U.S. Department of Justice
999 North Capitol Street, NE
Washington, DC 20531

via email: PREACompliance@usdoj.gov

July 11, 2025

re: 2025 Hightower 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) Hightower Unit conducted by auditor Cynthia Swier and Corrections Consulting Services, LLC, formerly PREA Auditors of America. The onsite portion of the audit was conducted from May 7 to May 9, 2025, no corrective actions were documented, no interim report appears to have been produced, and the final report was published on June 18, 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 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 has documented a total of 139 incidents of violence against persons housed at Hightower Unit. Of the total documented incidents, 32 involved noncompliance with some element of the PREA standards. The latter dated to earlier than 2023.[6] All comment letters prepared by TPI for

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).

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 standards as exceeded without sufficient support, vague and confusing statements or information, 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 10 standards, there is an indication of compliance is not met for one standard, and the report documents a failure to comply with five standards 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 audit reports must verify policy citations are accurate, and that when policy is referenced that does not support compliance, the audit report be considered incomplete and deficient. **There are serious issues with this audit report citing policy that does not support compliance as claimed.**
- 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 audit reports must verify data related to sexual violence allegations and investigations is accurate, and identify inconsistencies in facility data reported.
- 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.

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			
Fails to adhere to person-first language guideline (see page 7).			X					
Genders of persons at facility misrepresented (see page 8).		X	X		X			
Fails to identify any corrective actions (see page 8).	X							
Time spent onsite less than minimum requirement (see page 9).	X							
Facility information appears inaccurate (see page 10).	X							
Target interviews fail to meet minimum requirement (see page 11).	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		
PREA § 115.15, viewing and search deficiencies (see page 17).		X						X
PREA § 115.21, SANE exam deficiencies (see page 23).	X				X		X	
PREA § 115.31, staff training deficiencies (see page 24).	X	X						X
PREA § 115.33, incarcerated person training deficiencies (see page 25).	X			X	X	X		
PREA § 115.41, screening deficiencies (see page 27).	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			X
PREA § 115.51, reporting deficiencies (see page 47).				X				
PREA § 115.61, staff reporting deficiencies (see page 47).	X					X		
PREA § 115.64, first responder deficiencies (see page 48).					X			X
PREA § 115.67, retaliation deficiencies (see page 48).	X					X		
PREA § 115.68, victim protective custody deficiencies (see page 50).	X	X						X
PREA § 115.72, evidence deficiencies (see page 51).	X					X		
PREA § 115.401, audit scope deficiencies (see page 52).	X					X		
PREA § 115.402, audit qualification deficiencies (see page 53).	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 evaluation of PREA protective custody include all types of protective custody, not 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.
- 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 auditor conflicts of interests be addressed.
- That at a minimum, PREA §§ 115.15, 115.31, 115.43, 115.64, and 115.68 be considered to need corrective action at the next audit of Hightower Unit.
- That at a minimum, additional information be provided for the public record 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. TPI also mentioned this in our communication with the auditor dated April 24, 2025, to which we received no response or acknowledgment. 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 118 times in the report, and the word "inmate" is used more than 1,100 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

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.

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 Hightower Unit consists of "Men/boys," when in fact this is false. The Hightower Unit houses cisgender males and transgender persons who may be female or who may not belong to either of these 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, which the auditor compliance tool includes as a checklist for indicating male, female, intersex, transgender, and nonbinary.[9] TPI also mentioned this in our communication with the auditor dated April 24, 2025, to which we received no response or acknowledgment.

The Hightower Unit may falsely classify transgender women and other non-male persons as "male," but that is not an accurate description of the populations housed at the unit for PREA assessment purposes. This not only erases the existence of trans persons, this type of misclassification and erasure encourages violence against trans persons, including sexual abuse and sexual harassment. Refusal to affirm a person's gender dehumanizes the person, and dehumanization is a significant step in excusing and justifying institutional and individual harm and violence. Further, this misapplication of the PREA standards allows the 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 "males"—or to identify transgender males as "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 two standards as exceeded and 35 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.

8. PREA Resource Center, OAS Updates and Q&A. *Webinars* web page, September 19, 2024: 14:29 – 17:14, https://vimeo.com/1014881110.
9. PREA Resource Center. Auditor Compliance Tool, Facility: Prison / Jail, pp. 3 – 4. Available at: https://www.prearesourcecenter.org/sites/default/files/library/ACTPrisonJail.pdf.

Although the audit report claims that the facility substantially exceeds compliance with PREA § 115.33, data provided for this standard indicates that not everyone is receiving information either at intake or for comprehensive training. Circular nonsensical reasoning is provided as "support" for meeting compliance. In addition, the discussion of this standard indicates Hightower Unit is only providing comprehensive education to persons who have not previously received such education an another facility, which is not compliant with provision (b) of the standard. No specific justification for the rating of "substantially exceeds standard" is given, and it is questionable whether Hightower Unit even meets the requirements of the standard. The audit report also claims Hightower Unit "substantially exceeds" compliance with PREA § 115.51, but provides no evidence whatsoever to substantiate such a claim.

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.[10]

There were 10 standards that were rated as compliant or exceeds compliance, but the information provided in the report indicates compliance is questionable; one standard rated as compliant, but documentation in the audit report indicates the facility is likely not compliant; and five standards 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.

Onsite Audit Period

The audit report notes that the onsite portion of the audit was from May 7 to May 9, 2025. However, for a facility with more than 1,300 persons, just the interviews with incarcerated persons and staff are estimated to take three days, or 30.3 hours. TPI mentioned this concern in our communication with the auditor dated April 24, 2025, to which we received no response or acknowledgment. In addition to the interviews, other tasks were required to competently complete the audit. As per the 2022 Auditor Handbook:

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

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

involved. Auditors must allow adequate time to perform all the required activities necessary to complete a thorough site review.[11]

Audit Support Staff Information documents that the auditor received no assistance from other persons that would count toward the total hours. Thus, TPI feels this audit probably did not allow sufficient time to be conducted with competency.

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 Hightower 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, with problems shown in **bold red** text. Problems with the audit interviews and other facility information are discussed as needed below.

