HOUSE DOCKET, NO. 3309 FILED ON: 1/18/2013

HOUSE . . . . . No. 1232

The Commonwealth of Massachusetts

PRESENTED BY:

Paul Brodeur and Katherine M. Clark

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 to protect our communities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Paul Brodeur	*32nd Middlesex*
Katherine M. Clark	*Fifth Middlesex*
James R. Miceli	*19th Middlesex*
Thomas M. Stanley	*9th Middlesex*
Michael J. Finn	*6th Hampden*
Chris Walsh	*6th Middlesex*
Timothy R. Madden	*Barnstable, Dukes and Nantucket*
Jason M. Lewis	*31st Middlesex*
Tackey Chan	*2nd Norfolk*
James J. Dwyer	*30th Middlesex*
Danielle W. Gregoire	*4th Middlesex*
Anne M. Gobi	*5th Worcester*
Aaron Vega	*5th Hampden*
Randy Hunt	*5th Barnstable*
John D. Keenan	*7th Essex*
Cory Atkins	*14th Middlesex*
Carolyn C. Dykema	*8th Middlesex*
Lori A. Ehrlich	*8th Essex*

Kimberly N. Ferguson	*1st Worcester*
Denise C. Garlick	*13th Norfolk*
Kate Hogan	*3rd Middlesex*
Tom Sannicandro	*7th Middlesex*
Paul A. Schmid, III	*8th Bristol*
David T. Vieira	*3rd Barnstable*

HOUSE DOCKET, NO. 3309 FILED ON: 1/18/2013

HOUSE . . . . . No. 1232

By Representative Brodeur of Melrose and Senator Clark, a joint petition (accompanied by bill, House, No. 1232) of Paul Brodeur, Katherine M. Clark and others relative to sex offenders and the protection of children. The Judiciary.

The Commonwealth of Massachusetts

An Act to protect our communities.

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 178C of chapter 6 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking the definition of “Secondary addresses” and inserting in place thereof the following definition:-

"Secondary addresses", the addresses of all places where a sex offender lives, abides, lodges, works or resides for a period of 14 or more days in the aggregate during any calendar year and which is not a sex offender's primary address; or a place where a sex offender routinely lives, abides, lodges, works or resides for a period of 4 or more consecutive or nonconsecutive days in any month and which is not a sex offender's permanent address, including any out-of-state address.

SECTION 2. Section 178C of chapter 6 of the General Laws, as most recently amended by section 2 of chapter 178 of the Acts of 2011, is hereby amended by striking the definition of “Sex offense involving a child” and inserting in place thereof the following definition:-

"Sex offense involving a child", an indecent assault and battery on a child under 14 under section 13B of chapter 265; aggravated indecent assault and battery on a child under the age of 14 under section 13B1/2 of said chapter 265; a repeat offense under section 13B3/4 of said chapter 265; rape of a child under 16 with force under section 22A of said chapter 265; aggravated rape of a child under 16 with force under section 22B of said chapter 265; a repeat offense under section 22C of said chapter 265; rape and abuse of a child under section 23 of said chapter 265; aggravated rape and abuse of a child under section 23A of said chapter 265; a repeat offense under section 23B of said chapter 265; assault of a child with intent to commit rape under section 24B of said chapter 265; kidnapping of a child under the age of 16 under section 26 of said chapter 265; enticing a child under the age of 16 for the purposes of committing a

24 crime under section 26C of said chapter 265; enticing a child under 18 via electronic
25 communication to engage in prostitution, human trafficking or commercial sexual activity under
26 section 26D of said chapter 265; trafficking of persons for sexual servitude upon a person under
27 18 years of age under subsection (b) of section 50 of said chapter 265; inducing a minor into
28 prostitution under section 4A of chapter 272; living off or sharing earnings of a minor prostitute
29 under section 4B of said chapter 272; disseminating to a minor matter harmful to a minor under
30 section 28 of said chapter 272; posing or exhibiting a child in a state of nudity under section 29A
31 of said chapter 272; dissemination of visual material of a child in a state of nudity or sexual
32 conduct under section 29B of said chapter 272; possession of child pornography under section
33 29C of chapter 272; unnatural and lascivious acts with a child under 16 under section 35A of
34 said chapter 272; aggravated rape under section 39 of chapter 277; and any attempt to commit a
35 violation of any of the aforementioned sections pursuant to section 6 of chapter 274 or a like
36 violation of the laws of another state, the United States or a military, territorial or Indian tribal
37 authority.

