

December 30, 2008

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

The Honorable William F. Welch
Clerk of the Senate

The Honorable Robert S. Creedon, Jr.
Senate Chair, Joint Committee on the Judiciary

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

Dear Sirs:

In compliance with the provisions of Chapter 205 of the Acts of 2008, "An Act Further Protecting Children," please find enclosed a report on the development of an annual reporting system. The annual reporting system will be used to provide information to the Joint Committee on the Judiciary relative to the prosecution and disposition of offenses established under the act. The system relies on existing resources within the Administrative Office of the Trial Court where possible.

I believe that this reporting system will provide the information required by the legislature on those cases that are indicted and sentenced under the provisions of Chapter 205 and I look forward to working with the legislature on this initiative.

Very truly yours,

Robert A. Mulligan
Chief Justice for Administration and Management

cc: The Honorable Therese Murray, President of the Senate
The Honorable Salvatore F. Dimasi, Speaker of the House
The Honorable Karyn E. Polito, State Representative

Annual Reporting System to Support Implementation of

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 31, 2008

Annual Reporting System 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 these reporting requirements, this first report reviews the changes made by the legislation, considers data that is currently available on this population of offenders, and presents a reporting system that will be implemented beginning with state fiscal year 2009.

Scope of Offenses to be Considered

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 developing a reporting system, 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. 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**

Change	Previous Statutes	Chapter 205 of the Acts of 2008	Revised Statutory Penalty	BMC / District Court Jurisdiction
No Change	c. 265 s. 13B Indecent A&B on Child	c. 265 s. 13B Indecent A&B on Child	10 year statutory maximum / 2 1/2 year house of correction alternative	yes, from Chapter 218, section 26
New Crime / 10 year Mandatory		c. 265 s. 13B 1/2 Indecent A&B on Child, Aggravated	life felony / 10 year state prison mandatory minimum / no house of correction alternative	no
Broader Subsequent / 15 year Mandatory	c. 265 s. 13B Indecent A&B on Child, Subsequent	c. 265 s. 13B 3/4 Indecent A&B on Child, Subsequent	life felony / 15 year state prison mandatory minimum / no house of correction alternative	no
No Change	c. 265 s. 22A Rape of Child with Force	c. 265 s. 22A Rape of Child with Force	life felony	no
Offense Eliminated		Rape of Child with Force, Armed, Firearm		
Offense Eliminated		Rape of Child with Force, Armed, Firearm, Subsequent		
New Crime / 15 year Mandatory		c. 265 s. 22B Rape of Child with Force, Aggravated	life felony / 15 year state prison mandatory minimum / no house of correction alternative	no
Broader Subsequent / 20 year mandatory	c. 265 s. 22A Rape of Child with Force, Subsequent	c. 265 s. 22C Rape of Child with Force, Subsequent	life felony / 20 year state prison mandatory minimum / no house of correction alternative	no
No Change	c. 265 s. 23 Rape of Child, Statutory	c. 265 s. 23 Rape of Child, Statutory	life felony / 2 1/2 year house of correction alternative	no
New Crime / 10 year Mandatory		c. 265 s. 23A Rape of Child, Statutory, Aggravated	life felony / 10 year state prison mandatory minimum / no house of correction alternative	no
Broader Subsequent / 15 year Mandatory	c. 265 s. 23 Rape of Child, Statutory, Subsequent	c. 265 s. 23B Rape of Child, Statutory, Subsequent	life felony / 15 year state prison mandatory minimum / no house of correction alternative	no

Number of Offenders Sentenced Under These Provisions

In developing a reporting system, the number of offenders currently sentenced under existing statutes was considered. It is important to consider the number of cases as this will influence proposed data collection and reporting strategies.

Over a recent five year period, an estimated 919 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. Table 2 shows this data. For most convicted sex offenders, the sex offense is their governing offense so this is a reasonable estimate of the upward number of cases that would be included in a reporting system.³

Table 2.

