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

### Commissioner

**ANNUAL REPORT**

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

**FROM:** The Investigations Unit

**SUBJECT:** PREA Investigation Summary for January 2015-December 2015

**DATE:** April 5, 2017

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 DYS in 2015, including corrective action undertaken to improve the effectiveness of our response policies and practices. This is the fourth 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 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 2014 report, DYS continues its training and monitoring regarding PREA and the reporting process.

In 2015, DYS received ten reports from youth alleging sexual abuse[[1]](#footnote-1) by program staff. There were seven allegations of staff sexual misconduct[[2]](#footnote-2) reported; three were found to be unsubstantiated[[3]](#footnote-3) and four were determined to be unfounded.[[4]](#footnote-4) There were three allegations of staff sexual harassment[[5]](#footnote-5) reported; all three were found to be unsubstantiated. The following is a summary of investigation activity regarding the ten incidents:[[6]](#footnote-6)

**Sexual Misconduct Allegations**

**Staff Secure Treatment Programs – 4 reported allegations**

**Response Description**: All four allegations were reported verbally by the youth to program staff. In three of the incidents, a report was also filed pursuant to M.G.L. c. 119, section 51A (“51A”) with the Department of Children and Families (“DCF”) regarding those matters. All four matters were the subject of an investigation. One allegation was also referred to law enforcement.

**Findings**: In three cases, the youth’s allegations were determined after investigation to be unsubstantiated. In one case, the youth’s allegations were determined to be unfounded.

In one case, DCF screened in and investigated but found the allegations to be unsupported.[[7]](#footnote-7) In two cases, DCF screened out the 51A. In one of the screened-out cases, DCF referred the matter to law enforcement. Law enforcement informed DYS that there would be no further investigation and the matter was closed.

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

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

**Response Description**: The three allegations were verbally reported by youth to program staff. None of these allegations resulted in the filing of a 51A.

**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 – No reported allegations**

There were no allegations of sexual harassment in any staff secure treatment programs.

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

**Response Description**: These allegations were reported verbally by the youth to program staff, prompting an investigation. In one case, a 51A was filed with DCF.

**Findings**: DCF conducted an investigation into the 51A that was filed. DCF investigated and determined that the 51A was unsupported. The program’s investigation concurred with this finding, concluding that the allegation was unsubstantiated. With respect to the remaining two allegations, the programs determined that those allegations were unsubstantiated.

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

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

**Report for: January 2014-December 2014**

\*see legend

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| --- | --- | --- | --- |
| **Date** | **Method of Report\*** | **Type of Program**  | **Status** |
| **July** | **R, V** | **SS** | **Closed** |
| **July** | **R, V** | **HWS** | **Closed** |
| **August** | **R, V** | **SS** | **Closed** |
| **September** | **R, V** | **SS** | **Closed** |
| **January** | **R, V** | **SS** | **Closed** |
| **January** | **R, V** | **HWS** | **Closed** |
| **February** | **R, V** | **HWS** | **Closed** |
| **February** | **R, V** | **HWS** | **Closed** |
| **April** | **R, V** | **HWS** | **Closed** |
| **April** | **R, v** | **HWS** | **Closed** |

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| **Legend for Method of Report** |
| **R: resident reported** |
| **S: staff reported** |
| **W: written** |
| **V: verbal** |
| **GB: grievance box** |

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| --- |
| **Legend for Type of Program** |
| **HWS: Hardware Secure** |
| **SS: Staff Secure** |
| **ALP: Overnight Arrest** |
| **RC: Reception Center** |
| **IL: Independent Living** |

1. Sexual abuse is comprised of two categories under 28 C.F.R. §115.6: sexual misconduct and sexual harassment. [↑](#footnote-ref-1)
2. Sexual misconduct under 28 C.F.R. §115.6is 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. [↑](#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 or not the event occurred. 28 C.F.R. §115.5. [↑](#footnote-ref-3)
4. An unfounded allegation means an allegation that was investigated and determined not to have occurred. *Id*. [↑](#footnote-ref-4)
5. 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. [↑](#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. 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. [↑](#footnote-ref-7)