HOUSE DOCKET, NO. 3247 FILED ON: 1/18/2013

HOUSE . . . . . No. 1174

The Commonwealth of Massachusetts

PRESENTED BY:

James Arciero

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to the Sex Offender Registry Board .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James Arciero	*2nd Middlesex*
Laurie Myers	*7 Pine Hill Avenue* *Chelmsford, MA 01824*
Marcos A. Devers	*16th Essex*
Stephen L. DiNatale	*3rd Worcester*
Ryan C. Fattman	*18th Worcester*
John V. Fernandes	*10th Worcester*
Thomas A. Golden, Jr.	*16th Middlesex*
Sheila C. Harrington	*1st Middlesex*
Brian A. Joyce	*Norfolk, Bristol and Plymouth*
Shaunna O'Connell	*3rd Bristol*
William Smitty Pignatelli	*4th Berkshire*
Bruce E. Tarr	*First Essex and Middlesex*

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HOUSE . . . . . No. 1174

By Mr. Arciero of Westford, a petition (accompanied by bill, House, No. 1174) of James Arciero and others relative to the Sex Offender Registry Board. The Judiciary.

The Commonwealth of Massachusetts

An Act relative to the Sex Offender Registry Board .

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1 Section 178D, Section 178E, Section 178F, Section 178I, Section 178J, Section 178K, and Section 178M of Chapter 6 of the general laws is amended by striking the existing language and replacing it with the following new language:

Section 178D

The sex offender registry board, known as the board, in cooperation with the department, shall establish and maintain a central computerized registry of all sex offenders required to register pursuant to sections 178C to 178P, inclusive, known as the sex offender registry. The sex offender registry shall be updated based on information made available to the board, including information acquired pursuant to the registration provisions of said sections 178C to 178P, inclusive. The file on each sex offender required to register pursuant to said sections 178C to 178P, inclusive, shall include the following information, hereinafter referred to as registration data:

(a) the sex offender's name, aliases used, date and place of birth, sex, race, height, weight, eye and hair color, social security number, home address, any secondary addresses and work address and, if the sex offender works at or attends an institution of higher learning, the name and address of the institution;

(b) a photograph and set of fingerprints;

(c) a description of the offense for which the sex offender was convicted or adjudicated, the city or town where the offense occurred, the date of conviction or adjudication and the sentence imposed;

(d) any other information which may be useful in assessing the risk of the sex offender to reoffend; and

(e) any other information which may be useful in identifying the sex offender.

Notwithstanding sections 178C to 178P, inclusive, or any other general or special law to the contrary and in addition to any responsibility otherwise imposed upon the board, the board shall

27 make the sex offender information contained in the sex offender registry, delineated below in
28 subsections (i) to (viii), inclusive, available for inspection by the general public in the form of a
29 comprehensive database published on the internet, known as the "sex offender internet
30 database"; Information regarding level 1, 2 and 3 offenders, finally classified will be accessible
31 by the public.
32 (i) the name of the sex offender;
33 (ii) the offender's home address and any secondary addresses;
34 (iii) the offender's work address and business or company name;
35 (iv) the offense for which the offender was convicted or adjudicated and the date of the
36 conviction or adjudication;
37 (v) the sex offender's age, sex, race, height, weight, eye and hair color;
38 (vi) a photograph of the sex offender;
39 (vii) whether the sex offender has been designated a sexually violent predator; and
40 (viii) whether the offender is in compliance with the registration obligations of sections 178C
41 to 178P, inclusive.
42
43 All information provided to the general public through the sex offender internet database shall
44 include a warning regarding the criminal penalties for use of sex offender registry information to
45 commit a crime or to engage in illegal discrimination or harassment of an offender and the
46 punishment for threatening to commit a crime under section 4 of chapter 275. The sex offender
47 internet database shall be updated regularly, based on information available to the board and
48 shall be open to searches by the public at any time without charge or subscription. The board
49 shall promulgate rules and regulations to implement, update and maintain such a sex offender
50 internet database, to ensure the accuracy, integrity and security of information contained therein,
51 to ensure the prompt and complete removal of registration data for persons whose duty to
52 register has terminated or expired under section 178G, 178L or 178M or any other law and to
53 protect against the inaccurate, improper or inadvertent publication of registration data on the
54 internet.
55 The board shall develop standardized registration and verification forms, which shall include
56 registration data as required pursuant to sections 178C to 178P. The board shall make blank
57 copies of such forms available to all agencies having custody of sex offenders and all city and
58 town police departments; provided, however, that the board shall determine the format for the
59 collection and dissemination of registration data, which may include the electronic transmission
60 of data. Records maintained in the sex offender registry shall be open to any law enforcement
61 agency in the commonwealth, the United States or any other state. The board shall promulgate
62 rules and regulations to implement the provisions of sections 178C to 178P, inclusive. Such rules
63 and regulations shall include provisions which may permit police departments located in a city or
64 town that is divided into more than one zip code to disseminate information pursuant to the
65 provisions of section 178J categorized by zip code and to disseminate such information limited
66 to one or more zip codes if the request for such dissemination is so qualified; provided, however,

