



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

June 28, 2024

re: auditor noncompliance with audit requirements, abbreviated report, Hobby-Marlin
Complex

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) Hobby-Marlin complex 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 March 27 through 29, 2024. The final audit report was submitted April 22, 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 provided 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 fails to comply with Auditor Handbook encouragement to use person-first language.
- The auditor falsely states the Hobby-Marlin Complex houses only “females.”
- The auditor failed to conduct the minimum number of targeted interviews, even though there were clearly sufficient persons at the complex meeting target criteria.

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

- PREA § 115.15: The auditor fails to appropriately assess cross-gender searches for compliance of this standard by refusing to acknowledge the actual gender of persons housed within the Hobby-Marlin Complex.
- PREA § 115.21: The auditor fails to appropriately assess access to forensic medical examinations given that not even 1 of the 15 allegations of sexual abuse, including 10 allegations of sexual abuse by staff, involved forensic evidence collection via SANE.
- PREA §§ 115.43 and 115.68: The auditor fails to properly assess the use of PREA protective custody within the Hobby-Marlin Complex.



- PREA §§ 115.73 and 115.86: The auditor fails to make clear statements of compliance concerning these standards. It is not clear what or whether documentation was reviewed that would indicate actual compliance.

Request for Action

TPI requests that the following actions be taken:

- That 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.
- That the Hobby-Marlin Complex be required to conduct a subsequent audit to address deficiencies in the audit discussed in this letter.

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 681 times in this report. There is no excuse for every new document completed under the aegis of the PREA compliance system to not follow person-first practices.

The audit report states that the population at the Hobby-Marlin Complex consists of “females,” but for the purposes of PREA auditing, the Hobby-Marlin Complex houses cisgender females, transgender males, and other persons who may not belong to either of those two populations. This misclassification erases the existence of trans persons, and allows the auditor to ignore violations under 115.15 and other PREA standards.

The auditor noted that the Hobby-Marlin Complex exceeded PREA §§ 115.51 and 115.54. However, the discussion of these standards included no notes of any noteworthy actions about the Hobby-Marlin Complex’s attempts to comply with these standards.

Table 1 provides population characteristics as provided by the audit, the minimum required number of targeted interviews, and the number of interviews conducted during the audit. For a facility (or complex) the size of the Hobby-Marlin Complex, the interviews alone were expected to take 3 days, or 30.3 hours. The auditor reports spending 3 days at the two facilities in this complex, indicating it is unlikely that enough time was allowed for interviews and other tasks required for the audit.

As can be seen in Table 1, the auditor failed to complete the required number of targeted interviews. The Auditor Handbook is clear on page 71 that:



Table 1. Population Characteristics and Interviews

Population Characteristic	Persons Present	Interviews Required	Interviews Completed
36/53/58 – Total housed at unit	1807	Random: 20 Targeted: 20	Random: 24 Targeted: 18
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
41/63 – Persons deaf or hard-of-hearing	1	at least: 1	1
42/64 – Persons Limited English Proficient	12	at least: 1	2
43/65 – Persons identifying as lesbian, gay, or bisexual	383	at least: 2	4
44/66 – Persons identifying as transgender or intersex	83	at least: 3	4
45/67 – Persons who reported sexual abuse in facility	7	at least: 4	4
46/68 – Persons who reported prior sexual victimization	222	at least: 3	3
47/69 – Persons placed in segregated housing for risk of sexual victimization	0	at least: 2	0

If an auditor is unable to identify an individual from one of the targeted populations (e.g., the facility does not house youths under 18) or an individual belonging to a targeted population does not wish to participate in an interview, the auditor must select interviewees from other targeted populations in order to meet the minimum number of targeted interviews. If the auditor is unable to interview an adequate number of individuals to meet the minimum threshold for targeted interviews, they should then conduct additional random interviews of persons confined in the facility in order to comply with the overall minimum number of interviews.

There were clearly enough persons in targeted categories to make up the 20 required minimum number of persons interview, and it is doubly remiss that more of the persons reporting prior sexual victimization were not selected to make up the minimum.

It is also highly unlikely that no persons at the Hobby-Marlin Complex had ever been placed in segregated housing for risk of sexual victimization. This indicates a failure to do due diligence in assessing what constitutes segregated housing for PREA purposes versus TDCJ’s manipulation of segregated housing and this standard.

