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#### **PETER J. FORBES**

### Commissioner

**ANNUAL REPORT**

**TO:** Peter J. Forbes , Commissioner

**FROM:** The Investigations Unit

**SUBJECT:** PREA Annual Report for January 2018 - December 2018

**DATE:**  September 1, 2020

The Prison Rape Elimination Act (PREA) enacted in 2003, prohibits sexual misconduct in correctional settings such as prisons, jails, lockups, and includes 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 DYS in 2018, including corrective action undertaken to improve the effectiveness of our response policies and practices. This is the seventh annual PREA report by DYS. It includes a summary of new incidents and proposed corrective actions as well as an assessment of progress made toward any 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 2017 report, DYS has continued its training and monitoring regarding PREA and the reporting process.

In 2018, DYS received six reports from youths alleging sexual abuse by program staff and ten reports from youths alleging sexual abuse by other youths, for a total of sixteen (16) reports implicating PREA.

**Sexual abuse** by staff is comprised of two categories under 28 C.F.R. §115.6: sexual misconduct and sexual harassment. Sexual misconduct by program staff 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;

(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.

**Sexual harassment by program staff** 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.

The Survey of Sexual Victimization prepared by the U.S. Department of Justice, Bureau of Justice Statistics (“the Survey”), defines sexual abuse by other youths as comprising three categories: nonconsensual sexual acts, abusive sexual contact, and sexual harassment. **Nonconsensual sexual acts** are defined as:

Sexual contact or any person without his or her consent, or of a person who is unable to consent or refuse;

AND

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

OR

Contact between the mouth and the penis, vulva, or anus;

OR

Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument.

**Abusive sexual contact** by one youth against another youth is defined by the Survey as:

Sexual contact of any person without his or her consent, or of a person who is unable to consent or refuse;

AND

Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person.[[1]](#footnote-1)

Finally, the Survey defines **sexual harassment of a youth by another youth** as:

Repeated and unwelcome sexual advances, requests for sexual favors, or verbal comments, gestures, or actions of a derogatory or offensive sexual nature by one youth directed toward another.

With respect to the specific types of incidents reported involving staff, there were four (4) allegations of staff sexual misconduct reported and two allegations of staff sexual harassment reported. None of the allegations of staff sexual misconduct were substantiated: two were unsubstantiated,[[2]](#footnote-2) and two were determined to be unfounded.[[3]](#footnote-3) Both of the allegations of staff sexual harassment reported were found to be unsubstantiated.

With respect to the specific types of incidents reported involving youth, there were two allegations of youth upon youth nonconsensual sexual acts reported: one was substantiated and one was unsubstantiated. There was one allegation of youth upon youth abusive sexual contact reported, which was determined to be unfounded. Finally, there were seven allegations of youth upon youth sexual harassment reported: four were substantiated and three were unsubstantiated.

The following section is a summary of investigation activity regarding the six allegations[[4]](#footnote-4) of staff sexual abuse.

**Staff Sexual Misconduct Allegations**

**Staff Secure Treatment Programs – 1 reported allegation**

**Response Description**: A written accusation was placed in the program grievance box. The program submitted an Internal Review of the allegation.

**Findings**: The Internal Review determined that the allegation was unfounded.

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

**Staff Sexual Misconduct Allegations**

**Hardware Secure Assessment Programs – 1 reported allegation**

**Response Description**: The allegation of abuse was based on a resident answering “yes” to question on a program survey. DYS investigated the allegation.

**Findings**: The DYS investigation determined that the allegation was unfounded.

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

**Staff Sexual Misconduct Allegations**

**Hardware Secure Treatment Programs – 1 reported allegation**

**Response Description**: An allegation of past sexual misconduct at a DYS program was reported by an individual held within the Massachusetts Department of Corrections. No report was filed pursuant to M.G.L. c. 119, section 51A due to the fact that the involved youth was over the age of 18. DYS investigated the incident when first reported in 2008. DYS reviewed the findings in 2018.

**Findings**: The DYS investigation and review determined that the allegation was unsubstantiated.

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

**Staff Sexual Misconduct Allegations**

**Unknown Program – 1 reported allegation**

**Response Description**: An allegation of past sexual misconduct at an unnamed DYS program was reported by an individual held within the Massachusetts Department of Corrections.

