Final Report of the Special Commission to Examine the Qualifications and Scope of Practice of Qualified Examiners
December 31, 2018

Commission Membership

- Co-Chair, Senator Anne M. Gobi, Spencer
- Co- Chair, Representative Michael S. Day, Stoneham
- Minority Leader of the House designee, Representative David T. Vieira, Falmouth
- Minority Leader of the Senate designee, Catherine T. Jones, Psy. D, Designated Forensic Psychologist at Forensic Health Services
- Secretary of Public Safety and Security designee, Doug Levine**,** Special Counsel, Executive Office of Public Safety & Security
- Commissioner of Correction, designee, Mitzi Peterson, Director of Behavioral Health at the Department of Correction
- Commissioner of Public Health designee, Jim Lavery**,** Director of the Department of Public Health's Bureau of Health Professions Licensure
- Executive Director of the Massachusetts District Attorneys Association designee, Maryclare Flynn**,** Bristol County Assistant District Attorney
- Executive Director of the Massachusetts Office of Victim Assistance, Liam Lowney
- Superintendent of the Massachusetts Treatment Center designee, Dr. Niklos Tomich, Director of Psychological Services for the Commonwealth of Massachusetts
- Executive Director of the Committee for Public Counsel Services designee- Allison Jordan, Attorney in Charge for Public Counsel Services
- Representative of a professional association with expertise in the assessment and treatment of sexually dangerous persons, Dr, Laurie L. Guidry, Psy.D., Massachusetts Association for the Treatment of Sexual Abusers, Chair Public Policy Committee, Past President.
- Person with experience in supervision of Qualified Examiners, Dr. Nancy Connolly, Psy. D., Assistant Commissioner of Forensic Services at the Massachusetts Department of Mental Health

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ACKNOWLEDGEMENTS

As chairs of this Special Commission, we thank each appointed member for offering their time, commitment and expertise, all of which were integral to the work of the Special Commission and the creation of this final report. Our gratitude goes to: Dr. Niklos Tomich for his presentation to the Special Commission detailing the background and history of Qualified Examiners in the Commonwealth; Dr. Laurie Guidry for her presentation providing an overview of the current state of assessment tools most commonly used by Qualified Examiners; and to Mitzi Peterson for her presentation on current Qualified Examiner best practices and for providing relevant data points from the Massachusetts Department of Corrections. Finally, we thank our staff for their diligent work supporting the mission of this Special Commission and for their efforts in marshaling the information and feedback that helped to inform this final report.

Anne M. Gobi
State Senator

Michael S. Day
State Representative

EXECUTIVE SUMMARY

The Special Commission to Review the Qualifications and Scope of Practice of Qualified Examiners was established by Section 226 of Chapter 69 of the Acts of 2018. The Special Commission was charged with conducting a thorough review of the educational and experiential requirements for Qualified Examiners and the clinical standards, practices and risk-assessment criteria used by Qualified Examiners in conducting assessments of sexually dangerous persons. The Special Commission was further charged with reporting any recommended legislative changes back to the General Court.

The Commission consisted of members of the Legislature as well as representatives from the Department of Correction, the Department of Public Health, the Massachusetts District Attorneys Association, the Office of Victim Assistance, the Committee for Public Counsel Services, the Massachusetts Association for the Treatment of Sexual Abusers, and the Massachusetts Treatment Center. The Special Commission met four times between September and December 2018.

The Special Commission recognized that the scope of the role of Qualified Examiners is extensive and varied, requiring knowledge of psychology, forensics, and the law. Qualified Examiners need to know both how to appropriately evaluate those who are civilly committed as sexually dangerous persons and also how to speak in court as part of a trial. Qualified Examiners must also be skilled in using actuarial tools and measures of dynamic risk that can assist in determining the likelihood that an individual will recidivate.

The Special Commission noted that the Department of Correction's requirements for Qualified Examiners, detailed in the most recent Request for Responses for the administration of Qualified Examiners, are more extensive than those enumerated by current regulations. The Special Commission also learned that, while research continues to develop and advance the best way to evaluate potential recidivism among sex offenders, Qualified Examiners often default to the use of the actuarial tool known as the "Static 99R."

