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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 2021 - December 2021

**DATE:** February 14, 2023

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 2021, including corrective action undertaken to improve the effectiveness of our response policies and practices. This is the tenth 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 2020 report, DYS has continued its training and monitoring regarding PREA and the reporting process.

In 2021, DYS received ten reports from youths alleging sexual abuse by program staff and eight reports from youths alleging sexual abuse by other youths, for a total of eighteen (18) reports implicating PREA.

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

**Staff sexual misconduct** by program staff under 28 C.F.R. §115.6 is defined as:

Any behavior or act of a sexual nature directed toward a youth by an employee, volunteer, contractor, official visitor, or other agency representative (exclude family or other visitor).

Sexual relationships of a romantic nature between staff and youths are included in this definition. Consensual or nonconsensual sexual acts include-

Intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks that is unrelated to official duties or with the intent to abuse, arouse, or gratify sexual desire;

OR

Completed, attempted, threatened, or requested sexual acts;

OR

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

**Staff sexual harassment** 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 (exclude 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 of 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.

EXCLUDE incidents in which the contact was incidental to a physical altercation.

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 six allegations of staff sexual misconduct reported: one was substantiated, three were unsubstantiated[[1]](#footnote-1) and two were determined to be unfounded.[[2]](#footnote-2) There were four allegations of staff sexual harassment reported: two were substantiated and two were unsubstantiated.

With respect to the specific types of incidents reported involving youth, no allegations of youth upon youth nonconsensual sexual acts were reported. There were three incidents of youth upon youth abusive sexual contact reported: one was substantiated and two were unsubstantiated. Finally, there were five allegations of youth upon youth sexual harassment reported: none were substantiated, and five were determined to be unsubstantiated.

The following section is a summary of investigation activity regarding the three allegations[[3]](#footnote-3) of staff sexual abuse.

**Staff Sexual Misconduct Allegations**

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

**Response Description #1**: A youth reported an allegation of staff sexual misconduct to a staff member, who in turn, reported an allegation to the Department of Children and Families (DCF). The report was investigated by the DYS Investigations Unit.

**Findings**: Allegations of abuse and neglect by staff were reported by a program staff member to the DCF pursuant to M.G.L. c. 119, section 51A (“51A”). DCF screened in the report and investigated. The DCF investigation supported allegations of neglect but not sexual abuse. The DYS investigation determined that the allegation of staff sexual misconduct was unsubstantiated.

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

**Response Description #2**: A youth reported an allegation of staff sexual misconduct to a staff member. Program video footage for the relevant time frame was reviewed and clinical staff provided information regarding the youth’s behavioral health status

**Findings**: The Director of Investigations reviewed clinical staff documentation and 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 –2 reported allegations**

**Response Description #1**: A youth reported an allegation of staff sexual misconduct to a staff member who in turn, reported an allegation to the Department of Children and Families (DCF). The report was investigated by the DYS Investigations Unit.

**Findings**: Allegations of abuse and neglect by staff were reported by a program staff member to the DCF pursuant to M.G.L. c. 119, section 51A (“51A”). DCF screened in the report and investigated. DCF determined the report to be supported for sexual abuse and neglect. The DYS investigation determined that the allegation of staff sexual misconduct was substantiated.

**Corrective Actions:** The staff member no longer works for a DYS state or contracted provider operated program. The DYS investigation found that all relevant procedures, policies and standards were followed and no corrective actions were identified.

**Response Description #2**: A youth reported an allegation of staff sexual misconduct to a staff member who in turn, reported an allegation to the Department of Children and Families (DCF). The report was investigated by the DYS Investigations Unit.

**Findings**: Allegations of abuse and neglect by staff were reported by a program staff member to the DCF pursuant to M.G.L. c. 119, section 51A (“51A”). DCF determined that the allegations did not meet its criteria for investigation as the youth was 18 years old. The DYS investigation determined that the allegation of staff sexual misconduct was unsubstantiated.

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

**Staff Sexual Misconduct Allegations**

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

**Response Description #1**: The youth reported an allegation of staff sexual misconduct by a staff member to staff. 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 as a video review of the alleged incident showed no inappropriate contact.

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

**Staff Sexual Misconduct Allegations**

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

**Response Description #1**: The youth reported an allegation of staff sexual misconduct by a staff member to staff. 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**

**Hardware Secure Detention Program – reported allegations**

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

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

**Response Description #1**: A youth reported an allegation of staff sexual harassment to a staff member who in turn, reported an allegation to the Department of Children and Families (DCF). The report was investigated by the DYS Investigations Unit.

**Findings**: Multiple allegations of abuse and neglect were reported by a program staff member to the DCF pursuant to M.G.L. c. 119, section 51A (“51A”). DCF screened in the report and investigated. DCF determined the report to be supported for sexual abuse and neglect. The DYS investigation determined that the allegation of staff sexual harassment was substantiated.

**Corrective Actions:** The staff member no longer works for a DYS state or contracted provider operated program. The DYS investigation found that all relevant procedures, policies and standards were followed, and there were no policy or programmatic issues requiring corrective action were identified.

