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

April 18, 2025

re: 2025 Clemens 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) Clemens Unit conducted by auditor Matthew Taylor and Corrections Consulting Services, LLC, formerly PREA Auditors of America. The onsite portion of the audit was conducted from February 5 to February 7, 2025, no interim report appears to have been produced, and the final report was published on March 14, 2025.

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

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, https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title34-section30307&num=0&edition=prelim.

compliance.'"[3] Thus audits reflecting full compliance with PREA standards are in the best interest of state certification and full funding for prison operations, even when running counter to the PREA legislative objective of zero tolerance of sexual abuse and sexual harassment.

Audit quality and the resulting assessments are key factors in addressing problems hampering work toward the goals of the PREA legislation. DOJ's PREA Management Office 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.[5] 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 42 incidents of violence against persons housed at Clemens Unit. Of the total documented incidents, two involved noncompliance with some element of the PREA standards.[6]

The data presented in this letter is not comprehensive and only encompasses what is reported to TPI (in the case of Clemens Unit, that would be approximately 14 letters exchanged with four persons between 2019 and 2023), so it should be considered only a small portion of the incidents of violence, including sexual violence, that is actually occurring at Clemens 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 Clemens Unit.

All 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/.

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

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.

Contents

Summary of Deficiencies

Table 1 of this comment letter provides a summary of deficiencies identified in this audit report, described in the main body of this comment letter. Audit deficiencies include the reporting of questionable information, reporting of false information, use of problematic language, and apparent failures to comply with minimum audit requirements. In addition, this comment letter documents questionable information in the discussion of at least seven standards, false information related to at least the conduct of targeted interviews, that one standard was assessed as exceeding compliance with inadequate justification, and vague or inappropriate discussion of two standards. Based on these deficiencies, it appears that compliance is questionable for at least five standards, there is an indication that compliance is not met for

three standards, and the report documents a failure to comply with two standards with no corrective action required.

Table 1. Summary of Deficiencies

Audit Item	1	2	3	4	5	6	7	8
	(see definitions at bottom)							
Problematic audit report overall.	X	X	X	X	X			
Fails to adhere to person-first language guideline (see page 5).			X					
Fails to identify any corrective actions (see page 7).	X							
Time spent onsite less than minimum requirement (see page 7).	X							
Facility information appears inaccurate (see page 8).	X							
Random interviews fail to meet minimum requirement (see page 8).	X							
Target interviews fail to meet minimum requirement (see page 8).	X	X						
PREA § 115.11, zero tolerance deficiencies (see page 12).						X		
PREA § 115.13, supervision and monitoring deficiencies (see page 13).	X					X		
PREA § 115.21, SANE exam deficiencies (see page 16).	X				X	X		
PREA § 115.31, staff training deficiencies (see page 17).	X			X				
PREA § 115.41, screening deficiencies (see page 18).	X						X	
PREA § 115.42, screening data use deficiencies (see page 20).	X					X		
PREA § 115.43, protective custody deficiencies (see page 21).							X	
PREA § 115.64, first responder deficiencies (see page 28).					X			X
PREA § 115.68, victim protective custody deficiencies (see page 29).	X						X	
PREA § 115.72, evidence deficiencies (see page 30).	X							X
PREA § 115.402, audit qualification deficiencies (see page 31).						X		

1: Discussion contains questionable information.
2: Discussion contains false information.
3: Discussion contains problematic language indicating bias.
4: Exceeds standard given, discussion supporting assessment insufficient.
5: Discussion is vague, confusing, inaccurate, or inappropriate.
6: Discussion indicates standard compliance questionable.
7: Discussion indicates standard compliance not met.
8: Discussion documents standard compliance not met.

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 §§ 115.64 and 115.72 be considered to need corrective action at the next audit.
- That at a minimum, additional information be provided to support a finding of compliance for all remaining compliance issues mentioned in this comment letter.

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." Regardless whether or not the DOJ continues to support this now or in the future, person-first language is strongly supported by TPI, and we believe a failure to use for the most part person first language constitutes a failure to comply with at least the spirit of the PREA standards, if not PREA requirements for the use of professional and respectful language. The use of person-first language 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."[7] Although this audit report represents an improvement and does include some use of person-first language, the report also continues to use terms like "offender" and "inmate" throughout this report. The word "offender" is used approximately 17 times in the report (about half are in report and policy titles, the other half in audit report narratives), and the word "inmate" is used over 1,000 times. Although use of the word "inmate" may be considered acceptable in some places because that is the term TDCJ currently uses, continued use of the derogatory terms "offender" and "inmate" throughout an audit report more that two years after this guidance was issued is not acceptable. There is no excuse for every new document completed under the aegis of the PREA compliance system to not follow person-first practices.

It is also notable that in this audit report, there are at least 13 repeated claims that one sexual abuse incident was reported "in bad faith." We note that under PREA § 115.52(g), there is no mention of any discipline for a report filed in "bad faith," so it appears this determination was

7. U.S. Department of Justice, PREA Management Office, *PREA Auditor Handbook,* Version 2.1, November 2022: 1 - 2, https://www.prearesourcecenter.org/sites/default/files/library/PREA%20Auditor%20Handbook%20V2.1%20-%20December%202022.pdf.

solely the conclusion of the auditor without any additional investigation. Such repetition serves no purpose but as a disingenuous and discriminatory attempt to discredit the statements of incarcerated persons and to misdirect compliance assessments.

