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ANNUAL REPORT

TO: Peter J. Forbes, Commissioner
FROM: The Investigations Unit
SUBJECT: PREA Investigation Summary for January 2016-December 2016
DATE: April 24, 2018

The Prison Rape Elimination Act (PREA) enacted in 2003, prohibits sexual misconduct in correctional settings such as prisons, jails, lockups, and juvenile facilities. Pursuant to 28 C.F. R. Part 115, the National PREA Standards to Prevent, Detect, and Respond to Prison Rape took effect on August 20, 2012; however, the Department of Youth Services (DYS) began implementing the standards in 2005, while they were still in draft form and has been an active participant in the development and modifications of the standards.

The purpose of this report is to provide an accounting of the PREA related incidents processed by DHS in 2016, including corrective action undertaken to improve the effectiveness of our response policies and practices. This is the fifth annual PREA report by DHS. It includes a summary of new incidents and proposed corrective actions as well as an assessment of progress made toward the corrective actions identified in last year's report. This allows us to continually gauge our progress and improve the effectiveness of our prevention, detection and response policies, practices and training.

As there were no policy or programmatic issues requiring corrective action identified in the 2015 report, DHS continues its training and monitoring regarding PREA and the reporting process.

In 2016, DHS received seven reports from youths alleging sexual abuse¹ by program staff. There were four allegations of staff sexual misconduct² reported; all four were found to be unfounded.³

¹ Sexual abuse is comprised of two categories under 28 C.F.R. §115.6: sexual misconduct and sexual harassment.

² Sexual misconduct under 28 C.F.R. §115.6 is defined as:

Sexual abuse of an inmate, detainee, or resident by a staff member, contractor, or volunteer includes any of the following acts, with or without consent of the inmate, detainee, or resident:

(1) Contact between the penis and the vulva or the penis and the anus, including penetration, however slight;

There were three allegations of staff sexual harassment⁴ reported; one was substantiated and two were found to be unsubstantiated.⁵ The following is a summary of investigation activity regarding the seven incidents:⁶

Sexual Misconduct Allegations

Staff Secure Treatment Programs – 2 reported allegations

Response Description: One allegation was reported verbally by the youth's mother to a Department of Children and Families social worker. In that incident, a report was also filed pursuant to M.G.L. c. 119, section 51A ("51A") with the Department of Children and Families ("DCF") regarding the allegations. DCF screened in and investigated but found the allegations to be unsupported.⁷ This matter was also the subject of an investigation by DYS.

One allegation was reported verbally by the youth to program staff and was the subject of an internal investigation by the program.

Findings: In both cases the youths' allegations were determined after investigation to be unfounded.

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- (2) Contact between the mouth and the penis, vulva, or anus;
 - (3) Contact between the mouth and any body part where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
 - (4) Penetration of the anal or genital opening, however slight, by a hand, finger, object, or other instrument, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
 - (5) Any other intentional contact, either directly or through the clothing, of or with the genitalia, anus, groin, breast, inner thigh, or the buttocks, that is unrelated to official duties or where the staff member, contractor, or volunteer has the intent to abuse, arouse, or gratify sexual desire;
 - (6) Any attempt, threat, or request by a staff member, contractor, or volunteer to engage in the activities described in paragraphs (1) through (5) of this definition;
 - (7) Any display by a staff member, contractor, or volunteer of his or her uncovered genitalia, buttocks, or breast in the presence of an inmate, detainee, or resident, and
 - (8) Voyeurism by a staff member, contractor, or volunteer.

³ An unfounded allegation means an allegation that was investigated and determined not to have occurred. *Id.*

⁴ Sexual harassment under 28 C.F.R. §115.6 is defined as:

- (1) Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one inmate, detainee, or resident directed toward another; and
- (2) Repeated verbal comments or gestures of a sexual nature to an inmate, detainee, or resident by a staff member, contractor, or volunteer, including demeaning references to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.

⁵ An unsubstantiated allegation means an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether or not the event occurred. 28 C.F.R. §115.5.

⁶ Program name and location have been redacted to preserve the confidentiality of the involved parties as well as maintain safety and security of the specific facility.

⁷ Once DCF receives a 51A report, it makes a quick "screening" decision. If DCF "Screens Out" the 51A report, DCF makes notifications and takes no further action. Common reasons for a DCF "Screen Out" decision include that the person alleged to be responsible is not a "caretaker", the injured person is not a "child," or the facts do not meet the DCF definition of "abuse" or "neglect." 110 C.M.R. 4.21.

If DCF screens in a 51A report, it assigns a DCF investigator to conduct a DCF investigation, known as the 51B investigation. The DCF investigator produces a 51B report at the end of the 51B investigation which results in DCF finding the allegations in the 51A report are "Supported" or "Unsupported." If DCF finds the 51B investigation is "Unsupported," DCF takes no further action.

Corrective Actions: No policy or programmatic issues requiring corrective action were identified.

Hardware Secure Detention Programs – 2 reported allegations

Response Description: One allegation was verbally reported by youth to program staff. That allegation resulted in the filing of a report with DCF pursuant to M.G.L. c. 119, section 51A (“51A”). DCF screened in and investigated but found the allegations to be unsupported. This matter was also the subject of an investigation by DYS.

One allegation was reported verbally by the youth to program staff and was the subject of an internal investigation by the program.

Findings: The youths’ allegations were determined after investigation to be unfounded.

Corrective Actions: No policy or programmatic issues requiring corrective action were identified.

Sexual Harassment Allegations

Staff Secure Treatment Programs – 1 reported allegation

Response Description: The allegation was reported verbally by the youth to program staff and was the subject of an internal investigation by the program.

Findings: The youth’s allegations were determined after investigation to be unsubstantiated.

Corrective Actions: No policy or programmatic issues requiring corrective action were identified.

Hardware Secure Detention Programs – 2 reported allegations

Response Description: One allegation was reported verbally by the youth to program staff, resulting in the filing of a 51A with DCF. DCF conducted an investigation into the 51A and determined that the allegations were unsupported. This matter was also the subject of an investigation by DYS. The other allegation was reported via the grievance box at the program and was the subject of an internal investigation by the program.

Findings: In the first allegation, while DCF did not support the 51A allegations, the DYS investigation determined that the allegation of staff sexual harassment of a youth was substantiated. The staff person was terminated from employment. In the second allegations, the youth’s allegations were determined after investigation to be unfounded.

Corrective Actions: No policy or programmatic issues requiring corrective action were identified.

DEPARTMENT OF YOUTH SERVICES-PREA INVESTIGATION SUMMARY

Report for: January 2016-December 2016

*see legend

Date	Method of Report*	Type of Program	Status
January	R, V	HWS	Closed
September	R, V	HWS	Closed
September	S, V ⁸	SS	Closed
October	R, V	SS	Closed
November	R, V	SS	Closed
December	R, V	HWS	Closed
December	GB	HWS	Closed

Legend for Method of Report

R: resident reported

S: staff reported

W: written

V: verbal

GB: grievance box

Legend for Type of Program

HWS: Hardware Secure

SS: Staff Secure

ALP: Overnight Arrest

RC: Reception Center

IL: Independent Living

⁸ The youth's mother reported the allegation to a DCF social worker who then notified the program.