

December 15, 2010

The Honorable Steven T. James
Clerk of the House of Representatives

The Honorable William F. Welch
Clerk of the Senate

The Honorable Cynthia Stone Creem
Senate Chair, Joint Committee on the Judiciary

The Honorable Eugene L. O'Flaherty
House Chair, Joint Committee on the Judiciary

Dear Sirs and Madam:

In compliance with the provisions of Chapter 205 of the Acts of 2008, "An Act Further Protecting Children," please find enclosed the second annual report.

I believe that this annual report provides the Joint Committee on the Judiciary with the information required relative to the prosecution and disposition of offenses established under the Act. I look forward to working with the legislature on monitoring the implementation of this legislation.

Very truly yours,

Robert A. Mulligan
Chief Justice for Administration and Management

cc: The Honorable Therese Murray, President of the Senate
The Honorable Robert A. DeLeo, Speaker of the House
The Honorable Karyn E. Polito, State Representative

Annual Report

Chapter 205 of the Acts of 2008
An Act Further Protecting Children



A Report to the

Clerk of the House
Clerk of the Senate
Joint Committee on the Judiciary

Submitted
by:

Honorable Robert A. Mulligan
Chief Justice for Administration and Management

December 15, 2010

Annual Report to Support Implementation of

Chapter 205 of the Acts of 2008 An Act Further Protecting Children

Introduction

This report was prepared to comply with Section 5 of Chapter 205 of the Acts of 2008, "An Act Further Protecting Children" which provides that:

Notwithstanding any general or special law to the contrary, the chief justice for administration and management of the trial court shall establish and implement an annual reporting system that shall provide information to the joint committee on the judiciary relative to the prosecution and disposition of cases which involve offenses established under this act. The reporting system shall be established not later than December 31, 2008, and the first annual report shall be filed with the clerk of the house and the clerk of the senate and the joint committee on the judiciary not later than December 31, 2009.

In meeting this reporting requirement, this second annual report summarizes the changes made by the legislation and presents relevant data on this population for state fiscal year 2010.

Chapter 205 Legislative Summary

Chapter 205 of the Acts of 2008, entitled "An Act Further Protecting Children" was approved on July 24, 2008.¹ This legislation made the following changes to the offense structure in Massachusetts:

- Created three new crimes:
 - Indecent A&B on Child, Aggravated
 - Rape of Child, Aggravated
 - Rape of Child with Force, Aggravated

¹ On June 4, 2008 House 4811 was engrossed by a vote of 143 to 3; on July 15, 2008 it was engrossed in the Senate by a vote of 35 to 1; and on July 24, 2008 it was signed by Governor Patrick.

- Broadened the subsequent offender provisions for three crimes:²
 - Indecent A&B on Child, Subsequent
 - Rape of Child, Subsequent
 - Rape of Child with Force, Subsequent

- Established six new mandatory sentencing provisions:
 - Indecent A&B on Child, Aggravated
 - Rape of Child, Aggravated
 - Rape of Child with Force, Aggravated
 - Indecent A&B on Child, Subsequent
 - Rape of Child, Subsequent
 - Rape of Child with Force, Subsequent

Table 1 summarizes changes in the penalty structure and offenses that were created under this legislation. In this second annual report, the focus was placed on those six offenses representing the new offenses and broadened offense elements. All of those six offenses involve new mandatory minimum penalties ranging from 10 years to 20 years. All of these offenses are in the sole jurisdiction of the Superior Court Department in Massachusetts. Offenders convicted and sentenced under these provisions will be sentenced to the Department of Correction.

² Previous requirement was prior conviction of the same offense and current legislation calls for prior conviction of any enumerated sex offense.

Table 1.

