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

September 4, 2024

re: 2024 Boyd 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) Boyd Unit conducted by auditor James Kenney 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 limited corrective actions 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

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).

sexual abuse and sexual harassment. For this reason, the success or failure of PREA protections depends heavily on auditors and auditor accountability.

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.

Contents

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:

- There appear to be conflicts of interest for both the auditor and the auditor's employer.
- The auditor makes statements about transgender persons that indicate bias against and disregard of transgender persons, statements that indicate the auditor cannot assess noncompliance, at a minimum, with PREA § 115.31 requirements for effective and professional communication with LGBTI incarcerated persons.
- The auditor fails to appropriately consider the gender of the population at Boyd Unit for PREA purposes.
- **Audit entry 47:** The auditor falsely states that there were 0 persons ever placed in segregated housing at Boyd Unit.
- **Audit entry 69:** The auditor fails to conduct targeted interviews with the minimum number of persons placed in segregated housing at Boyd Unit.

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 § 115.15:** The auditor fails to appropriately assess cross-gender viewing and searches at Boyd Unit, in clear defiance of DOJ instructions about how to consider gender for this standard.
- **PREA § 115.21:** The auditor fails to explain why only 3 out of at least 12 persons were provided access to forensic medical examinations when the standards state that all victims of sexual abuse should be afforded access to such evidence collection.
- **PREA § 115.31:** The auditor fails to appropriately assess whether training is "tailored to the gender" of persons housed at Boyd Unit, erasing the existence of transgender persons housed at the facility in the process.
- **PREA §§ 115.43 and 115.68:** The auditor fails to assess any provision of this standard with the appropriate understanding of how segregated housing is used in TDCJ in response to risk or allegations of sexual violence.
- **PREA §§ 115.64 and 115.65:** The auditor fails to address why only 3 out of at least 12 victims of sexual abuse were provided access to forensic medical exams, which indicates a problem with one or both of these standards.
- **PREA § 115.82:** The auditor fails to explain why only 1 out of 18 victims of sexual abuse received prophylactic medications or, seemingly, subsequent treatment for sexually transmitted infections.

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 addressing bias and disregard for transgender persons, and in evaluating compliance considerations.
- That the Online Audit System implement measures to help identify and safeguard against contradictory data.

TPI Data for Boyd Unit

TPI has documented a total of 93 incidents of violence against persons housed at Boyd Unit, including 7 that occurred in the past 12 months. Of the total documented incidents, 29 involved noncompliance with some element of the PREA standards, with 3 PREA noncompliance issues documented in the last 12 months, and 11 in the last 36 months, which is approximately since the last PREA audit.[5]

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.[6] 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 Boyd 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 TPI has been able to identify with operations at Boyd Unit.

Although TPI does not have as much data for Boyd Unit as we do for some other TDCJ facilities, we feel that combined with our experience with the TDCJ system, there is sufficient

5. These data are all available at the Trans Pride Initiative web site. General information and all incidents of violence are available via our Prison Data Explorer (https://tpride.org/projects_prisondata/index.php), and specific PREA related data for each facility is available via our auditor data tool (https://tpride.org/projects_prisondata/prea.php).
6. 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 approximately 150 incidents of correspondence interference, and have many other reports of interference that lacked enough detail to formally document.

data available to question compliance in some areas and to indicate the most recent PREA audit is deficient.

Discussion of Audit Deficiencies

The onsite audit was conducted from July 17 through 19, 2024, encompassing 3 days. The final audit report was submitted approximately August 13, 2024, and it was posted publicly on or about August 28, 2024.

Auditor Qualification Issues

TPI believes that the statement by the auditor, James Kenney, that they do not have a conflict of interest is not valid due in part 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 paid by CCS may be conducting PREA audit services in violation of PREA § 115.402. Even if no current existing contractual obligations are in effect, a conflict of interest could exist in the understanding that PREA audits showing full compliance, 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 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]

Further supporting our contention that this auditor and others are biased in their assessments as an effect of prison industrial complex cronyism, of the 17 PREA audits (including the 2024 Boyd Unit audit) completed by this auditor that TPI can see, **not one includes a corrective action.** This does not seem to meet the 2022 Auditor Handbook expectation that "the PREA audit was built on the assumption that full compliance with every discrete provision would, in most cases, require corrective action."

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.

Additionally, the auditor currently serves as a PREA coordinator in the Florida prison system, a state and prison system that TPI knows both from direct involvement and from anecdotal evidence is deliberately abusive of transgender and queer (LGBTI) persons. 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, past or present, due to this potential conflict of interest. Additionally, audit funding must be separate from the system being audited to avoid this conflict of interest.

Although the 2022 Auditor Handbook states that auditors are personally accountable for their audits, the opportunity for conflicts of interest from prison industry cronyism 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 1,300 persons, just the interviews with incarcerated persons and staff are estimated to take 3 days of 10 hours or more each, or 30.3 hours, so it appears that this audit was conducted without allowing sufficient time to meet all the audit obligations. In addition to the interviews, the auditor was required to conduct other tasks to competently complete the audit. As per the 2022 Auditor Handbook:

> In addition to the time estimated to complete the interviews with persons confined in the facility and staff, auditors must also account for a thorough site review (observations, tests of critical functions, and informal conversations with individuals confined in the facility and staff), supplemental documentation selection and review, and in-briefs and out-briefs with facility/agency staff. The time required for a thorough site review will range depending on the size of the facility, the complexity of the facility and its processes, and the number of support staff involved. Auditors must allow adequate time to perform all the required activities necessary to complete a thorough site review.

Audit entries 115 and 116 document that the auditor received no assistance from other persons that would count toward the total hours. Thus, TPI feels this audit probably did not allow sufficient time to be conducted with competency.

Audit 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 352 times by the auditor (some in quotes from TDCJ policy, but in many instances in the auditor's own words). Although use of the word "inmate" may be considered acceptable because that is the term TDCJ currently uses, continued use of the derogatory term "offender" is not acceptable. There is no excuse for every new document completed under the aegis of the PREA compliance system to not follow person-first practices.

