

**“I Don’t Believe You,
So You Might as Well Get Used to It”—
The Myth of PREA *Zero Tolerance* in Texas Prisons**

Texas Prison Abuse Series, Report Number 1

by Trans Pride Initiative

July 2018

*Dedicated to all of the brave persons who have provided—sometimes at great risk
of personal safety—the information and data used to create this report.*

In solidarity.

A brief note about the content: The topics covered in this report are disturbing; many quoted items are extremely graphic and may be triggering for some persons, especially for survivors of abuse. We intentionally included graphic content to more accurately represent the lives, experiences, and ultimately the resilience of the persons with which we correspond. However, we recognize that while more representative, it can also be far more challenging.

We would like to emphasize that these narratives represent not only the abuse that is the overall subject of this report, but also represent the resilience of those who penned these words in letters to us. The comments included in this report are from persons who are actively advocating for their rights and for their survival in the incredibly abusive Texas prison system. Many are not only advocating for themselves, but are organizing and advocating for others as well.

If you feel triggered or overwhelmed by the content in these pages, please set this aside and return to it when you can. We hope that you find this report helpful in understanding the reality of the for-profit retributive prison system in Texas and in the United States in general, but we also want you to take care of yourself first. These words will still be here when you can return.



Trans Pride Initiative

Trans Pride Initiative is a Texas nonprofit corporation that empowers trans and gender diverse persons to rise above social barriers to equitable healthcare, housing, employment, and education. We work to provide general emotional and social support; guidance and advocacy in expanding access to healthcare, housing, education, and employment services; and strive to advance individual and community rights through prison support and broad anti-violence work.

Acknowledgments

Trans Pride Initiative would like to acknowledge the many brave persons who have chosen to reach out and tell their stories, and to trust us with those narratives so that we can help advocate for more humane treatment in an incredibly abusive state prison system. Without their honor, their courage, and their willingness to stand up—in spite of almost certain retaliation—for the rights of persons who experience marginalization due to sexual orientation and gender identity, this work would not be possible. For this, we thank all with whom we have had the privilege to correspond, many of whom have truly become a part of our family. You are loved, you are valued.

Contact Information

Mailing address:

Trans Pride Initiative
P.O. Box 3982
Dallas, Texas 75208

Physical location:

614 West Davis Street,
Suite 207
Dallas, Texas 75208

General Information: 214-449-1439

Email: info@tpride.org

Nell Gaither, President: 214-394-9835

Email: nell@tpride.org

Contents

I. Introduction.....	1
II. Compliance Concerns.....	3
PREA Intent.....	3
Evidence of Issues in TDCJ Implementation.....	3
Data collection.....	3
Training and Technical Assistance.....	8
Audits.....	9
A Note about the Number of Transgender Persons Incarcerated.....	10
III. Specific Concerns for LGBTQ Persons.....	13
Standard 115.11—Zero tolerance of sexual abuse and sexual harassment.....	13
Standard 115.15—Limits to cross-gender viewing and searches.....	14
Standard 115.31 Employee training.....	16
Standard 115.34 Specialized Training: Investigations.....	17
Standard 115.42 Use of screening information.....	18
Standard 115.43 Protective custody.....	21
Standard 115.51 Inmate reporting.....	22
Standard 115.53 Inmate access to outside confidential support services.....	23
Standard 115.62 Agency protection duties.....	23
Standard 115.63 Reporting to other confinement facilities.....	24
Standard 115.71 Criminal and administrative agency investigations.....	24
IV. Recommendations.....	25
Reduce Incarceration.....	25
Address Trial, Sentencing, and Parole Issues.....	26
Prison Culture Issues.....	26
Policy and Procedural Issues.....	27
Searches.....	28
PREA Audit Reports.....	28
PREA and Transportation Department Abuses.....	29
PREA Confidentiality.....	29
PREA Data Collection and Disclosure.....	29
PREA Prevention and Protection.....	30
PREA Incident Responses, Investigation, and Training.....	31
V. References Cited.....	32
Addendum: Quotes From Survivors.....	35

I. Introduction

The intent of the Prison Rape Elimination Act (PREA) is to prevent, detect, and respond to sexual abuse in confinement. These standards are far from perfect in conception, and farther in implementation. Trans Pride Initiative (TPI) has concerns about PREA ever being implemented effectively in a retributive for-profit confinement system.

The title of this report incorporates a statement made to one of our correspondents reporting sexual abuse in a Texas prison. In the Texas Department of Criminal Justice (TDCJ) system, the PREA concept of “zero tolerance” is simply a means of covering up and denying abuse: “The Texas Department of Criminal Justice (TDCJ) has zero tolerance for sexual abuse and sexual harassment and requires all allegations of sexual abuse and sexual harassment to be thoroughly investigated”; this is the template-based response to every report of sexual abuse and sexual harassment in TDCJ. This statement is a sham nod to PREA compliance that belies a system that not only fails to thoroughly investigate abuse, it also uses information reported to endanger survivors in an effort to discourage further reporting.

The title of this report come from an Allred Unit Safe Prisons Department manager. The Safe Prisons Department is responsible for ensuring “zero tolerance” under PREA. This quote was made to a transgender woman when she tried to report that for the last six weeks she had been repeatedly raped under threat of harm with a razor blade. The Safe Prisons manager’s response: “I don’t believe you, so you might as well get used to it.”

We chose the quote on this page—which we admit is rude, improper, offensive, crude, reveals disdain toward one’s constitutional rights, and certainly indicates a failure to follow PREA—to make a point. These words exemplify the environment that many persons who are, or are assumed to be, members of lesbian, gay, bisexual/pansexual, transgender, and queer/questioning (LGBTQ) communities experience daily. We want to increase public awareness, and outrage, at this situation.

“Maybe y’all ain’t heard about me but I don’t like no gay motherfuckers and all y’all need to die.”

—Corrections Officer to transgender woman, Telford Unit

TPI is fully transparent in admitting that we do not have the capacity in terms of either staffing or time to conduct the comprehensive data collection and analysis needed to fully support what is in this report. What we do have is well-established relationships with incarcerated persons who have related horrifying stories. We thus draw much of what is in this report not strictly from academic study but from the concrete and brick walls of prisons and those trying to survive within.

Our experience is primarily with the TDCJ system, and we received our first letters in 2013. Figure 1 shows the growth in our correspondence since that time through May 2018. Table 1 shows the number of letters we have exchanged through May 2018, and Table 2 shows the gender identity of those to which we have written. We do not regularly track sexual orientation, but most with whom we correspond are not strictly heterosexual.

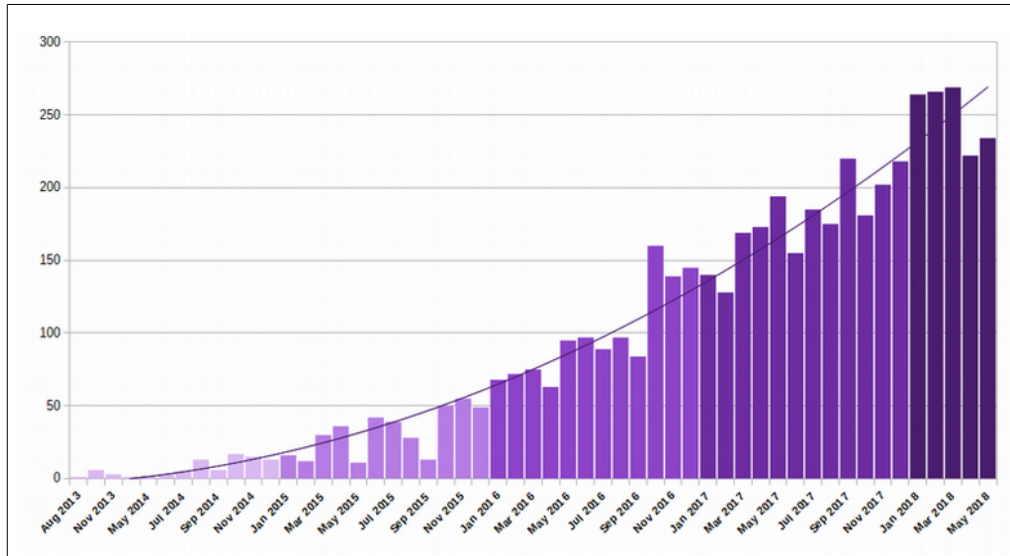


Figure 1: Communications received by and sent from TPI, 2013 through March 2018.

This report brings together the experiences we have documented through this correspondence. This Introduction is followed by a section discussing PREA Compliance Concerns, which provides an overview of PREA and areas of particular interest to TPI in our advocacy for transgender and queer persons in the TDCJ system. This is followed by Chapter III, a more detailed discussion of the PREA Standards and issues we have documented. We are providing in this section numerous quotes from our correspondents to illustrate the impact of PREA issues in their own words.

Chapter IV provides our Recommendations, divided into topical areas. These are not meant to be limited to simply addressing concerns discussed here, but also root problems with the for-profit carceral system as it currently exists in the United States. We end the main body of the report with our References, which are followed by an Addendum of quotes from survivors of violence in the TDCJ system.

Table 1. TPI Letters and Emails Exchanged*			
Facility	Received	Sent	Total
TDCJ Facility	2,553	1,832	4,385
Other State	186	133	319
Texas County Jail	13	8	21
Federal Facility	193	128	321
Total	2,945	2,101	5,046

* Totals include federal, state, and county prisons and jails.

Table 2. Gender Identity of TPI Correspondents	
Gender Identity	Count
Transgender	278
Cisgender	76
Unknown	50
Questioning	5
Gender Nonconforming	1
Two-Spirit	1
Total	411

II. Compliance Concerns

PREA Intent

PREA's intent is to prevent, detect, and respond to sexual abuse in confinement. The TDCJ policy document implementing the PREA Standards indicates the agency's intent is "preventing, detecting, and responding to sexual abuse, sexual harassment, extortion, and acts of violence perpetrated against an offender" (Texas Department of Criminal Justice, 2014, p. 1).

To accomplish its objectives, PREA defines tools that are intended to identify, understand, and eliminate sexual abuse through data collection, research, training, technical assistance, grants, and standards. These are monitored through audit requirements, and for noncompliance, a five-percent reduction of federal criminal justice assistance to states and agencies is an option.

Evidence of Issues in TDCJ Implementation

Data collection

TPI believes there are serious problems with data collection overall in TDCJ's implementation of PREA. In the most recent annual report from the TDCJ PREA Ombudsman, the agency presents some very revealing—and disturbing—numbers related to the recording of incidents of sexual violence. But first it is important to understand that across the board, validation of sexual abuse is extremely low in prison systems. Studies indicate false allegations of sexual violence in general (outside of prisons) range from around 2% to 10%,¹ meaning an estimated 90% to 98% of all allegations can be expected to be true. In U. S. prisons and jails in general, allegations of prohibited activities must meet a lower standard of proof to be accepted as "true." This is called the "preponderance of evidence" standard, which essentially means that to "prove" an incident occurred (to "substantiate" the incident), one must show that greater than 50% of the evidence indicates it did in fact occur. That is not an exceptionally high bar.

However, various types of sexual victimization² appear to be extremely difficult to prove in prisons and jails, in spite of extremely high controls, security, and observation. This great difficulty exists in spite of only requiring the lower "preponderance of evidence" standard. As shown in Table 3, national data from the Bureau of Justice Statistics (BJS) indicate only about 12% of all sexual victimization is substantiated.

-
1. A number of reports have addressed this issue. One large study was reported by Lisak, Gardinier, Nicksa, and Cote (2010, n.p.). A good brief overview of the issues may be found in Bazelon and Larimore (2009).
 2. There are a number of terms used to describe sexual conduct and contact in the data; here we use "sexual victimization" as a general term to refer to any conduct covered by the various terms and including everything from voyeurism and nonconsensual touching to rape.

Table 3. TDCJ and BJS Data on Sexual Abuse

NOTE: Studies show that false allegations of sexual violence account for only about 2% to 10% of all allegations.*

Type of Incident and Outcome	TDCJ Ombudsman n (%)**	TDCJ OIG n (%)**	National, 2009-2011 n (%)**
<i>Inmate-on-inmate nonconsensual sexual acts</i>	267	299	7,791
Substantiated	2 (0.7%)	5 (2.4%)	624 (9.0%)
Unsubstantiated	230 (86.1%)	195 (92.9%)	4,195 (60.4%)
Unfounded	35 (13.1%)	10 (4.7%)	2,125 (30.6%)
Investigation ongoing	0	89	862
<i>Inmate-on-inmate abusive sexual contacts</i>	348	--	4,381
Substantiated	11 (3.2%)	--	684 (16.1%)
Unsubstantiated	298 (85.6%)	--	2,732 (64.4%)
Unfounded	39 (11.2%)	--	827 (19.5%)
Investigation ongoing	0	--	139
<i>Staff-on-inmate sexual misconduct</i>	669	47	8,142
Substantiated	--	1 (4.3%)	1,034 (14.7%)
Unsubstantiated	--	19 (82.6%)	3,556 (50.4%)
Unfounded	--	3 (13.0%)	2,464 (34.9%)
Investigation ongoing	--	24	1,088
<i>Staff-on-inmate harassment (Penal Code 39.04)</i>	53	39	4,708
Substantiated	--	4 (19.0%)	267 (6.1%)
Unsubstantiated	--	16 (76.2%)	2,810 (64.5%)
Unfounded	--	1 (4.8%)	1,282 (29.4%)
Investigation ongoing	--	18	359
<i>Staff-on-inmate voyeurism</i>	230	--	--
no outcome statistics available			
Total Allegations***	1,567 / 615	385	25,022
Total Substantiated***	13 (0.83%) / 13 (2.1%)	10 (3.9%)	2,609 (11.6%)

Sources: Bureau of Justice Statistics, 2014, p. 5; TDCJ, 2017, pp. 26–29, 35–38.

