U.S. Department of Justice
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via email: PREACompliance@usdoj.gov

July 3, 2025

re: 2025 Goree Unit PREA audit report deficiencies

To the Department of Justice PREA Management Office:

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) Goree Unit conducted by auditor Lynni O'Haver and Corrections Consulting Services, LLC, formerly PREA Auditors of America. The onsite portion of the audit was conducted from April 7 to April 9, 2025, no corrective actions were documented, no interim report appears to have been produced, and the final report was published on June 9, 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 PREA 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.

A third purpose has less to do directly with PREA audits, but indirectly supports improved implementation of the PREA standards. TPI is with these comment reports, copied to prison operators, providing notice and documentation to prison officials that the actions they are taking to undermine, obfuscate, or avoid PREA compliance in fact encourage and support acts of violence by staff, and often may constitute acts of violence or complicity with acts of violence themselves. This is provided so prison operators cannot claim that they were not aware such acts constitute misconduct or even violence. Although PREA includes no right of individual action, deliberate noncompliance or willful undermining of PREA compliance may be used in supporting legal actions on behalf of persons experiencing violation of their constitutional rights.

TPI receives limited information from Goree Unit and has documented a total of two incidents of violence against persons housed at the facility, neither of which were PREA related.[6]

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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. These functions were previously the responsibility of the PREA Resource Center, which was terminated in April 2025, with all functions apparently transferred to the PMO. Some references to the PREA Resource Center remain in this report because the PMO appears to still be operating the PREA Resource Center web site.
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).

Although TPI does not have as much data for Goree Unit as we do for some other TDCJ facilities, the audit report itself contains information indicating a failure of compliance, and combined with TPI experience in general is sufficient to question compliance in some areas and to indicate the most recent PREA audit is deficient.

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/.

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, assessment of a standard as exceeded without support, vague or confusing statements, and apparent failures to comply with minimum audit requirements. Based on the deficiencies identified in this comment letter, it appears that compliance is questionable for at least ten standards, there is an indication of compliance is not met for two standards, and the report documents a failure to comply with one standard with no corrective action required.

Request for Action

TPI requests that, at a minimum, 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 audit reports consider relevant information from oversight agencies and other entities, such as the Texas Sunset Commission's report about conditions in TDCJ.
- That audits must verify numbers of individuals interviewed meet at least minimum requirements or audit reports will be considered insufficient and cannot be finalized.
- That compliance with evidence collection, particularly medical forensic evidence, actually consider the full implementation of *A National Protocol for Sexual Assault Medical Forensic Examinations*, not just a simplistic blanket timeline rule.
- That audit reports give serious consideration to information about PREA compliance concerns provided by incarcerated persons in interviews, and to provide justification for dismissing such information.
- That screening data and use involve scoring measures that are objective and transparent, not simply "objective" questions that are subjectively interpreted.
- That evaluation of PREA protective custody include all types of protective custody, not just a narrow range defined for the ease of prison operators.
- That PREA protective custody assessments that consider only or primarily "protective safekeeping" or "restrictive housing" be deemed insufficient and cannot be finalized.
- That highly problematic language in the Auditor Compliance Tool that ignores trauma and encourages sexual violence in regards to transgender, nonbinary, and gender nonconforming populations be amended to eliminate bias, stigmatizing constructs, and discrimination.

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 7).					X			
Genders of persons at facility misrepresented (see page 7).		X			X			
Fails to identify any corrective actions (see page 8).					X			
Facility information appears Inaccurate (see page 9).	X	X			X			
Target interviews fail to meet minimum requirement (see page 10).	X	X			X			
PREA § 115.11, zero tolerance deficiencies (see page 13).	X					X		
PREA § 115.13, supervision and monitoring deficiencies (see page 14).	X				X	X		
PREA § 115.15, viewing and search deficiencies (see page 17).	X				X	X		
PREA § 115.21, SANE exam deficiencies (see page 23).	X	X			X	X		
PREA § 115.31, staff training deficiencies (see page 24).					X	X		
PREA § 115.33, incarcerated person training deficiencies (see page 25).	X			X				X
PREA § 115.41, screening deficiencies (see page 26).	X				X		X	
PREA § 115.42, screening data use deficiencies (see page 29).	X				X		X	
PREA § 115.43, protective custody deficiencies (see page 33).	X				X	X		
PREA § 115.68, victim protective custody deficiencies (see page 43).	X	X			X	X		
PREA § 115.72, evidence deficiencies (see page 44).	X					X		
PREA § 115.401, audit scope deficiencies (see page 45).	X					X		
PREA § 115.402, audit qualification deficiencies (see page 46).	X					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, incomplete, or inappropriate.
6: Discussion indicates standard compliance questionable.
7: Discussion indicates standard compliance not met.
8: Discussion documents standard compliance not met.

- That the Online Audit System implement measures to help identify and safeguard against contradictory data (at least basic quality control measures to help identify problems).
- That auditor conflicts of interests be addressed.
- That at a minimum, PREA § 115.33 be considered to need corrective action at the next audit of Goree Unit.

- 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" in PREA audit reports. 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] This audit report ignores this shift by continuing to use terms like "offender" and "inmate" throughout this report. In fact, the word "offender" is used 664 times in the report, and the word "inmate" is used 596 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 use person-first language.

Facility Characteristics

The audit report states that the population at the Goree Unit consists of "Men/boys," when in fact this is false. The Goree Unit houses cisgender males and transgender persons who may be female or who may not belong to either of those two populations. We cannot determine specifics about the population because one audit report deficiency is the failure to meet DOJ requirements effective November 13, 2024, and announced as early as September 19, 2024, that all genders housed at facilities beyond dismissive binary-only categories be documented.[8] This audit report fails to even provide the required response with this information for this audit report.

The Goree Unit may falsely classify transgender women and other non-male persons as "Men/boys," but that is not an accurate description of the populations housed at the unit for

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.
8. PREA Resource Center, OAS Updates and Q&A. *Webinars* web page, September 19, 2024: 14:29 – 17:14, https://vimeo.com/1014881110.

PREA assessment purposes. This not only erases the existence of trans persons, this type of misclassification and erasure encourages violence against trans persons, including sexual abuse and sexual harassment. Refusal to affirm a person's gender dehumanizes the person, and dehumanization is a significant step in excusing and justifying institutional and individual harm and violence. Further, this misapplication of the PREA standards allows the audit to ignore violations under 115.15, cross-gender pat-down searches of female persons, as well as other PREA standards. To identify transgender females as "men" or "males"—or to identify transgender males as "women" or "females"—is an act of violence that not only denies the identity of transgender women and transgender men and nonbinary persons, but also encourages violence, sexual harassment, and sexual abuse of transgender persons by dismissing our core identity.

Summary of Facility Audit Findings

The audit report identifies one standard as exceeded and 36 as being met. The audit report does not identify any corrective actions 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 that may have influenced inappropriate findings of compliance.

The audit report made an extremely dubious claim that Goree Unit exceeded standard PREA § 115.33, and provided no support for that rating. As per the PMO, 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.[9]

In addition to a lack of any clear support for the exceeds standard rating, the audit report included at least three aspects where training appears to be deficient. The use of a video alone as being sufficient to meet the comprehensive education requirement is questionable at best, as discussed in PMO information about compliance with this standard. In the discussion of PREA § 115.51, the audit report notes that 18% of persons interviewed concerning aspects of PREA did not know they could make anonymous reports. Additionally, in the discussion of PREA § 115.53, the report documents that about 29% of interviewees had not received outside contact

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

information. These deficiencies not only call into question the "exceeds" rating, but indicate noncompliance with the PREA § 115.33 standard.

There were ten standards that were rated as compliant or exceeds compliance, but the information provided in the report indicates compliance is questionable; two standards rated as compliant, but documentation in the audit report indicates the facility is likely not compliant; and one standard rated as compliant, but information in the audit report indicates non-compliance (see Table 1). These issues will be discussed below, in the section discussing PREA Standards Compliance Assessment Issues.

