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

September 27, 2024

re: 2024 Pack 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) Pack Unit conducted by auditor Lynni O'Haver and Corrections Consulting Services, LLC, formerly PREA Auditors of America. TPI has been working with incarcerated persons since 2013, mainly trans and queer persons in the Texas prison system.[1] 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 sexual abuse and sexual harassment. For this reason, the success or failure of PREA protections depends heavily on auditors and auditor accountability.

1. PREA identifies LGBTI as lesbian, gay, bisexual, transgender, and intersex persons. TPI is much more affirming and comprehensive in our understanding of vulnerabilities and marginalization, and as such we include under the PREA "LGBTI" umbrella all non-cisgender non-hetero-normative persons. We believe this is the only interpretation consistent with the spirit of PREA.
2. The requirements are defined at 34 USC § 30307.
3. Federal Register (2012): vol. 77 no. 119, Fed. Reg. page 37188 (June 20, 2012).

Thus auditor performance and audit report assessments are key factors in addressing problems working toward the goals of the PREA legislation. DOJ's PREA Management Office is responsible for PREA audit oversight, which includes evaluation of auditor performance and development of auditor skills and thoroughness with the objective of "ensuring the high quality and integrity of PREA audits."[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 comment 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.

Contents

4. 2022 Auditor Handbook, page 91.

Summary of Deficiencies

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

- The auditor states that the population of Pack Unit consists of "males," when in fact this statement is false for PREA purposes.
- The auditor failed to conduct the minimum required 20 targeted interviews.
- The auditor failed to appropriately identify persons placed in segregated housing for risk of sexual victimization.
- Problems identified by TPI that indicate manipulation of investigations of sexual violence, as well as the difficult-to-accept low numbers of documented sexual harassment and sexual abuse at the facility, indicate substantial problems with PREA compliance.

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

- PREA § 115.11: In this comment report, TPI has identified what are potentially very significant and fundamental problems with the identification, investigation, and documentation of sexual violence at Pack Unit. Based on the failure of the audit to address these issues, Pack Unit cannot be considered compliant with this standard.
- PREA § 115.15: Due to the failure to appropriately identify the genders of persons housed at Pack Unit, the auditor failed to properly assess compliance with PREA limitations on cross-gender viewing and searches. Due to the failure to recognize actual genders, Pack Unit cannot be considered compliant with this standard.
- PREA § 115.15: Due in part to the auditor's failure to recognize the genders of the persons housed at Pack Unit, but more so because Pack Unit specifically and TDCJ overall participates in the same failure to recognize the gender of transgender and nonbinary persons, Pack Unit fails compliance with this standard.
- PREA § 115.21: Due to the information in this audit report that not one forensic medical exam was conducted in response to allegations of sexual abuse at Pack Unit, with no explanation to justify the complete absence of forensic medical evidence collection, it cannot be determined whether or not Pack Unit is compliant with this standard.
- PREA § 115.22: Due reports to TPI concerning sexual harassment incidents that were excluded from the PREA audit by the auditor, the facility, or both, TPI asserts that the audit of this standard was clearly deficient, and that Pack Unit cannot be considered complaint with this standard.
- PREA § 115.31: Due to both the failure by the auditor to ask incarcerated interviewees about staff actions that may indicate training problems, and a report to TPI that clearly

indicates a problem with employee training, Pack Unit cannot be considered compliant with this standard.

- PREA §§ 115.43 and 115.68: Due to the fact that the auditor failed to understand how PREA protective custody applies to housing in Pack Unit, and the fact that Pack Unit staff manipulated facts concerning how housing at the unit meets the protective custody definition, Pack Unit cannot be considered to be compliant with this standard.

Request for Action

TPI requests that the following actions be taken:

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

TPI Data for Pack Unit

TPI has documented a total of 75 incidents of violence against persons housed at Pack Unit, including 16 that occurred in the past 12 months. Of the total documented incidents, 21 involved noncompliance with some element of the PREA standards, with 3 PREA noncompliance issues documented in the last 12 months.[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 communications people have sent noting problems with staff, conditions and treatment at facilities, and policy violations have been

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.

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 Pack 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 Pack Unit.

Although TPI does not have as much data for Pack Unit as we do for some other TDCJ facilities, we feel there is sufficient 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 August 12 through 14, 2024. The final audit report was submitted September 14, 2024, and it was posted publicly on or about September 20, 2024.

Auditor Qualification Issues

TPI believes that the statement by the auditor, Lynni O'Haver, that they do not have a conflict of interest is not valid due to their employment with or contract through 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 or prime contractor, 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 contract opportunities. TPI feels it is highly unlikely that a conflict of interest does not exist.[7]

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 (also the auditor for this Pack Unit audit), 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

Further supporting our contention that this auditor and others are biased in their assessments as an effect of prison industrial complex cronyism, of the 43 PREA audits 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."

