024, just days before the onsite audit, this person asked to see both mental health and someone from unit safe prisons, and reported suicidal thoughts. The guard responded that "P5s don't get anything. Your a safekeeping weirdo trying to get attention. There's nothing wrong with you." Because this person requested to speak to safe prisons, the proper response would have been, in part, to inform safe prisons because it could be an effort to report sexual violence. Although other issues were reported as possible causes of suicidal ideation, sexual

9. 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.

violence cannot be ruled out. In this case, we cannot know because the subject died by hanging on January 6, 2024.

Although the auditor states in the discussion of PREA § 115.51 that reports to safe prisons can be made many ways, including contacting "any facility staff member," that "[i]nterviews with random staff confirm that they take all allegations seriously," and that "staff accept all reports," this claim by the auditor is undermined by this very significant example where a failure to accept a report could have contributed to a death.

Concerning PREA § 115.51(b) generally, TPI strongly recommends that advocacy groups documenting and responding to reports of sexual abuse and sexual harassment be allowed to receive sealed mail concerning such issues. The fact that mail room staff are allowed to open and read reports of sexual violence deters accurate and complete reporting to outside agencies.

TPI believes that this report failed to adequately assess compliance with PREA § 115.51, and that it cannot be determined whether or not Connally Unit meets this standard.

PREA § 115.52, Exhaustion of Administrative Remedies

PREA § 115.52 concerns filing complaints related to sexual violence, and includes PREA § 115.52(g), noting that "the agency may discipline an [incarcerated person] for filing a grievance related to alleged sexual abuse only where the agency demonstrates that the [incarcerated person] filed the grievance in bad faith." 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. TPI provides a specific example for the reporting period for Connally Unit in our discussion of PREA § 115.78, and we note that this has occurred often enough that it should be specifically investigated during PREA audits.

PREA § 115.61, Staff and Agency Reporting Duties

PREA § 115.61(a) requires staff to report "any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment." Once again, repetition of policy and staff claims mean little if practice does not support the claims. TPI has documented several reports that call into question compliance with this standard.

- November 8, 2023, a transgender woman reports that she filed a report of sexual abuse with the telephone number advertised by Connally Unit for reporting sexual abuse. A live person took her report, but no unit staff ever responded to that report.
- November 10, 2023, the same transgender woman reports again calling the advertised telephone number, reaching a live person who took her report of sexual abuse, but no unit staff ever responded to the report.

- November 10, 2023, after again calling the telephone number, the same person notes she was able to make a verbal report to a sergeant and to contact a family member who then called Connally Unit administration, and only then was there a response. However, that response included only a cell change. No staff person came to her about investigating the report of sexual abuse.
- On January 1, 2024, a family member contacted Connally Unit administration about sexual harassment by a guard that occurred December 31, 2023. The survivor of the guard's sexual harassment reports that there was no response to that report by the family member, and the issue was not investigated until the survivor was able to submit a grievance.
- A different person reported that another incarcerated person had for some time been coming to their cell door and asking for sex, not accepting refusals, and threatening to rape the person. On January 6, 2024, the person who had been doing the sexual harassment exposed himself. The subject notes that by January 8, 2024, they had tried to report the sexual harassment (at least once, possibly more), but no one would respond and address the situation.

In addition, PREA § 115.61(b) prohibits staff from revealing information related to an incident of sexual abuse. TPI regularly receives reports that staff inform abusers about the allegations made against them, and who made them, clearly in violation of this provision.

- January 24, 2024, while the auditor was conducting the onsite audit, a TPI correspondent reports that a sergeant told a person who had sexually abused the TPI correspondent that they had filed a complaint for the sexual violence, and the accused person then went to the subject and threatened harm due to the report.

These reports indicate a failure by the auditor to verify the claims concerning PREA compliance. Based on our information collected about issues at Connally Unit, TPI asserts that Connally Unit cannot be found to be compliant with PREA § 115.61.