Facility Information

This section of the audit report provides basic information about the facility and the persons housed there. **Audited Facility Population Characteristics** provides population characteristics at Goree Unit on the first day of the onsite audit. The **Interviews** section provides the breakdown of random and targeted interviews with incarcerated persons and staff. General site and report review are provided in the **Site Review and Documentation Sampling** section, followed by data in the **Sexual Abuse and Sexual Harassment Allegations and Investigations** section. 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.

Table 2. Population Characteristics and Interviews

Population Characteristic	Persons Present	Interviews Required	Interviews Completed
Total housed at unit	1122	Random: 20 **Targeted: 20**	Random: 28 (27?) **Targeted: 15 (14?)**
Persons with a physical disability	3	at least: 1	3
Persons blind or visually impaired	1		
Persons deaf or hard-of-hearing	2		
Persons Limited English Proficient	103	at least: 1	1
Persons with cognitive or functional disability	0	at least: 1	0
Persons identifying as lesbian, gay, or bisexual	7	at least: 2	3
Persons identifying as transgender or intersex	6	at least: 3	3
Persons placed in segregated housing for risk of sexual victimization	**0**	**at least: 2**	**0**
Persons who reported sexual abuse in facility	**2**	**at least: 4**	**3 (2?)**
Persons who reported prior sexual victimization	29	at least: 3	3

Persons housed at the facility and interviewed. The audit report documents that there were 1,122 persons housed at the facility on the first day of the onsite audit. The report notes that the audit included random interviews with 28 persons and targeted interviews with 15 persons. According to Table 2 in the 2022 Auditor Handbook, the minimum number of targeted interviews for a unit with the overall population of Goree Unit should have been 20.[10] The total of just 15 interviews—five short of the requirement—appears to itself be exaggerated because the audit report claims to have interviewed three persons who reported sexual abuse in the facility, but only documents two present.

The 2022 Auditor Handbook makes the 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.[11]

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.[12]

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. Based on the information in the audit report, the audit is significantly deficient for it's failure to include the minimum number of targeted interviews required.

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10. U.S. Department of Justice, PREA Management Office, *PREA Auditor Handbook,* Version 2.1, November 2022: 65, 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: 63, https://www.prearesourcecenter.org/sites/default/files/library/PREA%20Auditor%20Handbook%20V2.1%20-%20December%202022.pdf.
12. 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.

It should be noted that the number of random interviews was also variously given as 27 or 28.

Persons who were ever placed in segregated housing or isolation due to risk of sexual victimization. The audit report states that there were zero persons that had ever been placed in segregated housing or isolation for risk of sexual victimization at Goree 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 Goree Unit had ever been placed in segregated housing or isolation for risk of sexual victimization. The audit report states that zero persons who had ever been placed in segregated housing or isolation for risk of sexual victimization were interviewed by the auditor. According to Table 2 in the 2022 Auditor Handbook, the minimum number of interviews for a unit with the overall population of Goree Unit should have been at least two.[13] The audit thus failed to include the minimum number of interviews required for this target population.

We also note that this does not say "involuntarily" placed in segregated housing, but "ever placed in segregated housing," which includes voluntary and involuntary placement at this or any other facility. This will be discussed further under PREA § 115.43.

Persons who reported sexual abuse in the facility. The audit report states that there were two incarcerated persons who reported sexual abuse that occurred at Goree Unit on the first day of the onsite audit, but the audit reports interviews with three persons in this target category. Although the number of target interviews completed is deficient regardless of which number is correct, the fact that these data are in conflict indicates poor quality control in the conduct of the audit and production of the audit report.

The **Sexual Abuse and Sexual Harassment Allegations and Investigations** section provides totals for sexual violence allegations and investigations for the last 12 months. These numbers are summarized in Table 3. Problems that TPI finds with these numbers are discussed below the table.

Sexual abuse allegations and administrative investigations. As shown in Table 3, incarcerated persons reported seven allegations of sexual abuse by staff and other incarcerated persons during the preceding 12 months. Administrative investigations found zero substantiated and all four unsubstantiated. 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 of the allegations were found substantiated. This indicates a failure of allegation response, a failure of evidence collection, a failure of the

13. U.S. Department of Justice, PREA Management Office, *PREA Auditor Handbook,* Version 2.1, November 2022: 65, https://www.prearesourcecenter.org/sites/default/files/library/PREA%20Auditor%20Handbook%20V2.1%20-%20December%202022.pdf.

administrative investigations to adequately assess evidence, and a failure of the audit to identify problems in these areas and pursue an explanation of what appears to be a failure to properly investigate allegations.

Table 3. Sexual Violence Investigations and Outcomes

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

Sexual harassment allegations and administrative investigations. As shown in Table 3, there were five allegations of sexual harassment by incarcerated persons during the audit period. Administrative investigations found zero substantiated and all five unsubstantiated. 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 a single allegation was found substantiated. This indicates possible failures in allegation response, evidence collection, adequate assessment of evidence, and a failure of the audit to identify problems in these areas and pursue an explanation of what appears to be a failure to properly investigate allegations.

Sexual abuse criminal investigations, and sexual harassment investigations. TPI is not concerned with criminal investigations because we don't believe there is any utility in using criminal processes to address such behavior issues. However, it is notable that not one criminal investigation was done.

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 Goree 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 obscures 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].[14]

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.

In addition, facilities such as Goree Unit were constructed over 100 years ago, and they typically have communal showers. Although when constructed, risk of sexual violence that is inherent with communal showers in institutionalized settings may have been considered acceptable or "part of the punishment," under PREA this should no longer be acceptable, and should not be considered compliant with the PREA standard requiring zero tolerance for sexual abuse and sexual harassment. These facilities with communal showers should be modified to provide basic

14. 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.

privacy that will help address the inherent risk of sexual harassment and sexual abuse incorporated in institutional communal showers. If such risk was not assessed as part of how the facility is managing the risk of sexual violence and implementing policy to prevent sexual violence, then that is an audit deficiency.

Due to our work in general within TDCJ facilities, TPI has doubts that this unit fully complies with PREA § 115.11.

PREA § 115.13 Supervision and Monitoring

(a) The agency shall ensure that each facility it operates shall develop, document, and make its best efforts to comply on a regular basis with a staffing plan that provides for adequate levels of staffing, and, where applicable, video monitoring, to protect [incarcerated persons] against sexual abuse. In calculating adequate staffing levels and determining the need for video monitoring, facilities shall take into consideration:

(1) Generally accepted detention and correctional practices;

(2) Any judicial findings of inadequacy;

(3) Any findings of inadequacy from Federal investigative agencies;

(4) Any findings of inadequacy from internal or external oversight bodies;

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

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

(7) The number and placement of supervisory staff;

(8) Institution programs occurring on a particular shift;

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

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

(11) Any other relevant factors.

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

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

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

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

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

(d) Each agency operating a facility shall implement a policy and practice of having intermediate-level or higher-level supervisors conduct and document unannounced rounds to identify and deter staff sexual abuse and sexual harassment. Such policy and practice shall be implemented

for night shifts as well as day shifts. Each agency shall have a policy to prohibit staff from alerting other staff members that these supervisory rounds are occurring, unless such announcement is related to the legitimate operational functions of the facility.

Additional documentation about this standard further explains:

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

➢ Development, documentation and implementation of a staffing plan that provides for adequate levels of supervision and monitoring of the facility's population to prevent, detect and respond to sexual abuse and sexual harassment;

➢ Consideration of deployment of video monitoring and other monitoring technologies as appropriate and feasible to augment and enhance staff supervision of inmates to increase sexual safety in the facility; and

➢ Performance of periodic unannounced rounds by intermediate and upper-level supervisors on all shifts to deter, prevent, and detect sexual abuse and sexual harassment of inmates in the facility.[15]

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

- Observe the number of staff, contractors, and volunteers present (including security and non-security staff) and staffing patterns during every shift, including:
  - In the housing units
  - In isolated areas like administrative/disciplinary segregation and protective custody
  - In the programming, work, education, other areas
  - In areas where sexual abuse is known to be more likely to occur according to the staffing plan.
- Observe staff line of sight and assess whether there are blind spots.
- Observe areas where persons confined in the facility are not allowed to determine whether movement in and out of that space is monitored (e.g., by cameras or other forms of surveillance), to ensure that confined persons never enter those areas.
- Observe the level of supervision and frequency of cell checks in housing areas where confined persons are double-celled, in dormitories, or in holding pens with more than one person (if applicable).

