



U. S. Department of Justice

Civil Rights Division

Assistant Attorney General

Washington, D.C. 20530

SEP 06 2012

The Honorable Samuel D. Brownback
Governor
State of Kansas
Capitol, 300 SW 10th Ave., Ste. 241S
Topeka, KS 66612-1590

Re: Investigation of the Topeka Correctional Facility

Dear Governor Brownback:

We write to report the findings of the investigation of the Special Litigation Section of the Civil Rights Division. On April 7, 2011, we notified you of our intent to conduct an investigation of the Topeka Correctional Facility ("TCF") in Topeka, Kansas pursuant to the Civil Rights of Institutionalized Persons Act ("CRIPA"), 42 U.S.C. § 1997. CRIPA gives the Department of Justice authority to seek a remedy for a pattern or practice of conduct that violates the constitutional or statutory rights of prisoners in adult detention and correctional facilities. Specifically, we notified you that we would focus our investigation on whether prisoners at TCF were subject to sexual abuse and/or unsafe environmental conditions in violation of their constitutional rights.

I. Summary

We conclude that TCF fails to protect women prisoners from harm due to sexual abuse and misconduct from correctional staff and other prisoners in violation of their constitutional rights. TCF has a history of unabated officer-on-prisoner and prisoner-on-prisoner sexual abuse and misconduct. The women at TCF universally fear for their own safety. They live in a highly charged sexual environment with repeated and open sexual behavior, including sexual relations between staff and prisoners and non-consensual sexual conduct between the female prisoners, open and notorious sex parties, and public nudity. Much of the inappropriate sexual behavior, including sexual abuse, continues and remains unreported due to insufficient staffing and supervision, inadequate policies and procedures, poor training, a heightened fear of retaliation, a dysfunctional grievance system, and inadequate investigative processes. To date, the Kansas Department of Corrections ("KDOC") and TCF have failed to remedy the myriad systemic causes of harm to the women prisoners at TCF despite repeated, well-documented, and detailed investigations and audits exposing the problems.¹

¹ On May 16, 2012, the Attorney General of the United States signed and sent to the Federal Register for publication a final rule adopting National Standards to Prevent, Detect, and Respond

With respect to the environmental conditions of confinement, we find that prisoners confined at TCF are not currently subject to unsafe and unconstitutional environmental conditions. We do not comment on remedial requirements or compliance efforts outlined by the United States Environmental Protection Agency to abate past practices concerning asbestos removal.

II. Investigation

In the course of our investigation, we conducted an on-site inspection at TCF with an expert consultant in custodial sexual abuse. During the inspection, we interviewed administrative staff, security staff, medical and mental health staff, facilities management staff, training staff, and prisoners. Over the last year, we received and analyzed a broad array of documents, including policies and procedures, incident reports, investigative reports, prisoner grievances, disciplinary reports, unit logs, orientation materials, medical records, staff training materials, and environmental health and safety records. In keeping with our pledge of transparency and to provide technical assistance where appropriate, at the close of our site visit we conveyed our preliminary findings to the then-Acting Warden of TCF, Keven Pellant. We thank then-Acting Warden Pellant and her staff for their conduct throughout the course of the investigation and appreciate their receptiveness to our consultant's on-site recommendations. We sincerely hope, going forward, to work cooperatively with all interested parties and to avoid protracted and expensive litigation.

Consistent with the statutory requirements of CRIPA, we now write to advise you of the findings of our investigation, the facts supporting them, and the minimum remedial steps necessary to address the identified deficiencies.

III. Background

The Kansas Department of Corrections operates the Topeka Correctional Facility in Topeka, Kansas. TCF was built in the early 1970s to consolidate four other state penal institutions into one facility. In March of 2001, TCF became an all-female facility to house all of the state's women prisoners and provide academic and vocational programs, sex offender and substance abuse treatment, and a program to train "assist dogs" for persons with disabilities. The facility has several designated housing areas: A through D dormitories are low custody classification; J Cell House is medium custody; I Cell House holds maximum custody prisoners, special management, mental health, protective custody, and disciplinary housing; and G Cell House holds 20 work-release prisoners. The facility's rated capacity is 749. In May 2011, the population was approximately 558 women prisoners, an almost 10% increase from the previous year.

to Prison Rape, pursuant to the Prison Rape Elimination Act of 2003 ("PREA"), 42 U.S.C. § 15601 (2006). National Standards To Prevent, Detect, and Respond to Prison Rape, 77 Fed. Reg. 37,106 (June 20, 2012) (to be codified at 28 CFR pt. 115). The litany of harm outlined in this letter clearly violates these national standards.

In October 2009, the Topeka Capital-Journal published a series of articles outlining the problems of custodial sexual misconduct at TCF. The newspaper chronicled a facility in which officers engaged in sexual assault and abuse without fear of disciplinary action. The articles contained reports -- from both TCF prisoners and correctional officers alike -- that as many as one-third of TCF's 250 employees had engaged in sexual misconduct. The claims included employees exchanging contraband for sex with women prisoners, ferrying women prisoners to isolated areas during transport to outside jobs or appointments and demanding sex, turning pat down searches into groping sessions, redirecting security cameras toward the ceilings and affixing heavy magnets to cameras to distort the video images and avoid detection, and entering prisoners' cells at night for sexual encounters.

The facility has known about these problems and has allowed the abuses to occur for years. In 2009, the National Institute of Corrections ("NIC") and the Legislative Post Audit Committee of the Kansas State Legislature evaluated TCF, among other institutions, concerning staff sexual misconduct, including undue familiarity and contraband trafficking, policies and training procedures, and cross-gender supervision.

In January 2010, both the NIC and Audit Committee issued reports detailing the dangers faced by TCF prisoners. Unfortunately, many of the recommendations outlined in the NIC Report and the Audit Report remain outstanding and unaddressed, and women prisoners continue to be subjected to harm and the risk of harm. The systemic failures and corresponding harm that we found during our investigation mirror those found by both reports years earlier. The Audit Report found that TCF failed to provide adequate staff training targeted toward the prisoner population at TCF, adequate training for investigators, adequate reports of misconduct to the central office, an adequate management information system, and a proactive system to address misconduct. The NIC Report also contained recommendations for improvement in seven areas: policies and procedures, staff training, sexual misconduct and undue familiarity, investigations, prisoner education, monitoring systems, and staffing plans. The Audit Report was critical of TCF, stating that "facility officials should have recognized certain red flags and acted upon them. Doing so likely would have prevented the incidents from occurring." Legislative Div. of Post Audit, *Department of Corrections: Reviewing Allegations of Staff Misconduct* 9 (2010) [hereinafter *Audit Report*].

