

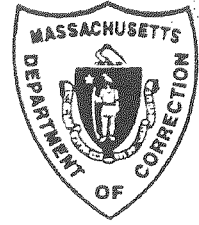
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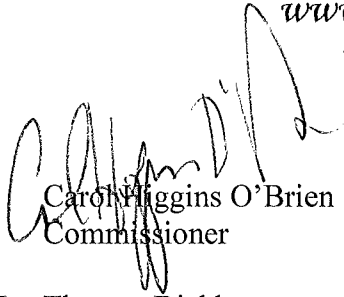
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Carol Higgins O'Brien  
Commissioner

Katherine A. Chmiel  
Thomas E. Dickhaut  
Paul L. DiPaolo  
Deputy Commissioners


TO:

  
Carol Higgins O'Brien  
Commissioner

THROUGH:

Thomas Dickhaut  
Deputy Commissioner, Prison Division 

FROM:

Raymond Marchilli Jr.  
Acting PREA Coordinator 

DATE:

September 15, 2014

RE:

**PREA Annual Report**

National PREA Standards require the Department of Correction to prepare an annual report with regard to PREA incidents. It is further required that the report be placed on the Department of Correction website for public access. The attached report was designed to incorporate the elements of obligation to publish in efforts to comply with the relevant standards.

This report will be placed on the PREA page of the Department of Correction's website following your review. Please feel free to contact me with any questions or concerns.

cc: Jennifer Gaffney, Director Policy Development and Compliance Unit  
PREA Standard files 115.88, .89

**The Massachusetts Department of Correction  
Prison Rape Elimination Act (PREA)  
Annual Report – 2013**

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## **Introduction**

The United States Department of Justice, pursuant to National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act (PREA) requires our agency to collect a defined set of data for every allegation of sexual abuse. Through what will be referred to in this report as “standards”, PREA further requires the Department of Correction to aggregate and review that data in order to assess and improve our effectiveness as an agency at preventing, detecting and responding to PREA. Standards related to the collection of data include § 115.87 Data Collection, § 115.88 Data Review For Corrective Action and § 115.89 Data Storage, Publication, And Destruction. For reference purposes, they are included within this report.

### **§ 115.87 Data Collection**

- (a) The agency shall collect accurate, uniform data for every allegation of sexual abuse at facilities under its direct control using a standardized instrument and set of definitions.
- (b) The agency shall aggregate the incident-based sexual abuse data at least annually.
- (c) The incident-based data collected shall include, at a minimum, the data necessary to answer all questions from the most recent version of the Survey of Sexual Violence conducted by the Department of Justice.
- (d) The agency shall maintain, review, and collect data as needed from all available incident-based documents, including reports, investigation files, and sexual abuse incident reviews.
- (e) The agency also shall obtain incident-based and aggregated data from every private facility with which it contracts for the confinement of its inmates.
- (f) Upon request, the agency shall provide all such data from the previous calendar year to the Department of Justice no later than June 30.

### **§ 115.88 Data Review for Corrective Action**

- (a) The agency shall review data collected and aggregated pursuant to § 115.87 in order to assess and improve the effectiveness of its sexual abuse prevention, detection, and response policies, practices, and training, including by:
  - (1) Identifying problem areas;
  - (2) Taking corrective action on an ongoing basis; and
  - (3) Preparing an annual report of its findings and corrective actions for each facility, as well as the agency as a whole.

- (b) Such report shall include a comparison of the current year's data and corrective actions with those from prior years and shall provide an assessment of the agency's progress in addressing sexual abuse.
- (c) The agency's report shall be approved by the agency head and made readily available to the public through its website or, if it does not have one, through other means.
- (d) The agency may redact specific material from the reports when publication would present a clear and specific threat to the safety and security of a facility, but must indicate the nature of the material redacted.

#### **§ 115.89 Data Storage, Publication, And Destruction**

- (a) The agency shall ensure that data collected pursuant to § 115.87 are securely retained.
- (b) The agency shall make all aggregated sexual abuse data, from facilities under its direct control and private facilities with which it contracts, readily available to the public at least annually through its website or, if it does not have one, through other means.
- (c) Before making aggregated sexual abuse data publicly available, the agency shall remove all personal identifiers.
- (d) The agency shall maintain sexual abuse data collected pursuant to § 115.87 for at least 10 years after the date of the initial collection unless Federal, State, or local law requires otherwise.

#### **PREA Data Collection Capabilities**

Through use of our Intranet, a uniformed set of data (and definitions) for each allegation investigated at every facility is collected and recorded. PREA standard 115.87 requires collecting, at a minimum, the data necessary to answer questions contained in annual "Survey of Sexual Violence" reports conducted by the United States Department of Justice. The Department of Correction *PREA Database* was, in part, designed to provide the agency with that capability and, in fact, exceeds those requirements. The *PREA Database* also provides an ability to draw comparisons on various aspects of sexual assault and harassment. Some of those comparisons will be found in this report on aggregated data.

