

# SOUTH DAKOTA DEPARTMENT OF CORRECTIONS 2021 ANNUAL PRISON RAPE ELIMINATION ACT REPORT



JUNE 2022

### **Overview**

In September of 2003, President Bush signed the Prison Rape Elimination Act (PREA). In August of 2012, the PREA standards promulgated by the United States Department of Justice went into effect. Since then, staff throughout the Department have taken action to prevent, detect, reduce, and respond to sexual abuse and sexual harassment in confinement facilities, including community confinement facilities and privately-operated facilities that hold contracts with the Department of Corrections.

This report reflects the Department's continued efforts to move forward in complying with the national standards promulgated under PREA. The SDDOC is committed to keeping those in our custody safe and free from harm and has a zero tolerance for sexual assault and harassment of offenders under the jurisdiction of the Department.

### **Staffing**

Protecting inmates and youth from sexual assault and harassment, and compliance with the PREA standards is the top priority for SDDOC. All SDDOC staff have been involved in achieving and maintaining these goals.

The Department Secretary has assigned a senior person in the Administrative Office the responsibility for overseeing the agency's PREA activities.

### **DOC PREA Coordinator**

The PREA Coordinator manages the department's policies and procedures pertaining to PREA and the associated PREA Standards. The PREA Coordinator oversees PREA policy development, PREA staff training, PREA investigator training, and PREA documentation of agency procedures. The PREA Coordinator collects and aggregates annual data for the Department.

### **DOC PREA Compliance Manager**

Each of the three main adult facilities have at a minimum of one PREA Compliance Manager to oversee facility level compliance with the PREA Standards.

### **Juvenile PREA Compliance Manager**

The Juvenile PREA Compliance Manager assists and monitors the community placement facilities under contract for compliance with the PREA Juvenile standards.

### **PREA Investigator**

Each adult facility designated a primary PREA investigator and trained additional staff as back-up PREA investigators. PREA Investigators attend specialized and annual training.

### **Adult Division Staffing Plan**

Each adult facility developed a PREA compliant staffing plan. The staffing plan outlined the minimum staffing levels, facility layout review, and video camera coverage. In 2021, staffing levels were maintained with documentation of staff shortage.



### **Training**

The adult division continued with pre-service training programs for new staff, contactors, and volunteers. The yearly in-service training program continued to expand to the new PREA related updates and policies. In addition, there were specialty training programs/events for the PREA investigators and PREA Compliance Managers.

### **PREA Pre-service Training**

All staff must attend pre-service training prior to contact with offenders; this standardized training including all ten of the staff training requirements in the PREA standards 115.31 Employee training.

- Zero-tolerance policy for sexual abuse and sexual harassment
- How to fulfill staff responsibilities under DOC sexual abuse and sexual harassment prevention, detection, reporting and response, policies and procedures
- Inmates' right to be free from sexual abuse and sexual harassment
- The right of inmates and staff members to be free from retaliation from reporting sexual abuse and sexual harassment
- The dynamics of sexual abuse and sexual harassment in confinement/correctional settings
- The common reaction of sexual abuse and sexual harassment victims
- How to detect and respond to signs of threatened and actual sexual abuse
- How to avoid inappropriate relationships with inmates
- How to communicate effectively and professionally with inmates, including lesbian, gay, bisexual, transgender, intersex, and gender nonconforming inmates
- How to comply with relevant laws related to mandatory reporting of sexual abuse to law enforcement.

### **PREA Annual Training**

All staff that has regular contact with offenders complete annual training. The in-service training for all facility staff for fiscal year 2021 was PREA's: Professional Boundaries/GNC vs Gender Dysphoria course. Topics discussed included the definitions, procedures and practices for professional boundaries, and the differences between gender non-conforming versus gender dysphoric offender and how to respond to requests.

