



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

May 11, 2024

re: auditor noncompliance with audit requirements, Memorial Unit

To the PREA Resource Center:

Trans Pride Initiative (TPI) is filing an objection to the acceptance of the audit report for the Texas Department of Criminal Justice (TDCJ) Memorial Unit conducted by auditor Lynni O’Haver and Corrections Consulting Services, LLC, formerly PREA Auditors of America (and misidentified as such in this report). TPI has been working with incarcerated persons since 2013, mainly trans and queer persons in the Texas prison system.<sup>1</sup> We believe that for a number of reasons this audit fails to meet the spirit or letter of audit requirements.

The onsite audit was conducted March 20 through 22, 2024, so where specific data are given in the audit report, these reflect the auditor’s report of their perceptions at that time. The final audit report was submitted April 11, 2024, and it was posted publicly on or about May 1, 2024.

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

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.

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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.



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### TPI Data for Memorial Unit

TPI has documented a total of 79 incidents of violence against persons housed at Memorial Unit, including 29 that occurred in the past 12 months. Of the total documented incidents, 18 involved noncompliance with some element of the PREA standards, with 1 PREA noncompliance issue documented in the last 12 months, and 3 in the last 36 months, so approximately since the last PREA audit.<sup>2</sup> Because Memorial Unit is an older unit and is not generally considered to meet the PREA compliance requirements for housing transgender persons, our data from Memorial Unit is limited. The data presented in this letter 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

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](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](https://tpride.org/projects_prisondata/prea.php)).



actually occurring at Memorial Unit. 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 Memorial Unit, nor should it be considered a complete inventory of PREA deficiencies. This should be considered to itemize only a few of the problems with PREA compliance at Memorial Unit.

Although TPI does not have as much data for Memorial Unit as we do for some other TDCJ facilities, we feel there is sufficient data available to question compliance in some areas and to indicate the most recent PREA audit is deficient.

### **Summary of Deficiencies**

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

- **Audit entry 10**, the auditor did not contact sufficient community-based organizations and advocates, as they are required to do.
- **Audit entry 47**, the auditor falsely states that 0 persons had ever been placed in segregated housing or isolation for risk of sexual victimization at Memorial Unit, due to a misrepresentation of such protective custody.
- **Audit entry 58**, the auditor documents a failure to conduct the minimum number of 20 targeted interviews, in spite of the availability of persons meeting minimum targeted numbers. Based on information throughout the report, the auditor also appears to have failed to conduct the minimum number of 40 total interviews.
- **Audit entry 67**, the auditor states the minimum 4 interviews with persons who reported sexual abuse in the facility were conducted, but statements throughout the report indicate one refused to provide any relevant information for the target topic. Several other persons meeting this target criterion were available and should have been interviewed.
- **Audit entry 69**, the auditor failed to interview the minimum 2 persons placed in segregated housing or isolation due to risk of sexual victimization due to a misrepresentation of such protective custody.
- **Audit entry 92 through 97**, the auditor provides inaccurate and conflicting data concerning sexual violence investigations and outcomes.

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

- PREA § 115.15: Due to the misrepresentation of the genders of persons housed at Memorial Unit, the auditor failed to appropriately assess compliance with this standard, and it cannot be determined if Memorial is within compliance or not.



- PREA § 115.21: Due to only 10 out of 50 allegations of sexual abuse including forensic evidence collection, as documented in this report, it appears that Memorial Unit is not complaint with this standard.
- PREA § 115.42: Due to multiple discrepancies and inconsistencies in the audit of compliance with this standard, it cannot be determined from this audit if Memorial Unit meets compliance with this standard or not.
- PREA § 115.43: Due to the numerous inaccuracies in the assessment of this standard, it cannot be determined if Memorial Unit meets compliance or not.
- PREA § 115.68: Due to the failure of the auditor to address compliance with this standard in the report, it cannot be determined if Memorial Unit meets compliance with this standard or not.
- PREA § 115.72: Based on the evidence presented in this report, it appears unlikely that Memorial Unit meets compliance with this standard.
- PREA § 115.86: Based on the evidence presented in this report, it must be concluded that Memorial Unit is not compliant with this standard.

### **Request for Action**

TPI requests that the following deficiencies be addressed:

- TPI requests that Memorial Unit be required to conduct a subsequent audit to address deficiencies in the audit discussed in this letter.
- TPI requests that auditor Lynni O'Haver be investigated for failure to comply with PREA audit methodology requirements and failure to meet the requirements of the PREA Auditor Certification Agreement.
- TPI requests that this audit of Memorial Unit be considered not compliant for the purposes of the governor's compliance certification.
- TPI requests that all contracts for audits conducted through Corrections Consulting Services, LLC, be investigated for potential conflicts of interest.
- TPI requests that the onsite portion of audits by auditor Lynni O'Haver be monitored for failure to allow adequate time for the conduct of a competent audit appropriate to the facility size.
- TPI requests that auditor Lynni O'Haver be required to complete training in the use of first-person language, and gender-inclusive pronouns and other personal references.
- TPI requests that the audit history of auditor Lynni O'Haver be reviewed for bias in favor of prison operators due to the dearth of noncompliance findings (based on our brief research, not one noncompliance issue was identified) at at facilities between at least September 2022 and today's date.



- TPI requests that audit reports for Memorial Unit, and for all units in TDCJ, be required to accurately state the genders of persons housed there at the time of the onsite portion of the audit, not simply repeat abusive misgendering by administration as simply “male,” “male only,” “female,” or “female only.”
- TPI requests that the auditor be required to follow PREA § 115.401(o) and contact each entity that may have significant information about Memorial Unit, including TPI’s publicly available documentation and PREA compliance issues at Memorial Unit.
- TPI requests that the auditor be required to conduct the minimum number of required interviews for Memorial Unit, as per the Auditor Handbook, and be required to be clear about how many incarcerated persons were actually interviewed for audits.
- TPI requests that the auditor provide accurate data for the numbers of sexual abuse and sexual harassment investigations and outcomes, or that Memorial Unit be found noncompliant with PREA standards requiring accurate data collection.
- TPI requests that Memorial Unit be assessed for compliance with PREA § 115.15 according to the actual genders of persons housed at Memorial, not the inappropriate assessment of genders presented in this audit report.
- TPI requests that Memorial Unit be assessed for actual compliance with PREA § 115.21 since it appears that only about 20% of the survivors alleging sexual abuse are being allowed access to forensic medical examinations. Based on the information in this audit report, it appears that Memorial Unit is not compliant with this standard, in spite of the auditor’s claim of compliance.
- TPI requests that Memorial Unit be reassessed for its actual use of investigative practices and use of evidentiary standards instead of it’s claims of compliance that are directly contradicted by the low number of substantiated allegations of sexual abuse and sexual harassment. This concerns compliance with PREA §§ 115.34, 115.71, 115.72, and possibly other standards.
- TPI requests that the audit of Memorial Unit, and all PREA audits, include consideration into whether screening information is appropriately collected and used for gender nonconforming persons under PREA §§ 115.41 and 115.42.
- TPI requests that Memorial Unit be monitored for abusive practices in the collection and use of screening data, and particularly in the provision of separate showers for transgender persons. This concerns compliance with PREA § 115.42 and other standards.
- TPI requests that Memorial Unit be reassessed for the actual use of segregated housing and protective custody rather than assessed on the misrepresentation of these designations, as discussed in this report concerning compliance with PREA §§ 115.43, 115.68, and possibly other standards.



