

# **TEXAS DEPARTMENT OF CRIMINAL JUSTICE**

## **Safe Prisons Program Fiscal Year 2010**



**Prepared By**

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# Safe Prisons Program

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## **SAFE PRISONS PROGRAM**

### **Correctional Institutions Division**

The Texas Department of Criminal Justice (TDCJ) operates a Safe Prisons Program for the purpose of preventing and limiting offender-on-offender sexual assaults, physical assaults, and extortion. The TDCJ strives to maintain the safety and security of all offenders incarcerated within the agency.

The components of the Safe Prisons Program are as follows:

#### **I. Education of Correctional Officers and staff about the importance of preventing sexual assault, extortion and offender physical assault.**

The education of correctional officers and staff on the importance of preventing sexual assaults, extortion and offender physical assaults is one of the primary objectives of the Safe Prisons Program. A key component of the objective is the reliable transmittal of information from the Safe Prisons Program Management Office to the facility staff. To accomplish this objective notices to staff are routinely distributed at agency meetings regarding the Safe Prisons Program and the TDCJ's policy regarding offender protection issues.

Sexual assault awareness posters (in both Spanish and English) are posted in all facilities in areas readily accessible to staff as well as offenders. These posters are intended to raise awareness of the issue of sexual assault, provide direction regarding how to report allegations and emphasize the agency's "Zero-Tolerance" policy on sexual assaults within its correctional facilities. The agency requires facility administrators to display the posters in strategically located areas identifying an individual at the facility level, and at the agency headquarters, who the offender, staff and visitors can contact to report allegations of sexual assaults.

The Correctional Training and Staff Development (CTSD) Department provides practical and relevant training services to correctional officers and supervisors in order to prepare them to support and carry out the mission of the TDCJ. Newly hired correctional officers are required to participate in a pre-service academy, while veteran correctional officers and correctional supervisors are required to participate in an annual in-service training academy.

The CTSD conducted 123 Pre-service Academy classes for new cadets in Fiscal Year (FY) 2010, with 5,134 cadets completing the course. The course includes a four-hour curriculum that instructs officers on the Safe Prisons Program initiatives within the TDCJ, addressing topics such as Offender Sexual Assault, Offender Life Endangerment and Offender Extortion. In addition, students viewed the video "Safe Prisons in Texas". During this period, 1,015 correctional officer in-service academy classes were conducted with 25,608 veteran correctional officers completing the course. The classes included Conducting a Thorough Investigation, and the video "Safe Prisons in Texas".

The CTSD conducted 323 management level classes for correctional supervisors in F Y 2010, providing training for 6,798 participants. Specifically, 5,555 correctional supervisors completed the In-Service Supervisor Training; 578 correctional supervisors completed the Sergeant, Food Service and Laundry Manager Training Academy; 246 correctional supervisors completed the Sergeant, Food Service and Laundry Manager Retreat Training; 175 captains attended the Captains Advanced Preparedness Training; 123 majors attended the Advanced Management Training for Majors and 121 Assistant Wardens attended the Assistant Wardens Annual Training.

One of the goals of the training is to provide a comprehensive, but concise overview of the Safe Prisons Program and its initiatives. Topics of discussion include the prevention of extortion, the Prison Rape Elimination Act (PREA) and statistics regarding the time, location and custody of offenders likely to report an alleged sexual assault. In addition, statistics describing the physical characteristics of both the potential sexual assault victims and potential predators are presented to aid in the assignment of offenders. Specific strategies are discussed in order to enhance the identification, investigation, prosecution and prevention of sexual assault in prison.

The TDCJ completed the production of the video “Safe Prisons in Texas” in FY 2008, which re-enforces the agency’s “Zero Tolerance Policy” against sexual assaults, and illustrates the agency’s support of the Safe Prisons Program initiatives. The video was added to the CTSD training curriculum in FY 2009. In FY 2010, the video was presented to 36,297 staff during pre-service, supervisor and non-supervisor in-service classes.

The Safe Prisons Program Management Office (SPPMO) and regional coordinators conducted quarterly trainings for Unit Safe Prisons Program Coordinators (USPPC). The training provided staff with policy and procedure revisions on topics such as extortion prevention; investigative report writing; interviewing techniques and data collection.

The SPPMO developed a sexual assault/abuse pocket card for distribution to correctional staff in FY 2010. The pocket card documents the agency's Zero Tolerance Policy on sexual assaults; steps to take if a sexual assault occurs; definitions for the Safe Prisons Program, Sexual Abuse and the PREA. The pocket card also contains a list of sexual assault/abuse red flags that provide staff with cues regarding victim, predator, and staff behaviors and characteristics.

### **Safe Prisons Plan**

Prior to January 2005, several separate agency policies and procedures addressed protection of offenders. In January 2005, the *Safe Prisons Plan* was approved. The plan encompasses previous policies and procedures, as well as new processes that have evolved since the inception of the SPPMO, creating one cohesive strategy for providing staff and offender safety. The plan reflects the agency’s commitment to reduce incidents of extortion, protect offenders who are at increased risk of harm by others, take a proactive approach to prevent sexual abuse of offenders, address the needs of offenders who have been sexually assaulted, and make violators subject to criminal charges, civil liability and disciplinary action. The Safe Prisons Plan was revised in September 2005, and is currently beginning a third revision.

This plan sets forth the guidelines and procedures for investigating requests from offenders alleging increased risk of harm (e.g., sexual assault, extortion and physical assault) from other offenders. It also encompasses procedures to follow when a staff member is notified by other means (other than from the offender himself) that an offender's safety has been threatened. The policy provides different options for staff to take in order to protect an offender from harm and discusses when it is appropriate to use each option. The options include, but are not limited to:

- a. Verbal intervention between offenders who are having a conflict;
- b. Changes in the housing assignments of one or more offenders within their housing area or other housing area of the same custody level, as well as changes to an offender's work assignment or work-shift hours;
- c. Placement of aggressive/assaultive offenders in Administrative Segregation or review for a change of custody (e.g., due to major disciplinary offenses);
- d. Transfer to another unit;
- e. Assignment to safekeeping status;
- f. Assignment to Administrative Segregation – Protective Custody; or
- g. Recommendation for transfer pursuant to the Interstate Corrections Compact.

**II. Education of newly received offenders on the risks of sexual assault, as well as the prosecution process.**

Available in English and Spanish, the *Offender Orientation Handbook* includes information on offender sexual assaults (from both the perpetrator and victim perspective) as well as offender protection. The information is also provided during both the diagnostic intake process and the new unit of assignment orientation process.

**III. Use of offender characteristics common to offender sexual assault victims in making cell and job assignments.**

The following policies establish the use of offender characteristics in making cell and job assignments:

Administrative Directive (AD)-04.17, "Offender Housing Assignment Criteria and Procedures"

- ◆ "Housing assignments shall be made on the basis of an offender's total record and as required by the offender's current needs and circumstances, as reflected in the offender's unit/facility file, Health Summary for Classification form, the information contained in the offender's computerized classification record...and unit/facility record, in order to ensure that each offender receives appropriate and adequate safety, supervision and treatment."
- ◆ "The following are criteria relative to offenders' security characteristics which, in addition to custody designation, shall be considered in making housing assignments:

- a. Criminal history;
- b. Current offense (type and seriousness), sentence length and amount of time completed on sentence;
- c. The offender's age and number of prior adult incarcerations;
- d. Violent or passive tendencies;
- e. Criminal sophistication;
- f. Offender enemies;
- g. Homosexual (both active and passive) tendencies;
- h. Physical characteristics such as height and weight;
- i. Security threat group affiliation;
- j. Current institutional adjustment, as reflected in the offender's disciplinary record; and
- k. Special safety requirements."

AD-04.68, "Offenders Requiring Single-Cell Housing":

- ◆ "This policy outlines those categories of offenders who require a single-cell due to vulnerability, medical or mental health problems, mental retardation, or other reasons related to offender health, safety, or security, in accordance with state law and TDCJ plans and policies."
- ◆ "The following characteristics, and any other factors or characteristics that are indicative of a need for a single-cell due to vulnerability, shall be considered in making the discretionary determination to single-cell offenders in safekeeping:
  1. Sex-related problems as demonstrated by either in-prison or out-of-prison behavior (e.g., offender is homosexual and is fearful of living with other offenders).
  2. Weak offenders (e.g., offenders who are easily exploited due to age, size, developmental impairment, physical weakness, and other similar traits).
  3. Other characteristics (e.g., unit/facility of assignment [that is, an offender may require a single-cell on one unit/facility, but may be double-celled on another unit/facility]; custody level; an offender may require a single-cell in one safekeeping custody level but not in another; incompatibility with other offenders; offender request due to fear of enemies; offender is institutional or law enforcement informant; offender or relative is a former law enforcement officer; or other similar circumstances)."

AD-04.18 (rev. 5), "Offender Jobs: Assignments, Job Descriptions, Selection Criteria, Work Programs and Supervision"

- ◆ "The TDCJ shall provide work opportunities and establish offender job programs in accordance with state and federal law. Job assignments shall be based on rational and objective criteria and in such a manner as to ensure that the safety, security, treatment and rehabilitative needs of the offenders are met."

- ◆ The following security-related criteria shall be considered in making job assignments:
  - a. Custody;
  - b. Security precaution designators;
  - c. Criminal history, to include all prior adult incarcerations;
  - d. Current offense, length of sentence and time served on sentence;
  - e. Violent or passive tendencies;
  - f. Offender enemies;
  - g. Security Threat Group (STG) affiliation;
  - h. Current institutional adjustment, as reflected in the offender's disciplinary record; and
  - i. Special safety requirements.

#### **IV. Use of an offender's assault history in making cell assignments.**

The use of an offender's assault history in making cell assignments is set forth in the following policies:

##### AD-04.17, "Offender Housing Assignment Criteria and Procedures"

- ◆ "Unless there are specific mitigating circumstances, an offender shall not be assigned to dormitory housing at an ID unit, irrespective of his custody designation, if:
  1. The offender has been convicted within the previous 12 months of a disciplinary offense involving possession of a weapon; or
  2. The offender has been convicted within the previous 24 months of a disciplinary offense involving either assault with a weapon or aggressive (or assaultive) sexual misconduct; or
  3. The offender demonstrates a recent pattern of in-prison assaultive behavior."

##### Safe Prisons Plan:

- ◆ "Placement of Aggressive/Assaultive Offenders in Administrative Segregation or Change of Custody Due to Major Disciplinary Offenses.

A change of custody for the offender-aggressor in accordance with the *Disciplinary Rules and Procedures for Offenders* and *Classification Plan* is also an option. Instead of placing the more vulnerable offender in another housing area, this option removes the offender who has engaged in aggressive or assaultive behavior. Although a change in custody cannot be effected by unit/facility administration, it may be done by the Unit Classification Committee (UCC) without further approval unless it involves placing the aggressor in Administrative Segregation (maximum custody). Assignment of an offender to Administrative Segregation must be made in accordance with the *Administrative Segregation Plan*. Removing the aggressor not only protects the offender specifically found to be at risk, but other offenders in his

housing area as well. Additionally, placing the offender-aggressor in a more restrictive custody classification (G4, G5 or Administrative Segregation) will limit his opportunity to victimize other offenders and encourage him to modify his antagonistic behavior.”

## **V. Use of protective custody or safekeeping.**

Protective custody and safekeeping are two custodies that may be used to isolate an at-risk or vulnerable offender from a possible predatory offender. The totality of an offender’s circumstances must be considered. The greatest care must be taken to screen out offenders who are inappropriate for safekeeping, as the safety of the existing safekeeping population must also be considered. Conversely, an offender should not be denied safekeeping if he does not meet any of the factors below, but his circumstances are such that the offender clearly needs protection from other offenders.