**Chapter 205 of the Acts of 2008, An Act to Further Protect Children
Summary of Legislative Provisions**

Chapter 205 of the Acts of 2008		Previous Statutes		Change	Revised Statutory Penalty	BMC / District Court Jurisdiction
c. 265 s. 13B	Indecent A&B on Child	c. 265 s. 13B	Indecent A&B on Child	No Change	10 year statutory maximum / 2 1/2 year house of correction alternative	yes, from Chapter 218, section 26
c. 265 s. 13B ½	Indecent A&B on Child, Aggravated			New Crime / 10 year Mandatory	life felony / 10 year state prison mandatory minimum / no house of correction alternative	no
c. 265 s. 13B ¾	Indecent A&B on Child, Subsequent	c. 265 s. 13B	Indecent A&B on Child, Subsequent	Broader Subsequent / 15 year Mandatory	life felony / 15 year state prison mandatory minimum / no house of correction alternative	no
c. 265 s. 22A	Rape of Child with Force	c. 265 s. 22A	Rape of Child with Force	No Change	life felony	no
			Rape of Child with Force, Armed, Firearm	Offense Eliminated		
			Rape of Child with Force, Armed, Firearm, Subsequent	Offense Eliminated		
c. 265 s. 22B	Rape of Child with Force, Aggravated			New Crime / 15 year Mandatory	life felony / 15 year state prison mandatory minimum / no house of correction alternative	no
c. 265 s. 22C	Rape of Child with Force, Subsequent	c. 265 s. 22A	Rape of Child with Force, Subsequent	Broader Subsequent / 20 year mandatory	life felony / 20 year state prison mandatory minimum / no house of correction alternative	no
c. 265 s. 23	Rape of Child, Statutory	c. 265 s. 23	Rape of Child, Statutory	No Change	life felony / 2 1/2 year house of correction alternative	no
c. 265 s. 23A	Rape of Child, Statutory, Aggravated			New Crime / 10 year Mandatory	life felony / 10 year state prison mandatory minimum / no house of correction alternative	no
c. 265 s. 23B	Rape of Child, Statutory, Subsequent	c. 265 s. 23	Rape of Child, Statutory, Subsequent	Broader Subsequent / 15 year Mandatory	life felony / 15 year state prison mandatory minimum / no house of correction alternative	no

Chapter 205 Offense

Historical Data on Chapter 205 Related Offenses

As background to the current analysis, relevant historical information for offenders convicted prior to Chapter 205 was considered. While Chapter 205 impacts only a small proportion of these offenders – those who meet the subsequent or aggravated provisions provided by the legislation – this background information should be useful for providing a context for considering the implementation of these legislative provisions.

The following tables are based on annual statistical reports from the Massachusetts Sentencing Commission and the Department of Correction and show the following information on selected sex offenders:

- The number of offenders sentenced in the Superior Court;
- The number of offenders incarcerated in the Department of Correction; and,
- The number of offenders committed to the Department of Correction.

As shown in Table 2, in FY2009 176 offenders were sentenced for Indecent Assault and Battery on a Child, Rape of a Child, or Forcible Rape of a Child (including all subsequent offense convictions) in the Superior Court Department in Massachusetts. While these statistics are based solely on governing offense this substantially accounts for most sex offenders, as for most convicted sex offenders, the sex offense is their governing offense.³

Table 2.

**Governing Offense, Selected Sex Offenses,
Superior Court Department, FY2003 to FY2009⁴**

Selected Sex Offenses	FY2003	FY2004	FY2005	FY2006	FY2007	FY2008	FY2009
Rape of Child, Forcible	31	36	30	29	39	30	36
Rape of Child	125	112	96	104	97	96	101
Rape of Child, 2 nd	3	1	1	0	3	0	1
A&B Indecent Child	38	34	58	39	36	49	36
A&B Indecent Child, 2 nd	2	0	1	2	2	2	2
Total	199	183	186	174	177	177	176

³ The Massachusetts Sentencing Commission estimates that 5.0% of all sex offenders were convicted of an offense other than a sex offense as the governing offense and that 2.8% of sex offenders convicted in the Superior Court Department were convicted of an offense other than a sex offense as the governing offense. (Massachusetts Sentencing Commission, *Survey of Sentencing Practices, FY 2009*).

⁴ The source of these data is the Massachusetts Sentencing Commission, *Survey of Sentencing Practices, FY2003 to FY 2009*.

Table 3 shows the number of offenders currently incarcerated in the Department of Correction for selected sex offenses for selected years from the period 1999 to 2010. As shown in Table 3, as of January 1, 2010 there were 788 offenders incarcerated in Department of Correction facilities for the offenses of Rape of Child, Forcible Rape of Child, and Indecent Assault and Battery on a Child.

Table 3.

**Governing Offense, Selected Sex Offenses,
Inmates in Department of Correction Facilities,
January 1, Selected Years, 1999 to 2010⁵**

Governing Offense	1999	2000	2004	2005	2009	2010
Rape of Child, Forcible	404	396	314	304	302	317
Rape of Child	548	542	475	453	387	375
A&B Indecent Child	151	144	107	103	96	96
Total	1,103	1,082	896	860	785	788

Table 4 shows the number of new court commitments to the Department of Correction for the selected years from 1998 to 2009 for selected sex offenses. In 2009 there were a total of 130 offenders committed to the Department of Correction for forcible rape of child, rape of child, or Indecent Assault and Battery on a Child.