- TPI requests that Memorial Unit be reassessed for compliance with PREA § 115.86 due to information provided in this audit report that Memorial Unit was not in compliance with this standard, in spite of the auditor’s claim of compliance.

## **Discussion of Audit Deficiencies**

### **Auditor Qualification Issues**

TPI believes that the auditor’s statement that they do not have a conflict of interest is not valid due to their employment with Corrections Consulting Services, LLC (CCS). Previously, it appears that CCS only did 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 its web site, CCS now lists services such as “accreditation support,” “policy and procedure review,” “security audits,” “staff training,” and “technology integration” in addition to “PREA auditing.” Thus it is obvious that CCS is providing services that may be considered a conflict of interest and activities that may include an auditor auditing their own work, or their employer’s work, that may provide a conflict of interest to auditors it employs or contracts with, and that it may be conducting PREA audit services in violation of PREA § 115.402. Even if no current existing contractual obligations are in effect, a conflict of interest could exist in the understanding that PREA audits showing full compliance would likely encourage additional contracts between the agency and CCS. CCS appears to have a vested interest in assuring its 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 served as a Sheriff in Florida for 23 years up until November 2021. TPI believes any current or recent connection with a prison system to be a potential conflict of interest. PREA §§ 115.401(c) and (d) prohibit an auditor from receiving financial compensation from the agency being audited within three years prior to and after the audit, which is warranted but not sufficient. Due to the “we protect our own” mentality common among persons affiliated with prison operations, TPI believes that auditors should be barred from receiving any financial compensation directly or indirectly from any prison operator or associated agency, past or present, due to this potential conflict of interest. Additionally, audit funding must be separate from the system being audited to avoid this conflict of interest.

Although the Auditor Handbook states that auditors are personally accountable for audits, the opportunity for conflicts of interest related to CCS influence and professional bias 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 March 20 through March 22, 2024.

TPI notes that for a facility with more than 1,001 persons (Memorial Unit housed 1,731 on the first day of the onsite audit), just the interviews with incarcerated persons and staff are estimated to take 3 days, or 30.3 hours, so it appears that this audit was conducted without allowing sufficient time to meet all the audit obligations. In addition to the interviews, the auditor was required to conduct other tasks to competently complete the audit. As per the 2022 Auditor Handbook:

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.

**Audit entries 115 and 116** document that the auditor received no assistance from other persons that would count toward the total hours spent on the unit 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 terms like “offender” throughout this report. In fact, the word “offender” is used 683 times by the auditor (a few of these can be attributed to TDCJ policy that still retains this verbiage). 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. That this auditor ignores this practice by continuing to use



terms “he” and “she” exclusively throughout this report is unacceptable. It appears that this auditor uses “he/she” for staff, but exclusives “he/him/his” for incarcerated persons, erasing the existence of trans women and nonbinary trans persons. 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 2 standards were exceeded and 36 were met. The auditor found that zero corrective actions were required. 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.” The fact that the auditor found no need for any corrective actions should also be considered in the assessment of a deficient audit.

Numerous contradictions in data in this report, as well as grammatical errors, typographic problems, and sloppy attempts to cut-and-paste responses, indicate a lack of attention to detail and rushed report completion without thorough editing.

We also feel it is important to point out that a review of PREA audits in the online PREA Audit directory shows 53 audits planned or completed by this auditor. Of the 31 that TPI identified with a final report available via the directory (10 for federal institutions, 11 for Texas jails and prisons, and 10 for prisons and jails in other states), not one included a finding of not compliant with any standard. The directory appears to only include audits conducted since September 2022. This auditor has been certified since late 2015, so TPI feels it would be important to know if this failure to identify any corrective actions continues into the past. Even with this preliminary evidence of favoring and bias for prison operators and administration over the safety of incarcerated persons, TPI questions whether any of the audits conducted by this auditor should be considered as supporting state or federal claims of PREA compliance.

### **Audit Information Issues**

The audit report states that the population at the Memorial Unit consists of “males,” when in fact this is false. The Memorial Unit houses cisgender males, transgender females, and other persons who may not belong to either of those two populations. The Memorial Unit may abusively classify transgender women and other non-male persons as “male,” but that is not an accurate description of the populations housed at the unit for PREA assessment purposes. This not only erases the existence of trans persons, this type of misclassification and erasure of transgender persons encourages violence against trans persons, including sexual abuse and sexual harassment. Refusal to affirm a person’s gender dehumanizes the person, and dehumanization is a significant step in excusing and justifying institutional harm and violence. Further, this misapplication of the PREA standards allows the auditor to ignore violations under 115.15, cross-gender pat-down searches of female persons, as well as other PREA standards. To identify transgender females as “males” —or to identify transgender males as “females” —is an act of violence that not only denies the identity of transgender women and transgender men and nonbinary persons, but also encourages violence, sexual harassment, and sexual abuse of transgender persons by dismissing our core identity.





**Audit entry 10** states that the auditor contacted 1 community-based organization, which is not exactly “community-based” as it is an “international” organization: Just Detention International.

PREA § 115.401(o) clearly states that “[a]uditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.” This 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. The Auditor Handbook notes that “auditors must demonstrate that they attempted to communicate with a community-based or victim advocate to gather information about relevant conditions in the facility,” and no such documentation was provided. TPI was not contacted concerning the information we have about Memorial 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](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 Memorial 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 39** states that there were 0 incarcerated persons with a cognitive or functional disability at Memorial Unit on the first day of the onsite audit. TPI has no way to contest this number, but finds this claim to be highly questionable.

