



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

August 24, 2024

re: 2024 Allred Unit PREA audit report deficiencies

To the PREA Resource Center:

Trans Pride Initiative (TPI) is filing an objection to the final Prison Rape Elimination Act (PREA) audit report for the Texas Department of Criminal Justice (TDCJ) Allred Unit conducted by auditor William Pierce 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 During that time, we believe we have gained an understanding of the Texas prison system that is sufficient to enable us to comment substantively on PREA audits, especially where the treatment of trans and queer persons is concerned. Based on that understanding, we believe that this audit fails to meet the spirit or letter of PREA audit requirements for reasons that will be provided below. **Thus TPI asserts that this audit report does not reflect compliance with the PREA standards.**

PREA auditors have an exceptional amount of power in the PREA certification process. Texas must submit an annual certification that prisons operating under state jurisdiction are in full compliance with the PREA standards or face a reduction in certain federal grant funds.² The certification of full compliance is issued by the governor, PREA § 115.501 requires that the governor “shall consider the results of the most recent agency audits,” and the Department of Justice (DOJ) notes that those audits are “to be a primary factor in determining State-level ‘full compliance.’”³ Thus audits reflecting full compliance with PREA standards and requiring only limited corrective actions and documenting no failures to meet PREA standards are in the best

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 PREA “LGBTI” umbrella all non-cisgender non-hetero-normative persons. We believe this is the only interpretation consistent with the spirit of PREA.

2. The requirements are defined at 34 USC § 30307.

3. Federal Register (2012): vol. 77 no. 119, Fed. Reg. page 37188 (June 20, 2012).



interest of state certification and full funding for prison operations, even when running counter to the PREA legislative objective of zero tolerance of sexual abuse and sexual harassment. The success or failure of PREA protections depends heavily on auditors to objectively assess compliance in spite of pressures to publish findings of full compliance.

Thus auditor performance and audit report assessments are key factors in addressing problems working toward the goals of the PREA legislation. DOJ's PREA Management Office is responsible for PREA audit oversight, which includes evaluation of auditor performance and development of auditor skills and thoroughness with the objective of "ensuring the high quality and integrity of PREA audits."⁴ This effort includes audit assessment, review, mentoring, remediation, and where necessary discipline. TPI's primary purpose in submitting this letter is to contribute information to the audit oversight process in any or all of these efforts to address problems in achieving the legislative goals of PREA.

TPI's secondary purpose in submitting this objection letter is to provide relevant information for the PREA Management Office in their review of Texas' certifications of full compliance, and for the National PREA Resource Center for use in auditor performance assessment. Although audit deficiencies will not cause the audit to be overturned or denied, TPI believes information in this report should raise serious questions about the state's certification of full compliance, past and present.

4. 2022 Auditor Handbook, page 91.



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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 appears to have not allowed sufficient time to complete all tasks required for the onsite portion of the audit.
- The auditor failed to follow person-first language as stipulated in the 2022 Auditor Handbook.
- The auditor made false statements that only “males” are housed at Allred Unit.
- The auditor defined no corrective actions, in spite of evidence of need for corrective actions.
- **Audit entries 38 and 39:** The auditor appears to have failed to conduct adequate due diligence to determine the veracity of the claims by Allred Unit staff about the absence of documented persons with physical, cognitive, or functional disabilities.
- **Audit entry 45:** The auditor makes contradictory statements that either 60 or 64 persons alleged sexual abuse at Allred Unit, indicating problems with data collection and assessment.
- **Audit entry 47:** The auditor claims that both 0 and 1 person had been placed in segregated housing for risk of sexual victimization, both of which are inaccurate.
- **Audit entry 48:** The auditor documents that Allred Unit does not distinguish between sexual orientation and gender identity, which calls into question how Allred Unit staff can meet obligations for properly screening individuals.
- **Audit entry 61:** The auditor appears to have failed to conduct adequate due diligence to identify and interview persons with cognitive or functional disabilities, and thus appears to have failed to conduct the minimum number of targeted interviews for this audit.
- **Audit entry 69:** The auditor claims that both 0 and 1 person had been placed in segregated housing for risk of sexual victimization, both of which are inaccurate. The auditor interviewed 1 of the 0 persons identified in **audit entry 47** as having been placed in segregated housing due to a risk of sexual victimization. The auditor failed to conduct necessary due diligence to understand the use of segregated housing at Allred Unit and failed to conduct the minimum number of targeted interviews for this audit.

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

- **PREA § 115.11:** TPI asserts that based on our information and known history of Allred Unit, it is unlikely the facility should be considered compliant with this standard.



- **PREA § 115.13:** TPI asserts that based on our data and understanding of Allred Unit, it is highly unlikely that the facility should be considered compliant with this standard.
- **PREA § 115.15:** The auditor failed to properly assess compliance with cross-gender viewing and searches. Based on statements by the auditor and evidence provided to TPI, we assert that Allred Unit fails compliance with multiple provisions of this standard.
- **PREA § 115.16:** Due to the apparent manipulation of data concerning persons with physical, psychiatric, and intellectual disabilities at Allred Unit, the facility should not be considered compliant with this standard.
- **PREA § 115.21:** Due to information provided in other PREA reports indicating noncompliance, information that is not sufficiently contradicted by this audit report, TPI questions whether policy in place may contradict this standard. TPI feels it cannot be determined from this report whether or not Allred Unit is compliant with this standard.
- **PREA § 115.22:** The auditor reports that 2 out of 5 interviewees did not understand this standard, but claims the facility is in compliance. This may be more of an issue with compliance concerning training requirements and effectiveness.
- **PREA § 115.31:** Due to statements by the auditor that indicate training ineffectiveness, TPI asserts that it cannot be determined whether or not Allred Unit meets this standard.
- **PREA § 115.33:** Due to multiple statements by the auditor that indicate a number of problems with training of incarcerated persons about the PREA standards as well as sexual abuse and sexual harassment, TPI asserts that Allred Unit should never have been considered by the auditor as exceeding this standard, and it is questionable whether or not Allred Unit meets this standard.
- **PREA § 115.34:** Due to the dearth of substantiated allegations of sexual violence, as well as statements by staff indicating a lack of understanding of PREA requirements, there appear to be indications that training may not be effective or adequately practiced. TPI asserts that it cannot be determined whether or not Allred Unit meets this standard.
- **PREA § 115.41:** Data presented by the auditor indicates Allred Unit should have been assessed as not compliant with this standard. TPI asserts that Allred Unit should not have been found compliant with this standard.
- **PREA § 115.42:** Due to TPI's experience and data contradicting auditor statements, questionable use of data concerning LGBTI persons housed at Allred Unit, and apparent dismissal of interviewee information that Allred Unit does not offer opportunities for transgender persons to shower separate, the assessment in this audit appears dubious. TPI asserts that Allred Unit should not have been found compliant with this standard.
- **PREA § 115.43:** Due to the clear misunderstanding of how TDCJ and Allred Unit implement PREA protective custody, TPI asserts that it cannot be determined from this audit whether or not Allred Unit meets PREA compliance with this standard.



- **PREA § 115.52:** TPI believes that this standard may not have been appropriately audited by the auditor because the auditor states that there were either 60 or 64 allegations of sexual abuse, but only 12 grievances were filed. Reviewing only grievances does not appear to have appropriately audited administrative remedies. TPI asserts that it cannot be determined from this audit whether or not Allred Unit meets PREA compliance with this standard.
- **PREA § 115.53:** The auditor states that one-third of the incarcerated persons interviewed about their reports of sexual abuse stated they did not receive information required by this standard. TPI asserts that based on the information provided in this report, it appears that Allred Unit is not in compliance with this standard.
- **PREA § 115.64:** The auditor makes statements in the discussion of this standard that indicate a failure of compliance, or that indicate a problem with the data reviewed. Based on these problems, TPI asserts that it cannot be determined from this report whether or not Allred Unit is in compliance with this standard.
- **PREA § 115.67:** The auditor states that 2 out of 5 persons interviewed about this standard stated they did not feel protection from retaliation was provided, but the auditor appears to have dismissed those concerns for a specious reason. TPI asserts that based on the audit report, it appears Allred Unit should not have been found in compliance with this standard.
- **PREA § 115.68:** For similar reasons discussed under PREA § 115.43, TPI asserts that Allred Unit is not likely to be in compliance with this standard.
- **PREA § 115.71:** Due to inaccurate data and discussion that contradict other data elsewhere in the audit report, TPI asserts that it cannot be determined if Allred Unit is in compliance with this standard.
- **PREA § 115.72:** Based on extremely low rates of substantiation in spite of claims that a low preponderance of evidence standard is used, TPI asserts that Allred Unit cannot be considered compliant with this standard.
- **PREA § 115.73:** Based on the auditor's report that at least 1 out of 6, possibly 2 out of 6, persons interviewed stated they did not receive reports about investigation outcomes, and based on the auditor's supporting data that contradict data presented elsewhere, TPI asserts that it cannot be determined whether or not Allred Unit is in compliance with this standard.
- **PREA § 115.82:** Based on the auditor's report that 1 of 6 persons reporting sexual abuse was not seen by medical or mental health staff and did not receive prophylaxis information, TPI asserts that it appears Allred Unit may not comply with this standard.



- **PREA § 115.83:** Based on the auditor’s report that 1 of 6 persons reporting sexual abuse did not recall being offered follow-up or ongoing medical and mental health care, TPI asserts that it appears Allred Unit may not comply with this standard.
- **PREA § 115.86:** The auditor’s discussion of this standard seems to be inconsistent with data provided elsewhere, but it is not clear whether or not it actually reflects a lack of compliance.
- **PREA § 115.87:** Several problems are noted concerning data provided by Allred Unit, which may indicate an agency failure to fully comply with this standard.
- **PREA § 115.401:** The auditor appears to have not conducted due diligence in contacting sufficient community advocates with information about Allred Unit.
- **PREA §§ 115.401 and 115.402:** The auditor appears to have multiple conflicts of interest, as discussed in the “auditor qualification issues” section.

Request for Action

TPI requests that the following actions be taken:

- That this audit report be considered deficient, and not be considered to support state compliance for the purpose of PREA § 115.501 certification of state compliance.
- That additional measures be taken to train and assist the auditor in compliance considerations and supporting documentation.
- That auditors give serious consideration to information about PREA compliance concerns provided by incarcerated persons in interviews, and to provide justification for dismissing such information.
- That the Online Audit System implement measures to help identify and safeguard against contradictory data.

TPI Data for Allred Unit

TPI has documented a total of 1,547 incidents of violence against persons housed at Allred Unit, including 124 that occurred in the past 12 months.⁵ Of the total documented incidents, 448 involved noncompliance with some element of the PREA standards, with 19 documented PREA noncompliance issues in the last 12 months, and 87 in the last 36 months, or approximately since the last PREA audit.⁶

5. 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.

6. 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/>



TPI notes that our communications have decreased by roughly 30% of what they were before TDCJ implemented its current digital mail system beginning July 2023, and we have documented—and filed complaints about—numerous instances of correspondence interference since then. The data we can make available should be viewed with that interference by TDCJ in mind. We have also received reports that some correspondence people have sent noting problems with staff, conditions and treatment at facilities, and policy violations have been blocked or denied. It is impossible for TPI to determine the extent of correspondence interference that is occurring at this time.

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 Allred 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, Allred Unit.

Discussion of Audit Deficiencies

The onsite audit was conducted from April 17 through April 19, 2024. The final audit report was submitted July 23, 2024, approximately six weeks beyond the 45 days allowed for a final report to be published per the 2022 Auditor Handbook. The final report was posted publicly by TDCJ approximately August 19, 2024.

