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

June 21, 2024

re: auditor noncompliance with audit requirements, Lewis 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) Lewis Unit conducted by auditor Mark McCorkle and Corrections Consulting Services, LLC, formerly PREA Auditors of America. TPI has been working with incarcerated persons since 2013, mainly trans and queer persons in the Texas prison system.[1] We believe that for a number of reasons this audit fails to meet the spirit or letter of audit requirements.

The onsite audit was conducted May 8 through 10, 2024. The final audit report was submitted May 23, 2024, and it was posted publicly on or about June 18, 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.

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

# Contents

## TPI Data for Lewis Unit

TPI has documented a total of 180 incidents of violence against persons housed at Lewis Unit, including 5 that occurred in the past 12 months.[2] Of the total documented incidents, 53 involved noncompliance with some element of the PREA standards, with 1 PREA noncompliance issue documented in the last 12 months, and 29 in the last 36 months, so approximately since the last PREA audit.[3] The data presented in this letter is not comprehensive and only encompasses what is reported to TPI, so it should be considered only a small portion of the incidents of violence, including sexual violence, that is actually occurring at Lewis Unit. This letter should also not be considered a complete inventory of PREA deficiencies, but an itemization and discussion of a few of the problems we have been able to identify with operations at, and the audit of, Lewis Unit.

## 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:

- The auditor appears to have conflicts of interest.
- The audit appears to have been completed too quickly to allow sufficient time for a competent audit. This is reflected in problems with the audit and audit document.
- The auditor found that 8 standards were exceeded without sufficient support for such.
- The auditor found no corrective actions were needed, in spite of information provided in the audit report indicating noncompliance.
- The auditor falsely stated that the population only consists of "males" when in fact the population consists of cisgender males, transgender females, and other persons who may not belong to either of those two populations.
- **Audit entry 10:** The auditor failed to contact sufficient community-based organizations.
- **Audit entry 47:** The auditor states that 0 persons housed at Lewis Unit had ever been placed in segregated housing for risk of sexual victimization, which is false.
- **Audit entry 67:** The Auditor Handbooks requires a minimum of 4 persons who reported sexual abuse in the facility to be interviewed, if available. Audit entry 45 states that there

2. TPI notes that TDCJ has engaged in gross negligence in correspondence interference since about July 2023 due to mismanagement of the agency's efforts to transition to digital mail, and our communications have fallen off substantially during this time. It is highly likely that incidents were reported to us via correspondence that was never delivered. So far, we have formally documented nearly 150 incidents of correspondence interference, and have many other reports of interference that lacked enough detail to formally document.
3. These data are all available at the Trans Pride Initiative web site. General information and all incidents of violence are available via our Prison Data Explorer (https://tpride.org/projects_prisondata/index.php), and specific PREA related data for each facility is available via our auditor data tool (https://tpride.org/projects_prisondata/prea.php).

were 32 persons meeting this target at the unit during the on-site audit, but the auditor only interviewed 2 of those persons. Thus this audit did not meet minimum requirements for this target.

- **Audit entry 68:** The Auditor Handbook requires a minimum of 3 persons who reported prior sexual victimization to be interviewed, if available. Audit entry 46 indicates there were 50 persons meeting this target at the unit on the first day of the on-site audit, but the auditor only interviewed 2. Thus the audit did not meet the minimum requirements for this target.
- **Audit entry 69:** The Auditor Handbook requires a minimum of 2 person who have ever been placed in segregated housing or isolation for risk of sexual victimization to be interviewed, if available. Audit entry 47, as well as other text in the audit report, indicates 0 persons at the unit met this target. It is not clear how 2 of 0 persons were interviewed, or if this is acknowledgment that audit entry 47 was a false statement.

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 § 115.13:** Staff shortages at Lewis Unit indicate that the facility may not realistically be considered to meet compliance with this standard, and certainly indicate the facility does not exceed the standard, as claimed by this auditor.
- **PREA § 115.15:** Failure by the auditor to appropriately assess compliance with this standard in terms of cross-gender searches involving transgender persons mean the audit is deficient in the assessment of this standard, and it cannot be determined if Lewis Unit does or does not meet compliance with this standard.
- **PREA § 115.21:** Per the auditor, only 6 of 32 persons alleging sexual abuse were provided SANE exams, and insufficient explanation was provided for this very low rate of forensic evidence collection. Even if allowing for the lower number of 18 reports of sexual abuse being provided within a time period that allows for evidence collection (presumable 120 hours), 6 SANE exams is still only 1 in 3, an abysmal record. Based on this information, it appears that Lewis Unit does not comply with this standard, and certainly does not warrant the "exceeds this standard" claim of the auditor.
- **PREA § 115.31:** Based on a report to TPI during the audit period, past reporting of staff issues concerning the treatment of LGBTI persons at Lewis Unit, and the lack of any information indicating extraordinary measures related to training, TPI feels that training at Lewis Unit certainly does not warrant the "exceeds this standard" claim of the auditor, and that based on information provided in this audit report, it cannot be determined whether or not Lewis Unit meets this standard.
- **PREA § 115.41:** Based on past experience with issues related to LGBTI persons housed at Lewis Unit, TPI asserts that Lewis Unit does not warrant the auditor's claim that the

facility "exceeds this standard," and in fact it cannot be determined based on information provided whether or not Lewis Unit meets this standard.

- **PREA § 115.42:** Based on past reports from persons housed at Lewis Unit, as well as our understanding of TDCJ practices, TPI asserts that it cannot be determined whether or not Lewis Unit meets this standard or not.
- **PREA § 115.43:** Based on misleading and false information provided by the auditor concerning the use of PREA protective custody at Lewis Unit and throughout TDCJ, it cannot be determined from this audit report whether or not Lewis Unit meets this standard.
- **PREA § 115.51:** Based on information provided in this report that one person would not report sexual abuse to anyone, and the auditor's failure to follow up on that statement—especially as the auditor claims the facility exceeds the standard concerning education of incarcerated persons in reporting sexual violence—TPI asserts that it cannot be determined from this audit report whether or not Lewis Unit meets this standard.
- **PREA § 115.52:** Concerning the provision that third-party assistance be permitted, TPI has documented interference with third-party reporting at Lewis Unit. TPI asserts that it cannot be determined from this audit report whether or not Lewis Unit meets this standard.
- **PREA § 115.53:** Based on the auditor's own findings that 2 persons "had no confidence that any conversation would be confidential," TPI asserts that it cannot be determined from this audit report whether or not Lewis Unit meets this standard.
- **PREA § 115.54:** Based on the issues related to third-party communication and reporting noted for PREA §§ 115.52 and 115.53, it seems unlikely that Lewis Unit would be fully compliant with this standard, and with no description from the auditor of any exceptional compliance measures, it is not clear why the auditor claimed the facility "exceeded this standard." Instead, TPI asserts that it cannot be determined from this audit report whether or not Lewis Unit is in compliance with this standard.
- **PREA § 115.61:** Based on reports to TPI that indicate Lewis Unit staff do not fully comply with reporting duties. The auditor provides no support beyond staff claims that they follow policy, so based on our information, TPI asserts that it cannot be determined from this audit report whether or not Lewis Unit meets this standard.
- **PREA § 115.62:** With 45 documented allegations of sexual abuse and sexual harassment during the 12 months prior to the on-site audit, Lewis Unit experienced nearly one documented incident of sexual violence every week, yet not one person was ever in that time "identified as being at imminent risk for sexual victimization." TPI asserts that based on this information, Lewis Unit is highly unlikely to be complaint with this standard.

- **PREA § 115.64:** The auditor's discussion of this standard, particularly in relation to the dearth of SANE exams, certainly does not indicate a finding that Lewis Unit exceeds this standard was warranted, and TPI asserts that there are legitimate questions whether the facility even meets this standard.
- **PREA § 115.67:** TPI has documented retaliation at Lewis Unit only a few months outside the audit period, while the auditor relies primarily on staff claims of compliance. TPI asserts that there is not enough information provided in this audit report to determine whether or not Lewis Unit is compliant with this standard.
- **PREA § 115.68:** For the reasons discussed under PREA § 115.43, TPI asserts that it cannot be determined whether or not Lewis Unit complies with this standard.
- **PREA § 115.72:** Based on the fact that out of 45 allegations of sexual abuse and sexual harassment, only 3 were determined to have a greater than 50/50 chance of having occurred, TPI asserts that the preponderance of evidence cannot be the evidentiary standard used at Lewis Unit. TPI assets that Lewis Unit does not meet this standard.
- **PREA § 115.73:** Based on the auditor's own statement that only 24 notifications were provided for 32 allegations for which administrative decisions were made, TPI asserts that based on information in this audit report, Lewis Unit does not comply with this standard.[4]
- **PREA § 115.86:** The auditor reports that only 22 of 24 required incident reviews were completed within 30 days, which means Lewis Unit is not in compliance with this standard.