* Determining what constitutes a “false allegation” is complex and depends on a number of considerations, from what constitutes a statement to how you measure truthfulness, or substantiated, unsubstantiated, and unfounded in TDCJ parlance.

** Percents are based on the number of investigations that have been completed.

*** The total of 615 includes only those allegations for which data on outcome is reported.

One might suggest that there is ample reason for incarcerated persons to make false accusations of sexual victimization, and that is true. That could lower the expected truth-in-reporting rate somewhat below the expected 90% to 98% range, but it would not reduce that rate to a mere 12%. Countering that is the fact, as noted by additional BJS research, that a huge amount of sexual victimization goes unreported. One 2008 BJS survey found that only 37.4% of formerly incarcerated persons reported inmate-on-inmate sexual victimization, and only 5.8% reported staff-on-inmate victimization (Beck and Johnson, 2012, p. 30). Note that this data indicates the number of individuals

choosing to not report, not the percentage of incidents that went unreported. In confinement environments, just as in the free world, many survivors experience repeat occurrences of sexual abuse, and that may be more true in confinement where one is often marked as an easy target for abuse after an incident, especially if they do not report. For this reason, the percentage of individuals who do not report probably represents a very large number of incidents. Corroborating, another researcher notes sexual assault in prison is about 65% unreported (Martyniuk, 2014, p. 1). Although there may be reasons for incarcerated persons to falsely report sexual victimization, the apparent high percentage of unreported abuse likely does much to offset any level of false reports in ascertaining a true picture of sexual abuse in confinement. We will cover some of the reasons such abuse is not reported later in this document, but there are ample reasons—often created or exacerbated by prison operators—for reporting to be low.

If the national data concerning substantiated sexual victimization is appalling, the data provided by TDCJ is even more atrocious by several orders of magnitude. In fact, TDCJ data more than turns the truth-in-reporting expectation on its head. As shown in Table 3, the agency claims that 98% to 99% of all reports are either unsubstantiated or fabrications. For the most recent data available (covering fiscal year 2016), TDCJ shows that out of 1,567 reports of sexual abuse, only 13 were substantiated, which is TDCJ essentially claiming that only 0.83% of the incidents occurred.

<p>Under PREA, what is sexual abuse?</p> <p>As per the PREA Standards (28 CFR § 115.6), sexual abuse is divided into two types, 1) abuse against an incarcerated or detained person by another incarcerated or detained person, and 2) abuse of an incarcerated or detained person by a staff, contract, or volunteer person.</p> <p>The abuse must be nonconsensual, coerced by overt or implied threats, or enacted against someone who cannot give consent.</p> <p>1) The first type includes all contact with the genitals or anus, including penetration by hand, finger, object, or other instrument. It can also include any other touching directly or through clothing of the “the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.”</p> <p>2) The second type includes the same and</p> <ul style="list-style-type: none"> • “contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire”; • any attempt, threat, or request by the employee or volunteer to engage in any of these actions; 	<ul style="list-style-type: none"> • any display by the employee or volunteer of “genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident”; and • voyeurism. <p>What is sexual harassment?</p> <p>As per the PREA Standards (28 CFR § 115.6), sexual harassment also has two types, 1) that which is perpetrated by another incarcerated or detained person, and 2) that which is from an employee or volunteer.</p> <p>1) From others in confinement, it includes:</p> <ul style="list-style-type: none"> • repeated and unwanted “sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature.” <p>2) From staff, contractors, and volunteers, it includes:</p> <ul style="list-style-type: none"> • “repeated verbal comments or gestures of a sexual nature” • “demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.”
--	--

TDCJ publications state that “substantiated” means “the event was investigated and determined to have occurred” (TDCJ, 2014, p. 5), but that is not entirely accurate or representative of what is being determined. The preponderance of evidence measure to assess an event as substantiated means there is sufficient evidence that a report of an event is probably true or accurate. One purpose is to identify likely endangerment where vulnerabilities exist, an objective of PREA for “preventing, detecting, and responding to” abuse. The TDCJ *Safe Prisons/PREA Plan* states “No standard higher than the preponderance of evidence shall be imposed in determining if allegations of sexual abuse or sexual harassment are substantiated” (TDCJ, 2014, p. 28). Thus TDCJ is claiming that there is less than even a 50% probability that 98% or more of the allegations of sexual violence happened. More, we have received information that indicates guards use this data to tell our correspondents that their reports cannot be believed because 99% of the reports are determined to be lies. This is an astounding claim, especially with the long history of violence against persons in TDCJ custody (see, for example, Beck, 2013; Gammill and Inglis, 2016; Santo, 2015).

TDCJ administration will raise the claim that there are many incentives for making false allegations concerning sexual violence in prison. TPI agrees, but we also point out two important considerations. First, many of the reasons someone might make a false allegation are the result of inhumanely placing people in cages. The environment established in prison is one of long-term daily trauma, and a desire to ameliorate that experience—ranging from gaining small instances of human dignity to escape from a threatening cellmate or abusive or endangering situation—can drive a person to embellish narratives to gain a modicum of safety. The prison environment encourages, even necessitates, this; the situation is grossly conveyed in the adage provided by TDCJ staff to many incarcerated persons with whom we correspond: “In here, you have to fight or fuck.” Second, although there may be a number of false allegations, as mentioned already, there is also a very high incidence of unreported sexual violence—almost certainly over half go unreported—because the system very often punishes those who report sexual violence, which also skews the data.

Table 4 presents the Texas-specific data from a BJS survey examining the number of former incarcerated persons who responded that they experienced sexual victimization while in prison. Table 4 averages the survey results for the Texas facilities for the various types of violence, then

Type of Incident and Outcome*	Weighted percent	Estimated TDCJ Total**
Inmate-on-inmate sexual victimization, total	3.21%	4,720
Inmate-on-inmate nonconsensual sexual acts	1.66%	2,441
Staff-on-inmate sexual victimization, total	3.99%	5,867
Staff-on-inmate nonconsensual sexual acts	2.89%	4,250
All abusive sexual contact	1.02%	1,500
All sexual victimization allegations	6.59%	9,691

Sources: Beck and Harrison, 2007, pp. 19, 23, 27, 31.
 * “Sexual victimization” includes all types of sexual activity and is reported for inmate-on-inmate and staff-on-inmate. “Nonconsensual sexual acts” include oral sex, anal sex, vaginal sex, hand jobs, and other sex acts, also reported for inmate-on-inmate and staff-on-inmate. “Abusive sexual contacts involve unwanted touching of the butt, thighs, penis, breasts, or vagina in a sexual manner.
 ** Total population in TDCJ used is 147,053, the total on hand for August 31, 2016 (TDCJ, 2017, p. 1).

Transgender Identity and Biology

Persons who do not identify as transgender have a wide range of opinions about who transgender persons are and what being transgender means. Much of what many believe is based on inaccurate stereotypes. One of the most basic misunderstandings concerns human biology.

Many people assume a person's gender or sex should be based on DNA, and that all persons have a DNA configuration that adheres to one of the assumed normative constructs of 46,XX or 46,XY. However, human DNA can be quite complex and varied. Alternate DNA structures include, for example, 45,X0; 47,XXY; 47;XYY; and a few dozen other alternatives that include chimeric and mosaic conditions that fall outside the assumed sex binary.

Chimeric DNA refers to having at least two distinct sets of chromosomes. Chimeric DNA typically occurs when two fertilized eggs fuse to become one fetus with two separate strands of DNA. Mosaicism occurs when there are separate populations of DNA within a body. These can result from differences in cell division within an embryo or fetus, and can mean, for example, that DNA of one's skin may differ from that of the nervous system. We also know that while carrying a child, DNA from the fetus is passed to the mother and vice versa, resulting in changes to the DNA composition of both. Such exchanges of DNA have both short- and long-term consequences not fully understood.

Geneticist Eric Vilain, of the University of California, Los Angeles, Institute for Society and Genetics, and also with the Center for Genetic Medicine Research at Children's National Health System, has identified a number of

additional components beyond the SRY (sex determining region of the Y chromosome) gene that influence sex differentiation, including the DAX1 and WNT4 genes (Learner, 2018; Lehrman, 2007). Simplistic reference to "XY" or "XX" chromosomes to identify one's sex in a complex biological system reveal much more about one's prejudices than biology or social role determinants.

Other conditions such as Androgen Insensitivity Syndrome (AIS) further expand the reality of human diversity (Hanan, 2008). AIS women have XY chromosomes and a functioning SRY gene, but the androgen (testosterone is an androgen) receptors do not respond to it.

As one researcher has said, "Humans like categories neat, but nature is a slob" (Clarey, 2009). Geneticist Anne Fausto-Sterling writes "There is no either/or. Rather, there are shades of difference. . . . [L]abeling someone a man or a woman is a social decision. We may use scientific knowledge to help us make the decision, but only our beliefs about gender—not science—can define our sex. Furthermore, our beliefs about gender affect what kinds of knowledge scientists produce about sex in the first place" (Fausto-Sterling, 2000, p. 3).

Our estimates of the rate of occurrence of conditions like this are increasing. It cannot be stressed enough that we have limited knowledge about how gender identity is influenced by biology, both in terms of these differences described above and regarding diversity of gene expression over time and in response to environmental influences through epigenetic processes. It is highly likely that in the future a number of biological determinants will be identified as influencing transgender identities.

projects a system total minimum sexual victimization count based on the total TDCJ count in custody as of August 31, 2016, for a rough comparison of the 2016 data presented in Table 3. This is a very rough means of comparing datasets, but the extreme level of disparity supports the contention that official numbers presented by TDCJ seem to clearly under-represent the level of sexual violence occurring, incredibly ineffective investigation of allegations, or some of both.

To further explain the comparison, TDCJ recorded a total of 1,567 incidents of sexual victimization (see Table 3) during 2016, representing about 1.07% of the August 31, 2016, population of 147,053.

The BJS study shows that about 6.59% of former Texas prisoners reported victimization, which would give an estimated 9,691 incidents, **more than six times what TDCJ is documenting, at a minimum.** Note that the latter figure is number of persons *reporting incidents*, and the former is the number of incidents; some persons in the BJS Inmate Survey reported multiple incidents, so the 9,691 number is a minimum number of incidents. When looking at the number of incidents that were substantiated ($n=13$) as a factor of this minimum number of incidents, we see that only at most 0.13% of incidents were substantiated. This number is important because it reflects a more complete understanding of how TDCJ complies with the PREA standards. PREA requires that agencies prevent, detect, and respond to sexual abuse and sexual harassment. The numbers presented in Table 3 only reflect a failure to adequately respond to sexual violence; the number presented in Table 4 also reflects the failure to detect and prevent sexual violence that is occurring in the facilities.

Valid data requires accurate and accountable collection methods; that BJS statisticians estimate rates of violence far in excess of what is being recorded in TDCJ indicate the agency is neither accurate nor accountable in their data collection. The most basic problem seems to be that interactions are manipulated at a fundamental level by unit staff and investigators (as detailed in this report), and until that is addressed, there can be no truly valid data collection method. This will always work to TDCJ's advantage because they get to create the narratives around the data as they wish.

Training and Technical Assistance

Training can be problematic in that it is generally policy- and compliance-based rather than culture-based—in other words, most “diversity” training teaches how to conform to policy and does little to affect underlying cultural biases and stigma. There are two reasons for this. Culture-based training is far more difficult and time-consuming, while policy-based training—although at times effective—can also be used to cover up on-going problems. It is common for organizations to claim negative issues do not occur because they have policy and training against discriminatory behaviors rather than acknowledging that policy and training are only effective when the culture that allows those problems is also addressed.

For example, as is increasingly acknowledged, policy prohibiting racial discrimination is largely ineffective within an environment that fails to acknowledge deeply embedded systemic racism; policy prohibiting sexual violence is largely ineffective within an environment that fails to acknowledge acceptance of behaviors that can be collectively described as rape culture. Similarly, TPI has experienced issues when trying to address anti-LGBTQ, and especially anti-transgender, discrimination and harassment with the Dallas Police Department. Over a two-year period, when presenting numerous examples of misconduct to the department LGBT liaison, she responded routinely with variations on the statement “that doesn’t happen because we have policy and training to avoid it.” Although we had experienced this type of response from other organizations, that from the Dallas Police Department is the most egregious example we have experienced to date. This response is common, and it is seldom addressed in training; it results from checkbox efforts that only provide the minimal compliance-mandated rote training efforts, not the cultural change needed to actually address problems. TDCJ does the same by insisting it has a “zero tolerance” for sexual violence when the evidence clearly shows differently.

One example specifically related to PREA implementation has to do with housing assignments and program access for transgender persons. The Bureau of Justice Administration has made it very clear

that housing transgender persons on the basis of external genital configuration is a violation of the standards:

Does a policy that houses transgender or intersex inmates based exclusively on external genital anatomy violate Standard 115.42(c) & (e)?

Yes. Standard 115.42(c) states:

In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate’s health and safety, and whether the placement would present management or security problems.³

Early PREA audits of TDCJ facilities documented that some staff admitted TDCJ assigns transgender persons by external genital configuration. Auditors pointed out that such practices constitute a “does not meet standard” assessment during audits, and the staff were allowed to change their response. However, that did nothing to change actual practice within TDCJ of making housing and program decisions based on external genitalia. This is in fact the case at most jails and prisons around the nation. As far as TPI has been able to determine, there are only a few, possibly only one, transgender person in TDCJ custody housed according to gender identity, and we have information that indicates those that are allowed gender-appropriate housing have had some degree of genital surgery. These examples are, in effect, the exceptions that proves the disallowed practice continues.

Audits

PREA’s limited “enforcement” power is provided by the audit requirements defined under Section 115.400. We believe the audit system to date has been far less than fully effective, and at times may

“[A] PREA consultant [auditor] . . . talked to a hand few of us transgender [inmates]. . . . She asked us about how we are treated by officers on this unit. . . . Do these officers refer to us as he or she . . . if he then they need to call us she because of what we identify as. . . . [The PREA auditor] said she was asked to come to Texas to this unit and other units by the FBI. Because Texas PREA might not write or report what we say.”