Additionally, Ms. O'Haver served as a Sheriff in Florida for 23 years up until November 2021. 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. Also, 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 passage through a rubber stamp turnstile, 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 1,001 persons (Pack Unit was noted to have 1,307 incarcerated persons on the first day of the audit, and an average population over 12 months of 1,368), just the interviews with incarcerated persons and staff are estimated to take 3 days, 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:

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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.

> 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 662 times by the auditor. Although use of the word "inmate" may be considered acceptable because that is the term TDCJ currently uses, continued use of the derogatory term "offender" is not acceptable. There is no excuse for every new document completed under the aegis of the PREA compliance system to not follow person-first practices.

The audit report states that the population at the Pack Unit consists of "males," when in fact this is false. The Pack Unit houses cisgender males, transgender females, and other persons who may not belong to either of those two populations. The Pack Unit may abusively classify transgender women and other non-male persons as "male," but that is not an accurate description of the populations housed at the unit for PREA assessment purposes. This not only erases the existence of trans persons, this type of misclassification and erasure 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 and individual 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 zero corrective actions were required. The 2022 Auditor Handbook states that "the PREA audit was built on the assumption that full compliance with every discrete provision would, in most cases, require corrective action." The fact that the auditor

found no need for any corrective actions—in spite of ample evidence in this report that corrective actions should have been required—should also be considered in the assessment of a deficient audit.

We also feel it is important to point out that a review of PREA audits in the online PREA Audit directory shows 43 audits completed by this auditor with a final report available. Of the 43—which included 12 for federal institutions, 15 for Texas jails and prisons, and 16 for prisons and jails in other states), not one included a finding of noncompliance with any standard. The directory appears to only include audits conducted since September 2022. This auditor has been certified since 2015, so TPI feels it would be important to know if this failure to identify any corrective actions continues into the past. Even with this preliminary evidence of showing favor and bias for prison operators and administration over the safety of incarcerated persons, TPI questions whether any of the audits conducted by this auditor should be considered as supporting state or federal claims of PREA compliance.

General Audit Information Issues

Audit entry 10 states that the auditor contacted a single community-based organization, Just Detention International. The auditor did not indicate that any information at all was provided by this contact.

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 Pack 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 entries 36-48 concern the population characteristics at Pack Unit on the first day of the onsite audit. **Audit entries 53-70** concern the numbers of random and targeted interviews with persons representing the various population characteristics at Pack Unit. The 2022 Auditor

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).

Handbook is very specific that the minimum numbers provided in the handbook are "the absolute minimum number of persons confined in the facility that the auditor is required to interview during an audit." Failures to identify persons for target interviews and confirm unit data around target populations cast doubt on all claims (or acceptance of counts provided by the unit administrative staff) for all target populations.

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

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

An overview of the interviews is provided in Table 1, with problems and potential problems highlighted in red.

Audit entry 36 states that there were 1,307 persons housed at Pack Unit on the first day of the onsite audit, which means the auditor was required to conduct a minimum of 20 random and 20 targeted interviews with incarcerated persons. The auditor only conducted 16 of the required 20 targeted interviews, although there were clearly sufficient persons meeting target characteristics to conduct 20 targeted interviews. The auditor thus failed to conduct the minimum number of targeted interviews required for this audit.

The 2022 Auditor Handbook makes this minimum number of targeted interviews very clear:

> This number refers to the minimum number of targeted interviewees that the auditor is required to interview during an audit. Importantly, the requirement refers to the minimum number of individuals who are required to be interviewed, not the number of protocols used. Thus, in cases where an auditor uses multiple protocols during one interview, it will only count as one interview for the purpose of meeting the overall threshold for targeted interviews. For example, if an auditor is completing an audit of a jail with fewer than 50 persons confined in the facility [which would require at least 5 targeted person interviews] and conducts an interview with an individual who is LEP, reported prior sexual victimization during risk screening, and is a person under the age of 18, that interview will satisfy three of the five individual targeted interview requirements, but the auditor must still conduct four more interviews with persons confined in the facility from the other targeted populations in order to meet the overall threshold. Therefore, in many cases, the number of targeted interview protocols used will likely exceed the number of individuals interviewed from targeted populations [page .