## Request for Action

TPI requests that the following actions be taken:

- This audit report should be considered deficient, and not be considered to support a state submission for PREA compliance for the purpose of PREA § 115.501 certification of compliance.
- Lewis Unit should be required to conduct a subsequent audit to address deficiencies in the audit discussed in this letter.
- Conflict of interest issues with this auditor and the auditor employer should be addressed.
- The unit population should be stated correctly for PREA purposes.
- The auditor should follow PREA § 115.401(o) and contact each entity that may have significant information about Lewis Unit, to include consulting TPI's publicly available documentation and PREA compliance issues at Lewis Unit.

4. The auditor also claims in the PREA § 115.73(e) discussion that 38 investigations were done and 38 decisions reported, but what these numbers are referring to cannot be determined from this report.

- The auditor should conduct the minimum number of required interviews for Lewis Unit, as per the Auditor Handbook.
- Lewis Unit should be reassessed for actual compliance with appropriate staffing per the PREA § 115.13 standard.
- Lewis Unit should be reassessed for actual compliance with cross-gender searches as per PREA § 115.15.
- Lewis Unit should be reassessed for compliance with PREA §§ 115.21 and 115.64 given the fact that out of 32 allegations of sexual abuse, at least 18 of which were made within 120 hours, only 6 SANE exams were completed.
- Lewis Unit should be reassessed for compliance with PREA §§ 115.31, 115.41, 115.42, 115.51, 115.52, 115.54, 115.61, and 115.67 due to evidence TPI has provided that contradict auditor assertions, which may indicate bias on the part of the auditor in favor of Lewis Unit due to conflict of interest.
- Lewis Unit should be reassessed for compliance with PREA §§ 115.43 and 115.68 due to the misrepresentation of what constitutes PREA protective custody in the TDCJ prison system.
- Lewis Unit should be reassessed for compliance with PREA § 115.53 based on the auditor's failure to follow up on findings from two interviews that communications under this standard are not confidential.
- Lewis Unit should be reassessed for compliance with PREA § 115.62 due to information provided in the audit report that appropriate protection measures are not being taken.
- Lewis Unit should be reassessed for compliance with PREA § 115.72 based on the fact that low rates of substantiation documented in this audit report indicate a preponderance of evidence is not the standard being used.
- Lewis Unit should be reassessed for compliance with PREA § 115.73 because the auditor's own statements indicate only 24 notifications were made for 32 allegations for which administrative decisions were made.
- Lewis Unit should be reassessed for compliance with PREA § 115.86 because the auditor's own statements indicate only 22 of 24 required incident reviews were completed within 30 days.

## 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 was only involved in PREA audits, and as such auditors may have been in

compliance with PREA § 115.402 because presumably the auditor's employer, from which the auditor receives direct benefits, had not "received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within the three years." On it's web site, CCS now lists services such as "accreditation support," "policy and procedure review," "security audits," "staff training," and "technology integration" in addition to "PREA auditing." Thus it is obvious that CCS is providing services that may be considered a conflict of interest and activities that may include an auditor auditing their own work or their employer's work. Such overlap may constitute a conflict of interest for auditors it employs or contracts with, and CCS 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 it's audits find full compliance for current and future opportunities. TPI feels it is highly unlikely that a conflict of interest does not exist.[5]

Additionally, the auditor was employed by Los Angeles County in several incarceration roles. TPI believes any current or recent connection with a jail or 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 jail and prison operations, TPI believes that auditors should be barred from receiving any financial compensation directly or indirectly from any prison operator or associated agency, past or present, due to this potential conflict of interest. Additionally, audit funding must be separate from the system being audited to avoid this conflict of interest.

Although the Auditor Handbook states that auditors are personally accountable in such situations, the opportunity for conflicts of interest in this case are too great to be ignored. The Auditor Handbook states that

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

In this specific audit report, there are a number of auditor comments included in the final report, apparently by mistake. Some of these are obviously questions from someone reviewing

5. TPI does not currently have the means of determining the percentage of full compliance audits conducted under contract with CCS, but recent research into one auditor, Lynni O'Haver, indicates that Ms. O'Haver has not identified a single item requiring corrective action at a Texas facility. We would suggest the PREA Resource Center publish online a means of looking up audit result summaries (including the number of standards exceeded, met, and requiring corrective actions) by auditor and auditor employer in the interest of transparency concerning potential auditor and auditor employer integrity.

the audit, others indicate the auditor was asking someone how to complete certain items. This indicates the auditor had input from probably staff at CCS, again indicating potential for conflicts of interest.

Such potential for conflicts of interest do not engender public trust, but instead strongly indicate a pay-for-compliance service that is focused on profit and easy compliance, 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 May 8 through 10, 2024.

TPI notes that for a facility with more than 1,000 persons, 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. Thus, TPI feels this audit probably did not allow sufficient time to be conducted with competency.

### 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 approximately 270 times by the auditor. 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. We want to recognize that this audit report does appear to comply with the instructions to use gender-inclusive pronouns.

The auditor found that 8 standards were exceeded and 32 were met. None of the discussions of standards the auditor claim were exceeded included information that Lewis Unit goes beyond typical compliance measures, and some clearly indicated compliance was not met. One standard identified as being exceeded was PREA § 115.13, which claims Lewis Unit is staffed more than adequately in spite of long-term serious staff shortages at the facility. Training under PREA §§ 115.31 and 115.33 both received exceeded ratings, but nothing was cited to warrant such a rating. And PREA § 115.64 concerning staff responses was also given an "exceeded the standard" rating in spite of many apparent failures to follow proper evidence collection procedures, as evidence by the dearth of SANE exams.

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, and evidence of a conflict of interest.

We also feel it is important to point out that a review of PREA audits in the online PREA Audit directory shows 5 audits planned or completed by this auditor. The other audit with a final report available, for FCC Lompoc, also found that no corrective actions were required, and again that multiple standards were exceeded. The directory appears to only include audits conducted since September 2022. This auditor has been certified since late 2018, so TPI feels it would be important to know if this failure to identify any corrective actions continues into the past. Although only documented here for two facilities, this preliminary evidence of favoring and bias for prison operators and administration over the safety of incarcerated persons gives TPI cause to question whether any 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 Lewis Unit consists of "males," when in fact this is false. The Lewis Unit houses cisgender males, transgender females, and other persons who may not belong to either of those two populations. The Lewis 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 2 community-based organizations, which were:

- Just Detention International
- Texas Association Against Sexual Assault

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 Lewis Unit, and no reference to our data readily available online was made. For auditor convenience, that information can even be easily viewed and downloaded at our web page for auditors: https://tpride.org/projects_prisondata/ prea.php. Because TPI is well known to have relevant data for PREA audits, and because this data is readily available online, the failure to include data from TPI can only be viewed as deliberate omission by the auditor.

**Audit entry 45** states that there were 32 incarcerated persons who reported sexual abuse that occurred at Lewis Unit on the first day of the onsite audit. Although the Auditor Handbook states that 4 of these person should have been interviewed, **audit entry 67** indicates only 2 were interviewed.

**Audit entry 46** states that there were 50 incarcerated persons who reported prior sexual victimization during risk screening at Lewis Unit on the first day of the onsite audit. Although the Auditor Handbook states that 3 of these persons should have been interviewed, **audit entry 68** indicates that only 2 were interviewed.

**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 Lewis 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 Lewis Unit had ever been placed in segregated housing or isolation for risk of sexual victimization. By way of example, there were 45 investigations of sexual harassment and sexual abuse noted during the prior 12 months at Lewis Unit, and it is almost certain that every one of those persons was placed in segregated housing either due to risk of sexual victimization or as post-allegation protective custody, which

must follow the PREA § 115.43 standards. Yet, the auditor's discussion of PREA § 115.67 makes the near unbelievable claim that not one person had been "placed in segregated housing for risk of sexual victimization, or who have alleged sexual abuse" in the past 12 months (page 105). The issues with TDCJ manipulation of PREA protective custody will be discussed further under PREA § 115.43.