Whether or not a report was claimed by an auditor to have been made in "bad faith":

- Has nothing to do with determining the merits of a grievance within 90 days (PREA § 115.52(d)), yet the audit report failed to document whether the lone interview with someone reporting sexual violence at Clemens Unit documented that the merits of the grievance were determined within 90 days.
- Has nothing to do with whether the responder separated the victim and abuser, and protected the scene of the alleged abuse (PREA § 115.64(a)), yet the audit report failed to document whether the lone interview with someone reporting sexual violence here supported or denied that the first responder met the requirements of this provision.
- Likely has little or nothing to do with monitoring for retaliation (PREA § 115.67(b) and (d)), yet the audit report failed to document whether the lone interview with someone reporting sexual violence at the facility supported or denied that retaliation was properly monitored under these provisions. In fact, PREA § 115.67 states that responsibility for compliance with this standard ends only if the allegation is determined unfounded, so regardless of the "bad faith" claim of an auditor, any person making an allegation or participating in an investigation must be monitored for retaliation until it is determined to be unfounded.
- Has nothing to do with determining compliance with post-allegation protective custody requirements (PREA § 115.68), yet the audit report failed to document whether the lone interview with someone reporting sexual violence here supported or denied compliance with the use and documentation of post-allegation protective custody.
- Has nothing to do with polygraph requirements (PREA § 115.71(e)), yet the audit report failed to document whether this person was required to submit to a polygraph exam.
- Has nothing to do with reporting the results of an investigation to the person making an allegation (PREA § 115.73(a)), yet the audit report failed to document whether the lone interview with someone reporting sexual violence was reported under this provision.
- Has nothing to do with determining compliance with PREA § 115.82(a), (b), or (c) requirements to provide emergency medical treatment and information, yet the audit report failed to document whether the lone interview with someone reporting sexual violence at the facility supported or denied compliance with these provisions.

Regarding the repetition of the "bad faith" claim in the discussion of PREA § 115.73(c), there is no information indicating the "bad faith" allegation was against a staff member. This conclusory statement in the audit report is simply restated with no indication of relevance to the assessment.

It is also worth pointing out that no meaningful explanation of what measure was used to determine this report was made in "bad faith" is given, so it cannot be determined if this is an inference made about some vague statement, a possible reference to a finding of "unfounded," a mention of some staff claiming falsely or without knowledge that the incident did not happen, or some other means of twisting a person's words into what was maliciously repeated numerous times as a report made "in bad faith." This repetition shows far more about the prejudicial nature of the audit itself than it reveals about PREA-related reporting and investigations that the audit report was supposed to reflect.

Summary of Facility Audit Findings

The audit report identifies one standard as exceeded and 36 as being met. The audit 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 audit report identified no need for any corrective actions—in spite of ample evidence in this report that corrective actions should have been required—should also be considered in the assessment of a deficient audit. We also point to the discussion of PREA § 115.402 and evidence of conflicts of interest.

The audit report found that Clemens Unit "substantially exceeds" the requirements under PREA § 115.31, but the only evidence provided is a contradictory statement that refresher training is provided every year rather than every two years as required. However, the audit report also states that there are "years in which an employee does not receive refresher training." It is impossible from this contradictory claim to substantiate that the facility "substantially exceeds" this standard, and the note under PREA § 115.51(d) that not all staff could identify a means of reporting sexual abuse or sexual harassment outside their chain of command indicates the claim the facility meets this standard may be questionable.

As per the PRC, an assessment of a standard being exceeded must be clearly documented as substantially surpassing the material requirements of compliance:

> Where an auditor determines that a facility exceeds the requirements of a Standard, the auditor must clearly and specifically explain how the facility meets and then substantially exceeds the requirements of the Standard, and the evidence must justify and support the finding. . . . It is not sufficient for the auditor to describe the facility as meeting the requirement of the Standards and then select "Exceeds Standard" for the Overall Determination.[8]

This report failed to adequately justify this "exceeds" assessment.

Onsite Audit Period

The audit report notes that the onsite portion of the audit was from February 5 to February 7, 2025. However, for a facility with more than 1,001 persons, just the interviews with incarcerated

8. PREA Resource Center, "Common Terminology," https://www.prearesourcecenter.org/audit/common-terminology.

persons and staff are estimated to take three days, or 30.3 hours. Thus it appears that this audit was conducted without allowing sufficient time to meet all the audit obligations. In addition to the interviews, other tasks were required to competently complete the audit. As per the 2022 Auditor Handbook:

> In addition to the time estimated to complete the interviews with persons confined in the facility and staff, auditors must also account for a thorough site review (observations, tests of critical functions, and informal conversations with individuals confined in the facility and staff), supplemental documentation selection and review, and in-briefs and out-briefs with facility/agency staff. The time required for a thorough site review will range depending on the size of the facility, the complexity of the facility and its processes, and the number of support staff involved. Auditors must allow adequate time to perform all the required activities necessary to complete a thorough site review.[9]

The fact that the audit report documents insufficient interviews with target populations also indicates insufficient time was allowed to fully comply with audit requirements. As noted below in this report, the audit report falsely states 20 targeted interviews with incarcerated persons were completed, yet only documents 16, and seven of those 16 were with persons who did not exist at the facility. It appears less than half the interviews with target populations of incarcerated persons were completed.