PREA § 115.64, Staff First Responder Duties

In the discussion of PREA § 115.64, the auditor states in one place that there were 29 allegations of sexual abuse in the last 12 months, and in another that there were 21 allegations of sexual abuse in the last 12 months at Connally Unit. Both these numbers are short of the 33 allegations of sexual abuse previously documented as occurring the prior 12 months, as per **audit entry 92.** As with earlier discussions concerning conflicting information about the number of sexual abuse incidents that occurred at Connally Unit, no explanation for the discrepancies was provided. Once again, discrepancies such as this, particularly when it comes to recording something as significant as the number of sexual abuse incidents reported during the last 12 months, call into question the validity of this entire audit report.

PREA § 115.67, Agency Protection Against Retaliation

PREA § 115.67 covers several aspects of how Connally Unit must protect incarcerated persons and staff reporting sexual abuse or sexual harassment from retaliation, and monitor for retaliation following the report.

The auditor states twice in the report, amazingly, that "there have been no allegations of retaliation nor any reported fear of retaliation" and somehow makes the claim that "[a]ll [incarcerated persons] at the facility are reviewed every 30 days and at that time can also indicate if they have any concerns related to retaliation," but that is certainly an unusual claim. The latter claim probably is for a subset of all those housed at Connally Unit, but based on this vague statement, it is impossible to tell what that subset is.

In contrast to the auditor's claim that there had been no retaliation in the last 12 months nor any reported fear of retaliation, TPI has documented the following issues related to retaliation:

- November 8, 2023, a transgender woman was threatened with death if she reported a sexual abuse incident.
- November 10, 2023, affiliates of the person making the above death threat assaulted the transgender woman because she had reported the sexual abuse.
- November 10, 2023, staff moved the transgender woman after she was assaulted, placing her on the top floor, top bunk, even though she has medical conditions that advise against such placement. She felt is was retaliation.
- January 4, 2024, a transgender woman was retaliated against by staff for reporting sexual harassment by another staff person. A false claim was made that she had a razor blade as an excuse for a use of force and for locking her in a 2 x 2 foot cell for "security observation status" (SOS) for four days. Note that if someone is actually at risk for self-harm, they should be placed in "constant direct observation" with monitoring and approval by mental health staff, but placement in SOS does not require mental health staff to sign off and is often used as a form of punishment that avoids mental health staff approvals.
- Through January 2024, the same transgender woman continued to experience mistreatment by guards, which is common in TDCJ after a report of sexual violence by staff. The mistreatment included verbal abuse, threats, giving her food to other incarcerated persons, shower refusal, and refusal of lay-ins for medical appointments.
- January 24, 2024, a nonbinary person noted a threat from another incarcerated person, against whom she reported sexual violence. This retaliatory threat occurred while the auditor was present during the onsite audit.

Based on information in this report and TPI's information, it appears clear that Connally Unit staff failed to disclose issues related to PREA § 115.67 compliance, the auditor may have manipulated information in the final report to cover up evidence showing that Connally Unit

did not meet the PREA § 115.67 standard, the auditor failed to conduct appropriate due diligence in investigating compliance with PREA § 115.67, and that there are serious questions concerning Connally Unit staff failing to meet the PREA § 115.67 standard. TPI asserts that it cannot be determined from this report that Connally Unit meets the PREA § 115.67 standard.

PREA § 115.68, Post-Allegation Protective Custody

PREA § 115.68 essentially applies the protective custody requirements outlined under PREA § 115.43 to any sort of lockup or detention of someone making an allegation of sexual abuse after said allegation was made and during investigation.

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 interviews for this assessment, the auditor references questions that were asked of persons housed in segregated housing for risk of sexual victimization, yet in the "findings" once again appears to claim that no incarcerated persons were ever held in segregated housing after making an allegation of sexual violence. However, the statement that "no [incarcerated persons] who alleged sexual abuse were placed in involuntarily [*sic*] restrictive housing for zero to 24 hours or longer than 30 days" is strangely specific and begs the question of whether this is allowing that some persons were held in involuntary protective custody for 2 to 30 days.