**Audit entry 48** provides no explanation as to why **Audit entry 47** was claimed to be 0, as should have been done.

**Audit entries 53-70** concern the numbers of random and targeted interviews with persons representing the various population characteristics at Lewis Unit. The Auditor Handbook is very specific that the minimum numbers provided in the handbook are "the absolute minimum number of persons confined in the facility that the auditor is required to interview during an audit." Failures to identify persons for target interviews and confirm unit data around target populations cast doubt on all claims (or acceptance of counts provided by the unit administrative staff) for all target populations.

**Audit entry 67** notes that 2 persons who reported sexual abuse in this facility 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 Lewis Unit should have been 4. **Audit entry 45** indicates there were 32 persons meeting this target at the unit during the on-site audit. No explanation for the failure to interview the minimum required for this target was provided. The auditor thus failed to conduct the minimum number of random interviews require for this audit.

**Audit entry 68** notes that 2 persons who disclosed prior 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 Lewis Unit should have been 3. **Audit entry 46** indicates there were 50 persons meeting this target at the unit during the on-site audit. No explanation for the failure to interview the minimum required for this target was provided. The auditor thus failed to conduct the minimum number of random interviews require for this audit.

**Audit entry 69** states that 2 persons who had ever been placed in segregated housing or isolation for risk of sexual victimization 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 Lewis Unit should have been 2. This meets the minimum requirement, but **audit entry 47** states that there were 0 persons at the unit meeting this target, so it is not clear how 2 of 0 persons were interviewed, why these 2 persons met the target when elsewhere in this report the auditor claims there were not meeting this criterion at the facility, or the different definitions of "segregated housing" that may have been used to report these contradictory data. Based on this inconsistency, it cannot be determined if the auditor failed to conduct the minimum number of random interviews require for this audit or not.

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 entries 92 through 97** provide data related to administrative and criminal investigations and outcomes of those investigations. The following summary is provided for reference.

**Audit entry 92** documents 32 allegations of sexual abuse were reported (21 involving abuse by other incarcerated person and 11 by staff), and that 32 administrative investigations were conducted. Fourteen of the allegations were also criminally investigated.

**Audit entry 93** documents 13 allegations of sexual harassment were reported (11 involving harassment by other incarcerated persons and 2 by staff), and that 13 administrative investigations were conducted.

**Audit entry 94** notes 10 investigations of sexual abuse by incarcerated persons and 1 investigation of staff sexual abuse were ongoing. The auditor did not note that the three investigations presumed to be completed were referred for prosecution, so apparently all three were closed without referral.

**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 32 allegations of sexual abuse by staff and other incarcerated persons. Per **audit entry 95,** administrative investigations found 2 substantiated, 22 unsubstantiated, and 8 unfounded. That is, 94% 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 6% 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 13 allegations of sexual harassment by staff and other incarcerated persons. Per **audit entry 97,** administrative investigations found 0 substantiated, 12 unsubstantiated, and 1 unfounded. That is, 100% of the allegations were found to have less than a 51% chance of having occurred. According to PREA § 115.72, the agency "shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated," yet not one of the allegations were found substantiated. This indicates a failure of the administrative investigations to adequately assess evidence in allegations of sexual harassment, and a failure of the auditor to identify this problem and pursue an explanation of what appears to be a failure to properly investigate allegations.

## PREA Compliance Assessment Issues

### *PREA § 115.11, Zero Tolerance of Sexual Abuse and Sexual Harassment*

PREA § 115.11 provides requirements that reflect the PREA goal of "zero tolerance of sexual abuse and sexual harassment" at the Lewis Unit and the agency overall through policy implementation and management. Policy is certainly essential to reaching such goals, but policy alone is inadequate, and how policy is implemented may even increase harm.

In TPI's experience, policy concerning protections for marginalized persons, as implemented by governmental agencies concerning law enforcement and the justice system, are commonly implemented in a manner that reinforces existing structural discrimination and harm. One very common example of how this works is when harmful practices are pointed out and the agency or responsible party states something to the effect "that does not happen because we have policy against it" or "because we have training against it." This excuse covers up and may even encourage violence such as sexual abuse and sexual harassment by providing a means of covering up such violence.

Similarly, claims that issues are "investigated," when it is clear the investigations have little or no merit due to the number of instances where allegations are dismissed, also function to cover up and may even encourage violence such as sexual abuse and sexual harassment by providing a means of simply ignoring such violence through improper investigations. Based on the data provided in **audit entries 95 through 97,** this certainly seems likely at Lewis Unit.

Due to our work in general at Lewis Unit, as well as the low percentage of substantiated allegations of sexual abuse and sexual harassment, TPI has doubts that this unit fully complies with PREA § 115.11.

### *PREA § 115.13, Supervision and Monitoring*

PREA § 115.13 requires the unit to maintain adequate staff to operate effectively and to "protect inmates against sexual abuse." TDCJ has long shown that they cannot hire or maintain adequate staffing levels at many of their units. A number of units in the system are operating at less than 50 percent security staff, some as low as 30 percent. TPI has received reports from a number of units, including many over the 12 months preceding this audit, that incarcerated persons may not even see a security staff person for hours at a time, and that one staff person may be the only assigned staff for an entire building or wing. Although positions may be filled during an audit, that may not be the case on days when the unit is not being audited.

In August of 2022, Lewis Unit was noted to be about 50% staffed for correctional officer positions, with 178 persons in those positions at that time. On May 4, 2023, an article about abusive placement of persons in holding cells for extended periods noted that "Gib Lewis had just over 50% of its fulltime 361 positions filled at the end of February," and this indicates little

had changed.[6] Today, TDCJ reports 241 total security employees (which includes correctional officers and others), so the number of staff does not appear to be substantially different, meaning the facility is probably about half staffed.

If the facility appeared more than half staffed, that may be because TDCJ manipulates auditors by making changes at a unit specifically for audits. In the documents concerning TDCJ's solicitation for a PREA auditor contract for Fiscal Year 2023, the agency stated that they did not want to reschedule PREA audits because they were scheduled "in conjunction with the unit's ACA audit."[7] There would be no reason for such objection unless extensive temporary changes were being made to meet audit requirements for the short term. The auditor even admitted that the warden and the PREA compliance manager "[b]oth stated that the facility suffers from staffing shortages" (pages 31 and 32). The auditor also stated that "[s]taff members, both security personnel, and non-security personnel were observed to be extremely active, moving about all areas of the various work environments. The same could be said in the housing units" (page 32). Further, the auditor states that "[i]t was clear that . . . resources from other facilities are routinely used to supplant Lewis Unit assigned staff" (page 33). These observations appear to be stated as a positive qualities, but they actually indicate a failure to adequately staff the facility and potential overwork and lack of consistency that may mean duties and responses to crises or emergencies, such as efforts to report sexual abuse or sexual harassment, are given inadequate attention.

The fact that this auditor claims—in spite of such persistent and extensive staffing issues—that Lewis Unit "exceeded this standard" indicates a failure to adequately audit Lewis Unit ability to meet PREA § 115.13. TPI asserts that any manipulation of actual staffing may indicate gross negligence in meeting staffing needs, and claiming that the facility exceeds this standard indicates a failure of due diligence on the part of the auditor to realistically audit staffing compliance overall.

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

The PREA standards state that Lewis 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.

6. Flahive, Paul. (May 4, 2023). Prisoners in cages doesn't violate policy because there is no policy, says Texas official. *Texas Public Radio.* Available at https://www.tpr.org/news/2023-05-04/prisoners-in-cages-doesnt-violate-policy-because-there-is-no-policy-says-texas-official.
7. See Solicitation ID IW117749, specifically Question 2 of the Addendum, available via the Electronic State Business Daily. Available at https://www.txsmartbuy.com/esbd/IW117749.

The auditor states that "the facility had zero cross-gender strip, or cross-gender visual body cavity searches of [incarcerated persons] in the past 12 months" (page 35). It is not clear whether that was because the auditor refused to recognize the gender of trans persons, as indicated by the statement that the facility only houses male persons, or because Lewis Unit actually complies with this standard. However, if cisgender males were conducting strip or visual body cavity searches of transgender females or nonbinary persons, that failed compliance.

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, and by extension the Department of Justice, 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. That the auditor stated in this report "the Lewis Unit does not house female [incarcerated persons]" (page 35) indicates a likely false statement by the auditor and failure to provide due diligence in the interests of an adequate audit.

The failure by the auditor to document that the unit houses transgender females and nonbinary transgender persons also results in deficient assessment of PREA § 115.15(c), requiring that the facility document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female incarcerated persons. Once again, the auditor makes what is almost certainly a false statement by claiming that "the facility does not house female [incarcerated persons]," again erasing the existence of transgender females (page 36).

