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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 2019 - December 2019

**DATE:**  November 13, 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 2019, including corrective action undertaken to improve the effectiveness of our response policies and practices. This is the eighth 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 2018 report, DYS has continued its training and monitoring regarding PREA and the reporting process.

In 2019, DYS received eleven reports from youths alleging sexual abuse by program staff and thirteen reports from youths alleging sexual abuse by other youths, for a total of twenty (24) 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 five allegations of staff sexual misconduct reported and six allegations of staff sexual harassment reported. One of the allegations of staff sexual misconduct was substantiated.[[2]](#footnote-2) Three allegations were unsubstantiated,[[3]](#footnote-3) and one was determined to be unfounded.[[4]](#footnote-4) Four of the allegations of staff sexual harassment reported were found to be substantiated. One of the allegations of staff sexual harassment was found to be unsubstantiated. One of the allegations of staff sexual harassment was determined to be unfounded.

With respect to the specific types of incidents reported involving youth, there were three historical[[5]](#footnote-5) allegations of youth upon youth nonconsensual sexual acts reported: all allegations were unsubstantiated. There were five allegations of youth upon youth abusive sexual contact reported: two were substantiated, two were unsubstantiated, and one was determined to be unfounded. Finally, there were five allegations of youth upon youth sexual harassment reported: four were substantiated, and one was determined to be unfounded.

The following section is a summary of investigation activity regarding the eleven allegations[[6]](#footnote-6) of staff sexual abuse.

**Staff Sexual Abuse Allegations**

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

**Response Description**: An allegation of past sexual misconduct by unnamed staff at a DYS program was reported by an individual to a staff person at a Massachusetts County House of Correction. DYS investigated the incident, which was alleged to have taken place in 2004, but was not reported at the time.

**Findings**: The DYS investigation determined that the allegation of staff sexual abuse could not be substantiated.

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

**Staff Sexual Misconduct Allegations**

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

**Response Description**: The Department of Children and Families (DCF) received an anonymous call reporting the allegation while conducting a joint investigation with DYS into an allegation of physical abuse involving the same youth. The report was investigated by the DYS Investigations Unit.

**Findings**: An allegation of physical and sexual abuse by staff was reported by the program 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 physical abuse allegation to be supported and unsupported the allegation of sexual abuse. The DYS investigation determined that the allegation of staff sexual misconduct was unfounded.

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

**Staff Sexual Misconduct Allegations**

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

**Response Description #1**: A youth reported an allegation regarding another youth to a staff member. The report was investigated by the DYS Investigations Unit and the Department of Early Education and Care (DEEC). No report was filed pursuant to M.G.L. c. 119, section 51A because the named youth was over the age of 18.

**Findings**: The DYS investigation determined that the allegation of a staff sexual misconduct was unsubstantiated. The DYS investigation determined that an allegation of staff sexual harassment related to this report was substantiated.[[7]](#footnote-7) The staff member no longer works at a DYS state or provider operated program.

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

**Response Description #2:** A youth reported an allegation to a staff member. An allegation of sexual abuse and neglect by staff was reported by the program 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 neglect and abuse allegations to be supported.

**Findings**: The DYS investigation was suspended awaiting the outcome of an investigation by law enforcement. DYS endorsed the findings of DCF and determined the incident to be substantiated. The staff member no longer works at a DYS state or provider operated program.

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

**Response Description #3:** A parent of a youth reported an allegation to a staff member. An allegation of sexual abuse by staff was reported by the program to the Department of Children and Families pursuant to M.G.L. c. 119, section 51A (“51A”). DCF screened out the report. The provider program submitted an Internal Review regarding the allegation.

**Findings**: The Internal Review submitted by the program was 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 – 3 reported allegations**

**Response Description #1**: An educational staff member reported the allegation after finding online communication between youth and a clinical provider. The report was investigated by the DYS Investigations Unit.

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

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

**Response Description #2**: A staff member reported the allegation after finding letters between youth and a clinical provider. The report was investigated by the DYS Investigations Unit.