Table 2. Population Characteristics and Interviews

Population Characteristic	Persons Present	Interviews Required	Interviews Completed
Total housed at unit	1384	Random: 20 **Targeted: 20**	Random: 40 **Targeted: 20 (19?)**
Youth (not housed at Hightower)	0	at least: 3	0
Persons with a physical disability	3	at least: 1	1
Persons blind or visually impaired	0		0
Persons deaf or hard-of-hearing	5		3
Persons Limited English Proficient	81	at least: 1	2
Persons with cognitive or functional disability	0	at least: 1	0
Persons identifying as lesbian, gay, or bisexual	51	at least: 2	2
Persons identifying as transgender or intersex	16	at least: 3	4
Persons placed in segregated housing for risk of sexual victimization	**0**	**at least: 2**	**0**
Persons who reported sexual abuse in facility	**0**	**at least: 4**	**1**
Persons who reported prior sexual victimization	40	at least: 3	7

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

Persons housed at the facility and interviewed. The audit report documents that there were 1,384 persons housed at the facility on the first day of the onsite audit. The report notes that the audit included random interviews with 40 persons and targeted interviews with 20 persons. However, one of those interviews was documented as a person who had reported sexual abuse at the facility, but the audit report documents in numerous places that there were no persons at the facility meeting that target. One of these numbers is false, and it appears the audit may not have met the minimum interview requirement. According to Table 2 in the 2022 Auditor Handbook, the minimum number of targeted interviews for a unit with the overall population of Hightower Unit should have been 20, but it appears only 19 were conducted.[12]

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

> This number refers to the minimum number of targeted interviewees that the auditor is required to interview during an audit. Importantly, the requirement refers to the minimum number of individuals who are required to be interviewed, not the number of protocols used. Thus, in cases where an auditor uses multiple protocols during one interview, it will only count as one interview for the purpose of meeting the overall threshold for targeted interviews. For example, if an auditor is completing an audit of a jail with fewer than 50 persons confined in the facility [which would require at least 5 targeted person interviews] and conducts an interview with an individual who is LEP, reported prior sexual victimization during risk screening, and is a person under the age of 18, that interview will satisfy three of the five individual targeted interview requirements, but the auditor must still conduct four more interviews with persons confined in the facility from the other targeted populations in order to meet the overall threshold. Therefore, in many cases, the number of targeted interview protocols used will likely exceed the number of individuals interviewed from targeted populations.[13]

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.[14]

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 failed to include the minimum number of targeted interviews required.

12. 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.
13. 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.
14. 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.

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 Hightower Unit on the first day of the onsite audit, but TPI knows this number to be most likely 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 Hightower Unit had ever been placed in segregated housing or isolation for risk of sexual victimization. According to Table 2 in the 2022 Auditor Handbook, the minimum number of interviews for a unit with the overall population of Hightower Unit should have been at least two.[15] 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 zero incarcerated persons who reported sexual abuse that occurred at Hightower Unit on the first day of the onsite audit, but the audit report also notes that one of these non-existent persons was interviewed by the auditor. The audit report states in other places that no persons meeting this target population were housed at the facility (see for example the discussions of PREA §§ 115.21, 115.52, 115.53, 115.64, and others). It cannot be determined from the information available which documentation is false, the number of persons present or the number of persons interviewed, but it appears that there was no one at the facility meeting this target to interview.

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, with problems shown in **bold red** text. Problems with these numbers are discussed below.

Sexual abuse allegations and administrative investigations. As shown in Table 3, incarcerated persons reported 17 allegations of sexual abuse by staff and other incarcerated persons during the preceding 12 months. Administrative investigations found either zero or one substantiated (the audit report data indicates a total of one substantiated, but also states zero allegations against staff were substantiated, and zero allegations against incarcerated persons were substantiated, so it cannot be determined which is correct), 12 or 13 unsubstantiated, and five or six unfounded. Adding to the confusion, the discussion of PREA § 115.78(a) notes that there

15. 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.

was one substantiated sexual abuse incident during the audit period. It is impossible to tell what is true based on the inaccurate data presented in the audit report, and possibly inaccurate data collected and presented by the facility.

Table 3. Sexual Violence Investigations and Outcomes

	Sexual Abuse by		Sexual Harassment by	
	Staff	Incarcerated Person	Staff	Incarcerated Person
Allegations	4	13	1	4
Administrative investigations	4	13	1	4
Ongoing	0	0 (1?)	0	0
Unfounded	4 (3?)	1 (2?)	0	0
Unsubstantiated	1 (0?)	11 (12?)	1	3
Substantiated	0 (1?)	0 (1?)	0	1
Criminal Investigations	0	8	0	0
Ongoing	0	6	0	0
No Action	0	2	0	0
Referred	0	0	0	0
Indicted	0	0	0	0
Convicted	0	0	0	0
Acquitted	0	0	0	0

Regardless, it appears that at most 94% of the allegations were found to have less than a 51% chance of having occurred, and it may be that 100% were found as such. According to PREA § 115.72, the agency "shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated," yet only at most 6% of the allegations were found substantiated. This indicates a failure of allegation response, a failure of evidence collection, a failure of the 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.

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 Hightower 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].[16]

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

Due to our work in general and in the past with persons at Hightower Unit, 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;

16. 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.

(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.[17]

17. 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

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

- Observe the number of staff, contractors, and volunteers present (including security and non-security staff) and staffing patterns during every shift, including:
  - In the housing units
  - In isolated areas like administrative/disciplinary segregation and protective custody
  - In the programming, work, education, other areas
  - In areas where sexual abuse is known to be more likely to occur according to the staffing plan.
- Observe staff line of sight and assess whether there are blind spots.
- Observe areas where persons confined in the facility are not allowed to determine whether movement in and out of that space is monitored (e.g., by cameras or other forms of surveillance), to ensure that confined persons never enter those areas.
- Observe the level of supervision and frequency of cell checks in housing areas where confined persons are double-celled, in dormitories, or in holding pens with more than one person (if applicable).
- Observe indirect supervision practices, including camera placement.
  - In addition to observation of camera placement, inquire about and observe the monitoring room, including staffing rotation (i.e., how often is camera feed monitored and by whom).
- Note any staffing concerns, including understaffing, overcrowding, poor line of sight, etc.[18]

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.[19]

%20in%20Focus%20%28115.13%29.pdf.

18. PREA Resource Center. Auditor Compliance Tool, Facility: Prison / Jail. Available at: https://www.prearesourcecenter.org/sites/default/files/library/ACTPrisonJail.pdf.
19. 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

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 at the agency and at specific units must be considered deficient in its assessment of this standard.