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,"[8] the refusal to acknowledge the gender of transgender

8. 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

persons also results in a failure to meet this standard. The auditor failed entirely to even consider that female and nonbinary transgender persons may have problems concerning staff of a different gender viewing them in these instances, once more erasing the existence of transgender persons.

Based on the deficiencies in the auditing of this standard, it is not possible to determine if Lewis Unit meets or does not meet compliance with PREA § 115.15.

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

In the discussion of PREA § 115.21(c), the auditor states that 6 persons alleging sexual abuse were provided SANE exams, but **audit entry 92** indicates there were 32 allegations of sexual abuse during the preceding 12 months. That means fewer than 1 in 5 persons were provided SANE exams, an abysmal record. PREA § 115.21 is clear about this: "all victims of sexual abuse [shall be offered] access to forensic medical examinations." The discussion of PREA § 115.64 also notes that 18 of the 32 reports were made "within a time period that still allowed for the collection of physical evidence" (page 100), yet apparently SANE exams were only done and forensic evidence collected in one-third of those instances. No explanation is provided to justify the extremely low rate of proper investigative protocol for allegations of sexual abuse.

The auditor references policy OIG-7.13 as stating "all victims of a sexually related offense are entitled to have a Sexual Assault Program Advocate or other Victim's Representative present prior to being interviewed by law enforcement" (page 49), but fails to address what OIG-7.13 states about SANE exams.

As TPI understands, OIG-7.13 also states that staff will "determine if a forensic medical examination will be offered," but that is not mentioned by the auditor. 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. The auditor's comments in the review of this section and the apparent text of OIG-7.13 indicates that is not being done either at the agency level or at Lewis Unit, but instead staff are deciding whether to offer the survivor access to a forensic medical examination.[9]

Based on this information, it appears that Lewis Unit is not compliant with PREA § 115.21. This assessment absolutely does not in any way support the assertion by this auditor that Lewis Unit "exceeds this standard." To cite problematic performance as presented in this report and then

---

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.

9. TPI does not have access to policy OIG-7.13, we are reporting what we understand to be true. However, the version of SPPOM 05.01 that we have, dated July 2014, has the same statement in section 1.F.: "The OIG investigator will determine whether a forensic medical examination is required." This, too, is counter to PREA § 115.21.

claim the facility exceeds the standard indicates a serious deficiency in the assessment of compliance 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 harassment, appropriate responses to indications and reports of sexual abuse and sexual harassment, and professional communication.

During the audit period, TPI received a report from the parent of a transgender woman housed at Lewis unit, stating that on or about July 5, 2023, their daughter was fired from their suicide prevention work because she is trans. The report was that a ranking officer asked why they were letting "homosexuals" work in suicide prevention, and then falsely claimed that the transgender woman was under the influence during her work as a reason to fire her. The reported statement and action from staff certainly indicates a failure to adequately train staff in "[h]ow to communicate effectively and professionally" with LGBTI persons.

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

In the auditor's discussion of PREA § 115.53, the auditor states that 22 persons believed that no telephone conversations concerning sexual abuse or support services would be confidential, and that after the auditor defined "confidential," 20 persons changed their response. One can rightly wonder, if every person interviewed had such a misunderstanding about access to support services, why would this auditor claim that education programs for incarcerated persons exceeds expectations.

The auditor documents nothing that should be out of the ordinary for basic required training, and the auditor failed to discuss any failures to respectfully interact with LGBTI persons housed at Lewis Unit, which based on our past experience when we have been in communication with more people at Lewis Unit is a serious issue.

Based on this understanding of training at Lewis Unit, TPI asserts that it is not possible to determine whether or not Lewis Unit is compliant with PREA § 115.31, and that the claim by the auditor that the unit "exceeded this standard" is not supported by any legitimate evidence.

***PREA § 115.33, Incarcerated Persons Education***

In the auditor's discussion of PREA § 115.53, the auditor states that 22 incarcerated persons believed that no telephone conversations concerning sexual abuse and support services would be confidential, and that after the auditor defined "confidential," 20 persons changed their

response. One can rightly wonder, if every person interviewed had such a misunderstanding about access to support services, why would this auditor claim that education programs for incarcerated persons exceed expectations.

The auditor documents nothing beyond standard compliance related to education of incarcerated persons at Lewis Unit. TPI feels that the auditor's claim that Lewis Unit "exceeded this standard" should be considered evidence of bias and conflict of interest in this audit.

***PREA § 115.34, Specialized Training: Investigations***

TPI has little means of monitoring compliance with PREA § 115.34, which covers training in the conduct of sexual abuse investigations. However, the fact that so few incidents involving allegations of sexual abuse were substantiated indicates a problem with this training.

***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. Most of the auditor's discussion describes policy and aggregate compliance that appears to meet the standard. TPI notes one example that, although slightly older than 12 months, indicates problems following PREA § 115.41(g) when in March 2023, safe prisons staff told a transgender person that they could not be reassessed and identified as transgender (meaning in TDCJ, they could not have the TRGEN marker placed on their file) until after the person was transferred. That is not compliant with PREA § 115.41(g) or TDCJ policy, both of which indicate that new information should result in the unit of assignment making the change to the screening information.

TPI asserts that TDCJ PREA compliance policy excludes persons who identify as gender nonconforming and possibly nonbinary. According to the TDCJ Safe Prisons Plan and the PREA Standards, the term transgender refers to "a person whose gender identity (i.e., internal sense of feeling male or female,) is different from the person's assigned sex at birth." This implies an old definition of "transgender" that does not include nonconforming and nonbinary persons. PREA and the Safe Prisons Plan technically address this by including "gender nonconforming." The PREA Final Rule notes that:

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

The PREA Standards require under § 115.41(d) that screening for risk of sexual victimization shall consider several factors, including "(7) Whether the inmate **is or is perceived to be** gay, lesbian, bisexual, transgender, intersex, or **gender nonconforming**" (emphasis added). If TDCJ

risk screening markers include only LGBTI (actually for LGB persons), 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.

The auditor describes nothing whatsoever exceptional about the Lewis Unit's compliance with PREA § 115.41, yet claims that the facility "has exceeded this standard." Based on TPI's reading of this discussion in the audit report, we feel the auditor's assessment of exceeding the standard is in no way warranted, and that in fact it is not possible to determine based on this information whether or not Lewis Unit meets PREA § 115.41.

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

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

Concerning PREA § 115.42(c), TPI notes that based on reporting to us, we only have heard of a single transgender or intersex incarcerated person NOT housed according to their gender assigned at birth in TDCJ, and our information indicates that person has had genital surgery. Thus TDCJ appears to have, in practice, a blanket rule of making housing assignments for transgender and intersex persons based on genital configuration, not on a case-by-case basis.

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

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

is not in compliance with 115.42(f).[10] If both persons are transgender or intersex, such housing may comply with this standard if both persons housed in the cell agree that the housing arrangement is acceptable, but only for as long as both persons housed in the cell agree that the arrangement is acceptable.

TPI asserts that there is insufficient information from this auditor to determine whether or not Lewis Unit is in compliance with PREA § 115.42.

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

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

Under the discussion of PREA § 115.43(a), the auditor states that persons in TDCJ custody "at high risk for sexual victimization shall not be placed in protective safekeeping unless an assessment of all available alternatives has been made and it is determined there is no available alternative" (page 78). Facially true, this statement grossly misrepresents "protective safekeeping" as the only type of PREA protective custody in TDCJ. This misrepresentation is discussed more fully below, in the subsection on TDCJ manipulation of protective custody designations. It should be noted that Lewis Unit does not appear to include housing for persons designated for either safekeeping or protective safekeeping, but there are other types of housing at the facility that constitute PREA protective custody.

The auditor continues to misrepresent practice—or perhaps to parrot TDCJ's deliberate misrepresentation of the agency's use of protective custody—by stating that "no [incarcerated persons] have been placed in involuntary segregation for one to 24 hours for risk of sexual victimization" (page 78). This is almost certainly false under PREA § 115.43, and false for compliance with PREA § 115.68. In almost every case, anyone reporting an allegation of sexual abuse or sexual harassment will be placed in protective custody (or post-allegation protective custody), and many times that placement is over the objection of the person reporting. In fact, threats of being placed in lockup are used as a means of limiting reports of sexual violence.