Officials still have not acted. TCF female prisoners continue to suffer harm and the unreasonable risk and fear of harm. The inappropriate and sexually charged environment and culture at TCF chronicled by the media and investigative reports both internal and external remains rampant. The full panoply of problems surrounding sexual assault and misconduct at TCF that we discovered during our tour and have outlined in this letter were analyzed in detail over two years earlier in the NIC and Audit Reports with specific recommendations to address them. Yet, at the time of our visit, the problems persisted -- KDOC and TCF leadership still have failed to adequately address the deficiencies.

IV. Findings

We find that KDOC and TCF violate women prisoners' constitutional rights by continuing to expose them to harm and the serious risk of harm from prisoner-on-prisoner and

employee-on-prisoner sexual abuse and assault. Conversely, we find that KDOC and TCF do not subject women prisoners to unconstitutional environmental conditions of confinement.

Prisoners have a constitutional right to be protected from harm, *Farmer v. Brennan*, 511 U.S. 825, 833 (1994), and serious risk of harm, *Helling v. McKinney*, 509 U.S. 25, 33-35 (1993). Prison officials cannot display “deliberate indifference” to prisoners’ constitutional rights. *Wilson v. Seiter*, 501 U.S. 294, 302-03 (1991) (citing *Estelle v. Gamble*, 429 U.S. 97, 104-06 (1976)). Sexual assault and abuse of prisoners, whether perpetrated by staff or other prisoners, violate prisoners’ constitutional rights under the Eighth Amendment. See *Tafoya v. Salazar*, 516 F.3d 912, 916 (10th Cir. 2008) (“no question” that sexual assault of an inmate by a prison guard violates the Eighth Amendment); see also *Howard v. Waide*, 534 F.3d 1226, 1242 (10th Cir. 2008) (“The Supreme Court and the Tenth Circuit have repeatedly and unequivocally established an inmate’s Eighth Amendment right to be protected from substantial risks of sexual assault by fellow prisoners.”); *Ramos v. Lamm*, 639 F.2d 559, 572 (10th Cir. 1980) (“[A]n inmate does have a right to be reasonably protected from constant threats of violence and sexual assaults from other inmates.”); *Smith v. Cochran*, 339 F.3d 1205, 1212-13 (10th Cir. 2003) (“Sexual abuse is repugnant to contemporary standards of decency . . . has no legitimate penological purpose, and is simply not part of the penalty that criminal offenders pay” for their crimes) (internal quotation marks omitted).

The women prisoners at TCF have been and continue to be subject to sexual assault and a substantial risk of sexual assault from both staff and other prisoners. We find that sexual misconduct by staff and prisoners is rampant throughout the facility. The highly charged sexual atmosphere and tolerance of sexual misconduct at TCF is so pervasive that when two officers were assigned to a post in an attempt to prevent sexual misconduct, the second officer, instead of monitoring the conduct of the first officer, acted as a lookout while the first had sex with a prisoner.

Furthermore, serious systemic deficiencies in the operations of TCF directly contribute to the actual harm and create a substantial risk of further harm to prisoners due to sexual assault and misconduct. We note that the harm to prisoners and systemic deficiencies in TCF operations have been thoroughly documented and are well known. Yet, little has been done to address these issues. The minor changes that have been made are inadequate and lack accountability measures to ensure their effectiveness. We further note that given the dysfunctional investigative, reporting, analytical, and disciplinary systems at TCF, the harm we find and describe in this letter may indeed be far deeper than documented and reported.

1. Women Prisoners are Subjected to Sexual Assault and Other Unwanted Sexual Conduct From Staff

Custodial sexual assault and misconduct unquestionably harms prisoners. See *Farmer*, 511 U.S. at 833-34 (1994); *Gonzales v. Martinez*, 403 F.3d 1179, 1186 (10th Cir. 2005) (“[A] plaintiff’s uncontroverted claim of deprivations resulting from sexual assault [is] sufficiently serious to constitute a violation under the Eighth Amendment.”) (internal quotation marks omitted). We found documented instances of staff sexually abusing TCF prisoners and engaging in sexual misconduct over a period of several years. In 2010, an officer was charged with having unlawful sexual relations with three female prisoners by demanding oral sex and sexual

intercourse during the women's work-release transport. One prisoner detailed how the officer picked her up at her work-release site and instructed her to get into his car. She complied and he drove her to a cemetery, pulled over and demanded oral sex.² Another prisoner detailed how the officer picked her up in his official car while she was walking to her work site off campus and demanded she get into the car. He drove the prisoner to a parking lot and demanded intercourse.

The above sexual assault followed a string of equally egregious acts of sexual assault and misconduct. In one incident, a correctional officer was charged with rape after he impregnated a TCF prisoner. The officer had arranged to have sex with a prisoner he supervised on the Maintenance Program in exchange for tobacco. Prosecutors agreed not to charge the officer with sexual crimes involving six other female prisoners in exchange for his guilty plea to unlawful sexual conduct. As reported in the Topeka Capital-Journal, in another incident, an employee left his post, entered the facility's maximum-security living unit, and sexually assaulted an inmate. He also allowed lewd behavior to occur between two prisoners.

This disturbing trend of sexual assault and misconduct has continued unabated up to our current investigative visit to TCF. In 2011, an officer was finally terminated after years of repeated allegations of sexual abuse against women prisoners. TCF failed to act despite numerous allegations, from both staff and prisoners, that the officer was engaging in sexual misconduct with various prisoners. The allegations were consistent and credible. Even the officer's supervisors had a high level of suspicion about his illegal activity. Yet TCF did not reassign the officer to a position without inmate contact, and thus he was able to enjoy continued access to his victims

Many of the prisoners with whom we spoke also complained of being groped and sexually assaulted during pat-down searches. The Topeka Capital Journal chronicled a number of incidents involving pat-down searches devolving into groping session by male staff. In one incident, a guard reportedly was known for turning pat down searches into groping sessions and would turn the security camera toward the ceiling to avoid detection. The Journal reported that prisoners claimed that the facility's most attractive women were targeted for the most intrusive and frequent searches by the male officers. The Audit Report also confirmed our findings of continued abusive pat-down practices and noted that KDOC officials acknowledged that TCF receives numerous allegations of inappropriate pat-down searches.

a. Inadequate Correctional Practices

The above documented incidents of sexual abuse and misconduct are caused by TCF's failure to employ accepted correctional practice that are routinely employed by corrections officials to protect women prisoners from sexual victimization, including gender responsive operational strategies and gender responsive training to security staff. TCF lacks adequate policies and procedures, an early warning system to identify problem employees, and appropriate data analyses to track and trend for potential misconduct. The failure to implement policies and

