

Subject: Response to TPI reports
From: Dana Shoenberg <dshoenberg@impactjustice.org>
Date: 10/21/2024, 7:00 AM
To: nell@tpride.org
CC: Erica Gammill <egammill@impactjustice.org>

Dear Ms. Gaither:

Thank you again for submitting to the PREA Resource Center (PRC) a number of “PREA Auditor Feedbacks” that focus on audits of confinement facilities operated by the Texas Department of Criminal Justice (TDCJ). We have shared and discussed them with the PREA Management Office (PMO) at the Bureau of Justice Assistance (BJA) within the Department of Justice (DOJ), and I know PMO Senior Policy Advisor Tom Talbot conveyed his thanks to you via email.

Before addressing the concerns you raise in the Auditor Feedbacks, I want to provide some relevant background information on the work of the PMO and the PRC related to PREA audits. The PRC is operated and funded via a competitive cooperative agreement between BJA (where the PMO resides) and Impact Justice, a private, non-profit organization. The PMO, with support from the PRC, is responsible for training, certifying, recertifying, and overseeing the work of all PREA auditors.

The PREA Standards define how audits are conducted. After PREA auditors are certified by DOJ, they contract with confinement facilities/agencies to conduct PREA audits. Neither DOJ/PMO nor the PRC plays a role in these contractual arrangements or has the authority to “accept” or “reject” final PREA audit reports from auditors.

The PMO, with support from the PRC, operates the PREA Audit Oversight Program. This program monitors the work of all PREA auditors to comply with DOJ’s auditing requirements defined in the PREA Standards and the [PREA Auditor Handbook](#). When the PMO identifies concerns related to the quality of audits and/or issues related to auditor conduct, they examine the matter to determine if it is appropriate to intervene with the auditor. For example, the PMO requires auditors to participate in targeted training and work one-on-one with peer mentors to address identified deficiencies in their auditing practices. The PMO also takes disciplinary action, including steps that impact PREA auditors’ DOJ-issued certifications, when auditors consistently fail to uphold DOJ’s auditing requirements.

The PMO and the PRC recognize that information about PREA auditors from the field is a critical component in our ongoing efforts to promote high quality audits that reflect DOJ’s requirements. This response focuses on some of the concerns you identified in all of the PREA Auditor Feedbacks you have submitted to date, which include:

1. March 11, 2023 – PREA Auditor Gregory Winston, TDCJ Clements Unit.
2. July 11, 2023 – PREA Auditor Pam Sonnen, TDCJ Smith Unit.
3. November 15, 2023 – PREA Auditor Latera Davis, Estelle Unit.
4. November 21, 2023 – PREA Auditor Darla O'Connor, TDCJ Stiles Unit.
5. December 5, 2023 – PREA Auditor Lynni O'Haver, TDCJ Holliday Unit.
6. December 12, 2023 – PREA Auditor James Kenney, TDCJ Beto Unit.
7. February 9, 2024 – PREA Auditor Darla O'Connor, TDCJ Telford Unit.
8. March 13, 2024 – PREA Auditor Lynni O'Haver, TDCJ Coffield Unit.
9. March 26, 2024 – PREA Auditor Cynthia Swier, TDCJ Connally Unit.
10. May 11, 2024 – PREA Auditor Lynni O'Haver, TDCJ Memorial Unit.

11. June 21, 2024 – PREA Auditor Mark McCorkle, TDCJ Gib Lewis Unit.
12. June 26, 2024 – PREA Auditor Lynni O'Haver, TDCJ Sayle Unit.
13. June 27, 2024 – PREA Auditor Cynthia Swier, TDCJ Diboll Unit.
14. June 28, 2024 – PREA Auditor Lynni O'Haver, TDCJ Hobby-Marlin Unit.
15. August 24, 2024 – PREA Auditor William Pierce, TDCJ Allred Unit.
16. August 30, 2024 – PREA Auditor Matthew Taylor, TDCJ Ferguson Unit.
17. September 4, 2024 – PREA Auditor James Kenney, TDCJ Boyd Unit.
18. September 27, 2024 – PREA Auditor Lynni O'Haver, TDCJ Wallace Pack Unit.
19. October 5, 2024 – PREA Auditor Lynni O'Haver, TDCJ Hamilton Unit.