Regardless of policy, reports to TPI indicate that placement in involuntary segregation due to immediate endangerment or after reporting sexual violence seldom considers any other options outside involuntary segregation. This practice in effect serves to punish persons for reporting endangerment and to discourage reporting. Concerning high risk of sexual victimization that is not imminent, TDCJ refuses safekeeping designation (see below for the definition of "safekeeping designation") too often, and in the assessment of alternatives nearly always claims a unit transfer will solve problems that persist across units.

The auditor goes on to state for PREA § 115.43(b) that staff who supervise segregated housing (presumably referring to the various types of restrictive housing used by TDCJ and available at Lewis Unit) "confirmed that no [incarcerated persons] in the previous 12 months had been

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

placed in involuntary segregated housing for this purpose" (page 78). It is not clear what they are referring to, but this almost certainly is false in both the letter and spirit of PREA § 115.43(b). That the auditor claimed there were no persons meeting this criterion for interviewing shows the auditor failed to do appropriate due diligence to verify staff false reporting. Note also that **audit entry 69** states that 2 persons were interviewed meeting this criterion. It is impossible to resolve such conflicts in this audit report.

For PREA § 115.43(c), the auditor again misrepresents practice (and here the misrepresentation is absolutely false) by stating that persons in TDCJ custody "shall be assigned to protective safekeeping only until an alternative means of separation from likely abusers is arranged, for no longer than 30 days" (page 79). "Protective safekeeping" in TDCJ, also identified as custody classification P6 and P7, is not a temporary assignment. This is discussed further below, in the subsection on TDCJ manipulation of protective custody designations. Although likely true that no persons on Lewis Unit were assigned to protective safekeeping (only about three facilities in the TDCJ system house P6/P7 designated persons, and the identity of those facilities is not publicly disclosed), that in no way assesses the use of protective custody under PREA. Once again, that the auditor claimed there were no persons meeting this criterion for interviewing shows the auditor failed to do appropriate due diligence to verify staff false reporting, and **audit entry 69,** once again, states that 2 persons were interviewed as meeting this criterion, an impossible to resolve contradiction.

Last, in the discussion of PREA § 115.43(d), the auditor continues to apparently parrot false statements by TDCJ staff, failing to do due diligence as expected for an audit, by discussing TDCJ "protective safekeeping" as the only housing meeting PREA "protective custody."

Based on the failure of the auditor to fully understand what constitutes PREA protective custody in TDCJ, it cannot be determined whether or not Lewis Unit meets the PREA § 115.43 standard.

*TDCJ Manipulation of "protective custody" designations*

PREA § 115.43 covers the separation or segregation of persons at high risk for sexual victimization, and the section uses several terms that provide opportunities for manipulation of the standard. These include "protective custody," "segregated housing," and "involuntary segregated housing." None of these are specifically defined in PREA § 115.5 general definitions, nor are definitions provided in the FAQ available online via the National PREA Resource Center. The PREA Final Rule[11] 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.[12] However, the discussion makes it clear that all these terms refer to separating the person from endangerment by placement in separate housing, and

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

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. This can be important for persons provided TDCJ "safekeeping designation" because in many cases, persons will initially agree and want the designation, but later wish to be released from safekeeping designation due to the limits on education, training, work, and program opportunities. Requests to be released from safekeeping designation are not always granted, and at that point, safekeeping becomes involuntary protective custody.

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 and possibly PREA § 115.68 purposes because all can be used to separate persons at risk of sexual victimization or after reporting sexual victimization.

**Protective safekeeping:** "Protective safekeeping" is defined in the TDCJ *Classification Plan* as being "for [incarcerated persons] who require the highest level of protection in a more controlled environment than other general population [persons], due to threats of harm by others or a high likelihood of victimization." This designation is more fully discussed in the *Protective Safekeeping Plan,* a document that is not made public and to which TPI does not have access. Protective safekeeping is also identified as custody levels P6 and P7, with P7 having more restrictions. We should point out that one way TDCJ makes this confusing can be seen in this definition, where they compare persons in protective safekeeping to "other general population" persons. This allows TDCJ to claim even protective safekeeping is not actually "segregation" because it is "general population." However, TDCJ protective safekeeping is very separate, and there are only about three units in the TDCJ system with housing designated for protective safekeeping.

This designation, based on reports from the one person with a P6 designation that we have been in contact with, is mainly used for persons who are politicians and other high-profile figures, persons with law enforcement history, and persons who have testified against powerful syndicates or cartels. This person did not mention anyone being in there due to a risk of sexual victimization, although there certainly could be. TDCJ protective safekeeping is absolutely separate from all other TDCJ populations, with no mixing outside P6 and P7. As far as TPI is aware, protective safekeeping is never recommended for only a risk of sexual victimization. We have never heard of any person being designated as "protective safekeeping" due to sexual violence. This contrasts with TDCJ responses to PREA auditors that tend to indicate this is the only "protective custody" meeting PREA § 115.43 requirements. All TDCJ classification

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."[13] 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.[14] In one example, TPI advocated for a transgender woman who was denied educational 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.

13. 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/.
14. Note that just as TDCJ confusingly describes "protective safekeeping" as "general population," safekeeping designation is also considered "general population" even though safekeeping housing is separate from general population because housing sections are designated for safekeeping persons only.

On paper, safekeeping persons may be able to access all the benefits of general population, but in practice the safekeeping population is often segregated in abusive ways at meals, recreation, and other unit movement and programs; and in some cases they are kept from some or all work assignments, this apparently being unit-level practice at some facilities, depending on the administration of the moment. Further, safekeeping housing is often in restrictive housing areas, meaning those housed there are subjected to the same disciplinary environment as persons in separate—or sometimes the same—sections or cell blocks who are there for disciplinary reasons.[15] These prohibitions and disciplinary conditions 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.

TDCJ also seems to claim that safekeeping designation is not "protective custody" under PREA § 115.43, and that only "protective safekeeping" is "protective custody." This claim is absolutely not consistent with practice or even the definition of the housing designation. TPI also knows of persons who were placed in safekeeping over their objections. And some who initially agreed to the designation may later see no need for continued safekeeping designation. Certainly a person's understanding of their own vulnerability and need for safekeeping can change over time. If the person on safekeeping does not agree they have a continuing need for safekeeping status, then they are in involuntary protective custody, and the documentation requirements under PREA must be met.

Likewise, TDCJ seems to claim that safekeeping as a whole 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 easily 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.

15. TPI has received a number of complaints that minimum level safekeeping persons and general population persons with a "cool bed score" are housed with medium and close custody persons in restrictive housing sections that are designated for safekeeping and for persons requiring temperature control. Texas Government Code 501.112 prohibits such mixed classifications "unless the structure of the cellblock or dormitory allows the physical separation of the different classifications." It appears this practice is considered not a violation of TGC 501.112 because persons housed in these areas are locked in their cells much of the time, and must be escorted when leaving the cell (standard restrictions in this type of housing, which are disciplinary in nature). This abusive treatment of safekeeping and cool bed persons appears to be surreptitious disciplinary actions meant to discourage requests for safekeeping and suits about excessive heat.

**Lockup for reporting sexual violence:** TDCJ seems to go to some effort to indicate only "protective safekeeping" (custody classification P6 and P7) constitutes "protective custody" or "involuntary protective custody" for PREA purposes, and TDCJ protective safekeeping can constitute PREA protective custody but appears to be seldom used for that in actual practice. As explained above, "safekeeping designation" is definitely "protective custody" under PREA when related to addressing risk for sexual violence, 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, if the report is not ignored, the person reporting is placed in a separate cell and isolated for an Inmate Protection Investigation (IPI).[16] This probably generates documentation that "all available alternatives" have been reviewed, but in practice it is an automatic action that is done even if the person reporting states definite reasons that they are in no further danger. TPI has even documented this happening when someone reported sexual abuse at a different unit and there was no conceivable danger at the current unit. In these cases, there is certainly no legitimate evaluation of "all available alternatives," regardless of staff claims or policy. IPI lockups also routinely last for more than 24 hours, and are often handled as disciplinary actions, with the person being strip searched and their property taken (this is often the consequence of being locked up immediately, without being allowed to pack their property, so ostensibly they are not "denied" their property, although that and property loss are effects of the action). Since IPI lockups are usually in the same areas as restrictive housing, they also routinely entail the same security restrictions that apply to those being held for disciplinary reasons. Such lockups may be called "restrictive housing," "transient housing," and other terms. Clearly such treatment discourages reports of sexual victimization.

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

### *PREA § 115.51, Incarcerated Persons Reporting*

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

16. 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.

