



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

February 26, 2025

re: 2024 Montford Unit 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) Montford Unit conducted by auditor Emilee Watts and Corrections Consulting Services, LLC, formerly PREA Auditors of America. The onsite audit was from November 6 through 8, 2024, and the final audit report was published December 9, 2024. There appears to have been no interim report.

TPI has been working with incarcerated persons since 2013, mainly trans and queer persons in the Texas prison system.¹ During that time, we believe we have gained an understanding of the Texas prison system that is sufficient to enable us to comment substantively on PREA audits, especially where the treatment of trans and queer persons is concerned. Based on that understanding, we believe that this audit fails to meet the spirit or letter of PREA audit requirements for reasons that will be provided below. **Thus TPI asserts that this audit report does not reflect compliance with the PREA standards.**

PREA auditors have an exceptional amount of power in the PREA certification process. Texas must submit an annual certification that jails and prisons operating under state jurisdiction are in full compliance with the PREA standards or face a reduction in certain federal grant funds.² The certification of full compliance is issued by the governor, PREA § 115.501 requires that “the Governor shall consider the results of the most recent agency audits,” and the Department of Justice (DOJ) notes that those audits are “to be a primary factor in determining State-level ‘full compliance.’”³ Thus audits reflecting full compliance with PREA standards are in the best

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

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

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



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.

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

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

TPI has documented a total of 129 incidents of violence against persons housed at Montford Unit, including two that occurred in the past 12 months. Of the total documented incidents, 27 involved noncompliance with some element of the PREA standards, with one PREA noncompliance issue documented in the last 12 months, and five in the last 36 months, so approximately since the last PREA audit.⁵

The data presented in this letter is not comprehensive and only encompasses what is reported to TPI, so it should be considered only a small portion of the incidents of violence, including sexual violence, that is actually occurring at Montford Unit. This letter should also not be considered a complete inventory of PREA deficiencies, but an itemization and discussion of a few of the problems TPI has been able to identify with operations at Montford Unit.

All previous comment letters prepared by TPI for PREA audits of Texas prison facilities may be viewed at <https://tpride.org/blog/category/prison-comm/prea-issues/>.

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.

4. 2022 Auditor Handbook, page 91.

5. These data are all available at the Trans Pride Initiative web site. General information and all incidents of violence are available via our Prison Data Explorer (https://tpride.org/projects_prisondata/index.php), and specific PREA related data for each facility is available via our auditor data tool (https://tpride.org/projects_prisondata/prea.php).



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Summary of Deficiencies

TPI has identified the following deficiencies in this audit report. These are only what we can identify based on our data; we are certain additional deficiencies would be identified with full access to audit materials and other facility records.

- The audit report fails to follow the 2022 Auditor Handbook instructions concerning the use of person-first language.
- The audit report inaccurately represents the genders of persons housed at Montford Unit as “mens/boys,” erasing the existence of transgender women and nonbinary persons.
- The audit report failed to identify any corrective actions, in spite of documenting non-compliance.
- The audit report falsely stated that no persons at the facility had been placed in segregated housing related to sexual violence.
- The audit report indicates 14 administrative investigations into sexual abuse are ongoing, indicating data related to investigations is inaccurate, or a lack of attention to audit report preparation.
- The superficial coverage of compliance with PREA § 115.11, along with TPI’s experience and work with persons housed at Montford Unit and elsewhere, indicates the facility is likely not fully compliant with this standard.
- The report failed to consider the very significant Texas Sunset Advisory Commission report documenting severe staffing, supervision, and monitoring problems across TDCJ. Based on the significance and obvious thoroughness of that audit, compared to the cursory nature of this audit report in its discussion of PREA § 115.13, the information provided in this report fails to support compliance with this standard.
- Due to numerous problems identified in the audit of PREA § 115.15, TPI asserts that the assessment of this standard is seriously deficient and cannot support a finding of compliance.
- The lack of support for compliance with PREA § 115.21 indicates it cannot be determined whether or not the facility is in compliance with this standard.
- The cursory discussion of PREA § 115.41, as well as identified problems with the TDCJ screening process, TPI asserts that it cannot be determined if Montford Unit is compliant with this standard.
- Due to the numerous reports to TPI across TDCJ facilities where vulnerable persons are placed in dangerous situations, as well as other issues documented below, TPI asserts that it is unlikely Montford Unit is compliant with PREA § 115.42.



- Due to the manipulation of protective custody designations and failures to appropriately identify segregated housing, TPI asserts that Montford Unit cannot be considered compliant with PREA §§ 115.43 or 115.68.
- Due to the dearth of staff reports of sexual violence over the last decade and more, TPI asserts that Montford Unit cannot be considered compliant with PREA § 115.61.
- Cursory information about PREA § 115.67 indicates it cannot be determined if Montford Unit is or is not compliant with this standard.
- Based on the lack of actual evidence supporting compliance with PREA § 115.72, as well as the lack of substantiated investigations into sexual violence, Montford Unit cannot be determined to be compliant with this standard.
- The discussion of PREA § 115.73 contradicts information provided elsewhere in the audit report. The report documents at least one incident of staff member abuse found substantiated, and that person was fired, but in this section it is stated that there was no substantiated allegation against staff and no incarcerated person was notified, violating the requirement to notify the incarcerated person of the staff member's dismissal. This discussion appears to document non-compliance with this standard.
- The cursory nature of this audit report, along with the serious data collection and management issues noted by the Texas Sunset Commission, indicate that it cannot be determined from this report whether or not Montford Unit is in compliance with PREA § 115.87.
- Because of the several reports TPI has received that incarcerated persons are not allowed truly private interviews with PREA auditors, TPI asserts that it cannot be determined if Montford Unit is or is not compliant with PREA § 115.401(m).
- Because there is no indication that the audit included contact with any community advocates or other individuals and organizations that may have information about the facility (other than the MOU party), this audit is not compliant with the requirement under PREA § 115.401(o).
- TPI also asserts that conflicts of interest and bias, as explained below, mean the auditor does not meet the qualifications defined under PREA § 115.402.

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 at a minimum, PREA §§ 115.15, 115.42, 115.43, 115.61, 115.68, and 115.73 be considered to need corrective action at the next audit.

Discussion of Audit Deficiencies

General Audit Information Issues

Audit Report Language

The DOJ has provided guidelines to use person-first language such as “persons in confinement” or “confined person.” This is discussed in the 2022 Auditor Handbook, and the handbook notes that the PREA Management Office and the PREA Resource Center “are shifting the way we identify people who are incarcerated by using person-first language.” This auditor ignores this shift by continuing to use terms like “offender” and “inmate” 630 times throughout this report. Although use of the word “inmate” may be considered occasionally acceptable because that is the term TDCJ currently uses, there is no excuse for its continued use throughout a PREA audit report over two years after the recommendation of person-first language.

Facility Characteristics

The audit report states that the population at the Montford Unit consists of “mens/boys” [*sic*], when in fact this is false. The Montford Unit houses cisgender males, transgender females, and other persons who may not belong to either of those two populations. The Montford Unit may abusively classify transgender women and other non-male persons as “male” (or in this case “mens”), but that is not an accurate description of the populations housed at the unit for PREA assessment purposes. This not only erases the existence of trans persons, this type of misclassification and erasure encourages violence against trans persons, including sexual abuse and sexual harassment. Refusal to affirm a person’s gender dehumanizes the person, and dehumanization is a significant step in excusing and justifying institutional and individual harm and violence. Further, this misapplication of the PREA standards allows the auditor to ignore violations under 115.15, cross-gender pat-down searches of female persons, as well as other PREA standards. To identify transgender persons as a gender which they are not is an act of violence that not only denies the identity of transgender women and transgender men and nonbinary persons, but also encourages violence, sexual harassment, and sexual abuse of transgender persons by dismissing our core identity.

Summary of Facility Audit Findings

The auditor found that 45 standards (including PREA §§ 115.401 and 115.403) were met. The auditor found that zero corrective actions were required. The 2022 Auditor Handbook states that “the PREA audit was built on the assumption that full compliance with every discrete provision would, in most cases, require corrective action.” The fact that the auditor found no need for any corrective actions—in spite of clear 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 herein and evidence of conflicts of interest as supporting an assessment of this report as reflecting a deficient audit.