² Recently, on June 29th, 2012, the Kansas State Finance Council, a bipartisan board made up of legislative leaders and chaired by Governor Sam Brownback, approved a \$30,000 payment to the inmate who was forced to engage in sexual activity at the cemetery.

procedures specifically designed for women prisoners increases the vulnerability of its female prisoners to sexual assault.

i. TCF Lacks Adequate Policies and Procedures To Prevent Sexual Abuse and Misconduct

TCF lacks adequate operational policies and procedures in several areas necessary to prevent sexual abuse and misconduct. *See Tafoya*, 516 F.3d at 919 (“The knowing failure to enforce policies necessary to the safety of inmates may rise to the level of deliberate indifference.”). TCF has inadequate policies to track female prison workers to insure their safety. The potential and actual harm caused by inadequate guidance and policies governing female prison workers was a primary cause of several of the incidents listed above where an officer impregnated a female prisoner worker and an officer sexually assaulted prisoners on work release. In spite of what should be a very high priority for TCF, as of our visit, TCF still did not have adequate policies and procedures to govern this important issue. TCF must immediately implement a policy governing its prison workers as failure to finalize such a policy has been shown to cause demonstrated harm in violation of the prisoners’ constitutional rights and increases the certainty that similar abuse will continue to occur.

TCF should provide more policy guidance governing cross-gender staff supervision, prisoner-to-staff boundaries, contractor behavior, prisoner searches, and prisoner orientation and rules. Currently, policies governing these areas are too broad and fail to incorporate adequate accountability. TCF should provide more specific direction in how to identify appropriate behavioral boundaries for prisoner-on-prisoner and staff-on-prisoner interaction. The dynamics of the relationships in a female prison require very clear direction for staff and prisoners about appropriate and inappropriate interactions and boundaries between staff and prisoners and among prisoners. Policies should specifically enumerate the behaviors permitted and/or prohibited. TCF policies and procedures do not address same sex and/or gender specific posts, or discuss gender specific training and operational needs. The prisoner orientation handbook is insufficient and needs to more explicitly outline and explain the dynamics of sexual assault, abuse, harassment, and sexual safety in a female prison. TCF must inform incoming prisoners of specific instances of how sexual assault may happen and how to prevent and report it. The Prisoner Rulebook that prisoners receive after they complete the orientation program also fails to sufficiently outline the critical issues concerning sexual safety.

Policies and procedures governing conduct in buildings other than living units remain incomplete. Several non-living areas and buildings are spread throughout the campus, including a training/command post area, laundry, maintenance shops, and office spaces. The Legislative Post Audit Committee in January of 2010 recommended securing all buildings that maintenance staff uses with prisoners. However, these critical policies and procedures remain incomplete as of our visit. Again, given the history at TCF of sexual misconduct reported in such non-living buildings, completing policies and procedures in this area should be a high priority at TCF. The absence of such critical policies increases dramatically the likelihood of further sexual assaults and misconduct.

Finally, TCF has no protocol for how to proceed when a prisoner victim is sent to the sexual assault treatment center and denies any sexually related activities. The medical staff also does not have specific training on evaluating prisoners alleged to have been involved with same sex sexual assault. Consequently, when a prisoner who is sent to the sexual assault treatment center denies any sexually related activities, the prisoner receives no further action or follow-up and is dismissed. TCF should have a protocol that guides officers and medical staff on how to proceed in instances of alleged sexual conduct that is later denied by the prisoner rather than basing such critical decisions solely on the prisoner's denial or recanting of the allegations.

ii. TCF Does Not Have a System To Identify Problem Employees To Prevent Staff-on-Prisoner Sexual Abuse

TCF does not have a formal employee and/or contractor/volunteer early-warning system to identify problem employees as early as possible. Such a system would allow TCF management to intervene before boundaries are crossed and prisoners harmed. For those suspected of sexual misconduct, TCF has no protocol for removing such officers from contact with prisoners until the investigation is concluded. As noted above, in one particular case, an officer suspected of sexual misconduct was left in a housing unit working with prisoners despite a high level of suspicion by his supervisors and reports from prisoners that he was engaging in sexual misconduct. TCF should not have left the officer in contact with prisoners allowing him to continue engaging in sexual misconduct to the harm of the prisoners. It is not acceptable correctional practice to allow an officer to continue to work with prisoners when the chain-of-command at the facility is aware of allegations of misconduct.

iii. TCF Fails To Analyze Data To Identify Potential Misconduct

TCF fails to use the data it collects to manage its prisoner population. TCF does not consolidate, analyze and otherwise use its data to assess its operations on a routine basis. The lack of adequate data management as a key issue in the several incidents of serious sexual misconduct that have occurred at TCF. TCF cannot know the true extent of sexual misconduct without complete data. The lack of a data management system has blinded senior management to the repeated and serious incidents of sexual abuse and misconduct visited upon female prisoners by TCF employees.

iv. Inadequate Training and Gender-Responsive Strategies

TCF fails to provide adequate gender-specific training and thus increases the risk of harm to its women prisoners. *See Tafoya*, 516 F.3d at 920 (finding that sheriff's failure "to implement regular training programs in spite of the availability of such programs offered at little or no cost through organizations such as . . . the National Institute of Corrections in Colorado" may give rise to a claim of deliberate indifference). We found that staff and prisoners have a confused and inconsistent understanding of what constitutes sexual misconduct and undue familiarity. As our expert stated, TCF correctional officers possess "uneven skill levels for working with women offenders," and noted the "need to provide better skill sets to employees to work with female inmates." Our expert further noted that "[t]here needs to be more specific direction on all boundaries in the prisons – inmate/inmate and staff/inmate." She stated that managing a female

prisoner population, particularly with a predominately male staff, requires “very clear direction for staff and inmates about what are appropriate and inappropriate interactions and boundaries among inmates, with policy enumerating the specific permitted and prohibited behaviors” Such clear direction through training and policy is missing at TCF. Our expert concluded that the problems at TCF “will continue until officers are trained in how to work with women inmates, and this training is modeled by all supervisory levels.” Without effective training based on proper gender-responsive strategies, officers at TCF are not provided with the understanding, skills, and knowledge they need to effectively and safely manage the female population.