—transgender woman, McConnell Unit

serve to reinforce PREA violations by overlooking issues of sexual victimization against LGBTQ persons. This is covered in more detail in the section presenting “Specific Concerns,” but we will cover a few general issues here.

We have received curious reports about one auditor in specific. One report was that the auditor told a transgender woman she was working with the FBI to investigate abuses against transgender persons at the unit. We are not sure why the auditor said this.⁴ Another report—from a different unit and person—noted this same auditor

3. As per the National PREA Resource Center online FAQ: <https://www.prearesourcecenter.org/node/3927>.

4. The officer also noted—correctly—that transgender persons should be addressed according to their gender identity, so using “she” for transgender women. Although correct, there is some indication the auditor did not intend to be supportive, but instead may have tried to manipulate this person to take an action that would result in a disciplinary case. We note that this compliance failure was not addressed in the auditor’s report, and the unit

said PREA allowed transgender women to paint their nails. The following week, the transgender woman who was told this by the auditor colored her nails and received a disciplinary case. When she noted what she had been told and tried to claim PREA protection, of course, unit administration dismissed her claim. We are not sure why this PREA auditor has provided information like this if it were not intended to create a problem or cause harm. We are currently asking persons we work with to let us know about their experiences with this particular auditor for reporting to the National PREA Resource Center.

We have recently realized that PREA § 115.401(o) requires auditors to “attempt to communicate with community-based or victim advocates who may have insight into relevant conditions in the facility.” TPI is clearly a community-based organization and victim advocate with insight into conditions at many Texas facilities, and we have indicated our interest in communicating with auditors directly to TDCJ since at least August 2016. In response, TDCJ has required that we submit requests to Executive Services to learn about upcoming audits so we can reach out to auditors. Since scheduling is done on a rotating basis, this means submitting monthly requests. Only a few auditors that we have contacted have responded. Instead, both the standards themselves and the *PREA Auditor Handbook* published by the PREA Management Office of the Bureau of Justice Assistance indicate the current situation should be reversed—the auditors should be actively reaching out to contact TPI, and should be making multiple attempts to do so. TPI filed a Public Information Act request to try to learn whether TDCJ is interfering with this, or if this is due to inadequate work on the part of auditors. TDCJ has simply responded that they provide the resource guide published by Texas Association Against Sexual Assault (TAASA) to auditors to comply with this standard. Our communications with TAASA indicate auditors do not reach out to them either, so we believe auditors may be generally failing to comply with PREA § 115.401(o).

We will continue to monitor these issues and work to identify additional factors that contribute to ineffective and potentially non-compliant audits of prisons and jails in Texas.

A Note about the Number of Transgender Persons Incarcerated

We believe that many people may assume that the number of transgender persons in TDCJ custody is quite small. That is unlikely the case. TPI believes there are likely between 1,000 and 1,500 transgender persons in TDCJ custody at any one time. Transgender persons are estimated to comprise about 0.6% of the adult (over 17) population in the US; the estimate for Texas is 0.66% (Flores, Herman, Gates, and Brown, 2016, pp. 3–4), so with a population of about 148,000 incarcerated persons in Texas, one can expect that if transgender persons are impacted by the justice system proportional to the occurrence of transgender persons in the general population, there should be about 980 transgender persons in TDCJ custody. However, pervasive social discrimination and marginalization often forces transgender persons into engagement with underground economies for survival, so the transgender community is likely impacted by incarceration at rates far above occurrence in the general population. A study of about 6,500 transgender persons across the United States found that overall, 16% of respondents had served time

was assessed as “exceeds standard” for Standard 115.31, where this issue most likely should have been mentioned. Had the auditor actually intended to call this out as an issue, it should have resulted in at least a mention in the audit report and possibly development of a corrective plan. Instead, the unit was assessed as meeting or exceeding all relevant standards (King, 2016, pp. 4, 12–13).

in jail or prison. This can be compared to about 5% for the general population. About 47% of Black transgender respondents had been to prison, a disparity thought to be related to much higher rates of discrimination—particularly in employment and police interactions—for being both Black and transgender (Grant, Mottet, Tanis, Harrison, Herman, and Keisling, 2011, p. 163; Bonczar and Beck, 1997, p. 1). Thus, the number of transgender persons in prison is probably higher than the 0.66% estimate. The upper bound of our estimate, 1,500, is approximately 1% of the TDCJ population.

Intersex persons add additional numbers to this estimate. In general, intersex conditions are currently understood to be present in about 1.7% of the general population (Intersex Campaign for Equality, 2015, n.p.). Some intersex persons identify as transgender, but not all do; however, intersex persons often experience similar issues of social stigmatization—and risk of violence in prison—as do transgender persons.

There are two ways that transgender and intersex persons are recognized in the TDCJ system. One is by the TRGEN marker, which is reported to be used for anyone who identifies as or may be transgender or intersex. As specified in TDCJ policy SPPOM-03.01 and -03.02, this designation is applied to the incarcerated person’s digital data record during screening at intake or on request after

National Victimization Data and Psychological Duress

TPI works with dozens of transgender men and women in the Texas prison system, and many—particularly transgender women—have been subjected to sexual abuse, including rape, coerced sex, forced sex in exchange for protection, and extortion under threat of sexual assault. National data concurs that sexual victimization of transgender persons in prison is high.

The BJS found that in the 12 months prior to surveys between 2007 and 2012, 34.6% of transgender prisoners in state and federal units had been sexually victimized, 24.1% by other incarcerated persons, and 16.7% by staff (Beck, 2014, Tables 1 and 2). In 2014, Black and Pink conducted a survey of 1,118 persons in prison identified as lesbian, gay, bisexual, transgender, or queer and found that 79% of transgender women reported sexual assault by another incarcerated person or prison staff during their incarceration (Lydon, 2015, p. 44).

Transgender persons are deeply affected by social stigma common in confinement, where staff and others either fail to respect or actively express stigma against transgender identity.

Social stigma can lead to chronic minority stress that includes or exacerbates such concerns as “anxiety, depression, self-harm, a history of abuse and neglect, compulsivity, substance abuse, sexual concerns, personality disorders, eating disorders, psychotic disorders, and autistic spectrum disorders” (World Professional Association for Transgender Health, 2011, p. 24).

The American Psychological Association notes that transgender and gender diverse (TGNC) persons “who receive social support about their gender identity and gender expression have improved outcomes and quality of life. Several studies indicate that family acceptance of TGNC adolescents and adults is associated with decreased rates of negative outcomes, such as depression, suicide, and HIV risk behaviors and infection” (American Psychological Association, 2015, p. 846). With professional expertise such as this readily available, promotion of stigma against transgender persons should be considered psychological abuse.

We believe that respect of transgender persons serves a penological purpose, but disrespect heightens negative outcomes.

initial intake. The other is diagnosis with gender dysphoria, necessary in TDCJ to access medical treatment.

A problem that seems to be increasingly an issue has to do with the misuse of the TRGEN marker. It is becoming more common for persons we have worked with for many months or years to note that the increase in the number of persons with the TRGEN marker—from 106 in January 2015 to 570 by August 2017 (personal communication, Tammy Houser, TDCJ Open Records Coordinator, October 16, 2017)—is in part due to abuse of the designation. We do not have access to comprehensive data that could help us better understand what is occurring, but we believe in some cases unit administrators may be allowing persons who are probably not transgender-identified to be assigned the TRGEN marker. One explanation is that it can be difficult to assess identity, and some staff may have legitimate issues doing so. However, we have learned that “problems” like this often can be used for abusive purposes in TDCJ, and this could be used by agency staff and administration to later justify “security interest” actions such as selectively denying access to healthcare by claiming abuse of the TRGEN identifier, even though that abuse may have been abetted or even driven by TDCJ personnel themselves. In addition, allowing abuse of the system makes it easier to later “discover” the abuse in order to withhold the designation from some persons for various reasons, generally as a control technique. Claims of abuse and “faking” identity may also be used to help deny safekeeping status (often extremely difficult for transgender persons to access), as well as PREA protections available to transgender persons such as separate showers. The extreme lack of transparency in TDCJ operations makes it difficult to assess what is actually occurring. TPI feels increased transparency in prison operations would improve conditions in many respects.

“I want to say that Allred is truly hell for a trans woman, and PREA here is the demon that punishes us every day!

“To tell you the truth I still stand and fight the oppression, but I’m broken, the rapes still bother me and I cry uncontrollably. . . . The psy [psychology, or the mental health] department here try to tell us we’re men in a man’s prison. I hate to hear that crap so bad. The staff here is just as bad. . . .

“I finally met the abuser [a PREA manager infamous for her abuse of transgender women in TDCJ]. This woman got me my first major case by lying on me. She wrote me up saying I told her to ‘suck my dick, bitch.’ Never have I ever referred to myself as having a ‘dick’ and I don’t even think like that. On the 24th of May they stormed my cell and wrote me a case for my cellie’s contraband. I did have 3 stamps and one address book she took, but they put so much crap on me.”

—transgender woman rape survivor, Allred Unit

III. Specific Concerns for LGBTQ Persons

The following is a selection of specific portions of the PREA Standards for Adult Prisons and Jails that we have noticed may not be fully assessed during audits or fully carried out by the agency. We have included a number of quotes from persons we work with in this section that we feel are illustrative of conditions within the facilities. In some cases these reflect the topic of the text within which they occur, but others are included regardless of whether they are directly related to the text because they convey important aspects of the experience of abuse while incarcerated.

Standard 115.11—Zero tolerance of sexual abuse and sexual harassment

Many procedures at TDCJ units fall far short of preventing sexual abuse and harassment against transgender persons, and indeed all incarcerated persons. We believe that data like that shown in Table 3, above, indicate not only a failure to prevent, detect, and respond to sexual abuse and sexual harassment, but active efforts to cover up its pervasive occurrence within the system.

We believe it is likely that broad structural problems within TDCJ (and other jails and prisons around the nation) work against the goals of PREA. Contrary to intent, some of these problems in part may be supported by PREA. For example, PREA seems to be encouraging agencies to place significant pressure on administrators at the units to show that PREA violations do not occur under their watch so they will appear to be complying with PREA standards and guidelines regardless of reality. Rapes are easily labeled “consensual sex” when an officer’s word is virtually guaranteed to weigh more as evidence than the survivor’s word. Evidence includes the numerous narratives we have of incarcerated persons being coerced to deny abuse took place or manipulated to change their statement. One data series that could be very revealing is how many persons reporting PREA incidents are cited with disciplinary or abuse complaints within a few weeks of the claimed PREA incident, or are harmed due to multiple ways that guards and other staff disclose that someone has “snitched.” This would allow us to look at, for

“In the housing area [at Boyd Unit] there were always sexual comments and unwanted/unwarranted gestures and I tried to talk to the PREA Sgt. __ and was told to deal with it and get used to it cause that’s the life in prison. I requested safekeeping and was told it wasn’t for me cause I haven’t snitched on any gang members and I wasn’t sick. So the psychological abuse continues even here because there are inmates from Boyd Unit here who have already put me out there.”

—transgender woman rape survivor, Neal Unit

“Sgt. __ made me write a statement that didn’t make him look guilty. He said that they were trying to blame him for it.”

—young transgender woman, Hughes Unit, repeatedly housed with gang members who forced her to provide sexual favors

example, how many reports of sexual abuse were transitioned into disciplinary cases for consensual sex.

Another issue concerns reports of sexual harassment that staff and administration should be more

attentive to substantiating as a means of preventing escalation to more serious incidents. Sexual harassment is often excused by over-emphasis on the word “repeated” in the definition of sexual harassment (see the definitions in the earlier sidebar). Staff and disciplinary hearing officers can easily determine harassment has not been repeated enough to constitute harassment. Denial of meeting that bar for sufficient repetition means the report is perceived as essentially a false report, giving the option to file a disciplinary case against the person reporting to discourage future “troublesome” reporting. If an incarcerated person has tried to report ongoing harassment, not considered “repeated” because it came from different persons, that effort to increase safety can be labeled a “disciplinary problem” by being characterized as repeated false claims. Victim-blaming is common. When the potential endangerment becomes an actual attack or rape, the purported “history” of “false claims” can be cited to mischaracterize a rape as “consensual sex,” a beating as “fighting or assaulting,” and extortion as soliciting or other contraband trade related activities.

Standard 115.15—Limits to cross-gender viewing and searches

Standard 115.15(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. PREA does not specifically define gender,⁵ leaving it up to agencies to define. TDCJ’s definition of “gender,” as per communication to incarcerated persons and TPI, is essentially that one’s gender is the gender of the unit to which one is assigned. Notwithstanding the circular reasoning, this in itself serves to negate the gender identity of most transgender persons and increases the risk of sexual harassment and sexual abuse because it conveys disdain from the staff, which marks them as easy prey to those searching for extortion targets. Defining gender in this way may also constitute denial of

“Captain __ called me out to talk about why did I file to the Ombudsman about the policies of strip searches. He told me ‘you are in a man’s penitentiary you will be stripped out all the way by my male officers.’ . . . Many offenders have told me and warned me about Safe Prisons, that they don’t like the girls. . . . Many offenders tell me that they always do the girls this way to P4 [them into] medium custody with bogus cases.”

—young transgender woman, Allred Unit

“These people know they can and do get away with a lot. I’ve been threatened that if I keep pushing I’m gonna get seg [administrative segregation] and locked up and all of my property will come up missing. . . . I am afraid—but I know that if I stop these people will win yet again at doing what is wrong. My credo has and shall always remain: The evil in people depends on good people to be quiet and not to speak up against it—not so with me—I speak up.”