67 that for the city of Boston dissemination of information may be limited to one or more police
68 districts.
69 The board may promulgate regulations further defining in a manner consistent with
70 maintaining or establishing eligibility for federal funding pursuant to the Jacob Wetterling
71 Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. section
72 14071, the eligibility of sex offenders to be relieved of the obligation to register, including but
73 not limited to, regulations limiting motions under subsection (e) of section 178E, section 178G
74 and relief from registration pursuant to paragraph (d) of subsection (2) of section 178K.
75
76 Section 178E Subsection (c)
77 (c) Any court which enters a conviction for a sex offense or adjudication as a youthful offender
78 or as a delinquent juvenile by reason of a sex offense, but does not impose a sentence of
79 confinement of 90 days or more to be served immediately shall inform the sex offender and
80 require the sex offender to acknowledge, in writing, his duty to register in the commonwealth
81 and in any state where he resides, is employed, carries on a vocation or is a student, to verify
82 registration information and to give notice of change of address or intended change of address
83 within the commonwealth or in another state and the penalties for failure to do so and for giving
84 false registration information, and of his right to submit to the board, according to section 178L,
85 documentary evidence relative to his risk of reoffense, the degree of dangerousness posed to the
86 public and of his duty to register under this section. If such sex offender is a juvenile at the time
87 of such adjudication, the legal guardian or agency having custody of the juvenile and his most
88 recent attorney of record shall also be required to acknowledge, in writing, such information. The
89 court shall cause such sex offender's registration data which, for purposes of this paragraph, shall
90 include identifying factors, anticipated future residence, any anticipated secondary addresses,
91 offense history and documentation of any treatment received for a mental abnormality to be
92 transmitted to the board within five days of sentencing. The board shall promptly transmit the
93 registration data for level 1, 2 and 3 offenders to the police departments in the municipalities
94 where such sex offender intends to live and work and where the offense was committed and to
95 the Federal Bureau of Investigation for internet dissemination on the Dru Sjodin National Sex
96 Offender Registry. A sex offender shall, within two days of receiving such notice or of release
97 from confinement, whichever is later, register by mailing to the board on a form approved by the
98 board and signed under the pains and penalties of perjury, the sex offender's name, date of birth,
99 home address or intended home address, any secondary addresses or intended secondary
100 addresses, work address or intended work address and, if the sex offender is or intends to become
101 a part-time or full-time employee of an institution of higher learning, the name and address of the
102 institution, and, if the sex offender is or intends to become a part-time or full-time student of an
103 institution of higher learning, the name and address of the institution.
104
105 Section 178I
106 Any person who is 18 years of age or older and who states that he is requesting sex offender

