

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

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I. INTRODUCTION

The Department of Correction ("Department" or "DOC") submits this annual report pursuant to G.L. c. 123A, § 16, which requires that the Department annually prepare a report that describes the treatment offered to persons civilly committed as sexually dangerous persons ("SDPs").

Specifically, 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 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 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 2015; (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

As reported in prior annual reports, Treatment Center staff members continue to participate in training about the Treatment Center's mission, the therapeutic model, re-entry issues and Department policies and procedures. Treatment Center and Department staff have continued to work cooperatively with other agencies including the Department of Mental Health, the Department of Developmental Services and Probation Departments to facilitate re-entry planning and appropriate placements for releasing inmates and civilly committed individuals. The Department and the Sex Offender Registry Board continue to collaborate to provide sex offender registration hearings.

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 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). At the Treatment Center, inmates are housed in the Modular Unit. The Department also offers sex offender treatment to male inmates confined in special housing at Old Colony Correctional Center.

II. THE TREATMENT CENTER'S CIVILLY COMMITTED POPULATION

As of September 25, 2015, 210 individuals were civilly committed as SDPs to the Department's custody. All of the data that follows in this section is as of September 25, 2015.

Of these 210 SDPs, 53 individuals remain committed under the pre-1990 version of G. L. c. 123A. In addition, 157 SDPs committed under the 1999 amendments to G.L. c. 123A remain civilly committed.

Nine SDPs have been transferred to other DOC facilities pursuant to the provisions of G.L. c. 123A, § 2A.² Three SDPs were receiving care at outside facilities.

Also, 37 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.

² General Laws c. 123A, § 2A provides, in pertinent part, that an individual "who has been committed as sexually dangerous and who has also been sentenced for a criminal offense and said sentence has not expired may be transferred from the treatment center to another correctional institution designated by the commissioner of correction. In determining whether a transfer to a correctional institution is appropriate the commissioner of correction may consider the following factors: (1) the person's unamenability to treatment; (2) the person's unwillingness or failure to follow treatment recommendations; (3) the person's lack of progress in treatment at the center or branch thereof; (4) the danger posed by the person to other residents or staff at the Treatment Center or branch thereof; [and] (5) the degree of security necessary to protect the public." As required by G.L. c. 123A, § 2A, the Department has promulgated regulations establishing a transfer board and procedures governing the transfer process. See 103 CMR 460, Transfer Procedures for the Massachusetts Treatment Center. The statute also requires that individuals transferred pursuant to this statutory provision be offered a program of voluntary treatment services and be evaluated annually and a report be prepared which report shall be admissible in any hearing conducted pursuant to G.L. c. 123A, § 9. A transfer does not vacate the SDP commitment. The statute mandates that the individual be returned to the Treatment Center upon completion of the criminal sentence.

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 Attorney General's office and 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 individual 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 individuals have been and continue to be effectively managed in accordance with the 1999 Plan and subsequent Annual Reports. These individuals 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 toward 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 treatment.

B. Forensic Evaluations for SDP Proceedings

Through its contract for the delivery of psychological forensic services with Forensic Health Services ("FHS"), the Department coordinates the statutorily mandated evaluations of persons subject to initial commitment petitions, described above, and persons subject to discharge proceedings, described below.³ 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, on an annual basis, to evaluate those persons who have been adjudicated as sexually dangerous and committed to the Treatment Center. G.L. c. 123A, § 6A. The CAB sometimes evaluates an SDP more than once annually if the SDP has filed a petition for discharge pursuant to G.L. c. 123A, § 9, and an updated report is needed.

3 FHS is now a wholly-owned subsidiary of MHM Correctional Services, Inc. ("MHM").

C. 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 2015.⁴ As of September 25, 2015, the Treatment Center Legal Office received 35 new G.L. c. 123A, § 9 petitions for discharge in 2015.

The Unified Session at Suffolk Superior Court scheduled 57 petitions for trial in 2015. The Unified Session continues to be managed in the Suffolk Superior Court. Section 9 jury trials were held in the Suffolk Superior Court. The data that follows in this section is as of September 25, 2015.

Nineteen of the petitions have been heard by juries. In 12 cases, the jury concluded that the petitioner remained sexually dangerous. In seven cases, the jury concluded that the petitioner was no longer sexually dangerous. Of these seven cases, the Commonwealth is appealing three of the verdicts on the ground that, in each case, the trial judge's instructions to the jury about evaluating expert opinion contained the same type of error as the instruction given in *In re Souza*, 87 Mass. App. Ct. 162, rev. denied, ___ Mass. ___, 36 N.E.3d 31 (2015), discussed below.

