

# SEXUALLY DANGEROUS NO LONGER?

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## MASSACHUSETTS SEXUAL RECIDIVISM DATA ON SEX OFFENDERS RELEASED FROM CIVIL COMMITMENT

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<https://bostonreleasenetwork.org>




**Applied Behavioral Consultants, LLC**

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## PERPETRATION OF SEXUAL VIOLENCE



- The U.S. Department of HHS reported in 2010 that 9.2% of victimized children were sexually assaulted.
- Studies conducted by the Crimes Against Children Research Center, show that:
  - 1 in 5 girls and 1 in 20 boys is a victim of child sexual abuse;
  - Self-report studies show that 20% of adult females and 5-10% of adult males recall a childhood sexual assault or sexual abuse incident;
  - During a one-year period in the U.S., 16% of youth ages 14 to 17 had been sexually victimized;
  - Over the course of their lifetime, 28% of U.S. youth ages 14 to 17 had been sexually victimized;
  - Children are most vulnerable to CSA between the ages of 7 and 13.
- The National Institute of Justice reported in 2003 that 3 out of 4 adolescents who have been sexually assaulted were victimized by someone they knew well.
- A Bureau of Justice Statistics report shows 1.6 % (sixteen out of one thousand) of children between the ages of 12-17 were victims of rape/sexual assault.
- A study conducted in 1986 found that 63% of women who had suffered sexual abuse by a family member also reported a rape or attempted rape after the age of 14. Recent studies in 2000, 2002, and 2005 have all concluded similar results.
- Children who had an experience of rape or attempted rape in their adolescent years were 13.7 times more likely to experience rape or attempted rape in their first year of college.

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## SEXUAL OFFENDER RECIDIVISM



- 90% of sexual crimes are committed by first time offenders.
- The vast majority of offenders are known to the victim/s.
- Sexual recidivism rates are the lowest among all major criminal categories (range of 3.4 to 7% in DOJ and other studies)
- Resources? Primary/Secondary Prevention? (we'll come back to that issue once the sexual recidivism data are presented)

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## MASSACHUSETTS SEXUALLY DANGEROUS PERSON PSYCHOLEGAL CRITERIA UNDER M.G.L. C. 123A



- Mental abnormality or personality disorder
- Affects emotional or volitional capacity
- Makes the person likely to engage in sexual offenses if not confined to a secure facility
- Civil Commitment as a Sexually Dangerous Person is DAY to LIFE. The “Hotel California” of the psycholegal world!
- What is “likely” to reoffend sexually in Massachusetts?

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## WHAT IS “LIKELY” TO REOFFEND SEXUALLY IN MASSACHUSETTS?



- The Commonwealth of Massachusetts Supreme Judicial Court in *Commonwealth v. Steven Boucher* (438 Mass. 274, December 17, 2002) defined the term “likely to engage in sexual offenses if not confined to a secure facility” as follows:
- *‘Likely’ is not defined in G.L. c. 123A, nor is it understood to be a term of art requiring a specific and limited interpretation...As commonly used and understood, ‘likely’ is a word that encompasses a range of probabilities depending on the specific context in which it is used. We conclude that something is ‘likely’ if it is reasonably to be expected in the context of the particular facts and circumstances at hand...Such a determination must be made on a case-by-case basis, by analyzing a number of factors, including the seriousness of the threatened harm, the relative certainty of the anticipated harm, and the possibility of successful intervention to prevent that harm.*

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## HOW MASSACHUSETTS SDP CASES PROCEED...