### **PREA Specialized Training**

Adult and Juvenile Division specialized training to select groups to cover training, policy and procedures. Juvenile Investigator training covering definitions, reporting procedures, responding to a report and investigation outcomes was completed in Sioux Falls in September. The Adult PREA Compliance and Investigator Training was held June 2021 relating to Gender Dysphoria with a DOC outside consultant. In September 2021, specialized training included the following topics: gender responsiveness for investigations, components for institutional culture and their impact on sexual abuse of inmates, effective communication with victims, witnesses, and perpetrators, COMS utilization, and Policy and annual review of data.

### **PREA Policies**

In 2021 for the Adult SDDOC there were PREA impacted policies issued by the SDDOC. The following policies were reviewed: Americans with Disabilities Act with minor changes to definitions of ADA Director, PREA Compliance with Prison Rape Elimination Act Standards with minor changes, PREA Response investigation of sexual abuse-harassment with minor changes, PREA Institutional Risk screens with minor changes, Management of Gender Dysphoria with minor changes, and community service programs with minor changes throughout the policy.

In 2021 for the Juvenile SDDOC there was a minor change to the PREA operational memorandum for accurate definitions and updated hyperlinks. No other PREA impacted policies or operational memorandums were updated or new.

### **Supportive Services**

Pursuant to PREA standard 115.21 evidence protocol and forensic examinations and 115.53 access to outside confidential support services; the SDDOC has maintained memorandums of understanding (MOU) with the following local victim advocate groups to provide services to SDDOC offenders who were victims of sexual abuse.

#### **Support Services MOU's**

- The Compass Center in Sioux Falls covers the Sioux Falls campus of the South Dakota State Penitentiary, Jameson Annex, Sioux Falls Community Work Center, and St. Francis House.
- Missouri Shores Domestic Violence Center in Pierre covers the Pierre campus of the South Dakota Women's Prison and the Pierre Community Work Center.
- Working Against Violence Inc. in Rapid City covers the Rapid City Community Work Center and Cornerstone Rescue Mission.
- River City Domestic Violence Center in Yankton covers the Mike Durfee State Prison and the Yankton Community Work Center.

### **Audits**

The adult division contracted with a private PREA auditing company, the Nakamoto Group, to conduct the audit of the South Dakota Women's Prison in May of 2021. SDWP was found compliant with PREA Standards. The Nakamoto Group completed the Mike Durfee State Prison in May of 2021. MDSP was found to be compliant with PREA Standards. South Dakota State Penitentiary is scheduled with the Nakamoto Group for a PREA Audit in the spring of 2022.

The juvenile division contract facility for the Sequel Transition Academy was completed in August 2021, they were found to be compliant with PREA Standards.



**General Definitions:**

**Incident Determinations**

|                             |  |
|-----------------------------|--|
| Substantiated allegation:   | an allegation that was investigated and determined to have occurred.   |
| Unfounded allegation:       | an allegation that was investigated and determined not to have occurred.   |
| Unsubstantiated allegation: | an allegation that was investigated and the investigation produced insufficient evidence to make a final determination as to whether the event occurred. |
| Informational incident:     | a sexual incident that did not involve an allegation of sexual abuse or harassment, i.e. a consensual incident between inmates.                          |

**Sexual Abuse and Harassment** The following definitions apply to adult division data:

**Inmate 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 acts by overt or implied threats of violence or is unable to consent or refuse:

- 1) Contact between the penis and 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; and

**Inmate sexual abuse – touching:** (of an inmate, detainee or resident by another inmate, detainee or resident)

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 incidentally to a physical altercation.

**Staff sexual abuse misconduct:** (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) – 3) Same first 3 points as inmate sexual abuse and
- 4) 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.
- 5) Any other intentional contact, either directly or through 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

Sexual relationships of a romantic nature between staff and inmates are included in this definition.

**Inmate sexual harassment:** (of an inmate, detainee or resident by another inmate, detainee or resident)

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

**Staff sexual harassment:** (of an inmate, detainee or resident by another inmate, detainee or resident)

Repeated verbal comments or gestures of a sexual nature to an inmate, detainee or resident by a staff member, contractor or volunteer, including demeaning reference to gender, sexually suggestive or derogatory comments about body or clothing, or obscene language or gestures.