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 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" 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.**

%20Report_9-26-24.pdf.

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. This in effect privileges cisgender persons and discriminates against transgender and nonbinary 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.**
- 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.

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.

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:

> 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]

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.
23. PREA Resource Center. Auditor Compliance Tool, Facility: Prison / Jail, p. 37. Available at: https://www.prearesourcecenter.org/sites/default/files/library/ACTPrisonJail.pdf.

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.

(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]

And specifically for transgender persons:

> Operationally, four options are in current practice for searches of transgender or intersex inmates/residents/detainees: 1) searches conducted only by medical staff; 2) pat searches of adult inmates conducted by female staff only, especially given there is no prohibition on the pat searches female staff can perform (except in juvenile facilities); 3) asking inmates/residents/detainees to identify the gender of staff with whom they would feel most comfortable conducting the search, and 4) searches conducted in accordance with the inmate's gender identity.[25]

In the discussion of provision (a), the audit report references TDCJ policy prohibiting cross-gender searches and references the pre-audit questionnaire to claim the facility has documented no cross-gender searches, but this is only true because TDCJ as a whole misidentifies the gender of transgender persons.

The audit report documents cross-gender searching is in fact being conducted by stating that incarcerated persons "are strip searched by male staff only," meaning that all strip searches of transgender persons are cross-gender searches. Thus Hightower Unit is documented by this audit report as failing to comply with PREA § 115.15(a).

> (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.

The audit report discussion of provision (b) is likewise deficient because it appears to falsely state that "no female [incarcerated persons] are housed at the facility," when TPI is absolutely certain that at least two of the transgender persons housed at the facility during the onsite audit are female, and we have corresponded with at least three other women that appear to have been housed there during the audit period. Thus the statement that "no female [incarcerated persons] are housed at the facility" was false at the time of the onsite audit, and was false for the audit period.

If Hightower Unit allows cisgender males and transgender males and nonbinary staff to conduct pat-down searches of transgender females, then the facility permits cross-gender pat-

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. We note that PREA does not have as a goal zero tolerance of sexual violence for only privileged cisgender persons, but for all.
25. "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.

down searches of female incarcerated persons. Cisgender males and transgender males, as well as nonbinary persons, are not the same gender as cisgender females and transgender females. All pat-down searches of incarcerated cisgender females and transgender females by cisgender males or transgender males constitute pat-down searches of female incarcerated persons by male staff. TPI contends also that the audit report, by refusing to identify transgender females among the transgender persons housed at the unit, is not only failing to adequately assess compliance with PREA § 115.15(b), but also may be considered as participating in violence against transgender women. If cross-gender pat searches involving transgender women are conducted at Hightower Unit, then the facility is not in compliance with provision (b) of the standard.

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

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

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

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

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.[26]

The audit report documents that Hightower Unit does not appropriately comply with this provision because staff at the facility do not appropriately recognize the gender of transgender persons.

The audit report clearly documents that Hightower Unit does not comply with PREA § 115.15.

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].[27]

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.[28] 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

26. "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.
27. Texas Code of Criminal Conduct § 56A.303 (2019, revised 2021 and 2023), https://statutes.capitol.texas.gov/Docs/CR/htm/CR.56A.htm.
28. 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.

added because a blanket 96-hour time limit as the only determining criterion for a SANE exam is definitely not maximizing potential for evidence).

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 criterion, 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.

This audit report only vaguely refers to evidence collection without substantiating compliance. 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.

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 where medically appropriate. OIG-7.13 and SPPOM-05.01 indicate that is not being done either at the agency level or at Hightower Unit, but instead staff are deciding whether to offer the survivor access to a forensic medical examination or not.[29] The audit report notes that six medical forensic exams were conducted during the audit period, which at least is a higher percent that is generally documented in audit reports. Yet even this appears inadequate because the discussion of 115.64(a) notes that 14 of the allegations were "within a time period that still allowed for the collection of physical evidence." Thus even though there seems to be some greater compliance at Hightower Unit with this standard, full compliance is questionable.

Based on the evidence provided in the audit report, TPI asserts that it cannot be determined whether or not Hightower Unit is compliance with this 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

29. 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. as has been reported to be in OIG-1.13: "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 this audit report falsely states in the discussion of provision (b) that Hightower "houses only male" persons, and that staff "receive training tailored to male" persons, the audit report documents that Hightower Unit is not compliant.

Regardless of whether or not all staff have received PREA-related training, the audit report documents that training was not appropriate because it excludes training around any gender other than males. Thus Hightower Unit cannot be considered compliant with PREA § 115.31.

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.
>
> (c) Current [incarcerated persons] who have not received such education shall be educated within one year of the effective date of the PREA standards, and shall receive education upon transfer to a different facility to the extent that the policies and procedures of the [incarcerated person's] new facility differ from those of the previous facility.
>
> (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 discussion of provision (a) notes that 1,240 persons received information at intake during the 12-month audit period, yet there were 1,384 persons present at the facility on the first day of the audit. Generally, the number of persons going through intake in a year will exceed, often substantially so, the number of persons present due to the constant cycling of persons through intake, even if a number of persons remain at the facility more than 12 months. Hightower provides pre-release and parole-required education programs, which also increase the cycling

of persons through the facility. The audit report appears to justify the number receiving education with the incredibly circular reasoning that "[t]his [referring to the 1,240 persons receiving intake information] is equivalent to 100% of [incarcerated persons] who received this information at intake." Without further support, it appears from these numbers highly unlikely that all persons are receiving provision (a) information at intake, or the data provided is wrong (possibly impacting compliance with PREA § 115.87).

The provision (b) discussion states that the comprehensive education video will be shown to persons on "arrival into the TDCJ," not necessarily meaning Hightower Unit, and that "if the [incarcerated person] is received at a facility and it is determined that he/she has not seen the video, they are to received it immediately." However, provision (c) is clear that all persons should receive comprehensive PREA education on transfer between facilities, at least to the extent that policies may differ from prior facilities. The PREA Final Rule is also clear that provision (b) requires persons to "receive education upon transfer between facilities to the extent that the policies and procedures differ. This revision is better tailored to the goal of ensuring that [incarcerated persons] are always aware of relevant procedures."[30] The implication that Hightower Unit only provides this information to persons who have not received it elsewhere is not compliant with the provision (b) requirements. The audit report indicates 1,116 persons received comprehensive training, again a number seemingly low due to what would generally be expected to cycle through the facility in a year. The audit report notes that this 1,116 "is equivalent to 100%," but does not say 100% of what. For these reasons, provision (b) compliance seems questionable as well.