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 [preceding] three years.” On its web site, CCS now lists services such as “accreditation support,” “policy and procedure review,” “security audits,” “staff training,” and “technology integration” in addition to “PREA auditing.” Thus it is obvious that CCS is providing services that may be considered a conflict of interest and activities that may include an auditor auditing their own work or their employer’s work. Such overlap may constitute a conflict of interest to auditors it employs or contracts with, and thus auditors 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, especially with no corrective actions, which CCS audits of Texas facilities routinely do, 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 with minimal corrective

projects.prisondata/prea.php.



actions as a means of generating greater chances for current and future opportunities. TPI feels it is highly unlikely that a conflict of interest does not exist.⁷

Additionally, the auditor served as a mental health practitioner within a Bureau of Prisons institution for 21 years, and currently directs mental health services at another federal institution. TPI believes any current or recent connection with a prison system to be a potential conflict of interest. PREA §§ 115.401(c) and (d) prohibit an auditor from receiving financial compensation from the agency being audited within three years prior to and after the audit, which is warranted but not sufficient. Due to the “we protect our own” mentality common among persons affiliated with prison operations, TPI believes that auditors should be barred from receiving any financial compensation directly or indirectly from any prison operator or associated agency in the past three years due to this potential conflict of interest.

Although the 2022 Auditor Handbook states that auditors are personally accountable for their audits, the opportunity for conflicts of interest and implied influence from the broad work of CCS are too great to be ignored. The 2022 Auditor Handbook states that

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

Such potential for conflicts of interest do not engender public trust, but instead strongly indicate a pay-for-compliance service that is focused on 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

TPI notes that for a facility with more than 2,501 persons (the 2024 Allred PREA report notes a population of 3,695 persons on the first day of the onsite audit, and an average population of 3,678 over the past 12 months), just the interviews with incarcerated persons and staff are estimated to take 3.4 days, or 33.7 hours. Audit entry 116 indicates the auditor had the assistance of one non-certified support staff. The 2022 Auditor Handbook states that “[u]nder no circumstances may individuals who are not DOJ-certified auditors participate or engage in the substantive work of a formal PREA audit unless acting under the direction of a DOJ-certified auditor.” TPI believes that such prohibition means that having a non-certified assistant would not significantly impact the time necessary for interviews, so it appears that this audit

7. 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 prominent auditor of Texas facilities 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.



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.

We note that according to **audit entries 53 and 58**, this auditor is claiming to have conducted 60 interviews as well as all other tasks related to the audit of Allred Unit in only three days.

Audit Reporting 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 257 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 audit report states that the population at the Allred Unit consists of “males,” when in fact this is false. The Allred Unit houses cisgender males, many transgender females, and other persons who may not belong to either of those two populations. The Allred 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.



The auditor found that 1 standard was exceeded and 36 were met. The auditor found that zero corrective actions were required. The 2022 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—in spite of ample evidence in this report that corrective actions should have been required—should also be considered in the assessment of a deficient audit. Such a finding at Allred Unit, where there is a long history of abuse and violence, should also be considered to be a significant indicator of serious conflict of interest.

General Audit Information Issues

Audit entry 10 states that the auditor contacted 1 community-based organization, which was First Step of Wichita Falls. 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 2022 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” (emphasis added to highlight 2022 Auditor Handbook text that incorrectly uses the singular instead of plural instructions) and insufficient documentation of such was provided.⁸ TPI was not contacted concerning the information we have about Allred 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 a failure of adequate due diligence or deliberate omission by the auditor.

TPI would like to point out that for at least two population characteristics, reflected in **audit entries 38 and 39**, the auditor reported unusually low numbers for a facility with a physical plant and programs like Allred Unit has. The auditor claimed that a low number of persons with physical, psychiatric, and intellectual disabilities is attributable to:

a memo which is contained in the audit report, stating the facility has a directive to transfer [incarcerated persons] with disabilities to facilities better equipped to manage these [incarcerated persons]. Consequently, the facility had fewer disabled [incarcerated persons] to interview, considering the size of the population.

However, that undated memo (discussed on page 43 of the audit report) only discusses that “it is better to cohort the blind and deaf and other ADS services at certain units to ensure the best

8. The singular use in the 2022 Auditor Handbook misrepresents the text of PREA § 401(o), which specifically uses a plural instruction: “Auditors shall attempt to communicate with **community-based or victim advocates who may have insight into relevant conditions in the facility**” (emphasis added).



services possible.” Correctional Managed Health Care Policy A-08.4 defines ADS units as housing persons “who are blind, deaf and/or mobility impaired.” That definition does not include psychiatric and intellectual disabilities, nor would it necessarily include all physical disabilities. TPI has been in contact with a number of persons with intellectual and psychological disabilities during the period covered by the audit, one of whom reported being randomly interviewed by the PREA auditor in April 2024. The 2022 Auditor Handbook notes that:

Auditors should evaluate the extent to which a facility appropriately and consistently collects, maintains, and tracks relevant information about whether a person confined in the facility is a member of a targeted population. If the auditor is not persuaded that the facility is sufficiently able to consistently identify members of the targeted populations, then the auditor should not be willing to accept claims of “none here” without further probing.

Although the auditor does report “further probing,” TPI evidence indicates it was insufficient to explain the low numbers of persons with physical disabilities documented (see below discussions of **audit entries 38 and 39**), and that there is nothing presented to account for the low number of persons with psychiatric and intellectual disabilities reported.

Audit entry 38 states that there was 1 incarcerated person with a physical disability at Allred Unit on the first day of the onsite audit. TPI has no way to deny that number, but the claim that only one out of a population of 3,695 persons had any physical disability seems suspect, especially since Allred Unit is designated as a single-level facility with disability services and CPAP accommodating housing, where persons with ambulation problems and other disabilities are typically housed. Regardless of the auditor’s reference to a memo stating that persons with disabilities were to be transferred (see above), information that is publicly available for Allred Unit indicates there is an inaccuracy in the data presented here. TPI does have anecdotal information that persons who are deaf or declared legally blind are transferred from Allred, but that only in part accounts for persons with physical disabilities.

See also **audit entry 48**, which documents that Allred Unit may be manipulating data for some unknown purpose; if it is provable that they are manipulating data in one area, data provided for other areas must be considered suspect as well.

Audit entry 39 states that there were 0 incarcerated persons with a cognitive or functional disability at Allred Unit on the first day of the onsite audit. The claim that not one in 3,695 persons had any cognitive or functional disability seems suspect, especially given that Allred Unit appears to house special education, adult literacy, and cognitive intervention programs. In fact, TPI was in contact with someone with a psychological disability (our contact reference number 1772, specifically diagnosed with schizoaffective disorder⁹ and under treatment with perphenazine during the audit period—this person discontinued the medication at some point

9. It is not clear what constitutes “disability” under PREA, although the Final Rule references the ADA in its discussions of disability. This person identified as number 1772 has throughout life experienced psychotic episodes, and suffered an extremely serious psychotic episode while at Allred, resulting in treatment at Montford Hospital, and almost certainly should be considered “disabled” under PREA.



while at Allred, which appears to have attributed to an increase in reports of auditory hallucinations while housed at Allred) who was housed at Allred Unit during the onsite audit. That person also reported being interviewed by the PREA auditor, and reported specifically discussing mental health issues with the auditor. TPI is also currently in contact with four other persons housed at Allred Unit (our reference numbers 2137, 2291, 2564, and 2688) who seem likely to experience intellectual or psychological disabilities. Regardless of the auditor's reference to a memo stating that persons with certain disabilities were to be transferred, TPI's data and direct communications with persons housed at Allred Unit indicates that did not mean there were none housed at Allred Unit.

See also **audit entry 48**, which documents that Allred Unit may be manipulating data for some unknown purpose; if it is provable that they are manipulating data in one area, unusual data in other areas must be considered suspect as well.

Audit entry 40 states that there were 0 incarcerated persons who are blind or have low vision at Allred Unit on the first day of the onsite audit.

Audit entry 41 states that there were 0 incarcerated persons who are deaf or hard-of-hearing at Allred Unit on the first day of the onsite audit.

Audit entry 43 states that there were 8 incarcerated persons identifying as lesbian, gay, or bisexual at Allred Unit on the first day of the onsite audit. TPI is certain this is an inaccurate number. See **audit entry 48** below.

Audit entry 44 states that there were 198 incarcerated persons identifying as transgender or intersex at Allred Unit on the first day of the onsite audit. See **audit entry 48** below.

Audit entry 45 states that there were 64 incarcerated persons who reported sexual abuse that occurred at Allred Unit on the first day of the onsite audit. TPI notes that **audit entry 92** states that only 60 allegations of sexual abuse had been made, but 64 persons reported allegations in **audit entry 45**. This appears to indicate at least four allegations of sexual abuse had not been investigated. There may be an explanation for this discrepancy, such as some occurred more than 12 months previous, but that is contradicted by other statements such as persons alleging sexual abuse "are usually moved to different units" (page 79, in the discussion of PREA § 115.43(a) and (b), which begs the question of why 64 person alleging sexual abuse were still at the facility if such persons are usually transferred). It would be advisable to explicitly state the explanation for this discrepancy.

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 Allred Unit on the first day of the onsite audit, but TPI knows this number to be inaccurate. In fact, the auditor contradicts this claim in **audit entry 69** by documenting that 1 of these 0 persons was interviewed during the onsite audit:

Interview with one [incarcerated person] placed in segregated housing (for risk of sexual victimization/who allege to have suffered sexual abuse): He reported he felt safe at the facility because they handled his allegation and incident quickly.



These statements—that 0 persons had ever been placed in segregated housing or isolation for risk of sexual victimization, and that at least one person was placed in segregated housing for risk or report of of sexual victimization—cannot both be true.

The claim that none or even a low number of persons were ever placed in segregated housing or isolation for risk of sexual victimization 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 either 0 or 1 persons housed at Allred Unit had ever been placed in segregated housing or isolation for risk of sexual victimization. TPI notes that Allred Unit houses safekeeping designated persons (custody levels P2 though P5), a designation provided often due to risk of sexual victimization. This will be discussed further under PREA § 115.43.

Audit entry 48 states that Allred Unit “did not separate their transgender list from their gay, lesbian, and bi-sexual list of [incarcerated persons], other than notating the sexual identity of some [incarcerated persons] who identified as transgender.” It is unclear what “sexual identity” as “transgender” means or what that statement and distinction in the Allred Unit data represents. The auditor did not address persons with intersex conditions here and whether or how they are represented in data.

The 2022 Auditor Handbook states that:

a facility that is unable to provide a list of persons confined in the facility who identify as lesbian, gay, bisexual, transgender, intersex, or gender nonconforming may not be meeting its obligations for screening confined individuals for risk of victimization and abusiveness under Standard 115.41 [page 62].

Although the granularity of such information is left vague in that statement, a facility the size of Allred Unit—and with an LGBTI population apparently exceeding 200—appears remiss in not differentiating these populations, especially considering these encompass different PREA requirements. In addition, the agency provides screening codes in their computerized records for identifying transgender (TRGEN code), intersex (INTSX), and lesbian/gay/bisexual persons (we are unsure of the current code for sexual orientation). That the facility refused to provide data conforming to agency-wide screening practices may also indicate audit noncompliance with PREA data and screening requirements and under PREA § 115.401. Again, as per the 2022 Auditor Handbook:

If at any point during an audit, an agency/facility denies an auditor access to documentation, the audit report should reflect “Does Not Meet Standard” for Standard 115.401. In addition, if an auditor is prevented from accessing documents relevant to the facility’s compliance with a specific standard that requires policies and/or practices to promote sexual safety, the agency/facility will likely have failed to fulfill its burden of demonstrating compliance with that specific standard. If the agency fails to meet its burden, the auditor should make a finding of “Does Not Meet Standard” with respect to that standard [page 46].