#### **Aggregated Data on Sexual Abuse Allegations and Comparison to Prior Years**

The Massachusetts Department of Correction has a Zero Tolerance policy for sexual abuse that is covered in detail in policy 103 DOC 519 Sexually Abusive Behavior Prevention and Intervention Policy. As such, every allegation, report and/or discovery of sexual activity is investigated as if a PREA event occurred. Only after a full investigation

are events defined as a PREA violation or otherwise (i.e., consensual but, unauthorized sexual activity that does not qualify as PREA).

The following charts reflect aggregated data from 2013 absent any events investigated that did not constitute a PREA violation. Comparative data for prior years is not provided at this time due to tracking adjustments made during mid-2013 on how cases are recorded. These changes improved data quality yet prohibited a direct comparison to prior year statistics in this, our first annual PREA report. Future comparisons to 2013 will be readily available going forward.

### **Definitions**

The PREA Standards provide definitions that guide us in determining the outcome of cases we investigate. The following are a few of those key definitions:

**Evidentiary Standard:** The agency shall impose no standard higher than a preponderance of the evidence in determining whether allegations of sexual abuse or sexual harassment are substantiated.

**Substantiated:** Substantiated allegation means an allegation that was investigated and determined to have occurred.

**Unsubstantiated:** 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.

**Unfounded:** Unfounded allegation means an allegation that was investigated and determined not to have occurred.

Agency Overview for 2013

Category	Investigative Outcome			
	Substantiated	Unsubstantiated	Unfounded	Line Total
Inmate-Inmate Sex Acts	4	4	3	11
Inmate-Inmate Sexual Abuse	4	7	2	13
Inmate-Inmate Sexual Harassment	1	1	0	2
Staff Sexual Misconduct	1	3	13	17
Staff-Inmate Sexual Harassment	0	0	2	2
Total Cases	10	15	20	45
Cases Pending Investigation				8
Grand Total				53

Percentage Breakdown

Category	Investigative Outcome			
	Substantiated	Unsubstantiated	Unfounded	Line Total
Inmate-Inmate Sex Acts	7.55%	7.55%	5.66%	20.76%
Inmate-Inmate Sexual Abuse	7.55%	13.21%	3.77%	24.53%
Inmate-Inmate Sexual Harassment	1.89%	1.89%	0%	3.77%
Staff Sexual Misconduct	1.89%	5.66%	24.53%	32.08%
Staff-Inmate Sexual Harassment	0%	0%	3.77%	3.77%
Total Cases	18.87%	28.30%	37.74%	84.91%
Cases Pending Investigation				15.09%
Grand Total				100%

### Incident Overview by Facility and Type

**Inmate/Inmate Sex Acts:** Sexual abuse of an inmate, detainee, or resident by another inmate, detainee, or resident includes any of the following acts, if the victim does not consent, is coerced into such act by overt or implied threats of violence, or is unable to consent or refuse:

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. Penetration of the anal or genital opening of another person, however slight, by a hand, finger, object, or other instrument.

Facility	Investigative Outcome			Total
	Substantiated	Unsubstantiated	Unfounded	
BSCC	0	0	0	
BSH	1	0	0	1
BSPRC	0	0	0	
LSH	0	0	0	
MASAC	0	0	0	
MCI – Concord	0	0	0	
MCI – Norfolk	2	0	1	3
MCI – Plymouth	0	0	0	
MCI – Shirley medium	0	0	0	
MCI – Shirley minimum	0	0	0	
MCI Framingham	1	0	0	1
MCI-CJ	0	0	0	
MTC	0	0	0	
NCCI medium	0	2	0	2
NCCI minimum	0	0	0	
NECC	0	0	0	
Non-DOC	0	0	0	
OCCC medium	0	2	1	3
OCCC minimum	0	0	0	
PCC	0	0	0	
SBCC	0	0	1	1
SMCC	0	0	0	
<b>Total</b>	<b>4</b>	<b>4</b>	<b>3</b>	<b>11</b>

**Inmate/Inmate Sex Abuse:** 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 genitalia, anus, groin, breast, inner thigh or buttocks of any person.

1. Any other intentional touching, either directly or through the clothing, of the genitalia, anus, groin, breast, inner thigh, or the buttocks of another person, excluding contact incidental to a physical altercation.