—transgender woman, Robertson Unit

5. In the PREA standards final rule, the term “gender” is mentioned nearly 200 times in the Supplementary Information and almost 100 times in the final rule itself, yet neither “gender” nor “sex” is defined. National Standards To Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg 37105 (June 20, 2012) (codified at 28 C.F.R. 115).

medically necessary care for transgender persons.⁶ We have many reports of abusive searches: examples include transgender men having their clothes tossed away from them so they have to run in front of other incarcerated persons to retrieve them, transgender women being intentionally stripped in full view of others, and transgender women being harassed about the use of sheets or towels for privacy and safety when changing or washing, even though cisgender (meaning “non-transgender”) persons are allowed to put sheets or towels up to obscure views.

Transgender persons are stripped sometimes multiple times a day in view of different-gender persons,⁷ often on display to others in spite of ostensibly using screens. At Allred Unit, transgender

“I requested for a female to strip search me which I was decline. . . . I done what I was ask and strip for the male officer, and as I was walking out the same Lt. and 4 other guards came with him with masks and gas guns, they were going to spray me. I was humiliated by these officers.”

—transgender woman, Darrington Unit

women were being stripped in view of offenders who would masturbate to the repeated strip-out procedures in a routine occurrence that was referred to as the “meat show.” Public outcry was strong enough in this case to prompt changes—reportedly—within medium custody at Allred Unit. TPI believes this practice continues in housing for other custody levels, and may continue some in medium custody.

Standard 115.15(f): The agency shall train security staff in how to conduct cross-gender pat-down searches, and searches of transgender and intersex inmates, in a

professional and respectful manner, and in the least intrusive manner possible, consistent with security needs.

This standard is insufficient because training does not equate compliance. To give one notable example of an abuse of this standard, in August 2017 the TDCJ PREA Ombudsman confirmed to TPI that they do not consider open palm searches of the breasts and genitals of transgender women (as they admitted was seen on review of surveillance video) to be a violation of pat search policy. PREA training guidelines, on the other hand, indicate the back or blade of the hand should be used. Only after raising specific objections and explicitly pointing out the training guidelines did the PREA Ombudsman concede to identifying an unspecified “training opportunity” at the unit, which was most likely training to avoid use of open palms (at least while on camera) and instead use the back or blade of the hand for pat searching transgender persons. We have no doubt the practice continues.

6. TPI has received a number of comments from transgender persons that TDCJ employees will use gender-based terms such as “sir” and “Mr.” for transgender women or “Ms.” and “ma’am” for transgender men when such terms are seldom used by the employee for non-transgender persons. Social transition is considered a form of medical treatment that is very often necessary to positive healthcare outcomes, so purposeful denial of such treatment may be considered denial of medically necessary care, and in some cases may constitute psychological abuse. PREA training also notes that treating a transgender person with respect includes using their affirming name and pronouns.
7. Housing for transgender persons in TDCJ custody is determined by genitalia in spite of PREA prohibitions. This fails to recognize the gender of transgender persons, and can be especially abusive to persons with gender dysphoria, the very definition of which indicates a person’s gender is different than the gender coercively assigned at birth by genitalia. TPI only knows of one transgender person in TDCJ custody housed according to self-identified gender, and that person has had genital surgery, an “exception” that we feel may prove TDCJ’s use of a genital rule in assigning housing in violation of PREA regulations.

Standard 115.31 Employee training

Standard 115.31(a)(4): The agency shall train all employees who may have contact with inmates on: . . . The right of inmates and employees to be free from retaliation for reporting sexual abuse and sexual harassment.

“It’s this unit. These officers just don’t care. They got all this PREA shit everywhere but they don’t keep us safe.”

—transgender woman, Stiles Unit

One of the most egregious PREA violations involves the standard that states “inmates and employees [have a right] to be free from retaliation for reporting sexual abuse and sexual harassment.” Retaliation appears to be routine in TDCJ, and probably in other confinement facilities. Persons reporting sexual abuse and sexual harassment do so at great risk for being cited with disciplinary cases or outed to others as a “snitch,”

which exposes them to additional violence. Our correspondents indicate it is common to be cited with consensual sex cases for surviving rape or other sexual abuse; we seem to be seeing an increase in cases of lying during an investigation after reporting assault. It appears quite common for persons to be cited with refusing housing when they bring up that—sometimes by mistake, but sometimes it appears by intent as well—the unit is trying to house them with someone who is a threat due to prior violence or even direct threat of violence in front of the staff. Threats of violence against LGBTQ persons are common because diversity in gender and sexual orientation is often extremely stigmatized by organization (gang) members.

Standard 115.31(a)(9): The agency shall train all employees who may have contact with inmates on: . . . How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, or gender nonconforming inmates. We document a large number of instances where transgender inmates are harassed and abused by staff in ways that do not reflect effective or professional communication. This includes emphasis on identifying a person according to their genitalia, statements that genitalia make them a man or a woman, encouragement to amputate genitalia, and use of derogatory terms such as “faggot,” “tranny,” “he/she,” “it,” and the like. Not only is this not “effective communication,” it is often pervasive enough to constitute mental and psychological abuse, particularly for incarcerated transgender persons experiencing severe gender dysphoria.

This standard is insufficient because training does not equate compliance. We would suggest that random video of interactions (not selected by unit staff) with incarcerated transgender persons be reviewed by auditors to determine if training is actually implemented or not. We would also suggest that outside grievance review and auditing may help address problems like this.

“[After being stripped,] I was then forced to expose my genitals while Sgt. __ and Officer __ repeatedly mocked me by telling me, ‘I was a man and not a girl.’ . . . I was then told to declare I was a man and not a girl without anything covering my genitals. After being forced to repeat this phrase more than once, I was then placed in the 8 building cage next to the front desk. That is when I undergone jokes, and other forms of verbal abuse from inmates while Sgt. __ and Officer __ cheered on the inmates passing by. Somewhere in that time I began to have cardiac problems [due] to my on-going heart related issues (implanted devices). Officer __ fully aware of this began prolonging the arrival of medical by making the situation into a joke. After about 45 minutes medical staff arrived and took me to the ER room. This is when it was decided that I in fact needed to be sent to the local hospital.”

—transgender woman, Hughes Unit

PREA training materials also note that effective and professional communication is respectful, and respectful communication includes using pronouns that incarcerated persons use for themselves (Moss Group, 2014, Unit 5).⁸ Transgender women often use “she” and “her,” and transgender men “he” and “him.” Disrespecting this can lead to ineffective communication, is dehumanizing and may lead to increased risk for sexual abuse (by showing other incarcerated persons that staff will not or are less likely to protect transgender persons subjected to sexual harassment, sexual abuse, and other violence), and may also increase negative mental health issues such as anxiety and depression. The latter effect can, in turn, lead to increases in risky behavior that can escalate the likelihood of sexual abuse. Our correspondents have reported that TDCJ employees have claimed use of affirming pronouns is actually sexual harassment. This turns a potentially positive PREA standard into an abusive policy supporting ineffective communication that, depending on context and frequency, may itself constitute sexual harassment.

“I was the on-call electrician there for approx. 6 months until the staff out at maintenance found out [I am transgender] and I was called a faggot, d-sucker, among other slurs, then they fired me.”

—transgender woman, Boyd Unit

Standard 115.34 Specialized Training: Investigations

Standard 115.34(a) and (b): (a) In addition to the general training provided to all employees pursuant to § 115.31, the agency shall ensure that, to the extent the agency itself conducts sexual abuse investigations, its investigators have received training in conducting such investigations in confinement settings. (b) Specialized training shall include techniques for interviewing sexual abuse victims, proper use of Miranda and Garrity warnings, sexual abuse evidence collection in confinement settings, and the criteria and evidence required to

“They repeatedly pulled me out . . . to ‘re-investigate.’ He was very upset that the Ombudsman office (and you [TPI]) are involved in this incident. . . . He called me back out the next day . . . to re-write my statement, which will be the one that you and the Ombudsman’s Office will get. . . . My statement that I gave to ‘resolve’ the issue is ‘UT, D&C.’” (The abbreviation was later defined as “under threat, duress, and coercion.”)

**—gay cisgender man, Stiles Unit,
trying to address a death threat from a guard**

substantiate a case for administrative action or prosecution referral. TPI has received a number of reports concerning investigations of sexual abuse and sexual harassment that consist of the following pattern. First, ask the alleged victim if they were abused, then ask who their abuser was, after which one of the following typically occurs:

- If they cannot specifically identify the abuser, the case is closed with no review of video evidence or interviews of possible witnesses to identify an abuser.
- If they can identify the abuser, the abuser is approached and told that the survivor is accusing them of sexual abuse or harassment. The abuser denies the allegations, and the case is closed with no review of video evidence or interviews of possible witness. This also sets the survivor up for retaliation from the accused.

8. This PREA training states “Best practices suggest that transgender females . . . be addressed as ‘she’ and referred to as ‘her,’ [and] Transgender males . . . should be addressed as ‘he’ and referred to as ‘him.’”

- Investigations are often conducted at cell doors, necessitating speaking loud enough that persons in nearby cells hear the conversations, further endangering the survivor.

“Around this time on 2 different days, Mental Health Psychologist (referred by Lynne Sharp [PREA Ombudsman]) came to my cell door and discussed my sexual assault claim and my OPI out loud where 13 other offenders could hear it. . . . There were 4 Crip members on the section. One was my neighbor. . . . Once they heard the psych doctor’s talk about my sexual assault claim and my OPI [that was] filed, they began to verbally harass me and said they ‘sent word all over the unit.’”

—bisexual cisgender man, Stiles Unit

Not only are these inappropriate investigative techniques, all of these have the effect of discouraging the reporting of sexual abuse and sexual harassment, a possible violation of PREA standards. As nearly all reports of sexual violence are found “unsubstantiated” (see Table 3), and thus requests for safekeeping are denied, this puts the incarcerated person in more danger from assailants and their cohorts because they are released back to general population, sometimes even being housed in the same section as their assailant. The effect is to create a situation where it is “safer” to put up with sexual abuse than be subjected to additional violence that results from a report that is ineffectively investigated and written off as “unsubstantiated.”

Standard 115.42 Use of screening information

Standard 115.42(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 inmates at high risk of being sexually victimized from those at high risk of being sexually abusive. Our communications indicate an incarcerated transgender persons’ views about their own vulnerability are almost always ignored. Details are discussed in the sections below.

Standard 115.42(c), (d), and (e): (c) In deciding whether to assign a transgender or intersex inmate to a facility for male or female inmates, and in making other housing and programming assignments, the agency shall consider on a case-by-case basis whether a placement would ensure the inmate’s health and safety, and whether the placement would present management or security problems. (d) Placement and programming assignments for each transgender or intersex inmate shall be reassessed at least twice each year to review any threats to safety experienced by the inmate. (e) A transgender or intersex inmate’s own views with respect to his or her own safety shall be given serious consideration. TDCJ claims to not default to a

“genital rule” for making housing decisions, as PREA requires under § 115.42(c). However, we have only identified so far one transgender person that is assigned to a gender-appropriate facility. As that person seems to have had genital surgery, this indicates that in practice, TDCJ does implement a genital rule for housing placement.

“I begged the safe prisons officer with tears running out of my eyes to please help me [get into housing where the risk of abuse was less], and then I got suicidal so they called psych and the lady straight up told me she had just read what the psychiatrist at Montford put on my file: for me to be housed on 12 Building seg because being on ECB and having these animals masturbate on me makes me think about when I got sexually assaulted! She talked to the Capt. to get me moved and he told her to mind psych business and stay out of his. He bragged about it to me when I went to committee 10 minutes later.”

—transgender woman, Allred Unit

As noted in the previous section, during early PREA audits, some staff reported to auditors that incarcerated persons were assigned housing in male or female units based on genitalia, which probably inadvertently revealed the unstated practice.⁹ It could be said that “training” addressed this as a corrective action under PREA § 115.404, and that is superficially true, but our

“Our friend [Jane Doe] has been sexually assaulted here on [X Unit] by her cellie on [date in early 2018]. Before this occurred, she had spoken with Sgt. [A] and Lt. [B], . . . requesting to get moved due to cellie voicing dissatisfaction with her being his cellie. They spoke to Sgt. [C] on [early 2018] as well. Then she and I came to an agreement to be cellies for safety and acceptance concerns and we spoke with Lt. [D] and Sgt. [E] to that effect, . . . explaining to them both that she was attempting to stem a situation; . . . nothing was done. All conversations took place in view of the cameras to show that we did in fact speak with them. The very next day [Jane Doe]’s cellie raped her.” (Identifying information redacted for ongoing safety concerns; five different ranking officers failed to take action.)

—transgender woman, friend of “Jane Doe”

communications indicate training in truth only coached responses to conform to PREA by conveying decisions consider a range of issues on a case-by-case basis. Adherence to this standard cannot be determined by simply asking staff if they comply. Rather, actual practice needs to be reviewed through agency-wide documentation to determine if TDCJ as an agency is in compliance.

We have recorded several instances where transgender women are placed in cells with persons who have a known history of abusing LGBTQ persons, and we have several reports of transgender persons stating that the safest place for them is a cell with another transgender person, but unit administration has often refused to consider that option even when there is another

transgender person of the same custody class and similar age, build, and conviction who could have been housed with them. Comments reported to us indicate there may be a common misconception and stereotype among TDCJ staff that all transgender persons want to be housed together just so they can have sex with each other.

Reports of intentionally housing transgender women with known abusers are especially troubling. There have been a number of cases where transgender women were assigned housing with someone who immediately told them they would be physically assaulted or sexually abused if they stayed—sometimes saying so in front of guards—yet when the transgender person reports this, they are often given a case for refusing to accept a housing assignment.¹⁰

9. PREA audits in 2014 for Stiles Unit, Luther Unit, and the Holiday Transfer Facility all contain the statement that “[d]iscussions with staff indicated placement of transgender inmate is done based on genitalia.” PREA audit reports are available at: https://www.tdcj.state.tx.us/divisions/arm/rev_stan_prea.html.