That the auditor failed to perform due diligence research to understand the screening elements in use within the agency, and that the auditor did not pursue recovery of data that does exist, indicates a failure to properly audit the facility. TPI again refers to the 2022 Auditor Handbook:

Auditors must ensure that these populations [targeted interviewees] are adequately represented in the interview process. To accomplish this, auditors should work with the facility to obtain a list of all persons confined in the facility that fall within the prescribed target populations, including their housing units, so auditors can ensure geographic diversity [page 61].

The auditor failed to meet this requirement concerning targeted interviewees of LGBTI persons. Although TPI is well aware of this area of noncompliance, we do not know how many other areas the auditor may have failed to collect appropriate data to meet audit requirements.

Audit entries 53-70 concern the numbers of random and targeted interviews with persons representing the various population characteristics at Allred Unit. The 2022 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.

TPI also notes here that we have received reports that these random and targeted interviews include TDCJ staff observing and listening to the responses provided to auditors, and in some cases have been preceded by warnings of retaliation for not providing appropriate responses. This may be a violation of PREA § 115.401(m), which state that the auditor “shall be permitted to conduct private interviews with inmates, residents, and detainees.” Per page 59 of the 2022 Auditor Handbook:

The purpose of conducting one-on-one interviews with persons confined in the facility is to provide a safe space where they can freely discuss their experiences in and perspectives of the facility on sensitive issues related to sexual safety.

Two persons interviewed for this PREA audit, whom we understand refused to provide answers agreeable to staff, were transferred within days of the audit conclusion.

Audit entry 61 notes that 0 persons with a cognitive or functional disability were interviewed by the auditor. According to Table 2 in the 2022 Auditor Handbook, the minimum number of interviews for a unit with the overall population of Allred Unit should have been 2. See the discussion under **audit entry 39** for TPI’s data that contradicts the auditor’s claim that for this target criterion there were “none here.” For this reason, TPI believes the auditor failed to conduct the minimum number of required interviews with persons with a cognitive or functional disability.

Audit entry 62 notes that 0 persons who are blind or have low vision were interviewed by the auditor. According to Table 2 in the 2022 Auditor Handbook, the minimum number of



interviews for a unit with the overall population of Allred Unit should have been 1. TPI cannot state whether or not the auditor met this requirement.

Audit entry 63 notes that 0 persons who are deaf or hard-of-hearing were interviewed by the auditor. According to Table 2 in the 2022 Auditor Handbook, the minimum number of interviews for a unit with the overall population of Allred Unit should have been 1. TPI cannot state whether or not the auditor met this requirement.

Audit entry 69 states that 1 person who had ever been placed in segregated housing or isolation for risk of sexual victimization was interviewed by the auditor. According to Table 2 in the 2022 Auditor Handbook, the minimum number of interviews for a unit with the overall population of Allred Unit should have been 2.

That no persons were claimed in **audit entry 47** to have met this target criterion, yet 1 was interviewed meeting this criterion, underscores the fact that Allred Unit staff are manipulating data concerning segregated housing, and that the auditor failed to conduct sufficient due diligence to understand the use of segregation for this purpose at Allred Unit and throughout TDCJ. The auditor thus failed to conduct the minimum number of random interviews require for this audit.

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

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 60 allegations of sexual abuse by staff and other incarcerated persons. Per **audit entry 95**, administrative investigations found 1 substantiated, 43 unsubstantiated, and 16 unfounded (Table 1). That is, over 98% of the allegations were found to have less than a 50% or less chance

Table 1. Sexual Violence Investigations and Outcomes

	Sexual Abuse by		Sexual Harassment by	
	Staff	Incarcerated Person	Staff	Incarcerated Person
Allegations	16	44	4	8
Administrative investigations	16	44	4	8
Ongoing	-	-	-	-
Unfounded	8	8	-	-
Unsubstantiated	8	35	4	-
Substantiated	-	1	-	8
Criminal Investigations	1	30	0	0
Ongoing	-	19	-	-
No Action	1	10	-	-
Referred	-	1	-	-
Indicted	-	-	-	-
Convicted	-	-	-	-
Acquitted	-	-	-	-



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 less than 2% 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 12 allegations of sexual harassment by staff and other incarcerated persons. Per **audit entry 97**, administrative investigations found 8 substantiated, 4 unsubstantiated, and 0 unfounded (see Table 1). Suspiciously, 100% of allegations against other incarcerated persons were found substantiated, and 100% of allegations against staff were found unsubstantiated. 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 the evidence of sexual harassment seems to have only been persuasive when it was against other incarcerated persons. This indicates a possible failure of the administrative investigations to adequately assess evidence in allegations of sexual harassment, and a possible failure of the auditor to identify this problem and pursue an explanation of what appears may be biased or unequal investigations and evidentiary standards applied to staff versus incarcerated persons.

PREA Compliance Assessment Issues

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

TPI has for many years monitored Allred Unit because of its long history of abusive treatment of trans and queer persons, as well as other persons deemed worthy of abuse by Allred staff, particularly persons designated for safekeeping. The facility figured prominently in TPI’s 2018 report titled *“I Don’t Believe You, So You Might as Well Get Used to It” – The Myth of PREA Zero Tolerance in Texas Prisons.*¹⁰ The quote in the title comes from the then Allred Unit Safe Prisons manager, and the report’s closing quote came from a person housed at Allred Unit:

I’ve come to the conclusion that this is how they want me to feel—helpless, vulnerable, and alone. I won’t give up or in to their antics any longer. I must keep fighting for my rights and not let the disregard, disrespect and deliberate indifference to my gender status, my safety and right to be me and live without oppression become the vices that undo my essence.

In the creation of this and other auditor comment letters, TPI holds in our collective memory the persons who have suffered the targeted and general violence of the TDCJ prison system, and we honor the struggle of the many who, as stated above, refused to give in to the disregard, the disrespect, the deliberate indifference from staff at Allred Unit and within TDCJ, and we will

10. Available at <https://www.prearesourcecenter.org/resource/myth-prea-zero-tolerance-texas-prisons>.



continue to fight for our safety and our right to exist in spite of TDCJ's efforts to oppress and eliminate us.

PREA § 115.11 provides requirements that reflect the PREA goal of “zero tolerance of sexual abuse and sexual harassment” at the Allred 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. TPI would like to point out that the 2022 Auditor Handbook emphasizes this very point:

The PREA audit is not only an audit of policies and procedures. *It is primarily an audit of practice.* The objective for the auditor is to examine enough evidence to make a compliance determination regarding the audited facility's actual practice. Policies and procedures do not demonstrate actual practice, although they are the essential baseline for establishing practice and should be reviewed carefully [emphasis added; page 46].

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.

The auditor's discussion of this standard consisted only of pointing to such superficial compliance without any discussion of actual implementation. That is not an an audit of practice.

Similarly, claims that sexual violence is “investigated,” when it is clear the investigations have little or no merit due to the extremely high rate of dismissal, also function to cover up and may even encourage violence such as sexual abuse and sexual harassment by providing a means of simply ignoring such violence through improper investigations. That over 98% of all sexual abuse allegations and 100% of sexual harassment allegations against staff are dismissed, while 100% of sexual harassment allegations against incarcerated persons are “substantiated,” lends credence to the incredulity of the investigations.

Just from the persons writing to TPI, we have documented almost 450 PREA violations over the last 10 years, as well as huge numbers of abusive practices and actions by staff at Allred Unit. Table 2 below provides some of the reports of sexual abuse and sexual harassment TPI has received over the last 36 months. Due to our work in general as well as specific documented incidents at Allred Unit described above and below, 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 [incarcerated persons] against sexual abuse.” TDCJ has long shown that they cannot hire or



Table 2. Incident Details Related to PREA § 115.11 Compliance

TPI Incident Number	Date	Identity	Description
2022-00572	Jan 15, 2022	Latinx Transgender Woman	Subject reports cellmate repeatedly and intentionally exposed himself to her. The subject reported the incident, then declined to file an IPI (Inmate Protection Investigation) because she would have been locked in protective custody causing her to miss a visit from a relative.
2022-00896	Apr 25, 2022	White Transgender Woman	Subject reports being put in cell with person who had a history of sexual assaults. He told her on the first night that he wanted sex from her (see next incident report). TPI reported incident to PREA Ombudsman office, and they did not respond to this incident.
2022-00898	Apr 26, 2022	White Transgender Woman	Subject reports being forced to provide oral sex under threat of harm. Subject tried to report the incident a number of times, but was not able to file an IPI until May 4. TPI reported incident to PREA Ombudsman office, and they did not respond to this incident.
2022-00940	~Jun 1, 2022	White Bisexual Cisgender Man	Subject was sexually abused by a corrections officer for about a month, and the allegation was substantiated. Subject should have been monitored for retaliation and moved from the facility, but neither happened and he experienced retaliation.
2022-00881	Jul 12, 2022	Black Transgender Woman	Subject was forced to provide oral sex in the shower, then the assailant “punched me and told me if I tell anyone he would kill me.” When she tried to report the incident, a sergeant “told me that she was not filing anything and to get the fuck out of her face.”
2022-00719	Oct 17, 2022	Latinx Transgender Woman	Subject reports being stripped by a male lieutenant, who told her “to shut my stupid punk ass up,” then once she was naked, “laughed at me and pointed at my breasts and said ‘stupid punk you ain’t no woman!’” The lieutenant then shook out her clothing, threw it at her, and said “cover that disgusting shit up.”
2022-00942	Dec 10, 2022	White Bisexual Cisgender Man	Subject reports being beaten and raped by his cellmate, and it is not clear what if any response was provided by Allred Unit staff. The subject subsequently took action that would send him to the mental health program to escape the situation.



Table 2. Incident Details Related to PREA § 115.11 Compliance

TPI Incident Number	Date	Identity	Description
2024-00152	Mar 1, 2024	White Transgender Woman	Subject is housed in an ECB cell with someone who “can’t keep his hands off his penis.” She has reported the issue, and there has been no response.
2023-00248	Mar 6, 2023	White Transgender Woman	Subject was housed in ECB cell with cisgender man who made sexual advances and got into bed with her. The staff refused to provide an adequate response, and let the accused know the subject had reported his behavior, which resulted in him assaulting her.
2024-00163	Apr 10, 2024	White Gender Diverse Person	Subject notes that their cellmate has made sexual advances, and they are trying to address it without reporting and causing greater problems.

maintain adequate staffing levels at many of their facilities. Many units in the system are operating at less than 50 percent security staff, some as low as 30 percent. TPI has received reports from a number of units, including many over the 12 months preceding this audit, that incarcerated persons may not even see a security staff person for hours at a time, and that one staff person may be the only assigned staff person for an entire building or wing. Although positions may be filled during an audit, that may not be the case on days when the unit is not being audited.

The auditor noted the number of cameras at Allred Unit, but failed to note how many are operational or how many have been not operational during the past 12 months or lengths of time they were not operational. One of the main complaints TPI receives across the TDCJ system is that security cameras are routinely not operational—or at least that is the claim by staff. An effective audit would not address simply the number of cameras, but the number of cameras that were operational, lengths of time they were inoperative, and other documentation such as disciplinary reports and other investigations where staff claimed that cameras were not operational.

One way to view overall supervision and monitoring efficacy is to look at the deaths at a facility over time. Allred Unit has an appalling record in this area. Table 3 provides basic information about deaths at Allred Unit from May 1, 2023 through the end of April 2024.¹¹ We note that for many persons who were older, their condition appears to have not been diagnosed or under treatment, which can also be considered negligence due to poor supervision and monitoring.

11. Data derived from the Texas Attorney General’s Custodial Death Report data set, access August 7, 2024, available at: <https://oag.my.site.com/cdr/cdrreportdeaths>. The main fields used for comments are the medical cause of death, medical treatment for cause of death, and incident summary.