Facility Information

This section of the audit report provides basic information about the facility and the persons housed there. **Items 18 – 29** provide population characteristics at Montford Unit on the first day of the onsite audit. **Items 34 – 63** provide the breakdown of random and targeted interviews with incarcerated persons and staff. An overview of the interviews is provided in Table 1. Problems with the audit interviews and other facility information are discussed as needed, after the table.

Table 1. Population Characteristics and Interviews

Population Characteristic*	Persons Present	Interviews Required	Interviews Completed
18/34/39 – Total housed at unit	834	Random: 15 Targeted: 15	Random: 22 Targeted: 20
19/40 – Persons with a physical disability	116	at least: 1	2
20/41 – Persons with cognitive or functional disability	616	at least: 1	8
21/42 – Persons blind or visually impaired	3	at least: 1	1
22/43 – Persons deaf or hard-of-hearing	4	at least: 1	3
23/44 – Persons Limited English Proficient	2	at least: 1	1
24/45 – Persons identifying as lesbian, gay, or bisexual	16	at least: 1	2
25/46 – Persons identifying as transgender or intersex	8	at least: 1	3
26/47 – Persons who reported sexual abuse in facility	6	at least: 3	2
27/48 – Persons who reported prior sexual victimization	68	at least: 2	3
28/49 – Persons placed in segregated housing for risk of sexual victimization	0	at least: 1	0

* The numbers at left refer to the audit report facility information numbers providing the information.

Item 28 states that there were zero persons that had ever been placed in segregated housing or isolation for risk of sexual victimization at Montford Unit, but TPI knows this number to be inaccurate. This represents a major failure to document and audit segregated housing, or protective custody under PREA. This also indicates a failure to investigate and understand how segregated housing is defined confusingly (and appears to be purposefully manipulated by



TDCJ to cause confusion) and a failure to perform due diligence in confirming such a claim that zero persons housed at Montford Unit had ever been placed in segregated housing or isolation for risk of sexual victimization. This will be discussed further under PREA § 115.43.

Item 49 states that zero persons who had ever been placed in segregated housing or isolation for risk of sexual victimization were interviewed by the auditor. According to Table 2 in the 2022 Auditor Handbook, the minimum number of interviews for a unit with the overall population of Montford Unit should have been at least one. Because it is absolutely certain that there was at least one person at Montford Unit who had been placed in segregated housing or isolation for risk of sexual victimization, the auditor failed to conduct the minimum number of random interviews required for this audit.

As with **item 28**, this indicates a failure to investigate and understand how segregated housing is manipulated by TDCJ to cause confusion; this will be discussed further under PREA § 115.43.

Items 72 – 77 provide totals for sexual violence allegations and investigations for the last 12 months. These numbers are summarized in Table 2. Problems that TPI finds with these numbers are discussed in below the table.

Table 2. Sexual Violence Investigations and Outcomes

	Sexual Abuse by		Sexual Harassment by	
	Staff	Incarcerated Person	Staff	Incarcerated Person
Allegations	7	7	0	5
Administrative investigations	7	7	0	5
Ongoing	7	7	0	0
Unfounded	1	1	0	0
Unsubstantiated	5	6	0	4
Substantiated	1	0	0	1
Criminal Investigations	1	5	0	0
Ongoing	1	2	0	0
No Action	0	3	0	0
Referred	0	0	0	0
Indicted	0	0	0	0
Convicted	0	0	0	0
Acquitted	0	0	0	0

Item 75 provides the outcomes for administrative investigations of sexual abuse allegations during the previous 12 months. It is not clear why the audit report documented twice the number of administrative investigations than apparently actually occurred, but the data provided indicates there may have been **up to 28 sexual abuse allegations** rather than the 14 discussed. **Item 72** shows incarcerated persons reported 14 allegations of sexual abuse by staff and other incarcerated persons. Per **item 75**, administrative investigations found only one



substantiated, 11 unsubstantiated, 2 unfounded, and 14 ongoing. That is, 93% of the allegations with a completed investigation were found to have a 50% or less chance of having occurred. According to PREA § 115.72, the agency “shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated,” yet only 7% of the allegations were found substantiated. This indicates a failure of the administrative investigations to adequately investigate or assess evidence in allegations of sexual abuse, and a failure of the audit to identify this problem and pursue an explanation of what appears to be a failure to properly investigate allegations.

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 primarily considers policy at the Montford Unit. Policy is certainly essential to reaching such goals, 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 [page 46; emphasis added].

Negative effects of policy are also seen where claims that sexual violence is “investigated” are accompanied by clear indications that the investigations have little or no merit due to the extremely high rate of dismissal as “unsubstantiated” or even “unfounded.” 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.



The audit report coverage of the assessment of this standard is superficial and does little to support a claim of compliance. Due to our work with persons housed at Montford Unit, TPI asserts that Montford Unit is likely not fully compliant with PREA § 115.11.

PREA § 115.13 Supervision and Monitoring

DOJ/PRC guidance concerning the evaluation of this standard, which requires sufficient staff across facility operations to eliminate sexual violence, includes the following instructions to auditors:

During the site review the auditor must compare the written staffing plan against the following observations to determine whether the staffing plan adequately assesses the staffing and/or electronic monitoring needs of the facility with sexual safety in mind, and, whether the facility is staffed according to the plan, as it is written, to later determine whether deviations from the plan have been documented:

- Observe the number of staff, contractors, and volunteers present (including security and non-security staff) and staffing patterns during every shift, including:
 - In the housing units
 - In isolated areas like administrative/disciplinary segregation and protective custody
 - In the programming, work, education, other areas
 - In areas where sexual abuse is known to be more likely to occur according to the staffing plan.
- Observe staff line of sight and assess whether there are blind spots.
- Observe areas where persons confined in the facility are not allowed to determine whether movement in and out of that space is monitored (e.g., by cameras or other forms of surveillance), to ensure that confined persons never enter those areas.
- Observe the level of supervision and frequency of cell checks in housing areas where confined persons are double-celled, in dormitories, or in holding pens with more than one person (if applicable).
- Observe indirect supervision practices, including camera placement.
 - In addition to observation of camera placement, inquire about and observe the monitoring room, including staffing rotation (i.e., how often is camera feed monitored and by whom).
- Note any staffing concerns, including understaffing, overcrowding, poor line of sight, etc.⁶

The audit report only documented a cursory review of a staffing plan with no observation of actual practices.

PREA § 115.13 requires the unit to maintain adequate staff to operate effectively and to “protect [incarcerated persons] against sexual abuse.” TDCJ has long shown that they cannot hire or maintain adequate staffing levels at many of their units. Many units in the system are operating at less than 50 percent security staff, some as low as 30 percent. TPI has received reports from a

6. National PREA Resource Center. Auditor Compliance Tool, Facility: Prison / Jail. Available at: <https://www.prearesourcecenter.org/sites/default/files/library/ACTPrisonJail.pdf>.



number of units, including many over the 12 months preceding this audit, that incarcerated persons may not even see a security staff person for hours at a time, and that one staff person may be the only assigned staff person for an entire building or wing. Although positions may be filled during an audit, that may not be the case on days when the unit is not being audited.

Our documentation of inadequate staffing levels is supported by the 2024 Texas Sunset Commission review of TDCJ, which left no question about the inability of the agency to staff its prisons. The following are just a few excerpts from the report:

[TDCJ] has experienced **crisis-level vacancy rates among correctional staff for several years** in many of its facilities [emphasis added].⁷

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 agencywide 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. For example, Sunset staff analyzed a random sample of CO shift turnout rosters from one facility and found it frequently operates with a vacancy rate over 60 percent after accounting for employees on leave or otherwise absent from work. Moreover, Sunset staff learned some facilities have operated with as little as 25 percent of the staff they need on a given day. **In practice, this forces TDCJ staff to supervise thousands of inmates with fewer than half of the security staff they need, which has potentially dire consequences for staff, inmates, and others** [emphasis added].⁸

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 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.** Given limited capacity, most receiving facilities provide little unit-specific training to transported COs, and TDCJ has not provided clear guidance for receiving facilities and supervisors on how to best utilize such staff, further exacerbating these challenges. Overall, the staff transport models are costly and an unsustainable short-term solution to what has become a pervasive and long-term problem in hiring and retaining COs at hard-to-staff locations [emphasis added].⁹

7. Texas Sunset Advisory Commission. (September 2024). Sunset Staff Report: Texas Criminal Justice Entities, page 23. Available at: https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.