Facility	Investigative Outcome			Total
	Substantiated	Unsubstantiated	Unfounded	
BSCC	0	0	0	
BSH	1	0	0	1
BSPRC	0	0	0	
LSH	0	0	0	
MASAC	0	0	0	
MCI – Concord	0	0	0	
MCI – Norfolk	0	1	0	1
MCI – Plymouth	0	0	0	
MCI – Shirley medium	0	0	0	
MCI – Shirley minimum	0	0	0	
MCI Framingham	1	1	1	3
MCI-CJ	0	0	0	
MTC	1	0	0	1
NCCI medium	0	0	1	1
NCCI minimum	0	0	0	
NECC	0	0	0	
Non-DOC	0	0	0	
OCCC medium	0	4	0	4
OCCC minimum	0	0	0	
PCC	0	1	0	1
SBCC	0	0	0	
SMCC	1	0	0	1
<b>Total</b>	<b>4</b>	<b>7</b>	<b>2</b>	<b>13</b>



**Inmate-Inmate Sexual Harassment:** Sexual Harassment includes— 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.

Written or verbal communication, gestures such as simulated acts of a sexual nature.

Facility	Investigative Outcome			Total
	Substantiated	Unsubstantiated	Unfounded	
BSCC	0	0	0	
BSH	0	0	0	
BSPRC	0	0	0	
LSH	0	0	0	
MASAC	0	0	0	
MCI - Concord	0	0	0	
MCI - Norfolk	0	1	0	1
MCI - Plymouth	0	0	0	
MCI - Shirley medium	0	0	0	
MCI - Shirley minimum	0	0	0	
MCI Framingham	0	0	0	
MCI-CJ	0	0	0	
MTC	0	0	0	
NCCI medium	0	0	0	
NCCI minimum	0	0	0	
NECC	0	0	0	
Non-DOC	0	0	0	
OCCC medium	1	0	0	1
OCCC minimum	0	0	0	
PCC	0	0	0	
SBCC	0	0	0	
SMCC	0	0	0	
<b>Total</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>2</b>

**Staff Sexual Misconduct:** 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)-(5) of this section;
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. Voyeurism by a staff member, contractor, or volunteer means an invasion of privacy of an inmate, detainee, or resident by staff for reasons unrelated to official duties, such as peering at an inmate who is using a toilet in his or her cell to perform bodily functions; requiring an inmate to expose his or her buttocks, genitals, or breasts; or taking images of all or part of an inmate's naked body or of an inmate performing bodily functions.

Facility	Investigative Outcome			Total
	Substantiated	Unsubstantiated	Unfounded	
BSCC	0	0	0	
BSH	0	0	3	3
BSPRC	0	1	0	1
LSH	0	0	0	
MASAC	0	0	0	
MCI - Concord	0	0	2	2
MCI - Norfolk	0	1	1	2
MCI - Plymouth	0	0	0	
MCI - Shirley medium	1	0	0	1
MCI - Shirley minimum	0	0	0	
MCI Framingham	0	0	1	1
MCI-CJ	0	0	0	
MTC	0	0	0	
NCCI medium	0	0	0	
NCCI minimum	0	0	0	
NECC	0	0	0	
Non-DOC	0	0	0	
OCCC medium	0	0	3	3
OCCC minimum	0	0	0	
PCC	0	0	1	1
SBCC	0	1	2	3
SMCC	0	0	0	
<b>Total</b>	<b>1</b>	<b>3</b>	<b>13</b>	<b>17</b>

**Staff-Inmate Sexual Harassment:** 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.

Written or verbal communication, gestures such as simulated acts of a sexual nature.

Facility	Investigative Outcome			Total
	Substantiated	Unsubstantiated	Unfounded	
BSCC	0	0	0	
BSH	0	0	0	
BSPRC	0	0	0	
LSH	0	0	0	
MASAC	0	0	0	
MCI - Concord	0	0	0	
MCI - Norfolk	0	0	0	
MCI - Plymouth	0	0	0	
MCI - Shirley medium	0	0	0	
MCI - Shirley minimum	0	0	0	
MCI Framingham	0	0	1	1
MCI-CJ	0	0	0	
MTC	0	0	0	
NCCI medium	0	0	0	
NCCI minimum	0	0	0	
NECC	0	0	0	
Non-DOC	0	0	0	
OCCC medium	0	0	1	1
OCCC minimum	0	0	0	
PCC	0	0	0	
SBCC	0	0	0	
SMCC	0	0	0	
<b>Total</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>2</b>

Cases Pending Investigation	
Facility	Cases of any type pending investigation
BSCC	0
BSH	1
BSPRC	0
LSH	0
MASAC	0
MCI - Concord	1
MCI - Norfolk	0
MCI - Plymouth	0
MCI - Shirley medium	0
MCI - Shirley minimum	0
MCI Framingham	3
MCI-CJ	0
MTC	0
NCCI medium	0
NCCI minimum	0
NECC	0
Non-DOC	1
OCCC medium	1
OCCC minimum	0
PCC	0
SBCC	1
SMCC	0
<b>Total</b>	<b>8</b>

### Trends

As previously indicated, it is impractical to identify trends on a year-to-year basis at this time due to changes in data collection methodology. However, the use of available data from two sources can be utilized to review the last three years of activity. Sources include the Department of Correction *PREA Database* and annual responses to the Bureau of Justice Statistics' (BJS) Survey of Sexual Violence (SSV).