Regardless, as can be seen in TPI's discussion of PREA § 115.67, an incarcerated person was being held in restrictive housing due to a report of sexual abuse while the onsite audit was being conducted, and as per TPI's discussion of PREA § 115.43, there are a number of additional ways that persons may have been held in involuntary protective custody during the 12 months covered by this audit. What is not addressed by this audit is 1) whether these persons were placed in protective custody voluntarily or involuntarily; 2) if involuntary, did the involuntary protective custody last more than 24 hours; 3) if persons placed in protective custody had access to opportunities to the extent possible, and whether documentation covered the opportunities that had been limited, the duration of the limit, and the reasons for the limit; 4) whether any involuntary protective custody exceeded 30 days; 5) whether appropriate documentation of the involuntary protective custody was done by staff; and 6) whether review of the continuing need for involuntary protective custody was conducted every 30 days. The fact that the auditor parroted Connally Unit staff claims that no persons were held in involuntary protective custody does not address these potential issues.

Based on the data we have and our understanding of TDCJ operations as well as operations at Connally Unit, TPI asserts that it cannot be determined that Connally Unit meets the PREA § 115.68 standard.

PREA § 115.71, Agency Investigations

In the discussion of PREA § 115.71(c), the auditor reports that there were 51 allegations of sexual abuse at Connally Unit during the prior 12 months (this count is noted in the discussions of PREA § 115.71(c) and PREA § 115.71(f), although the latter refers to "administrative investigations" and may include sexual harassment allegations). However, **audit entry 92** only documents 33 investigations for sexual abuse, and **audit entry 95** claims there were only 29 investigation outcomes. The total investigations in **audit entries 92 and 93** seem to be 50, not 51. These discrepancies underscore what can only be auditor incompetence, Connally Unit staff manipulation of data, or both.

The auditor also implies that 51 reports of sexual abuse were reviewed during the audit, but if 51 reports were reviewed, why are only 33 (or possibly 50, depending on what is actually being discussed here) documented elsewhere in this report. Again, this indicates a serious conflict with data presented elsewhere in the audit report.

In this discussion, the auditor also reports that "investigative staff confirmed that an investigator . . . would require the victim to be taken for a 'rape kit,'"for investigations, but that is contrary to PREA § 115.21(c), which says that the agency must "offer all victims of sexual abuse access to forensic medical examinations." This also appears to run counter to TDCJ policy, which also counter to PREA § 115.21(c) states that investigators will determine if access to forensic data collection is offered.

Due to the contradictions and apparent information that is incorrect in this section, TPI asserts that it cannot be determined from this report whether or not Connally Unit meets the PREA § 115.71 standard.

PREA § 115.72, Evidentiary Standards for Administrative Investigations

Once again in the discussion of PREA § 115.72, the auditor notes that "51 sexual abuse administrative investigations were completed within the previous twelve months," yet only 33 were documented in **audit entry 92,** and in **audit entry 95,** the auditor reported only 29 outcomes. The auditor also reports that "the agency does not impose no higher standard than a preponderance of evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated," a mistake and double negative that is perhaps more correct than intended.

PREA § 115.72 requires that no standard of evidence 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 stated when out of either 29 or 33 or 51 (it cannot be determined what the actual number is from this audit) reports of sexual abuse, not one of those reports had a greater chance of occurring than a 50/50 chance. Not one of those had even a coin

toss' 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.

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 (unfounded), 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 Connally Unit, the data are even more remarkable (these figures use the numbers from **audit entries 92 - 97,** but as noted this report indicates those numbers may not be accurate). The auditor noted that for allegations against staff, 0% of 18 sexual abuse allegations were substantiated, 0% of 4 sexual harassment allegations were substantiated, and voyeurism allegations were not reported. For allegations against other incarcerated persons, 0% of 15 allegations of sexual abuse were substantiated, and 0% of 13 allegations of sexual harassment were substantiated. In a perfect score, not a single one of 50 allegations of sexual abuse and sexual harassment had more that a coin toss' chance of being true.

