



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

October 5, 2024

re: 2024 Hamilton Unit PREA audit report deficiencies

To the PREA Resource Center:

Trans Pride Initiative (TPI) is filing comments about the final Prison Rape Elimination Act (PREA) audit report for the Texas Department of Criminal Justice (TDCJ) Hamilton 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 requiring only limited corrective actions and documenting no failures to meet PREA standards are in the best interest of state certification and full funding for prison operations, even when running counter to the PREA legislative objective of zero tolerance of sexual abuse and sexual harassment. For this reason, the success or failure of PREA protections depends heavily on auditors.

1. PREA identifies LGBTI as lesbian, gay, bisexual, transgender, and intersex persons. TPI is much more affirming and comprehensive in our understanding of vulnerabilities and marginalization, and as such we include under the PREA “LGBTI” umbrella all non-cisgender non-hetero-normative persons. We believe this is the only interpretation consistent with the spirit of PREA.

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

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



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

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

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

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:

- **Audit entry 58:** auditor failed to conduct minimum required target interviews.
- **Audit entry 70:** auditor failed to provide appropriate justification for the failure to meet the required number of target interviews.

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

- **PREA § 115.21:** Because only 1 out of 7 allegations of sexual abuse were afforded a forensic medical examination, and because no justification is provided as to why 6 allegations lack such examinations, it cannot be determined that Hamilton is compliant with this standard.
- **PREA §§ 115.43 and 115.68:** Due to the failure to address actual practice in the use of protective custody at Hamilton Unit, it can only be stated that Hamilton Unit is not in compliance with either of these standards.

4. 2022 Auditor Handbook, page 91.



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 the Online Audit System implement measures to help identify and safeguard against contradictory data.
- That TDCJ and TDCJ facilities be appropriately assessed for compliance with the PREA § 115.43 standard.

Discussion of Audit Deficiencies

General Data and Report Deficiencies

The DOJ has provided guidelines to use person first language such as persons in confinement or confined person. This is discussed in the 2022 Auditor Handbook, and the handbook notes that the PREA Management Office and the PREA Resource Center “are shifting the way we identify people who are incarcerated by using person-first language.” This auditor ignores this shift by continuing to use terms like “offender” throughout this report. In fact, the word “offender” is used 641 times by the auditor. There is no excuse for every new document completed under the aegis of the PREA compliance system to not follow person-first practices.

Table 1. Population Characteristics and Interviews

Population Characteristic	Persons		Interviews
	Present	Interviews Required	Completed
36/53/58 – Total housed at unit	985	Random: 15 Targeted: 15	Random: 20 Targeted: 13 [14?]
38/60 – Persons with a physical disability	4	at least: 1	1
39/61 – Persons with cognitive or functional disability	0	at least: 1	0
40/62 – Persons blind or visually impaired	1	at least: 1	1
41/63 – Persons deaf or hard-of-hearing	3	at least: 1	3
42/64 – Persons Limited English Proficient	39	at least: 1	1
43/65 – Persons identifying as lesbian, gay, or bisexual	11	at least: 1	4
44/66 – Persons identifying as transgender or intersex	0	at least: 1	0
45/67 – Persons who reported sexual abuse in facility	0	at least: 3	0
46/68 – Persons who reported prior sexual victimization	4	at least: 2	4
47/69 – Persons placed in segregated housing for risk of sexual victimization	0	at least: 1	0



As can be seen in Table 1, the auditor failed to complete the required number of targeted interviews. The auditor stated that 13 persons were interviewed, but provided individual categories totaling 14, so it cannot be determined how many targeted interviews the auditor actually conducted. The Auditor Handbook is clear on page 71 that:

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

Audit entry 70 is provided for the auditor to justify the failure to complete the minimum number of targeted interviews, but the auditor provided no justification for the failure to do so.

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

- 115.21 provides the number of forensic exams documented,
- 115.41 provides the number of risk reassessments noted to comply with provision g,
- 115.43 provides the number of persons reported placed in protective custody,
- 115.62 provides the number of investigations into reports of imminent sexual abuse,
- 115.67 provides the number of reported responses to retaliation,
- 115.68 provides the number of reported persons placed in protective custody after reporting sexual abuse,
- 115.71 provides the number of administrative investigations documented in written reports,
- 115.73 provides the number of persons reported to have received notifications about investigation outcomes,
- 115.86 provides the number of reported incident reviews.