Not only are staff confused regarding appropriate behaviors surrounding sexual misconduct and undue familiarity; the prisoners are also not adequately informed of what constitutes permissible and impermissible behavior. As our expert stated, “[t]he prisoner orientation handbook is insufficient and needs to be more explicit in terms of the dynamics of sexual assault, abuse, harassment, sexual safety, etc., in a female institution. Arriving inmates need to have specific instances of how sexual assault can happen, and how to prevent it.” The lack of clear direction and training regarding sexual misconduct substantially increases the risk of inappropriate sexual behavior between staff and prisoners and between prisoners. Our expert observed during our tour “some interesting dynamics between staff and inmates, some of which in my opinion were overly familiar and playful”

The failure to provide gender-specific training and gender-responsive operational strategies is not a new issue at TCF. As early as January 2010, the NIC Report stated that TCF failed to provide its staff or its volunteers with training specific to its prisoner population. The NIC noted, as we did, that “[s]taff expressed some confusion about the definition of undue familiarity, particularly with respect to their role in restricting personal contact with inmates.” Nat’l Instit. Of Corr., *Technical Assistance No. 10B4606, Technical Assistance Report on Kansas Dep’t of Corrs, Topeka Correctional Facility* 11 (2010) [hereinafter *NIC Report*]. The NIC advised KDOC to “develop a curriculum to use in training all TCF staff working with female inmates.” *Id.* at 10. The Audit Report also identified the lack of adequate staff training as an important issue relating to serious incidents of sexual misconduct at TCF, and recommended specialized training to address TCF’s prisoner population.

v. Inadequate Numbers of Female Officers

In addition to insufficient staffing, the mix of male to female staff at TCF is problematic to the issue of harm and risk of harm from sexual abuse. Sixty-eight percent (68%) of the staff at TFC are male. As our expert stated, “[w]hile not advocating single sex supervision, this percentage is too high, especially considering the toilet/showering configurations of J Cell House.” TCF needs to recruit additional female officers and, as our expert noted, “If it is difficult for TCF to hire female officers, the issue may be lack of targeted recruitment, failure to use existing female staff to participate in recruitment, or an internal culture unwelcoming of female officers.” The high percentage of male staff means that there are increased opportunities for cross-gender viewing and pat-down searches. Cross-gender pat-down searches present increased opportunities for sexual assault and misconduct. Studies show that male staff commit the great majority of sexual abuse of female inmates and many are the result of cross-gender pat-down searches. The Bureau of Justice Statistics (“BJS”) National Inmate Survey found that

71.8% of female prisoners who were victims of sexual abuse by staff reported that the staff perpetrator was male in every instance, compared to 9.3% who reported that the staff perpetrators were exclusively female. Furthermore, 36.7% of female inmates who reported sexual touching indicated that they experienced sexual touching during a pat-down search. *See BJS, Sexual Victimization in Prisons and Jails Reported by Inmates, National Inmate Survey, 2008-09* 24 (2010). In an analysis of allegations reported by federal Bureau of Prison (“BOP”) inmates to BOP’s Office of Internal Affairs, conducted by the Department’s Office of the Inspector General (“OIG”), the OIG reported that “BOP officials believed that male staff members were most often accused of sexual misconduct stemming from pat searches.” *See OIG, U.S. Dep’t of Justice, The Department of Justice’s Efforts to Prevent Staff Sexual Abuse of Federal Inmates*, 26-28 (2009).

In addition to the clear harm caused by staff who inappropriately grope and sexually assault prisoners during pat-down searches, cross-gender pat-down searches, even those conducted for legitimate security purposes, may also be traumatic and perceived as abusive by inmates who have experienced past sexual abuse. *See Jordan v. Gardner*, 986 F.2d 1521, 1526 (9th Cir. 1993) (en banc) (striking down cross-gender pat-downs of female inmates as unconstitutional “infliction of pain” where there was evidence that a high percentage of the female inmate population had a history of traumatic sexual abuse by men and were being re-traumatized by the cross-gender pat-down searches). Thus, cross-gender pat-down searches increase the risk of harm to female inmates who have a high prevalence of past prior abuse. *See id.* at 1525 (affirming district court holding that there “is a high probability of great harm, including severe psychological injury and emotional pain and suffering, to some inmates, from these searches, even if it was properly conducted”). *See also* Barbara Bloom, Barbara Owen, and Stephanie Covington, Nat’l Instit. of Corr., *Gender-Responsive Strategies: Research, Practice, and Guiding Principles for Women Offenders* 37 (2003) (“In addition, standard policies and procedures in correctional settings (e.g., searches, restraints, and isolation) can have profound effects on women with histories of trauma and abuse, and often act as triggers to retraumatize women who have post-traumatic stress disorder (PTSD).”).

In addition to illicit pat-down searches, with 68% of the staff as male, and given the configuration of some of the Cell Houses (particularly J Cell House and the dorms), cross-gender viewing is also inevitable, whether purposeful or inadvertent. When the prisoners are dressing in their assigned bunk areas in J Cell House if a male officer does (or does not) announce himself, the opportunities are great for inadvertent viewing. While on tour, we witnessed male officers standing in the middle of the toilet area in the J Cell House in order to enforce the rule that female prisoners be out of bed and dressed by 8:00 a.m.

2. *Women Prisoners are Exposed to Harm and the Risk of Harm From Prisoner-on-Prisoner Sexual Violence*

We reviewed a shocking digital recording of a recent prisoner-on-prisoner sexual assault that continued for approximately 45 minutes without intervention. For 45 minutes, the video showed a woman being assaulted by another prisoner through slapping, hair pulling, and forced sexual contact. Although the camera caught this sexual assault, no one was monitoring the camera, and no one was monitoring the living unit where the assault occurred. The other

prisoners on the unit remained silent and uninvolved. For 45 minutes, no TCF staff were aware that a woman was being sexually assaulted, and for 45 minutes, no one stopped the assault. Although this one incident was captured on tape, as stated below, due to the lack of adequate grievance procedures and investigations, incidents of sexual abuse and misconduct are likely heavily underreported at TCF. Such an egregious act of prisoner-on-prisoner sexual violence is a direct result of several grossly deficient systemic practices at TCF, including insufficient staffing and supervision with no proactive plan to increase staffing ratios based upon an adequate staffing analysis, unmonitored cameras, a compromised architectural structure, and an inadequate classification system.

a. Inadequate Staffing, Supervision, and Monitoring

TCF has inadequate human resources to appropriately supervise prisoners, thus exposing the women to harm and risk of harm for prisoner-on-prisoner sexual violence and staff-on-prisoner sexual assault and misconduct. *Ramos*, 639 F.2d at 572 (holding that inadequacy of staffing, which resulted in increased risk of violence amongst prisoners, constitutes deliberate indifference); *Howard*, 534 F.3d at 1242. Data provided by TCF dated May 26, 2011, show 115 Correctional Officers I and II, 23 Sergeants, 5 Lieutenants, and 5 Captains for security for a total of 148 security staff. The current staffing at TCF compared to a March 2011 KDOC analysis reveals that, based on the computed shift relief factor, TCF is understaffed by approximately 10%, notwithstanding that the need for a staffing analysis and an objective look at all posts might further increase the number of needed staff significantly.

