

**2021 ANNUAL REPORT OF THE MASSACHUSETTS
TREATMENT CENTER FOR SEXUALLY
DANGEROUS PERSONS**

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I. INTRODUCTION

The Massachusetts 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 or MTC), as well as the Department's plan for operating the Treatment Center. Subsequently, 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 2021; (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 2021; and (d) the treatment and rehabilitative services delivered to the civilly committed SDPs

confined to the Treatment Center over the past year.¹

As reported in prior annual reports, 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 the Probation Department 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 16, 2021, 132 individuals were civilly committed as SDPs to the Department's custody. All of the data that follows in this section is as of September 16, 2021.

Of these 132 SDPs, 20 individuals remain committed under the pre-1990 version of M.G.L. c. 123A. In addition, 112 SDPs committed under the 1999 amendments to M.G.L. c. 123A remain civilly committed.

Six SDPs have been transferred to other DOC facilities pursuant to the provisions of M.G.L. c. 123A, § 2A.² Four SDPs are receiving care at other facilities.

Thirty-eight individuals were temporarily committed to the Treatment Center pending resolution of civil commitment proceedings.

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 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). Placement is determined by a combination of clinical appropriateness, as well as safety and security concerns.

² 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, be evaluated annually, and a report be prepared which shall be admissible in 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.

No juvenile was committed to the Treatment Center during the year 2021 pursuant to 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 M.G.L. 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. As discussed below, changes were made due to the novel coronavirus (COVID-19) pandemic. 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 M.G.L. c. 123A.

After persons are found sexually dangerous and civilly committed to the Treatment Center, they are offered the opportunity to participate in treatment.

B. Forensic Evaluations for SDP Proceedings

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), described above, and any petition for discharge pursuant to M.G.L. c. 123A, § 9, described below. When a court orders that QEs conduct evaluations, the Department, through a contract with a vendor, coordinates the evaluations of persons for the initial commitment proceedings and the discharge proceedings.

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

1. Resumption of Trials

The Department's Legal Division continued to represent the Commonwealth in M.G.L. c. 123A, § 9 proceedings during 2021.³ Between January 1, 2021 and October 8, 2021, the Treatment Center Legal Office received ten 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 discharge petitions through trial. Due to the COVID-19 pandemic and related court orders restricting jury trials, Section 9 jury trials were suspended from March 14, 2020 until September 20, 2021.

Between September 20, 2021 and October 8, 2021, two jury trials had been completed. Seven Section 9 petitions are scheduled to commence between October 12, 2021 and December 13, 2021. As of October 8, 2021, at the request of the petitioners in two other cases, the court continued the trials to a later year.

2. *LeSage, petitioner*

On August 10, 2021, the Supreme Judicial Court (SJC) issued its decision in *LeSage, petitioner*, 488 Mass. 175 (2021), reversing a Superior Court order which (1) concluded that the Commonwealth's exercise of its statutory right to demand a jury trial

³ In addition to representing the Commonwealth in M.G.L. c. 123A, § 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 and other government officials in civil rights litigation brought by SDPs, temporarily committed individuals, and inmates in the state and federal courts.

in a M.G.L. c. 123A, § 9 petition constitutes a substantive due process violation because of the COVID-19 pandemic and related temporary suspension of jury trials; and (2) allowed petitioner Robert LeSage's motion for a bench trial over the Commonwealth's objection. Specifically, the SJC concluded that "the Commonwealth's exercise of its statutory right to demand a jury trial is narrowly tailored to its legitimate and compelling interest of protecting the public from sexually dangerous persons." *LeSage*, 488 Mass. at 176. Further, the SJC "agree[d] with the Commonwealth that juries play an important function" in deciding whether individuals previously adjudicated sexually dangerous remain so. *Id.* at 183. Analogizing to criminal cases, the SJC reiterated that the jury's role is to protect the public interest "by acting as the community's conscience. The public's interest in jury trials is protected only by the government's ability to demand a jury trial over the petitioner's objection." *Id.* at 184. Further, the fact that the Legislature amended M.G.L. c. 123A, § 9 to provide the Commonwealth and the petitioner with the right to demand a jury trial evidenced "its recognition of the critical role a jury plays in § 9 petitions." *Id.* at 185. Given LeSage's history of having been found to be sexually dangerous beyond a reasonable doubt three times, the "Commonwealth has a strong interest in retrying the petitioner and doing so in front of jurors that serve as the conscience of the community." *Id.* at 186.

Further, the SJC held that the delay resulting from the pandemic "has not yet transformed the Commonwealth's exercise of this right into conduct that shocks the conscience." *Id.* at 176. Prior to this case, the Court had held that pandemic-related delays were to be uniformly excluded from statutory time limits on pretrial detention and speedy trial computations in criminal cases. *Id.* at 186-187. The Court formally extended this analysis to § 9 petitions. *Id.* at 187. Therefore, the length of the delay "has not yet risen to the level of a due process violation." *Id.* at 186.

While leaving open the possibility that a significantly longer delay may give rise to a claim for violation of substantive due process rights and require that a petitioner be given a chance to seek supervised release pending retrial, the Court specifically held that LeSage did not have a right to seek release before the retrial. *Id.* at 188. *Contra Commonwealth v. G.F.*, 479 Mass. 180, 196 (2018) (following a mistrial, a person temporarily held on a finding of probable cause may seek release pending retrial of an initial SDP commitment petition).

