

**ANNUAL REPORT OF THE MASSACHUSETTS
TREATMENT CENTER FOR SEXUALLY
DANGEROUS PERSONS**

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I. INTRODUCTION

Section 12 of AN ACT IMPROVING THE SEX OFFENDER REGISTRY AND ESTABLISHING CIVIL COMMITMENT AND COMMUNITY PAROLE FOR LIFE FOR SEX OFFENDERS, enacted as an emergency law on September 10, 1999, and as appearing in G.L. c. 123A, § 16, provides:

The department of correction . . . shall annually prepare reports describing the treatment offered to each person who has been committed to the treatment center . . . as a sexually dangerous person and, without disclosing the identity of such persons, describe the treatment provided. The annual reports shall be submitted, on or before January 1, 2000 and every November 1 thereafter, to the clerk of the house of representatives and the clerk of the senate, who shall forward the same to the house and senate committees on ways and means and to the joint committee on criminal justice.

In addition, G.L. c. 123A, § 16 further provides:

The treatment center shall submit on or before December 12, 1999 its plan for the administration and management of the treatment center to the clerk of the house of representatives and the clerk of the senate, who shall forward the same to the house and senate committees on ways and means and to the joint committee on criminal justice. The treatment center shall promptly notify said committees of any modifications to said plan.

On December 10, 1999, the Department of Correction ("the Department" or "DOC") filed its Plan for the Administration and Management of the Massachusetts Treatment Center for Sexually Dangerous Persons ("the 1999 Plan"), which described in detail the treatment offered to the civilly committed sexually dangerous persons ("SDPs") confined at the Massachusetts Treatment Center for Sexually Dangerous Persons ("Treatment Center"), as well as the Department's plan for operating the Treatment Center. The Department has filed Annual Reports updating the 1999 Plan and reporting relevant developments.

Accordingly, this report includes (a) the accomplishments of the Treatment Center in the year 2009; (b) modifications to the 1999 Plan; (c) the manner in which the Treatment Center satisfied its obligations under G.L. c. 123A during the year;

and (d) the treatment and rehabilitative services delivered to the civilly committed SDPs confined to the Treatment Center over the past year.¹

¹ The Treatment Center has traditionally referred to its civilly committed population as "residents" and to state prison inmates, who are not civilly committed, as "inmates." Inmates who are sex offenders as that term is defined in 103 DOC 446 - Sex Offender Management, may voluntarily participate in the Department's sex offender treatment program at the Treatment Center, MCI-Norfolk, North Central Correctional Institution at Gardner ("NCCI-Gardner"), or MCI-Framingham (female offenders). Those inmates housed at the Treatment Center reside in the Modular Unit. The Department also offers sex offender treatment to male inmates confined in special housing at Old Colony Correctional Center.

II. TREATMENT CENTER'S CIVILLY COMMITTED POPULATION

As of October 22, 2009, 251 individuals were civilly committed as SDPs. Of this number, 100 individuals remain committed as SDPs under the pre-1990 version of G. L. c. 123A. As of October 22, 2009, 92 of these SDPs were housed at the Treatment Center. Seven of these SDPs have been transferred to other DOC facilities pursuant to the provisions of G.L. c. 123A, § 2A. One is currently receiving medical care at Lemuel Shattuck Hospital. Of the 100 SDPs committed under the pre-1990 version of the statute, 19 were serving concurrent criminal sentences as of October 22, 2009.

In addition, as of October 22, 2009, 151 SDPs committed under the 1999 amendments to G.L. c. 123A remain civilly committed. Two of these SDPs are receiving medical care at other facilities. Also as of October 22, 2009, 80 individuals were temporarily committed to the Treatment Center pending resolution of civil commitment proceedings.

