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

December 18, 2024

re: 2024 Texas Department of Criminal Justice agency PREA audit report deficiencies

To the PREA Resource Center:

Trans Pride Initiative (TPI) is filing this comment letter concerning the final Prison Rape Elimination Act (PREA) audit report for the Texas Department of Criminal Justice (TDCJ) agency audit conducted by auditor Ronell Prioleau and Corrections Consulting Services, LLC, formerly PREA Auditors of America.[1] TPI has been working with incarcerated persons since 2013, mainly trans and queer persons in the Texas prison system.[2] 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, and unwarranted, amount of power in the PREA certification process. Texas must submit an annual certification that jails and prisons operating under state jurisdiction are in full compliance with the PREA standards or face a reduction in certain federal grant funds.[3] 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

1. The involvement of Corrections Consulting Services if identified nowhere in the audit report, which should be considered a deficiency in addition to the other factual deficiencies discussed in this comment letter.
2. 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.
3. The requirements are defined at 34 USC § 30307, https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title34-section30307&num=0&edition=prelim.

in determining State-level 'full compliance.'"[4] Thus audits reflecting full compliance with 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.

Audit quality and the resulting assessments are key factors in addressing problems hampering work toward the goals of the PREA legislation. DOJ's PREA Management Office (PMO) 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."[5] 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 (PRC) for use in auditor performance assessment.[6] Although audit deficiencies will not cause the audit to be overturned or denied, TPI believes information in this comment letter should raise serious questions about the state's certification of full compliance, past and present.

Additionally, TPI hopes to encourage greater accountability among auditors by providing comments on their audit reports.

TPI has documented a total of 15,131 incidents of violence against persons housed at TDCJ facilities, including 1,166 incidents that occurred in the past 12 months. Of the total documented incidents, 3,675 involved noncompliance with some element of the PREA standards, with 262 PREA noncompliance issues documented in the last 12 months.[7]

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 within TDCJ facilities. This letter should also not be considered a complete inventory of PREA deficiencies, but an itemization and discussion of a

4. U.S. Department of Justice, "National Standards To Prevent, Detect, and Respond to Prison Rape," *Federal Register 77*, no. 119 (June 20, 2012): 37188, https://www.ojp.gov/sites/g/files/xyckuh186/files/media/document/PREA-Final-Rule.pdf.
5. PREA Resource Center, *PREA Auditor Handbook,* U.S. Department of Justice, Version 2.1, November 2022: 91, https://www.prearesourcecenter.org/sites/default/files/library/PREA%20Auditor%20Handbook%20V2.1%20-%20December%202022.pdf.
6. The National PREA Resource Center is joint governmental and public nonprofit entity, so the views and opinions of the PRC are considered to represent the views and opinions of the DOJ as well.
7. 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).

few of the problems TPI has been able to identify with operations at TDCJ facilities and within the agency.

TPI notes that the auditor was provided an opportunity to look at and discuss TPI data presented in this comment letter prior to the onsite visit dates for this agency audit, but chose neither to contact TPI nor to consider these data. For more information about our efforts to contact the auditor, see the section "PREA § 115.401, Audit Frequency and Scope."

In this report, excerpts from the PREA standards are highlighted in purple to make them easier to recognize. Excerpts from PREA auditor tools and guidelines are highlighted in green.

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Summary of Deficiencies

This comment letter discusses the following audit deficiencies:

- The audit report required no corrective actions, but as outlined in this letter, corrective actions appear warranted.
- Concerning PREA § 115.11 compliance, the audit report failed to consider even publicly available data in the evaluation of the agency's efforts to prevent, detect, and respond to sexual violence. This letter discusses some of the problems TDCJ has meeting this standard in areas of staffing, training, intake screening, classification processes, reporting sexual violence, investigating sexual violence, and providing services to those who have experienced or perpetrated sexual violence.
- Concerning PREA § 115.18 compliance, the audit report failed to adequately consider the use of surveillance technology in agency practices.
- Concerning PREA § 115.42 compliance, the audit report appears to have documented agency assessment of screening practices based on standards less than what PREA requires, and in addition:
    - failed to consider agency practices in maintaining separation of those at increased risk of experiencing sexual violence from those more likely to harm others by sexual violence,
    - failed to address TDCJ's blanket rule housing transgender persons by genital configuration,
    - failed to consider the efficacy of biannual reassessments of the safety of transgender and intersex persons,
    - failed to address practices around serious consideration of the views of transgender and intersex persons with regards to their safety,
    - failed to consider widespread issues with providing separate showers for transgender and intersex persons, and
    - failed to consider how the agency manipulates "protective custody" in the use of screening information.
- Concerning PREA §§ 115.87, 115.88, and 115.89 compliance, the audit report appears to have failed to appropriately assess the accuracy of the data TDCJ collects, failed to adequately review the compliance of PREA annual reports with PREA requirements, and misrepresented the reports available publicly on the agency website.

- Concerning PREA §§ 115.401 and 115.402, the auditor failed to contact community advocates with information pertinent to the audit, and failed to appropriately consider conflicts of interest in the performance of this audit.

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 auditor be required to give serious consideration to information about PREA compliance concerns provided by incarcerated persons—the auditor only notes one written letter from an incarcerated person, and provides no information about whether information in that letter was seriously considered—and to provide justification for dismissing such information.
- That the deficiencies identified in this comment letter be address in the next PREA agency audit.

General Audit Information Issues

The audit report states that 10 standards were met. The audit report documents 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 audit report reflected 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 point to the discussion of PREA § 115.402 and evidence of conflicts of interest.

PREA Standards Compliance Assessment Issues

PREA § 115.11, Zero Tolerance

(a) An agency shall have a written policy mandating zero tolerance toward all forms of sexual abuse and sexual harassment and outlining the agency's approach to preventing, detecting, and responding to such conduct.

(b) An agency shall employ or designate an upper-level, agency-wide PREA coordinator with sufficient time and authority to develop, implement, and oversee agency efforts to comply with the PREA standards in all of its facilities.

(c) Where an agency operates more than one facility, each facility shall designate a PREA compliance manager with sufficient time and authority to coordinate the facility's efforts to comply with the PREA standards.

PREA § 115.11 considers policy at the agency overall as well as how that policy is implemented at various facilities. Policy is certainly essential to reaching the PREA goals identified in this standard, but policy alone is inadequate, and how policy is implemented may even increase harm. Certainly policy is important, but implementation and accountability are important also. TPI has seen many instances where an agency or responsible entity 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. The 2022 Auditor Handbook addresses this negative potential by stating 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 [emphasis added].[8]

Negative effects of policy are also seen where a claim that sexual violence is "investigated" is accompanied by clear indications that investigations have little or no merit due to the extremely high rate of dismissal. This can also serve to cover up—and may even encourage—violence such as sexual abuse and sexual harassment by providing a means of simply ignoring such violence through improper investigations.

In the agency audit report, the auditor references policy and other documentation supporting compliance with the PREA standards in the three broad areas defined in provision (a) of the standard:

- Prevention of sexual violence through designation of PREA-related staff; background checks for staff, contractors, and volunteers; training; staffing; intake screening; classification; education for incarcerated persons, PREA-related signage; and contract monitoring.
- Detection of sexual violence through training of staff, contractors, and volunteers; and intake screening.
- Responding to sexual violence though reporting practices, investigations, victim services, medical and mental health services, staff disciplinary sanctions, incident review teams, and data collection and analysis.

Two brief paragraphs relate the support for compliance as based on staff statements and policy, yet nothing was provided to address the 2022 Auditor Handbook requirement that "[p]olicies and procedures do not demonstrate actual practice," so a PREA audit "is primarily an audit of practice."

8. U.S. Department of Justice, PREA Management Office, *PREA Auditor Handbook,* Version 2.1, November 2022: 46, https://www.prearesourcecenter.org/sites/default/files/library/PREA%20Auditor%20Handbook%20V2.1%20-%20December%202022.pdf.

The following will examine practices in each of these areas contradicting the audit report's claim that "[a]fter a careful and detailed review, . . . the Agency meets the requirements of the standard." The following comments show that, instead of meeting the prevention aspect as the audit report claims, TDCJ has serious problems meeting even minimum staffing requirements; that the superficial training numbers provided by TDCJ and the audit report are not supported by performance and practice measures; and that screening and classification practices do not effectively prevent sexual violence. For the detection aspect of this standard, comments will show that staff are almost completely absent from detection practices, and that the PREA Ombudsman Office is increasingly refusing to address inquiries and complaints.[9] And for the response aspect, we will show that data indicates staff are failing to appropriately respond to reports of sexual violence, they fail to appropriately protect persons at risk of sexual violence or retaliation, that investigative measures are inadequate and victim services lacking.

For all the reasons presented here, TPI asserts that neither was a careful review done, nor does the agency meet the requirements of PREA § 115.11.

TDCJ Prevention of Sexual Violence

The audit report states that TDCJ meets compliance for easy checkbox items such as the agency has an agency-wide coordinator and a PREA ombudsman, has policies that make a claim of zero tolerance for sexual violence, conducts background checks, has a handbook that parrots PREA policies, and because staff could repeat PREA requirements in interviews. It is clear that TDCJ superficially performs these functional policy-related tasks, but it is just as clear that in other areas—such as staffing, training, screening, and classification—TDCJ fails to perform in spite of claims to meet the standards.

Staffing Levels as Prevention (PREA § 115.13)

PREA § 115.13 requires that the agency maintain adequate staff to operate effectively and to "protect [incarcerated persons] against sexual abuse." The standard in it's entirety is shown below.

> (a) The agency shall ensure that each facility it operates shall develop, document, and make its best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect [incarcerated persons] against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration:
>
> (1) Generally accepted detention and correctional practices;
>
> (2) Any judicial findings of inadequacy;
>
> (3) Any findings of inadequacy from Federal investigative agencies;
>
> (4) Any findings of inadequacy from internal or external oversight bodies;

9. Officially, the PREA Ombudsman Office is organized under the Texas Board of Criminal Justice, but the distinction between the department and the board seems for most operational considerations inconsequential.

(5) All components of the facility's physical plant (including "blind-spots" or areas where staff or [incarcerated persons] may be isolated);

(6) The composition of the [incarcerated person] population;

(7) The number and placement of supervisory staff;

(8) Institution programs occurring on a particular shift;

(9) Any applicable State or local laws, regulations, or standards;

(10) The prevalence of substantiated and unsubstantiated incidents of sexual abuse; and

(11) Any other relevant factors.

(b) In circumstances where the staffing plan is not complied with, the facility shall document and justify all deviations from the plan.

(c) Whenever necessary, but no less frequently than once each year, for each facility the agency operates, in consultation with the PREA coordinator required by § 115.11, the agency shall assess, determine, and document whether adjustments are needed to:

(1) The staffing plan established pursuant to paragraph (a) of this section;

(2) The facility's deployment of video monitoring systems and other monitoring technologies; and

(3) The resources the facility has available to commit to ensure adherence to the staffing plan.

(d) Each agency operating a facility shall implement a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented for night shifts as well as day shifts. Each agency shall have a policy to prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

Additional PRC comments further define the purpose of this standard and how it relates to reducing sexual violence. From the "Standards in Focus" series for PREA § 115.13:

Purpose: To protect inmates against sexual abuse and sexual harassment by limiting the possibility that inmates and staff will be left alone and unmonitored through adequate and ongoing supervision. This purpose is achieved through:

- Development, documentation and implementation of a staffing plan that provides for adequate levels of supervision and monitoring of the facility's population to prevent, detect and respond to sexual abuse and sexual harassment;
- Consideration of deployment of video monitoring and other monitoring technologies as appropriate and feasible to augment and enhance staff supervision of inmates to increase sexual safety in the facility; and

> ➢ Performance of periodic unannounced rounds by intermediate and upper-level supervisors on all shifts to deter, prevent, and detect sexual abuse and sexual harassment of inmates in the facility.[10]

The audit report claims that TDCJ staffing levels adequately contribute to prevention efforts, in spite of damning condemnation of long-persistent and continuing staffing problems documented in news accounts and, most recently, by the Texas Sunset Commission review of the agency. The Sunset Commission provided a general overview of the staffing problems and some of the additional issues that affect safety on the first page of their recent report:

> This Sunset review occurred in the context of both TDCJ's systemwide prison lockdown due to unprecedented levels of contraband and violence and inmate population projections that exceed TDCJ's operational capacity, **raising basic questions about TDCJ's ability to handle its current and future realities.** The state's criminal justice entities are **confronting serious challenges in executing their mission to safely confine, supervise, and provide services** for adults convicted of certain crimes in Texas [emphasis added].[11]

Below are a few of the bullet point items relevant to a PREA audit provided in the Sunset Commission report:

- Serious and systemic deficiencies in human resources functions, which form the backbone of effective agency operations, contribute to agency-wide hiring and retention problems, with more than half of TDCJ divisions at a vacancy rate of at least 20 percent in fiscal year 2023.[12]
- [TDCJ] has experienced crisis-level vacancy rates among correctional staff for several years in many of its facilities.[13]
- While **correctional best practice is that staff vacancy rates remain below 10 percent, in fiscal year 2023, TDCJ's vacancy rate among correctional staff was nearly 28 percent agency-wide and much higher at certain facilities.** At the end of that year, **22 facilities had more than 40 percent of correctional positions vacant, including six facilities with more than half of correctional positions vacant.** . . . These vacancy rates are even higher for just COs, with some units operating with up to 70 percent of CO positions unfilled. Agency data indicate **vacancy rates have progressively worsened at certain facilities over the last ten years** [emphasis added; Figure 1].[14]
- Staff members transporting to a facility for one day or for a week or two at a time must quickly learn and adapt to a new environment and system, which can be difficult for both them and the facility's permanent staff. Sunset staff learned from COs that, while the help is

10. PREA Resource Center, "Prevention Planning, § 115.13, 115.113, 115.213, 115.313 Supervision and Monitoring," *PREA Standards in Focus*, https://www.prearesourcecenter.org/sites/default/files/library/PREA%20Standards%20in%20Focus%20%28115.13%29.pdf.
11. Texas Sunset Advisory Commission, *Sunset Staff Report: Texas Criminal Justice Entities*, September 2024: 1, https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.
12. Texas Sunset Advisory Commission, *Sunset Staff Report:* 1.
13. Texas Sunset Advisory Commission, *Sunset Staff Report:* 23.
14. Texas Sunset Advisory Commission, *Sunset Staff Report:* 24.

TDCJ Units with the Highest Vacancy Rates, FYs 2014-23

Unit	FY 14	FY 15	FY 16	FY 17	FY 18	FY 19	FY 20	FY 21	FY 22	FY 23
D	13.92%	16.63%	18.68%	22.28%	25.83%	31.61%	45.86%	47.09%	52.72%	55.43%
E	20.05%	27.19%	16.19%	22.15%	28.87%	29.84%	38.86%	43.44%	52.59%	53.55%
G	20.83%	27.01%	11.45%	20.63%	28.72%	31.43%	36.77%	41.62%	48.52%	52.77%
B	27.39%	16.67%	16.24%	30.70%	31.82%	44.91%	41.67%	43.46%	51.69%	53.89%
W	15.71%	17.84%	8.70%	8.74%	11.16%	15.65%	15.78%	27.85%	43.78%	49.90%
J	11.53%	17.13%	10.14%	17.38%	28.15%	27.57%	32.74%	35.61%	45.14%	47.98%
C	24.36%	16.85%	6.88%	20.15%	14.34%	12.04%	25.37%	44.11%	47.40%	51.74%
A	1.53%	3.89%	9.16%	7.50%	19.92%	23.16%	32.68%	42.24%	59.09%	56.57%
R	13.56%	8.47%	9.40%	10.17%	25.66%	5.08%	16.10%	32.48%	41.96%	48.68%
O	40.14%	21.35%	12.43%	27.69%	23.22%	36.43%	36.29%	52.55%	51.85%	48.67%

Figure 1: Facilities with the top 10 staffing shortages for the ten-year period 2014–2023. Source: Texas Sunset Advisory Commission, *Sunset Staff Report: Texas Criminal Justice Entities*, September 2024: 25.

appreciated and needed, **transported officers are sometimes more prone to mistakes, more reticent to take on difficult assignments, and in some cases, less invested in their tasks** and the overall success of the facility [emphasis added].[15]

- Forty percent of respondents to Sunset's correctional staff survey said they feel unsafe in TDCJ facilities, and **many facilities are so critically understaffed they cannot operate by the agency's own safety standards** [emphasis added].[16]
- **[Incarcerated persons] are not being supervised as closely as TDCJ has deemed minimally necessary to ensure the safety and security of facilities, impacting both staff and [incarcerated persons].** Reducing [incarcerated person] supervision and assistance with basic needs can lead to increases in violence, self-harm, and other dangerous incidents. Furthermore, in the event of such an incident, an officer's nearest help might be a building away, out of earshot and behind security doors [emphasis added].[17]
- A Sunset staff analysis found **facilities are more dangerous now than a decade ago.** . . . [I]n fiscal year 2023 the agency recorded more than 2,000 adverse events, surpassing a pre-COVID-19 high, and these events have been rising as a percentage of the [incarcerated person] population over the last 10 years [emphasis added].[18]
- Internal policy prohibits staff from working more than 16 hours a day or 10 days in a row. However, **since fiscal year 2019, documented violations of the 10-day rule doubled and violations of the 16-hour rule increased more than tenfold to 9,000 violations per month on**

15. Texas Sunset Advisory Commission, *Sunset Staff Report:* 26.
16. Texas Sunset Advisory Commission, *Sunset Staff Report:* 40.
17. Texas Sunset Advisory Commission, *Sunset Staff Report:* 41.
18. Texas Sunset Advisory Commission, *Sunset Staff Report:* 41.

