



**DEPARTMENT OF PUBLIC SAFETY
REPORT TO THE 2011 LEGISLATURE**

HB 2266 (2010)

SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES

December 2010

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HB 2266 calls for the Department of Public Safety (PSD) to report to the Legislature, data on the number of sexual assaults that occur in custody each year. Accordingly, the data for the last fiscal year is listed below.

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

There were two reported incidents during the fiscal year of 2010. One report was substantiated after an investigation and appropriate action was taken. The other report was investigated and found to be unsubstantiated.

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

There was one reported incident, which was found to be unsubstantiated after investigation. There is one other incident that was brought to PSD attention via a lawsuit after the inmate and the staff member had both left PSD. This incident is referenced in Section V.

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

There was one reported incident that was investigated and found to be unsubstantiated.

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

The Departments of the Prosecuting Attorney's Office were contacted and none reported any cases initiated during the last year for sexual assaults by or upon a person in custody of PSD.

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

There was one civil lawsuit filed during the last fiscal year alleging sexual harassment and sexual assault by a staff member. The staff member resigned prior to the investigation and the inmate was released from custody so that the investigation could not continue. The lawsuit is still pending.

HB 2266 also requires PSD to report to the Legislature on its efforts to implement the Prison Rape Elimination Act of 2003 (PREA) in the state correctional facilities and those correctional facilities under contract for the housing of inmates. When

PREA became federal law, it created a schedule of events that have occurred since its passage in 2003. A number of studies were conducted and a commission was established to develop standards for PREA. These standards were finalized and sent to the Attorney General of the United States in the summer of 2009. The plan was for the Attorney General to use the standards to create federal regulations within one year. The Hawaii coordinator for PREA attended a meeting with all the other state representatives and staff from the Attorney General's Office in December of 2009. According to the consensus of the officials at this meeting, the federal regulations will probably differ from the standards that were promulgated by the commission simply due to the expense in implementing the original extensive standards. PREA precludes the implementation of any regulations that require additional expenditures to put into place. Thus, the federal regulations will probably not be established until some time in the summer of 2011.

Currently, PSD policy is consistent with the intent of PREA, and PSD is waiting to evaluate the federal regulations when they are finally promulgated to determine whether any changes need to be made to existing PSD policy in order to be consistent with the new federal regulations.