



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

August 30, 2024

re: 2024 Ferguson 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) Ferguson Unit conducted by auditor Matthew Taylor 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.<sup>1</sup> 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.<sup>2</sup> 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.’”<sup>3</sup> 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 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. For this reason, the success or failure of PREA protections depends heavily on auditors.

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).



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."<sup>4</sup> 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.

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

### **Summary of Deficiencies**

TPI has documented inaccuracies and deficiencies with the basic and general information provided in this audit report. These may be summarized as:

- The auditor failed to do due diligence to identify persons housed in segregated housing due to risk of sexual victimization.

TPI has documented a number of inaccuracies and deficiencies with the assessment of compliance with PREA standards in this report. These may be summarized as:

- PREA § 115.15: Documentation of "opposite-gender" staff viewing surveillance cameras with point and zoom capabilities and failure to recognize the gender of transgender persons indicate compliance with this standard is not sufficiently supported.
- PREA § 115.21: Only 3 out of 44 persons alleging sexual abuse (at least 24 of which appear to have been provided within 120 hours) were provided forensic medical exams, indicating a failure to comply with this standard.
- PREA § 115.33: Possible misinformation on signage indicates potential noncompliance with this standard.

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4. 2022 Auditor Handbook, page 91.



- PREA § 115.42: Apparent inappropriate assessment of providing adequate access to separate showers for transgender persons indicates compliance cannot be determined.
- PREA § 115.43: Failure to appropriately assess segregated housing and documentation of use of transient housing that constitutes segregated housing indicate unlikely compliance with this standard.
- PREA § 115.52: Documentation that not all administrative remedies receive a response indicate probable noncompliance with this standard.
- PREA § 115.64: Auditor documents only 25% compliance with separation of abuser from victim, and apparently only 7% to 13% compliance with forensic medical evidence collection, indicating the facility is not compliant with this standard.
- PREA § 115.72: With less than 5% of sexual abuse allegations and less than 6% of sexual harassment allegations substantiated, it appear unlikely the facility uses the preponderance of evidence assessment required by this standard, and thus fails compliance.
- PREA § 115.73: It appears that at least 1 person was not notified of the outcome of the investigation into the report of sexual abuse, indicating noncompliance with this standard.
- PREA § 115.82: Apparent failures to provide medical and mental health services and possibly appropriate prophylaxis indicate it cannot be determined if the facility is compliant with this standard.
- PREA § 115.86: The auditor only documents 22 of the required 29 incident reviews, indicate the facility is not compliant with this standard.

### **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.



## Discussion of Audit Deficiencies

### General Data and Report Deficiencies

The DOJ has provided guidelines to use person first language such as persons in confinement or confined person. This is discussed in the 2022 Auditor Handbook, and the handbook notes that the PREA Management Office and the PREA Resource Center “are shifting the way we identify people who are incarcerated by using person-first language.” This auditor ignores this shift by continuing to use terms like “offender” throughout this report. In fact, the word “offender” is used 418 times by the auditor. There is no excuse for every new document completed under the aegis of the PREA compliance system to not follow person-first practices.

The audit report states that the population at the Ferguson Unit consists of “males,” but for the purposes of PREA auditing, the Ferguson Unit houses cisgender males, transgender females, and other persons who may not belong to either of those two populations. This misclassification erases the existence of trans persons, and allows the auditor to ignore violations under 115.15, cross-gender pat-down searches of female persons, as well as other PREA standards.

The auditor noted that Ferguson Unit exceeded PREA §§ 115.31 and 115.52. However, the discussion of PREA § 115.31 indicates nothing extraordinary about Ferguson Unit’s attempts to comply with that standard. In addition, the auditor provides evidence of a need for correction action in the discussion of PREA § 115.52 by stating that Ferguson Unit failed to respond to 1 out of 6 grievances. Without some discussion of what was exceptional for PREA § 115.31, and certainly for the exceptional rating for PREA § 115.52 in spite of evidence of noncompliance, these ratings can only be understood as bias on the part of the auditor in favor of providing higher ratings than are warranted in this audit.

