



WILLIAM F. WELCH
CLERK OF THE SENATE

The Commonwealth of Massachusetts
MASSACHUSETTS SENATE
OFFICE OF THE CLERK OF THE SENATE

STATE HOUSE, ROOM 335
BOSTON, MA 02133-1053
TEL. (617) 722-1276
WILLIAM.WELCH@MASENATE.GOV
WWW.MASENATE.GOV


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Joint Committee on the Judiciary
State House - Room 413-C
Boston, MA 02133

Dear Chairman Brownsberger,

Attached please find a copy of the Annual Report of Sexually Dangerous Persons filed with this office by the Department of Corrections as mandated by Section 16 of Chapter 123A of the General Laws.

Sincerely,


William F. Welch
Clerk of the Senate

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

**By: Carol Higgins O'Brien, Commissioner
Department of Correction
50 Maple Street, Suite 3
Milford, MA 01757-3698
(508) 422-3300**

**Steven J. O'Brien, Superintendent
Massachusetts Treatment Center
30 Administration Road
Bridgewater, MA 02324
(508) 279-8111**

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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 2014; (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

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 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

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.

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 October 14, 2014, 218 individuals were civilly committed as SDPs to the Department's custody. All of the data that follows in this section is as of October 14, 2014.

Of these 218 SDPs, 59 individuals remain committed under the pre-1990 version of G. L. c. 123A. In addition, 159 SDPs committed under the 1999 amendments to G.L. c. 123A remain civilly committed.

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

Also, 33 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 2014.⁴ As of October 10, 2014, the Treatment Center Legal Office received 22 new G.L. c. 123A, § 9 petitions for discharge in 2014.

The Unified Session at Suffolk Superior Court scheduled 54 petitions for trial in 2014. 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 October 10, 2014.

Twenty of the petitions have been heard by juries. In 14 cases, the jury concluded that the petitioner remained sexually dangerous. In five cases, the jury concluded that the petitioner was no longer sexually dangerous. One case resulted in two mistrials and is awaiting retrial. To date, there have been 21 trials on 20 petitions.

Seven of the petitioners withdrew their § 9 petitions. Two petitions have been dismissed. In five instances, the trials were continued and these cases were not tried before October 10, 2014, one of which has been rescheduled to be tried later in 2014. Eight additional petitions are scheduled to be tried between October 10 and December 31, 2014, for a total of nine trials to be held later in 2014.

In 12 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 2014, the First Circuit Court of Appeals issued a favorable decision to the Department, following 13 years of litigation about the Treatment Center's operation. *Healey v. Spencer*, 765 F.3d 65 (1st Cir. 2014).

Plaintiffs Jeffrey Healey and Edward Given are civilly committed to the Treatment Center as SDPs. In separate suits, Healey and Given challenged their conditions of confinement and the adequacy of the sex offender treatment program, alleging violations of the federal constitution and state law. Healey also alleged that the Department failed to comply with the Amended Management Plan (Plan), a blueprint for the Treatment Center's operation, which the Department developed during earlier consent decree litigation. See *King v. Greenblatt*, 53 F.Supp.2d 117 (D. Mass. 1999). Each sued the Commissioner of Correction and the Treatment Center Superintendent. Given also sued the Massachusetts Department of Correction. The cases were consolidated. Healey sought only declaratory and injunctive relief. Given initially sought declaratory, injunctive and monetary relief. Prior to trial, Given abandoned his claim for money damages.