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].[31]

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

30. U.S. Department of Justice, "National Standards To Prevent, Detect, and Respond to Prison Rape," *Federal Register 77*, no. 119 (June 20, 2012): 37148, https://www.ojp.gov/sites/g/files/xyckuh186/files/media/document/PREA-Final-Rule.pdf.
31. "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.

> 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.[32]

The audit report states that Hightower Unit substantially exceeds this standard, but provides no information to substantiate that assessment. As discussed above, it is questionable whether Hightower Unit even meets at least provisions (a) and (b). 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 communications, as well as problems documented by this audit report, indicate training at Hightower Unit not only fails to be exceeded, it is questionable whether or not the facility even meets the 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].
>
> (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.

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. The PMO Auditor Compliance Tool notes that appropriate assessment for risk screening includes concurrence that "[c]ompletion of the risk screening instrument returns a subsequent 'score' or determination of risk of being sexually abused or being sexually abusive," but no such score is returned by the TDCJ screening form.[33] The audit report states that the "risk screening instrument returns a subsequent score or determination of risk of being sexually

32. 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.
33. PREA Resource Center. Auditor Compliance Tool, Facility: Prison / Jail, p. 144. Available at: https://www.prearesourcecenter.org/sites/default/files/library/ACTPrisonJail.pdf.

abused or being sexually abusive," but as far as TPI can tell from examination of this tool and the related policy, that is false, no score is provided by the risk screening instrument.

In addition, simply providing set questions do not assure objectivity. 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.[34] This is even more true for screening instruments that are ultimately rated by subjective determination. Also, 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."[35]

> (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;
>
> (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.,

34. "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.
35. "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.

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/PREA Plan* technically address this by including "gender nonconforming" in their discussions. The PREA Final Rule notes that:

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

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 SPPSP (which somehow apparently identifies gay, lesbian, and bisexual persons), 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.

Due to the problems identified with the screening process as presented at Hightower Unit, TPI asserts that it cannot be determined if the facility is fully compliant with the PREA § 115.41 screening requirements.

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.[36]

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.[37]

TPI receives routine complaints from transgender persons and others 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 a 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.

> (b) The agency shall make individualized determinations about how to ensure the safety of each [incarcerated person].

36. 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.
37. "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.

> (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.[38] 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 Hightower 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.[39]

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

38. 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/.
39. "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.

> specific inmate records/files to determine if individualized, case-by-case housing and programming assignments of transgender and/or intersex inmates are being made.[40]

In the audit report discussion of provision (c), it is noted only that transgender and intersex persons were asked whether they were placed in dedicated housing, not whether housing placements were made based on considerations of their health and safety, as is required in the audit interview question protocol. Although provision (e) indicates the required question was asked, the response given is not that interviewees specifically answered affirmatively, but that they "felt that the facility housed them appropriately." TPI's experience is that when answers do not match the question asked, that is an indication of manipulation during an interview, or a manipulation of the responses provided.

> (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).[41] 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

40. 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.
41. 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.

disrobe, shower, and dress apart from other [incarcerated persons]," not simply have a minimally compliant "separate" shower.[42] Audit reports that do not fully discuss compliance in this way indicate compliance is questionable.

It is worth noting also that page number references to SPPOM-03.01 throughout the discussions of PREA §§ 115.41 and 115.42 are wrong, indicating continued copying and pasting from past reports without verifying updated policies remain compliant.

Due to the several problems that TPI identifies both in TDCJ screening data use in general, as well as the confusing and apparently lacking discussion in this audit report, TPI asserts that it cannot be determined whether or not Hightower Unit complies with this standard.

PREA § 115.43 Preface, TDCJ "Protective Custody" Designations

PREA § 115.43 covers the separation or segregation of persons at high risk for sexual victimization, and the section uses several terms that provide opportunities for manipulation of the standard. These include "protective custody," "segregated housing," and "involuntary segregated housing." None of these are specifically defined in PREA § 115.5 general definitions, nor are definitions provided in the FAQ available online via the National PREA Resource Center. The PREA Final Rule[43] 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.[44] 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

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

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 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.[45]

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.[46] All

45. 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.

46. 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

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

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

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

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

Safekeeping status is sought by incarcerated persons who experience vulnerabilities, including vulnerabilities related to sexual violence. However, safekeeping status is provided only in relatively few cases, and some people experience sexual violence over and over and are refused safekeeping status because of the length of their incarceration, their body size, or in some cases for specious reasons such as being "too intelligent."[47] 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.[48] 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

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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.

47. 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/.

48. 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.

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

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.[50] 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

49. 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.
50. 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.

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.

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).[51] 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

51. 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.

property, although that and property loss are effects of the action). Since IPI lockups are usually in the same areas as restrictive housing, they also routinely entail the same security restrictions that apply to those being held for disciplinary reasons. Such lockups may be called "restrictive housing," "transient housing," and other terms. Clearly such treatment discourages reports of sexual victimization.

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

> Section 115.66 in the proposed rule (now renumbered as § 115.68) provided that any use of segregated housing to protect an [incarcerated person] who is alleged to have suffered sexual abuse shall be subject to the requirements of § 115.43.[52]

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.

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

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

Regardless of policy, reports to TPI indicate that placement in segregation due to high risk or immediate endangerment related to sexual violence seldom considers any other options outside segregation, often involuntary because this involves locking one up for IPI, which as will be discussed below, includes no consideration of alternatives). 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.

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

The audit report notes that the TDCJ *Safe Prisons/PREA Plan* states that persons at high risk of sexual victimization are not placed in "involuntary restrictive housing" unless alternatives have been ruled out, but that statement is false. The TDCJ *Safe Prisons/PREA Plan* only states that they will not be placed in "protective safekeeping" unless alternatives are ruled out.

The audit report then goes on to discuss restrictive housing policy—mixing references to "protective custody" and "restrictive housing"—which is not what is discussed in the *Safe Prisons/PREA Plan*. The audit report picks and chooses from separate policies in an effort to show compliance, misrepresenting what is stated in the *Safe Prisons/PREA Plan*, and failing to reflect actual policy or practice.