> **average.** . . . [H]alf of the respondents to Sunset's correctional staff survey said the amount of extra time they must work negatively impacts officer safety, and more than 40 percent of respondents said it negatively impacts the safety of inmates and the public [emphasis added].[19]
>
> - Despite the difficulty—and sometimes physical impossibility—of completing all required tasks with such severe staffing shortages, **TDCJ has failed to adjust expectations to the new realities of current staffing levels.** In the face of crisis-level staffing at many correctional facilities, parole offices, and other departments, employees are often tasked with more than they can reasonably perform within normal working hours. For example, **a correctional housing rover responsible for 300 inmates across multiple housing areas would have just six seconds to perform a security check on each inmate, which TDCJ policy requires every 30 minutes** [emphasis added].[20]
> - Sunset staff repeatedly heard from employees about a culture trickling down from upper levels of agency leadership of "doing more with less" and "making it work," coupled with a reluctance to report bad news up the chain of command. Under this dynamic, the crush of tasks described above creates a lose-lose scenario for officers and other staff who risk punishment for admitting failure to complete all required tasks, **feel they must deceive supervisors or falsify recordkeeping,** and wind up having to make high-stakes prioritization decisions [emphasis added].[21]

The Sunset Commission report is an example of a competent audit of staffing levels and problems, whereas the PREA audit report is an example of a rubber stamped quick review that has as its goal pleasing the agency and the prime contractor, not the application of prevention measures required under PREA.

TPI has begun coding letters we receive for their mention of topics that may be too general for us to document as incidents of violence, and many of the issues identified this way relate to a lack of staffing and failures to adequately supervise persons in TDCJ custody. We have so far only coded less than 2,000 of the nearly 15,000 letters received, and some of the letter counts for staff-related issues are shown in Table 1.

Once again, TPI's data is limited to what has been reported to us. The true scope and impact of staffing issues are much greater than we are able to document, but the report of the Sunset Commission should be taken as critical evidence in any PREA audit, whether at the facility or agency level.

In spite of the audit report's amazing claims that staff is sufficient—especially in light of the much more investigative and thorough Sunset Commission report that the audit report has ignored—it appears to be extremely clear that staffing is not sufficient to meet PREA compliance obligations.

19. Texas Sunset Advisory Commission, *Sunset Staff Report:* 41–42.
20. Texas Sunset Advisory Commission, *Sunset Staff Report:* 44–45.
21. Texas Sunset Advisory Commission, *Sunset Staff Report:* 45–46.

Table 1. Letters to TPI Discussing Staff Shortage Issues

Topic	Letter Count	Topic	Letter Count
Drug Use and Trade		**Treatment of Incarcerated Persons**	
General drug use and trade	45	Fail to respond to general requests	17
K2 specific	44	Lack of wellness checks	3
Meth specific	4	Search problems	10
Fentanyl specific	3	Abusive searches	3
Security Issues		Cross-gender strip search	21
General security problems	5	**Grievance and Investigation Issues**	
Lack of staff	57	Response time to grievances	32
Staff contraband trade	10	Refuse or ignore grievances	16
Staff allowing drug use	8	Manipulate grievances	16
Use of building "tenders"	9	General endangerment issues	33
Safety issues due to lack of staff	9	Fail to respond to endangerment	65
Staff not meeting responsibilities	51		

Staff Training as Prevention (PREA §§ 115.31, 115.32, 115.34, 115.35)

The PREA Ombudsman annual reports provide counts for overall persons receiving training, but counts do not equate effectiveness. Nor do counts even necessarily represent attendance accurately. TPI has also received a number of reports that PREA-related education for incarcerated persons involves, at least some of the time, being handed a form to sign by staff stating they received training when they did not. It should be expected that the same is true of staff training, at least some of the time.

One measure of training is how well staff understand and comply with PREA § 115.15 concerning cross-gender viewing and searches. Regardless of whether a person is assigned to a facility designated as "male" or "female," if that person identifies as transgender, then viewing and searches by persons of a gender different from the incarcerated person's self-identified gender are cross-gender searches, and may be noncompliant with PREA standards. Failure to recognize this fact in training is a failure to properly provide training for PREA § 115.15. A blanket practice of misclassifying transgender females as "males," transgender males as "females," or nonbinary transgender persons according to any gender binary stereotype—which is clearly done in TDCJ agency-wide because every facility identifies the persons housed there in that way—is inappropriate, is noncompliant with PREA § 115.15, and willful disregard of this fact may constitute violence against transgender persons.

The DOJ has stated support for this position through the PRC 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].[22]

Please note that this does not state "may not be compliant," it states "would not be compliant."

TDCJ also appears to provide inadequate training for PREA § 115.15(d) in circumstances requiring constant or near constant observation (which in TDCJ includes both CDO, or constant direct observation, and SOS, or security observation status). Per the PRC 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 [incarcerated person] 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 [incarcerated person] 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 [incarcerated persons] 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 [] conduct makes it impractical to provide same gender coverage during a period in which the [incarcerated person] 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.[23]

TPI has documented a number of problems indicating failures to adequately train staff in how to meet PREA § 115.15. These include recent examples such as the following. Many of these examples can clearly be seen as intentionally abusive because they are accompanied by unprofessional communication, a violation of PREA § 115.31 as well; indications that PREA § 115.31 are not adequately met probably implies PREA §§ 115.32, 115.34, and 115.35 are not met as well:

- A sergeant placed a transgender female in a holding cage, stripped her of all clothing except her bra, and left her there 24 hours.

22. "FAQ | Can you please clarify the parameters of conducting a search of a transgender, . . ." Frequently Asked Questions, National PREA Resource Center, October 24, 2023, https://www.prearesourcecenter.org/frequently-asked-questions/can-you-please-clarify-parameters-conducting-search-transgender-or.
23. "FAQ | How do the requirements of standard 115.15(d) apply to inmates who have been, . . ." Frequently Asked Questions, National PREA Resource Center, December 18, 2015, https://www.prearesourcecenter.org/frequently-asked-questions/how-do-requirements-standard-11515d-apply-inmates-who-have-been-placed.

- A sergeant strip searched a transgender female in front of other incarcerated persons and told her "You are a man in a male facility, strip him down like other male inmates."
- A sergeant strip searched a transgender female in front of others on her pod during a shakedown, threatening to use chemical agent if she did not strip in front of him.
- A male sergeant told a transgender female to strip in front of him. When she objected, the sergeant told her not to "cry like a bitch." While stripped, the sergeant kicked her bra across the ground.
- A transgender female was forced, with the participation of a Unit Safe Prisons Manager, to completely strip and be searched by a male. When the female incarcerated person asked for a female to at least be present, she was refused.
- A male lieutenant stripped a trans female, and when she objected, he told her to "shut your stupid punk ass up." When naked, the lieutenant "laughed at me and pointed at my breasts and said 'stupid punk you ain't no woman,'" then threw her clothing at her and said "cover that disgusting shit up."
- A transgender female on chain from Lynaugh to McConnell was stripped in front of male incarcerated persons at every stop. This included Robertson, Huntsville, and Memorial units. At Memorial, they also took her bra and would not return it.
- A transgender female reported that for about a month, her cell was searched two to three times each week, and the searches included being strip searched by male staff, who also denied her request for a female staff member to be present for the searches.
- A transgender female was strip searched by male staff for a random cell search, and the male staff member told her he "did not give a fuck" about her gender.
- A male corrections officer entered a shower with out announcing his presence while a transgender female was showering, then told her to leave even though that was the time for transgender females to access a separate shower.
- A male corrections officer told a transgender female that he wanted to watch her while she showered, and when she objected, the officer said "bitch, I will fuck you up with a case."
- A transgender female reported that while in transit, she was only allowed to shower in a location where laundry workers often looked over a partition to watch her.

> "The person to strip search me passed me on after inspection for transport. However, the older Hispanic man that was to handcuff me pulled me out of line and asked me if I still have my penis. . . . I was led back to the shower area and forced to reach inside the front of my pants and expose my genitalia to him."
>
> —transgender female

- A transgender female was asked by a male corrections officer about her genitals. She stated that she had already been strip searched and asked him to leave her alone. The male officer then told her he had to verify her genitals, took her to a shower, and forced her to expose herself to him.

These are just some of the reports made to TPI concerning improper searches. Such problematic and abusive search practices are so common many are not reported to TPI, or are reported only generally, so we cannot document the date and location to include them. Cross-gender viewing of transgender persons is ubiquitous in TDCJ facilities. It is very clear that TDCJ's training concerning PREA § 115.15 is woefully ineffective.

PREA § 115.31 is directly related to the training aspect of prevention efforts. Table 2 shows the number of incidents TPI has documented specifically related to ineffective implementation of PREA-related training.

Table 2. TPI PREA Training-Related Incidents

PREA Standard	12 Months	Since 2014
115.31(a): Training not implemented, lack of understanding of PREA	13	89
115.31(a)(9): Training not implemented, unprofessional or abusive communication	38	539
115.33(f): PREA information not readily available	0	1
115.34,115.71: Investigation not done properly	6	127
115.34,115.71: Investigation not done properly, deliberate misclassification	1	26

Some of the individual incidents related to TDCJ failures to provide sufficient training around PREA § 115.31, as well as §§ 115.32, 115.34, and 115.35, include the following, some of which also violate other PREA standards:

- Although per information from the Ombudsman Office that all transgender persons should be identified as "inmate [last name]" and gender neutral pronouns used, staff in the Ombudsman Office and PREA Ombudsman Office refer to transgender persons repeatedly using their deadname and misgender them with incorrect pronouns.
- Patient Liaison Program staff consistently ignore training and TDCJ policy to use "inmate [last name]" and gender neutral pronouns, referring to incarcerated transgender persons by their deadname and misgendering them with incorrect pronouns.
- A transgender female was designated for safekeeping over her objections (involuntary protective custody), and the PREA Ombudsman Office manipulated our report of the failure to appropriately document involuntary protective custody by simply stating she was not removed from safekeeping per agency guidelines.

- Staff at the PREA Ombudsman Office reported to TPI that an incident of sexual harassment cannot constitute sexual harassment because it was not repeated. This is deliberate manipulation of the PREA standards, and a failure to fully understand that, as per the Final Rule, "correctional agencies may take appropriate action in response to a single comment, . . . [but] it is best to mandate such action only where comments of a sexual nature are repeated."[24] TDCJ as an agency appears to train staff to NOT take appropriate action where sexual harassment is not repeated, which is a manipulation of the PREA definition of sexual harassment and a failure to follow PREA requirements.
- TDCJ staff have repeatedly mischaracterized harassment and abuse as sexual harassment and sexual abuse in order to "investigate" as PREA violence, then claim they do not meet the definitions of the latter and improperly dismiss complaints about nonsexual harassment and abuse.
- Staff at multiple facilities extort persons reporting sexual abuse and sexual harassment by refusing to address the reports or even threatening to identify rape as consensual sex and file a disciplinary case unless the person making the report provides information about contraband.
- A number of responses from the PREA Ombudsman Office have indicated that the PREA Ombudsman Office staff feel it sufficient investigation to consider an incident unsubstantiated where "the accused assailant denied the allegation" (from a 2024 response letter from the PREA Ombudsman Office).

PREA Ombudsman letter dated April 12, 2024, actual statement used to support unsubstantiated finding of sexual abuse:

"The PREA Ombudsman Office conducted a review of the unit's administrative investigative report regarding the allegation of sexual abuse. According to investigative documentation, the accused assailant denied the allegation."

- A nurse told a transgender female "Y'all transgenders will never be real women" and "it's against the christian faith," then refused to provide the transgender person her medically necessary treatment.
- A transgender female reported requesting an evaluation to start hormone therapy, and the nurse let other staff know about the request, and they started harassing her about it.
- A lieutenant refused to let a transgender female out of her cell, telling her that she had to look and act like a man before she could leave her cell.
- A gay male reported a risk of sexual assault, and when asking a sergeant about his property in his cell, the sergeant told him he should have just had sex because he is gay, then told another sergeant that he had no property.

24. U.S. Department of Justice, "National Standards To Prevent, Detect, and Respond to Prison Rape": 37116.

- A corrections officer told a gender diverse incarcerated person that it was TDCJ policy to house persons by genital status.
- A gay male was going through intake at Wallace Unit, where he identified as gay. An intake person told him they would put him on file as transgender "for safety." Apparently at least two other gay males going through intake had the same misclassification as well. It is not clear why intake staff are misclassifying this way.
- A transgender person was told by a warden (or possibly assistant warden) that they were being denied safekeeping designation due to their appearance rather than appropriate PREA-defined criteria. It is not clear how appearance overrides PREA screening criteria.
- A transgender female reports that their separate showers are intermittently denied because staff complain that it is an unnecessary accommodation.

> "I told him [a corrections officer] I needed rank. He refused and told me I was a catch out punk and he ain't getting rank. I told him I was suicidal. He told me to kill myself. So I hung myself. I ended up waking up in Lufkin Hospital. I got 35 stitches in my right eye and . . . burns all on my neck."
>
> —queer transgender person

- A transgender female reports that unit safe prisons staff discouraged her from filing a sexual assault report by claiming that the assailant would get mad and retaliate, then had the victim submit a false report under the claim that it would get a transfer. She was not transferred, and she was refused subsequent efforts to file accurate sexual abuse complaints.
- A transgender female stated that every day she is called "sir," even though TDCJ training is to address incarcerated persons as "inmate [last name]."
- A transgender female was being harassed by another incarcerated person in the day room who demanded half her commissary. When she refused, he hit her and they fought, during which she apparently hit him with a cup. During the investigation of the fight, a sergeant told the transgender female to "shut up you faggot, y'all wanna be women are always full of drama. I don't like your kind. I'm going to send you to jail for assault on an inmate with a weapon that results in serious injuries."
- A transgender female reported that the person in an adjacent cell was throwing feces through a hold between the two cells, and she was told by a sergeant "that is what happens to transgenders so deal with it."
- A transgender female reported being refused insulin shots because a shift supervisor stated she does not babysit "punk" and queer persons, and called them "faggots" and "bitches."

- A transgender female reported a corrections officer told her "I hate transgenders" and assaulted her, then claimed she assaulted him and filed a disciplinary case. The case was thrown out due to video supporting her version of events. The guard then began trying to incite others to harm her.
- A transgender male was told by a warden "as long as we have female genitalia, we will be made to act as women or receive disciplinary action."
- A transgender person reported being provided "education" by medical staff at a facility, and during the session the medical staff called LGBTI persons "punks" and characterized LGBTI persons as "diseased people."
- A transgender person reported that a sergeant who took property without providing confiscation papers said to other incarcerated persons in the housing area that "if their stuff gets taken it's the punk's fault because we're taking up too much of their time with their 'special privileges,'" an attempt to endanger anyone who is or is perceived to be LGBTI.
- A queer person reports that safekeeping persons, which at their facility are mainly transgender and queer persons, are mistreated as a group in a disciplinary environment by being given cold food, cold showers, not being given necessities, denied day room and phone access, and regularly referred to as "faggots," "dick suckers," and "punks" by staff.
- A queer person reports conveying suicidal inclinations to a guard, who responded by telling them to kill themself. The person hung themself and woke up in a hospital.
- A transgender female in a two-person cell with a shower requested a separate shower, and a corrections officer told her they both had a penis and denied the separate shower. The guard also told her to put up a sheet, knowing that would cause her to get a disciplinary case.
- A ranking officer refused to let a transgender female do suicide prevention peer support claiming "homosexuals" should not work in suicide prevention.
- A transgender female reported that a cisgender female major made inappropriate statements like "why do you want to be a tranny," and "you just want to suck dick." This was said at a Unit Classification Committee meeting, where the Unit PREA Manager was in attendance and refused to intervene. When the subject asked the PREA manager why they did not say anything, they stated "you wrote her up, what did you expect."
- A transgender female requested to be let out of her cell during in-and-outs, and a corrections officer who had repeatedly called her a "faggot" said that her "faggot ass" should not be let out of the cell. Another corrections officer appeared to have witnessed the incident and refused to address it.

- A transgender female reports being told she was placed on cell restriction, the reason give that she "shouldn't have been a faggot." She was then denied showers and medical prescriptions over the next several days.
- A transgender female reports a corrections officer called her a "faggot" while talking to another incarcerated person, then came to her cell, groped his genitals and told her "right, you're a faggot and you like to suck dick and get fucked." The officer returned later, making additional sexual comments and threatening gestures with a food slot bar.
- A transgender female reports that when she tried to get a sack meal exchanged because it included allergens she cannot eat, a corrections officer refused to exchange it and told her "I'm going to beat you down faggot," then threatened to withhold food from others "unless you can make this faggot bitch shut her door." She also stated that if "this faggot [writes] a grievance[, I would say] I never threatened that nigger." The officer also returned to the cell later while the incarcerated person was reporting the incident and stated "they can't help you faggot, but my baby daddy [staff name redacted] will have you beaten up, raped, or fucked off."
- A transgender female reports being told by a sergeant that "I'm not a real woman and she as a real woman with a uterus is offended by my existence."
- A transgender female noted to the Unit Classification Committee that she would like to be housed on the dorms, where she said there were showers she felt safe using. However, she was told against PREA standards and training that she "must shower privately" and that she did not understand the PREA standards.
- A third party reported that a gay man experienced a medical emergency and died, and that staff took him from his cell by disrespectfully loading him in a trash cart. The third party later heard staff discussing the incident say "it was just another faggot." Another staff person opened the cell to let people steal the deceased person's property.
- A transgender female reported that while setting up the chapel for a religious service, a chaplain came in yelling and pushing her to make her leave because she is transgender.
- A nonbinary person during intake at a unit they were transferring to requested to see mental health about sexual harassment and sexual abuse at another facility, but was refused by the PREA manager, who claimed the person would have already seen mental health, showing at a minimum that the PREA manager did not know a survivor had a right to access ongoing mental health support.
- A nonbinary person stated that after reporting sexual abuse, a captain taking their statement told the person "I hate faggots, just to let you know. You said your celly raped you? I don't believe it. You're lying." While taking the statement, the captain continued, "I don't believe this shit. You're a fucking faggot, you like taking dick, that's what you do."

- After a straight cisgender male reported sexual abuse, staff showed they did not know or did not care that he was no longer in danger and locked him up, ostensibly for protection that he denied needing, placing him in a disciplinary environment, which is essentially punishment for reporting the sexual abuse.
- A nonbinary transgender person was refused a separate shower and instead told to shower in the group shower. There are no separate showers at the facility, so she should not have been there in the first place.
- A nonbinary person reported that when being interviewed by a captain about a sexual violence incident, the captain complained about having to comply with PREA and implied that housing safekeeping persons was a problem. The person making the report felt "badgered" and stated they felt they could not write a full statement.