**Audit entry 42** states that there were 34 incarcerated persons who are Limited English Proficient at Memorial Unit on the first day of the onsite audit. We cite this number not because we believe it to be inaccurate (we have no way to determine that), but to show that there were many persons available for targeted interviews, which the auditor failed to complete according to Auditor Handbook requirements.

**Audit entry 43** states that there were 26 incarcerated persons identifying as lesbian, gay, or bisexual at Memorial Unit on the first day of the onsite audit. We cite this number not because we believe it to be inaccurate (we have no way to determine that), but to show that there were many persons available for targeted interviews, which the auditor failed to complete according to Auditor Handbook requirements.

**Audit entry 44** states that there were 5 incarcerated persons identifying as transgender or intersex at Memorial Unit on the first day of the onsite audit. We cite this number not because we believe it to be inaccurate (we have no way to determine that), but to show that there were additional persons available for targeted interviews, which the auditor failed to complete according to Auditor Handbook requirements.



**Audit entry 45** states that there were 15 incarcerated persons who reported sexual abuse that occurred at Memorial Unit on the first day of the onsite audit. We cite this number not because we believe it to be inaccurate (we have no way to determine that), but to show that there were additional persons available for targeted interviews, which the auditor failed to complete according to Auditor Handbook requirements.

**Audit entry 46** states that there were 9 incarcerated persons who reported prior sexual victimization during risk screening at Memorial Unit on the first day of the onsite audit. We cite this number not because we believe it to be inaccurate (we have no way to determine that), but to show that there were additional persons available for targeted interviews, which the auditor failed to complete according to Auditor Handbook requirements.

**Audit entry 47** states that there were 0 persons that had ever been placed in segregated housing or isolation for risk of sexual victimization at Memorial Unit on the first day of the onsite audit, but TPI knows this number to be inaccurate.

This represents a major failure to document and audit segregated housing, or protective custody under PREA. This also indicates a failure to investigate and understand how segregated housing is defined confusingly (and appears to be purposefully manipulated by TDCJ to cause confusion) and a failure to perform due diligence in confirming such a claim that 0 persons housed at Memorial Unit had ever been placed in segregated housing or isolation for risk of sexual victimization. This will be discussed further under PREA § 115.43. **Audit entry 48** did not provide any explanation for this number.

**Audit entries 53-70** concern the numbers of random and targeted interviews with persons representing the various population characteristics at Memorial Unit. The Auditor Handbook states that at least 40 persons should be interviewed at a facility the size of Memorial Unit. The auditor appears to claim 45 person were interviewed (28 random and 17 targeted), but a closer reading of the report indicates that representation is false, and that it appears only 28 total interviews were conducted, with 17 of those 28 also meeting target population characteristics.

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.” 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.

Thus it appears that the number of incarcerated persons interviewed during this audit fell far short of the requirements clearly stated in the Auditor Handbook, with only 28 of the required minimum of 40 interviews being conducted.

**Audit entry 53** states that 28 random interviews with incarcerated persons were conducted at Memorial Unit. This appears to meet the minimum requirement of 20 persons.

**Audit entry 58** states that 17 targeted interviews with incarcerated persons were conducted at Memorial Unit. According to Table 2 in the Auditor Handbook, the minimum number of



interviews for a unit with the overall population of Memorial Unit should have been 20. The auditor thus failed to conduct the minimum number of random interviews require for this audit.

In addition, at several places in this report, the auditor references 28 interviews conducted with incarcerated persons. Based on review of the complete report, a best guess explaining the contradictions in these statements indicate that 28 individuals were interviewed, and 17 persons met one or more of the target interview characteristics. Such an interview technique does not comport with requirements in the Auditor Handbook.

Regardless whether this assumption is correct, it is clear that the targeted interviews fell short of the requirements clearly stated in the Auditor Handbook.

**Audit entry 64** states that only 1 person who was Limited English Proficient was interviewed for this audit, which only meets the minimum requirement for this target. **Audit entry 42** states that 34 persons who were Limited English Proficient were available on the first day of the audit, so there is no reason for not completing the minimum number of total targeted interviews.

**Audit entry 65** states that only 3 persons who identified as lesbian, gay, or bisexual were interviewed for this audit, which only meets the minimum requirement for this target. **Audit entry 43** indicates there were 26 persons who identified as lesbian, gay, or bisexual available on the first day of the audit, so there is no reason for not completing the minimum number of total targeted interviews.

**Audit entry 66** states that only 3 persons who identified as transgender were interviewed for this audit, which only meets the minimum requirement for this target. **Audit entry 44** states that 5 persons who identified as transgender were available on the first day of the audit, so there is no reason for not completing the minimum number of total targeted interviews.

**Audit entry 67** states that only 4 persons who reported sexual abuse in this facility were interviewed for this audit, which only meets the minimum requirement for this target. **Audit entry 45** states that 15 persons who had reported sexual abuse in this facility were available on the first day of the audit, so there is no reason for not completing the minimum number of total targeted interviews.

TPI also notes that throughout this report, the auditor states that one of the four interviewed for this target group declined to discuss anything about the sexual abuse incident or incidents. Although the Auditor Handbook does not seem to specify that such a lack of response should not be counted as an interview, it seems dubious to count as legitimate an interview with someone who refused to discuss the issues related to the target topic for that interview, especially if other persons a part of this target population were available for interviewing. If it is not counted, the auditor did not meet the minimum requirement for this target population.

**Audit entry 68** states that only 3 persons who disclosed prior sexual victimization were interviewed for this audit, which only meets the minimum requirement for this target. **Audit entry 46** states that 9 persons who had disclosed prior sexual victimization were available on



the first day of the audit, so there is no reason for not completing the minimum number of total targeted interviews.

**Audit entry 69** states that 0 persons who had ever been placed in segregated housing or isolation for risk of sexual victimization were 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 Memorial Unit should have been 2. The auditor simply accepted the false statement from Memorial Unit administration that there were “none here” without performing due diligence sufficient to determine the inaccuracy of that statement. TPI is certain that there were persons meeting this target population at the unit during the audit. The auditor thus failed to conduct the minimum number of interviews required for this target population.

As with **audit entry 47**, this indicates a failure to investigate and understand how segregated housing is manipulated by TDCJ to cause confusion; this will be discussed further under PREA § 115.43.