Table 4.

**Governing Offense, Selected Sex Offenses,
Inmates Committed to the Department of Correction,
Selected Years, 1998 to 2009⁶**

Governing Offense	1998	1999	2003	2004	2008	2009
Rape of Child, Forcible	37	29	33	38	29	44
Rape of Child	82	71	70	61	66	69
A&B Indecent Child	31	27	15	17	18	17
Total	150	127	118	116	113	130

⁵ Massachusetts Department of Correction, *Inmate Statistics, January 1, 1999 to 2009* and response to information request dated November 23, 2010. This table includes criminally sentenced offenders in the jurisdiction of the Department of Correction and excludes those offenders placed in treatment facilities managed by the Department of Correction such as the Bridgewater State Hospital or the Treatment Center for the Sexually Dangerous.

⁶ Massachusetts Department of Correction, *Court Commitments to the Massachusetts Department of Correction, 1998 to 2008* and response to information request dated November 23, 2010.

Chapter 205 Report Statistical Results

As indicated in the reporting plan submitted in December 2008, the types of information available in the second annual report to the legislature would include the number of individuals charged, the status of the case at the end of the reporting period, the number of defendants sentenced under this legislation, and the length of sentences imposed. The methodology used to implement this reporting system is contained in the Appendix.

As noted earlier, Chapter 205 became effective on October 22, 2008. Those who committed any one of the six designated sex offenses on or after that date were subject to the mandatory sentencing provisions of Chapter 205. The following table shows the results of the data collection efforts for those charged with a Chapter 205 offense where the offense occurred between October 22, 2008, and June 30, 2010, the end of FY 2010. This table is limited to those cases where one or more of the charges were one of the six Chapter 205 offenses (e.g. subsequent or aggravated charge with an underlying offense of forcible rape of child, rape of child, or indecent assault and battery of child).

Some of the findings shown in Table 5 are:

- There were 64 cases identified where one or more of the charges was potentially subject to the provisions of Chapter 205;
- Of the 64 cases, 40 are currently pending and 24 have been disposed;
- Of the disposed cases, 17 resulted in a conviction and sentenced and 7 cases had some other disposition (e.g. nolle prosequi, not guilty, dismissed, or no bill);
- Of the 17 convicted cases four were disposed by a jury trial, one was disposed by a bench trial, and 12 were disposed by a plea of guilty;
- Of the 7 cases that were disposed of in some other manner, 2 were dismissed, 3 resulted in a not guilty verdict, 1 was nolle prosequi, and 1 was no bill;
- Of the 17 convicted cases, all resulted in a period of incarceration including six mandatory sentences, nine other sentences to the Department of Correction and two other sentences to a house of correction.

Table 5.

**Chapter 205 Cases -
Cases Charged, Current Status, Disposition, and Sentence**

Case Status	FY 2009	FY 2010	Total
Cases Charged	11	53	64
Current Status of Case			
Pending	4	36	40
Disposed	7	17	24
Total	11	53	64
Disposed Cases			
Convicted and Sentenced	6	11	17
Other Disposition	1	6	7
Total	7	17	24
Sentenced Cases			
Convicted of Chapter 205 Offense	2	4	6
Convicted of Other Offense	4	7	11
Total	6	11	17
Sentence Information			
15 Year Mandatory	2	1	3
10 Year Mandatory	0	3	3
Other Incarceration to State Prison	4	5	9
Incarceration to House of Correction	0	2	2
Total	6	11	17

Summary

This second annual report is intended to meet the requirements established by the Legislature under Chapter 205. Fiscal Year 2010 represented the first full year of implementation of this law. It is the intention of the Administrative Office of the Trial Court to maintain this annual reporting requirement by continued follow-up of those cases that began in FY 2009 and FY 2010 along with reporting new cases that come before the court in FY 2011 or after. The Administrative Office of the Trial Court looks forward to continued work with the legislature on the implementation and monitoring of this legislation and welcomes suggestions or comments for further improvement of this effort.

Appendix - Chapter 205 Reporting Methodology

As noted in the planning report submitted in December 2008, the annual reporting system is required to consider the prosecution and disposition of cases under these provisions. At a minimum the reporting system should include the number of new cases filed, the number of cases resulting in a conviction, and the sentence imposed for those cases. The governing offense and secondary offenses were included. In order to be fiscally responsible, the reporting strategy relied on existing automated systems or statistical reporting systems.

