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#### **CECELY A REARDON**

### Acting Commissioner

**ANNUAL REPORT**

**TO:** Cecely A. Reardon, Acting Commissioner

**FROM:** The Investigations Unit

**SUBJECT:** PREA Annual Report for January 2020 - December 2020

**DATE:** March 9, 2022

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 2020, including corrective action undertaken to improve the effectiveness of our response policies and practices. This is the ninth 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 2019 report, DYS has continued its training and monitoring regarding PREA and the reporting process.

In 2020, DYS received thirteen reports from youths alleging sexual abuse by program staff and four reports from youths alleging sexual abuse by other youths, for a total of seventeen (17) 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 an employee, contractor, official visitor, volunteer, or other agency representative (excluding family, friend or other visitors) includes any of the following acts, with or without consent of the inmate, detainee, or resident:

(1) Sexual relationships of a romantic nature between staff and youth;

(2) 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;

(3) Completed, attempted, threatened, or requested sexual acts;

(4) Occurrences of indecent exposure, invasion of privacy, or staff voyeurism for reasons unrelated to official duties or for sexual gratification.

**Sexual harassment by program staff** under 28 C.F.R. §115.6 is defined as:

Repeated verbal comments or gestures of a sexual nature to a youth by an employee, contractor, official visitor, volunteer, or other agency representative (excluding family, friend, or other visitors); including:

Demeaning references to gender, sexually suggestive or derogatory comments about body or clothing;

Repeated profane 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 three allegations of staff sexual misconduct reported and ten allegations of staff sexual harassment reported. The three allegations of staff sexual misconduct were unsubstantiated.[[2]](#footnote-2) One of the allegations of staff sexual harassment was found to be substantiated. Seven of the allegations of staff sexual harassment reported were found to be unsubstantiated. Two of the allegations of staff sexual harassment were determined to be unfounded.[[3]](#footnote-3)

With respect to the specific types of incidents reported involving youth, no allegations of youth upon youth nonconsensual sexual acts were reported. There were no incidents youth upon youth abusive sexual contact reported. Finally, there were four allegations of youth upon youth sexual harassment reported: three were substantiated, and one was determined to be unsubstantiated.

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

**Staff Sexual Misconduct Allegations**

**Hardware Secure Detention Programs – 2 reported allegations**

**Response Description #1**: The Department of Children and Families (DCF) received an allegation of staff sexual misconduct from a youth’s parent. The report was investigated by the DYS Investigations Unit.

**Findings**: An allegation of sexual abuse by staff was reported by a youth’s parent 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 determined the report to be unsupported. The DYS investigation determined that the allegation of staff sexual misconduct was unsubstantiated.

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

**Response Description #3**: A staff member reported an allegation of staff sexual misconduct. The program submitted an Internal Review of the allegation.

**Findings**: The Internal Review was submitted by the program and 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.

**Staff Sexual Misconduct Allegations**

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

**Response Description #1**: A youth reported an allegation of staff sexual misconduct to a staff member. The program submitted an Internal Review of the allegation.

**Findings**: The Internal Review was submitted by the program and reviewed by the Director of Investigations who 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 Detention Program – 5 reported allegations**

**Response Description #1**: A youth reported an allegation of sexual harassment by a staff member using the grievance box. The report was investigated by the DYS Investigations Unit.

**Findings**: The DYS investigation determined that the allegation of staff sexual harassment was unsubstantiated.

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

**Response Description #1**: A youth reported an allegation of sexual harassment by a staff member to staff. The report was investigated by the DYS Investigations Unit.

**Findings**: The DYS investigation determined that the allegation of staff sexual harassment was unsubstantiated.

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

**Response Description #2**: A youth reported an allegation of sexual harassment by a staff member to a staff member. The report was investigated by the DYS Investigations Unit.