15. PREA Resource Center, "Prevention Planning, § 115.13, 115.113, 115.213, 115.313 Supervision and Monitoring," *PREA Standards in Focus*, https://www.prearesourcecenter.org/sites/default/files/library/PREA%20Standards%20in%20Focus%20%28115.13%29.pdf.

- Observe indirect supervision practices, including camera placement.
  - In addition to observation of camera placement, inquire about and observe the monitoring room, including staffing rotation (i.e., how often is camera feed monitored and by whom).
- Note any staffing concerns, including understaffing, overcrowding, poor line of sight, etc.[16]

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.[17] PREA audits are required to determine whether or not entities are appropriately incorporating findings of inadequacy from oversight agencies, but the Sunset Report was not even mentioned in the documents considered for this audit. Due to the system-wide hiring and management problems being experienced by TDCJ, any audit that does not discuss these specific issues and how they affect compliance with PREA § 115.13 either at the agency or for specific units must be considered deficient in its assessment of this standard.

> 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.[18]

16. PREA Resource Center. Auditor Compliance Tool, Facility: Prison / Jail. Available at: https://www.prearesourcecenter.org/sites/default/files/library/ACTPrisonJail.pdf.
17. Texas Sunset Advisory Commission, *Sunset Staff Report: Texas Criminal Justice Entities*, September 2024, 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: 24, https://www.sunset.texas.gov/public/uploads/2024-09/Texas%20Criminal%20Justice%20Entities%20Staff

It is certainly curious that no PREA audits that TPI has seen have every mentioned the issues the Sunset Commission found so glaringly obvious.

> Forty percent of respondents to Sunset's correctional staff survey said they feel unsafe in TDCJ facilities, and many facilities are so critically understaffed they cannot operate by the agency's own safety standards. TDCJ's staffing plans identify the roles minimally necessary to operate each facility safely, called "Priority One" positions. . . . 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.[19]

There is extensive coverage in the Sunset Commission report concerning staff shortages and the endangerment that creates, and again we note how unusual it is that there seems to be complete blindness to these issues in PREA audits.

Due to the system-wide hiring and management problems being experienced by TDCJ, any audit that does not discuss these specific issues and how they affect compliance with PREA § 115.13 must be considered deficient in its assessment of this standard.

PREA § 115.15 Preface, Defining Cross-Gender

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

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

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

Because the PREA standards, and especially the PREA auditor tools in their current state, add a conflicting term "opposite gender" that ultimately serves no purpose other than to provide an

%20Report_9-26-24.pdf.

19. 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.

opening for abusive conduct and exemption of transgender and gender nonconforming persons, we must also define this term, as well as advocate for its removal. "Opposite gender" is a term that means the "further side" of a thing or the "reverse" of someone or something. The implication of an "opposite" is to create a mutually exclusive dichotomy, thus eliminating other possibilities. In considerations of PREA compliance, the use of "opposite" in terms of gender itself **is a violence that erases any other possible genders, and that may be misconstrued to even eliminate everything other than the two "opposites" of cisgender males and cisgender females.**

The term "opposite gender" is only used in one provision of the PREA standards for prisons and jails, § 115.15(d), where discussing policies and procedures that enable persons "to shower, perform bodily functions, and change clothing without nonmedical staff of the opposite gender viewing" private body parts, and discussing "opposite gender" announcements. Yet the PREA auditor tools amplify the concept of "opposite" genders, an action that deliberately and intentionally serves to diminish the consideration of the PREA standards as applied to transgender, nonbinary, and gender nonconforming persons. The term is unnecessary, and in fact PREA purposes would be better served by the use of "cross gender" to address the abusive and offensive "curiosity" with transgender persons' genitals that cisgender persons seem to have.

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

> facilities should make an individualized determination based on the gender identity of the staff member and not solely based on the staff member's sex assigned at birth, the gender designation of the facility or housing unit to which the staff member is assigned, the related and required job duties of the specific staff member, the limits to cross-gender viewing and searches in PREA Standard 115.15, and the goal of the PREA Standards **to prevent trauma and sexual abuse** [emphasis added].[20]

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

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

20. FAQ | "How should transgender staff and non-binary staff be classified. . . ." Frequently Asked Questions, National PREA Resource Center, May 1, 2023, https://www.prearesourcecenter.org/frequently-asked-questions/how-should-transgender-staff-and-non-binary-staff-be-classified-purposes.

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

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

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

With this in mind, we can state that regardless of whether a person is assigned to a facility designated as "male" or "female," if that person identifies as transgender, then viewing and searches by persons of a gender different from the incarcerated person's self-identified gender are cross-gender searches, and may be noncompliant with PREA standards.

Failure to recognize this fact in an audit is a failure to properly assess whether or not cross-gender searches and viewing are occurring at a facility. A blanket practice of misclassifying transgender females as "males," transgender males as "females," or nonbinary transgender persons according to any stereotype is inappropriate, is noncompliant with PREA § 115.15, and willful disregard of this fact may constitute violence against transgender persons.

The DOJ has stated support for this position by noting that:

> [a]gencies or facilities that conduct searches **based solely on the gender designation of the facility** without considering other factors such as the gender identity or expression of the individual [incarcerated person] or the [incarcerated person's] preference regarding the gender of the person conducting the search, **would not be compliant with Standard 115.15** [emphasis added].[21]

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

At this point, we can proceed to the guidance in the Auditor Compliance Tool,[22] which fails to encourage progress toward zero-tolerance, fails to prevent trauma, and **in many cases may actively cause trauma and may encourage sexual harassment and sexual abuse.**

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

21. "FAQ | Can you please clarify the parameters of conducting a search of a transgender, . . ." Frequently Asked Questions, National PREA Resource Center, October 24, 2023, https://www.prearesourcecenter.org/frequently-asked-questions/can-you-please-clarify-parameters-conducting-search-transgender-or.
22. TPI strongly advises modification of the Auditor Compliance Tool to eliminate the bias it encourages. The tool is available at: https://www.prearesourcecenter.org/sites/default/files/library/ACTPrisonJail.pdf.

> Note: the Standard use [*sic*] the term "cross-gender," but for the purposes of clarity in the site review instructions we use both "cross-gender" and "opposite-gender" when referring to viewing or searches of persons confined in the facility by staff of the opposite gender.[23]

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

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

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

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

PREA § 115.15, Cross-Gender Viewing and Searches

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

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

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

> Purpose: To limit intimate bodily contact of inmates by staff and enable bodily privacy for both [cisgender and transgender] male and [cisgender and transgender] female [and nonbinary and gender nonconforming incarcerated persons] in order to prohibit abuse and trauma that might arise from that contact or viewing.[24]

Because the facility information of this audit report reflects that the gender of persons that should be considered in the assessment of compliance with this standard was not appropriately considered, it cannot be considered that this provision was appropriately audited.

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

Concerning PREA § 115.15(b), if the facility allows cisgender males and transgender males and nonbinary staff to conduct pat-down searches of transgender females, then the facility permits cross-gender pat-down searches of female incarcerated persons. Cisgender males and transgender males, as well as nonbinary persons, are not the same gender as cisgender females and transgender females. All pat-down searches of incarcerated cisgender females and transgender females by cisgender males or transgender males constitute pat-down searches of female incarcerated persons by male staff.

The audit report only discusses facility documentation that there were no cross-gender pat-down searches of female persons, but because the unit misgenders persons in violation of PREA, this is not an appropriate assessment. Because the audit report failed to provide the genders of persons housed at the facility, we do not know for certain if trans females are housed there, but there certainly could be trans females because the audit report documented unspecified transgender persons housed there.

Based on this problematic documentation and assessment, it cannot be considered that this provision was appropriately audited.

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

24. PREA Resource Center, "Prevention Planning, § 115.15, 115.115, 115.215, 115.315 Limits to Cross-Gender Viewing and Searches," *PREA Standards in Focus*, https://www.prearesourcecenter.org/sites/default/files/library/115.15.pdf.