No juvenile was committed to the Treatment Center during the year. G.L. c. 123A, § 14(d). Likewise, no person deemed incompetent to stand trial in the underlying criminal case was civilly committed to the Treatment Center during the year. G.L. c. 123A, § 15. In February, 2009, the Supreme Judicial Court released its decision in *Kenniston v. Department of Youth Services*, 453 Mass. 179 (2009). The Supreme Judicial Court declared the statute permitting continued custody for juveniles past age 18 if release would be dangerous to the public, unconstitutional. This decision means that the District Attorneys will not be able to defer to the so-called "extension" process before seeking to commit someone as SDP who is coming out of DYS custody at age 18. To date, at least one individual who had been adjudicated delinquent by reason of a sexual offense and who had reached the age of eighteen was temporarily committed to the Department's custody pending SDP commitment proceedings. As of October 22, 2009, this individual was housed at the Treatment Center.

III. THE DEPARTMENT'S OBLIGATIONS UNDER G.L. C. 123A

A. Initial Commitment Proceedings Pursuant to G.L. c. 123A, §§ 12(e), 13(a) and 14(d).

As described in detail in the 1999 Plan, the Department and the Treatment Center remain committed to the successful implementation of G.L. c. 123A. The Department has established an effective and timely process to notify the Attorney General's office and the various District Attorneys' offices of the impending release of inmates subject to potential commitment as sexually dangerous persons. Pursuant to G.L. c. 123A, § 12(a), the Department reviews the records of all inmates in its custody and identifies those convicted of the sexual offenses listed in G.L. c. 123A, § 1. The Department then provides the District Attorneys' offices with written notice of the inmate's discharge date and other documentation so that the District Attorneys can decide whether to file a petition for civil commitment pursuant to G.L. c. 123A, § 12(a).

Pursuant to G.L. c. 123A, §§ 12 and 13, the Department provides the District Attorneys' offices with all records, files, and information that it can lawfully provide.

When the Superior Court orders that an inmate be temporarily committed to the Treatment Center pending a probable cause determination pursuant to G.L. c. 123A, § 12(e), or orders that the inmate be committed to the facility for a 60 day observation period pursuant to G.L. c. 123A, § 13(a), the temporarily committed resident is oriented to the operation of the facility and educated as to its rules and regulations. The Treatment Center administration remains committed to responding in a proactive and efficient manner to developments arising during the implementation of c. 123A. Temporarily committed residents have been and continue to be effectively managed in accordance with the 1999 Plan and subsequent Annual Reports. These residents receive access to facility programs, services, and treatment, as well as visitation with family members and legal representatives. The administration and staff of the Treatment Center continue to strive towards the appropriate management and treatment of those persons identified as possibly sexually dangerous as well as those committed under G.L. c. 123A.

After persons are found sexually dangerous and civilly committed to the Treatment Center, they are scheduled to meet with a therapist within two business days. They are offered the

opportunity to enroll in an orientation group. The Treatment Center transfers new SDPs to an existing SDP housing unit upon completion of the orientation process and availability of bed space in an appropriate housing unit.

Through its contract for the delivery of psychological forensic services with Forensic Health Services ("FHS"), originally entered in October, 2000, the Department coordinates the statutorily mandated evaluations of sex offenders for initial commitment and discharge proceedings. Chapter 123A requires that two Qualified Examiners evaluate the sex offender in connection with the initial commitment petition pursuant to G.L. c. 123A, § 13(a), and any petition for discharge pursuant to G.L. c. 123A, § 9. The Community Access Board ("CAB") is required to evaluate those sex offenders who have been adjudicated as sexually dangerous annually. G.L. c. 123A, § 6A. The CAB sometimes evaluates a SDP more than once annually if the SDP has filed a petition for discharge pursuant to G.L. c. 123A, § 9.

B. Discharge Proceedings - G.L. c. 123A,
§ 9 Petitions.

The Department's Legal Division continued to represent the Commonwealth in G.L. c. 123A, § 9 proceedings during 2009.² As of October 26, 2009, the Treatment Center Legal Office received 36 new G.L. c. 123A, § 9 petitions for discharge in 2009.