Support Staff Information items 106 and 107 document that the auditor received no assistance from other persons that would count toward the total hours.

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 Clemens Unit on the first day of the onsite audit. **Items 30 – 33** provide staff levels. **Items 34 – 73** provide the breakdown of random and targeted interviews with incarcerated persons and staff. Document sampling information is provided in **items 74 – 81,** investigation data are provided in **items 82 – 88,** and sexual violence records review information is provided in **items 89 – 105.** An overview of the interviews is provided in Table 2. Problems with the audit interviews and other facility information are discussed as needed, after the table.

Items 18/34/39, the audit report specific interview counts only accounted for 16 persons interviewed, and seven of those interviews were of persons who were documented as not being present at the facility, meaning it appears **only nine of the required 20 interviews were done.** Thus it appears the audit report provides false information about the number of targeted interviews done, and failed to complete even half of the required number of target interviews with incarcerated persons. **Item 34** also documents that the audit included random interviews

9. U.S. Department of Justice, PREA Management Office, *PREA Auditor Handbook,* Version 2.1, November 2022: 78, https://www.prearesourcecenter.org/sites/default/files/library/PREA%20Auditor%20Handbook%20V2.1%20-%20December%202022.pdf.

with 20 persons, but due to the huge misrepresentation of targeted interviews, TPI asserts that it is highly unlikely that is not also a misrepresentation.

Table 2. Population Characteristics and Interviews

Population Characteristic*	Persons Present	Interviews Required	Interviews Completed
18/34/39 — Total housed at unit	1041	Random: 20 Targeted: 20	Random: 20 **Targeted: 20 (documented 9)**
19/40 — Persons with a physical disability	**0**	**at least: 1**	**4**
20/41 — Persons with cognitive or functional disability	**0**	**at least: 1**	**2**
21/42 — Persons blind or visually impaired	0	at least: 1	0
22/45 — Persons deaf or hard-of-hearing	**0**	**at least: 1**	**1**
23/46 — Persons Limited English Proficient	36	at least: 1	5
24/47 — Persons identifying as lesbian, gay, or bisexual	20	at least: 2	2
25/48 — Persons identifying as transgender or intersex	0	at least: 3	0
26/51 — Persons who reported sexual abuse in facility	1	at least: 4	1
27/52 — Persons who reported prior sexual victimization	**16**	**at least: 3**	**1**
28/53 — Persons placed in segregated housing for risk of sexual victimization	**0**	**at least: 2**	**0**

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

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

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

> in many cases, the number of targeted interview protocols used will likely exceed the number of individuals interviewed from targeted populations.[10]

In addition:

> If an auditor is unable to identify an individual from one of the targeted populations (e.g., the facility does not house youths under 18) or an individual belonging to a targeted population does not wish to participate in an interview, the auditor must select interviewees from other targeted populations in order to meet the minimum number of targeted interviews.[11]

Failures to identify persons for target interviews and confirm unit data around target populations cast doubt on all claims (or acceptance of counts provided by the unit administrative staff) for all target populations.

Item 19/40, the audit report documents zero incarcerated persons with a physical disability at Clemens Unit on the first day of the onsite audit, yet claims four of zero persons were interviewed. Both these statements cannot be true.

Item 20/41, the audit report documents zero incarcerated persons with a cognitive or functional disability at Clemens Unit on the first day of the onsite audit, yet claims two of zero persons were interviewed. Both these statements cannot be true.

Item 22/45, the audit report documents zero incarcerated persons who are deaf or hard-of-hearing at Clemens Unit on the first day of the onsite audit, yet claims one of zero persons was interviewed. Both these statements cannot be true.

Items 27/52, the audit report states that 16 persons who had reported prior sexual victimization were at Clemens Unit during the audit, yet only one of the required three persons were interviewed, and no explanation for the deficiency was provided. The audit thus failed to include the minimum number of interviews required for this target population. There were also sufficient numbers of these persons as well as lesbian, gay, or bisexual persons present to have made up for the deficient number of target interviews.

Item 28/53 states that there were zero persons that had ever been placed in segregated housing or isolation for risk of sexual victimization at Clemens Unit on the first day of the onsite audit, but TPI knows this number to be inaccurate. This represents a major failure to document and audit segregated housing, or protective custody under PREA. This also indicates a failure to investigate and understand how segregated housing is defined confusingly (and appears to be purposefully manipulated by TDCJ to cause confusion) and a failure to perform due diligence in confirming such a claim that zero persons housed at Clemens Unit had ever been placed in

10. U.S. Department of Justice, PREA Management Office, *PREA Auditor Handbook,* Version 2.1, November 2022: 63, https://www.prearesourcecenter.org/sites/default/files/library/PREA%20Auditor%20Handbook%20V2.1%20-%20December%202022.pdf.
11. U.S. Department of Justice, PREA Management Office, *PREA Auditor Handbook,* Version 2.1, November 2022: 71, https://www.prearesourcecenter.org/sites/default/files/library/PREA%20Auditor%20Handbook%20V2.1%20-%20December%202022.pdf.