These are only some of the reports we have taken that have enough information to document a date and where the incident took place; TPI receives many other claims of disrespectful and abusive treatment that are not documented due to lacking information we require for this level of documentation. Other indications of training failures can be found in the discussions elsewhere in this comment document. The above also includes only reports that TPI receives, which tend to be from LGBTI persons, not the entire population that staff, volunteers, and contractors are subjecting to abusive treatment that is not in compliance with PREA standards.

The actual scope of deficient PREA training is magnitudes larger than what TPI can document. And any legitimate and competent audit of actual practices would determine that TDCJ as an agency is not compliant in the practice of these standards. These do not indicate individual failures of training, these indicate gross systemic training ineffectiveness.

In spite of TDCJ claims to provide sufficient PREA-compliant training—which they support by counts of sessions and persons participating—TDCJ training is in practice ineffective, is not sufficient to shift the abusive environment and treatment of incarcerated persons toward "zero tolerance" in any meaningful way, and the lack of attention to training that addresses the culture of abuse is a characteristic that is endemic throughout the agency and serves to not only to fail PREA compliance but also to promote further mistreatment and violence by tacit approval of the abusive culture. In fact, TPI asserts that the failures of TDCJ training serve to perpetuate prison rape culture.

Intake Screening as Prevention (PREA § 115.41)

The PREA § 115.41 standard covers the assessment of incarcerated persons for risk of becoming a victim and for risk of perpetrating sexual violence. The assessment is supposed to be completed within 72 hours of arrival at a facility. The first two provisions of the standard are:

> (a) All [incarcerated persons] shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other [incarcerated persons] or sexually abusive toward other [incarcerated persons].

> (b) Intake screening shall ordinarily take place within 72 hours of arrival at the facility.

TPI has no means of reviewing the actual screening process, but we are receiving increasing numbers of mentions that the screening and training of incarcerated persons on unit transfer is skipped, with incarcerated persons simply being asked to sign forms confirming these occurred. However, there are two aspects of the screening process that we can comment on, and we have never seen either of these covered in a TDCJ PREA audit at the agency or facility level.

> (c) Such assessments shall be conducted using an objective screening instrument.

TPI notes that an "objective" screening tool required under PREA § 115.41(c) does not guarantee that it is a nondiscriminatory screening tool, but DOJ clarifications do address discrimination, if indirectly. As an example of discrimination, the Static-99R screening tool discriminates by claiming persons who have had same gender relations are more apt to commit sexual violence. Such conclusory scoring would not comply with the essential features described by the DOJ that risk factors must be scored based on "reasonably informed assumptions," and that "weighted inputs lead to presumptive outcome determinations" rather than agency or individual bias.[25] In addition, actual practice in applying the screening tool can result in intentional or unintentional bias. As per DOJ comments for this standard, "[e]ffective and professional communication [per the PREA § 115.31(a)(9) training requirements, deficiencies of which are discussed above] 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."[26] As indicated by the numerous examples given previously, it is common for TDCJ staff to lack "a basic understanding of sexual orientation, gender identity, [and] gender expression," and extremely clear that many staff are neither aware of nor interested in "their own gaps in knowledge and cultural beliefs, and how these factors may impact the ability to conduct effective interviews and assessments."

PREA § 115.41(d) covers the minimum risk criteria that must be assessed, including "[w]hether the [incarcerated person] is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming." 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" (emphasis added). This implies an old and limited definition of "transgender" that does not include nonconforming and nonbinary persons. PREA standards

25. "FAQ | What is meant by the term "objective screening instrument" in PREA Standard 115, . . ." Frequently Asked Questions, National PREA Resource Center, May 10, 2021, https://www.prearesourcecenter.org/frequently-asked-questions/what-meant-term-objective-screening-instrument-prea-standard-11541.
26. "FAQ | Does standard § 115.41 (§ 115.241, § 115.341) require facilities to, . . ." Frequently Asked Questions, National PREA Resource Center FAQ, October 21, 2016, https://www.prearesourcecenter.org/frequently-asked-questions/does-standard-11541-115241-115341-require-facilities-affirmatively.

and the TDCJ *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.[27]

If TDCJ risk screening markers include only LGB[XX] (unknown code), TRGEN, and INTSX, to be compliant with this requirement, it appears that gender nonconforming and nonbinary persons must be included in one of these categories, with TRGEN being the category generally most appropriate for risk assessment. TPI notes that SPPOM-03.01 screening in Section II for "Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI), and Gender Non-conforming" persons does not provide a coding entry for gender nonconforming persons. Questions 9 and 10 on Attachment E only include lesbian, gay, bisexual, heterosexual, transgender, and intersex. Section IV follow-up questions only address the "perceived to be" portion of this requirement, not the "is" portion. Therefore, it is not clear how TDCJ identifies persons in these classes, or how these criteria are applied for PREA § 115.42 purposes for either persons who may be perceived to be gender nonconforming, or who may be nonbinary regardless of how they are perceived. This appears to indicate TDCJ policy makes it easy to exclude considerations of vulnerability for gender nonconforming and nonbinary persons.

Specific examples of failures to comply with PREA § 115.41 that TPI has received include the following:

- Reports of no screening by the Unit Classification Committee or safe prisons staff after unit transfers, even after weeks or months have passed. Some specific facilities include Hughes, Wainwright, and Beto.
- Reports of refusals to accept a person's identity as transgender, or mislabeling in their file as "gay" without substantive reason for the misidentification.
- Various reports of transgender identity being removed from a person's file. This is sometimes done by unit staff, but one reported incident involved the complicity of the PREA Ombudsman Office staff, who claimed the removal was per the person's request, but the person stated they never made such request and did not know their identity had been removed from their file until TPI informed them.
- Numerous reports of persons being housed with others who espouse—often in front of staff—violence against LGBTI persons, indicating a serious problem in the collection of vulnerability and aggressor data (as described above) or its application. Some of these

27. U.S. Department of Justice, "National Standards To Prevent, Detect, and Respond to Prison Rape": 37109.

have resulted in serious injuries, such as one recent incident where a transgender female was assaulted by an aggressive cellmate she was forced to house with (and about whom she tried to report to staff). She reported multiple broken ribs, a punctured lung, injuries requiring 30 staples in the back of her head, and 16 stitches on her face. Sexual abuse can also easily be an outcome of such inappropriate housing decisions.

- A transgender female reported being told by Safe Prisons staff that they are prohibited from recommending anyone for safekeeping designation (a kind of PREA protective custody). Safe prisons staff sit on the Unit Classification Committee, which makes recommendations for housing changes, including safekeeping designation. Assuming that the staff person was not lying to the incarcerated person, this indicates upper administration staff or central office staff have told at least some unit staff to not recommend anyone for safekeeping, the primary means of housing persons vulnerable to sexual violence in TDCJ.
- Numerous instances where LGBTI persons are assigned housing with known affiliated persons who belong to organizations that encourage harming LGBTI persons a member is celled with to prove the affiliated person is not in a relationship with them or because the organization espouses violence against LGBTI persons.
- Multiple cases where risk levels are not reassessed, or not appropriately reassessed, after incidents of violence illustrating an incarcerated person's vulnerability.
- Various examples of unit Safe Prisons staff manipulating transgender status in incarcerated persons' files, such as removing a TRGEN marker based on a request sent by a third party and without the policy required interview to confirm the removal, or telling someone they have been assigned the TRGEN marker when they have not.

An agency audit that does not address these serious issues concerning basic and obvious problems with the way the agency conducts screening to comply with the PREA objective of "zero tolerance toward all forms of sexual abuse and sexual harassment" should be considered a deficient audit.

Classification as Prevention (PREA §§ 115.42 and 115.43)

If used appropriately, these two standards can be the most important standards related to decreasing the incidence of sexual violence. For the application of these two not only to the prevention of sexual violence as they apply to PREA § 115.11, but also as they apply to other areas, please refer to the section below discussing PREA § 115.42 in more detail.

A few outcome measures reflecting the lack of effectiveness in classification at TDCJ related to prevention are available in the Safe Prisons/PREA annual reports. Some specific characteristics presented in these reports reflect known individual attributes that can help prevent sexual violence, but TDCJ's own data does not appear to indicate they are applying this data and understanding.

Figure 2 shows the number of nonconsensual sexual acts[28] where the assailant is significantly older, taller, or heavier than their victim, and the data clearly shows this data is trending upward. If demographic data was used effectively in the prevention of sexual violence, one would expect this to be trending downward. Figure 3 shows these same data for abusive sexual contacts, where the data reflects the opposite of what one would expect for effective use of physical characteristic data to help address sexual violence in TDCJ, also trending upward.

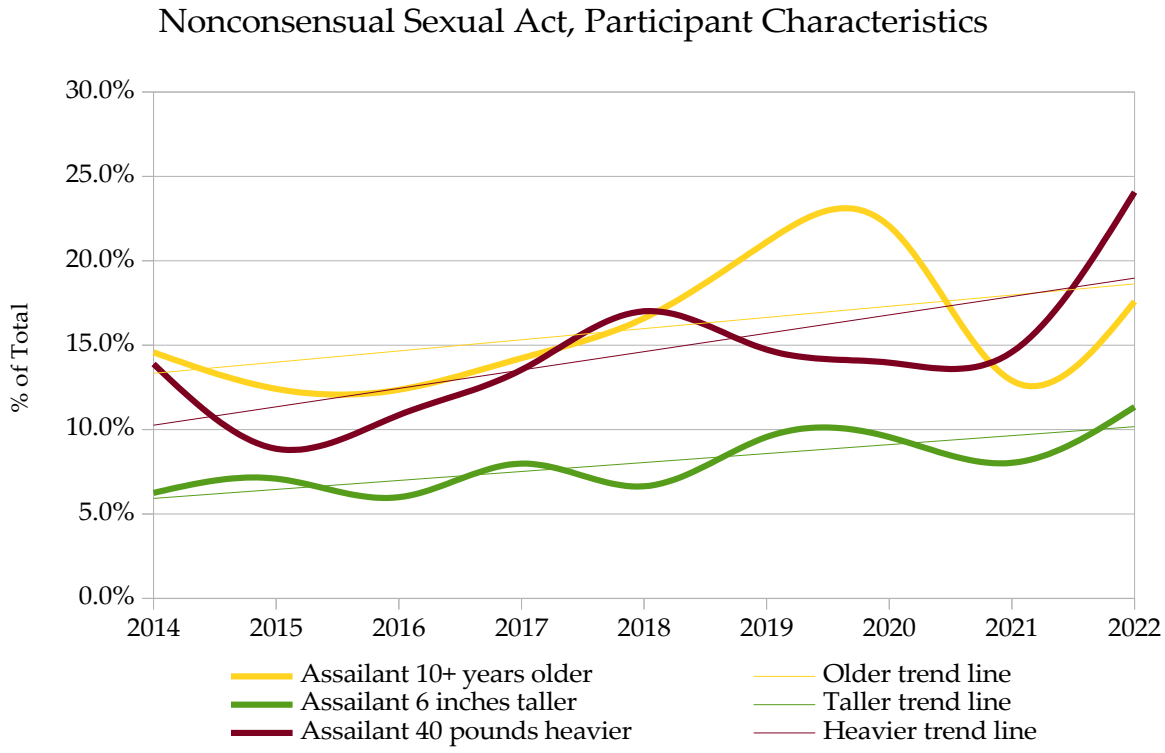

Figure 2: Numbers of nonconsensual sexual act incidents where an assailant was more than 10 years older, more than 6 inches taller, or more than 40 pounds heavier. Effective use of screening information should show trend lines going down, not going up, almost doubling in the case of the trend for mishousing by weight and by height.

TDCJ Detection of Sexual Violence

The audit report's brief statement assessing compliance with PREA § 115.11 does not say specifically what efforts TDCJ takes to detect sexual violence as part of the report's claim TDCJ meets the PREA § 115.11 standard. There is simply a claim that TDCJ addresses this PREA component through training and intake screening.

28. Nonconsensual sexual acts are sexual assaults that have been determined by TDCJ to meet Texas Penal Code sections 22.011, 22.021, or 39.04. Abusive sexual contacts are sexual assaults that do not meet one of these penal code definitions.

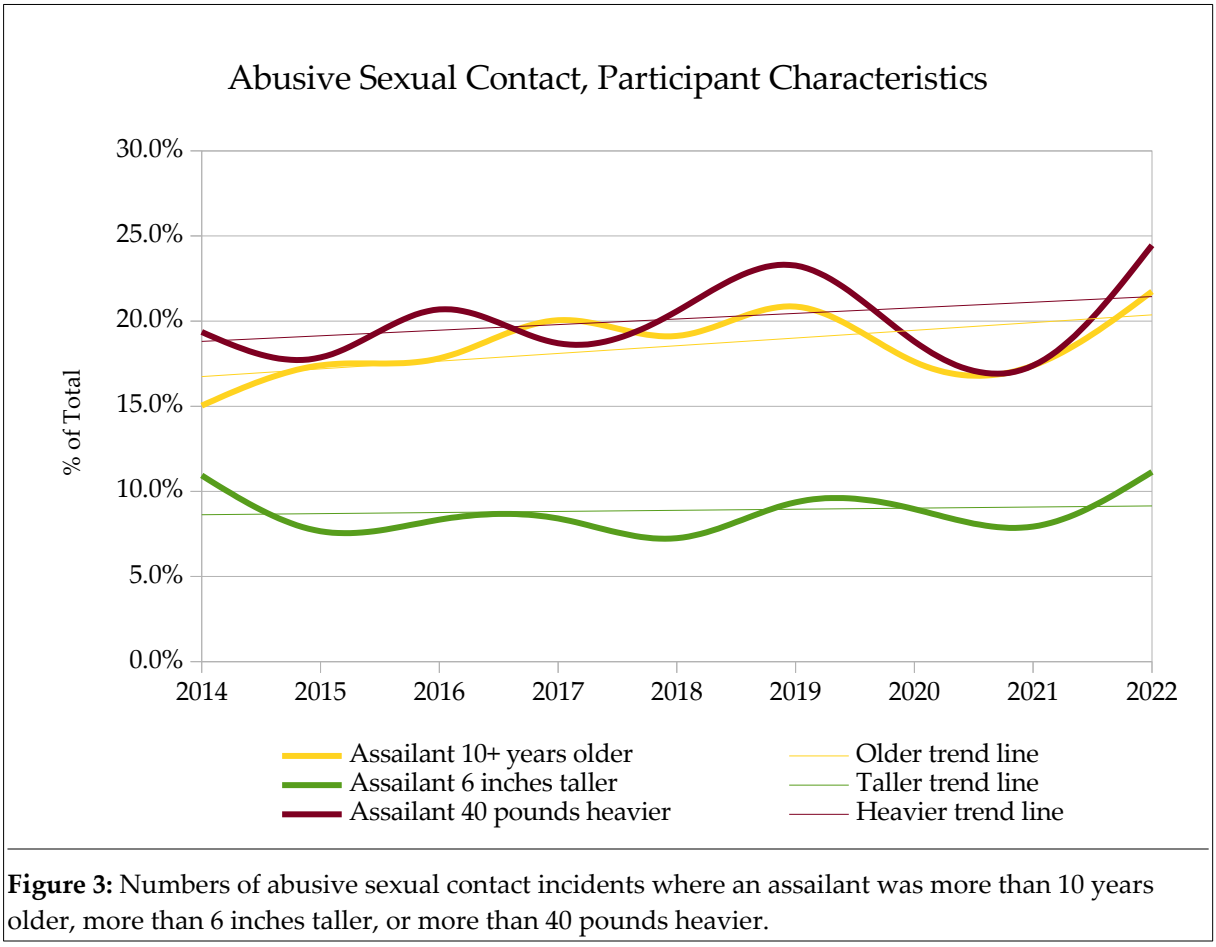

Figure 3: Numbers of abusive sexual contact incidents where an assailant was more than 10 years older, more than 6 inches taller, or more than 40 pounds heavier.

TPI takes issue with this simplistic statement. One indication of the failure of TDCJ to detect sexual violence comes from the annual Safe Prisons/PREA Program reports, which clearly indicate that staff are able to detect almost no issues that result in a report to the PREA Ombudsman as a PREA-related incident (Table 3).[29] Because these data include both complaints and inquiries (about 60 to 70 percent are processed as PREA complaints of sexual violence, the remainder forwarded to other departments), it is impossible to tell how many are sexual violence complaints, yet clearly with only—at the very most—four complaints reported over nine years, staff are not detecting incidents of sexual violence or risk.

There is also a question about whether the PREA Ombudsman Office is performing its duties appropriately, and this would likely be relevant to both the detection and investigation of, as well as incarcerated person education and data collection concerning, sexual violence. Agency PREA data indicate the PREA Ombudsman Office routinely refuses to address about one-third of all inquiries received by the office (Table 4). The most recent report is for calendar year 2022.

29. These reports are available at https://www.tdcj.texas.gov/publications/index.html#PREA. Similar Safe Prisons Program reports are available for fiscal years 2009 through 2013, then calendar year reporting begins in 2014. TPI generally is using the 2014 through 2022 reports because they have more data and all cover the calendar year.

Because the vast majority of these allegations come from incarcerated persons, this indicates either a failure to adequately educate incarcerated persons about PREA, or manipulation of the allegations and complaints by the PREA Ombudsman Office staff. TPI regularly receives reports that indicate Safe Prisons staff manipulate statements making allegations of sexual violence with an apparent effort to avoid documenting an allegation of sexual violence instead of making the effort to identify and address sexual violence.

Table 3. PREA Ombudsman Complaints and Inquiries, Yearly

Annual Report Year	Total	From Incarcerated Persons		From Staff	
		#	%	#	%
2014	1,467	X	X	**X**	**X**
2015	1,733	1,398	80.67%	**1**	**0.06%**
2016	2,083	1,654	79.40%	**0**	**0.00%**
2017	2,258	1,740	77.06%	**1**	**0.04%**
2018	2,288	1,758	76.84%	**2**	**0.09%**
2019	2,177	1,508	69.27%	**0**	**0.00%**
2020	2,726	1,802	66.10%	**0**	**0.00%**
2021	3,090	2,073	67.09%	**0**	**0.00%**
2022	3,232	2,103	65.07%	**0**	**0.00%**

Table 4. Complaints and Inquiries Received and Declined by the PREA Ombudsman Office

Report Year	Received	Processed	Percent Refused
2014	1467	1089	**26%**
2015	1733	1160	**33%**
2016	2083	1355	**35%**
2017	2258	1375	**39%**
2018	2288	1426	**38%**
2019	2177	1309	**40%**
2020	2726	1779	**35%**
2021	3090	1770	**43%**
2022	3232	1906	**41%**

In the following sections, we look at training and screening practices that have an effect on detection of sexual violence.

