

MASSACHUSETTS DEPARTMENT OF CORRECTION

MASSACHUSETTS TREATMENT CENTER COMMUNITY ACCESS BOARD POLICY

103 DOC 459

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<b>MASSACHUSETTS DEPARTMENT OF CORRECTION</b>	<b>DIVISION: ASSISTANT DEPUTY COMMISSIONER, SOUTHERN SECTOR</b>
<b>TITLE: MASSACHUSETTS TREATMENT CENTER COMMUNITY ACCESS BOARD POLICY</b>	<b>NUMBER: 103 DOC 459</b>

**PURPOSE:** The purpose of this policy is to establish a Community Access Board (CAB) for the Massachusetts Treatment Center in accordance with MGL c. 123A. The CAB shall be a Board consisting of five members appointed by the Commissioner, whose function shall be to consider a person's placement within a community access program and conduct an annual review of a person's sexual dangerousness.

**REFERENCES:** M.G.L., Chapter 123A, §§ 1, 2 and 6A.

**APPLICABILITY:** Staff/Inmates/Residents

**PUBLIC ACCESS:** Yes

**LOCATION:** DOC Central Policy File/Institutional Policy File, Inmate Library.

**RESPONSIBLE STAFF FOR IMPLEMENTATION AND MONITORING OF POLICY:**  
Assistant Deputy Commissioner, Southern Sector, Superintendents

**EFFECTIVE DATE:** 09/18/2016

**CANCELLATION:** This policy cancels all previous departmental or institutional policies, policy statements, bulletins, and rules and procedures regarding the community access board that are inconsistent with this policy.

**SEVERABILITY CLAUSE:** If any part of this policy is, for any reason held to be in excess of the authority of the Commissioner, such decision will not affect any other part of this policy.

## **459.01 INTRODUCTION**

The Massachusetts Department of Correction is required by Massachusetts General Law (MGL) chapter 123A, Section 6A to establish a Community Access Board (CAB). The CAB shall evaluate those persons adjudicated as sexually dangerous persons (SDP's) and committed to the Massachusetts Treatment Center for Sexually Dangerous Persons for appropriateness for participation in a community access program and establish conditions to ensure the safety of the general community. The CAB shall also give to the Superintendent, as chief administrative officer of the Treatment Center, a written report of its findings, including dissenting views, regarding a person's participation in a community access program.

The CAB shall also conduct an annual review of all SDP's committed to the Treatment Center to determine progress of treatment, make recommendations regarding treatment, and review current sexual dangerousness. Residents shall be given a 48-hour notice of such meeting. This notice may be waived by the resident in writing. The CAB shall provide, to the Superintendent, as chief administrative officer of the Treatment Center, a written annual report of its findings, including dissenting views. Each annual report shall also include a statement regarding the CAB's opinion of the person's current sexual dangerousness and the base(s) of that opinion. The CAB shall update a person's annual report for the purpose of a hearing in the Massachusetts Superior Court under MGL c. 123A, section 9 (section 9 hearing), if the CAB's last annual report predates the scheduled date of the person's section 9 hearing by six months or longer.

## **459.02 DEFINITIONS**

Annual Review: The title of the written annual report of the CAB's findings, including dissenting views, of all Treatment Center residents to determine each resident's progress of treatment, make recommendations regarding each resident's treatment, and review each resident's current sexual dangerousness.

Annual Review and Section 9 Update: The title of the CAB's written annual report if prepared in anticipation of a hearing in the Massachusetts Superior Court under MGL c. 123A, section 9.

Commissioner: The Commissioner of the Massachusetts Department of Correction.

Community Access Board (CAB or Board): The board established pursuant to the provisions of MGL c. 123A, section 6A whose five members are appointed by the Commissioner and whose function shall be to consider a resident's placement within a community access program and to conduct annual reviews of a resident's sexual dangerousness.

Community Access Program (CAP or Program): As required by MGL c. 123A, section 6A, the program by which the department provides for a Treatment Center resident's reintegration into the community.

Community Access Program Report (CAP Report): As required by MGL c. 123A, section 6A, the written findings of the CAB, including dissenting views, evaluating a Treatment Center resident's eligibility to participate in the CAP and the conditions and parameters of a resident's participation in the CAP.

Correctional Institution: A state or county correctional facility located within Massachusetts.

Department: The Department of Correction.

Deputy Superintendent of Treatment/Classification: An employee of the department having management responsibility for matters relating to programs and treatment at the Treatment Center.

