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**Raymond W. Marchilli, Jr.**  
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TO: Carol Higgins O'Brien  
Commissioner

THROUGH: Thomas Dickhaut  
Deputy Commissioner, Prison Division

FROM: Raymond Marchilli Jr.  
Acting PREA Coordinator

DATE: June 4, 2015

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  
Michael Donaher, Acting Deputy Director - PREA  
PREA Standard files 115.88, .89

**The Massachusetts Department of Correction  
Prison Rape Elimination Act (PREA)  
Annual Report – 2014**

**Table of Contents**

• Introduction.....	1
• 115.87; Data Collection .....	1
• 115.88; Data Review for Corrective Action .....	1
• 115.89; Data Storage, Publication, and Destruction.....	2
• Summary of PREA Data Collection Capabilities .....	2
• Aggregated Data on Sexual Abuse Allegations and Comparison to Prior Years .....	2
• Definitions.....	3
• Agency Overview for 2014 and Comparison to 2013.....	4
• Percentage Breakdowns for 2014 and Comparison to 2013.....	5
• Incident Overview by Facility and Type for 2014	
○ Inmate/Inmate Sex Acts.....	6
○ Inmate/Inmate Sexual Abuse.....	7
○ Inmate-Inmate Sexual Harassment.....	8
○ Staff Sexual Misconduct.....	9
○ Staff-Inmate Sexual Harassment.....	10
• Trends.....	11
• Identified Problem Areas and Corrective Action.....	11
• Problem Areas from 2013 Resolved.....	12
• Assessment of the Massachusetts Department of Correction’s Progress in Addressing Inmate Sexual Abuse .....	12

## **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 is completed is an event 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 2014 absent any events investigated that did not constitute a PREA violation. Comparative data for years preceding 2013 is not provided due to

adjustments made during mid-2013 on how cases are recorded. These changes improved data quality yet prohibited a direct comparison to statistics from prior years.

### **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 2014

Category	Investigative Outcome				
	Substantiated	Unsubstantiated	Unfounded	Pending	Line Total
Inmate-Inmate Sex Acts	0	6	5	1	12
Inmate-Inmate Sexual Abuse	5	8	5	2	20
Inmate-Inmate Sexual Harassment	5	17	3	1	26
Staff Sexual Misconduct	0	6	13	1	20
Staff-Inmate Sexual Harassment	0	4	5	2	11
Grand Total	10	41	31	7	89

Agency Overview for 2013 for Comparison

Category	Investigative Outcome				
	Substantiated	Unsubstantiated	Unfounded	Pending	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
					8 Pending
Grand Total	10	15	20	8	53

\*\*Note: While the total number of Pending cases was recorded for 2013 they were not tracked by category as was reported for 2014.

Comparison of PREA Cases Between Years 2013 and 2014.

The number of PREA investigations for 2014 increased by 36 in total (46% ^) over 2013. This reflects an increase in allegations for every PREA category. The most notable increases, however, are found in categories pertaining to harassment. Inmate-on Inmate Sexual Harassment claims increased by 24 investigated cases from 2 cases in 2013 to 26 in 2014. Staff-on-Inmate Sexual Harassment claims increased by 9 investigated cases from 2 in 2013 to 11 in 2014.

Percentage Breakdown for 2014

Category	Investigative Outcome				
	Substantiated	Unsubstantiated	Unfounded	Pending	Line Total
Inmate-Inmate Sex Acts	0%	6.74%	5.62%	1.12%	13.48%
Inmate-Inmate Sexual Abuse	5.62%	8.98%	5.62%	2.25%	22.47%
Inmate-Inmate Sexual Harassment	5.62%	19.10%	3.37%	1.12%	29.21%
Staff Sexual Misconduct	0%	6.74%	14.61%	1.12%	22.47%
Staff-Inmate Sexual Harassment	0%	4.49%	5.62%	2.25%	12.36%
Grand Total	11.23%	46.06%	34.83%	7.86%	100%

Percentage Breakdown for 2013 for Comparison

Category	Investigative Outcome				
	Substantiated	Unsubstantiated	Unfounded	Pending	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%
					15.09% Pending
Grand Total	18.87%	28.30%	37.74%	15.09%	100%

\*\*Note: While the total number of Pending cases was recorded for 2013 they were not tracked by category as was reported for 2014.

Comparison of Investigative Outcomes Between Years 2013 and 2014.