### Adult Aggregated Data Review:

#### **Trends over the one-year period:**

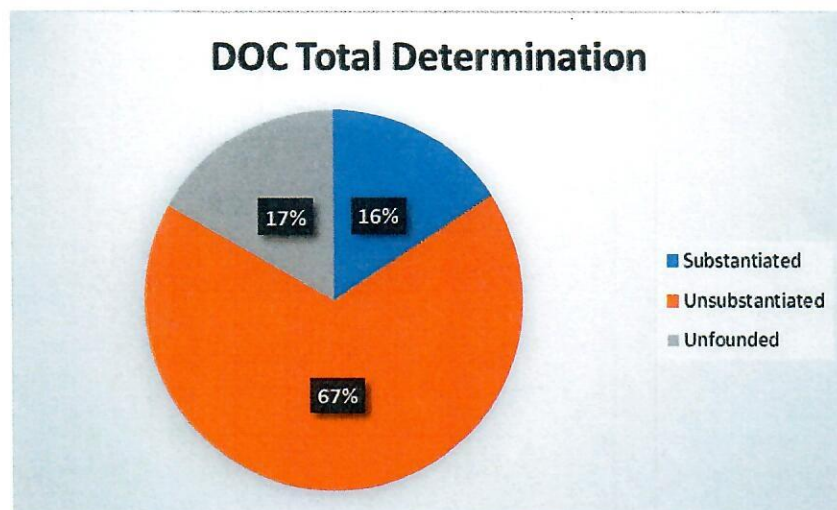
The 2021 total number of incidents at 95 is a 5.12% decrease over 2020's reported 100 total incidents. The 2021's total is 27.1% below the five-year average of 124.8 total incidents. The past two years show that SDDOC is maintaining the number of reported and investigated cases, but is a decrease over the five year period.

The 2021 data shows a slight increase of the percentage of substantiated cases from 15% in 2020 to 15.8% in 2021. Unsubstantiated cases also had a slight percentage increase from 66% in 2020 to 67.3% in 2021. There was a percentage decrease for unfounded cases from 19% in 2020 to 16.8% in 2021. The trend of reported and investigated allegations are maintaining from 2020 to 2021.

There was an increase of staff sexual abuse misconduct cases that were investigated in 2021 of 16 cases from 2020 of 7 cases. There was an increase of the staff sexual harassment cases in 2021 of 32 cases from 2020 of 30 cases. There was a decrease of inmate on inmate sexual abuse – penetration cases in 2021 of 6 cases from 2020 of 14 cases. There was a decrease of inmate on inmate sexual abuse – touching cases in 2021 of 4 cases from 2020 of 14 cases. There was an increase of inmate on inmate sexual harassment cases in 2021 of 37 cases from 2020 of 35 cases.

