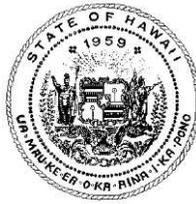


DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

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No. _____

December 18, 2018

The Honorable Ronald D. Kouchi,
President and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

The Honorable Scott K. Saiki, Speaker
and Members of the House of
Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, HI 96813

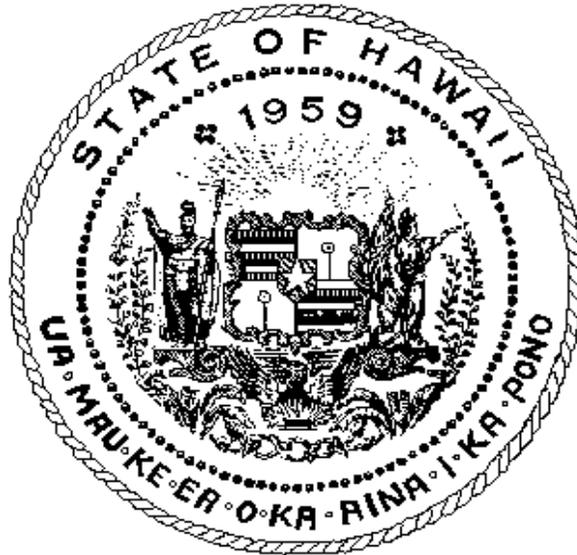
Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

For your information and consideration, I am transmitting a copy of the **Report on Sexual Assaults in Correctional Facilities**, as required by Act 194, Session Laws of Hawaii 2010, Section 353C-8, Hawaii Revised Statutes. In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at: <https://dps.hawaii.gov/wp-content/uploads/2018/12/Sexual-Assaults-in-Correctional-Facilities.pdf>

Sincerely,

Nolan P. Espinda
Director

Enclosures



**DEPARTMENT OF PUBLIC SAFETY
REPORT TO THE 2019 LEGISLATURE**

**Responsive to Act 194, Sessions Law of Hawaii 2010
Section 353C-8, Hawaii Revised Statutes**

**SEXUAL ASSAULTS IN CORRECTIONAL
FACILITIES**

December 2018

**Act 194, Sessions Law of Hawaii 2010
Section 353C-8, Hawaii Revised Statutes**

SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES

Act 194, Sessions Law 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 2017.

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

In 2017, there were forty-five (45) 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 five (5) 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 eighteen (18) reported incidents were either unfounded or unsubstantiated. There are twenty-two (22) incidents still pending the administrative investigation process.

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

In 2017, there were fifteen (15) reported incidents of staff-on-offender sexual abuse. PSD's administrative investigation process concluded that four (4) reported incidents were substantiated. Two (2) staff perpetrators were either terminated or submitted their resignations with stipulations. Eight (8) of the fifteen (15) reported incidents were deemed either unsubstantiated or unfounded, and the remaining five (5) 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 2017, there were ten (10) reported incidents of staff-on-offender sexual harassment. PSD's administrative investigation process concluded that two (2) reported incident was substantiated. Six (6) reported incidents were

deemed unfounded. The remaining two (2) 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 2017, there were five (5) substantiated sexual assault cases which were referred to County law enforcement for criminal investigation. These criminal cases are pending with the appropriate County Law Enforcement and/or Prosecutor's Office.

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

In 2017, there were zero (0) 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 PSD to report to the Legislature on its efforts to implement the Prison Rape Elimination Act of 2003 (PREA) in our state correctional facilities. The goal of PREA focuses on preventing, reducing, eliminating, investigating incidents, providing treatment for victims, and the prosecution of 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 a Department of Justice (DOJ) Certified PREA Auditor.

The audits are conducted on a three-year cycle with one-third of PSD's facilities audited each year beginning in August 2013 and ending August 2016. The Department completed its first three-year audit cycle as of August 2016. The department is currently in the second three-year cycle (August 2016 to August 2019) and has completed audits in one third of its facilities in the first year of the second cycle.

All eight PSD facilities, including contracted facilities, were audited by DOJ PREA Certified Auditors and the following PSD facilities have been certified as PREA Compliant: Halawa Correctional Facility, Hawaii Community Correctional Center, Kauai Community Correctional Center, Kulani Correctional Facility, Maui Community Correctional Center, Oahu Community Correctional Center, Waiawa Correctional Facility and the Women's Community Correctional Center. Contracted facilities: Core

Civic, formerly known as Corrections Corporation of America (CCA), Saguaro Correctional Center, and the Federal Detention Center were also audited and deemed compliant with the National PREA Standards.

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

The MOU 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 five (5) Certified DOJ PREA Auditors. PSD has two (2) staff who have recently certified as DOJ PREA auditors and are currently on probation. Due to new requirements by DOJ and the PREA Resource Center newly certified PREA auditors must participate in a field training Program (FTP) that is conducted by DOJ and the PREA Resource Center (PRC). Once the FTP and overview of their first (2) audits as lead auditors have been completed the staff members will have completed their probation. This new process is a requirement for full certification.

In October of 2018, Governor David Y. Ige informed the DOJ that the State of Hawaii would provide assurances to work towards PREA compliance. The certification of assurances was provided because the Office of Youth Services: Hawaii Youth Correctional Facility, under the Department of Human Services (DHS) has not yet achieved full compliance with the DOJ PREA Standards for a Juvenile Facility. It should be noted that there is no exception for Hawaii to certify full compliance by the Governor for the Adult Prison and Jails under PSD.

The certification and notification of assurances allowed the Executive Branch to avoid forfeiting five percent of Federal grant funds dedicated to prisons, jails, lock ups, and juvenile detention facilities. PREA impacts PSD in its Corrections and Law Enforcement Division. PSD’s budget, programs, and resources are significantly impacted by PREA; therefore, PSD respectfully asks the Legislature’s consideration in supporting budgetary request impacted by PREA as a benefit for all offenders, staff, contractors, volunteers and the community at large.