8. Texas Sunset Advisory Commission. (September 2024). Sunset Staff Report: Texas Criminal Justice Entities, page 24. Available at: https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.

9. Texas Sunset Advisory Commission. (September 2024). Sunset Staff Report: Texas Criminal Justice Entities, page 26. Available at:



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. Source: Texas Sunset Advisory Commission. (September 2024). Sunset Staff Report: Texas Criminal Justice Entities, page 25.

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].¹⁰

In survey responses and numerous conversations with TDCJ employees, Sunset staff learned about a highly biased and punitive leadership culture, where many supervisors insufficiently support staff or even misuse their power. Comments consistently indicated a pervasive culture of disrespect, callousness, and unfair treatment from supervisors. Staff spoke of rampant favoritism and “cliques,” whereby supervisors privilege some staff while giving others worse assignments, publicly humiliating certain staff, and administering more severe or retaliatory discipline often for little apparent cause.¹¹

In the face of crisis-level staffing at many correctional facilities, . . . 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. Even assuming there are no interruptions or inmate needs to attend to, this would be

https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.

10. Texas Sunset Advisory Commission. (September 2024). Sunset Staff Report: Texas Criminal Justice Entities, page 40. Available at:

https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.

11. Texas Sunset Advisory Commission. (September 2024). Sunset Staff Report: Texas Criminal Justice Entities, page 44. Available at:

https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.



nearly impossible and is just one of the many recurring tasks rovers must perform throughout their shift. Furthermore, officers from across the facility are regularly pulled to cover unfilled Priority One positions, leaving their primary duties undone. Despite widespread staffing shortages, supervisors assigning positions on understaffed facilities have received limited guidance from executive or senior leaders about what tasks to prioritize or how to adjust the requirements set out in policy.¹²

TDCJ does track some information about the deployment of correctional officers to short-staffed units through its staffing command center, but individual prisons often only report these nuances on paper shift rosters, and the agencywide staffing data available to agency leadership often do not reflect the daily reality at prisons. Without this granular level of data, and due to the agency's reliance on a paper-based roster system, TDCJ cannot accurately assess and address its staffing challenges at different prisons.¹³

PREA § 115.13 requires under provision (a)(4) that facilities take into consideration “[a]ny findings of inadequacy from internal or external oversight bodies.” The Sunset Review Commission is such an oversight body, yet the audit report is entirely silent on how Montford Unit is addressing such an enormous problem with direct impact on sexual violence at the facility.

Such a serious failure of this audit report reflects that the assessment of this standard cannot be accepted as even minimally adequate, and thus this audit report fails to support an assessment of compliance with this standard.

PREA § 115.15 Preface, Defining Cross-Gender

Before addressing cross-gender viewing and searches under PREA § 115.15, it is essential to understand what “cross-gender” means for the purposes of PREA compliance. And in understanding what cross-gender means, we must first consider what gender itself means, again, for the purposes of PREA compliance. With these definitions provided, we can then consider the appropriate understanding of gender in regards to PREA § 115.15.

In a general and over-simplistic (and still biased) view, gender can be seen as predominately consisting of “male” and “female,” with “male” including cisgender males and transgender males, and “female” including cisgender females and transgender females. However, gender also includes persons who consider themselves to be specifically “nonbinary” (a gender that is not constrained by social stereotypes around what constitute “male” and “female”), a different gender, or a combination of genders.

12. Texas Sunset Advisory Commission. (September 2024). Sunset Staff Report: Texas Criminal Justice Entities, page 44 – 45. Available at: https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.

13. Texas Sunset Advisory Commission. (September 2024). Sunset Staff Report: Texas Criminal Justice Entities, page 63. Available at: https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.



For PREA compliance, it matters not at all how the social, political, religious, or other constructed frameworks of prison staff, incarcerated persons, or PREA auditors try to narrow or eliminate these to dismiss a person’s deeply felt identity in preference to one’s own bias. What does matter is that **failing to recognize these identities leads to the infliction of trauma and the encouragement of sexual violence, and as such undermines PREA compliance.**

Because the PREA standards, and especially the PREA auditor tools in their current state, add a conflicting term “opposite gender” that ultimately serves no purpose other than to provide an opening for abusive conduct and exemption of transgender and gender nonconforming persons, we must also define this term, as well as advocate for its removal. “Opposite gender” is a term that means the “further side” of a thing or the “reverse” of someone or something. The implication of an “opposite” when applied to a single concept such as “gender” is to create a mutually exclusive dichotomy, thus eliminating other possibilities. In considerations of PREA compliance, the use of “opposite” in terms of gender itself **is a violence that erases any other possible genders, and that may be misconstrued to even eliminate everything other than the two “opposites” of cisgender males and cisgender females.**

The term “opposite gender” is only used in one provision of the PREA standards, § 115.15(d), where discussing the examination of a person to determine genital status. Yet the PREA auditor tools inappropriately and abusively amplify the concept of “opposite” genders, an action that deliberately and intentionally serves to diminish the consideration of the PREA standards as applied to transgender, nonbinary, and gender nonconforming persons. The term is unnecessary, and in fact PREA purposes would be better served by the use of “cross gender” to address the abusive and offensive “curiosity” with transgender persons’ genitals that cisgender persons seem to have.

The DOJ provides a comment in a discussion of staff genders that clearly sets out how PREA § 115.15 should be viewed in terms of addressing the overall goals of the PREA standards:

facilities should make an individualized determination based on the gender identity of the staff member and not solely based on the staff member’s sex assigned at birth, the gender designation of the facility or housing unit to which the staff member is assigned, the related and required job duties of the specific staff member, the limits to cross-gender viewing and searches in PREA Standard 115.15, and the goal of the PREA Standards **to prevent trauma and sexual abuse** [emphasis added].¹⁴

Even if this is about staff gender, it is important to note the perspective, and that this statement cites the overall objective of PREA: “to prevent trauma and sexual abuse.” There are some important points to make concerning this overall PREA objective.

14. National PREA Resource Center FAQ. (May 1, 2023). How should transgender staff and non-binary staff be classified. . . . Available at: <https://www.prearesourcecenter.org/frequently-asked-questions/how-should-transgender-staff-and-non-binary-staff-be-classified-purposes>.



- To claim that a transgender man is a woman for 115.15 compliance issues does not prevent trauma, and **in many cases may actively cause trauma and may encourage sexual harassment and sexual abuse.**
- To claim that a transgender woman is a man for 115.15 compliance issues does not prevent trauma, and **in many cases may actively cause trauma and may encourage sexual harassment and sexual abuse.**
- To claim that a nonbinary person is a man or a woman for 115.15 compliance issues does not prevent trauma, and **in many cases may actively cause trauma and may encourage sexual harassment and sexual abuse.**

Once again, the biases of staff, other incarcerated persons, or the auditor are not themselves at issue in the assessment of this standard. What is at issue is what reduces trauma and sexual violence. Erasing and dismissing identities does neither.

The primary term used in the PREA standards is “cross-gender,” and this should be understood as its most simple and obvious meaning of being of a different gender. To insist that “cross-gender” means the same as “opposite-gender” or can only be applied to non-transgender persons is engaging in harmful duplicity that has no purpose but to diminish or erase consideration of the safety of transgender, nonbinary, and gender nonconforming persons.

With this in mind, we can state that 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 an audit is a failure to properly assess whether or not cross-gender searches and viewing are occurring at a facility. A blanket practice of misclassifying transgender females as “males,” transgender males as “females,” or nonbinary transgender persons according to any stereotype 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 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].¹⁵

It should be emphasized that this does not state “may not be compliant,” it states “would not be compliant.”

15. National PREA Resource Center FAQ. (October 24, 2023). Discussing searches of transgender or intersex residents. Available at: <https://www.prearesourcecenter.org/frequently-asked-questions/can-you-please-clarify-parameters-conducting-search-transgender-or>.



