

PREA AUDIT REPORT Interim Final

ADULT PRISONS & JAILS

Date of report: March 23, 2016

Auditor Information			
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Telephone number: 908-459-4509			
Date of facility visit: February 24-26, 2016			
Facility name: TDCJ-Rufus H. Duncan Unit			
Facility physical address: 1502 South First Street Diboll, Texas 75941			
Facility mailing address: <i>(if different from above)</i> SAME			
Facility telephone number: 936-829-2616			
The facility is:	<input type="checkbox"/> Federal	<input checked="" type="checkbox"/> State	<input type="checkbox"/> County
	<input type="checkbox"/> Military	<input type="checkbox"/> Municipal	<input type="checkbox"/> Private for profit
	<input type="checkbox"/> Private not for profit		
Facility type:	<input checked="" type="checkbox"/> Prison	<input type="checkbox"/> Jail	
Name of facility's Chief Executive Officer: Garth Parker, Senior Warden			
Number of staff assigned to the facility in the last 12 months: 133			
Designed facility capacity: 606			
Current population of facility: 537 (Wednesday February 24, 2016)			
Facility security levels/inmate custody levels: G1-G2, Transient			
Age range of the population: Adults (37-87 years old)			
Name of PREA Compliance Manager: Misty Terrazas, Sgt		Title: Unit Safe Prisons PREA Manager	
Email address: Misty.terrazas@tdcj.texas.gov		Telephone number: 936-829-2616	
Name of agency: Texas Department of Criminal Justice			
Governing authority or parent agency: <i>(if applicable)</i> State of Texas			
Physical address: 861-B I-45 North, Huntsville, Texas 77320			
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Telephone number: 936-295-6371			
Name: Brad Livingston		Title: Executive Director	
Email address: brad.livingston@tdcj.texas.gov		Telephone number: 936-437-2170	
Name: William Stephens		Title: Director, Correctional Institutions Division	
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AUDIT FINDINGS

NARRATIVE

The Prison Rape Elimination Act (PREA) on-site audit of the TDCJ- Rufus H. Duncan Unit in Diboll, Texas was conducted February 24-26, 2016 by Ralph P. Woodward, M.D. from Hope, New Jersey, a U.S. Department of Justice Certified PREA Auditor for Adult confinement facilities.

The *Pre-Audit Questionnaire* and companion documentation were delivered on a password protected flash drive, shipped by Federal Express (tracking number 775486870973) on January 25, 2016. This allowed for a full 29 calendar days to review the submitted documentation prior to arriving on site Wednesday February 24, 2016. Each of the 43 adult standards was substantiated by a policy or procedure and multiple recent documented examples demonstrating compliance with each standard. Prior to arrival at the Duncan Unit the auditor reviewed all submitted material and cross referenced those documents with the documentation described in the Pre-Audit Questionnaire. While on-site the auditor tested the actual implementation and usage of various policies and procedures by asking random staff to describe their understanding and use of the policy or procedure. The evening prior to the actual audit was spent with Duncan leadership staff and the ACA auditors. The following morning the auditor again met with Senior Warden Garth Parker and his Executive Staff during which time we mapped out a tour itinerary and assembled lists of inmates and staff to be interviewed. The auditor was continuously accompanied by TDCJ-Duncan Compliance Manager Sgt. Misty Terrazas and Major Patrick Coleman, Chief of Security. The auditor was permitted unimpeded access to all areas of the prison facility and all staff were cooperative with the audit. Of note, Friday February 26, 2016 was the last day at TDCJ-Duncan for Senior Warden Garth Parker who will be moving to a new facility in El Paso, Texas. He will be replaced by Warden Stephen Bryant. Warden Bryant was present at all meetings relevant to this PREA audit.

Signage notifying Inmates of the PREA audit was posted in all common areas and prominent, permanent, durable signs indicating the name of the local PREA Compliance Manager as well as the off-site PREA ombudsperson. No inmate had attempted to reach the auditor prior to arrival at the Duncan Unit. Prior to the onsite visit and again after the visit, emails were sent to the East Texas Alliance for Children and Harold's House (www.angelinaallianceforchildren.org) to inquire if any Inmate had attempted to reach them or if they had any concerns regarding the TDCJ-Duncan Unit. The auditor received a response from Deanna Wallace, Executive Director for Harold's House – East Texas Alliance for Children who provided details on their services including a SANE nurse. To the best of Ms. Wallace's knowledge no Inmate had attempted to reach her and they had no particular concerns about the Duncan Unit.

The Duncan Unit is a geriatric facility that serves primarily healthy older Inmates. Inmates with more complicate medical or mental health problems are transferred to other TDCJ facilities. During the on-site portion of the audit all housing areas, intake, medical, classification, laundry, commissary, library, kitchen, work areas and administrative areas were inspected for camera installations, viewing angles, use of mirrors and any areas that were not viewable by direct or indirect means. Inmates are routinely strip-searched on exiting the kitchen area so this area (kitchen) was reviewed several times for different purposes. A total of 27 inmates from all housing areas including inmates who identified as gay, disabled, non-English speaking, or who reported instances of sexual abuse or assault were interviewed.

All specialty staff as well as Housing Officers and Shift Commanders on both 12 hour scheduled shifts were interviewed. Specialty staff included: Facility Warden, Regional PREA Coordinator, PREA Compliance Manager, Security Chief, OLS on-site Investigator, Human Resource Manager, Chaplain, Classification Chief, Program Supervisor, Grievance Officer, Director of Health Care and Medical Director. All formal, scheduled interviewing with staff and inmates was done in a private office with a closed door. To ensure future uniformity of audit results the auditor relied heavily upon the PRC-authored interview scripts.

During the facility tour random staff were queried about PREA topics, their role in PREA as well as knowledge of published policy and procedure. During the time of the visit there were no inmates identified as Intersex or Transgender. The facility lists 17 years as the average time in custody, however the mean length of stay for those inmates interviewed was approximately seven years (max=8 years, min= 2 years) and provided an opportunity to observe changes in the Duncan Unit over the last several years. There was one death, and one PREA allegation filed within 90 days prior to my arrival. The PREA allegation was actively under investigation at the time of my visit although a final result and notification to the Inmate were not available prior to my departure. The one death was due to natural causes and was unrelated to this PREA audit.

All of the Inmates interviewed had gone through a PREA screening prior to arriving at the Duncan Unit and most of the Inmates had both a recollection of the intake training and a solid working knowledge of PREA. Twenty three of twenty-seven Inmates related that they had gone through a second PREA screening upon arriving at the Duncan Unit. All inmates had a good understanding of multiple pathways to report instances of sexual harassment and abuse. All showers were single stall and all screens and shower doors were durable and in good working condition. There were lightweight moveable privacy screens in the wheelchair housing areas that permitted inmates to reposition the screens as they maneuvered in their wheel chairs. Each camera, camera view and Officer visibility from the Central Picket were observed during times that inmates were within the cameras view. It was noted during the on-site audit that an outside camera in the recreation yard (East Turnout camera) was aligned such that it was possible to view the strip search area. Warden Parker was able to have this camera realigned such that it was unable to view the strip search area. All inmates reported that they felt comfortable and safe – with easy access to PREA resources and problem resolution. The majority of Inmates were able to identify the PREA Coordinator Sgt. Misty Terrazas by name, and most were able to provide names of one or more ranking Officers whom they believed would assist them if

approached.

During the tour female staff announced their presence loudly as they entered the housing and medical areas and this was verified during the Inmate interviews. All 27 of the Inmates interviewed reported that this announcement by female staff occurred reliably and had been a long standing practice. On each of the housing entry ways [doors], instructions were stenciled in large letters reminding female staff to announce prior to entering the housing area. The facility did at one time have a P.A. system but this had been abandoned years ago. The voice announcement was more than adequate given the overall quietness of the environment. Each housing area and every functional area of the prison was entered and assessed for blind spots. Cameras were noted in the Intake Sally Port/ storage area, and in hallways leading to laundry, library, mess halls, and housing areas. Camera angles and visibility were again observed within the units. In each functional area random staff was questioned about protocols and supervision.

The auditor met with Warden Parker several times during the on-site visit to review his thoughts on capital construction and future plans to install additional cameras. As cameras become available he and his successor Warden Bryant will deploy them in the laundry rooms, store rooms and other potentially vulnerable areas. Those areas are currently well-supervised and mirrors visualize blind spots.

It was noted that all Officers carry a fold-out PREA instruction pamphlet as part of their uniform – which was identical to the standard instruction pamphlet observed at the TDCJ-Middleton Unit. All policies and procedures used at Duncan derive from the same TDCJ State-wide policy set with modifications as required for the local facility. Because of the size of the Texas Prison system, some interviews of State-wide Administrative Staff had been previously recorded and disseminated to PREA Auditors. In each case the auditor queried administrative staff to determine if any changes had been made to the pre-published statements by Agency-wide Directors.

During the onsite visit, the American Correctional Association (ACA) was completing its facility audit and the PREA auditor sat in on the exit briefing. Notably the Duncan Unit met 99% of the ACA standards.