The DOJ has instructed the PREA Management Office and the PREA Resource Center to use gender-inclusive pronouns "they/them/theirs" in their resources rather than he and she to be inclusive of nonbinary persons. Not only does this auditor ignore this practice, the auditor deliberately and with intentional malice uses terms that misgender trans persons throughout this report. This is unacceptable. Such mistreatment by the auditor further supports concerns of bias related to using an auditor from a state and prison system with such abysmal history of mistreating trans and queer persons. There is no excuse for every new document completed under the aegis of the PREA compliance system to not use gender-appropriate and gender-inclusive pronouns.

TPI additionally asserts that the deliberate misgendering evidenced in this report indicates this auditor neither understands nor has received appropriate training in how to comply with PREA § 115.31(a)(9), "[h]ow to communicate effectively and professionally with [incarcerated persons], including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming" persons. With deliberate abusive intent, the auditor made statements such as:

> [From the 115.42(c) discussion:] The auditor interviewed four (4) transgender female individuals during the onsite audit. Each of the four individuals indicated that ***he*** was housed based on ***his*** own feelings of safety and not based on ***his*** transgender status [emphasis added].
>
> [From the 115.42(e) discussion:] During the onsite phase of the audit, the auditor interviewed four (4) transgender female individuals. Each of the four individuals indicated that ***he*** was housed based on ***his*** own feelings of safety and not based on ***his*** transgender status [emphasis added].
>
> [From the 115.42(f) discussion:] The auditor interviewed four (4) transgender female individuals during the onsite audit. Each of the four individuals indicated that ***he*** was provided the opportunity to shower separately from the rest of the incarcerated individual population [emphasis added].

This is participation in violence against transgender individuals. Period. This should call into question all PREA audits by this person, as well as bias and discrimination in the performance of duties as the Hillsborough County Jail PREA coordinator. The clear bias illustrated in this conduct alone should be sufficient to warrant this audit to be deficient.

The audit report states that the population at the Boyd Unit consists of "males," when in fact this is false. The Boyd Unit houses cisgender males, transgender females, and other persons who may not belong to either of those two populations. The Boyd Unit—and this auditor—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 2 standards were exceeded and 35 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 this or any of the audit reports TPI has access to—in spite of ample evidence in this report that corrective actions should have been required—should also be considered in the assessment that this audit report is deficient.

General Audit Information Issues

Audit entry 10 states that the auditor contacted 2 community-based organizations, which were:

- Advocacy Center for Crime Victims and Children
- Just Detention International

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 that the auditor addressed that requirement was provided.[8] TPI was not contacted concerning the information we have about Boyd Unit, and no reference to our audit comments and 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.

Audit entry 39 states that there were 0 incarcerated persons with a cognitive or functional disability at Boyd Unit on the first day of the onsite audit. TPI does not have specific evidence that this is incorrect, but we believe it highly unlikely, and believe it reflects a failure of due diligence in investigating this population on the part of the auditor.

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 Boyd Unit on the first day of the onsite audit, but TPI knows this number to be inaccurate. In fact, Boyd Unit houses safekeeping designated persons, which is segregated housing, and it is often provided for persons who experience a risk of sexual victimization. This represents a major failure to document and audit segregated housing, or protective custody under PREA. This also indicates a failure to investigate and understand how segregated housing is defined confusingly (and appears to be purposefully manipulated by TDCJ to cause confusion) and a failure to perform due diligence in confirming such a claim that 0 persons housed at Boyd Unit had ever been placed in segregated housing or isolation for risk of sexual victimization. This will be discussed further under PREA § 115.43.

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 Boyd Unit should have been 1. Although the auditor claimed that there were no persons at the facility with a cognitive or functional disability, TPI doubts the veracity of that claim.

Audit entry 69 states that 0 persons who had ever been placed in segregated housing or isolation for risk of sexual victimization were interviewed by the auditor. According to Table 2 in the 2022 Auditor Handbook, the minimum number of interviews for a unit with the overall population of Boyd Unit should have been 2. The auditor claims that no persons were housed in segregated housing and fails to understand that safekeeping housing is segregated housing, and is often provided for persons experiencing a risk of sexual victimization. The auditor thus failed to conduct the minimum number of random interviews require for this audit.

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).

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

Audit entry 95 provides the outcomes of administrative investigations of sexual abuse allegations during the previous 12 months (Table 1). **Audit entry 92** shows incarcerated persons reported 18 allegations of sexual abuse by staff and other incarcerated persons. Per **audit entry 95,** administrative investigations found 1 substantiated, 16 unsubstantiated, and 1 unfounded. That is, 94% of the allegations were found to have less than a 51% chance of having occurred. According to PREA § 115.72, the agency "shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated," yet only 6% of the allegations were found substantiated. This indicates a failure of the administrative investigations to adequately assess evidence in allegations of sexual abuse, and a failure of the auditor to identify this problem and pursue an explanation of what appears to be a failure to properly investigate allegations.

Table 1. Sexual Violence Investigations and Outcomes

	Sexual Abuse by		Sexual Harassment by	
	Staff	Incarcerated Person	Staff	Incarcerated Person
Allegations	9	9	8	9
Administrative investigations	9	9	8	9
Ongoing	0	0	0	0
Unfounded	1	0	1	0
Unsubstantiated	7	9	7	9
Substantiated	1	0	0	0
Criminal Investigations	1	4	0	0
Ongoing	1	2	-	-
No Action	0	2	-	-
Referred	0	0	-	-
Indicted	0	0	-	-
Convicted	0	0	-	-
Acquitted	0	0	-	-

Audit entry 97 provides the outcomes of administrative investigations of sexual harassment allegations during the previous 12 months (see Table 1). **Audit entry 93** shows incarcerated persons reported 17 allegations of sexual harassment by staff and other incarcerated persons. Per **audit entry 97,** administrative investigations found 0 substantiated, 16 unsubstantiated, and 1 unfounded. That is, 100% of the allegations were found to have less than a 51% chance of having occurred. According to PREA § 115.72, the agency "shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated," yet only 0% of the allegations were found substantiated.

