



**DEPARTMENT OF PUBLIC SAFETY
REPORT TO THE 2018 LEGISLATURE**

**IN RESPONSE TO HRS 353C-8
ACT 194, SESSION LAWS OF HAWAII 2010**

SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES

December 2017

Act 194, Sessions Law of Hawai'i 2010
SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES

Act 194, Sessions Law of Hawai'i 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 2016.

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

In 2016, 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 eight (8) of the reported incidents made by offender victims, which resulted in administrative disciplinary action for the perpetrators of the sexual abuse. PSD's administrative investigation process determined that thirty-three (33) reported incidents were either unfounded or unsubstantiated. There are four (4) incidents still pending the administrative investigation process.

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

In 2016, there were twenty-one (21) reported incidents of staff-on-offender sexual abuse. PSD's administrative investigation process concluded that eight (8) reported incidents were substantiated. Eight (8) staff perpetrators were either terminated or submitted their resignations with stipulations. Of the remaining thirteen (13) reported incidents, twelve (12) incidents were deemed either unsubstantiated or unfounded, and one (1) incident is still pending the administrative investigation process. All reported incidents of sexual abuse by staff, contractors, or volunteers were also referred 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 2016, there were nine (9) reported incidents of staff-on-offender sexual harassment. PSD's administrative investigation process concluded that none was substantiated. Seven (7) 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 2016, there were eight (8) substantiated sexual assault cases which were referred to County law enforcement for criminal investigation. These criminal cases remain pending with the appropriate County law enforcement and/or Prosecutor's Offices.

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

In 2016, 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 PSD to report to the Legislature on its progress in implementing the Prison Rape Elimination Act of 2003 (PREA) in our state correctional facilities. 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, reentry 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 in each year of a three-year cycle from August 2013 to August 2016. The Department completed its first three-year audit cycle in August 2016 and is currently in the second three-year cycle (August 2016 to August 2019). Presently one-third of PSD facilities have been audited in the first year of the second cycle.

In 2013, PSD entered into a Memorandum of Understanding (MOU) with several Western States to conduct "circular auditing", with the goal of minimizing audit costs by sharing state staff resources among the MOU state members to conduct the mandated PREA audits as defined by the DOJ PREA Standards on a rotational basis. The MOU requires that PSD has DOJ Certified PREA Auditors on staff. PSD has sent five (5) staff members to the Certified DOJ PREA Auditor Training and currently has four (4) Certified DOJ PREA Auditors. The fifth staff member is pending final certification by DOJ and the PREA Resource Center.

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: 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 October of 2017, Governor 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, and the Department is assisting the Youth Correctional Facility in achieving PREA compliance.

The certification and notification of assurances allowed the Executive Branch to avoid forfeiting five (5) 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 requests impacted by PREA as a benefit for all offenders, staff, contractors, volunteers and the community at large.