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

Items 82 – 88 provide totals for sexual violence allegations and investigations for the 12 months prior to the audit. These numbers are summarized in Table 3. Problems that TPI finds with these numbers are discussed in below the table.

Table 3. Sexual Violence Investigations and Outcomes

	Sexual Abuse by		Sexual Harassment by	
	Staff	Incarcerated Person	Staff	Incarcerated Person
Allegations	3	10	1	4
Administrative investigations	3	10	1	4
Ongoing	0	0	0	0
Unfounded	0	1	0	0
Unsubstantiated	3	9	1	4
Substantiated	**0**	**0**	**0**	**0**
Criminal Investigations	0	4	0	0
Ongoing	0	1	0	0
No Action	0	0	0	0
Referred	0	1	0	0
Indicted	0	0	0	0
Convicted	0	0	0	0
Acquitted	0	0	0	0

Item 85 provides the outcomes for administrative investigations of sexual abuse allegations during the previous 12 months. **Item 82** shows incarcerated persons reported 13 allegations of sexual abuse by staff and other incarcerated persons. Per **item 85,** administrative investigations found zero substantiated, 12 unsubstantiated, and one unfounded. That is, 100% of the allegations were found to have less than a 51% 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 not one allegation was found substantiated. **More amazing still, one of these cases involved enough evidence that the incident was referred for criminal prosecution and a "case is open and pending," yet the audit report maintains that an administrative finding that the incident does not even meet a preponderance evidentiary standard is acceptable.** This indicates a failure of the facility to investigate properly, and a failure of the audit to appropriately investigate what clearly is a red flag for that failure to investigate. This audit report documentation indicates a failure of the administrative investigations to adequately 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.

Item 88 provides the outcomes for administrative investigations of sexual harassment allegations during the previous 12 months. **Item 83** shows incarcerated persons reported five allegations of sexual harassment by staff and other incarcerated persons. Per **item 88,** administrative investigations found zero substantiated, and all five unsubstantiated. That is, once again, 100% of the allegations were found to have less than a 51% 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 0% of the allegations were found substantiated. This indicates a failure of the administrative investigations to adequately assess evidence in allegations of sexual harassment, 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.

Item 89 indicates eight sexual abuse investigation files were reviewed, yet **item 91** documents review of three investigations into alleged sexual abuse by incarcerated persons, and **item 94** documents review of three investigations into sexual abuse by staff. Based on this, it appears that false information is provided about the number of investigation files reviewed, which probably should be six instead of eight.

Item 97 indicates five sexual harassment investigation files were reviewed, yet **item 99** documents review of two investigations into alleged sexual harassment by incarcerated persons, and **item 102** documents review of zero investigations into sexual harassment by staff. Based on this, it appears that false information is provided about the number of investigation files reviewed.

Discrepancies such as these case doubt on the accuracy and thoroughness of all aspects of this audit report.

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 Clemens Unit and the agency overall. Policy is certainly essential to reaching such goals, but policy alone is inadequate, and how policy is implemented may even increase harm. TPI has seen many instances where an agency or

responsible entity states something to the effect "that does not happen because we have policy against it" or "because we have training against it." This excuse covers up and may even encourage violence such as sexual abuse and sexual harassment by providing a means of covering up such violence. The 2022 Auditor Handbook addresses this negative potential by stating that:

> The PREA audit is not only an audit of policies and procedures. It is ***primarily*** an audit of practice. The objective for the auditor is to examine enough evidence to make a compliance determination regarding the audited facility's ***actual practice. Policies and procedures do not demonstrate actual practice,*** although they are the essential baseline for establishing practice and should be reviewed carefully [emphasis added].[12]

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. 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.

Due to our work in general as well as specific problems discussed elsewhere in this comment letter, TPI has doubts that Clemens Unit fully complies with PREA § 115.11.

PREA § 115.13 Supervision and Monitoring

PREA § 115.13 requires the unit to maintain adequate staff to operate effectively and to "protect [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 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.

In addition to our experience and data related to staffing issues, the Texas Sunset Advisory Committee audited TDCJ as a whole in 2024 and provided even more damning conclusions. The following are some excerpts from the commission report that pertain to Clemens Unit.

> Serious and systemic deficiencies in human resources functions, which form the backbone of effective agency operations, contribute to agencywide hiring and retention problems, with more than half of TDCJ divisions at a vacancy rate of at least 20 percent in fiscal year 2023.[13]

12. U.S. Department of Justice, PREA Management Office, *PREA Auditor Handbook,* Version 2.1, November 2022: 46, https://www.prearesourcecenter.org/sites/default/files/library/PREA%20Auditor%20Handbook%20V2.1%20-%20December%202022.pdf.
13. Texas Sunset Advisory Commission, *Sunset Staff Report: Texas Criminal Justice Entities,* September 2024: 1, https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.