You have raised many important concerns in your Auditor Feedbacks and our responses below focus on those that we have sufficient information about and authority to address.

Concern 1: Auditors do not contact the Trans Pride Initiative (TPI) during their outreach to community-based organizations

Response:

As you noted, PREA Standard 115.401(o) requires auditors to “attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.” You indicated the auditors listed above did not contact TPI during their outreach to community-based organizations. Because auditors may not be aware of every community-based organization that may have relevant information about facilities they audit, we encourage you to proactively reach out to auditors who are conducting audits for which you have “insight into relevant conditions.” You can find information about all upcoming PREA audits across the country in the online [Directory of PREA Audits](#), including contact information for auditors.

Concern 2: Audit reports mention “male” or “female” populations, even though transgender women may be housed in facilities for “men” and transgender men maybe be housed in facilities for “women.” In addition, there may be intersex people housed in facilities for “men” or “women.”

Response:

We appreciate your concerns regarding the accuracy of PREA audit reports in describing the confined populations in specific facilities. PREA auditors are required to work with the confinement facilities they are auditing to complete a Pre-Audit Questionnaire (PAQ) before the onsite portion of every audit. Based on your feedback, the PMO is considering updates to the PAQ to include gender designations in addition to “male” and “female.”

Concern 3: Auditors’ compliance findings related to PREA Standard 115.13

Response:

The Auditor Feedbacks you submitted include your concern about the ability of TDCJ facilities to comply with Standard 115.13, given that many have staff vacancy rates of 50% or higher. In light of these significant staffing challenges, you questioned whether PREA auditors of TDCJ facilities have adequately determined compliance with Standard 115.13.

Standard 115.13 requires the agency to ensure that each facility it operates develops, documents, and makes its **best efforts to comply on a regular basis** (emphasis added) with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect incarcerated people from sexual abuse. The staffing plan must include several factors defined in Standard 115.13, and, in circumstances where the staffing plan is not followed, the facility must document and justify the deviation.

As indicated above, the facility must make “best efforts to comply on a regular basis” with the staffing plan, and document and justify the reason(s) when they do not. Unfortunately, high staff vacancy rates are prevalent in confinement facilities across the country. Due to this, the PMO and the PRC have made, and will continue to make, information and resources available to the field about implementing Standard 115.13, and to auditors about strategies to evaluate compliance with it. One example is the resource, [Developing and Implementing a PREA-Compliant Staffing Plan](#).

Concern 4: Auditors’ compliance findings related to PREA Standard 115.15

Response:

Your Auditor Feedbacks include your concern about TDCJ’s compliance with Standard 115.15 and auditors’ compliance determinations related to it. Specifically, you state that TDCJ facilities are conducting searches that are not in accordance with the gender identity of transgender people who are confined.

On October 24, 2023, DOJ’s PREA Working published an [FAQ](#) related to Standard 115.15 which states, in part, the following:

“Operationally, four options are in current practice for searches of transgender or intersex inmates/residents/detainees: 1) searches conducted only by medical staff; 2) pat searches of adult inmates conducted by female staff only, especially given there is no prohibition on the pat searches female staff can perform (except in juvenile facilities); 3) asking inmates/residents/detainees to identify the gender of staff with whom they would feel most comfortable conducting the search, and 4) searches conducted in accordance with the inmate’s gender identity. Agencies or facilities that conduct searches based solely on the gender designation of the facility without considering other factors such as the gender identity or expression of the individual inmate or the inmate’s preference regarding the gender of the person conducting the search, would not be compliant with Standards 115.15, 115.115, 115.215, and 115.315.”

In September 2024, the PMO and the PRC provided mandatory training to PREA auditors on how to evaluate compliance with Standard 115.15, consistent with the October 24, 2023, FAQ from DOJ. Accurately evaluating compliance with Standard 115.15 will continue to be an area of emphasis in the PMO’s and the PRC’s work with auditors in the Audit Oversight Program.