Based on its findings, the Special Commission recommends that the Department of Correction update its regulations to include additional requirements for Qualified Examiners and to ensure that Qualified Examiners are always using evidence-based best practices in their evaluations. The Special Commission also recommends that the Department of Correction employ more extensive data collection practices to track outcomes and recidivism rates for individuals formerly designated as sexually dangerous persons. Finally, recognizing the lack of Qualified Examiners currently available in the Commonwealth, the Special Commission recommends that the Department of Correction work with other stakeholders to increase training and opportunities for individuals pursuing this designation.

I. Introduction

The Special Commission to Review the Qualifications and Scope of Practice of Qualified Examiners was established pursuant to Section 226 of Chapter 69 of the Acts of 2018 ("the statute"). The statute authorized up to 13 members of the Special Commission: the Senate and House Chairs of the Joint Committee on the Judiciary or their designees, who serve as chairs; the Minority Leader of the House of Representatives or a designee; the Minority Leader of the Senate or a designee; the Secretary of Public Safety and Security or a designee; the Commissioner of Correction or a designee; the Commissioner of Public Health or a designee; the Executive Director of the Massachusetts District Attorneys Association or a designee; the Executive Director of the Massachusetts Office of Victim Assistance or a designee; the Superintendent of the Massachusetts Treatment Center or a designee; the Executive Director of the Committee for Public Counsel Services or a designee; a representative of a professional association with expertise in the assessment and treatment of sexually dangerous persons; and a representative of a professional association with expertise in supervision of Qualified Examiners. The statute also authorized the Special Commission to consult with the Sex Offender Registry Board, the Parole Board, the Department of Probation, and others as necessary to complete its work.

The statute required the Special Commission to conduct a thorough review of the educational and experiential requirements for Qualified Examiners and the clinical standards and practices and risk-assessment criteria used by Qualified Examiners in conducting assessments of sexually dangerous persons as defined in section 1 of chapter 123A of the General Laws. The Special Commission was further tasked with determining whether these requirements, standards and practices reflect the current scientific research and best-practice evidence in the field and then make recommendations for the appropriate revision of current professional requirements, clinical standards, practices and risk assessment criteria as needed to support effective practices among Qualified Examiners and to maximally ensure public safety. The Special Commission's report was to be filed with the clerks of the House of Representatives and the Senate no later than December 31, 2018.

This report reflects the recommendations of the Special Commission, which held four public meetings in the State House: September 19, 2018 at 11:00am in Room B2; October 18, 2018 at 1:00pm in Room 428; November 14, 2018 at 11:00am in Room 222; and December 4, 2018 in Room 222. Additionally, the Special Commission welcomed input and information through written correspondence throughout its existence.

II. Special Commission Charge

A. SECTION 226 OF CHAPTER 69 OF THE ACTS OF 2018

Notwithstanding any general or special law to the contrary, there shall be a special commission established pursuant to section 2A of chapter 4 of the General Laws to review the qualifications and scope of practice of qualified examiners as defined in section 1 of chapter 123A of the General Laws.

The special commission shall consist of 13 members: 2 of whom shall be the senate and house chairs of the joint committee on the judiciary or their designees, who shall serve as co-chairs; 1 of whom shall be the minority leader of the house of representatives or a designee; 1 of whom shall be the minority leader of the senate or a designee; 1 of whom shall be the secretary of public safety and security or a designee; 1 of whom shall be the commissioner of correction or a designee; 1 of whom shall be the commissioner of public health or a designee; 1 of whom shall be the executive director of the Massachusetts District Attorneys Association or a designee; 1 of whom shall be the executive director of the Massachusetts office of victim assistance or a designee; 1 of whom shall be the superintendent of the Massachusetts treatment center or a designee; 1 of whom shall be the executive director of the committee for public counsel services or a designee; 1 of whom shall be a representative of a professional association with expertise in the assessment and treatment of sexually dangerous persons; and 1 of whom shall be a person with experience in supervision of qualified examiners. The special commission shall consult with the sex offender registry board, the parole board, the department of probation and others as necessary to complete the commission's work.