During my interview with the health care staff I studied the use of their electronic health care record (PEARL) as well as their level of participation in the PREA-process. There was some confusion regarding the outside agency that medical staff should contact in the event that an inmate required the services of a SANE nurse or other workup. The Warden, this auditor and medical staff reviewed the current published procedure and the confusion was rectified.

Audit Methodology:

For each of the Adult standards the auditor reviewed the documents listed in the *Pre-Audit Questionnaire* as well as any supporting documentation submitted by the TDCJ-Duncan Unit. Additional submitted documentation consisted of:

1. 115.16, 115.31PERS 632 Training Acknowledgement.pdf
2. 115.22, 115.63 Sexual Abuse.pdf
3. 115.32, 115.35 Medical Training Roster.pdf
4. 115.62, 115.73, 115.86 List of Sexual Assaults w Outcomes.pdf
5. 115.62, 115.86 Medical Notes I-06814-05-15.pdf
6. 115.62, 115.86 Medical Notes I-18411-12-14.pdf
7. 115.13 Annual Staffing Plan Review Minutes.pdf
8. 115.13 Annual Staffing Plan Review.pdf
9. 115.13 Staffing Plan.pdf
10. 115.13(b)-1 - Staffing Roster (10-27-15).pdf
11. 115.13(b)-1- Staffing Roster (10-28-15).pdf
12. 115.13(b)-1- Staffing Roster (10-31-15).pdf
13. 115.13(b)-1- Staffing Roster (10-29-15).pdf
14. 115.13(b)-1(10-30-15) - Staffing Roster.pdf
15. 115.14(a)-1 SOF Youthful Offenders .pdf
16. 115.15(a)-1 SOF Females Searches (2).pdf
17. 115.15(a)-1 SOF Females.pdf
18. 115.16(c)-3 Interpreter.pdf
19. 115.17 List of New Hires & Background Checks.pdf
20. 115.21(d)-3 Victim Representative.pdf
21. 115.32 Volunteers Training Acknowledgement.pdf
22. 115.33(b)-1 Inmate Education.pdf
23. 115.41(c)-1 Inmate Interview.pdf
24. 115.52 Sexual Abuse Grievances.pdf
25. 115.62(a)-2 I-06814-05-15.pdf
26. 115.62(a)-2 I-18411-12-14.pdf
27. Duncan - Youthful Offenders.pdf
28. Duncan Unit Schematic.pdf
29. Facility Information - Unit ACA Report.pdf
30. Interviews - List of Transgender.pdf

31. Physical Plant Video Monitoring Location Report.pdf
32. Unit Population Report.pdf

Additional documents were requested on site such as: documentation of rounds made by supervisory security Officers, current facility population and additional documentation from the medical unit. Staffing and training documents were verified by meeting individual staff listed in the rosters.

During the on-site portion of the audit, the facility was toured and actual placement of cameras was compared with the facility schematics. Interviews of all staff and inmates followed the published PRC scripts. Responses to identical questions between inmates, and responses to identical questions between staff and inmates were cross-referenced for discrepancies and veracity. Each alteration to facility design such as the installation of modesty screens, or strip search procedures was compared to inmate and staff experience to determine how long each feature had been in service and how well the modifications functioned. Where possible, each policy or procedure was cross-referenced with actual staff and inmate experience to determine the degree of implementation of each procedure.

Because of the small number of inmates who identified as gay, non-English speaking, or victims of sexual abuse, no sampling technique (randomization) was required and all inmates who identified as gay or non-English speaking were interviewed. For the remainder of the population, the auditor utilized the alpha-list for each housing area and selected one name from the first third of the list and a second name from the last third of the list. This yielded 32 names of which 27 were available for interview. Note that inmates are not housed by last name so that the use of an ordered list (alphabetical) results in a fair degree of randomization at the start.

Ad hoc interviews with staff were conducted by the auditor during the facility tour, again to determine degree of implementation of published procedure as well as knowledge of the *Prison Rape Elimination Act*.

For each of the Standards the auditor lists the policies, procedures or supporting documents that were utilized to make a determination on whether the Standard had been *met*, *exceeded*, or *not met*. A brief explanation follows the document list, and in some cases excerpts of individual TDCJ-Duncan documents are included in the explanation where it clarifies or illustrates a point.

Notes on Investigative Procedures:

The Office of the Inspector General is responsible for investigating all allegations of sexual abuse and is the Department responsible for making the determination of whether forensic testing or SANE services are indicated. In all cases the OIG makes the determination of whether an allegation of sexual abuse is substantiated, un-substantiated, or unfounded – and is responsible in communicating the results of that investigation to the inmate. Its staff are specialty trained and all are sworn peace officers. Each investigation involves the local facility however the investigations are independent of and in addition to investigations that may be conducted by the facility.

The Office of the Inspector General is independent of the Texas Department of Criminal Justice and reports directly to the Texas *Board of Criminal Justice*. The authority of the Office of the Inspector General is central to all investigations and is referenced throughout this PREA audit.

Notes on Health Care Services:

All health care services are provided by the University of Texas Medical Branch which has an MOU with TDCJ-Duncan. The medical unit is staffed 24/7 and provides physical and mental health services. Complex mental health cases requiring psychotropic medication are transferred to another facility. Inmates who are not capable of conducting their own *activities of daily living* are also transferred to other facilities. The medical provider utilizes a commercial electronic health records system for all of its clinical documentation.

Corrective Action:

Two findings were noted for corrective action and both issues were resolved during the on site visit.

1. A single camera was placed such that it could potentially view a strip search area This was resolved by adjusting the cameras viewing area.
2. The medical staff had evolved an *ad hoc* procedure for referring inmates to a SANE nurse should that be required. This was resolved on site with a brief meeting between Duncan managers and the Director of health care services.

DESCRIPTION OF FACILITY CHARACTERISTICS

The TDCJ-Duncan Unit located in Diboll, Texas is a TDCJ prison designated as a geriatric unit. The facility was built in 1992 on 27 acres and is immediately adjacent to the Diboll Prison Unit which is privately run. The Duncan Unit and Diboll Prison are administered separately however they share some medical services and the Director of Nursing oversees both units.

All services are housed in a single 72,000 square foot building which contains the sixteen open dormitory housing units, administration, laundry, kitchen, medical, library and commissary. The entire prison facility is air-conditioned. An area identified as 'WXZ' was designated as "transient housing" which was used primarily for housing overflow. Two of the 'WXZ' cells were wheel-chair accessible. The 'M' dormitory was designated as the Trustee housing area and the 'O' dormitory was designated as the Faith Based housing area. All areas of the dormitories can be visualized from the hallway through a window. All showers and toilets have durable privacy screens/curtains which block direct viewing of any genitalia.

Officers enter the housing areas hourly for '[television] channel check', bed checks, random counts, and at scheduled thirty minute intervals. Senior Officers up to the rank of Major and including the Warden make unannounced visits to the housing areas. Signs instructing Inmates on how to report sexual assault and abuse were posted in all housing areas and any area accessible to Inmates. Unannounced visits by supervisory staff are signed and logged on the daily roster forms.

The population is male-only; adult-only under security levels G1-G2, and transient. Its design housing capacity is 606 and the average census during my three day visit was 537 inmates. Staff compliment is nominally 133 who are deployed over two 12-hour shifts in all locations. Medical services are provided under contract by University of Texas Medical Branch. The medical services utilize a commercial grade electronic health record system (PEARL) which is used throughout the TDCJ.

SUMMARY OF AUDIT FINDINGS

Although this is the first PREA audit for TDCJ-Duncan, the Agency (Texas Department of Criminal Justice) has successfully completed similar PREA audits, and Regional PREA Coordinator Sgt. Cheryl Jeffcoat has overseen five prior PREA audits – Duncan would be the sixth. The Texas Department of Corrections Safe Prisons Program, in place since approximately 2000, predates PREA but incorporated many of PREA's concepts as do several of the ACA accreditation standards. It was clear that the Warden, executive staff and line staff were well-practiced, open-minded, and comfortable with the concepts of PREA and that the process was fully incorporated into the Agency's culture. There was evidence of clear, consistent, Agency application of procedure, policy and training. During the first day of the audit tour the American Correctional Association completed its facility audit and I was able to attend the Exit Briefing along with the local and regional TDCJ staff. At the ACA Exit Briefing the lead auditor indicated that the Duncan Unit was in compliance with 99% of the accessible standards.

Two Standards: 115.31 and 115.32 exceeded the published standard requirements. This was due to the heavy emphasis placed on training in excess of that required by the standard including: extensive off site-training for Inmate Peer Educators, annual mandatory off-site training for staff, contractors and volunteers, monthly and weekly PREA training topics and updates done at the "Turn-Out." Training extended beyond PREA concepts and including a presentation on the consequences of sexual assault such as STDs and HIV. All staff demonstrated ready familiarity with the concepts of detection and harm reduction.

Standard: 115.12 did not apply (the Duncan Unit does not contract for confinement of inmates).

Standard 115.14 did not apply (the Duncan Unit does not house youthful offenders).