The audit report only mentions policy in the discussion of this provision, and fails to discuss actual practices at the facility. Therefore, it cannot be considered that this provision was appropriately audited.

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

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

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

> [A] cross gender staff can be assigned to suicide watch, including constant observation, so long as the facility has procedures in place that enable an [incarcerated person] on suicide watch to avoid exposing himself or herself to nonmedical cross gender staff. This may be accomplished by substituting same gender correctional staff or medical staff to observe the periods of time when an [incarcerated person] is showering, performing bodily functions, or changing clothes. It may also be accomplished by providing a shower with a partial curtain, other privacy shields, or, if the suicide watch is being conducted via live video monitoring, by digitally obscuring an appropriate portion of the cell. Any privacy accommodations must be implemented in a way that does not pose a safety risk for the individual on suicide watch. The privacy standards apply whether the viewing occurs in a cell or elsewhere.
>
> The exceptions for cross gender viewing under exigent circumstances or, for [incarcerated persons] who are not on constant observation, when incidental to routine cell checks apply to suicide watch as well. Because safety is paramount when conducting a suicide watch, if an immediate safety concern or [] conduct makes it impractical to provide same gender coverage during a period in which the [incarcerated person] is undressed, such isolated instances of cross gender viewing do not constitute a violation of the standards. Any such incidents should be rare and must be documented.[25]

Based on the deficiencies identified above, TPI asserts that it cannot be determined from this audit report whether or not Goree Unit is complaint with the PREA § 115.15 standard.

25. "FAQ | How do the requirements of standard 115.15(d) apply to inmates who have been, . . ." Frequently Asked Questions, National PREA Resource Center, December 18, 2015, https://www.prearesourcecenter.org/frequently-asked-questions/how-do-requirements-standard-11515d-apply-inmates-who-have-been-placed.

PREA § 115.21, Evidence Protocol and Forensic Medical Examinations

> (a) To the extent the agency is responsible for investigating allegations of sexual abuse, the agency shall follow a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions.

In 2019, during the 86th session of the Texas Legislature, the time period for which forensic medical examinations are considered a right afforded victims of sexual abuse was extended from 96 to 120 hours. This is codified under the Texas Criminal Code § 56A.052, stating:

> (b-1) A law enforcement agency shall refer a victim of a sexual assault for a forensic medical examination, to be conducted in accordance with Subsection (a), if a sexual assault is reported to a law enforcement agency **within 120 hours after the assault.** . . . A law enforcement agency may make the same referral with respect to any victim of a sexual assault who is not a minor and who does not report the sexual assault within the 120-hour period required by this subsection if the agency believes that a forensic medical examination may further a sexual assault investigation or prosecution [emphasis added].[26]

Based on annual PREA reports, it appears that the agency may have complied with this requirement for a short time in 2019 after the statute went into effect, but subsequent annual reports indicate noncompliance.[27] This appears to also fail PREA § 115.21(a) requirement that the agency "follow a uniform evidence protocol that **maximizes** the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions" (emphasis added).

We note also that any practice (regardless of what is stated in policy) that bases the need for forensic medical exams only on a timeline criteria, as it is implied is done within TDCJ and at this facility, is a problematic practice. Forensic examinations can detect tissue damage, contusions, and other indications of assault and sexual assault within a much longer time period than is appropriate for DNA collection, and to ignore that aspect of evidence collection is wholly inappropriate.

The audit report does not address such compliance issues, and based on this evidence, it appears highly doubtful that the facility is compliant with this provision.

> (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.

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

The audit report documents that not one of the at least seven sexual abuse investigations included a forensic medical exam. Although there can be explanations justifying the absolute absence of all such exams, no explanation is given. Thus it appears that the facility is highly unlikely complaint with this provision.

In addition, TDCJ OIG-7.13 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. OIG-7.13 and SPPOM-05.01 indicate that is not being done either at the agency level or at Goree Unit, but instead staff are deciding whether to offer the survivor access to a forensic medical examination or not.[28] Based on this conflicting information, it is not possible to determine if Goree Unit is compliant with this provision or not.

> (d) The agency shall attempt to make available to the victim a victim advocate from a rape crisis center. If a rape crisis center is not available to provide victim advocate services, the agency shall make available to provide these services a qualified staff member from a community-based organization, or a qualified agency staff member. Agencies shall document efforts to secure services from rape crisis centers. For the purpose of this standard, a rape crisis center refers to an entity that provides intervention and related assistance, such as the services specified in 42 U.S.C. 14043g(b)(2)(C), to victims of sexual assault of all ages. The agency may utilize a rape crisis center that is part of a governmental unit as long as the center is not part of the criminal justice system (such as a law enforcement agency) and offers a comparable level of confidentiality as a nongovernmental entity that provides similar victim services.

The audit report documents that two persons who had reported sexual abuse in the facility were housed at the facility, but claims in the facility information section and here to have interviewed three of those two persons, a physical impossibility. It is impossible to determine if the contradiction is due to problematic copying and pasting, and whether the discussion of the "three" interviews actually is related to Goree Unit. Some aspect of this discussion or the facility information is false.

Based on the apparent lack of compliance with provision (a), the questionable compliance with provision (c), and the indication that the discussion of provision (d) may not be for Goree Unit, TPI asserts that it cannot be determined whether or not Goree Unit is compliant with the PREA § 115.21 standard.

PREA § 115.31, Employee Training

> (b) Such training shall be tailored to the gender of the [incarcerated persons] at the employee's facility. The employee shall receive additional training if the employee is reassigned from a

28. 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. that has been reported for OIG-7.13: "The OIG investigator will determine whether a forensic medical examination is required." This, too, is counter to PREA § 115.21.

> facility that houses only male [incarcerated persons] to a facility that houses only female [incarcerated persons], or vice versa.

Concerning § 115.31(b), if training does not include use of preferred names and pronouns of transgender persons, then training is not tailored to the gender of the persons incarcerated at the facility. If the training does not recognize the actual affirming gender of transgender persons, which may be different from the gender designation of the unit to which they are assigned, then training is not tailored to the gender of persons at the facility. Because TDCJ as a whole refuses to affirm the gender of transgender persons, the facility is not likely to have a different practice and is thus not compliant with this provision.

Due to the failure to note the actual genders of persons present at Goree Unit in the facility information, it cannot be determined whether or not Goree Unit is compliant with this standard.

PREA § 115.33, Incarcerated Persons Education

> (a) During the intake process, [incarcerated persons] shall receive information explaining the agency's zero-tolerance policy regarding sexual abuse and sexual harassment and how to report incidents or suspicions of sexual abuse or sexual harassment.
>
> (b) Within 30 days of intake, the agency shall provide comprehensive education to [incarcerated persons] either in person or through video regarding their rights to be free from sexual abuse and sexual harassment and to be free from retaliation for reporting such incidents, and regarding agency policies and procedures for responding to such incidents.

The discussion of provision (c) of this standard, only applicable the first year the PREA standards were implemented, appears to apply to provision (b). In this discussion, the audit report states that the pre-audit questionnaire documented that of the persons arriving at the facility, "those who were not educated during 30 days of intake . . . have been subsequently educated." This is not compliant with provision (b) and documents noncompliance with no required corrective action to address whatever the problem was in future practice.

> (d) The agency shall provide [] education in formats accessible to all [incarcerated persons], including those who are limited English proficient, deaf, visually impaired, or otherwise disabled, as well as to [incarcerated persons] who have limited reading skills.
>
> (e) The agency shall maintain documentation of [] participation in these education sessions.
>
> (f) In addition to providing such education, the agency shall ensure that key information is continuously and readily available or visible to [incarcerated persons] through posters, [] handbooks, or other written formats.