In the auditor's discussion of PREA § 115.51(a), the auditor notes that one of the incarcerated persons that were randomly interviewed stated that they "would not report [sexual abuse] to anyone" apparently at Lewis Unit (page 82). Certainly this should be a red flag to any auditor, and should prompt followup questions about why the person would not report sexual violence, especially given that the auditor praised the facility for its efforts under PREA § 115.33 with an "exceeds standard" rating. Yet the auditor does not indicate any follow-up questions here or elsewhere in this report about why this person, and possibly others, would not report sexual violence.

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

Based on the failure to follow up with why at least one person at Lewis Unit would refuse to report sexual violence—and the high likelihood that if one person feels this way then others do as well—TPI asserts that it cannot be determined from this report whether or not Lewis Unit meets the PREA § 115.51 standard.

***PREA § 115.52, Exhaustion of Administrative Remedies***

PREA § 115.52 concerns filing complaints related to sexual violence.

The auditor states that third-party reports of sexual abuse "shall be processed as an emergency grievance" (page 87), but that does not address the PREA § 115.52(e)(1) provision that third parties "shall be permitted to assist [incarcerated persons] in filing requests . . . relating to allegations of sexual abuse." Although a few months before the audit period, TPI has documented a recent disturbing report that in August 2022, the warden "warned me about starting unnecessary trouble with outside people and organizations" in response to her report of sexual abuse, an apparent attempt to interfere with outside reporting of a then-recent sexual abuse she experienced. She reported that the warden also threatened that if she continued to report the issues to outside parties, "I will be miserable, and will have to change my lifestyle," an apparent reference to coercing her not to identify as trans in the system (TPI incident numbers 2022-00509 and 2022-00525).

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

Based on the information TPI has about past interference with outside reporting of sexual abuse, as well as the fact that the reported past interference noted above was from a person in

the top administration at Lewis Unit, TPI asserts that this audit did not adequately examine whether Lewis Unit does or does not comply with PREA § 115.52.

***PREA § 115.53, Access to Outside Confidential Support Services***

The auditor reports Lewis Unit staff apparently stated that if a person incarcerated at Lewis Unit "chooses to write to an outside agency, they place their written letter in a locked mailbox in the housing unit" (page 90). However, the interference reported above concerning PREA § 115.52 indicates such reporting may not be without interference, attempts at interference, and retaliation for such communications.

The auditor states that 20 of 22 persons believed no telephone conversations would be confidential, but after the auditor explained what "confidential" meant, 20 persons changed their response. This again begs the question of why the auditor would claim Lewis Unit exceeds the PREA PREA § 115.33 standard for education of incarcerated persons about the PREA standards.

The auditor also states that 2 of the persons "had no confidence that any conversation would be confidential," and thus conversations with outside support services would not remain confidential. A logical follow-up question would then be what had happened that caused those persons to make such statements, but the auditor appears to have not inquired further into this potential problem.

Based on what is presented in this audit report, TPI asserts that it cannot be determined whether or not Lewis Unit is in compliance with PREA § 115.53.

***PREA § 115.54, Third-Party Reporting***

The auditor states that third parties are encouraged to report sexual abuse and sexual harassment to the PREA Ombudsman Office or the "TDCJ Ombudsman Office" (page 92). This statement is inaccurate first for a small detail, that the ombudsman office is no longer organized under TDCJ but is under the Texas Board of Criminal Justice; and second because the Ombudsman Office is not the appropriate entity to which sexual violence should be reported, and they will redirect all such reports to the PREA Ombudsman.

In addition, as we have already established in our discussion of PREA § 115.52, there appears to be at least some interference with reporting to outside parties from upper administration at Lewis Unit.

The brief discussion of this standard offers absolutely nothing exceptional in way Lewis Unit staff attempt compliance here, and the mistakes in documenting unit compliance indicate nothing but a perfunctory checking of a box rather than actual audit level assessment, yet the auditor claims "that the facility has exceeded this standard." TPI asserts that nothing has been provided to show Lewis Unit exceeds the standard, and due to the report of interference

documented previously, it cannot be determined from this report whether or not Lewis Unit is in compliance with PREA § 115.54.

***PREA § 115.61, Staff and Agency Reporting Duties***

Although TPI does not have reports dating within the last 12 months of staff refusing to respond to reports of sexual violence, we do have reports that indicate problems in this area.

In April 2022, a transgender woman tried to report a sexual assault to a corrections officer at the pill window, but the guard refused to take any action and told her to go to her cell. TPI submitted a complaint about this refusal to report sexual abuse to the PREA Ombudsman Office, and staff there refused to provide any explanation or other indication that this issue was addressed (TPI incident report 2022-00277).

In May 2022, a transgender woman reported sexual abuse to a corrections officer in the unit Safe Prisons/PREA office. The safe prisons staff person asked the woman if she really wanted to report it because that could result in retaliation from the person she was reporting, indicated also that staff would not or could not protect her from retaliation as required under PREA § 115.67. The woman then asked the staff person if she reported a lesser issue, could they make sure she was transferred away from Lewis Unit, and the staff person said they would talk to the warden. The incarcerated woman thus, based on the unit safe prisons staff statements, only reported threats and that she was in fear for her life. After investigation, the warden stated her claim was unsubstantiated and she would be placed back in general population, with her abuser. The unit safe prisons staff then refused to let the woman report the sexual assault, and efforts to report the sexual violence to an assistant warden, mental health staff, ranking security staff, a medical nurse, and others also were ignored (TPI incidents 2022-00278, 2022-00279, 2022-00288, 2022-00280, and 2022-00281).

In August of 2022, a transgender woman stated that when she tried to report sexual abuse, she was told by "security and PREA officers" that "I'd never be able to prove what I said happened and it was a waste of time, mine and theirs, to even try."

The auditor's discussion of compliance with this standard simply states that staff claim they follow PREA standards and respond appropriately. Based on the reports to TPI from Lewis Unit, this does not appear to adequately audit compliance with the PREA § 115.61 standard.

TPI asserts that based on information in this audit and past reports we have received from Lewis Unit, it cannot be determined from this audit report whether or not Lewis Unit complies with PREA § 115.61.

***PREA § 115.62, Agency Protection Duties***

In the discussion of this standard, the auditor states that Lewis Unit Senior Warden said any incarcerated person "at substantial risk of imminent sexual abuse . . . would immediately be separated and secured" (page 96). The auditor also notes that 12 randomly selected staff persons

all responded the same. Yet—and in spite of 45 documented allegations of sexual harassment and sexual abuse in the last 12 months (and we note this does not include incidents not reported to staff, or which garnered no staff response)—there was not one single case "when an [incarcerated person] was identified as being at imminent risk for sexual victimization."

It seems incredulous that a facility—if it has a PREA compliant policy that is appropriately followed, a policy that includes an approach to ***preventing*** sexual violence, as required under PREA § 115.11, yet also saw at least 32 allegations of sexual abuse during the last 12 months—it seems to truly test the limits of credibility that such a unit did not receive even one indication of imminent risk warranting protective custody.

TPI assets that based on the information provided in this audit report, it is highly unlikely that there would not have been at some point sufficient risk of imminent sexual abuse to warrant immediate action to protect the person and prevent sexual violence. Based on this understanding, TPI asserts that Lewis Unit is not complaint with PREA § 115.62.

***PREA § 115.64, Staff First Responder Duties***

The auditor provides no indication that any exceptional actions are taken in relation to this standard, and there is some question as to why, out of 32 allegations of sexual abuse, between 18 of which were within approximately 120 hours and appropriate for conducting a SANE exam, only 6 persons participated in SANE exams. The claim that in 4 of the 18 incidents, either the survivor or abuser had taken some action to destroy some sort of evidence does not sufficiently explain why no SANE exam was done in those cases.

TPI asserts that based on the information available, there is insufficient indication that Lewis Unit complies with PREA § 115.64. It also should be considered certain that no evidence is provided in this audit report to support a finding that the facility exceeds this standard, as the auditor claims.

***PREA § 115.67, Agency Protection Against Retaliation***

In the discussion of PREA § 115.67, the auditor makes the highly suspect statement that at Lewis Unit during the last 12 months, there were no incarcerated persons "placed in segregated housing for risk of sexual victimization, or who have alleged sexual abuse." The standard means of responding to any report of sexual harassment or sexual abuse in TDCJ is to place a person in segregated housing, and it is almost beyond belief that anyone who either knows the TDCJ system or has actually done research to identify conditions and responses go violence could make such a statement.

Contrasting with the auditor's claims, TPI has documented retaliation only a few months outside the audit period.