Concern 5: Auditors’ compliance findings related to PREA Standard 115.31

Response:

Your Auditor Feedbacks include your concern about compliance with Standard 115.31 in TDCJ facilities and auditors’ findings of “Meets Standard” in their audits of them. Specifically, you indicate that TDCJ staff training is not consistent with Standard 115.31(a)(9), which requires this training to include: “How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates.”

In the September 2024 mandatory training for auditors that is referenced above, the PMO and the PRC focused on how to evaluate compliance with Standard 115.31, with an emphasis on reviewing staff training to ensure it adequately addresses professional and respectful interactions with confined persons who are LGBTI+.

Concern 6: Auditors’ compliance findings with PREA Standard 115.42.

Response:

Your Auditor Feedbacks include your concern about compliance with Standard 115.42 in TDCJ facilities and auditors' findings of "Meets Standard" in their audits of these facilities. According to your Auditor Feedbacks, it is TDCJ policy to house individuals according to their sex assigned at birth. It is not clear which TDCJ policy to which you are referring, but the [February 2019 Safe Prisons/PREA Plan for TDCJ's Correctional Institutions Division](#) includes the following on page 19:

"When deciding to assign a transgender or intersex offender to a unit for male or female offenders, and when making other housing and programming assignments, consideration shall be made on a case-by-case basis with regard to the health and safety of the offender and potential management or security problems. Housing determinations shall not be made solely on the basis of LGBTI status. Placement and programming assignments for each transgender or intersex offender shall be reassessed semiannually to review any threats to safety experienced by the offender. A transgender or intersex offender's views with respect to his or her own safety shall be given serious consideration."

This TDCJ policy language is generally consistent with the requirements under Standard 115.42, including Standard 115.42(b), which states: "The agency shall make individualized determinations about how to ensure the safety of each inmate; and Standard 115.42(c), which states: "In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate's health and safety, and whether the placement would present management or security problems."

In the September 2024 mandatory training for auditors that is referenced above, the PMO and the PRC focused on how to evaluate compliance with Standard 115.42, which includes reviewing housing placements for transgender and intersex individuals. In addition, the PMO and the PRC emphasized the importance of examining the extent to which a given agency policy, which an auditor determines to be consistent with the PREA Standards, has been successfully implemented in the day-to-day practices inside the confinement facility they are auditing. This is consistent with the practice-based auditing methodology prescribed in the PREA Auditor Handbook that requires a thorough onsite review of the facility and interviews of individuals who are confined and staff members.

Concern 7: Auditors' Compliance Findings with PREA Standards 115.71 and 115.72Response:

Your Auditor Feedbacks reflect your concern that investigations of allegations of sexual abuse in TDCJ facilities result in low rates of substantiation, which indicates that investigators may be imposing a higher standard of evidence than what is required by Standard 115.72. In addition, you reference the overall quality of these investigations and the "Meets Standard" compliance findings made by the auditors of the TDCJ facilities listed above.

The PMO and the PRC frequently receive questions from corrections agencies about implementing Standards 115.71 and 115.72, and requests to assist them in implementing them successfully. In response to the needs of the field, the PMO and the PRC successfully piloted a new, PREA Academy Investigations Training (PAIT) last fall, and we will deliver PAIT to representatives from state corrections agencies across the country starting in early December 2024. This 14-week virtual training course includes asynchronous learning, small-group discussions, synchronous in-service days, and skills-based practice with faculty

feedback on investigative methods and techniques. We are planning additional deliveries of PAIT in 2025, and we will use content and lessons learned from it to inform our ongoing work with corrections agencies related to improving investigations and supporting the work of auditors to evaluate compliance with Standards 115.71 and 115.72.

Again, thank you for sharing your Auditor Feedbacks with us.

Sincerely,

Dana Shoenberg
Director
PREA Resource Center



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Director

National Prison Rape Elimination Act Resource Center

Pronouns: she, her, hers

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