The legislation requires that the annual reports be submitted no later than December 31. As recommended in the planning report submitted in December 2008, the annual reports submitted to the legislature include the most recent state fiscal year as well as a follow-up of cases identified in prior reports. The initial study sample was all defendants arraigned in Superior Court with one or more charges for a sex offense. From this initial broader sample, those cases where the specific provisions of Chapter 205 applied were selected for further data collection and analysis.

Chapter 205 was approved effective July 24, 2008 and became effective on October 22, 2008. All of the cases that were classified as potential Chapter 205 that were charged during the period July 1, 2008 through October 31, 2008 were considered to be charged under the old law. District court arraignment dates were reviewed to determine the status of those cases charged from November 2008 through June 2009 which are currently disposed to ascertain the applicability of the Chapter 205 provisions. For those cases charged in FY 2010 or later, it was assumed that the provisions of Chapter 205 were applicable.

As set forth in the planning report submitted in December 2008, two data sources were available to measure the number of cases charged under the new and revised section of the legislation – the Superior Court Department and the Office of the Commissioner of Probation. The Office of the Commissioner of Probation has information on arraignments and would provide the number of new arraignments for selected offenses over the sampling period. The Superior Court Department has an automated system – Forecourt – that can be used to further report charges and disposition of these cases.

Data was collected from the Court Activity Record Information (CARI) database maintained by the Office of the Commissioner of Probation. A sample of all Superior Court arraignments for FY2010 was selected from the Office of the Commissioner of Probations Court Activity Record Information (CARI) database (N = 21,306 records).

All of the offenses and descriptive information was reviewed to identify sex offense charges. All cases involving kidnapping or "Attempt to Commit a Crime" were further reviewed to determine if the offense should be considered a sexual offense. Some of the sex offense related cases might have other types of charges associated with them. For example, a case might involve a sex offense and a weapons offense charge. For each case involving at least one sex offense charge, all of the charges were selected,

representing those individuals arraigned in a superior court with one or more charges for a sex offense.

The CARI file docket was converted to a Forecourt docket format to allow secondary data collection effort to ensure that all of the potential Chapter 205 offenses were identified. All charges from the Forecourt database were included even if some were arraigned at a prior period of time. For purposes of this analysis at least one of the charges was arraigned in the current sampling period. The unit of analysis for this report is a case.

Further analysis was done of those cases from the initial sample with one or more charges for a sex offense. Based on those charges, defendants in the sample were assigned to one of three groups:

- Chapter 205 sex offenses (one or more charges for an offense impacted by Chapter 205);
- Child sex offenses (one or more charges for an offense not covered by Chapter 205 but involving a child victim);
- Other sex offenses (one or more charges of any other type of sex offense); and,
- Other offenses (one or more charges for attempt of a sex offense or other charges under a separate docket arraigned on the same date as a sex offense case).

Of the 493 cases identified in the CARI data-base as sex offenders in FY2010, information was not available in the Forecourt database for 17 cases. The CARI database included some cases for whom "no bill" was issued for any of the charges (N= 13) and the case was not found in some cases (N = 4).

For both FY2010 cases and previously identified FY2009 cases, the current status of the case was determined from both the CARI data-base and the Forecourt data base. The status of the case was determined through December 9, 2010. Cases were assigned to one of two statuses: pending (including active and suspended cases), and disposed. All of the offenses that are subject to the provisions of Chapter 205 are under the jurisdiction of the Superior Court Department and are subject to the Criminal Case Management standards adopted by the Trial Court.⁷ Cases involving rape are assigned to track "C" and other sex offense cases are assigned to track "B" with presumptive trial dates of 360 days and 270 days respectively. In this second annual report, it is expected that many of the cases subject to the provisions of Chapter 205 will be active at the time of the data collection for this report.

For those cases that have been disposed, the type of disposition and sentence was collected using the data available in both the CARI database and the Forecourt database. Data collection on sentence structure was based on the method used by the Massachusetts Sentencing Commission in the on-going survey of sentencing practices. Type of disposition included the following categories: dismissed, nolle prosequi, not guilty finding, not guilty verdict, guilty plea, guilty finding, and guilty verdict.

⁷ Commonwealth of Massachusetts The Trial Court, Standing Order No. 2-86 (Amended)
<http://www.mass.gov/courts/courtsandjudges/courts/superiorcourt/amended-standing-order2-86.pdf>.