The audit report notes that page 11 of the TDCJ *Restrictive Housing Plan* states persons "at high risk for sexual victimization shall not be placed into involuntary segregated housing unless" alternatives have been considered and eliminated. The *Restrictive Housing Plan* seems to make no such statement. In fact, such housing is only discussed in terms of IPI procedures; the relevant text in its entirety states:

> Transient Status Pending Outcome of an Offender [*sic*] Protection Investigation (OPI) is a status reserved for offenders [*sic*] 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.[53]

There is no mention of placement in restrictive housing for risk of sexual victimization. There is no discussion of alternatives considered for placement after an allegation (PREA § 115.68).

TPI has no way to determine if this misleading information is provided by TDCJ staff making statements about what the audit report should document, or if the auditor has provided inaccurate information, but this text definitely misrepresents both policy and practice in an effort to falsely support compliance with provision (a), and shows the audit report does not reflect due diligence in auditing compliance at the facility.

> (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

53. TDCJ, *Restrictive Housing Plan,* August 2019: 5.

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 mostly refers to placement in restrictive housing, once again 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][54]

It is questionable whether a note on "the housing log" should be considered sufficient documentation, as this audit report contends, 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.[55]

54. 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.
55. Phebia Moreland, PREA Resource Center Senior Program Manager, to Nell Gaither, November 14, 2021, email communication.

TPI is 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 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.

In the discussion of provision (b), the audit report states that:

> 115.43 (b): The Safe Prisons/PREA Plan, page 18-19, indicates that if an [incarcerated person] was placed in restrictive housing, they would have access to programs, privileges, education and work opportunities to the extent possible and all limitations would be documented with indication of the reason and length of time of limitation.

Once again, this is not stated in the *Safe Prisons/PREA Plan*. The actual text reads:

> Offenders [*sic*] placed in **protective safekeeping** for this purpose [the "purpose" being referred to in this paragraph is the use of screening information indicating high risk for sexual victimization] shall have access to programs, privileges, education, and work opportunities to the extent possible [emphasis added to indicate this is defined only for the very rarely ever provided status of protective safekeeping, which requires top administration approval and generally takes weeks to accomplish].[56]

In contrast to the claim of the audit report, the *Restrictive Housing Plan* makes no statement about access to "programs, privileges, education, and work opportunities," but instead states that:

> Offenders [*sic*] 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. Offenders assigned to this restrictive housing category are generally **placed in the same manner as offenders assigned to PHD** [emphasis added].[57]

PHD housing is defined as a disciplinary environment, which is counter to PREA requirements:

> PHD is used when an offender [*sic*] is charged with, or suspected of a disciplinary violation, when at least one of the following conditions exists: the offender is a current escape risk; the offender's presence in general population would create a threat to the physical safety of other offenders or staff, to include volunteers and contract employees; or it is necessary to maintain the integrity of an investigation, such as to preserve information or evidence in either the offender's possession or another offender's possession.[58]

Even the least restrictive level of restrictive housing, Level I, has restrictions in violation of PREA requirements. Those restrictions include, per the *Restrictive Housing Plan*:

- out-of-cell recreation limited to one hour per day (page 18),

56. TDCJ, *Safe Prisons/PREA Plan,* February 2019: 18 – 19, https://www.tdcj.texas.gov/documents/cid/Safe_Prisons_PREA_Plan.pdf.
57. TDCJ, *Restrictive Housing Plan,* August 2019: 5.
58. TDCJ, *Restrictive Housing Plan,* August 2019: 5.

- visitation limited to one non-contact visit per week (pages 19 and 34),
- ineligible for job assignments (page 34),
- ineligible for education programs (page 34),
- prohibited from using the telephone system (page 19),
- limits to commissary purchases (page 20),
- separation from property (page 20),
- possible suspension of in-cell programs (page 23),
- suspension of out-of-cell education (page 24),
- no access to libraries and book delivery limits (page 28),
- various means that persons are "restricted from normal movement within the facility" (page 30), and
- requires armed supervision and escorts outside cell area (page 34).

To say, as is stated in this audit report, that persons "in segregation have access to programs, however it is modified due to their status" is disingenuous at best, and may constitute falsification of information and deliberate manipulation. This does not comply with the requirements of provision (b).

> (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 due to risk for sexual victimization 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.

If safekeeping housing is present, it also seems reasonable to consider in an audit how a facility handles persons who once agreed with safekeeping designation as an appropriate means of separation from likely abusers, but who have changed their mind and want to be released from safekeeping. Once a request for removal is submitted, continued designation as safekeeping should be considered involuntary, and it must be reassessed every 30 days.

Once again, in the discussion of provision (c), this audit report provides a false statement about what is provided in the *Safe Prisons/PREA Plan*, claiming the document says that if a person is placed "in restrictive housing due to risk of victimization they would only be placed until an alternative means of separation from likely abusers could be arranged, and such assignment would not ordinarily exceed 30 days." The actual statement in the *Safe Prisons/PREA Plan* is:

> Offenders [*sic*] shall be assigned to **protective safekeeping** only until an alternative means of separation from likely abusers is arranged, for no longer than 30 days [emphasis added to indicate this is defined only for the very rarely ever provided status of protective safekeeping].[59]

And again, restrictive housing has no such limits, simply stating persons housed therein will be in segregated housing "pending the outcome of an OPI."[60]

> (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 refers to a Restrictive Housing Review Form I-203A, claiming that document indicates "the basis for the concern for the [incarcerated person's] safety and why no alternative means of separation could be arranged." However, Form I-203A contains no such information (Figure 1). Instead, it only includes a checkbox indicating housing for investigation (shown as "Transient Status Pending OPI") and space for review comments. As can be clearly seen, this form does not specifically request and appears to provide no space to include the information required under provision (d).

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

This provision does not state that it is only for involuntary segregation, and because other provisions specify where applicable to involuntary segregated housing, this provision must be read as encompassing all segregation for risk of sexual victimization. Thus all persons held in any type of segregated housing, voluntary or involuntary, for risk of victimization from potential abusers—including safekeeping, protective safekeeping, all types of transit and restrictive housing, SOS, CDO, any type of "lockup," "protective management," and all other types of separation—are to be reviewed every 30 days to determine if there is a continuing need for separation.