Director of Forensic Psychological Services: An employee of the department having management responsibilities for matters relating to the CAB.

Professional Board Members: Members of the CAB who are licensed to practice psychology or psychiatry in the Commonwealth of Massachusetts and who have been awarded either a Ph.D., Ed.D. or similar doctorate level degree in psychology or a M.D. in psychiatry.

Resident: Any person committed to the Treatment Center as a sexually dangerous person pursuant to the provisions of MGL c. 123A regardless of the correctional institution in which the person actually resides.

Restrictive Integration Review Board: The board established pursuant to the provisions of MGL c. 123A, section 8 (repealed) and dissolved as of August 1, 1995.

Sexually Dangerous Person (SDP): As defined in MGL c 123A, section 1: "Any person who has been (i) convicted of or adjudicated as a delinquent juvenile or youthful offender by reason of a sexual offense and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in sexual offenses if not confined to a secure facility (ii) charged with a sexual offense and was determined to be incompetent to stand trial and who suffers from a mental abnormality or personality disorder which makes such person likely to engage in sexual offenses if not confined to a secure facility; or (iii) previously adjudicated as such by a court of the commonwealth and whose misconduct in sexual matters indicates a general lack of power to control his sexual impulses, as evidenced by repetitive or compulsive sexual misconduct by either violence against any victim, or aggression against any victim under the age of sixteen years, and who, as a result, is likely to attack or otherwise inflict injury on such victims because of his uncontrolled or uncontrollable desires."

Superintendent: The chief administrative officer of the Treatment Center appointed by the Commissioner pursuant to MGL c. 125, section 2.

Treatment Center: As created by MGL c. 123A, section 2, the correctional institution for the care, custody, treatment, and rehabilitation of persons adjudicated as being sexually dangerous pursuant to the provisions of MGL c. 123A.

#### **459.03 BOARD MEMBERSHIP AND COMPOSITION**

A meeting of the Community Access Board (CAB) shall consist of five board members all of whom are appointed by the Commissioner. In order to ensure representation for all meetings of the CAB, the Commissioner may appoint a pool of persons with the qualifications described in this paragraph and who shall be eligible to sit as members at meetings of the CAB.

The Commissioner shall appoint the Treatment Center director of forensic psychological services to serve as the CAB chairperson, who may preside at meetings of the board. The director of forensic psychological services may designate another person who is a department employee and a board member to preside over a board meeting. The director of forensic psychological services, nonetheless, shall continue to be responsible for the overall quality of the review process and compliance with MGL c. 123A, section 6A. In the event of a vacancy in the position of Treatment Center director of forensic psychological services, the Treatment Center Superintendent may designate another CAB

member to fulfill the duties of the Treatment Center director of forensic psychological services.

Membership at a board meeting shall include three department employees and two persons who are not department employees, but who are independent contractors or consultants. The two non-department employees shall consist of psychologists or psychiatrists licensed by the commonwealth. The Superintendent shall designate three department employees who shall be psychiatrists, psychologists, or other department employees who hold a position as an administrator or upper level supervisor and who possess knowledge of and experience in security, facility operations and/or treatment of sex offenders.

#### **459.04 BOARD MEETING, DELIBERATION AND VOTING**

All five members of the CAB meeting shall be present in order for the CAB to review a resident's eligibility for participation in, or condition of, the CAP; conduct an annual review of his current sexual dangerousness; or conduct a section 9 update of his sexual dangerousness. If a member of the CAB anticipates a conflict of interest or other appropriate reason for being unable to render an objective opinion, the member shall notify the chairperson sufficiently in advance of the board meeting so that arrangements may be made for an alternate member to sit on the board.

The chairperson shall provide all board members with pertinent data regarding the resident prior to the date of a meeting. In all cases the board shall have access to all records of the resident being evaluated.

The chairperson or the Deputy Superintendent of Reentry shall issue a notice of the date and time of the board meeting to the resident being evaluated. This notice shall be issued at least 48 hours prior to the meeting and shall inform the resident that he may attend the meeting. This 48-hour notice may be waived in writing. The chairperson may, in his or her discretion and for good cause shown, reschedule the meeting one time at the request of the resident.