The staffing patterns in the low custody dorms and the medium custody unit are particularly problematic. With only one officer assigned to the workstation in these units during a shift, the officer is limited to accomplishing the basic operational duties required at the workstation, including handling the arrival and departure of prisoners, answering questions and telephone calls, overseeing the dayroom located behind the workstation, and inputting information into the computer. The officer is unable to engage in the more critical tasks of walking through the areas to gauge activities, intervene, and manage behaviors – including inappropriate nudity or sexual misconduct. An internal KDOC audit confirms this finding. In a Topeka Correctional Facility Security Staffing Audit Report, dated March 1-2, 2011 (“Staffing Audit”), KDOC noted the problematic staffing configuration, particularly in the medium custody unit, J Cell House. The Staffing Audit observed the “chaotic, stressful environment” on the J Unit and that “[o]n all shifts this housing unit should be staffed allowing the ability of the Corrections Specialist to move about and observe/supervise the officers and staff in the unit.” Kansas Dep’t of Corr., Topeka Correctional Facility Security Staffing Audit Report 4 (2011). The audit team recommended that “J Unit staffing should be further reviewed. There is a need for a minimum of two mobile staff on each shift to immediately respond to conditions and alarms.” Although TCF agreed with this recommendation, we found that the staffing issues remained unresolved to the detriment of the prisoners, not to mention the security of the officers.

As was painfully clear in the recorded prisoner-on-prisoner sexual assault referred to above, staff is insufficient to monitor the many cameras located throughout the institution, even those that are located in high-risk areas, and unmonitored cameras are not a deterrent to a violation of rules. The sexual assault was being filmed via camera, yet, for 45 minutes it

continued without any intervention by staff or other prisoners. Furthermore, the prisoners know where the cameras are located and that no one monitors the cameras in real time. It makes little sense to spend money purchasing needed cameras but fail to create post positions to monitor the cameras. *See Tafoya*, 516 F.3d at 919 (finding that the sheriff “knew that blind spots remained even after the installation of the new cameras, and knew that having some cameras in the jail was not enough to deter assaults in unmonitored areas” may give rise to a claim of deliberate indifference). As our expert pointed out in her report, “To install cameras throughout the institution and then not monitor them, a fact known by the inmates, is irresponsible correctional practice. . . . While the recordings of incidents from the cameras provide excellent investigatory documentation, there clearly must be the capability for employees to immediately intervene in critical incidents to stop the harm to prisoners caused by other inmates, or staff.”

KDOC and TCF have long been on notice of its insufficient staffing. The NIC’s findings from its December 2009 tour stated that “[c]urrent custodial staffing levels are insufficient to effectively monitor activities at TCF – even considering the use of cameras. This impairs the safety of both staff and prisoners, including sexual safety.” *NIC Report* at 23. The Audit Report also noted that since 1999 KDOC has been operating its facilities below adequate staffing levels. The Report stated that “[o]ur 1999 performance audit of correctional staffing levels showed that the Department often was operating facilities below operational staffing levels. Department officials indicated those staffing levels continue to be inadequate. Officials stated that more staff would be more eyes and ears and would provide greater deterrence.” *Audit Report* at 34. An employee union representative working at TCF testified before the Kansas House Corrections and Juvenile Committee on March 16, 2011, and stated that there were staff shortages “that undermine security” at the prison. He stated that “[o]ne dormitory at the East Topeka prison with 108 inmates is watched by a single officer” Tim Carpenter, *TCF Officer Raises Safety Concerns*, *The Topeka Capital-Journal*, Mar. 16, 2011, *available at* <http://cjonline.com/news/2011-03-16/tcf-officer-raises-safety-concerns>. Despite recommendations by NIC and an order by the Governor to review staffing, as of the date of our tour, KDOC and TCF had yet to complete a comprehensive staffing analysis.

b. A Compromised Architectural Structure with Poor Sight Lines

The physical configuration of J Cell House creates many blind spots and locations not viewable by cameras (i.e., toilets/showers). Insufficient staffing combined with a compromised architectural structure have operated to facilitate harm and risk of harm due to incidents of sexual assault and misconduct by staff and prisoners. J Cell House is an older, retrofitted building housing medium custody prisoners on three floors. Officers staffing the J Cell House workstation have limited surveillance of the living area and can see only the immediately surrounding dayrooms. Prisoners move throughout the floors of this building and the officer stationed in the workstation cannot adequately track prisoner movement. Furthermore, in order to monitor the living areas in J Cell House, an officer must first pass through the toilet, sink, and shower area. This arrangement is particularly troubling given the inadequate number of female staff working at TCF who can staff posts that require viewing prisoners who may be undressed. When the NIC identified these deficiencies in its January 2010 report, TCF claimed that the workstations were reconfigured. However, we found that the current layout still prevented adequate supervision of the living area. Our consultant concluded that given its difficult physical

configuration, the J Cell House remains unsafe absent, at a minimum, a second officer to supervise the prisoners in the living areas. KDOC's own Staffing Audit supports our recommendation.

c. A Classification System Unable to Protect Potential Victims From Assault

TCF's classification and risk assessment processes do not adequately identify potential predators and potential victims. *Marsh v. Butler County, Alabama*, 268 F.3d 1014 (11th Cir. 2001) (lack of classification and risk assessment system constitutes deliberate indifference where inmates were harmed by other inmates because housing assignments did not account for the risk violent prisoners posed); *Jensen v. Clarke*, 94 F.3d 1191 (8th Cir. 1996) (failure to account for size, age, or length of sentence of inmates entering facility in determining appropriate housing assignment may amount to deliberate indifference). Although TCF has updated its risk assessment tools to determine sexual predators and victims, as of our visit, it had not yet implemented the instrument. Without being able to adequately identify its sexual predators, TCF cannot appropriately manage their behavior, thus exposing women to harm from potential predators. Furthermore, TCF has no protocol to manage women who are identified as sexual predators. Again, this danger was vividly demonstrated in the uninterrupted, approximately 45 minute prisoner-on-prisoner sexual assault we viewed on video during our tour.