Table 3. Deaths in Custody, Allred Unit, May 2023 – April 2024

Name	CDR No.	Date	Age	Comments Concerning Death
H. Smith	23-527-P	5/13/2023	72	Pneumonia, sepsis, pancreatic cancer; condition diagnosed, but apparently not under treatment
T. E. Looper	23-589-P	5/22/2023	54	Suicide by hanging
J. R. Smith	23-627-P	6/3/2023	54	Pulmonary thromboembolism, other conditions, apparently diagnosed and under treatment for conditions
J. H. Szalla	23-737-P	6/21/2023	29	Suicide by hanging
A. Madrid	23-955-P	7/29/2023	72	Cardiac arrest, diagnosed and under treatment
F. L. Gaconnet	13-1-P	8/11/2023	66	Heart failure due to multiple conditions, apparently not diagnosed and not under treatment
D. W. Heinze	23-1019-P	8/11/2023	74	Cardiac arrest, apparently not diagnosed and not under treatment for condition
S. Trevino	23-1061-P	8/18/2023	39	Homicide by strangulation
K. W. Middleton	23-1137-P	9/1/2023	61	Heart disease, apparently not diagnosed and not under treatment for condition
R. R. Fuller	23-1173-P	9/2/2023	41	Overdose from fentanyl
K. A. Midgley	23-1175-P	9/3/2023	35	Overdose from fentanyl
L. R. Sunderland	23-1181-P	9/9/2023	50	Overdose from fentanyl
J. A. Govea	23-1203-P	9/9/2023	40	Suicide by hanging
R. J. Byler	23-1313-P	9/30/2023	63	Aorto-esophageal fistula, unknown if diagnosed, apparently not under treatment for condition
A. Congrove	23-1333-P	10/7/2023	21	Kidney cancer, apparently not diagnosed and not under treatment for condition
R. E. McConnell	23-1365-P	10/14/2023	60	Suicide by hanging
R. Carranza	23-1373-P	10/16/2023	56	Cardiac arrest, diagnosed and under treatment
T. J. Garza	23-1545-P	11/21/2023	70	Pneumonia, emphysema, colon cancer; diagnosed and was under treatment for conditions
R. C. Mead	23-1739-P	12/21/2023	56	Gastric cancer, diagnosed and under treatment
J. Forrest	24-209-P	2/21/2024	50	Cardiac arrest, apparently not diagnosed and not under treatment for condition
K. W. Roberts	24-383-P	3/26/2024	45	Undefined cause, apparently was not under treatment for the undisclosed condition
J. M. Guerrero	24-393-P	3/31/2024	71	Liver cancer, apparently not diagnosed and not under treatment for condition
J. D. Aguilar	24-483-P	4/11/2024	45	Suicide by hanging
K. R. Withers	24-489-P	4/15/2024	69	Gastrointestinal bleeding, cirrhosis, apparent overdose from ethanol and methamphetamine, apparently medical conditions not diagnosed and not being treated
C. J. Baxter	24-541-P	4/18/2024	39	Cause and manner of death pending
E. Poree	24-623-P	4/22/2024	56	Cause and manner of death pending, reports to TPI that after altercation, Poree was sprayed in face with chemical agent then left without treatment



TPI receives numerous general complaints about security staff refusing to allow people to go to medical lay-ins or escort people to medical appointments, often blamed on staff shortages. We also note that deaths between April and October may be due to conditions exacerbated by heat exposure in buildings without climate control. Suicides indicate poor supervision of staff and incarcerated persons, as well as possible desperation due to staff failure to address a problem.

In the 12 months covered by the PREA audit, there were 26 deaths at Allred Unit, an extremely high number for an average population of 3,678 persons. This would be a death rate of 707 per 100,000, almost as high as the incarceration rate of 751 per 100,000 for the entire state of Texas.¹² These deaths include at least 5 suicides, 1 homicide, 3 overdose deaths, and 1 possible death by staff misconduct occurring 3 days after the 2024 onsite audit. It is difficult to consider that this supposedly reflects a facility with adequate supervision and monitoring of safety and endangerment. TPI doubts that Allred Unit should be considered to meet compliance with PREA § 115.13.

PREA § 115.15, Cross-Gender Viewing and Searches

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

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

Failure to recognize this fact in an audit is a failure to properly assess whether or not cross-gender searches are conducted at a facility. As discussed above, a blanket practice of misclassifying transgender females as “males” (or transgender males as “females” or nonbinary transgender persons according to any stereotype) is inappropriate, is noncompliant with PREA § 115.15(a), and furthermore willful disregard of this fact may constitute violence against transgender persons.

The DOJ has stated support for this position by noting that:

[a]gencies or facilities that conduct searches based solely on the gender designation of the facility without considering other factors such as the gender identity or expression of the individual [incarcerated person] or the [incarcerated person’s] preference regarding the gender of the person conducting the search, *would not be compliant with Standards 115.15* [emphasis added].¹³

12. Prison Policy Initiative. Texas Profile. Accessed August 7, 2024, at <https://www.prisonpolicy.org/profiles/TX.html>.

13. National PREA Resource Center FAQ. (October 24, 2023). Discussing searches of transgender or intersex residents. Available at: <https://www.prearesourcecenter.org/frequently-asked-questions/can-you-please-clarify-parameters-conducting-search-transgender-or->



TPI emphasizes that this does not state “may not be compliant,” it states “would not be compliant.”

One TPI report (TPI incident number 2023-00165) notes that between April 20 and May 21, 2023, a transgender woman’s cell was searched two to three times each week, and an unspecified number of those searches included her being strip searched by male guards. The subject reported that she requested searches by female guards or that at least a female guard be present, and reports that each time both requests were denied. TPI’s experience is that such cross-gender searches are so common that most transgender persons do not even report them, feeling that doing so would resolve nothing, and may initiate retaliatory actions from staff.

In the discussion of PREA § 115.15(a), the auditor states that “[i]n the past 12 months, the facility has not had any cross-gender visual body cavity searches,” but does not address cross-gender strip searches other than to refer to AD-03.22 and state that strip searches can be necessary. The auditor also stated that the warden, PREA compliance manager, safe prisons/PREA staff, and supervisory staff “all reported there were no exigent circumstances that required cross gender viewing of an unclothed [incarcerated person] by a staff member at Allred.” TPI asserts that an audit doing appropriate due diligence would determine that statement to be false.

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.

In the discussion of PREA § 115.15(b), the auditor erases transgender persons entirely, as well as fails to consider DOJ guidance concerning gender identity, by stating that Allred Unit “does not house female” incarcerated persons, which is false. The auditor erases transgender persons entirely by also stating that “[t]here were zero pat-down searches of female [incarcerated persons] conducted by male staff,” which is false.

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.

In the discussion of PREA § 115.15(c), the auditor continues to erase the existence of transgender women at Allred Unit by stating that “[t]he facility does not house female” incarcerated persons, and echos staff misunderstanding and disregard for PREA compliance by stating that



“[i]nformal conversations with staff and [incarcerated persons] confirmed the absence of female [incarcerated persons] at Allred.”

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,”¹⁴ the refusal to acknowledge the gender of transgender persons also results in a failure to meet this standard.

The auditor reports asking all 60 incarcerated persons interviewed about “opposite” gender announcements, and 16 stated female staff do not announce their presence and 7 said it is inconsistent, a total of 23 reporting noncompliance. That is, almost 40% reported noncompliance with this provision.

Additionally, the auditor reports that 6 of 60 (10%) interviewed confirmed that they are viewed by persons of the “opposite” gender while in a state of undress.

We also note that persons incarcerated in the ECB housing at Allred have stated the showers are beside the door, which has a window, so anyone walking by can readily see in when someone is changing or showering.

It is not clear why the auditor determined there was insufficient information to warrant a corrective action.

TPI would like to point out that also of relevance to PREA § 115.15(d) is that under circumstances requiring constant or near constant observation (which in TDCJ includes both CDO, or constant direct observation, and SOS, or security observation status, neither of which were discussed in the audit report) are likewise accountable for compliance with PREA § 115.15(d). Per the National PREA Resource Center FAQ:

[A] cross gender staff can be assigned to suicide watch, including constant observation, so long as the facility has procedures in place that enable an [incarcerated person] on suicide watch to avoid exposing himself or herself to nonmedical cross gender staff. This may be accomplished by substituting same gender correctional staff or medical staff to observe the periods of time when an [incarcerated person] is showering, performing bodily functions, or changing clothes. It may also be accomplished by providing a shower with a partial curtain, other privacy shields, or, if the suicide watch is being conducted via live video monitoring, by digitally obscuring an

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14. 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.



appropriate portion of the cell. Any privacy accommodations must be implemented in a way that does not pose a safety risk for the individual on suicide watch. The privacy standards apply whether the viewing occurs in a cell or elsewhere.

The exceptions for cross gender viewing under exigent circumstances or, for [incarcerated persons] who are not on constant observation, when incidental to routine cell checks apply to suicide watch as well. Because safety is paramount when conducting a suicide watch, if an immediate safety concern or [incarcerated person's] conduct makes it impractical to provide same gender coverage during a period in which the [incarcerated person] is undressed, such isolated instances of cross gender viewing do not constitute a violation of the standards. Any such incidents should be rare and must be documented.¹⁵

Concerning PREA § 115.15(f), which 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, the auditor curiously states that “[t]he majority of [incarcerated persons] reported staff were respectful when performing pat searches and strip searches,” which means some reported that staff were not professional or respectful. The auditor does not address these instances of noncompliance, **the investigation of which is the very object of this audit**. As in other assessment areas of PREA § 115.15, the auditor seems to have simply dismissed compliance issues when a clear need for corrective action was established.

TPI asserts that the audit of Allred Unit compliance with PREA § 115.15 was insufficient, and that it appears clear that Allred Unit fails compliance with this standard.

PREA § 115.16, Disabilities and Limited English Proficiency

As noted above concerning audit entries 38 and 39, there appears to be some manipulation of the numbers of persons with physical, psychiatric, and intellectual disabilities at Allred Unit. TPI does not have the ability to investigate these discrepancies, but we assert that without further information, Allred Unit cannot be considered compliant with PREA § 115.16.

PREA § 115.21, Evidence Protocol and Forensic Medical Examinations

PREA § 115.21(c) requires the agency to “offer all victims of sexual abuse access to forensic medical examinations.” Audits at other TDCJ facilities have referenced TDCJ OIG-7.13 as stating that staff will “determine if a forensic medical examination will be offered.” TDCJ policy SPPOM-05.01 has made the same statement in section 1.F. This auditor reports different, noting that OIG-7.13 states “[i]f a sexual assault is reported to the OIG within 120 hours, . . . an investigator shall request a forensic medical examination of the victim of the alleged assault for use in the investigation or prosecution of the offense” (these are the auditor’s words, not quoted from OIG-7.13; other audits have included quoted text from OIG-7.13). TPI has no access to OIG-7.13, so we cannot confirm whether this noncompliant policy has been updated.

15. National PREA Resource Center FAQ. (December 18, 2015). Discussing cross-gender viewing of transgender or intersex persons during “suicide watch.” Available at: <https://www.prearesourcecenter.org/frequently-asked-questions/how-do-requirements-standard-11515d-apply-inmates-who-have-been-placed>.



PREA § 115.22, Referrals of Allegations for Investigations

The auditor seems to imply that 2 out of 5 investigators did not understand the PREA § 115.22(b) requirement that they must report sexual abuse and sexual harassment allegations to “an agency with the legal authority to conduct criminal investigations.” This is certainly relevant to training deficiencies, but may also be relevant under the PREA § 115.22 standard as it may indicate an opposition to compliance with this standard, even if in the current audit the auditor can claim all 72 allegations were referred to the OIG.

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.