Inmates were able to articulate multiple pathways to reporting sexual harassment and verbal abuse. Two of the inmates interviewed were PREA Peer Educators who were excited and enthusiastic about their educator roles and were appreciative of the extensive training they received. Several inmates with long sentences within the Duncan Unit were able to describe the improvements over the years and felt that PREA was a major driving force in the improved conditions. All showers were single stall and all screens and shower doors were durable and in good working condition. There were lightweight moveable privacy screens in the wheelchair housing areas that permitted inmates to reposition the screens as they maneuvered in their wheel chairs.

There were two areas that required correction and both of these issues were resolved while on-site. The first problem involved the viewing angle of the East Turnout camera. The relatively wide-angle lens was able to view the strip search area as inmates entered the facility from the recreation yard. All cameras are viewable for a single split-screen display in a central 'picket.' This post can be assigned to any housing Officer including female staff and thus would allow cross-gender viewing during strip searches. Repositioning the camera successfully ameliorated this problem. However as additional cameras are added it is important that leadership become very familiar with what the camera can or potentially could view. The second problem concerned the different procedures described to the auditor by medical staff and custody staff with respect to where inmates should be referred in the event of sexual assault. This difference too was resolved while on-site. During an actual assault, referral may be emergent and it is important that all members of the team have an absolute and unambiguous plan on where the inmate is going. This would preclude the potential problem of medical staff endorsing medical report to one facility while the inmate is physically in another facility. Clearly subordinate contractor staff should adhere to published facility procedures – and if a change is required this should be conveyed to all staff and encoded in policy.

As of this date the Duncan Intake Unit is in compliance with the PREA standards.

Number of standards exceeded: Two

Number of standards met: thirty-nine

Number of standards not met: zero

Number of standards not applicable: two

Standard 115.11 Zero tolerance of sexual abuse and sexual harassment; PREA Coordinator

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: ED-03.03 P:1, PREA Plan P: ii, Agency Org Chart

The Standard requires that the agency shall have a written policy mandating zero tolerance of any form of sexual abuse and outlines the agency's approach to detecting and preventing, such conduct. The TDCJ publishes the Safe Prisons-PREA Plan which is used Agency-wide and describes an overall approach to PREA, assignment of staff and tables of organization. Agency Policy ED-03.03 P:1 implements the plan and outlines staff disciplinary actions to be taken in the event of staff engaging in prohibited behaviors [115.11(a)].

The [regional] PREA Coordinator is full time with no other assigned duties, and the PREA Compliance Manager is predominantly assigned to PREA-related duties, but at the Duncan Unit is also in charge of Quality Assurance [115.11(b), (c)].

Typically the PREA staff have dual reporting requirements: locally to the facility Warden and to the State Central Office in Huntsville which coordinates all Agency-wide PREA activities.

Standard 115.12 Contracting with other entities for the confinement of inmates

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

N/A. The Duncan Unit does not contract with other agencies for the confinement of its inmates.

Standard 115.13 Supervision and monitoring

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan Reference: AD-11.52 P:2-3.

On an annual basis the Agency requires each facility to review its formal staffing plan and modify that staffing plan for local conditions. Those conditions include any findings of inadequacies from external audits, judicial findings or other oversight bodies; inmate population type, facility blind spots, or any recent incidents of sexual abuse [115.13(a)].

Compliance with the annual staffing plan is conducted by a Staffing Committee which regularly reviews staffing requirements and defines minimum staffing required for operational readiness. On a daily basis, the Warden reviews shift turnout reports to ensure that staffing needs are addressed and any deviations from the staffing plan are part of the facilities formal reporting requirement [115.13(b)]. The Regional PREA Coordinator as well as the PREA Compliance Manager are part of the Staffing and Planning Committee, and as cameras become available, the Warden meets with senior staff to consider locations [115.13(c)]. Regular unannounced rounds are made by supervisory Officers and documented on the shift rosters [115.13(d)]. The shift rosters are turned in at the end of each shift and filed. This is somewhat different from the frequent practice of having logbooks at each housing area (where supervisors would record unannounced rounds in red ink) however the existing practice was easily reviewed and clearly demonstrated that rounds were frequent, with unannounced supervisor oversight. This was documented on both 12-hour shifts.

Standard 115.14 Youthful inmates

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

N/A TDCJ-Duncan does not house youthful offenders.

Standard 115.15 Limits to cross-gender viewing and searches

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan Reference: AD-03.22 P:2-3.

The Duncan Unit does not allow cross-gender pat searches, strip searches or cross-gender visual body cavity searches of inmates or staff [115.15(a)] and this was verified during the inmate interviews. Several interviewed inmates commented that some searches were delayed until female staff were cleared from the area and a male Officer made available. All showers have durable curtains which conceal the nipple to genital area, and strip searches are conducted behind privacy screens. Female staff were observed to announce their presence upon entering a housing area [115.15(d)] and there was prominent lettering on each housing door reminding female staff to announce their presence. This process was also confirmed during inmate interviews.

During the on-site tour, the auditor noted that the East Turnout camera was initially aligned such that strip searching may have been visible as inmates entered the facility from the recreation yard. The camera was realigned during the on-site visit which solved this issue. Policy prohibits staff from examining any inmate for the purpose of determining “genital status.” During this tour no inmate identified as transgender or intersex thus the auditor was unable to determine compliance through the interview process.

Standard 115.16 Inmates with disabilities and inmates who are limited English proficient

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan Reference: AD-04.25 P:2-4, 8-9.

The Duncan Unit posts all PREA signage in English and Spanish and the inmate handbook is printed in both English and Spanish. The Facility maintains a list of approved staff translators [115.16(b)] and the auditor was able to comfortably interview non-English speaking inmates without complication. Translation was provided by a CO5 (Library Officer) during my visit. Inmate interpreters are not used [115.16(c)]. The facility provided training rosters for specific training on PREA-compliant practices for inmates with disabilities. Document SM-05.50 P:3 lists contracts with interpreters [115.16(a)].

A number of inmates were wheelchair bound and the Duncan Unit accommodated them in housing units designed specifically for wheel chair access. The auditor observed wheelchair bound inmates making purchases at the commissary without apparent difficulty. Inmates with more severe disabilities are not housed at the Duncan Unit.

Standard 115.17 Hiring and promotion decisions

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: PD-71 P:2.24-25; PD-73 P:1,3-4; PD-75 P:4; PD-27 P:1,5; PD-75 P:4.

The auditor reviewed the above policy/procedures and statements submitted for this standard. Policies prohibit the hiring, promotion or retention of any employee, volunteer or contractor staff who are charged with engaging in sexual abuse or who have a pre-employment history of sexual abuse.

All employees and contractor staff undergo pre-employment background checks [115.17(c)]. Additionally, staff undergo an annual criminal background check that occurs in their birth month [115.17(e)]. This allows for detection of new and pending warrants. PD 71 also describes a background check for specific job descriptions (laundry, food supervisor) and certain promotional positions.

There were no documented instances at the Duncan Unit when an employee had been denied promotion because of a history of engaging in sexual abuse, nor was there a documented instance of an employee disciplined or terminated for engaging in sexual abuse [115.17(a)].

Standard 115.18 Upgrades to facilities and technologies

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The Duncan Unit is neither a newly constructed unit nor are there plans for major renovations [115.18(a)]. Minor modifications were made to the shower doors which increased the coverage of the lower part of the door. Inmate interviews confirm that these have been in use for more than 12 months. No new video monitoring or electronic surveillance systems specific to PREA have been installed. However the Warden has a well thought-out plan for video monitoring equipment as it becomes available. During the tour of the physical plant, the Security Chief and PREA Compliance Manager pointed out locations that were reserved for future camera placement to enhance monitoring for sexual abuse.

Standard 115.21 Evidence protocol and forensic medical examinations

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan Reference: G57.1.

This is the central reference procedure describing the examination, collection and processing of sexual assault forensic material; treatment of STDs and pregnancy. As per the Duncan Policy, inmates are sent to the nearest emergency department [115.21(c)] for SANE evaluations.

Since there had been no recent use of the local E.D., nor SANE nurse services required, it was not possible to determine what advocacy services the hospital might provide [115.21(d)]. However Agency policy does not prohibit the use of community-based organizations if the victim requests those services [115.21(e)]. Onsite medical staff do not conduct SANE examinations nor collect forensic evidence – their role is limited to stabilizing any immediate injury and then referring to the local hospital emergency department.

Regular solicitation letters have gone out to community rape crisis centers, however auditor conversation with these organizations indicates that they do not yet have the resources to support TDCJ-Duncan’s PREA mission [115.21(d)]. Before and after the onsite visit emails were sent to several shelters and rape crisis centers and the auditor received a response from Deanna Wallace, Executive Director for Harold’s House – East Texas Alliance for Children who provided details on their services including a SANE nurse. To the best of Ms. Wallace’s knowledge no Inmate had attempted to reach her and they had no particular concerns about the Duncan Unit.

Multiple levels of investigation are involved depending on the nature of the event, including the facility as well as the Texas OIG and local police. Duncan Unit staff initiate all PREA investigations [115.219(a)] and then present those findings to the local, onsite OIG (Office of Inspector General) who in turn communicates with the OIG office in Huntsville. The OIG makes the final (sole) determination if the gathering of forensic evidence is warranted.