TPI believes it is highly unlikely that TDCJ provides a review of each person in safekeeping designated housing a review of the continuing need for separation every 30 days. Although restrictive housing placements are required to be reviewed at least every 30 days, other types of segregation may not be reviewed that often.

The audit report failed to document compliance in multiple ways, including:

- failed to consider all types of segregation encompassed by PREA protective custody;
- failed to support the claim that alternatives are considered;

59. TDCJ, *Safe Prisons/PREA Plan,* February 2019: 18, https://www.tdcj.texas.gov/documents/cid/Safe_Prisons_PREA_Plan.pdf.
60. TDCJ, *Restrictive Housing Plan,* August 2019: 10.

- failed to identify even one person segregated due to high risk of sexual victimization;
- made false statements about, and serious misrepresentations of, policy; and
- provided inappropriate claims about the *Safe Prisons/PREA* and *Restrictive Housing* plans.

Based on these serious issues and the evidence documented in our comment letter, TPI asserts that Hightower Unit is not in compliance with PREA § 115.43.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE

Restrictive Housing Review

I. OFFENDER INFORMATION

Offender Name: _____; **TDCJ Number:** _____; **Custody:** _____; **Unit:** _____

II. PLACEMENT OR RETENTION IN RESTRICTIVE HOUSING

Instructions: ***The highest-ranking security supervisor on duty has the authority to initially place an offender in restrictive housing. This form should be used to document placement and reviews for all categories of restrictive housing EXCEPT security detention.***

As of *(date)* _____, at *(time)* _____, the above-named offender has been placed in restrictive housing, in accordance with the TDCJ *Restrictive Housing Plan*. *NOTE: Place a √ to indicate the type of restrictive housing the offender is assigned to:*

☐ Pre-Hearing Detention

☐ Transient Status Pending OPI

REVIEW: *(√ one)* ☐ Initial; ☐ *Subsequent; Review held on _____ (Date) at _____ (Time) by the *(√ one)* ☐ UCC; ☐ RHC.

Type of Review: ☐ 7-day; ☐ 30-day; ☐ Special Review;

The RHC has reviewed the offender's record and determined that the original condition that led to placement in Restrictive Housing:

☐ Has been resolved and the offender may be returned/assigned to general population; or

☐ Has not been resolved and continued placement in restrictive housing is necessary.

If continued placement in restrictive housing is necessary, document the projected expiration or next review date: _____

Justification for decision: _____

_____

_____

_____

Committee Members *(Print name and rank or title)*: _____

_____; and _____

III. OFFENDER NOTIFICATION

Instructions: ***Correctional staff shall notify the offender that the UCC/RHC decision will expire on the date indicated or be reviewed for continuation, request the offender to sign (if the offender refuses, document the refusal), and provide the offender a copy of the completed document.***

Notified by: _____ *(Employee -- print name and sign initials)* _____ *(Date and Time)* _____ *(Offender signature and date)*

I-203A (8/2019) WHITE: offender's unit file CANARY: offender

Figure 1: Form I-203A from the TDCJ *Restrictive Housing Plan*.

PREA § 115.51, Incarcerated Person Reporting

> (a) The agency shall provide multiple internal ways for [incarcerated persons] to privately report sexual abuse and sexual harassment, retaliation by other [incarcerated persons] or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.
>
> (b) The agency shall also provide at least one way for [incarcerated persons] to report abuse or harassment to a public or private entity or office that is not part of the agency, and that is able to receive and immediately forward [incarcerated person] reports of sexual abuse and sexual harassment to agency officials, allowing the [incarcerated person] to remain anonymous upon request. [Incarcerated persons] detained solely for civil immigration purposes shall be provided information on how to contact relevant consular officials and relevant officials at the Department of Homeland Security.
>
> (c) Staff shall accept reports made verbally, in writing, anonymously, and from third parties and shall promptly document any verbal reports.
>
> (d) The agency shall provide a method for staff to privately report sexual abuse and sexual harassment of [incarcerated persons].

The audit report discusses basic compliance with the provision of this standard—although we note that due to the egregious misrepresentations in the discussion of screening standards that all text herein should be viewed with at least some level of doubt without specific documented support. However, nothing is described that would support the claim that Hightower Unit exceeds the standard, as claimed in the audit report.

PREA § 115.61, Staff and Agency Reporting Duties

> (a) The agency shall require all staff to report immediately and according to agency policy any knowledge, suspicion, or information regarding an incident of sexual abuse or sexual harassment that occurred in a facility, whether or not it is part of the agency; retaliation against [incarcerated persons] or staff who reported such an incident; and any staff neglect or violation of responsibilities that may have contributed to an incident or retaliation.

The standard requires the agency to ensure that facility staff report all allegations while also taking steps to protect the confidentiality of sexual abuse information by sharing internally with only those who need to know.

To build confidence and trust in the reporting system and help minimize a victim's fear of reporting and possible retaliation by requiring that inmates be informed up front about the limits of confidentiality when receiving medical and mental health services.[61]

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

TPI notes that system-wide, there have only been at most four staff reports of sexual violence between 2014 and 2023.[62] Policy aligning with this standard certainly exists, but the facts concerning staff adherence to that policy support the conclusion that TDCJ staff across the system do not comply with this requirement. Without further investigation, it cannot be determined whether Hightower Unit or any other facility is in compliance with this provision.

PREA § 115.64, Staff First Responder Duties

> (a) Upon learning of an allegation that an [incarcerated person] was sexually abused, the first security staff member to respond to the report shall be required to:
>
> (1) Separate the alleged victim and abuser;
>
> (2) Preserve and protect any crime scene until appropriate steps can be taken to collect any evidence;
>
> (3) If the abuse occurred within a time period that still allows for the collection of physical evidence, request that the alleged victim not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating; and
>
> (4) If the abuse occurred within a time period that still allows for the collection of physical evidence, ensure that the alleged abuser does not take any actions that could destroy physical evidence, including, as appropriate, washing, brushing teeth, changing clothes, urinating, defecating, smoking, drinking, or eating.
>
> (b) If the first staff responder is not a security staff member, the responder shall be required to request that the alleged victim not take any actions that could destroy physical evidence, and then notify security staff.

Although the audit report documents 17 allegations of sexual abuse, 14 of which were reported within a time frame for the collection of physical evidence, the audit report notes under the discussion of provision (b) that in only one instance were the victim and perpetrator separated, and provides no further information about the lack of separation on apparently at least 13 other occasions.

