



**DEPARTMENT OF PUBLIC SAFETY
REPORT TO THE 2012 LEGISLATURE**

**In Response to House Bill 2266, Sessions Law of Hawaii 2010
SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES**

December 2011

House Bill (HB) 2266, Sessions Law of Hawaii 2010

SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES

HB 2266, Sessions Law of Hawaii 2010, 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 (July 2010 – June 2011) 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 2011. Both incidents were reported to law enforcement authorities. The administrative and/or criminal investigations did not substantiate the allegations. In one of the incidents the alleged victim admitted to falsifying his statement to law enforcement authorities.

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

There were three reported incidents. These incidents involve three inmates, who filed a criminal complaint against the same Adult Correctional Officer (ACO) with law enforcement authorities. The ACO was arrested for Sexual Assault in the Third and released on bail. The ACO was placed on leave pending investigation. These allegations were investigated administratively and criminally, both are still pending resolution.

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 it was substantiated. The incident involved derogatory statements made by an ACO related to “gender discrimination.”

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.

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. 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 federal 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.

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 60-day public comment review period ended in April 2011 and the final rules are projected to be published by the end of 2011. These rules will prevent sexual abuse and reduce harm to the victims by assessing prevention planning; responsive planning; training and education; screening for risk of sexual victimization and abusiveness; reporting; official response following an inmate report; investigations; discipline; medical and mental care; data collection and review; and audits.

The rules must comply with PREA's requirement, which precludes the implementation of any regulations that require additional expenditures to put into place. The goal is to have correctional agencies implement these standards without jeopardizing other programs vital to protecting inmates and ensuring their re-integration into society.

PSD's policy is consistent with the intent of PREA; and PSD will evaluate the final federal regulations, when they are promulgated to determine whether any changes are necessary to existing PSD policy in order to be consistent with the new federal regulations. It is important to note that once these regulations are published, States that do not comply with the national standards are subject to a five percent reduction in funds they would otherwise receive for prison purposes, unless the governor certifies that five percent of such funds will be used to enable compliance in future years.