In addition:

> If an auditor is unable to identify an individual from one of the targeted populations (e.g., the facility does not house youths under 18) or an individual belonging to a targeted population does

Table 1. Population Characteristics and Interviews

Population Characteristic*	Persons Present	Interviews Required	Interviews Completed
36/53/58 — Total housed at unit	1,307	Random: 20 **Targeted: 20**	Random: 28 **Targeted: 16****
38/60 — Persons with a physical disability	83	at least: 1	2
39/61 — Persons with cognitive or functional disability	**2****	**at least: 1**	**1**
40/62 — Persons blind or visually impaired	6	at least: 1	2
41/63 — Persons deaf or hard-of-hearing	29	at least: 1	1
42/64 — Persons Limited English Proficient	42	at least: 1	1
43/65 — Persons identifying as lesbian, gay, or bisexual	33	at least: 2	3
44/66 — Persons identifying as transgender or intersex	12	at least: 3	3
45/67 — Persons who reported sexual abuse in facility	**2**	**at least: 4**	**2****
46/68 — Persons who reported prior sexual victimization	44	at least: 3	3
47/69 — Persons placed in segregated housing for risk of sexual victimization	**0****	**at least: 2**	**0**

* The numbers at left refer to the audit entry sources of this information.
** See discussion about this information in text, below.

> not wish to participate in an interview, the auditor must select interviewees from other targeted populations in order to meet the minimum number of targeted interviews [page 71].

Audit entry 39 states that there were 2 incarcerated persons with a cognitive or functional disability at Pack Unit on the first day of the onsite audit. Although TPI does not have any way to demonstrate that this number is inaccurate, Pack Unit is a geriatric facility, so it seems unlikely that with the high ratio of elderly persons housed here there are not more with cognitive or functional disabilities.

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 Pack Unit on the first day of the onsite audit, but TPI knows this number to be inaccurate. 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 Pack Unit had ever been placed in

segregated housing or isolation for risk of sexual victimization. This will be discussed further under PREA § 115.43.

An additional consideration should be presented here. In many audits, auditors and TDCJ staff explicitly or implicitly state that TDCJ protective safekeeping (custody classification P6 and P7) is the only housing meeting the PREA § 115.43 protective custody definition, yet even here, in one of only about three facilities in the entire TDCJ system with housing for P6/P7 persons—which TDCJ seems to assert is the only housing for persons assessed as being at risk for sexual abuse—staff claim and the auditor accepts without apparent question that not one of those persons in protective safekeeping were placed in segregated housing for risk of sexual victimization. TDCJ appears to be defining only one type of housing as protective custody, then claiming that no one in that highly restrictive housing is there as protective custody for risk of sexual victimization, in order to avoid PREA documentation requirements and manipulate PREA required data collection. Pack Unit as an example should support a contention that TDCJ, as an agency, fails to comply with the most fundamental requirements under PREA § 115.11.

Audit entry 70 states that the auditor could not complete the minimum number of targeted interviews because there were "none here." However, that assertion is false. As can be seen in Table 1, there were clearly sufficient persons meeting target characteristics to conduct the minimum number of targeted interviews. The auditor thus failed to conduct the minimum number of targeted interviews required for this audit.

Audit entries 92 through 97 provide totals for sexual violence allegations and investigations for the last 12 months. These numbers are summarized in Table 2.

Table 2. Sexual Violence Investigations and Outcomes

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

Audit entry 93 indicates there were 0 reports of sexual harassment in the entire 12 months prior to the onsite audit, yet just in TPI's reports there are two allegations that constitute sexual harassment for April and May 2024. Not only is it beyond belief that a facility of this size has 0 allegations of sexual harassment, the extremely limited data provided to TPI indicates this claim is false, and that many more incidents of sexual harassment may be occurring.

TPI would suggest that it is possible at least some of the 3 reports of sexual abuse may have been misclassified incidents of sexual harassment, which we believe is commonly done in order to claim an allegation of sexual abuse—that perhaps should have been considered sexual harassment—does not meet the definition of sexual abuse in order to find it unsubstantiated or unfounded rather than properly classifying and investigating incident as the sexual violence that is actually constitutes. This issue is exacerbated by both ineffective PREA education for incarcerated persons and manipulation by facility staff and investigators.

TPI asserts that none of the figures provided by Pack Unit concerning allegations and investigations of sexual violence should be accepted as fact, and that due to these obvious problems, an actual audit would require review of grievances and other documentation that might help reveal actual rate of sexual harassment and sexual abuse occurring at the facility.

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 Pack 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 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 there are almost no incidents of sexual violence being reported are extremely suspect and indicate the facility is ignoring or covering up allegations of sexual harassment and sexual abuse.

TPI presents in this comment letter some evidence of such manipulation. This is discussed primarily in relation to the limited number of documented reports of sexual harassment and sexual abuse, at the end of the prior section above, and below under the discussion of compliance with PREA § 115.22. Appropriate identification, investigation, and documentation of sexual violence is a core necessity for PREA compliance, and where there are indications that these responsibilities are not carried out adequately, and where audits do not indicate sufficient investigation and confirmation that both policies and practices are carried out in compliance with the regulations, a facility cannot be considered to have been appropriately audited and to have been found in compliance with the regulations.