Nine of the petitioners withdrew their § 9 petitions. One petition has been dismissed. In four instances, the trials were continued and these cases were not tried before September 25, 2015, one of which has been rescheduled to be tried later in 2015. Nine additional petitions are scheduled to be tried between September 28 and December 31, 2015, for a total of 10 cases to be resolved after September 25, 2015.

In 15 other instances, the Commonwealth lacked sufficient expert evidence to proceed to trial. In these cases, the judge determined that the petitioner was no longer sexually dangerous as required by the Supreme Judicial Court's decision in *Johnstone, petitioner*, 453 Mass. 544 (2009). In *Johnstone*, 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.*

4 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. The Treatment Center Legal Division also represents Treatment Center and other DOC employees in civil rights litigation brought by SDPs, temporarily committed individuals and inmates in the state and federal courts.

D. Legal Developments

In March 2015, the Appeals Court issued a decision in the Commonwealth's favor in an appeal from a G.L. c. 123A, § 9 discharge petition. *In re Souza*, 87 Mass. App. Ct. 162, rev. denied, ___ Mass. ___, 36 N.E.3d 31 (2015).

Souza is an SDP who filed a Section 9 discharge petition. At the December 2012 trial, the Commonwealth offered expert opinion from a qualified examiner⁵ (QE) and an expert psychologist member of the CAB⁶ that Souza remained sexually dangerous. The jury deadlocked. After the jury could not reach a verdict, the trial judge ruled that the Commonwealth did not have sufficient evidence to go forward for a retrial and directed a verdict against the Commonwealth.⁷

The Appeals Court reversed. In the majority opinion, the Appeals Court held that the Commonwealth's evidence was sufficient for the case to be submitted to the jury. At trial, there was no dispute that the evidence showed that Souza met the first two elements to be found an SDP: he had been convicted of sexual crimes and was previously adjudicated a sexually dangerous person. At issue was the third element: whether Souza presently suffered from a mental condition which made him likely to reoffend sexually if released. Each expert witness called by the Commonwealth testified that Souza suffered from pedophilia and antisocial personality disorder, either of which is sufficient to support a finding of sexual dangerousness. Each expert witness also testified that Souza lacked the present ability to control his sexual impulses and was likely to reoffend sexually if released to the community. That Souza offered contrary expert opinion did not warrant a verdict in his favor as a matter of law.

In addition, the Appeals Court concluded that the trial judge erred in instructing the jury with respect to the extent it was to rely on the expert opinion offered by the psychologist testifying as a QE as opposed to the psychologist testifying as a member of the CAB. The trial judge instructed the jury that:

5 As defined in G.L. c. 123A, § 1, a qualified examiner must either be a physician, licensed and certified in either psychiatry or neurology, or a licensed psychologist, with at least two years of experience with the diagnosis or treatment of sexually aggressive offenders and be appointed by the Commissioner of Correction. A qualified examiner need not be a Department of Correction (DOC) employee. G.L. c. 123A, § 1. The qualified examiners' reports "shall be admissible" in a § 9 trial. G.L. c. 123A, § 9.

6 Pursuant to G.L. c. 123A, §§ 1, 6A, the CAB is a five-member board, including three DOC employees and two consulting members. The CAB annually evaluates the current sexual dangerousness of each SDP. See G.L. c. 123A, § 6A. The CAB's report "shall be admissible" at a § 9 proceeding. *Id.*

7 Over the Commonwealth's objection, the trial judge ordered Souza to be released from the Department's custody on supervised conditions of probation even though all of Souza's criminal sentences had expired and Souza had no probationary period to serve in connection with any criminal conviction. A single justice of the Appeals Court and a single justice of the Supreme Judicial Court both rejected the Commonwealth's efforts to have Souza remain in custody pending the Commonwealth's appeal. Souza was supervised by Bristol County Probation.

You heard of testimony from Dr. Tomich, a representative of the community access board. The law permits a representative of the community access board to testify in all proceedings like this one, and you may certainly rely upon the testimony of Dr. Tomich. However, you cannot find that the petitioner, Mr. Souza, is sexually dangerous based solely on the testimony of Dr. Tomich. In order for you to find that Mr. Souza is today a sexually dangerous person, you must find support for that determination in the opinion that [sic] Dr. Kelso, who testified as a qualified examiner.