10. This is not just a PREA concern but also a constitutional concern. The National Institute of Corrections notes that Corrections agencies have a responsibility to protect inmates from abuse at the hands of other inmates and staff, including volunteers and contractors. Agency officials can be held liable under the Eighth Amendment’s cruel and unusual punishment clause if they are deliberately indifferent and fail to protect inmates. In 1994, the U. S. Supreme Court held that prison officials cannot be deliberately indifferent to the sexual abuse of a transgender inmate who was repeatedly raped and beaten by other inmates. The Court explained that officials are liable for abuse of inmates when “the official knows of and disregards an excessive risk to inmate health or safety.” . . . In 2004, the sixth circuit noted that “placing a transgender woman in protective custody with inmates who have assaulted other inmates resulted in a substantial risk to her safety and could amount to deliberate indifference [Smith, Loomis, Yarussi, and Marksamer, 2013, p. 21].

We also point out that Unit Classification Procedure-02.03 (February 2017) lists eight items in the section “Factors in Determining Offender’s Need for Safekeeping,” but fails to include consideration of an inmate’s own perception of vulnerability. This excludes a specific and extremely important PREA requirement. It also includes “sexual orientation” but has nothing about transgender identity or intersex conditions. This either falsely conflates sexual orientation with gender identity—a misunderstanding that can increase violence against transgender persons—or it intentionally erases transgender identity and intersex conditions from consideration, a violation of PREA standards.

In many cases, transgender persons within the TDCJ system are being denied access to programs, privileges, education, and work opportunities by placement in segregated housing for persons at high risk for victimization. Safekeeping status can restrict participation in all these areas. At Telford Unit, safekeeping is now housed in the former administrative segregation building, where there are multiple differences in cell accommodations, access to recreation, access to programs, and access to simple daily activities. The single-cell accommodation amounts to lengthy periods of solitary confinement during lockdowns. The building was locked down June 27, 2017, and persons housed there endured about four lockdowns through April 2018 for a cumulative total of over 120 days.

“They keep putting members of these uber-violent gangs in the cell with me. I’m not gang-related and I’m effeminate so I’m easy prey. I’ve tried to look and act tough before but it never works out for me.”

—transgender woman rape survivor, Allred Unit

At least one of TPI’s correspondents who feels housing in safekeeping status is the most safe was recently told that she will have to give up that status in order to complete a program required for parole. We have reached out for confirmation to a national legal advocacy group that agrees this may violate PREA standards, stating that “Requiring a person to participate in a program as a condition of their parole that requires them to give up their Safekeeping status without a viable alternative, undermines the individual’s view of what is safest for them and ultimately compromises that individual’s safety, arguably violating the PREA standards” (personal communication, Desiree Magsombol, Just Detention International, October 26, 2016).

Standard 115.42(f): Transgender and intersex inmates shall be given the opportunity to shower separately from other inmates. We have documented what appear to be a variety of ways that TDCJ staff have applied the separate shower requirement inappropriately. In some cases, transgender persons have been forced out of housing they felt was safe and into other housing simply because it had a certain type of shower, sometimes increasing their risk of being abused. Another issue is that not all “single-stall showers” are PREA compliant. The PREA Resource Center notes that “facilities should adopt procedures that will afford transgender and intersex inmates the opportunity to disrobe, shower, and dress apart from other inmates.”¹¹ TPI is receiving increasing numbers of complaints that showers, sometimes due to recent modifications, fail to provide adequate privacy, exposing the entire upper body of transgender women, greatly increasing their vulnerability and risk of abuse.

In a similar type of non-compliance, Allred Unit has some two-person cells with showers that do not afford the privacy required under this standard. Hughes Unit also houses transgender persons with non-transgender persons in Extended Cell Block (ECB) cells, which are essentially the same type of

11. As per the National PREA Resource Center online FAQ: <https://www.prearesourcecenter.org/node/3249>.

configuration. We need more information to determine which shower facilities are actually compliant and which may be non-compliant or increasing risk of abuse.

Standard 115.42(g): The agency shall not place lesbian, gay, bisexual, transgender, or intersex inmates in dedicated facilities, units, or wings solely on the basis of such identification or status, unless such placement is in a dedicated facility, unit, or wing established in connection with a consent decree, legal settlement, or legal judgment for the purpose of protecting such inmates. This report has previously mentioned that TDCJ tends to not house transgender persons together in cells, even when that appears to be an option that would increase safety. There have been several reports that TDCJ staff use this section of the PREA Standards to claim housing two transgender persons together constitutes “dedicated facilities, units, or wings.” TPI strongly opposes such misuse of this standard.

“Here recently (2 or 3 months) I’ve been noticing more and more discrimination towards the trans folks here at Stiles. . . . My psych guy and I have spoken extensively how this solitary, isolationist cell drives me crazy cause my mind won’t shut down my racing thoughts. That eventually I’d cut my penis again. . . . [After not eating all day for an approved Jewish fast, a guard refused to provide a sack meal, as policy allows.] I explained to the Sgt that this extra stress was not helping me please feed me cause the cell isolation etc had me manic enough as it was to where I was already on the verge of amputation of my penis cause I was stressed out. He got smart and said ‘go ahead, cut, looking at you you don’t look like you want it anyway.’ Several hours later, the urges overtook me and I went to skinning my penis. Two and one-half inches of skinning it, it got too slick with blood to continue.

“They seen the blood and took me to medical. I seen the psych a couple hours later and they put me back in my cell against the psych’s telling them I need to get back to the population.”

—transgender woman, Stiles Unit

Standard 115.43 Protective custody

Standard 115.43(a): Inmates 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 inmate in involuntary segregated housing for less than 24 hours while completing the assessment.

Correspondence we have received indicates TDCJ routinely places persons at risk for sexual victimization in involuntary segregated housing¹²—in fact, it appears to be considered an automatic response to a request for investigation. This can promote false reports of abuse in order to quickly be removed from a dangerous situation, but it also discourages

“This past 4-17-18 I had a SCC meeting about the Admin. Seg. I can’t remember the woman’s name but she looked at some paperwork and said that I just made it to Admin. Seg. starting on 4-9-18. I told her that’s not true, I’ve been in seg since 2-8-18. Then she showed me the date on the paper. And I was like WTF?”

—transgender woman, Connally Unit

12. This type of housing can be confusing within TDCJ. The agency defines “protective custody” as a type of non-punitive administrative segregation, but the same more strict and disciplinary rules are applied to all held in administrative segregation, so it is punitive in the actual way it is effected. This would typically be the “involuntary segregated housing” referenced in PREA. TDCJ “safekeeping” or “protective safekeeping” housing is closer to what would generally be defined as “protective custody” in PREA.

reports of threats and abuses by those who are severely affected by such forced solitary confinement, especially those for whom solitary increases thoughts of self-harm or suicide. TPI receives communications from persons who are afraid to report any victimization due to the high likelihood they will be placed in the restrictive and punishing environment of solitary confinement or “administrative segregation.”

It should also be noted that to be PREA compliant, involuntary segregation should not extend beyond 24 hours, but that would be an extremely short stay in TDCJ’s protective custody, where stays of 15 to 30 days, sometimes more by “rotating” through a short assignment elsewhere, are not uncommon. Longer stays in involuntary segregation are allowed under PREA § 115.43(c), but it should not be as routine—and as potentially disproportionately applied to LGBTQ persons—as it appears to be.

Standard 115.43(b): Inmates 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. As noted above, there may be some confusion among the public about whether this refers to TDCJ’s “protective custody” as administrative segregation or safekeeping housing, and TPI views this as referring to the latter. Although far less restrictive than TDCJ’s administrative segregation “protective custody,” safekeeping designation does mean a loss of access from certain programs (some required for parole), craft shops, some educational opportunities, and probably others, as we do not have a full idea of what is allowed and what is not. TPI has not received an appropriate response to our requests for specific documentation of such denials. Additionally, we are hearing increasingly that persons in safekeeping housing are routinely fed last and least, taken to recreation last, and treated in a variety of ways that indicate access to programs, privileges, education, and work opportunities are regularly and routinely reduced as a means of punishing or retaliating against persons in PREA protective custody, identified as protective safekeeping status in TDCJ.

Standard 115.51 Inmate reporting

Standard 115.51(a) and (b): (a) The agency shall provide multiple internal ways for inmates to privately report sexual abuse and sexual harassment, retaliation by other inmates 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 inmates 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 inmate reports of sexual abuse and

“On the Eastham Unit, Safe Prisons Officers . . . all criticized me for reporting my sexual abuse to OIG Mr. __ stating that I should have gone to a TDCJ official on the Boyd Unit and not the OIG. . . . After the way TDCJ officials have continuously mistreated me and retaliated against me for reporting my sexual abuse to them, do you honestly think I would ever go to them again in the future? . . . I was treated more like a crime suspect than a rape victim.”

—transgender woman, abused at multiple units

sexual harassment to agency officials, allowing the inmate to remain anonymous upon request. We have seen in some cases incarcerated persons criticized for either taking an issue to the OIG or to an outside

agency. TPI strongly feels that increased access to confidential reporting to outside agencies is essential to improving adherence to PREA standards. For more about this, see the next section.

Standard 115.53 Inmate access to outside confidential support services

Standard 115.53(a): The facility shall provide inmates with access to outside victim advocates for emotional support services related to sexual abuse by giving inmates mailing addresses and telephone numbers, including toll-free hotline numbers where available, of local, State, or national victim advocacy or rape crisis organizations, and, for persons detained solely for civil immigration purposes, immigrant services agencies. The facility shall enable reasonable communication between inmates and these organizations and agencies, in as confidential a manner as possible. TDCJ’s current practice of “reasonable communication . . . in as

“It’s retaliation for the letter you [TPI] sent complaining to Huntsville about my situation but this Major . . . claiming he was going to send me back to ECB which is where I was sexually abused and harassed by the 2nd person on this unit. . . . [He told me] I won’t be shipped from here unless I am sexual assaulted, abused, violently assaulted, stabbed or all of the above without question.”

—transgender woman, Allred Unit

confidential a manner as possible” between incarcerated persons and outside victim advocates involves no confidential written communication unless the agency has an attorney on staff—all other mail is subject to full inspection. As TPI understands, TDCJ has offered an “alternative” that incarcerated persons may write a letter to a local agency, send it to the PREA Ombudsman, and the PREA Ombudsman will forward the letter. This is not sufficient or appropriate.

TPI regularly receives letters from incarcerated persons with concerns about staff reading and disclosing sensitive information related to violence they have experienced in the system. We receive direct requests for some means of receiving confidential mail so our correspondents can more fully disclose the issues they are trying to address. We have had to cease disclosing abuser identification in communications with the PREA Ombudsman and Ombudsman offices because those letters were sent to the units and too often the names were disclosed to those being accused, greatly increasing the likelihood of violence against our correspondents. TPI believes current practice at TDCJ is wholly inappropriate and does not constitute confidential or “reasonable” communication. TDCJ seems to be potentially in violation of this standard agency-wide.

Standard 115.62 Agency protection duties

Standard 115.62: When an agency learns that an inmate is subject to a substantial risk of imminent sexual abuse, it shall take immediate action to protect the inmate. TPI has received a number of complaints from various units noting that when incarcerated transgender persons report a substantial risk of imminent sexual abuse, the abuse is ignored. In some cases, incarcerated transgender persons reporting risk to ranking

“He [a TDCJ officer] told me ‘just because you suck dick doesn’t make you a woman,’ and announced to the dayroom I am selling my ass [prostituting]. He then told me he is not taking any punks to the shower and refused my shower.”

Note: she was recently raped, and due to the refusal to address her attack she has started cutting herself, is suicidal, and refuses food. This is the second time in six months we have addressed sexual violence by this same officer.

—transgender woman, Allred Unit

officers or the Unit Classification Committee have been told that they will just have to put up with it, that simply reporting risk is not enough to identify a threat but the person has to actually experience violence before an issue will be addressed, and that they must identify a specific person who is threatening them or the threat is not valid. It is also common knowledge that if they do identify the person or persons threatening them, they will be outed by an “investigation” that is often no more than asking the accused if they have been threatening the person reporting the threats, a response that increases rather than decreases the risk of harm (see also Standard 115.34).

Standard 115.63 Reporting to other confinement facilities

Standard 115.63(a): Upon receiving an allegation that an inmate was sexually abused while confined at another facility, the head of the facility that received the allegation shall notify the head of the facility or appropriate office of the agency where the alleged abuse occurred. This standard requires notification of the appropriate entity when the head of a facility learns of the sexual abuse of an inmate at another facility. TPI has several reports of transgender women being abused while on transit between units. Personnel within the Transportation Department are reportedly handcuffing transgender women to abusive men and allowing or even promoting—in some cases participating in—sexual harassment and sexual abuse on Transportation Department vehicles. Responses from TDCJ administration have included “The Transportation Department is not up to PREA standards” so you will have to just deal with it. Abusive practices include handcuffing persons with safekeeping status to persons in the general population, even when there are available safekeeping-status persons on board.

PREA § 115.63(a) indicates there is actually sufficient guidance that victimization on Transportation Department vehicles are to be reported to the unit of assigned housing, and that unit bears the responsibility for investigating. **Even if the PREA standards focus on activities in the units and facilities, that does not abrogate TDCJ responsibilities agency-wide under PREA § 115.11.**

Standard 115.71 Criminal and administrative agency investigations

Standard 115.71(a): When the agency conducts its own investigations into allegations of sexual abuse and sexual harassment, it shall do so promptly, thoroughly, and objectively for all allegations, including third-party and anonymous reports. As mentioned above, investigations of sexual abuse have often been comprised of nothing more—or little more—than asking the accused if they abused the accuser. This should not be counted as a thorough investigation.

Standard 115.71(j): The departure of the alleged abuser or victim from the employment or control of the facility or agency shall not provide a basis for terminating an investigation. TPI has observed that it seems quite typical for TDCJ to close a case when one of the parties to an alleged sexual abuse incident is transferred to another unit. The claim is that there is no longer a threat and thus nothing more needs to be done, when in fact the threat often follows a person from one unit to the next, despite the claims of TDCJ administration. The investigation should be continued, and organization or gang affiliation of the accused should be used to identify and prevent subsequent issues from other organization members.