Due to our work in general, and especially due to the specific indications of problems with the identification, investigation, and documentation of incidents of sexual violence at Pack Unit, TPI asserts that the facility cannot be considered compliant with PREA § 115.11.

PREA § 115.13, Supervision and Monitoring

PREA § 115.13 requires the unit to maintain adequate staff to operate effectively and to "protect inmates against sexual abuse." TDCJ has long shown that they cannot hire or maintain adequate staffing levels at their facilities. Many units in the system are operating at less than 50 percent security staff, some as low as 30 percent. TPI has received reports from a number of units, including many over the 12 months preceding this audit, that incarcerated persons may not even see a security staff person for hours at a time, and that one staff person may be the only assigned staff person for an entire building or wing. Although positions may be filled during an audit, that may not be the case on days when the unit is not being audited.

PREA § 115.15, Cross-Gender Viewing and Searches

The PREA standards state that Pack 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 [incarcerated person] or the [incarcerated person's] preference regarding the gender of the person conducting the search, **would not be compliant with Standard 115.15** [emphasis added].[9]

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

Concerning PREA § 115.15(b), if the facility allows cisgender males and transgender males and nonbinary staff to conduct pat-down searches of transgender females, then the facility permits cross-gender pat-down searches of female incarcerated persons. 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. TPI contends also that the auditor, by refusing to identify transgender females among the transgender persons housed at the unit, is not only failing to adequately assess compliance with PREA § 115.15(b), but also may be considered as participating in violence against transgender women.

The auditor addresses both (a) and (b) provisions of PREA § 115.15 by stating, falsely, that "the Pack Unit does hold female [incarcerated persons]." Thus the auditor failed to appropriately audit these provisions.

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

Concerning PREA § 115.15(d), which provides that incarcerated persons be allowed "to shower, perform bodily functions, and change clothing without staff of the opposite [*sic*] gender viewing their breasts, buttocks, or genitalia,"[10] the refusal to acknowledge the gender of transgender persons also results in a failure to meet this standard.

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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.

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 and individual 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—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** [emphasis added].[11]

Based on these serious deficiencies in this audit, TPI asserts that Pack Unit is not compliant with PREA § 115.15.

PREA § 115.21, Evidence Protocol and Forensic Medical Examinations

In the discussion of PREA § 115.21(c), the auditor notes that there were no forensic medical exams conducted, so not 1 of the 2 allegations against staff and 1 against another incarcerated person involved forensic medical evidence collection. No explanation for the lack of forensic medical evidence collection was provided. The auditor only stated in this discussion that 2 persons interviewed denied victim advocates offered in compliance with PREA § 115.21(d). This does not address the apparent failure to provide forensic medical evidence collection.

Based on this deficiency in the audit report, TPI asserts that it cannot be determined whether or not Pack Unit is in compliance with the PREA § 115.21 standard.

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.

PREA § 115.22, Referrals of Allegations for Investigations

PREA § 115.22(a) requires that an administrative or criminal investigation be completed for all allegations of sexual abuse and sexual harassment. Information reported to TPI indicates noncompliance with this provision.

As reported to TPI, incident 2024-00243 involved sexual harassment that occurred approximately April 28, 2024, wherein an incarcerated person told another incarcerated person he wanted to "grab a handful of [her] ass." This was reported to staff as either sexual harassment or sexual abuse (TPI finds that many incarcerated persons are not adequately educated by TDCJ staff on the difference), and it appears that staff responded by moving the person making the threat to a separate housing area. TPI does not object to how the incident was handled, but this was certainly an incident that seems to constitute sexual harassment even if not repeated,[12] should have been documented as an allegation of sexual harassment but clearly was not because no incidents of sexual harassment were documented during this period, and it resulted in an action to resolve the risk of additional sexual harassment.

TPI incident 2024-00244, which occurred May 5, 2024, involved an incarcerated individual entering the dorm cubical of another incarcerated person, grabbing her neck, and trying to kiss her. She was able to escape and tell him to leave. We understand this was reported, probably as sexual abuse, but TPI documented it as sexual harassment because there was no genital contact reported. We do not know how the facility responded. It is possible that this was investigated as sexual abuse, found not to meet the definition of sexual abuse, and unsubstantiated. If this is the case, TPI would consider this manipulation of the report in order to find it unsubstantiated. The behavior clearly should have been considered to rise to the level of sexual harassment, even if it occurred only once. Yet Pack Unit did not consider this to be sexual harassment as there was not even one incident of sexual harassment documented during the audit period.

If TPI received reports of two incidents of sexual harassment that were not investigated, this begs the question of how many other incidents of sexual harassment occurred that also were not investigated or manipulated in some way to exclude them from investigation and documentation. Such problems also indicate potential failure to comply with data collection requirements under PREA § 115.87.