**Audit entry 70** provides no explanation or justification of the auditor’s failure to conduct the minimum number of targeted interviews. The auditor thus failed to conduct the minimum number of targeted interviews required for this audit.

**Audit entry 80** states that the auditor interviewed SAFE/SANE staff. However, discussion of PREA § 115.35(b) states that “Memorial Unit medical staff do not conduct forensic medical exams.”

**Audit entry 89** states that “[t]he [a]uditor conducted thirty-two informal interviews with [incarcerated persons],” possibly indicating that of the 28 random interviews and 17 targeted interviews, 14 of those interviews may have actually been interviews with one person fitting multiple target population protocols (unless these “informal interviews” were intended to be in addition to the random and targeted interviews—it is impossible to tell).<sup>3</sup> The Auditor Handbook is clear that “the requirement refers to the minimum number of individuals who are required to be interviewed, not the number of protocols used.” In addition, Table 2 in the Auditor Handbook states that the overall minimum number of persons interviewed for a facility the size of Memorial Unit should be 40. Regardless of what this text actually describes, it is clear that this entry indicates the auditor failed to meet this minimum threshold.

**Audit entry 92** indicates there were 50 administrative investigations of sexual abuse during the 12 months preceding the audit. This number is noted because it appears to conflict with **audit entry 95**, which reports outcomes for 51 investigations. **Audit entry 92** also indicates there were 20 criminal investigations of sexual abuse allegations during the 12 months preceding the audit. This number is noted because it appears to conflict with **audit entry 94**, which states that only 13 criminal investigations were conducted. Unexplained inconsistencies in data such as these

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3. We note also that in the discussions of PREA §§ 115.31, 115.33(c), 115.41(b), 115.51(a), 115.53(a), and 115.54, the auditor states only 28 interviews were conducted. Conflicting information such as this makes it impossible to tell what was actually done, and calls into question the accuracy of all aspects of this audit.



indicate problems with data collection at Memorial Unit, a failure of adequate auditing by the auditor, or both.

**Audit entry 94** provides the status of criminal investigations for the past 12 months, and this entry states that 12 criminal sexual abuse investigations were ongoing, 1 was referred for prosecution, and all other investigation status entries were documented as 0, which only reflects the status of 13 of the 20 investigations noted in **audit entry 92** as being conducted in the previous 12 months. Unexplained inconsistencies in data such as these indicate problems with data collection at Memorial Unit, a failure of adequate auditing by the auditor, or both.

**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 50 allegations of sexual abuse by staff and other incarcerated persons, and there were 50 administrative investigations. Per **audit entry 95**, administrative investigations found 6 substantiated, 20 unsubstantiated, and 25 unfounded, for a total of 51. This inaccurate total indicates a problem with the audit, a problem with unit record keeping, or both.

TPI deems it a positive that at least a few of the allegations were substantiated since most PREA audits at TDCJ find no allegations are substantiated. Still, approximately 88% of the allegations were found to have less than a 51% chance of having occurred. According to PREA § 115.72, the agency “shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated,” yet only about 12% 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.

**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 10 allegations of sexual harassment by staff and other incarcerated persons, and there were 10 investigations. Per **audit entry 97**, administrative investigations found 0 substantiated, 7 unsubstantiated, and 3 unfounded. That is, 100% of the allegations were found to have less than a 51% chance of having occurred. According to PREA § 115.72, the agency “shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated,” yet 0% of the allegations were found substantiated. This indicates a failure of the administrative investigations to 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.

**Audit entry 98** notes the total number of sexual abuse investigation files reviewed was 26, while **audit entry 100** states that 8 files concerning incarcerated person sexual abuse files were reviewed, and **audit entry 103** states that 13 staff sexual abuse files were reviewed. It is not clear



how 8 and 13 equal 26, but this again indicates a problem with auditor accuracy and competency.

## **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 Memorial 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.

Although it occurred outside the 12 month audit period, one documented incident warrants mention for its indication that Memorial Unit—and TDCJ in general—fails to meet the spirit or letter of PREA § 115.11. In October 2022, a transgender woman reported being transferred from Lynaugh Unit to McConnell Unit, and stated that at every stopping point along the transfer, she was stripped in front of other incarcerated persons. Memorial Unit was noted as being the worst (incident 2022-00725). At Memorial Unit, staff took her bra off and would not let her put it back on. TPI also documented that as staff sexual harassment (incident 2022-00726).

We also point to **audit entries 92 and 95**, which show 29 investigations into sexual abuse by staff, with 5 substantiated. Because in general, almost 100% of allegations are found “unsubstantiated” by TDCJ units, these incidents of sexual abuse must have been particularly egregious for the unit to find them substantiated. This certainly is not indicative of zero tolerance for sexual abuse and sexual harassment.

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.

Due to our work in general and our reports from Memorial Unit over the years, TPI has doubts that this unit fully complies with PREA § 115.11.



*PREA § 115.15, Cross-Gender Viewing and Searches*

The PREA standards state that Memorial Unit staff “shall not conduct cross-gender strip searches or cross-gender visual body cavity searches . . . except in exigent circumstances or when performed by medical practitioners.”

Regardless of whether a person is assigned to a facility designated as “male” or “female,” if that person is identified as transgender in the prison system or facility, then strip and visual body cavity searches by persons of a gender different from the incarcerated person’s self-identified gender are cross-gender searches, and are noncompliant with PREA standards unless a waiver documenting search preference allowing a cross-gender search has been signed.

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

Concerning PREA § 115.15(b), if the facility allows cisgender males and transgender males and nonbinary staff to conduct pat-down searches of transgender females, then the facility permits cross-gender pat-down searches of female incarcerated persons unless the incarcerated transgender female has completed a waiver allowing such searches. Cisgender males and transgender males, as well as nonbinary persons, are not the same gender as cisgender females and transgender females. All pat-down searches of incarcerated cisgender females and transgender females by cisgender males or transgender males constitute pat-down searches of female incarcerated persons by male staff. The auditor, by refusing to identify transgender females among the transgender persons housed at the unit, 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.

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,”<sup>4</sup> the refusal to acknowledge the gender of transgender persons also results in a failure to meet this standard.

Due to these failures related to the inappropriate assessment of the genders of persons housed at Memorial Unit, it is not possible to tell if the facility complies with PREA § 115.15 or not.

