



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

June 26, 2024

re: auditor noncompliance with audit requirements, abbreviated report, Sayle 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) Sayle Unit conducted by auditor Lynni O’Haver 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 February 7 through 9, 2024. The final audit report was submitted February 29, 2024.

TPI would like to stress that 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 presented in the following pages of this letter.

TPI files detailed objections to PREA audits where we have sufficient information to understand operations at a specific facility. For some facilities, we have limited information, and for such facilities, we may submit an abbreviated report identifying inaccuracies and other problems in a PREA audit. This letter represents an abbreviated objection letter dealing primarily with factual inaccuracies in an audit report.

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



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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 failed to conduct the minimum number of required targeted interviews, even though there were almost certainly enough persons—or at least more than what was identified by the auditor—at the unit meeting target criteria.
- Audit entry 46 indicates there were 0 persons who reported prior sexual victimization at the facility during the onsite audit. That is almost certainly not accurate.
- Audit entry 47 indicates there were 0 persons at the facility who had ever been placed in segregated housing for risk of sexual victimization. That is almost certainly not accurate.

TPI has documented the following inaccuracies and deficiencies with the assessment of compliance with PREA standards in this report.

- PREA § 115.21: None of the persons reporting sexual abuse by staff were reported to have been provided access to forensic exams. There is no discussion by the auditor concerning this shortcoming that indicates a problem. This indicates compliance with the standard cannot be determined from this report, and the facility may fail compliance with this standard.
- PREA § 115.43: The auditor demonstrated a complete lack of understanding about what constitutes PREA protective custody at Sayle Unit and in TDCJ as a whole. Because the three persons reporting sexual abuse by staff were almost certainly placed in protective custody, it must be assumed that Sayle Unit is not in compliance with this standard.
- PREA § 115.68: As with PREA § 115.43, the auditor demonstrated a failure to do due diligence in understanding how PREA protective custody is provided in TDCJ. Sayle Unit appears to also fail compliance with this standard.



Request for Action

TPI requests that the following actions be taken:

- That due to the deficiencies noted above, this audit report be considered deficient, and not be considered to support of a state submission for PREA compliance for the purpose of PREA § 115.501 certification of compliance.
- Sayle Unit be reassessed for failure to provide access to forensic evidence collection, as required under PREA § 115.21.
- Sayle Unit be reassessed for the actual use of segregated housing and protective custody rather than assessed on it’s misrepresentation of these designations. This concerns compliance with PREA §§ 115.43, 115.68, and possibly other standards.

Discussion of Audit Deficiencies

General Data and Report Deficiencies

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 641 times by the auditor. There is no excuse for every new document completed under the aegis of the PREA compliance system to not follow person-first practices.

The auditor noted that Sayle Unit exceeded PREA § 115.33. However, the discussion of this standard indicates nothing extraordinary about Sayle Unit’s attempts to comply with this standard. Without some discussion of what was exceptional, this rating can only be understood as bias on the part of the auditor in favor of providing higher ratings that warranted in this audit.

Table 1 reports population characteristics as provided by the audit, the minimum required number of targeted interviews, and the number of interviews conducted during the audit. Problem areas are in **red**.

Table 1. Population Characteristics and Interviews

Population Characteristic	Persons Present	Interviews Required	Interviews Completed
36/53/58 – Total housed at unit	535	Random: 15 Targeted: 15	Random: 30 Targeted: 5
38/60 – Persons with a physical disability	0	at least: 1	0
39/61 – Persons with cognitive or functional disability	0	at least: 1	0
40/62 – Persons blind or visually impaired	0	at least: 1	0

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41/63 — Persons deaf or hard-of-hearing	1	at least: 1	1
42/64 — Persons Limited English Proficient	3	at least: 1	3
43/65 — Persons identifying as lesbian, gay, or bisexual	1	at least: 1	1
44/66 — Persons identifying as transgender or intersex	0	at least: 1	0
45/67 — Persons who reported sexual abuse in facility	0	at least: 3	0
46/68 — Persons who reported prior sexual victimization	0	at least: 2	0
47/69 — Persons placed in segregated housing for risk of sexual victimization	0	at least: 1	0

The Auditor Handbook states that “[e]ven when an auditor is unable to conduct the minimum number of targeted interviews (e.g., the facility does not house a certain targeted population), the auditor must select additional persons confined in the facility in order to meet the minimum threshold.” The auditor failed to conduct the minimum number of 15 targeted interviews. It is hard to believe that no persons met so many of these targets, especially for having reported prior sexual victimization or been placed in segregated housing, so this appears to be a failure by the auditor to do due diligence to identify members of target populations the facility failed to document. Although audit entry 92 notes 3 persons alleged sexual abuse in the last 12 months, apparently those persons were all transferred prior to the audit (see auditor discussion of PREA § 115.21).