3. Sexual Misconduct by Staff and Prisoners is Rampant Throughout the Facility

Sexual misconduct by staff and prisoners is rampant throughout the facility. While previous investigations did not attempt to quantify the extent of sexual misconduct, all who have looked at the prison have found it to be pervasive. Prisoners consistently reported to us misconduct between officers and women prisoners. Prisoners estimate that only about a third of the sexual activity is consensual; the rest, coerced. One of the more shocking reports we received was what prisoners called "naked dildo parties," during which it is alleged that women prisoners would get naked in housing unit common areas and pass around and use sex toys. One male officer reportedly held a dildo up to the camera to display for his colleagues. Then-Acting Warden Pellant informed us that she was aware of the allegations. Prisoners related to us incidents of blatant sexual activity and prisoners "running around naked" when officers were not present due to the lack of adequate supervision caused by inadequate staffing.

a. Inadequate Investigations

The long and unabated history of staff-on-prisoner and prisoner-on-prisoner sexual assault and misconduct is facilitated by an investigative and disciplinary system that fails to identify, substantiate the conduct of, and discipline sexual predators. TCF fails to adequately investigate allegations of sexual assault/misconduct, which increases the prisoners' risk of harm. *Tafuya*, 516 F.3d at 919 (failure to seriously consider inmates' complaints of sexual assault and investigate allegations contributed to finding of deliberate indifference). TCF has an Enforcement, Apprehensions and Investigations Unit ("EAI") that conducts its investigations. On a positive note, the EAI is adequately staffed with a three-person team of investigators on site and the unit reports to the central KDOC office. However, the investigative process itself is

inadequate. Investigations are not timely, which leads to an inordinate number of inappropriate dismissals and unsubstantiated cases. We reviewed all 23 investigative files provided by the Facility for incidents dating back to February 18, 2011. For 19 files, or 83% of the incidents, the EAI interviews took place on May 11, 2011 or May 12, 2011, just days prior to our arrival on May 23, 2011. In only four cases were there timely interviews (within five days of the incident) and in many cases interviews took place 60 to 90 days after the allegations were made. Furthermore, far too many investigations were concluded with unsubstantiated outcomes. EAI investigatory files reveal that, as a matter of practice, the EAI will simply dismiss a case without further inquiry if a prisoner changes or recants her story. However, in matters of sexual and personal safety, it is not uncommon for a prisoner's story to change for numerous reasons, including fear of retaliation or embarrassment. Dismissing a sexual assault or misconduct case solely because of inconsistencies in reports and/or recanting is not acceptable investigative practice, especially in a custodial setting. Of the 23 cases we reviewed, 18 were deemed unsubstantiated, three unfounded, one substantiated, and one had no disposition. As discussed earlier, the Audit Report also noted the problem of unsubstantiated investigations.

TCF senior management also fails to review all relevant allegations of sexual misconduct. The absence of a process to review all investigations regardless of whether they result in sustained violations places prisoners in further jeopardy because senior administrators are unable to identify and correct actual and potential patterns or trends of sexual misconduct. TCF senior management, however, only reviews allegations of "confirmed" findings. TCF needs to review and analyze all allegations, not just those with "confirmed" findings. Again, this is not new information for TCF. The NIC Report contained an identical recommendation.

TCF fails to have a protocol for prioritizing its investigations, thus wasting its precious resources on unproductive evaluations of minor cases and failing to act upon and/or delaying resolution of more serious cases. TCF should develop a screening process with appropriate protocols to quickly evaluate sexual assault and misconduct allegations and quickly determine the severity of any particular case. The protocol should require an analysis of whether force or coercion was used and should direct what actions should be taken based on the nature of the infraction. The protocol should include steps to take as part of a medical and mental health evaluation of any victim. Without protocols to assist in determining which cases should be prioritized, TCF is investigating allegations of lower-level rules violations, such as prisoners kissing, along with instances of criminal coercion and assault. Proper protocols can also capture and track important data arising out of the investigations and allow senior management to manage behavior that constitutes or may give rise to sexual assault and misconduct.

Finally, along with hiring more female correctional officers, TCF should have a female investigator as part of its EAI unit. There will be circumstances in which a victim or an accused will want to talk with a female investigator, particularly in an all female prison. Having no female investigator potentially jeopardizes investigations in instances where female prisoners may not want to speak to a male investigator. As one prisoner noted to our expert, "I'm not telling my stuff to that big guy" – referring to one of the EAI investigators at TCF. Failing to both acknowledge the lack of a female investigator as a problem and to act to correct it is an example of the overall system's failure at TCF to understand and implement appropriate strategies to correct its history of sexual misconduct.

4. *Women Prisoners Live in Fear of Sexual Abuse*

Women prisoners live in fear of sexual abuse and harm during their incarceration at TCF. In I and J Cell Houses, almost 100% of the prisoners with whom we spoke stated that they feared for their safety. As previously noted, there is simply not enough staff to adequately monitor the prisoners or protect potential victims from predators. Due to lack of staffing and functional policies and procedures governing TCF's predator population, TCF attempts to control prisoner sexual activity through periodic 23-hour lockdowns. However, prisoners complained that during lockdown, officers refuse to respond to intercom requests for help, even for coerced sexual aggression from a prisoner's roommate.

Being subjected to the fear of sexual assault and repeated sexual abuse is particularly devastating to female prisoners due to the high incidence of sexual abuse to women prisoners prior to incarceration. A 2004 Bureau of Justice Statistics (BJS) survey found that 42% of female State prisoners reported that they had been sexually abused before their incarceration. *See BJS, 2004 Survey of Inmates in State and Federal Correctional Facilities (2004); see also BJS, 2002 Survey of Inmates in Local Jails (2002).* Studies have repeatedly shown that women with histories of sexual abuse—including women in prison – are particularly traumatized by subsequent abuse. *See Catherine C. Classen, Oxana Gronskaya Palesh, and Rashi Aggarwal, Sexual Revictimization: A Review of the Empirical Literature, 6 Trauma, Violence, & Abuse 103, 117 (2005)* (“There is considerable evidence that sexual revictimization is associated with more distress compared to one incident of sexual victimization. . . . The general finding appears to be that women who are revictimized suffer more PTSD symptoms.”); Danielle Dirks, *Sexual Revictimization and Retraumatization of Women in Prison, 32 Women's Stud. Q. 102, 102 (2004)* (“For women with previous histories of abuse, prison life is apt to simulate the abuse dynamics already established in these women's lives, thus perpetuating women's further revictimization and retraumatization while serving time.”). In 2009, the Department of Justice's Office of the Inspector General, in a report on BOP's efforts at combating sexual abuse by staff, noted that “because female prisoners in particular often have histories of being sexually abused, they are even more traumatized by further abuse inflicted by correctional staff while in custody.” *OIG, United States Department of Justice, The Department of Justice's Efforts to Prevent Staff Sexual Abuse of Federal Inmates 1 (2009).*

a. Inadequate Grievance Procedures

A dysfunctional grievance system directly contributes to the pervasive fear of sexual assault among prisoners and to the harm due to staff-on-prisoner and prisoner-on-prisoner sexual assault. An adequate grievance process is a critical element in the operational system of an institution such as TCF with a known and documented history of sexual misconduct. Prisoners need as many paths as possible to report allegations. The lack of an adequate grievance system places prisoners in harm's way because the facility is limiting prisoners' ability to report allegations, a key source of critical information necessary to identify and discipline staff and prisoners engaging in sexual misconduct. *See Tafoya, 516 F.3d at 920* (In outlining the parameters of a claim for deliberate indifference, “[p]erhaps most troubling, Sheriff Salazar failed to implement an adequate grievance procedure through which inmates could make complaints without fear of retribution, and which included serious investigation and response.”);

Gonzales, 403 F.3d at 1187 (10th Cir. 2005) (failure to adequately address inmates' complaints contributed to finding of deliberate indifference).