38 SECTION 3. Section 178D of chapter 6 of the General Laws, as appearing in the 2010
39 Official Edition, is hereby amended by striking out the fourth paragraph and inserting in place
40 thereof the following paragraph:-

41 The board shall develop standardized registration and verification forms, which shall
42 include registration data as required pursuant to sections 178C to 178P. The board shall make
43 blank copies of such forms available to all agencies having custody of sex offenders and all city
44 and town police departments; provided, however, that the board shall determine the format for
45 the collection and dissemination of registration data, which may include the electronic
46 transmission of data. Records maintained in the sex offender registry shall be open to any law
47 enforcement agency in the commonwealth, the United States or any other state, as well as the
48 department of youth services, the department of children and families, the department of early
49 education and care, the parole board, the department of probation and the department of mental
50 health. The board shall promulgate rules and regulations to implement the provisions of sections
51 178C to 178P, inclusive. Such rules and regulations shall include provisions which may permit
52 police departments located in a city or town that is divided into more than one zip code to
53 disseminate information pursuant to the provisions of section 178J categorized by zip code and
54 to disseminate such information limited to one or more zip codes if the request for such
55 dissemination is so qualified; provided, however, that for the city of Boston dissemination of
56 information may be limited to one or more police districts.

57 SECTION 4. Section 178E of said chapter 6, as so appearing, is hereby amended by
58 inserting, after the word “inclusive” in subsection (f) the following words:-

59 , but the court may terminate the order of relief based on new information that arises
60 during the pendency of any probationary term imposed on the sex offense, and the order of relief

61 will automatically terminate if the sex offender's probation is revoked and a committed sentence
62 is imposed on the sex offense.

63 SECTION 5. Section 178F of said chapter 6, as so appearing, is hereby amended by
64 striking out, in line 27, the word "subsequent".

65 SECTION 6. Section 178F1/2 of said chapter 6, as so appearing, is hereby amended by
66 striking out, in line 25, the word "subsequent".

67 SECTION 7. Section 178J of said chapter 6, as so appearing, is hereby amended by
68 inserting after subsection (c) the following subsection:-

69 (d) If the search of the sex offender registry conducted pursuant to clause (1) of
70 subsection (b) results in the identification of a sex offender required to register pursuant to this
71 chapter who has yet to be classified or has been finally classified by the board as a level 1
72 offender under section 178K, the police shall disseminate to the person making the inquiry:

73 (1) the name of the sex offender;

74 (2) the sex offender's classification level; and

75 (3) the offense for which he was convicted or adjudicated and the dates of such
76 conviction or adjudication.

77 Information about an offender who has yet to be classified or has been finally classified
78 by the board as a level 1 offender shall not be released pursuant to an inquiry described in
79 clauses (2) and (3) of subsection (b).

80 SECTION 8. Section 178K of said chapter 6, as so appearing, is hereby amended by
81 inserting after clause (l) of subsection (1) the following clause:-

82 (m) conviction of a crime constituting a sex offense involving a child as that term is
83 defined in section 178C shall create a rebuttable presumption of classification no lower than
84 level 2.

85 SECTION 9. Section 178K of said chapter 6, as so appearing, is hereby amended by
86 striking out, in line 91, the word "and".