**Findings**: DYS determined that the incident had been reported to DYS while the youth was in DYS’ custody and an allegation of sexual abuse was reported by staff to the Department of Children and Families pursuant to M.G.L. c. 119, section 51A (“51A”). DCF screened in the report and investigated. DCF found the allegation to be unsupported. The DYS investigation determined that the allegation was unsubstantiated.

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

**Staff Sexual Harassment Allegations**

**Hardware Secure Treatment/Assessment Program – 1 reported allegation**

**Response Description**: The youth reported an allegation to a staff member. The program submitted an Internal Review of the allegation.

 **Findings**: The Internal Review determined that the allegation was unsubstantiated.

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

**Staff Sexual Harassment Allegations**

**Hardware Secure Detention Program – 1 reported allegation**

**Response Description**: A youth verbally reported an allegation to a staff member. The program submitted an Internal Review of the allegation.

 **Findings**: The allegation was reported by staff to the Department of Children and Families pursuant to M.G.L. c. 119, section 51A (“51A”). DCF screened in the report and investigated. DCF found the allegation to be unsupported. The DYS investigation determined that the allegation was unsubstantiated.

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

**Youth on Youth Sexual Abuse Allegations**

As stated previously, there were a total of ten reports from youths alleging sexual abuse by other youths. There were two allegations of youth upon youth nonconsensual sexual acts reported: one was substantiated and one was unsubstantiated. There was one allegation of youth upon youth abusive sexual contact reported; the allegation was determined to be unfounded. There were seven allegations of youth upon youth sexual harassment reported: four were substantiated and three were unsubstantiated.

The following section is a summary of investigation activity regarding the ten reports[[5]](#footnote-5) of youth on youth sexual abuse.

**Allegations of Youth on Youth Nonconsensual Sexual Acts**

**Hardware Secure Programs – 1 reported allegation**

**Response Description**: The allegation was reported by a youth via an anonymous survey. The program submitted an Internal Review of the allegation.

 **Findings**: The Internal Review determined that the allegation was unsubstantiated.

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

**Allegations of Youth on Youth Nonconsensual Sexual Acts**

**Staff Secure Programs – 1 reported allegation**

**Response Description**: The allegation was reported by a youth to a staff member.

 **Findings**: An allegation of neglect by staff was reported by staff to the Department of Children and Families pursuant to M.G.L. c. 119, section 51A (“51A”). DCF screened in the report and investigated. DCF found the allegation of neglect to be supported. The DYS investigation determined that the allegation of a youth on youth nonconsensual sexual act was substantiated.  **Corrective Actions**: Two provider program employees were terminated. No other policy or programmatic issues requiring corrective action were identified.

**Allegations of Youth on Youth Abusive Sexual Contact**

**Hardware Secure Program – 1 reported allegation**

**Response Description**: The allegation was made by a youth to clinical staff. DYS investigated the allegation.

 **Findings**: DYS investigation determined that the allegation was unfounded.

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

**Allegations of Youth on Youth Sexual Harassment**

**Staff Secure Programs – 5 reported allegations**

**Response Description #1**: The allegation was reported by a youth to staff. The program submitted an Internal Review of the allegation.

 **Findings**: The Internal Review submitted by the program and reviewed by the Director of Investigations determined that the allegation was unsubstantiated.

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

**Response Description #2**: The allegation of youth on youth sexual harassment was observed by and reported by staff. The program submitted an Internal Review of the allegation.

 **Findings**: The Internal Review submitted by the program and reviewed by the Director of Investigations determined that the allegation was substantiated.

 **Corrective Actions**: The perpetrator was separated from the victim and provided counseling. No policy or programmatic issues requiring corrective action were identified.

**Response Description #3**: The allegation was reported by a youth to staff. The program submitted a Serious Incident Report of the allegation.

 **Findings**: The Serious Incident Report submitted by the program was reviewed by the Director of Investigations who determined that the allegation was unsubstantiated.

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

**Response Description #4**: The allegation was reported by a youth to staff. The program submitted an Internal Review of the allegation.