At this point, we can proceed to the guidance in the Auditor Compliance Tool,¹⁶ which fails to encourage progress toward zero-tolerance, fails to prevent trauma, and **in many cases may actively cause trauma and may encourage sexual harassment and sexual abuse.**

In the audit site review comments for PREA § 115.15(a), the Auditor Compliance Tool provides the following highly problematic language:

Note: the Standard use the term “cross-gender,” but for the purposes of clarity in the site review instructions we use both “cross-gender” and “opposite-gender” when referring to viewing or searches of persons confined in the facility by staff of the opposite gender.¹⁷

This redefines “cross-gender” as “opposite-gender,” which effectively, at a minimum, erases the existence of nonbinary and some gender nonconforming persons, and implies on the one hand that only persons who adhere to stereotypes of what constitutes “male” and “female” norms are worth considering in this standard, and on the other hand can allow auditors to claim only physical characteristics (a genital-based rule) meet “opposite-gender” descriptions. This instruction undermines PREA claims of zero tolerance for sexual violence as it applies to transgender, nonbinary, and gender nonconforming persons; and it promotes the application of harmful stereotypes for these same populations.

The Auditor Compliance Tool audit site review comments for PREA § 115.15(b) and (c) refer to the provision (a) guidelines, here encouraging a false and discriminatory treatment specifically of transgender females. At a minimum, the site review comments must address that “female” here includes transgender and cisgender females. Otherwise, the insistence of the review comments on the crudely reductive “opposite gender” language serves to allow or even encourage the dismissal of transgender females as somehow not “opposite.” Doing so, again, **may actively cause trauma and may encourage sexual harassment and sexual abuse.**

The Auditor Compliance Tool audit site review comments for PREA § 115.15(d) again insists on diminishing the humanity of transgender persons by insisting on the use of “opposite gender.” Here and earlier, the instructions state that this is “for the purposes of clarity,” which indicates the clarity of discrimination only. There is nothing that insistence on such terminology “clarifies” except an intent to deliberately dismiss the consideration of harm to, and encourage erasure and sexual abuse of, transgender, nonbinary, and gender nonconforming persons. This is continued and underscored by statements such as “staff of both genders,” which very clearly erases all but the narrow gender binary stereotypes.

Understanding these ways that the Auditor Compliance Tool, as it currently exists, contributes to the infliction of trauma and encourages sexual harassment and sexual violence, we move on to the audit report assessment of this standard.

16. TPI strongly advises modification of the Auditor Compliance Tool to eliminate the bias it encourages. The tool is available at: <https://www.prearesourcecenter.org/sites/default/files/library/ACTPrisonJail.pdf>.

17. National PREA Resource Center. (ca. 2022). PREA Audit: Auditor Compliance Tool, Facility: Prison / Jail. Available at: <https://www.prearesourcecenter.org/sites/default/files/library/ACTPrisonJail.pdf>.



PREA § 115.15, Cross-Gender Viewing and Searches

Please see the PREA § 115.15 Preface, above, for additional information about serious issues with how PREA implementation instructions undermine the goals of PREA compliance for transgender, nonbinary, and gender nonconforming persons.

(a) The facility shall not conduct cross-gender strip searches or cross-gender visual body cavity searches (meaning a search of the anal or genital opening) except in exigent circumstances or when performed by medical practitioners.

Purpose: To limit intimate bodily contact of inmates by staff and enable bodily privacy for both [cisgender and transgender] male and [cisgender and transgender] female [and nonbinary and gender nonconforming incarcerated persons] in order to prohibit abuse and trauma that might arise from that contact or viewing.¹⁸

The audit report itself reflects violence against transgender persons by claiming that all of the transgender women and nonbinary persons housed at the facility are “mens/boys.” The audit report extends the false claim in the discussion of this standard by claiming that “[f]emale [incarcerated persons] are not housed at the facility.” TPI can document many females housed at Montford Unit.

(b) As of August 20, 2015, or August 20, 2017 for a facility whose rated capacity does not exceed 50 [incarcerated persons], the facility shall not permit cross-gender pat-down searches of female [incarcerated persons], absent exigent circumstances. Facilities shall not restrict female [incarcerated persons'] access to regularly available programming or other out-of-cell opportunities in order to comply with this provision.

Concerning PREA § 115.15(b), if the facility allows cisgender males and transgender males and nonbinary staff to conduct pat-down searches of transgender females, then the facility permits cross-gender pat-down searches of female incarcerated persons. Cisgender males and transgender males, as well as nonbinary persons, are not the same gender as cisgender females and transgender females. All pat-down searches of incarcerated cisgender females and transgender females by cisgender males or transgender males constitute pat-down searches of female incarcerated persons by male staff. TPI contends also that the audit report, by refusing to identify transgender females among the transgender persons housed at the unit, not only fails to adequately assess compliance with PREA § 115.15(b), but also may be considered as supporting violence against transgender women.

As discussed above, the audit report supports violence against transgender females by erasing the existence of the transgender female persons housed at the facility. This provision also was not adequately assessed.

18. National PREA Resource Center. (ca. 2015). PREA Standards in Focus 115.15. Text corrected to clarify compliance with this standard. Available at: <https://www.prearesourcecenter.org/sites/default/files/library/115.15.pdf>.



(c) The facility shall document all cross-gender strip searches and cross-gender visual body cavity searches, and shall document all cross-gender pat-down searches of female [incarcerated persons].

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

(d) The facility shall implement policies and procedures that enable [incarcerated persons] to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia, except in exigent circumstances or when such viewing is incidental to routine cell checks. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering an [incarcerated persons] housing unit.

Concerning PREA § 115.15(d), which TPI points out incorrectly discusses “opposite” gender viewing (see the PREA § 115.15 Preface, above), the refusal to acknowledge the gender of transgender persons also results in a failure to meet this standard.

TPI would like to point out that also of relevance to PREA § 115.15(d) is that in circumstances requiring constant or near constant observation (which in TDCJ includes both CDO, or constant direct observation, and SOS, or security observation status, neither of which are covered in the audit report), the facility is likewise accountable for compliance with PREA § 115.15(d). Per the National PREA Resource Center FAQ:

[A] cross gender staff can be assigned to suicide watch, including constant observation, so long as the facility has procedures in place that enable an [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.¹⁹

19. National PREA Resource Center FAQ. (December 18, 2015). Discussing cross-gender viewing of transgender or intersex persons during “suicide watch.” Available at: <https://www.prearesourcecenter.org/frequently-asked->



Due to the numerous problems with the audit of PREA § 115.15, TPI asserts that the assessment of this standard was seriously deficient and cannot support a finding of compliance with this standard.

PREA § 115.21, Evidence Protocol and Forensic Medical Examinations

The audit report failed to provide the number of forensic medical examinations conducted during the audit period. Due to the number of times it has been reported to TPI that SANE exams have been denied or discouraged, as well as the extremely low rate of substantiated allegations, providing this number should be essential in all TDCJ audit reports. Based on our experience and the lack of information provided in this report, TPI asserts that the report cannot support compliance with this standard.

PREA § 115.41, Screening for Risk of Victimization and Abusiveness

The discussion of this standard in the audit report is very cursory, and provides no specific information to substantiate claims that the screening process is used or effective.

TPI notes that an “objective” screening tool does not guarantee a nondiscriminatory screening tool. For example, 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 personal bias.²⁰ 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 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.”²¹

TPI asserts that TDCJ PREA compliance policy excludes persons who identify as gender nonconforming and possibly nonbinary. According to the TDCJ *Safe Prisons/PREA Plan* and the PREA Standards, the term transgender refers to “a person whose gender identity (i.e., internal sense of feeling male or female,) is different from the person’s assigned sex at birth.” This implies an old and limited definition of “transgender” that does not include nonconforming and

[questions/how-do-requirements-standard-11515d-apply-inmates-who-have-been-placed.](#)

20. National PREA Resource Center FAQ. (May 10, 2021). What is meant by the term “objective screening instrument.” Available at: <https://www.prearesourcecenter.org/frequently-asked-questions/what-meant-term-objective-screening-instrument-prea-standard-11541>.

