

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

DEPT. COMM. NO. 314

MAX N. OTANI
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Tommy Johnson
Deputy Director
Corrections

Jordan Lowe
Deputy Director
Law Enforcement

No. _____

December 30, 2021

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

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

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

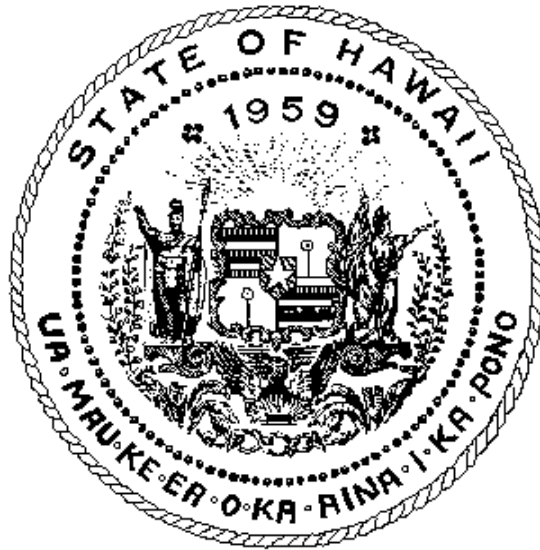
For your information and consideration, I am transmitting a copy of the **Report of Sexual Assaults in Correctional Facilities**, as required by Act 194, Session Laws of Hawaii 2010, Section 353C-8, Hawaii Revised Statutes. In accordance with Section 93-16, Hawaii Revised Statutes, I am also informing you that the report may be viewed electronically at: <https://dps.hawaii.gov/wp-content/2022/01/Report-of-Sexual-Assaults-in-Correctional-Facilities.pdf>.

Sincerely,

A handwritten signature in black ink, appearing to read "Max N. Otani", is written over a horizontal line.

Max N. Otani
Director

Enclosure



**DEPARTMENT OF PUBLIC SAFETY
REPORT TO THE 2022 LEGISLATURE**

**Response to Section 353C-8, Hawaii Revised Statutes/
Act 194, Session Laws of Hawaii 2010**

SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES

December 2021

Act 194, Session Laws of Hawaii 2010 SEXUAL ASSAULTS IN CORRECTIONAL FACILITIES

Act 194, Session Laws of Hawaii 2010, requires the Department of Public Safety (PSD) to annually report to the Legislature statistical information related to the number of sexual assaults that occurred involving PSD custodies. 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 are from the 2020 Calendar Year.

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

In 2020, there were fifty-three (53) reported incidents of offender-on-offender sexual abuse. PSD is responsible for conducting the administrative investigations for all PREA sexual abuse incidents, and PSD refers all reported PREA sexual abuse incidents to County law enforcement to process the parallel criminal investigations. PSD's administrative investigation process substantiated two (2) of the incidents reported by offender victims, which resulted in administrative disciplinary action for the perpetrator of the sexual abuse. PSD's administrative investigation process determined that forty-eight (48) reported incidents were either unfounded or unsubstantiated. There are three (3) incidents still pending the administrative investigation process.

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

In 2020, there were thirty-nine (39) 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. Thirty-two (32) of the thirty-nine (39) reported incidents were deemed either unsubstantiated or unfounded, and the remaining three (3) 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 the custody of PSD.

In 2020, there were seven (7) reported incidents of staff-on-offender sexual harassment. PSD's administrative investigation process concluded that one (1) reported incident was substantiated. Six (6) reported incidents were

deemed either unsubstantiated or unfounded, and there are no open or pending incidents remaining in the administrative investigation process.

IV. Criminal cases initiated and closed for sexual assaults (sexual abuse) by or upon a person in the custody of PSD.

In 2020, there were six (6) substantiated sexual assault cases referred to County law enforcement for criminal investigation. Six (6) criminal cases were closed with no further action.

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

In 2020, 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 the Department of Public Safety to report to the Legislature on its efforts to implement the Prison Rape Elimination Act (PREA) of 2003 in state correctional institutions. The goal of PREA focuses on preventing, reducing, eliminating, investigating incidents, providing treatment for victims, and prosecuting violators.

The final PREA National Standards were signed by the U.S. Attorney General on May 16, 2012, published in the Federal Register on June 20, 2012, taking effect in August 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 be subject to independent audits conducted by Department of Justice (DOJ) Certified PREA Auditors.

The audits are conducted on a three-year cycle that began in August 2013, with one-third of PSD's facilities audited each year. In the first year of the third cycle, the Department's onsite DOJ PREA Audits were conducted at the Halawa Correctional Facility (HCF) and Waiawa Correctional Facility (WCF) in September 2019. The Women's Community Correctional Center was rescheduled from September 2019 to January 2020, at the request of the Auditor. The final audit reports were submitted in February 2020 (HCF), April 2020 (WCF), and September 2020 (WCCC).