Based on this apparent evidence of a lack or manipulation of investigations into the incidents that have been reported to TPI—which are certainly only a small percentage of the total incidents at the facility—TPI asserts that Pack Unit cannot be considered compliant with PREA § 115.22.

12. Although TDCJ interprets the PREA definition of sexual harassment to require repetition, the DOJ has made it clear that is not at all the case. Repetition ***requires*** a response, but ***a single comment may warrant action to address sexual harassment:*** "Various standards require remedial action in response to sexual harassment; while correctional agencies may take appropriate action in response to a single comment, a concern for efficient resource allocation suggests that it is best to mandate such action only where comments of a sexual nature are repeated." Federal Register (2012): vol. 77 no. 119, Fed. Reg. page 37116 (June 20, 2012).

PREA § 115.31, Employee Training

PREA § 115.31 concerns staff training related to zero tolerance for sexual abuse and sexual harassment, the rights of incarcerated persons to be free from sexual abuse and sexual harassment, appropriate responses to indications and reports of sexual abuse and sexual harassment, and professional communication.

In discussing this provision, the auditor refers to a bullet list claiming training covers all the necessary PREA-required elements, but does not refer to any discussions with incarcerated persons to assess efficacy. TPI has received a report, incident 2021-00137, occurring approximately February 15, 2024, indicating that a staff person told the subject, a transgender person, that she would only use the subject's birth name and appears to have insisted on using the full name. This not only fails to comply with PREA guidelines, it is against TDCJ policy and training to use "inmate [last name]," and TPI contends that this language, repeated, will rise to sexual harassment as "repeated verbal comments, . . . including demeaning references to gender," because deliberate and intentional misgendering is absolutely a demeaning reference to gender for transgender persons. This alone indicates a failure of staff training in regards to provision (a).

Along the same line, concerning § 115.31(b), if training does not include use of preferred names and pronouns of transgender persons, then training is not tailored to the gender of the persons incarcerated at the facility. If the training does not recognize the actual affirming gender of transgender persons, which may be different from the gender designation of the unit to which they are assigned, then training is not tailored to the gender of persons at the facility. The incident above indicates noncompliance also with provision (b).

Based on this information, TPI asserts that Pack Unit cannot be considered compliant with the PREA § 115.31 standard.

PREA § 115.33, Incarcerated Persons Education

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

Based on this understanding, TPI asserts that it is highly unlikely that Pack Unit exceeds the PREA § 115.34 standard, as the auditor asserts.

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. The auditor fails to address some of the provisions of the PREA § 115.41 standard. In addressing PREA § 115.41(d)—which defines minimum requirements for intake screening—the auditor only discusses "appropriate controls to disseminate responses,"

which is actually provision (i). And for PREA § 115.41(f)—which requires reassessment within 30 days of intake assessment—the auditor cites the 30 day reassessment policy then discusses the provision (b) 72-hour assessment forms and that interviewees confirmed meeting with medical or mental health during intake as support. Although there is a mention of "reassessments reviewed," the auditor does not address compliance, which requires all persons to be reassessed within 30 days.

TPI also points out that due to the lack of transparency in the use of the "objective screening instrument" used by TDCJ, assessment could be being used to claim trans and queer persons are abusers rather than, as is more likely, at greater risk of being victims of sexual abuse.[13] Also, as noted by the DOJ in reference to PREA § 115.41, "[e]ffective and professional communication requires a basic understanding of sexual orientation, gender identity, gender expression, and how sex is assigned at birth. It also requires staff to be aware of their own gaps in knowledge and cultural beliefs, and how these factors may impact the ability to conduct effective interviews and assessments."[14] As is evident from some of the reports to TPI mentioned in this comment letter, this does not seem to be the case.

And one final point, TPI asserts that TDCJ PREA compliance policy excludes persons who identify as gender nonconforming and possibly nonbinary. According to the TDCJ *Safe Prisons/PREA 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/PREA Plan* technically address this by including "gender nonconforming" in their discussions. 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, it appears that gender

13. This type of "objective" application can be seen in assessment tools like the Static-99R, which incorporates abusive stereotypes and calculates results in a manner that effectively treats LGBT persons as more likely to be sexually abusive.
14. National PREA Resource Center FAQ. (October 21, 2016). Discussing standard 115.41 requirements. Available at: https://www.prearesourcecenter.org/frequently-asked-questions/does-standard-11541-115241-115341-require-facilities-affirmatively.

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.

Due to these apparent audit deficiencies and uncertainties, TPI asserts that it cannot be determined based on this audit report whether or not Pack Unit is compliant with PREA § 115.41.