In the discussion of PREA § 115.31(a), the auditor notes that out of 21 staff interviewed “[t]wenty of the staff members reported receiving training on the following topics” and enumerates the subparts of PREA § 115.31(a). The one staff member who did not receive training was recently hired, worked in the human resources department and did not have direct contact with incarcerated persons, and had not yet received training. That may not be a deficiency, but the auditor referenced several other training deficiencies without such explanation:

- Discussion of PREA § 115.15(d), a staff person was “not sure” if incarcerated persons were able to dress, shower, and use the toilet without being viewed by staff of the “opposite” gender;
- Discussion of PREA § 115.15(e), a staff person was “not sure” if staff could search a transgender person for the sole purpose of determining genital status;
- Discussion of PREA § 115.16, an employee said they were not sure if other incarcerated persons could be used as interpreters;
- Discussion of PREA § 115.21, 19 of 21 staff could “effectively identify” protocol for obtaining usable physical evidence if there is an allegation of sexual abuse; two said they “were not exactly sure of the protocol”; and
- Discussion of PREA § 115.22, three of five sexual violence investigative staff stated they refer all allegations of sexual abuse or sexual harassment to the OIG, which is the entity with legal authority to conduct criminal investigations (no information provided as to why all five investigative staff did not report this, but it can only be assumed that two of five did not know they are required to report or were otherwise not clear about the requirements of PREA § 115.22(b)).



The above bullet points discussing PREA § 115.22 may be more appropriate to specialized training under PREA § 115.34. It may be that some of these can be attributable to the human resources employee that had not received training, but that is not made explicit, so based on what can be read, possibly as many as 25% of the staff interviewed had not received adequate training.

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. Based on the auditor's comments that only "males" are housed at Allred Unit, we can be assured that this provision was not adequately audited, even if the training includes something called "Gender Specificity Training" (mentioned on page 58 of the audit report).

Although TPI does not have any reports of issues related to compliance with this standard from the past 12 months, the numerous reports we have had over time and ongoing correspondence interference (see the section of this letter titled TPI Data for Allred Unit) indicate there is an ongoing issue with staff training at Allred Unit. We provide in Table 4 an overview of the issues that we have received from the last three years, roughly since the last PREA audit.

Based on these observations and facts, TPI asserts that it cannot be determined that Allred Unit is in compliance with PREA § 115.31.

PREA § 115.33, Incarcerated Persons Education

TPI has little means of monitoring compliance with PREA § 115.33, which covers education of incarcerated persons concerning PREA issues, however, the number and extent of misunderstandings about PREA we receive in reports indicates as a whole, TDCJ training in this area is a failure.

In this audit report, the auditor claims that Allred Unit exceeds this standard. However, the auditor also reports in the discussion of PREA § 115.33(a) that almost 10% (n=5) of the incarcerated persons interviewed stated they did not receive information about the zero-tolerance policy and how to report incidents or suspicions of sexual abuse or sexual harassment; another 5% (n=3) could not remember. Additionally, the auditor reports in the discussion of PREA § 115.33(b) that 20% (n=12) stated they did not receive training in compliance with that standard, including the right not to be sexually abused or sexually harassed, how to report sexual abuse and sexual harassment, and the right to not be punished for reporting sexual abuse or harassment. The auditor states in the discussion of PREA § 115.51 that about 7% (n=4 of 60 interviewees) "were not aware of how to report sexual abuse/harassment, retaliation, or staff neglect." Knowledge about making external reports was even worse, with nearly one-third of those interviewed stating there was no means of making an external report (15%, n=9) or they were not sure (15%, n=9).



Table 4. Incident Details Related to PREA § 115.31 Compliance

TPI Incident Number	Date	Identity	Description
2021-00570	Jul 8, 2021	White Transgender Woman	During a UCC meeting, a captain made a comment about not looking male enough, to which an assistant warden responded "I like bald-headed G4 punks."
2021-00357	Aug 24, 2021	Latinx Transgender Woman	A captain stated after a UCC meeting "I told [you] I'd get you bitch ass faggot."
2021-00358	Aug 24, 2021	Latinx Transgender Woman	After release from holding cell following a UCC meeting, cellmate reported the captain searched the cell and asked the cellmate if he knew he was "living with a transgender," apparently an effort to endanger the subject.
2021-00608	~Dec 19, 2021	Black Gay Man	Reports of regular and ongoing harassment by two sergeants and three corrections officers, all named, all working on 7 Building. Subject reports these persons are intentionally targeting LGBTI persons for abuse.
2022-00151 2022-00152 2022-00153	Mar 26, 2022	Latinx Transgender Woman	Prior to cell search, corrections officer called subject a "faggot" and said to "get [your] queer ass in the D-space." During search, the CO threw around legal work, photographs, books, soap, colored pencils, food, and condiments, walked on the materials and damaged them, took commissary items without issuing a contraband form, and called the subject a "chomo" to instigate endangerment with others.
2022-00880	Jul 11, 2022	Black Transgender Woman	After being assaulted by several persons the day previous, a sergeant that she tried talk to about filing an IPI told her to "get the fuck out her face and she was not filing no OPI [IPI] and to get out her face before she would have someone to jump on me and beat my ass."
2022-00884	Jul 12, 2022	Black Transgender Woman	When trying to report sexual abuse and the need for an IPI, a sergeant responded by stating "that she was not filing anything and to get the fuck out of her face. . . . She also told me that she hate[s] punks and transgenders." After successfully reporting the incident to safe prisons staff, the incident was unsubstantiated with the excuse that the cameras were not working, and the person was housed on the same building as her assailant.



Table 4. Incident Details Related to PREA § 115.31 Compliance

TPI Incident Number	Date	Identity	Description
2022-00945	Jul 17, 2022	Black Transgender Woman	Reports being assaulted by a corrections officer who stated “I hate transgenders,” then filed a false report that the trans woman assaulted him, which was disproven by security cameras. The CO subsequently tried to incite others to assault her.
2022-00620	Sep 13, 2022	Latinx Transgender Woman	After being assaulted when no staff were in the day room or in the picket, the assailant falsely claimed to a sergeant that he was assaulted. When the transgender woman tried to state what happened, the sergeant responded “shut up you faggot, y’all wanna-be women are always full of drama. I don’t like your kind. I’m going to send you to jail for assault on an inmate with a weapon that results in serious injuries.”
2022-00617	~Sep 15, 2022	Mixed Race Transgender Woman	Notes that multiple staff routinely misgender her by intentionally call her “sir” to offend and belittle her. This is in spite of training that includes addressing all incarcerated persons as “inmate [last name].”
2022-00747	Nov 9, 2022	White Gender Questioning Person	Patient Liaison Program staff repeatedly failed to follow policy to refer to Allred person as “inmate [last name].”
2023-00250	Mar 6, 2023	White Transgender Woman	Instead of responding to a report of sexual harassment and indications of intent to sexually abuse her, a CO shouted in front of others in the day room “what do you want me to do about it,” which alerted her cellmate that she was reporting his actions and put her in danger. Subsequently, the cellmate assaulted her.
2023-00091	Mar 15, 2023	White Transgender Woman	When trying to report being concerned about her safety to a sergeant, he replied “I don’t give a damn how you feel.”
2023-00172	Apr 9, 2023	Black Transgender Woman	When requesting a separate shower in a cell with the shower in the cell, a CO told her that they both have a penis so put up a sheet.

It is certainly not supportive of a claim that Allred Unit exceeds this standard that 7% of the incarcerated population does not know how to report sexual violence to staff, and that 30% do not know they can report to outside entities.



Concerning PREA § 115.43 confidentiality, only about half of 50 persons noted to have been interviewed (it is not clear why this references only 50 instead of 60 interviewees) indicated they were aware of confidentiality requirements, while 7 stated they did not believe conversations would be confidential and 16 did not know. In the discussion of PREA § 115.53, the auditor reports that out of 50 incarcerated persons interviewed, only 45 knew that services were available outside the facility.

The auditor cites little that would indicate Allred Unit exceeds basic compliance with PREA § 115.33 save that the auditor was “provided with a significant amount of sign[-]in sheets” and “an impressive amount of literature, paintings, posters, and PREA information,” which was probably put out in preparation for the PREA and ACA audits, which TDCJ schedules approximately the same time as per contract proposal discussions).¹⁶ Because of the far from insignificant numbers of incarcerated persons reporting that they did not receive the most basic information and training in compliance with this standard, TPI asserts that there is no reason Allred Unit should have been determined to “exceed the standard,” and in fact there is ample evidence in this report itself that corrective action should have been required.

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 only 1 of 60 incidents involving allegations of sexual abuse were substantiated indicates a problem with this training, or perhaps with putting the training into practice. It is also noteworthy that in the discussion of PREA § 115.22, the auditor reported 3 of 5 sexual violence investigative staff stated they refer all allegations of sexual abuse or sexual harassment to the OIG, which is the entity with legal authority to conduct criminal investigations. It is not clear why all 5 investigative staff did not report this, but it can only be presumed that 2 of 5 did not know they are required to report or were otherwise not clear about the requirements of PREA § 115.22(b). The discussion in PREA § 115.34 states that all 5 had received training that is supposed to be compliant with this standard, and that all were supposed to be current with training requirements.

TPI believes that it is questionable whether or not the audit of this standard was sufficient.

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.

In the discussion of PREA § 115.41(a) and (b), the auditor states that out of 23 incarcerated persons interviewed who arrived within the last 12 months, 2 (almost 10%) stated they did not recall being screened. TPI asserts that screening is an extremely significant aspect of PREA

16. See Solicitation IW117749 for PREA Audit Services, Amendment No. 1, Questions and Answers, Question 2 answer concerning rescheduling audit dates: “they are scheduled in conjunction with the unit’s ACA audit.” Available at <https://www.txsmartbuy.gov/esbd/IW117749>.



compliance, and this begs the question of what the auditor did to confirm that all persons were properly screened. The only indication that documentation was reviewed concerning this was an incomplete sentence that simply stated: “Intake screening records of [incarcerated persons] coming in last 12 months and being screened within 72 hours.” Were reviewed? Confirmed that the two were actually screened? Indicated some persons were not screened? The report is incomplete on this issue.

Again, in the discussion of PREA § 115.41(f) and (g), the auditor notes that of 23 incarcerated persons interviewed, only 14 recalled being reassessed within 30 days, and 9 said they did not remember that happening. This does not indicate compliance with PREA § 115.41(f).

TPI would like to point out that as documented in audit entry 48, Allred Unit does not seem to distinguish between sexual orientation and gender identity for screening purposes. The fact that they could not provide to the auditor one list for lesbian, gay, and bisexual persons, and another list for transgender and intersex persons seems to indicate that the facility may not be compliant with PREA § 115.41. It is not clear why the auditor did not question this issue in the PREA § 115.41 discussion. This is doubly problematic because Allred Unit houses many transgender persons in ECB (extended cell block) cells, which have a shower in the cell and are currently being used to house two people. If the unit cannot identify transgender and intersex persons, how can it identify appropriate housing and shower needs for compliance with PREA § 115.42.

In addition to these issues with the audit, TPI also 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 and limited 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 [incarcerated person] **is or is perceived to be** gay, lesbian, bisexual, transgender, intersex, or **gender nonconforming**” (emphasis added). If TDCJ risk screening markers include only LGBXX (unknown code), 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 is not clear how TDCJ identifies persons in these classes, or how these criteria are applied for PREA § 115.42 purposes. This appears to indicate TDCJ policy makes it easy to exclude considerations of vulnerability for gender nonconforming and nonbinary persons.

TPI believes that for the above reasons, it is clear that there should have been some additional investigation into whether all screening assessments are actually being done, and it is likely that a corrective action should have been developed to address the problematic data concerning the identification of transgender persons housed at the facility. Thus TPI asserts that this audit was deficient in assessing Allred Unit compliance with 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.