21. National PREA Resource Center FAQ. (October 21, 2016). Discussing standard 115.41 requirements. Available at: <https://www.prearesourcecenter.org/frequently-asked-questions/does-standard-11541-115241-115341-require-facilities-affirmatively>.



nonbinary persons. PREA and the Safe Prisons Plan technically address this by including “gender nonconforming” in their discussions. The PREA Final Rule notes that:

The standards account in various ways for the particular vulnerabilities of [incarcerated persons] who are LGBTI or whose appearance or manner does not conform to traditional gender expectations. The standards require training in effective and professional communication with LGBTI and gender nonconforming [incarcerated persons] and require the screening process to consider whether the [incarcerated person] is, or is perceived to be, LGBTI or gender nonconforming. The standards also require that post-incident reviews consider whether the incident was motivated by LGBTI identification, status, or perceived status.

The PREA standards require under § 115.41(d) that screening for risk of sexual victimization shall consider several factors, including “(7) Whether the [incarcerated person] **is or is perceived to be** gay, lesbian, bisexual, transgender, intersex, or **gender nonconforming**” (emphasis added). If TDCJ risk screening markers include only LGBXX (unknown code), TRGEN, and INTSX, to be compliant with this requirement, it appears that gender nonconforming and nonbinary persons must be included in one of these categories, with TRGEN being the category generally most appropriate for risk assessment. TPI notes that SPPOM-03.01 screening in Section II for “Lesbian, Gay, Bisexual, Transgender, Intersex (LGBTI), and Gender Non-conforming” persons does not provide a coding entry for gender nonconforming persons. Questions 9 and 10 on Attachment E only include lesbian, gay, bisexual, heterosexual, transgender, and intersex. Section IV follow-up questions only address the “perceived to be” portion of this requirement, not the “is” portion. Therefore, it is not clear how TDCJ identifies persons in these classes, or how these criteria are applied for PREA § 115.42 purposes. This appears to indicate TDCJ policy makes it easy to exclude considerations of vulnerability for gender nonconforming and nonbinary persons.

Based on the lack of support for compliance and the issues noted above that are not addressed, TPI asserts that this audit report is deficient in supporting its claim that Montford Unit is compliant with this standard.

PREA § 115.42, Use of Screening Information

This standard requires persons at high risk of victimization to be separated from those at high risk of abuse. For PREA § 115.42, the DOJ has clarified that the manner of separation will depend on the circumstances of confinement, providing examples:

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



- In facilities that include multiple housing units, vulnerable persons should be assigned to different housing units from persons who are potentially abusive.²²

TPI regularly receives complaints from transgender persons incarcerated in TDCJ that 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. The antagonism may be due to personal or religious hatred, but it can also be due to affiliation with organizations that have rules against or that stigmatize any fraternization or association—including sharing a cell—with a transgender person or any LGBTI person. TPI does not contend that TDCJ does not have a screening process or use the screening information, but that both as 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 its purpose.

Concerning PREA § 115.42(c), TPI notes that based on reporting to us, we have heard of only a single transgender or intersex incarcerated person NOT housed according to their gender assigned at birth in TDCJ, and our information indicates that person has had genital surgery. Thus TDCJ appears to have, in practice, a blanket rule of making housing assignments for transgender and intersex persons based on genital configuration, not on a case-by-case basis.

The DOJ has stated that an auditor:

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 [as is true in at Boyd Unit and across TDCJ facilities] raises the possibility of non-compliance. The auditor should then closely examine the facility’s actual assessments to determine whether the facility is conducting truly individualized, case-by-case assessments for each transgender or intersex [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.

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

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



specific inmate records/files to determine if individualized, case-by-case housing and programming assignments of transgender and/or intersex inmates are being made.²³

(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 many persons note that if they report issues, those are either dismissed or ignored, or addressed by locking the person in restrictive housing, likely with little or no property, for a week or more while an “investigation” is conducted then found unsubstantiated at best. The process appears seldom conducive to meeting the spirit of the PREA standard, and instead may offer staff opportunities to discourage reports of sexual victimization risks. TPI feels it is inadequate to simply parrot policy in support of meeting this standard, as is done in this audit report, and it must be supported by genuine investigation into the efficacy of the process for incarcerated transgender and intersex persons.

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

It is not known whether Montford Unit includes two-person cells with showers in the cell, but TPI notes that for such cell configurations, if one of the persons is transgender or intersex and one is not, that housing is not in compliance with 115.42(f).²⁴ 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.²⁵

(g) The agency shall not place lesbian, gay, bisexual, transgender, or intersex [incarcerated persons] in dedicated facilities, units, or wings solely on the basis of such identification or status,

23. National PREA Resource Center. (ca. 2015). PREA Standards in Focus 115.42 Use of Screening Information. Available at: https://www.prearesourcecenter.org/sites/default/files/library/115.42%20SIF_0.pdf.

24. This generally would be the case even if the unit claims that opportunities for separate showers are provided because during lock downs and even periods of staff shortages, those opportunities are some of the first to be overlooked or set aside.

25. National PREA Resource Center FAQ. (April 23, 2014). Discussing PREA § 115.42(f) and separate showers. Available at: <https://www.prearesourcecenter.org/frequently-asked-questions/standard-11542-use-screening-information-requires-transgender-inmates-be>.



unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such [incarcerated persons].

It is not known why this audit report only refers to an assessment of dedicated housing that included only “bisexual, transgender, or intersex” persons. That begs the question of whether there is dedicated housing for gay and lesbian persons in violation of this standard.

Due to the several problems with the assessment of Montford Unit for compliance with this standard, as noted above, TPI asserts that it cannot be determined if Montford Unit is compliant or not with this PREA standard, and it is doubtful that the facility is compliant.

PREA § 115.43 Preface, TDCJ “Protective Custody” Designations

PREA § 115.43 covers the separation or segregation of persons at high risk for sexual victimization, and the section uses several terms that provide opportunities for manipulation of the standard. These include “protective custody,” “segregated housing,” and “involuntary segregated housing.” None of these are specifically defined in PREA § 115.5 general definitions, nor are definitions provided in the FAQ available online via the National PREA Resource Center. The PREA Final Rule²⁶ 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.²⁷ 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.

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

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



The following discussion provides definitions and descriptions of a number of types of protective custody in use in TDCJ. All of these should be considered “protective custody” for PREA § 115.43 and PREA § 115.68 purposes because all can be used to separate persons at risk of sexual victimization or after reporting sexual victimization.

Protective safekeeping: “Protective safekeeping” is defined in the TDCJ *Classification Plan* as being “for [incarcerated persons] who require the highest level of protection in a more controlled environment than other general population [persons], due to threats of harm by others or a high likelihood of victimization.” This designation is more fully discussed in the *Protective Safekeeping Plan*, a document that is not made public and to which TPI does not have access. Protective safekeeping is also identified as custody levels P6 and P7, with P7 having more restrictions. We should point out that one way TDCJ makes this confusing can be seen in this definition, where they compare persons in protective safekeeping to “other general population” persons. This allows TDCJ to claim even protective safekeeping is not actually “segregation” because it is “general population.” However, TDCJ protective safekeeping is very separate, and there are only about three units in the TDCJ system with housing designated for protective safekeeping.²⁸

This designation, based on reports from the one person with a P6 designation that we have been in contact with, is mainly used for persons who are politicians and other high-profile figures, persons with law enforcement history, and persons who have testified against powerful syndicates or cartels. This person did not mention anyone being in there due to a risk of sexual victimization, although there certainly could be. TDCJ protective safekeeping is absolutely separate from all other TDCJ populations, with no mixing outside P6 and P7. As far as TPI is aware, protective safekeeping is never recommended for only a risk of sexual victimization. We have never heard of any person being designated as “protective safekeeping” due to sexual violence or risk of sexual violence. This contrasts with TDCJ responses to PREA auditors that tend to indicate this is the only “protective custody” meeting PREA § 115.43 requirements.²⁹ All

28. TPI also notes that a 2016 PREA audit report documents that starting November 1, 2015, “TDCJ no longer uses the term ‘Protective Custody’ and now refers to these areas as ‘Protective Safe Keeping.’” Agency staff would likely claim the change eliminated confusion about the nature of the housing, but TPI strongly asserts that this is simply a means of obscuring actual conditions, much the way other types of abusive segregation have been renamed from “solitary confinement” to “administrative segregation” to “restrictive housing” over the years to obscure the abusive nature of solitary confinement. Ralph P. Woodward, “TDCJ Rufus H. Duncan Unit, PREA Audit Report Final,” March 23, 2016: 15, https://www.tdcj.texas.gov/documents/prea_report/Duncan_Unit_2016-02-26.pdf.