Factors involved when considering an offender for protective custody or safekeeping include:

1. Any objective evidence discovered during an investigation which would indicate an offender is being extorted or victimized. Examples of objective evidence include visible physical injuries, medical reports, commissary account records, witness accounts and other similar evidence.
2. Offender’s physical size.
3. Mental/physical impairments.
4. Age/first time offender.
5. Sexual orientation (claims of homosexuality should be corroborated by permanent records, disciplinary reports or any other evidence to support homosexual activity).
6. Determination whether the problem is unit or geographic specific. If an offender’s alleged problem is confined to a specific individual, alternatives such as cell changes or unit transfer might well alleviate the situation.
7. Factors that would preclude an offender’s placement into safekeeping. For example, it would not be prudent to recommend safekeeping for an offender who has a felony conviction for sexual assault of another offender.
8. An offender’s previous history in safekeeping status on prior commitment.

Safekeeping offenders are primarily housed at the Michael Prototype units in order to isolate them according to the various custodies within the safekeeping status. All safekeeping offenders are housed in buildings that allow the offenders to be separated from the general population. This isolation makes it difficult for general population offenders to enter their housing areas. In addition, safekeeping offenders receive their recreation time and meals apart from the general population. Some safekeeping offenders are still being housed at the Estelle Unit for medical reasons and at the Daniel Unit and Boyd Unit.

Staff from the Classification and Records Department produces a Monthly Activity Report that tracks:



1. The number of requests for protective custody/safekeeping/transfers;
2. The number of offenders placed in protective custody/safekeeping/transfers;
3. The number of offenders denied protective custody/safekeeping/transfers;
4. The number of requests that include allegations of extortion, sexual assault and violence; and
5. The number of times an offender has signed a waiver stating that he no longer needed protection.

The *Classification Plan* sets forth the characteristics and boundaries of Protective Custody and Safekeeping, while the *Safe Prisons Plan* discusses the procedures to be used in assisting offenders who may need protection.

#### **VI. Use of surveillance cameras.**

As of September 1, 2010, there were 5,608 surveillance cameras on units across the state. Of these, 3,967 are in housing areas (mostly in dormitory areas and dormitory access control areas). In FY 2009, the TDCJ was appropriated \$10 million in order to purchase correctional security equipment, to include video surveillance systems for certain correctional facilities. Currently, the TDCJ has three projects in progress to install comprehensive surveillance systems at the Polunsky, Stiles and Darrington units. This equipment will not only enhance efforts to prevent contraband from entering TDCJ correctional facilities, it will increase offender and staff safety by substantially increasing the number of surveillance cameras on targeted maximum security institutions.

#### **VII. Education of Correctional Officers and staff on the care and protection for offenders who have been assaulted.**

- ◆ Staff are oriented on and required to be familiar with the *Safe Prisons Plan*. This policy sets forth the philosophy of the TDCJ regarding the duty to protect offenders. It also sets forth guidelines and procedures for investigating allegations of offender victimization and measures to prevent an offender from being victimized.
- ◆ A lesson plan entitled “Sexual Assault Offender Victim Representatives” is designed to develop appropriate skills in psychologists, sociologists, chaplains, social workers and case managers to provide counseling and other support services for an offender who has been a victim of a sexual assault. A total of 78 Offender Victim Representatives were trained during FY 2010. Offender Victim Representatives are identified by statute as Psychologists, Sociologists, Case Managers and Chaplains.
- ◆ The CTSD Department Pre-Service Program contains a Health and Wellness – Suicide Prevention Lesson that includes a 14-minute video entitled “Responding to Offender Suicides and Attempted Suicides” that details the responsibilities of staff in these critical situations. The TDCJ provided training on suicide prevention to 5,134 new cadets and 25,608 veteran correctional officers during pre-service and in-service academies in FY 2010. In addition, 5,555 correctional supervisors participated in suicide prevention training during in-service.

- ◆ Pamphlets placed in visiting areas in various prison units, state jails and private facilities include “Suicide Prevention – How You Can Help” to assist families in identifying risk factors for incarcerated loved ones who may be suicidal.
- ◆ Pocket cards containing suicide risk factors have been distributed to all TDCJ units. The pocket cards help alert staff to offenders who may exhibit signs or symptoms that put them at risk for suicide.

### **VIII. Tracking and reporting of alleged sexual assaults.**

Organizationally, the Director of the Correctional Institutions Division (CID) serves as the Safe Prisons Program coordinator. The SPPMO conducts statistical analysis of alleged sexual assaults; monitors each alleged incident to ensure agency compliance with current policies; identifies issues for further policy development; and facilitates training and awareness programs for staff and offenders.

Alleged sexual assaults and other serious/unusual incidents are reported to the Emergency Action Center (EAC). Initially, all incidents of alleged sexual assaults are reported to EAC, who forwards the reports to the SPPMO, the Office of Inspector General (OIG) and the PREA Ombudsman. After reviewing the allegations, the OOIG advises the TDCJ of those incidents that meet the elements of the Penal Code. In addition to reports received through EAC, the OIG receives reports through other sources. Information reported to OIG from other sources is not processed through EAC; however, it is reconciled monthly for statistical purposes. Alleged sexual assaults reported through EAC require an administrative review. An administrative review is a detailed report that is submitted by the warden through the appropriate regional director to the EAC. Any findings requiring recommendations or corrective action must have a follow-up within 90 days to the Deputy Director, CID – Prison and Jail Management.

Allegations of sexual assault are investigated by the OIG. If probable cause is established or if there is sufficient information to make a determination regarding the allegation, the formal criminal felony investigation is presented to the Special Prosecution Unit or the local district attorney for possible prosecution.

The Deputy Director, CID – Prison and Jail Management and the Deputy Director, CID – Management Operations reviews any administrative review regarding sexual assaults within TDCJ facilities. In addition, the PREA Ombudsman reviews the administrative reviews associated with allegations of sexual assaults.

Classification designators have been developed for electronic notification and tracking of sexual predators, potential sexual predators and potential sex victims on the mainframe. This designator will better enable the unit administration to identify offenders who are more likely to be sexual predators and victims.

## **IX. Other Initiatives**

- ◆ Subsequent to the creation of the SPPMO, the CID Director formed the Safe Prisons Program Council. This body was created to provide guidance to the SPPMO and to executive administrative staff on the issue of prison sexual assault. Individuals serving on the council are criminal justice professionals who possess a wide array of educational and professional backgrounds and expertise. Since its inception in November 2003, the council has adopted as their mission: “To establish and implement a zero tolerance standard on sexual assaults and predatory behavior by collecting, analyzing and disseminating information for evidence-based decisions; and by promoting and delivering training and education that contributes to positive change in institutional culture and safer prisons.”
- ◆ A Sexual Predator Database/Mainframe application helps in the process of identifying potential predators and victims on the facilities. The database is a collaborative effort between the SPPMO and the OIG, the law enforcement arm of the TDCJ. All allegations of sexual assault are referred to the OIG for investigation, those offenders identified as potential predators by the OIG are then identified by the Safe Prisons Program Manager on the TDCJ Mainframe System. This identification assists in decisions regarding housing or programmatic assignments both within the institutions and post-release. In FY 2010, the Mainframe application was expanded to include tracking of extortion predators and victims.
- ◆ The SPPMO conducts analysis of all alleged sexual assaults, including alleged sexual assaults which may or may not meet the elements of the penal code definition as determined by the OIG. This analysis identifies trends related to time of day allegations are more likely to be made, physical location, and custody classes with a higher rate of alleged sexual assault reports. This information is passed on to the units to enable them to make decisions related to their building schedules, physical plants and housing assignments.
- ◆ The SPPMO identifies trends related to the age, height and weight of both victims and predators. This information is passed on to the facilities to make staff aware of these physical characteristics when determining housing assignments.

Parole staff are trained to recognize that an offender may not report a sexual assault that occurred in prison until after release. A process has been established for reporting these allegations in order to initiate the necessary investigations and track alleged predators.

## **X. Protecting Inmates and Safeguarding Communities (PISC) Grant initiatives**

Since October 1, 2004, the TDCJ has received two one million dollar grant awards from the Office of Justice Programs to enhance the Safe Prisons Program through additional measures aimed at heightened awareness, prevention, detection, investigation and prosecution of sexual assaults. The second of these two awards expired on May 31, 2008.

As a part of the federal grant program, the TDCJ-CID met the dollar amount awards with a matching “in-kind” amount. These “in-kind” dollars are directed toward facility based operations of the Safe Prisons Program. 25 of the largest facilities, intake facilities, and facilities housing more aggressive or vulnerable offenders have been staffed with a designated Unit Safe Prisons Program Coordinator (USPPC). The USPPC is a multitasked position identified by the TDCJ to perform facility based initiatives identified through the SPPMO and the Safe Prisons Program Council. The USPPC is responsible for monitoring the Safe Prisons Program at the facility level and works directly for the facility administrator responsible for the safety and security of the unit. The USPPC is a collateral duty function on the remaining TDCJ facilities.

The PISC grants assisted the agency in implementing the following initiatives, which remain in effect:

1) *To reduce the number of in-cell offender-on-offender sexual assaults in high-risk areas by increasing the visibility into the cells and also by adding additional video surveillance equipment.*

The TDCJ manufactured and installed Lexan© Cell-Fronts in selected areas in order to enhance the ability of the central security officer to visually supervise offenders. The security officer has unlimited visual supervision of the cell fronts contained in each 24-cell section; however, the doors are currently constructed from a solid piece of steel with a small viewing window. This design limits the officer’s view of activities in the cell and increases the opportunities for in-cell sexual assaults. By modifying the cell front with the Lexan© that is reinforced by bars or expanded metal, the security officer is afforded increased visual surveillance of the offenders inside the cell. This enhancement allows staff the increased ability to detect assaults or suicide attempts and respond accordingly. TDCJ officials also plan to utilize data obtained from reported incidents to determine the most appropriate location to place additional digital video surveillance equipment. The combination of the Lexan© doors and more video surveillance equipment is expected to contribute to the prevention, detection and investigation of incidences of sexual assault.

216 cells were fitted with Lexan© cell-fronts and installed on ten of the Michael prototype facilities during FY 2006. The TDCJ purchased 270 video surveillance cameras as a result of the PISC grant. 135 video surveillance cameras were installed on five of the Michael prototype facilities in FY 2006 with an additional 135 video surveillance cameras installed on the remaining five Michael prototype facilities during FY 2007.

2) *To enhance sexual assault awareness for medical personnel and to improve medical examination services provided to offender sexual assault victims.*

All medical services are provided to offenders through the university medical school health care providers under contract through Correctional Managed Health Care . Medical services personnel oversee any medical examination and administration of a forensic collection kit performed in response to an allegation of sexual assault. Information obtained from the offender during the medical interview, evaluation and

examination are shared with OIG investigators. In order to enhance coordination of the medical process with security personnel, TDCJ officials hired a Sexual Assault Examination Coordinator who is a licensed registered nurse and a certified Sexual Assault Nurse Examiner. The Office of the Texas Attorney General's Sexual Assault Prevention and Crisis Services coordinates the certification training. The nurse is responsible for planning and implementing training for unit level nurses, mid-level practitioners (physician assistants and advanced practice nurses), and physicians. The training for clinical staff includes the proper techniques for performing the examinations, collecting samples, chain of custody procedures and testifying in court. The curriculum is specific to the gender of the offender assigned to each facility, and contains information relevant to the prison population, culture and setting. Health care administrative staff are included in general training topics. The coordinator is also responsible for providing liaison functions with non-health care departments in the TDCJ.

During Fiscal Year 2010, the Sexual Assault Examination Coordinator conducted 20 In-Service sessions on conducting medical examinations with 172 health professionals attending.

*3) To increase the knowledge level of the Special Prosecutors Unit (SPU) through special training on the management of sexual assault cases.*

There are many complex issues facing prosecutors charged with the responsibility of handling prison sexual assault cases. With heightened awareness of PREA 2003, more professional organizations are addressing the issue through specialized training and public forums. The SPPMO and the SPU meet regularly to discuss the availability of continued training and specific issues relevant to the prosecution of sexual assault cases.