Staff Training as a Detection Measure (PREA §§ 115.31, 115.32, 115.34, 115.34)

Discussions of many of the problems related to training are included in the previous section, to which reference is here made. Below are a list of some additional incidents reported to TPI that are related to problems with agency training and the detection or identification of sexual violence.

> "Upon arrival at my new unit, . . . I told the unit major and the PREA/Safe Prisons manager that I was a transgender with a recent documented history of sexual harassment and threats of danger. They just laughed and then made rude comments. . . . [After about three weeks in a cell with a person known for abusing other incarcerated persons], I was told by this cellmate that I had to be his wife and suck his dick every day. I told an officer about this and he said 'that's your problem, you deal with it.'" Later that day, she was tied up, stabbed, and raped twice.
>
> —transgender female

- A transgender female stated she tried several times to report a sexual abuse, but unit safe prisons staff did not respond until an outside advocate filed a report. In responding, the Safe Prisons staff person was dismissive and victim blaming, and said the allegation would be denied before any investigation was done.
- A warden told a transgender female that she was to blame for sexual harassment because she "chose" to be out as transgender.
- A transgender female reported being made to wait for an hour for a supervisor before getting medical attention for serious injuries, and when a sergeant arrived, she cussed out the subject and called her a "fucking faggot."
- A transgender female filed a statement reporting sexual assault, then was given a case for consensual sex and told by a major "next time don't flirt with anyone," apparently blaming her not only for the assault but justifying staff retaliation for filing a report about the assault.
- When a transgender female tried to report a threat of sexual abuse by her cellmate, a corrections officer told her "that's your problem, you deal with it." That was said in front of the cellmate, who took that as license to rape her later that day.
- A transgender female tried to report a sexual assault and was told by a sergeant "to get the fuck out of her face" and that she hated "punks and transgenders."
- A transgender female tried to report attempted sexual abuse and continuing endangerment from her cellmate, and the guard shouted so all could hear "what do you

want me to do about it," alerting the cellmate she was trying to report the issue and prompting a physical assault a few hours later.

- A transgender female, who had been forced to provide oral sex for protection from someone threatening her (which staff refused to address), later tried to report additional sexual harassment and threats. Staff showed her video of her providing sex in exchange for protection, used the video to deny her protection from her current endangerment, and filed a disciplinary case for "consensual" sex.
- A transgender female reported that after being placed in transit for transfer from her facility, a unit PREA staff person threatened to cancel her transfer and put her back in danger if she did not recant the allegation. These types of incidents seem to reflect efforts by staff to manipulate PREA required data and documentation.
- A transgender female reported that she was raped in the shower, and immediately reported it to a staff person near the shower area who refused to respond appropriately, claiming they would have seen something. The incarcerated person persisted and reported the incident to other staff (finally documented by the THIRD person she approached), and security video showed the assailant follow her into the shower. PREA requires a response to reports of sexual violence, not excuses to protect one's job.
- A transgender female reported that a captain taking a statement about a sexual assault told her "I'm supposed to offer you a rape kit, but since you were in the shower, it's going to be a waste of time." He also told her that the forensic investigation would be "more painful and embarrassing than what you have already gone through." That is not only a failure to appropriately offer a forensic medical exam, it is also providing false information to coerce her to deny the exam and shows a lack of appropriate training.
- A transgender female gave an inmate protection investigation (IPI) request to a sergeant, who later the same day told her he would file it if she exposed her breasts and other body parts to him. He told her he would deny it if she reported him, and he would retaliate by spreading rumors that would get her hurt.

Once again, these are only some of the reports to TPI, those where we have received enough information to document a date and location where the incident took place; TPI receives many other claims of refusals to accept allegations or interference with reporting or other detection-related incidents that are not documented due to lacking information we require for this level of documentation. The above is also only the reports that we receive, which tend to be from LGBTI persons, not the entire population.

Intake Screening as a Detection Tool (PREA § 115.41)

Presumably, the audit report is referring to persons reporting sexual violence on transfer to another facility or due to screening after an adverse incident that warrants reassessment under PREA § 115.41(g), although the latter would not technically be "intake" screening:

> (g) An [incarcerated person's] risk level shall be reassessed when warranted due to a referral, request, incident of sexual abuse, or receipt of additional information that bears on the [incarcerated person's] risk of sexual victimization or abusiveness.

Intake screening has already been discussed under the prevention section above, and examples of how TDCJ fails to use intake screening effectively for prevention are also pertinent to detection, so we refer to those previously provided examples. Issues more specifically related to detection include:

- As mentioned above, reports of no screening by UCC or Safe Prisons staff after unit transfers, even after weeks or months have passed. This communicates a lack of priority in the assessment of screening factors, and delays reporting where someone may have felt the need to wait until at another facility to report sexual violence.
- In responses to TPI from the PREA Ombudsman Office concerning allegations of sexual violence, the PREA Ombudsman Office staff regularly provide no specific comment or very vague comments on our reports of sexual violence, indicating the issue has been brushed aside or miscategorized as something else. A failure to admit to the issue shows as well a high likelihood of a failure to adequately address the issue.
- Failures to update incarcerated persons' files with identifications related to sexual orientation and gender identity are a failure to consider additional information, as required under PREA § 115.41(g). This does not mean denials cannot be made for legitimate reasons such as a history of manipulating the system for individual gain, but neither should facile claims of manipulation by incarcerated individuals be as common as it is. Failures in this area can also involve removals of identity markers without proper attention to verifying the removal.

TDCJ Response to Sexual Violence

As with the detection prong of the PREA § 115.11 assessment, the audit report does not say specifically what efforts TDCJ takes to respond to sexual violence to support the claim TDCJ meets the PREA § 115.11 standard. There is simply a claim that TDCJ addresses this PREA component through "Reporting, Investigations, Victim Services, Medical and Mental Health Services, Disciplinary Sanctions for Staff (including notification of licensing agencies), Incident Review Teams, and Data Collections and Analysis." Agency practices related to the standards covering these areas are reviewed below.

Reporting Responses (PREA §§ 115.51, 115.61, 115.62, 115.67, 115.68)

PREA §§ 115.51 and 115.61 are complimentary, with the former addressing how incarcerated persons report PREA issues, and the latter staff responsibilities to do the same. PREA § 115.51 defines minimum requirements for how incarcerated persons are allowed to report sexual violence and retaliation, as well as how incarcerated persons report staff negligence contributing to incidents of sexual violence. Provisions of the standard state that there should be

multiple ways to report these issues, including one means of contacting an outside entity, and that staff shall accept and document all reports whether verbal, written, anonymous, or from an outside party. TDCJ policy defines several ways incarcerated persons can report violence, but as the audit report implies by citing reporting under the response prong of the PREA § 115.11 standard, the significance is not simply a policy-defined method of reporting, it is the response to that reporting.

One issue that TPI has encountered is that that we receive numerous reports of people not wanting to provide details for incidents, including sexual violence incidents, because letters concerning these issues are not confidential. TPI strongly recommends that advocacy groups documenting and responding to reports of sexual abuse and sexual harassment be allowed to receive sealed mail concerning such issues. The fact that mail room staff are allowed to open and read reports of sexual violence deters accurate and complete reporting to outside agencies, and without accurate information, our reporting to the agency is subject to manipulation and dismissal.

PREA § 115.61 requires staff to appropriately report knowledge, suspicion, or information regarding sexual violence, and all allegations of sexual violence to investigators. Further clarifying this standard, the relevant PRC Standards in Focus notes:

> The standard requires the agency to ensure that facility staff report all allegations while also taking steps to protect the confidentiality of sexual abuse information by sharing internally with only those who need to know.
>
> To build confidence and trust in the reporting system and help minimize a victim's fear of reporting and possible retaliation by requiring that inmates be informed up front about the limits of confidentiality when receiving medical and mental health services.[30]

As shown previously (see Table 3), staff reporting of sexual violence and risk of sexual violence, as required under PREA § 115.61(a), is almost nonexistent, with at most four reports over nine years. In addition, TPI receives numerous reports of problems complying with these standards, particularly the latter—staff refuse to respond to indications of sexual violence, even where explicitly reported. Specific issues related to PREA §§ 115.51 and 115.61 compliance failures include:

- A nonbinary transgender person reported that a unit safe prisons manager told them to bring issues to her before reporting to the PREA Ombudsman. This constitutes staff interference with reporting.
- A straight cisgender male reported requesting the picket officer to call rank so he could report a sexual contact incident with staff, but the picket officer made an obscene gesture and otherwise ignored the request.

30. PREA Resource Center, "115.61, Staff and Agency Reporting Duties," *PREA Standards in Focus*, https://www.prearesourcecenter.org/sites/default/files/library/PREA%20Standard%20in%20Focus%20115.61%20-%20Staff%20and%20agency%20reporting%20duties%20%281%29%20%281%29%20%28updated%2012.2%29.pdf.

- A transgender female reported seeing someone who had raped her elsewhere at the facility where she was then assigned, and when she reported the issue, security staff placed her on suicide watch, although she was not suicidal (this may have been SOS, which is the same by does not require mental health approval). She reported then being told by several ranking officers not to file an IPI. A lieutenant tried to coerce her into writing a statement that she was not in danger under threat to spray her with chemical agent and lock her in segregation.
- Many reports of persons having to try multiple times to get any staff to accept a report of sexual violence. Table 5 shows data from the PREA annual reports documenting the reporting times for allegations of non-staff sexual abuse. One could understandably wonder how a shift in staff culture toward immediately responding to allegations of sexual violence could change the reporting time frames for these and other categories of sexual violence. It is obvious that most reports are made within the current 120 hour standard for the collection of forensic medical evidence, and it is possible that a significant portion of the next higher reporting period would move up to that time frame with better staff response.

Table 5. Non-staff Sexual Abuse Reports

	2014	2015	2016	2017	2018	2019	2020	2021	2022
Nonconsensual sexual act (OIG criminal case opened)									
Reported within 96 hours	149	140	120	143	119	86	154	238	216
Reported within 120 hours	—	—	—	—	—	51	?	?	?
Reported 5 to 30 days	57	58	62	66	51	38	59	87	101
Reported 6 to 30 days	—	—	—	—	—	17	?	?	?
Reported 31 to 90 days	25	26	20	24	22	26	21	34	46
Incarcerated abusive sexual contact (no OIG criminal case opened)									
Reported within 96 hours	252	246	202	198	197	148	204	231	230
Reported within 120 hours	—	—	—	—	—	88	?	?	?
Reported 5 to 30 days	97	100	89	96	89	62	89	93	74
Reported 6 to 30 days	—	—	—	—	—	19	?	?	?
Reported 31 to 90 days	38	21	25	36	19	23	15	28	26

The PREA Ombudsman Office annual reports indicate they changed from documenting incidents reported within 96 hours to 120 to reflect a 2019 change in state law (which also changed the second reporting period from 5 to 30 days to 6 to 30 days), but subsequent annual reports indicate continued use of the 96 hour time frame.

- A transgender female reported sexual misconduct to a sergeant, who responded that there was "nothing she could do about it."

> On trying to report a sexual assault, "I've told officers, mental health staff, a nurse, and the officer that covers Safe Prison/PREA about the rape. I've sent I-60s and can't get a Step 1 grievance form from no one. I'm at my wit's end."
> —transgender female

- A transgender female reported that a captain refused to act on a report of sexual abuse and subsequent threats, stating they were "not serious enough and it would be a waste of time."
- A transgender female reported that staff in the PREA Ombusman Office told her they would not respond to reports of retaliation because they had already responded to sexual misconduct and threat incidents.
- A transgender female reported that a corrections officer refused to contact the unit safe prisons office about her report of sexual abuse.
- A gay male reported that when trying to report sexual harassment and an attempted sexual abuse incident, a sergeant handed him a PREA flyer and walked away without even talking to him.
- A transgender person noted that a person across the run stands in his cell and masturbates while watching them; staff know this is happening and do nothing to address it.
- A transgender female tried to report sexual abuse and was told by "security and PREA officers" that "I'd never be able to prove what I said happened and it was a waste of time, mine and theirs, to even try."
- TPI reported sexual violence against a transgender female at Allred and Michael units to the TDCJ PREA Ombudsman Office, but staff only responded to the sexual harassment at Michael Unit, ignoring the sexual abuse incident at Allred. The staff person responding stated that Michael Unit provided a signed statement "advising that no sexual harassment occurred." TPI also received a letter from the victim dated two days before the TDCJ letter, stating that unit safe prisons staff had coerced her into recanting her allegation of sexual harassment at Michael Unit.
- A transgender female reported that she contacted a family member about a sergeant who was sexually harassing her, and that family member contacted unit administration several times to report the issue, but no one ever came to investigate.
- After a sexual abuse incident against a nonbinary person, the victim was moved to 4 Building on A side, but the assailant continued to come to their cell and threaten them for reporting the issue, even though the assailant was housed on B side. The victim reported the threats and retaliation, but staff took no action and the threats continued.

PREA § 115.62 covers the agency's duty to protect a person who is at risk of sexual abuse. TDCJ does not seem to make available any data regarding how they meet or fail compliance with this standard, but TPI has some reports that indicate problems. Some are noted elsewhere, such as incidents where staff allow general population persons into safekeeping housing areas, where

they are supposed to be "separated from other general population [incarcerated persons] by housing assignment. This separation makes it difficult for general population inmates to enter their housing areas."[31] Reports to TPI of such incidents appear to be increasing along with the increase in reports of a lack of staff.

PREA § 115.67 concerns how the agency responds to retaliation. For the most part, TDCJ seems to ignore retaliation and claim it does not happen. Facility audit reports often have astounding statements that there are no reports of retaliation over a 12-month period, or the audit report discredits or delegitimizes the report or retaliation (something well beyond the scope of the audit work):

- "Based on information provided by the facility, there have been no incidents of retaliation in the past 12 months."[32] There were approximately 45 allegations of sexual abuse and sexual harassment made during the 12 months.[33]
- "During the twelve months prior to the audit, the agency reported no allegations of retaliation were reported."[34] There were also approximately 45 allegations of sexual abuse and sexual harassment made at this unit during the 12 months covered by the audit.[35]
- "One stated since he did not file criminal charges, 'I don't feel like the protection is there' [apparently stating that because there were no criminal charges filed, staff are not adequately monitoring for retaliation], and one stated he feels he is being retaliated against now but was unable to elaborate as to how. None of the inmates reported being in any imminent distress or had any immediate safety concerns."[36] The audit report ignored these reports as insignificant. There were 72 allegations of sexual abuse and sexual harassment noted by the report as being made during the 12-month audit period.[37] TPI considers Allred Unit one of the most dangerous in TDCJ in terms of sexual violence, especially against LGBTI persons.

It is not clear how these retaliation data are collected by TDCJ, but in contrast, TPI receives numerous reports of retaliation by incarcerated persons and staff.

31. PREA Ombudsman and Office of Inspector General, *Safe Prisons/Prison Rape Elimination Act (PREA) Program Annual Report, Calendar Year 2022,* Texas Department of Criminal Justice, ca. 2023: 20, https://www.tdcj.texas.gov/documents/PREA_SPP_Report_2022.pdf.
32. Mark McCorkle, "PREA Facility Audit Report: Lewis Unit," May 23, 2024: 105, https://www.tdcj.texas.gov/documents/prea_report/Lewis_Unit_2024-05-10.pdf.
33. McCorkle, PREA Audit Report: Lewis Unit: 18.
34. Lynni O'Haver, "PREA Facility Audit Report: Coffield Unit," January 30, 2024: 99, https://www.tdcj.texas.gov/documents/prea_report/Coffield_Unit_2024-01-12.pdf.
35. O'Haver, PREA Audit Report: Coffield Unit: 20.
36. William Pierce, "PREA Facility Audit Report: Allred Unit," July 23, 2024: 104, https://www.tdcj.texas.gov/documents/prea_report/Allred_Unit_2024-04-19.pdf.
37. Pierce, PREA Audit Report: Allred Unit: 20–21.

- A bisexual male reported that a guard sexually abused him for a month, and that he was able to collect evidence and the abuse was substantiated. The victim reported he was not transferred from the unit and experienced retaliation since reporting the sexual abuse.
- A transgender female reported that a corrections officer falsely claimed that the subject had a razor blade and sprayed her with chemical agent. Two sergeants then placed the subject in security observation status (SOS) housing, apparently making statements that this was in retaliation for her report about the sexual abuse by another corrections officer a few days earlier.
- A transgender female reported that "every day" the corrections officers mistreat her, which appears to be retaliation for reporting sexual abuse and sexual harassment. The subject reports verbal abuse, threats, giving her food to other incarcerated persons, refusal of showers, and refusal to take her to medical lay-ins.
- A transgender female reported that after receiving a report of sexual abuse from TPI, an assistant warden came to her cell and was "hostile, beligerent [sic] and very mad." She said he had the TPI complaint in his hand and stated "Why the fuck are you making things worse for yourself and what are you writing about my unity to these media phonies? Don't you know what could happen to you here in prison?"
- A transgender person reported that the they observed a corrections officer in a cell alone with another incarcerated person apparently having sex. The subject reported it, but administration denied the two were engaging in sex. After the report, the corrections officer retaliated by refusing to open the subject's door at meal time, encouraging other incarcerated persons to attack the subject, and telling a nurse not to talk to the subject.
- A transgender female reported that during a medical appointment, she was able to disclose a physical assault and sexual assault that she had been prevented from reporting earlier by the assailant. After making a statement for the investigation and going off-site for forensic evidence collection, the victim was then housed in a cell next to the person who sexually assaulted her, and he repeatedly threatened and harassed the victim in retaliation for reporting the rape.
- A transgender female reported that for about two weeks, another incarcerated person withheld food from her, apparently as retaliation for a complaint against him for attempted sexual assault. She reported losing 16 pounds during the time.
- An incarcerated person reported that seven individuals, included the correspondent, filed grievances about sexual harassment by a corrections officer, apparently targeting transgender females on the section. The were all called out by a captain, who threatened to lock all up "if we pursue this course" under the claim that they must be a threat to the staff person who was sexually harassing them. The captain also indicated they would have their tablets confiscated and property lost for making them do the investigation and paperwork.