**Staff Sexual Harassment Allegations**

**Independent Living Program – 1 reported allegation**

**Response Description #1**: The 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.

**Staff Sexual Harassment Allegations**

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

**Response Description**: A staff member reported an allegation of sexual harassment of a youth by a staff member based on a written grievance at a program operated by a contracted provider. Program staff reported an allegation of neglect to the Department of Children and Families (DCF). The program submitted an Internal Review of the allegation.

**Findings**: DCF determined that the allegations did not meet its criteria for investigation as the youth, who had a long history with DCF of recanting allegations, recanted the allegation of sexual harassment. The Internal Review was conducted consistent with the PREA regulation requiring review even if an allegation is recanted and submitted by the program. The Internal Review was reviewed by the Director of Investigations who determined that the allegation was substantiated.

**Corrective Actions**: The contracted provider staff member received an unpaid suspension and retraining. 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 eight reports from youths alleging sexual abuse by other youths. No allegations of youth upon youth nonconsensual sexual acts were reported. There were three allegations of youth upon youth abusive sexual contact reported. One was substantiated and two were unsubstantiated. There were five allegations of youth upon youth sexual harassment reported. All five were determined to be unsubstantiated.

The following section is a summary of investigation activity regarding the three reports[[4]](#footnote-4) of youth upon youth abusive sexual contact and five reports of youth upon youth sexual harassment.

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

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

**Response Description 1#**: A staff member reported an allegation of abusive sexual contact of a youth by another youth observed on program video. Program staff reported an allegation of neglect to the Department of Children and Families (DCF). The report was investigated by the DYS Investigations Unit.

**Findings**: Allegations of neglect by staff supervising the involved youth were reported by a program staff member to the DCF pursuant to M.G.L. c. 119, section 51A (“51A”). DCF screened in the report and investigated. After investigating, DCF unsupported allegations of neglect by the staff caretakers supervising the youth. The DYS investigation determined the allegation of abusive sexual contact by a youth on another youth was substantiated but otherwise found that all relevant procedures, policies and standards were followed.

**Corrective Actions**: Youth involved were separated and provided treatment. No policy or programmatic issues requiring corrective action were identified.

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

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

**Response Description #2**: A youth reported an allegation of abusive sexual contact by a youth to staff. Program video footage for the relevant time frame was reviewed and clinical staff provided information regarding the youth’s behavioral health status.

**Findings**: Program staff did not file a report alleging abuse and/or neglect to the DCF pursuant to M.G.L. c. 119, section 51A (“51A”) because video review demonstrated that there was not reasonable cause to believe the youth had been abused or neglected. The Director of Investigations further reviewed program documentation regarding their video review and the youth’s behavioral health status and determined that the allegation was unsubstantiated.

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

**Response Description #2**: A youth reported the allegation of abusive sexual contact by a youth to a staff member. 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 other 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 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**: The involved youth were placed on alert watch to maintain safety and communication. Line of sight and bathroom policies reviewed with staff.

**Allegations of Youth on Youth Sexual Harassment**

**Hardware Secure Assessment/Treatment Program – 3 reported allegations**

**Response Description #1**: A youth reported the allegation of sexual harassment by a youth to a staff member. 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 other policy or programmatic issues requiring corrective action were identified.

**Response Description #2**: A youth reported the allegation of sexual harassment by a youth to a staff member. 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 #3**: A youth reported the allegation of sexual harassment by a youth via a written grievance. 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.

**Allegations of Youth on Youth Sexual Harassment**

**Hardware Secure Detention Program – reported allegations**

**Response Description #1**: A youth reported the allegation of sexual harassment by a youth to a staff member. 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 other policy or programmatic issues requiring corrective action were identified.

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

**Report for: January 2021-December 2021**

\*see legend

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| --- | --- | --- | --- |
| **Date** | **Method of Report\*** | **Type of Program**  | **Status** |
| **March**  | **Y, V** | **HWS** | **Closed** |
| **March** | **Y, V** | **HWS** | **Closed** |
| **March** | **Y, GB** | **HWS** | **Closed** |
| **April** | **Y, V** | **HWS** | **Closed** |
| **April** | **Y, V** | **SS** | **Closed** |
| **May** | **Y, V** | **HWS** | **Closed** |
| **May**  | **Y, V** | **HWS** | **Closed** |
| **June**  | **Y, V** | **HWS** | **Closed** |
| **July** | **Y, V** | **HWS** | **Closed** |
| **August**  | **S, V** | **HWS** | **Closed** |
| **September** | **Y, V** | **TP** | **Closed** |
| **September** | **Y, V** | **SS** | **Closed** |
| **September**  | **Y, W** | **SS** | **Closed** |
| **October[[5]](#footnote-5)** | **Y, V** | **HWS** | **Closed** |
| **November**  | **Y, V** | **HWS** | **Closed** |
| **November** | **Y, V** | **SS** | **Closed** |
| **December**  | **Y, V** | **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. 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-1)
2. An unfounded allegation means an allegation that was investigated and determined not to have occurred. *Id.* [↑](#footnote-ref-2)
3. 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-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. One incident included allegations of staff sexual misconduct and youth nonconsensual sexual acts. This incident is included in two locations in the details of this report. [↑](#footnote-ref-5)