This indicates a failure of the administrative investigations to adequately assess evidence in allegations of sexual harassment, and a failure of the auditor to identify this problem and pursue an explanation of what appears to be a failure to properly investigate allegations.

Audit entry 111, states that the auditor reviewed 11 investigation files concerning sexual harassment of incarcerated persons by staff, yet there were only 8 allegations made in the last 12 months. Certainly the auditor could have reviewed more than the last 12 months, but the claim that was done also calls into question the accuracy of auditor claims.

PREA Compliance Assessment Issues

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

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

In TPI's experience, policy concerning protections for marginalized persons, as implemented by governmental agencies concerning law enforcement and the justice system, are commonly implemented in a manner that reinforces existing structural discrimination and harm. One very common example of how this works is when harmful practices are pointed out and the agency or responsible party states something to the effect "that does not happen because we have policy against it" or "because we have training against it." This excuse covers up and may even encourage violence such as sexual abuse and sexual harassment by providing a means of covering up such violence. TPI would like to point out that the 2022 Auditor Handbook states that

> 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 [page 46; emphasis added].

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. See Table 1, showing that out of 35 allegations of sexual abuse and sexual harassment, only 1 (<3%) was deemed to have better than a 50/50 chance of occurring. Only 1 in 35 survived essentially a coin toss.

Due to our work in general and the dismal results of investigations as well as other problems documented in this letter, TPI has doubts that this unit fully complies with PREA § 115.11.

PREA § 115.15, Cross-Gender Viewing and Searches

PREA § 115.15(a) states that Boyd 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.

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 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 inmate or the inmate's preference regarding the gender of the person conducting the search, **would not be compliant with Standards 115.15** [emphasis added].[9]

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

One specific incident reported to TPI occurred within the audit period, on or about January 8 (or possibly February 8), 2024. An incarcerated person who has the TRGEN marker on file was strip searched in front of about 20 other persons, including staff and incarcerated persons, including many cisgender males.

As also discussed above, the auditor shows obvious bias, clear disregard of DOJ position statements like that quoted above, and deliberate intent to cause harm to transgender persons by intentional misgendering in this report. The auditor's statements supporting compliance with this provision address only "male" staff and "male" incarcerated persons, that "visual searches are always performed . . . by male officers only," erasing the existence of all transgender female or nonbinary persons at the facility. Based on these inappropriate comments covering for a deficient assessment, the claim by this auditor that Boyd Unit is "in compliance with this provision" cannot be accepted as valid.

Concerning PREA § 115.15(b)—which states that the facility "shall not permit cross-gender pat-down searches of female" incarcerated persons—if the facility allows cisgender males and

9. 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.

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. 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. The auditor, again, with intentional bias, erases the existence of transgender females at Boyd Unit by stating the facility "houses male incarcerated individuals only." Based on the inappropriate and deficient assessment of this provision, the claim by the auditor that Boyd Unit is "in compliance with this provision" cannot be accepted as valid.

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 "shall 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. The acceptance of a log that showed "there were zero such searches conducted over the previous 12 months," when it is known that there were transgender persons housed at Boyd Unit, and it is known as per comments elsewhere in this audit report that there were cross-gender strip searches and cross-gender pat searches of transgender females by cisgender males, indicates manipulation of compliance by Boyd Unit staff, complicity in that manipulation of compliance by the auditor, and a failure to appropriately assess Boyd Unit for compliance with PREA § 115.15(c). Based on these facts, it is clear that the claim by the auditor that Boyd Unit is "in compliance with this provision" cannot be accepted as valid.

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,"[10] the discussion of this section indicates, at least on a superficial level, compliance in some areas. However, due to the obvious anti-transgender bias of this auditor, it is questionable whether or not the descriptions chosen are applicable to where transgender persons are housed on the facility. We note that the auditor does not describe specifically asking any transgender person whether they agree that they are provided appropriate opportunities to shower, change clothing, and use the toilet separately.

10. 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.

TPI would like to point out that also of relevance to PREA § 115.15(d) is that in 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 are covered in the audit report), the facility is 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 inmate 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 inmate 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 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 inmates 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 inmate conduct makes it impractical to provide same gender coverage during a period in which the inmate 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.[11]

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. TPI asserts that due to the disrespect documented by this auditor, this person is not competent to assess what a professional and respectful manner of addressing transgender persons would be. For these many reasons, TPI asserts that not only did this auditor fail to properly assess this standard, the auditor expressed bias and discrimination in the method of assessment, and that the claim made by the auditor that Boyd Unit meets the PREA § 115.15 standard cannot be accepted as valid.

PREA § 115.21, Evidence Protocol and Forensic Medical Examinations

PREA § 115.21(c) states the facility "shall offer all victims of sexual abuse access to forensic medical examinations . . . where evidentiarily or medically appropriate." In the auditor's discussion of this provision, it is revealed that out of 18 allegations of sexual abuse, only 3 survivors (<17%) were provided forensic medical examinations. The auditor reports in the discussion of PREA § 115.64(a) that only 12 were reported, apparently, within 120 hours of the incident, raising the low rate of forensic medical examinations to a still too low 25%. No reason or reasons for the extremely low rate of forensic evidence collection was provided, which begs

11. 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.

the question of whether all victims are offered a SAFE/SANE exam by Boyd Unit staff, as required. Based on the dearth of exams and the auditor's failure to provide any justification for such a low rate of evidence collection, the auditor's claim that Boyd Unit is "in compliance with this provision" cannot be accepted.

PREA § 115.31, Employee Training

PREA § 115.31(a) 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.

PREA § 115.31(b) requires the training to be "tailored to the gender" of the persons incarcerated at the facility. 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 the gender designation of the unit to which they are assigned, then training is not tailored to the gender of persons at the facility.