*4) To provide resources to enhance the investigation process performed by OIG staff.*

TDCJ policy requires correctional staff to notify OIG staff immediately when an alleged sexual assault has been reported. Upon notification of an alleged sexual assault, OIG staff begins the investigation process through the collection of information obtained in one-on-one interviews with the victim and alleged perpetrator. OIG staff are responsible for determining the need for a sexual assault evidence collection exam to be performed by medical staff. The OIG investigator may consult with the onsite medical personnel regarding the necessity of such an exam. The location of the alleged sexual assault is secured and checked for any evidence that is also collected. Upon receipt of all investigative data, the OIG investigator reviews the information to assess whether it meets the elements of an offense.

Additionally, OIG investigators coordinate with security personnel to take measures to prevent offender on offender assaults through enhanced surveillance equipment and investigative tools. An additional staff member (grant-funded) was hired to manage the collection, maintenance, analysis and dissemination of data obtained during criminal investigation of alleged sexual assaults. In an effort to enhance the current investigative process, OIG investigators participate in training to enhance staff knowledge and skill level regarding evidence detection/collection, securing a crime scene and interviewing sexual assault victims. This training is intended to compliment training that is received by

the staff from the SPU. Similar to other groups participating in training, OIG investigators share lessons learned with correctional staff.

In FY 2008, the OIG completed the implementation of a Case Management System to assist in tracking and providing statistical information needed for sexual assault cases. In addition, the OIG provided training to OIG investigators so they could obtain certification as a Sexual Assault/Family Violence investigator.

*5) To increase offender knowledge of sexual assault prevention.*

The TDCJ has partnered with several community-based organizations to pilot an HIV offender peer education program. The program concept provides for offenders being trained as peer educators to share information to their counterparts on such topics as infectious diseases, sexually transmitted diseases and other health related topics. The program includes training offender peer educators; increasing the knowledge level of the peer educators and recipients of the training session; and expanding the number of topics addressed.

The agency initiated a similar peer education program as a component of the Safe Prisons Program. Officials partnered/contracted (grant-funded) with local community-based organizations to assist with the development of a curriculum, printing of attendant training materials, and to provide training (three hours) to peer educators. The curriculum entitled "Sexual Assault Awareness" was completed by the grant funded contractor in FY 2006, with approximately 250 offender peer educators from 35 prison facilities participating in the initial training.

The Sexual Assault Awareness Curriculum - Peer Education Program utilizes offender peer educators to discuss issues of prevention, reporting, and State and Federal laws pertaining to sexual abuse and sexual assault. This direct intervention helps change certain perceptions and attitudes among the offender population regarding prison sexual assault. Due to the success of this concept with other prison based initiatives, the TDCJ implemented the peer education program at units with the highest rates of reported sexual assaults. In FY 2010, 521 new offender peer educators were trained with a total of 1,416 peer educators system wide.

In FY 2010, peer educators conducted 3,081 Sexual Assault Awareness classes with 64,154 offender participants attending. The Sexual Assault Awareness curriculum is currently being provided in 86 correctional facilities. In addition, a Spanish Sexual Assault Awareness curriculum was developed and implemented to assist Spanish speaking offenders with limited English proficiency. In FY 2010, 125 Spanish Sexual Assault Awareness classes were conducted with 982 offender participants attending. In addition, the Sexual Assault Awareness class was incorporated into the Gang Renouncement and Disassociation (GRAD) process during Phase II of the program. In FY 2010, a total of 15 Sexual Assault Awareness classes were conducted during Phase II with 273 offender participants attending. A Peer Education Coordinator manages the peer education services and monitors performance of program operations. The Peer Education Coordinator works in collaboration with the agency's Health Services Division to update the curriculum as required.

The National Institute of Corrections (NIC) has produced a video toolkit for offenders titled "Speaking Up - Discussing Prison Sexual Assault." This video, provided in male, female, and Spanish versions is designed to assist facility staff in educating offenders on federal, state, and local sexual assault laws, policies and practices. In FY 2010, the TDCJ distributed Speaking Up video tool kits to all units, including privately operated facilities. The videos are utilized to enhance the Sexual Assault Awareness classes and provide additional training opportunities for incarcerated offenders.

*6) To create an Offender Sexual Assault Victim Services Component within the SPPMO to address the needs of offender sexual assault victims.*

The SPPMO has taken an active role in ensuring that appropriate services are provided to offender victims of sexual assaults. For example, the SPPMO collaborated with CTSD, Health Services Division and Victim Services Division to develop an approved training curriculum for Offender Victim Representatives who provide support and resources to offenders that are administered an Evidence Collection Kit due to an alleged sexual assault. The TDCJ continues to train additional staff to ensure adequate services are available at each of the agency's units to address the victim's needs. In FY 2010, Offender Victim Representative Training was provided for 78 new and veteran representatives.

*7) To enhance the offender orientation process by introducing a more formalized approach to advising offenders of prison life.*

Offenders processed for admissions into the TDCJ are provided with an Offender Orientation Handbook that is designed to inform them of prison life, agency policies and their roles and responsibilities. In FY 2010, the TDCJ conducted an enhanced offender orientation process at 14 major intake facilities that deliver a formal presentation on prison life. The ten-hour curriculum is comprised of two segments: a five-hour video segment illustrating general information documented in the Offender Orientation Handbook, and a five-hour peer education segment that includes the Sexual Assault Awareness curriculum and a comprehensive educational awareness program on health services topics. In addition, offenders receive the *Sexual Assault Awareness Brochure* containing information on sexual assault prevention, reporting and what steps to take if an assault occurs.

## **XI Prison Rape Elimination Act of 2003**

On September 4, 2003, President George W. Bush signed PREA into law (Public Law 108-79) to address the issue of sexual violence in prisons. Two key components of the act were the appointments of the National Prison Rape Elimination Commission (NPREC), and the Review Panel on Prison Rape.

The Commission or NPREC is a bipartisan panel created by Congress and charged with studying federal, state and local government policies and practices related to the prevention, detection, response and monitoring of sexual abuse in correction and detention facilities in the United States. Upon completion of the study, the Commission

will report its findings, conclusions and recommendations to the President, Congress, the US Attorney General and other federal and state officials.

The Commission conducted eight public hearings between June 2005 and December 2007. The purpose of the hearings was to gather documentation and listen to testimony of correctional professionals and offender advocacy groups to assist in the preparation of the report and the drafting of the standards. TDCJ administrators participated in three of the hearings; assisted the Commission in FY 2008 by providing documents utilized in preparing the standards, and submitted an agency response to the request for public comments on the draft of the PREA Standards. In addition, the Allred Unit in Iowa Park, Texas was chosen to participate in the Standards Implementation Needs Assessment (SINA) Project in June 2008, which provided unit staff the opportunity to speak directly with representatives drafting the PREA Standards to discuss the possible effects the implementation of the standards would have on correctional facilities.

The three member Review Panel on Prison Rape was created to conduct hearings on prison rape and to interview officials who oversee the three facilities with the highest incidence of prison rape and the two facilities with the lowest incidence of prison rape in prisons, jails, and community corrections facilities. The Bureau of Justice Statistics (BJS) conducted a National Inmate Survey (NIS) in the spring of 2007, which provided a special report to the Panel in December 2007 to assist in determining the facilities that will participate in the Panel hearings. The NIS is a self-administered survey that provides anonymity to respondents and encourages the reporting of victimization. The survey collects reports of sexual violence directly from the inmates, utilizing an Audio Computer-Assisted Self Interview (ACASI) process in which inmates interact with a computer-assisted questionnaire. 146 State and Federal prisons participated in the survey, with 15 of those facilities in Texas. As a consequence of the sampling error, the survey could not provide an exact ranking for all facilities as required under the PREA. However, the survey did provide the ability to statistically identify a small group of facilities with the highest rate of sexual victimization of 9.3% or greater. The report identified five correctional facilities in the State of Texas among the top ten facilities in the nation meeting this criterion.

The Panel conducted hearings in Washington, DC and Houston, Texas in the spring of 2008 with TDCJ administrators and unit officials from the five facilities in Texas participating in the hearing in Houston. The hearing included a visit to a local prison facility, and testimony from TDCJ administrators and employees. In addition, the TDCJ provided documentation on existing policies and procedures; information related to the reporting and processing of administrative and criminal investigations of allegations of sexual assault, and reports on grievances and disciplinary cases concerning sexual assaults alleged against offenders or staff.

The Panel published its findings and policy recommendations in its *Report On Rape In Federal And State Prisons In The U.S.* in August 2008. Several common characteristics of victims of inmate-on-inmate prison rape were identified, which may include one or more of the following:



- ◆ Physical attributes (height, weight);
- ◆ Smaller inmates housed with larger cellmates;
- ◆ Age of the victim in contrast to the assailant;
- ◆ Nature of the victims current offense;
- ◆ History of prior incarceration;
- ◆ Mental illness or physical limitations;
- ◆ Lack of gang affiliation or social support;
- ◆ Low self-confidence, or
- ◆ Vulnerability to extortion.

In addition, the Panel identified common characteristics of inmate sexual assault perpetrators. The study indicated:

- ◆ Larger inmates are more prone to assault smaller cellmates;
- ◆ Inmates that have a history of committing sexual offenses or engaging in sexual misconduct are at higher risk of committing sexual assaults;
- ◆ Inmates with a history of incarceration are more prone to engage in sexual assaults;
- ◆ Inmates with a history of engaging in violence are more prone to engage in sexual violence;
- ◆ Inmates that engage in extortion are more prone to engage in sexual assaults;
- ◆ Inmates' gang affiliation may determine if they are more prone to engage in sexual assaults, and
- ◆ Inmates exhibiting aggressive attitudes during the intake process are more prone to engage in sexual assaults.

The Panel concluded its report with recommendations to policymakers and correctional administrators based on information and testimonies obtained from the hearings. In June 2009, the Commission submitted their final report and recommendations for National PREA Standards to the US Attorney General, which are currently under review.

The proposed Standards titled “*Standards for the Prevention, Detection, Response, and Monitoring of Sexual Abuse in Adult Prisons and Jails*” are separated into five categories; 40 standard statements; an assessment checklist for each standard statement; and a discussion of each standard. The discussion provides explanation for the rationale of the standard and offers guidance for achieving compliance which provides commentary and guidance.

The following provides a summation of the proposed PREA Standard statements:

### ***1) Prevention and Response Planning***

#### **a. Prevention Planning (PP)**

- i. PP-1, *Zero tolerance of sexual abuse*: The agency has a written policy mandating zero tolerance toward all forms of sexual abuse

and enforces that policy by ensuring all of its facilities comply with the PREA standards.

- ii. PP-2, *Contracting with other entities for the confinement of inmates*: If public correctional agencies contract for the confinement of their inmates, they do so only with private agencies or other entities, including other government agencies, committed to eliminating sexual abuse in their facilities, as evidenced by their adoption of and compliance with the PREA standards.
- iii. PP-3, *Inmate supervision*: Security staff provides the inmate supervision necessary to protect inmates from sexual abuse.
- iv. PP-4, *Limits to cross-gender viewing and searches*: Except in the case of an emergency, the facility prohibits cross-gender strip and visual body cavity searches.
- v. PP-5, *Accommodating inmates with special needs*: The agency ensures that inmates who are limited English proficient (LEP), deaf or disabled are able to report sexual abuse to staff directly, through interpretive technology, or through non-inmate interpreters.
- vi. PP-6, *Hiring and promotion decisions*: The agency does not hire or promote anyone who has engaged in sexual abuse in an institutional setting or who has engaged in sexual activity in the community facilitated by force, the threat of force or coercion.
- vii. PP-7, *Assessment and use of monitoring technology*: The agency uses video monitoring systems and other cost-effective and appropriate technology to supplement its sexual abuse prevention, detection and response efforts.

b. Response Planning (RP)

- i. RP-1, *Evidence protocol and forensic medical exams*: The agency follows a uniform evidence protocol that maximizes the potential for obtaining usable physical evidence for administrative proceedings and criminal prosecutions (2004 U.S. Department of Justice’s Office on Violence Against Women publication “A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,”) Forensic medical exams are provided free of charge to the victim. The facility makes available a victim advocate to accompany the victim through the forensic medical exam process.
- ii. RP-2, *Agreements with outside public entities and community service providers*: The agency maintains or attempts to enter into a memoranda of understanding (MOU) or other agreement with an outside public entity or office that is able to receive and immediately forward inmate reports of sexual abuse to facility heads.