107 registry information for his own protection or for the protection of a child under the age of 18 or
108 another person for whom the requesting person has responsibility, care or custody shall receive
109 at no cost from the board a report to the extent available pursuant to sections 178C to 178P,
110 inclusive, which indicates whether an individual identified by name, date of birth or sufficient
111 personal identifying characteristics is a sex offender with an obligation to register pursuant to
112 this chapter, the offenses for which he was convicted or adjudicated and the dates of such
113 convictions or adjudications. Any records of inquiry shall be kept confidential, except that the
114 records may be disseminated to assist or defend in a criminal prosecution.
115 Information on level 1, 2 and 3 offenders shall be made available.
116 All reports to persons making inquiries shall include a warning regarding the criminal penalties
117 for use of sex offender registry information to commit a crime or to engage in illegal
118 discrimination or harassment of an offender and the punishment for threatening to commit a
119 crime under section 4 of chapter 275.
120 The board shall not release information identifying the victim by name, address or relation to
121 the offender.
122
123 Section 178J
124 Section 178J. (a) A person who requests sex offender registry information shall:
125 (1) be 18 years of age or older;
126 (2) appear in person at a city or town police station and present proper identification;
127 (3) require sex offender registry information for his own protection or for the protection of a
128 child under the age of 18 or another person for whom such inquirer has responsibility, care or
129 custody, and so state; and
130 Such records of inquiries shall include a warning regarding the criminal penalties for use of sex
131 offender registry information to commit a crime or to engage in illegal discrimination or
132 harassment of an offender and the punishment for threatening to commit a crime under the
133 provisions of section 4 of chapter 275. Such records of inquiries shall state as follows: "I
134 understand that the sex offender registry information disclosed to me is intended for my own
135 protection or for the protection of a child under the age of 18 or another person for whom I have
136 responsibility, care or custody."
137
138 (b) The person making the inquiry may either:
139 (1) identify a specific individual by name or provide personal identifying information sufficient
140 to allow the police to identify the subject of the inquiry; or
141 (2) inquire whether any sex offenders live, work or attend an institution of higher learning
142 within the same city or town at a specific address including, but not limited to, a residential
143 address, a business address, school, after-school program, child care center, playground,
144 recreational area or other identified address and inquire in another city or town whether any sex
145 offenders live, work or attend an institution of higher learning within that city or town, upon a
146 reasonable showing that the sex offender registry information is requested for his own protection

147 or for the protection of a child under the age of 18 or another person for whom the inquirer has
148 responsibility, care or custody; or
149 (3) inquire whether any sex offenders live, work or attend an institution of higher learning on a
150 specific street within the city or town in which such inquiry is made.
151 (c) If the search of the sex offender registry results in the identification of a sex offender
152 required to register pursuant to this chapter who has been finally classified by the board under
153 section 178K, the police shall disseminate to the person making the inquiry:
154 (1) the name of the sex offender;
155 (2) the home address and any secondary address if located in the areas described in clause (2)
156 or (3) of subsection (b);
157 (3) the work address if located in the areas described in said clause (2) or (3) of said subsection
158 (b);
159 (4) the offense for which he was convicted or adjudicated and the dates of such conviction or
160 adjudication;
161 (5) the sex offender's age, sex, race, height, weight, eye and hair color; and
162 (6) a photograph of the sex offender;
163 (7) the name and address of the institution of higher learning where the sex offender works or
164 is enrolled as a student, if located in the areas described in clause (2) or (3) of subsection (b).
165 The police shall not release information identifying the victim by name, address or the victim's
166 relation to the offender.
167
168 Section 178 K
169 Section 178K. (1) There shall be, in the executive office of public safety and security, a sex
170 offender registry board which shall consist of seven members who shall be appointed by the
171 governor for terms of six years, with the exception of the chairman, and who shall devote their
172 full time during business hours to their official duties. The board shall include one person with
173 experience and knowledge in the field of criminal justice who shall act as chairman; at least two
174 licensed psychologists or psychiatrists with special expertise in the assessment and evaluation of
175 sex offenders and who have knowledge of the forensic mental health system; at least one
176 licensed psychologist or psychiatrist with special expertise in the assessment and evaluation of
177 sex offenders, including juvenile sex offenders and who has knowledge of the forensic mental
178 health system; at least two persons who have at least five years of training and experience in
179 probation, parole or corrections; and at least one person who has expertise or experience with
180 victims of sexual abuse. Members shall be compensated at a reasonable rate subject to approval
181 of the secretary of administration and finance.
182 The chairman shall be appointed by and serve at the pleasure of the governor and shall be the
183 executive and administrative head of the sex offender registry board, shall have the authority and
184 responsibility for directing assignments of members of said board and shall be the appointing and
185 removing authority for members of said board's staff. In the case of the absence or disability of
186 the chairman, the governor may designate one of the members to act as chairman during such