 **Findings**: An Internal Review was submitted by the program and reviewed by the Director of Investigations who determined that the allegation was substantiated.

 **Corrective Actions**: The perpetrators were removed from the program. No policy or programmatic issues requiring corrective action were identified.

**Response Description #5**: The allegation was reported by a youth to staff. The program submitted an Internal Review of the allegation.

 **Findings**: An Internal Review submitted by the program and reviewed by the Director of Investigations who determined that the allegation was substantiated.

 **Corrective Actions**: An Individual Service Plan (ISP) was created for the perpetrator. No policy or programmatic issues requiring corrective action were identified.

**Allegations of Youth on Youth Sexual Harassment**

**Hardware Secure Programs – 2 reported allegations**

**Response Description #1**: The allegation was reported by a youth to staff.

 **Findings**: An allegation of neglect by staff was reported by staff to the Department of Children and Families pursuant to M.G.L. c. 119, section 51A (“51A”). DCF screened in the report and investigated. DCF found the allegation to be supported. The DYS investigation determined that the allegation was unsubstantiated.

**Corrective Actions**: A provider program employee was terminated. No policy or programmatic issues requiring corrective action were identified.

**Response Description #2**: The allegation was reported by a youth to staff. The program submitted an Internal Review of the allegation.

 **Findings**: An Internal Review was submitted by the program and reviewed by the Director of Investigations who determined that the allegation was substantiated.

 **Corrective Actions**: The victim received a room reassignment. No policy or programmatic issues requiring corrective action were identified.

**DEPARTMENT OF YOUTH SERVICES-PREA INVESTIGATION SUMMARY**

**Report for: January 2018-December 2018**

\*see legend

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| --- | --- | --- | --- |
| **Date** | **Method of Report\*** | **Type of Program**  | **Status** |
| **January**  | **Y, V** | **SS** | **Closed** |
| **February**  | **GB** | **SS** | **Closed** |
| **February[[6]](#footnote-6)** | **S, W** | **HWS** | **Closed** |
| **April**  | **Y, V** | **SS** | **Closed** |
| **July**  | **Y, V** | **HWS** | **Closed** |
| **August** | **Y, V** | **SS** | **Closed** |
| **August**  | **Y, V** | **HWS** | **Closed** |
| **August**  | **Y, V** | **SS** | **Closed** |
| **August**  | **Y, V** | **HWS** | **Closed** |
| **August**  | **Y, V** | **HWS** | **Closed** |
| **September**  | **Y, V** | **HWS** | **Closed** |
| **September**  | **Y, V** | **SS** | **Closed** |
| **October** | **S, W** | **HWS** | **Closed** |
| **November[[7]](#footnote-7)** | **A, W** | **HWS** | **Closed** |
| **December**  | **S, W** | **SS** | **Closed** |
| **Unknown[[8]](#footnote-8)** | **Y, V** | **HWS** | **Closed** |

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| **Legend for Method of Report** |
| **Y: youth reported** |
| **S: staff reported** |
| **W: written** |
| **V: verbal** |
| **GB: grievance box** |
| **A: anonymous report, other than via grievance box** |

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| **Legend for Type of Program** |
| **HWS: Hardware Secure** |
| **SS: Staff Secure** |
| **ONA: Overnight Arrest** |
| **RC: Reception Center** |
| **TP: Transition to Independent Living** |

1. The definition specifically excludes incidents in which the contact was incidental to a physical altercation. [↑](#footnote-ref-1)
2. 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. [↑](#footnote-ref-2)
3. An unfounded allegation means an allegation that was investigated and determined not to have occurred. *Id*. [↑](#footnote-ref-3)
4. 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. [↑](#footnote-ref-4)
5. 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. [↑](#footnote-ref-5)
6. This report was made by a youth in 2018 who was unable to identify the date or location of the alleged staff-youth sexual misconduct. [↑](#footnote-ref-6)
7. This single incident involved allegations of staff-youth sexual misconduct and youth-youth nonconsensual sexual acts. It is listed once here and twice earlier in report details. [↑](#footnote-ref-7)
8. [↑](#footnote-ref-8)