Table 1 provides population characteristics as per the audit, the minimum required number of targeted interviews, and the number of interviews conducted during the audit. For a facility the size of Ferguson Unit, the interviews alone were expected to take 3 days, or 30.3 hours. The auditor reports spending 3 days total at the facility, and reports in **audit entry 115** that there was no assistance with the audit, indicating not enough time was allowed for interviews and other tasks required for the audit.

Although **audit entry 47** indicates there were 0 persons who had ever been placed in segregated housing for risk of sexual victimization, that statement is false and reflects the failure of the auditor to perform sufficient due diligence to identify how segregated housing is used in TDCJ, and how the agency manipulates definitions to avoid accountability for improper use of segregated housing. This issue will be discussed further in the discussion of PREA § 115.43.

Table 2 presents the compiled data concerning sexual violence, investigations, and reporting requirements. The “Qty” column reflects the counts provided in tables 92 through 97, and “Associated Standards” column provides counts from elsewhere in the audit report where given:



**Table 1. Population Characteristics and Interviews**

<b>Population Characteristic</b>	<b>Persons Present</b>	<b>Interviews Required</b>	<b>Interviews Completed</b>
36/53/58 — Total housed at unit	2387 12-month avg: 2119	Random: 20 Targeted: 20	Random: 20 Targeted: 20
38/60 — Persons with a physical disability	0	at least: 1	0
39/61 — Persons with cognitive or functional disability	0	at least: 1	0
40/62 — Persons blind or visually impaired	0	at least: 1	0
41/63 — Persons deaf or hard-of-hearing	0	at least: 1	0
42/64 — Persons Limited English Proficient	70	at least: 1	4
43/65 — Persons identifying as lesbian, gay, or bisexual	18	at least: 2	5
44/66 — Persons identifying as transgender or intersex	1	at least: 3	1
45/67 — Persons who reported sexual abuse in facility	10	at least: 4	4
46/68 — Persons who reported prior sexual victimization	43	at least: 3	6
47/69 — Persons placed in segregated housing for risk of sexual victimization	0	at least: 2	0

- 115.21 provides the number of forensic exams documented,
- 115.41 provides the number of risk reassessments noted to comply with provision g,
- 115.43 provides the number of persons placed in protective custody (see discussion of this PREA standard for additional information about persons placed in involuntary protective custody, held for 0 to 24 hours in involuntary protective custody for risk assessments, documented restrictions related to placement in protective custody, held for 1 to 30 days in involuntary protective custody for risk assessments, documentation justifying protective custody, and 30-day evaluations for continuing need for protective custody),
- 115.62 provides the number of investigations into reports of imminent sexual abuse,
- 115.67 provides the number of reported responses to retaliation,
- 115.68 provides the number of reported persons placed in protective custody after reporting sexual abuse,
- 115.71 provides the number of administrative investigations documented in written reports,
- 115.73 provides the number of persons reported to have received notifications about investigation outcomes,
- 115.86 provides the number of reported incident reviews.



**Table 2. Sexual Violence: Investigations, Outcomes, Standards Compliance**

	Administrative Investigations					Associated Standards	
	Qty	Ongoing	Unfounded	Unsubstantiated	Substantiated		
<b>Sexual Abuse</b>							
<u>Allegations Against Staff</u>							
	23	0	15	7	1	<b>115.21:</b>	<b>3</b>
						115.41:	X
						<b>115.43:</b>	<b>0</b>
						115.67:	0
<u>Allegations Against Incarcerated Persons</u>							
	21	0	0	20	1	<b>115.68:</b>	<b>0</b>
						<b>115.71:</b>	<b>X (43?)</b>
						<b>115.73:</b>	<b>43</b>
						<b>115.86:</b>	<b>22</b>
<b>Risk of Sexual Abuse</b>							
Reports	2	X	X	X	X	115.41:	X
						<b>115.43:</b>	<b>0</b>
						115.62:	?
						115.67:	0
<b>Sexual Harassment</b>							
<u>Allegations Against Staff</u>							
	1	1	0	1	0	<b>115.43:</b>	<b>0</b>
						115.67:	0
<u>Allegations Against Incarcerated Persons</u>							
	17	0	2	15	0	115.71:	X

Notes: Text in **red** indicates a problem that affects compliance. X – auditor did not provide counts or percentages.  
? – vague description.