- M.G.L. Chapter 123 A § 12 to § 14: Initial Commitment
- Probable Cause, appointment of two qualified examiners, initial commitment trial (jury vs. bench)
- M.G.L. Chapter 123 A § 9: Review Trial (jury in unified session in Suffolk Superior Court, Boston)

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## HOW INITIAL MASSACHUSETTS SDP CASES PROCEED



- Once a petition is filed by a district attorney in whose jurisdiction a past sexual crime has been committed under Massachusetts General Laws, the Superior Court holds a hearing to determine whether probable cause exists to believe that the individual is sexually dangerous (G.L. c. 123A § 12(c)). There must be expert testimony at a probable cause hearing from an expert hired by the district attorney that the respondent satisfies criteria for civil commitment.
- If probable cause is found, the respondent will be held for an additional 60-day period for a subsequent evaluation by two "qualified examiners" appointed by the Commissioner of the Department of Correction to determine whether or not he is sexually dangerous (G.L. c. 123A § 13(a)). If either of the two qualified examiners concludes that the respondent is sexually dangerous and the district attorney petitions for a trial, he is held until a trial takes place to determine whether or not he meets the criteria for sexual dangerousness beyond a reasonable doubt (G.L. c. 123A § 14(a)). Qualified examiner reports must be filed within 45 days.
- If either the district attorney or the individual named in the petition request a jury trial, the case is tried to a jury (G.L. c. 123A, § 14(a)). Although these cases are considered civil, the standard of proof at trial is "beyond a reasonable doubt." Strict timelines govern the temporary commitment period and the Commonwealth's obligations.

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## DISCHARGE PROCEEDINGS PURSUANT TO G.L. C. 123A, § 9



- Once civilly committed, an individual may file a petition for release every twelve months claiming that he is no longer sexually dangerous (G.L. c. 123A, § 9). In practice, however, the trial may not take place until three or more years after the petition is filed. The statute provides that the Commonwealth or the individual may exercise the right to a jury trial in these proceedings.
- These trials are usually held in the Unified Session in Suffolk Superior Court and proceed "according to the practice of trial in civil cases in the Superior Court." G.L. c. 123A, § 9. However, according to rule 81 of the Rules of Civil Procedure, the civil rules do not apply to sexually dangerous persons proceedings. "[T]he practice in civil proceedings to which these rules do not apply shall follow the course of the common law, as near to these rules as may be, except that depositions shall not be taken, nor interrogatories served, save by order of the court, on motion, with notice, for good cause shown." Mass. R. Civ. P. 81. Although these trials are considered civil, the standard of proof remains "beyond a reasonable doubt."

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## G.L. C. 123A, § 9 DISCHARGE PROCEEDINGS NUMBERS IN 2017



- The Unified Session scheduled 53 petitions for trial in 2017. Section 9 jury trials were held in the Suffolk Superior Court. The data that follows in this section is as of September 25, 2017.
- Eighteen of the petitions have been heard by juries. In 11 cases, the jury concluded that the petitioner remained sexually dangerous. In seven cases, the jury concluded that the petitioner was no longer sexually dangerous.
- Six of the petitioners withdrew their § 9 petitions. In six instances, the trials were continued at the petitioner's request or the Court's direction; these cases were not tried before September 25, 2017. One of these petitions is scheduled for trial in October 2017. Seven additional petitions are scheduled to be tried between October 10 and December 31, 2017.
- In 15 other instances, the Commonwealth lacked sufficient expert evidence to proceed to trial under the Supreme Judicial Court's decision in *Johnstone, petitioner*, 453 Mass. 544 (2009). These 2017 data are the latest filed by the Department of Correction.