29. 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 protective safekeeping or restrictive housing for PREA § 115.43 compliance, which TPI asserts is insufficient. We also note that restrictive housing is nearly always a disciplinary designation, and most likely to refer to persons who might be identified as potential abusers.



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

TPI has seen many audit reports that appear to simply accept TDCJ’s implied or stated claims that the only legitimate PREA § 115.43 “protective custody” in the system is TDCJ protective safekeeping. That is far from true. TPI believes such statements should be considered deliberate and intentional efforts to manipulate PREA data collection, PREA audits, and PREA compliance.

Safekeeping status: Safekeeping designation or status is defined in the TDCJ Classification Plan as:

a status assigned to [incarcerated persons] who require separate housing within general population due to threats to their safety, vulnerability, a potential for victimization, or other similar reasons. [Incarcerated persons] in safekeeping are also assigned a principal custody designation, including safekeeping Level 2-P2 [minimum custody], safekeeping Level 3-P3 [minimum custody], safekeeping Level 4 -P4 [medium custody], and safekeeping Level 5-P5 [closed custody].

Safekeeping status is sought by incarcerated persons who experience vulnerabilities, including vulnerabilities related to sexual violence. However, safekeeping status is provided only in relatively few cases, and some people experience sexual violence over and over and are refused safekeeping status because of the length of their incarceration, their body size, or in some cases for specious reasons such as being “too intelligent.”³⁰ 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.³¹ 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.³² The more complete explanation was that there was no *safekeeping* housing on the units where the

30. 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/>.

31. 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.



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-identified as transgender in the system so she could access the program), and she entered the program. That was the only impediment to her participation in that program. TDCJ's insistence that "housing availability" instead of the safekeeping designation kept her from the program should be considered deliberate manipulation to avoid PREA documentation and data requirements.

On paper, safekeeping persons may be able to access all the benefits of general population, but in practice the safekeeping population is often segregated in abusive ways at meals, recreation, and other unit movement and programs; and in some cases they are kept from some or all work assignments, this apparently being unit-level practice at some facilities, depending on the administration of the moment. Further, safekeeping housing is often in restrictive housing areas, meaning those housed there are subjected to the same disciplinary environment as persons in separate—or sometimes the same—sections or cell blocks who are there for disciplinary reasons.³³ 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

32. 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.

33. TPI has received a number of complaints that minimum level safekeeping persons and general population persons with a "cool bed score" are housed with medium and close custody persons in restrictive housing sections that are designated for safekeeping and for persons requiring temperature control. Texas Government Code 501.112 prohibits such mixed classifications "unless the structure of the cellblock or dormitory allows the physical separation of the different classifications." It appears this practice is considered not a violation of TGC 501.112 because persons housed in these areas are locked in their cells much of the time, and must be escorted when leaving the cell (standard restrictions in this type of housing, which are disciplinary in nature). This abusive treatment of safekeeping and cool bed persons appears to be surreptitious disciplinary actions meant to discourage requests for safekeeping and suits about excessive heat. Housing in disciplinary environments should certainly be considered in assessments related to PREA protective custody compliance areas.



status, then they are in involuntary protective custody, and the documentation requirements under PREA must be met.

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

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

Lockup for reporting sexual violence: TDCJ seems to go to some effort to indicate only “protective safekeeping” (custody classification P6 and P7) constitutes “protective custody” or “involuntary protective custody” for PREA purposes, and TDCJ protective safekeeping can constitute PREA protective custody but appears to be seldom used for that in actual practice. As explained above, “safekeeping designation” is definitely “protective custody” under PREA when related to addressing risk for sexual violence, and may also constitute “involuntary protective custody.” Likewise, lockup for reporting sexual violence is “protective custody” under PREA, and often constitutes “involuntary protective custody” under PREA. In almost every report we have had documenting a TDCJ response to a report of sexual abuse, if the report is not ignored, the person reporting is placed in a separate cell and isolated for an Inmate Protection Investigation (IPI).³⁴ 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

34. 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.



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 § 115.43.³⁵

Protective Management: Some PREA audit reports for TDCJ facilities have mentioned a housing designation called “protective management.” The housing designation is described as segregated housing for protection. TPI has not ever seen this phrase in any other context, although we do believe there are several additional segregation categories not covered here. We mention this here because it appears to be directly related to PREA compliance with PREA §§ 115.43 and 115.68, but is not always covered in audit report assessments. It appears that this “protective management” designation should also be considered to be PREA protective custody, and sometimes may constitute involuntary protective custody.

This discussion shows that without a doubt, TDCJ “protective safekeeping” is absolutely not the only classification that meets the “protective custody” definition under the PREA standards, nor is it the only classification that can be considered “involuntary protective custody.” This discussion should also show the extent of the manipulation that TDCJ administration has engaged in to deliberately misrepresent PREA compliance and mislead PREA auditors, in some cases with what should be considered fully knowledgeable participation of the auditors. Without a doubt, protective custody and involuntary protective custody are sometimes necessary and of great benefit to survivors of sexual abuse and those threatened with sexual violence. But TDCJ manipulates this practice for the benefit of the agency—and without necessary transparency, often causes great harm and compounds the sexual violence a survivor has experienced by adding personal and systemic violence from the staff and agency.

PREA § 115.43, Protective Custody

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

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

This provision covers housing that is both separate due to a risk of sexual violence, and that is considered involuntary. This is not limited to any specific housing category or classification or

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



location, it includes any separation for a PREA concern that is not done with the concurrence of the person being separated. In TDCJ, this can include all types of transit and restrictive housing, SOS, CDO, any type of “lockup,” “protective management,” and all other types of separation such as safekeeping and protective safekeeping (see the preface section above concerning TDCJ types of protective custody). Such separation must be supported by an assessment that there is no other safe alternative to separation from a likely abuser within 24 hours, and PREA § 115.43(d) provides the specifics that must be included in the documentation of that assessment.

Regardless of policy, reports to TPI indicate that placement in involuntary segregation due to immediate endangerment seldom considers any other options outside segregation, often involuntary. This practice in effect serves to punish persons for reporting endangerment and to discourage reporting. Concerning high risk of sexual victimization that is not imminent but may be an ongoing risk due to a person’s presentation or other factors, TDCJ often fails to separate by providing safekeeping designation to persons who repeatedly experience sexual violence at multiple facilities, nearly always claiming a unit transfer will solve the issues.

This audit report makes the claim that there was not even one instance in 12 months that any person was placed in involuntary segregation due to risk of sexual victimization. To the contrary, it is a near certainty that everyone making an allegation of sexual abuse or sexual harassment (PREA § 115.68 requires 115.43 compliance for such reports) or requesting an investigation of a threat of sexual violence, would have been placed in segregated housing, and it is just as certain that at least some of those would have been involuntary placements. The failure to address this fact of TDCJ operational policy is a clear indication of a lack of due diligence in the conduct of the audit to verify claims made by TDCJ staff.

(b) [Incarcerated persons] placed in segregated housing for this purpose shall have access to programs, privileges, education, and work opportunities to the extent possible. If the facility restricts access to programs, privileges, education, or work opportunities, the facility shall document:

- (1) The opportunities that have been limited;
- (2) The duration of the limitation; and
- (3) The reasons for such limitations.

This provision does not limit segregation to being involuntary, so it covers all segregated housing for the purpose of separating persons at risk of victimization from potential abusers, as well as those who have reported sexual violence as per PREA § 115.68. Again, this is not limited to any specific housing category or classification or location, it includes any separation, voluntary or involuntary, of a person at risk for victimization from potential abusers. This includes all types of transit and restrictive housing, SOS, CDO, any type of “lockup,” “protective management,” “safekeeping designation,” “protective safekeeping,” and all other types of separation. All such placements must document restrictions to “programs, privileges, education, or work opportunities” per the specified requirements.



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

(c) The facility shall assign such [incarcerated persons] to involuntary segregated housing only until an alternative means of separation from likely abusers can be arranged, and such an assignment shall not ordinarily exceed a period of 30 days.

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

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

(d) If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document:

- (1) The basis for the facility’s concern for the [incarcerated person’s] safety; and
- (2) The reason why no alternative means of separation can be arranged.

