



**DEPARTMENT OF PUBLIC SAFETY
REPORT TO THE 2023 LEGISLATURE**

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

December 2022

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 2021.

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

In 2021, there were fifty-four (54) 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 eight (8) 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 forty-three (43) reported incidents were either unfounded or unsubstantiated. 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 2021, there were twenty-seven (27) reported incidents of staff-on-offender sexual abuse. PSD's administrative investigation process concluded that seven (7) reported incidents were substantiated. These substantiated incidents were categorized as overfamiliarity/inappropriate relationships that were romantic in nature, including behaviors that may have led to sexual contact. Three (3) staff perpetrators were either terminated or submitted their resignations with stipulations, one (1) staff is still pending disciplinary action. Four (4) out of the seven (7) substantiated incidents involved one (1) staff member with four (4) multiple offenders. Seventeen (17) of the twenty-seven (27) reported incidents were deemed either unsubstantiated or unfounded, and the remaining three (3) 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 2021, there were eighteen (18) reported incidents of staff-on-offender sexual harassment. PSD's administrative investigation process concluded that fifteen (15) reported incidents were deemed either unsubstantiated or unfounded, and the remaining three (3) 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 2021, there were eight (8) substantiated sexual assault cases which were referred to County law enforcement for criminal investigation. Eight (8) 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 2021, there were no 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 the Department of Public Safety (PSD) 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 violators.

The final PREA National Standards were signed by U.S. Attorney General on May 16, 2012, published in the Federal Register on June 20, 2012, and became effective August 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.

PSD began its initial efforts to comply with the finalized PREA standards in August of 2012. As a result, PSD began implementing policies and procedures, training employees, contractors, volunteers, and educating offenders.

PSD supports all efforts to detect, prevent, report, investigate, offer victim support services, and prosecute criminally and/or administratively perpetrators of sexual abuse/assault and sexual harassment in its prison system, jails, and lockups. PSD is committed to providing a safe environment for all offenders committed to the custody and supervision of its Director.

In 2012, PSD appointed an Agency Wide PREA Coordinator located in the Litigation Coordination Office to coordinate and oversee the agency's implementation and compliance efforts. Each facility Warden designated a staff member to act as a PREA Compliance Manager who would be responsible for facility-level implementation of PREA procedures, and protocols, and to foster a sexually safe environment by maintaining compliance with national PREA standards

PREA training initially began in 2012 providing PREA information, and education, emphasizing zero tolerance for sexual abuse and sexual harassment, victim services, offender, and staff rights to not be retaliated against, the importance of preventing, detecting, deterring, prosecuting violators, and encouraging the reporting of sexual abuse/sexual assault and sexual harassment incidents. Staff is also informed about the serious impact of offender sexual victimization within a correctional setting and its effects. PSD staff members, volunteers, and contractors are provided with refresher PREA training every two (2) years to ensure that they are aware of PREA policies, procedures, and goals. In years when a staff member does not receive refresher training, they are provided with updated information on current sexual abuse and sexual harassment policies, and any relevant updates or changes through handouts, memoranda, and posters.

In July 2014 PSD finalized the departments PREA policy (ADM.08.08). The policy is reviewed annually and updated based on the need to address updated information and changes due to modified protocols or additional guidance on PREA standards provided by the PREA Resource Center (PRC), the PREA Management Office (PMO) and DOJ PREA audits. The policy has been updated in 2017, 2020, and 2021, which can be accessed at:

<https://dps.hawaii.gov/wp-content/uploads/2014/07/ADM.08.08.pdf>

All new admissions and transfers receive comprehensive PREA education within thirty (30) days of arrival through an education video developed by Just Detention International (JDI), and provided with an informational brochure about PSD's zero tolerance policy, medical and mental health care, victim services, strategies to stay safe, and how to report incidents or suspected incidents of sexual abuse or sexual harassment. PREA related information is consistently posted throughout the facility and on the department's website. Written materials are published and can be accessed at:

<https://dps.hawaii.gov/wp-content/uploads/2020/10/FINAL-PREA-Brochure-GTL-FINAL-BLACK-4-17-19-FINAL.pdf>.