In the discussion of PREA § 115.42(a), the auditor states “[incarcerated persons] at the facility consistently stated feeling safe and reported low rates of violence or sexual crimes.” TPI would like to state in contrast that Allred Unit has in our experience been for the past decade one of the most violent and abusive facilities in the TDCJ system. The high number of deaths presented in Table 1 supports this. Although we do not have specific incidents to report related to use of screening information for safety during the last 12 months, we have for many years received general reports of abusive housing practices that endanger transgender and other LGBTI persons at Allred Unit. It is hard to imagine how the auditor coalesced evidence available at Allred Unit into this single short idyllic statement covering PREA § 115.42(a) and (b). We again note that such interviews with incarcerated persons are often or always conducted with ranking staff listening instead of in privacy, as required under PREA § 115.401(m), a fact that should be noted in order to assess influence on the truthfulness of responses from incarcerated persons.

The auditor asserts that Allred Unit makes case-by-case determinations in assigning housing to a “male” or “female” unit. The auditor does not seem to specifically address this in the report, instead addressing assignment to dedicated buildings, wings, or cell blocks instead of evaluating compliance with PREA § 115.42(c). TPI notes that based on reporting to us, we have heard of only 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.

In comments on PREA § 115.42(c) and (e), the DOJ states that



A PREA auditor *must examine a facility or agency's actual practices in addition to reviewing official policy. A PREA audit that reveals that all transgender or intersex [incarcerated persons] in a facility are, in practice, housed according to their external genital status raises the possibility of non-compliance.* The auditor should then closely examine the facility's actual assessments to determine whether the facility is conducting truly individualized, case-by-case assessments for each transgender or intersex [incarcerated person]. The auditor will likely need to conduct a comprehensive review of the facility's risk screening and classification processes, specific [incarcerated person's] records, and documentation regarding placement decisions [emphasis added].¹⁷

The auditor states correctly (at least in general) in reference to PREA § 115.42(d) and (e) that transgender persons are assigned the TRGEN special population code, and intersex persons the INTSX special population code. The auditor does not state whether there is also a special population code for sexual orientation (apparently mutually exclusive for TDCJ classification), but TPI has seen a code referenced, although we do not know what the code is. The auditor states that transgender persons are reassessed twice a year, but the auditor also stated that Allred Unit could not provide a separate list of transgender persons. If that is true, one must wonder how the auditor confirmed that these biannual reassessments are actually done.

It is not clear why Allred Unit was manipulating screening data collected for LGBTI persons, but what is very clear is that this data is being manipulated for some reason. That the auditor failed to undertake due diligence investigations to address this data manipulation is a serious deficiency in this audit, and begs the question of what else is being manipulated.

The auditor notes that to in part assess compliance with PREA § 115.42(d), seven transgender persons interviewed "reported being asked about their sense of safety during periodic status checks" (page 77). That may be facilely true, but 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 through the use of housing persons reporting problems in a disciplinary environment for a week or more. TPI feels the response from this auditor concerning this provision is inadequate, and there should have been some level of genuine investigation into the effectiveness of the PREA § 115.42(d) reassessments.

In the auditor's discussion of PREA § 115.42(f), the auditor reports that 6 of 7 transgender interviewees "reported being able to shower separately[, but 1] reported 'there is a shower

17. National PREA Resource Center FAQ. (March 24, 2016). Discussing housing for transgender or intersex persons. Available at: <https://www.prearesourcecenter.org/frequently-asked-questions/does-policy-houses-transgender-or-intersex-inmates-based-exclusively>.



schedule, but it is not always followed.” That means that not all transgender persons are able to shower separately, as required for compliance with PREA § 115.42(f). The auditor appears to ignore that report and simply concludes that all incarcerated transgender persons at Allred Unit are “able to shower separately.” The auditor even identifies a significant issue with the ECB cells having two persons and a shower in the cell, but claims that “all [incarcerated persons] are ordered out of their cell at a specific time to allow for private showers.” This may be what operational procedures state should happen, and that may happen during brief periods when the unit is under audit, but lock downs, staff shortages, and various operational conditions mean Allred Unit does not always comply with PREA § 115.42(f). We would like to emphasize that with two persons in a cell with a shower, it would be impossible to routinely comply with this standard as described by the DOJ:

The separation required by the regulation will be dependent on the layout of the facility, and may be accomplished either through physical separation (e.g., separate shower stalls) or by time-phasing or scheduling (e.g., allowing an [incarcerated person] to shower before or after others). In any event, facilities should *adopt procedures that will afford transgender and intersex [incarcerated persons] the opportunity to disrobe, shower, and dress apart from other [incarcerated persons]* [emphasis added].¹⁸

Table 5 provides incidents TPI has documented indicating noncompliance with the PREA § 115.42(f) provision during the past 12 months.

Due to these problems with the audit of compliance with this standard, TPI asserts that this audit was deficient in this assessment, and that it is highly unlikely that Allred Unit meets compliance with the PREA § 115.42 standard.

PREA § 115.43, Protective Custody

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

In discussing PREA § 115.43(a) and (b), the auditor states that 0 persons at risk of sexual victimization were held in involuntary segregated housing in the last 12 months, and TPI asserts that this data is absolutely false. The auditor relies on false information from TDCJ and Allred Unit to justify this statement, claiming that persons “at high risk for sexual victimization shall not be placed in *protective safekeeping* unless an assessment of all available alternatives has been made” (page 79; emphasis added). This represents a gross misunderstanding of the various types of segregated housing in use at Allred Unit. (See the section below titled “TDCJ Manipulation of ‘protective custody’ designations.”)

TPI would also like to point out that in various places in the audit report, there are claims that persons making allegations of sexual violence would be typically transferred from the unit, and thus not placed in segregated housing. Yet there were also 64 persons at the facility who had

18. National PREA Resource Center FAQ. (April 23, 2014). Discussing separate showers for transgender or intersex persons. Available at: <https://www.prearesourcecenter.org/frequently-asked-questions/standard-11542-use-screening-information-requires-transgender-inmates-be>.



Table 5. Incident Details Related to PREA § 115.42(f) Compliance

TPI Incident Number	Date	Identity	Description
2023-00100	Mar 12 – Mar 24, 2023	White Transgender Woman	Subject housed in ECB cell on Mar 10, and on Mar 12 they went on lock down, with only one separate shower provided between Mar 12 and Mar 24
2023-00171	Apr 9 – May 18, 2023	Black Transgender Woman	Subject housed in ECB cell, separate showers provided most of the time during March 2023, but in April and May was denied opportunities to shower separate
2023-00348	~May 11, 2023	White Transgender Person	Subject states was placed in cell with cis cellmate at some point around May 9, 2023; notes not being provided opportunities to shower separate, and continued to happen at least into September 2023.
2023-00347	Sep 6 – Oct 16, 2023	Black Transgender Woman	Subject housed in ECB cell with cis cellmate during lock down from September 6 through October 16; most days in cell 24 hours. Staff sometimes offered separate showers, but report indicates that was by having the cellmate leave the cell, but he would refuse to leave.
2024-00013	~ Jan 17, 2024	Latinx Transgender Woman	Subject reports being housed in ECB cell with a cis cellmate and must shower in the cell while the cellmate is present.
2024-00157	Apr 8, 2024	White Transgender Woman	Subject states she and other transgender persons are forced to live in cells with cis persons, and that they are not allowed appropriate access to separate showers.

reported sexual abuse at Allred Unit, and 60 allegations of sex abuse in the last 12 months. It certainly seems that these claims cannot both be true.

The auditor also repeats false information from the warden referencing “protective safekeeping” as the only means of segregating incarcerated persons at high risk of sexual victimization. That the warden would also claim that he “does not recall the last time a victim of sexual abuse was placed in segregation” and that “the perpetrators, when identified, are placed in segregation pending an Offender Protection Investigation (OPI)” runs counter to practice in TDCJ to immediately lock up anyone reporting sexual abuse or sexual harassment, and it is curious that the warden apparently refuses to use the current language of “Inmate Protection Investigation.”

Regardless of policy or staff claims of practice, reports to TPI indicate that placement in involuntary segregation due to immediate endangerment seldom considers any other options



outside segregation, often involuntary. This practice in effect serves to punish persons for reporting endangerment and to discourage reporting. Concerning high risk of sexual victimization that is not imminent, TDCJ refuses safekeeping designation too often, and in the assessment of alternatives nearly always claims a unit transfer will solve problems that persist across units.

Concerning PREA § 115.43(b), correspondence to TPI relates that some units have a blanket prohibition against safekeeping designated persons being assigned job duties, even when there is no endangerment from the job assignment and work assignments are desired by the incarcerated person. Safekeeping designation also results in exclusion from many programs, privileges, education, and work opportunities, with TDCJ claiming that it is not protective custody that prohibits the exclusion but the lack of safekeeping housing on units with those programs. That is a specious claim at best. Regardless, safekeeping designation is the cause of the exclusion, and the exclusion must be documented according to provision b requirements. TPI believes these requirements are not being met by claiming it is not safekeeping that causes the exclusion. The auditor does not appear to have investigated issues related to the substantial number of persons confined to safekeeping housing at Allred Unit at all.

In discussing PREA § 115.43(c), the auditor states that 0 persons were placed in involuntary segregated housing for more than 30 days, and supports this statement with inaccurate information that incarcerated persons “shall be assigned to protective safekeeping only until an alternative means of separation from likely abusers is arranged, for no longer than 30 days.” This does not even resemble the actual use of protective safekeeping within TDCJ, and does not in any way address compliance with PREA § 115.43(c). The warden’s claim that no persons at risk of sexual victimization have been placed in segregated housing within the last 12 months is highly improbably and requires investigation.

And in discussing PREA § 115.43(d) and (e), the auditor continues to misapply and misunderstand “protective safekeeping” and how segregated housing is used within TDCJ. Based on the lack of understanding of the various types of protective custody and restrictive housing evidenced by this auditor, the inappropriate citations of staff statements and policies, TPI asserts that it is impossible to determine from this audit whether or not Allred Unit meets PREA § 115.43 compliance.

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 Rule¹⁹ also does not provide definitions for these terms. In discussing

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



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.²⁰ However, the discussion makes it clear that all these terms refer to separating the person from endangerment by placement in separate housing, and that all of these are considered “protective custody.” For the sake of consistency, TPI will refer here to all separation for investigations of alleged sexual abuse or due to assessment as being at risk for sexual abuse to be “protective custody.” If the person being segregated agrees with the segregation, that segregation will be “voluntary protective custody”; if the person being segregated does not agree with the segregation, that segregation will be “involuntary protective custody.” TPI also asserts that due to the requirement at PREA § 115.41(d)(9) that the incarcerated person’s own views of vulnerability taken into account, considerations of whether separate housing is “voluntary” or “involuntary” may change over time as the person’s views about the need for protective custody changes. 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. At that point, safekeeping becomes involuntary protective custody. Requests to be released from safekeeping designation are not always granted, and when not granted, documentation requirements under PREA § 115.43 are triggered.

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,

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



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.”²¹ 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.²² 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

21. 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/>.

22. 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.



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 and to effect a disciplinary environment for persons warranting safekeeping status.

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.²³ 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 may be 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

23. 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.



or volunteer for and be assigned, and in many cases requests for removal of the safekeeping designation are denied, sometimes even after outside advocacy for removal of the safekeeping designation.

Thus safekeeping designation is definitely a type of “protective custody” under the PREA standards, and may be considered “involuntary protective custody” requiring documentation and on-going assessments of continuing need for PREA compliance.

Lockup for reporting sexual violence: TDCJ seems to go to some effort to indicate only “protective safekeeping” (custody classification P6 and P7) constitutes “protective custody” or “involuntary protective custody” for PREA purposes, and 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).²⁴ 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.

Protective Management: Some PREA audit reports for TDCJ facilities have mentioned a housing designation called “protective management.” The housing designation is described as segregated housing for protection. TPI has not ever seen this phrase in any other context, although we do know there are several additional segregation categories not covered here. We mention this here because it appears to be directly related to PREA compliance with PREA §§ 115.43 and 115.68, but is not always covered in audit report assessments. It appears that this “protective management” designation should also be considered to be PREA protective custody, and sometimes may constitute involuntary protective custody.