***PREA § 115.21, Evidence Protocol and Forensic Medical Examinations***

In the discussion of PREA § 115.21(c), the auditor notes that 10 forensic exams were completed during the 12 months prior to the audit. This means that for 80% of the allegations and investigations of sexual abuse, no forensic exam was conducted! This is an extremely high number of investigations that included no forensic exam, and such a high percentage warrants an explanation, yet the auditor provides no comment on this apparent failure to offer or provide forensic evidence collection. In addition, there were 12 criminal investigations, which indicates at least two criminal investigations had no SANE completed. Although criminal investigation without a completed SANE is certainly possible, both these figures beg the question of whether the unit is compliant with the PREA § 115.21(c) requirement that all victims of sexual abuse be offered access to forensic exams.

It is TPI’s understanding that TDCJ OIG-7.13 states that staff will “determine if a forensic medical examination will be offered.” PREA § 115.21(c) states that **all** survivors of sexual abuse shall be offered access to forensic medical examinations; and PREA § 115.21(e) allows the survivor to request a forensic medical examination. If the above information is accurate concerning OIG-7.13, that indicates compliance with PREA § 115.21(c) is questionable at the agency level, indicating staff are deciding whether to offer the survivor access to a forensic medical examination.

Based on apparent compliance failures and conflicting information, it appears likely that Memorial Unit is not compliant with PREA § 115.21.

***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

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

Regardless of whether a facility is designated as “male” or “female,” this policy covers “opposite” genders of “male” and “female,” including cisgender and transgender males as “opposite” to cisgender and transgender females, and cisgender and transgender females as “opposite” to cisgender and transgender males. If the facility does not have policies and procedures that enable incarcerated persons to shower, perform bodily functions, and change clothing without non-medical staff of the opposite gender viewing their breasts, buttocks, or genitalia except in exigent circumstances—including cisgender and transgender males viewing transgender females, and cisgender and transgender females viewing transgender males, except in cases where a waiver has been completed by the incarcerated person—the facility is not compliant with this policy.





harassment, appropriate responses to indications and reports of sexual abuse and sexual harassment, and professional communication.

Concerning § 115.31(b), if training does not include use of preferred names and pronouns of transgender persons, then training is not tailored to the gender of the persons incarcerated at the facility, which includes transgender persons. If the training does not recognize the actual affirming gender of transgender persons, which may be different than that of the unit to which they are assigned, then training is not tailored to the gender of persons at the facility.

TPI data that indicates a failure to effectively train staff includes the following account that occurred February 23, 2024, approximately a month before the onsite visit. After a nonbinary intersex person reported a threat to a Memorial Unit security person on February 22, they were placed in restrictive housing. The following day, security staff forced the subject to walk topless through the housing area, in spite of the subject having breast development due to their intersex condition and feeling extremely uncomfortable being topless. This was done in spite of the intersex person informing the guard they are intersex and requesting to be allowed to wear a covering over the top portion of their body.

This incident alone may not be sufficient to warrant a finding of noncompliance with PREA § 115.31, but it should call into question whether training needs further assessment for compliance.

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

The PREA Standards require under § 115.41(d) that screening for risk of sexual victimization shall consider several factors, including “(7) Whether the inmate **is or is perceived to be** gay, lesbian, bisexual, transgender, intersex, or **gender nonconforming**” (emphasis added). If TDCJ risk screening markers include only LGBTI, TRGEN, and INTSX, to be compliant with this



requirement, gender nonconforming and nonbinary persons must be included in one of these categories, with TRGEN being the category generally most appropriate for risk assessment. TPI notes that SPPOM-03.01 screening in Section II for “Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI), and Gender Non-conforming” persons does not provide a coding entry for gender nonconforming persons. Questions 9 and 10 on Attachment E only include lesbian, gay, bisexual, heterosexual, transgender, and intersex. Section IV follow-up questions only address the “perceived to be” portion of this requirement, not the “is” portion. Therefore, it appears that TDCJ policy makes it easy to exclude considerations of vulnerability for gender nonconforming and nonbinary persons.

This indicates that Memorial Unit may not be in compliance with PREA § 115.41, but we cannot know until a more complete audit covering compliance issues such as these is conducted.

### *PREA § 115.42, Use of Screening Information*

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

In the discussion of PREA § 115.42(a), the auditor states that “a transgender or intersex [incarcerated person’s] own views on safety is given consideration during this process and if placed in protective custody, such placement is done at the request of the [incarcerated person] or solely based on the [incarcerated person’s] classification level.” This statement is inaccurate for multiple reasons. The various uses of “protective custody” are discussed further under the next section. Also, regardless of the various housing that may be referenced here as “protective custody,” it is seldom in our experience the result of the request of an incarcerated person. Saying it is based on the incarcerated person’s classification level appears to be a meaningless circular statement, meaning apparently that if someone is designated P2 through P7 (safekeeping and protective safekeeping custody classifications), they are assigned housing for a person with that designation of P2 through P7.

In the discussion of PREA § 115.42(c), the auditor states in two places that they “conducted one interview with an [incarcerated person] who identified as gay, bisexual, transgender, or intersex,” contradicting the claim in **audit entries 65 and 66** indicate six persons were interviewed: 3 who are gay, lesbian, or bisexual; and 3 who are transgender or intersex. Due to the apparent manipulation of interview counts documented in this audit, it is impossible to tell if possibly one person was interviewed and somehow counted as six targeted interviews, or if six persons for these two protocols were interviewed, or if counts fell somewhere in between.

Again contradicting interview counts, the auditor states in the discussion of PREA § 115.42(c) that “both transgender [persons] . . . confirmed to the Auditor the facility does provide the opportunity to shower alone.” Memorial Unit was constructed in 1917 and was designed with only group showers. TPI has received a number of complaints from transgender persons in this facility concerning showers. Due to the configuration and this history, it would be preferable to address how Memorial Unit is complying with the requirement to provide transgender persons



opportunities to shower separate from other incarcerated persons. Many of TDCJ's claim to provide separate showers for transgender persons fall short of actually doing so.

TPI notes that based on reporting to us, we only have heard of a single transgender or intersex incarcerated person NOT housed according to their gender assigned at birth in TDCJ, and our information indicates that person has had genital surgery. Thus TDCJ appears to have, in practice, a blanket rule of making housing assignments for transgender and intersex persons based on genital configuration, not on a case-by-case basis.