## PREA Compliance Assessment Issues

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

The auditor identifies potential problems such as “opposite-gender” staff being assigned to monitor video surveillance and cameras that can potentially be used to watch incarcerated persons “in a state of undress” (page 32). The auditor does not address if or how Ferguson prevents misuse of the surveillance system.

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

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





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

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

In the discussion of PREA § 115.15(b), the auditor failed to properly assess the provision by erasing the existence of transgender women, at least 1 of whom was then housed at the facility, by claiming that Ferguson Unit houses only male incarcerated persons. This statement also likely indicates a failure to properly assess PREA § 115.15(a) as well. The auditor expressly stated in the discussion of PREA § 115.15(c) that “there were no female [incarcerated persons] housed at this facility,” possibly erasing at least one trans person housed at the facility at that time, an act that constitutes participation in violence against transgender persons.

The failure by the auditor to document that the unit houses transgender females and nonbinary transgender persons also results in deficient assessment of PREA § 115.15(c), requiring that the facility document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female incarcerated persons.

Concerning PREA § 115.15(d), which provides that incarcerated persons be allowed “to shower, perform bodily functions, and change clothing without staff of the opposite [*sic*] gender viewing their breasts, buttocks, or genitalia,”<sup>5</sup> the refusal to acknowledge the gender of transgender persons also results in a failure to meet this standard.

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5. 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.



PREA § 115.15(f) covers training in the conduct of cross-gender pat-down searches and searches of transgender and intersex incarcerated persons in a professional and respectful manner. Based on the auditor's erasure of transgender persons in the discussion of this standard, it is highly unlikely that training curricula was adequately assessed.

Based on these highly problematic deficiencies in the conduct of this audit, TPI asserts that this audit does not demonstrate compliance with the standard.

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

PREA § 115.21(c) requires that all victims of sexual abuse be offered access to forensic medical exams, yet in the discussion of this provision, the auditor documents that only 3 out of 44 (<7%) persons alleging sexual abuse were provided SAFE/SANE exams.<sup>6</sup> There is no mention of why 41 allegations (about 93%) were not provided forensic medical exams, a glaring omission.

In the discussion of PREA § 115.21(d), the auditor notes that Ferguson did not have an existing MOU with an outside provider of victim advocates, and did not provide the auditor with a list of staff qualified to serve as a victim advocate. The auditor reports that the chaplain is used as a victim advocate, and that the chaplain has had "specialized training," but it warrants questioning why that person was not listed by the facility as "qualified staff" and whether a chaplain is appropriate for such a role.

Based on these issues that are not adequately addressed in this audit, particularly that well over 90% of the persons alleging sexual abuse received no forensic medical exam, TPI asserts that Ferguson Unit cannot be considered compliant with this standard.

***PREA § 115.33, Incarcerate Persons Education***

The auditor notes in the discussion of this and other standards that "[t]he auditor observed whether signage throughout the facility can be easily read/accessed . . . related to services, such as emotional support services . . . and external reporting." However, the auditor also says in the discussion of PREA § 115.53(c) that in the pre-audit questionnaire, Ferguson Unit staff "reported that the Ferguson Unit had successfully entered into a memorandum of understanding with the Brazos Valley Rape Crisis Center," but that during the onsite audit the auditor was informed the MOU was "not fully in place." This begs the question of whether, just as the availability of services was misrepresented in the pre-audit questionnaire, are these communications also misrepresenting access to services and other information related to compliance with this standard, as well as other standards. Misinformation is not proper education.