Prior to trial, Judge Nancy Gertner rejected Healey's claim that the Plan was a settlement agreement, but ruled that the Plan was an enforceable court order. In July 2011, the consolidated cases were tried, jury-waived, before Judge Gertner, who retired without issuing a decision while the parties were participating in mediation. The cases were re-tried before Chief Judge Patti B. Saris in January 2012. In March 2013, C.J. Saris entered judgment for the DOC Defendants on all claims except, following Judge Gertner's earlier ruling that the Plan was an enforceable court order as the "law of the case," she found the DOC Defendants violated the Plan by (a): failing to provide adequate pharmacological evaluation and treatment (even though this form of treatment was nowhere mentioned in the Plan and had been discontinued during the prior consent decree litigation); and (b) failing to provide a functioning Community Access Program (CAP) (which she also found to be a violation of G.L. c. 123A). She also found that the DOC Defendants violated Healey's and Given's substantive due process rights by failing to provide adequate pharmacological evaluation and treatment for paraphilia (sexual deviancy). C.J. Saris ordered that the DOC Defendants must have each plaintiff evaluated for pharmacological treatment by a qualified psychiatrist and, if appropriate, provide each plaintiff with such treatment. While C.J. Saris declined to grant specific injunctive relief to either plaintiff and specifically found that the CAP is not constitutionally required, she ordered that the DOC Defendants must meet the requirements of the Plan "in all material respects," including instituting a functioning CAP and keeping the Community Transition House, a related program at the MTC, open.

The DOC Defendants appealed the findings with respect to the Plan and all relief ordered under the Plan. Healey and Given cross appealed. On August 26, 2014, the First Circuit issued its decision, affirming in part and vacating in part the District Court's

rulings. *Healey v. Spencer*, 765 F.3d 65 (1st Cir. 2014). The First Circuit reversed the District Court's finding that the Plan is an enforceable court order and vacated all declaratory and injunctive relief ordered under the Plan. Specifically, the First Circuit concluded that the Plan "is not, and was not meant by [the judge in the earlier consent decree litigation] to be, an enforceable court order." *Id.* at 77. The First Circuit affirmed the District Court's findings in favor of the DOC Defendants in all other respects. The First Circuit upheld the District Court's findings that the sex offender treatment program, other than pharmacological treatment, "is in accordance with best professional judgment. . . ." *Id.* at 78. The First Circuit specifically agreed that the District Court properly concluded that the CAP is not constitutionally required. *Id.* at 79. The First Circuit also specifically reaffirmed the Treatment Center's "legitimate security concerns," "because, by definition under the state statute, every resident of the [Treatment] Center has committed sexual crimes and has been found by a court, beyond a reasonable doubt, to suffer from a mental condition that renders him likely to reoffend." *Id.* (citations omitted). The First Circuit expressly affirmed the District Court's determination that the Treatment Center's conditions of confinement "all address legitimate security concerns" and, therefore, comport with constitutional requirements. *Id.*⁵

5 Each plaintiff is seeking attorneys' fees associated with his one successful claim under the federal constitution. Briefing on the question of attorneys' fees is ongoing in the District Court.

IV. ACCOMPLISHMENTS AND CHANGES SINCE NOVEMBER, 2013

In addition, the Treatment Center achieved the following accomplishments and significant events since the filing of the 2013 Annual Report:

- As noted in the 2011, 2012 and 2013 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.
- 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. The new practice involves enhanced collaboration in the decision-making process.
- As noted in the 2013 Annual Report, in February 2013, a severe snowstorm caused significant damage to a fence inside the Treatment Center's secure perimeter. This fence separates the main facility from the CTH. As a result, the CTH was temporarily closed for security reasons. The four SDPs then housed at the CTH were temporarily relocated inside the main facility while sufficient interim repairs were made. Permanent repairs were completed in 2014.
- In conjunction with Department staff, the Treatment Center administration conducts 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. The consultation includes representatives from multiple disciplines and aids in the development of plans for the treatment and management of these individuals.
- As part of a Department-wide initiative, the Treatment Center administration has introduced the use of kiosks in certain housing units and common areas in the facility. The Treatment Center population is 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.

- Over the past year, the Treatment Center administration has 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. Over the past year, eight of the twelve doors have been refurbished.
- Over the past year, the Treatment Center has begun 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.
- 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. The Treatment Center anticipates that it will receive reaccreditation from the Commission on Accreditation in February 2015.

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 2014, 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.

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