TPI has often heard from incarcerated transgender persons throughout TDCJ that the twice yearly assessments by UCC are cursory and ineffective. Reports generally convey that staff make it clear that they are simply there to check off the items they are required to ask, and many persons note that if they report issues, those are either dismissed or ignored, or addressed by locking the person in restrictive housing, likely with little or no property, for a week or more while an "investigation" is conducted then found unsubstantiated at best. The process appears seldom conducive to meeting the spirit of the PREA standard, and instead may offer staff opportunities to discourage reports of sexual victimization risks. TPI feels it is inadequate to simply parrot policy in support of meeting this standard, as is done by this auditor, and it must be supported by genuine investigation into the efficacy of the process for incarcerated transgender and intersex persons.

Based on these discrepancies and inconsistencies, TPI believes it cannot be determined from this audit whether or not Memorial Unit complies with PREA § 115.42.

#### ***PREA § 115.43, Protective Custody***

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

For this discussion, it should be noted that Memorial Unit has no housing of the type that the auditor repeatedly refers to in this report: safekeeping housing (P2 through P5 custody classifications) or protective safekeeping housing (P6 and P7). According to the auditor's report, Memorial Unit only houses custody classifications G1 through G5 and restrictive housing (typically referring to custody classifications G2 through G5 in segregated housing, but sometimes P2 through P5 safekeeping persons are housed with G2 through G5 persons in restrictive housing areas). Much of the auditor's discussion is irrelevant to an assessment of how PREA protective custody is used at Memorial Unit.

Regardless of policy, reports to TPI indicate that placement in involuntary segregation due to immediate endangerment seldom considers any other options outside involuntary segregation, often referred to as lockup or restrictive housing for Inmate Protection Investigation. 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, even those that persist across units.



In the discussion of PREA § 115.43(a), the auditor states that incarcerated persons “at high risk for sexual victimization shall not be placed in protective safekeeping unless an assessment of all other available alternatives has been made,” which appears to mischaracterize PREA “protective custody” as only TDCJ “protective safekeeping.” This is not true (see the discussion of this issue below). This misstatement renders this assessment of protective custody invalid.

In this same section, the auditor states that “[t]he Facility Warden explained [incarcerated persons] who are at a high risk of sexual victimization will be placed in protective safekeeping until an assessment of all other available alternatives has been made,” another statement that is not true (see the discussion of this issue below). Again, there is no protective safekeeping housing at Memorial Unit, so it is far from clear why this statement is made, or why it was considered in assessing Memorial Unit compliance with this standard by the auditor.

In this same discussion, the auditor states that an incarcerated person will be held in “involuntary safekeeping while completing the assessment.” Since TDCJ appears to claim that all safekeeping is voluntary (even though it is not), this statement has little meaning in terms of TDCJ housing classification, and it is meaningless for Memorial Unit since they have no safekeeping housing. Although in the last sentence of the PREA § 115.43(a) discussion, the auditor more accurately identifies protective custody for risk of victimization as “segregation,” the more accurate term would appear to be restrictive housing for Inmate Protection Investigation. The confused mix of terms used in this discussion make it impossible to assess what actually occurs at Memorial Unit in relation to PREA § 115.43(a) compliance and use of PREA “involuntary segregated housing.”

In the discussion of PREA § 115.43(b), the auditor again appears to only assess compliance with this standard for TDCJ’s “protective safekeeping,” which is an invalid assessment for housing that does not even exist at Memorial Unit.

Also in the discussion of PREA § 115.43(b), the auditor claims to have correctly requested what restrictions are placed on a person “placed in segregated housing for protection from sexual abuse or after having alleged sexual abuse,” but reports a response from a “Facility Staff Member” that only addressed safekeeping (and provided false information about safekeeping), a housing designation that does not exist at Memorial Unit.

Further, in the discussion of PREA § 115.43(b), the auditor states that the facility reported that “there were no [incarcerated persons] at risk of sexual victimization being assigned to involuntary segregated housing.” Based on the standard procedure system-wide of automatically placing persons reporting any type of sexual violence in lockup or restrictive housing for Inmate Protection Investigation, it seems highly unlikely that not one of the 60 (or 61, depending on which numbers one believes in this audit report) investigations of sexual abuse and sexual harassment did not result in an involuntary placement in protective custody. This probably is parroting staff statements manipulating information about PREA “protective custody” to refer to either safekeeping or protective safekeeping housing, neither of which even



exist at Memorial Unit. The auditor is not conducting appropriate verification of the misrepresentations staff are providing.

Because the assessments of PREA §§ 115.43(a) and 115.43(b) are inaccurate, the assessment of PREA § 115.43(c) cannot be considered accurate. In the discussion of PREA § 115.43(d), the auditor assesses only “a protective safekeeping housing assignment,” not an involuntary protective custody assignment as per this protocol. Once again, protective safekeeping housing does not exist at Memorial Unit. Due to the numerous inaccuracies in the assessment of PREA § 115.43, it cannot be determined if Memorial Unit meets compliance with this standard or not.

### *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<sup>5</sup> also does not provide definitions for these terms. In discussing this section, the Final Rule appears to use “segregated housing” and “involuntary segregated housing” to refer somewhat more generally to any type of separate housing for safety reasons, and “protective custody” and “involuntary protective custody” as separate housing for the purpose of providing immediate safety.<sup>6</sup> 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

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

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



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 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.”<sup>7</sup> 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.<sup>8</sup> In one example, TPI advocated for a transgender woman who was denied education opportunities due to her safekeeping status, even though she tried for several years to be released from safekeeping status. When TPI filed a complaint, we were told that her safekeeping status did not prevent her from entering the education program, and that she had been accepted for the program, but could not access it because there was no housing for her on any unit where that program was offered. The more complete explanation was that there was no *safekeeping* housing on the units where the program was offered. Perhaps in a warped sense of logic it may be said that safekeeping was not the reason she was denied, but it is entirely disingenuous to claim that safekeeping status did not prevent her from entering the program. Her safekeeping status was finally relinquished after our complaint, and she entered the program. That was the only impediment to her participation in that program. TDCJ's insistence that "housing availability" instead of the safekeeping designation kept her from the program should be considered deliberate manipulation to avoid PREA compliance.