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	10	0	0		
Criminal Investigations	3	0	0	1?	-
Ongoing	2	0	0	?	-
No Action	1	0	0	1	-
Referred	0	-	0	0	-
Indicted	0	-	0	0	-
Convicted	0	-	0	0	-
Acquitted	0	-	0	0	-
Administrative Investigation	10	0	0	10	8
Ongoing	0	0	0	0	0
Unfounded	2	0	0	2	NA
Unsubstantiated	7	0	0	7	7
Substantiated	1	0	0	1	1
Both Investigations	3	0	0		-
Sexual Abuse by Incarcerated Persons					
Allegations	5	0	0		
Criminal Investigations	1	0	0	0?	-
Ongoing	1	0	0	?	-
No Action	0	-	0	0	-
Referred	0	-	0	0	-
Indicted	0	-	0	0	-
Convicted	0	-	0	0	-
Acquitted	0	-	0	0	-
Administrative Investigation	5	0	0	5	
Ongoing	0	0	0	0	0
Unfounded	2	0	0	2	NA
Unsubstantiated	2	0	0	2	2
Substantiated	1	0	0	1	1
Both Investigations	1	0	0		-
Sexual Harassment by Staff					
Allegations	2	NA	0		
Criminal Investigations	0	NA	0	NA	NA
Ongoing	0	NA	0	NA	NA
No Action	0	NA	0	NA	NA
Referred	0	NA	0	NA	NA
Indicted	0	NA	0	NA	NA
Convicted	0	NA	0	NA	NA
Acquitted	0	NA	0	NA	NA
Administrative Investigation	2	NA	0	NA	NA
Ongoing	0	NA	0	NA	NA
Unfounded	0	NA	0	NA	NA
Unsubstantiated	2	NA	0	NA	NA
Substantiated	0	NA	0	NA	NA
Both Investigations	0	NA	0	NA	NA
Sexual Harassment by Incarcerated Persons					



Table 2. Sexual Violence Investigations and Outcomes

	Qty (92-97)	115.21	115.43 / 115.68	115.73	115.86
Allegations	7	NA	0		
Criminal Investigations	0	NA	0	NA	NA
Ongoing	0	NA	0	NA	NA
No Action	0	NA	0	NA	NA
Referred	0	NA	0	NA	NA
Indicted	0	NA	0	NA	NA
Convicted	0	NA	0	NA	NA
Acquitted	0	NA	0	NA	NA
Administrative Investigation	7	NA	0	NA	NA
Ongoing	0	NA	0	NA	NA
Unfounded	1	NA	0	NA	NA
Unsubstantiated	6	NA	0	NA	NA
Substantiated	0	NA	0	NA	NA
Both Investigations	0	NA	0	NA	NA

In the discussion of PREA § 115.73, the auditor does not clearly state that all administrative decisions and all unsubstantiated and substantiated decisions were conveyed to persons making allegations, but made a general assertion that the Hobby-Marlin Complex was compliant. A more definite assertion of compliance would be preferred.

In the discussion of PREA § 115.86, the auditor states that “thirteen criminal/administrative investigations of alleged sexual abuse were completed at the facility and were followed by a sexual abuse incident review within 30 days.” However, these data do not seem to reflect data provided in audit entry 95. These data indicate, for what is relevant to PREA § 115.86, that 15 sexual abuse investigations were completed, 4 were determined to have been “unfounded,” so 11 incident reviews should have been undertaken. The TDCJ Safe Prisons/PREA Plan indicates that incident reviews are also done for allegations of staff sexual harassment, so this count may have included the 2 allegations of sexual harassment by staff, but that is not clear. Since it is not clear what the auditor was reviewing, it seems the audit of PREA § 115.86 may be deficient.

PREA Compliance Assessment Issues

PREA § 115.15, Cross-Gender Viewing and Searches

The PREA standards state that Hobby-Marlin Complex 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.” In the discussion of PREA § 115.15(a), the auditor states that there were “no cross-gender strip searches or cross-gender visual body cavity searches conducted during the last twelve months,” but with 83 documented transgender and intersex persons housed in this complex, that statement is almost certainly false.

Regardless of whether a person is assigned to a facility designated as “male” or “female,” if that person is identified as transgender in the prison system or facility, then strip and visual body



cavity searches by persons of a gender different from the incarcerated person's self-identified gender are cross-gender searches, and are noncompliant with PREA standards unless a waiver documenting search preference allowing a cross-gender search has been signed.

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

The failure by the auditor to document that the unit houses transgender males 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.

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,"² the refusal to acknowledge the gender of transgender persons also results in a failure to meet this standard.

PREA § 115.15(f) covers training in the conduct of cross-gender pat-down searches and searches of transgender and intersex incarcerated persons in a professional and respectful manner. Because the auditor failed to appropriately assess the genders of persons housed in the Hobby-Marlin Complex, the auditor could not have appropriately assessed whether or not the complex is compliant with this aspect of this provision.