The volume of complaints that TPI receives concerning retaliation indicate serious problems with how TDCJ documents and monitors for retaliation.

PREA § 115.68 requires that any use of segregated housing to protect an individual who is alleged to have suffered sexual abuse must conform to the requirements of protective custody defined in PREA § 115.43. For the discussion of this standard, please refer to the section below discussing PREA § 115.42 in detail with elements of PREA § 115.43.

Investigation Responses (PREA §§ 115.21, 115.22, 115.71, 115.72)

PREA § 115.21 covers evidence protocols and, very importantly, access to forensic medical examinations, an extremely important component in investigation efforts. These SANE (sexual assault nurse examiner) exams[38] are specifically required in PREA § 115.21(c), which states, in part, that

> (c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. . . . The agency shall document its efforts to provide SAFEs or SANEs.

TPI has found that some PREA facility audits reference TDCJ policy OIG-7.13 as stating that OIG staff will "determine if a forensic medical examination will be offered." It appears that policy SPPOM-05.01 makes the same statement in section 1.F. PREA § 115.21(c) states that **all** survivors of sexual abuse shall be offered access to forensic medical examinations if supported by evidentiary and medical standards. OIG-7.13 and SPPOM-05.01 indicate this is not being done either at the agency level or at individual facilities, but instead staff are deciding whether to offer the survivor access to a forensic medical examination.[39] Additionally, each of the Safe Prisons/PREA annual reports covers this topic as well. From the 2014 report: "The OIG staff are responsible for determining the need for a sexual assault evidence collection exam to be performed by medical staff. The OIG investigator may consult with the onsite medical personnel regarding the necessity of such an exam."[40] No mention of victim input to the decision is made. The most recent 2022 report states that "OIG investigators order sexual assault evidence kits to be completed and medical examinations to occur," and again no reference is made to the PREA-required provision that the victim be able to request forensic examinations.

38. The SANE acronym can refer to a sexual assault nurse examiner or sexual assault nurse exam. Some people prefer SAFE, for sexual assault forensic examiner or sexual assault forensic exam. For our purposes, SAFE and SANE are considered equivalent, and we will use SANE for the examiner and SANE exam to clarify that we are referring to a forensic examination, not the examiner.
39. See for example James Kenney, "PREA Facility Audit Report: Beto Unit," November 27, 2023: 40, https://www.tdcj.texas.gov/documents/prea_report/Beto_Unit_2023_11_03.pdf. TPI does not have access to policy OIG-7.13, we are reporting what we understand to be true and what has been quoted in audit reports. However, the version of SPPOM 05.01 that we have, dated July 2014, has the same statement in section 1.F.: "The OIG investigator will determine whether a forensic medical examination is required." This, too, is counter to PREA § 115.21.
40. PREA Ombudsman and Office of Inspector General, *Safe Prisons/Prison Rape Elimination Act (PREA) Program Annual Report, Calendar Year 2014,* Texas Department of Criminal Justice, August 2015: 15, https://www.tdcj.texas.gov/documents/PREA_SPP_Report_2014.pdf.

TDCJ could claim that OIG (which handles criminal investigations) should determine whether evidentiary and medical standards warrant a SANE exam. However, following that reasoning indicates another problem. The primary evidentiary and medical standards that govern whether a SANE exam is warranted are first, whether the victim alleged sexual contact that may involve either the transfer of bodily fluids or other DNA evidence transferred by touch, as well as indications of violence or force such as contusions, lacerations, abrasions, avulsions, and other evidence of trauma, even when not visible to the eye.[41] The second standard would be the time that has elapsed since the incident occurred. We note that PREA does not limit this to criminal investigations, but covers all investigations, administrative or criminal. Prior to 2019, the standard time frame was 96 hours, but Texas HB 616, passed during the 86th legislative session, raised the standard to 120 hours.[42] This should be considered a minimum because, as noted above, evidence or trauma impacts to skin can last much longer than this and can serve as evidence of assault, including sexual assault. The Safe Prisons/PREA annual report for 2019 mentions this change and provides separate counts for reports made within 96 hours and 120 hours occurring before and after this change took effect (see also Table 5).[43] However, the three annual reports published since that time include data tables that indicate TDCJ still adheres to the 96 hour time frame rather than the longer time frame defined by Texas law since September 2019. These facts show that apparently TDCJ not only fails to meet PREA requirements that "all victims of sexual abuse [are offered] access to forensic medical examinations," but that they are also not following state minimum state standards for the collection of physical evidence by Texas law enforcement entities. This could affect PREA compliance not only in investigations, but also in all training and incarcerated person education as well.

There are very clear problems in the assessment of this standard for this audit, and such problems undermine the audit report's claim that TDCJ forensic evidence collection practice is sufficient to indicate minimum compliance.

PREA § 115.22 requires that all allegations of sexual abuse and sexual harassment receive an administrative or criminal investigation. The significance of this standard is discussed in the relevant PRC Standards in Focus publication:

> To ensure that every allegation of sexual abuse and sexual harassment is **thoroughly and appropriately investigated, in order to increase reporting, ensure that victims receive the assistance they need, and ultimately deter sexual abuse.** This includes putting policies in place that govern administrative investigations conducted by internal investigators and specify

41. The author has been trained and has served as a volunteer sexual assault advocate, during which time she observed several SANE exams. The exams include documentation of a narrative of the event, collection of any clothing that may be considered evidence, photographs of areas that may have experienced physical trauma with special equipment and film that can show evidence of trauma not visible to the naked eye, and DNA collection. Forensic medical evidence collection is far more than simply it's stereotype of semen collection.
42. Texas Code of Criminal Conduct § 56A.303(b-1) (2019, revised 2021 and 2023), https://statutes.capitol.texas.gov/Docs/CR/htm/CR.56A.htm.
43. PREA Ombudsman and Office of Inspector General, *Safe Prisons/Prison Rape Elimination Act (PREA) Program, Calendar Year 2019,* July 2020: 28, https://www.tdcj.texas.gov/documents/PREA_SPP_Report_2019.pdf.

> procedures for referring investigations that involve potentially criminal behavior to agencies with the legal authority to conduct criminal investigations [emphasis added].[44]

TPI refers to other sections in this document conveying the difficulty that victims have getting TDCJ staff to respond, and the problems of TDCJ staff interfering with reports of allegations. As noted in the Standards in Focus statement above, when an agency fails to appropriately respond to and properly investigate allegations, they are setting aside opportunities to deter sexual violence. TPI asserts that regular failures in responding and investigating serve to increase sexual violence by showing that persons doing harm are not held accountable. In fact, individual examples of such an effect can be seen where, as reported in this document, staff refusals to respond to reports of endangerment resulted in assailants interpreting such response failures as encouragement to engage in violence, including sexual violence.

PREA §§ 115.71 and 115.72 cover the minimal requirements for the investigation process and set the maximum evidentiary standard to be used in substantiating allegations, respectively. Minimum investigation requirements include 1) that physical and DNA evidence be collected and preserved, which as we have seen in relation to PREA § 115.21 clearly is lacking; 2) that electronic monitoring data be used, which based on reports to TPI seems very routinely to be missing due to deletion or malfunctioning equipment; and 3) that the parties involved and witnesses be interviewed, a requirement that TDCJ staff seem to mishandle often and use to increase endangerment and discourage reporting. The evidentiary standard is to be no greater than the preponderance of evidence, which simply means anything greater than a fifty-fifty chance the incident occurred.

The relevant PRC Standards in Focus notes that:

> A robust investigatory practice with experienced, well-trained investigators is a critical piece of the overall PREA effort and is key to creating an environment of sexual safety in the facility by allowing victims to have confidence in the process. Building trust in the investigatory process by inmates takes time, good communication, and transparent, timely, and effective investigations. When inmates and staff trust that investigations are comprehensive, objective and timely, they are more likely to report abuse, which is a deterrent to abuse overall.[45]

One indication that the TDCJ investigatory process is less than adequate, and that the minimum evidentiary standard is not applied is the percentage of investigations that result in a substantiated allegation. As reported in the most recent PREA Ombudsman annual report for calendar year 2022, 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

44. PREA Resource Center, "Responsive Planning: § 115.22, 115.122, 115.222, 115.322, Policies to ensure referrals of allegations for investigations," *PREA Standards in Focus,* https://www.prearesourcecenter.org/sites/default/files/library/115.22.pdf.
45. PREA Resource Center, "Investigations § 115.71, 115.171, 115.271, 115.371, Criminal and administrative agency investigations," *PREA Standards in Focus,* https://www.prearesourcecenter.org/sites/default/files/library/115.71%20SIF_0.pdf.

improvement over the prior year. Amazingly, TDCJ seriously claims that almost half (261 of 563, or 46%) of the allegations of staff sexual abuse against incarcerated persons 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. These dismal findings hold true across all of the PREA-era Safe Prisons/PREA annual reports, as shown in Table 6. It is truly astounding that PREA audit reports claim such findings represent a competent investigatory process and use of a preponderance of evidence standard.

Victim Service Responses (PREA §§ 115.62, 115.67, 115.68)

As discussed above in the Reporting Responses section, PREA § 115.62 covers the agency's duty to protect a person who is at risk of sexual abuse. TDCJ does not seem to make available any data regarding how they meet or fail compliance with this standard, but TPI has some reports that indicate problems, which were presented in the above discussion. We would also suggest that audit reports be required to investigate and document not just whether a facility or agency claims there are none or limited persons at substantial risk of imminent sexual abuse, but the number of reports of endangerment related to potential sexual violence and how those reports were disposed. PREA § 115.67 was also discussed in the Reporting Responses section above. For the discussion of PREA § 115.68 and the related PREA § 115.43, please refer to the section below discussing PREA § 115.42 in detail.

Medical and Mental Health Service Responses (PREA §§ 115.81, 115.82, 115.83)

The three standards that PREA includes under its Medical and Mental Care section are intended to provide opportunities to access to medical and mental health services for both persons who have suffered sexual harm and those who have caused sexual harm as a matter of routine opportunities, in emergency situations, and as ongoing care.

As far as TPI knows, TDCJ does not release any data about the numbers of persons identified as having experienced or caused sexual harm and offerings of counseling. We only know that many of the people who tell us they want counseling for sexual violence they have suffered tell us they cannot find it through TDCJ. One correspondent has for many years suffered from flashbacks, nightmares, anxiety, and depression, the effects of trauma from a violent sexual abuse incident some years ago. At one point, this person went on a hunger strike to try to access competent mental health care. That effort resulted in a transfer to a facility with an MOU with outside counseling services, and they felt they would finally get some much needed help. That was followed by reports of a couple of very productive sessions, but individual sessions were ended in favor of monthly group sessions, were not helpful and that this person had to refuse because disclosing details to the group put the person in danger.

Table 6. Sexual Violence Investigation Outcomes

	2014 - 2017		2018		2019		2020		2021		2022		Total With Outcome	
Sexual abuse														
By staff														
Substantiated	**X**	**X**	**20**	**3.7%**	**28**	**6.1%**	**22**	**3.7%**	**26**	**0.0%**	**30**	**5.3%**	**126**	**4.2%**
Unsubstantiated	X	X	309	57.1%	255	55.6%	336	56.1%	386	46.7%	272	48.3%	1558	52.1%
Unfounded	X	X	212	39.2%	176	38.3%	241	40.2%	415	50.2%	261	46.4%	1305	43.7%
Total	2470		541		459		599		827		563		2989	
By incarcerated														
-- Nonconsensual sexual act	1125		241		251		272		411		432		2732	
Substantiated	**21**	**1.9%**	**8**	**3.3%**	**2**	**0.8%**	**10**	**3.7%**	**11**	**0.0%**	**6**	**1.4%**	**58**	**2.1%**
Unsubstantiated	932	82.8%	208	86.3%	220	87.7%	221	81.3%	325	0.0%	371	85.9%	2277	83.3%
Unfounded	172	15.3%	25	10.4%	29	11.6%	41	15.1%	75	0.0%	55	12.7%	397	14.5%
-- Abusive sexual contact	1587		345		374		335		391		368			
Substantiated	**58**	**3.7%**	**21**	**6.1%**	**22**	**5.9%**	**11**	**3.3%**	**15**	**0.0%**	**16**	**4.4%**	**143**	**4.2%**
Unsubstantiated	1305	82.2%	279	80.9%	288	77.0%	282	84.2%	323	0.0%	305	82.9%	2782	81.8%
Unfounded	224	14.1%	45	13.0%	64	17.1%	42	12.5%	53	0.0%	47	12.8%	475	14.0%
Total	2712		586		625		607		802		800		3400	
Sexual harassment														
By staff														
Substantiated	**X**	**X**	**2**	**4.9%**	**0**	**0.0%**	**4**	**5.8%**	**0**	**0.0%**	**3**	**3.7%**	**9**	**3.1%**
Unsubstantiated	X	X	31	75.6%	41	63.1%	48	69.6%	24	70.6%	62	76.5%	206	71.0%
Unfounded	X	X	8	19.5%	24	36.9%	17	24.6%	10	29.4%	16	19.8%	75	25.9%
Total	299		41		65		69		34		81		290	
By incarcerated	X	X	X	X	X	X	X	X	X	X	X	X		
Voyeurism														
By staff														
Substantiated	**X**		**0**	**0.0%**	**0**	**0.0%**	**1**	**0.4%**	**0**	**0.0%**	**0**	**0.0%**	**1**	**0.1%**
Unsubstantiated	X		113	58.5%	53	60.2%	152	58.9%	100	46.5%	101	60.1%	519	56.3%
Unfounded	X		80	41.5%	35	39.8%	105	40.7%	115	53.5%	67	39.9%	402	43.6%
Total	627		193		88		258		215		168		922	

Note: "X" indicates no data provided. The "Total With Outcome" columns provide totals for 2018 – 2022 where no data on outcomes were provided for sexual abuse by staff, sexual harassment by staff, or voyeurism by staff for the years 2014–2017.

As in all the PREA standards, policy is meaningless if it is not accompanied by competent performance. Some of the performance issues TPI has documented around medical and mental health service responses, primarily emergency and ongoing access to services, include:

- A gay male was not allowed to shower and provided no medical attention after a sexual assault. He did not receive prophylactic treatment for sexually transmitted infections (STIs), and had to wait until he arrived at another facility to have the STI he contracted treated.
- A gay male was not taken to a SANE exam until about 14 hours after the sexual abuse incident. He tried to hold out and not drink water that might compromise evidence, but after 12 hours and with no information about when he would be taken for the forensic exam, he gave in and drank water.
- A transgender female reported anal bleeding after a sexual abuse incident, but the facility refused her both access to a SANE exam and treatment for the bleeding.
- A transgender female reported that a captain told her "I'm supposed to offer you a rape kit, but since you were in the shower, it's going to be a waste of time [and that] the kit [apparently referring to SANE evidence collection] is more painful and embarrassing than what you have already gone through." In a subsequent letter, the victim stated that the OIG investigator was present as well.
- A gender questioning person reported that they were not able to talk to a counselor about a sexual abuse incident. The person stated that "my rape comes back to mind and I either freeze or have a panic attack." The only treatment that medical and mental health have provided is a prescription for venlafaxine.
- A transgender female reported being transferred back to a facility where she was sexually assaulted and housed in the same building where the assault took place. After having to pass the shower where the incident took place, she was unable to leave her cell for at least four days due to severe distress, and a sick call to see someone in mental health was ignored for at least two days.
- A nonbinary queer person reported they requested mental health counseling many times during a period of eight months after a sexual abuse incident. Except for a five-minute question and answer meeting after six months of requests, the person was not been seen by any mental health staff. One sick call requesting mental health counseling received a response that the subject had refused mental health at some point—apparently as an excuse to not to provide an appointment—but the subject reported never refusing an appointment.
- A transgender female stated that she was diagnosed with Rape Trauma Syndrome about about four months after a sexual assault, but that counselors did little to help, certainly nothing near approaching an appropriate or community level of service. She noted only seeing an actual counselor once after the rape, and after about nine months, and that

staff at two facilities (one the psychiatric care facility Wayne Scott Unit) "that they are not trained to help deal with rape victims."

- A transgender female reported that she was told by mental health staff that they cannot provide any help with PTSD due to sexual assault.
- A transgender female reported that when mental health came by to see her after a sexual assault, they simply told her that if she is not thinking about killing herself, she will be ok.
- A transgender female reported that a month after a sexual assault, she had still not been tested for HIV or other STIs.
- A transgender female reported that she was not taken for a forensic exam and not provided STI prophylaxis after a sexual assault. In responding to a TPI report of the incident, the PREA Ombudsman office refused to address the lack of a SANE and prophylaxis.

> After a violent sexual assault, "Since I am not on the case load for mental health, they only come by and say are you okay. I say NO, then she says well the depression will take some time to heal, as long as you are not thinking about killing yourself, you'll be alright (WTF!)"
>
> —transgender female

Conclusion for PREA § 115.11 Compliance

This PREA compliance discussion related to some of the standards that are significant in an agency PREA § 115.11 audit covers what TPI believes to be pertinent information related to TDCJ compliance with this most basic PREA standard, the "zero tolerance" requirement. Performance in meeting this standard brings in numerous other standards that are essential to reducing and eliminating sexual violence.

The audit report assess TDCJ for compliance in the prevention, detection, and response to sexual violence, claiming that TDCJ meets compliance in these areas. TPI disagrees.

Our discussion shows that for the prevention aspect, TDCJ has serious issues with staffing, a fact that is not only clear from numerous media accounts about staffing shortages, but also supported by an excoriating assessment from the Texas Sunset Commission in its 2024 review of the agency.

Our discussion shows that—in spite of TDCJ claiming to support prevention with adequate staff training by simply giving counts of persons who sat through training—training has not been effective in changing the culture of abuse and disrespect that is endemic among TDCJ staff, especially when it comes to the treatment of LGBTI persons. TPI provides numerous examples to support our position on this matter. Regardless of the claims that staff are sitting through training or signing forms indicating completion of training, the training is not evident in what we hear directly from person experiencing staff animosity and mistreatment.

In this document, we also discuss problems and potential problems with the screening processes that TDCJ uses, as well as examples of failures to conduct required screening or appropriate screening. The use of the screening information to classify persons in TDCJ custody is also discussed, and some of TDCJ's own data is used to show that their efforts to apply data to screen persons who have a potential to harm from those with a potential to be harmed is also sorely lacking.