Souza, 87 Mass. App. Ct. at 172. The Appeals Court held:

We agree with the Commonwealth that such an instruction is not compelled by Johnstone, and that it is otherwise inadvisable. Johnstone held only that the Commonwealth cannot continue to pursue SDP confinement of someone unless at least one of the two assigned QEs concludes that the person is an SDP. [citation omitted]. That precondition was satisfied here. As the judge herself recognized, in determining whether someone is an SDP, jurors are not precluded from relying on evidence from non-QE sources. The judge's efforts to acknowledge this to the jury, while still trying to create a special evidentiary role for the QE, led to an instruction that was confusing at best and not a fair statement of the law. Where, as here, the gatekeeping role served by QEs has been satisfied, and the Commonwealth offers additional expert testimony, a trial judge should refrain from suggesting the relative weight the jury can or should assign to the various Commonwealth experts.

Souza, 87 Mass. App. Ct. at 173. The Appeals Court remanded the case to the Superior Court for further proceedings consistent with the Court's decision. Souza filed an application for leave to obtain further appellate review by the Supreme Judicial Court. The Supreme Judicial Court denied the application and rescript issued to the Superior Court in July 2015. *In re Souza*, __ Mass. __, 36 N.E.3d 31 (2015).

IV. ACCOMPLISHMENTS AND CHANGES SINCE NOVEMBER, 2014

In addition, the Treatment Center achieved the following accomplishments and significant events since the filing of the 2014 Annual Report:

- Over the past year, Treatment Center staff continued the installation process for more than 200 additional cameras throughout the Treatment Center. This project supports the Department's and the Treatment Center's objective of reducing incidents of sexual assault and achieving compliance with national standards related to the Prison Rape Elimination Act (PREA).
- In January 2015, Treatment Center staff completed a PREA Vulnerability Assessment to identify and address areas of concern through increased staff observation and enforcement of facility policy and institutional rules.
- In February 2015, the Treatment Center received re-accreditation from the nationally recognized American Correctional Association. As noted in the 2014 Annual Report, the American Correctional Association re-accreditation audit was conducted on October 20, 21 and 22, 2014. The Treatment Center achieved a score of 100% on all mandatory standards and a score of 99.8% on non-mandatory standards.
- In April 2015, the Treatment Center underwent its first audit for compliance with the federal PREA Prisons and Jail Standards. The Treatment Center passed this audit and was found to be in compliance with all applicable federal standards.
- Treatment Center staff conducted a full security assessment in 2015. During the assessment, facility staff examined the Treatment Center's physical plant and processes to identify vulnerabilities that could lead to escape attempts. Staff developed corrective action plans which are in the process of being implemented.
- As noted in the 2014 Annual Report, as part of a Department-wide initiative, the Treatment Center administration introduced the use of kiosks in certain housing units and common areas in the facility. Initially, the Treatment Center population was able to use the kiosks to order canteen items and download music, promoting use of technology and personal accountability as well as increasing efficiency in the management of institutional resources. In August 2015, the Treatment Center administration expanded use of kiosks to permit electronic submission of grievances and limited access to email.
- Over the past year, the Treatment Center administration completed the process of refurbishing doors on cells in the Minimum Privilege Unit, a temporary, separate and secure housing unit for those SDPs, temporary commitments and inmates who require close custody and separation from the general population.

The refurbished doors have maximum observation panels, which allow for better supervision of persons housed in this unit.

- As noted in the 2011, 2012, 2013 and 2014 Annual Reports, on May 26, 2011, following a competitive public bidding process, the Department awarded the sex offender treatment contract to MHM. During the term of the previous sex offender treatment contract, FHS became a wholly-owned subsidiary of MHM and currently operates as a service division of MHM. The new contract had an initial duration of three years with three options to renew for two years each. In May 2014, the Department exercised its first option to renew the sex offender treatment contract for two years. The renewal period began on July 1, 2014, and expires on June 30, 2016..
- As noted in the 2014 Annual Report, the Treatment Center administration initiated a Community Transition House (CTH) case conference process. A multi-disciplinary team consisting of administrative, clinical and security staff reviews potential placement of SDPs who have applied for placement in the CTH, which serves as lower security housing at the Treatment Center for those SDPs who are deemed to be appropriate for such placement from both clinical and security perspectives. Under the prior process, clinical and security components were separately reviewed. This practice involves enhanced collaboration in the decision-making process. The Treatment Center administration continued to utilize this process in 2015.
- In conjunction with Department staff, the Treatment Center administration continues to conduct monthly care coordination meetings about SDPs, temporary commitments and inmates who present issues of concern in terms of behavior, medical care, mental health or other areas. As noted in the 2014 Annual Report, the consultation includes representatives from multiple disciplines and aids in the development of plans for the treatment and management of these individuals.

V. CONCLUSION

The Department of Correction continues to operate the Treatment Center as a facility geared to deliver state-of-the-art sex offender services to its unique population. During the year 2015, the Department received new temporarily committed individuals and new SDPs and provided them with services in a safe and secure setting conducive to providing treatment and protecting the public.