87 SECTION 10. Section 178K of said chapter 6, as so appearing, is hereby amended by
88 striking out, in line 93, the punctuation mark "." and inserting after the word "offender" the
89 following:-

90 ; and

91 SECTION 11. Subsection (2) of section 178K of said chapter 6, as so appearing, is
92 hereby amended by striking out paragraph (a) and inserting in place thereof the following
93 paragraph:-

94 (a) Where the board determines that the risk of reoffense is low and the degree of
95 dangerousness posed to the public is not such that a public safety interest is served by general
96 public availability of registration information but only upon request pursuant to subsections (a)
97 and (b)(1) of section 178J, it shall give a level 1 designation to the sex offender. In such case, the
98 board shall transmit the registration data and designation to the police departments in the
99 municipalities where such sex offender lives and works and attends an institution of higher
100 learning upon release and where the offense was committed and to the Federal Bureau of
101 Investigation. The public shall have access to the information regarding a level 1 offender in
102 accordance with the provisions of section 178J. The police and board may also release such
103 information identifying such sex offender to the department of correction, any county
104 correctional facility, the department of youth services, the department of children and families,
105 the department of early education and care, the parole board, the department of probation and the
106 department of mental health, all city and town police departments and the Federal Bureau of
107 Investigation.

108 SECTION 12. Section 178K of said chapter 6, as so appearing, is hereby amended by
109 inserting after subsection (3) the following subsections:-

110 (4) The sex offender registry board, in cooperation with the executive office of public
111 safety and security, and with the consultation of the offices of the district attorneys, the
112 department of probation, the department of children and families and the Massachusetts Chiefs
113 of Police Association, shall establish and maintain a system of procedures for the ongoing
114 sharing of information between the board, the offices of the district attorneys, and any
115 department, agency or office of the Commonwealth that reports, investigates or otherwise has
116 access to potentially relevant information, including but not limited to, the department of youth
117 services, the department of children and families, the department of mental health, the
118 department of developmental services, the department of correction, the department of probation,
119 the department of early education and care and the office of the child advocate, of any
120 information that may be relevant to the board's determination or reevaluation of a sex offender's
121 level designation. The board shall promulgate any rules and regulations necessary to establish,
122 update and maintain this system, ensure its comprehensiveness, clarity, and effectiveness, and
123 define what information may be relevant. When sharing information through this system, the
124 offices of the district attorneys shall have discretion to delay sharing information where it is
125 reasonably believed that disclosure would compromise or impede a prosecution.

126 (5) Notwithstanding any general or special law to the contrary, the sex offender registry
127 board shall have access to any information that is determined be relevant to the board's

128 determination or reevaluation of a sex offender's level designation as defined pursuant to
129 subsection (4) of this section through the system of procedures established by that subsection.

130 SECTION 13. Section 178L of said chapter 6, as so appearing, is hereby amended by
131 inserting after subsection (2) the following subsection:-

132 (3) The board may, on its own initiative or upon written request by a police department or
133 district attorney, seek to reclassify any registered and finally classified sex offender in the event
134 that new information that is relevant to a determination of a risk of reoffense or degree of
135 dangerousness is received. The board shall promulgate regulations defining such new
136 information and establishing the procedures relative to a reclassification hearing held for this
137 purpose.

138 SECTION 14. Section 51A of chapter 119 of the General Laws, as most recently
139 amended by section 10 of chapter 178 of the Acts of 2011, is hereby amended by striking the
140 first paragraph of subsection (a) and inserting in place thereof the following paragraph:-

141 (a) A mandated reporter who, in his professional capacity, has reasonable cause to
142 believe that a child is suffering: (i) physical or sexual abuse; (ii) neglect, including malnutrition;
143 (iii) physical dependence upon an addictive drug at birth; (iv) being a sexually exploited child; or
144 (v) being a human trafficking victim as defined by section 20M of chapter 233, shall
145 immediately communicate with the department orally and, within 48 hours, shall file a written
146 report with the department detailing the suspected abuse or neglect.