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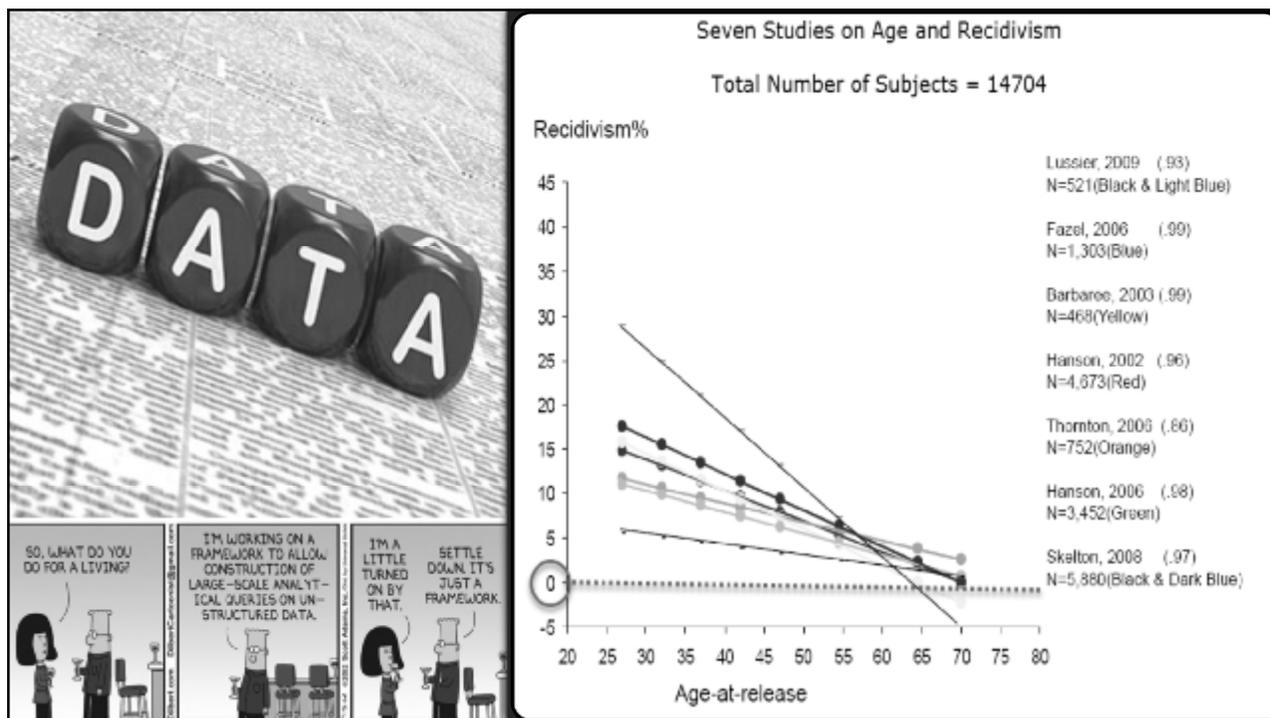
The Boston Release Network (BRN), founded in 2012, is a volunteer 501(c)3 program to improve public safety by assisting those formerly incarcerated for a sexual offense during their transition from the prison system back into the community. BRN's goals are simply to:

Have no more victims and give clients the support and the tools necessary for a meaningful transition.



**BRN**  
Boston Release Network

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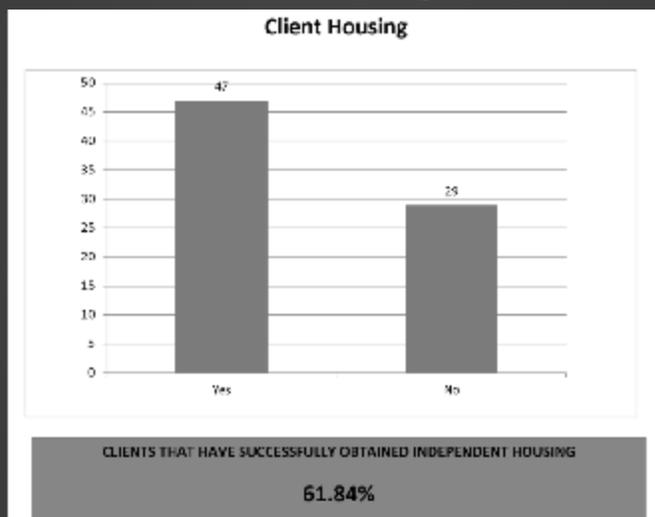
### THE DATA ON MEN RELEASED FROM CIVIL COMMITMENT AS SEXUALLY DANGEROUS PERSONS UNDER M.G.L. CHAPTER 123 A § 9