### Department of Correction PREA Database Tracking History and Analysis

Total number of cases investigated per year*	2011	2012	2013	Annual Average
	68	85	79	77.3

\*Note: This number includes all cases, even those with an outcome that defined the incident as a non-PREA event such as consensual but, unauthorized sexual activity. Incidents tracked exceed to scope contained in the SSV reports.

Statistical data from the *PREA Database* reveals that the number of cases investigated during 2013 was just above the three year average. This may be due to the fact that the Massachusetts DOC was an "early adopter" of the PREA concept and had begun agency-wide efforts to eliminate prison rape as far back as 2006. These efforts pre-dated the current PREA Standards by six years as they were not finalized by the United States Department of Justice and published in the Federal Register until August 20, 2012.

*BJS – SSV Reports submitted by the Massachusetts DOC and Analysis*

<b>Total number of SUBSTANTIATED cases per year*</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>Annual Average</b>
Inmate-on-inmate nonconsensual sexual acts	5	0	0	1.66
Inmate-on-inmate abusive sexual contacts	8	1	2	3.66
Staff sexual misconduct	1	1	2	1.33
Staff sexual harassment	0	0	2	.66
<b>Total</b>	<b>14</b>	<b>2</b>	<b>6</b>	<b>7.33</b>

\*Note: A different three year comparison period was used because the BJS has not yet issued the SSV forms for 2013. While typically due by June 30<sup>th</sup> of each year, the BJS website indicates that they will not be due this year until September 1, 2014 for 2013 activity.

Statistical data with regard to the Massachusetts Department of Correction's BJS/SSV reports demonstrate an increase over 2011 but, also show a significant drop in total events since 2010. This may be attributable to better education and training at all levels of the department towards the goal of prevention. Improved inmate education and housing decisions may also contribute to an overall downward trend.

**Identified Problem Areas and Corrective Action**

PREA standards require a review of collected data in order to identify problem areas and establish plans of corrective action. Based upon statistical data alone, there are no obvious problem areas that are not already being addressed through our efforts to achieve compliance with PREA standards. This includes improved inmate education, data collection, staff training and investigative capabilities, and improved relationships with stakeholders.

There are, however, two non-data driven plans of corrective action being pursued that are anticipated to have a positive qualitative, if not quantitative impact on the Department of Correction's effectiveness with regard to PREA. The first is a re-development of the agency's inmate risk screening tool. This will permit the Department to better assess inmates for their potential of being either a victim or perpetrator of sexual assault while incarcerated. While the Department has utilized such a process for some time now, the instrument did not contain all of the aspects now required to assess nor, were the assessments performed at the newly prescribed frequency. The development of computer programming, will allow the Department to deploy the risk screening tool on an agency-wide level. The computer program was completed and is currently being field tested at the three sites (MCI-Cedar Junction, MCI-Framingham and, at MCI-Concord). Upon determination that the system is fully functional further preparations will be made to deploy it throughout the agency. This will represent an important step in assessing inmates for housing, programs and work assignments in a standardized manner across the Department and may lead to a further reduction in victimization.

The second action being pursued is the expansion of victim advocacy services. Community based services of this nature have been extremely challenging to obtain. These groups are dependant on funding received through federal grants that are issued under the Violence Against Women Act (VAWA) and the Massachusetts Office of Victim Assistance (MOVA). Until recently, regulations associated with those grants prohibited victim advocacy groups from providing services to convicted offenders. This conflict has since been removed and the Department of Correction has applied for a grant to begin funding them for the inmate population. The grant was submitted in May 2014. A decision on the award is expected sometime in October 2014 when the new fiscal year begins for the Federal government. In the interim, the Department is able to address advocacy needs through the use of qualified agency personnel.

#### **Assessment of the Massachusetts Department of Correction's Progress in Addressing Inmate Sexual Abuse**

The Department of Correction has been making successful strides in addressing inmate sexual abuse. Although full compliance with the PREA standards has not yet been achieved, the Department is working diligently towards that goal. With the Department's 2013 substantiated victimization rate of .82 cases per 1,000 inmates (total of 9 cases - not inclusive of those deemed to be inmate-to-inmate sexual harassment which is not tracked by the BJS or, unauthorized but consensual sexual activity between inmates which is not PREA and measured against a total inmate population of 11,034 as of 12/31/13) Massachusetts is significantly below the national rate for state prisons. The most recent data available (2011) on the national state prison substantiated victimization rate is 4.81. Substantiated cases per 1,000 inmates are approximately six times higher than Massachusetts (BJS report; "Sexual Victimization Reported by Adult Correctional Authorities, 2009-11").