PREA § 115.42, Use of Screening Information

PREA § 115.42 concerns how sexual abuse risk screening information is used to help ensure safety. 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.[15]

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 as

15. 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.

currently implemented are inadequate to properly achieve the separation required under PREA § 115.42. Simply having policy addressing these requirements is not sufficient; the policy also must be efficacious at achieving it's purpose.

In the discussion of PREA § 115.42(a), the auditor states that if a transgender or intersex person is placed "in protective custody, such placement is done at the request of the [incarcerated person] or solely based on the [incarcerated person's] classification level." This statement makes little sense. TDCJ classification staff often strongly assert their right to make housing assignments, and it is almost unheard of for TDCJ housing to be assigned on someone's request. And stating that a person's housing is based on their classification is a meaningless tautology.

Concerning PREA § 115.42(c), the auditor repeats policy but does not further discuss this specific provision in the audit report. Instead, the auditor offers responses to interview questions about other standards. 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, in assessing this provision:

> 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 Pack 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.

In discussing provision (d), the auditor simply refers to the TDCJ *Safe Prisons/PREA Plan.* TPI has heard from incarcerated transgender persons throughout TDCJ that the twice yearly assessments by UCC are cursory and ineffective. Reports generally convey that many 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 several days 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 efficacy of the process for incarcerated transgender and intersex persons.

In discussing PREA § 115.42(f), the auditor again simply refers to the TDCJ *Safe Prisons/PREA Plan* without indicating any further audit investigation was conducted, and without referring to interviews with transgender incarcerated persons.

TPI notes that if Pack Unit has two-person cells with 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 115.42(f).[16] 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.

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.[17]

Based on the lack of information and confusing information provided in this discussion of PREA § 115.42 compliance, TPI asserts that it cannot be determined from this report whether or not Pack Unit is compliant with this standard.

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

16. 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.
17. 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.

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.

Regardless of policy, reports to TPI indicate that placement in involuntary segregation due to immediate endangerment seldom considers any other options outside segregation, often involuntary. This practice in effect serves to punish persons for reporting endangerment and to discourage reporting. Concerning high risk of sexual victimization that is not imminent but may be an ongoing risk due to presentation or other factors, TDCJ refuses safekeeping designation too often, and in the assessment of alternatives nearly always claims a unit transfer will solve problems that persist across units.

Another way that prisons can manipulate this standard is by how they define "high risk for sexual victimization." TDCJ and Pack 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 inmate who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43.[18]

If fact, in this audit report, the auditor only considers protective safekeeping, stating that incarcerated persons

> at high risk for sexual victimization shall not be placed in **protective safekeeping** unless an assessment of all other available alternatives has been made and it is determined that there are no available alternative means of separation from likely abusers. If the assessment cannot be completed immediately, the unit may hold the [incarcerated person] in involuntary segregated housing while completing the assessment, for no longer than 24 hours.

This misrepresents protective safekeeping as the only housing meeting the "protective custody" designation under PREA § 115.43. The auditor continues,

> The Facility Warden explained [incarcerated persons] who are at a high risk of sexual victimization will be placed in **protective safekeeping** until an assessment of all other available alternatives has been made and it is determined that there are no available alternative means of separation from likely abusers. If the assessment cannot be completed immediately, the unit may hold the [incarcerated person] in involuntary safekeeping while completing the assessment, for no longer than 24 hours. The incident is reviewed as soon as possible, and the [incarcerated person] will be released from segregation as soon as it can be determined that the [incarcerated person] is no longer in imminent danger, or as soon as alternative means of separation from an alleged abuser can be arranged.

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

This misrepresents how protective safekeeping works. Very few people are assigned to protective safekeeping for risk of sexual violence (see the discussion of protective custody types, below). This also misrepresents how safekeeping designation works, and as far as TPI has seen, no one is assigned safekeeping designation on a temporary basis. Both of these are State Classification Committee designations that often take days, if not weeks, to be determined.

It is important to note that, according to this audit report, Pack Unit houses protective safekeeping persons, or persons classified as custody levels P6 and P7.

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 (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). Such housing also involves separation from and loss of property, as well as loss of opportunities and housing in a disciplinary environment, even though very often a cell change to a different section could address the issue while the investigation is ongoing. Most people reporting such treatment to TPI indicate the placement in such segregated housing is often done involuntarily to discourage reports of sexual violence.

This misrepresents compliance with the PREA § 115.43(a) provision, and thus TPI asserts that Pack 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," "safekeeping designation," "protective safekeeping," 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 again only addresses one rather small portion of protective custody in TDCJ, stating that persons are

> placed in **protective safekeeping** for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible, [and that] the unit shall document the opportunities that have been limited, the duration of the limitations, and the reasons for the limitations [emphasis added].

This fails to fully address protective custody and the documentation potentially required for all other types of housing or segregation that meet the PREA definition of protective custody.