**Findings**: Allegations of neglect and sexual abuse by the clinical provider were 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 neglect allegation to be supported, but unsupported the allegation of sexual abuse. The DYS investigation determined that the allegation of staff sexual harassment was substantiated.

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

**Response Description #3**: A staff member reported the allegation after reviewing program video. 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 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**

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

**Response Description #1**: DCF received an anonymous report of harassment. The program submitted an Internal Review of the allegation.

**Findings**: The allegation was reported anonymously to the Department of Children and Families pursuant to M.G.L. c. 119, section 51A (“51A”). DCF screened out the report. The Internal Review 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 #2**: The youth reported an allegation to a staff member. The report was investigated by the DYS Investigations Unit.

**Findings**: The DYS investigation determined that the allegation of a staff sexual harassment was substantiated. The DYS investigation determined that an allegation of a staff sexual misconduct related to this report was unsubstantiated[[8]](#footnote-8).

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

**Staff Sexual Harassment Allegations**

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

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

**Findings**: The allegation was reported to the Department of Children and Families pursuant to M.G.L. c. 119, section 51A (“51A”). DCF screened out the report. The Internal Review submitted by the program was 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.

**Youth on Youth Sexual Abuse Allegations**

As stated previously, there were a total of thirteen reports from youths alleging sexual abuse by other youths. There were three allegations of youth upon youth nonconsensual sexual acts reported. All were regarding events alleged to have taken place over 10 years ago; all were unsubstantiated. There were five allegations of youth upon youth abusive sexual contact reported: two were substantiated, two were unsubstantiated, and one was determined to be unfounded. Finally, there were five allegations of youth upon youth sexual harassment reported: four were substantiated, and one was determined to be unfounded.

The following section is a summary of investigation activity regarding the thirteen reports[[9]](#footnote-9) of youth on youth sexual abuse.

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

**Hardware Secure Detention Programs – 3 reported allegations**

**Response Description #1**: The allegation was reported by a youth to Central Office staff when requesting their DYS records. The allegation was originally reported by a different youth in 1999. and investigated by the DYS Investigation Unit at that time.

**Findings**: The current DYS Investigations Unit reviewed the investigation report and searched for additional documentation and determined the allegation was unsubstantiated.

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

**Response Description #2**: This allegation was reported by an inmate to staff at the Massachusetts Department of Corrections. The alleged incident was reported to have involved an unnamed youth at an unknown location in 1998. DYS found no records to indicate that the allegations had been reported or investigated at the time and no further information regarding the allegations.

 **Findings**: The DYS investigation determined that the allegation of staff sexual abuse could not be substantiated.

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

**Response Description #3**: The allegation was reported by an inmate to staff at a Massachusetts County House of Correction. The alleged incident was reported to have occurred in 2009 at a DYS facility. No records related to the youth or the allegation could be located.

 **Findings**: The DYS investigation determined that the allegation of staff sexual abuse could not be substantiated.

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

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

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

**Response Description #1**: The allegation was made 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**: No policy or programmatic issues requiring corrective action were identified.

**Response Description #2**: The allegation was made 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 youth were separated for all program activities. No policy or programmatic issues requiring corrective action were identified.

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

**Staff Secure Treatment Program – 2 reported allegation**

**Response Description 1#**: The allegation was made 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 substantiated.

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

Response Description 2#: The allegation was made 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 substantiated. The youth were separated for all program activities.

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

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

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

**Response Description 1#**: The allegation was made by a youth to a family member who notified the youth’s attorney. The youth’s attorney notified DYS. The report was investigated by the DYS Investigations Unit and law enforcement.

**Findings**: Allegations of sexual abuse and neglect were reported to the Department of Children and Families pursuant to M.G.L. c. 119, section 51A (“51A”). DCF screened in the report and investigated. The allegations were also investigated by the Department of Early Education and Care (DEEC). DCF found the allegations to be unsupported. The DYS investigation determined that the allegation of sexual abuse was unfounded. The law enforcement investigation did not result in criminal charges.