[TDCJ] has experienced crisis-level vacancy rates among correctional staff for several years in many of its facilities.[14]

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.[15]

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

14. Texas Sunset Advisory Commission, *Sunset Staff Report: Texas Criminal Justice Entities*, September 2024: 23, https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.
15. Texas Sunset Advisory Commission, *Sunset Staff Report: Texas Criminal Justice Entities*, September 2024: 24, https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.

own safety standards. TDCJ's staffing plans identify the roles minimally necessary to operate each facility safely, called "Priority One" positions, an example of which is described in the *Correctional Housing Rovers* textbox on the following page. Some portion of Priority One positions routinely go unfilled in several critically understaffed facilities. Priority Two positions, which further aid in the safe functioning of the facility and typically support inmate rehabilitation programming and recreation, often go entirely unfilled in these facilities.[16]

Correctional Housing Rovers: Each inmate housing area, such as a cellblock or wing of a dormitory, has a certain number of officers, informally called "housing rovers," dedicated to security functions. Whenever these Priority One positions are left unfilled, rovers assigned to nearby housing areas must cover the unfilled areas — sometimes totaling hundreds of inmates at a time. Functionally, this means inmates are not being supervised as closely as TDCJ has deemed minimally necessary to ensure the safety and security of facilities, impacting both staff and inmates. Reducing inmate supervision and assistance with basic needs can lead to increases in violence, self-harm, and other dangerous incidents. Furthermore, in the event of such an incident, an officer's nearest help might be a building away, out of earshot and behind security doors.[17]

A Sunset staff analysis found facilities are more dangerous now than a decade ago. . . . [I]n fiscal year 2023 the agency recorded more than 2,000 adverse events, surpassing a pre-COVID-19 high, and these events have been rising as a percentage of the inmate population over the last 10 years. Even while the inmate population decreased, the amount of contraband such as drugs, weapons, and cellphones found in TDCJ facilities has increased significantly over the last 10 years, which can contribute to conflict and violence in prisons. Nearly 70 percent of respondents to Sunset's correctional staff survey indicated they have experienced or witnessed an adverse event, nearly half of whom said they are exposed to these events daily or weekly. A majority of respondents indicated adverse events make their jobs more difficult and negatively impact their physical or mental health. Also at risk for these events are others who work in facilities, including food and laundry service staff, chaplains, medical providers, employees of the Windham School District and the Board of Pardons and Paroles, vendors, and volunteers.[18]

Despite the difficulty — and sometimes physical impossibility — of completing all required tasks with such severe staffing shortages, TDCJ has failed to adjust expectations to the new realities of current staffing levels. In the face of crisis-level staffing at many correctional facilities, parole offices, and other departments, employees are often tasked with more than they can reasonably perform within normal working hours. For example, a correctional housing rover responsible for 300 inmates across multiple housing areas would have just six seconds to perform a security check on each inmate, which TDCJ policy requires every 30 minutes. Even assuming there are no interruptions or inmate needs to attend to, this would be nearly impossible and is just one of the

16. Texas Sunset Advisory Commission, *Sunset Staff Report: Texas Criminal Justice Entities,* September 2024: 40, https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.
17. Texas Sunset Advisory Commission, *Sunset Staff Report: Texas Criminal Justice Entities,* September 2024: 41, https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.
18. Texas Sunset Advisory Commission, *Sunset Staff Report: Texas Criminal Justice Entities,* September 2024: 41, https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.

> 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.[19]
>
> The actual number of correctional officers who are available to work on a particular day varies due to illness or other types of leave so daily data points include staff who are initially assigned to work a shift, staff who actually cover that shift, and staff who work beyond the assigned shift. The number of unfilled positions at a facility might change significantly during a shift as staff does not show up for a shift, staff is asked to stay beyond their original shift, or staff is sent over from other facilities. 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.[20]

Due to our work in general as well as specific problems discussed elsewhere in this comment letter, TPI has doubts that Clemens Unit fully complies with PREA § 115.13.

PREA § 115.21, Evidence Protocol and Forensic Medical Examinations

> (c) The agency shall offer all victims of sexual abuse access to forensic medical examinations, whether on-site or at an outside facility, without financial cost, where evidentiarily or medically appropriate. Such examinations shall be performed by Sexual Assault Forensic Examiners (SAFEs) or Sexual Assault Nurse Examiners (SANEs) where possible. If SAFEs or SANEs cannot be made available, the examination can be performed by other qualified medical practitioners. The agency shall document its efforts to provide SAFEs or SANEs.

The audit report documents that only two of the 13 allegations (15%) resulted in allowing SANE exams, and no explanation was provided for the refusal of forensic evidence collection for the remaining 85% of the allegations other than a vague reference to exams being done when "medically appropriate." It should be noted that Texas Code of Criminal Procedure 56A.303 states that a forensic medical exam should be done if it is within 120 hours of the incident, but TDCJ appears to enforce a more restrictive limit of 96 hours.[21]

19. Texas Sunset Advisory Commission, *Sunset Staff Report: Texas Criminal Justice Entities*, September 2024: 44 – 45, https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.
20. Texas Sunset Advisory Commission, *Sunset Staff Report: Texas Criminal Justice Entities*, September 2024: 63, https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff%20Report_9-26-24.pdf.
21. This information is intentionally left vague in TBCJ/TDCJ documentation, but appears to be indicated by annual PREA reports that document incidents reported within four days (which would be 96 hours). The 2019 annual report documents the change to 120 hours, and documented both incidents reported within 96 and 120 hours, but subsequent annual reports are very vague in an apparent attempt to obscure noncompliance with House Bill 616 of the 86th Texas Legislature changing the reporting time frame from 96 hours to 120 hours. PREA Ombudsman

In the discussion of PREA § 115.64(a), the audit report states that six allegations of sexual abuse were reported "within a time period that still allowed for the collection of physical evidence," presumably within a more restrictive 96-hour time frame TDCJ enforces. No explanation was provided why only one-third of those incidents included forensic medical exams, and two-thirds did not.