One example of such limitations concerns persons in safekeeping housing. TPI correspondence relates that some units have a blanket prohibition against safekeeping designated persons being assigned job duties, even when there is no endangerment from the job assignment, and when work assignments are desired by the incarcerated person. Safekeeping designation also results in exclusion from many programs, privileges, education, and work opportunities, with TDCJ claiming that it is not protective custody that prohibits the exclusion but the lack of safekeeping housing on units with those programs. That is a specious claim at best. Regardless, safekeeping designation is the cause of the exclusion, and the exclusion must be documented according to provision (b) requirements. TPI believes these requirements are not being met by claiming it is not safekeeping that causes the exclusion.

The auditor does mention interviewing staff working in "segregated housing," but it is not clear what this refers to, and at Pack Unit it may refer to protective safekeeping, or P6 and P7 housing. In this paragraph, the auditor claims that persons placed in "safekeeping do not have restrictions and retain the same privileges as [incarcerated persons] in general population housing," a clearly false statement in terms of actual practice.

In the final paragraph of this section, the auditor claims that no persons "at risk of sexual victimization [were] assigned to involuntary segregated housing," but provision (b) does not appear to address just involuntary segregated housing, but all segregated housing.

Due to the misrepresentation provided in the discussion of PREA § 115.43(b), TPI asserts that Pack Unit cannot be determined to be 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.

The auditor simply refers to the TDCJ *Safe Prisons/PREA Plan* to address this provision and fails to address actual practice.

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 simply refers to the TDCJ *Safe Prisons/PREA Plan,* and fails to address actual practice.

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.

Based on these deficiencies, TPI asserts that Pack Unit cannot be considered to be complaint with PREA § 115.43 based on this audit.

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[19] 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.[20] However, the discussion makes it clear that all these terms refer to separating the person from endangerment by placement in separate housing, and that all of these are considered "protective custody." For the sake of consistency, TPI will refer here to all separation for investigations of alleged sexual abuse or due to assessment as being at risk for sexual abuse to be "protective custody." If the person being segregated agrees with the segregation, that segregation will be "voluntary protective custody"; if the person being

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

segregated does not agree with the segregation, that segregation will be "involuntary protective custody." TPI also asserts that due to the requirement at PREA § 115.41(d)(9) that the incarcerated person's own views of vulnerability taken into account, considerations of whether separate housing is "voluntary" or "involuntary" may change over time as the person's views about the need for protective custody changes. This can be important for persons provided TDCJ "safekeeping designation" because in many cases, persons will initially agree and want the designation, but later wish to be released from safekeeping designation due to the limits on education, training, work, and program opportunities. At that point, safekeeping becomes involuntary protective custody. Requests to be released from safekeeping designation are not always granted, and when not granted, documentation requirements under PREA § 115.43 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.

Protective safekeeping housing for P6 and P7 designated persons is provided at Pack Unit, according to this audit report.

The protective safekeeping 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.[21] All TDCJ classification discussions we are aware of related to separation due to the potential for sexual victimization focus on "safekeeping status" (P2 through P5), not "protective safekeeping" (P6 and P7).

TPI has seen many audit reports that appear to simply accept TDCJ's implied or stated claims that the only legitimate PREA § 115.43 "protective custody" in the system is TDCJ protective safekeeping. That is far from true. TPI believes such statements should be considered deliberate and intentional efforts to manipulate PREA data collection, 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 still 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."[22] 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.[23] In one

21. 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.
22. 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/.
23. 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

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.[24] The more 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. This does not address the harm done by forcing the person to de-identify as transgender.

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.[25] 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

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victimized or abusive," which serves to document that individuals in safekeeping may experience (TPI would suspect always experience) limitations to privileges and opportunities.

24. 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.
25. 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.

opportunities, training programs, and other benefits, sometimes by claiming the denial is not because of the safekeeping designation but for other reasons such as housing, as noted above.

TDCJ also seems to claim that safekeeping designation is not "protective custody" under PREA § 115.43, and that only "protective safekeeping" is "protective custody." This claim is absolutely not consistent with practice or even the definition of the housing designation. TPI also knows of persons who were placed in safekeeping over their objections. And some who initially agreed to the designation may later see no need for continued safekeeping designation. Certainly a person's understanding of their own vulnerability and need for safekeeping can change over time. If the person on safekeeping does not agree they have a continuing need for safekeeping status, then they are in involuntary protective custody, and the documentation requirements under PREA must be met.