The special commission shall conduct a thorough review of the educational and experiential requirements for qualified examiners and the clinical standards and practices and risk assessment criteria used by qualified examiners in conducting an assessment of sexually dangerous persons as defined in section 1 of chapter 123A of the General Laws. The special commission shall determine whether these requirements, standards and practices reflect the current scientific research and best practice evidence in the field and make recommendations for revision of current professional requirements, clinical standards, practices and risk assessment criteria as needed to support effective practices among qualified examiners and to maximally ensure public safety.

The special commission shall submit its report and recommendations, together with drafts of legislation to carry its recommendations into effect, by filing the same with the clerks of the House of Representatives and the Senate not later than December 31, 2018.

III. Background Information

A. CIVIL COMMITMENT

Massachusetts is one of twenty states (in addition to Washington D.C. and the federal government) that provide for the civil commitment of people deemed to be sexually dangerous. Massachusetts statutorily defines a sexually dangerous person as 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.

Massachusetts General Laws ("M.G.L.") Chapter 123A, Section 1.

As a threshold matter, a district attorney may only seek civil commitment based on the designation of a sexually dangerous person against an individual convicted of a sexual or sexually motivated offense and who is incarcerated at the time civil commitment is sought.[1] Inmates may be referred for civil commitment to the Massachusetts Treatment Center (MTC) following a notice sent to the district attorney within whose jurisdiction the individual is incarcerated at least six months prior to the inmate's release date. Upon receipt of the notice, the district attorney's office will review the case and, if electing to pursue civil commitment, will retain an expert to opine as to whether the individual could qualify as a sexually dangerous person as defined in M.G.L. c. 123A, Section 1. If the expert expresses the opinion that the individual may meet this definition, the district attorney may then file a petition for temporary commitment to the MTC. The court receiving the petition will then conduct a probable cause hearing.

[1] *See* https://www.publiccounsel.net/pc/overview-of-sdp-process/. N.B.: The government may pursue civil commitment for an individual incarcerated and currently serving a sentence for any crime, not necessarily for a sexual or sexually motivated crime, as long as that individual has also been convicted of a sexual or sexually motivated offense.

If the court finds probable cause that the individual may qualify as a sexually dangerous person, it may order the individual to be held in the MTC for a period of up to 60 days, during which time the individual will be examined by two Qualified Examiners (QEs), itself a statutorily defined position. If either or both of the QEs opine that the individual meets the definition of a sexually dangerous person, the district attorney may then file a petition for an initial commitment trial. If, however, both of the QEs opine that the individual does not meet the definition of a sexually dangerous person, the court must dismiss the case and may not civilly commit the individual.[2]

At the initial commitment trial, individuals are entitled to a trial by jury but may waive this right in favor of a bench trial with the judge. If the judge or jury finds that the individual does qualify as a sexually dangerous person, the court may order the commitment of the individual to the MTC for an indefinite period from one day to life.

Individuals committed to the MTC as sexually dangerous persons may file a petition for review and release pursuant to M.G.L. c. 123A, section 9 annually. At the review hearing, the Department of Corrections (DOC) will again assign two QEs to the matter. Those QEs will then review the case history and evaluate the petitioning individual on a *de novo* basis. The statute requires that each QE conduct a personal interview of the petitioning individual.[3]

As in the initial commitment process, if both QEs determine that the individual is not a sexually dangerous person, the court must release the individual from the MTC immediately. If one or both of the QEs determine that the person still meets the definition of a sexually dangerous person, however, the matter will be set for trial.[4]

Individuals deemed to be sexually dangerous persons are committed to the MTC, where they are eligible to participate in a full treatment program, including group meetings and psychoeducational classes.

B. QUALIFIED EXAMINERS

1) Statutory Qualifications

The DOC oversees and manages QEs, who are defined by law as:

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[2] *See In re Johnstone*, 453 Mass. 544 (2009).

[3] The petitioning individual has the right to decline the personal interview with the QEs. However, if the individual declines to participate in the interviews, the court may dismiss the petition. If the petitioning individual declines to participate in the QE interviews but the petition proceeds to trial, the individual is precluded from offering testimony of an expert who has had the benefit of a personal interview.