PREA Investigative Outcomes for 2014 (not including cases pending) demonstrate variation over the results noted in 2013. Substantiated and Unfounded results have decreased (7.64% and 2.91% respectively), while Unsubstantiated outcomes have increased by 17.76%. While a definitive explanation for these variations cannot be ascertained, it is probable that they can be attributed to the agency's continued educational efforts for staff, vendors and inmates. Better investigative techniques and training and, strict adherence to the definitions established under the PREA Standards are also contributing factors.

## **Incident Overview by Facility and Type for 2014**

**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	Pending	
BSCC	0	0	0	0	0
BSH	0	1	1	0	2
BSPRC	0	0	0	0	0
LSH	0	0	0	0	0
MASAC	0	0	0	0	0
MCI – Concord	0	1	0	0	1
MCI – Norfolk	0	1	0	0	1
MCI – Plymouth	0	0	0	0	0
MCI – Shirley medium	0	0	0	0	0
MCI – Shirley minimum	0	0	0	0	0
MCI Framingham	0	0	0	0	0
MCI-CJ	0	0	0	0	0
MTC	0	0	1	0	1
NCCI medium	0	1	0	0	1
NCCI minimum	0	0	0	0	0
NECC	0	0	0	0	0
Non-DOC	0	0	0	0	0
OCCC medium	0	2	2	0	4
OCCC minimum	0	0	0	0	0
PCC	0	0	0	0	0
SBCC	0	0	0	1	1
SMCC	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>6</b>	<b>4</b>	<b>1</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	Pending	
BSCC	0	0	0	0	0
BSH	0	0	0	0	0
BSPRC	0	0	0	0	0
LSH	0	0	0	0	0
MASAC	0	0	0	0	0
MCI – Concord	0	1	1	0	2
MCI – Norfolk	0	1	0	0	1
MCI – Plymouth	0	0	0	0	0
MCI – Shirley medium	0	1	0	0	1
MCI – Shirley minimum	0	0	0	0	0
MCI Framingham	2	3	2	0	7
MCI-CJ	0	0	1	0	1
MTC	3	1	1	0	5
NCCI medium	0	0	0	0	0
NCCI minimum	0	0	0	0	0
NECC	0	0	0	0	0
Non-DOC	0	0	0	0	0
OCCC medium	0	2	0	0	2
OCCC minimum	0	0	0	0	0
PCC	0	0	0	0	0
SBCC	0	0	0	2	2
SMCC	0	0	0	0	0
<b>Total</b>	<b>5</b>	<b>9</b>	<b>5</b>	<b>2</b>	<b>21</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	Pending	
BSCC	0	0	0	0	0
BSH	0	0	0	0	0
BSPRC	0	0	0	0	0
LSH	0	0	0	0	0
MASAC	0	0	1	0	1
MCI – Concord	0	0	0	0	0
MCI – Norfolk	1	1	0	0	2
MCI – Plymouth	0	0	0	0	0
MCI – Shirley medium	0	0	1	0	1
MCI – Shirley minimum	0	0	0	0	0
MCI Framingham	1	4	0	0	5
MCI-CJ	0	0	0	0	0
MTC	1	2	0	0	3
NCCI medium	2	2	0	0	4
NCCI minimum	0	0	0	0	0
NECC	0	0	0	0	0
Non-DOC	0	0	0	0	0
OSCC medium	1	4	1	0	6
OSCC minimum	0	0	0	0	0
PCC	0	0	0	0	0
SBCC	0	2	1	1	4
SMCC	0	0	0	0	0
<b>Total</b>	<b>6</b>	<b>15</b>	<b>4</b>	<b>1</b>	<b>26</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	Pending	
BSCC	0	0	0	0	0
BSH	0	0	3	0	3
BSPRC	0	1	0	0	1
LSH	0	0	1	0	1
MASAC	0	0	0	0	0
MCI – Concord	0	1	3	0	4
MCI – Norfolk	0	1	0	0	1
MCI – Plymouth	0	0	0	0	0
MCI – Shirley medium	0	0	0	1	1
MCI – Shirley minimum	0	0	0	0	0
MCI Framingham	0	0	1	0	1
MCI-CJ	0	0	1	0	1
MTC	0	1	1	0	2
NCCI medium	0	0	0	0	0
NCCI minimum	0	0	0	0	0
NECC	0	1	0	0	1
Non-DOC	0	0	1	0	1
OCCC medium	0	2	2	0	4
OCCC minimum	0	0	0	0	0
PCC	0	0	0	0	0
SBCC	0	0	0	0	0
SMCC	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>7</b>	<b>13</b>	<b>1</b>	<b>21</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	Pending	
BSCC	0	0	0	0	0
BSH	0	1	0	0	1
BSPRC	0	1	0	0	1
LSH	0	0	0	0	0
MASAC	0	0	0	0	0
MCI – Concord	0	0	2	0	2
MCI – Norfolk	0	1	0	0	1
MCI – Plymouth	0	0	0	0	0
MCI – Shirley medium	0	0	0	0	0
MCI – Shirley minimum	0	0	0	0	0
MCI Framingham	0	0	0	0	0
MCI-CJ	0	0	0	0	0
MTC	0	0	0	0	0
NCCI medium	0	0	0	0	0
NCCI minimum	0	0	0	0	0
NECC	0	0	0	0	0
Non-DOC	0	0	0	0	0
OSCC medium	0	1	1	0	2
OSCC minimum	0	0	0	0	0
PCC	0	0	0	0	0
SBCC	0	0	2	2	4
SMCC	0	0	0	0	0
<b>Total</b>	<b>0</b>	<b>4</b>	<b>5</b>	<b>2</b>	<b>9</b>