- Total of 76 men formerly deemed as sexually dangerous persons under Massachusetts law and released from civil commitment
- In Massachusetts men found no longer sexually dangerous are unconditionally released, but still subject in some cases to terms of probation (clock stops while the person is civilly committed) and sexual offender registration
- Data collected between November 1, 2016 and March 20, 2019 (~2.5 years)
- *Age range of subjects between 29 and 80 years old*

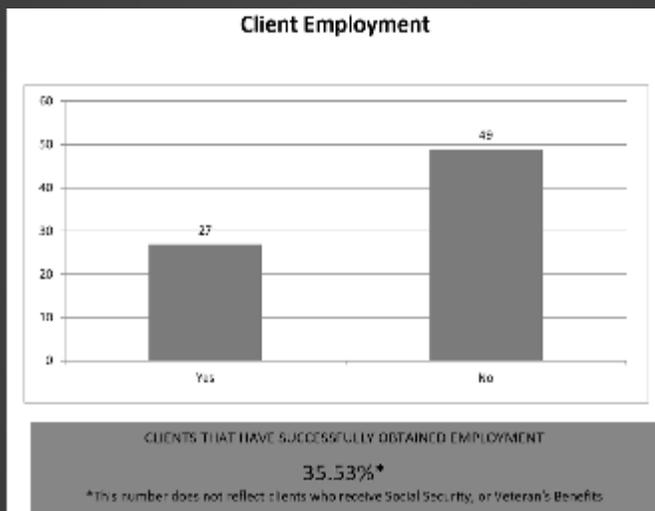
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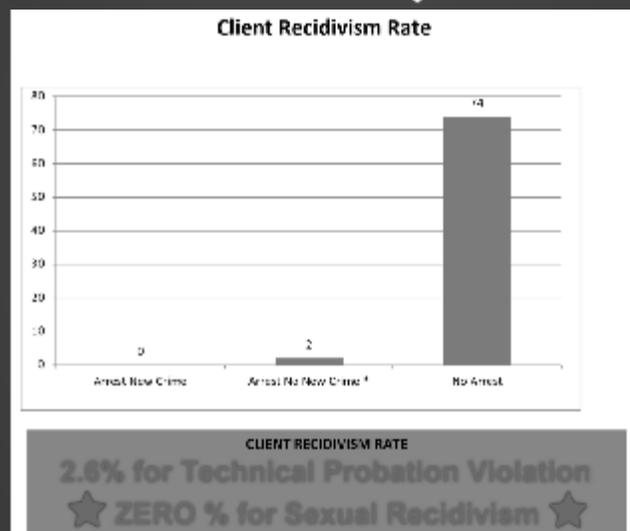
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# THE DATA ON MEN RELEASED FROM CIVIL COMMITMENT AS SEXUALLY DANGEROUS PERSONS UNDER M.G.L. CHAPTER 123 A § 9



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## CONCLUSIONS THUS FAR...



- The SEXUAL recidivism rate for approximately 2.5 years of 76 men formerly deemed to be sexually dangerous persons under Massachusetts law as of March 25, 2019 is [REDACTED], and only 2 out of 76 (or 2.6%) were re-arrested for technical, non-sexual probation violations.
- This finding exists despite societal attitudes that negatively affect housing and employment opportunities, and laws such as sexual offender registration that can shadow men as they reintegrate back into society.
- We need to compare these data with men released from civil commitment and not currently followed by the Boston Release Network.
- What do these findings mean?
- Is civil commitment worth it? (the base rate problem)
- Are we misusing our resources?
- Are we committing the appropriate men?
- Does the treatment program at the Massachusetts Treatment Center contribute to these positive findings?
- Will these positive findings persist into the future as more longitudinal data are gathered?
- Are programs such as the Boston Release Network (BRN) a vital part of the solution?

DISCUSS...