In April 2022, a transgender woman reported that her assailant, whom she had tried to report for sexual abuse, continued to harass her about her report of the incident. An SSI (Support

Service Inmate) also extorted her out of $30 in commissary by claiming could get the person retaliating against her to stop (TPI incident 2022-00282). She paid it, apparently because staff were not addressing the retaliation and endangerment.

Throughout May 2022, a transgender woman at Lewis Unit notes that she was moved from protective custody to general population, where the person who sexually abused her had access to her to harass or harm her (TPI incident 2022-00280). Although the description of retaliation was only generalized, she did report that at the end of May 2022, the person who sexually abused her was able to fall out of place and come to her housing, where he threatened her at her cell (TPI incident 2022-00284).

The same person continued to be threatened by the assailant's friends at least into August 2022, when they threatened "extreme violence" whenever they would be able to get access to her (TPI incident 2022-00508).

Based on the auditor's heavy reliance on staff reporting of compliance with this standard, the almost assuredly inaccurate statement that no persons had been placed in segregated housing for risk or reporting sexual violence, and TPI's own past experience corresponding with persons housed at Lewis Unit, TPI asserts that the information reported here is not sufficient to determine whether or not Lewis Unit is compliant with PREA § 115.67.

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

In the discussion of PREA § 115.68(a), the auditor appears to confound TDCJ "protective safekeeping" with "involuntary segregated housing." It is not clear what the auditor is discussing, but the failure to understand what protective safekeeping is in TDCJ and how it is used indicates a failure to properly evaluate compliance with PREA § 115.68.

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.

Based on the misunderstanding evident in this discussion, TPI asserts that it cannot be determined from this report whether or not Lewis Unit meets the PREA § 115.68 standard.

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

The auditor made a single brief statement reflecting that the TDCJ Safe Prisons/PREA Plan claims the agency is in compliance with this standard, but provides no further discussion. The documentation in this section appears to be incomplete.

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

It is difficult to understand why anyone would consider a claim that the preponderance of evidence standard was truthfully stated when out of 32 reports of sexual abuse, only 2 reports had a greater chance of occurring than a 50/50 chance. Such low rates of substantiation indicate serious manipulation of the evidence on the part of the investigators, done with the complicity of any auditor that accepts such claims as fact without substantial investigation.

Due to the extremely low rates of substantiated allegations, as reported in the most recent PREA Ombudsman report for calendar year 2022, it is highly unlikely that a preponderance of evidence standard is used anywhere in TDCJ. In that report, for allegations against staff, only 5% of 563 sexual abuse allegations were substantiated, 4% of 81 sexual harassment allegations were substantiated, and 0% of 168 voyeurism allegations were substantiated. These dismal accountability ratings are actually an improvement over the prior year. Amazingly, TDCJ seriously claims that almost half (261 of 563, or 46%) of the allegations of staff on incarcerated persons sexual abuse were false reports, 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 Lewis Unit, the data are similar. The auditor noted that for allegations against staff, a remarkable 50% of 2 sexual abuse allegations were substantiated, only 1 sexual harassment allegation was even reported (an unbelievable claim in itself), and voyeurism allegations were not documented. For allegations against other incarcerated persons, less than 5% of 21 allegations of sexual abuse were substantiated, and 0% of 11 allegations of sexual harassment were substantiated.

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

It is truly astounding that data like this is not a red flag for an auditor, and that these numbers were just accepted blindly indicates a definite issue with the audit. Due to what can be seen from this report, it appears irresponsible, unprofessional, absolutely unacceptable that Lewis Unit was assessed as meeting the PREA § 115.72 standard.

*PREA § 115.73, Reporting to Incarcerated Persons*

PREA § 115.73 states that incarcerated persons alleging sexual abuse shall be informed of whether administrative investigations were substantiated, unsubstantiated, or unfounded; the impact on employment of staff persons accused of sexual abuse where the allegation was not considered unfounded; and the status of criminal charges prosecuted.

In the basic information about the facility (**audit entries 92 through 95**), the auditor reports that there were 21 allegations of sexual abuse made against other incarcerated persons, all 21 of those allegations were investigated administratively, and 12 were investigated criminally. Of the 21 administrative investigations, 1 was substantiated, 16 unsubstantiated, and 4 unfounded. Out of the 12 criminal investigations, 10 were ongoing, and it appears 2 were closed without referral for prosecution. This indicates 21 administrative decisions should have been reported to persons making allegations.

The auditor reports that there were 11 allegations of sexual abuse made against staff, all 11 of those allegations were investigated administratively, and 2 were investigated criminally. Of the 11 administrative investigations, 1 was substantiated, 6 unsubstantiated, and 4 unfounded. Out of the 2 criminal investigations, 1 was ongoing, and it appears the other was closed without referral for prosecution. This indicates 11 administrative decisions should have been reported to persons making allegations.

Thus it appears that a grand total of 32 administrative decisions regarding allegations against staff and other incarcerated persons should have been made and documented. It is not clear, but there are indications that one allegation against a staff persons may have resulted in a criminal indictment or conviction, which does not seem to have been reported or documented.

In the discussion of PREA § 115.73(a), the auditor claims there were 33 administrative investigations instead of 32, and that 24 notifications were provided, while 9 investigations were ongoing. It is not clear how these numbers were determined, but they do not match the data provided elsewhere. This may be the result of the auditor wrongly assessing that only substantiated and unsubstantiated findings need to be reported, but the standard states that "the agency shall inform the [incarcerated person] as to whether the allegation has been determined to be substantiated, unsubstantiated, **or unfounded**" (emphasis added). These totals indicate at least 8 notifications were not provided and not documented, which would mean a failure to comply with this provision.

The auditor's discussion of PREA § 115.73(c) indicates that one of the sexual abuse allegations against staff was "sustained" (this probably means "substantiated"), and that the person making the allegation was notified that the staff person is no longer employed by TDCJ. The auditor states in the discussion of PREA § 115.73(d) that "[t]he staff member has been convicted on a charge related to sexual abuse within the unit," which appears to indicate data provide in **audit entry 94** is inaccurate (missing the results of the criminal investigation that included a referral to prosecution and other criminal outcomes), and this statement indicates the person

making the allegation was not informed of that outcome, as required under PREA § 115.73(c). Based on the information provided, Lewis Unit does not comply with this provision.

Under the discussion of PREA § 115.73(e), the auditor further confuses the issue by stating that there were 38 investigations that required notification, and 38 notifications were made. It is not clear what this number is referring to; this total does not agree what what is indicated in **audit entries 92 through 95** or with other information provided in the auditor's discussion of compliance with PREA § 115.73.

Due to conflicting statements and data, as well as statements that indicate noncompliance, TPI asserts that Lewis does not comply with the PREA § 115.73 standard.

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

In the basic information about the facility (**audit entries 92 through 95**), the auditor reports that of 32 allegations of sexual abuse, 2 were substantiated, 22 unsubstantiated, and 8 unfounded; thus, incident reviews should have been done for 24 incidents. However, in the discussion of PREA § 115.86(a), the auditor claims that there were only 22 investigations resulting in a finding of substantiated or unsubstantiated. The auditor failed to state how many incident reviews were completed (unless the 22 is supposed to reflect the number of reviews completed, which is stated in the discussion of PREA § 115.86(b)), and only confirms that 13 were completed.

In the auditor's discussion of PREA § 115.86(b), the auditor clearly states that only 22 of the required 24 incident reviews were completed within 30 days.

Based on the information provided, it appears that Lewis Unit is not in compliance with PREA § 115.86.

## Conclusion

In this report, 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:

- The auditor appears to have conflicts of interest.
- The audit appears to have been completed too quickly to allow sufficient time for a competent audit. This is reflected in problems with the audit and audit document.
- The auditor found that 8 standards were exceeded without sufficient support for such.
- The auditor found no corrective actions were needed, in spite of information provided in the audit report indicating noncompliance.
- The auditor falsely stated that the population only consists of "males" when in fact the population consists of cisgender males, transgender females, and other persons who may not belong to either of those two populations.
- **Audit entry 10:** The auditor failed to contact sufficient community-based organizations.

