

**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 2011; (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.<sup>1</sup>

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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 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). At the

## II. TREATMENT CENTER'S CIVILLY COMMITTED POPULATION

As of October 5, 2011, 254 individuals were civilly committed as SDPs to the Department's custody. As of October 5, 2011, 245 of these SDPs were housed at the Treatment Center. Eighty-one individuals remain committed as SDPs under the pre-1990 version of G. L. c. 123A. Of the 81 SDPs committed under the pre-1990 version of the statute, 22 were serving concurrent criminal sentences as of October 5, 2011. As of October 5, 2011, nine of these 81 SDPs were housed in other DOC facilities for the following reasons: (1) six of these 81 SDPs have been transferred to other DOC facilities pursuant to the provisions of G.L. c. 123A, § 2A;<sup>2</sup> (2) two of these SDPs were receiving medical care at other facilities; and (3) one was undergoing evaluation at Bridgewater State Hospital.

In addition, as of October 5, 2011, 173 SDPs committed under the 1999 amendments to G.L. c. 123A remain civilly committed. Also as of October 5, 2011, 81 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).<sup>3</sup> 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.

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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.

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.

3 The Department is aware that one male has been adjudicated as an SDP and committed to the custody of the Department of Youth Services until he reaches his twenty-first birthday as required by G.L. c. 123A, § 14(d).

### 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).

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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 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 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 treatment.

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.<sup>4</sup> 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

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<sup>4</sup> FHS is now a wholly-owned subsidiary of MHM Correctional Services, Inc. ("MHM").

been adjudicated as sexually dangerous and committed to the Treatment Center annually. 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.

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 2011.<sup>5</sup> As of October 21, 2011, the Treatment Center Legal Office received 32 new G.L. c. 123A, § 9 petitions for discharge in 2011.

The Unified Session at Suffolk Superior Court scheduled 59 petitions for trial in 2011. Section 9 jury trials were held in the Suffolk Superior Court. The Unified Session continues to be managed in the Suffolk Superior Court.

As of October 21, 2011, 23 of these petitions were heard by juries. In 15 cases, the jury concluded that the petitioner remained sexually dangerous. In seven cases, the jury concluded that the petitioner was no longer sexually dangerous. Two cases resulted in mistrials. One of these cases was retried and the jury concluded that the petitioner remained an SDP. Thus, there were 24 jury trials on 23 petitions. The other case has not been retried as of October 21, 2011.

Seven of the petitioners withdrew their § 9 petitions before trial as of October 21, 2011. In twelve cases, the trials were continued and these cases were not tried as of October 21, 2011. Two cases were stayed at the request of the petitioners. One case was dismissed. In another case, the Superior Court canceled the trial date at the petitioner's request, pending the filing of a motion to withdraw or to dismiss the petition. Five additional cases are scheduled to begin between October 21 and December 31, 2011.

In eight 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 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.*

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<sup>5</sup> 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.

#### IV. ACCOMPLISHMENTS AND CHANGES SINCE NOVEMBER, 2010

In addition, the Treatment Center achieved the following accomplishments and significant events since the filing of the 2010 Annual Report:

- On May 26, 2011, the Department awarded the sex offender treatment contract through a competitive public bidding process 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 has an initial duration of three years with three options to renew for two years each. The contract includes treatment programming for SDPs, individuals temporarily committed to the Department's custody who are awaiting SDP commitment proceedings and inmates.
- Access to medical appointments has been increased by the addition of medical areas within the modular building. In addition, insulin self administration areas have been added to the main facility and the modular building. Medical intervention carts for emergency cell entrance have been placed in two additional areas of the Treatment Center.
- To improve the efficiency and supervision of canteen distribution to the resident/inmate populations, a central canteen distribution process was implemented.
- Reports of incidents under the Prison Rape Elimination Act were reduced by more than 70% as the result of enhanced security measures designed to reduce sexual misconduct within the Treatment Center.
- To provide better accountability of resident/inmate movement, a new movement system as been developed and is expected to be implemented by January 2012. The new movement system includes use of a laminated pass system which will track all resident/inmate movement within the facility.
- The Department and the Sex Offender Registry Board continue to collaborate to provide sex offender registration hearings. In December 2009, video conferencing facilities were installed in the Treatment Center's visiting room conference room. Since that time, the Sex Offender Registry Board hearings have been conducted on a regular basis.
- In October 2011, the American Correctional Association (ACA) Accreditation Audit was held. The Treatment Center achieved 100% of the mandatory standards and 99.3% of the non-mandatory standards. The Treatment Center anticipates that it will receive reaccreditation from the Commission on Accreditation in January 2012.

## 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 2011, 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.