187 absence or disability. The chairman shall, subject to appropriation, establish such staff positions
188 and employ such administrative, research, technical, legal, clerical and other personnel and
189 consultants as may be necessary to perform the duties of said board. Such staff positions shall
190 not be subject to section 9A of chapter 30 or chapter 31.
191 The governor shall fill any vacancy for the unexpired term. As long as there are four sitting
192 members, a vacancy shall not impair the right of the remaining members to exercise the powers
193 of the board.
194 The sex offender registry board shall promulgate guidelines for determining the level of risk of
195 reoffense and the degree of dangerousness posed to the public or for relief from the obligation to
196 register and shall provide for three levels of notification depending on such risk of reoffense and
197 the degree of dangerousness posed to the public; apply the guidelines to assess the risk level of
198 particular offenders; develop guidelines for use by city and town police departments in
199 disseminating sex offender registry information; devise a plan, in cooperation with state and
200 local law enforcement authorities and other appropriate agencies, to locate and verify the current
201 addresses of sex offenders including, subject to appropriation, entering into contracts or
202 interagency agreements for such purposes; and conduct hearings as provided in section 178L.
203 The attorney general and the chief counsel of the committee for public counsel services, or their
204 designees, shall assist in the development of such guidelines. Factors relevant to the risk of
205 reoffense shall include, but not be limited to, the following:
206 (a) criminal history factors indicative of a high risk of reoffense and degree of dangerousness
207 posed to the public, including:
208 (i) whether the sex offender has a mental abnormality;
209 (ii) whether the sex offender's conduct is characterized by repetitive and compulsive behavior;
210 (iii) whether the sex offender was an adult who committed a sex offense on a child;
211 (iv) the age of the sex offender at the time of the commission of the first sex offense;
212 (v) whether the sex offender has been adjudicated to be a sexually dangerous person pursuant
213 to section 14 of chapter 123A or is a person released from civil commitment pursuant to section
214 9 of said chapter 123A; and
215 (vi) whether the sex offender served the maximum term of incarceration;
216 (b) other criminal history factors to be considered in determining risk and degree of
217 dangerousness, including:
218 (i) the relationship between the sex offender and the victim;
219 (ii) whether the offense involved the use of a weapon, violence or infliction of bodily injury;
220 (iii) the number, date and nature of prior offenses;
221 (c) conditions of release that minimize risk of reoffense and degree of dangerousness posed to
222 the public, including whether the sex offender is under probation or parole supervision, whether
223 such sex offender is receiving counseling, therapy or treatment and whether such sex offender is
224 residing in a home situation that provides guidance and supervision, including sex offender-
225 specific treatment in a community-based residential program;
226 (d) physical conditions that minimize risk of reoffense including, but not limited to,

227 debilitating illness;
228 (e) whether the sex offender was a juvenile when he committed the offense, his response to
229 treatment and subsequent criminal history;
230 (f) whether psychological or psychiatric profiles indicate a risk of recidivism;
231 (g) the sex offender's history of alcohol or substance abuse;
232 (h) the sex offender's participation in sex offender treatment and counseling while incarcerated
233 or while on probation or parole and his response to such treatment or counseling;
234 (i) recent behavior, including behavior while incarcerated or while supervised on probation or
235 parole;
236 (j) recent threats against persons or expressions of intent to commit additional offenses;
237 (k) review of any victim impact statement; and
238 (l) review of any materials submitted by the sex offender, his attorney or others on behalf of
239 such offender.
240 (2) The guidelines shall provide for three levels of notification depending on the degree of risk
241 of reoffense and the degree of dangerousness posed to the public by the sex offender or for relief
242 from the obligation to register:
243 (a) Where the board determines that the risk of reoffense is low the board shall transmit the
244 registration data and designation to the police departments in the municipalities where such sex
245 offender lives and works and attends an institution of higher learning or, if in custody, intends to
246 live and work and attend an institution of higher learning upon release and where the offense was
247 committed and to the Federal Bureau of Investigation. The police and the board may release such
248 information identifying such sex offender to the department of correction, any county
249 correctional facility, the department of youth services, the department of children and families,
250 the parole board, the department of probation and the department of mental health, all city and
251 town police departments and the Federal Bureau of Investigation. The public shall have access to
252 the information regarding a level 1 offender in accordance with sections 178D, 178I and 178J.
253 (b) Where the board determines that the risk of reoffense is moderate the board shall transmit
254 the registration data and designation to the police departments in the municipalities where the sex
255 offender lives, has a secondary address and works and attends an institution of higher learning
256 or, if in custody, intends to live and work and attend an institution of higher learning upon
257 release and where the offense was committed and to the Federal Bureau of Investigation. The
258 public shall have access to the information regarding a level 2 offender in accordance with
259 sections 178D, 178I and 178J.
260 The sex offender shall be required to register and to verify registration information pursuant to
261 section 178F1/2.
262 (c) Where the board determines that the risk of reoffense is high and the degree of
263 dangerousness posed to the public is such that a substantial public safety interest is served by
264 active dissemination, it shall give a level 3 designation to the sex offender. In such case, the
265 board shall transmit the registration data and designation to the police departments in the
266 municipalities where the sex offender lives, has a secondary address and works and attends an

