



**DEPARTMENT OF PUBLIC SAFETY
REPORT TO THE 2017 LEGISLATURE**

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

December 2016

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 2015.

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

In 2015, there were thirty-three (33) 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 four (4) 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 twenty-seven (27) reported incidents were either unfounded or unsubstantiated. There are two (2) incidents still pending the administrative investigation process.

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

In 2015, there were thirty-one (31) reported incidents of staff-on-offender sexual abuse. PSD's administrative investigation process concluded that eight (8) reported incidents were substantiated. Five (5) staff perpetrators were either terminated or submitted their resignations with stipulations. Out of the five there were two (2) perpetrators that had multiple victims. One (1) staff perpetrator investigation was found to be substantiated and the disciplinary action is pending. The remaining twenty-three (23) reported incidents resulted in eighteen (18) reported incidents deemed either unsubstantiated or unfounded, and five (5) reported incidents are still pending the administrative investigation process. All reported incidents of sexual abuse by staff, contractors, or volunteers were also reported to County law enforcement authorities to process the criminal investigation component, if warranted.

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

In 2015, there were nine (9) reported incidents of staff-on-offender sexual harassment. PSD's administrative investigation process concluded that one (1) reported incident was substantiated. The one (1) staff-on-offender sexual harassment investigation was found to be substantiated and the disciplinary action is pending. Six (6) reported incidents were deemed either unsubstantiated or unfounded. The remaining two (2) reported incidents are still pending the administrative investigation process.

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

In 2015, there were eight (8) substantiated sexual assault cases which were referred to County law enforcement for criminal investigation. These criminal cases are pending with the appropriate County Police and/or Prosecutor's Office.

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

In 2015, there were zero (0) new civil lawsuits filed, related to allegations of sexual harassment and/or sexual abuse on behalf of the offender victim.

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. 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) were required to comply with these standards by August of 2013 and are subject to independent audits conducted by a Department of Justice (DOJ) Certified PREA Auditor. The audits are conducted on a three-year cycle with one-third of PSD's facilities audited each year in a three-year cycle beginning in August of 2013 to August of 2016. The Department has completed its first three-year audit cycle as of August 2016 and has now entered its second three-year cycle.

All eight PSD facilities, including contracted facilities, were audited by DOJ PREA Certified Auditors and the following PSD facilities have been certified as Compliant: Halawa Correctional Facility, Hawaii Community Correctional Center, Kauai Community Correctional Center, Kulani Correctional Facility, Maui Community Correctional Center, Waiawa Correctional Facility, and Women's Community Correctional Center. PSD is pending the final audit report for the Oahu Community Correctional Center as it was audited in August 2016. Contracted facilities: Corrections Corporation of America (CCA), Saguaro Correctional Center, and the Federal Detention Center were also audited and deemed compliant with the national PREA Standards.

PSD entered into a Memorandum of Understanding (MOU) with several Western States to conduct "circular auditing." The goal of the MOU is to minimize audit costs by sharing state staff resources among the MOU state members on a rotational basis to conduct the mandated PREA audits as defined by the DOJ PREA Standards. The MOU requires that PSD has DOJ Certified PREA Auditors on staff. As a result, PSD has sent five (5) staff members to the Certified DOJ PREA Auditor Training. PSD currently has four (4) Certified DOJ PREA Auditors, as the fifth staff member transferred to the University of Hawaii system.

In May and October of 2016, Governor David Y. Ige informed the DOJ that the State of Hawaii would provide assurances to work towards PREA compliance. The certification of assurances was provided because the Office of Youth Services Hawaii Youth Correctional Facility, under the Department of Human Services (DHS), has not yet achieved full compliance with the DOJ PREA Standards, and there is no exception for certifying only the PSD Adult Prison and Jails. 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 for and is approved to utilize the five (5) percent penalty to supplement PSD's compliance with the PREA Standards. As of this writing, PSD is pending approval for grant funds in the amount of \$23,253 related to the Justice Assistance Grant and \$51,076 related to the STOP Violence Against Women Formula Grant. These funds will be redirected to supplement PSD's compliance with the PREA Standards.

PREA impacts PSD in its Corrections and Law Enforcement Division, as well as, the DHS Office of Youth Services Hawaii Youth Correctional Facility. As the responsible manager of the finalized PREA national standards, PSD's budget, programs, and resources are significantly impacted by PREA. PSD respectfully asks the Legislature's consideration in supporting PSD submittals based on PREA, for the benefit of offenders, staff, and the community.