Based on this information from the audit report, TPI asserts that the audit report documents noncompliance with this standard.

PREA § 115.67, Protection Against Retaliation

> (a) The agency shall establish a policy to protect all [incarcerated persons] and staff who report sexual abuse or sexual harassment or cooperate with sexual abuse or sexual harassment

62. For data 2014 through 2022, see Trans Pride Initiative to Impact Justice, PREA Resource Center, December 18, 2024: table 3, https://tpride.org/blog/prison-advocacy-prea-noncompliance-tdcj-agency-audit/. For 2023 data, see 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: 6, https://www.tdcj.texas.gov/documents/PREA_SPP_Report_2023.pdf. Although the annual report information is vague, this issue appears to be related to both PREA §§ 115.61 and 115.62.

investigations from retaliation by other [incarcerated persons] or staff, and shall designate which staff members or departments are charged with monitoring retaliation.

Agencies can demonstrate that they take retaliation seriously by communicating proactively with inmates and staff about retaliation concerns; by explaining the steps in place to prevent and address retaliation; and by using the perspectives of inmates and staff to develop or revise agency policies that focus on retaliation.[63]

(b) The agency shall employ multiple protection measures, such as housing changes or transfers for [incarcerated person] victims or abusers, removal of alleged staff or [incarcerated person] abusers from contact with victims, and emotional support services for [incarcerated persons] or staff who fear retaliation for reporting sexual abuse or sexual harassment or for cooperating with investigations.

(c) For at least 90 days following a report of sexual abuse, the agency shall monitor the conduct and treatment of [incarcerated persons] or staff who reported the sexual abuse and of [incarcerated persons] who were reported to have suffered sexual abuse to see if there are changes that may suggest possible retaliation by [incarcerated persons] or staff, and shall act promptly to remedy any such retaliation. Items the agency should monitor include any [incarcerated person] disciplinary reports, housing, or program changes, or negative performance reviews or reassignments of staff. The agency shall continue such monitoring beyond 90 days if the initial monitoring indicates a continuing need.

(d) In the case of [incarcerated persons], such monitoring shall also include periodic status checks.

(e) If any other individual who cooperates with an investigation expresses a fear of retaliation, the agency shall take appropriate measures to protect that individual against retaliation.

(f) An agency's obligation to monitor shall terminate if the agency determines that the allegation is unfounded.

The audit report states that even though there were 22 allegations of sexual violence at Hightower Unit during the audit period, there was not one report of either retaliation or fear of retaliation during that time. The audit report also makes the dubious claim that "all [incarcerated persons] at the facility are reviewed every 30 days and at that time can also indicate if they have any concerns related to retaliation."

With the number of reports about retaliation that TPI receives, it is difficult to believe a claim that no reports of retaliation or fear of retaliation were ever reported, yet this is the claim made in nearly every audit report. This claim must be the result of manipulation of how retaliation is documented (or ignored).

As for the claim that everyone is reviewed every 30 days, and that review is some sort of interview where people can "indicate if they have any concerns related to retaliation," that seems entirely unlikely. If this were done, there would be no need for other types of review,

63. PREA Resource Center, "115.67, Agency Protection Against Retaliation," *PREA Standards in Focus,* https://www.prearesourcecenter.org/sites/default/files/library/SIF%20115.67%20FINAL%20%28updated%29.pdf.

such as the biannual transgender review. This appears to be a reference to a paragraph in the screening section of the *Safe Prisons/PREA Plan*, which seems to have nothing to do with retaliation but refers to screening persons placed in protective safekeeping for high risk of sexual victimization. However, even facilities that house protective safekeeping persons, such as Huntsville Unit, claim no persons there are housed in protective safekeeping due to risk of sexual victimization. These claims are circular arrangements meant to eliminate documentation requirements and manipulate data collection concerning sexual violence.

These claims are dubious enough that TPI asserts the audit report does not substantiate compliance with this standard, and it cannot be determined from this audit whether Hightower Unit is or is not compliant with PREA § 115.67.

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).[64] 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 17 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, which serves 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. Also, in TPI's experience, TDCJ automatically places all or almost all persons who report sexual violence in involuntary protective custody (restricted housing for inmate protection investigation, or IPI) regardless of whether there are alternatives to such placement or not. TPI receives regular reports of persons not wanting to report incidents due to not wanting to be placed in segregation.

This audit report notes under the discussion of provision (a) that pages 18 and 19 of the *Safe Prisons/PREA Plan*, as well as unspecified pages in the *Protective Safekeeping Plan* and the *Restrictive Housing Plan*, document that "any use of restrictive housing to protect an [incarcerated person] who alleged to have suffered sexual abuse will not be involuntary [placed

64. 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.

in involuntary segregated housing?] unless an assessment of all available alternatives has been made." However, the *Safe Prisons/PREA Plan* policy for reporting sexual violence does not begin until page 20, and the section mentions nothing about housing. Instead, it notes an IPI will be initiated, and that brings in the noncompliant restrictive housing policy previously discussed under the PREA § 115.43 section of this comment letter.

Based on these issues with this audit report and the actual text of policies herein cited, TPI asserts that there is ample evidence that Hightower Unit is not compliant with this standard.

PREA § 115.72, Evidentiary Standard for Administrative Investigations

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

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

It is difficult to understand why anyone would consider a claim that the preponderance of evidence standard was truthfully stated when out of 17 reports of sexual abuse, apparently not one of those reports had a greater chance of occurring than a 50/50 chance (see Table 3 documenting the confusion about these data). 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.[65] These dismal accountability ratings are actually an improvement over the prior year. Amazingly, TDCJ seriously claims that more than one in three (186 of 505, or 37%) of the allegations of staff on incarcerated persons sexual abuse were false reports, a statement truly beyond belief.[66]

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

65. 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.
66. Texas Department of Criminal Justice, *Safe Prisons/Prison Rape Elimination Act (PREA) Program Annual Report, Calendar Year 2023,* Texas Department of Criminal Justice, December 2024: 26, https://www.tdcj.texas.gov/documents/PREA_SPP_Report_2023.pdf.