> "TDCJ says 'Silence is Violence,' but they don't mean it. Because we're still getting extorted, sexually harassed, and raped in TDCJ. TDCJ places us in cells with Security Threat Gang Members. . . . The LGBTQs now live by these words, 'It's easier to lay there!'"
>
> —gay male

TDCJ also fails to effectively use classification practices as prevention. Although TPI does not have access to the information an auditor would that we feel is highly likely to show even more evidence of failure, what we do have access to shows that TDCJ classification processes are not making effective use of differences in physical characteristics to prevent sexual violence, instead increasingly placing persons who are younger and smaller into cells where they are mismatched with persons who are older and larger, setting up situations that lead to abuse (see figures 2 and 3).

For these reasons, TPI asserts that TDCJ fails compliance with the prevention goal of PREA § 115.11.

To support compliance with the detection aspect of the standard, the audit report points to training and intake screening. However, data available indicate that over nine years, staff have only reported at most four incidents of sexual violence, and none since 2019 (see Table 3).[46] And TPI has long asserted that TDCJ manipulates reports of sexual violence by what appears to be deliberate misinterpretation of reports or questionable application or misapplication of definitions to exclude reports from consideration.[47] The percent of "complaints and inquiries" declined by the PREA Ombudsman Office has steadily grown from 26 percent in 2014 to a high so far of 43 percent in 2021 (see Table 4). TPI provides numerous examples of reports we have received that show TDCJ's efforts to detect sexual violence are not compliant with the PREA § 115.11 standard.

And finally, for the response aspect of the standard, the audit report fails to support the claim that TDCJ is compliant, instead simply pointing to policy that superficially parrots PREA standards related to reporting and investigating sexual violence, providing victim services that

46. The data available is for total complaints and inquiries received by the PREA Ombudsman Office. The breakout of how many of these four were complaints and how many inquiries not processed as sexual violence incidents is not provided. Thus the number of complaints provided is a *maximum* because some of these could have been inquiries.
47. One example is the TDCJ practice of claiming that allegations of sexual harassment must be repeated, when the PREA standards are that repeated sexual harassment must be investigated, but single incidents can be investigated as sexual harassment.

include medical and mental health services, staff disciplinary practices, incident review, and data collection and analysis.

TPI's discussion of this aspect of PREA § 115.11 compliance shows that there are numerous problems with how staff respond to victim reports of sexual violence, an issue that translates into delays in the response to sexual violence (supported also by data in Table 5). It should also be pointed out that staff are required to report knowledge or suspicion of sexual violence, but such reporting rarely occurs, with only at most four reports made in nine years (see Table 3).

TPI data also shows how staff fail to take appropriate efforts to protect persons at risk of sexual violence (PREA § 115.62), such as the common practice of allowing general population persons into safekeeping housing areas; and to protect persons reporting sexual violence through monitoring for and responding to retaliation (required by PREA § 115.67, with TDCJ making astounding claims that retaliation rarely occurs).

As shown in earlier discussions, investigation practices are questionable at best. SANE exams appear to be rarely allowed or offered, and TDCJ policy concerning these appear to violate PREA requirements. Concerning all these issues, we would suggest that auditors interview victims of sexual abuse to determine how long it took for them to be able to get staff to document their report, and evaluate that along with the number of reports with a response within 120 hours and the number of SANE exams done.[48]

TDCJ also exhibits clear problems following evidentiary and investigation requirements established in PREA §§ 115.71 and 115.72. This can be seen in part by the extremely low number of investigations that result in substantiating an allegation. Claims of false reporting cannot excuse overall substantiation rates for various sexual violence from 0.1 percent for staff voyeurism to a high of only 4.2 percent for staff sexual abuse and abusive sexual contact (see Table 6).

TDCJ also has an extremely poor showing in its provision of victim services. We provide a number of examples supporting a general failure to do anything more than maybe meet the minimum requirements to offer medical and mental health services to persons who have experienced harm and those who have caused harm, to offer appropriate emergency care, or to offer even minimal ongoing care "consistent with the community level of care" required under PREA § 115.83.

For all of these reasons, TPI feels that this audit of agency compliance with PREA § 115.11 is woefully inadequate and misrepresents the problems and failures TDCJ obviously exhibits. If the agency were appropriately complying with PREA § 115.11 and the other standards that such compliance entails, then we should expect to see measures of sexual violence decreasing, not increasing, as shown in Figure 4. Here we show several measures of sexual violence, adjusted to rates per 100,000 for better comparison across the varying population in TDCJ over multiple

48. One way TDCJ potentially interferes with the ability to conduct the interviews mentioned here is that many persons reporting sexual abuse are transferred from the facility where the abuse occurred prior to the PREA audit. Such interviews should be done with persons reporting sexual abuse at current and past facilities.

years. Every measure except sexual harassment by staff (which we feel is seriously manipulated by refusing reports) shows increases rather than decreases (sexual harassment by staff remains constant), and this includes not just reports, but increases in the numbers of persons victimized and the numbers of assailants (Table 7).

For all these reasons, we feel this audit report's assessment of compliance with the PREA § 115.11 standard to be deficient.

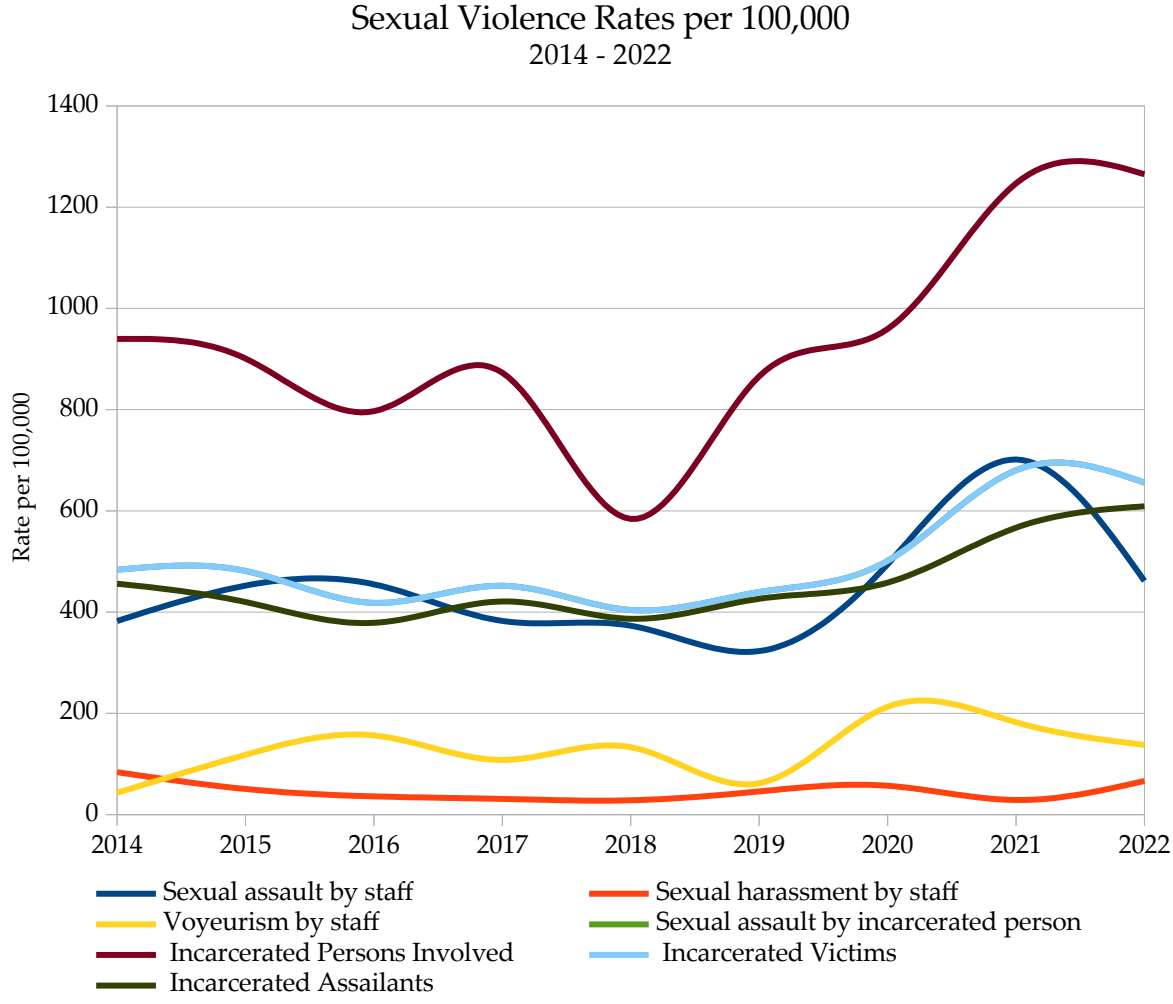

Figure 4: Data from TDCJ Safe Prisons/PREA annual reports showing sexual violence totals per year, adjusted to rates per 100,000 population based on August 31 population data from TDCJ annual statistical reports.

Table 7. Data for TDCJ Sexual Violence Rates per 100,000 Population.

	2014	2015	2016	2017	2018	2019	2020	2021	2022
Allegations against staff									
Sexual assault	382.4	452.3	454.9	382.5	373.1	322.9	494.6	701.6	461.6
Sexual harassment	83.8	50.6	36	31	28.3	45.7	57	28.8	66.4
Voyeurism	43.2	118.1	156.4	108	133.1	61.9	213	182.4	137.7
Allegations against incarcerated persons									
Sexual assault	483.5	481.3	418.2	452	404.1	439.6	501.2	680.4	655.9
Data on Incarcerated Person involvement									
Total Persons Involved	939.7	901.1	797	873.1	584.1	865.9	959.4	1247.1	1265
Total Victims	483.5	481.3	418.2	452	404.1	439.6	501.2	680.4	655.9
Total Assailants	456.2	419.9	378.8	421.1	386.8	426.3	458.2	566.7	609.1

PREA § 115.18, Upgrades to Facilities and Technologies

The audit report provides an extremely brief comment to support compliance with this standard, stating basically that the agency added new cameras and did something not identified to "consider" the impact of new cameras on "how such technology will enhance the Agency/facilities ability to protect [incarcerated persons] from sexual abuse."

This comment does not provide an adequate assessment of the use—and failure to use—video surveillance technology, and to use it in a manner that actually addresses prevention, detection, and response to sexual violence.

Table 3, discussed previously in the "TDCJ Detection of Sexual Violence" section, shows that during the eight years of 2015 through 2022, there were at most only four staff reports that were brought to the attention of the PREA Ombudsman about sexual violence or potential sexual violence. Apparently cameras and training serve little purpose for either prevention or detection purposes. Compared to the average of 0.5 inquiries and complaints per year from staff, incarcerated persons during this same period brought an average of over 1,750 inquiries and complaints annually to the PREA Ombudsman.

Anecdotal evidence provided to TPI indicates cameras appear to very often malfunction on the occurrence of sexual and other violence. The number of reports TPI receives of persons being told that cameras were malfunctioning or not operational at the time of an event indicates coincidence beyond mere chance. Audits, in order to competently assess the use of video technology, need to assess the number of times that technology was "nonoperational" when incidents occur, as well as consulting maintenance records to determine when cameras that could have provided evidence of violence malfunctioned and were repaired.

Further, drawing from TDCJ's own data, it appears that although the impact of increasing video technology may be "considered" as required per policy, actual practice is that it appears to not be given much weight.

TDCJ PREA annual reports provide the location of PREA documented sexual violence where the assailant is another incarcerated person. Those locations are predominately housing areas. Table 8 shows the various locations defined in the available annual reports, and TPI notes which are in housing areas, which may be in housing areas, and which are not in housing areas.

Table 8. PREA Documented Sexual Violence Locations

Location	In Housing Area
Cellblock housing	Yes
Shower or restroom	Maybe
Dorm housing	Yes
Day room	Yes
Rec yard or gym	No
Dining hall or kitchen	No
Common area (shower, day room, bathroom)	Maybe
Medical area	No
Assailant's cell or room	Yes
Program area (commissary, kitchen, laundry)	No
Location unknown	Maybe
Staff area (office, break room)	No
Temporary Holding Cell	Maybe
Instructional area (classroom, school, library)	No
Victim's cell or room	Yes
Other	Maybe

Classifying data on incident locations this way, it is clear that the overwhelming majority take place in housing areas (Figure 5). The PREA Ombudsman Office annual reports provide the number of cameras installed throughout the system, and identify how many were in housing areas 2014 through 2016, and each year the percentage in housing areas dropped. This indicates that although TDCJ data shows sexual violence overwhelming takes place in housing areas, and TDCJ claims cameras help alleviate sexual violence, they are not prioritizing cameras in housing areas. In fact, they appear to be deprioritizing them (Figure 6).

The PREA Ombudsman Office annual reports stopped providing the number of cameras in housing areas after 2016, but had provided this number in earlier Safe Prisons annual reports, so based on these data available, TDCJ added an average of about 139 cameras to housing areas each year from 2009 through 2016. Using that average to assume that some cameras are being added to housing areas after 2016 (by no means a certain assumption), we can project new installations. Overlaying the number of total cameras (known from data provided) with the

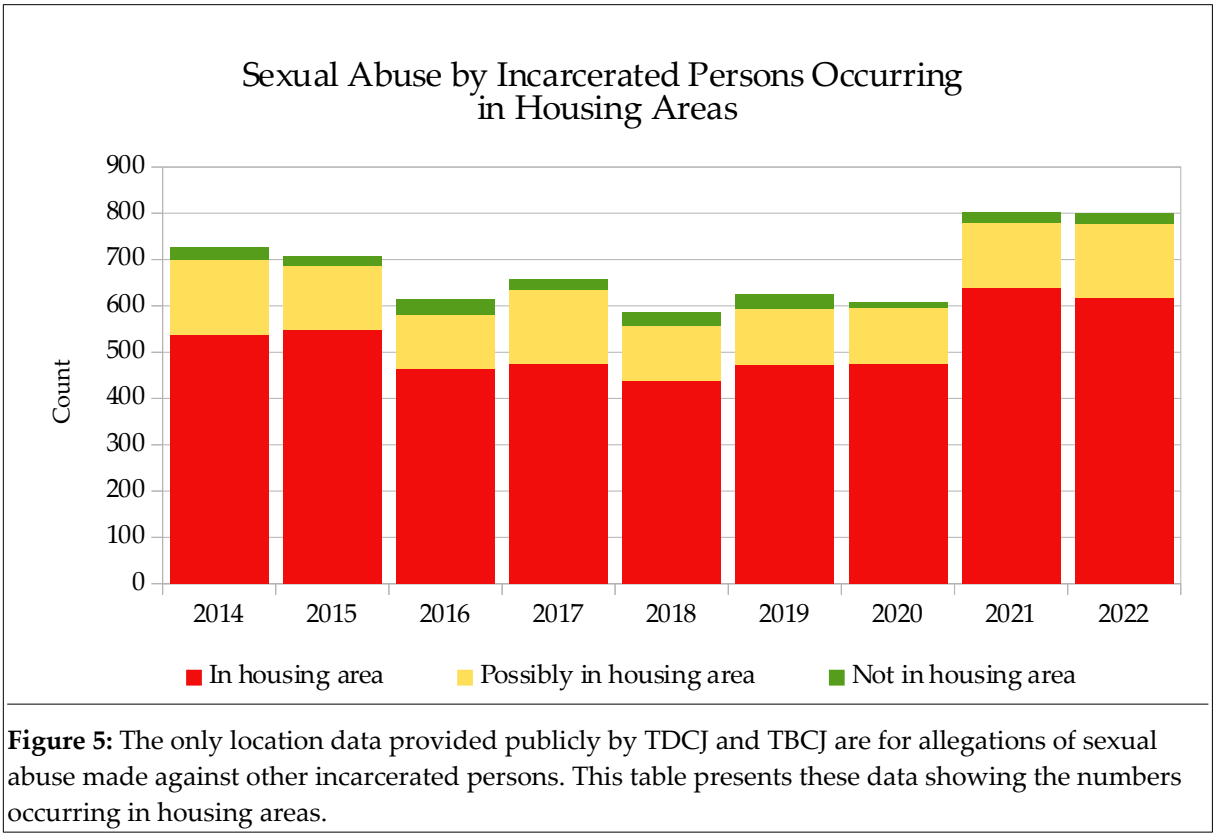

Figure 5: The only location data provided publicly by TDCJ and TBCJ are for allegations of sexual abuse made against other incarcerated persons. This table presents these data showing the numbers occurring in housing areas.

number of cameras in housing areas (known 2009 through 2016, projected 2017 through 2022), it is clear that the percentage of cameras in housing areas drops steeply, from about 50 percent in 2014 to below 30 percent in 2022 (see Figure 6).

To perform a legitimate audit of camera use in facilities and agency-wide for PREA purposes, auditors must assess not only the overall numbers of cameras, but where those cameras are located relative to where sexual violence is occurring, how often cameras are "not operational" when they could provide evidence in an investigation, and whether the claims of giving consideration to the impact of cameras is actually given appropriate weight in decision-making.

TPI asserts that this agency audit report did not competently look at these issues during the agency audit, and thus the claim that TDCJ is in compliance with PREA § 115.18 is not supported and cannot be determined at this time.