Audit entry 70 should have included an explanation why the auditor only completed 5 of the 15 required targeted interviews. No explanation was provided.

Table 2 presents the compiled data concerning sexual violence, investigations, and reporting requirements. Under criminal investigations, the entry “no action (inferred)” is listed thus because the audit report does not provide a number for allegations referred for criminal investigation where no action is taken; this value must be inferred from the other categories. In Table 2, column “Qty (92-97)” provides the data from audit entries 92-97; column “115.21” provides information on forensic exams required to be offered under PREA § 115.21; “115.43 / 115.68” provides data on persons separated for risk and post-allegation protective custody; “115.73” provides data on reporting the results of investigations to incarcerated persons; and “115.86” concerns incident reviews completed.

Table 2. Sexual Violence Investigations and Outcomes

	Qty (92-97)	115.21	115.43 / 115.68	115.73	115.86
Sexual Abuse by Staff					
Allegations	3	0	0		
Criminal Investigations	0	0	0	0	0
Ongoing	-	-	-	-	-
No Action (inferred)	-	-	-	-	-
Referred	-	-	-	-	-



Table 2. Sexual Violence Investigations and Outcomes

	Qty (92-97)	115.21	115.43 / 115.68	115.73	115.86
Indicted	-	-	-	-	-
Convicted	-	-	-	-	-
Acquitted	-	-	-	-	-
Administrative Investigation	3	0	0	3	3
Ongoing	0	0	0	0	0
Unfounded	0	0	0	0	NA
Unsubstantiated	3	0	0	3	3
Substantiated	0	0	0	0	0
Both Investigations	0	0	0	0	0
Sexual Abuse by Incarcerated Persons					
Allegations	0	0	0		
Criminal Investigations	0	0	0	0	0
Ongoing	-	-	-	-	-
No Action (inferred)	-	-	-	-	-
Referred	-	-	-	-	-
Indicted	-	-	-	-	-
Convicted	-	-	-	-	-
Acquitted	-	-	-	-	-
Administrative Investigation	0	0	0	0	0
Ongoing	-	-	-	-	-
Unfounded	-	-	-	-	NA
Unsubstantiated	-	-	-	-	-
Substantiated	-	-	-	-	-
Both Investigations	0	0	0	0	0
Sexual Harassment by Staff					
Allegations	0	NA	0		
Criminal Investigations	0	NA	0	NA	NA
Ongoing	-	NA	-	NA	NA
No Action (inferred)	-	NA	-	NA	NA
Referred	-	NA	-	NA	NA
Indicted	-	NA	-	NA	NA
Convicted	-	NA	-	NA	NA
Acquitted	-	NA	-	NA	NA
Administrative Investigation	0	NA	0	NA	NA
Ongoing	-	NA	-	NA	NA
Unfounded	-	NA	-	NA	NA
Unsubstantiated	-	NA	-	NA	NA
Substantiated	-	NA	-	NA	NA
Both Investigations	0	NA	0	NA	NA
Sexual Harassment by Incarcerated Persons					
Allegations	0	NA			
Criminal Investigations	0	NA		NA	NA
Ongoing	-	NA		NA	NA
No Action (inferred)	-	NA		NA	NA
Referred	-	NA		NA	NA
Indicted	-	NA		NA	NA



Table 2. Sexual Violence Investigations and Outcomes

	Qty (92-97)	115.21	115.43 / 115.68	115.73	115.86
Convicted	-	NA		NA	NA
Acquitted	-	NA		NA	NA
Administrative Investigation	0	NA		NA	NA
Ongoing	-	NA		NA	NA
Unfounded	-	NA		NA	NA
Unsubstantiated	-	NA		NA	NA
Substantiated	-	NA		NA	NA
Both Investigations	0	NA		NA	NA

One noteworthy problem shown in Table 2 is that PREA § 115.21 requires all persons experiencing sexual abuse to be offered access to forensic exams, but none of the 3 persons reporting sexual abuse received a SANE exam according to the discussion of PREA § 115.21(c). This is especially significant given that all three allegations were made against staff, and the failure to provide forensic evidence collection via SANE exams may indicate bias on the part of investigators. No explanation was provided by the auditor.