Recent examples of a lack of basic training that have been reported to TPI include:

- Staff told a transgender female reporting for her hormone medication "Y'all transgenders will never be real women" and "it's against the christian faith." The subject was refused her hormone medication.
- In a response to TPI concerning a complaint about abusive language toward a transgender female at Boyd Unit, the Patient Liaison Program staff used abusive language by misgendering the subject of the complaint throughout the response letter. This is attributed to both the agency and Boyd Unit.
- A corrections officer approached a transgender female while she was sitting in the day room with three other persons and said "what makes a man think he is a woman and how can he love another man?" Later the same day, the same corrections officer tried to insult transgender females in general in front of the same incarcerated person, yelling at people going to a meal, "make sure you have your cups, spoons, bras, and panties."
- A transgender female requested to be let out of her cell during in-and-outs, and the corrections officer responded by cussing her out and repeatedly calling her a "faggot." The corrections officer also stated that her "faggot ass" shouldn't be let out of the cell. The transgender female appears to have submitted a grievance, but instead of addressing the misconduct, the response simply stated there was no sexual harassment. This is a common means of dismissing misconduct that is noncompliant with PREA standards.

The auditor demonstrates a failure to properly assess compliance at Boyd Unit by stating "Boyd Unit houses male incarcerated individuals only, so staff are not required to attend specialized

training before [being] assigned to work at this unit." Due to the auditor's own failure to reflect proper training under the provision, TPI asserts that the auditor cannot be considered qualified to assess compliance with either PREA § 115.31(a) or (b). Based on these facts, Boyd Unit cannot be determined to be compliant with these provisions. Due to noncompliance with these two most important provisions, TPI asserts that this audit cannot show Boyd Unit is compliant with PREA § 115.31.

PREA § 115.32, Volunteer and Contractor Training

Based on the auditor's failure to appropriately assess Boyd Unit for compliance with PREA § 115.31, TPI asserts that Boyd Unit cannot be shown in this audit to be compliant with PREA § 115.32 either.

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. TPI asserts that TDCJ PREA compliance policy excludes persons who identify as gender nonconforming and possibly nonbinary. According to the TDCJ Safe Prisons Plan and the PREA Standards, the term transgender refers to "a person whose gender identity (i.e., internal sense of feeling male or female,) is different from the person's assigned sex at birth." This implies an old 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.

PREA § 115.42, Use of Screening Information

PREA § 115.42 concerns how sexual abuse risk screening information is used to help ensure safety. The purpose, as defined under PREA § 115.42(a), is to "keep . . . separate those [incarcerated persons] at high risk of being sexually victimized from those at high risk of being sexually abusive." The DOJ clarifies that the manner of separation will depend on the circumstances of confinement, providing examples:

- In facilities that are comprised of only a single dormitory for housing, persons at risk for victimization should generally be housed on the opposite side from persons who have been screened as a risk for being abusive;
- In facilities with cells in a single housing unit, persons should be housed vulnerable persons should be housed in different cells from persons who are potentially abusive;
- In facilities that include multiple housing units, vulnerable persons should be assigned to different housing units from persons who are potentially abusive.[12]

TPI receives routine complaints from transgender persons incarcerated in TDCJ that they are housed in housing units or even in the same cell with persons who are a danger to them (including danger of sexual harassment and sexual abuse) because the other persons in the same housing unit or cell are antagonistic toward transgender persons specifically, LGBTI persons in general, or non-affiliated or "solo" persons who are vulnerable to exploitation. The antagonism may be due to personal or religious hatred, but it can also be due to affiliation with organizations that have rules against or that stigmatize any fraternization or association—including sharing a cell—with a transgender person or any LGBTI person. TPI does not contend that TDCJ does not have a screening process or use the screening information, but that both are inadequate to properly achieve the separation required under PREA § 115.42(a). Simply having policy addressing these requirements is not sufficient. The policy must be efficacious at achieving it's purpose.

Concerning 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.

The DOJ has stated that an auditor:

12. National PREA Resource Center FAQ. (December 2, 2016). Discussing the meaning of separate in the context of screening standards. Available at: https://www.prearesourcecenter.org/node/5166.

> 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 inmates in a facility are, in practice, housed according to their external genital status [as is true in at Boyd Unit and across TDCJ facilities] 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 inmate. The auditor will likely need to conduct a comprehensive review of the facility's risk screening and classification processes, specific inmate records, and documentation regarding placement decisions.

And, TPI adds, the auditor cannot be biased against an appropriate assessment, which this auditor clearly is, as demonstrated by this audit report. In fact, the auditor demonstrates in this very provision discussion that interactions with and related to transgender females in the conduct of this audit were clearly biased against actual fact-finding and compliance assessment, stating that "[t]he auditor interviewed four (4) transgender female individuals during the onsite audit. Each of the four individuals indicated that **he** was housed based on **his** own feelings of safety and not based on **his** transgender status." TPI asserts that this auditor cannot currently provide an appropriate assessment of PREA § 115.42(c).

Concerning PREA § 115.42(d), TPI has often heard from incarcerated transgender persons throughout TDCJ that the twice yearly assessments by UCC are cursory and ineffective. Reports generally convey that staff make it clear they are simply there to check off the items they are required to ask, and many persons note that if they report issues, those are either dismissed or ignored, or addressed by locking the person in restrictive housing, likely with little or no property, for a week or more while an "investigation" is conducted then found unsubstantiated at best. The process appears seldom conducive to meeting the spirit of the PREA standard, and instead may offer staff opportunities to discourage reports of sexual victimization risks. TPI feels it is inadequate to simply parrot policy in support of meeting this standard, as is done by this auditor, and it must be supported by genuine investigation into the effectiveness of the process for incarcerated transgender and intersex persons.