PREA § 115.42, Use of Screening Information

The audit report makes some surprising statements in the evaluation of this standard. Although PREA § 115.42 concerns the separation of persons at risk of being sexually abusive from those at risk of sexual victimization, the audit report supports compliance by saying TDCJ makes decisions that are "are made based on objective criteria, and not based on race, color, nationality, or ethnic origin." That is required under other federal statutes; PREA "objective

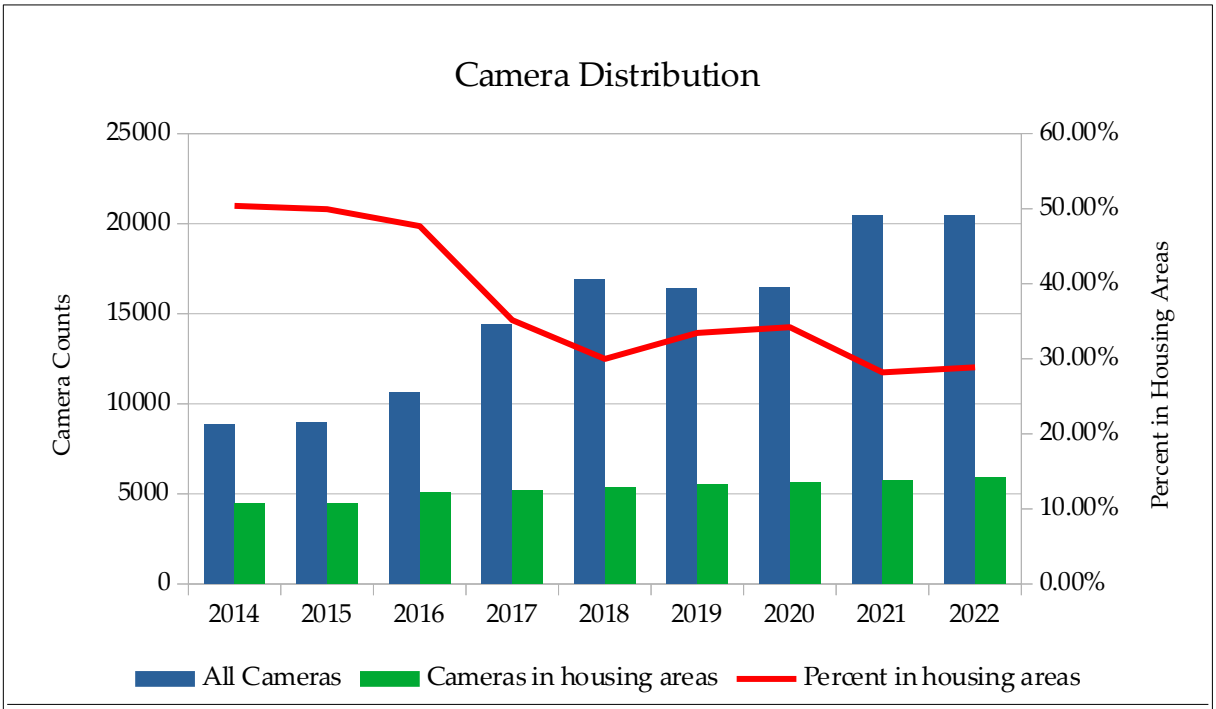

Figure 6: Security camera distribution showing total cameras installed. Note that total camera counts for all years are provided by PREA Ombudsman Office. However, totals in housing areas only provided for 2014 through 2016. Safe Prisons annual reports from 2009 through 2013 provided numbers of cameras in housing areas, and those numbers were averaged with the PREA Ombudsman Office housing area totals to project totals for 2017 through 2022. Also shown is the declining priority for placing cameras in housing areas, where most sexual violence takes place.

criteria" require compliance with additional considerations other than what the audit report documents being reviewed.

Although the audit report does mention assessment criteria in use at TDCJ, and that these criteria exist in the files for persons in TDCJ custody (technically a PREA § 115.41 concern), the only actual review documented by the auditor was the availability of the electronic record at the central office and individual units. The audit report then concludes the audit of this standard by making a circular statement that because TDCJ meets this standard, TDCJ meets this standard. It does not appear that any "careful and detailed review of all the information" was done, as is claimed.

The PRC Standards in Focus publication for this standard provides in essence the requirements for an audit of the standard:

> Purpose: To reduce the risk of inmate-on-inmate sexual abuse and sexual harassment (referred to throughout the remainder of this document as "sexual abuse" or "sexual victimization") by:
>
> — Maintaining separation between inmates at risk of being sexually victimized and inmates at risk of being sexually abusive;

— Using intake screening information from § 115.41 to inform all inmate housing, bed, work, education, and program assignments: and

— Providing additional protections for transgender and intersex inmates, based on the unique risks these populations face while incarcerated.[49]

Thus the audit must assess how the facility or agency maintains separation of these populations using their screening data, and how they meet the requirements for the additional protections for transgender and intersex persons.

TPI receives routine complaints from transgender and other persons incarcerated in TDCJ that this standard and these guidelines are not followed. Our correspondents report 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, including sexual 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 the screening process and use of screening information, as 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 must be efficacious at achieving it's purpose.

Examples of problems related to PREA § 115.42(a) and prevention include:

- A transgender female stated that she was first refused her report of endangerment, then it was apparently investigated, but the following day she was place back in the same section with the person threatening her. A lieutenant—and classification staff—refused to consider that she had tattoos that put her in danger, stating that no other trans persons on the wing reported endangerment.
- A transgender female stated that she was housed in a general population housing area that included mostly minimum security persons, but also housed four safekeeping minimum security persons and a medium security general population person. All would spend time together in the day room, ate together, and went to recreation together. Irrespective of state laws prohibiting mixed custody housing, this is also a failure of classification for safety and the prevention of sexual violence. Safekeeping designated persons are specifically supposed to be housed separate from general population, and this is touted in the TDCJ PREA annual reports.

49. PREA Resource Center, "Screening for Risk of Sexual Victimization and Abusiveness, § 115.42, 115.142, 115.242, 115.342, Use of Screening Information," *PREA Standards in Focus*, https://www.prearesourcecenter.org/sites/default/files/library/115.42%20SIF_0.pdf.

- A transgender female stated that, while minimum custody, she was forced to share a cell in a holding area with a medium custody male for three days, and on each day the medium custody male threatened her life to coerce her to perform oral sex.
- TPI has received multiple reports, which have increased in frequency over approximately the last two years, of general population persons coming into safekeeping housing. This appears to be a failure by security staff to reinforce the separation required by different classification levels and general population versus protective custody. Issues include corrections officers allow incarcerated persons they favor into safekeeping areas, section doors are left unlocked during staff shortages (easier access, possibly for temporary staff who do not have keys?), and inattention.
- A transgender female reported that staff forced her into a cell with a person who was threatening her due to her trans identity. She tried to move a few days later and was told to sleep in the day room for a week. She was then told to stay in the multipurpose room for several more days before staff tried to force her back into the cell with the person threatening her. Instead of addressing the issue caused by classification's failure to provide appropriate housing, then cited her with a disciplinary case for refusing housing.

In addition to these individual examples of compliance issues, there is a general issue concerning how TDCJ manipulates what is called safekeeping status or designation, claiming something that is obviously separate housing meeting the PREA definition of "protective custody" is not actually protective custody. This is further discussed in the next section, the "PREA § 115.42 Supplemental" discussion. The subterfuge involved in this manipulation, however, may make it more difficult to access this protective designation. Similar types of protective custody seem to be easier to access in other prison systems. The full reasons for this are not clear, and it may be in part the persistent negative culture within TDCJ that seeks to exact harm and retribution in every way possible instead of meeting their state-defined mission to "promote positive change in [] behavior [and] reintegrate [incarcerated persons] into society."[50] Regardless of the reason for this ongoing manipulation, audits that fail to address this issue fail to properly audit the use of screening information by TDCJ.

One very important provision that should be addressed at the agency level is PREA § 115.42(c):

> (c) In deciding whether to assign a transgender or intersex [incarcerated person] to a facility for male or female [incarcerated persons], and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the [incarcerated person's] health and safety, and whether the placement would present management or security problems.

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

50. Texas Government Code § 793.001 (1991, revised 1995 and 1999), https://statutes.capitol.texas.gov/Docs/GV/htm/GV.493.htm.

information indicates that person has had genital surgery. 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. Yet, not one PREA audit that TPI has reviewed has addressed this issue.

The DOJ has stated that an auditor:

> **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 [incarcerated persons] in a facility are, in practice, housed according to their external genital status 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 [incarcerated person]. The auditor will likely need to conduct a comprehensive review of the facility's risk screening and classification processes, specific [incarcerated person] records, and documentation regarding placement decisions [emphasis added].[51]

The PREA Standards in Focus provides specific instructions to auditors:

> Examining a facility's actual practices, in addition to reviewing official policy. For example, a PREA audit that reveals that all transgender and/or intersex inmates are, in practice, housed according to their genital status raises the possibility of non-compliance, even if the agency's policies are consistent with all of the requirements in § 115.42. **The auditor must conduct a comprehensive review of the agency's screening and reassessment processes, and examine specific inmate records/files to determine if individualized, case-by-case housing and programming assignments of transgender and/or intersex inmates are being made** [emphasis added].[52]

As the misclassification or failure to use individualized determinations in the housing and programming assignments for transgender and intersex person appears to be agency-wide, it is imperative that this provision be assessed at the agency level, which was not done based on the information in this audit report.

TDCJ appears to generally comply with PREA § 115.42(d) superficially, but the compliance is performative instead of substantive.

> (d) Placement and programming assignments for each transgender or intersex [incarcerated person] shall be reassessed at least twice each year to review any threats to safety experienced by the [incarcerated person].

TPI has often heard from incarcerated transgender persons throughout TDCJ that the twice yearly assessments by UCC are cursory and ineffective. Reports generally convey that many staff make it clear they are simply there to check off the items they are required to ask, and

51. "FAQ | Does a policy that houses transgender or intersex inmates based exclusively on, . . ." Frequently Asked Questions, National PREA Resource Center FAQ, March 24, 2016, https://www.prearesourcecenter.org/frequently-asked-questions/does-policy-houses-transgender-or-intersex-inmates-based-exclusively.
52. PREA Resource Center, "Screening for Risk of Sexual Victimization and Abusiveness."

many persons note that if they report issues, those are either dismissed or ignored, or addressed by locking the person in restrictive housing, likely with little or no property, for a week or more while an "investigation" is conducted then found unsubstantiated at best. The process appears seldom conducive to meeting the spirit of the PREA standard, and instead may offer staff opportunities to discourage reports of sexual victimization risks. TPI feels it is inadequate to simply parrot policy in support of meeting this standard, but even that low bar was not met in this audit report. Assessment must be supported by genuine investigation into the efficacy of the process for incarcerated transgender and intersex persons.

The audit report also failed to address PREA § 115.42(e), which should have more than a cursory repetition of policy for assessment.

> (e) A transgender or intersex [incarcerated person's] own views with respect to his or her own safety shall be given serious consideration.

This audit report did not mention this provision either. The following are a few examples we can provide to illustrate actual practice as opposed to policy claims:

- A transgender female was designated as safekeeping against her wishes and in spite of her protests that she was not in any danger. To the contrary, she reported that safekeeping designation harmed her by keeping her from programs she wished to participate in.
- A transgender female reported that someone submitted a request to rescind her identification in the system as transgender, and classification rescinded it without confirming with her, as is policy and as should be done for PREA compliance.
- A transgender female reported that she made multiple requests to UCC for housing changes due to endangerment, all of which were ignored until the sexual harassment she was experiencing turned into an assault and injuries requiring hospitalization.
- A gay male reported that an IPI was filed over his objections that he was not in danger. The IPI appears to have been filed to justify placement in safekeeping, which the subject did not want.

PREA § 115.42(f) provides another example of a missed opportunity to address a serious problem in TDCJ that very much appears to be the result of central administrative decisions to violate this provision.

> (f) Transgender and intersex [incarcerated persons] shall be given the opportunity to shower separately from other [incarcerated persons].

This standard is further defined in the materials readily available to auditors and the public:

> This standard was adopted to provide additional protections for these inmates, given the unique risks these populations face while incarcerated. The separation required by the regulation will be dependent on the layout of the facility, and may be accomplished either through physical

> separation (e.g., separate shower stalls) or by time-phasing or scheduling (e.g., allowing an inmate to shower before or after others). In any event, facilities should adopt **procedures that will afford transgender and intersex inmates the opportunity to disrobe, shower, and dress apart from other [incarcerated persons]** [emphasis added].[53]

For several years, TDCJ appeared to usually be in compliance with the separate shower requirement as it applies to two-person cells where the shower is in the cell—typically ECB or High Security cells.[54] Transgender and intersex persons would be single-celled in these cells, or sometimes celled with another transgender or intersex person if that was agreeable to both parties. During the past few years, apparently starting after Bobby Lumpkin was promoted to director of the Correctional Institutions Division, transgender and intersex persons have been forced to live in cells with showers in them with inappropriate cellmates and often denied separate showers, regardless of the claims of administration at the facilities and at TDCJ headquarters. One purpose of the PREA audits is to identify and correct practices that are not complaint with policy. PREA audits of TDCJ facilities and the agency have failed to do so.

TPI notes that for two-person cells where the shower is in the cell, if one of the persons is transgender or intersex and one is not, that housing is not in compliance with 115.42(f).[55] 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 [incarcerated persons] the opportunity to disrobe, shower, and dress apart from other [incarcerated persons]," not simply have a minimally compliant "separate" shower.[56] In the past three years, TPI has documented 68 violations of this provision, and we are certain that there are many other violations that are not reported to us.

- A transgender female notes that many trans persons with cis persons in her housing area, which has cells with the shower in them.
- A transgender female stated that facility administration is forcing all transgender persons in ECB cells to have a cellmate and denying opportunities for separate showers.

53. "FAQ | Standard 115.42, Use of Screening Information, requires that transgender, . . ." Frequently Asked Questions, National PREA Resource Center FAQ, April 23, 2014, https://www.prearesourcecenter.org/frequently-asked-questions/standard-11542-use-screening-information-requires-transgender-inmates-be.
54. ECB stands for Extended Cell Block, originally for high security housing. These cells are currently often used to house people with a heat score who need climate control, and may be minimum custody. Unfortunately, this also punishes people placed in these cells because a disciplinary environment is maintained for the entire housing block.
55. This generally would be the case even if the unit claims that opportunities for separate showers are provided because during lock downs and periods of staff shortages (which at many facilities is an almost continual condition), those opportunities are some of the first to be overlooked or set aside.
56. "FAQ | Standard 115.42, Use of Screening Information, requires that transgender, . . ." April 23, 2014.

- A transgender female documents that trans persons were denied separate showers for two weeks. Grievances addressed the issue somewhat, but separate showers after were only available sporadically through a very cumbersome process.
- A transgender female reported being housed in a 58-person "open tank" with no shower separation, without the ability to "disrobe, shower, and dress apart from other [incarcerated persons]."
- At many facilities, stated policy to provide separate showers is not followed during staff shortages, lock downs, shakedowns, and in many other circumstances, resulting in the standard not being met for a month or more at a time.

> "Four days in a row now we were showered in a communal shower as a group, men and trans [persons] alike and were denied towels or fresh clothing by the laundry boss and inmate workers. Now we shower on a seg line locked in a shower like seg, held in it for 20 to 30 minutes after we finish. One day the water is ice cold and when you ask for hot water it all the sudden becomes scalding hot! All to try to stop us from going to shower. Nearly daily we have to refuse to rack up to get showers."
>
> —transgender female

- Report from a third party that transgender females are being refused separate showers and told to just shower in their underwear.
- A transgender female stated that all persons in safekeeping were made to shower in group showers including trans persons and cis men, with separate showers for transgender and intersex persons refused. Water for the showers was alternately very cold or very hot to discourage safekeeping persons from showering.
- A nonbinary transgender person reported that their trans identity was ignored during screening, and they were made to shower in a group shower. This may also an example of the screening process not appropriately handling nonbinary identities appropriately.
- A transgender person reported being placed in a cell with the shower in the cell, and having to shower in the cell with a cisgender cellmate present. This was initially reported in May 2023, and reported to still continue in August 2024.

Due to the indications in the audit report that little or no actual practice was audited, that use of the screening data is ineffective at preventing sexual violence, that TDCJ appears to have a blanket rule housing transgender persons based on genital configuration (and the lack of actual assessment of practice in this area by the auditor), that the required twice-annual reassessments of the safety of transgender persons are ineffective, that the views of transgender and intersex persons are not given serious consideration, and that transgender and intersex persons are not provided opportunities to disrobe, shower, and dress apart from other incarcerated persons, TPI asserts that the agency is not compliant with this standard.

PREA § 115.42 Supplemental, Screening Information and Protective Custody

Although a separate standard in the PREA regulations, PREA § 115.43 "protective custody" is an essential part of the discussion of how screening information is used under PREA § 115.42, as is is the response to allegations of sexual abuse under PREA § 115.68. As mentioned in the previous section, TDCJ manipulates protective custody in its housing designations to claim they are not actually "protective custody." The reason is not known, but it is probably to avoid documentation required under PREA § 115.43, and possibly to manipulate data collection related to sexual violence. In this section, TPI further elucidates our information related to this issue.

The first TDCJ Safe Prisons Program report for fiscal year 2009 provided the explanation that "Protective custody and safekeeping are two custodies that may be used to isolate an at-risk or vulnerable [incarcerated person] from a possible predatory [incarcerated person]."[57] This same language was used in the 2010 annual report, but in the 2011 report it was changed to claim that safekeeping status was both separate from "other" general population but also "in the general population" because persons with safekeeping status require "protection from other" incarcerated persons.[58]

The PREA Standards make no such distinction or claim that separate housing is not separate if an agency simply calls that separate housing "general population." Any segregated housing for PREA must consider and document the impact that housing has on access to programs and other opportunities, and it is extremely clear that TDCJ safekeeping designation impacts access to programs and opportunities. As per the PREA Final Rule, incarcerated persons:

> shall not be placed **involuntarily** [emphasis added] in protective custody, unless an assessment of available alternatives has been made, and a determination has been made that no other alternative means of separating the inmate from the abuser exist. . . . The final standard also adds a requirement that if the facility restricts access to programs, privileges, education, or work opportunities [**note that there is no qualifier limiting this to involuntary actions**], it must document the opportunities that have been limited, the duration of the limitation, and the reasons for such limitations.[59]

PREA § 115.43 covers the separation or segregation of persons at high risk for sexual victimization based on screening information collected under PREA § 115.42 or because of reporting sexual abuse per PREA § 115.68. The standard 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

57. PREA Ombudsman and Office of Inspector General, *Safe Prisons Program, Fiscal Year 2009,* Texas Department of Criminal Justice, June 2010: 8, https://www.tdcj.texas.gov/documents/PREA_SPP_Report_2009.pdf.
58. PREA Ombudsman and Office of Inspector General, *Safe Prisons Program, Fiscal Year 2011,* Texas Department of Criminal Justice, April 2012: 8–9, https://www.tdcj.texas.gov/documents/PREA_SPP_Report_2011.pdf.
59. Federal Register (2012): vol. 77 no. 119, Fed. Reg. page 37154 (June 20, 2012).

online via the National PREA Resource Center. The PREA Final Rule[60] 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, such as in response to a report of sexual abuse.[61] However, the discussion makes it clear that all these terms refer to separating the person from endangerment by placement in separate housing, and that all of these are considered "protective custody." For the sake of consistency, TPI will refer here to all separation for investigations of alleged sexual abuse or due to assessment as being at risk for sexual abuse to be "protective custody." If the person being segregated agrees with the segregation, that segregation will be "voluntary protective custody"; if the person being segregated does not agree with the segregation, that segregation will be "involuntary protective custody." TPI also asserts that due to the requirement at PREA § 115.41(d)(9) that the incarcerated person's own views of vulnerability taken into account, considerations of whether separate housing is "voluntary" or "involuntary" may change over time as the person's views about the need for protective custody changes. This can be important for persons provided TDCJ "safekeeping designation" because in many cases, persons will initially agree and want the designation, but later wish to be released from safekeeping designation due to the limits on education, training, work, and program opportunities. At that point, safekeeping becomes involuntary protective custody. Requests to be released from safekeeping designation are not 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."[62] 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 undermines TDCJ's use of the term "general population" because it appears that anything not apparently defined as "restrictive housing" is "general population," a

60. Federal Register (2012): vol. 77 no. 119, Fed. Reg. page 37106-37232 (June 20, 2012).
61. Federal Register (2012): vol. 77 no. 119, Fed. Reg. page 37154-37155 (June 20, 2012).
62. Classification and Records, *Classification Plan,* Texas Department of Criminal Justice, April 2018: 9.

claim that is obviously specious.[63] TDCJ protective safekeeping is very separate, and there are only about three units in the TDCJ system with housing designated for protective safekeeping.