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

**Allegations of Youth on Youth Sexual Harassment**

**Staff Secure Treatment Programs – 2 reported allegations**

**Response Description #1**: The allegation was reported by staff who discovered letters written by one youth to another. 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**: No policy or programmatic issues requiring corrective action were identified.

**Response Description #2**: The allegation of youth on youth sexual harassment was reported by a youth to a staff member. The incident was investigated by the Director of Investigations.

 **Findings**: The Director of Investigations determined that the allegation was unfounded.

 **Corrective Actions**: The 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**: The allegation was reported by a youth to a staff member. 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**: The youth were separated for all program activities. No policy or programmatic issues requiring corrective action were identified.

**Response Description #2**: The allegation was reported by a Massachusetts County House of Correction. The DYS Investigations Unit had previously investigated the allegation.

**Findings**: The DYS Investigations Unit had investigated the allegation in 2017 and determined that the allegation was substantiated.

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

**Allegations of Youth on Youth Sexual Harassment**

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

**Response Description #1**: The allegation was reported by a youth to a staff member. The program submitted a Serious Incident report of the allegation.

**Findings**: The Serious Incident report submitted by the program was reviewed by the DYS Investigations Unit who determined that the allegation was substantiated.

**Corrective Actions**: The youth mediated the incident with staff. No policy or programmatic issues requiring corrective action were identified.

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

**Report for: January 2019-December 2019**

\*see legend

|  |  |  |  |
| --- | --- | --- | --- |
| **Date** | **Method of Report\*** | **Type of Program**  | **Status** |
| **January**  | **Y, S** | **SS** | **Closed** |
| **February**  | **Y, V** | **HWS** | **Closed** |
| **February**  | **Y, V** | **HWS** | **Closed** |
| **February**  | **P, V** | **SS** | **Closed** |
| **March**  | **Y, V** | **HWS** | **Closed** |
| **March**  | **Y, V** | **SS** | **Closed** |
| **April**  | **S, W** | **HSW** | **Closed** |
| **April**  | **S, W** | **HSW** | **Closed** |
|  **April[[10]](#footnote-10)**  | **Y, V** | **SS** | **Closed** |
| **April** | **Y, V** | **SS** | **Closed** |
| **May** | **S, V** | **SS** | **Closed** |
| **May**  | **S, V** | **HWS** | **Closed** |
| **May**  | **Y, V** | **HWS** | **Closed** |
|  **July**  | **Y, V** | **HWS** | **Closed** |
| **July**  | **Y, V** | **HWS** | **Closed** |
| **August** | **S, V** | **HWS** | **Closed** |
| **September**  | **Y, V** | **SS** | **Closed** |
| **November** | **Y, V** | **SS** | **Closed** |
| **December**  | **S, V**  | **HWS** | **Closed** |
| **December**  | **S, V** | **HWS** | **Closed** |
| **December**  | **A, V** | **SS** | **Closed** |
| **December**  | **Y, V** | **HWS** | **Closed** |
| **Unknown** | **S, W** | **Unknown** | **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. A substantiated allegation means an allegation that was investigated, and the investigation produce sufficient evidence to determine that the event occurred. 28 C.F.R. §115.5. [↑](#footnote-ref-2)
3. 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-3)
4. An unfounded allegation means an allegation that was investigated and determined not to have occurred. *Id*. [↑](#footnote-ref-4)
5. DYS defines a historic PREA allegation as an allegation made by an individual who is no longer in the care or custody of the Department about an incident that occurred when they were in the Department’s care or custody sometime in the past. DYS typically receives historic PREA reports from adult corrections pursuant to their PREA reporting obligations. [↑](#footnote-ref-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. [↑](#footnote-ref-6)
7. The allegation of staff sexual harassment is reported under Staff Sexual Harassment, Staff Secure Assessment/Treatment Program, Response Description #2. [↑](#footnote-ref-7)
8. The allegation of staff sexual misconduct is reported under Staff Sexual Misconduct, Staff Secure Assessment/Treatment Program, Response Description #1. [↑](#footnote-ref-8)
9. 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-9)
10. 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-10)