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

For Hightower Unit, the audit report noted that for allegations against staff, apparently 0% of four sexual abuse allegations were substantiated, only one sexual harassment allegation was even reported (an unbelievable claim in itself), and voyeurism allegations were not reported. For allegations against other incarcerated persons, apparently 0% of 13 allegations of sexual abuse were substantiated, and 25% (n=1) of four allegations of sexual harassment were substantiated.

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

It is truly astounding that data like this is not a red flag for an audit, and that these numbers were just accepted indicates a definite issue with the audit report. Due to what can be seen from this report, it appears unacceptable that Hightower 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:

> 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.[68]

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.

67. 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.
68. 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.

PREA § 115.402, Auditor Qualifications

> (c) No audit may be conducted by an auditor who has received financial compensation from the agency being audited (except for compensation received for conducting prior PREA audits) within the three years prior to the agency's retention of the auditor.

> (d) The agency shall not employ, contract with, or otherwise financially compensate the auditor for three years subsequent to the agency's retention of the auditor, with the exception of contracting for subsequent PREA audits.

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

> Because PREA auditors are DOJ-certified, they are in a unique position of public trust with the ability to impact public confidence in the integrity of the PREA audit function. Many stakeholders rely on this audit process and its results, including federal, state, local, and private agencies that operate or oversee confinement facilities; facility staff; treatment and service providers; community-based advocacy organizations; courts; attorneys; and people in confinement and their families.[69]

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.[70]

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,"

69. 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.
70. 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.

"policy and procedure review," "security audits," "staff training," and "technology integration" in addition to "PREA auditing." This expansion means that PREA auditors under contract to CCS may be auditing work by other CCS staff or subcontractors, a definite conflict of interest. In addition, the increase in services could increase direct or indirect or inferred pressure from CCS on PREA auditors to find facilities in full compliance to encourage contracts for additional services. It is difficult to understand why this is allowed as it appears to be an obvious conflict of interest that undermines public trust.

General cronyism within and across prison systems also serves as a basis for conflicts of interest potentially affecting all PREA auditors with current or past connections to the prison system. It is extremely common for prison as well as law enforcement staff to develop an "us against them" mentality that results in the view that what prison staff do and the decisions they make must be defended against all outside questioning. One example of the antagonism within the broad criminal justice system comes from a former participant in that culture:

> 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 . . . "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.[71]

Investigations into New York prisons, where laws have helped expose staff abuses, have revealed how staff work together to provide false narratives about events.

> Guards often work in groups to conceal violent assaults by lying to investigators and on official reports, records show. Then the officers file charges accusing prisoners of assaulting them.[72]

The pervasiveness of the problem—and it's persistence across the justice system—is emphasized by government officials:

> A former New York corrections commissioner, Brian Fischer, called the culture of officers covering up one another's misconduct the "blue wall"—and said it is deeply rooted in the workplace.
>
> "Just like cops on the street, you depend on the guy watching your back," Fischer said. "So if he does something stupid, and he comes up and says, 'Look, I need you to change the report a little bit,' you're kind of put in a tough situation."[73]

These cover-ups involve extreme uses of force and violence, so lying or altering facts about lesser issues becomes acceptable and routine for prison staff embedded in this culture of "we protect our own," as the saying goes in TDCJ. PREA auditors who are insiders in this culture

71. 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/.
72. Alysia Santo and Joseph Neff, "We Spent Two Years Investigating Abuse by Prison Guards in New York. Here are Five Takeaways," *The Marshall Project*, May 22, 2023, https://www.themarshallproject.org/2023/05/22/new-york-prison-corrections-officer-discipline-findings.
73. Joseph Neff, Alysia Santo, and Tom Meagher, "How a 'Blue Wall' Inside New York State Prisons Protects Abusive Guards," *The Marshall Project*, May 22, 2023, https://www.themarshallproject.org/2023/05/22/new-york-prison-corrections-officer-abuse-cover-up.

are subject to the pressures to protect the status quo, and are far less likely to meaningfully critique the prisons they are auditing.

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.[74] 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. Also, it is important to note that although the auditor admitted staff provide false information, these were treated as equal, ignoring the enormous power differential in favor of staff narratives.
- "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.

74. 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.

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 17 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."[75] The directory appears to only include audits conducted since September 2022. This auditor has been certified since 2019, so TPI feels it would be important to know if this failure to identify 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.

Audit findings are almost certainly influenced by the deep connections this auditor has to the prison industrial complex. The auditor is noted in PMO data (apparently no longer available since some time in June 2025) to be recently retired from three decades of work in Florida prisons, and has spent at least some time as an assistant warden with the for-profit prison operator Management Training Corporation.[76] TPI believes any current or recent connection with a prison system—especially for-profit prison operators—to be a conflict of interest.

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

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

    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.

76. This information was previously available via a LinkedIn profile that has since been deleted, but info apparently scraped from LinkedIn is available here: https://www.datanyze.com/people/Cynthia-Swier/8614078874.

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 standards as exceeded without sufficient support, vague and confusing statements or information, 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 10 standards, there is an indication of compliance is not met for one standard, and the report documents a failure to comply with five standards 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 audit reports must verify policy citations are accurate, and that when policy is referenced that does not support compliance, the audit report be considered incomplete and deficient. **There are serious issues with this audit report citing policy that does not support compliance as claimed.**
- 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 audit reports must verify data related to sexual violence allegations and investigations is accurate, and identify inconsistencies in facility data reported.

- 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 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 auditor conflicts of interests be addressed.
- That at a minimum, PREA §§ 115.15, 115.31, 115.43, 115.64, and 115.68 be considered to need corrective action at the next audit of Hightower Unit.
- That at a minimum, additional information be provided for the public record to support a finding of compliance for all remaining compliance issues mentioned in this comment letter.

I hope that these issues can be addressed in the interest of increasing the safety of all trans and queer persons, and in the interest of more full compliance with PREA standards requiring "zero tolerance toward all forms of sexual abuse and sexual harassment" and legitimate efforts to prevent, detect, and respond to such conduct.

Sincerely,

Nell Gaither, President
Pronouns: she/her/hers
Trans Pride Initiative

cc: Department of Justice, PREA Management Office
TBCJ Chair Eric Nichols
TBCJ Vice-Chair Faith Johnson
TDCJ Executive Director Bryan Collier
TBCJ PREA Ombudsman Cassandra McGilbra
Hightower Unit Senior Warden Kilven Cuba
Hightower Unit PREA Manager Aszurdee Haley
PREA auditor Cynthia Swier
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