The Unified Session at Suffolk Superior Court scheduled 67 petitions for trial for 2009. Section 9 trials were held in Suffolk Superior Court or Middlesex Superior Court. Beginning in late September, 2007, the § 9 trials that were previously scheduled for Suffolk Superior Court were transferred to Plymouth Superior Court in Plymouth. This practice continued until October, 2008, when the Superior Court elected to relocate the § 9 trials in Plymouth back to Suffolk. The Unified Session continues to be managed in the Suffolk Superior Court.

As of October 26, 2009, thirty-two of these petitions were heard by juries. In sixteen cases, the jury concluded that the petitioner remained sexually dangerous.³ In twelve cases, the jury concluded that the petitioner was no longer sexually dangerous. In two cases, the jury was unable to reach a verdict and the cases ended in mistrials. These cases have not yet been retried. Two jury trials were ongoing as of October 26, 2009.

Nine of the petitioners withdrew their § 9 petitions before trial. In twelve cases, the trials were continued and these cases were not tried as of October 26, 2009. Nine additional cases are scheduled to begin between October 27 and December 14, 2009.

In five other instances, the cases were heard jury-waived because the Commonwealth lacked sufficient expert evidence to proceed to trial. In these cases, the judge determined that the petitioner was no longer sexually dangerous. In two cases, all of the expert members of the CAB and both qualified examiners opined that the petitioner was no longer sexually dangerous.⁴ In

² In addition to representing the Commonwealth in these § 9 cases, the Treatment Center Legal Division provides in-house legal advice to the Department and the Treatment Center administration and represents Treatment Center and other DOC employees in civil rights litigation brought by residents and inmates in the state and federal courts.

³ In one of these cases, the Superior Court set aside the jury's verdict that the petitioner remained sexually dangerous based on the decision in *Johnstone, petitioner*, 453 Mass. 544 (2009), discussed below.

⁴ In one of these cases, the Department, through counsel, filed a Section 9 petition for discharge of an individual whom the CAB had opined was no

the other three cases, both of the qualified examiners opined that the individual was no longer sexually dangerous but the CAB unanimously concluded that the petitioner remained sexually dangerous. Because of the Supreme Judicial Court's decision in *Johnstone, petitioner*, 453 Mass. 544 (2009), discussed below, the Commonwealth was unable to proceed to trial.

In June, 2008, the Appeals Court issued its decision in the matter of *In re Johnstone*, 72 Mass. App. Ct. 123, rev. granted, 452 Mass. 1103 (2008). The Appeals Court affirmed a directed verdict against the Commonwealth in a \$ 9 trial. The Appeals Court concluded that the Commonwealth could not satisfy its burden of producing expert testimony of continued sexual dangerousness by producing the unanimous opinion of the CAB (including all three of its expert psychologist members), together with the testimony of a CAB psychologist who is also designated as a qualified examiner. The Appeals Court reached this conclusion despite G.L. c. 123A's mandate that the CAB shall "conduct annual reviews" of a person's sexual dangerousness and "prepare reports on the current sexual dangerousness of all persons at the treatment center" G.L. c. 123A, § 6A. The CAB's report "shall be admissible" at the \$ 9 trial. G.L. c. 123A, § 6A. The Appeals Court also concluded that the CAB psychologist's testimony did not satisfy the requirement of expert testimony because, in its view, the CAB psychologist testified "only as the CAB's representative, and not as an independent expert." *Johnstone*, 72 Mass. App. Ct. at 132.

The Supreme Judicial Court granted the Commonwealth's application for further appellate review. On April 9, 2009, the Supreme Judicial Court affirmed the trial court's entry of a directed verdict against the Commonwealth. *Johnstone, petitioner*, 453 Mass. 544 (2009). The Court did not adopt the Appeals Court's reasoning. Instead, the Court concluded that, in order to proceed to trial, the Commonwealth must have the opinion of at least one of the two qualified examiners that the petitioner is a sexually dangerous person. *Johnstone*, 453 Mass. at 553. This ruling applies to both initial commitment petitions managed by the District Attorneys' offices and Section 9 trials managed by Department attorneys based at the Treatment Center. *Id.*

longer sexually dangerous due to serious health issues. Both qualified examiners opined that the individual was not sexually dangerous. The Court ordered this individual discharged. This individual was admitted to Tewksbury State Hospital.

