



The Commonwealth of Massachusetts
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EXECUTIVE

- ADMINISTRATION
- COMMUNICATIONS
- INTERVENTION & PREVENTION PROGRAMS
- PUBLIC POLICY
- LEGISLATION
- VICTIM WITNESS BUREAU

TRIAL TEAMS

- CAMBRIDGE REGION SUPERIOR COURT
- MALDEN REGION SUPERIOR COURT
- WOBURN DISTRICT COURT

SPECIALTY UNITS

- APPEALS & TRAINING BUREAU
- CYBER PROTECTION PROGRAM
- FAMILY PROTECTION BUREAU
- CHILD PROTECTION UNIT
- DOMESTIC VIOLENCE UNIT
- ELDER/DISABLED UNIT
- SPECIAL INVESTIGATIONS UNIT (SIU)

STATE POLICE DETECTIVES

- COMPUTER FORENSICS
- HOMICIDE
- SIU

REGIONAL OFFICES

- CAMBRIDGE
- FRAMINGHAM
- LOWELL

DISTRICT COURT OFFICES

- AYER
- CAMBRIDGE
- CONCORD
- FRAMINGHAM
- LOWELL
- MALDEN
- MARLBOROUGH
- NEWTON
- SOMERVILLE
- WALTHAM
- WOBURN



September 10, 2015

The Honorable William N. Brownsberger
 Senate Chair - Special Commission
 to Reduce the Recidivism of Sex Offenders
 State House Room 504
 Boston, MA 02133

The Honorable Paul Brodeur
 House Chair - Special Commission
 to Reduce the Recidivism of Sex Offenders
 State House Room 160
 Boston, MA 02133

Re: Commission to Reduce the Recidivism of Sex Offenders

Dear Chairmen Brownsberger and Brodeur:

I write regarding this Office's January 14, 2015 presentation to the Commission regarding prosecutions pursuant to G.L. c. 123A, "Care, Treatment and Rehabilitation of Sexually Dangerous Persons." The law, which provides a one-day to life commitment of a person found to be a "sexually dangerous person," was enacted by emergency legislation on September 10, 1999, to protect members of the community from sex offenders.

In prosecuting cases under the law, the Commonwealth is required to prove beyond a reasonable doubt that the person (1) has been convicted of a "sexual offense" as defined in G.L. c. 123A, § 1; (2) suffers from a mental abnormality or personality disorder and as a consequence of which (3) is likely to commit sexual offenses if not confined to a secure treatment facility. See Commonwealth v. Fay, 467 Mass. 574, 580 (2014); Commonwealth v. Boucher, 438 Mass. 274, 275 (2002).

Definitions of Terms in the Law

The law defines "sexually dangerous person" is "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 16 years, and who, as a result, is likely to attack or otherwise inflict injury on such victims because of his uncontrolled or uncontrollable desires.”

The law defines “mental abnormality” as “a congenital or acquired condition of a person that affects the emotional or volitional capacity of the person in a manner that predisposes that person to the commission of criminal sexual acts to a degree that makes the person a menace to the health and safety of other persons.” The law defines “personality disorder” as “a congenital or acquired physical condition or mental condition that results in a general lack of power to control sexual impulses.”

The term “sexual offense” includes a number of crimes, such as indecent assault and battery on a child under 14, indecent assault and battery on a mentally retarded person, rape, rape of a child, kidnapping, enticing a person for prostitution or sexual intercourse, drugging a person for sexual intercourse, inducing a person under 18 into prostitution, open and gross lewdness and lascivious behavior, dissemination of matter harmful to a minor to a minor, posing a child in a state of nudity, and possession of child pornography.

Prosecution Process

Six months before an inmate convicted of a sexual offense is due to be released, the Office receives notice from the DOC, HOC and Parole Board. The Office reviews materials to determine if the inmate is “likely” a sexually dangerous person. If making this determination, this Office reviews the facts of the sexual offense crime, any sex offender treatment records, risk and protective factors, any disciplinary reports of the inmate while incarcerated, and the inmate’s version of the sexual offense crime. If the Office determines after review that the inmate is “likely” a sexually dangerous person, a petition is filed in Superior Court setting out sufficient facts to support the allegation.

Pursuant to G.L. c. 123A, § 12(c), (d), the person named in the petition is entitled to a probable cause hearing before a Superior Court Justice to determine whether the case should proceed to trial. At the hearing, the person has the right to be represented by counsel, to present evidence, to cross-examine witnesses, and to view and copy all petitions and reports in the court file.

If the Court finds probable cause that the person is a sexually dangerous person, he is committed to the Massachusetts Treatment Center for a period of up to 60 days for examination and diagnosis. Two “qualified examiners,” defined in G.L. c. 123A, § 1, are appointed for this purpose. The person named in the petition has the right to counsel, and counsel is appointed for indigent persons. The person named in the petition may retain his own expert(s).

If one or both of the qualified examiners find that the person is a sexually dangerous person, the Commonwealth may file a trial petition pursuant to G.L. c. 123A, § 14. The person named in the trial petition is entitled to counsel, which is appointed for indigent persons, and to retain experts. The trial may be before a judge or a jury, which must find “unanimously and beyond a reasonable doubt that the person named in the petition is a sexually dangerous person.” Upon such a finding, the person is committed to the Massachusetts Treatment Center for one day to life.

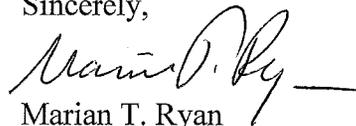
A person found to be a sexually dangerous person may appeal that finding. The person is also entitled to file a petition for examination and discharge pursuant to G.L. c. 123A, § 9 once every twelve months. In addition, the DOC may file a discharge petition if it believes that a person is no longer a sexually dangerous person. Under § 9, a petitioner has the right to a speedy hearing before a Superior Court Justice. A petition is examined by two qualified examiners. Unless the trier of fact concludes that such person remains a sexually dangerous person, it “shall order such person to be discharged from the treatment center.”

Cases Handled by the Middlesex District Attorney’s Office

The Middlesex District Attorney’s Office handles a substantial number of Sexually Dangerous Persons cases. Between November 1999 and January 2015, the Office reviewed 2,132 referrals for prosecution. Of those cases, probable cause petitions were filed in 114 cases. Of these, no probable cause was found in 2 cases. In the cases that proceeded to trial, 23 persons were found not to be sexually dangerous persons; 36 persons were found to be sexually dangerous persons; and 52 trial petitions were withdrawn. As of January 2015, the Office had 4 sexually dangerous persons cases pending.

Please feel free to contact me with any questions regarding this Office’s handling of Sexually Dangerous Persons matters.

Sincerely,



Marian T. Ryan
District Attorney
Middlesex County