During the auditor’s interview of contractor medical staff it was learned that the SANE nurse previously employed by the local emergency department has now resigned her position and works at another location. There was a mistaken belief by medical staff that inmates would continue to be referred to the same SANE Nurse at her new location. This is incorrect as the Duncan Unit has no MOU with the SANE Nurse’s new employer (Harold’s House). Duncan Administrative staff were able to clarify this misunderstanding while the auditor was on site.

Standard 115.22 Policies to ensure referrals of allegations for investigations

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan Reference: SPPOM-05.05 P:

All investigations are initiated at the facility level and then forwarded to the Office of the Inspector General (OIG) if there appears to be criminal involvement or any report of sexual abuse [115.22 (a)]. There is an OIG investigator located at the Duncan facility who reviews the case details and determines if the case should be forwarded to the main OIG Office in Huntsville for further prosecution [115.22 (b)], and if there is sufficient evidence to warrant the collection of forensic material. OIG is independent of the Texas Department of Criminal Justice and has primary investigative authority. The TDCJ-Duncan reported a single instance of an allegation in the preceding 12 months and this was reviewed by the auditor for time frames and appropriate referral.

The PREA Compliance Manager is involved in all investigations and reporting. OIG reports the results of its PREA investigations directly to the inmate. Inmates are present at the conclusion of the investigation and sign documentation that they have been made aware of the outcome of the investigation.

Standard 115.31 Employee training

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the

relevant review period)

- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: AD-12.20 P:1,8, PREA Curriculum

PREA Standard [115.31(a-d)] requires that all members of the Unit receive thorough training on all elements of identification, detection and response to sexual abuse and harassment. TDCJ - Duncan Reference: AD-12.20 P 1,8. Describe the training requirements.

Training logs were reviewed and correlated against actual staff who had signed the logs. The standard requires that all staff and contractors receive refresher training every 24 months however the Agency policy mandates annual PREA training. This annual training is provided off-site at the training center located at the Gibb Lewis Unit in Woodville. This insures that the training is not diluted or interrupted by other obligations. Additionally staff receive monthly and sometimes weekly PREA training modules during the 30 minute shift overlap.

All staff carry a fold-out, multi-panel PREA handbook which is part of the required uniform. This training went beyond the basic facts of PREA and included updates on sexually transmitted diseases and HIV. During interviews all staff evidenced a solid working knowledge of PREA.

Standard 115.32 Volunteer and contractor training

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan Reference: Curriculum P:21-24, S:34-35.

Volunteer and contractor staff attend the same rigorous annual off-site training as the custody staff [115.32(a)-(c)]. Interviews with volunteers and staff indicate that high importance is placed on PREA and its principles. This auditor interviewed the Director of Nursing and the Medical Director, each of whom had received specialized training on the unique role of medical in responding to PREA allegations. During the interviews Medical staff described a SANE referral source that was different from that described by the published Duncan procedure. This was reviewed with the Facility Warden and the medical staff. The Duncan procedure requires cases of sexual assault to be referred to the local hospital emergency department.

Medical described a local crisis center for the referral. Apparently the SANE nurse who had worked at the hospital E.D. now works at the crisis center and the medical staff mistakenly thought that the service followed the SANE nurse from hospital to crisis center. This procedure was resolved on site during the visit.

Standard 115.33 Inmate education

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan Reference: UCPM-05.00 P:1.

Inmates receive their initial PREA training at one of several facilities dedicated to intake processing [115.33 (a)]. Typically this includes one of several videos used over the years (during the interviews inmates described a number of different videos). Inmates may arrive at the Duncan Unit years after their initial intake and classification. Upon arrival at the Duncan Unit inmates may view another video, receive written material describing their rights to be free from sexual abuse. The Duncan Unit also utilizes Inmate Peer-Educators who walk each new arrival through the various mechanisms of how to report incidents of sexual abuse [115.33(b)]. Written information was available in multiple languages, available through translation as well as the Peer-Educators [115.33(d)]. Placards in English and Spanish contain key information and are posted in all housing units as well as all public areas [115.33(f)]. All training records are retained on site for inmate training. The auditor reviewed the inmate-signed training roster for the preceding 12 months.

The auditor interviewed two of the inmate Peer-educators who were enthusiastic and well-trained on PREA. Peer Educators received annual training at an offsite location. Training included modules on HIV and hepatitis C treatment updates.

Standard 115.34 Specialized training: Investigations

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ – Duncan References: BP-01.07, OIG LP-3201, PD-97.

Investigations are conducted through the Agency’s Office of the Inspector General and this Office is responsible for all aspects of specialized training [115.34(a)]. CID – Management Operations Correctional Training and Staff Development Manual is a 59 page document that outlines technical elements of training for non-law enforcement correctional staff. The manual includes interviewing techniques, instruction on evidence preservation, report writing and the consequences of late reporting [115.34(b)]. The Office of the Inspector General maintains attendance and test scores for investigators [115.34(c)]. The auditor noted that the OIG investigator assigned to the Duncan Unit (and interviewed by the auditor) had a passing score of 96 on 8/22/2014.

Standard 115.35 Specialized training: Medical and mental health care

- Exceeds Standard (substantially exceeds requirement of standard)

- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: CMHC C-25, CMHC G-57, CMHC C-19.

Health care staff receive the same initial and annual PREA training as given to custody staff [115.35(c),(d)] and all training records are retained. During the auditor’s interview with the Director of Nursing and the Medical Director the auditor reviewed the unique role that health care staff play in PREA. Medical staff were able to describe the physical examination and history required to detect sexual abuse, how to report the abuse to law enforcement, how to refer the patient for further treatment, and how to stabilize physical and emotional trauma [115.35(a)]. The medical staff do not conduct forensic examinations but refer cases to outside facilities [115.35(b)]. The auditor notes that the medical contractor, University of Texas Medical Branch, employs a Nurse Manager who shares her time between TDCJ – Duncan and the Diboll Correctional Facility.

Standard 115.41 Screening for risk of victimization and abusiveness

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan Reference: SPPOM-03.01, PREA Plan P-7.

The Agency, TDCJ completes Intake screening and classification at dedicated Intake Facilities. Inmates who are transferred to the Duncan Unit are re-screened when entering the Duncan Unit by mental health and the classification department [115.41(a)]. The mental health intake instrument is administered by a licensed clinician and screens for mental health elements used to estimate risk of victimization. Screening typically occurs on the day of admission to the Duncan Unit [115.41(b)]. The screening tools are uniformly used for each inmate [115.41(c)] and query for medical or mental health disabilities, age, body type and habitus, incarceration history, violence, sex offenses, gender identity, prior victimization, inmate’s perception of vulnerability, and whether the inmate has been detained solely for immigration purposes [115.41(d)]. The initial screening records are sent to the Duncan classification office [115.41(e)] to inform housing decisions. New, or additional information or inmate allegation of abuse triggers a reassessment which is performed by the facility’s PREA Compliance Manager [115.41(f),(g)]. All screening instruments are retained in a locked, controlled office [115.41(i)] and inmates may decline to answer any question without disciplinary repercussions [115.41(h)].

Standard 115.42 Use of screening information

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

relevant review period)

- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: IMP-04.01, AD-04.17.

The Safe Prisons/PREA Plan page 18 provides PREA-specific guidance on how to apply information from the screening tool [115.42(a)]. The auditor discussed with the PREA Compliance Manager and the Classification Director how the screening tool could be used to inform housing and programming assignments to ensure the safety of each inmate [115.42(b)]. Most commonly assignments are made based on age, functional level, and degree of infirmity. For example inmates in wheel chairs would be housed in ADA-accessible locations. Inmates with similar interests (theology) would be grouped together. Inmates were never housed based on gender identity [115.42(g)] and there were no housing areas reserved at the Duncan Unit for this purpose. All showers are single-stalled and the PREA Compliance Manager has received no requests to shower separately [115.42(f)] or an increase level of privacy. Policy dictates that transgender and intersex inmates are evaluated twice annually however the auditor was unable to verify this as no inmates had identified as transgender or intersex in the preceding 12 months [115.42(d)].

Standard 115.43 Protective custody

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan Reference: SPPOM-05.05, Ad Seg Plan P:1, 2, 4.).

The PREA auditor was informed that since November 1, 2015 the TDCJ no longer uses the term ‘Protective Custody’ and now refers to these areas as ‘Protective Safe Keeping.’ Inmates in Protective Safe Keeping have access to programming opportunities equivalent to other inmates [115.43(a)]. Inmates at risk for sexual victimization are housed in a transient (non-dormitory) setting designated ‘WXZ’ which permits full access to all programs and privileges [115.43(a)] and is ordinarily the same area used for Inmates in Protective Safe Keeping. Duncan reports that in the preceding 12 months there have been no instances of involuntary segregated housing [115.43(c)] and that the rare instances of inmate altercations (non-PREA) were resolved with changes in dormitory housing assignments. During the inmate interviews the auditor queried each inmate if they had at any time requested or been in protective custody. The auditor also queried each inmate if they were aware of any other inmate who had requested or been placed in protective custody. The inmate interviews were in agreement with the facility-reported account of no inmates in involuntary segregated housing.

Policy requires that inmates in involuntary segregated housing shall be reviewed every 30 days and that the reasons for involuntary segregated housing are documented [115.43(d),(e)].