267 institution of higher learning or, if in custody, intends to live and work and attend an institution
268 of higher learning upon release and where the offense was committed and to the Federal Bureau
269 of Investigation. A level 3 community notification plan shall require the police department to
270 notify organizations in the community which are likely to encounter such sex offender and
271 individual members of the public who are likely to encounter such sex offender. The sex
272 offender shall be required to register and to verify registration information pursuant to sections
273 178F1/2. Neighboring police districts shall share sex offender registration information of level 3
274 offenders and may inform the residents of their municipality of a sex offender they are likely to
275 encounter who resides in an adjacent city or town. The police or the board shall actively
276 disseminate in such time and manner as such police department or board deems reasonably
277 necessary the following information:
278 (i) the name of the sex offender;
279 (ii) the offender's home address and any secondary address;
280 (iii) the offender's work address;
281 (iv) the offense for which the offender was convicted or adjudicated and the date of the
282 conviction or adjudication;
283 (v) the sex offender's age, sex, race, height, weight, eye and hair color; and
284 (vi) a photograph of the sex offender, provided that such active dissemination may include
285 publication of such information on the internet by the police department at such time and in such
286 manner as the police or the board deem reasonably necessary; and provided further, that the
287 police or the board shall not release information identifying the victim by name, address or
288 relation to the sex offender. All notices to the community shall include a warning regarding the
289 criminal penalties for use of sex offender registry information to commit a crime or to engage in
290 illegal discrimination or harassment of an offender and the punishment for threatening to commit
291 a crime under section 4 of chapter 275.
292 (vii) the name and address of the institution of higher learning that the sex offender is
293 attending.
294 The public shall have access to the information regarding a level 3 offender in accordance with
295 sections 178D, 178I and 178J.
296 If the board, in finally giving an offender a level 3 classification, also concludes that such sex
297 offender should be designated a sexually violent predator, the board shall transmit a report to the
298 sentencing court explaining the board's reasons for so recommending, including specific
299 identification of the sexually violent offense committed by such sex offender and the mental
300 abnormality from which he suffers. The report shall not be subject to judicial review under
301 section 178M. Upon receipt from the board of a report recommending that a sex offender be
302 designated a sexually violent predator, the sentencing court, after giving such sex offender an
303 opportunity to be heard and informing the sex offender of his right to have counsel appointed, if
304 he is deemed to be indigent in accordance with section 2 of chapter 211D, shall determine, by a
305 preponderance of the evidence, whether such sex offender is a sexually violent predator. An
306 attorney employed or retained by the board may make an appearance, subject to section 3 of