The audit report also considers simply watching a "Sexual Abuse/PREA Awareness video" as meeting the comprehensive training provision. Although provision 115.33(b) does indicate a video may meet this standard, most audit reports cover in-person training of approximately four hours as part of the 115.33(b) training. In addition, the PMO notes specifically about videos that:

> It is strongly recommended that agencies have a facilitator run screenings of the Comprehensive education video. As with any classroom environment, people are less likely to engage with—and thus remember—the information in the video without a facilitator present to highlight key points and lead conversations. The facilitator should take this opportunity to review with people in confinement at a minimum, the agency's mission and values, the multiple avenues for reporting, and the available emotional support services and programs. **There should also be time for questions following the presentation** [emphasis in the original].[29]

This is emphasized as well in the relevant *PREA Standards in Focus:*

> It is a recommended practice that a staff member or peer educator present inmate education in person and distribute supplemental materials to inmates, even if a video is part of the intake information or comprehensive education. The facility should designate staff educators. They can be custody staff, case managers, mental health staff, or non-custody staff. Staff educators should become their facility's experts and be responsible for keeping up-to-date on policies and practices related to sexual abuse prevention, detection, and response.[30]

No facilitation was mentioned, no questions or conversations were noted as included, no peer education was mentioned, and in short, nothing was provided that would appear to justify considering a simple video showing as comprising "comprehensive education."

TPI has little means of monitoring compliance with PREA § 115.33, which covers education of incarcerated persons concerning PREA issues, however, the number and extent of misunderstandings about PREA we receive in reports indicates as a whole, TDCJ training in this area is a failure. This audit report assessed Goree Unit as exceeding the PREA § 115.33 standard, but provides no substantiating information for the rating. To the contrary, the discussion indicates clear noncompliance with at least the provision (b) time frame, and possibly with the provision (b) level of education. In the discussion of PREA § 115.51, the audit report documents that five (18%) of 28 persons did not understood they could make anonymous PREA reports; and the discussion of PREA § 115.53 notes that eight (29%) of 28 interviewees reported they did not receive outside contact information, both indications of significant problems with PREA training. Based on these facts, TPI asserts that Goree Unit is not complaint with the PREA § 115.33 standard.

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].

29. "New PREA Education Videos for Adult and Juvenile People in Confinement," PREA Resource Center, April 27, 2023, https://www.prearesourcecenter.org/resource/new-prea-education-videos-adult-and-juvenile-people-confinement.
30. PREA Resource Center, "Prevention Planning, § 115.33, 115.132, 115.233, 115.333 Inmate/Resident Education," *PREA Standards in Focus*, https://www.prearesourcecenter.org/sites/default/files/library/115.33%20SIF_Update.pdf.

> (b) Intake screening shall ordinarily take place within 72 hours of arrival at the facility.
>
> (c) Such assessments shall be conducted using an objective screening instrument.

TPI questions whether SPPOM-03.01 and its Attachment E, referenced in the audit report, actually are objective screening instruments. Neither SPPOM-03.01 nor its Attachment E contain any objective scores, nor do they reference any other source or instructions used for scoring. SPPOM-03.01 implies, instead, a subjective determination by the Unit Classification Committee, which writes that subjective determination in Section V of the Attachment E. This does not appear to be an objective screening instrument as required under this standard.

TPI notes also that an "objective" screening tool—especially if it is subjectively interpreted, as Attachment E appears to be—does not guarantee an effective and thus nondiscriminatory screening tool, and that may be further undermined by the apparent lack of an actual scoring instrument. 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.[31] 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."[32]

> (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;

31. "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.
32. "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 screening 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 is subjective and makes it easy to exclude considerations of vulnerability for gender nonconforming and nonbinary persons.

> (f) Within a set time period, not to exceed 30 days from the [incarcerated person's] arrival at the facility, the facility will reassess the [incarcerated person's] risk of victimization or abusiveness based upon any additional, relevant information received by the facility since the intake screening.

The audit report documents that of 17 persons interviewed who had arrived at the facility during the audit period, only 11 remembered undergoing a required second risk assessment, while all 17 remembered undergoing the first risk assessment. No explanation or reason for this discrepancy is provided in the audit report. It is highly questionable whether the second risk assessment is consistently done if about 35% cannot recall that assessment being done while 100% remember the initial assessment. This certainly appears to indicate noncompliance with the provision is not consistent.

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

The audit report simply repeats agency policy in the discussion of this provision, with no substantiation that the facility complies with agency policy for this provision. The audit report variously stated that there were either two or three persons present and interviewed who had reported sexual abuse at the facility, so the opportunity to collect information from both interviews and from site documentation was certainly available. With no information to substantiate compliance with this provision, compliance must be considered questionable.

Based on evidence that the screening instrument is not truly objective, that certain populations appear to be excluded from screening, that the second required evaluation is not consistently completed, and that reassessments after reports of sexual abuse may not be completed, TPI asserts that it appears Goree Unit is not complaint with this standard.

PREA § 115.42, Use of Screening Information

> (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.

> 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.[33]

33. 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.

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.[34]

TPI receives routine complaints from transgender and other persons incarcerated in TDCJ that these guidelines are not followed. Our correspondents report they are housed in housing units or even in the same cell with persons who are a danger to them (including danger of sexual harassment and sexual abuse) because the other persons in the same housing unit or cell are antagonistic toward transgender persons specifically, LGBTI persons in general, or non-affiliated or "solo" persons who are vulnerable to exploitation. The antagonism may be due to personal or religious hatred, but it can also be due to affiliation with organizations that have rules against or that stigmatize any fraternization or association—including sharing a cell—with a transgender person or any LGBTI person, and see a transgender person as as target for sexual exploitation. TPI does not contend that TDCJ does not have a screening process or use the screening information, but that both as currently implemented are inadequate to properly achieve the separation required under PREA § 115.42. Simply having policy addressing these requirements is not sufficient. The policy must be efficacious at achieving its purpose.

The audit report fails to substantiate compliance with this provision.

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

Provision (b) requires individualized determinations based on screening data that include, in part, age and physical size, but TDCJ's own data shows that incidents of sexual violence between persons housed with others who are more than 10 years older and more than 40 pounds heavier are rising, and have trended upward since the implementation of PREA.[35]

34. "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.
35. Data compiled and presented in Trans Pride Initiative to Impact Justice, PREA Resource Center, December 18, 2024: figures 2 and 3, https://tpride.org/blog/prison-advocacy-prea-noncompliance-tdcj-agency-audit/.

Simply stating or implying these issues are considered in making individualized determinations does not confirm that they are implemented or implemented effectively. The data, on the other hand, show the implementation is not effective.

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

The DOJ has stated that an auditor:

> must examine a facility or agency's actual practices in addition to reviewing official policy. A PREA audit that reveals that all transgender or intersex [incarcerated persons] in a facility are, in practice, housed according to their external genital status, as is true at Goree Unit and across TDCJ facilities, raises the possibility of non-compliance. The auditor should then closely examine the facility's actual assessments to determine whether the facility is conducting truly individualized, case-by-case assessments for each transgender or intersex [incarcerated person]. The auditor will likely need to conduct a comprehensive review of the facility's risk screening and classification processes, specific [incarcerated person] records, and documentation regarding placement decisions.[36]

The PREA Standards in Focus provides specific instructions to auditors:

> Examining a facility's actual practices, in addition to reviewing official policy. For example, a PREA audit that reveals that all transgender and/or intersex inmates are, in practice, housed according to their genital status raises the possibility of non-compliance, even if the agency's policies are consistent with all of the requirements in § 115.42. The auditor must conduct a comprehensive review of the agency's screening and reassessment processes, and examine specific inmate records/files to determine if individualized, case-by-case housing and programming assignments of transgender and/or intersex inmates are being made.[37]

Additionally, this audit report includes a statement in the discussion of provision (c) that LGBTI persons interviewed "acknowledged being housed in a general population housing area for all [incarcerated persons] of the same level of classification." It is not clear how this statement, which is required under state law, substantiates compliance with the provision.[38]

36. "FAQ | Does a policy that houses transgender or intersex inmates based exclusively on, . . ." Frequently Asked Questions, National PREA Resource Center FAQ, March 24,2016, https://www.prearesourcecenter.org/frequently-asked-questions/does-policy-houses-transgender-or-intersex-inmates-based-exclusively.
37. 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.
38. Texas Government Code § 501.112, "Mixing Classifications Prohibited," https://statutes.capitol.texas.gov/Docs/GV/htm/GV.501.htm.