This provision defines the documentation required for PREA § 115.43(a) placements in involuntary segregated housing. The audit report again simply claims no one was in segregated housing, which is not true. This discussion is not sufficient to consider Montford Unit compliant with this provision.

(e) Every 30 days, the facility shall afford each such [incarcerated person] a review to determine whether there is a continuing need for separation from the general population.

This provision does not state that it is only for involuntary segregation, and because other provisions specify where applicable to involuntary segregated housing, this provision must be read as encompassing all segregation for risk of sexual victimization. Thus all persons held in any type of segregated housing, voluntary or involuntary, for risk of victimization from



potential abusers—including safekeeping, protective safekeeping, all types of transit and restrictive housing, SOS, CDO, any type of “lockup,” “protective management,” and all other types of separation—are to be reviewed every 30 days to determine if there is a continuing need for separation.

TPI believes it is highly unlikely that TDCJ provides a review of each person in safekeeping designated housing a review of the continuing need for separation every 30 days.

TPI asserts that due to the above deficiencies, TPI asserts that Montford Unit must be considered not complaint with this standard.

PREA § 115.61, Staff and Agency Reporting Duties

Although TDCJ makes claims to comply with this standard, echoed in this audit report, their own data strongly contradict these claims. TDCJ annual reports indicate that from 2014 through 2022, only four times did staff make reports of endangerment, suspicion of a threat of sexual violence, or other issues related to PREA concerns. That would be four complaints from staff out of roughly 21,050 complaints submitted over that time (that would be 0.019% of the complaints). There should be no doubt whatsoever that staff do not take this requirement seriously in any TDCJ facility, and all audit reports should identify the number of reports from staff during the audit period.

Due to the overwhelming evidence that TDCJ is not complaint with this standard anywhere in its operations, Montford Unit cannot be considered complaint with this standard without additional information, not provided in this audit report.

PREA § 115.67, Protection Against Retaliation

The audit report provides a very cursory discussion of this standard, and provides no information supporting efficacy of the policy claims. Even if the limited number of admitted sexual violence allegations is accurate (almost certainly it is not), there would have been some efforts to retaliate against persons making allegations. Many audit reports provide some statement concerning the number of incidents of retaliation during the audit period. With no statement concerning this at all, it must be assumed that there were incidents of retaliation and that Montford Unit staff failed to prevent retaliatory actions. Without further support for compliance with this standard, TPI asserts that this audit report cannot be determined to support compliance with this standard.

PREA § 115.68, Post-Allegation Protective Custody

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.

The standard response in TDCJ, if there is a response, when someone reports an incident of sexual violence or a risk of sexual victimization is to place the person reporting in transit or



restrictive housing for an IPI (which requires PREA § 115.43 consideration, in some cases via PREA § 115.68), and that placement generally lasts several days to sometimes weeks (although the designation often changes during that time to obscure the extended stay in segregated housing). Such housing also involves separation from and loss of property, as well as loss of opportunities, even though very often a cell change to a different section could address the issue without segregation while the investigation is ongoing. It is highly unlikely that of the 14 (or possibly 28) reports of sexual abuse, none were placed in segregated housing involuntarily during the preceding 12 months. Most people reporting such treatment to TPI indicate the placement in such segregated housing is often done involuntarily to discourage reports of sexual violence.

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

This audit report makes the unsupported claim that not one person was held in segregated housing following a PREA incident in the past 12 months. TPI asserts that such claims are clearly false, and that based on the discussion of this standard, it cannot be determined if Montford Unit is compliant with this standard.

PREA § 115.72, Evidentiary Standard for Administrative Investigations

The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

PREA § 115.72 requires that no standard of evidence higher than a preponderance of the evidence (greater than a 50 percent chance of occurrence—essentially equal to a coin toss) be used in substantiating an allegation of sexual abuse.

It is difficult to understand why anyone would consider a claim that the preponderance of evidence standard was truthfully stated when out of 14 reports of sexual abuse, only one of those reports had a greater chance of occurring than a 50/50 chance. Only one had even a coin toss’s chance of having occurred. Such low rates of substantiation indicate manipulation of the evidence on the part of the investigators and a failure to appropriately consider the preponderance of evidence standard.

Due to the extremely low rates of substantiated allegations, as reported in the most recent PREA Ombudsman report for calendar year 2023, it is highly unlikely that a preponderance of evidence standard is used anywhere in TDCJ. In that report, for allegations against staff, only 7% of 505 sexual abuse allegations were substantiated, 1% of 86 sexual harassment allegations



were substantiated, and 0% of 147 voyeurism allegations were substantiated. These dismal accountability ratings are actually an improvement over the prior year. Amazingly, TDCJ seriously claims that more than one in three (186 of 505, or 37%) of the allegations of staff on incarcerated persons sexual abuse were false reports, a statement truly beyond belief.

For allegations against other incarcerated persons, only 1.4% of 426 allegations of “nonconsensual sexual acts” were substantiated, and only 2.9% of 421 reports of “abusive sexual contact” were substantiated. Regardless of one’s concerns about possible false reporting, these extremely low rates of substantiation indicate a preponderance of evidence is not the standard being used anywhere in the TDCJ system.

For Montford Unit, the data are just as remarkable. The auditor noted that for allegations against staff, 14% of 7 sexual abuse allegations were substantiated, and claimed that in 12 months there was not even one sexual harassment allegation reported (an unbelievable claim in itself). For allegations against other incarcerated persons, 0% of 7 allegations of sexual abuse were substantiated.

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

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

PREA § 115.73, Reporting to Incarcerated Persons

This audit report states that during the 12-month audit period “there has not been a substantiated or unsubstantiated allegation against a staff member” that would require notification, yet elsewhere in the report, it is stated that at least one sexual abuse allegation against staff was substantiated, and in the PREA § 115.76 discussion, states that staff person was terminated, an action that clearly requires notification. This indicates clear noncompliance with the standard.

- (a) Following an investigation into an [incarcerated person’s] allegation that he or she suffered sexual abuse in an agency facility, the agency shall inform the [person] as to whether the allegation has been determined to be substantiated, unsubstantiated, or unfounded.
.....
- (c) Following an [incarcerated person’s] allegation that a staff member has committed sexual abuse against the [incarcerated person], the agency shall subsequently inform the [incarcerated person] (unless the agency has determined that the allegation is unfounded) whenever:
 - (1) The staff member is no longer posted within the [incarcerated person’s] unit;



- (2) The staff member is no longer employed at the facility;
- (3) The agency learns that the staff member has been indicted on a charge related to sexual abuse within the facility; or
- (4) The agency learns that the staff member has been convicted on a charge related to sexual abuse within the facility.

Clearly either documentation of the staff sexual abuse was not adequately kept, or the audit report has misrepresented data available. Either way, what is presented in the discussion of this standard documents noncompliance with the PREA § 115.73 standard.

PREA § 115.87, Data Collection

- (a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.
- (b) The agency shall aggregate the incident-based sexual abuse data at least annually.
- (c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.
- (d) The agency shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.
- (e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its [incarcerated persons].
- (f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

Although the discussion of this standard in this audit report is cursory and does not provide statements indicating a failure to provided competent data collection, the much more in-depth and responsible Sunset Commission audit report noted serious problems with TDCJ data collection and management.

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.³⁶

36. Texas Sunset Advisory Commission. (September 2024). Sunset Staff Report: Texas Criminal Justice Entities, page 62 – 63. Available at: https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.



[in large bold text in the Sunset Commission report:] *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* [emphasis added].³⁷

Based on this information and the vague and cursory information in the PREA audit report, TPI asserts that it cannot be determined from this audit whether or not Montford Unit is in compliance with this standard.

PREA § 115.401, Frequency and Scope of Audits

(m) The auditor shall be permitted to conduct private interviews with [incarcerated persons], residents, and detainees.

TPI has received reports that these random and targeted interviews include TDCJ staff observing and listening to the responses provided to auditors, and in some cases interviewees have been warned of retaliation if they do not provide “appropriate” responses. Where this occurs, this is a violation of PREA § 115.401(m). Per the 2022 Auditor Handbook:

The purpose of conducting one-on-one interviews with persons confined in the facility is to provide a safe space where they can freely discuss their experiences in and perspectives of the facility on sensitive issues related to sexual safety [page 59].