This designation, based on reports from the one person with a P6 designation that TPI has 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, although as noted above, TDCJ tries to claim even this is "general population."[64] 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) or "restrictive housing" for that purpose.

TPI has seen many facility 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 or restrictive housing. That is far from true. TPI believes such statements should be considered deliberate and intentional efforts to manipulate PREA data collection, PREA audits, PREA compliance, or all of the above.

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

63. The TDCJ *Restrictive Housing Plan* states that "Restrictive Housing is a non-punitive, maximum custody status involving the separation of an offender from general population." Texas Department of Criminal Justice, *Restrictive Housing Plan,* August 2019: 4. In spite of this statement, there is no chance that any average person with a typical understanding of what constitutes "punitive" housing would consider TDCJ restrictive housing as "non-punitive." By TDCJ policy, persons in this housing are confined to their cells 22 or more hours per day. That TDCJ policy calls this "non-punitive" is emblematic of the disconnect that TDCJ administration has for the inhumanity of their actions.
64. 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. [Incarcerated person] [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 restrictive housing and possibly protective safekeeping for PREA § 115.43 compliance, which TPI asserts is far from sufficient. We also note that restrictive housing is nearly always a disciplinary designation.

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].[65]

Safekeeping status is sought by incarcerated persons who experience vulnerabilities, including vulnerabilities related to sexual violence. However, safekeeping status is provided only in relatively few cases, and some people experience sexual violence over and over and are refused safekeeping status because of the length of their incarceration, their body size, or in some cases for vague and questionable reasons such as being "too intelligent."[66] 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.[67] In one example, TPI advocated for a transgender woman who was denied educational opportunities due to her safekeeping status, even though she tried for several years to be released from safekeeping status. When TPI filed a complaint, we were told that her safekeeping status did not prevent her from entering the education program, and that she had been accepted for the program, but could not access it because there was no housing for her on any unit where that program was offered.[68] 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, and to punish a person for accepting safekeeping designation for her own safety.

65. Classification and Records, *Classification Plan:* 9.
66. 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/.
67. 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 [] housing, jobs, and programming [for incarcerated persons] based on sound correctional practices to ensure the [incarcerated person] is overall safe from being victimized or abusive," which serves to document that individuals in safekeeping may experience (TPI would suspect always experience) limitations to privileges and opportunities.
68. 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 [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.

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.[69] These prohibitions and disciplinary conditions are sometimes used to harass persons with safekeeping designations, who are often identified as "snitches" and "punks" and other derogatory terms. Safekeeping persons may be denied access to educational opportunities, training programs, and other benefits, sometimes by claiming the denial is not because of the safekeeping designation but for other reasons such as housing, as noted above.

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

69. TPI has received a number of complaints that minimum custody 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. And the restrictions for compliance with Texas Government Code 501.112 should trigger documentation required under PREA § 115.43(b).

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 restrictive housing and possibly "protective safekeeping" (custody classification P6 and P7) constitute "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, or IPI.[70] This probably generates documentation that "all available alternatives" have been reviewed, but in practice it is an automatic action that is done even if the person reporting states definite reasons that they are in no further danger. TPI has even documented this happening when someone reported sexual abuse at a different unit and there was no conceivable danger at the current unit. In these cases, there is certainly no legitimate evaluation of "all available alternatives," regardless of staff claims or policy. IPI lockups also routinely last for more than 24 hours, and are often handled as disciplinary actions, with the person being strip searched and their property taken (the latter is often the consequence of being locked up immediately, without being allowed to pack their property, so ostensibly they are not "denied" their property, although that and property loss are effects of the action). Since IPI lockups are usually in the same areas as restrictive housing, they also routinely entail the same security restrictions that apply to those being held for disciplinary reasons. Such lockups may be called "restrictive housing," "transient housing," and other terms. Clearly such treatment discourages reports of sexual victimization.

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

> 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.[71]

Protective Management: Some PREA audit reports for TDCJ facilities have mentioned a housing designation called "protective management." The housing designation is described as

70. 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.
71. Federal Register (2012): vol. 77 no. 119, Fed. Reg. page 37154 (June 20, 2012).

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.

Conclusion for TDCJ Protective Custody: This discussion shows that without a doubt, TDCJ "restrictive housing" and "protective safekeeping" are absolutely not the only classifications that meet the "protective custody" definition under the PREA standards, nor are these the only classifications that can be considered "involuntary protective custody." This discussion also shows 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, such manipulation often causes great harm and compounds the sexual violence a survivor has experienced by adding personal and systemic violence from the staff and agency.

We hope that this brings some clarity to the different ways that TDCJ defines various types of housing segregation, and manipulates the definitions to their own benefit, and certainly not the benefit of those in their custody.

PREA § 115.87, Data Collection

The auditor essentially asserts that because TDCJ completes PREA-required forms using data generated by staff at their facilities, the data must be accurate and thus the agency is in compliance with this standard. TPI asserts that compliance cannot be determined by whether the forms were completed, but must assess whether or not the information provided for data collection is accurate.

We also note that the Texas Sunset Commission in its recent audit of the agency identified serious concerns with TDCJ data:

> Limitations in TDCJ's data management systems often cause the agency to be unsure of the reliability of its data, which can obscure the size and scope of serious issues that occur within the agency and make it difficult to appropriately remediate such issues. The agency has some quality control processes to improve data reliability, but these processes are not standardized and are not always consistently followed, limiting their usefulness. TDCJ lacks master data management processes to ensure that data in its master records are consistent and correct, resulting in time-intensive processes to clean data any time it is pulled from the system and preventing TDCJ from having a single source of truth for data requests. During the review, Sunset staff found several examples of unreliable data.[72]

72. Texas Sunset Advisory Commission, *Sunset Staff Report:* 62–63.

And they add a page later that:

> TDCJ's inefficient, siloed, and outdated data governance leads to errors that can hinder the agency's ability to ensure safety to inmates, staff, and the public.[73]

Based on the contradictions between what TDCJ alleges and what TPI (and the Texas Sunset Commission) observes via the narratives of people subjected to the PREA compliance failures at the facilities, TPI believes the agency cannot be determined to be compliant with this standard based on the documentation provided in this audit report.

PREA § 115.88, Data Review

The PREA § 115.88 standard requires that the agency, in part, must prepare "an annual report of its findings and corrective actions for each facility, as well as the agency as a whole." The report is also required to include a comparison of the current year data and corrective actions with prior years.

In reviewing the annual reports available, covering fiscal year 2009 through calendar year 2022, not one agency level corrective action is clearly identified and addressed, nor are corrective actions from prior years reviewed and compared. There is also no comparison of current year data with prior year data, and certainly no clear assessment of trends in the reports.

In order to claim that TDCJ meets this standard, the audit report makes false statements. The report falsely states that the agency publishes a "semi-annual report of it's findings and corrective actions for each unit/facility, and the Agency." TPI can find no such semi-annual reports. On November 28, 2024, TPI contacted the PREA Ombudsman Office and the Safe Prisons Director asking if someone there could point us to these semi-annual reports, and by the date this comment letter was finalized, we have received no response.

The audit report states the referenced TDCJ PREA reports, which we can only assume actually refer to the annual published reports, include corrective actions for the agency, but that is a false statement.

The audit report states the TDCJ PREA reports include "a comparison of the current year's data and corrective actions with those from prior years," but that is a false statement.

Based on these considerations, TPI asserts that the audit was not sufficient to determine whether or not TDCJ is complaint with this standard, and based on the failure to include certain required data elements in the annual reports, TPI asserts that it is likely TDCJ should be considered noncompliant with this standard.

PREA § 115.89, Data Storage, Publication, and Destruction

The audit report states as part of the support for claiming the agency meets compliance with this standard that "annual report from previous years to present are published on the website." The PREA Ombudsman publications list only includes annual reports through 2022, which does

73. Texas Sunset Advisory Commission, *Sunset Staff Report:* 64.

not constitute publishing "to present" as that should encompass 2023. This clearly false statement indicates the audit report has not included careful reviews as claimed in this audit report, and all statements made in this report should be questioned because of the demonstrable falsehoods that are included in this report.

PREA § 115.401, Audit Frequency and Scope

The auditor stated that a three-year period began August 2014, and that during each three-year period the agency has audited one third of its facilities. This statement is false. The first PREA three-year cycle began in August 2013, and TDCJ failed to audit all of its facilities during the first cycle.

PREA § 115.401(o) clearly states that auditors should contact community advocates who may have relevant information for a PREA audit, and the 2022 Auditor Handbook reiterates this. 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.[74]

To ensure that TPI was contacted for this audit, we sent an email to the auditor on September 21, 2024, via the PRC auditor contact tool. The auditor failed to respond to our notice, and claimed to have not been contacted by TPI by saying only "one written letter from an [incarcerated person] related to a TDCJ unit/facility" was received.

For audit convenience, TPI information pertinent to the agency audit can be easily viewed and downloaded at our web page for auditors: https://tpride.org/projects_prisondata/prea.php. It appears this also was not done.

Because TPI is well known to have relevant data for PREA audits, because we contacted the auditor and the auditor ignored our effort to reach out, 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.

PREA § 115.402, Auditor Qualifications

This PREA standard is not specifically mentioned in the agency audit report, but we include it here because it is relevant to every PREA audit. The provisions that are primarily relevant to this comment letter are the last two:

74. 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" (PREA Resource Center, *PREA Auditor Handbook:* 51; emphasis added to highlight 2022 Auditor Handbook text that incorrectly uses the singular instead of plural instructions) and no such documentation or insufficient documentation that the auditor addressed that requirement was provided. The singular use in the 2022 Auditor Handbook misrepresents the text of PREA § 401(o), which specifically uses a plural instruction.

> (c) No audit may be conducted by an auditor who has received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within the three years prior to the agency's retention of the auditor.
>
> (d) The agency shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent PREA audits.

The 2022 Auditor Handbook places a strong emphasis on the audit process being important to engendering and maintaining public trust in the PREA process.

> 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.[75]

TPI believes that for at least two reasons, this audit does not contribute to this role of maintaining public trust. Influence or potential influence by the contracting entity appears to undermine public trust due to potential, if not actualized, conflicts of interest. General cronyism within prison systems exerts undue influence on auditors, a "fox guarding the hen house" situation that fails to promote public trust. The following provides details about how these are eroding public trust in the PREA process.

> DOJ-certified PREA auditors have a responsibility to avoid any conflicts of interest, or the appearance of any such conflict. Conflicts of interest may adversely impact an auditor's ability, or perceived ability, to conduct high quality, reliable, objective, and comprehensive audits. Therefore, auditors should avoid any personal or financial arrangements that could create a conflict of interest, or the appearance of a conflict of interest, that would lead a reasonable person to question their objectivity during the conduct of a PREA audit.[76]

It appears that all Texas prisons are currently audited through contract with Corrections Consulting Services, LLC (CCS). Although this audit report fails to mention this fact, this auditor was working under contract to CCS, per the record in the PRC Audit Directory. In the past, CCS only provided PREA audits, and as such potential for conflicts of interest were limited. However, in approximately 2022, CCS started providing a wider range of services, including what are listed on the web site as "accreditation support," "policy and procedure review," "security audits," "staff training," and "technology integration" in addition to "PREA auditing."[77] This expansion means that PREA auditors under contract to CCS may be auditing work by other CCS staff or subcontractors, a definite conflict of interest. In addition, the increase in services could increase direct or indirect or inferred pressure from CCS on PREA auditors to

75. PREA Resource Center, *PREA Auditor Handbook:* 14.
76. PREA Resource Center, *PREA Auditor Handbook:* 19.
77. "Transforming Corrections for a Safer Tomorrow: Empowering Communities with Expert Consulting and Auditing Services," Corrections Consulting Services, LLC, December 17, 2024, https://correctionscs.com.

find facilities in full compliance to encourage contracts for additional services. It is difficult to understand why this is allowed as it appears to be an obvious conflict of interest that undermines public trust.

General cronyism within and across prison systems also serves as a basis for conflicts of interest potentially affecting all PREA auditors with current or past connections to the prison system. It is extremely common for prison as well as law enforcement staff to develop an "us against them" mentality that results in the view that what prison staff do and the decisions they make must be defended against all outside questioning. And too many PREA auditors are insiders refusing to meaningfully critique the status quo of the prisons they audit. More is published about this in police culture, but it is clearly woven throughout the fabric of prison staff culture as well.

> At the Academy, he was indoctrinated into an "us versus the world" mentality and learned just how deep such dehumanization ran. He said he learned the "colloquial terms for people you encounter, such as 'doper,' 'skell' [short for skeleton], 'mope,' and 'thug.'" He said he understands now how they carry "clear racial undertones," but explained that "it doesn't take long for a recruit to be totally enmeshed into their new cop identity." As a young officer, he embraced police culture, which he now describes as cult-like.[78]

Arguably, such clique or prison culture identities may constitute a kind of "personal relationship" identified as a potential conflict in the 2022 Auditor Handbook.

PREA § 115.402(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, at least for the last three years, due to this potential conflict of interest. Additionally, audit funding must be separate from the system being audited to avoid this conflict of interest.

This auditor can be seen to have completed at least five PREA audits in the PRC audit database, and not one includes a corrective action. By contrast, 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."[79] The directory appears to only include audits conducted since September 2022, and because this auditor was certified in January 2024, this appears to be all of the audits he has completed. Because all these audits were completed for CCS, TPI questions what training or possible benefits CCS provides to encourage audits that find no corrective actions necessary.

The failure to find any corrective actions may also be due to this auditor's deep connections to the prison industrial complex. The auditor is described in the PRC database as retried from the

78. Michael J. Moore, "What an Ex-Cop Learned in Prison About Police Culture," *The Nation,* December 31, 2020, https://www.thenation.com/article/politics/toxic-culture-police-prison/.
79. PREA Resource Center, *PREA Auditor Handbook:* 41.

Bureau of Prisons after a 33-year career in corrections work, part of which was served as a warden at USP Tucson, which was listed among the BOP institutions with the highest death rates in the nation during his tenure.[80]

Such potential for conflicts of interest do not engender public trust, but instead strongly indicate a pay-for-compliance service that is focused on protection of the status quo, profit for the prime contractor, and easy compliance, not accountability. Even if the letter of the PREA standard is followed, the spirit of avoiding conflicts of interest that degrade public trust is not.

Conclusion

This comment letter discusses the following audit deficiencies:

- The audit report required no corrective actions, but as outlined in this letter, corrective actions appear warranted.
- Concerning PREA § 115.11 compliance, the audit report failed to consider even publicly available data in the evaluation of the agency's efforts to prevent, detect, and respond to sexual violence. This letter discusses some of the problems TDCJ has meeting this standard in areas of staffing, training, intake screening, classification processes, reporting sexual violence, investigating sexual violence, and providing services to those who have experienced or perpetrated sexual violence.
- Concerning PREA § 115.18 compliance, the audit report failed to adequately consider the use of surveillance technology in agency practices.
- Concerning PREA § 115.42 compliance, the audit report appears to have documented agency assessment of screening practices based on standards less than what PREA requires, and in addition:
    - failed to consider agency practices in maintaining separation of those at increased risk of experiencing sexual violence from those more likely to harm others by sexual violence,
    - failed to address TDCJ's blanket rule housing transgender persons by genital configuration,
    - failed to consider the efficacy of biannual reassessments of the safety of transgender and intersex persons,
    - failed to address practices around serious consideration of the views of transgender and intersex persons with regards to their safety,
    - failed to consider widespread issues with providing separate showers for transgender and intersex persons, and

80. Evaluation and Inspections Division, *Evaluation of Issues Surrounding Inmate Deaths in Federal Bureau of Prisons Institutions,* Evaluations and Inspections Division Report 24-041, February 2024: 9 (Table 3), https://oig.justice.gov/sites/default/files/reports/24-041.pdf.

- failed to consider how the agency manipulates "protective custody" in the use of screening information.

- Concerning PREA §§ 115.87, 115.88, and 115.89 compliance, the audit report appears to have failed to appropriately assess the accuracy of the data TDCJ collects, failed to adequately review the compliance of PREA annual reports with PREA requirements, and misrepresented the reports available publicly on the agency website.
- Concerning PREA §§ 115.401 and 115.402, the auditor failed to contact community advocates with information pertinent to the audit, and failed to appropriately consider conflicts of interest in the performance of this audit.

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 auditor be required to give serious consideration to information about PREA compliance concerns provided by incarcerated persons—the auditor only notes one written letter from an incarcerated person, and provides no information about whether information in that letter was seriously considered—and to provide justification for dismissing such information.
- That the deficiencies identified in this comment letter be address in the next PREA agency audit.

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
Cassandra McGilbra, TBCJ PREA Ombudsman
Haley Boaen, TDCJ Safe Prison/PREA Manager
Ronell Prioleau, PREA Auditor
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