In the discussion of PREA § 115.42(e), the auditor again shows incompetence in assessing compliance with the provision. Most transgender persons, especially those who are binary identified (the auditor states the interviews were with transgender females, indicating a binary identity as female), will interpret misgendering as disrespect, abuse, and a potential for violence. With either malice or absolute disregard for proper audit procedures, the auditor reports "interview[ing] four (4) transgender female individuals. Each of the four individuals indicated that **he** was housed based on **his** own feelings of safety and not based on **his** transgender status." This auditor should not be considered qualified to audit compliance with this provision.

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

compliance with PREA § 115.42(f).[13] If both persons are transgender or intersex, such housing may comply with this standard if both persons housed in the cell agree that the housing arrangement is acceptable, but only for as long as both persons housed in the cell agree that the arrangement is acceptable. It is not clear whether Boyd Unit has any cells with this configuration, although many units built approximately the same time do have such cells.

In addition, full compliance with PREA § 115.42(f), as per the DOJ, requires that facilities "adopt procedures that will afford transgender and intersex inmates the opportunity to disrobe, shower, and dress apart from other inmates," not simply have a minimally compliant "separate" shower.[14]

TPI asserts that due to these numerous serious audit deficiencies, Boyd Unit cannot be considered compliant with this standard based on this audit.

PREA § 115.43, Protective Custody

PREA § 115.43 concerns segregation practices for persons at high risk of sexual victimization, and due to potentially confusing language in the standards—and the way TDCJ has created deliberate confusion around what constitutes segregation in TDCJ—the requirements must be considered carefully. Each provision is discussed separately here.

PREA § 115.43(a) states:

> [Incarcerated persons] at high risk for sexual victimization shall not be placed in involuntary segregated housing unless an assessment of all available alternatives has been made, and a determination has been made that there is no available alternative means of separation from likely abusers. If a facility cannot conduct such an assessment immediately, the facility may hold the [incarcerated person] in involuntary segregated housing for less than 24 hours while completing the assessment.

This provision covers housing that is both separate due to a risk of sexual violence, and that is considered involuntary. This is not limited to any specific housing category or classification or location, it includes any separation that is not done with the concurrence of the person being separated. In TDCJ, this can include all types of transit and restrictive housing, SOS, CDO, any type of "lockup," "protective management," and all other types of separation such as safekeeping and protective safekeeping (see the section below concerning TDCJ types of protective custody). Such separation must be supported by an assessment that there is no other safe alternative to separation from a likely abuser within 24 hours, and PREA § 115.43(d) provides the specifics that must be included in the documentation of that assessment.

13. This generally would be the case even if the unit claims that opportunities for separate showers are provided because during lock downs and even periods of staff shortages, those opportunities are some of the first to be overlooked or set aside.
14. National PREA Resource Center FAQ. (April 23, 2014). Discussing PREA § 115.42(f) and separate showers. Available at: https://www.prearesourcecenter.org/frequently-asked-questions/standard-11542-use-screening-information-requires-transgender-inmates-be.

Another way that prisons can manipulate this standard is by how they define "high risk for sexual victimization." TDCJ and Boyd Unit, with the auditor's complicity, appear to be only defining this phrase as meeting some unidentified criteria, such as the criteria TDCJ uses for placement in safekeeping designation or possibly protective safekeeping designation. In the Final Rule, the DOJ makes it clear that such should not be the case for PREA § 115.68, which is often the driver behind these initial placements in segregated housing and requirements for PREA § 115.43 compliance:

> Section 115.66 in the proposed rule (now renumbered as § 115.68) provided that ***any use of segregated housing to protect an [incarcerated person] who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43*** [emphasis added].[15]

In the assessment of this provision, the auditor references TDCJ protective safekeeping, one very limited classification that is seldom used simply for risk of sexual victimization (see the following section concerning TDCJ types of protective custody), then refers to "involuntary segregated housing," but actually may be only considering safekeeping or protective safekeeping. The auditor then echos Boyd Unit staff reports that "zero incarcerated individuals [were] placed in involuntary segregation over the previous 12 months," probably referring only to a safekeeping or protective safekeeping designation.

The standard response in TDCJ, if there is a response, when someone reports an incident of sexual violence or a risk of sexual victimization is to place the person reporting in transit or restrictive housing for an IPI, or "inmate protection investigation" (which requires PREA § 115.43 consideration, in some cases via PREA § 115.68), and that placement generally lasts several days to sometimes weeks (although the designation often changes during that time to obscure the extended stay in segregated housing and manipulate regulatory requirements). Such housing also involves separation from and loss of property, as well as loss of opportunities, even though very often a cell change to a different section could address the issue while the investigation is ongoing. It is highly unlikely that of the 18 reports of sexual abuse, none were placed in segregated housing involuntarily during the preceding 12 months. Most people reporting such treatment to TPI indicate the placement in such segregated housing is often done involuntarily, most likely to discourage reports of sexual violence.

The auditor states that facility records showed "no incarcerated individuals . . . assessed to be at a high risk for victimization" (in spite of housing safekeeping persons at Boyd Unit), but with 18 allegations of sexual abuse, and 1 incident of staff abuse even substantiated, it is highly doubtful that no persons were actually placed in segregated housing and due considerations under PREA § 115.43(a). The auditor's statement that "[t]he agency does not commonly house those incarcerated individuals at the Boyd Unit—which definitely houses safekeeping persons—indicates this reference is only to protective safekeeping persons, who are only housed at approximately three facilities in TDCJ.

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

This indicates deliberate manipulation of the assessment of this provision by both the auditor and Boyd Unit staff, and based on information in this audit report, Boyd Unit cannot be considered compliant with this provision.

PREA § 115.43(b) states:

> [Incarcerated persons] placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document:
>
> (1) The opportunities that have been limited;
> (2) The duration of the limitation; and
> (3) The reasons for such limitations.