**Governing Offense, Selected Sex Offenses,
Superior Court Department, FY2003 to FY2007⁴**

Selected Sex Offenses	FY2003	FY2004	FY2005	FY2006	FY2007	Total
Rape of Child, Forcible	31	36	30	29	39	165
Rape of Child	125	112	96	104	97	534
Rape of Child, 2nd	3	1	1	0	3	8
A&B Indecent Child	38	34	58	39	36	205
A&B Indecent Child, 2nd	2	0	1	2	2	7
Total	199	183	186	174	177	919

It is expected that the legislation will impact the most serious of these sex offenders. The Massachusetts Department of Correction publishes statistics on the number of offenders incarcerated and the number of new offenders committed to the Department of Correction each calendar year. These estimates of the size of the population are very close to those of the Massachusetts Sentencing Commission. Both data sources indicate that this population has been decreasing over time.

³ The Massachusetts Sentencing Commission estimates that 4.7% of all sex offenders were convicted of an offense other than a sex offense as the governing offense. (Massachusetts Sentencing Commission, *Survey of Sentencing Practices, FY 2006*).

⁴ The source of these data is the Massachusetts Sentencing Commission, *Survey of Sentencing Practices, FY2003 to FY 2007*.

Table 3.

**Governing Offense, Selected Sex Offenses,
Inmates in Department of Correction Facilities,
January 1, 1998 to 2008**

Governing Offense	1998	2003	2008	Change 1998 to 2008
Rape of Child, Forcible	398	321	280	-29.6%
Rape of Child	494	474	389	-21.3%
A&B Indecent Child	145	126	109	-24.8%
Total	1037	921	778	-25.0%

Table 4.

**Governing Offense, Selected Sex Offenses,
Inmates Committed to the Department of Correction,
1997, 2002, and 2007**

Governing Offense	1997	2002	2007	Change 1997 to 2007
Rape of Child, Forcible	44	36	26	-40.9%
Rape of Child	88	63	47	-46.6%
A&B Indecent Child	26	21	20	-23.1%
Total	158	120	93	-41.1%

Because the reporting system will focus on those offenders charged with and sentenced under the aggravated and subsequent offender portion of this range of offenses, the number of offenders included in the reporting system is expected to be less than 100 in any given 12 month period. Based on the recent history of this population, it is also expected that the number of offenders will not increase. Because of the small number of cases, the suggested reporting strategies rely on using automated systems to identify an initial sample of offenders and using manual data collection to supplement automated systems as required.

Reporting System

The 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 offenders convicted, and the sentence imposed for those offenders. Where possible, governing offense and secondary offenses should be included. In order to be fiscally responsible, the reporting strategy should rely on existing automated systems or existing statistical reporting systems.

Sampling Time Frame

The legislation requires that the report be submitted no later than December 31, 2009. It is recommended that a reporting system be implemented on a state fiscal year basis. The first report submitted to the legislature would include the most recent state fiscal year (FY 2009) or the period July 1, 2008 through June 30, 2009.

Charging / Indictment of Cases

Two data sources are available to measure the number of cases indicted under the new and revised section of the legislation – the Superior Court Department and the Office of the Commissioner of Probation.

The Superior Court Department has an automated system – Forecourt – that can be used to report the number of indictments for these offenses. 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.

Disposition of Cases

The Massachusetts Sentencing Commission maintains a database of sentences as part of the on-going Survey of Sentencing Practices. It is proposed that this data base be used to report on disposition and sentencing for these offenses. This can be supplemented by including the most recent information from the Massachusetts Department of Correction on this population. This is a cost effective way to meet the reporting requirements of Chapter 205 and can place these cases within a larger framework of the disposition and sentencing of sex offenders in the Commonwealth.

Information Available to the Legislature

The types of information available in the first annual report to the legislature would include the number of indictments, 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.