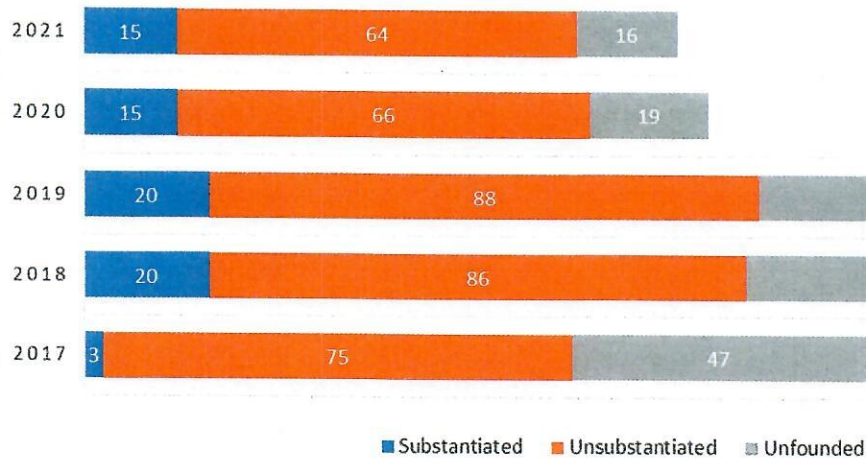
#### **2021 SDDOC Determination Chart**

| Incident Type    | Inmate on Inmate Sexual Abuse Penetration | Inmate on Inmate Sexual Abuse Touching | Inmate on Inmate Sexual Harassment | Staff on Inmate Sexual Abuse Misconduct | Staff on Inmate Sexual Harassment | Grand Total |
|------------------|---|--|------------------------------------|---|-----------------------------------|-------------|
| <b>Adult DOC</b> |   |  |                                    |   |                                   |             |
| Substantiated    | 0   | 0                                      | 8                                  | 3                                       | 4                                 | 15          |
| Unsubstantiated  | 3   | 3                                      | 26                                 | 9                                       | 23                                | 64          |
| Unfounded        | 3   | 1                                      | 3                                  | 4                                       | 5                                 | 16          |
| <b>Total</b>     | <b>6</b>                                  | <b>4</b>                               | <b>37</b>                          | <b>16</b>                               | <b>32</b>                         | <b>95</b>   |

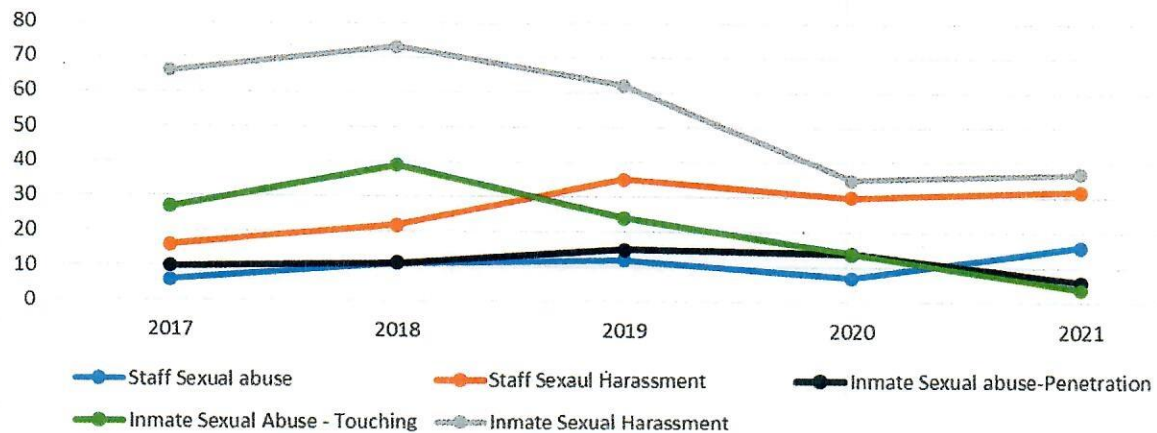


The chart following indicates the trends over the last five years in each determination category.

## 5 - YEAR SEXUAL ABUSE AND HARASSMENT DETERMINATION TREND



## 5 - YEAR SEXUAL ABUSE AND HARASSMENT INCIDENT TREND





**Adult Division – Reported Incidents and Administrative Responses:**

**Reporting Period: January 1, 2021 to December 31, 2021**

**Mike Durfee State Prison**

MDSP had zero change in the year of 2021 of total allegations investigated from 13 incidents. The reportable cases of 13 continues to be lower than the 5-year total average of 21.4 incidents. There was not a large difference in the type of cases MDSP investigated. MDSP staff related cases increased by one from 6 cases in 2020 to 7 cases in 2021. There was one substantiated staff sexual abuse misconduct case, one unsubstantiated staff sexual misconduct and two unsubstantiated staff sexual harassment cases, and finally three unfounded staff sexual harassment cases. MDSP inmate cases dropped from 7 cases in 2020 to 6 cases in 2021. These cases involved one unsubstantiated and two unfounded inmate sexual abuse penetration and three unsubstantiated inmate sexual harassment.