PREA Compliance Assessment Issues

PREA § 115.21, Evidence Protocol and Forensic Medical Examinations

PREA § 115.21 requires that all victims of sexual abuse be offered access to forensic medical examinations. In the discussion of PREA § 115.21(c), the auditor states that 0 out of the 3 persons alleging sexual abuse were provided a SANE exam; the auditor provides no explanation for the 100% refusal or failure to provide forensic evidence collection.

It may be argued that someone making an allegation is not necessarily a “victim.” However, making that determination requires review of evidence the collection of which is the purpose of forensic exams. The PREA Final Rule also states, regarding the importance of investigations involving staff abuse:

Objective assessments of credibility are crucial in investigations of sexual abuse in correctional settings, especially when abuse by staff is alleged. While this standard is not easily quantifiable, it is quite possible that a blatant failure to abide by it will be readily evident. For example, when an inmate makes an allegation of staff abuse, and there is no objective evidence that the allegation is false, the investigator should attempt to find other avenues to corroborate or disprove the allegation rather than assessing the allegation in a vacuum.²

The failure to conduct any SANE exams where allegations against staff are concerned indicates such a “blatant failure” to abide by the standard. The auditor-reported fact that none of the investigations of allegations against staff involved forensic evidence appears to indicate noncompliance; at the very least, compliance cannot be determined by this audit report.

2. Federal Register (2012): vol. 77 no. 119, Fed. Reg. page 37170 (June 20, 2012).



PREA § 115.43, Protective Custody

The auditor falsely equates TDCJ “protective safekeeping” with the only housing or classification designation meeting PREA “protective custody.” It is a near certainty that all 3 of the persons alleging sexual abuse by staff were placed in housing that constitute PREA protective custody. The auditor also falsely discusses something referred to as “involuntary safekeeping” as a temporary measure that lasts no longer than 24 hours. TDCJ safekeeping designation, whether voluntary or involuntary, is a classification level requiring referral by the Unit Classification Committee and approval by the State Classification Committee, and as far as TPI is aware never is used as a temporary housing designation.

This indicates a failure to conduct due diligence to determine what housing and cell assignments actually constitute PREA protective custody at Sayle Unit, and a failure to properly assess at least PREA § 115.43 provisions a, b, and d.

Based on this discussion, it cannot be determined if Sayle Unit is in compliance with PREA § 115.43, but because the almost universal response to allegations of sexual violence in TDCJ is to place a person in protective custody under a claim of protecting the person from violence and for post-allegation investigation, and because this appears to be a deliberate effort to cover up such almost certain housing assignments for the three persons noted to have reported sexual violence, the assumption must be made that Sayle Unit is not in compliance with this standard.

PREA § 115.68, Post-Allegation Protective Custody

As with the discussion under PREA § 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.

Once again, the auditor falsely claims that the only housing designation in TDCJ that constitutes PREA “protective custody” is TDCJ protective safekeeping, which is far from true. Additionally, the auditor refers to something called “protective management,” parroting false claims by staff that persons in restrictive housing have no restrictions. Again, this indicates a failure to properly audit PREA § 115.68. A determination of compliance cannot be made, and there is rightly an assumption of noncompliance due to what very much appears to be a deliberate effort to obfuscate the use of what constitutes protective custody.

PREA § 115.72, Evidentiary Standards for Administrative Investigations

At Sayle Unit, 100% of the sexual abuse allegations were found to have less than a 51% chance of having occurred. TPI asserts that this does not appear to indicate a preponderance of evidence is the evidentiary standard used in practice.



Conclusion

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

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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
Sayle Unit Senior Warden Brian Pollock
Sayle Unit PREA Manager Herminia Franco