

HOUSE No. 3628

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to sex offender classification..

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

1 SECTION 1. Section 178L of chapter 6 of the General Laws, as appearing in the 2006
2 official edition, is hereby amended striking paragraph (a) of subsection (1) and inserting in place
3 thereof the following:

4 Not less than 180 days prior to the release or parole of a sex offender from custody or
5 incarceration, the board shall notify the sex offender of his right to submit to the board
6 documentary evidence relative to his risk of reoffending and the degree of dangerousness posed
7 to the public and his duty to register according to the provisions of section 178E. If the sex
8 offender is a juvenile at the time of such notification, notification shall also be mailed to the sex
9 offender’s legal guardian and his most recent attorney of record. Such sex offender may submit
10 such evidence to the board within 21 days of receiving such notice from the board. Upon a
11 reasonable showing, the board may extend the time in which such sex offender may submit such
12 documentary evidence by no more than 30 days. Upon reviewing such evidence, the board shall
13 notify the sex offender within 30 days of the board’s recommended sex offender classification,
14 his duty to register, if any, his right to petition the board to request an evidentiary hearing to

15 challenge such classification and duty, his right to retain counsel to represent him at such hearing
16 and his right to have counsel appointed for him if he is found to be indigent as determined by the
17 board using the standards under chapter 211D; provided, however, that such indigent offender
18 may also apply for and the board may grant payment of fees for an expert witness in any case
19 where the board in its classification proceeding intends to rely on the testimony or report of an
20 expert witness prepared specifically for the purposes of the classification proceeding. If the
21 offender is found to be indigent as determined by the board using the standards under chapter
22 211D, counsel shall be appointed within 10 days. Such sex offender shall petition the board for
23 such hearing within 14 days of receiving such notice. The board shall conduct such hearing
24 within 60 days. The failure timely to petition the board for such hearing shall result in a waiver
25 of such right and the registration requirements, if any, and the board's recommended
26 classification shall become final.

27 SECTION 2. Section 178L of chapter 6 of the General Laws, as appearing in the 2006
28 official edition, is hereby amended striking paragraph (c) of subsection (1) and inserting in place
29 thereof the following:

30 In the case of any sex offender not in custody, upon receiving registration data from the
31 agency, the police department at which the sex offender registered, the sentencing court or by
32 any other means, the board shall promptly notify the sex offender of his right to submit to the
33 board documentary evidence relative to his risk of reoffending and the degree of dangerousness
34 posed to the public and his duty to register, if any, according to the provisions of section 178E.
35 If such sex offender is a juvenile at the time of such notification, notification shall also be mailed
36 to the sex offender's legal guardian and his most recent attorney of record. Such sex offender
37 may submit such evidence to the board within 21 days of receiving such notice from the board.

38 Upon a reasonable showing, the board may extend the time in which such sex offender may
39 submit such documentary evidence. Upon reviewing such evidence, the board shall notify the
40 sex offender within 30 days of the board's recommended sex offender classification, his duty to
41 register, if any, his right to petition the board to request an evidentiary hearing to challenge such
42 classification and duty, his right to retain counsel to represent him at such hearing and his right to
43 have counsel appointed for him if he is found to be indigent as determined by the board using the
44 standards under chapter 211D; provided, however, that such indigent offender may also apply for
45 and the board may grant payment of fees for an expert witness in any case where the board in its
46 classification proceeding intends to rely on the testimony or report of an expert witness prepared
47 specifically for the purposes of the classification proceeding. Such sex offender shall petition the
48 board for such hearing within 14 days of receiving such notice. The board shall conduct such
49 hearing within 60 days. The failure timely to petition the board for such hearing shall result in a
50 waiver of such right and the registration requirements, if any, and the board's recommended
51 classification shall become final.

52 SECTION 3. The provisions of this bill shall be deemed to be retroactive to the fullest
53 extent permitted under the Constitution of the United States and the Declaration of Rights of the
54 Commonwealth of Massachusetts.

55 SECTION 4. The provisions of this bill shall become effective upon passage.

56 SECTION 5. Each section of this Act shall be separable and shall continue in effect if
57 any provision hereof is deemed to be unconstitutional or otherwise ineffective.