Standard 115.51 Inmate reporting

- Exceeds Standard (substantially exceeds requirement of standard)

- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan Reference: TBCJ PREA Brochure.

During the facility tour, the auditor observed durable posted signs indicating contact information for the Facility PREA Compliance Manager as well as contact information for the State-wide PREA Ombudsperson who is located outside of the facility [115.51(b)]. Reports to the State-wide Office of the Ombudsperson can be made anonymously by mail. If the inmate wishes, they may also obtain the names of local area crisis centers to which they can write. This information is available in the inmate law library.

During the inmate interviews, all inmates were able to describe multiple pathways to reporting abuse – both the published routes, but also unpublished contacts that they expressed comfort with [115.51(a)]. Inmates remarked that they generally preferred to make verbal reports to ranking Officers and administrative staff [115.51(c)] rather than use the published routes. As a cross reference, inmates were readily able to identify the PREA Compliance Manager by name. Duncan Unit does not retain inmates solely for civil immigration purposes [115.51(b)]. Staff may also use the same reporting mechanisms to privately report observations of inmate sexual abuse and harassment [115.51(d)].

Standard 115.52 Exhaustion of administrative remedies

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: Texas Govt. Codes §§ 493.014, 501.008, AD-03.77 Offender Grievances, AD-03.82 Management of Offender Grievances, AD-03.82 P:8, OGOM sections 1.01 P: 1, 1.04 P:2, 7.00 P:1 Appendix-J

Agency Procedure OGOM section 1.04 describes the administrative process that an inmate would use to file a grievance regarding sexual abuse [115.52(a)]. Section 1.04 states:

*“To establish procedures and guidelines for initial response, notification and processing of offender grievances alleging a sexual abuse/harassment incident. All grievances received with allegations of a sexual abuse/harassment shall be reported in accordance with the **Safe Prisons/PREA Compliance Plan**.”*

Policy AD-03.82 (pages 5-7) places no time limit on when an inmate can file a grievance [115.52(b-1)], and AD-03.82 (page 7) provides a formal method for filing a grievance and does not require that the inmate use an informal procedure [115.52(b-3)].

Agency policies: AD-03.82 P:8, OGOM sections 1.01 P: 1, 1.04 P:2, 7.00 P:1 Appendix-J, ensures that an inmate may file a grievance without submitting the grievance to the staff member who is the target of the grievance [115.52(c-1)], and further ensures that the inmate’s grievance will not be forwarded to the staff member who is the subject of the grievance [115.52(c-2)].

Agency policies: Texas Govt. Code §501.008, AD-03.82 P:9, OGOM section 4.00 P:1 require that:

1. The agency issue a decision on the grievance alleging sexual abuse within 90 days of the initial filing [115.52(d-1)],
2. The 90 day time period exempts time that the inmate used in preparing any administrative appeal [115.52(d-2)],
3. The agency response may be extended by 70 days if the initial 90 day period is insufficient and the inmate is notified in writing of the extension [115.52(d-3)],
4. If the inmate does not receive a response within the formal time period, the inmate may consider the absence of a response to be an administrative denial at whatever administrative level the delay occurred [115.52(d-4)].

Agency policies: AD-03.82 P: 4, OGOM section 9 P:1-2, Appendix-U:

1. Permits any third party including inmates to file the grievance[115.52(e-1)] ,
2. Permits the facility to require that the inmate agree to having a third party file the grievance [115.52(e-2)],
3. Permits the facility to document an inmate’s decision if the inmates declines to have a third part file the grievance [115.52(e-3)].

Agency policies: AD-03.82 P:4 OGOM section 1.04 P:2, Safe Prisons PREA Plan P:22, SPPOM 05.01 P:3, SPPOM 05.11 P: 1State

1. The agency will have a procedure to file an emergency grievance if the inmate is at risk of imminent sexual abuse[115.52(f-1)] ,
2. The agency will forward the grievance to a level of review such that immediate corrective action may be taken, complete an initial response within 48 hours, and a final response within five days. The initial and final response will document the whether the risk of imminent sexual abuse is substantial and what action was taken in response to the emergency grievance [115.52(f-1)].

Agency policy OGOM section 1.01 P:4 limits the disciplinary action that the agency may take if it is determined that the inmate filed the grievance in bad faith [115.52(g)].

The Duncan Unit submitted specimens of inmate grievances from December 2013. In the preceding 12 months there were no instances of emergency grievance filed by inmates or third parties.

Standard 115.53 Inmate access to outside confidential support services

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan Reference: Safe Prisons PREA Plan; P:13 SPPOM-02.02 P: 1, BP-03.91 P:1, 9, Offender Orientation Handbook.

Standard [115.53(a)] requires that the facility provide inmates with access to outside victim advocacy services. Duncan procedure SPPOM05.01states:

“IV. Other Responsibility.
The USPPM (Unit Safe PREA/Prisons Manager) shall provide the victim with contact information of national, state and local rape advocacy centers upon request.”

This list of outside victim advocacy services is available in the Duncan Unit Law Library. Notification in the Law Library reminds inmates that contact with outside agencies may be monitored and reports of sexual abuse will be reported to authorities where required by law [115.53(b)]. Thus the Standard is met.

On a regular basis, the agency has sent letters of solicitation to community service providers however those community services providers have not entered into memoranda of agreements [115.53(c)]. The auditor did communicate with a community provider: *Harold's House – East Texas Alliance for Children*, and its Executive Director Deanna Wallace did remark that they were not prepared at this time to enter into an MOU.

Standard 115.54 Third-party reporting

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: SPPOM-04.02, ED-02.03 P: 1,2,8,9, ED-02.10 P: 1,3, General Information for Families of Offenders Brochure P: 32-33, Safe Prison PREA Plan P: 23.

The agency publishes a 47 page manual for families and other third parties that provides information on how to report sexual abuse and harassment [115.54(a)]. This manual is available for download on the TDCJ web site.

The relevant portion of the manual reads (excerpt below):

“Protecting offenders’ rights to file grievances and promoting problem solving at all levels is very important to TDCJ. It is a violation of policy to subject any offender to harassment, retaliation or reprisal for using the grievance procedure.

PREA OMBUDSMAN

The Texas Department of Criminal Justice has a “Zero-Tolerance” policy concerning the detection, prevention and punishment for sexual abuse, including consensual sexual contact, of offenders in the custody of the department. The Prison Rape Elimination Act (PREA) Ombudsman was established by the 80th Legislature in 2007 (Texas Government Code, Section 501, subchapter F), and is appointed by the Texas Board of Criminal Justice (TBCJ).

The PREA Ombudsman was created to provide offenders, as well as the public, an independent office to report sexual assaults. In 2008, the TBCJ hired the current PREA Ombudsman and established the PREA Ombudsman Office. The primary responsibilities of the PREA Ombudsman Office are to:

- ◆ Monitor the agency’s efforts to eliminate the occurrence of sexual assaults in correctional facilities;*
- ◆ Review the agency’s policies and procedures to ensure they are in compliance with federal and state laws and standards (currently under review are the proposed national standards submitted to the United States Attorney General by the National Prison Rape Elimination Commission); and*
- ◆ Respond to public inquiries related to allegations of sexual assault in TDCJ correctional facilities.*

HOW TO CONTACT THE PREA OMBUDSMAN

(Please submit inquiries in writing)

Due to the serious nature of sexual assaults, anyone knowledgeable of an offender-on-offender or staff-on-offender sexual assault that occurs within a TDCJ correctional facility is encouraged to immediately report the allegation.

PREA Ombudsman Office
P.O. Box 99, Huntsville, TX 77342-0099
(936) 437-2133 (936) 437-6981 fax
prea.ombudsman@tdcj.state.tx.us

Standard 115.61 Staff and agency reporting duties

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: Safe Prisons PREA Plan page 23, PD-29 pages 3-4. The Safe Prisons PREA Plan explicitly directs staff to immediately report instances of inmate sexual abuse and may do so using any written form, document, or verbal communication [115.63(a)]. Page 22 (13) of the Plan requires that reporting staff restrict their reporting to the smallest group necessary to carry out action [115.61(b)]. Health care staff are similarly instructed by the Plan (page 23(4)) to report sexual abuse the the auditor was advised that there were no State legal restrictions on such reporting [115.61(c)]. All allegations are reported to the OIG which is the Agency's investigative unit [115.61(c)]. The auditor again notes that the Duncan Unit does not house youthful offenders and has no reporting requirement [115.61 (d)].

Standard 115.62 Agency protection duties

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: AD-02.16, SPPOM-05.01 and SPPOM-05.0. SPPOM-05.01 (Sexual Abuse Response and Investigation) details the procedure for Notification and Response, Forensic Evidence Handling, and Referral to outside crisis centers. The Duncan Unit reports that within the preceeding 12 months there were two instances where an inmate was subject to substantial risk of imminent sexual abuse [115.62(a)]. Documentation for both events was submitted for review. One event was recorded as 'unsubstantiated' and one event recorded as 'unfounded.' In both instances all investigation was completed within the permissible time frame and both victims signed receipt for the results of the investigation.