There were no sexual incident review recommendations for MDSP during the 2021 reporting period.

| DETERMINATION AND TYPE 2021 | Inmate on Inmate Sexual Abuse Penetration | Inmate on Inmate Sexual Abuse Touching | Inmate on Inmate Sexual Harassment | Staff on Inmate Sexual Abuse Misconduct | Staff on Inmate Sexual Harassment | Grand Total |
|-----------------------------|---|--|------------------------------------|---|-----------------------------------|-------------|
| Substantiated               | 0   | 0                                      | 0                                  | 1                                       | 0                                 | 1           |
| Unsubstantiated             | 1   | 0                                      | 3                                  | 1                                       | 2                                 | 7           |
| Unfounded                   | 2   | 0                                      | 0                                  | 0                                       | 3                                 | 5           |
| Total                       | 3   | 0                                      | 3                                  | 2                                       | 5                                 | 13          |

**\*Administrative Response to substantiated staff involved incidents:** There was 1 staff-involved substantiated case at Mike Durfee State Prison. The one case was staff sexual misconduct abuse, it was not referred to DCI as it did not seem criminal in nature. The staff member received a written reprimanded.

**South Dakota State Penitentiary**

SDSP had a 10.9% decrease in the year 2021 of total allegations investigated from 68 to 61 incidents over the 2020 reporting year. The current year's total incidents at 61 is lower than the 5-year total average of 82.8 incidents. This decrease is due to a large decrease in reported inmate sexual abuse – touching and penetration. The 2020 data showed 20 inmate incidents of abuse compared to the 2021 data with 5 incidents which is an 83.3% decrease. There was a slight increase of inmate sexual harassment from 2020 to 2021 of 1 case. The 2020 data showed 29 staff incidents of abuse misconduct and harassment compared to the 2021 reported data of 36 staff incidents of abuse misconduct and harassment which is an 21.5% increase. In reviewing the overall total incidents with the number of staff incidents, the percentage of staff related incidents increased from 42.6% in 2020 to 57.4% in 2021. There was one sexual incident recommendation for SDSP to have two staff monitor showers. It was reviewed by DOC staff and was approved.

| DETERMINATION AND TYPE 2021 | Inmate on Inmate Sexual Abuse Penetration | Inmate on Inmate Sexual Abuse Touching | Inmate on Inmate Sexual Harassment | Staff on Inmate Sexual Abuse Misconduct | Staff on Inmate Sexual Harassment | Grand Total |
|-----------------------------|---|--|------------------------------------|---|-----------------------------------|-------------|
| Substantiated               | 0   | 0                                      | 4                                  | 1                                       | 4                                 | 9           |
| Unsubstantiated             | 2   | 2                                      | 16                                 | 6                                       | 21                                | 47          |
| Unfounded                   | 1   | 0                                      | 0                                  | 2                                       | 2                                 | 5           |
| Total                       | 3   | 2                                      | 20                                 | 9                                       | 27                                | 61          |

**\*Administrative Response to substantiated staff involved incidents:** There were 5 staff-involved substantiated cases at the South Dakota State Penitentiary. Four cases were staff sexual harassment- they were not referred to Division of Criminal Investigation (DCI) as they did not appear to be criminal. Two cases the staff members received a written reprimand, one received a verbal reprimand, and one case the staff member received a no action. There were one cases of staff sexual abuse misconduct, which was referred to DCI, staff was terminated and prosecuted.



### South Dakota Women's Prison

SDWP has a 10% increase in the year of 2021 of total allegations investigated from 19 to 21 incidents over the 2020 reporting year. The current year's total incidents at 21 is greater than the 5-year total average of 20.6 incidents. SDWP has continued maintain the number of incidents that it investigates annually. Inmate on inmate sexual abuse penetration decreased from 2 incidents investigated in 2020 to 0 incidents in 2021, which is a 100% decrease. Inmate on inmate sexual abuse touching decreased with investigated incidents of 4 in 2020 to 2 in 2021, which is a 50% decrease. Inmate sexual harassment increased from 10 incidents investigated in 2020 to 14 in 2021, which is a 33% increase. Staff sexual abuse misconduct increased by 5 in 2021, as there were zero incidents in 2020, which is a 100% increase. There was a decrease of staff sexual harassment from 3 incidents investigated in 2020 to 0 in 2021 which is a 100% decrease.

