

## 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 2018; (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.

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

As of September 11, 2018, 154 individuals were civilly committed as SDPs to the Department's custody. All of the data that follows in this section is as of September 11, 2018.

Of these 154 SDPs, 34 individuals remain committed under the pre-1990 version of G.L. c. 123A. In addition, 120 SDPs committed under the 1999 amendments to M.G.L. c. 123A remain civilly committed.

Seven 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 other facilities.

<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, North Central Correctional Institution at Gardner ("NCCI-Gardner"), Old Colony Correctional Center ("OCCC"), or MCI-Framingham (female offenders).

<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

Also, 28 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. 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. M.G.L. c. 123A, § 15.

### 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

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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.

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 participate in treatment.

#### B. Forensic Evaluations for SDP Proceedings

Through a contract with a vendor, the Department coordinates the statutorily mandated evaluations of persons subject to initial commitment petitions, described above, and persons subject to discharge proceedings, described below. Chapter 123A requires that two qualified examiners ("QEs") 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.

The Community Access Board ("CAB") is a five-member board that includes three Department employees and two consulting members. See M.G.L. c. 123A, §§ 1, 6A. Pursuant to M.G.L. c. 123A, § 6A, the 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.

#### 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 2018.<sup>3</sup> Between January 1 and September 10, 2018, the Treatment Center Legal Office received 19 new M.G.L. c. 123A, § 9 petitions for discharge.

The Unified Session at Suffolk Superior Court continues to manage the M.G.L. c. 123A, § 9 petitions for trial. The Unified Session scheduled 60 petitions for trial in 2018. Section 9 jury trials were held in the Suffolk Superior Court. The data that follows in this section is as of September 10, 2018.

Twenty-three of the petitions have been heard by juries. In 15 cases, the jury concluded that the petitioner remained sexually dangerous. In five cases, the jury concluded that the petitioner was no longer sexually dangerous. Two cases ended in a

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<sup>3</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.

mistrial due to deadlocked juries; one case ended in a mistrial due to the sudden unavailability of an expert witness.

Five of the petitioners withdrew their § 9 petitions. In six instances, the trials were continued; these cases were not tried before September 10, 2018. One petition was dismissed.<sup>4</sup> Twelve additional petitions are scheduled to be tried between September 10 and December 31, 2018.

In thirteen other instances, the Commonwealth could not 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.<sup>5</sup>

The Commonwealth, through an appeal in one such case, is challenging the continuing effect and validity of the *Johnstone* decision. The Commonwealth is seeking a stay of the petitioner's discharge during the pendency of the appeal.

In addition, on June 6, 2018, Governor Baker filed An Act Relative to Child Predators ("Act") (S. 2544). If passed, the Act would permit the Commonwealth to prove present sexual dangerousness by relying on expert opinion from any of several sources.

#### IV. ACCOMPLISHMENTS AND CHANGES SINCE NOVEMBER, 2017

- On April 13, 2018, Governor Baker signed the Criminal Justice Reform Law, Chapter 69 of the Acts of 2018. Section 226 of this law establishes a commission to study the qualifications and practices of QEs. Membership on the Commission includes two Department employees. The commission's report and recommendations must be filed by December 31, 2018.
- Sex Offender Treatment Program ("SOTP"): The Department's SOTP contract with Forensic Health Services (FHS), a wholly owned subsidiary of MHM Correctional Services, Inc. (MHM), ended on June 30, 2018. Following a competitive public procurement process, the Department awarded its contract for comprehensive health services to the Massachusetts prison population to Correct Care Solutions (CCS). The five-year contract term began on July 1, 2018. The Department, at its option, may exercise up to two renewals, each of which is up to two years in duration.

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<sup>4</sup> The Superior Court entered the dismissal in 2017.

<sup>5</sup> In two of these cases, the QE reports were completed in late 2017; the Superior Court ordered the petitioners to be discharged in late 2017.

Among other components, the contract includes the SOTP for SDPs, individuals temporarily committed to the Department's custody who are awaiting SDP commitment proceedings and inmates.

- In the SOTP available to SDPs, CCS has incorporated aspects of the Good Lives Model and the risk-needs-responsivity model with a focus on relapse prevention. The SOTP is delivered via a therapeutic community model. As a result, housing assignments are based on level of treatment involvement in addition to security and other considerations. Among other things, the SOTP available to SDPs includes assessment components, group therapy and psycho-educational classes.

CCS has subcontracted with the Counseling and Psychotherapy Center (CPC) for the provision of the SOTP to state inmates.

In July 2018, staff of CCS and CPC provided training on the components of the SOTP to Treatment Center staff.

- Until June 30, 2018, the Department had also contracted with FHS for QE and consulting CAB member services. Effective July 1, 2018, the QE and consulting CAB member services are now part of its contract for comprehensive health services to the Massachusetts prison population, described above. CCS has subcontracted with CPC for the provision of the QE and consulting CAB member services.
- Treatment Center staff have continued to participate in training in several other areas including, but not limited to, environmental health and safety, the Prison Rape Elimination Act, and visitor and attorney entrance procedures. A representative of the Boston Area Rape Crisis Center ("BARCC") provided training to Treatment Center staff about supportive services BARCC offers when there is a report of a rape in a correctional facility.
- At the request of the State Department, Treatment Center staff conducted a presentation about the SDP commitment process, the Department's sex offender management policy (103 DOC 446, Sex Offender Management), and the SOTP to a delegation from Estonia. At the request of Bridgewater State University, Treatment Center staff conducted a similar presentation for a delegation from Africa. Each delegation participated in a tour of the Treatment Center.
- In conjunction with the Department's Reentry Services Division, Treatment Center staff members have continued to collaborate with the Probation Department so that Probation staff may apply GPS monitoring devices to those individuals who are being discharged from the Treatment Center and subject to GPS monitoring as a probation condition before the individuals are released from custody.

- Safety and security improvements were made during the year, including the ongoing process of upgrading fire safety and camera equipment and installing additional cameras throughout the facility. To enhance facility security, Treatment Center staff members are in the process of installing grill doors on each housing unit and assessing ingress and egress throughout the facility.

## 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 2018, 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.