The procedures for filing a grievance at TCF place many undue hurdles before the prisoners, are cumbersome, and function to discourage prisoners from filing grievances. TCF's policy is to attempt to resolve prisoner issues/grievances at the lowest level by encouraging prisoner-to-officer dialogue and using a "Form 9/Inmate Request to a Staff Member." However, it is unclear how the prisoners are to utilize Form 9. Neither the Inmate Orientation Manual nor the Prisoner Rule Book contains instructions on how to use Form 9. In fact, neither document even mentions Form 9s. If a prisoner does appropriately fill out and submit a Form 9 but fails to receive a response to her grievance within 10 days and still wants to pursue the grievance, she has the burden to explain why the unit correctional officers did not sign off on her grievance. The prisoner is also required to attach a copy of each prisoner request form used in the attempt to file the grievance.

Prisoners do not trust the grievance process. The prisoners with whom we spoke were universally negative about the grievance process. Prisoners repeatedly stated that they receive no response despite numerous submitted grievances, and certain officers will threaten to file disciplinary reports in retaliation for submitted grievances unless the prisoner agrees to destroy/retract the grievance. Many believe that the unit manager destroys grievances, especially if the officer grieved is a close colleague. The NIC Report also noted these problems with the grievance system and stated, "[i]nmates discussed a strong mistrust of the grievance process. They do not feel that the grievances are answered and some prisoners communicated their fear of retaliation." *NIC Report* at 12. The result of such mistrust is that the prisoners are not using the grievance system and, therefore, the grievance process fails to enhance prisoner safety or serve to highlight and/or resolve important issues of real or potential sexual misconduct. As our expert noted, there are too few official grievances reported at TCF as compared to similar women's facilities, and fewer still sustained. The lack of grievances points to a number of causes: prisoners fear retaliation for using the grievance process; the system is burdensome; prisoners' lack confidence in the grievance process to resolve their issues; prisoners are discouraged from filing grievances; and/or TCF fails to adequately respond to the grievances.

Finally, TCF neither maintains nor analyzes grievance data that would permit the facility's leadership to use the grievance process as an integral part of an early-warning system. Grievance data should be broken down by topic, unit, date, etc., to provide senior management with the ability to know if complaints about a particular officer need further review and action. Failing to make a systematic assessment of reported grievances in order to triage for potential important issues (such as use of force, sexual misconduct, medical concerns, etc.) leaves prisoners subject to harm and risk of harm.

In sum, the lack of an adequately functioning grievance process, the lack of data analysis regarding grievances, the confusion surrounding Form 9, and the prisoners' lack of confidence in the system chronicle a dysfunctional grievance system and speak to the need to revise the grievance process. The NIC Report previously advised KDOC of the need to reform its grievance process. As of our tour, prisoners still have no confidence in the grievance process. If prisoners do not use the grievance system to report critical allegations of misconduct, such misconduct will continue to the harm of the prisoners in violation of their constitutional rights.

5. *Prison Officials are Deliberately Indifferent to the Constitutional Harms to Women Prisoners*

KDOC and TCF officials are aware of, and deliberately indifferent to, the substantial harm and serious risk of harm to TCF prisoners due to sexual assault, harassment, and misconduct and have failed to take reasonable steps to prevent harm and risk of harm. *See Farmer*, 511 U.S. at 834 (“[A] prison official violates the Eighth Amendment only when two requirements are met. First, the deprivation alleged must be, objectively, sufficiently serious. . . and a prison official must have a sufficiently culpable state of mind.”) (internal quotation marks and citations omitted).

TCF has been aware of the full extent of its sexual misconduct problems and the systemic deficiencies that directly contribute to the misconduct since early 2010, if not sooner. Both the NIC and the Legislative Post Audit Committee issued detailed reports that discussed many of the same issues identified in this findings letter. The NIC Report provided recommendations in seven areas, including (1) policies and procedures governing sexual assault, pat searches, and communication to staff and inmates, (2) staff training on the prevention and detection of sexual assault and gender responsive training, (3) staff and prisoner knowledge of sexual misconduct and undue familiarity, (4) guidelines for timely investigations and facility responses to allegations, (5) prisoner education and orientation on sexual abuse and reporting of incidents, (6) monitoring systems, including improving camera coverage, and (7) staffing plans.

In its Audit Report, the State itself discussed the inappropriate and highly charged sexual environment and culture at TCF. The Audit Report outlined and analyzed the issues surrounding sexual misconduct and undue familiarity, including, the high number of unsubstantiated investigative findings, prisoner complaints regarding cross-gender pat searches, inconsistent and lenient responses to allegations, failure to provide targeted training based on the inmate population at TCF, policy and procedural needs, better accuracy and consistency in reporting and leadership’s lack of good information regarding the extent of misconduct, and the need for a proactive system addressing misconduct. Like the NIC Report, the Audit Report contained numerous recommendations designed to ameliorate the serious problem of sexual assault and misconduct at TCF. The Audit Report stated that “[W]e found . . . systemic problems at the Topeka Correctional Facility that may lead to more instances of staff misconduct.” *Audit Report* at 21. The Audit Report concluded that women prisoners are more vulnerable than male offenders and at a higher risk of abuse by staff and other prisoners and “[a]s such, we would have expected even more stringent adherence to policy and more strict disciplinary actions at Topeka Correctional Facility than at the other facilities. That’s not what we found.” *Id.*

In sum, in a clear and deliberate violation of prisoners’ constitutional rights, KDOC and TCF have failed to act on repeated notices and warnings concerning a bevy of chronicled deficiencies over an extended period of time resulting in harm and continued risk of harm to prisoners. *See Farmer*, 511 U.S. at 843 (The official’s knowledge of the risk need not be knowledge of a substantial risk to a particular inmate, or knowledge of the particular manner in which injury might occur); *Gonzales*, 403 F.3d at 118 (“It does not matter whether the risk comes from a single source or multiple sources, any more than it matters whether a prisoner faces an excessive risk of assault for reasons personal to him or because all prisoners in his situation face such a risk.”) (quoting *Farmer*, 511 U.S. at 843).

