



DEPARTMENT OF PUBLIC SAFETY
REPORT TO THE 2015 LEGISLATURE

**Response to Act 194, Sessions Law of Hawaii 2010
SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES**

December 2014

Act 194, Sessions Law of Hawaii 2010
SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES

Act 194, Sessions Law of Hawaii 2010, requires the Department of Public Safety (PSD) to report to the Legislature the statistical information related to the number of sexual assaults that occurred while a person is in the custody of PSD. The Prison Rape Elimination Act's (PREA) definition of sexual abuse and sexual harassment will be adopted for this report. Accordingly, the data reported under paragraphs I - V is from the calendar year 2013.

I. Sexual assaults (sexual abuse) by persons in custody against other persons in the custody of PSD.

In 2013, there were twenty-six (26) reported incidents of offender on offender sexual abuse. PSD is responsible for conducting the administrative investigation for all PREA sexual abuse incidents and PSD refers all reported PREA sexual abuse incidents to County law enforcement to process the parallel criminal investigation. PSD's administrative investigation process substantiated three (3) of the reported incidents made by offender victims, which resulted in administrative disciplinary action for the perpetrator of the sexual abuse. PSD's administrative investigation process determined that eighteen (18) incidents were either unfounded or unsubstantiated and two (2) incidents involved consensual sex acts, which resulted in an inmate misconduct violation for the offenders. There are three (3) incidents still pending the administrative investigation process.

II. Sexual assaults (sexual abuse) by correctional staff against persons in custody of the PSD.

In 2013, there were five (5) reported incidents of staff on offender sexual abuse. PSD's administrative investigation process concluded that one reported incident was substantiated and the employee was discharged. The remaining (4) reported incidents were deemed unfounded. All reported incidents of sexual abuse by staff, contractors, or volunteers are also reported to City & County law enforcement authorities to process the criminal investigation.

III. Non-criminal sexual misconduct by staff, including sexual harassment of persons in custody of PSD.

In 2013, there was one (1) reported incident of staff on offender sexual harassment, and PSD's administrative investigation process concluded that this case was unfounded.

IV. Criminal cases initiated, and closed for sexual assaults (sexual abuse) by or upon a person in custody of PSD.

In 2013, there were two (2) cases substantiated by the City & County law enforcement's criminal investigation, which were submitted to the City and

County Prosecutor's Office. These criminal cases are pending with the relevant City and County Prosecutor's Office

V. Civil Claims filed and closed for sexual assaults by or upon a person in custody of PSD.

In 2013, there were two (2) new civil lawsuits filed, related to allegations of sexual harassment and/or sexual abuse behalf of the offender victim. These new civil cases involves one (1) offender on offender sexual abuse incident and one (1) staff on offender sexual abuse incident.

VI. PREA UPDATE

Act 194 also requires PSD to report to the Legislature on its efforts to implement the Prison Rape Elimination Act of 2003 (PREA) in our state correctional facilities and those correctional facilities under contract for the housing of PSD's inmates. The goal of PREA focuses on preventing, reducing, eliminating, investigating incidents, providing treatment for victims, and the prosecution of accusers.

The final PREA National Standards were signed by U.S. Attorney General on May 16, 2012 and published in the Federal Register on June 20, 2012. All State, County and private prisons, jails, lockups, juvenile facilities, and community confinement facilities (halfway houses, re-entry centers, and day reporting centers) must be in compliance with these standards by August 2013 and are subject to independent audits conducted by a Department of Justice (DOJ) Certified PREA Auditor. The audits are conduct on a three-year cycle with one third of PSD's facilities audited each year in a three-year cycle beginning August 2013 to August 2016. The first audits were required by August 20, 2014.

PSD entered into a Memorandum of Understanding (MOU) with several West Coast States to conduct "circular auditing." The goal of the MOU is to minimize audit cost by sharing State staff resources among the MOU State members on a rotational basis to conduct the mandated PREA audits as defined by the PREA Standards. The MOU requires that PSD has DOJ Certified PREA Auditors on staff. As a result, PSD has sent four (4) staff members to the Certified DOJ PREA Auditor Training. One staff member received certification as of April 2014 and we are pending notification of the certification for the remaining three (3) staff members.

In May 2014, Governor Neil Abercrombie informed the DOJ that the State of Hawaii was not fully compliant with the PREA Standards, but provided assurances that we are working toward compliance with all of the PREA Standards. The certification and notification of assurances allowed the Executive Branch to avoid forfeiting five (5) percent of Federal grant funds dedicated to prisons, jails, lock ups, and juvenile detention facilities. PSD has applied and is

approved to utilize the five (5) percent penalty toward assuring compliance with the PREA Standards. As of this writing, PSD has been notified that about \$26,000 (Justice Assistance Grant only) of grant funds will be redirected to ensure PSD's compliance with the PREA Standards.

In August of 2014, the first independent audits of PSD's correctional facilities were conducted. Certified auditors from the Colorado Department of Corrections audited the Women's Community Correctional Center and the Waiawa Correctional Facility through the MOU. In September 2014, PSD received the Auditor's Interim Report and PSD is working on corrective action related to nine (9) of forty-three (43) PREA Standards.

PREA impacts PSD in its Corrections and Law Enforcement Division, as well as the Office of Youth Services: Hawaii Youth Correctional Facility. The management of the finalized PREA national standards will have a significant impact on PSD's budget, programs, and resources. Therefore, PSD respectfully ask for the Legislature's support of any Department submittals based on PREA, for the benefit of offenders, staff, and the community.