The audit report also references policy OIG-7.13, which states that staff will "determine if a forensic medical examination will be offered." It appears that policy SPPOM-05.01 makes the same statement in section 1.F. PREA § 115.21(c) states that **all** survivors of sexual abuse shall be offered access to forensic medical examinations; and PREA § 115.21(e) allows the survivor to request a forensic medical examination. OIG-7.13 and SPPOM-05.01 indicate that is not being done either at the agency level or at Clemens Unit, but instead staff are deciding whether to offer the survivor access to a forensic medical examination.[22] Based on this conflicting information, it is not possible to determine if Clemens Unit is compliant with PREA § 115.21 or not.

PREA § 115.31, Employee Training

The audit report assesses Clemens Unit as "exceeds standard," but the only evidence that the facility "substantially exceeds requirement" is a contradictory statement that "refresher training [is provided] every year" and then contradicts that statement by reporting that "[i]n years in which an employee does not receive refresher training," indicating the only evidence of some action beyond merely meeting the standard is not consistent. Without more information about the extent of the "refresher training," it is also unknown whether this actually exceeds the standard or is more in line with the standard requirement to provide annual "refresher information."

Additionally, the discussion of PREA § 115.51(d) indicates not all staff could give even one private way to report an allegation of sexual abuse or sexual harassment outside their chain of command, and further implied that some may not even know how to report such allegations. This serious red flag was not addressed during the audit, and calls into question the effectiveness of staff training.

Based on TPI's experience and the failure to substantiate actual evidence that the facility exceeds this standard, TPI asserts that Clemens Unit can only be determined to possibly meet the standard.

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and Office of Inspector General, *Safe Prisons/Prison Rape Elimination Act (PREA) Program, Calendar Year 2019,* July 2020: 28, https://www.tdcj.texas.gov/documents/PREA_SPP_Report_2019.pdf. See also Texas Code of Criminal Conduct § 56A.303 (2019, revised 2021 and 2023), https://statutes.capitol.texas.gov/Docs/CR/htm/CR.56A.htm.

22. TPI does not have access to policy OIG-7.13, we are reporting what we understand to be true. However, the version of SPPOM 05.01 that we have, dated July 2014, has the same statement in section 1.F.: "The OIG investigator will determine whether a forensic medical examination is required." This, too, is counter to PREA § 115.21.

PREA § 115.41, Screening for Risk of Victimization and Abusiveness

> (a) All [incarcerated persons] shall be assessed during an intake screening and upon transfer to another facility for their risk of being sexually abused by other [incarcerated persons] or sexually abusive toward other [incarcerated persons].
>
> (b) Intake screening shall ordinarily take place within 72 hours of arrival at the facility.

The audit report states that interviews with incarcerated persons revealed that at least some incarcerated persons reported they were not screened within 72 hours of arrival at the facility, yet the audit report does not provide any indication that these reports were investigated. Instead, the audit report seems to dismiss the validity of incarcerated person statements and simply accept claims by the facility, which are subject to errors and manipulation and falsification, just as other information in this audit report is falsified or in error.

TPI notes that an "objective" screening tool does not guarantee an effective and thus 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 individual bias.[23] 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."[24]

> (d) The intake screening shall consider, at a minimum, the following criteria to assess [incarcerated persons] for risk of sexual victimization:
>
> (1) Whether the [incarcerated person] has a mental, physical, or developmental disability;
>
> (2) The age of the [incarcerated person];
>
> (3) The physical build of the [incarcerated person];
>
> (4) Whether the [incarcerated person] has previously been incarcerated;
>
> (5) Whether the [incarcerated person's] criminal history is exclusively nonviolent;
>
> (6) Whether the [incarcerated person] has prior convictions for sex offenses against an adult or child;

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

> (7) Whether the [incarcerated person] is or is perceived to be gay, lesbian, bisexual, transgender, intersex, or gender nonconforming;
>
> (8) Whether the [incarcerated person] has previously experienced sexual victimization;
>
> (9) The [incarcerated person's] own perception of vulnerability; and
>
> (10) Whether the [incarcerated person] is detained solely for civil immigration purposes.

TPI asserts that TDCJ PREA compliance policy excludes persons who identify as gender nonconforming and possibly nonbinary. According to the TDCJ *Safe Prisons/PREA Plan* and the PREA Standards, the term transgender refers to "a person whose gender identity (i.e., internal sense of feeling male or female,) is different from the person's assigned sex at birth." This implies an old and limited definition of "transgender" that does not include nonconforming and nonbinary persons. PREA and the Safe Prisons 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 documentation in this audit report that at least some percentage of persons are not being screened within 72 hours of arrival as required by provision (b), that it is highly likely that the "objective" screening instrument used by TDCJ is applied with discriminatory intent against the spirit of provision (d) and requirements to communicate professionally and respectfully with LGBTI persons and to consider the incarcerated person's view of

vulnerability, and because it is certain that appropriate relevance to persons who are or may be gender nonconforming is not given, TPI asserts that it is highly likely Clemens Unit is not complaint with this standard.