This provision does not limit segregation to being involuntary, so it covers all segregated housing for the purpose of separating persons at risk of victimization from potential abusers. Again, this is not limited to any specific housing category or classification or location, it includes any separation, voluntary or involuntary, of a person at risk for victimization from potential abusers. This includes all types of transit and restrictive housing, SOS, CDO, any type of "lockup," "protective management," and all other types of separation. All such placements must document restrictions to "programs, privileges, education, or work opportunities" per the specified requirements.

The auditor references a Form I-201, *Restrictive Housing Confinement Record,* which documents "any required restrictions," and in the next paragraph states that people in restrictive housing "generally have access to most of the programs and privileges," but most is not all, and this does not satisfy PREA § 115.43(b) documentation requirements for the limitations, duration, and reasons for such restrictions for segregation covered by PREA § 115.43.

Additionally, Boyd Unit houses safekeeping persons (who often have safekeeping designation due to risk of experiencing sexual violence), and safekeeping designated persons are very often denied access to programs and opportunities—from out of cell and recreation time appropriate to their classification, to participation in programs and other benefits appropriate to their classification, although these are sometimes denied for dubious reasons to avoid admitting that safekeeping designation causes such losses of access—which must be assessed for PREA § 115.43(b) compliance.

The auditor also claims that "Boyd Unit does not house individuals that are at high risk of victimization," again apparently referring only to TDCJ protective safekeeping, completely ignoring the population of safekeeping designated persons at Boyd Unit that must be considered in assessing PREA § 115.43(b) compliance. This indicates deliberate manipulation of the assessment of this provision by both the auditor and Boyd Unit staff, and based on information in this audit report, Boyd Unit cannot be considered compliant with this provision.

PREA § 115.43(c) states:

> The facility shall assign such inmates to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.

This provision is limited to involuntary segregation, again encompassing any type of transit and restrictive housing, SOS, CDO, any type of "lockup," "protective management," and all other types of separation where the incarcerated person does not specifically volunteer for that housing. In general, any such involuntary segregation should be for no more than 30 days.

Once again, in the assessment of compliance with this provision, the auditor claims there were no persons placed in involuntary segregation. Auditor references to Boyd Unit administration statements that Boyd Unit does not house persons "at high risk of victimization" indicate the auditor is only discussing TDCJ protective safekeeping. The auditor provides a confusing statement, attributed to a staff person in the restrictive housing area, that "incarcerated individuals held in this area are usually scheduled for transport to another unit or held for safekeeping," and that "they have not housed any incarcerated individuals there for the high risk of victimization." These statements again appear to indicate that the only persons being considered as at "high risk of victimization" are those who have been designated for protective safekeeping.

It seems reasonable to consider in an audit how a facility handles persons who once agreed with safekeeping designation as an appropriate means of separation from likely abusers, but who have changed their mind and want to be released from safekeeping. Once a request for removal is submitted, continued designation as safekeeping should be considered involuntary, and it must be reassessed every 30 days. The auditor did not assess any safekeeping designated persons for this, a deficiency in this audit.

This discussion indicates deliberate manipulation of the assessment of this provision by both the auditor and Boyd Unit staff, and based on information in this audit report, Boyd Unit cannot be considered compliant with this provision.

PREA § 115.43(d) states:

> If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document:
>
> (1) The basis for the facility's concern for the inmate's safety; and
> (2) The reason why no alternative means of separation can be arranged.

This provision defines the documentation required for PREA § 115.43(a) placements in involuntary segregated housing. The auditor again only refers to protective safekeeping in the discussion of this section, which is not an appropriate assessment of compliance. This discussion is not sufficient to consider Boyd Unit compliant with this provision.

PREA § 115.43(e) states:

> Every 30 days, the facility shall afford each such inmate a review to determine whether there is a continuing need for separation from the general population.

This provision does not state that it is only for involuntary segregation, and because other provisions specify where applicable to involuntary segregated housing, this provision must be read as encompassing all segregation for risk of sexual victimization. Thus all persons held in any type of segregated housing, voluntary or involuntary, for risk of victimization from potential abusers—including safekeeping, protective safekeeping, all types of transit and restrictive housing, SOS, CDO, any type of "lockup," "protective management," and all other types of separation—are to be reviewed every 30 days to determine if there is a continuing need for separation.

Once again, the auditor failed to conduct due diligence to determine that—at the very least—safekeeping designated persons housed at Boyd Unit fall under this category.

For these reasons, TPI asserts that it cannot be determined from this audit report that Boyd Unit is in compliance with the PREA § 115.43 standard.

TDCJ "Protective Custody" Designations

PREA § 115.43 covers the separation or segregation of persons at high risk for sexual victimization, and the section uses several terms that provide opportunities for manipulation of the standard. These include "protective custody," "segregated housing," and "involuntary segregated housing." None of these are specifically defined in PREA § 115.5 general definitions, nor are definitions provided in the FAQ available online via the National PREA Resource Center. The PREA Final Rule[16] also does not provide definitions for these terms. In discussing this section, the Final Rule appears to use "segregated housing" and "involuntary segregated housing" to refer somewhat more generally to any type of separate housing for safety reasons, and "protective custody" and "involuntary protective custody" as separate housing for the purpose of providing immediate safety.[17] 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

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

always granted, and when not granted, documentation requirements under PREA § 115.43 should be 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 PREA § 115.68 purposes because all can be used to separate persons at risk of sexual victimization or after reporting sexual victimization.

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

This designation, based on reports from the one person with a P6 designation that we have been in contact with, is mainly used for persons who are politicians and other high-profile figures, persons with law enforcement history, and persons who have testified against powerful syndicates or cartels. This person did not mention anyone being in there due to a risk of sexual victimization, although there certainly could be. TDCJ protective safekeeping is absolutely separate from all other TDCJ populations, with no mixing outside P6 and P7. As far as TPI is aware, protective safekeeping is never recommended for only a risk of sexual victimization. We have never heard of any person being designated as "protective safekeeping" due to sexual violence or risk of 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.[18] 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).