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

TPI has often heard from incarcerated transgender persons throughout TDCJ that the twice yearly assessments by UCC are cursory and ineffective. Reports generally convey that many staff make it clear they are simply there to check off the items they are required to ask, and many persons note that if they report issues, those are either dismissed or ignored, or addressed by locking the person in restrictive housing, likely with little or no property, for a week or more while an "investigation" is conducted then found unsubstantiated at best. The process appears seldom conducive to meeting the spirit of the PREA standard, and instead may offer staff opportunities to discourage reports of sexual victimization risks. TPI feels it is inadequate to simply parrot policy in support of meeting this standard, as is done in this audit report, and it must be supported by genuine investigation into the efficacy of the process for incarcerated transgender and intersex persons.

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

TPI notes that for two-person cells where the shower is in the cell, if one of the persons is transgender or intersex and one is not, that housing is not in compliance with 115.42(f).[39] If both persons are transgender or intersex, such housing may comply with this standard if both persons housed in the cell agree that the housing arrangement is acceptable, but only for as long as both persons housed in the cell agree that the arrangement is acceptable.]

In addition, full compliance with PREA § 115.42(f), as per the DOJ, requires that facilities "adopt procedures that will afford transgender and intersex [incarcerated persons] the opportunity to disrobe, shower, and dress apart from other [incarcerated persons]," not simply have a minimally compliant "separate" shower.[40]

Based on the failure to substantiate facility compliance with provision (a) and evidence that TDCJ is broadly not compliant with the provision, indications in TDCJ's own data that they are not fully compliant with provision (b), the almost certainty that TDCJ as an agency is not compliant with provision (c), as well as indications of poor or lacking compliance with other provisions of the PREA § 115.42 standard, TPI asserts that it is not likely Goree Unit is compliant with this standard.

39. This generally would be the case even if the unit claims that opportunities for separate showers are provided because during lock downs and even periods of staff shortages, those opportunities are some of the first to be overlooked or set aside.
40. "FAQ | Standard 115.42, 'Use of Screening Information,' requires that transgender, . . ." Frequently Asked Questions, National PREA Resource Center FAQ, April 23,2014, https://www.prearesourcecenter.org/frequently-asked-questions/standard-11542-use-screening-information-requires-transgender-inmates-be.

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[41] 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.[42] However, the discussion makes it clear that all these terms refer to separating the person from endangerment by placement in separate housing, and that all of these are considered "protective custody." For the sake of consistency, TPI will refer here to all separation for investigations of alleged sexual abuse or due to assessment as being at risk for sexual abuse to be "protective custody." If the person being segregated agrees with the segregation, that segregation will be "voluntary protective custody"; if the person being segregated does not agree with the segregation, that segregation will be "involuntary protective custody." TPI also asserts that due to the requirement at PREA § 115.41(d)(9) that the incarcerated person's own views of vulnerability taken into account, considerations of whether separate housing is "voluntary" or "involuntary" may change over time as the person's views about the need for protective custody changes. This can be important for persons provided TDCJ "safekeeping designation" because in many cases, persons will initially agree and want the designation, but later wish to be released from safekeeping designation due to the limits on education, training, work, and program opportunities. At that point, safekeeping becomes involuntary protective custody. Requests to be released from safekeeping designation are not always granted, and when not granted, documentation requirements under PREA § 115.43 should be triggered.

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

Protective safekeeping: "Protective safekeeping" is defined in the TDCJ *Classification Plan* as being "for [incarcerated persons] who require the highest level of protection in a more controlled environment than other general population [persons], due to threats of harm by others or a high likelihood of victimization." 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

41. Federal Register (2012): vol. 77 no. 119, Fed. Reg. page 37106-37232 (June 20, 2012).
42. Federal Register (2012): vol. 77 no. 119, Fed. Reg. page 37154-37155 (June 20, 2012).

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.[43]

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

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:

43. 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.
44. 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.

> 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."[45] 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.[46] 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.[47] The more complete explanation was that there was no ***safekeeping*** housing on the units where the program was offered. Perhaps in a warped sense of logic it may be said that safekeeping was not the reason she was denied, but it is entirely disingenuous to claim that safekeeping status did not prevent her from entering the program. Her safekeeping status was finally relinquished after our complaint (and after she voluntarily de-identifed as transgender in the system so she could access the program), and she entered the program. That was the only impediment to her participation in that program. TDCJ's insistence that "housing availability" instead of the

45. 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/.
46. 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.
47. 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.

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

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

48. TPI has received a number of complaints that minimum custody 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.

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.

Restrictive housing: TDCJ restrictive housing is defined in the TDCJ Restrictive Housing Plan, which defines restrictive housing as:

> a non-punitive, maximum custody status involving the separation of an [incarcerated person] from general population for maintaining safety, security, and order among [incarcerated persons], staff, and the public. . . . An [incarcerated person] is considered to be in restrictive housing any time the [incarcerated person] is separated from the general population by confinement, by themselves, in a cell for 22 hours or more each day to preserve the safe and secure operation of the facility. . . .
>
> For the purpose of this *Plan,* restrictive housing consists of the following categories: security detention; pre-hearing detention (PHD); and transient status pending the outcome of an [Inmate] Protection Investigation ([IPI]).

Also from the TDCJ Restrictive Housing Plan:

> [Incarcerated persons] who are placed in transient status pending the outcome of an OPI are considered to be in restrictive housing as their placement in this status is necessary to preserve the safe and secure operation of the facility. [Incarcerated persons] assigned to this restrictive housing category are generally placed in the same manner as offenders assigned to PHD.

Two important points to be gleaned from this statement are 1) that claims made in audit reports that there were allegations of sexual harassment or sexual abuse at a facility, yet no persons were ever placed in restrictive housing, would be either a violation of TDCJ policy or false statements; and 2) that placement in transit for IPI is an environment that is essentially disciplinary in nature because it is "the same manner" as persons cited with disciplinary cases.

Numerous PREA audit reports have noted that after reporting allegations of sexual violence, the survivor is not placed in "restrictive housing" but in "transient" housing. However, as seen in TDCJ's own policy, transient housing for IPI is considered "restrictive housing." It should also be noted that this definition refers to any other separation "by themselves, in a cell for 22 hours or more each day," so this does not necessitate housing in a "restrictive housing cell," but anywhere meeting that definition. As such, this is the closest housing in TDCJ to meeting the PREA protective custody definition. However, it should also be noted that PREA protective custody does not require being housed by themselves or confined to the cell for at least 22 hours a day, so PREA protective custody is much more broad than TDCJ restrictive housing.

Further, audit reports claiming that a person reporting sexual violence are housed in transient housing, not restrictive housing, is false according to TDCJ's own policy, which states explicitly that "Transient Status Pending Outcome of an [Inmate] Protection Investigation ([IPI]) is a status reserved for [incarcerated persons] who are placed in restrictive housing on a temporary basis pending the outcome of a formal investigation related to allegations of sexual abuse,

sexual harassment, extortion, violence, or threats of violence." Thus transient housing for 115.68 purposes **IS** restrictive housing.

It should be further noted that there is no provision in the Restrictive Housing Plan for a consideration of alternative housing, as required under PREA 115.43. Access to out-of-cell programs for persons in restrictive housing for IPI is not addressed specifically, but appears to be extremely limited in most cases.

Lockup for reporting sexual violence: TDCJ seems to go to some effort to indicate only "protective safekeeping" (custody classification P6 and P7) and "restrictive housing" constitute "protective custody" or "involuntary protective custody" for PREA purposes, and TDCJ protective safekeeping and restrictive housing 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).[49] This probably generates documentation that "all available alternatives" have been reviewed, but in practice it is an automatic action that is done even if the person reporting states definite reasons that they are in no further danger. TPI has even documented this happening when someone reported sexual abuse at a different unit and there was no conceivable danger at the current unit. In these cases, there is certainly no legitimate evaluation of "all available alternatives," regardless of staff claims or policy. IPI lockups also routinely last for more than 24 hours, and are often handled as disciplinary actions, with the person being strip searched and their property taken (the latter is often the consequence of being locked up immediately, without being allowed to pack their property, so ostensibly they are not "denied" their property, although that and property loss are effects of the action). Since IPI lockups are usually in the same areas as restrictive housing, they also routinely entail the same security restrictions that apply to those being held for disciplinary reasons. Such lockups may be called "restrictive housing," "transient housing," and other terms. Clearly such treatment discourages reports of sexual victimization.