It should also be noted that under the discussion of PREA § 115.76(b), the auditor reveals that "[t]th PAQ indicated that there was one (1) staff member who violated the sexual abuse and sexual harassment policies. The staff member resigned prior to termination." This information is repeated in other PREA § 115.76 discussion. Presumably there was an allegation and investigation to determine that this staff member "violated the sexual abuse and sexual harassment policies," yet that allegation and investigation were either not reported in PREA data and investigation outcomes, or were also documented as "unsubstantiated." This provides supporting evidence for the assertion that TDCJ and Connally Unit staff manipulate PREA data and compliance, in this case possibly by stating that someone could act in a way that could be proven enough to warrant termination but still not be found "substantiated." This also calls into question the legitimacy of this audit, qualifications of the auditor, and the agenda of the auditor and the employer in failing to cite this issue as a potential compliance red flag.

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 Connally Unit was assessed as being compliant with the PREA § 115.72 standard.

PREA § 115.73, Reporting to Incarcerated Persons

In the discussion of PREA § 115.73(a), the auditor states that "there were 31 criminal or administrative investigations completed within the previous twelve months, [and that persons making allegations] were notified of the outcome of the investigation via memo." It is not clear where this figure comes from. **Audit entries 92 and 93** indicate the following:

	Criminal Investigations Completed	Criminal Investigations Ongoing	Administrative Investigations Completed
Sexual Abuse	10	3	33
Sexual Harassment	0	0	17

If only 31 notices were provided for 43 criminal and administrative investigations completed (that number based on 33 administrative investigations and 10 criminal investigations also done separately), then that means Connally Unit staff failed to provide notice required under PREA § 115.73 in 12 out of 43, or 28%, of the investigations. The discussion of PREA § 115.73(e) contradicts the statement in the discussion of PREA § 115.73(a), claiming that actually 51 notices were provided during the audit period. There does not appear to be a way to figure out what was actually audited for this standard.

The auditor also notes under PREA § 115.73(c) that there were 16 allegations of sexual abuse by staff against incarcerated persons in the previous 12 months, but **audit entry 92** indicates there were actually 18 allegations and 18 investigations. It could be assumed that the 16 is less the 2 unfounded allegations of sexual abuse by staff, but this is still confusing because **audit entry 95** indicates there were 0 ongoing, 12 unsubstantiated, and 0 substantiated allegations in addition to the 2 unfounded, giving a total of only 14 investigations, so there are still conflicts in the data.

Based on this conflicting information, TPI asserts that it is not possible to determine whether or not Connally Unit meets the PREA § 115.73 standard.

PREA § 115.76, Disciplinary Sanctions for Staff

Note that the discussion of a staff person who was found to have "violated the sexual abuse and sexual harassment policies" is important for the discussion of other areas of this report, particularly discussions of allegations and investigations made and outcomes of investigations, as well as evidentiary standards used (see also the discussion of PREA § 115.72).

PREA § 115.78, Disciplinary Sanctions for Incarcerated Persons

In the discussion of PREA § 115.78(f), the auditor notes that there "have been no instances where [incarcerated persons] have been disciplined for falsely reporting an incident of sexual abuse or sexual harassment," but this statement appears to be false. On October 18, 2022, a TPI correspondent was given a case for filing a report of staff sexual assault for an event that occurred October 16, 2022. The case was eventually overturned, but not until some time after January 1, 2023, which would mean that there was an incident where an incarcerated person had been disciplined for falsely reporting an incident of sexual abuse during the audit period.

That the case was overturned indicates also that the case was potentially issued in violation of PREA § 115.78(f).

TPI asserts that due to this omission by Connally Unit staff, it cannot be determined that Connally Unit meets the PREA § 115.78 standard.

PREA § 115.86, Sexual Abuse Incident Reviews

PREA § 115.86(a) requires Connally Unit to conduct an incident review "at the conclusion of every sexual abuse investigation . . . unless the allegation has been determined to be unfounded." The auditor states that Connally Unit conducted 28 such reviews within the previous 12 months. However, the auditor also documents that there were 33 investigations concerning allegations of sexual abuse, 3 of which were determined to be unfounded. This indicates Connally Unit did not comply with PREA § 115.86.