18. This appears to be an agency-wide position. In a response letter dated August 17, 2022, from TBCJ PREA Ombudsman Cassandra McGilbra (letter not further identified for privacy considerations, but a redacted copy may be provided if needed), McGilbra stated that "[t]he PREA Ombudsman Office concluded our investigative review on August 17, 2022, and found no violations of PREA Standard § 115.43. Inmate [name redacted] was never assigned to **Protective Safekeeping** or **Restrictive Housing** preventing [her] from participating in available TDCJ jobs, education, or programs" (emphasis in the original). This indicates TDCJ only considers persons in housing designated as protective safekeeping or restrictive housing for PREA § 115.43 compliance, which TPI asserts is insufficient. We also note that restrictive housing is nearly always a disciplinary designation, and most likely to refer to persons who might be identified as potential abusers.

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, PREA audits, and PREA compliance.

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 for specious reasons such as being "too intelligent."[19] 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.[20] 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.[21] The more

19. 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/.
20. 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.

    Also, in a response letter dated August 17, 2022, from TBCJ PREA Ombudsman Cassandra McGilbra (letter not further identified for privacy considerations), McGilbra stated in addressing restrictions on a safekeeping designated individual, that "the agency also has a responsibility of making decisions for inmate housing, jobs, and programming based on sound correctional practices to ensure the inmate is overall safe from being victimized or abusive," which serves to document that individuals in safekeeping may experience (TPI would suspect always experience) limitations to privileges and opportunities.
21. In a response letter dated August 17, 2022, from TBCJ PREA Ombudsman Cassandra McGilbra (letter not further identified for privacy considerations), McGilbra stated that "[t]he PREA Ombudsman found the McConnell Unit's position not to remove Inmate [redacted] from Safekeeping was within the agency's guidelines." This provides a definitive statement that TDCJ refuses safekeeping designation removal, meaning safekeeping designation can be involuntary.

complete explanation was that there was no ***safekeeping*** housing on the units where the program was offered. Perhaps in a warped sense of logic it may be said that safekeeping was not the reason she was denied, but it is entirely disingenuous to claim that safekeeping status did not prevent her from entering the program. Her safekeeping status was finally relinquished after our complaint (and after she voluntarily de-identifed as transgender in the system so she could access the program), 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 documentation and data requirements.

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.[22] These prohibitions and disciplinary conditions are sometimes used to harass persons with safekeeping designations, 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.

22. 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. Housing in disciplinary environments should certainly be considered in assessments related to PREA protective custody compliance areas.

Likewise, TDCJ seems to claim that safekeeping as a whole is not "involuntary protective custody," apparently because in most cases, people request or agree to be placed in safekeeping designation—at least initially. However, it is certainly not something a person can easily request or volunteer for and be assigned, and in many cases requests for removal of the safekeeping designation are denied, sometimes even after outside advocacy for removal of the safekeeping designation.

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

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.[23] 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 (the latter 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.

TPI also points out that in the Final Rule, the DOJ makes it clear that such lockups and other segregated housing for reporting sexual abuse is included under PREA § 115.68, which is often the driver behind these initial placements in segregated housing and requirements for PREA § 115.43 compliance:

23. 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.

> Section 115.66 in the proposed rule (now renumbered as § 115.68) provided that any use of segregated housing to protect an inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43.[24]

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 believe 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.

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 are sometimes necessary and of great benefit to survivors of sexual abuse and those threatened with sexual violence. 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 § 115.64, Staff First Responder Duties

As noted in the section of this letter addressing PREA § 115.21, only 3 (25%) of the 12 sexual abuse incidents presumably reported within 120 hours of the incident were provided forensic medical evidence collection, which indicates a problem at some point with response and investigation procedures.

Without knowing the reasons for the lack of adequate forensic medical evidence collection and whether that is a first responder response problem or lies elsewhere, TPI asserts that Boyd Unit compliance with this standard cannot be determined.

PREA § 115.65, Coordinated Response

As with the above PREA § 115.64, only 3 (25%) of the 12 sexual abuse incidents presumably reported within 120 hours of the incident were provided forensic medical evidence collection, which indicates a problem at some point with response and investigation procedures.

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

Without knowing the reasons for the lack of adequate forensic medical evidence collection and whether that is a coordinated response problem or lies elsewhere, TPI assets that Boyd Unit compliance with this standard cannot be determined.

PREA § 115.68, Post-Allegation Protective Custody

As with the discussion under PREA § 115.43, TDCJ engages in egregious manipulation of what constitutes "protective custody" by making misleading statements about what "protective safekeeping" and "safekeeping designation" are. Also, in TPI's experience, TDCJ automatically places all or almost all persons who report sexual violence in involuntary protective custody (restricted housing for inmate protection investigation, or IPI) regardless of whether there are alternatives to such placement or not. TPI receives regular reports of persons not wanting to report incidents due to not wanting to be placed in segregation.

The auditor reports in the discussion of PREA § 115.68 that the TDCJ Restrictive Housing Plan, which TPI does not have access to, states that incarcerated persons who have reported an incident and are held separately during IPI are "placed in restrictive housing on a temporary basis pending the outcome of a formal investigation related to allegations of sexual abuse, sexual harassment," and other threats or harms.

The auditor also quotes this plan as stating

> All [incarcerated persons] initially placed in restrictive housing shall be afforded an initial hearing within 7 days and shall undergo a documentation review by the RHC [restrictive housing committee] every 7 days for the first 60 days, and at least every 30 days thereafter to determine if the [incarcerated person] is suitable for placement in a less restrictive category or custody.

These two statements indicate that all of the 35 persons reporting sexual abuse and sexual harassment, as well as any additional persons reporting a risk of sexual abuse during the 12 months prior to the audit, were placed in segregated housing. The auditor states that no persons were placed in such such housing involuntarily during the last 12 months. However, it is beyond belief that at least some of those persons did not object to that placement, meaning it constituted involuntary segregated housing. Any persons involuntarily placed in such housing would be subject to assessment for the need for such housing under PREA § 115.43(a) within 24 hours, yet the policy quoted by the auditor indicates policy does not require such an assessment within 24 hours, but within 7 days. This is not in compliance with PREA § 115.68.