The auditor noted that there was a minor discrepancy between where health care staff and custody staff believed that Inmates were to be sent for Forensic data gathering. The published procedure on using the local emergency room is the correct procedure and the medical staff were

instructed on this procedure.

Standard 115.63 Reporting to other confinement facilities

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: AD-16.20 (page 5), BP-01.07 (page 2), SPPOM-04.01(pages 1- 3), PREA Plan (page 24). BP-01.07 (Inspector General Policy Statement) outlines the reporting expectations and provides the procedure for reporting.

Standard 115.63 (a-d) requires that the Duncan Unit have a policy, or policy structure that directs reporting of inmate sexual abuse whenever the inmate is confined at another facility. SPPOM-04.01 (Safe Prisons/PREA Operations Manual) requires that the Duncan Warden, upon receipt of information that an inmates was sexually abused at another facility, report that information to the Office of the Inspector General, the Agency PREA ombudsman, and the head of the facility confining the inmate [115.63(a)]. SPPOM-04.01 (page 1) further directs that this reporting shall occur as soon as possible but not later than 72 hours after the allegation [115.63(b)].

As per the PREA Manual (below), item (b.) requires that the agency document the notification [115.63(c)].

“After receiving an allegation that an offender was sexually abused while confined at another facility, such as a county jail or out of state facility, the individual taking the initial report shall immediately notify the USPPM (‘Safe Prisons Manager’). The USPPM shall provide the SPPMO (‘PREA Management Office’) with the details of the alleged incident so the SPPMO may initiate notification to the appropriate office of the outside agency where the alleged abuse occurred.

- a. The SPPMO shall provide the notification to the appropriate agency as soon as possible, but no later than 72 hours after receiving the allegation.*
- b. The SPPMO shall document the notification.”*

Upon receipt of notification of sexual abuse in another facility, multiple policies/procedures require that the agency head (Warden) investigates the allegation in accordance with PREA standards [115.63(d)]. The explicit reporting requirements described in the Agency’s PREA Operations Manual (SPPOM-4.02) would initiate a full inspection of the PREA allegation by the Office of the Inspector General.

Duncan Unit reports that in the preceding 12 months there were no specific instances where a notification of sexual abuse was sent to another facility, nor was there an instance where the Duncan Unit received a notification. During interviews with the PREA Compliance Manager, the Security Chief, and the Warden, all were familiar with the reporting requirements but had not been required to make any reporting.

Duncan Unit reports that in the preceeding 12 months there were no specific instances where a notification of sexual abuse was sent to another facility, nor was there an instance where the Duncan Unit received a notification. During interviews with the PREA Compliance Manager, the Security Chief, and the Warden, all were familiar with the reporting requirements but had no been required to make any reporting.

Standard 115.64 Staff first responder duties

- Exceeds Standard (substantially exceeds requirement of standard)

- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: SPPOM-05.01, AD-16.03, OIG OPM-04.05.

All Officers are First Responders. The Safe Prisons/PREA Operations Manual as well as OIG OPM-04.05 direct that the first responding security Officer will separate the alleged victim and abuser [115.64(a-1)] and to preserve and protect the crime scene [115.64(a-2)]. If the alleged assault occurred within the preceding 96 hours [115.64(a-3)] then the alleged victim is requested not to take any action that might destroy forensic evidence – such as brushing teeth, showering or washing clothing. In each case the OIG will determine if the time frame is appropriate to collect and preserve forensic information from the alleged abuser [115.64(a-4)]. Until that determination is made, the alleged abuser is held in a dry cell to prevent the destruction of evidence. If the OIG determines that the time frames for data collection from either the victim or abuser has exceeded 96 hours (or would otherwise be unusable) then the investigator will document that in the investigation record.

During annual PREA training all non-security staff are instructed on the need to preserve forensic information and if the first responder is not a security Officer they need to instruct the alleged victim to not take action that might destroy physical evidence[115.64(b)].

Standard 115.65 Coordinated response

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: PREA Plan, SPPOM-5. The Safe Prisons/PREA Operations Manual states:

“PROCEDURES:

Responding to an allegation of sexual abuse requires a coordinated effort between unit security staff, the Office of the Inspector General (OIG), medical and mental health services, and victim advocates (where available) or an Offender Victim Representative (OVR). The following procedures provide a systematic notification and response process following a reported sexual abuse incident.”

The procedure then goes into detail how each unit shall respond [115.65(a)]. This is an agency-wide procedure that then requires the user to reference additional facility-specific modifications. For example specific instructions on when and where medical staff should refer victims of sexual assault. The Duncan Unit medical staff (UTMB) appeared to have evolved a facility-level medical practice that differed from the facility-level security practice. During the auditor’s on-site visit this discrepancy was corrected and the cause of the discrepancy identified. The medical staff mistakenly believed that the services of the SANE nurse followed the SANE nurse as she transferred from hospital employment to a local crisis center. The procedures and process were sound however it is important that changes – or proposed changes be communicated to all parties.

Standard 115.66 Preservation of ability to protect inmates from contact with abusers

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

The Agency has no agreements with collective bargaining units that would prohibit the Duncan Unit from removing alleged staff sexual abusers [115.66(a)].

Standard 115.67 Agency protection against retaliation

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: PD-22, PD-29, PD-31, PD-13, SPPOM-5.08.

Policy statement PD-13 (page 5) prohibits retaliation against any inmate or staff who report sexual abuse [115.67(a)]. The Safe Prisons/PREA Operations Manual section 5.08 describes the 90 day monitoring period [115.67(c)] for retaliation as follows:

“PROCEDURES:

Following a report of sexual abuse or sexual harassment, the warden or USPPM shall monitor and document the conduct and treatment of staff and offenders who reported the incident, cooperated with the investigation as a witness to the allegation, and of offenders who suffered as the victim of sexual abuse or harassment to determine potential risks or acts that may suggest possible retaliation. The warden or USPPM shall act promptly to remedy any such indication of retaliation.

I. Duration and Frequency of Status Checks

A. The warden and USPPM shall monitor staff and offenders for at least 90 calendar days following an allegation of sexual abuse or sexual harassment. Monitoring shall continue beyond the initial 90-days on a case-by-case basis when the initial monitoring period indicates a continuing need.

B. For each staff-on-offender and offender-on-offender sexual abuse and sexual harassment investigation, the investigator conducting the investigation shall complete the incident information section of Attachment N.S., Staff 90-Day Monitoring Form and/or Attachment N.O., Offender 90-day Monitoring Form for offenders, as appropriate. For example, if there are three cooperating witnesses and a victim to a single investigation, a form is required for each witness and victim for four forms total.”

To protect inmates or staff who report sexual abuse from retaliation [115.67(b)], the Duncan Unit would rely primarily on housing changes. However within the preceding 12 months there were no recorded instances of retaliation against staff or inmates.

Monitoring for retaliation and performing status checks [115.67(d)] is the responsibility of the Unit Safe Prisons/PREA Manager (USPPM) which is described in SPPOM-5.08 (page 1). For the Duncan Unit this staff member is PREA Compliance Manager Sgt. Misty Terrazas.

Standard 115.68 Post-allegation protective custody

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: Ad Seg Plan, AD-03.50.

The Standard expects that inmates who allege to have suffered sexual abuse shall be placed in involuntary segregated housing only when no alternative method of separation from abusers is available. This is stated in the published guidelines (excerpt below) which set forth the documentation requirements in Form I-169 that all available alternatives to involuntary segregated housing were considered.

Guidelines for Administrative Segregation Committee Members

2. Protective Custody -- If the offender is being placed into protective custody, the I-169 shall provide specific information regarding the specific nature of the threat, identified or potential assailant(s), the source of the information, and any additional information related to the threat. For offenders placed into PC due to risk of sexual victimization, the I-169 must state that an assessment of all available alternatives has been made and there is no alternate means of separation from likely assailants. You are encouraged to attach additional sheets to fully explain the rationale for protective custody.

The Duncan Unit reports that no inmates were placed in Administrative Segregation within the preceding 12 months.

Standard 115.71 Criminal and administrative agency investigations

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: PREA Plan, AD-16.20, AD-02.15, OIG OPM-3.72, BP-01.07, State of Texas Records Retention Schedule.

Standard [115.71(a)] requires that TDCJ-Duncan Unit have a policy related to criminal and administrative agency investigations. AD-PREA Audit Report

16.20 (Administrative Directive) is the parent policy which describes the broad investigative authority and responsibility of the Office of the Investigator General (OIG). Several subordinate policies:

- OIG OPM-04.05 (Offender Sexual Assault Investigations): describes the mechanics of the actual investigation, collection and preservation of forensic data [115.71(c)], and cooperation with outside agencies [115.71(l)].
- OIG OPM-02.15 (Training Procedures): describes the training and skill sets required of OIG investigators [115.71(b)(c)].
- OIG OPM-05.15 (Statements & Confessions): describes the proper use of Miranda and Garrity Warnings.

Determination of whether to pursue prosecution is solely at the discretion and authority of the OIG upon review of all investigation material and interviews of witnesses, victim and abuser. [115.71(h)]. As per OIG OPM-04.05, investigations and/or prosecution will continue after the termination or departure of the alleged abuser [115.71(j)].