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

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

Lockup for reporting sexual violence: TDCJ seems to go to some effort to indicate only "protective safekeeping" (custody classification P6 and P7) constitutes "protective custody" or "involuntary protective custody" for PREA purposes, and TDCJ protective safekeeping can constitute PREA protective custody but appears to be seldom used for that in actual practice. As explained above, "safekeeping designation" is definitely "protective custody" under PREA when related to addressing risk for sexual violence, and may also constitute "involuntary protective custody." Likewise, lockup for reporting sexual violence is "protective custody" under PREA, and often constitutes "involuntary protective custody" under PREA. In almost every report we have had documenting a TDCJ response to a report of sexual abuse, if the report is not ignored, the person reporting is placed in a separate cell and isolated for an Inmate Protection Investigation (IPI).[26] 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

26. 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.

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:

> 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.[27]

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 § 115.68, Post-Allegation Protective Custody

As with the discussion under PREA § 115.43, TDCJ engages in 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

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

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.

In the discussion of PREA § 115.68, the auditor notes that the Pack Unit warden stated persons

> who have made an allegation of sexual abuse and have stated that they are in fear for their safety will be placed in segregated housing (Safekeeping), either voluntarily or involuntarily, on a temporary basis until a review can be conducted to verify the extent of the danger.

TPI emphasizes once again that safekeeping designation does not work this way, and that a safekeeping designation must be made by the State Classification Committee, which first requires the Unit Classification Committee make a recommendation, a process that can take weeks if not months.

Due to the auditor's misrepresentations made in the discussion of the PREA § 115.68 standard as well as the deficiencies and problems discussed for PREA § 115.43, TPI asserts that Pack Unit cannot be considered compliant with PREA § 115.68 based on this report.

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 0 reports of sexual abuse or harassment had a greater chance of occurring than a 50/50 chance. Not one of the allegations at Pack Unit over the preceding 12 months 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.

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 unlikely that Pack Unit is compliant with the PREA § 115.72 standard.

Conclusion

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

- The auditor states that the population of Pack Unit consists of "males," when in fact this statement is false for PREA purposes.
- The auditor failed to conduct the minimum required 20 targeted interviews.
- The auditor failed to appropriately identify persons placed in segregated housing for risk of sexual victimization.
- Problems identified by TPI that indicate manipulation of investigations of sexual violence, as well as the difficult-to-accept low numbers of documented sexual harassment and sexual abuse at the facility, indicate substantial problems with PREA compliance.

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

- PREA § 115.11: In this comment report, TPI has identified what are potentially very significant and fundamental problems with the identification, investigation, and documentation of sexual violence at Pack Unit. Based on the failure of the audit to address these issues, Pack Unit cannot be considered compliant with this standard.
- PREA § 115.15: Due to the failure to appropriately identify the genders of persons housed at Pack Unit, the auditor failed to properly assess compliance with PREA limitations on cross-gender viewing and searches. Due to the failure to recognize actual genders, Pack Unit cannot be considered compliant with this standard.
- PREA § 115.15: Due in part to the auditor's failure to recognize the genders of the persons housed at Pack Unit, but more so because Pack Unit specifically and TDCJ overall participates in the same failure to recognize the gender of transgender and nonbinary persons, Pack Unit fails compliance with this standard.

- PREA § 115.21: Due to the information in this audit report that not one forensic medical exam was conducted in response to allegations of sexual abuse at Pack Unit, with no explanation to justify the complete absence of forensic medical evidence collection, it cannot be determined whether or not Pack Unit is compliant with this standard.
- PREA § 115.22: Due reports to TPI concerning sexual harassment incidents that were excluded from the PREA audit by the auditor, the facility, or both, TPI asserts that the audit of this standard was clearly deficient, and that Pack Unit cannot be considered complaint with this standard.
- PREA § 115.31: Due to both the failure by the auditor to ask incarcerated interviewees about staff actions that may indicate training problems, and a report to TPI that clearly indicates a problem with employee training, Pack Unit cannot be considered compliant with this standard.
- PREA §§ 115.43 and 115.68: Due to the fact that the auditor failed to understand how PREA protective custody applies to housing in Pack Unit, and the fact that Pack Unit staff manipulated facts concerning how housing at the unit meets the protective custody definition, Pack Unit cannot be considered to be compliant with this standard.

TPI requests that the following actions be taken:

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

I hope that these issues can be addressed in the interest of increasing the safety of all trans and queer persons, and in the interest of more full compliance with PREA standards requiring "zero tolerance toward all forms of sexual abuse and sexual harassment" and legitimate 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
Pack Unit Senior Warden Moises Villalobos
Pack Unit PREA Manager Kristi Shields
Pete Flores, Chair, Senate Committee on Criminal Justice
Phil King, Vice-Chair, Senate Committee on Criminal Justice
Abel Herrero, Chair, House Committee on Corrections
Kyle Kacal, Vice-Chair, House Committee on Corrections
Carl Sherman, Texas Representative, District 109
Venton Jones, Texas Representative, District 100