- iii. RP-3, *Agreements with outside law enforcement agencies*: If an agency does not have the legal authority to conduct criminal investigations or has elected to permit an outside agency to conduct criminal or administrative investigations of staff or inmates, the agency maintains or attempts to enter into a written MOU or other agreement specific to investigations of sexual abuse with the law enforcement agency responsible for conducting investigations.
- iv. RP-4, *Agreements with the prosecuting authority*: The agency maintains or attempts to enter into a written MOU or other agreement with the authority responsible for prosecuting violations of criminal law.

## 2) *Prevention*

### a. Training and Education (TR)

- i. TR-1, *Employee training*: The agency trains all employees to be able to fulfill their responsibilities under agency sexual abuse prevention, detection and response policies and procedures; the PREA standards; and relevant Federal, State and local law. The agency trains all employees to communicate effectively and professionally with all inmates. Additionally, the agency trains all employees on an inmate's right to be free from sexual abuse, the right of inmates and employees to be free from retaliation for reporting sexual abuse, the dynamics of sexual abuse in confinement and the common reactions of sexual abuse victims.
- ii. TR-2, *Volunteer and contract training*: The agency ensures that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse prevention, detection, and response policies and procedures; the PREA standards; and relevant Federal, State and local law.
- iii. TR-3, *Inmate education*: During the intake process, staff informs inmates of the agency's zero-tolerance policy regarding sexual abuse and how to report incidents or suspicions of sexual abuse.
- iv. TR-4, *Specialized training: Investigations*: In addition to the general training provided to all employees, the agency ensures that agency investigators conducting sexual abuse investigations have received comprehensive and up-to-date training in conducting such investigations in confinement settings.
- v. TR-5, *Specialized training: Medical and mental health care*: The agency ensures that all full- and part-time medical and mental health care practitioners working in its facilities have been trained in how to

detect and assess signs of sexual abuse, and that all medical practitioners are trained in how to preserve physical evidence of sexual abuse.

b. Screening for Risk of Sexual Victimization and Abusiveness (SC)

- i. SC-1, *Screening for risk of sexual victimization and abusiveness*: All inmates are screened during intake, during the initial classification process, and at all subsequent classification reviews to assess their risk of being sexually abused by other inmates or sexually abusive toward other inmates.
- ii. SC-2, *Use of screening information*: Employees use information from the risk screening to inform housing, bed, work, education and program assignments with the goal of keeping separate those inmates at high risk of being sexually victimized from those at high risk of being sexually abusive.

**3) Detection and Response**

a. Reporting (RE)

- i. RE-1, *Inmate reporting*: The facility provides multiple internal ways for inmates to report easily, privately and securely sexual abuse, retaliation by other inmates or staff for reporting sexual abuse, and staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse. The facility also provides at least one way for inmates to report the abuse to an outside public entity or office not affiliated with the agency that has agreed to receive reports and forward them to the facility head.
- ii. RE-2, *Exhaustion of administrative remedies*: Under agency policy, an inmate has exhausted his or her administrative remedies with regard to a claim of sexual abuse either (1) when the agency makes a final decision on the merits of the report of abuse (regardless of whether the report was made by the inmate, made by a third party, or forwarded from an outside official or office) or (2) when 90 days have passed since the report was made, whichever occurs sooner.
- iii. RE-3, *Inmate access to outside confidential support services*: In addition to providing on-site mental health care services, the facility provides inmates with access to outside victim advocates for emotional support services related to sexual abuse.
- iv. RE-4, *Third-party reporting*: The facility receives and investigates all third-party reports of sexual abuse and distributes publicly information on how to report sexual abuse on behalf of an inmate.

b. Official Response Following an Inmate Report (OR)

- i. OR-1, *Staff and facility head reporting duties*: All staff members are required to report immediately and according to agency policy any knowledge, suspicion or information they receive regarding an incident of sexual abuse that occurred in an institutional setting; retaliation against inmates or staff who reported abuse; and any staff neglect or violation of responsibilities that may have contributed to an incident of sexual abuse or retaliation.
- ii. OR-2, *Reporting to other confinement facilities*: When the facility receives an allegation that an inmate was sexually abused while confined at another facility, the head of the facility where the report was made notifies in writing the head of the facility where the alleged abuse occurred. The head of the facility where the alleged abuse occurred ensures the allegation is investigated.
- iii. OR-3, *Staff first responder duties*: Upon learning that an inmate was sexually abused within a time period that still allows for the collection of physical evidence, the first security staff member to respond to the report is required to (1) separate the alleged victim and abuser; (2) seal and preserve any crime scene(s); and (3) instruct the victim not to take any actions that could destroy physical evidence, including washing, brushing his or her teeth, changing his or her clothes, urinating, defecating, smoking, drinking or eating.
- iv. OR-4, *Coordinated response*: All actions taken in response to an incident of sexual abuse are coordinated among staff first responders, medical and mental health practitioners, investigators and facility leadership.
- v. OR-5, *Agency protection against retaliation*: The agency protects all inmates and staff who report sexual abuse or cooperate with sexual abuse investigations from retaliation by other inmates or staff.

c. Investigations (IN)

- i. IN-1, *Duty to investigate*: The facility investigates all allegations of sexual abuse, including third-party and anonymous reports, and notifies victims and/or other complainants in writing of investigation outcomes and any disciplinary or criminal sanctions, regardless of the source of the allegation.
- ii. IN-2, *Criminal and administrative agency investigations*: Agency investigations into allegations of sexual abuse are prompt, thorough, objective and conducted by investigators who have received special training in sexual abuse investigations.

- iii. IN-3, *Evidence standard for administrative investigations*: Allegations of sexual abuse are substantiated if supported by a preponderance of the evidence.
- d. Discipline (DI)
- i. DI-1, *Disciplinary sanctions for staff*: Staff is subject to disciplinary sanctions up to and including termination when staff has violated agency sexual abuse policies.
  - ii. DI-2, *Disciplinary sanctions for inmates*: Inmates are subject to disciplinary sanctions pursuant to a formal disciplinary process following an administrative ruling that the inmate engaged in inmate-on-inmate sexual abuse or following a criminal finding of guilt for inmate-on-inmate sexual abuse.
- e. Medical and Mental Health Care (MM)
- i. MM-1, *Medical and mental health screenings-history of sexual abuse*: Qualified medical or mental health practitioners ask inmates about prior sexual victimization and abusiveness during medical and mental health reception and intake screenings.
  - ii. MM-2, *Access to emergency medical and mental health services*: Victims of sexual abuse have timely, unimpeded access to emergency medical treatment and crisis intervention services, the nature and scope of which are determined by medical and mental health practitioners according to their professional judgment.
  - iii. MM-3, *Ongoing medical and mental health care for sexual abuse victims and abusers*: The facility provides ongoing medical and/or mental health evaluation and treatment to all known victims of sexual abuse. The evaluation and treatment of sexual abuse victims must include appropriate follow-up services, treatment plans and when necessary, referrals for continued care following their release from custody.

#### **4) Monitoring**

- a. Data Collection and Review (DC)
- i. DC-1, *Sexual abuse incident reviews*: The facility treats all instances of sexual abuse as critical incidents to be examined by a team of upper management officials, with input from line supervisors, investigators and medical/mental health practitioners.

- ii. DC-2, *Data collection*: The agency collects accurate, uniform data for every reported incident of sexual abuse using a standardized instrument and set of definitions.
- iii. DC-3, *Data review for corrective action*: The agency reviews, analyzes and uses all sexual abuse data, including incident-based and aggregated data, to assess and improve the effectiveness of its sexual abuse prevention, detection and response policies, practices and training.
- iv. DC-4, *Data storage, publication and destruction*: The agency ensures that the collected sexual abuse data are properly stored, securely retained and protected. The agency makes all aggregated sexual abuse data, from facilities under its direct control and those with which it contracts, readily available to the public at least annually through its website or, if it does not have one, through other means.

b. Audits (AU)

- i. AU-1, *Audits of standards*: The public agency ensures that all of its facilities, including contract facilities, are audited to measure compliance with the PREA standards. Audits must be conducted at least every three years by independent and qualified auditors.

In March 2010, the Department of Justice (DOJ) published an Advance Notice of Proposed Rulemaking (ANPRM) to solicit public input on the Commission's proposed national standards prior to publishing a final rule adopting the standards. The DOJ welcomed all comments, including comments addressing specific standards proposed by the Commission. In May 2010, the agency submitted its comments on 13 of the 40 standards. In addition, the DOJ specifically requested comments regarding three general questions. The agency's response to the DOJ's questions and the agency's response to the proposed national standards are provided in the appendices.

The BJS conducted its second round of National Inmate Surveys (NIS-2) between October 2008 and December 2009. (*First round of National Inmate Surveys is referenced on Page 17 of this report*). 167 state and federal prisons, 286 jails, and ten special confinement facilities operated by Immigration and Customs Enforcement, the U.S. Military, and correctional authorities in Indian country participated in the survey, with 19 of those facilities in Texas. The survey provided facility rankings with eight male prisons, two female prisons and six jails identified as "high rate" facilities based on the prevalence of inmate-on-inmate sexual victimization and four male prisons, two female prisons, and five jails identified as "high rate" based on the prevalence of staff sexual misconduct. The report, titled *Sexual Victimization in Prisons and Jails Reported by Inmates, 2008-09* which was made public in August 2010, identified three male correctional facilities in the State of Texas among the "high rate" of inmate-on-inmate sexual victimization and one male correctional facility with a "high rate" of staff sexual misconduct. Seven male prisons, four female prisons and nine jails were identified as "low rate" facilities based on a small percentage of inmates reporting any sexual victimization by another inmate or staff. Three

Texas correctional facilities were identified among the “low rate”, which included one male facility and two female facilities.



## **PREA OMBUDSMAN**

The 80<sup>th</sup> Texas Legislature passed legislation in 2007 establishing the appointment of an ombudsperson to the Texas Board of Criminal Justice (TBCJ). The primary purpose of the ombudsperson is to coordinate the agency's efforts to eliminate the occurrence of sexual assaults in correctional facilities. The primary responsibilities of the ombudsperson are to: (1) monitor agency policies for the prevention of sexual assaults in correctional facilities (2) oversee the administrative investigation of inmate complaints of sexual assaults (3) insure the impartial resolution of offender complaints of sexual assaults, and (4) collect statistics regarding all allegations of sexual assaults from correctional facilities in accordance with the established standards of the NPREC.

In FY 2008, the TBCJ and the TDCJ completed the process to establish the ombudsperson position, identified as the “Safe Prisons Ombudsman Liaison (SPOL)” in the previous report. The title was changed to “PREA Ombudsman” in 2009 to minimize confusion of the position being affiliated with the TDCJ Safe Prisons Program.

