



**DEPARTMENT OF PUBLIC SAFETY
REPORT TO THE 2021 LEGISLATURE**

**Response to HRS 353C-8/Act 194, Sessions Law of Hawaii 2010
SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES**

December 2020

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

Act 194, Session Laws 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 2019.

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

In 2019, there were forty-two (42) 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 one (1) 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 thirty-six (36) reported incidents were either unfounded or unsubstantiated. There are five (5) incidents still pending the administrative investigation process.

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

In 2019, there were forty-seven (47) reported incidents of staff-on-offender sexual abuse. PSD's administrative investigation process concluded that four (4) reported incidents were substantiated. Four (4) staff perpetrators were either terminated or submitted their resignations with stipulations. Thirty-seven (37) of the forty-seven (47) reported incidents were deemed either unsubstantiated or unfounded, and the remaining six (6) 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 2019, there were thirteen (13) reported incidents of staff-on-offender sexual harassment. PSD's administrative investigation process concluded that there were no substantiated findings for any of the reported incidents. Twelve (12) reported incidents were deemed unfounded. There is one (1) that remains open 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 2019, there were five (5) substantiated sexual assault cases which were referred to County law enforcement for criminal investigation. Five (5) criminal cases were closed with no further action for sexual assault/abuse.

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

In 2019, there were no new civil lawsuit 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 state correctional institutions. The goal of PREA focuses on preventing, reducing, eliminating, investigating incidents, providing treatment for victims, and prosecuting 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 Department of Justice (DOJ) Certified PREA Auditors.

The audits are conducted on a three-year cycle which began in August of 2013, with one-third of PSD's facilities audited each year. The Department completed its first year in the third cycle in August 2019. The department is currently in the second year of the third cycle (August 2020 to August 2021) with Maui Community Correctional Center and Kauai Community Correctional Center scheduled to be audited by a certified DOJ PREA Auditor. PSD's on-site DOJ PREA Audits in the first year of the third cycle were held at Halawa Correctional Facility and Waiawa Correctional Facility in September 2019. The Women's Community Correctional Center was rescheduled from September to January 2020, due to personal reasons by the Auditor. The final audit reports were submitted in February 2020 (HCF), April 2020 (WCF) and September 2020 (WCCC).

All PSD facilities including contracted facilities, such as Core Civic – Saguaro Correctional Center and the Hawaii Federal Detention Center have already gone through 2 cycles of PREA audits and is currently in the third cycle. All PSD facilities were audited by DOJ PREA Certified Auditors and have been certified as compliant with the National PREA

Standards. PSD has completed the first year (August 2019 - August 2020) in the third cycle and is continuing into the second year (August 2020 – August 2021)

In 2013, PSD entered into a Memorandum of Agreement (MOA) with several Western States to conduct “circular auditing.” The goal of the MOA is to minimize audit costs by sharing state staff resources among the MOA member States and counties on a rotational basis to conduct the mandated PREA audits as defined by the DOJ PREA Standards.

The MOA requires that PSD have DOJ Certified PREA Auditors on staff. As a result, PSD has sent seven (7) staff members to the Certified DOJ PREA Auditor Training. PSD currently has three (3) Certified DOJ PREA Auditors due to retirement, employment changes, or personal reasons. Due to new requirements by DOJ and the PREA Resource Center, newly certified PREA auditors must participate in a field training Program (FTP) conducted by DOJ and the PREA Resource Center (PRC). Once the individual successfully completes FTP, then the individual is subject to a probational review until completing two (2) audits as the lead auditor. This new process has extended the certification process to about a year and half. PSD referred three current employees for an upcoming DOJ PREA Auditor Certification class; however due to the limited slots, PSD’s employees were not accepted for the November 2020 PREA Auditor Certification class, which was altered due to COVID 19.

In September of 2020, Governor David Y. Ige informed the DOJ that the State of Hawaii was certified and in full compliance with the National PREA Standards for Audit year one (1) of cycle three (3). The notification of certification allowed the Executive Branch to avoid forfeiting five percent of Federal grant funds dedicated to prisons, jails, lockups, and juvenile detention facilities. PREA impacts PSD in its Corrections and Law Enforcement Divisions.

PSD’s budget, programs, and resources are significantly impacted by PREA; therefore, PSD respectfully asks the Legislature’s favorable consideration of PREA-impacted budgetary requests as they benefit all offenders, staff, contractors, volunteers, and the community at large.