[4] N.B., the Supreme Judicial Court is currently considering the continuing validity of the holding of *In re Johnstone*.

> a physician who is licensed pursuant to section two of chapter one hundred and twelve who is either certified in psychiatry by the American Board of Psychiatry and Neurology or eligible to be so certified, or a psychologist who is licensed pursuant to sections one hundred and eighteen to one hundred and twenty-nine, inclusive, of chapter one hundred and twelve; provided, however, that the examiner has had two years of experience with diagnosis or treatment of sexually aggressive offenders and is designated by the commissioner of correction. A 'qualified examiner' need not be an employee of the department of correction or of any facility or institution of the department. G.L. c. 123A, section 1.

2) DOC Management of QEs

Prior to 2018, the oversight responsibilities of all Sex Offender Treatment Services resided in the DOC's Program Services Division. In 2018, the DOC transitioned contractual oversight responsibilities of all Sex Offender Treatment Services from its Program Services Division to its Health Services Division. The DOC informed the Special Commission that transition of oversight to the Assistant Deputy Commissioner of Clinical Services, Director of Behavioral Health and other independently licensed mental health professionals was most appropriate given the fact that a person determined to be Sexually Dangerous Persons must also have been determined to have a mental illness.

A) Contractual Requirements for QE Credentials and Qualifications

In its most recent process seeking third-party administration of the Qualified Examiner program, the DOC has imposed far greater qualifications and requirements for QEs than required under the statute. According to the DOC, its Request for Response for Comprehensive Health Services to Massachusetts Prison Population, RFR #19-DOC-9004-Prison Health Services (the "RFR"), is designed to ensure, among other things, that QEs are doctorate-level psychologists or psychiatrists with specialized training and a clinical focus on sex offender risk assessment. This RFR process concluded with the awarding of a comprehensive contract commencing on July 1, 2018.

Specifically, the RFR expanded the requirements of G.L. c. 123A, section 1 by requiring, in addition to two years of experience in diagnosis or treatment, that the QE also meet the following requirements:

- Be a member of an organization that promotes research and the study of the treatment and assessment of sex offenders;
- Be certified as a Designated Forensic Professional ("DFP") in Massachusetts;
- Possess a similar certification in forensic assessment, such as one granted by the American Board of Professional Psychology ("ABPP") or, prior to appointment as a QE,

complete the Contractor's training program in the forensic assessment of sexual offenders…; and

- Be appointed as a QE by the Commissioner.

The DOC further requires that the winning contractor meet the following requirements relating to the number of active QEs in the Commonwealth:

> The Contractor shall maintain a minimum of fifteen (15) QEs who are actively accepting assignments as QEs. When a QE's appointment is terminated or s/he resigns, the Contractor must submit a qualified candidate for appointment within eight (8) weeks. The Contractor's recommendation of potential QEs is subject to the approval of, and appointment in writing, by the Commissioner.

B) Contractual Requirements for QE Training

The DOC, again through its RFR, imposed new and expanded training requirements, both pre-service and in-service, for Commissioner-approved QEs. The Chairperson of the Community Access Board as well as the DOC's Health Services Division Oversight manages this training. The RFR requires the Health Services Division to monitor each QE to ensure yearly compliance with training as well as relevance of training to the evolving field of risk assessment:

> The Contractor, with the guidance and oversight of the Department's Director of Forensic Psychological Services and with the approval of the Department, shall develop and administer a training program for those individuals whom the Contractor and/or the Department view as potential QEs and/or consulting CAB members.

The training program is to include, at a minimum, 24 hours of annual training containing the following components for all QEs:

- Research in the area of sex offender treatment and risk assessment;
- The current and former treatment models utilized in Department facilities;
- Contents and review of legal/medical/therapeutic records of sex offenders;
- Analysis and use of actuarial data and instruments and other testing mechanisms in the forensic evaluation of sex offenders;
- Preparation of risk assessment reports;
- Forensic interviewing;
- Legal issues relevant to SDP evaluations; and
- Forensic testimony.