### **Monitoring Agency Policies**

In FY 2010, the PREA Ombudsman reviewed TDCJ policies related to the prevention, reporting and investigation of sexual assaults in correctional facilities to ensure the duties and responsibilities of the PREA Ombudsman are reflected within the policies. The PREA Ombudsman was included in the Executive Services Policy Review process, which submits agency policies to administrators for review and comments before adoption. Being a part of the review process enables the PREA Ombudsman to provide responses to policies that may impact the duties and responsibilities of the PREA Ombudsman, and assess the impact the proposed PREA Standards may have on the current policies and procedures. In 2010, The PREA Ombudsman drafted policies to develop procedures, to include checklists that will enable the PREA Ombudsman to monitor compliance of the processing of allegations of sexual assaults with agency policies and PREA Standards, and researching best practices in the areas of sexual assault prevention, reporting, investigation and education. Most of the research involves reviewing best practices identified by the BJS and the NIC; attending conferences that provide the opportunity to network with correctional professionals involved with issues related to sexual assaults in prison, and sharing information with other correctional professionals across the United States. Best practices identified by the PREA Ombudsman will be shared with the director of the TDCJ – CID for consideration and possible implementation.

### **Oversight of Administrative Investigations**

In FY 2010, the PREA Ombudsman monitored the administrative investigations of allegations of offender-on-offender sexual assaults. Allegations of sexual assaults are reported to EAC within three hours of the allegation being reported to facility staff. Once the EAC receives the incident report, the report is forwarded to the PREA Ombudsman office for review. Upon completion of the investigation, the facility administrator completes an Administrative Review detailing information specific to the incident. The PREA Ombudsman implemented office procedures enabling the PREA Ombudsman to monitor the Administrative Reviews associated with allegations of sexual assaults to ensure compliance with agency policies. In FY 2010, the PREA

Ombudsman office reviewed 563 administrative investigations pertaining to allegations of offender-on-offender sexual assault.

### **Impartial Resolution of Complaints of Sexual Assaults**

The PREA Ombudsman processes complaints and inquiries from offenders incarcerated in TDCJ correctional facilities and the public concerning allegations of sexual assault. The PREA Ombudsman reports directly to the Chairman of the TBCJ, providing an external source where public inquiries can be processed and investigations conducted that are independent of the investigations conducted by TDCJ staff, ensuring an impartial resolution to those complaints. This process provides multiple avenues for oversight of allegations of sexual assaults to occur.

In FY 2010, the PREA Ombudsman office drafted agency policies for the documentation and response of inquiries received by the office. The process includes the use of the Ombudsman Case Tracking System (OCTS) to maintain and track inquiries and responses, and to generate various informational and statistical reports.

Anyone can report allegations of sexual assault to the PREA Ombudsman. However, 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. Offenders incarcerated in the TDCJ are encouraged to immediately report allegations of sexual assault to correctional staff on their current facility. However, offenders may report allegations of sexual assault to the PREA Ombudsman Office, the OIG, the SPPMO, or the CID - Ombudsman Office. In addition, offenders may report allegations of sexual assault through the grievance process. TDCJ employees are required to immediately report allegations of sexual assault to their supervisors.

Friends of offenders incarcerated in the TDCJ, family members and the general public are encouraged to report allegations of sexual assault to the PREA Ombudsman Office. Public inquiries concerning allegations of sexual assault received by the TBCJ and the TDCJ – Ombudsman Coordinator are referred to the PREA Ombudsman office for investigation and response. Inquiries pertaining to allegations of sexual assaults received by the PREA Ombudsman are reported immediately (same day received) to unit administration for investigation and appropriate administrative action. A thorough investigation is conducted and a comprehensive report is forwarded to the PREA Ombudsman office. Depending on the results of the investigation, the PREA Ombudsman office may elect to conduct a subsequent interview and investigation. In addition, all allegations of sexual assault are referred to the OIG for criminal investigation.

## Collection of Statistical Data

In FY 2010, the PREA Ombudsman assisted in the coordination of data requested by the BJS for the completion of the national Survey of Sexual Violence for 2009. In addition, the PREA Ombudsman coordinated with the TDCJ Executive Services Department, the SPPMO and the OIG to monitor the collection of data associated with sexual assaults in prisons to ensure accuracy of data utilized in reports to agency administrators and responses to public requests concerning PREA related statistics. The procedures include monthly reconciliation of the number of offender-on-offender allegations of sexual assault that are reported to EAC and the PREA Ombudsman and identifying those allegations that meet the elements of the Texas Penal Code for Sexual Assault (Texas Penal Code 22.011) and Aggravated Sexual Assault (Texas Penal Code 22.021) as determined by the OIG.

Initially, all allegations of sexual assault are reported to EAC and forwarded to the PREA Ombudsman office as an alleged sexual assault. However, upon reconciliation with OIG the incidents are divided into two categories for reporting purposes. Incidents that meet the Texas Penal Code 22.011 or 22.021, and OIG opens a criminal case, remain identified as an *Alleged Sexual Assault*. However, incidents that do not meet the Texas Penal Codes 22.011 and 22.021, and OIG does not open a criminal case, are identified as *Sexual Contact*. These categories are consistent with BJS definitions and are used to assist in the compilation of data to complete the national Survey of Sexual Violence each year.

During FY 2010, there were 563 allegations of offender-on-offender alleged sexual assaults reported to the PREA Ombudsman by the TDCJ. Only 226 (40.1%) of those allegations were identified by OIG as meeting the elements of the Texas Penal Code for Sexual Assault or Aggravated Sexual Assault, and subsequently categorized as an *Alleged Sexual Assault*. The remaining 337 allegations were categorized as the *Sexual Contact* of one offender by another. Regardless of the category, the TDCJ policy of “Zero Tolerance” on sexual assaults assures every allegation is thoroughly investigated and appropriate disciplinary actions taken should the allegations be substantiated.

All dispositions of investigations pertaining to an *Alleged Sexual Assault* or *Sexual Contact* are based on the preponderance of evidence collected during the investigation. The definitions of disposition outcomes are consistent with definitions utilized by the BJS. “Substantiated” means the event was investigated and determined to have occurred; “Unsubstantiated” means the evidence was insufficient to make the final determination if the incident occurred; “Unfounded” means the incident was determined not to have occurred and “Investigation Ongoing” means a final determination has not yet been made as to whether the incident occurred.

The disposition of the administrative investigations monitored by the PREA Ombudsman and statistical information submitted by correctional facilities are provided in the following paragraphs and tables.

### Offender-On-Offender Alleged Sexual Assault Statistics

The PREA Ombudsman reviewed 226 administrative investigations identified as Alleged Sexual Assaults. There were 20 correctional facilities where five or more allegations were reported to have occurred. These facilities accounted for 69% of the allegations reported occurring in TDCJ correctional facilities. There were 24 Alleged Sexual Assault cases that were reported on a different facility than the incident allegedly occurred on. 22 of the 226 incidents reported occurred on a female facility. Of the cases reviewed, eight cases were substantiated, 20 cases were unfounded and 198 cases were unsubstantiated. The substantiated cases resulted in seven cases where disciplinary penalties were administered; the unfounded cases resulted in 23 disciplinary penalties administered and seven of the unsubstantiated cases resulted in disciplinary penalties being administered. 40 of the allegations had no identified assailants; 172 allegations had one assailant and 14 allegations had multiple (two or more) assailants, resulting in a total of 433 participants. There were a total of 226 alleged victims and 207 alleged assailants reported.

The PREA Ombudsman monitors the number of convictions against assailants for the following disciplinary infractions: Sexual Misconduct, Sexual Fondling and Sexual Abuse. There were 15 assailants who received disciplinary cases for “Sexual Misconduct”, and six assailants received disciplinary cases for “Sexual Abuse”. No assailants received disciplinary cases for “Sexual Fondling” in this category.

Victims and assailants of Alleged Sexual Assaults are interviewed by the Unit Classification Committee (UCC), who makes specific recommendations based on the disposition of administrative investigations. The following UCC dispositions are based on the findings of the Alleged Sexual Assault investigations conducted by the unit administration.

<b>UCC Disposition</b>	<b>Assailant</b>	<b>Victim</b>
No Changes (Allegations Unfounded or Unsubstantiated)	116	101
Issued a Housing Change	62	57
Received a Unit Transfer	5	40
Placed in Safekeeping or Protective Custody	0	10
Released by the TDCJ Prior to Hearing	1	3
Other UCC Action	23	15

One of the challenges to conducting an administrative investigation of an Alleged Sexual Assault is the delay in reporting the incident from the time it occurred to the time it was reported. Consequently, offenders are informed through various media the importance of reporting allegations of sexual assault as soon as possible, especially within 96 hours (four days). However, only 115 of the 226 incidents (50.9%) were reported within four days; 60 were reported within five to 30 days; 21 were reported within 31 to 90 days. The remaining 30 incidents were either reported later than 90 days, or information obtained during the administrative investigation could not determine the approximate date of occurrence.

Another element of the administrative investigation is to determine the location the Alleged Sexual Assault occurred. The following table indicates general locations where victims claimed the Alleged Sexual Assaults occurred. The “Cellblock Housing Area” category includes general population cells, and single-cell housing areas. The “Other” category depicts locations where a single incident was reported for a given location, or where no location information was provided.

<b>General Location</b>	<b>Occurrences</b>	<b>Percent</b>
Cellblock Housing Area	160	70.8%
Shower or Restroom Area	19	8.4%
Dormitory Housing Area	17	7.5%
Other	11	4.9%
Offender Dayroom	10	4.4%
Dining Hall or Kitchen	5	2.2%
Recreation Yard or Gym Area	4	1.8%

Specific offender demographic information pertaining to the reports of allegations of sexual assault was reviewed. Of the 226 incidents reported, 49 of the victims were Black; 61 of the victims were Hispanic, one victim was Other and 115 of the victims were White. Conversely, 100 of the assailants were Black; 62 of the assailants were Hispanic and 45 of the assailants were White. The average age of the victim was 33 and the average age of the assailant was 35. However, there were 42 incidents (22.6%) where the alleged assailant was ten years or older than the alleged victim. The average height of the victim and the assailant was 5' 8". There were nine incidents (4.8%) where the alleged assailant was at least six inches taller than the alleged victim. The average weight of the alleged victim was 174 pounds and the average weight of the alleged assailant was 185 pounds. There were 39 incidents (21.0%) where the alleged assailant was at least 40 pounds heavier than the alleged victim.

Lastly, the PREA Ombudsman monitored the prevalence of Alleged Sexual Assaults occurring on correctional facilities to determine those facilities that increased from the previous year. In FY 2010, there were 44 facilities that had an increase of reports of sexual assaults occurring on the facility. While the majority of the facilities experienced a minimal increase, there were seven facilities that had five or more allegations reported than in FY 2009.

*Offender-On-Offender Sexual Contact Statistics*

The PREA Ombudsman reviewed 337 administrative investigations that are deemed as Sexual Contact. There were eight correctional facilities where ten or more allegations were reported to have occurred. These facilities accounted for 46.6% of the allegations reported occurring in TDCJ correctional facilities. There were 42 Sexual Contact cases that were reported on a different facility than the incident allegedly occurred on. 102 of the 337 incidents occurred on a female facility. Of the cases reviewed, eight cases were substantiated, 37 cases were unfounded and 292 cases were unsubstantiated. The substantiated cases resulted in seven cases where disciplinary penalties were administered; the unfounded cases resulted in 25 disciplinary penalties administered and there were no unsubstantiated cases resulting in disciplinary penalties being administered. Lastly, 60 of the allegations had no identified assailants; 239 allegations had one assailant and 38 allegations had multiple (two or more) assailants, resulting in a total of 681 participants. There were a total of 337 alleged victims and 344 alleged assailants reported.

The PREA Ombudsman monitors the number of convictions against assailants for the following disciplinary infractions: Sexual Misconduct, Sexual Fondling and Sexual Abuse. There were five assailants who received disciplinary cases for “Sexual Misconduct”; three assailants received disciplinary cases for “Sexual Fondling” and two assailants received disciplinary cases for “Sexual Abuse”.

Victims and assailants of alleged Sexual Contact were interviewed by the UCC, which made specific recommendations based on the disposition of the administrative investigations. The following dispositions were based on the findings of the alleged Sexual Contact investigations conducted by the unit administration.