PREA § 115.42, Use of Screening Information

> Purpose [per the Standards in Focus]: To reduce the risk of inmate-on-inmate sexual abuse and sexual harassment (referred to throughout the remainder of this document as "sexual abuse" or "sexual victimization") by:
>
> -- Maintaining separation between inmates at risk of being sexually victimized and inmates at risk of being sexually abusive;
>
> --Using intake screening information from § 115.41 to inform all inmate housing, bed, work, education, and program assignments: and
>
> -- Providing additional protections for transgender and intersex inmates, based on the unique risks these populations face while incarcerated.[25]

> (a) The agency shall use information from the risk screening required by § 115.41 to inform housing, bed, work, education, and program assignments with the goal of keeping separate those [incarcerated persons] at high risk of being sexually victimized from those at high risk of being sexually abusive.

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.[26]

TPI receives routine complaints from vulnerable 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

25. PREA Resource Center, "Screening for Risk of Sexual Victimization and Abusiveness, § 115.42, 115.142, 115.242, 115.342, Use of Screening Information," *PREA Standards in Focus*, https://www.prearesourcecenter.org/sites/default/files/library/115.42%20SIF_0.pdf.
26. "FAQ | What does 'separate' mean in the context of the screening standards, which, . . ." Frequently Asked Questions, National PREA Resource Center FAQ, December 2,2016, https://www.prearesourcecenter.org/node/5166.

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 it's purpose.

Based on the failure of the audit report to fully investigate compliance with this standard, TPI asserts that it cannot be determined by this report whether or not Clemens Unit meets this standard.

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 Rule[27] 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.[28] 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.

27. Federal Register (2012): vol. 77 no. 119, Fed. Reg. page 37106-37232 (June 20, 2012).
28. 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.[29]

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.[30] All

29. 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.

30. 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 in a disciplinary environment, and is usually taken to refer to persons 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."[31] 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.[32] 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.[33] The more complete explanation was that there was no ***safekeeping*** housing on the units where the

31. 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/.

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

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.[34] 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

33. 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.
34. TPI has received a number of complaints that minimum custidy 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.

time. If the person on safekeeping does not agree they have a continuing need for safekeeping status, then they are in involuntary protective custody, and the documentation requirements under PREA must be met.

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

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

Lockup for reporting sexual violence: TDCJ seems to go to some effort to indicate only "protective safekeeping" (custody classification P6 and P7) constitutes "protective custody" or "involuntary protective custody" for PREA purposes, and TDCJ protective safekeeping can constitute PREA protective custody but appears to be seldom used for that in actual practice. As explained above, "safekeeping designation" is definitely "protective custody" under PREA when related to addressing risk for sexual violence, and may also constitute "involuntary protective custody." Likewise, lockup for reporting sexual violence is "protective custody" under PREA, and often constitutes "involuntary protective custody" under PREA. In almost every report we have had documenting a TDCJ response to a report of sexual abuse, if the report is not ignored, the person reporting is placed in a separate cell and isolated for an Inmate Protection Investigation (IPI).[35] 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.

35. This term has varied over time. What is currently called an IPI was until about 2022 identified as an OPI for "offender protection investigation," and in the past has been known as an LID, or "life in danger" investigation.

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

> Section 115.66 in the proposed rule (now renumbered as § 115.68) provided that any use of segregated housing to protect an [incarcerated person] who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43.[36]

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.

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

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

The audit report states that not one person was ever during the 12-month audit period determined to be at risk of sexual victimization indicates serious failures of the screening process and use of screening information as well.

> (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. 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.

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.

This audit report provides a staff response that any person "placed in segregated housing for risk of victimization . . . would still be afforded the same out of cell, work, education and programming opportunities" as other incarcerated persons. This fantasy housing simply does not exist in TDCJ, and this response is simply a false narrative to provide text for the audit report. That the audit report parrots such statements without question is irresponsible.

> (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 does not even reference 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.

Based on TPI's extensive experience corresponding with persons subjected to protective custody for PREA purposes, TPI asserts it is almost certain that Clemens Unit is not compliant with this standard.

PREA § 115.64, Staff First Responder Duties

> (a) Upon learning of an allegation that an [incarcerated person] was sexually abused, the first security staff member to respond to the report shall be required to:
>
> (1) Separate the alleged victim and abuser;
>
> (2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;

> (3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and
>
> (4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.

The audit report states that out of the 13 allegations of sexual abuse, the victim and abuser were separated on seven times, or just over 50% of the time. No explanation is provided for why the facility appears to only comply with this standard half of the time. No statement was provided concerning whether the first responder complied with other requirements of this provision: preserving and protecting the scene and evidence, and providing appropriate preservation of possible forensic medical evidence.

> (b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.

The audit report stated that in two instances, the first responder was not a security staff member, but failed to indicate whether the responses taken were appropriate.

Based on the information provided in this audit report, TPI asserts that it must be concluded that Clemens Unit is not in 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), 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 while the investigation is ongoing. It is highly unlikely that of the 13 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, likely 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 housing practices. 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.