The Records Retention Schedule states that *criminal investigation case* files are permanent and administrative case evidence is retained until the case is closed, terminated, completed, expired or settled *plus* seven years [115.71(i)].

Standard 115.72 Evidentiary standard for administrative investigations

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: PREA Plan P: 28, SPPOM-05.05 P: 9-10, CTSD Special Investigator Training P: 6.

The CTSD Training manual describes standards for using evidence in establishing whether allegations of sexual abuse are substantiated. During the auditor’s interview with the Duncan OIG investigator, he described that cases are referred to the main OIG office in Huntsville for determination on the requirement for forensic data gathering, and the outcome of that investigation. OIG communicates directly with the Inmate on the outcome of the investigation. As per the excerpt below (from agency SPPOM-05.05), the agency imposes no standard higher than the preponderance of the evidence in determining whether allegations of sexual abuse or harassment are substantiated [115.72(a)].

“Section XII: Committee Review and Recommendation

1. Based on the Preponderance of evidence contained in the report, the UCC determined the allegations of this investigation to be: The committee shall review the totality of the investigation including facts, evidence, and any other pertinent information to determine whether the allegations (incident being investigated) are substantiated, unsubstantiated, or unfounded as defined below. The determinations to substantiate, unsubstantiated, or unfound shall **NOT** be confused with determining whether the victim requires protective action. Justification for protective action is described in 2 and 3 of this section. In the event multiple allegations are addressed in a single OPI, select the appropriate investigative outcome for each allegation. For example, threat of violence may be substantiated while sexual abuse is unsubstantiated.”

Standard 115.73 Reporting to inmates

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)

- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: PREA Plan P: 30, SPPOM-05.05 Attachment J P: 5, SPPOM-05.05 Attachment M, SPPOM-05.11 Attachment F P: 6

Following an investigation into an inmate’s allegation of sexual abuse, the Office of the Inspector General (OIG) meets with the inmate and presents the result of the investigation: substantiated, unsubstantiated or unfounded [115.73(a)]. All results of the investigation including termination or transfer of a staff member, indictment or conviction of a staff member are conveyed to the inmate victim directly by the OIG [115.73(c)]. All results of the investigation including indictment or conviction of the inmate abuser are conveyed to the inmate victim directly by the OIG [115.73(d)(1),(2)]. In all cases the inmate signs for receipt of the completed investigation [115.73(e)].

A single sample report notification was reviewed dated: 12/19/2014. The Duncan Unit reports that there was one internal investigation of sexual abuse in the preceding 12 months prior to the audit. This was a local facility investigation that did not require forwarding to the OIG. Results of the investigation were reported to the inmate by the classification committee.

Standard 115.76 Disciplinary sanctions for staff

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: PD-13 P: 1, 3-5, PD-22 P: 1,41-42, 48, Addendum P: 5, PD-29 Addendum P: 5

From Policy PD-22 (excerpt below)

“Sexual Misconduct with Offender - Violation Level 1:

An employee is prohibited from acts of sexual misconduct with: (1) any incarcerated offender; or (2) any offender under the supervision of the TDCJ who is not the employee’s spouse.

Acts of sexual abuse and harassment are described in PD-29, “Sexual Misconduct with Offenders.”

The Policy states that for “Violation Level 1” the recommended outcome is termination [115.76(a),(b)]. Additionally, Policy PD-29(excerpt below) makes sexual abuse of an inmate a felony offense and all such violations are reported to law enforcement agencies or profession boards of licensure [115.76(d)].

DISCUSSION, SECTION II, FELONY OFFENSES:

AN EMPLOYEE OR OTHER INDIVIDUAL COMMITS A FELONY OFFENSE

IF THE PERSON ENGAGES IN THE BEHAVIOR SPECIFIED IN TEXAS

PENAL CODE § 39.04.

The Duncan Unit reports no instances of staff termination or discipline for sexual abuse within the preceding 12 months.

Standard 115.77 Corrective action for contractors and volunteers

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: Volunteer Service Plan P: 11-13, 23, Acknowledgement of Volunteer Training Orientation, 2014 Volunteer Services Training Video Script P: 21-24, PD-29 P: 5-6, Safe Prisons PREA Plan P: 39

As per Policy PD-29(except below) contractor and volunteer staff who in engage in sexual misconduct are prohibited from continuing service [115.77(b)]:

“B. Other Individuals

Other individuals who commit an act of sexual misconduct with an offender shall not be allowed to continue to perform services for the TDCJ and shall be denied access to TDCJ premises.”

Further as per the Volunteer Training Orientation,

“The TDCJ has a zero tolerance policy for sexual misconduct. Individuals who violate the rights of an offender or engage in sexual misconduct will be referred for prosecution. A volunteer with knowledge of any misconduct, either by personal detection or being confided in by an offender, shall be required to report the misconduct immediately. It is a felony offense if a volunteer violates the rights of a person in custody or engages in sexual contact, sexual intercourse, or deviant sexual intercourse with a person in custody.” [115.77(a)], and

“Z. The TDCJ has zero tolerance for sexual misconduct, as defined in PD-29, “Sexual Misconduct with Offenders.” Volunteers are prohibited from establishing or continuing in personal relationships with offenders, including engaging in, or attempting to engage in, any form of consensual sexual misconduct with offenders, including forcing or attempting to force offenders to participate in non-consensual sexual misconduct. It is a felony offense if anyone, including a volunteer, at a TDCJ facility violates the rights of a person in custody or engages in sexual contact or sexual intercourse with a person in custody. Volunteers who violate the policy shall not be allowed to continue to perform services for the agency and may be subject to criminal prosecution.” [115.77(a)]

Duncan Unit reports no instances of contractor staff or volunteer removal, or reporting to licensure boards within the preceding 12 months; and no instances where contractor staff or volunteers were referred for criminal prosecution within the preceding 12 months.

Standard 115.78 Disciplinary sanctions for inmates

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion

must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: PREA Plan P: 30, GR-106 P: 18-21, 26, Attachment A-2, Email of New Offense 20.4

Agency procedure GR-106 (47 pages) describes in detail the disciplinary process and sanctions for inmate-on-inmate sexual abuse [115.78(a)], and provides for graded sanctions commensurate with the nature of the abuse committed [115.78(b), (e), (g)]. Reports filed in good faith are not considered 'false reporting' even if the findings do not substantiate the allegation [115.78(f)].

The Duncan Unit disciplinary process takes into account any mental illness or disability in determining disciplinary sanctions as per policy GR-106 (excerpt below): [115.78(c)]

"V. Special Procedures for Certain Categories of Offenders

A. Special considerations are required for offenders charged with or suspected of a disciplinary infraction who are developmentally disabled or psychiatric patients. The applicable procedures are specified in the Mentally Retarded Offender Plan and the Correctional Managed Health Care Manual of Policies and Procedures. These procedures shall be followed when dealing with developmentally disabled offenders or psychiatric patients."

The Duncan Unit offers therapy and counseling [115.78(d)] locally through its mental health providers (UTMB) who start with the intake assessment but may offer counseling at any point of an inmate's incarceration. During the auditor's interview with the medical staff, it was verified that this counseling is available upon request.

More formal treatment for risk determination is available (SOTP-18 and SOTP-9 excerpt below):

"Texas Department of Criminal Justice (TDCJ) Rehabilitation Tier of Programs.

The purpose of these programs is to provide need-specific rehabilitative interventions designed to limit an offender's risk to re-offend. These programs are designed to address the needs of sex offenders who pose varying risks reoffend upon their release from the TDCJ."

Note that *Sexual Fondling* was added as a State-wide change in May 2014 as a new disciplinary category.

The agency prohibits all sexual activity between inmates however such acts are not considered abusive if the sexual activity was not coerced [115.78(g)].

During the on-site visit, the auditor reviewed the application of the procedures and reviewed the difference between inmate-on-inmate abuses versus those instance involving staff members. Officer Staff were familiar with, and able to articulate the inmate disciplinary process. During the preceding 12 months the Duncan Unit reports there were no instances of reporting or disciplinary action taken with regard to disciplinary sanction for inmates.

Standard 115.81 Medical and mental health screenings; history of sexual abuse

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: PREA Plan P: 17, SPPOM-03.01 Attachment E, CMHC E-35.1 P: 1, CMHC E-35.2 P: 1, CMHC G-57.1 P:1-2

During the auditor’s on-site interview with the medical director and director of nursing, all elements of the mental health assessment, assessment for risks of victimization, and history taking for prior sexual victimization were reviewed. Two inmate medical records, with names redacted were submitted for review. These were electronic records produced by the electronic health records system used agency-wide. Additionally a number of completed *Mental Health Appraisals for Incoming Offenders* were reviewed to verify that all inmates who disclosed a prior history of sexual victimization were offered a follow-up within 14 days [115.81(a), (c)]. As per policy CMHC E-35.1 (excerpt below):

“All incoming offenders admitted into the Texas Department of Criminal Justice (TDCJ) and all offenders returning from bench warrant after having been separated from TDCJ more than ninety (90) days will undergo an Intake Mental Health Appraisal by appropriately trained personnel. The qualified mental health professional (QMHP) will complete the Mental Health appraisal process within 14 days of admission to an intake facility. Offenders identified as having a history of mental health illness and/or treatment will be referred for a mental health evaluation.”