PSD recently completed the second (August 2020 to August 2021) year of the third cycle, with audits conducted at the Kauai Community Correctional Center (KCCC) and Maui Community Correctional Center (MCCC). The

initial onsite portion of the DOJ PREA audits for KCCC and MCCC were initially scheduled for November 2020, however, the Auditor based with the Western State Consortium for circular auditing was forced to postpone due to COVID-19 travel restrictions. The onsite DOJ PREA audits were rescheduled and were completed in April 2021 (KCCCA), with MCCC receiving an interim report in June 2021. After some corrective action, MCCC's final audit report was received in November 2021, which deemed MCCC to be in full compliance with the National PREA Standards.

Currently, PSD is in the third (August 2021 to August 2022) year of the third audit cycle, with Hawaii Community Correctional Center (HCCC), Kulani Correctional Facility (KCF), and Oahu Community Correctional Center (OCCC) scheduled to be audited by a certified DOJ PREA Auditor in December 2021 and January 2022.

All PSD facilities, including contacted facilities, such as, CoreCivic – Saguaro Correctional Center and the Hawaii Federal Detention Center, have already completed two cycles of PREA audits and are currently in the third cycle. All PSD and contracted facilities were audited by DOJ PREA Certified Auditors and have been certified as compliant with the National PREA Standards.

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

The MOA requires that PSD have DOJ Certified PREA Auditors on staff. As a result, PSD sent seven (7) qualified staff members to the Certified DOJ PREA Auditor Training. Currently, three (3) Certified DOJ PREA Auditors remain, due to retirement, changes in employment, or for other reasons.

DOJ and the PREA Resource Center now require newly certified PREA auditors to participate in a field training program (FTP). 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 procedure has extended the certification process to about a year-and-a-half. PSD referred three current employees for the upcoming DOJ PREA Auditor Certification class, however, due to limited slots and the COVID-19 pandemic, PSD's employees were not accepted to the November 2020 Auditor Certification class.

In October 2021, Governor David Ige informed the DOJ of the State of Hawaii's certification of full compliance with the National PREA Standards

for Audit Year 2 of Cycle 3. The notification of certification allowed the Executive Branch to avoid forfeiting five percent of Federal grant funds dedicated to prisons, jails, lockups, and juvenile detention facilities, which impacts both PSD's Corrections and Law Enforcement divisions.

PSD's initial efforts to comply with the finalized PREA standards began in August 2012, with the implementation of policies and procedures, the training of employees, contractors, and volunteers, and the education of offenders.

The Department supports all efforts to detect, prevent, report, investigate, offer victim support services, and prosecute criminally and/or administratively, perpetrators of sexual abuse/assault and sexual harassment in its prison system, jails, and lockups. PSD is committed to providing a safe environment for all offenders committed to the custody and supervision of the Department.

PSD continues its efforts to maintain compliance with the PREA standards. Some of these efforts include, but are not limited to, updating policies, requesting community rape crisis centers to provide emotional counseling support services for offenders, updated PREA training with current information and educational materials, as well as, appointing PREA Compliance Managers (PCM) in each facility. Under the guidance of PSD's PREA Coordinator, PCMs direct their facility's efforts to comply with the policies and directives that promote the PREA standards.

The Department has continued to provide comprehensive training and PREA updates despite pandemic-related restrictions for all PSD staff, emphasizing PSD's zero tolerance policy and the importance of preventing, detecting, deterring, and encouraging the reporting of sexual abuse/sexual assault and sexual harassment toward offenders. PSD has also educated staff about the serious impact of offender sexual victimization within the correctional setting. Staff members are provided with refresher PREA training every two (2) years to ensure that they are aware of PSD's PREA policies and goals. In years when staff members do not receive the refresher training, they are provided with updated information on current sexual abuse and sexual harassment policies through handouts, memoranda, and posters.

The PREA posters on general assistance and reporting information for inmates, staff, and the public have been updated to include a new medical and mental health information poster. All informational posters and brochures have distributed to all facilities and posted to the Department's website. PSD volunteers and contractors, who have contact with offenders, receive PREA training through the Department's Volin-Cor program, part of the Corrections Program Services Division. They are

trained in PREA and PSD's Zero-Tolerance policies and their responsibilities regarding prevention, detection, reporting, and how to respond to an offender victim of sexual abuse and sexual harassment. The training is conducted prior to them having any contact with the inmate population. Also included in the PREA training are sections on Code of Ethics, Confidentiality, and Mandatory Reporting requirements, safety, security procedures, protocols, and dress code. The training for Volin-Cor Program participants is held annually, to include background checks.

Offenders receive verbal and written information about PSD's zero tolerance policy and how to report incidents or suspected incidents of sexual abuse or sexual harassment, as well as ongoing comprehensive PREA education for inmates, detainees, and residents, through video and updated PREA brochures and postings, even throughout the pandemic.

PSD's budget, programs, and resources are significantly impacted by the required PREA audits, training, and education; 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.