3) Availability of Qualified Examiners

The DOC currently oversees a total of nineteen QEs. Of that number, only six perform the vast majority of the examinations undertaken on behalf of the Commonwealth. There are multiple reasons contributing to the ongoing problem of the dearth of QEs in the Commonwealth.

In the first place, the work performed by a QE does not equate to a full-time position, and requires an individual to perform other work. With the unpredictability of a commitment process and the vagaries of a court's trial schedule, an individual performing services as a QE must have the ability to respond on short notice to requests for examination and to testify at trial.

In addition to this challenge, the limited number of QEs available to render services in the Commonwealth means that the small pool of those who are performing these intense services are susceptible to fatigue and burnout. As a result, this group of professionals is particularly susceptible to high turnover, which further contributes to the challenges facing the Commonwealth.

IV. Qualified Examiner Methods, Tools and Best Practices

QEs employ actuarial and other validated assessment tools when evaluating the recidivism risk of an individual suspected of being a sexually dangerous person.

Actuarial tools are designed to estimate the probability that a sex offender will reoffend once released. QEs are expected to use evidence-based best practices to complete their assessment of sexually dangerous people. These best practices are tested during examination of the QE in court and are expected to help the fact finder determine whether an individual should be held as a sexually dangerous person. The actuarial tool most commonly used in the field is currently the Static-99R; the Violence Risk Scale Sex Offender, "VRS-SO", is a structured professional tool that captures dynamic risk factors and can be combined with an actuarial measure to produce an integrated, overall risk score.

A. Static-99R

The tool known as Static-99 is a ten-item actuarial assessment instrument created by R. Karl Hanson, Ph.D. and David Thornton, Ph.D. to be used with adult male sexual offenders at least 18 years of age at the time of release to the community. In 2012, the age item for the scale was updated, creating Static-99R. Static-99R is now the most widely-used actuarial measure of risk for sex offender recidivism in the world.

Because there is no one risk factor alone that can easily predict recidivism rates, this tool creates a score based on a combination of ten different, widely-researched and well-established factors to create an overall assessment of risk probability. The factors are designed to assess domains related

to both criminality and sexual deviance. In recognition of the fact that individuals will often decline to answer detailed questions about their own impulses and violent history, the tool incorporates objective data that a QE can obtain from the review of an inmate's criminal record and treatment history. Some of the objective factors used include age at release, prior sex offenses, prior nonsexual offenses, whether the victim was male or female, and whether the offender was related to the victim.

Experts testified to the Special Commission that the Static 99R is a widely accepted tool in part because it has been studied, cross-validated and peer-reviewed multiple times, in addition to the level of objectivity it provides in its scoring rubric. According to those with experience in administering the Static 99R tool, it has strong inter-rater reliability such that any trained examiner should come up with the same, or very close to the same, score for the individual examined. The Static 99R tool has a .71 receiver operating characteristic, meaning that it should accurately predict the likelihood of recidivism better than chance and approximately 71% of the time.

However, even proponents of the Static 99R tool recognize its natural limitations in light of the fact that the study and understanding of sexual offenders continues to evolve and that many, if not most, sexual offenses go unreported. Additionally, actuarial tools are merely statistical estimates Furthermore, as evidenced by its very name, the Static 99R only captures fixed, historical factors. It is important to note that because the Static 99R is based on the assessment of historical factors and is not designed to assess change in risk as a result of treatment, it does not take the results of treatment into account when determining how likely a person is to recidivate.

B. Dynamic Assessment Tool Example

The Violence Risk Scale Sex Offender version (VRS-SO) was developed by Olver, Wong, Nicholaichik, and Gordon in 2007. The VRS-SO is a tool that allows QEs to include dynamic factors (those that can change over time) in their assessment of the individual examined. Experts testified to the Special Commission that the evolving nature of these tools allow QEs to capture the effects of both time and treatment on sexually dangerous persons.

The VRS-SO looks at seventeen dynamic or changeable factors to assess a person's risk of recidivism. The VRS-SO also includes factors to assess the person's criminality and sexual deviance. However, it also factors in an individual's responsiveness to, and history of, treatment. Proponents of the VRS-SO state that these features allow for a more complex understanding of the individual being assessed by considering both the details of the crimes committed and the individual's past as well as the observed responsiveness and participation in treatment programs.