24. 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.



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 § 115.52, Exhaustion of Administrative Remedies

Both the auditor and Allred Unit staff appear to not understand the scope of this standard, at least as staff at TPI understand it. Although the standard technically covers, as noted in the audit report, “administrative procedure[s] for dealing with [incarcerated persons’] *grievances* regarding sexual abuse” (emphasis added), the PREA standard is focused on the *administrative remedies* related to reports of sexual abuse, not just grievances. As stated in the Final Rule, this standard covers in provision (a) “administrative remedies (typically known as grievances) following an incident of sexual abuse,” and in provision (f) “procedures for dealing with emergency claims alleging imminent sexual abuse.”²⁵ These do not limit remedies to only considering grievances, and in TDCJ, an IPI should be considered a “grievance” related to seeking and exhausting administrative remedies under PREA.

The auditor states that according to the pre-audit questionnaire, only 12 grievances alleging sexual abuse and 2 alleging imminent risk were filed, when previously the auditor stated that 60 (elsewhere identified as 64) allegations of sexual abuse (each requiring an administrative remedy) were filed (we are assuming that the 60 allegations do not include reports of imminent risk). It is not clear why Allred Unit staff would claim that only 12 of 60 allegations of sexual abuse (that is only 20% of the allegations) were covered by this standard, nor is it clear why the auditor would accept that as legitimate for compliance with this standard. One should legitimately wonder if administrative remedies related to allegations of sexual abuse that do not involve a grievance—which apparently was true for 48 of 60 (80%) allegations—were also compliant with this standard. A sample of both types of redress should have been reviewed.

TPI also notes that although the auditor reports 60 allegations of sexual abuse were investigated, the auditor appears to contradict that data by stating 64 persons had alleged sexual abuse at Allred Unit. There could be an explanation for this number, but it would seem warranted to specify in this report what that explanation is, especially given that audit entry 45

25. Federal Register (2012): vol. 77 no. 119, Fed. Reg. page 37157-37158 (June 20, 2012).



states there were 64 persons at the unit who had reported sexual abuse at the unit, but only 60 allegations documented.

That the auditor only reviewed compliance where grievances were apparently part of the report of sexual abuse may or may not indicate noncompliance, but this apparent misrepresentation of PREA § 115.52 by Allred Unit staff and misunderstanding of the standard by the auditor both warrant further investigation of compliance at the facility.

Based on this concern, TPI asserts that it cannot be determined if Allred Unit is in compliance with PREA § 115.52 or not.

PREA § 115.53, Access to Outside Confidential Support Services

This standard states that the facility shall provide incarcerated persons access to outside victim advocates by providing mailing addresses and telephone numbers. The auditor states that 2 of 6 incarcerated persons (33%) stated they did not receive this information. The auditor seems to claim that because the phone number for an outside contact was provided on wall postings that meets compliance. However, it is not clear that these postings are always available, and because a significant percentage of persons with a vested interest in having this information stated they did not receive it, this does appear to reflect compliance with this standard.

PREA § 115.61, Staff and Agency Reporting Duties

In discussion of PREA § 115.61, the auditor notes that staff claim to follow reporting duties for reporting allegations of sexual abuse or sexual harassment for investigation. TPI does not have reports of failure to comply during the preceding 12 months, but we do have several significant problems documented since the last PREA audit, as shown in Table 6.

PREA § 115.64, Staff First Responder Duties

In the discussion of PREA § 115.64(a), the auditor states that out of 60 allegations of sexual abuse, the victim and abuser were separated only 43 times, apparently meaning that in almost one-third of the reports, the victim and abuser were not separated.

In the discussion of PREA § 115.64(a)(3), the auditor states that 25 reports were made within 120 hours, and apparently states that in 43 of those 25 reports, the first responder requested that the survivor not take actions that would destroy physical evidence. Because these numbers are impossible, it is not possible to know what was actually audited for PREA § 115.63(a) compliance.

Because a main component of this assessment includes contradictory information that cannot be resolved even with an explanation (43 cannot be a subset of 25), TPI asserts that it is impossible to determine if Allred Unit is in compliance with PREA § 115.64 or not.



Table 6. Incident Details Related to PREA § 115.61 Compliance

TPI Incident Number	Date	Identity	Description
2021-00378	Sep 27, 2021	White Cisgender Man	Subject reports that staff have refused to respond to multiple reports of sexual harassment and possible sexual abuse against another person, then on September 27, the person being sexually harassed was given a case for defending themself.
2022-00899	~Apr 26, 2022	White Transgender Woman	Subject forced to provide oral sex by cellmate. Attempts to report the incident were initially ignored, and she was finally able to file an IPI May 4, more than 120 hours after the incident occurred. TPI's complaint to the TBCJ PREA Ombudsman Office received no response (see next entry).
2023-00047	Feb 23, 2023	White Transgender Woman	TPI reported sexual harassment and sexual assault against the subject at Allred Unit (sexual harassment incident 2022-00896 and sexual assault incident 2022-00898), but PREA Ombudsman Vazquez failed to even acknowledge either report. Vazquez only provided reference to a separate sexual harassment allegation at a different unit, claiming the subject "signed a statement advising no sexual harassment occurred." Although that incident was not at Allred Unit, the subject had earlier reported being coerced by unit safe prisons staff to recant the allegation of sexual harassment.
2023-00249	Mar 6, 2023	White Transgender Woman	The subject noted trying to report sexual harassment to a corrections officer, who in response shouted in the day room "what do you want me to do about it," which in addition to refusing to accept the report alerted the accused that she had reported the act, placing her in additional danger, which led to an assault by the accused later the same day.

PREA § 115.67, Agency Protection Against Retaliation

In the discussion of PREA § 115.67(a), the auditor states that 2 out of 5 persons interviewed indicated that they did not feel they were protected from retaliation, but apparently the auditor chose to disregard these claims, in one case simply because the person was "unable to elaborate" – yet not being willing to elaborate should be expected from someone who feels that they are being retaliated against for their reports concerning sexual violence, especially if staff



are present during the audit interview, which has been reported. TPI asserts that based on this information, Allred Unit should not have been found compliant with this standard.

PREA § 115.68, Post-Allegation Protective Custody

As with the discussion under PREA §§ 115.42 and 115.43, TDCJ engages in egregious manipulation of what constitutes “protective custody” by making misleading statements about what “protective safekeeping” and “safekeeping designation” are. Also, in TPI’s experience, TDCJ automatically places all or almost all persons who report sexual violence in involuntary protective custody (restricted housing for IPI) regardless of whether there are alternatives to such placement or not. TPI receives regular reports from persons not wanting to report incidents due to no wanting to be placed in segregation.

The auditor reports that 0 persons were ever placed in “involuntary segregated housing” within the last 12 months, then supports that with policy that states incarcerated persons will not be placed in “protective safekeeping,” and seems to equate “protective safekeeping” with “involuntary segregated housing.” TDCJ protective safekeeping can be voluntary or involuntary, and protective safekeeping is far from the only housing designation that meets the PREA definition of “protective custody,” be that voluntary or involuntary.

Additional evidence of manipulation of these terms is evident in the auditor’s report of an interview with the warden, where the auditor notes the warden stated that “they are often able to move [incarcerated persons] at high risk of victimization to transit housing where all property and privileges can be retained.” Transit housing is generally in restrictive housing areas where restrictive housing movement limitations and in-cell restrictions are practiced. Although transit housing may retain “property and privileges” on paper, the reality is that persons making allegations of sexual abuse, sexual harassment, or risk of sexual violence, are locked up in transit or other housing without being allowed to pack their property, meaning it is often stolen or they may go many days before it is packed and given to them—a significant deterrent to reporting sexual violence. That transit housing is generally in restrictive housing areas means regardless of policy that may not limit privileges and movement, actual conditions are the same as other persons in restrictive housing for disciplinary purposes. This statement by no means shows persons are not placed in PREA involuntary protective custody, but actually supports that they are treated as such. That TDCJ and Allred Unit manipulate data and records by claiming such housing is something that in practice it is not does not and should not eliminate the responsibility for compliance with PREA §§ 115.43 and 115.68 responsibilities.

TPI asserts that statements in this discussion of PREA § 115.68 indicate that Allred Unit is not likely in compliance with this standard.

PREA § 115.71, Agency Investigations

In the discussion of PREA § 115.71, the auditor states that there were 64 allegations of sexual abuse made against other incarcerated persons and 20 allegations against staff. However, these



numbers do not match the number provided in audit entries 92 through 97. The auditor also refers to 8 allegations of sexual harassment made against other incarcerated persons, but does not mention the sexual harassment allegations against staff. This indicates at least four allegations of sexual abuse made against staff may not have been reported accurately.

It may be that the auditor included allegations of sexual harassment against staff with the allegations of sexual abuse, but such mistakes beg the question of what other mistakes were made in reviewing data that are not so apparent and cast doubt on the entire audit report. TPI cannot tell if that is what happened, or if there were actually more allegations of sexual abuse than are reported in audit entries 92 through 97.

In this discussion, the auditor also states that 2 incidents of sexual violence were referred for prosecution, but data in audit entries 92 through 97 only reflect 1 referral. Again, data inaccuracies cast doubt on the legitimacy of this report and other findings that cannot be cross-checked.

Based on contradictory evidence, it is not clear that Allred Unit meets the PREA § 115.71 standard requiring prompt, thorough, objective investigations of *all allegations*. For this reason, TPI asserts that it cannot be determined if Allred Unit meets PREA § 115.71.

PREA § 115.72, Evidentiary Standards for Administrative Investigations

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

It is difficult to understand why anyone would consider a claim that the preponderance of evidence standard was truthfully stated when out of 60 (or possibly 64) reports of sexual abuse, only 1 (<2%) of those reports had a greater chance of occurring than a 50/50 chance. Only 1 had even a coin toss's chance of having occurred. Such low rates of substantiation indicate serious manipulation of the evidence on the part of the investigators, and a failure to appropriately consider the preponderance of evidence standard.

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 Allred Unit, the data are remarkable for a slightly different reason. The auditor noted that for allegations against staff, 0% of 16 (or 20) sexual abuse allegations were substantiated, 0% of sexual harassment allegations were substantiated, and voyeurism allegations were not reported. For allegations against other incarcerated persons, 1.67% of 44 allegations of sexual abuse were substantiated, and **100% of 8 allegations of sexual harassment were substantiated**—this is extremely unusual, and suggests that Allred Unit investigators are finding all allegations of sexual harassment substantiated for some unknown purpose, but Allred Unit staff do have a reputation and history of using disciplinary cases to keep certain classes of persons (mainly LGBTI persons and persons in safekeeping housing) in P4/G4 and P5/G5 classifications.

Regardless of one’s concerns about possible false reporting, such 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 indicates a definite issue with the audit. Due to what can be seen from this report, it appears unacceptable that Allred Unit was assessed as being “fully compliant” with the PREA § 115.72 standard.

PREA § 115.73, Reporting to Incarcerated Persons

In the discussion of PREA § 115.73, the auditor states that out of 6 persons interviewed who reported sexual abuse at Allred Unit, only 4 stated that they received a report about the investigation outcome. One could not remember if they did or not, and 1 person indicated no outcome report was received. It would seem appropriate to at least check the investigation files to confirm that those two persons were documented as being informed of the outcomes, but the auditor does not indicate that was done.

The auditor also reports that 80 notifications were made pursuant to PREA § 115.73(e). However, that number does not appear relevant to data reported elsewhere in this document: there were 60 (or 64) allegations of sexual abuse, 12 allegations of sexual harassment, 31 criminal investigations, 1 criminal investigation resulting in a referral for prosecution, and 11 criminal investigations with no action; there seems to be no combination of these outcomes that would result in 80 notifications. Because of the report from 2 incarcerated persons that they may not have been notified of the outcomes of investigations and what appears to be inaccuracies in what was examined to justify reporting was done per this standard, TPI asserts that it cannot be determined whether or not Allred Unit meets PREA § 115.73.