There were no sexual incident review recommendations for SDWP during the 2021 reporting period.

| DETERMINATION AND TYPE 2021 | Inmate on Inmate Sexual Abuse Penetration | Inmate on Inmate Sexual Abuse Touching | Inmate on Inmate Sexual Harassment | Staff on Inmate Sexual Abuse Misconduct | Staff on Inmate Sexual Harassment | Grand Total |
|-----------------------------|---|--|------------------------------------|---|-----------------------------------|-------------|
| Substantiated               | 0   | 0                                      | 4                                  | 1                                       | 0                                 | 5           |
| Unsubstantiated             | 0   | 1                                      | 7                                  | 2                                       | 0                                 | 10          |
| Unfounded                   | 0   | 1                                      | 3                                  | 2                                       | 0                                 | 6           |
| Total                       | 0   | 2                                      | 14                                 | 5                                       | 0                                 | 21          |

**\*Administrative Response to substantiated staff involved incidents:** The one staff-involved substantiated sexual abuse misconduct case was not referred to DCI as it did seem criminal in nature. The staff member was terminated.

### Juvenile Aggregated Data Review

#### Sequel Transition Academy (STA)

In June 2013, the facility reopened as the Sequel Transition Academy, a 32-bed licensed group care home that provides transitional services to DOC youth returning to the Sioux Falls area. The single facility operating on behalf of the South Dakota Department of Corrections. Sequel Transition Academy leases property from the state.

| SDDOC Descriptive Categories            | Equivalent (=) | Youth Descriptive Categories    |
|---|----------------|---------------------------------|
| Youth Sexual Abuse - Penetration        | =              | Youth Nonconsensual Sexual Acts |
| Youth Sexual Abuse - Touching           | =              | Youth Abusive Sexual Contact    |
| Youth Sexual Harassment                 | =              | Youth Sexual Harassment         |
| Staff Sexual Abuse Penetration/Touching | =              | Staff Sexual Misconduct         |
| Staff Sexual Harassment                 | =              | Staff Sexual Harassment         |

Base on the data collected for the 2021 year there was an increase in reporting from three in 2020 to four in 2021. In the year 2020, there was one substantiated youth sexual harassment and two unsubstantiated cases, one inmate sexual abuse touching and one youth sexual harassment, compared to 2021 which included one substantiated cases of youth sexual abuse penetration, one substantiated case of youth sexual abuse touching and two unsubstantiated cases of youth sexual abuse touching.

| DETERMINATION AND TYPE  | Informational | Youth Sexual Abuse - Penetration | Youth Sexual Abuse- Touching | Youth Sexual Harassment | Staff Sexual Abuse Penetration / Touching | Staff Sexual Harassment | Grand Total |
|-------------------------|---------------|----------------------------------|------------------------------|-------------------------|---|-------------------------|-------------|
| Completed Informational | 0             | 0                                | 0                            | 0                       | 0   | 0                       | 0           |
| Unsubstantiated         | 0             | 0                                | 2                            | 0                       | 0   | 0                       | 2           |
| Substantiated           | 0             | 1                                | 1                            | 0                       | 0   | 0                       | 2           |
| Unfounded               | 0             | 0                                | 0                            | 0                       | 0   | 0                       | 0           |
| Total                   | 0             | 1                                | 3                            | 0                       | 0   | 0                       | 4           |

**2022 Prospectus**

In 2021, the South Dakota Women's Prison audit was completed in May for audit year 3 cycle 1. This report was received and SDWP met all PREA Standards. The Mike Durfee State Prison audit was completed in May for audit year 3 cycle 2. This report was received and MDSP met all PREA Standards exceeding four standards. The Juvenile contract facility 2021 audit year 3 cycle 2 was completed August 2021 and met all PREA Standards. The South Dakota State Penitentiary is scheduled for audit year 3 cycle 3 audit in June 2022.

The SDDOC will continue its pursuit of compliance with the PREA standards and protecting inmates and youth from sexual assaults and harassments.

Reviewed and approved:



Signature

Kellie Wasko

Printed Name

Department Secretary

Title



Date