If the resident attends the meeting, a member of the board shall inform the resident of the lack of confidentiality of anything he tells the board, in a manner consistent with Commonwealth v. Lamb, 365 Mass. 265 (1974). If the resident decides to participate in the meeting, he may provide the board with any information the board deems relevant to its decision making function. All board members must agree that the resident

understands the Warning of the limits of confidentiality and that the process is voluntary prior to commencing the interview and that the process is voluntary. All CAB reports shall indicate that the resident understood the Warning of Confidentiality.

The board may also ask the resident questions. The resident may decline to answer any question and may terminate the interview with the board at any time.

The chairperson shall permit a resident to tape record his board meeting if the resident agrees to follow the procedures and conditions mandated by the Treatment Center's written Audio Taping Procedure approved by the Superintendent.

The chairperson presiding over the board meeting in his or her discretion may permit persons in addition to the members of the CAB and the resident to be present during the meeting of the CAB. Such persons may provide the board with any information relevant to the board's decision-making function. Only the CAB members shall be present during the deliberation and voting. All determinations shall be by simple majority vote.

Members of the CAB may not abstain from a vote. Once a vote is taken, board members may not, at any time or for any reason, change their votes. Prior to voting, at the request of a member, the chairperson in his or her discretion may recess the CAB meeting to provide the members additional time to consider their votes or to obtain additional information to assist the members in making their votes. Should information be received immediately following the CAB meeting that the Superintendent has determined is of a crucial nature, then the Superintendent shall instruct the CAB chairperson to reconvene the CAB in order to review the information. If necessary, another vote shall be taken.

#### **459.05 REPORTING**

The chairperson presiding over a meeting of the CAB will assign responsibility for writing annual reports, annual reports and section 9 updates, and CAP reports. The numerical vote of the board will be included on the first page of all board reports as well as the names of the board members present at the meeting; their academic and professional credentials, if applicable; and their department title, if applicable (e.g., John Smith, Ph.D., Mary Jones, M.D., Jane Doe, etc.). The first page of each board report shall also include the resident's name, date of birth, commitment #, date of SDP commitment, criminal sentence,

sentence effective date, parole eligibility, maximum date, status, date of review, date of last review, staff members and observers present at the meeting, including their professional credentials, if applicable.

In the event of a unanimous decision, the chairperson presiding over a meeting of the CAB shall assign to any one of the professional board members sitting in the meeting the responsibility of writing the annual report or CAP report on behalf of the board. All reports shall be signed only by their author, but shall include all significant facts considered by all the board members during their deliberations and in their ultimate decision.

In the event of a non-unanimous decision, the board shall issue majority and minority reports. The chairperson shall assign a professional board member to write the majority report and a professional board member who voted in accordance with the minority to write that report. If the minority does not include a professional board member, the chairperson shall assign the minority report to one of the Superintendent's designees who were present at the meeting. Minority and majority reports shall be signed by their respective authors, and shall include reasons for disagreement with the opposing opinion.

All reports must be submitted to the chairperson for review within thirty calendar days after the board meeting unless a shorter or longer time is established by the CAB Chairperson or court order. Prior to submitting CAB reports to the chairperson, all reports authored by board members who are not department employees shall be reviewed by the director of the contracting agency in order to assure compliance with relevant statutes, regulations, policies, and/or guidelines. Board members will be responsible for reviewing each report. The chairperson or designee shall review each report to ensure that it reflects the major findings and conclusions of the board members and may request modification of any report in order to meet the required guidelines and standards. Such requests shall be made within seven calendar days of the chairperson's receipt of the report and such modification shall be made within seven calendar days of the chairperson's request.

#### **459.06 RECORDS KEEPING**

Only the reports of the board as outlined in section 5 of this policy shall be included in the residents' treatment files.



The board may, however, keep detailed minutes of all of its meetings including attendance and the votes of individual members. All data and records of the board shall be stored at the Treatment Center in a secure location for a period of thirty years after the date of the meeting.

**459.07 COMMUNITY ACCESS PROGRAM**

The board shall review all applications to the CAP pursuant to the Treatment Center's Community Access Program policy.

**459.08 TRANSFER REFERRALS**

Recommendations made by the CAB to the Transfer Board regarding the transfer of a resident from the Treatment Center to another correctional institution shall be done in accordance with institutional policy and procedure set forth in 103 CMR 460.

**459.09 TIME LIMITS**

All procedural time limits set forth in this policy are directory and may be modified by the Superintendent, the Commissioner or their designee(s).

**459.10 PRIVATE RIGHT OF ACTION**

Nothing contained in this policy shall provide or be construed as providing any private right of action for enforcement or for damages.