- **Audit entry 47:** The auditor states that 0 persons housed at Lewis Unit had ever been placed in segregated housing for risk of sexual victimization, which is false.
- **Audit entry 67:** The Auditor Handbooks requires a minimum of 4 persons who reported sexual abuse in the facility to be interviewed, if available. Audit entry 45 states that there were 32 persons meeting this target at the unit during the on-site audit, but the auditor only interviewed 2 of those persons. Thus this audit did not meet minimum requirements for this target.
- **Audit entry 68:** The Auditor Handbook requires a minimum of 3 persons who reported prior sexual victimization to be interviewed, if available. Audit entry 46 indicates there were 50 persons meeting this target at the unit on the first day of the on-site audit, but the auditor only interviewed 2. Thus the audit did not meet the minimum requirements for this target.
- **Audit entry 69:** The Auditor Handbook requires a minimum of 2 person who have ever been placed in segregated housing or isolation for risk of sexual victimization to be interviewed, if available. Audit entry 47, as well as other text in the audit report, indicates 0 persons at the unit met this target. It is not clear how 2 of 0 persons were interviewed, or if this is acknowledgment that audit entry 47 was a false statement.

In this report, 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 § 115.13:** Staff shortages at Lewis Unit indicate that the facility may not realistically be considered to meet compliance with this standard, and certainly indicate the facility does not exceed the standard, as claimed by this auditor.
- **PREA § 115.15:** Failure by the auditor to appropriately assess compliance with this standard in terms of cross-gender searches involving transgender persons mean the audit is deficient in the assessment of this standard, and it cannot be determined if Lewis Unit does or does not meet compliance with this standard.
- **PREA § 115.21:** Per the auditor, only 6 of 32 persons alleging sexual abuse were provided SANE exams, and insufficient explanation was provided for this very low rate of forensic evidence collection. Even if allowing for the lower number of 18 reports of sexual abuse being provided within a time period that allows for evidence collection (presumable 120 hours), 6 SANE exams is still only 1 in 3, an abysmal record. Based on this information, it appears that Lewis Unit does not comply with this standard, and certainly does not warrant the "exceeds this standard" claim of the auditor.
- **PREA § 115.31:** Based on a report to TPI during the audit period, past reporting of staff issues concerning the treatment of LGBTI persons at Lewis Unit, and the lack of any information indicating extraordinary measures related to training, TPI feels that training at Lewis Unit certainly does not warrant the "exceeds this standard" claim of the

auditor, and that based on information provided in this audit report, it cannot be determined whether or not Lewis Unit meets this standard.

- **PREA § 115.41:** Based on past experience with issues related to LGBTI persons housed at Lewis Unit, TPI asserts that Lewis Unit does not warrant the auditor's claim that the facility "exceeds this standard," and in fact it cannot be determined based on information provided whether or not Lewis Unit meets this standard.
- **PREA § 115.42:** Based on past reports from persons housed at Lewis Unit, as well as our understanding of TDCJ practices, TPI asserts that it cannot be determined whether or not Lewis Unit meets this standard or not.
- **PREA § 115.43:** Based on misleading and false information provided by the auditor concerning the use of PREA protective custody at Lewis Unit and throughout TDCJ, it cannot be determined from this audit report whether or not Lewis Unit meets this standard.
- **PREA § 115.51:** Based on information provided in this report that one person would not report sexual abuse to anyone, and the auditor's failure to follow up on that statement—especially as the auditor claims the facility exceeds the standard concerning education of incarcerated persons in reporting sexual violence—TPI asserts that it cannot be determined from this audit report whether or not Lewis Unit meets this standard.
- **PREA § 115.52:** Concerning the provision that third-party assistance be permitted, TPI has documented interference with third-party reporting at Lewis Unit. TPI asserts that it cannot be determined from this audit report whether or not Lewis Unit meets this standard.
- **PREA § 115.53:** Based on the auditor's own findings that 2 persons "had no confidence that any conversation would be confidential," TPI asserts that it cannot be determined from this audit report whether or not Lewis Unit meets this standard.
- **PREA § 115.54:** Based on the issues related to third-party communication and reporting noted for PREA §§ 115.52 and 115.53, it seems unlikely that Lewis Unit would be fully compliant with this standard, and with no description from the auditor of any exceptional compliance measures, it is not clear why the auditor claimed the facility "exceeded this standard." Instead, TPI asserts that it cannot be determined from this audit report whether or not Lewis Unit is in compliance with this standard.
- **PREA § 115.61:** Based on reports to TPI that indicate Lewis Unit staff do not fully comply with reporting duties. The auditor provides no support beyond staff claims that they follow policy, so based on our information, TPI asserts that it cannot be determined from this audit report whether or not Lewis Unit meets this standard.
- **PREA § 115.62:** With 45 documented allegations of sexual abuse and sexual harassment during the 12 months prior to the on-site audit, Lewis Unit experienced nearly one

documented incident of sexual violence every week, yet not one person was ever in that time "identified as being at imminent risk for sexual victimization." TPI asserts that based on this information, Lewis Unit is highly unlikely to be complaint with this standard.

- **PREA § 115.64:** The auditor's discussion of this standard, particularly in relation to the dearth of SANE exams, certainly does not indicate a finding that Lewis Unit exceeds this standard was warranted, and TPI asserts that there are legitimate questions whether the facility even meets this standard.
- **PREA § 115.67:** TPI has documented retaliation at Lewis Unit only a few months outside the audit period, while the auditor relies primarily on staff claims of compliance. TPI asserts that there is not enough information provided in this audit report to determine whether or not Lewis Unit is compliant with this standard.
- **PREA § 115.68:** For the reasons discussed under PREA § 115.43, TPI asserts that it cannot be determined whether or not Lewis Unit complies with this standard.
- **PREA § 115.72:** Based on the fact that out of 45 allegations of sexual abuse and sexual harassment, only 3 were determined to have a greater than 50/50 chance of having occurred, TPI asserts that the preponderance of evidence cannot be the evidentiary standard used at Lewis Unit. TPI assets that Lewis Unit does not meet this standard.
- **PREA § 115.73:** Based on the auditor's own statement that only 24 notifications were provided for 32 allegations for which administrative decisions were made, TPI asserts that based on information in this audit report, Lewis Unit does not comply with this standard.
- **PREA § 115.86:** The auditor reports that only 22 of 24 required incident reviews were completed within 30 days, which means Lewis Unit is not in compliance with this standard.

TPI requests that the following actions be taken:

- This audit report should be considered deficient, and not be considered to support a state submission for PREA compliance for the purpose of PREA § 115.501 certification of compliance.
- Lewis Unit should be required to conduct a subsequent audit to address deficiencies in the audit discussed in this letter.
- Conflict of interest issues with this auditor and the auditor employer should be addressed.
- The unit population should be stated correctly for PREA purposes.

- The auditor should follow PREA § 115.401(o) and contact each entity that may have significant information about Lewis Unit, to include consulting TPI's publicly available documentation and PREA compliance issues at Lewis Unit.
- The auditor should conduct the minimum number of required interviews for Lewis Unit, as per the Auditor Handbook.
- Lewis Unit should be reassessed for actual compliance with appropriate staffing per the PREA § 115.13 standard.
- Lewis Unit should be reassessed for actual compliance with cross-gender searches as per PREA § 115.15.
- Lewis Unit should be reassessed for compliance with PREA §§ 115.21 and 115.64 given the fact that out of 32 allegations of sexual abuse, at least 18 of which were made within 120 hours, only 6 SANE exams were completed.
- Lewis Unit should be reassessed for compliance with PREA §§ 115.31, 115.41, 115.42, 115.51, 115.52, 115.54, 115.61, and 115.67 due to evidence TPI has provided that contradict auditor assertions, which may indicate bias on the part of the auditor in favor of Lewis Unit due to conflict of interest.
- Lewis Unit should be reassessed for compliance with PREA §§ 115.43 and 115.68 due to the misrepresentation of what constitutes PREA protective custody in the TDCJ prison system.
- Lewis Unit should be reassessed for compliance with PREA § 115.53 based on the auditor's failure to follow up on findings from two interviews that communications under this standard are not confidential.
- Lewis Unit should be reassessed for compliance with PREA § 115.62 due to information provided in the audit report that appropriate protection measures are not being taken.
- Lewis Unit should be reassessed for compliance with PREA § 115.72 based on the fact that low rates of substantiation documented in this audit report indicate a preponderance of evidence is not the standard being used.
- Lewis Unit should be reassessed for compliance with PREA § 115.73 because the auditor's own statements indicate only 24 notifications were made for 32 allegations for which administrative decisions were made.
- Lewis Unit should be reassessed for compliance with PREA § 115.86 because the auditor's own statements indicate only 22 of 24 required incident reviews were completed within 30 days.

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
Lewis Unit Senior Warden Brian Smith
Lewis Unit PREA Manager Riley Dannar
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