On paper, safekeeping persons may be able to access all the benefits of general population, but in practice the safekeeping population is often segregated in abusive ways at meals, recreation, and other unit movement and programs; and in some cases they are kept from some or all work assignments, this apparently being unit-level practice at some units, depending on the administration of the moment. These prohibitions are sometimes used to harass persons on safekeeping, who are often identified as "snitches" and "punks" and other derogatory terms. Safekeeping persons are denied access to educational opportunities, training programs, and other benefits, sometimes by claiming the denial is not because of the safekeeping designation but for other reasons such as housing, as noted above. On many units, safekeeping housing is on what is called 12 Building, the old administrative segregation building that has limited 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.

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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.



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 (or restrictive housing) 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).<sup>9</sup> 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.

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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.





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 § 115.62, Agency Protection Duties***

PREA § 115.62 states simply that “[w]hen an agency learns that an [incarcerated person] is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the inmate.” That is the standard in its entirety.

In the discussion of PREA § 115.62, the auditor states that persons “at high risk for sexual victimization shall not be placed in protective safekeeping unless an assessment of all other available alternatives has been made,” a facile generalization that does not address this standard and appears to again attempt to infer that the only PREA protective custody in TDCJ is protective safekeeping.

The auditor continues to provide misleading information for this standard by stating assignments to “protective safekeeping,” which again does not exist at Memorial Unit, will document safety concerns and the lack of alternatives. The auditor amazingly states that, in spite of 60 (or 61, depending on which part of the report one believes) reports of sexual abuse and sexual harassment, not one of those persons was “at risk of imminent sexual abuse.” It would be good to know how many of the 50 reports of sexual abuse occurred after reports to staff about endangerment were ignored.

Although the auditor does eventually provide information that appears to support compliance with this standard, much disinformation is provided here as well.

***PREA § 115.68, Post-Allegation Protective Custody***

As with the discussion under PREA §§ 115.42 and 115.43, TDCJ engages in egregious manipulation of what constitutes “protective custody” by making misleading statements about what “protective safekeeping” and “safekeeping designation” are. Also, in TPI’s experience, TDCJ automatically places all or almost all persons who report sexual violence in involuntary protective custody (restricted housing for Inmate Protection Investigation, or IPI) regardless of whether there are alternatives to such placement or not.

In the discussion of this standard, the auditor refers to “Protective Management,” a term used nowhere else in this report and not seen before by staff at TPI. It cannot be determined if this is meant to refer to “protective safekeeping,” which the auditor used elsewhere in the discussion of this standard, or something else.

Regardless of what term was used or what actual housing designation it refers to, the auditor accepted claims that “during the twelve months prior to the audit, the agency reported no . . .



[incarcerated persons were] placed in segregated housing due to risk of sexual victimization” as a response to NOT sexual victimization but post-allegation treatment. This appears to mean that not one of the 60 (or 61, depending on which data in this report is correct) allegations and investigations of sexual abuse and sexual harassment ever resulted in a post-allegation move to restrictive housing for IPI, in spite of staff repeatedly confirming in response discussions that that is what would be done.

In addition, the auditor parrots a false statement from the Memorial Unit warden that incarcerated persons “who have made an allegation of sexual abuse and have stated that they are in fear for their safety will be placed in segregated housing (Safekeeping), either voluntarily or involuntarily, on a temporary basis until a review can be conducted to verify the extent of the danger.” This is not how safekeeping works (it can only be approved by the State Classification Committee, a process that takes from several days to several weeks), Memorial Unit has no safekeeping housing, and safekeeping is not a “temporary” assignment.

It is not clear what the auditor was assessing in this compliance statement, so it cannot be determined if Memorial Unit is in compliance with PREA § 115.68 or not.

#### ***PREA § 115.72, Evidentiary Standards for Administrative Investigations***

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.

Although the percent of substantiated reports of sexual violence is higher than at many TDCJ facilities, it is still difficult to understand why anyone would consider a claim that the preponderance of evidence standard was truthfully stated when out of either 50 or 51 reports of sexual abuse, only 6 had a greater than 50/50 chance of occurring. For 44 or 45 investigations to find that they don’t even have a coin toss’s chance of being truthful, there appears to be at least some manipulation of the evidence, 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 Memorial Unit, the auditor noted that for allegations against staff, about 17% of 29 or 30 sexual abuse allegations were substantiated, 0% of sexual harassment allegations were substantiated, and voyeurism allegations were not reported.<sup>10</sup> For allegations against other incarcerated persons, 5% of 21 allegations of sexual abuse were substantiated, and 0% of 8 allegations of sexual harassment were substantiated.

Regardless of one's concerns about possible false reporting, these 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 surprising that this data is not a red flag for an auditor and does not warrant additional comment under the discussion of this standard. That these numbers were accepted blindly indicates an issue with the audit. Due to what can be seen from this report, it appears unlikely that Memorial Unit should be assessed as being compliant with the PREA § 115.72 standard.

#### ***PREA § 115.86, Sexual Abuse Incident Reviews***

PREA § 115.86(a) states that Memorial Unit "shall conduct a sexual abuse incident review at the conclusion of every sexual abuse investigation . . . unless the allegation has been determined to be unfounded," and PREA § 115.86(b) states that the "review shall ordinarily occur within 30 days of the conclusion of the investigation."

Audit entry 95 of this report documents that out of a total—here—of 51 investigations of sexual abuse, 20 were deemed "unsubstantiated" and 6 were substantiated, indicating 26 incident reviews should have been conducted. However, in the discussion of PREA § 115.86(b), the auditor states that only "twenty-three criminal/administrative investigations of alleged sexual abuse were completed at the facility and were followed by a sexual abuse incident review within 30 days." No additional incident reviews were noted after 30 days.

Although this statement documents that Memorial Unit did not comply with PREA § 115.86, and that no sexual abuse incident review was conducted for at least three cases, the auditor falsely states that "a sexual abuse incident review was completed for each closed investigation."

Based on this information, it must be concluded that Memorial Unit is not compliant with PREA § 115.86.

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10. Audit entry 95 documents 5 allegations were substantiated, 7 unsubstantiated, and 18 were unfounded, for a total of 30 investigations. However, audit entry 92 indicates there were only 29 investigations. It is not possible to know which figures are correct.



### *PREA § 115.87, Data Collection*

Based on the data inconsistencies presented in this report, it cannot be determined that Memorial Unit meets its obligations under PREA § 115.87 to “collect accurate, uniform data for every allegation of sexual abuse.”