Based on TPI's experience and the lack of information provided in the audit report, TPI asserts that it is highly unlikely Clemens Unit complies 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 either 13 reports of sexual abuse, not one of those reports had a greater chance of occurring than a 50/50 chance. Not one of those had even a coin toss's chance of having occurred . . . even the one that had enough evidence to be referred for criminal prosecution. Such low rates of substantiation indicate serious manipulation of the evidence on the part of the investigators, and a failure to appropriately consider the preponderance of evidence standard.

Due to the extremely low rates of substantiated allegations, as reported in the most recent PREA Ombudsman report for calendar year 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.[37] 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.[38]

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.[39] Regardless of one's concerns about possible false

37. Texas Department of Criminal Justice, *Safe Prisons/Prison Rape Elimination Act (PREA) Program Annual Report, Calendar Year 2023,* Texas Department of Criminal Justice, December 2024: 26, https://www.tdcj.texas.gov/documents/PREA_SPP_Report_2023.pdf.
38. Texas Department of Criminal Justice, *Safe Prisons/Prison Rape Elimination Act (PREA) Program Annual Report, Calendar Year 2023,* Texas Department of Criminal Justice, December 2024: 26, https://www.tdcj.texas.gov/documents/PREA_SPP_Report_2023.pdf.

reporting, these extremely low rates of substantiation indicate a preponderance of evidence is not the standard being used anywhere in the TDCJ system.

At Clemens Unit, the current audit report noted that for allegations against staff, 0% of three sexual abuse allegations were substantiated, 0% of 1 sexual harassment allegation was substantiated, and voyeurism allegations were not reported. For allegations against other incarcerated persons, 0% of 10 allegations of sexual abuse were substantiated, and 0% of four allegations of sexual harassment were substantiated.

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 audit, and that these numbers were just accepted indicates a definite issue with the audit report. Due to what can be seen from this report, it appears unacceptable that Clemens Unit was assessed as being "fully compliant" with the PREA § 115.72 standard. Based on this evidence, TPI asserts that Clemens Unit is not complaint with this standard.

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.[40]

39. Texas Department of Criminal Justice, *Safe Prisons/Prison Rape Elimination Act (PREA) Program Annual Report, Calendar Year 2023,* Texas Department of Criminal Justice, December 2024: 26 – 29, https://www.tdcj.texas.gov/documents/PREA_SPP_Report_2023.pdf.
40. U.S. Department of Justice, PREA Management Office, *PREA Auditor Handbook,* Version 2.1, November 2022: 14, https://www.prearesourcecenter.org/sites/default/files/library/PREA%20Auditor%20Handbook%20V2.1%20-%20December%202022.pdf.

TPI believes that for at least 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.[41]

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 operate. 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

41. U.S. Department of Justice, PREA Management Office, *PREA Auditor Handbook,* Version 2.1, November 2022: 19, https://www.prearesourcecenter.org/sites/default/files/library/PREA%20Auditor%20Handbook%20V2.1%20-%20December%202022.pdf.

> 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.[42]

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.

Of the nine PREA audits (not including this one) with final reports available in the PRC audit database, not one includes a corrective action. By contrast, the 2022 Auditor Handbook states that "the PREA audit was built on the assumption that full compliance with every discrete provision would, in most cases, require corrective action" (page 41).[43] The directory appears to only include audits conducted since September 2022.

Perhaps these audits are influenced by the deep connections this auditor has to the prison industrial complex. The auditor is on staff at the incredibly problematic Arizona Department of Corrections, and has been under the influence of that environment since 1998.

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 been working with incarcerated persons since 2013, mainly trans and queer persons in the Texas prison system. 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.**

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42. Michael J. Moore, "What an Ex-Cop Learned in Prison About Police Culture," *The Nation*, December 31, 2020, https://www.thenation.com/article/politics/toxic-culture-police-prison/.
43. 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.

Table 1 of this comment letter provides a summary of deficiencies identified in this audit report, described in the main body of this comment letter. Audit deficiencies include the reporting of questionable information, reporting of false information, use of problematic language, and apparent failures to comply with minimum audit requirements. In addition, this comment letter documents questionable information in the discussion of at least seven standards, false information related to at least the conduct of targeted interviews, that one standard was assessed as exceeding compliance with inadequate justification, and vague or inappropriate discussion of two standards. Based on these deficiencies, it appears that compliance is questionable for at least five standards, there is an indication that compliance is not met for three standards, and the report documents a failure to comply with two standards with no corrective action required.

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 §§ 115.64 and 115.72 be considered to need corrective action at the next audit.
- That at a minimum, additional information be provided to support a finding of compliance for all remaining compliance issues mentioned in this comment letter.

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
Clemens Unit Senior Warden Ariel Burks

Clemens Unit PREA Manager LaTanya Marshall
PREA auditor Matthew Taylor
Pete Flores, Chair, Texas Senate Committee on Criminal Justice
Sam Harless, Chair, Texas House Committee on Corrections
Venton Jones, Vice-Chair, Texas House Committee on Corrections
Dick Durbin, U.S. Senate Judiciary Committee, Subcommittee on Crime and Counterterrorism
Sheldon Whitehouse, U.S. Senate Judiciary Committee, Subcommittee on Federal Courts, Oversight, Agency Action, and Federal Rights
Lucy McBath, U.S. House Judiciary Committee, Subcommittee on Crime and Federal Government Surveillance
Mary Gay Scanlon, U.S. House Judiciary Committee, Subcommittee on the Constitution and Limited Government