IV. ACCOMPLISHMENTS AND CHANGES SINCE NOVEMBER, 2008

In addition, the Treatment Center achieved the following accomplishments and significant events since the filing of the 2008 Annual report:

- As reported in the 2008 Annual Report, the Department has converted the Rehabilitation Department service element of the Sex Offender Treatment Program from a contracted vendor-provided service to a state line service. The librarian position and academic and vocational teacher positions were converted to state employee positions. In addition the Department of Correction Education Division increased the staff matrix with the addition of an academic counselor position. A school principal transferred to the Treatment Center from another Department facility. The Treatment Center School has made the following improvements since opening:
 - A Life Skills Class consisting of a fourteen-week program teaching skills in resume writing, job finding skills, interviewing techniques, banking skills, etc., was added.
 - The Building Trades vocational program began utilizing the National Center for Construction and Research curriculum and introduced a twelve-week construction class. An OSHA safety course is planned for the near future in conjunction with Building Trades.
 - The GED and Pre-GED curricula were revised in order to provide each student classroom time for five to seven hours per week. GED tests are now given in a sixteen week cycle; tests for 2010 will be conducted in mid-January and May.
 - Students in the English as a Second Language classes have been grouped by ability so that their individualized needs are considered.
 - In the Computer Applications program, all students meet for five hours per week. Students progress to an advanced level with curriculum benchmarks along their course of study. Microsoft Office User Specialist testing and certification is the final goal of the course.
- In October, 2008, an American Correctional Association (ACA) Accreditation Audit was held. The Treatment

Center achieved 100% of the mandatory standards and 98% of the non - mandatory standards. The Treatment Center received reaccreditation from the Commission on Accreditation in January, 2009.

- In April, 2009, a master TV antennae system project was completed in preparation for the analog to digital transmission conversion.
- In May, 2009, a roof repair project began on several housing units. Significant improvements have been made in reducing roof leaks in several housing units, especially the A section handicap unit.
- The census of c. 123A commitments has continued to rise within the past year. No additional single occupancy rooms have been converted into double occupancy rooms. The census of the Observation Units has experienced only a slight increase. Six rooms in an Observation Unit have been designated for newly committed SDPs. Residents assigned to these rooms will receive an Orientation as well as an Initial Assessment. Residents will transition to their assigned committed housing unit when a bed becomes available.
- The Department implemented an Informal Complaint Process this year. Most complaints can be addressed quickly and efficiently through improved communication between staff and inmates/residents. The informal process, although the preferred method to address complaints, does not replace the existing Grievance Complaint Procedure.
- Significant effort has been made to improve re-entry opportunities for residents during the past year. Several sessions have been scheduled between community service providers and residents. In addition, in September, 2009, the Treatment Center hosted a forum for facility staff, community providers, other state agencies providing re-entry services and residential facilities.
- The Department and the Sex Offender Registry Board have collaborated to provide sex offender registration hearings at the Treatment Center. Both agencies are reviewing the possibility of utilizing video conferencing equipment for future hearings.
- The Community Transition House (CTH) re-opened in November, 2008. The CTH is designed as a specialized housing unit located within the secure, fenced perimeter of the Treatment Center. The CTH offers

certain residents the opportunity to participate in lower security housing. The CTH offers a less structured environment with greater privileges than housing units in the Main Facility. The CTH is designed for those residents who are actively participating in the sex offender treatment program and whose criminal sentences have either expired or are close to expiring. Prior to placement in the CTH, SDPs are reviewed by both clinical and security staff. As of October 26, 2009, there were five SDPs residing at the CTH. Currently, no SDPs are participating in a community access program as described in G.L. c. 123A, § 6A.

V. CONCLUSION

The Department of Correction continues to operate the Treatment Center as a facility geared to delivering state-of-the-art sex offender services to its unique population, whether they are civilly committed sexually dangerous persons or state prison inmates. During the year 2009, the Department received new temporarily committed residents and new SDPs and provided them with services in a safe and secure setting conducive to providing treatment and protecting the public.