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Secretary

November 3, 2016

The Honorable Karen E. Spilka, Senate Chair  
Joint Committee on Ways and Means  
State House, Room 212  
Boston, MA 02133

The Honorable Brian S. Dempsey, House Chair  
Joint Committee on Ways and Means  
State House, Room 243  
Boston, MA 02133

Dear Chairwoman Spilka and Chairman Dempsey:

Pursuant to M.G.L. c. 123A, § 16, please find attached the Department of Correction annual report on the treatment offered to persons civilly committed as sexually dangerous persons.

We hope you find this information helpful. Please let us know if we may be of further assistance.

Sincerely,

Daniel Bennett  
Secretary of Public Safety and Security

Encl.  
Annual Report

## I. INTRODUCTION

The Department of Correction ("Department" or "DOC") submits this annual report pursuant to M.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 M.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, M.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 2016; (b) modifications to the 1999 Plan; (c) the manner in which the Treatment Center satisfied its obligations under M.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.<sup>1</sup>

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.

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<sup>1</sup> 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"), Old Colony Correctional Center ("OCCC"), or MCI-Framingham (female offenders). At the Treatment Center, inmates are housed in the Modular Unit.

## II. THE TREATMENT CENTER'S CIVILLY COMMITTED POPULATION

As of September 15, 2016, 189 individuals were civilly committed as SDPs to the Department's custody. All of the data that follows in this section is as of September 15, 2016.

Of these 189 SDPs, 47 individuals remain committed under the pre-1990 version of M.G.L. c. 123A. In addition, 142 SDPs committed under the 1999 amendments to M.G.L. c. 123A remain civilly committed.

Ten SDPs have been transferred to other DOC facilities pursuant to the provisions of M.G.L. c. 123A, § 2A.<sup>2</sup> Three SDPs were receiving care at outside facilities.

Also, 40 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 under M.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, as provided in M.G.L. c. 123A, § 15.

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<sup>2</sup> Massachusetts 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 M.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 M.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 M.G.L. C. 123A

#### A. Initial Commitment Proceedings Pursuant to M.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 M.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 M.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 M.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 M.G.L. c. 123A, § 12(a).

Pursuant to M.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 M.G.L. c. 123A, § 12(e), or orders that the inmate be committed to the facility for a 60-day observation period pursuant to M.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 M.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.<sup>3</sup> Chapter 123A requires that two qualified examiners evaluate the sex offender in connection with the initial commitment petition pursuant to M.G.L. c. 123A, § 13(a), and any petition for discharge pursuant to M.G.L. c. 123A, § 9.

Pursuant to M.G.L. c. 123A, § 6A, 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. The CAB sometimes evaluates an SDP more than once annually if the SDP has filed a petition for discharge pursuant to M.G.L. c. 123A, § 9 and an updated report is needed.

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

C. Discharge Proceedings – M.G.L. c. 123A, § 9 Petitions

The Department's Legal Division continued to represent the Commonwealth in M.G.L. c. 123A, § 9 proceedings during 2016.<sup>4</sup> As of September 15, 2016, the Treatment Center Legal Office received 27 new G.L. c. 123A, § 9 petitions for discharge in 2016.

The Unified Session at Suffolk Superior Court scheduled 52 petitions for trial in 2016. 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 15, 2016.

Fourteen of the petitions have been heard by juries. In nine cases, the jury concluded that the petitioner remained sexually dangerous. In five cases, the jury concluded that the petitioner was no longer sexually dangerous. Another case ended in a mistrial after the petitioner became ill; it has not been tried as of September 15, 2016. One trial was ongoing as of September 15, 2016.

Six of the petitioners withdrew their Section 9 petitions. One petition has been dismissed. In four instances, the trials were continued at the petitioner's request and these cases were not tried before September 15, 2016. Eleven additional petitions are scheduled to be tried between September 23 and December 31, 2016.

In 14 other instances, the Commonwealth lacked sufficient expert evidence to proceed to trial under 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.* In these cases, the judge entered an order allowing the petition for discharge as required by *Johnstone*.

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<sup>4</sup> In addition to representing the Commonwealth in these § 9 cases, the Treatment Center Legal Office provides in-house legal advice to the Department and the Treatment Center administration. The Treatment Center Legal Office 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.

#### **IV. ACCOMPLISHMENTS AND CHANGES SINCE NOVEMBER, 2015**

In addition, the Treatment Center achieved the following accomplishments and significant events since the filing of the 2015 Annual Report:

- In October 2015, Treatment Center staff, with assistance from the Department's Special Operations Division, upgraded the Treatment Center's body alarm system.
- In November 2015, Treatment Center staff presented a security assessment to Department officials. The assessment included a site tour to examine the physical plant to identify vulnerabilities that could potentially lead to escape attempts.
- In January 2016, Treatment Center staff completed an annual Prison Rape Elimination Act (PREA) Vulnerability Assessment to identify and address areas of concern through increased staff observation and enforcement of policy and institutional rules.
- In February 2016, Treatment Center staff implemented a new monthly block inspection process to assist in addressing unit maintenance issues.
- In March 2016, the Treatment Center administration accepted a recommendation to develop two modified treatment units for persons adjudicated as sexually dangerous within the institution's sex offender treatment program. One modified treatment community is designed for residents with significant cognitive limitations, deficits in social functioning, diagnosis of a major mental illness, or other vulnerabilities. Treatment is modified to be delivered at an appropriate pace and have an increased focus on impulse control, boundaries, frustration tolerance, and development of appropriate interpersonal relationships. Another modified treatment community is designed for residents with significant character pathology that either interferes with pro-social behavior or contributes to a lack of genuine motivation and engagement in treatment. Treatment is modified to have an increased focus on interpersonal dynamics and conflict resolution.
- In April 2016, the Treatment Center installed a secure weapons clearing station. The secure weapon clearing station was created for the transfer and clearing of small firearms to and from the Control Room.
- Also, in April 2016, the MHM contract for Sex Offender Treatment was extended for an additional two years with an end date of June 30, 2018. As noted in prior 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 the sex offender treatment contract for two years. The initial renewal period began on July 1, 2014, and expired on June 30, 2016.

- In June 2016, major roof repairs were completed over the Learning Center area of the facility. Facility and vendor staff worked well to coordinate equipment and supply needs while maintaining security practices.
- In May 2016, the relocation of an existing Notifier NFS2-640 Fire Alarm Control Panel (F.A.C.P.) and replacement of all fire detection devices in the Modular Building were completed. As part of the replacement, the Modular F.A.C.P. and all supervised devices were integrated into the main F.A.C.P. in the Control Center, which allows the main F.A.C.P. to have complete oversight of all fire and carbon monoxide detection devices within the institution.
- As noted in the 2014 and 2015 Annual Reports, 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 2016.
- In conjunction with Department staff, the Treatment Center administration continues to conduct monthly care coordination meetings regarding SDPs, temporary commitments and inmates who present issues of concern in terms of behavior, medical care, mental health or other areas. As noted in prior Annual Reports, 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. Throughout 2016, 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.