The agency created multiple methods for staff and offenders to report incidents of sexual abuse and sexual harassment; methods include free internal and external reporting hotlines, providing addresses for confidential written correspondence, grievance procedures, and verbal reporting processes. Family, friends, attorneys, and other third parties are informed of ways they can report incidents of offender institutional sexual abuse and/or sexual harassment by other offenders, PSD staff, contractors, or volunteers. The information can be accessed at:

<http://dps.hawaii.gov/wp-content/uploads/2015/02/How-to-report-PREA-Incident-2-3-15.jpg>.

All offenders are assessed through a PREA screening process during admission or transfer. Screening occurs by utilizing the PSD PREA Screening Tool which assesses an offender's vulnerability or predatory risk factors for sexual abuse or having the propensity to be sexually abusive towards other offenders. In April 2016, PSD conducted training for key staff on the electronic PREA screening form through PSD's Offendertrak system. The electronic process went live on June 1, 2016. The electronic screening process considers all screening variables from the National PREA Standards which enables an effective and efficient process for offender designations that will assist in housing, work assignment, programming, education and keeping separate those inmates at high risk.

In 2013 PSD entered into a Memorandum of Agreement (MOA) with several Western and Mid-Western States, creating the Western State Consortium (WSC) 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 is reviewed and renewed annually.

The MOA requires that PSD have DOJ Certified PREA Auditors on staff. As a result, PSD initially recommended seven (7) qualified staff members, and after passing initial application and minimum requirements by DOJ, the applicants were sent to the DOJ PREA Auditor Training for the certification process. PSD currently has three (3) Certified DOJ PREA Auditors due to retirement, employment changes, or personal reasons. Based on 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 a half. PSD recently referred three (3) current employees for upcoming DOJ PREA Auditor Certification training; two of the three employees were accepted after a challenging application and interview

process. The training will begin in January 2023. The classroom sessions and the final written examination will be held virtually, in-person training participation was altered due to modifications based on the COVID-19 pandemic.

The DOJ PREA 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 Departments onsite DOJ PREA Audits in the second (August 2020 – August 2021) and third (August 2021 – August 2022) year of the third cycle were conducted at Kauai Community Correctional Center (KCCC) and Maui Community Correctional Center (MCCC) in April 2021. The final audit reports for full compliance were submitted in October 2021 (MCCC), and November 2021 (KCCC). Oahu Community Correctional Center's onsite DOJ PREA Audit was held in December 2021, with a final audit report was submitted in August 2022. The onsite portion of DOJ PREA audits for Hawaii Community Correctional Center (HCCC) and Kulani Correctional Facility (KCF) were initially scheduled for November 2021, however the assigned Auditor based out of the Western State Consortium for circular auditing was required to postpone due to COVID-19 restrictions. The onsite DOJ PREA audits were rescheduled and were completed in January 2022. HCCC and KCF received an interim report in February 2022, and after some corrective action, received a final PREA audit report in August 2022 that deemed both facilities compliant with the National PREA Standards.

Currently PSD is in the first (August 2022 – August 2023) year of the fourth audit cycle. The onsite portion of PREA audits were conducted at the Women's Community Correctional Center (WCCC) and, Waiawa Correctional Facility (WCF) in September 2022, with WCCC receiving an interim audit report for minor corrective action, and WCF receiving a final audit report deeming full compliance with the National PREA Standards in October 2022. Halawa Correctional Facility's onsite portion of the audit was in October 2022 and receiving an interim report for corrective action in November 2022.

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

In October of 2022, 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 three (3) 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.

The Department continues its efforts to maintain compliance with the PREA standards, and working to prevent, detect, and respond to sexual abuse and sexual harassment in confinement settings. Some of these efforts include, but are not limited to internal reviews, Department of Justice PREA audits, updating policies, partnering with the community rape crisis centers that provide emotional counseling support services for offenders, updating PREA training with current information and materials, and monitoring of status and progress in each institution.

PSD's budget, programs, and resources are significantly impacted by required PREA audits (internal and external), compliance, training, and education. The department does not have a specific budget designated for the maintenance of PREA within the agency or its institutions. The department had been dependent on previous federal grant funds to cover PREA audits, related materials, corrective action items needed based on auditing, cost of education, training, and materials used for PREA information and remedies. With compliance, comes a need for financial assistance to accomplish the vision and goals to prevent, detect, eliminate, and prosecute violators; 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.