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6. In the discussion of PREA § 115.64(a), the auditor states that only 24 of the 44 incidents were reported within the time frame "that still allowed for the collection of physical evidence," typically 120 hours. However, the auditor's statement is vague and not supported by a description that substantiates that claim, so we use the 44 incidents that are clearly documented elsewhere in this report.





*PREA § 115.42, Use of Screening Information*

In the discussion of PREA § 115.42(f), the auditor states that Ferguson Unit complies with this provision requiring all transgender persons to be provided an opportunity to shower separate from other incarcerated persons by stating that “the facility PREA compliance manager . . . explained there is a shower in the medical unit which is available to them upon request.” The auditor failed to report whether the transgender person who should have been questioned about this provision agreed that was an adequate opportunity to shower separate. In TPI’s experience, that would not meet compliance and could be difficult to provide consistently due to staff shortages and other operational impediments. It also forces walking in inclement weather to shower, something cisgender persons are not generally required to do. Based on this deficiency, TPI asserts that it cannot be determined whether or not Ferguson Unit is compliant with this standard.

*PREA § 115.43, Protective Custody*

The auditor states that 0 persons were placed in segregated housing in the last 12 months, which means that not even 1 of the 44 persons alleging sexual abuse, 2 persons alleging imminent risk of sexual abuse, and 18 persons alleging sexual harassment (total 64) were placed in segregated housing. Based on TPI’s long experience working with persons in TDCJ who report these issues, it is almost universal practice to place a person reporting any of these issues in segregated housing, often involuntarily. This claim is simply not believable. It is a near certainty that all 64 persons alleging these issues were placed in housing that constitutes PREA protective custody.

The auditor manipulates this discussion with the admission, in the discussion of PREA § 115.43(c), that persons apparently making any or all these allegations “are placed in a transient status for brief periods of time.” Transient status is most definitely segregation or PREA protective custody, it is almost always in housing that is used for persons with disciplinary cases and involves a disciplinary environment, it involves separation from property and privileges, and it is nearly always involuntary. In addition, “brief periods of time” indicates it could be for more than the 24-hour limit defined in PREA § 115.43(a). Transient housing also involves limits prohibited under PREA § 115.43(b). It has been known to extend 30 days as well, bringing it under the consideration of PREA § 115.43(c). And transient housing is a classification used to avoid justifications like those required under PREA § 115.43(d).

This indicates a failure to conduct due diligence to determine what housing and cell assignments in use at Ferguson Unit actually constitute PREA protective custody and require compliance with this standard, and a failure to properly assess at least PREA § 115.43 provisions a, b, c, and d.

Based on this discussion, TPI asserts that it is highly unlikely that Ferguson Unit is in compliance with PREA § 115.43.



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

The auditor states that only 6 grievances, out of 44 reports of sexual abuse, were filed in the 12 months of the audit period, and that 1 of the 6 (about 17%) reported that they were never provided “the outcome of the investigation,” presumably meaning a response to the grievance in this case.<sup>7</sup> However, the auditor immediately contradicts this statement by claiming “[t]here were no instances of [incarcerated persons] filing grievances that the outcome of their grievance was not provided to them in writing within 90 days” (page 63).

PREA § 115.52(d) states that the facility “shall issue a final agency decision on the merits of any portion of a grievance alleging sexual abuse within 90 days,” but it appears that the auditor documented Ferguson Unit was not compliant with this requirement in at least 1 instance out of just 6 persons questioned. That indicates noncompliance to a possibly substantial degree. Based on this information, TPI asserts that Ferguson Unit cannot be considered compliant with this standard. Surprisingly, the auditor assessed the facility as exceeding this standard, in spite of providing evidence of a need for corrective action.

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

PREA § 115.64(a), in part, states that on learning of an allegation of sexual abuse, the victim and abuser will be separated. The auditor reports that out of 44 allegations of sexual abuse in the preceding 12 months, only in 11 instances were the parties separated. No explanation for the 25% compliance rate is provided.