### Trends

As previously indicated, it is impractical to identify long term trends on a year-to-year basis due to recent (2013) changes in data collection methodology. However, the use of available data from two sources can be utilized to review the last two 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 PREA cases investigated per year**	2013	2014	Annual Average
	53	89	71

\*\*Note: These numbers include only those cases defined as PREA events per the *National Standards to Prevent, Detect, and Respond to Prison Rape Under the Prison Rape Elimination Act (PREA)*.

Statistical data from the *PREA Database* reveals that the number of PREA cases investigated during 2014 was well above the number recorded in the previous year. This appears to be primarily due to a significant rise in the number of cases related to claims of sexual harassment by both inmates and staff. It is possible that educational efforts and a greater comfort level in reporting contributed to that increase.

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

Total number of SUBSTANTIATED cases per year*	2010	2011	2012	2013	2014	Five Year Average
Inmate-on-inmate nonconsensual sexual acts	5	0	0	1	0	1.2
Inmate-on-inmate abusive sexual contacts	8	1	2	5	5	4.2
Staff sexual misconduct	1	1	2	1	0	1.0
Staff sexual harassment	0	0	2	0	0	.4
<b>Total</b>	<b>14</b>	<b>2</b>	<b>6</b>	<b>7</b>	<b>5</b>	<b>6.8</b>

\*Note: These figures may vary from data reported in other areas of this/previous reports because it reflects a “snap-shot” of resolved cases when those reports were generated. Cases still pending and/or allegations not reported to DOC Officials at the time of the incident may skew the data.

Statistical data with regard to the Massachusetts Department of Correction's BJS/SSV reports demonstrate a stable trend over the last three years. 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, the Substantiated victimization rate within the Massachusetts Department of Correction is low. 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.

### **Resolved Problem Areas from 2013**

Two problem areas were stated in the 2013 report. The first was a need to re-develop the agency's Inmate Housing Risk screening tool. That objective was fully implemented across the agency in late 2013 through early 2014.

The second area of need was the expansion of victim advocacy services. Community based services of this nature were extremely challenging to obtain. Advocacy 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. The Department of Correction then applied for and was awarded a grant to contract for services for our inmate population. As a result, a contract was signed with the Boston Area Rape Crisis Center (BARRC) in May, 2014 to begin providing this service.

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

The Department of Correction has been making successful strides in addressing inmate sexual abuse allegations. We are confident that we are now in full compliance with the PREA standards and are prepared to successfully pass at least 10 DOJ mandated PREA Audits before the end of the second year of the PREA Audit cycle (August 20, 2015).

With the Department's 2014 substantiated victimization rate of .46 cases per 1,000 inmates (total of 5 cases - not inclusive of those deemed to be inmate-to-inmate sexual harassment which is not tracked by the BJS and measured against a total inmate population of 10,813 as of 12/31/14) Massachusetts appears to remain significantly below the national rate for Substantiated cases in state prisons. The most recent data available (2011) on the national state prison substantiated victimization rate is 4.81 cases per 1,000. Substantiated cases per 1,000 inmates in Massachusetts is approximately ten times lower than the most recently available figure on the national average (BJS report; "Sexual Victimization Reported by Adult Correctional Authorities, 2009-11").