IV. Recommendations

Our position at TPI is that reform of the prison system as it exists today will not achieve sufficient change to end the harm done by this system, and many changes that are presented as “reforms” serve to increase harm rather than reduce it. Reform measures, in spite of the beneficent intent that is regularly expressed, seldom truly address the underlying causes of social harm. However, we recognize that some change may be helpful in the short term while not causing an increase in harm long term. PREA has the potential to help in this way if it begins to address the culture of oppression and dehumanization rampant in our prison systems. Keeping in mind that the ultimate goal of ending the carceral system that has evolved in this country and in the State of Texas may not necessarily be reinforced if reform advocacy is carried out carefully and with critical assessment, we propose the following recommendations that we hope will provide some relief of the harms caused by our current justice system while avoiding the tendency of many reforms to expand the system and its harmful impacts on our communities. We recognize that many items in this list were inspired by those proposed by Lydon (2015, pp. 6–11); we also recognize that this list—nor any list of recommendations—will be complete until this system is abolished.

“The success of the PREA standards in combating sexual abuse in confinement facilities will depend on effective agency and facility leadership, and the development of an agency culture that prioritizes efforts to combat sexual abuse. Effective leadership and culture cannot, of course, be directly mandated by rule. Yet implementation of the standards will help foster a change in culture by institutionalizing policies and practices that bring these concerns to the fore.”

—*National Standards to Prevent, Detect, and Respond to Prison Rape*,
77 Fed. Reg. 37105 (June 20, 2012) (final rule 28 CFR 115).

Reduce Incarceration

Recommendation 1: Improve social support networks. The State of Texas should provide better and more comprehensive social support structures for marginalized populations. One study specifically focusing on LGBTQ persons notes that nearly 20% of LGBTQ persons in prison experienced housing instability (identified as homeless or transient) prior to incarceration, more than one-third were unemployed, and a high percentage were involved in underground economy work for survival (Lydon, 2015, pp. 20–22). Substantial changes that work toward alleviating poverty and social marginalization, we believe, would do far more than any prison reform measure to reduce violence and abuse in the prison system.

Recommendation 2: Remove incentives for incarceration. System changes that work toward ending the for-profit and retributive justice system that simply responds to social problems by locking people up should be prioritized. The current system rewards both for-profit corporations and governmental entities for keeping more people locked up for longer periods. All financial incentives that encourage incarceration in both private and public sectors should be reversed so that

the incentives discourage incarceration. Active pursuit of alternatives to incarceration such as community-based transformative justice programs that strive to actually heal harm and violence and address the social causes of violence before it occurs should instead be the focus of funding.

Address Trial, Sentencing, and Parole Issues

Recommendation 3: Increase funding for public defenders. Marginalized persons experiencing housing and employment instability are disproportionately affected by the justice system in part due to the lack of appropriate representation in the courts. This is even more keenly experienced by members of LGBTQ communities, where limited options may mean few if any available attorneys understand how discrimination creates marginalization in the world and in the judicial process for LGBTQ persons. Increased funding should result in increased staff and attorneys, allowing public defenders to more effectively address the needs of their clients, including trans and queer clients.

Recommendation 4: Shift parole away from enforcement toward support. This includes ending re-arrest for technical violations that are not new criminal charges. The function of parole should be shifted to near exclusive focus on assisting persons released from prison overcome challenges and successfully identify and access housing, education, training, employment, healthcare, and other social support so they have opportunities to participate in society without resorting to actions that cause social harm.

Recommendation 5: Eliminate cash bail requirements. The requirements to post cash bail are inherently discriminatory and need to be eliminated in favor of support systems that will assist defendants make their court dates and avoid problems that participation in court mandated activities can create. Cash bail requirements disproportionately affect LGBTQ persons, especially LGBTQ persons of color, who tend to have less access to financial support.

Prison Culture Issues

Recommendation 6: Reward accountability. Our experience shows that the TDCJ system very often rewards—with career advancement, financial benefits, and recognition—those who cover up issues of violence rather than those who expose issues of violence. Exposing problems in prison systems is often viewed negatively and as damaging to authority and security. When issues of violence by TDCJ staff are addressed, they generally target only single “bad actors” rather than examine and address systemic problems that create and enable those bad actors. It is imperative that the system be changed to reward accountability and transparency.

Recommendation 7: Reduce staff trafficking in contraband. Although prison administrators make concerted efforts to blame the presence of contraband in prisons exclusively on incarcerated persons, contraband often—perhaps mostly—enters facilities with the complicity of prison staff. This problem directly and indirectly increases the level and incidence of violence against persons in custody. In large measure, the contraband problems would not exist without the active support and involvement of staff.

Recommendation 8: Pay wages to incarcerated persons. The lack of pay in Texas prisons is first and foremost an issue of modern slavery and should be abolished for that reason alone. There is also a high incidence of trading sex and other favors for food, supplies, commissary items, and protection

within the system, so the slave labor system that severely disadvantages those without outside support helps drive prison violence. This disproportionately affects LGBTQ persons with less access to outside financial support. Our correspondents have noted providing sex for writing supplies and stamps to simply be able to communicate with outside friends and advocates. It is not a great leap to conclude that the system itself is guilty of coercing persons in their custody into providing sex and other favors in exchange for survival supplies.

Putting persons in an environment where they receive no compensation for work but are assessed fees for surviving is barbarous and inhumane. Paying a decent wage to incarcerated persons for the labor they contribute to maintaining the prisons and working in production will help eliminate the enormous disparities experienced by those without outside financial support. It will also help alleviate the state's continued active participation in the maintenance of a slave population.

Recommendation 9: Eliminate blanket bans on touching and all sexual contact. Confining human beings in conditions that attempt to ban all personal contact is emotionally abusive and creates an environment where nearly everyone breaks the rules at some level, giving staff ubiquitous cause for select and arbitrary disciplinary sanctions. In one example, one of our correspondents was even given a disciplinary case for hugging a friend who was being transferred to another facility. These types of cases are often used disproportionately against LGBTQ persons due to widespread homophobia and transphobia in the prison systems.

Recommendation 10: Eliminate anti-transgender policies and practices that increase risk of violence. This includes allowing all transgender persons the same access to clothing, commissary, and grooming options that are allowed to cisgender persons based on gender identity. Implement policy that encourages use of affirming names and pronouns for transgender persons and that disciplines consistent and intentional use of non-affirming names and pronouns. There is no need nor is there a legitimate security or other penological purpose for denying access to such items and identity affirmation; the practice has no purpose other than dehumanization. In fact, providing these serves a penological interest by reducing mental health issues and increasing self-esteem and willingness to work toward success on release.

Recommendation 11: Eliminate barriers to healthcare. Expand healthcare access to provide the full range of options considered medically necessary healthcare treatment for transgender (and all other) persons. Eliminate the "Health Care Fee" charged to persons in TDCJ custody under Texas Government Code 501.063 for accessing health care. This is especially egregious since almost all labor performed while in the system earns no pay.

Policy and Procedural Issues

Recommendation 12: Eliminate solitary confinement. Although TDCJ claims to have eliminated solitary confinement, it continues in practice. Single-cell housing in administrative segregation is still managed by the restrictive practices of disciplinary housing, and constitute solitary in all but name. Safekeeping persons on TDCJ's Telford Unit have been moved into the former administrative segregation building, and they have been locked down for long periods of time in conditions that are very similar to solitary confinement. Transgender persons are also more likely to be placed in solitary confinement "for their own protection" when filing for an investigation into an incident of violence, sometimes spending a month or more in isolation, even if placement in solitary severely

impacts their mental health and they request not to be isolated. We have received numerous non sequitur explanations from TDCJ staff that this is not solitary because it is not for punishment. Solitary confinement is housing as a single occupant with limited human interaction for 22 or more hours a day, regardless of the purpose of that solitary confinement.

Recommendation 13: Institute independent grievance oversight. The grievance process at TDCJ is highly problematic and easily manipulated by persons in power at the units. Suggestions from advocates include establishing an Office of Independent Ombudsman or expanding the Texas Juvenile Justice Department Office of Independent Ombudsman to review grievances not handled at the unit level. Regardless of specifics, the grievance process must be made more accountable through strong independent oversight with input from advocates with a vested interest in eliminating abuse and violence in prisons.

Recommendation 14: End abusive interpretation of PREA § 115.42(g). Clearly define that placing transgender persons together in a cell does not in itself infringe on prohibitions against “dedicated facilities” under PREA § 115.42(g) and may be the best way to house some transgender persons. Transgender persons should always be provided this option for housing where available.

Searches

Recommendation 15: End routine strip searches. TDCJ and many prison systems engage in routine daily—sometimes multiple times a day—strip searches of persons in certain custody levels. These are conducted so often and unnecessarily that they exceed any legitimate security or penological interest. Unnecessary routine strip searches are a form of sexual abuse and have a disproportionately negative affect on LGBTQ persons, particularly those who have suffered sexual trauma and those for whom such searches increase the likelihood of additional victimization by others. This is especially problematic for transgender persons housed in gender segregated facilities that do not conform to their gender.

Recommendation 16: Follow PREA search best practice guidelines. The four options for transgender and intersex persons are: 1) searches are conducted only by medical staff; 2) pat searches of adult inmates are 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 are conducted in accord with the inmate’s gender identity.

PREA Audit Reports

Recommendation 17: Require external comments on audit reports where a potential conflict of interest exists. PREA auditor certification allows employees of correctional agencies to conduct audits, and this is a potential conflict of interest with the Auditor Code of Conduct requirement that “PREA auditors must be independent, objective, and credible in evaluating the extent to which confinement facilities comply with the PREA Standards” (PREA Management Office, 2017, p. 8). Reports for all audits where the lead auditor is a current correctional agency employee or has been an employee of any correctional agency in the past 10 years should be required to include review by an external advocacy agency.

PREA and Transportation Department Abuses

Recommendation 18: Extend PREA standards to transportation. TDCJ appears to not hold the Transportation Department to PREA standards because the standards are facility-based, a loophole the agency is unethically allowing. This is very likely a problem, or potential problem, in all prison systems. The existence of this loophole, however, does not abrogate agency responsibilities under section 115.11 to have—as an agency—“zero tolerance toward all forms of sexual abuse and sexual harassment.”

PREA Confidentiality

Recommendation 19: Confidential correspondence for anti-violence advocates. Under PREA Standard 115.53, facilities “shall provide inmates with access to outside victim advocates for emotional support services . . . of local, state, or national victim advocacy or rape crisis organizations . . . in as confidential a manner as possible.” TDCJ and all jails and prisons in Texas should implement a class of confidential correspondence so that community advocates and sex abuse survivor advocates are not required to have an attorney on staff to receive confidential mail from incarcerated persons.

Recommendation 20: Keep reports of violence confidential. PREA § 115.61(b) notes that “[a]part from reporting to designated supervisors or officials, staff shall not reveal any information related to a sexual abuse report to anyone other than to the extent necessary.” It is common practice for guards and administration to disclose, directly or indirectly, that someone reported violence or details about the report. Privacy is not respected; one of our correspondents, a transgender woman being transported to a SANE exam after being raped, experienced guards yelling across the yard that she was “going to get her butt checked.” Not only does that disrespect personal privacy rights, it also increases endangerment by announcing she reported a rape. Information is passed to trustees or SSIs (staff support inmates), who provide the information to associates, endangering the lives of anyone filing a report. Staff and investigators discuss reports in non-private settings, such as at a distance with a loud voice through a cell door where others can easily hear, most likely to discourage further reports and encourage the case to be dropped.

PREA Data Collection and Disclosure

Recommendation 21: Track and make available disciplinary cases against survivors. Track disciplinary cases received by all who are associated with reports of violence to identify potential retaliation. The cases should be available to victim advocacy organizations on request.

Recommendation 22: Monitor transgender housing practices. Collect aggregate data noting the number of persons in the prison system identified as transgender, the gender of the housing, and the presence or absence of genital reconstruction surgery. Unit level data must be provided to PREA auditors as part of the facility assessment, and audit interviewees must be clearly invited to discuss their housing as appropriate or inappropriate to their gender with PREA auditors. Aggregate data should be available to community advocate organizations on request.

Recommendation 23: Track persons with non-substantiated reports of violence. Far too many incidents of sexual violence are found unsubstantiated or unfounded. Each person with an

unsubstantiated or unfounded case needs to be tracked for subsequent incidents of violence of any kind, as well as subsequent disciplinary cases, to identify retaliation and repeat endangerment. This should somewhat encourage prisons and jails to actually prevent abuse instead of covering it up. The data should be available to victim advocacy organizations on request.

Recommendation 24: Transparent incident data. Make information about all incidents of violence available to the public on a quarterly basis, with appropriate privacy protections in place.

Recommendation 25: Transparent segregation. Provide aggregate data for all persons placed in involuntary segregation due to reporting violence, along with the length of stay and subsequent housing placement over the next 60 days after release from segregation, to victim advocacy organizations on request.

Recommendation 26: Transparent reporting of sexual violence. All reports of sexual violence, along with the resolution or investigation status, should be made available to external advocacy organizations on a quarterly basis (appropriately redacted for privacy).

PREA Prevention and Protection

Recommendation 27: Allow housing for safety. Incarcerated LGBTQ persons should have the option of being housed with other LGBTQ persons in their facility on a cell or pod level (less than 15 persons). Accommodating such should not be used to justify construction of new facilities.

We also note that it is common for prison staff to place LGBTQ persons in cells with others antagonistic to the demographic, endangering their health and safety, while threatening to cite them with disciplinary cases for refusing to accept their endangerment.¹³ Persons identified as LGBTQ should be allowed to refuse housing that puts their health and safety in danger without receiving disciplinary cases.

Prioritize housing of transgender persons by gender identity rather than by forced gender assignment at birth. All housing that is not provided based on gender identity must be justified. **Incarcerated persons must be allowed to specify their housing preference and have that preference given serious consideration**, even if it seems to differ from their gender identity.