PREA § 115.82, Access to Emergency Medical and Mental Health Services

In the discussion of PREA § 115.82(a), the auditor notes that 1 of 6 persons interviewed noted that “he was never seen by medical or mental health.” That indicates a serious failure to provide adequate medical and mental health services, constituting based on this audit 17% of those alleging sexual abuse not receiving medical and mental health services. There is no indication whether or not the auditor investigated if that person might have been mistaken.

In the discussion of PREA § 115.82(c), the auditor states that 1 of 6 persons interviewed denied receiving any information about prophylaxis, and 3 stated “it didn’t apply.” We would note that there are many misconceptions about prophylaxis and when it might apply, so simply accepting that 50% of those interviewed did not receive information about prophylaxis because “it didn’t apply” is not appropriate, and the only exceptions allowed in the standard is when prophylaxis is not in accord with professionally accepted standards of care or medically appropriate. We can only hope that the “it did not apply” was in accord with medical standards.

TPI asserts that due to these statements in the audit report—1 person was not provided access to medical or mental health care, and 1 person was not offered information about prophylaxis—it appears that Allred Unit may not comply with PREA § 115.82.

PREA § 115.83, Ongoing Medical and Mental Health Care

In the discussion of PREA § 115.83, the auditor notes that 1 of 6 persons interviewed reported not recalling if any follow-up services were offered. Once again, that indicates a serious failure to provide follow-up or ongoing medical and mental health care, constituting based on this audit 17% of those alleging sexual abuse not being offered follow-up or ongoing medical and mental health care. TPI asserts that due to the failure to further investigate this issue, it appears that Allred Unit may not comply with PREA § 115.83.

PREA § 115.86, Sexual Abuse Incident Reviews

PREA § 115.86 requires an incident review of every sexual abuse investigation unless the outcome of the investigation resulted in it being unfounded. Audit entries 92 through 97 show that there were 8 unsubstantiated allegations of sexual abuse made against staff, 35 unsubstantiated allegations of sexual abuse made against incarcerated persons, and 1 substantiated allegation of sexual abuse made against an incarcerated person, requiring a total of 44 incident reviews. The auditor states that there were 48 incident reviews done. That seems compliant (see next paragraph). Elsewhere in this audit report, the auditor has variously reported either 60 or 64 allegations of sexual abuse were made in the last 12 months, so if the higher number, then there were potentially as many as 48 allegations of sexual abuse that were not determined “unfounded.”

The auditor also notes that TDCJ conducts incident reviews for both sexual abuse investigations and staff sexual harassment allegations, the latter of which are not required by PREA § 115.86. If



the auditor is including incident reviews that are not to be considered in assessing compliance with the PREA § 115.86 standard, that should be noted. It could also mean that if the number of allegations was actually 64, some incident reviews may not have been done. This also brings into question other audit reports and whether auditors are documenting sexual abuse and staff sexual harassment incident reviews toward the required PREA § 115.86 total, thus failing to note where incident reviews may not be done. That is underscored by the fact that the auditor multiple times refers to the 48 reviews as sexual abuse incident reviews, not sexual abuse and staff sexual harassment incident reviews. It is impossible to rectify this lack of clarity from what is provided.

TPI does not object to more incident reviews than necessary being done, but we note that it is not for certain that more were done in this case, and we note that this invites question into all the other data reported for sexual abuse allegations, and for the data that Allred Unit is to provide under PREA § 115.87.

PREA § 115.87, Data Collection

As noted above, problems with and contradictions in the data provided in this audit report cast doubt about the accuracy of data provided by Allred Unit for PREA compliance purposes. TPI asserts that Allred Unit cannot be determined to be compliant with this standard.

Conclusion

Here in this comment letter, 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 not allowed sufficient time to complete all tasks required for the onsite portion of the audit.
- The auditor failed to follow person-first language as stipulated in the 2022 Auditor Handbook.
- The auditor made false statements that only “males” are housed at Allred Unit.
- The auditor defined no corrective actions, in spite of evidence of need for corrective actions.
- **Audit entries 38 and 39:** The auditor appears to have failed to conduct adequate due diligence to determine the veracity of the claims by Allred Unit staff about the absence of documented persons with physical, cognitive, or functional disabilities.
- **Audit entry 45:** The auditor makes contradictory statements that either 60 or 64 persons alleged sexual abuse at Allred Unit, indicating problems with data collection and assessment.



- **Audit entry 47:** The auditor claims that both 0 and 1 person had been placed in segregated housing for risk of sexual victimization, both of which are inaccurate.
- **Audit entry 48:** The auditor documents that Allred Unit does not distinguish between sexual orientation and gender identity, which calls into question how Allred Unit staff can meet obligations for properly screening individuals.
- **Audit entry 61:** The auditor appears to have failed to conduct adequate due diligence to identify and interview persons with cognitive or functional disabilities, and thus appears to have failed to conduct the minimum number of targeted interviews for this audit.
- **Audit entry 69:** The auditor claims that both 0 and 1 person had been placed in segregated housing for risk of sexual victimization, both of which are inaccurate. The auditor interviewed 1 of the 0 persons identified in **audit entry 47** as having been placed in segregated housing due to a risk of sexual victimization. The auditor failed to conduct necessary due diligence to understand the use of segregated housing at Allred Unit and failed to conduct the minimum number of targeted interviews for this audit.

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

- **PREA § 115.11:** TPI asserts that based on our information and known history of Allred Unit, it is unlikely the facility should be considered compliant with this standard.
- **PREA § 115.13:** TPI asserts that based on our data and understanding of Allred Unit, it is highly unlikely that the facility should be considered compliant with this standard.
- **PREA § 115.15:** The auditor failed to properly assess compliance with cross-gender viewing and searches. Based on statements by the auditor and evidence provided to TPI, we assert that Allred Unit fails compliance with multiple provisions of this standard.
- **PREA § 115.16:** Due to the apparent manipulation of data concerning persons with physical, psychiatric, and intellectual disabilities at Allred Unit, the facility should not be considered compliant with this standard.
- **PREA § 115.21:** Due to information provided in other PREA reports indicating noncompliance, information that is not sufficiently contradicted by this audit report, TPI questions whether policy in place may contradict this standard. TPI feels it cannot be determined from this report whether or not Allred Unit is compliant with this standard.
- **PREA § 115.22:** The auditor reports that 2 out of 5 interviewees did not understand this standard, but claims the facility is in compliance. This may be more of an issue with compliance concerning training requirements and effectiveness.
- **PREA § 115.31:** Due to statements by the auditor that indicate training ineffectiveness, TPI asserts that it cannot be determined whether or not Allred Unit meets this standard.



- **PREA § 115.33:** Due to multiple statements by the auditor that indicate a number of problems with training of incarcerated persons about the PREA standards as well as sexual abuse and sexual harassment, TPI asserts that Allred Unit should never have been considered by the auditor as exceeding this standard, and it is questionable whether or not Allred Unit meets this standard.
- **PREA § 115.34:** Due to the dearth of substantiated allegations of sexual violence, as well as statements by staff indicating a lack of understanding of PREA requirements, there appear to be indications that training may not be effective or adequately practiced. TPI asserts that it cannot be determined whether or not Allred Unit meets this standard.
- **PREA § 115.41:** Data presented by the auditor indicates Allred Unit should have been assessed as not compliant with this standard. TPI asserts that Allred Unit should not have been found compliant with this standard.
- **PREA § 115.42:** Due to TPI's experience and data contradicting auditor statements, questionable use of data concerning LGBTI persons housed at Allred Unit, and apparent dismissal of interviewee information that Allred Unit does not offer opportunities for transgender persons to shower separate, the assessment in this audit appears dubious. TPI asserts that Allred Unit should not have been found compliant with this standard.
- **PREA § 115.43:** Due to the clear misunderstanding of how TDCJ and Allred Unit implement PREA protective custody, TPI asserts that it cannot be determined from this audit whether or not Allred Unit meets PREA compliance with this standard.
- **PREA § 115.52:** TPI believes that this standard may not have been appropriately audited by the auditor because the auditor states that there were either 60 or 64 allegations of sexual abuse, but only 12 grievances were filed. Reviewing only grievances does not appear to have appropriately audited administrative remedies. TPI asserts that it cannot be determined from this audit whether or not Allred Unit meets PREA compliance with this standard.
- **PREA § 115.53:** The auditor states that one-third of the incarcerated persons interviewed about their reports of sexual abuse stated they did not receive information required by this standard. TPI asserts that based on the information provided in this report, it appears that Allred Unit is not in compliance with this standard.
- **PREA § 115.64:** The auditor makes statements in the discussion of this standard that indicate a failure of compliance, or that indicate a problem with the data reviewed. Based on these problems, TPI asserts that it cannot be determined from this report whether or not Allred Unit is in compliance with this standard.
- **PREA § 115.67:** The auditor states that 2 out of 5 persons interviewed about this standard stated they did not feel protection from retaliation was provided, but the auditor appears to have dismissed those concerns for a specious reason. TPI asserts that



based on the audit report, it appears Allred Unit should not have been found in compliance with this standard.

- **PREA § 115.68:** For similar reasons discussed under PREA § 115.43, TPI asserts that Allred Unit is not likely to be in compliance with this standard.
- **PREA § 115.71:** Due to inaccurate data and discussion that contradict other data elsewhere in the audit report, TPI asserts that it cannot be determined if Allred Unit is in compliance with this standard.
- **PREA § 115.72:** Based on extremely low rates of substantiation in spite of claims that a low preponderance of evidence standard is used, TPI asserts that Allred Unit cannot be considered compliant with this standard.
- **PREA § 115.73:** Based on the auditor’s report that at least 1 out of 6, possibly 2 out of 6, persons interviewed stated they did not receive reports about investigation outcomes, and based on the auditor’s supporting data that contradict data presented elsewhere, TPI asserts that it cannot be determined whether or not Allred Unit is in compliance with this standard.
- **PREA § 115.82:** Based on the auditor’s report that 1 of 6 persons reporting sexual abuse was not seen by medical or mental health staff and did not receive prophylaxis information, TPI asserts that it appears Allred Unit may not comply with this standard.
- **PREA § 115.83:** Based on the auditor’s report that 1 of 6 persons reporting sexual abuse did not recall being offered follow-up or ongoing medical and mental health care, TPI asserts that it appears Allred Unit may not comply with this standard.
- **PREA § 115.86:** The auditor’s discussion of this standard seems to be inconsistent with data provided elsewhere, but it is not clear whether or not it actually reflects a lack of compliance.
- **PREA § 115.87:** Several problems are noted concerning data provided by Allred Unit, which may indicate an agency failure to fully comply with this standard.
- **PREA § 115.401:** The auditor appears to have not conducted due diligence in contacting sufficient community advocates with information about Allred Unit.
- **PREA §§ 115.401 and 115.402:** The auditor appears to have multiple conflicts of interest, as discussed in the “auditor qualification issues” section.

TPI requests that the following actions be taken:

- That this audit report be considered deficient, and not be considered to support state compliance for the purpose of PREA § 115.501 certification of state compliance.
- That additional measures be taken to train and assist the auditor in compliance considerations and supporting documentation.



- That auditors give serious consideration to information about PREA compliance concerns provided by incarcerated persons in interviews, and to provide justification for dismissing such information.
- That the Online Audit System implement measures to help identify and safeguard against contradictory data.

I hope that these issues can be addressed in the interest of increasing the safety of all transgender 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 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
TBCJ PREA Ombudsman
Allred Unit Senior Warden Kevin Smith
Allred Unit PREA Manager Scott Szczepinski
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
Carl Sherman, Texas Representative, District 109
Venton Jones, Texas Representative, District 100