Importantly, the VRS-SO considers both Offense Analogue Behaviors (OABs) and Offense Replacement Behaviors (ORBs). OABs are behaviors that one might observe in an institutional

setting that would indicate ongoing concerning impulses in sexually dangerous persons such as excessive masturbation, lewd comments towards staff, lying, attempts at manipulation, and disruptive or aggressive behaviors. ORBs are behaviors that suggest a decline in risk that can be observed in an institutional setting, such as demonstrating adequate impulse control and maintaining appropriate boundaries with staff and peers. Experts testified that the VRS-SO has been in the field for over ten years, is well-studied and supported by peer-reviewed and widely accepted scientific research.

V. **Special Commission Recommendations: Best Practices; QE Availability; Data Tracking**

One of the Special Commission's primary concerns was whether it should recommend legislation or make recommendations for changes to the Code of Massachusetts Regulations given the static nature of legislation and regulation and the need for practices in this area to evolve and reflect scientific advancements and the most current accepted research and best practices. For example, while members of the Special Commission expressed interest in the increased use of newer dynamic tools, the members did not feel that it would be appropriate for the Legislature to specify a specific actuarial or other tool that QEs should use.

The Special Commission also recognized the inherent tensions and concerns resulting from the relatively small pool of QEs and prospective QEs available in the Commonwealth. At this time, there are only nineteen QEs in the Commonwealth.

The Special Commission also learned that, since publishing its RFR and contracting with a new vendor on July 1, 2018, the DOC has implemented its own evaluation of ongoing processes, including QE qualifications, training, tools, and outcomes.

A. Recommendations

1. *Encourage the DOC to update the Code of Massachusetts Regulations to reflect the requirements included in its most recent RFR.*

The Special Commission is concerned by the extent of the differences between the QE qualifications, as defined in the General Laws, and the RFR that currently used by the DOC. The Special Commission members broadly agreed that the extensive qualifications enumerated in the RFR is a welcome and necessary step forward in the Commonwealth's efforts to ensure the appointment of better-qualified QEs. Members also lauded the DOC's move of oversight of all Sex Offender Treatment Services from its Program Services Division to its Health Services Division.

However, there was marked concern that a change in leadership or philosophy at the DOC in the future could mean a departure from these advancements. The Special Commission therefore recommends that the DOC undertake the steps required to update its CMR to track the QE requirements currently mandated in its current RFR.[5] The Special Commission strongly recommends that the DOC either update the CMR or, at the very least update its formal standing policies, to help insure consistency in the oversight and quality of appointed QEs.[6]

2. *Legislate the use of evidence-based best practices by QEs.*

While the members of the Special Commission believed legislative specifying the tools that QEs should use in assessing potentially sexually dangerous persons would be too restrictive and inflexible, there was interest in taking steps to insure that QEs use the most scientifically-accepted best practices at all times. The Special Commission was in general agreement that a legislative mandate would be appropriate, but only insofar as it permitted flexibility in the evaluation process so that evaluations could proceed without requiring formal amendments of regulations each time an advancement or change is recognized.

A brief review of the currently-accepted best practices and examination tools is instructive in explaining the Special Commission's conclusion in this area.

The Static 99R is now the most widely used actuarial tool in the world employed in assessing the long-term risk for sexual offense recidivism. Like all measures, however, it has its limitations. While the Static-99R serves to inform the question of risk probabilities associated with sexual re-offense, it is not designed to capture change in risk, for instance, as a person engages in and moves through treatment. Accordingly, the Static 99R does not account for factors such as the impact of treatment when considering how likely a person is to recidivate.

As such, current best practice in risk assessment also includes informed consideration of dynamic or changeable risk factors. The use of a measure, such as the VRS-SO, allows for the

[5] The Special Commission expressly chose to recommend that the CMR "track" and not "match" the current RFR. Notably, some Special Commission members suggested that the current RFR's specification that a QE be a member of a particular professional organization unnecessarily limited an individual's professional judgment and would improperly have the Commonwealth favor one private group over another.