V. Conclusion

Although current leadership at TCF has attempted to stabilize the facility and institute important interventions, TCF remains a highly sexualized environment with a culture and operational structure that violates the constitutional rights of its prisoners resulting in harm and risk of harm due to staff-on-prisoner and prisoner-on-prisoner sexual abuse, assault and misconduct. Despite TCF's attempts to address its sexualized environment, the fact that staff and prisoners continue to engage in overt and inappropriate sexual behavior at TCF points to the need for continued and critical reforms. As the then-acting Warden, Ms. Pellant, characterized the situation, "staff behavior challenges" remain. *See Tafoya*, 516 F.3d at 918 (finding that a prison official may be liable for a substantial risk of serious harm to prisoners in spite of efforts reasonably calculated to reduce the risk, if he intentionally refuses other reasonable alternatives and the dangerous conditions persist).

KDOC and TCF leadership have yet to implement many of the recommendations outlined by the NIC and the Legislative Post Audit Committee in their reports issued over 2 years ago in January 2010. They remain deliberately indifferent to the serious and significant need to protect female prisoners at TCF from sexual assault, abuse and misconduct. Without putting the above reforms in place in a timely fashion and faced with decreasing fiscal resources and a lack of consistent leadership, TCF will continue to violate the constitutional rights of its prisoners due to the harm and substantial risk of harm from sexual assault.

VI. Minimal Remedial Measures

In order to rectify the identified deficiencies and protect the constitutional rights of prisoners confined at TCF, this facility should implement, at a minimum, the following remedial measures:

1. Protection From Harm
 - a. KDOC and the TCF shall provide prisoners with a safe and secure environment and continue to take all reasonable steps to protect them from harm.
 - b. KDOC and TCF shall have a written policy mandating zero tolerance toward all forms of sexual abuse, misconduct and harassment and outlining their approach to preventing, detecting, and responding to such conduct.
 - c. KDOC shall develop and implement a policy on prevention, detection, reporting, and investigation of sexual abuse, including prisoner-on-prisoner and staff-on-prisoner sexual abuse.
 - d. KDOC and TCF shall develop a written institutional plan to coordinate actions taken in response to an incident of sexual abuse, among staff first responders, medical and mental health practitioners, investigators, and facility leadership.

2. Staffing

- a. KDOC and TCF shall ensure that TCF develop, implement, and document a staffing plan, based on gender-responsive principles, that provides for adequate levels of staffing, and, where applicable, real-time video monitoring, to protect prisoners against sexual abuse.
- b. KDOC and TCF shall develop a plan to recruit additional female correctional officers at TCF.
- c. TCF shall establish a policy to ensure that any employee, contractor or volunteer who is suspected of sexual misconduct has no interaction with prisoners until an investigation is concluded.

3. Correctional Practices

- a. KDOC and TCF shall implement a gender-normed classification system specific to the female population at TCF.
- b. KDOC and TCF shall implement a risk assessment process that adequately identifies potential predators and victims.
- c. KDOC and TCF shall collect, consolidate, analyze, track and otherwise use its data to assess its operations on a routine basis.
- d. KDOC and TCF shall implement policies and procedures that enable prisoners to shower, use the bathroom, and change clothing without nonmedical staff of the opposite gender viewing their breasts, buttocks, or genitalia. Such policies and procedures shall require staff of the opposite gender to announce their presence when entering a prisoner housing unit.
- e. KDOC and TCF shall ensure that all newly admitted prisoners receive information, through a prisoner handbook and, at the discretion of KDOC and TCF, an orientation video, regarding the following: facility rules and regulations, how to report misconduct, how to report sexual abuse or assault, the process for accessing medical and mental health care, the disciplinary process, and how to access the grievance process.

4. Training

- a. KDOC and TCF shall provide appropriate orientation, basic, and in-service training to all employees who may have contact with prisoners. All modules must include gender-responsive strategies.

5. Investigations

- a. KDOC and TCF shall ensure that an administrative and/or criminal investigation is completed for all allegations of sexual abuse and sexual harassment.
- b. KDOC and TCF shall issue a report of its investigative findings.
- c. KDOC and TCF shall establish guidelines for timely investigations and develop a process for monitoring those timelines.
- d. KDOC and TCF shall establish procedures for staff and prisoners to report allegations of sexual abuse or sexual harassment.

6. Grievances

- a. KDOC and TCF shall develop and implement an adequate grievance process that shall provide multiple internal ways for prisoners to privately report sexual abuse and sexual harassment, retaliation by other prisoners or staff for reporting sexual abuse and sexual harassment, and staff neglect or violation of responsibilities that may have contributed to such incidents.
- b. KDOC and TCF shall provide a method for staff to privately report sexual abuse and sexual harassment of prisoners.
- c. KDOC and TCF shall ensure that a prisoner who alleges sexual abuse may submit a grievance without submitting it to a staff member who is the subject of the complaint, and such grievance is not referred to a staff member who is the subject of the complaint.

7. PREA Standards

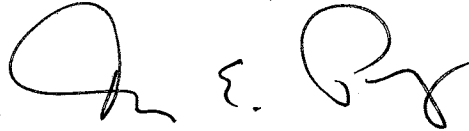
- a. KDOC and TCF shall comply with all provisions of the National Standards to Prevent, Detect, and Respond to Prison Rape as promulgated by the United States Department of Justice in 28 CFR Part 115.

Please note that this Findings Letter is a public document. It will be posted on the Civil Rights Division's website. We hope to continue working with the State in an amicable and cooperative fashion to resolve our outstanding concerns regarding TCF. Assuming there is a continuing spirit of cooperation from the State, we also would be willing to send our consultant's evaluation under separate cover. This report is not a public document. Although the consultant's evaluation and work do not necessarily reflect the official conclusions of the Department of Justice, her observations, analysis, and recommendations provide further elaboration on the issues discussed in this letter and offer practical technical assistance in addressing them.

We are obligated to advise you that, in the event that we are unable to reach a resolution regarding our concerns, the Attorney General may initiate a lawsuit pursuant to CRIPA to correct deficiencies of the kind identified in this letter 49 days after appropriate officials have been notified of them. 42 U.S.C. § 1997b(a)(1).

We would prefer, however, to resolve this matter by working cooperatively with you. The lawyers assigned to this investigation will be contacting the KDOC and facility's attorney to discuss this matter in further detail. If you have any questions regarding this letter, please call Jonathan M. Smith, Chief of the Civil Rights Division's Special Litigation Section, at (202) 514-5393.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. E. Perez', written in a cursive style.

Thomas E. Perez
Assistant Attorney General

cc: Ray Roberts
Secretary
Kansas Department of Corrections

Barry R. Grissom
United States Attorney
District of Kansas