PREA § 115.64(a) also in part states that the scene of the incident should be protected and that steps should be taken to preserve evidence. The auditor states that 24 of the 44 allegations were made within a time period, typically 120 hours (the auditor does not provide any specific support for how the appropriate time period was determined), allowing for the “collection of physical evidence,” which generally refers to the time period that a forensic medical exam can be conducted, indicating at least 24 persons should have been offered SAFE/SANE exams.

The auditor states that 4 persons interviewed agreed that they were separated from their abuser and potential evidence was protected. However, that information seems to be misdirecting away from information that is directly pertinent and very significant to the assessment of compliance with this issue: that in only 3 out of at least 24, and possibly as many as 44, cases were SAFE/SANE exams done (see the above discussion of PREA § 115.21).

TPI asserts that the foregoing indicates Ferguson Unit is not compliant with PREA § 115.64.

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7. Because this information is included in this section, we must consider it relevant to the consideration of grievances under PREA § 115.52, although it could be that this actually referred to an investigation outcome that did not involve a grievance; this failure to respond is also significant under PREA § 115.73. There appears to have been at least one failure to report either a grievance response, an investigation outcome, or both.



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

TPI refers to our discussion of PREA § 115.43 in relation to this standard, for which the auditor also failed to consider transient housing as a possible type of PREA protective custody. As with PREA § 115.43, TPI asserts that it is highly unlikely that Ferguson Unit is compliant with this standard.

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

TPI notes that the fact that out of 44 allegations of sexual abuse, only 2 (<5%) were substantiated, and not even 1 of 17 allegations (0%) of sexual harassment (1 of the 18 sexual harassment reports is still under investigation) were substantiated indicates a preponderance of evidence standard is not used for investigations at Ferguson Unit. TPI asserts that it is highly unlikely Ferguson Unit is compliant with this standard.

***PREA § 115.73, Reporting to Incarcerated Persons***

In the discussion of PREA § 115.73(a), the auditor states that there were 43 allegations of sexual abuse completed in the last 12 months, and that 43 incarcerated persons were notified of the outcome. As there were 44 allegations of sexual abuse and all are reported in this audit to have been investigated, this appears to indicate that 1 person was not notified. In fact, the auditor reports in the discussion of PREA § 115.52(d) that 1 person reported never being informed of the outcome of the investigation,<sup>8</sup> yet that report was not included in the discussion of this standard. Instead, the following manipulated information was provided, reporting in the one case a failure to report an outcome, and in the second simply that they understood the facility was supposed to inform them:

[from PREA § 115.52(d):] The auditor interviewed 4 [incarcerated persons] during the onsite portion of the audit that reported sexual abuse at the facility. Only *one of [incarcerated persons] interviewed reported that he was never advised of the outcome* of the investigation [emphasis added].

[from PREA § 115.73(a):] The auditor interviewed 4 [incarcerated persons] who reported sexual abuse at the facility. *All 4 [incarcerated persons] reported they were aware the facility is required to advise them of the outcome* of a PREA investigation upon its completion [emphasis added].

Both statements cannot be true. This type of manipulative wording has no place in an audit. The fact documented in this report that at least one person did not receive notice of the outcome of an investigation means Ferguson Unit is not compliant with PREA § 115.73.

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

In the discussion of PREA § 115.82(a) and (b), the auditor states that out of 4 persons interviewed who had reported sexual abuse at the facility, “most” said they were offered follow-up medical and mental health care “almost immediately.” It is not clear if this means

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8. It is not clear if the failure to report was related to a grievance, other report of an investigation outcome, or both.  
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some were not offered care or not, if all were offered care but some later than others, or something else, but due to clear word manipulation elsewhere in this report, it must be considered that this could be obscuring responses indicating noncompliance.

In the discussion of PREA § 115.82(c), the auditor makes a nonsense statement that: “All but one of the [incarcerated persons] reported they were offered access to emergency access to sexual transmitted infections prophylaxis but that it was not required or necessary.” That may have been intended to state that the person was not offered access to prophylaxis, but that it was not necessary in their case. TPI contends that there can be a lot of misinformation about prophylaxis treatments and when they are necessary, so it cannot be determined from this statement whether the person was offered appropriate information and access to prophylaxis “in accordance with professionally accepted standards of care, where medically appropriate,” as required by the standard.