The Duncan facility reports, and the on-site audit substantiates that 100% of arriving inmates were interviewed by mental health clinicians and offered a follow-up visit where indicated by the PREA Standard.

Confidentiality and privacy of medical records [115.81(d)] are described in a series of policies:

- CMHC A-09.01 Privacy of Care
- CMHC E-35.2 Mental Health Evaluation
- CMHC H-61.1 Confidentiality and Release of Protected Health Information
- CPOM 02.05 Requirement to Contact Department of Family Protective Services
- CMHC I-70.1 Informed Consent,

and require that clinical staff obtain consent from the inmate prior to disclosing information on prior victimization to any non-clinical staff [115.81(e)].

Standard 115.82 Access to emergency medical and mental health services

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: CMHC A-01.1P: 1, CMHC G-57.1P: 1, SPPOM-05.01 P: 1-2.

Policy A-01.1 *Access to Health Care* states that there will be no unreasonable barriers to immediate health care [115.82(a)] and that medical determinations are made by appropriately licensed health care providers. All notes are contained within the electronic health records system except for the intake form. All paper records are retained as part of the health record. The EHR documents the timeliness of treatment [115.82(c)] however there are no additional free-standing documents that reflect service beyond the EHR. [Note that the use of an EHR allows for the use of queries and reports which can generate such logs as required]. Treatment services are provided without cost [115.82(d)].

During the preceding 12 months, the facility physician and Nurse Manager were unaware of any PREA-related emergencies. All medical services are available 24/7 on site and do not require security staff to take preliminary steps except in emergencies where security staff may be the first to respond [115.82(b)].

Standard 115.83 Ongoing medical and mental health care for sexual abuse victims and abusers

- Exceeds Standard (substantially exceeds requirement of standard)

- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: PREA Plan P:14, SPPOM-05.01 P: 1-2, 4, SPPOM-05.05 Attachment J P: 1, CMHC G-57.1 P: 1-2

All medical services are provided by an MOU with the University Of Texas Medical Branch (UTMB) and are available 24/7. Mental Health services requiring psychiatry support are provided by telemedicine however none of the inmates at Duncan are on psychotropic medications. Inmates with mental health problems requiring medication are transferred to the Sky View Facility in Rusk [115.83(a)]. All evaluation and treatment not provided on-site are transferred to other facilities for more specialized treatment [115.83(b)]. All services are provided by licensed professional health care staff who provide *community standard of care* and are subject to the same oversight required of professional Boards of practice [115.83(c)]. This would include clinical testing and laboratory support for sexually transmitted diseases when appropriate [115.83(f)]. As per policy CMHC G-57.1 treatment services related to sexual abuse are provided to the inmate at no cost regardless of whether the inmate cooperates with any investigation or not [115.83(g)].

Note that the Duncan Unit does not incarcerate female inmates [115.83(d)].

While on-site the auditor reviewed medical records and viewed services that were in progress at the time of the visit. The medical staff reported, and documentation reflects, that there were no inmate-on-inmate assaults within the preceding 12 months thus there was no documentation of a mental health examination having been performed within 60 days of discovery of the abuse history [115.83(h)]. However the requirement to provide an examination within 60 days is described in the PREA Plan (section: Ongoing Medical and Mental Health).

Standard 115.86 Sexual abuse incident reviews

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: PREA Plan P:14, SPPOM-05.01 P: 1-2, 4, SPPOM-05.05 Attachment J P: 1, CMHC G-57.1 P: 1-2

All medical services are provided by an MOU with the University Of Texas Medical Branch (UTMB) and are available 24/7. Mental Health services requiring psychiatry support are provided by telemedicine however none of the inmates at Duncan are on psychotropic medications. Inmates with mental health problems requiring medication are transferred to the Sky View Facility in Rusk [115.83(a)]. All evaluation and treatment not provided on-site are transferred to other facilities for more specialized treatment [115.83(b)]. All services are provided by licensed professional health care staff who provide *community standard of care* and are subject to the same oversight required of professional Boards of practice [115.83(c)]. This would include clinical testing and laboratory support for sexually transmitted diseases when appropriate [115.83(f)]. As per policy CMHC G-57.1 treatment services related to sexual abuse are provided to the inmate at no cost regardless of whether the inmate cooperates with any investigation or not [115.83(g)].

Note that the Duncan Unit does not incarcerate female inmates [115.83(d)].

While on-site the auditor reviewed medical records and viewed services that were in progress at the time of the visit. The medical staff reported, and documentation reflects, that there were no inmate-on-inmate assaults within the preceding 12 months thus there was no documentation of a mental health examination having been performed within 60 days of discovery of the abuse history [115.83(h)]. However the requirement to provide an examination within 60 days is described in the PREA Plan (section: Ongoing Medical and Mental Health).

Standard 115.87 Data collection

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: BP-02.09 P: 3, AD-02.15 P: 1-12, OIG OPM-04.05 P: 5-6, PREA Plan P: 35, SPPOM-01.01- I.A.1, Survey of Sexual Violence, 2012, Unusual Incidents P: 1-12

The agency submits responses to the Federal Survey of Sexual Violence, and collects, at a minimum information necessary to complete the response. [115.87(a), (c)]. PREA Plan pages: 2-5 provides the definition and data set to be collected from each prison facility.

Policy AD-02.15 describes the collection and aggregation of data required for statistical analysis [115.87 (b),(d)] (excerpt below):

“The Emergency Action Center (EAC) is responsible for receiving all reports of serious or unusual incidents, notifying appropriate entities and administrative staff of serious or unusual incidents, maintaining custody of all records relating to serious or unusual incidents, preparing monthly audit reports, and providing Executive Services with the information required to publish statistical reports. Reported information shall be made available to TDCJ administration to ensure availability of the necessary information to make critical decisions that affect the safety and security of the public and all divisions of the TDCJ.”

During the on-site visit the auditor reviewed samples of the aggregated data and discussed its use with the Warden and other members of the executive staff. The agency has provided annual data to the Department of Justice for each year in which it was requested [115.87 (f)]. Note that the Duncan Unit does not contract for the confinement of its inmates [115.87 (e)].

Standard 115.88 Data review for corrective action

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor’s analysis and reasoning, and the auditor’s conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ - Duncan References: None

All data related to PREA is collected by the Office of the Ombudsman, and it is this Office that is responsible for the dissemination of information to the public and other State agencies. [115.88(c)]. As per the mission statement of the Ombudsman's Office:

"The mission of the PREA ombudsman is to serve as an independent office to monitor or conduct administrative investigations of allegations of sexual assault, sexual contact, and staff sexual misconduct, as well as provide a point of contact for the public, elected officials, and offenders who have complaints or inquiries regarding allegations of sexual assault, sexual contact, staff sexual misconduct, or initiatives related to the PREA."

The Duncan Unit prepares its own annual report which is submitted to the Ombudsman's Office to create an agency report. During interviews of the Duncan executive staff, the auditor was informed that the facility (Duncan) did utilize the information to:

1. Identify problem areas [115.88(a-1)],
2. Take action on an ongoing basis [115.88(a-2)], and
3. Use the information locally at the Duncan Unit as well as for the agency as a whole [115.88(a-3)].

The auditor accessed the agency's Office of the Ombudsman at: http://www.tdcj.state.tx.us/tbcj/tbcj_prea.html and was able to review annual PREA reports as well as many reports and publications [115.88(c)].

Standard 115.89 Data storage, publication, and destruction

- Exceeds Standard (substantially exceeds requirement of standard)
- Meets Standard (substantial compliance; complies in all material ways with the standard for the relevant review period)
- Does Not Meet Standard (requires corrective action)

Auditor discussion, including the evidence relied upon in making the compliance or non-compliance determination, the auditor's analysis and reasoning, and the auditor's conclusions. This discussion must also include corrective action recommendations where the facility does not meet standard. These recommendations must be included in the Final Report, accompanied by information on specific corrective actions taken by the facility.

TDCJ – Duncan References: TDCJ Record Retention Schedule, Annual report.

Data that are maintained locally by the Duncan Unit are kept in a private office under lock and key [115.89(a)]. Although the auditor was not able to demonstrate this, it is assumed that data that are maintained on electronic data servers (as much of the information is) are maintained in a secure fashion [115.89(a)]. The auditor did not inquire about encryption procedures of electronic data however this will become of increasing importance for future audits.

The auditor viewed the agency's web site and its many references, reports and other publications. There were no instances where personal identifiers were left in the record [115.89(b),(c)].

The 32 page manual on record retention is certified by the Records Management of the Texas State Library. Multiple sections direct the retention of records relevant to PREA.

AUDITOR CERTIFICATION

I certify that:

- The contents of this report are accurate to the best of my knowledge.
- No conflict of interest exists with respect to my ability to conduct an audit of the agency under review, and

- I have not included in the final report any personally identifiable information (PII) about any inmate or staff member, except where the names of administrative personnel are specifically requested in the report template.

Ralph P. Woodward

March 24, 2016

Auditor Signature

Date