**Findings**: The DYS investigation determined that the allegation of staff sexual harassment was unsubstantiated.

**Corrective Actions**: Staff members to receive discipline and additional training related to failure to report the incident in a timely manner. No other policy or programmatic issues requiring corrective action were identified.

**Response Description #3**: A staff member reported an allegation of sexual harassment of a youth by a staff member. The program submitted an Internal Review of the allegation.

**Findings**: The Internal Review was submitted by the program and 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 #2**: A youth reported an allegation of sexual harassment by a staff member to staff via a written grievance.

**Findings**: The youth retracted the allegation. A serious incident report submitted by the program and reviewed by the Director of Investigations who determined that the allegation was unfounded.

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

**Staff Sexual Harassment Allegations**

**Staff Secure Assessment/Treatment Program – 2 reported allegations**

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

**Findings**: The Internal Review was submitted by the program and 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 #2**: The youth reported an allegation of sexual harassment by a staff member to a staff member. The program submitted an Internal Review of the allegation.

**Findings**: The Internal Review was submitted by the program and 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.

**Staff Sexual Harassment Allegations**

**Reception Center – 1 reported allegation**

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

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

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

**Staff Sexual Harassment Allegations**

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

**Response Description**: A staff member reported an allegation of sexual harassment of a youth by a staff member based on the discovery of a note allegedly passed between a staff member and a youth. The program submitted an Internal Review of the allegation.

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

**Corrective Actions**: The provider staff member no longer works for a DYS state or provider operated program. No policy or programmatic issues requiring corrective action were identified.

**Staff Sexual Harassment Allegations**

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

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

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

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

**Youth on Youth Sexual Abuse Allegations**

As stated previously, there were a total of four reports from youths alleging sexual abuse by other youths. No allegations of youth upon youth nonconsensual sexual acts were reported. No allegations of youth upon youth abusive sexual contact were reported. There were four allegations of youth upon youth sexual harassment reported: three were substantiated, and one was determined to be unsubstantiated.

The following section is a summary of investigation activity regarding the four reports[[5]](#footnote-5) of youth upon youth sexual harassment.

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

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

**Response Description 1#**: A staff member reported the allegation. 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 youth was provided counseling. No policy or programmatic issues requiring corrective action were identified.

**Allegations of Youth on Youth Sexual Harassment**

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

**Response Description #2**: The allegation of sexual harassment by a youth was reported by a youth to a staff member. The program submitted a Serious Incident Report of the allegation.

**Findings**: A serious incident report submitted by the program and reviewed by the Director of Investigations who determined that the allegation was substantiated.

**Corrective Actions**: The involved youth were separated for all program activities and provided counseling. No policy or programmatic issues requiring corrective action were identified.

**Allegations of Youth on Youth Sexual Harassment**

**Hardware Secure Detention Programs – 2 reported allegations**

**Response Description #1**: A staff member reported the allegation of sexual harassment by a youth.

**Findings**: A serious incident report submitted by the program and reviewed by the Director of Investigations who determined that the allegation was substantiated.

**Corrective Actions**: The youth who was found to have perpetrated the sexual harassment was provided counseling. No other policy or programmatic issues requiring corrective action were identified.

**Response Description #2**: A youth reported the allegation of sexual harassment by a youth via the grievance box. 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.

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

**Report for: January 2020-December 2020**

\*see legend

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

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| **Legend for Method of Report** |
| **Y: resident reported** |
| **S: staff reported** |
| **P: parent** |
| **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 the event occurred. *Id*. [↑](#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. One incident included allegations of staff sexual misconduct and staff sexual harassment. This incident is included in two locations in the details of this report. [↑](#footnote-ref-6)
7. One incident included allegations of staff sexual misconduct and youth on youth sexual harassment. This incident is included in two locations in the details of this report. [↑](#footnote-ref-7)
8. One incident included allegations of staff sexual misconduct and staff sexual harassment. This incident is included in two locations in the details of this report. [↑](#footnote-ref-8)