SENATE DOCKET, NO. 1613 FILED ON: 1/18/2013

SENATE . . . . . No. 656

The Commonwealth of Massachusetts

PRESENTED BY:

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:
Katherine M. Clark	*Fifth Middlesex*
Paul Brodeur	*32nd Middlesex*
Donald H. Wong	*9th Essex*
Michael J. Rodrigues	*First Bristol and Plymouth*
Barry R. Finegold	*Second Essex and Middlesex*
Bruce E. Tarr	*First Essex and Middlesex*
Jennifer L. Flanagan	*Worcester and Middlesex*
Eileen M. Donoghue	*First Middlesex*
Anthony W. Petruccelli	*First Suffolk and Middlesex*
Bruce J. Ayers	*1st Norfolk*
Thomas M. Stanley	*9th Middlesex*
Timothy R. Madden	*Barnstable, Dukes and Nantucket*
Robert M. Koczera	*11th Bristol*
Bradley H. Jones, Jr.	*20th Middlesex*
Daniel A. Wolf	*Cape and Islands*
Kenneth J. Donnelly	*Fourth Middlesex*
Sal N. DiDomenico	*Middlesex and Suffolk*
Karen E. Spilka	*Second Middlesex and Norfolk*

Denise Provost	*27th Middlesex*
Jason M. Lewis	*31st Middlesex*
Kay Khan	*11th Middlesex*
Cory Atkins	*14th Middlesex*
Middlesex District Attorney Gerry Leone	*15 Commonwealth Ave.* *Woburn, MA 01801*
Brian A. Joyce	*Norfolk, Bristol and Plymouth*
Linda Campbell	*15th Essex*
Kathleen O'Connor Ives	*First Essex*
Denise Andrews	*2nd Franklin*
Jennifer E. Benson	*37th Middlesex*

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By Ms. Clark, a petition (accompanied by bill, Senate, No. 656) of Katherine M. Clark, Paul Brodeur, Donald H. Wong, Michael J. Rodrigues and other members of the General Court for legislation to protect our communities. 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 crime under section 26C of said chapter 265; enticing a child under 18 via electronic

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

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

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

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

58 , but the court may terminate the order of relief based on new information that arises
59 during the pendency of any probationary term imposed on the sex offense, and the order of relief
60 will automatically terminate if the sex offender’s probation is revoked and a committed sentence
61 is imposed on the sex offense.

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

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

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

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

72 (1) the name of the sex offender;

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

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

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

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

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

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

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

89 ; and

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

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

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

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

125 (5) Notwithstanding any general or special law to the contrary, the sex offender registry
126 board shall have access to any information that is determined be relevant to the board's
127 determination or reevaluation of a sex offender's level designation as defined pursuant to
128 subsection (4) of this section through the system of procedures established by that subsection.

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

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

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

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

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

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

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

163 "Physical abuse", a non-accidental act, with or without a weapon, that causes or creates a
164 substantial risk of physical injury to a child, including: death; abusive head trauma; fracture of
165 any bone; any burn; loss or impairment of any organ or limb; addiction to a drug or drugs at
166 birth; failure to thrive; and soft tissue swelling, cuts, or bruising depending on such factors as the

167 child's age, circumstances under which the injury occurred, and the number and location of the
168 injuries.

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

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

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

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

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

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

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