

DAVID Y. IGE
GOVERNOR



DEPT. COMM. NO. 103

STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
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No. _____

December 12, 2019

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

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

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

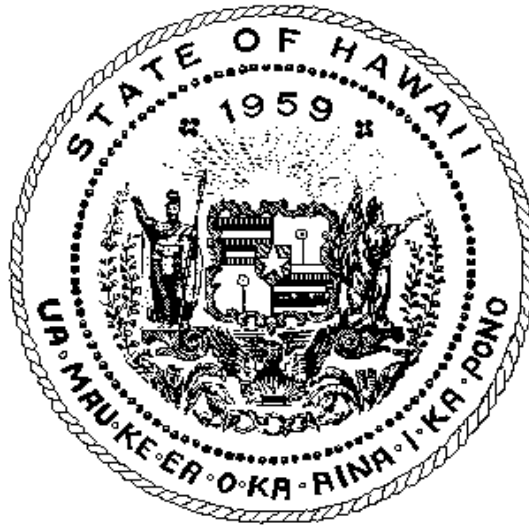
For your information and consideration, I am transmitting a copy of the Report on Sexual Assaults in Correctional Facilities, as required by Act 194, Session Laws of Hawaii 2010, §353C-8, Hawaii Revised Statutes. In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at: <https://dps.hawaii.gov/wp-content/uploads/2019/12/Report on Sexual Assaults in Correctional Facilities.pdf>.

Sincerely,

A handwritten signature in black ink that reads "Nolan P. Espinda".

Nolan P. Espinda
Director

Enclosures



**DEPARTMENT OF PUBLIC SAFETY
REPORT TO THE 2020 LEGISLATURE**

**Response to HRS 353C-8/Act 194, Sessions Law of Hawaii 2010
SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES**

December 2019

Act 194, Sessions Law of Hawaii 2010 SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES

Act 194, Session Laws 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 2018.

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

In 2018, there were sixty (60) 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 perpetrator of the sexual abuse. PSD's administrative investigation process determined that thirty-one (31) reported incidents were either unfounded or unsubstantiated. There are twenty-one (21) incidents still pending the administrative investigation process.

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

In 2018, there were thirty-three (33) reported incidents of staff-on-offender sexual abuse. PSD's administrative investigation process concluded that four (4) reported incidents were substantiated. Four (4) staff perpetrators were either terminated or submitted their resignations with stipulations. Twenty (20) of the thirty-three (33) reported incidents were deemed either unsubstantiated or unfounded, and the remaining nine (9) 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 2018, there were eleven (11) reported incidents of staff-on-offender sexual harassment. PSD's administrative investigation process concluded that two (2) reported incidents were 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 2018, there were twenty-eight (28) substantiated sexual assault cases which were referred to County law enforcement for criminal investigation. Four (4) criminal cases were closed with no further action for sexual assault/abuse. The remaining twenty-four (24) 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 2018, there was one (1) new civil lawsuit 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 state correctional facilities. The goal of PREA focuses on preventing, reducing, eliminating, investigating incidents, providing treatment for victims, and prosecuting 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 Department of Justice (DOJ) Certified PREA Auditors.

The audits are conducted on a three-year cycle begun in August of 2013, with one-third of PSD's facilities audited each year. The Department completed its second cycle of the three-year audit in August 2019. The department is currently in the first year of the third cycle (August 2019 to August 2022). PSD's on-site DOJ PREA Audit of Halawa Correctional Facility and Waiawa Correctional Facility was completed in September 2019 with the final audit reports expected by May 2020. The Women's Community Correctional Center is scheduled for an on-site DOJ PREA Audit in January 2020.

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 for the second cycle of PREA Audits: 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. PSD's contracted facilities such as Core Civic, formerly known as Corrections Corporation of America (CCA) Saguaro Correctional Center, and the Hawaii Federal Detention Center were also audited and deemed compliant with the National PREA Standards.

In 2013, PSD entered into a Memorandum of Agreement (MOA) with several Western States to conduct "circular auditing." The goal of the MOA is to minimize audit costs by sharing state staff resources among the MOA member states and counties on a rotational basis to conduct the mandated PREA audits as defined by the DOJ PREA Standards.

The MOA 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 four (4) Certified DOJ PREA Auditors. Due to new requirements by DOJ and the PREA Resource Center, newly certified PREA auditors must participate in a field training Program (FTP) conducted by DOJ and the PREA Resource Center (PRC). Once the individual successfully completes FTP, then the individual is subject to a probational review until completing two (2) audits as the lead auditor. This new process has extended the certification process to about a year and half. PSD is referring four current employees to the next DOJ PREA Auditor Certification class in 2020.

In October of 2019, Governor David Y. Ige informed the DOJ that the State of Hawaii would provide assurances to work towards PREA compliance. 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 Divisions.

PSD's budget, programs, and resources are significantly impacted by PREA; therefore, PSD respectfully asks the Legislature's favorable consideration of PREA-impacted budgetary requests as they benefit all offenders, staff, contractors, volunteers, and the community at large.