Based on these issues, TPI asserts that it cannot be determined from this audit whether or not Ferguson Unit is compliant with this standard.

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

PREA § 115.86 requires, in part, that every sexual abuse incident that has not determined to have been unfounded, must undergo an incident review. The audit reports that of the 44 allegations of sexual abuse made in the previous 12 months, 15 were determined to have been unfounded (see Table 2), leaving 29 that should have undergone an incident review.<sup>9</sup>

However, in the discussion of PREA § 115.86(a), the auditor states that Ferguson Unit has in the prior 12 months completed only 22 “investigations of sexual abuse,” and in PREA § 115.86(b) that “there were a total of 22 criminal and/or administrative investigations of alleged sexual abuse completed at the facility that were followed by a sexual abuse incident review within 30 days.”

This appears to clearly state that Ferguson Unit was not in compliance with PREA § 115.86 because at least 29 incident reviews should have been completed. Based on this information, TPI asserts that Ferguson Unit is not in compliance with PREA § 115.86.

### **Conclusion**

TPI has documented inaccuracies and deficiencies with the basic and general information provided in this audit report. These may be summarized as:

- The auditor failed to do due diligence to identify persons housed in segregated housing due to risk of sexual victimization.

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9. TPI notes that we understand TDCJ also claims to conduct incident reviews of staff sexual harassment allegations that are not determined unfounded, meaning which can confuse the assessment of compliance with this standard.



TPI has documented a number of inaccuracies and deficiencies with the assessment of compliance with PREA standards in this report. These may be summarized as:

- PREA § 115.15: Documentation of “opposite-gender” staff viewing surveillance cameras with point and zoom capabilities and failure to recognize the gender of transgender persons indicate compliance with this standard is not sufficiently supported.
- PREA § 115.21: Only 3 out of 44 persons alleging sexual abuse (at least 24 of which appear to have been provided within 120 hours) were provided forensic medical exams, indicating a failure to comply with this standard.
- PREA § 115.33: Possible misinformation on signage indicates potential noncompliance with this standard.
- PREA § 115.42: Apparent inappropriate assessment of providing adequate access to separate showers for transgender persons indicates compliance cannot be determined.
- PREA § 115.43: Failure to appropriately assess segregated housing and documentation of use of transient housing that constitutes segregated housing indicate unlikely compliance with this standard.
- PREA § 115.52: Documentation that not all administrative remedies receive a response indicate probable noncompliance with this standard.
- PREA § 115.64: Auditor documents only 25% compliance with separation of abuser from victim, and apparently only 7% to 13% compliance with forensic medical evidence collection, indicating the facility is not compliant with this standard.
- PREA § 115.72: With less than 5% of sexual abuse allegations and less than 6% of sexual harassment allegations substantiated, it appear unlikely the facility uses the preponderance of evidence assessment required by this standard, and thus fails compliance.
- PREA § 115.73: It appears that at least 1 person was not notified of the outcome of the investigation into the report of sexual abuse, indicating noncompliance with this standard.
- PREA § 115.82: Apparent failures to provide medical and mental health services and possibly appropriate prophylaxis indicate it cannot be determined if the facility is compliant with this standard.
- PREA § 115.86: The auditor only documents 22 of the required 29 incident reviews, indicate the facility is not compliant with this standard.

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 trans and queer persons, and in the interest of more full compliance with PREA standards requiring “zero tolerance toward all forms of sexual abuse and sexual harassment” and legitimate instead of specious efforts to prevent, detect, and respond to such conduct.

Sincerely,

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

cc: Department of Justice, PREA Management Office  
TDCJ CEO Bryan Collier  
TDCJ PREA Ombudsman  
Ferguson Unit Senior Warden William Wheat  
Ferguson Unit PREA Manager TreShay Smith  
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