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

49. 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.

> 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.[50]

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

PREA § 115.43, Protective Custody

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

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

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

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

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 segregation due to high risk or immediate endangerment related to sexual violence 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 appropriately screen them for that risk even after they experience sexual violence at multiple facilities, yet staff often segregate these persons—often involuntarily—for sometimes weeks or even months in housing not covered by this audit. We note that this audit report only mentions TDCJ protective safekeeping in the discussion of provision (a), a housing designation that is entirely inappropriate as the only classification to be considered.

In the discussion of PREA § 115.42(a), the audit report states that placement in PREA protective custody "is done at the request of the [incarcerated person] or solely based on the [incarcerated person's] classification level. There are many times that placement is not at the person's request, and it is not clear what "based on . . . classification level" even means because, for example, the classification level of someone in medium security safekeeping is P4 as opposed to general population G4. This circular statement in effect says they are placed in safekeeping because they are designated for safekeeping, and fails to address how that determination is made or why that is the only available alternative.

The assessment of compliance with this provision is entirely deficient and cannot be used to determine compliance.

> (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 appears to focus on or only consider protective safekeeping, but vaguely references "segregated housing," which may refer to TDCJ restrictive housing. Once again, this is insufficient to substantiate compliance with this provision. TPI would also like to note that communication with the now abolished PREA Resource Center states in reference to provision (b):

> You will see that **there is a LOT of documentation that is required when involuntary segregation is used:**
>
> - The goal of this standard is to make sure that at-risk inmates are not segregated as a way to keep them safe (involuntary segregation)
> - Segregation can ONLY be used as a last resort
>   - There has to be an assessment of all available alternatives **and documentation about why no other option exists and why segregated housing is necessary** for the inmate's safety
> - Inmates placed in segregation for this purpose must be allowed to have access to programming, privileges, education and work opportunities to the extent possible.
>   - Facilities must document when these opportunities are limited and why they exist and for how long
> - Inmates can be held in segregated housing for 24 hours as the facility works to conduct the assessment [emphasis added][51]

Although not specified in this audit report, other audits state that this "documentation" consists of a note on "the housing log." It is unlikely such a note should be considered sufficient

51. Phebia Moreland, PREA Resource Center Senior Program Manager, to Nell Gaither, November 14, 2021, email communication. TPI notes that this indicates provision (b) applies only to involuntary segregation, but that limit is not reflected in the actual PREA language, which refers to "for this purpose," which is the purpose of keeping safe persons at high risk of sexual victimization.

documentation to constitute "a LOT of documentation that is required" per the PMO. The comment from the PREA Resource Center continues:

> We want there to be a reporting culture. We want people to tell us if they are not safe or if something has happened to them. However, if people know they will be placed in segregation for disclosing this information they will be less willing to disclose and now you cannot keep them safe.
>
> [Segregation w]ill also deter people who are sexually abused in the facility from reporting since it will be perceived as punishment. Imagine someone who feels that their housing assignment is a safe place for them. Now they are in segregation and their bed assignment may be given to someone else. They may lose their work assignments and be prohibited from participating in programming. All of this will create a deterrent to reporting.[52]

TPI is in wholly and enthusiastically in agreement with these aspirations. The problem is that these exact scenarios occur daily within TDCJ facilities, and because of the agency's manipulation of what constitutes such segregation, with the complicity of audit reports that fail to identify the full range of segregation, no or very little documentation is done and people are discouraged from reporting in just this way. The very problem the PMO claims to be addressing is allowed and even encouraged by ineffective audits.

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

This provision is limited to involuntary segregation, again encompassing any type of transit and restrictive housing, SOS, CDO, any type of "lockup," "protective management," and all other types of separation where the incarcerated person does not specifically volunteer for that housing. In general, any such involuntary segregation should be for no more than 30 days. This audit report fails to substantiate Goree Unit's compliance with this standard.

> (d) If an involuntary segregated housing assignment is made pursuant to paragraph (a) of this section, the facility shall clearly document:
>
> (1) The basis for the facility's concern for the [incarcerated person's] safety; and
>
> (2) The reason why no alternative means of separation can be arranged.

This provision defines the documentation required for PREA § 115.43(a) placements in involuntary segregated housing. The audit report again only refers to protective safekeeping in the discussion of this provision, which is not an appropriate assessment of compliance. This discussion is not sufficient to consider Goree Unit compliant with this provision.

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

52. Phebia Moreland, PREA Resource Center Senior Program Manager, to Nell Gaither, November 14, 2021, email communication.

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.

Due to the entirely deficient discussion of compliance with provision (a), the clear lack of discussion substantiating compliance with provisions (b) and (c), the lack of support for compliance with provision (d), and the deficient consideration of appropriate segregated housing types, TPI asserts that it cannot be determined whether or not Goree Unit is compliant 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 restrictive housing for an IPI (which requires PREA § 115.43 consideration, in some cases via PREA § 115.68), and that placement generally lasts several days to sometimes weeks (although the designation often changes during that time to obscure the extended stay in segregated housing).[53] 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 seven reports of sexual abuse, none were placed in segregated housing involuntarily during the preceding 12 months. Most people reporting such treatment to TPI indicate the placement in such segregated housing is often done involuntarily to discourage reports of sexual violence, and that there are many alternatives to restrictive housing.

As with the discussion under PREA § 115.43, TDCJ engages in manipulation of what constitutes "protective custody" by making misleading statements about what "protective safekeeping" and "safekeeping designation" are. This audit report fully participates in such misrepresentation by echoing the "protective safekeeping" or "safekeeping" reference in the discussion of this standard as the only housing that constitutes segregation:

- persons "at high risk for sexual victimization shall not be placed in protective safekeeping . . .";

53. Note also that some audit reports claim persons segregated for IPI are placed in transit rather than restrictive housing, but according to the TDCJ Restrictive Housing Plan, transit housing for IPI IS restrictive housing.

- "if a protective safekeeping housing assignment is made . . ."
- persons "placed in protective safekeeping for this purpose . . ."
- "will be placed in segregated housing (Safekeeping) . . ."

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.

> [Incarcerated persons] who are placed in transient status pending the outcome of an OPI are considered to be in restrictive housing as their placement in this status is necessary to preserve the safe and secure operation of the facility. [Incarcerated persons] assigned to this restrictive housing category are generally placed in the same manner as [incarcerated persons] assigned to PHD.

Based on these issues, TPI asserts that this audit report did not fully audit the use of restrictive housing for compliance with this standard, and that it cannot be determined from this audit whether or not Goree Unit is compliant with PREA § 115.68.

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 literally every single allegation of either sexual harassment or sexual abuse was unsubstantiated. Although the numbers are low (possibly indicating a failure to document reports), out of the seven 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. 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.[54] These dismal

54. 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/

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.[55]

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.[56] Regardless of one's concerns about possible false reporting, these extremely low rates of substantiation indicate a preponderance of evidence is not the standard being used anywhere in the TDCJ system.

For Goree Unit, as noted above, the audit report states that for allegations against staff, 0% of four sexual abuse allegations were substantiated, zero sexual harassment allegations were even reported (an unbelievable claim in itself), and voyeurism allegations were not reported. For allegations against other incarcerated persons, 0% of three allegations of sexual abuse were substantiated, and 0% of five 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 Goree Unit was assessed as being compliant with the PREA § 115.72 standard.

PREA § 115.401, Frequency and Scope of Audits

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

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

documents/PREA_SPP_Report_2023.pdf.

55. 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.
56. 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.

> The purpose of conducting one-on-one interviews with persons confined in the facility is to provide a safe space where they can freely discuss their experiences in and perspectives of the facility on sensitive issues related to sexual safety.[57]

A simple statement that the interviews were "private" is not sufficient to document that responses were not coerced or manipulated by staff in some way. There needs to be a statement that specifically describes the setting, and that interviewees were asked if their responses were discussed in any way by or with staff.