[6] Special Commission member Tomich specifically suggested that any new CMR be modeled after 104 CMR 33 to give the DOC authority to grant a Designated Forensic Psychologist ("DFP") credential to psychologists and psychiatrists specifically trained to aid the court's in the forensic process. He noted that his own training as a DFP was invaluable in the QE process and in his work as Director of Forensic Psychological Services for the Department of Correction.

Special Commission member Connolly, however, noted that requiring a DFP certification would likely lead to a further limitation on the pool of psychologists eligible to become QEs, and that only a few currently-certified DFP's have specialized training in sex offender assessments.

consideration of the impact of treatment progress on risk probabilities; it also offers an algorithm for combing both static and dynamic risk scores in order to produce a single overall risk estimate score. The Special Commission takes note of the fact that any measure may change as this field evolves and that the DOC and QEs must use the scientifically accepted, evidence-based best practices and methods available at any given time to assess whether individuals should be subject to civil commitment as Sexually Dangerous Persons.

Accordingly, and recognizing that statutory language should not operate as a hindrance to scientific advancement, the Special Commission believes that, while a statutory update is warranted, the language should be limited to requiring QEs to use "evidence-based best-practices" in their assessments.

3. *Increase the tracking of QE outcomes.*

The Special Commission heard extensively about the difficulty of tracking recidivism rates once individuals are released from the MTC for several reasons, including most notably the fact that sex-based crimes are vastly underreported, making it difficult (if not impossible) to know whether a released sexually dangerous person actually recidivates. Another major challenge to accurately tracking recidivism rates is the fact that the DOC does not now have the authority to force anyone who was once in the MTC to submit to tracking for the purposes of follow-up data compilation.

The strong emotional response from the public to issues relating to sexual violence increases the pressure on QEs, and the scrutiny of the recommendations QEs make. To some extent, expectations of perfection are obviously unfair and impossible to meet. The best a QE can do in evaluating whether an individual qualifies as a sexually dangerous person is to opine on how likely the individual is to recidivate. There will inevitably be situations where a QE opines incorrectly on the likelihood of an individual to commit another sex-based crime.

Nonetheless, the importance of highly competent performance by QEs in insuring the public safety and confidence is too high not to track the actual outcomes of QE evaluations. Additionally, the Special Commission finds that tracking such data could help provide valuable feedback to QEs regarding the accuracy of their predictions. Therefore, the Special Commission believes that the DOC must do more to track recidivism rates of individuals released after the recommendation of a QE in order to monitor and track which, if any, of the QEs are outliers in determining the likelihood of an individual to recidivate. This data should include the ultimate resolution of the case and manner in which it was resolved.[7]

[7] Special Commission member Jordan also recommended that the data include the QE's opinion offered in the underlying case and whether the person being evaluated reoffended with a new sexual offense.

Currently, the DOC tracks recidivism rates for approximately three years after release. The Special Commission recommends increasing the length of time of this tracking for those individuals released from the MTC to 5 years. While recognizing that this data will not necessarily be perfect due to the challenges detailed above, the Special Commission nonetheless believes it is important for this data to be collected.

4. *Encourage further measures designed to increase the availability and number of QEs.*

The Special Commission recognizes that there is a shortage of QEs in the Commonwealth, which may lead to adverse outcomes including individual QE "burn out," and over-reliance upon a particularly small group of QEs by the Commonwealth. While the Special Commission has not found evidence that the DOC has been unable to staff a QE on any particular case, it does find that the number of individual QEs the DOC assigns to cases continues to shrink.

The Special Commission therefore recommends that the DOC continue its work designed to increase the number of QEs in the Commonwealth, including assessing the payment and employment model currently in place and continuing to develop and pursue partnerships with higher education institutions to develop and incentivize individuals to pursue the work required to become a QE. The Special Commission further encourages the DOC to continue its work with higher education institutions in developing a certificate program designed to increase the number of individuals who can meet the requirements of QEs.

APPENDIX

A. Section 226 of Chapter 69 of the Acts of 2018
B. Chapter 123A of Massachusetts General Laws
C. 104 CMR 33.00

D. Request for Response for Comprehensive Health Services to Massachusetts Prison Population RFR# 19-DOC-9004-Prison Health Services.