<b>UCC DISPOSITION</b>	<b>Assailant</b>	<b>Victim</b>
No Changes (Allegations Unfounded or Unsubstantiated)	256	196
Issued a Housing Change	75	82
Received a Unit Transfer	2	31
Placed in Safekeeping	0	6
Released by the TDCJ Prior to Hearing	0	1
Other UCC Action	11	21

Offenders are informed through various media the necessity for reporting allegations as soon as possible, especially within 96 hours (four days). However, only 155 of the 337 incidents (46%) were reported within four days; 91 were reported within five to 30 days; 29 were reported within 31 to 90 days; and 29 were reported after 90 days. Information obtained during the administrative investigation could not determine the exact date of occurrence of the remaining 33 incidents.

The following table indicates those general locations where victims claimed the alleged Sexual Contact occurred. The “Cellblock Housing Area” category includes general population cells and single-cell housing areas. The “Other” category identifies those locations where a single incident was reported for a given location or where no location information was provided.

<b>General Location</b>	<b>Occurrences</b>	<b>Percent</b>
Cellblock Housing Area	164	48.7%
Dormitory Housing Area	46	13.6%
Offender Dayroom	34	10.1%
Shower or Restroom Area	31	9.2%
Hallway or Walkway	22	6.5%
Recreation Yard or Gym Area	12	3.6%
Dining Hall or Kitchen	11	3.3%
Other	17	5.0%

Specific offender demographic information pertaining to the reports of allegations of Sexual Contact was reviewed. Of the 337 incidents reported, 148 of the victims were Black; 81 of the victims were Hispanic; one was Other and 107 of the victims were White. Conversely, 172 of the assailants were Black; 96 of the assailants were Hispanic, and 76 of the assailants were White. The average age of the victim was 34 and the average age of the assailant was 35. However, there were 56 incidents (20.2%) where the alleged assailant was ten years or older than the alleged victim. The average height of the victim and the assailant was 5' 7". There were 24 incidents (9%) where the alleged assailant was at least six inches taller than the alleged victim. The average weight of the alleged victim was 173 pounds and the average weight of the alleged assailant was 178 pounds. There were 52 incidents (18.8%) where the alleged assailant was at least 40 pounds heavier than the alleged victim.

## **OFFICE OF INSPECTOR GENERAL**

The OIG, in conjunction with the staff of the CID, medical personnel and the SPU, is focused on creating a safer environment for both offenders and TDCJ employees. The following programs and procedures are utilized:

1. Identification and protection of victims of sexual assault along with the identification and timely prosecution of sexual predators;
2. Continued training of investigative staff in the Sexual Assault Family Violence Investigator Course, a three-day training course. This course covered the dynamics of sexual assault, sexual assault laws and sexual assault investigative techniques;
3. Monthly briefings to the OIG deputy directors, operations commander, and the regional captains on all sexual assault investigations;
4. Meetings with medical administrative staff, as appropriate, to ensure timely and appropriate medical examinations continue to be provided to victims of sexual assaults as well as proper procedures for obtaining and preserving evidence are followed;
5. Meetings with prosecutorial entities, as appropriate, to ensure thorough report presentation and timely adjudication of sexual assault allegations. OIG investigators routinely request that the prosecutor allow them to personally present substantiated offenses to grand juries to ensure that grand jury members receive all facts of the investigation from an individual with full working knowledge of the incident. The personal presentation is also an attempt to humanize the victim to the grand jury and dispel myths regarding prison assaults and rapes; and
6. Meetings with correctional staff, as appropriate, to ensure the timely reporting of allegations of sexual assaults to the OIG, timely medical assistance to the victims and the preservation of evidence.

### **SEXUAL ASSAULT INVESTIGATIVE PROCESS:**

Following is an outline of the process of a sexual assault investigation:

1. An offender makes an allegation of sexual assault or aggravated sexual assault and unit officials notify an OIG Investigator, or the victim or other interested party reports a sexual assault allegation directly to the OIG.
2. An OIG investigator conducts a thorough investigation into the allegation. The offender victim is immediately offered a medical examination and a sexual assault examination (rape kit) is performed if it is determined that there is a possibility that evidence exists. The offender victim may request a representative who can be present during the forensic medical examination. During the interview, pertinent information relating to the alleged sexual assault, such as the date, time, circumstances and subject information is obtained and

documented. The subject information is then shared with security personnel to ensure the victim is isolated from the subject.

3. If a crime scene exists, the investigator conducts a thorough investigation of the scene in an effort to obtain evidence for use in the prosecution of the subject. All OIG investigators are licensed peace officers and have received continuing education and training in sexual assault investigations and evidence collection.
4. In the event DNA evidence is collected and a subject is identified, the investigator will obtain a search warrant to collect DNA evidence directly from the subject for comparison with samples obtained during the sexual assault examination and/or crime scene. All DNA evidence is then forwarded to a crime laboratory for analysis.
5. In the course of the investigation, witnesses, potential witnesses and subjects are identified and statements are obtained.
6. Upon completion of the investigation, if probable cause is established or if there is insufficient information to make a determination regarding the allegation, then the case is presented to a prosecutor with the District Attorney's Office or the SPU. The prosecutor will make the determination as to whether a case is accepted or declined for prosecution.
7. When a case is declined for prosecution the investigation is closed, but retained in file so if additional information is developed in support of the allegation the case can be re-opened.
8. When an investigation is accepted for prosecution the case enters the status of "Pending Grand Jury Presentation," until a disposition is rendered by a Grand Jury.
9. After presentation of the case to a Grand Jury, the Grand Jury votes to either indict or no bill the subject. After this decision is rendered, the investigation is either closed or held pending the outcome of the judicial process.

#### SEXUAL ASSAULT CASE TRACKING:

Starting on September 1, 2001, the OIG has maintained a database of all TDCJ related sexual assault investigations. This database is able to formulate statistical information, which notifies OIG officials of previously entered subjects, witnesses or victims; thereby, quickly identifying and tracking potential victims, sexual predators and offenders who may use allegations of sexual assault to manipulate the prison system. Sharing this information with the Classification and Records Department assists with assessing risk and making appropriate housing assignments.

Additionally, the sexual assault database tracks violations of Improper Sexual Activity with a Person in Custody.



## STATUS OF SEXUAL ASSAULT INVESTIGATIONS:

During FY 2010, the OIG documented 286 sexual assault incidents that met one of the below State of Texas Penal Code definitions.

- ◆ Sexual assault allegations (Texas Penal Code 22.011)
- ◆ Attempted sexual assault allegations (Texas Penal Code 22.011A)
- ◆ Aggravated sexual assault allegations (Texas Penal Code 22.021)

### **Improper Sexual Activity with Persons in Custody:**

Additionally, during FY 2010, the OIG recorded 44 alleged incidents of Improper Sexual Activity with Persons in Custody, State of Texas Penal Code 39.04.

### **Reporting Delays:**

During FY 2010, 20 offenders made delayed sexual assault outcries greater than 365 days with the greatest being 2,629 days. Excluding the aforementioned 20 incidents, the average time for an offender to report a sexual assault was 27 days.

### **Investigative Dispositions:**

The following appendices provide status information and incident location on OIG Sexual Assault and Improper Sexual Activity with Persons in Custody investigations. “Active” investigations are still actively under investigation. “Inactivated” investigations are temporarily halted awaiting laboratory analysis of evidence or other impediments that cause the temporary investigative cessation. “Unfounded” means the investigation proved that the alleged incident did not occur or the alleged incident is physically impossible to have occurred.

# **Safe Prisons Program**

## **Appendices**

## Reconciliation of Alleged Sexual Assault Statistics

This report provides a comprehensive review of the prevalence of sexual assaults reported to the TDCJ. In doing so, several departments<sup>1</sup> have coordinated their efforts to ensure that an accurate reconciliation of the incidents reported occurs. This is significant given that this report encompasses the documentation of administrative investigations and criminal investigations simultaneously. Both of these investigative processes have unique characteristics, which require a systematic review to provide a thorough reconciliation of the data. The following paragraphs summarize the prevalence of the allegations of sexual assaults documented in this report, and the correlation between the administrative investigations and criminal investigations.

TDCJ policy requires that all offender-on-offender alleged sexual assaults reported on correctional facilities be reported to the TDCJ-EAC, who forwards the reports to the OIG, PREA Ombudsman and the Safe Prisons Program Management Office. An administrative investigation is completed on all allegations, regardless of the ability to substantiate the initial complaint. In addition, an OIG Investigator will conduct a criminal investigation to determine if the incident meets the elements of a felony penal code violation.

During FY 2010, there were 563 allegations of offender-on-offender alleged sexual assaults reported to EAC. Only 226 of those allegations were identified by the OIG as meeting the elements of the Texas Penal Code 22.011 (Sexual Assault) and 22.021 (Aggravated Sexual Assault). The remaining 337 allegations did not meet the elements of a felony penal code violation and were categorized as the *Sexual Contact* of one offender by another.<sup>2</sup>

In FY 2010, there were a total of 286 criminal cases opened by the OIG pertaining to allegations of sexual assault, attempted sexual assault or aggravated sexual assault<sup>3</sup>, which include the elements under Penal Code sections 22.011, 22.011(A), and 22.021, respectively.

Of the 286 cases opened involving alleged violations of Penal Code Chapter 22, there were 277 criminal cases specific to sexual assault (Penal Code 22.011 and 22.021).

Of the 277 cases specific to sexual assault, 244 of the cases were identified as an offender-on-offender sexual assault; the remaining 33 cases included employee-on-offender sexual assaults.

Of the 244 cases identified as an offender-on-offender sexual assault ten cases were received by the OIG from external sources and were not processed through EAC, and eight were multiple cases opened on single incidents,. The remaining 226 cases were processed through EAC and forwarded to the OIG for review, as noted above.

In FY 2010, there were 44 criminal cases opened by the OIG pertaining to allegations of improper sexual activity with persons in custody (Penal Code 39.04).

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<sup>1</sup> Offices involved in reconciling Allegations of Sexual Assault for this report include the Office of Inspector General; TDCJ Executive Services; TDCJ Safe Prisons Program Management Office, and the PREA Ombudsman.

<sup>2</sup> Statistics on administrative investigations are included in the PREA Ombudsman section of this report.

<sup>3</sup> These totals are depicted in the appendices *Reported Sexual Assault Violations by Penal Code Section*.



## Texas Department of Criminal Justice

Brad Livingston  
Executive Director

May 4, 2010

Mr. Robert Hinchman, Senior Counsel  
Office of Legal Policy  
United States Department of Justice  
950 Pennsylvania Ave NW, Room 4252  
Washington, DC 20530-0001

Re: Docket No. OAG-131

Dear Mr. Hinchman:

On behalf of the Texas Department of Criminal Justice (TDCJ), I am writing in response to U.S. Attorney General Eric Holder's request to submit public input on the Commission's proposed national standards. Comments on specific standards are enclosed. Comments on the three general questions are as follows:

1. The Commission's proposed standards are intended to prevent, detect, and respond to "sexual abuse," which is defined in the glossary that precedes each checklist. PREA directed the department to publish a final rule adopting national standards for the detection, prevention, reduction, and punishment of prison "rape," which is defined in section 10 of Public Law 108-79 (42 U.S.C. 15609(9)). What would be the implications of referring to one term as opposed to the other in the Department's consideration of the Commission's proposed national standards?