### **Conclusion**

TPI has documented a total of 79 incidents of violence against persons housed at Memorial Unit, including 29 that occurred in the past 12 months. Of the total documented incidents, 18 involved noncompliance with some element of the PREA standards, with 1 PREA noncompliance issue documented in the last 12 months, and 3 in the last 36 months, so approximately since the last PREA audit.<sup>11</sup> Because Memorial Unit is an older unit and is not generally considered to meet the PREA compliance requirements for housing transgender persons, out data from Memorial Unit is limited. The data presented in this letter 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 at Memorial Unit.

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

- **Audit entry 10**, the auditor did not contact sufficient community-based organizations and advocates, as they are required to do.
- **Audit entry 47**, the auditor falsely states that 0 persons had ever been placed in segregated housing or isolation for risk of sexual victimization at Memorial Unit, due to a misrepresentation of such protective custody.
- **Audit entry 58**, the auditor documents a failure to conduct the minimum number of 20 targeted interviews, in spite of the availability of persons meeting minimum targeted numbers. Based on information throughout the report, the auditor also appears to have failed to conduct the minimum number of 40 total interviews.
- **Audit entry 67**, the auditor states the minimum 4 interviews with persons who reported sexual abuse in the facility were conducted, but statements throughout the report indicate one refused to provide any relevant information for the target topic. Several other persons meeting this target criterion were available and should have been interviewed.

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11. 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](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](https://tpride.org/projects_prisondata/prea.php)).



- **Audit entry 69**, the auditor failed to interview the minimum 2 persons placed in segregated housing or isolation due to risk of sexual victimization due to a misrepresentation of such protective custody.
- Audit entry 92 through 97, the auditor provides inaccurate and conflicting data concerning sexual violence investigations and outcomes.

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

- PREA § 115.15: Due to the misrepresentation of the genders of persons housed at Memorial Unit, the auditor failed to appropriately assess compliance with this standard, and it cannot be determined if Memorial is within compliance or not.
- PREA § 115.21: Due to only 10 out of 50 allegations of sexual abuse including forensic evidence collection, as documented in this report, it appears that Memorial Unit is not compliant with this standard.
- PREA § 115.42: Due to multiple discrepancies and inconsistencies in the audit of compliance with this standard, it cannot be determined from this audit if Memorial Unit meets compliance with this standard or not.
- PREA § 115.43: Due to the numerous inaccuracies in the assessment of this standard, it cannot be determined if Memorial Unit meets compliance or not.
- PREA § 115.68: Due to the failure of the auditor to address compliance with this standard in the report, it cannot be determined if Memorial Unit meets compliance with this standard or not.
- PREA § 115.72: Based on the evidence presented in this report, it appears unlikely that Memorial Unit meets compliance with this standard.
- PREA § 115.86: Based on the evidence presented in this report, it must be concluded that Memorial Unit is not compliant with this standard.

TPI requests that the following deficiencies be addressed:

- TPI requests that Memorial Unit be required to conduct a subsequent audit to address deficiencies in the audit discussed in this letter.
- TPI requests that auditor Lynni O'Haver be investigated for failure to comply with PREA audit methodology requirements and failure to meet the requirements of the PREA Auditor Certification Agreement.
- TPI requests that this audit of Memorial Unit be considered not compliant for the purposes of the governor's compliance certification.



- TPI requests that all contracts for audits conducted through Corrections Consulting Services, LLC, be investigated for potential conflicts of interest.
- TPI requests that the onsite portion of audits by auditor Lynni O’Haver be monitored for failure to allow adequate time for the conduct of a competent audit appropriate to the facility size.
- TPI requests that auditor Lynni O’Haver be required to complete training in the use of first-person language, and gender-inclusive pronouns and other personal references.
- TPI requests that the audit history of auditor Lynni O’Haver be reviewed for bias in favor of prison operators due to the dearth of noncompliance findings (based on our brief research, not one noncompliance issue was identified) at at facilities between at least September 2022 and today’s date.
- TPI requests that audit reports for Memorial Unit, and for all units in TDCJ, be required to accurately state the genders of persons housed there at the time of the onsite portion of the audit, not simply repeat abusive misgendering by administration as simply “male,” “male only,” “female,” or “female only.”
- TPI requests that the auditor be required to follow PREA § 115.401(o) and contact each entity that may have significant information about Memorial Unit, including TPI’s publicly available documentation and PREA compliance issues at Memorial Unit.
- TPI requests that the auditor be required to conduct the minimum number of required interviews for Memorial Unit, as per the Auditor Handbook, and be required to be clear about how many incarcerated persons were actually interviewed for audits.
- TPI requests that the auditor provide accurate data for the numbers of sexual abuse and sexual harassment investigations and outcomes, or that Memorial Unit be found noncompliant with PREA standards requiring accurate data collection.
- TPI requests that Memorial Unit be assessed for compliance with PREA § 115.15 according to the actual genders of persons housed at Memorial, not the inappropriate assessment of genders presented in this audit report.
- TPI requests that Memorial Unit be assessed for actual compliance with PREA § 115.21 since it appears that only about 20% of the survivors alleging sexual abuse are being allowed access to forensic medical examinations. Based on the information in this audit report, it appears that Memorial Unit is not compliant with this standard, in spite of the auditor’s claim of compliance.
- TPI requests that Memorial Unit be reassessed for its actual use of investigative practices and use of evidentiary standards instead of it’s claims of compliance that are directly contradicted by the low number of substantiated allegations of sexual abuse and sexual harassment. This concerns compliance with PREA §§ 115.34, 115.71, 115.72, and possibly other standards.



- TPI requests that the audit of Memorial Unit, and all PREA audits, include consideration into whether screening information is appropriately collected and used for gender nonconforming persons under PREA §§ 115.41 and 115.42.
- TPI requests that Memorial Unit be monitored for abusive practices in the collection and use of screening data, and particularly in the provision of separate showers for transgender persons. This concerns compliance with PREA § 115.42 and other standards.
- TPI requests that Memorial Unit be reassessed for the actual use of segregated housing and protective custody rather than assessed on the misrepresentation of these designations, as discussed in this report concerning compliance with PREA §§ 115.43, 115.68, and possibly other standards.
- TPI requests that Memorial Unit be reassessed for compliance with PREA § 115.86 due to information provided in this audit report that Memorial Unit was not in compliance with this standard, in spite of the auditor's claim of compliance.

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

Sincerely,

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

cc: Department of Justice, PREA Management Office  
TDCJ CEO Bryan Collier  
TDCJ PREA Ombudsman  
Memorial Unit Senior Warden Bridgette Hays  
Memorial Unit PREA Manager Tia Bey  
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