As can be seen, there appear to have been four allegations of sexual harassment against staff—2 unsubstantiated and 2 ongoing—but elsewhere the report states 2. Due to conflicts in auditor data, it is not possible to know what was actually defined for the facility.



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

	Administrative Investigations					Associated Standards	
	Qty	Ongoing	Unfounded	Unsubstantiated	Substantiated		
Sexual Abuse							
<u>Allegations Against Staff</u>							
	3	0	0	2	1	115.21:	1
						115.41:	X
						115.43:	0
						115.67:	0
<u>Allegations Against Incarcerated Persons</u>							
	4	0	1	3	0	115.68:	0
						115.71:	7
						115.73:	?
						115.86:	6
Risk of Sexual Abuse							
Reports	0	-	-	-	-	115.41:	X
						115.43:	0
						115.62:	0
						115.67:	0
Sexual Harassment							
<u>Allegations Against Staff</u>							
	2	2	0	2	0	115.43:	0
						115.67:	0
<u>Allegations Against Incarcerated Persons</u>							
	4	0	0	4	0	115.71:	6

Notes: Text in **red** indicate a problem with compliance. X – auditor did not provide counts or percentages. ? – description too vague to determine compliance.

PREA Compliance Assessment Issues

PREA § 115.21, Evidence Protocol and Forensic Medical Examinations

The auditor states that out of 7 allegations of sexual abuse over the 12 months preceding the audit, only 1 (14%) was afforded an opportunity to undergo a forensic medical examination. No justification was provided concerning the other 6 (86%) of the persons reporting sexual abuse, including 3 allegations against staff for sexual abuse, who were NOT afforded a forensic medical examination.

Based on the lack of justification for the fact that for 86% of the persons reporting sexual abuse, no forensic medical examination was done, TPI asserts that it cannot be determined that Hamilton Unit is compliant with this standard.

PREA § 115.43, Protective Custody

The auditor falsely equates TDCJ “protective safekeeping” with the only housing or classification designation meeting PREA “protective custody.” It is a near certainty that all 13 to



15 of the persons alleging sexual harassment and sexual abuse were placed in housing that constitutes PREA protective custody.

The auditor also falsely discusses “involuntary safekeeping” as a temporary measure that lasts no longer than 24 hours. TDCJ safekeeping designation, whether voluntary or involuntary, is a classification level requiring referral by the Unit Classification Committee and approval by the State Classification Committee, and as far as TPI is aware never is used as a temporary housing designation.

These issues indicate a failure to conduct due diligence to determine what housing and cell assignments actually constitute PREA protective custody at Hamilton Unit, and a failure to properly assess at least PREA § 115.43 provisions a, b, and d.

Based on this discussion, it cannot be determined if Hamilton Unit is in compliance with PREA § 115.43, but because the almost universal response to allegations of sexual violence in TDCJ is to place a person in protective custody under a claim of protecting the person from violence and for post-allegation investigation, and because this appears to be a deliberate effort to cover up such almost certain housing assignments for the three persons noted to have reported sexual violence, TPI asserts that that Hamilton Unit is not in compliance with this standard.

PREA § 115.68, Post-Allegation Protective Custody

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

Based on the claim by the facility and the auditor that not 1 of the 13 or 15 persons alleging sexual harassment and sexual abuse were placed in protective custody, which is almost certainly false, the assumption must be made that Hamilton Unit is not in compliance with this 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:

- Audit entry 58: auditor failed to conduct minimum required target interviews.
- Audit entry 70: auditor failed to provide appropriate justification for the failure to meet the required number of target interviews.
- PREA § 115.21: Because only 1 out of 7 allegations of sexual abuse were afforded a forensic medical examination, and because no justification is provided as to why 6



allegations lack such examinations, it cannot be determined that Hamilton is compliant with this standard.

- PREA §§ 115.43 and 115.68: Due to the failure to address actual practice in the use of protective custody at Hamilton Unit, it can only be stated that Hamilton Unit is not in compliance with either of these standards.

I hope that these issues can be addressed in the interest of increasing the safety of all trans and queer persons, and in the interest of more full compliance with PREA standards requiring “zero tolerance toward all forms of sexual abuse and sexual harassment” and legitimate instead of specious efforts to prevent, detect, and respond to such conduct.

Sincerely,

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

cc: Department of Justice, PREA Management Office
TDCJ CEO Bryan Collier
TDCJ PREA Ombudsman
Hamilton Unit Senior Warden Bruce Johnson
Hamilton Unit PREA Manager Keshia Keys
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