Regardless of whether the placement was voluntary or involuntary, any limitations, the duration of the limitations, and the reasons such limitations were necessary should have been documented under PREA § 115.43(b). The auditor did not address that aspect of compliance.

For involuntary segregated housing, which PREA § 115.43(c) indicates should last only as long as alternative means of separation cannot be arranged, and generally should last no more than 30 days, this auditor indicates it may last 60 days or longer. Likewise, documentation needs to address the basis of concern and why no alternatives are available to justify placement in such

segregated housing. The auditor did not address either of these aspects of PREA § 115.68 compliance.

Based on these deficiencies, it appears that Boyd Unit does not comply with PREA § 115.68 in under requirements in at least one PREA § 115.43 provision, likely two provisions, and possibly more.

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 18 reports of sexual abuse, only 1 (<6%) of those reports had a greater that 50/50 chance of occurring. 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 Boyd Unit, the data are equally remarkable. Although the auditor noted that for allegations against staff, 11% (n=1) of 9 sexual abuse allegations were substantiated, 0% of 8 sexual harassment allegations were substantiated, and voyeurism allegations were not reported. For allegations against other incarcerated persons, 0% of 9 allegations of sexual abuse were substantiated, and 0% of 9 allegations of sexual harassment were substantiated.

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

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

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

PREA § 115.82 requires, in part, that victims of sexual abuse be provided "timely information about and timely access to emergency contraception and sexually transmitted infections prophylaxis." In a statement that deserves questioning, the auditor notes that at Boyd Unit, "[i]f the [incarcerated person] person receives a forensic examination, hospital staff will provide a treatment plan that includes the necessary testing and medications" for prophylaxis. However, someone should not be required to have a forensic medical exam to access prophylaxis. Although the intent may be to indicate both would be offered to persons for whom sexual contact was sufficient to warrant forensic evidence collection, that is not what seems to have been assessed. Additionally, treatment and testing may be required whether or not contact occurred within 120 hours. Because only 3 out of 12 persons reported sexual abuse within 120 hours, and possibly another 6 may have had contact that could require testing, this assessment is deficient. The auditor states that 4 persons interviewed stated they did not have physical contact requiring testing or prophylaxis, but we can assume none of those persons were trained in medicine, and because there can be serious misunderstaning of what can require treatment or prophylaxis, that should not be taken as support for providing medically appropriate care. In the discussion of PREA § 115.83(f), the auditor indicates that only 1 out of 18 individuals reporting sexual abuse received prophylactic medications; the number of persons reporting sexual abuse who were later tested for sexually transmitted infections is not provided.

Based on these deficiencies, TPI asserts that it cannot be determined whether or not Boyd Unit complies with PREA § 115.82.

PREA § 115.86, Sexual Abuse Incident Reviews

PREA § 115.86 states that a sexual abuse incident review will be completed after every investigation of sexual abuse. The auditor states that "[t]he Boyd Unit indicated that there were 17 such reviews completed following administrative investigations over the last 12 months." But because there were 18 allegations of sexual abuse, Boyd Unit seems to be out of compliance with this standard. The auditor fails to mention that 1 of the allegations was unfounded and thus did not require an incident review.

The auditor also notes reviewing 35 sexual abuse and sexual harassment investigation files—which would include 18 sexual abuse and 17 sexual harassment allegations—and that "[t]he completed administrative incident review form was in all sexual abuse investigation files reviewed." Both statements—that there were 17 incident reviews and that there were 18 incident reviews—cannot be true.

Based on this contradictory information, TPI asserts that although it appears that Boyd Unit is in compliance with PREA § 115.86, the auditor appears to be presenting contradictory information, raising the question of what the data for incident reviews actually shows, as well as what other data in this report is provided for the purpose of showing compliance rather than providing a competent audit.

Conclusion

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

- There appear to be conflicts of interest for both the auditor and the auditor's employer.
- The auditor makes statements about transgender persons that indicate bias against and disregard of transgender persons, statements that indicate the auditor cannot assess noncompliance, at a minimum, with PREA § 115.31 requirements for effective and professional communication with LGBTI incarcerated persons.
- The auditor fails to appropriately consider the gender of the population at Boyd Unit for PREA purposes.
- **Audit entry 47:** The auditor falsely states that there were 0 persons ever placed in segregated housing at Boyd Unit.
- **Audit entry 69:** The auditor fails to conduct targeted interviews with the minimum number of persons placed in segregated housing at Boyd Unit.

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 § 115.15:** The auditor fails to appropriately assess cross-gender viewing and searches at Boyd Unit, in clear defiance of DOJ instructions about how to consider gender for this standard.
- **PREA § 115.21:** The auditor fails to explain why only 3 out of at least 12 persons were provided access to forensic medical examinations when the standards state that all victims of sexual abuse should be afforded access to such evidence collection.
- **PREA § 115.31:** The auditor fails to appropriately assess whether training is "tailored to the gender" of persons housed at Boyd Unit, erasing the existence of transgender persons housed at the facility in the process.
- **PREA §§ 115.43 and 115.68:** The auditor fails to assess any provision of this standard with the appropriate understanding of how segregated housing is used in TDCJ in response to risk or allegations of sexual violence.

- **PREA §§ 115.64 and 115.65:** The auditor fails to address why only 3 out of at least 12 victims of sexual abuse were provided access to forensic medical exams, which indicates a problem with one or both of these standards.
- **PREA § 115.82:** The auditor fails to explain why only 1 out of 18 victims of sexual abuse received prophylactic medications or, seemingly, subsequent treatment for sexually transmitted infections.

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 addressing bias and disregard for transgender persons, and in evaluating compliance considerations.
- 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 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
Boyd Unit Senior Warden Michael Gruver
Boyd Unit PREA Manager Brittany Bryant
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