147 SECTION 15. Section 21 of said chapter 119, as appearing in the 2010 Official Edition,
148 is hereby amended by inserting after the definition of "Mandated reporter" the following
149 definition:-

150 "Neglect", the failure, either deliberately or through negligence or inability, to take those
151 actions necessary to provide a child with minimally adequate food, clothing, shelter, medical
152 care, supervision, emotional stability and growth, or other essential care when there is a duty to
153 do so; provided, however, that such inability is not due solely to inadequate economic resources
154 or the existence of a disabling condition. Actual emotional or physical injury is not required.
155 Neglect also includes exposure to domestic violence, which may include, but is not limited to,
156 conduct where: the alleged perpetrator made threats to kill the domestic partner, child or self and
157 the domestic partner fears for their safety; a child in the home was physically injured in an
158 incident where the domestic partner was the target; the child was coerced to participate in or
159 witness abuse of the domestic partner; or the incident involved the use or threatened use of a
160 weapon and the domestic partner believes the alleged perpetrator intended to or has the ability to
161 cause harm.

162 SECTION 16. Section 21 of said chapter 119, as so appearing, is hereby amended by
163 inserting after the definition of "Parent" the following definition:-

164 “Physical abuse”, a non-accidental act, with or without a weapon, that causes or creates a
165 substantial risk of physical injury to a child, including: death; abusive head trauma; fracture of
166 any bone; any burn; loss or impairment of any organ or limb; addiction to a drug or drugs at
167 birth; failure to thrive; and soft tissue swelling, cuts, or bruising depending on such factors as the
168 child’s age, circumstances under which the injury occurred, and the number and location of the
169 injuries.

170 SECTION 17. Section 21 of said chapter 119, as so appearing, is hereby amended by
171 inserting after the definition of “Serious bodily injury” the following definition:-

172 “Sexual abuse”, any sexual contact between a person and a child in that person’s care or
173 the commission or attempted commission of a sexual offense as defined by section 1 of chapter
174 123A.

175 SECTION 18. Notwithstanding any general or special law to the contrary, there shall be a
176 special commission for the purposes of making an investigation and study relative to the
177 determination of the most reliable protocols for predicting the risk of recidivism of sex offenders
178 and development of a Massachusetts Authorized Risk Assessment Tool for Sexual Offenders,
179 including but not limited to any special assessment tools for juveniles and female offenders. The
180 commission shall consist of: 2 members of the senate, 1 of whom shall be the senate president or
181 a designee who will serve as co-chair; 2 members of the house of representatives, 1 of whom
182 shall be the speaker or a designee who shall serve as co-chair; the chairman of the sex offender
183 registry board or a designee; the commissioner of probation or a designee; the commissioner of
184 mental health or a designee; the secretary of the executive office of public safety and security or
185 designee; the commissioner of the Executive Office of Health and Human Services or designee;
186 and 5 persons to be appointed by the governor, 2 of whom shall have expertise in treatment of
187 sex offenders and knowledge of the research on recidivism of sex offenders, 1 of whom shall
188 have experience in the treatment of juvenile sex offenders, 1 of whom shall be a representative of
189 the Massachusetts District Attorneys Association, and 1 of whom shall be a representative of the
190 Massachusetts Chiefs of Police Association.

191 All appointments shall be made not later than 30 days after the effective date of this Act.
192 The chairpersons shall meet with the commission not later than 60 days after the effective date of
193 this Act.

194 The Commission shall report to the Governor, Senate President, Speaker of the House of
195 Representatives, and the general court no later than 180 days after the effective date of this Act.
196 The commission shall report the result of its investigation and study and any recommended
197 legislative or regulatory action, along with a timeline for implementation.

198 SECTION 19. Section 6 of chapter 15D of the General Laws, as appearing in the 2010
199 Official Edition, is hereby amended by inserting after subsection (e) the following subsection:-

200 (f) The department shall promulgate rules and regulations for the purposes of publishing
201 the licensing history of any its licensees through its website, which shall include defining the
202 extent, nature, and manner of availability of the information to be provided to the public pursuant
203 to this section.