IV. OPERATIONAL CHANGES IN RESPONSE TO THE COVID-19 PANDEMIC

On March 10, 2020, Governor Baker declared a State of Emergency due to the COVID-19 pandemic. The State of Emergency concluded on June 15, 2021.

The Department's responses to the COVID-19 pandemic have been extensively detailed in numerous publicly available documents. Facility operation continues to be conducted in accordance with public health guidelines. Corresponding updates about the MTC follow below:

- Since January 2020, the Department is complying with Executive Order 595 by affording the staff, residents, and inmates the opportunity to be vaccinated. Additionally, staff and inmate COVID-19 surveillance testing is periodically conducted.
- Various activities have been expanded or resumed in a manner that provides for social distancing. As noted in the 2020 Annual Report, non-contact in-person visits for friends and family resumed in September 2020. On November 16, 2020, these visits were suspended due to the need to modify operations in response to the pandemic. On June 4, 2021, these in-person visits resumed. To accommodate social distancing, inmates and residents are permitted two personal visits per week, by appointment. All participants are required to wear masks during processing and for the duration of the visit. If a visitor does not have a mask, one is provided to the visitor. To enter the facility, visitors are required to complete a screening form and have a temperature check. To accommodate social distancing, the main visiting room has been configured with five protective barrier booths and the restrictive housing area has been equipped with one. Hand sanitizing stations are available in the visiting room, visitor processing area, and the visiting room trap. The visiting room is cleaned between visiting periods. In addition to in-person visits, beginning in late December 2020, inmates and residents may participate in video visits with friends and family twice per week by appointment.
- As noted in the 2020 Annual Report, in-person attorney visits resumed on June 18, 2020, by appointment. In-person visits by outside medical and mental health professionals were reinstated as of June 22, 2020, by appointment. There is no limit on the number of in-person attorney or outside medical and mental health professional visits that an inmate or resident may have per week. In addition, the DOC has continued to make videoconference visits available by appointment to attorneys and outside medical and mental health professionals during 2021.
- As of October 8, 2021, the education program and wood shop are open. To permit social distancing, class size is limited to six persons. Desks are spaced six feet apart.
- As of October 8, 2021, the institutional library is open six days per week. To ensure social distancing, up to ten residents may use the library per session. Appointments are scheduled for one-hour blocks, by unit.
- As of October 8, 2021, residents have tier time three times per day for 80 minutes per session. To allow for social distancing, the units are divided into groups. Residents have daily access to the yard, weather permitting. Sessions in the indoor gym are scheduled by unit. Each unit is offered three sessions per week for a total of two hours and 45 minutes.

- Chaplain services are available. Three chaplains conduct services/education twice per week. One chaplain conducts services in the chapel on Sundays. Chapel attendance is limited to a total of seven individuals, including the chaplain.
- Since December 14, 2020, the A-1 unit (A-1) has been designated as the MTC quarantine unit. Residents housed on this unit are kept separate and apart from inmates housed on another tier of this unit. Placement on this unit is made in accordance with guidelines for the Centers for Disease Control and Department of Public Health guidelines. Residents placed on this unit are offered four hours of tier time per day during which they may use the phone, clean their cell, and shower. Residents are offered one hour of yard time daily.
- The culinary program has been reopened on a modified schedule.
- All resident work assignments have resumed. Each resident is screened for COVID-related symptoms each time the resident reports to a work assignment. The barber shop is also available.

V. Sex Offender Treatment Program (SOTP)

A. Overview

Among other components, the Department's contract with Wellpath includes the SOTP for SDPs, individuals temporarily committed to the Department's custody who are awaiting SDP commitment proceedings, and inmates. Wellpath continued to subcontract with the Counseling and Psychotherapy Center (CPC) for the provision of the SOTP to state inmates until July 1, 2021, at which time Wellpath began to provide SOTP services to state inmates.⁴

In the SOTP available to SDPs, Wellpath continued to incorporate 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.

⁴ Effective July 1, 2018, the QE and consulting CAB member services are part of the Department's contract for comprehensive health services to the Massachusetts prison population. Wellpath subcontracted with CPC for the provision of the QE and consulting CAB member services until July 23, 2021. Since July 24, 2021, Wellpath has subcontracted with William James College, Inc., for the provision of the QE and consulting CAB member services.

B. SOTP during the COVID-19 Pandemic

Wellpath continued to provide sex offender treatment in modified form throughout the pandemic. Group therapy resumed in April 2021, with a reduced number of participants in each group. To allow for social distancing, group therapy sessions for residents are now held in the Learning Center, rather than within the housing units.

VI. **ADDITIONAL UPDATES**

- The MTC completed a comprehensive inspection and assessment of all roof top exhaust and fresh air intake fan motors. The MTC received funding to replace 50 fresh air intake rooftop fans. The installation process has been completed.
- MTC staff members continue to participate in training in several areas including, but not limited to, sex offender treatment and mental health issues to facilitate communication between clinical and security staff and assist with continuity of care, environmental health and safety, the Prison Rape Elimination Act (PREA), and Department policies and procedures.
- In conjunction with the Department's Reentry Services Division, MTC staff members continue to collaborate with the Probation Department in the affixing of GPS monitors at the facility prior to the release from custody, or at the Courthouses, of those individuals who are subject to GPS monitoring as a condition of probation.

VII. **CONCLUSION**

The Massachusetts 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 2021, 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. The Department also adapted its operation of the MTC to continue to provide for care, custody, treatment, and rehabilitation during the COVID-19 pandemic.