TPI asserts that based on the auditor's own data, Connally Unit cannot be assessed as meeting the PREA § 115.86 standard.

Conclusion

TPI has documented issues concerning the qualifications of the auditor, the conduct of the onsite audit, inaccuracies in the audit report, and deficiencies with the assessment of compliance with PREA standards in this report. The most significant problems identified include:

- The auditor fails to affirm in the final audit report that the contents of the report are accurate and that there is no conflict of interest. TPI asserts that the contents are not accurate, and that there is indeed auditor conflict of interest.
- The auditor appears to have not spent sufficient time at the unit during the onsite visit to meet audit obligations, and this is reflected in problems noted in the final report.
- The auditor falsely claims that Connally Unit houses only "males."
- The auditor failed to contact sufficient community-based organizations, as required.
- Multiple conflicts in data presented (unlikely claims of target population sizes; conflicting claims that target populations did not exist at the facility, and interviews with

supposedly nonexistent members of these target populations; false claims about segregated housing; incomplete and conflicting data concerning investigations of sexual violence). See also notes about conflicting information concerning PREA §§ 115.64, 115.71, 115.72, and 115.73.

- The auditor failed to conduct the minimum number of targeted interviews required (20 required; 15 interviewed).
- The auditor failed to conduct the minimum number of interviews with persons who reported sexual abuse in the facility (4 required; 1 interviewed, but at least 2 available).
- The auditor failed to conduct the minimum number of interviews with persons who disclosed prior sexual victimization (3 required; 1 interviewed, but at least 63 available).
- PREA § 115.11: The issues documented in this letter indicate it is very unlikely that Connally Unit complies with this PREA standard.
- PREA § 115.13: Severe staff shortages at Connally Unit and throughout TDCJ indicate it is very unlikely Connally Unit complies with this PREA standard.
- PREA § 115.15: Based on TPI data, TPI experience with the procedures at Connally Unit, and the clear fact that the auditor did not properly audit this standard, Connally Unit cannot be assessed as meeting PREA § 115.15.
- PREA § 115.21: Based on information in TDCJ's own policy, which against PREA requirements allows staff to determine if a forensic exam is warranted, it appears that Connally Unit does not meet compliance with this standard.
- PREA § 115.22: Due to missing, incomplete, or contradictory data concerning investigation of allegations of sexual violence, Connally Unit cannot be determined to meet compliance with this standard.
- PREA § 115.31: Due to incomplete auditing of this standard by the auditor as well as TPI data that indicates a failure to comply, Connally Unit cannot be determined to meet compliance with PREA § 115.31.
- PREA § 115.33: The auditor presents unexplained conflicting data concerning the evaluation of compliance with this standard. Due to these issues, it cannot be determined whether or not Connally Unit meets compliance with this standard.
- PREA § 115.34: Based on the questionable assessment by the auditor and TPI's reports of ineffective investigations, it cannot be determined whether or not Connally Unit complies with the PREA § 115.34 standard.
- PREA § 115.41: Due to what appears to be problematic TDCJ policy, it cannot be determined whether or not Connally Unit complies with this standard.
- PREA § 115.42: Based on multiple issues with this audit assessment, our knowledge and experience with TDCJ practices in general and at Connally Unit, and documented

instances of noncompliance, Connally Unit cannot be determined to meet compliance with this standard.