Based on these deficiencies and the near 100% certainty that cross-gender searches were conducted and inappropriately reviewed by the auditor, TPI asserts that the Hobby-Marlin Complex cannot be considered compliant with PREA § 115.15.

PREA § 115.21, Evidence Protocol and Forensic Medical Examinations

PREA § 115.21(c) requires that agency staff shall "offer all victims of sexual abuse access to forensic medical examinations," yet the auditor states that out of 15 allegations of sexual abuse

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

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



—10 of which were allegations against staff—not one of those persons alleging sexual abuse was provided a forensic medical exam. The auditor provides no information to justify that not one allegation of sexual abuse was accompanied by a forensic medical exam or any information about why 100% of the allegations were deemed to not be “evidentiarily or medically appropriate.” This should be considered evidence of a failure to comply with PREA § 115.21(c) and a failure of appropriate assessment of this provision by the auditor.

Based on this egregious deficiency in the assessment of whether or not appropriate forensic medical evidence collection was offered, TPI asserts that the Hobby-Marlin Complex cannot be considered compliant with PREA § 115.21.

PREA § 115.34, Specialized Training: Investigations

Because of the total absence of forensic medical examinations for 15 allegations of sexual abuse, 10 of which were alleged against staff, TPI questions whether the Hobby-Marlin Complex can be considered compliant with PREA § 115.34, and asserts that training appears to be lacking in terms of evidence collection.

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 24 of the allegations of sexual harassment and sexual abuse resulted in the persons making the allegations being placed in housing that constitutes PREA protective custody, so using an explanation of such actions that depends only on whether someone was placed in “protective safekeeping” is not appropriate to review use of PREA protective custody.

The auditor also falsely discusses “protective safekeeping” as a temporary measure that lasts no longer than 24 hours. TDCJ safekeeping and protective safekeeping designations, whether voluntary or involuntary, are classification levels 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 statement is also false.

The auditor reports interviewing a person who supervises restrictive housing in TDCJ Hobby-Marlin Complex, and states that the supervisor reported persons “placed in safekeeping do not have restrictions and retain the same privileges as [incarcerated persons] in general population housing.” Regardless of whether it is true or not that persons designated for safekeeping have the same privileges as persons in general population, this does not apply to person held in restrictive housing as protective custody for either risk of sexual violence or post allegation.

The statement by the auditor that “[d]uring the twelve months prior to the audit, the facility reported in the PAQ there were no [incarcerated persons] at risk of sexual victimization being assigned to involuntary segregated housing,” a statement that is almost assuredly false, indicated Hobby-Marlin Complex staff appear to be providing false documentation, and the auditor appears to fail to do due diligence in assessing the use of protective custody.



These deficiencies indicate a failure to conduct due diligence to determine what housing and cell assignments actually constitute PREA protective custody within the Hobby-Marlin Complex, 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 the Hobby-Marlin Complex is in compliance with PREA § 115.43. The almost universal TDCJ response to allegations of endangerment related to sexual violence, acts of sexual violence, and after allegations of sexual violence is to place a person in protective custody under a claim of protecting the person from violence—whether they volunteer for that placement or not. TPI asserts that based on experience and knowledge and reporting, the assumption must be made that the Hobby-Marlin Complex 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 protective custody (restricted housing for inmate protection investigation, or IPI), often over the objections of the person making allegations, and regardless of whether there are alternatives to such placement or not.

In the discussion of PREA § 115.68, the auditor stated that no persons making allegations of sexual abuse assigned to involuntary segregated housing during the 12 months preceding the audit. This is almost certainly false, and likely indicates intentional manipulation of this standard by TDCJ staff and a failure of due diligence by the auditor to understand the use of PREA protective custody at the Hobby-Marlin Complex. Based on the information above, TPI asserts that the Hobby-Marlin Complex cannot be found compliant with PREA § 115.68.

PREA § 115.73, Reporting to Incarcerated Persons

In the discussion of PREA § 115.73, the auditor does not clearly state that all administrative decisions and all unsubstantiated and substantiated decisions were conveyed to persons making allegations, but made a general assertion that the Hobby-Marlin Complex was compliant. A more definite assertion of compliance would be preferred.

PREA § 115.86, Sexual Abuse Incident Reviews

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have included the 2 allegations of sexual harassment by staff, but that is not clear. Since it is not clear what the auditor was reviewing, it seems the audit of PREA § 115.86 may be deficient.

Conclusion

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 fails to comply with Auditor Handbook encouragement to use person-first language.
- The auditor falsely states the Hobby-Marlin Complex houses only “females.”
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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
Hobby-Marlin Complex Senior Warden Janet Harry-Dobbins
Hobby-Marlin Complex PREA Manager Elbony Benjamin