(o) Auditors shall attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.

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.³⁸ TPI was not contacted concerning the information we have about Montford Unit, and no reference to our audit comments and data readily available online was made. For auditor convenience, that information can even be easily viewed and downloaded at our web page for auditors: https://tpride.org/projects_prisondata/prea.php. Because TPI is well known to have relevant data for PREA audits, and because this data is readily available online, the failure to include

37. Texas Sunset Advisory Commission. (September 2024). Sunset Staff Report: Texas Criminal Justice Entities, page 64. Available at:

https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.

38. The 2022 Auditor Handbook notes that “auditors must demonstrate that they attempted to communicate with a **community-based or victim advocate** to gather information about relevant conditions in the facility” (emphasis added to highlight 2022 Auditor Handbook text that incorrectly uses the singular instead of plural instructions) and 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.



data from TPI can only be viewed as a failure of adequate due diligence or deliberate omission from this audit report.

PREA § 115.402, Auditor Qualifications

(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 [page 14].

TPI believes that for three 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. And, auditor bias is apparent across the scope of this and other PREA auditor reports, indicating protection of the status quo is the purpose, not auditing PREA compliance. 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 [2022 Auditor Handbook, page 19].

It appears that all Texas prisons are audited through contract with Corrections Consulting Services, LLC (CCS). 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.” 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 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.³⁹

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 had deep connections with the for-profit prison industry, which has a vested interest in limiting oversight of prison operations. The auditor worked for Corrections Corporation of America, a company notorious for its mistreatment of incarcerated persons, from 2009 through 2022. Rebranded as Core Civic, this auditor received money from this Texas prison operator as recent as 2022. The auditor continues to receive pay from Advanced Correctional Healthcare, a long-time provider of substandard health services for incarcerated persons.⁴⁰

39. Moore, M.J. (2020, December 31.) What an Ex-Cop Learned in Prison About Police Culture. *The Nation*. Available at <https://www.thenation.com/article/politics/toxic-culture-police-prison/>.

40. See for example, Burdziak, A. (2016, July 10.) PLN Quoted Re Privatized Medical Care for Prisoners, Advanced Correctional Healthcare. Available at <https://www.humanrightsdefensecenter.org/action/news/2016/pln-quoted->



This auditor can be seen to have completed seven PREA audits in the NPRC audit database, three of which are final reports, and not one includes a corrective action. In fact, all three have the exact same ratings of 45 “meets standards” and no corrective actions. These are not audits, these are performative shams that cover up sexual violence, not promote PREA goals.

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” (page 41).⁴¹ The directory appears to only include audits conducted since September 2022. This auditor has been certified since 2014, so TPI feels it would be important to know if this failure to identify any corrective actions continues into the past. Even with this preliminary evidence of showing favor and bias for prison operators and administration over the safety of incarcerated persons, TPI questions whether any of the audits conducted by this auditor should be considered as supporting state or federal claims of PREA compliance.

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

TPI has identified the following deficiencies in this audit report. These are only what we can identify based on our data; we are certain additional deficiencies would be identified with full access to audit materials and other facility records.

- The audit report fails to follow the 2022 Auditor Handbook instructions concerning the use of person-first language.
- The audit report inaccurately represents the genders of persons housed at Montford Unit as “mens/boys,” erasing the existence of transgender women and nonbinary persons.
- The audit report failed to identify any corrective actions, in spite of documenting non-compliance.
- The audit report falsely stated that no persons at the facility had been placed in segregated housing related to sexual violence.

re-privatized-medical-care-prisoners-advanced-correctional-healthcare/. And more recently, Prison Legal News. (2024, October 15.) Advanced Correctional Healthcare Ends Two Suits Over Deaths at Ohio Jail. Available at <https://www.prisonlegalnews.org/news/2024/oct/15/advanced-correctional-healthcare-ends-two-suits-over-deaths-ohio-jail/>.

41. TPI does not currently have the means of determining the percentage of full compliance audits conducted under contract with CCS, but recent research into one prominent auditor of Texas facilities, Lynni O’Haver, indicates that Ms. O’Haver has not identified a single item requiring corrective action at a Texas facility. We would suggest the PREA Resource Center publish online a means of looking up audit result summaries (including the number of standards exceeded, met, and requiring corrective actions) by auditor and auditor employer in the interest of transparency concerning potential auditor and auditor employer integrity.



- The audit report indicates 14 administrative investigations into sexual abuse are ongoing, indicating data related to investigations is inaccurate, or a lack of attention to audit report preparation.
- The superficial coverage of compliance with PREA § 115.11, along with TPI's experience and work with persons housed at Montford Unit and elsewhere, indicates the facility is likely not fully compliant with this standard.
- The report failed to consider the very significant Texas Sunset Advisory Commission report documenting severe staffing, supervision, and monitoring problems across TDCJ. Based on the significance and obvious thoroughness of that audit, compared to the cursory nature of this audit report in its discussion of PREA § 115.13, the information provided in this report fails to support compliance with this standard.
- Due to numerous problems identified in the audit of PREA § 115.15, TPI asserts that the assessment of this standard is seriously deficient and cannot support a finding of compliance.
- The lack of support for compliance with PREA § 115.21 indicates it cannot be determined whether or not the facility is in compliance with this standard.
- The cursory discussion of PREA § 115.41, as well as identified problems with the TDCJ screening process, TPI asserts that it cannot be determined if Montford Unit is compliant with this standard.
- Due to the numerous reports to TPI across TDCJ facilities where vulnerable persons are placed in dangerous situations, as well as other issues documented below, TPI asserts that it is unlikely Montford Unit is compliant with PREA § 115.42.
- Due to the manipulation of protective custody designations and failures to appropriately identify segregated housing, TPI asserts that Montford Unit cannot be considered compliant with PREA §§ 115.43 or 115.68.
- Due to the dearth of staff reports of sexual violence over the last decade and more, TPI asserts that Montford Unit cannot be considered compliant with PREA § 115.61.
- Cursory information about PREA § 115.67 indicates it cannot be determined if Montford Unit is or is not compliant with this standard.
- Based on the lack of actual evidence supporting compliance with PREA § 115.72, as well as the lack of substantiated investigations into sexual violence, Montford Unit cannot be determined to be compliant with this standard.
- The discussion of PREA § 115.73 contradicts information provided elsewhere in the audit report. The report documents at least one incident of staff member abuse found substantiated, and that person was fired, but in this section it is stated that there was no substantiated allegation against staff and no incarcerated person was notified, violating



the requirement to notify the incarcerated person of the staff member's dismissal. This discussion appears to document non-compliance with this standard.

- The cursory nature of this audit report, along with the serious data collection and management issues noted by the Texas Sunset Commission, indicate that it cannot be determined from this report whether or not Montford Unit is in compliance with PREA § 115.87.
- Because of the several reports TPI has received that incarcerated persons are not allowed truly private interviews with PREA auditors, TPI asserts that it cannot be determined if Montford Unit is or is not compliant with PREA § 115.401(m).
- Because there is no indication that the audit included contact with any community advocates or other individuals and organizations that may have information about the facility (other than the MOU party), this audit is not compliant with the requirement under PREA § 115.401(o).
- TPI also asserts that conflicts of interest and bias, as explained below, mean the auditor does not meet the qualifications defined under PREA § 115.402.

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 at a minimum, PREA §§ 115.15, 115.42, 115.43, 115.61, 115.68, and 115.73 be considered to need corrective action at the next 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 ED Bryan Collier
TBCJ PREA Ombudsman Cassandra McGilbra
Montford Unit Senior Warden Greg Rodriquez
Montford Unit PREA Manager Diana Mars
PREA auditor Emilee Watts
Pete Flores, Chair, Senate Committee on Criminal Justice
Sam Harless, Chair, House Committee on Corrections
Venton Jones, Vice-Chair, House Committee on Corrections
Dick Durbin, Senate Judiciary Committee, Subcommittee on Crime and Counterterrorism
Sheldon Whitehouse, Senate Judiciary Committee, Subcommittee on Federal Courts,
Oversight, Agency Action, and Federal Rights
Lucy McBath, House Judiciary Committee, Subcommittee on Crime and Federal Government
Surveillance
Mary Gay Scanlon, House Judiciary Committee, Subcommittee on the Constitution and
Limited Government