- PREA § 115.43: The auditor fails to fully address issues of protective custody as used in TDCJ, and appears to manipulate the interpretation of this standard and Connally Unit compliance. The auditor also fails to identify that many people at Connally Unit—both at the time of the onsite audit and during the 12-month audit period—were in housing at the facility that constitutes PREA "protective custody." Based on information provided in this audit, data that TPI has documented for Connally Unit, and the auditor's failure to address the scope of PREA protective custody, TPI asserts that Connally Unit cannot be assessed as meeting compliance with the PREA § 115.43 standard.
- PREA § 115.51: TPI documentation indicates significant failures by Connally Unit staff to respond to reports of sexual violence or potential sexual violence. Based on this audit report, it cannot be determined whether or not Connally Unit meets this standard.
- PREA § 115.61: TPI provides several examples of Connally Unit staff failing to meet their reporting duties and disclosing protected information. Based on our information and the failure of the auditor to address such issues, Connally Unit cannot be found to meet compliance requirements for PREA § 115.61.
- PREA § 115.67: TPI has documented a number of issues concerning retaliation for reporting sexual abuse and sexual harassment at Connally Unit, so the fact that the auditor claims there were none in 12 months is questionable. Due to these issues, Connally Unit cannot be found to meet compliance requirements for PREA § 115.67.
- PREA § 115.68: TPI documentation appears to contradict the auditor's claims made in the evaluation of Connally Unit for compliance with this standard. Additionally, the auditor's discussion does not address significant parts of compliance with PREA § 115.68. Based on these, Connally Unit cannot be found to meet compliance with this standard.
- PREA § 115.71: Conflicting information and the auditor's own report of interviewee statements indicate Connally Unit may not be in compliance with this standard. Based on these issues, it cannot be determined whether or not Connally Unit meets the PREA § 115.71 standard.
- PREA § 115.72: Discussion of compliance with this standard by the auditor does not address significant indications that Connally Unit does not meet the PREA § 115.72 standard. Based on this, Connally Unit cannot be found to meet compliance with this standard.
- PREA § 115.73: The auditor's own statements concerning this assessment are too confusing and contradictory to determine whether or not Connally Unit meets the PREA § 115.73 standard.

- PREA § 115.78: TPI has evidence that the auditor's statement in this discussion that there were no persons accused of falsely reporting sexual abuse at Connally Unit is false. I addition, the case we know about was overturned, indicating the discipline was pursued in violation of this standard. Based on this information, it cannot be determined that Connally Unit meets the PREA § 115.78 standard.
- PREA § 115.86: The auditors own statements indicate Connally Unit cannot be assessed as meeting this standard.

TPI requests that the following deficiencies be addressed:

- Auditor Cynthia Swier and Corrections Consulting Services be assessed for whether or not the auditor meets PREA qualifications, and whether there is a conflict of interest.
- A PREA auditor be required to make up clear deficiencies in this audit:
  - The auditor be required to conduct the minimum number of required interviews for Connally Unit, 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 Connally Unit, including TPI's publicly available documentation and PREA compliance issues at Connally Unit.
- The final report be amended to reflect the actual population of the unit, not TDCJ's abusive definition of the population as "males" only. This concerns compliance with PREA § 115.15 and other standards that include gender-based considerations.
- Connally Unit be required to define corrective actions to address deficiencies in the audit discussed in this letter, including:
  - Addressing actual staff shortages and their impact on safety in the assessment of PREA § 115.113.
  - Properly audit compliance with PREA § 115.15.
  - Address deficiencies in compliance with PREA § 115.21.
  - Address missing, incomplete, and contradictory data in the assessment of PREA § 115.22.
  - Properly audit compliance with PREA § 115.31.
  - Address conflicting data concerning the assessment of PREA § 115.33.
  - Properly audit compliance with PREA § 115.34.
  - Address deficiencies in compliance with PREA § 115.41.
  - Address deficiencies and properly audit compliance with PREA § 115.42.
  - Address deficiencies and properly audit compliance with PREA § 115.43.

- Properly audit compliance with PREA § 115.51.
- Address deficiencies and properly audit compliance with PREA § 115.61.
- Address deficiencies and properly audit compliance with PREA § 115.67.
- Address deficiencies and properly audit compliance with PREA § 115.68.
- Address deficiencies and properly audit compliance with PREA § 115.71.
- Address deficiencies and properly audit compliance with PREA § 115.72.
- Properly audit compliance with PREA § 115.73.
- Address deficiencies and properly audit compliance with PREA § 115.78.
- Address deficiencies in compliance with PREA § 115.86.

I hope that these issues can be addressed in the interest of increasing the safety of all LGBTI 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
Connally Unit Senior Warden Edmundo Cueto
Connally Unit PREA Manager Ruby Alfaro
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