*Agency Comment: The TDCJ recommends the use of the term "rape" rather than "sexual abuse." The intent of Public Law 108-79 is to enhance the detection, prevention, reduction, and punishment of prison rape. "Rape" is clearly defined in the Public Law as (a) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person, forcibly or against that person's will; (b) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a person not forcibly or against the person's will, where the victim is incapable of giving consent because of his or her youth or his or her temporary or permanent mental or physical incapacity; or (c) the carnal knowledge, oral sodomy, sexual assault with an object, or sexual fondling of a*

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*person achieved through the exploitation of the fear or threat of physical violence or bodily injury. Other states use various definitions for the crime of "rape", such as sexual assault in Texas and criminal sexual penetration in New Mexico; however, the definitions encompass the various forms of penetration as the definition of "rape" in the Public Law.*

*"Sexual abuse" has a much broader definition as written in the national standards that encompass sexual harassment and other listed forms of sexual behaviors that do not involve physical contact. To my knowledge there are no instances where the term "sexual abuse" is written in the Public Law; the law refers to rape and fondling. Each standard, as currently written, documents the term "sexual abuse." This causes confusion in that every instance of sexual abuse, whether it is sexually abusive contact or sexual harassment, must be treated with the same level of priority. For example: Standard MM-3 is written; the facility provides ongoing medical and/or mental health evaluation and treatment to all known victims of "sexual abuse". The standard does not differentiate which form of "sexual abuse." It would appear to mean that all offenders with allegations of verbal harassment shall be provided with ongoing medical and/or mental health evaluation, as it is encompassed in the definition of "sexual abuse". The TDCJ does not condone any form of harassment and manages this type of behavior through the agency disciplinary process.*

*The use of the broad term "sexual abuse" should be carefully reviewed and "rape" be considered for use, as the law intended. TDCJ's comments to specific standards assume the standards will apply to rape, not sexual abuse.*

*Regarding the proposed standards applying to offenses committed in juvenile facilities, jails, lock-ups and community corrections facilities and other aspects of community corrections and parole, it should be noted the Commission's report cites the lack of research relating to community corrections. Before expanding these standards to community corrections, research should be conducted to determine the extent of rape in community corrections.*

2. PREA mandates that the Attorney General shall not establish a national standard "that would impose substantial additional costs compared to the costs presently expended by Federal, State and local prison authorities." Would any of the Commission's proposed standards impose "substantial additional costs"? How should any such standards be revised so as not to impose such costs?

**Agency Comment:** *Several of the Commission's standards will impose a substantial cost to the agency, state and local jurisdictions. In particular, the agency estimated the cost of complying with standard PP-7, Monitoring Technology to be \$98.0 million startup and \$5.5 million annually, and AU-1, Audits of Standards was estimated to be \$0.5 million annually. These cost estimates do not include the cost to local community*

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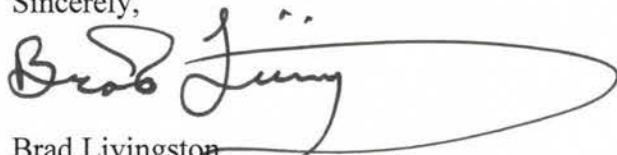
*supervision and corrections (probation) departments should the standards apply to community corrections as well.*

*Also note that costs, which may not be substantial to large organizations, could be significant to smaller entities such as local community supervision and corrections departments. Standards relating to training and education are among the standards which may have a greater fiscal impact on smaller organizations.*

3. Should the Department consider differentiating with any of the four categories of facilities for which the Commission proposed standards (i.e., adult prisons and jails; juvenile facilities; community corrections facilities; and lockups) with compliance requirements dependent on size, personnel or resource limitations, or any other factors:

**Agency Comment:** *Comments regarding the proposed standards for community corrections facilities and/or community corrections have been provided in our responses to Questions 1 and 2 above. It is recommended that before any standards are implemented regarding the prevention, detection or response to rape in community corrections, further research be conducted to determine the magnitude and extent of the problem.*

Sincerely,

A handwritten signature in black ink that reads "Brad Livingston". The signature is written in a cursive style with a large, sweeping loop at the end.

Brad Livingston  
Executive Director

Copy: Members, Texas Board of Criminal Justice

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*Our mission is to provide public safety, promote positive change in offender behavior, reintegrate offenders into society, and assist victims of crime.*

Texas Department of Criminal Justice  
Responses to PREA Standards

#	TITLE	STANDARD	AGENCY COMMENTS
<b>PP-4</b>	<b>Limits to cross-gender viewing and searches</b>	<p>Except in the case of emergency, the facility prohibits cross-gender strip and visual body cavity searches. Except in the case of emergency or other extraordinary or unforeseen circumstances, the facility restricts nonmedical staff from viewing inmates of the opposite gender who are nude or performing bodily functions and similarly restricts cross-gender pat-down searches. Medical practitioners conduct examinations of transgender individuals to determine their genital status only in private settings and only when an individual's genital status is unknown.</p>	<p>Restrictions on cross gender pat-down searches would have a substantial operational impact. Regardless of the standard's intent, such restrictions could also place agencies in violation of Title VII of the Civil Rights Act of 1964 by forcing the Agency to make employment decisions on the basis of gender. Texas case law also impacts the ability to comply with the standard. Coble vs. the Texas Department of Corrections, Civil Action No H-77-707, January 20, 1988, guarantees equal employment opportunities for women. The case was settled in light of Aranda vs. Lynaugh, 1993 U.S. District. LEXIS 21424. TDCJ does not consider gender in the hiring and assignment of personnel at correctional facilities and the presence of female correctional officers during searches does not violate the constitutional rights of male inmates.</p>
<b>PP-5</b>	<b>Accommodating inmates with special needs</b>	<p>The agency ensures that inmates who are limited English proficient (LEP), deaf, or disabled are able to report sexual abuse to staff directly, through interpretive technology, or through non-inmate interpreters. Accommodations are made to convey all written information about sexual abuse policies, including how to report sexual abuse, verbally to inmates who have limited reading skills or who are visually impaired.</p>	<p>The standard should authorize reporting through written communications for deaf offenders.</p>

Texas Department of Criminal Justice  
Responses to PREA Standards

#	TITLE	STANDARD	AGENCY COMMENTS
<b>PP-6</b>	<b>Hiring and promotion decisions</b>	<p>The agency does not hire or promote anyone who has engaged in sexual abuse in an institutional setting or who has engaged in sexual activity in the community facilitated by force, the threat of force, or coercion. Consistent with Federal, State, and local law, the agency makes its best effort to contact all prior institutional employers for information on substantiated allegations of sexual abuse; must run criminal background checks for all applicants and employees being considered for promotion; and must examine and carefully weigh any history of criminal activity at work or in the community, including convictions for domestic violence, stalking, and sex offenses. The agency also asks all applicants and employees directly about previous misconduct during interviews and reviews.</p>	<p>The standard should not require inquiries about "previous misconduct" of applicants and employees during interviews and reviews when an alternative is available to gather this information. TDCJ conducts criminal history checks prior to hiring and once each year on current employees. In addition, TDCJ automatically receives notice of employee arrests from the Texas Department of Public Safety. Another alternative would be to require such an inquiry only if the employee has contact with inmates. The standard should be revised to require "background checks prior to promotion" rather than "prior to consideration;" and should waive the requirement if background checks have been conducted within the last year.</p>
<b>PP-7</b>	<b>Assessment and use of monitoring technology</b>	<p>The agency uses video monitoring systems and other cost-effective and appropriate technology to supplement its sexual abuse prevention, detection, and response efforts. The agency assesses, at least annually, the feasibility of and need for new or additional monitoring technology and develops a plan for securing such technology.</p>	<p>TDCJ uses video monitoring systems and other cost effective technology. Currently the agency has over 5,500 video surveillance cameras system-wide, and is adding comprehensive video surveillance systems at certain facilities. However, purchasing, installing, and operating comprehensive video surveillance systems at all facilities would entail a substantial cost to the Agency.</p>



Texas Department of Criminal Justice  
Responses to PREA Standards

#	TITLE	STANDARD	AGENCY COMMENTS
<b>RP-2</b>	<b>Agreements with outside public entities and community service providers</b>	The agency maintains or attempts to enter into memoranda of understanding (MOUs) or other agreements with an outside public entity or office that is able to receive and immediately forward inmate reports of sexual abuse to facility heads (RE-1). The agency also maintains or attempts to enter into MOUs or other agreements with community service providers that are able to: (1) provide inmates with confidential emotional support services related to sexual abuse and (2) help victims of sexual abuse during their transition from incarceration to the community (RE-3, MM-3). The agency maintains copies of agreements or documentation showing attempts to enter into agreements.	Note in Texas the TDCJ-Office of Inspector General (OIG) performs criminal investigations of rape and would be a likely participant in the MOU.
<b>TR-1</b>	<b>Employee Training</b>	The agency trains all employees to be able to fulfill their responsibilities under agency sexual abuse prevention, detection, and response policies and procedures; the PREA standards; and relevant Federal, State, and local law. The agency trains all employees to communicate effectively and professionally with all inmates. Additionally, the agency trains all employees on an inmate's right to be free from sexual abuse, the right of inmates and employees to be free from retaliation for reporting sexual abuse, the dynamics of sexual abuse in confinement, and the	The standard should be revised by limiting training to inmate contact positions as was done in standard TR-2 related to contractors and volunteers, or in the alternative, recognize that training will vary based on job assignment. As the definition of employee includes contractors, there could be confusion as to which standard applies to contractors.

**Texas Department of Criminal Justice  
Responses to PREA Standards**

<b>TR-1</b>	<b>(Standard continued) Employee Training</b>	<p>common reactions of sexual abuse victims. Current employees are educated as soon as possible following the agency's adoption of the PREA standards, and the agency provides periodic refresher information to all employees to ensure that they know the agency's most current sexual abuse policies and procedures. The agency maintains written documentation showing employee signatures verifying that employees understand the training they have received.</p>	
<b>TR-2</b>	<b>Volunteer and contractor training</b>	<p>The agency ensures that all volunteers and contractors who have contact with inmates have been trained on their responsibilities under the agency's sexual abuse prevention, detection, and response policies and procedures; the PREA standards; and relevant Federal, State, and local law. The level and type of training provides to volunteers and contractors is based on the services they provide and level of contact they have with inmates, but all volunteers and contractors who have contact with inmates must be notified of the agency's zero-tolerance policy regarding sexual abuse. Volunteers must also be trained in how to report sexual abuse. The agency maintains written documentation showing volunteer and contractor signatures verifying that they understand the training they have received.</p>	<p>Note in Texas volunteers receive training unless they are designated a special volunteer with contact limited to up to four times while under the direct supervision of the TDCJ employees. For example, special volunteers limit their participation to special events such as the Bill Glass Ministries weekend crusade and revival. We would envision special volunteers being notified of the agency's zero tolerance policy.</p>

Texas Department of Criminal Justice  
Responses to PREA Standards

#	TITLE	STANDARD	AGENCY COMMENTS
<b>RE-3</b>	<b>Inmate access to outside confidential support services</b>	<p>In addition to providing on-site mental health care services, the facility provides inmates with access to outside victim advocates for emotional support services related to sexual abuse. The facility provides such access by giving inmates the current mailing addresses and telephone numbers, including toll-free hotline numbers, of local, State, and/or national victim advocacy or rape crisis organizations and enabling reasonable communication between inmates and these organizations. The facility ensures that communications with such advocates are private, confidential, and privileged, to the extent allowable by Federal, State, and local law. The facility informs inmates, prior to giving them access, of the extent to which such communications will be private, confidential, and/or privileged.</p>	<p>Note the document checklist item (b) addresses private settings in which conversations with outside victim advocates cannot be overheard, whereas communications with administrative segregation (maximum-security) inmates might be limited to written communications.</p>
<b>RE-4</b>	<b>Third-party reporting</b>	<p>The facility receives and investigates all third-party reports of sexual abuse (IN-1). At the conclusion of the investigation, the facility notifies in writing the third-party individual who reported the abuse and the inmate named in the third-party report of the outcome of the investigation. The facility distributes publicly information on how to report sexual abuse on behalf of an inmate.</p>	<p>Third party complaints must be investigated, but consider limiting information regarding outcomes consistent with a "need to know" provision similar to standard OR-1 or limiting outcome information to family members and public officials. Victims may not want information shared with third parties, particularly with other inmates. Note the agency encourages offenders who witness, or have knowledge of the victimization to report such incidents.</p>