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

PREA § 115.401(o) clearly states that auditors should contact community advocates who may have relevant information for a PREA audit, and the 2022 Auditor Handbook reiterates this. This is a broadly inclusive definition, and it places the onus on the auditor to identify and contact organizations and advocates with information about the facility. TPI is well known to have information about sexual violence and other violence at TDCJ facilities.[58] TPI was not contacted concerning the information we have about Goree Unit, and no reference to our audit comments and data readily available online was made. For auditor convenience, that information can even be easily viewed and downloaded at our web page for auditors: https://tpride.org/projects_prisondata/prea.php. Because TPI is well known to have relevant data for PREA audits, and because this data is readily available online, the failure to include data from TPI can only be viewed as a failure of adequate due diligence or deliberate omission by the auditor.

PREA § 115.402, Auditor Qualifications

> (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.

57. U.S. Department of Justice, PREA Management Office, *PREA Auditor Handbook,* Version 2.1, November 2022: 59, https://www.prearesourcecenter.org/sites/default/files/library/PREA%20Auditor%20Handbook%20V2.1%20-%20December%202022.pdf.
58. The 2022 Auditor Handbook notes that "auditors must demonstrate that they attempted to communicate with **a community-based or victim advocate** to gather information about relevant conditions in the facility" (emphasis added to highlight 2022 Auditor Handbook text that incorrectly uses the singular instead of plural instructions) and no such documentation or insufficient documentation that the auditor addressed that requirement was provided. The singular use in the 2022 Auditor Handbook misrepresents the text of PREA § 401(o), which specifically uses a plural instruction.

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.[59]

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.[60]

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.

59. 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.
60. 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.

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 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.[61]

More specifically, a currently certified PREA auditor recently responded to TPI after we forwarded information to him by berating TPI's concerns and making a statement that in effect claimed reports of sexual violence by incarcerated persons are lies.[62] Excerpts from that auditor's statements include:

- "I have no obligation whatsoever to listen to you." False; PREA requires auditors to incorporate information from community advocates.
- "There are three ways that I could respond to your email. The first is to take the information and utilize it to the best of my ability. The second is to totally ignore it. The third is to respond negatively. I have chosen the third way." Again, PREA requires auditors to incorporate information from community advocates.
- "I don't suppose you ever considered that what you learn from [incarcerated persons] might not be true?" Illustrative of the "us and them" mentality at discussion here. We always do what we can to verify the incidents we document.

61. 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/.
62. James Kenney to Nell Gaither, April 27, 2025, email communication. TPI has for years made data available to auditors, and as we became known in Texas prisons, we expected increased contacts from auditors who are almost certainly aware of our data. That did not happen. We then made a publicly accessible tool so auditors would not have to contact us, and shared that with TDCJ officials as we had opportunities to do so, expecting use of our data would increase at least some. That did not happen. Since we began collecting violence data in 2014 through 2024, our data has been requested only about five times. Staff at the now dissolved National PREA Resource Center told TPI that we should contact auditors—even though the PREA standards state this is the auditors' responsibility—so we have started contacting auditors. This response exemplifies the reluctance—and refusal—to use community advocate data to inform PREA audits.

- "You do not know me from Adam and you write to me out of the blue and degrade me and my work. Then you go on to tell me how to do audits." We have no requirement to know an auditor; we have a right to comment on what we observe and document.
- "I have never written to you and told you how to do your job." He is doing exactly that in his email, telling TPI how to do our job.
- "Have you been certified through the Department of Justice to perform PREA audits?" We are not required to be certified auditors to comment on violence we document at facilities or deficiencies we identify in audits.
- "I will take from your email what I care to read and then I will do my audit professionally the way I always do, without your help and guidance." Again, PREA requires auditors to incorporate information from community advocates.

We believe that auditors who are part of the prison industrial complex are definitely affected by the clique or prison culture identities described above and illustrated by this auditor response, and examples such as the refusal of our data documented here indicate a kind of "personal relationship" identified as a potential conflict in the 2022 Auditor Handbook. Such clique or prison culture identities may also constitute a kind of "personal relationship" identified as a potential conflict in the 2022 Auditor Handbook.

PREA § 115.402(c) and (d) prohibit an auditor from receiving financial compensation from the agency being audited within three years prior to and after the audit, which is warranted but not sufficient. Due to the "we protect our own" mentality common among persons affiliated with prison operations, TPI believes that auditors should be barred from receiving any financial compensation directly or indirectly from any prison operator or associated agency, at least for the last three years, due to this potential conflict of interest. Additionally, audit funding must be separate from the system being audited to avoid this conflict of interest.

This auditor can be seen to have completed 73 PREA audits with available reports in the PMO audit database, and only 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).[63] The directory appears to only include audits conducted since September 2022. This auditor has been certified since 2015, so TPI feels it would be important to know if this failure to identify sufficient corrective actions continues into the past. Even with this preliminary evidence of showing favor and bias for prison operators and administration over the safety of incarcerated persons, TPI questions whether any of the audits conducted by this auditor should be considered as supporting state or federal claims of PREA compliance.

63. TPI does not currently have the means of determining the percentage of full compliance audits conducted under contract with CCS, but we would strongly suggest the PMO 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.

Favorable audits are almost certainly influenced by the deep and long-term connections this auditor has to the prison industrial complex. Ms. O'Haver worked as an officer for a sheriff's office in Florida for approximately 23 years up until November 2021. Florida is not known for affirming practices concerning the treatment of LGBTI incarcerated persons (TPI is currently in contact with persons being abused in the system there).

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 audit sign-offs, 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.**

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, assessment of a standard as exceeded without support, vague or confusing statements, and apparent failures to comply with minimum audit requirements. Based on the deficiencies identified in this comment letter, it appears that compliance is questionable for at least ten standards, there is an indication of compliance is not met for two standards, and the report documents a failure to comply with one standard with no corrective action required.

TPI requests that, at a minimum, 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 audit reports consider relevant information from oversight agencies and other entities, such as the Texas Sunset Commission's report about conditions in TDCJ.
- That audits must verify numbers of individuals interviewed meet at least minimum requirements or audit reports will be considered insufficient and cannot be finalized.
- That compliance with evidence collection, particularly medical forensic evidence, actually consider the full implementation of *A National Protocol for Sexual Assault Medical Forensic Examinations*, not just a simplistic blanket timeline rule.

- That audit reports give serious consideration to information about PREA compliance concerns provided by incarcerated persons in interviews, and to provide justification for dismissing such information.
- That screening data and use involve scoring measures that are objective and transparent, not simply "objective" questions that are subjectively interpreted.
- That evaluation of PREA protective custody include all types of protective custody, not just a narrow range defined for the ease of prison operators.
- That PREA protective custody assessments that consider only or primarily "protective safekeeping" or "restrictive housing" be deemed insufficient and cannot be finalized.
- That highly problematic language in the Auditor Compliance Tool that ignores trauma and encourages sexual violence in regards to transgender, nonbinary, and gender nonconforming populations be amended to eliminate bias, stigmatizing constructs, and discrimination.
- That the Online Audit System implement measures to help identify and safeguard against contradictory data (at least basic quality control measures to help identify problems).
- That auditor conflicts of interests be addressed.
- That at a minimum, PREA § 115.33 be considered to need corrective action at the next audit of Goree Unit.
- 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: TDCJ Executive Director Bryan Collier
TBCJ PREA Ombudsman Cassandra McGilbra

Goree Unit Senior Warden Juaquine Pope
Goree Unit PREA Manager Kiara Goffney
PREA auditor Lynni O'Haver
Pete Flores, Chair, Senate Committee on Criminal Justice
Sam Harless, Chair, House Committee on Corrections
Venton Jones, Vice-Chair, House Committee on Corrections
Dick Durbin, Senate Judiciary Committee, Subcommittee on Crime and Counterterrorism
Sheldon Whitehouse, Senate Judiciary Committee, Subcommittee on Federal Courts, Oversight, Agency Action, and Federal Rights
Lucy McBath, House Judiciary Committee, Subcommittee on Crime and Federal Government Surveillance
Mary Gay Scanlon, House Judiciary Committee, Subcommittee on the Constitution and Limited Government