



**DEPARTMENT OF PUBLIC SAFETY
REPORT TO THE 2013 LEGISLATURE**

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

December 2012

Act 194, Sessions Law of Hawaii 2010

SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES

Act 194, Sessions Law of Hawaii 2010, requires that the Department of Public Safety (PSD) report to the Legislature the statistical information related to the number of sexual assaults that occurred while a person is in the custody of the Department of Public Safety. Accordingly, the data for July 2011 – June 2012, fiscal year (FY) 2012, is listed below.

I. Sexual assaults by persons in custody against other persons in the custody of PSD.

There was one reported incident during FY 2012 of offender on offender sexual abuse. The departmental administrative investigation did substantiate the allegation made by the victim offender. This incident was also reported to law enforcement authorities for a criminal investigation.

II. Sexual assaults by correctional staff against persons in custody of PSD.

There were four reported incidents related to allegations of staff on offender sexual abuse during FY 2012. In one case, the staff member resigned prior to completion of the administrative investigation and the disciplinary process. The other cases are currently pending the departmental administrative investigation process and these cases were also reported to law enforcement authority for a criminal investigation. One case has resulted in a criminal indictment and is currently being prosecuted in the courts.

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

There were no isolated reports of staff sexual harassment during FY 2012.

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

There were no cases initiated during this period that were closed for sexual assaults by or upon a person in custody of PSD. The criminal case identified above is still pending in the criminal court system.

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

There were two civil lawsuits pending from prior fiscal years alleging sexual harassment and sexual assault by a staff member.

VI. PREA UPDATE

Act 194 also requires PSD to report to the Legislature on its efforts to implement the Prison Rape Elimination Act (PREA) of 2003 in our state correctional facilities

and those correctional facilities under contract for the housing of PSD inmates. The goal of PREA focuses on preventing, reducing, eliminating, investigating incidents, providing treatment for victims, and the prosecution of accusers.

In January 2011, the U.S. Department of Justice released proposed rules in accordance with PREA. These proposed rules contain national standards aimed at combating sexual abuse in four types of confinement facilities: adult prisons and jails, juvenile facilities, lockups, and community confinement facilities.

The final PREA National Standards were signed by U.S. Attorney General on May 16, 2012. There are fifty-two official PREA standards, which were published in the Federal Register on June 20, 2012. All State and County prisons (including contract facilities), jails, lockups, juvenile facilities, and community confinement facilities (halfway houses, re-entry centers, and day reporting centers) must comply with these standards. PSD is in the process of ensuring compliance with these standards by developing a screening tool, checklist, training for staff and inmates, formatting a policy incorporating the final standards, and networking with other agencies.

In FY 2014, PSD will be subject to external audits for compliance with the PREA national standards. It is important to note that the penalty for being found "not substantially in compliance" with the national standards is a five percent reduction in grant funds related to the relevant executive branch programs.

In Hawaii, this could impact the Department of Public Safety in both Corrections and Law Enforcement, as well as the Office of Youth Services: Hawaii Youth Correctional Facility. An exception to this penalty would require that the Governor certify that the projected five percent reductions of grant funds will be utilized for expenses to ensure compliance with PREA. The implementation of the final PREA national standards will have a significant impact on PSD's budget, programs, and resources; therefore, the Legislature will need to consider the needs of PSD, offenders, staff, and the community to "substantially comply" with the PREA national standards.