Recommendation 28: Provide appropriate benefits access. Provide documentation on request by advocacy organizations for an individual in any type of segregated housing concerning access to programs, privileges, education, and work opportunities to track compliance with PREA § 115.43(b).

Recommendation 29: Ensure staff accountability to endangerment. Hold all staff accountable, with clear paths to termination, for all violence against LGBTQ persons.

13. Lydon (2015, p. 5) notes that “Prisoners are over three times more likely to have committed sexual assaults on LGBTQ prisoners than prison staff. However, **of those who report having been sexually assaulted by a prisoner, 76% also report that prison staff intentionally placed them in situations where they would be at high risk of sexually assault from another prisoner**” (emphasis added).

PREA Incident Responses, Investigation, and Training

Recommendation 30: End re-victimization of violence survivors. End the practice of re-victimizing survivors of violence by placing them in solitary confinement when not absolutely necessary; stop endangering survivors by placing them back in the same housing situation with abusers; acknowledge and fully consider a victim's statements about what will be safe for them; and stop citing survivors with disciplinary cases to discourage reports of violence.

Recommendation 31: Reward full investigation. TPI has recorded many instances where various steps were taken to obstruct and discourage investigations, some of which were covered in this document. TDCJ appears to have a culture that views covering up and hiding cases of violence with success, and identification of problems that need correcting as failure. Such a culture will *always be abusive*. Institute policy that encourages and rewards transparency and full investigation with harm reduction steps to address sexual abuse and other incidents of violence, instead of stigmatizing these and rewarding the erasure of these issues.

Recommendation 32: Confirm training is implemented. Surveillance video and documentation needs to be available to advocates to better monitor that PREA compliance training is actually implemented.

V. References Cited

- American Psychological Association. (2015). Guidelines for Psychological Practice With Transgender and Gender Nonconforming People. *American Psychologist* 70(9), page 832–864. Retrieved from <https://www.apa.org/practice/guidelines/transgender.pdf>.
- Bazelon, E. and Larimore, R. (2009, October 1). How Often Do Women Falsely Cry Rape? *Slate*. Retrieved from http://www.slate.com/articles/news_and_politics/jurisprudence/2009/10/how_often_do_women_falsely_cry_rape.html.
- Beck, A.J. (2013, May). *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12*. U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <https://www.bjs.gov/content/pub/pdf/svpjri1112.pdf>.
- Beck, A.J. (2014, December). *Sexual Victimization in Prisons and Jails Reported by Inmates, 2011–12*. Supplemental Tables: Prevalence of Sexual Victimization Among Transgender Adult Inmates. U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from https://www.bjs.gov/content/pub/pdf/svpjri1112_st.pdf.
- Beck, A.J., and Harrison, P.M. (2007, December). *Special Report: Sexual Victimization in State and Federal Prisons Reported by Inmates, 2007*. U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <https://www.bjs.gov/content/pub/pdf/svsfpri07.pdf>.
- Beck, A.J., and Johnson, C. (2012). *Sexual Victimization Reported by Former State Prisoners, 2008*. U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <https://www.bjs.gov/content/pub/pdf/svrfsp08.pdf>.
- Bonczar, T.P., Beck, A.J. (1997, March). *Special Report: Lifetime Likelihood of Going to State or Federal Prison*. U. S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. Retrieved from <https://bjs.gov/content/pub/pdf/Llgsfp.pdf>.
- Bureau of Justice Statistics. (2014, January). *Special Report: Sexual Victimization Reported by Adult Corrections Authorities, 2009-11*. U. S. Department of Justice, Office of Justice Programs. Retrieved from <https://www.bjs.gov/content/pub/pdf/svraca0911.pdf>.
- Clarey, C. (2009, August 19). Gender Test After a Gold-Medal Finish. *New York Times*. New York. Retrieved from <https://www.nytimes.com/2009/08/20/sports/20runner.html>.
- Fausto-Sterling, A. (2000). *Sexing the Body: Gender Politics and the Construction of Sexuality*. New York: Basic Books.
- Flores, A.R., Herman, J.L., Gates, G.J., and Brown, T.N.T. (2016). *How Many Adults Identify as Transgender in the United States?* Los Angeles: The Williams Institute. Retrieved from <https://williamsinstitute.law.ucla.edu/wp-content/uploads/How-Many-Adults-Identify-as-Transgender-in-the-United-States.pdf>.
- Gammill, E., and Inglis, E. (2016). *A Texas-Sized Failure: Sexual Assaults in Texas Prisons*. Prison Justice League and Texas Association Against Sexual Assault. Retrieved from http://taasa.org/wp-content/uploads/2016/11/BK_A-Texas-Sized-Failure-SA-in-TX-Prisons-Final.pdf.

- Grant, J.M., Mottet, L.A., Tanis, J., Harrison, J., Herman, J.L., and Keisling, M. (2011). *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey*. Washington: National Center for Transgender Equality and National Gay and Lesbian Task Force.
- Hanan, M. (2008, August 11). Women With Male DNA All Female. *ABC News*. Retrieved from <http://abcnews.go.com/Health/MedicalMysteries/story?id=5465752>.
- Intersex Campaign for Equality. (2015). How Common is Intersex? An Explanation of the Stats. Retrieved from <http://oii-usa.org/2563/how-common-is-intersex-in-humans/>.
- Learner, A. (2018.) *Biology of Sex and Gender: Expert Interview Transcripts*, Eric Vilain, MD, PhD. Retrieved from <https://www.learner.org/courses/biology/units/gender/experts/vilain.html>.
- Lehrman, S. (2007, May 30). When a Person Is Neither XX nor XY: A Q&A with Geneticist Eric Vilain. *Scientific American*. Retrieved from <https://www.scientificamerican.com/article/q-a-mixed-sex-biology/>.
- Lisak, D., Gardinier, L., Nicksa, S.C., and Cote, A.M. (2010). False Allegations of Sexual Assault: An Analysis of Ten Years of Reported Cases. *Symposium on False Allegations of Rape, Violence Against Women* 16(12):1318–1334. Available at <https://atixa.org/wordpress/wp-content/uploads/2012/01/Lisak-False-Allegations-16-VAW-1318-2010.pdf>.
- Lydon, J. (2015). *Coming Out of Concrete Closets: A Report on Black & Pink's National LGBTQ Prisoner Survey*. Black & Pink:Dorchester, MA. Available online at: <http://www.blackandpink.org/wp-content/uploads/Coming-Out-of-Concrete-Closets.-Black-and-Pink.-October-21-2015..pdf>.
- Martyniuk, H. (2014). *Understanding Rape in Prison*. Enola, Pennsylvania: Pennsylvania Coalition Against Rape. Available at https://www.pcar.org/sites/default/files/resource-pdfs/7_understanding_rape_in_prison_low_res.pdf.
- Moss Group. (2014, August 01). *PREA Employee Training*. PREA Resource Center. Retrieved from <https://www.prearesourcecenter.org/ec-item/1919/employee-training>
- PREA Management Office. (2017, August). *PREA Auditor Handbook*. Washington, D. C.: Bureau of Justice Assistance, Office of Justice Programs, U. S. Department of Justice. Retrieved from <https://www.prearesourcecenter.org/node/5341>.
- Santo, A. (2015, June 20). Texas: The Prison Rape Capital of the U. S. *Newsweek*. Retrieved from <http://www.newsweek.com/texas-prison-rape-capital-us-344729>.
- Smith, B.V., Loomis, M.C., Yarussi, J.M., and Marksamer, J. (August 2013). *Policy Review and Development Guide: Lesbian, Gay, Bisexual, Transgender, and Intersex Persons in Custodial Settings*. Washington, DC: National Institute of Corrections. Retrieved from <https://www.hivlawandpolicy.org/resources/policy-review-and-development-guide-lesbian-gay-bisexual-transgender-and-intersex-persons>.
- Texas Department of Criminal Justice. (2014, August). *Safe Prisons/PREA Plan*. Huntsville, Texas: Author. Retrieved from [http://www.tdcj.state.tx.us/documents/cid/Safe Prisons PREA Plan.pdf](http://www.tdcj.state.tx.us/documents/cid/Safe_Prisons_PREA_Plan.pdf).
- Texas Department of Criminal Justice. (2017). *FY 2016 Statistical Report*. Huntsville, Texas: Author. Retrieved from http://www.tdcj.texas.gov/documents/Statistical_Report_FY2016.pdf.
- Texas Department of Criminal Justice. (2017, July). *Safe Prisons/Prison Rape Elimination Act (PREA) Program, Calendar Year 2016*. Huntsville, Texas: Author. Available at http://www.tdcj.texas.gov/documents/PREA_SPP_Report_2016.pdf.

World Professional Association for Transgender Health. (2011). *Standards of Care for the Health of Transsexual, Transgender, and Gender Nonconforming People*. Version 7. Retrieved from http://www.wpath.org/site_page.cfm?pk_association_webpage_menu=1351&pk_association_webpage=3926.

Addendum: Quotes From Survivors

In this addendum, we provide a number of quotes from our correspondents in the TDCJ system reporting violence, abuse, and mistreatment. Most names have been redacted for safety concerns. Some of the issues being discussed on these pages are on-going.

Allred Unit

The following two quotes are excerpts from two letters. The first excerpt was written in clear neat handwriting at the very beginning of a letter that was being read by Safe Prisons staff.

“ I really want to stay here cause the PREA people are about getting to the bottom of crap! If Telford was half this prepared I would of never been raped on the 10th.”

The second letter explained that the praise in the prior letter was coerced by someone in the Safe Prisons Department. The second quote is from the end of that second letter. The reference to “kites” (notes) is her trying to send us evidence of threats she had received, which the unit confiscated. She was trying to send it because she was afraid the unit would dispose of her evidence.

“ They hurt me on purpose. . . . Just to let you know this PREA office is snakes too. No matter if they see this they’re just like Telford. I would of never tried to send the kites if they would of done their job the very first day.”

Allred Unit has one of the highest incidents of staff-on-offender abuse and mistreatment in our data. The following are a few of the quotes from persons we have corresponded with at Allred Unit.

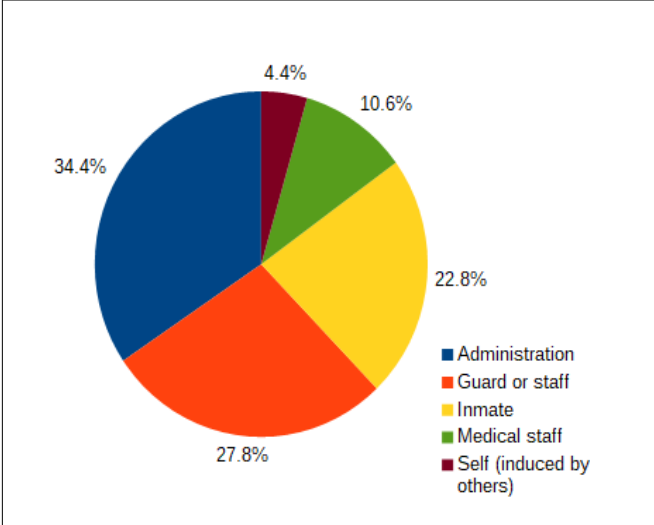


Figure 2: Incidents of violence at Allred Unit reported to TPI, January 2016 through May 2018. Total number of reported incidents: 180.

“ When people are bullied, they tend to lose humanity, and do things they will later regret. I have been bullied since day one and I fear being pushed over the cliff. I have less than 90 days left in this single cell before I have to make a critical choice: Either catch another major case to avoid going to UCC [Unit Classification Committee] or stay out of trouble, see UCC, and be forced back into the war zone. I don't want another case. . . . I see parole as soon as I can get my line class 1 back—but I don't want to get beat up, stolen from or harassed either. I shouldn't have to make a choice like that. It's heartbreaking.”

“ This [forced sex at threat of razor slashes] went on for a month and a half when I spoke to safe prison officer [name redacted] and told her[, but] she told me ‘I don't believe you so you might as well get use to it cause we don't play on this unit.’”

“ I don't think it is a good idea for me to continue to try to get these people to place me on safe keeping, and I am even about to go ahead and dismiss my civil suit at this time. Due to the fact that until something major happens, they are not going to place me over there. Secondly, the way they do things places a person in more danger because they pull you out to the administration building, and inmates go to assuming that you are snitching on what they are doing and have going on. Then the next day, they try to run you to UCC. NOT A GOOD LOOK!”

“ We get strip searched three times a day to leave the wing for meals, plus are strip searched every time we need medical care, access to law library, chapel, education and twice more per day for recreation.

“We are stripped in front of multiple day rooms behind a 4 ½ foot tall shield which leaves a transgender inmate's breasts exposed to everyone and their genitals exposed to the roof mounted cameras and inmates on the third row looking down from the run and inside of their cells. Including a large percentage of convicted sex offenders who stalk the strip searches every day. . . .

“Allred Unit has a history of retaliating against offenders when complaints are made against the strip search policy and multiple grievances on the strip search issue have disappeared after being turned in for processing. They write disciplinary cases, go through property and unnecessarily/unjustly confiscate the inmates property, place inmates in a disciplinary solitary confinement cell in 11 Building without due cause.”

“ [B]eing groped by the male guards is very demeaning and I feel like I am being molested, and being strip searched in front of the men is very demeaning.”

“ [T]he Sgt would jump up and say ‘say one thing and I will beat you down. I have 18 years of experience beating up inmates and getting away with it.’ He also said he had the same 18 years experience killing inmates and making it look like suicide. . . . They told me if I file a grievance over the pat searches or what they did to me they would know and they would beat me up and then while I was recovering in 11

Building they would stop all incoming and outgoing mail so I could not tell anyone what they did. In fact, this letter may get me beat up if they are already monitoring my mail. They also said they would open my legal mail to be sure I don't tell on them."

“ They keep putting members of these uber-violent gangs in the cell with me. I'm not gang-related and I'm effeminate so I'm easy prey. I've tried to look and act tough before but it never works out for me.”