Texas Department of Criminal Justice  
Responses to PREA Standards

#	TITLE	STANDARD	AGENCY COMMENTS
<b>OR-2</b>	<b>Reporting to other confinement facilities</b>	<p>When the facility receives an allegation that an inmate was sexually abused while confined at another facility, the head of the facility where the report was made notifies in writing the head of the facility where the alleged abuse occurred. The head of the facility where the alleged abuse occurred ensures the allegation is investigated.</p>	<p>Consider whether responsibility for notification and investigation should be better placed on the agency rather than the head of the facility where the alleged sexual assault occurred. Both the alleged victim and perpetrator may no longer be housed at the facility, which could hinder the facility head's ability to ensure an investigation.</p>
<b>IN-1</b>	<b>Duty to investigate</b>	<p>The facility investigates all allegations of sexual abuse, including third-party and anonymous reports, and notifies victims and/or other complainants in writing of investigation outcomes and any disciplinary or criminal sanctions, regardless of the source or the allegation. All investigations are carried through to completion, regardless of whether the alleged abuser or victim remains at the facility.</p>	<p>See comments pertaining to standard RE-4 and providing to third-party complainants with information relating to outcomes.</p>
<b>IN-2</b>	<b>Criminal and administrative agency investigations</b>	<p>Agency investigations into allegations of sexual abuse are prompt, thorough, objective, and conducted by investigators who have received special training in sexual abuse investigations (TR-4). When outside agencies investigate sexual abuse, the facility has a duty to keep abreast of the investigation and cooperate with outside investigators (RP-3).</p>	<p>In Texas criminal investigations of rape allegations are performed by the TDCJ Office of Inspector General, which reports to the Texas Board of Criminal Justice. The OIG's criminal investigations are not and should not be subject to initiation or approval by the highest ranking facility official.</p>

Texas Department of Criminal Justice  
Responses to PREA Standards

<p style="text-align: center;"><b>IN-2</b></p>	<p style="text-align: center;"><b>(Standard continued)</b> <b>Criminal and administrative agency investigations</b></p>	<p>Investigations including the following elements:</p> <ul style="list-style-type: none"> <li>● Investigations are initiated and completed within the timeframes established by the highest-ranking facility official, and the highest-ranking official approves the final investigative report.</li> </ul> <p>(The remainder of the text for this Standard has been deleted)</p>	
<p style="text-align: center;"><b>AU-1</b></p>	<p style="text-align: center;"><b>Audits of standards</b></p>	<p>The public agency ensures that all of its facilities, including contract facilities, are audited to measure compliance with the PREA standards. Audits must be conducted at least every three years by independent and qualified auditors. The public or contracted agency allows the auditor to enter and tour facilities, review documents, and interview staff and inmates, as deemed appropriate by the auditor, to conduct comprehensive audits. The public agency ensure that the report of the auditor's findings and the public or contracted agency's plan for corrective action (DC-3) are published on the appropriate agency's Web site if it has one or are otherwise made readily available to the public.</p>	<p>Note there appears to be a contradiction between the standard and the definition of auditor. The standard requires the public agency to ensure facilities are audited to measure compliance with PREA standards; however the definition of auditor precludes the public agency from employing or contracting with the auditors (auditors would be employees or contractors of the state). As the annual estimated costs of auditing by the jurisdiction would be significant, and the jurisdiction's auditors must be prequalified by the U.S. Department of Justice, the Attorney General may want to seek input from entities other than the public agencies.</p>

Reported Sexual Assault Violations by Penal Code Section

Sexual Assault Case Counts by Current Status

Sexual Assault Case Counts by Location

**Texas Department of Criminal Justice  
OFFICE OF THE INSPECTOR GENERAL**

**Reported Sexual Assault Violations  
By Penal Code Section**

**Date Range:  
September 1, 2009 – August 31, 2010**

Violations	Penal Code	Reported Cases
Sexual Assault	22.011	254
Attempted Sexual Assault	22.011(A)	9
Aggravated Sexual Assault	22.021	23
Attempted Aggravated Sexual Assault	22.021(A)	0
<b>Total Number of Cases Reported:</b>		<b>286</b>

Allegations reported under Penal Code Sections 22.011, 22.011(A) and 22.021 include allegations of Offender-on-Offender and Staff-on-Offender sexual assaults. In FY 2010 there were 277 allegations of sexual assaults (Penal Codes 22.011 and 22.021) accepted by the OIG as meeting the elements of the Penal Code. Of the 277 cases, 226 of those reports were processed through EAC and forwarded to the PREA Ombudsman for review; eight were multiple cases opened on single incidents; 33 were employee-on-offender allegations and ten incidents were accepted by the OIG without an EAC number.

**Improper Sexual Activity with Person in Custody**

**Date Range:  
September 1, 2009 – August 31, 2010**

Violations	Penal Code	Reported Cases
Improper Sexual Activity with Person in Custody	39.04	<b>44</b>

Allegations reported under Penal Code Section 39.04 involve allegations of staff members engaging in sexual contact, sexual intercourse or deviate sexual intercourse with an offender.

**Texas Department of Criminal Justice  
OFFICE OF THE INSPECTOR GENERAL**

**FY 2006 – 2010  
Reported Sexual Assault Violations  
By Penal Code Section**

Violations	Penal Code	Fiscal Year				
		2006	2007	2008	2009	2010
Sexual Assault	22.011	280	281	221	179	254
Attempted Sexual Assault	22.011(A)	0	0	0	4	9
Aggravated Sexual Assault	22.021	22	21	26	27	23
Attempted Aggravated Sexual Assault	22.021(A)	0	0	0	1	0
<b>Total Number of Cases Reported:</b>		<b>302</b>	<b>302</b>	<b>347</b>	<b>211</b>	<b>286</b>

Statistical information provided for FY 2006 - FY 2010 depicts the incidents of alleged sexual assaults in the year they were reported.

**Improper Sexual Activity with Person in Custody**

Violations	Penal Code	Fiscal Year				
		2006	2007	2008	2009	2010
Improper Sexual Activity with Person in Custody	39.04	<b>77</b>	<b>79</b>	<b>103</b>	<b>53</b>	<b>44</b>

Statistical information provided for FY 2006 - FY 2010 depicts the incidents of Improper Sexual Activity with Person in Custody in the year they were reported.



**Texas Department of Criminal Justice  
OFFICE OF THE INSPECTOR GENERAL**

**Sexual Assault Case Counts by Current Status  
Penal Codes 22.011 and 22.021**

**Date Range:  
September 1, 2009 – August 31, 2010**

<b>Disposition</b>	<b>Number of Cases</b>
Active/Open	166
Administratively Closed	71
Inactivated – Not Presented for Prosecution	3
Prosecution Declined by SPU/DA	2
Prosecution Declined by Victim	4
Unfounded	31

**Texas Department of Criminal Justice  
OFFICE OF THE INSPECTOR GENERAL**

**Sexual Assault Case Counts by Current Status  
Penal Codes 22.011(A) and 22.021(A)**

**Date Range:  
September 1, 2009 – August 31, 2010**

<b>Disposition</b>	<b>Number of Cases</b>
Active/Open	6
Administratively Closed	1
Inactivated - Not Presented for Prosecution	1
Unfounded	1

**Texas Department of Criminal Justice  
OFFICE OF THE INSPECTOR GENERAL**

**Sexual Assault Case Counts by Current Status  
Penal Code 39.04**

**Date Range:  
September 1, 2009 – August 31, 2010**

<b>Disposition</b>	<b>Number of Cases</b>
Accepted for Prosecution	1
Active/Open	26
Administratively Closed	6
Inactivated – Not Presented for Prosecution	3
Indicted (True Billed)	3
No Billed	1
Prosecution Declined by SPU/DA	2
Sentenced	1
Unfounded	1

**Texas Department of Criminal Justice  
OFFICE OF THE INSPECTOR GENERAL**

**Sexual Assault Case Counts by Incident Location  
Penal Codes 22.011 and 22.021**

**Date Range:  
September 1, 2009 – August 31, 2010**

Facility	County	Cases Reported
Allred	Wichita	18
Baten ISF	Gray	1
Beto	Anderson	8
Boyd	Freestone	2
Briscoe	Frio	3
Byrd	Walker	1
Clemens	Brazoria	4
Clements	Potter	13
Coffield	Anderson	8
Cole	Fannin	1
Connally	Karnes	7
Daniel	Scurry	2
Darrington	Brazoria	5
Dawson	Dallas	1
Dominguez	Bexar	4
Eastham	Houston	4
Estelle	Walker	9
Ferguson	Madison	5
Garza West	Bee	2
Gatesville	Coryell	5
Goree	Walker	1
Gurney	Anderson	1
Hightower	Liberty	2
Hobby	Falls	6
Hodge	Cherokee	6
Holliday	Walker	1

Facility	County	Cases Reported
Hospital Galveston	Galveston	1
Hughes	Coryell	21
Jester I (SAFP)	Fort Bend	1
Jester III	Fort Bend	1
Jester IV (Psych)	Fort Bend	6
Jordan	Gray	1
Lewis	Tyler	6
Lindsey	Jack	1
Lopez	Hidalgo	4
Luther	Grimes	3
Lychner	Harris	2
McConnell	Bee	15
Michael	Anderson	9
Middleton	Jones	1
Montford	Lubbock	5
Moore, B.	Rusk	1
Mountain View	Coryell	9
Murray	Coryell	3
Neal	Potter	5
Pack	Grimes	3
Plane	Liberty	4
Polunsky	Polk	6
Powledge	Anderson	1
Ramsey	Brazoria	1
Roach	Childress	1
Robertson	Jones	10
Skyview	Cherokee	1
Smith	Dawson	11
Stiles	Jefferson	6
Stringfellow	Brazoria	1
Telford	Bowie	12
Terrell	Brazoria	3
Torres	Medina	1
Wynne	Walker	1

Facility	County	Cases Reported
Total Number of Cases Reported		277

**Texas Department of Criminal Justice  
OFFICE OF THE INSPECTOR GENERAL**

**Sexual Assault Case Counts by Incident Location  
Penal Codes 22.011(A) and 22.021(A)**

**Date Range:  
September 1, 2009 – August 31, 2010**

Facility	County	Cases Reported
Allred	Wichita	1
Boyd	Freestone	1
Clements	Potter	1
Estelle	Walker	1
Fort Stockton	Pecos	1
Lynaugh	Pecos	1
McConnell	Bee	1
Michael	Anderson	1
Tulia	Swisher	1
Total Number of Cases Reported		9

**Texas Department of Criminal Justice  
OFFICE OF THE INSPECTOR GENERAL**

**Sexual Assault Case Counts by Incident Location  
Penal Code 39.04**

**Date Range:  
September 1, 2009 – August 31, 2010**

Facility	County	Cases Reported
Allred	Wichita	1
Austin Two Parole	Travis	1
Beto	Anderson	2
Boyd	Freestone	1
Bradshaw	Rusk	1
Coffield	Anderson	4
Daniel	Scurry	1
Estelle	Walker	2
Estes	Johnson	1
Ferguson	Madison	2
Gatesville	Coryell	1
Hilltop	Coryell	1
Hobby	Falls	2
Hospital Galveston	Galveston	1
Lindsey	Jack	1
Lynaugh	Pecos	1
Marlin	Falls	1
Michael	Anderson	3
Moore, B.	Rusk	1
Moore, C.	Fannin	1
Mountain View	Coryell	1
Murray	Coryell	2
Neal	Potter	2
Plane	Liberty	1
Robertson	Jones	1
Smith	Dawson	1



Facility	County	Cases Reported
Stevenson	Dewitt	1
Stiles	Jefferson	1
Telford	Bowie	1
Wallace	Mitchell	1
Woodman	Coryell	2
Wynne	Walker	1
Total Number of Cases Reported		44