307 chapter 12, to defend the board's recommendation. The board shall be notified of the
308 determination. A determination that a sex offender should not be designated a sexually violent
309 predator shall not invalidate such sex offender's classification. Where the sentencing court
310 determines that such sex offender is a sexually violent predator, dissemination of the sexually
311 violent predator's registration data shall be in accordance with a level 3 community notification
312 plan; provided, however, that such dissemination shall include such sex offender's designation as
313 a sexually violent predator.
314 (d) The board may, upon making specific written findings that the circumstances of the offense
315 in conjunction with the offender's criminal history do not indicate a risk of reoffense or a danger
316 to the public and the reasons therefor, relieve such sex offender of any further obligation to
317 register, shall remove such sex offender's registration information from the registry and shall so
318 notify the police departments where said sex offender lives and works or if in custody intends to
319 live and work upon release, and where the offense was committed and the Federal Bureau of
320 Investigation. In making such determination the board shall consider factors, including but not
321 limited to, the presence or absence of any physical harm caused by the offense and whether the
322 offense involved consensual conduct between adults. The burden of proof shall be on the
323 offender to prove he comes within the provisions of this subsection. The provisions of this
324 subsection shall not apply if a sex offender has been determined to be a sexually violent predator;
325 has been convicted of two or more sex offenses defined as sex offenses pursuant to the Jacob
326 Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C.
327 section 14071, committed on different occasions; or has been convicted of a sexually violent
328 offense. The provisions of this subsection shall also not apply if a sex offender has been
329 convicted of a sex offense involving a child or a sexually violent offense, and such offender has
330 not already registered pursuant to this chapter for at least ten years, or if the sex offender is
331 otherwise subject to lifetime or minimum registration requirements as determined by the board
332 pursuant to section 178D.
333 (e) No sex offender classified as a level 3 offender shall knowingly and willingly establish
334 living conditions within, move to, or transfer to any convalescent or nursing home, infirmary
335 maintained in a town, rest home, charitable home for the aged or intermediate care facility for the
336 mentally retarded which meets the requirements of the department of public health under section
337 71 of chapter 111. Any sex offender who violates this paragraph shall, for a first conviction, be
338 punished by imprisonment for not more than 30 days in a jail or house of correction; for a second
339 conviction, be punished by imprisonment for not more than 21/2 years in a jail or house of
340 correction nor more than 5 years in a state prison or by a fine of not more than $1,000, or by both
341 such fine and imprisonment; and for a third and subsequent conviction, be punished by
342 imprisonment in a state prison for not less than 5 years; provided, however, that the sentence
343 imposed for such third or subsequent conviction shall not be reduced to less than 5 years, nor
344 suspended, nor shall any person sentenced herein be eligible for probation, parole, work release
345 or furlough, or receive any deduction from his sentence for good conduct until he shall have
346 served 5 years. Prosecutions commenced hereunder shall neither be continued without a finding

347 nor placed on file.
348 (3) The sex offender registry board shall make a determination regarding the level of risk of
349 reoffense and the degree of dangerousness posed to the public of each sex offender listed in said
350 sex offender registry and shall give immediate priority to those offenders who have been
351 convicted of a sex offense involving a child or convicted or adjudicated as a delinquent juvenile
352 or as a youthful offender by reason of a sexually violent offense or of a sex offense of indecent
353 assault and battery upon a mentally retarded person pursuant to section 13F of chapter 265, and
354 who have not been sentenced to incarceration for at least 90 days, followed, in order of priority,
355 by those sex offenders who (1) have been released from incarceration within the past 12 months,
356 (2) are currently on parole or probation supervision, and (3) are scheduled to be released from
357 incarceration within six months. All agencies shall cooperate in providing files to the sex
358 offender registry board and any information the sex offender registry board deems useful in
359 providing notice under sections 178C to 178P, inclusive, and in assessing the risk of reoffense
360 and the degree of dangerousness posed to the public by the sex offender. All agencies from
361 which registration data, including data within the control of providers under contract to such
362 agencies, is requested by the sex offender registry board shall make such data available to said
363 board immediately upon request. Failure to comply in good faith with such a request within 30
364 days shall be punishable by a fine of not more than $1,000 per day.
365
366
367 Section 178M
368 Section 178M. An offender may seek judicial review, in accordance with section 14 of chapter
369 30A, of the board's final classification and registration requirements. An attorney employed or
370 retained by the board may make an appearance, subject to section 3 of chapter 12, to defend the
371 board's decision. The court shall reach its final decision within 30 days of such sex offender's
372 petition for review. Sex offender information will remain public during the judicial review.
373