“ I was denied S/K [safekeeping designation], but they shipped me to Allred. I've had a lot of gang members come on to me for sex on this unit and I'm losing my mind going through stress.”

“ They strip me out in front of everyone. Even after I asked first to be stripped in private, away from the prying eyes of the offenders. They respond as 'you're in a male facility, you're a man.' I feel so embarrassed and disgraced. I feel sometimes [a] little [like] doing other things, but it won't harm anyone else; only me. After they strip me out in front of everyone the COs [Correctional Officers] and other offenders say things that make me feel violated, dirty, like a mutant. 'Oh damn, look it's got a dick and some big ass tits.' 'What the fuck is that a yeti?' 'Come here, don't cry, I'll protect you, then you can make me some (\$) money.' 'I never seen a hoe that was 6'8", 370 lbs., come here big bitch.' (That's just some of [the] things I hear.)”

“ The rape happened in the beginning of November 2017. . . . They told me that they really didn't believe me and the psych came . . . and she told me that I'm making trouble and it will be better not to go through an examination. I told them of the weapon [that her rapist used to threaten her]. They didn't believe me (then they found it). When they took me to a holding cell, my cellmate was screaming 'why did you tell on me I'm going to fuck you over. And CO [name redacted] was telling officers that I got raped while other inmates were there.”

“ On [date in 2018], I was called down to the PREA office by Sgt. [name redacted] for this bogus case and she asked me my statement. I looked at the table and seen most of my cellie's crap there. 24 sex pics that were under his mat with his name and number on the package. Stuff they took off his shelf, so I told her I did not care what she put on my statement. She told me to get the fuck out of her office. This lady is trash! I mean so immature it's crazy! They are pretty stupid and they'll make it easy for people to see. The next day I sent two I-60s to ask her to stop harassing and act like she had a education.”

“ [date redacted] I was called to 1 building where I was served a major case for cussing Sgt [name redacted]. The statement was so childish that she wrote. So the finally get to P4 me but still they will not break my spirit ever.”

Boyd Unit

The incarcerated person in this quote is well known to the author, who has been a friend for years in the free world and has never seen her present in any way that would indicate she identifies as male.

“ I was groped, both breasts, by an officer who was searching me. I told him that he was supposed to run his fingers around and under my breastline, not touch my breasts. He said ‘well you’re in a male prison and I’m going to search you like any other male, you’re not special,’ and continued now practically squeezing my breasts until an officer [name redacted] had to step in and told him that that was no procedure. A female officer, [name redacted], as I went to walk off called after me, ‘you ARE still a man, [name redacted].’ I felt helpless.”

After her grievance was found unsubstantiated, she was berated by two ranking officers, who spoke in direct contradiction to PREA standards, an action that has increased her vulnerability:

“ I wrote a grievance. My claim was found unsubstantiated. I was blasted by Sergeant [name redacted] and Captain [name redacted]. ‘This is a male facility and you will be searched and stripped if need be, he did not touch you inappropriately, you are still a man.’ Ranking officers; who can I trust? Since then, I have been taunted and ridiculed to the point that I’m almost hoping this fight gets me shipped away from here.”

“ Honestly, there’s no safekeeping, only a way of making work easier for them, mass shaming, and as the warden says, ‘keep us from “poisoning” the men.’ They only comply to safekeeping standards when the ACA inspection (which they are informed of) is near. I can honestly say that I empathize with people who have taken their lives to escape this madness.”

Coffield Unit

After being sexually assaulted, PREA came to interview a gender questioning person. They report that the PREA staff person . . .

“ . . . acted like they cared, but turns out all they really cared about was ‘making a bust.’ After I refused to give them more than a nickname (I really don’t know his first name) they pushed me under the rug so to speak.”

“ I did not report threats . . . it’s useless. They will isolate [you] for a few days then release back to G.P. [general population] . . . so you’ll have to face prisoner questions/suspensions of circumstances of your disappearance and, of course, you’ll always get blamed as the one who snitched on anyone that got busted with dope, tobacco, or cell phones while you were in isolation. It’s how ‘they’ make PREA, and reporting, a double edged sword.”

Connally Unit

A transgender woman asked a Safe Prisons staff person at Connally Unit to identify her as transgender in her file, as per TDCJ policy . . .

“ . . . explaining that I am and always been a transgender female and would like for my file to indicate such. They interviewed me and told me I do not meet the or their requirements. Off the record I was told that because I don't 'look' enough like a female (my eyebrows not arched, clothes not tight enough, etc, etc), all of which will earn me a disciplinary infraction and some kind of restriction.”

Connally administration placed a trans woman in administrative segregation after reporting abuses to a PREA auditor and claimed it was for her own protection. She commented:

“ I disagree, because I can't watch TV, use the phone, stay in the dayroom until rack time, walk to rec, walk to chow, the infirmary, law library, general library, anywhere for that matter. When I'm taken somewhere I'm handcuffed and escorted by two officers. That's punishment. . . . I had a SCC [State Classification Committee] meeting about the admin seg [administrative segregation]. I can't remember the woman's name but she looked at some paperwork and said that I just made it to admin. Seg. Starting on 4-9-18. I told her no, that's not true, I've been in seg since 2-8-18. then she showed me the date on the paper.”

Estelle Unit

“ A week or so later [after initial intake at Estelle Unit] the Warden come and called me down to the main office and told me I had to change my 'gender' on file from 'trans' to 'gay' because being labeled 'trans' put too much work off on his officers.”

Hughes Unit

“ I refuse to come out of my cage unless I have a t-shirt on. Before, they use to make us come out without a t-shirt on. I got gassed and beat up at least 2 times for refusing to come out with only my boxers on!”

This next quote is from a rape survivor who at the time of her letter was being coerced to hold contraband. She is discussing her refusal to identify those coercing her.

“ When they asked me for 'names' what they want to then do is have me fill out a statement of what occurred, using that as the basis for an OPI [Offender Protection Investigation]. . . . They send an officer over to the offending prisoner's cell, in front of everyone, and escort him to the major's office, where they tell him 'well, [name redacted for safety] filed an OPI on you alleging so and so, want to tell us about it?' Then he will say whatever he wants to defend himself. . . . The officer will have him

write out a statement to that effect, have him sign it, and send him on his way. The prisoner will return to his wing where everyone will question what that was all about. He'll announce that I'm a snitch, filed an OPI on him and voice revenge, to which his homeboys will wire him put to the point to where he has to stab me up or they will call him weak, thus exacerbating the whole thing and guaranteeing a violent outcome. . . . [Rumors snowball and] people are calling me a snitch behind my back, to my face, stealing my stuff and challenging me so they can look hard for checking that snitch. Yeah, OPI, what a joke."

Lewis Unit

One of our regular correspondents discussing another incarcerated person who was just transferred because of sexual mistreatment by others in her former unit.

“ I hear she's on Gib Lewis. A horrible unit. I got beaten up by 2 officers and 10 inmates at the same time there. It was awful. They were all high on K2. That's not a place for transgenders. They will get around to hurting her. They had 17 witness statements on my behalf.”

Guard—who does not know the difference between sexual orientation and gender identity, or does not care—to transgender woman:

“ I hate all homosexuals.”

McConnell Unit

After the physician's assistant at McConnell Unit read the Gender Dysphoria Specialist's note that a transgender woman with breasts should be provided a bra, he said:

“ You know what? I don't give a shit what this says, I'm not going to order anything for y'all. Someone else can see you so leave my office.”

Michael Unit

“ The reason I was beat up was cause they wanted me to shave all my hair off cause they were saying I was attempting highlights [that is, trying to color or bleach her hair to look more feminine]. The highlights they were accusing me of attempting was really my gray hair.”

“ I told you how I had previous rapes and assaults, but even though I filed charges in those matters since there was no DNA the charges were dropped and the Safe Prisons PREA people here don't even believe they ever happened at all. I just

seen . . . [a Safe Prisons officer who] told me: I think you're just a big cry baby and you're crying to everyone you can because you have mental problems from things that's happened in the past . . . she then tells me I should work out so I can defend myself.”

Stiles Unit

This was a very unusual solution to a situation. Generally, the transgender woman would have been beaten in this situation, or extorted or raped and then beaten. The sense conveyed in her letter was that she had been incredibly lucky in avoiding an assault after what this officer did, although TDCJ staff will say there was no problem because she remained safe. This kind of abusive housing is routine.

“ Early this morning they came and told me I was moving to another cell for the 7th time this month. . . . I go to talk to the dude and tell him we're about to be cellies and he goes off, 'you can't stay in the cell, it's going to be a problem.' . . . He's like 'are you gay?' I tell him I'm a woman and he goes off again. The Sgt. comes down to the pod and he ask me if he's going to let me in the cell and I tell him to ask the dude. He (Sgt. [name redacted]) went and asked him and he flat out told the sgt. it was going to be a problem and that he couldn't stay with me. Instead of the Sgt locking him up then, he tells me to go ahead and go in the cell and if he tells me to get out just step out of the cell. . . . I moved in the cell and the only saved a problem from occurring was that they rolled the door to give him and I our lunch sack meals and he barged out the door with his property and had a use of force done on him.”

“ I spoke with a supervisor a Sgt. [name redacted] about a medical move because I am on a top bunk with bottom bunk restrictions due to seizures. I was already moved when C.O. [name redacted] stopped the move and told the Sgt. I was 'running game.' When I tried to explain the reason behind the move [name redacted] began hollering 'Ya'll faggots are such drama queens'; 'I want this "thing" out of my D-space'; 'You are nothing but a wet back faggot'; 'You fucking faggots don't run shit here'; 'This dick sucker won't get out of the D-space.' Of course, that's not all she said. The conversation/verbal altercation was 30 minutes long.”

“ I'm really putting myself in danger for telling about the sexual assault and the harassment and putting names and cells with it. Here I am a sitting duck, hoping that nothing happens.”

A trans woman was housed with a man who was nice to her, but she had an anxiety attack because of prior assaults when housed with men, so she asked to be housed with another trans woman. However, they housed her with someone she described as . . .

“ . . . a known booty bandit. He likes to screw the girls by any means necessary. The day before he beat his boy cellie up splitting the boy’s lip badly and blacking his eye. Sgt [name redacted] lets him get away with it and the other boy goes to lock up.”

“ You cannot imagine how frustrating this is [the continual determination from TDCJ officials that abuses are ‘unsubstantiated’] and to be perfectly honest, how psychologically damaging this is as it leaves us no other choice than to turn to violence to protect ourselves. Literally, turns you into that vicious animal that we all have within ourselves. Quite obviously I try to ‘keep that in check.’ But you just have no idea how hard it is for someone like me to be antagonized, mistreated, singled out, discriminated against, threatened, and harassed, and keep just trying to do ‘the right thing’ to make it stop.”

Guard to transgender woman:

“ You are a punk ass faggot and I am tired of you walking around looking and acting like you are a woman.”

Incarcerated persons in safekeeping housing complained to a Captain about being shorted food (they are not allowed to go to chow until the other housing classes have gone). He responded . . .

“ [quoting the Captain] either shut your bitch ass crying up or get off safekeeping that’s what you faggots get y’all ain’t nothing but a bunch of child molesters or a snitch.”

“ One of the problems with PREA is how easily it is being misused to file OPIs making false claims without any consequences when their claim is proven false. Many times they write an OPI in someone else’s name to retaliate or get them locked up or moved. They tend to lock you up before they investigate whether it’s legitimate. Other times they lie to get moved near a lover. That’s crazy!”

Telford Unit

While she was being stripped, a trans woman had an anxiety attack due to prior assaults. She was taken to Mental Health. The counselor told her . . .

“ . . . because I chose to think of myself as a woman in a man’s prison my ‘meltdown’ was my own fault. That day, I left their office a mental and an emotional wreck. . . . I couldn’t catch a breath, I was shaking and the tears wouldn’t stop.”

A guard speaking to a transgender woman and others, as quoted in the trans woman’s letter:

“ Maybe ya’ll ain’t heard about me but I don’t like no gay motherfuckers and all ya’ll need to die. Ain’t no punks gone work on no building I work with ya’ll disease packing asses. Get the fuck away from my desk and if any of ya’ll ever try to turn out

again I will write threatening officer cases and get you hoe's locked up. I don't care who assigned ya'll jobs or housing."

Transportation Department

“ About the issue of sexual assault on the bus, I know about this occurring to at least 3 different people and all of them are scared to put it in writing, for fear of retaliation from TDCJ as well as the predators who perpetrated the incident. They told me about it in confidence that I would protect their secret.”

Unit Not Certain or Multiple Units

TDCJ staff have not progressed past blaming women (cis or trans) for their own assaults. The following is a simple means of blaming victims for rapes and other violence committed against them, and its prevalence is an indication of how deeply rape culture is embedded in the TDCJ system. Makeup is often necessary to treat dysphoria for trans women, particularly in a forced male culture.

“ I was told as I wore makeup I would get [attention].”

“ Whenever I've told the supervisors/rank/authorities within this system [about a rape, which she has experienced three times], all they do is have the medical department to 'cover it up' and or ship me off to another unit and threaten me to 'just leave it alone before something worse happens.'”

“ At any moment any of us trans can end up dead. For damn sure in population.”

“ I honestly do not believe the head warden is aware of this yet and if so they are hoping I just stop. However, I won't because I've been taking it from these people for 21 years. Getting raped, beat up, laughed at, spit on, bullied, talked about for 21 years with no help from these people. . . . When I finally got up the nerves to report the rapes? . . . They said I was lying even though they found semen in me and I was torn open. One nurse cried and they were told not to put it in my file and I was shipped within 24 hrs to another unit.”

“I’ve come to the conclusion that this is how they want me to feel—helpless, vulnerable, and alone. I won’t give up or in to their antics any longer. I must keep fighting for my rights and not let the disregard, disrespect and deliberate indifference to my gender status, my safety and right to be me and live without oppression become the vices that undo my essence.”

—*transgender woman, Allred Unit*