

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 adoption of the accompanying bill:

An Act relative to the Sex Offender Registry Board.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>James Arciero</i>	<i>2nd Middlesex</i>	<i>1/18/2013</i>
<i>Laurie Myers</i>	<i>7 Pine Hill Avenue Chelmsford, MA 01824</i>	
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>2/1/2013</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>	<i>1/29/2013</i>
<i>Ryan C. Fattman</i>	<i>18th Worcester</i>	<i>1/30/2013</i>
<i>John V. Fernandes</i>	<i>10th Worcester</i>	<i>1/30/2013</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>	<i>1/30/2013</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>	<i>1/31/2013</i>
<i>Brian A. Joyce</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>2/1/2013</i>
<i>Shaunna O'Connell</i>	<i>3rd Bristol</i>	<i>1/30/2013</i>
<i>William Smitty Pignatelli</i>	<i>4th Berkshire</i>	<i>1/30/2013</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>2/1/2013</i>

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

In the Year Two Thousand Thirteen

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:

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

4 Section 178D

5 The sex offender registry board, known as the board, in cooperation with the department,
6 shall establish and maintain a central computerized registry of all sex offenders required to
7 register pursuant to sections 178C to 178P, inclusive, known as the sex offender registry. The sex
8 offender registry shall be updated based on information made available to the board, including
9 information acquired pursuant to the registration provisions of said sections 178C to 178P,
10 inclusive. The file on each sex offender required to register pursuant to said sections 178C to
11 178P, inclusive, shall include the following information, hereinafter referred to as registration
12 data:

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

17 (b) a photograph and set of fingerprints;

18 (c) a description of the offense for which the sex offender was convicted or adjudicated,
19 the city or town where the offense occurred, the date of conviction or adjudication and the
20 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 make the sex offender information contained in the sex offender registry, delineated below in subsections (i) to (viii), inclusive, available for inspection by the general public in the form of a comprehensive database published on the internet, known as the “sex offender internet database”; Information regarding level 1, 2 and 3 offenders, finally classified will be accessible by the public.

(i) the name of the sex offender;

(ii) the offender’s home address and any secondary addresses;

(iii) the offender’s work address and business or company name;

(iv) the offense for which the offender was convicted or adjudicated and the date of the conviction or adjudication;

(v) the sex offender’s age, sex, race, height, weight, eye and hair color;

(vi) a photograph of the sex offender;

(vii) whether the sex offender has been designated a sexually violent predator; and

(viii) whether the offender is in compliance with the registration obligations of sections 178C to 178P, inclusive.

All information provided to the general public through the sex offender internet database shall include a warning regarding the criminal penalties for use of sex offender registry information to commit a crime or to engage in illegal discrimination or harassment of an offender and the punishment for threatening to commit a crime under section 4 of chapter 275. The sex offender internet database shall be updated regularly, based on information available to the board and shall be open to searches by the public at any time without charge or subscription. The board shall promulgate rules and regulations to implement, update and maintain such a sex offender internet database, to ensure the accuracy, integrity and security of information contained therein, to ensure the prompt and complete removal of registration data for persons whose duty to register has terminated or expired under section 178G, 178L or 178M or any other law and to protect against the inaccurate, improper or inadvertent publication of registration data on the internet.

53 The board shall develop standardized registration and verification forms, which shall
54 include registration data as required pursuant to sections 178C to 178P. The board shall make
55 blank copies of such forms available to all agencies having custody of sex offenders and all city
56 and town police departments; provided, however, that the board shall determine the format for
57 the collection and dissemination of registration data, which may include the electronic
58 transmission of data. Records maintained in the sex offender registry shall be open to any law
59 enforcement agency in the commonwealth, the United States or any other state. The board shall
60 promulgate rules and regulations to implement the provisions of sections 178C to 178P,
61 inclusive. Such rules and regulations shall include provisions which may permit police
62 departments located in a city or town that is divided into more than one zip code to disseminate
63 information pursuant to the provisions of section 178J categorized by zip code and to
64 disseminate such information limited to one or more zip codes if the request for such
65 dissemination is so qualified; provided, however, that for the city of Boston dissemination of
66 information may be limited to one or more police districts.

67 The board may promulgate regulations further defining in a manner consistent with
68 maintaining or establishing eligibility for federal funding pursuant to the Jacob Wetterling
69 Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. section
70 14071, the eligibility of sex offenders to be relieved of the obligation to register, including but
71 not limited to, regulations limiting motions under subsection (e) of section 178E, section 178G
72 and relief from registration pursuant to paragraph (d) of subsection (2) of section 178K.

73 Section 178E Subsection (c)

74 (c) Any court which enters a conviction for a sex offense or adjudication as a youthful
75 offender or as a delinquent juvenile by reason of a sex offense, but does not impose a sentence of
76 confinement of 90 days or more to be served immediately shall inform the sex offender and
77 require the sex offender to acknowledge, in writing, his duty to register in the commonwealth
78 and in any state where he resides, is employed, carries on a vocation or is a student, to verify
79 registration information and to give notice of change of address or intended change of address
80 within the commonwealth or in another state and the penalties for failure to do so and for giving
81 false registration information, and of his right to submit to the board, according to section 178L,
82 documentary evidence relative to his risk of reoffense, the degree of dangerousness posed to the
83 public and of his duty to register under this section. If such sex offender is a juvenile at the time
84 of such adjudication, the legal guardian or agency having custody of the juvenile and his most
85 recent attorney of record shall also be required to acknowledge, in writing, such information. The
86 court shall cause such sex offender's registration data which, for purposes of this paragraph, shall
87 include identifying factors, anticipated future residence, any anticipated secondary addresses,
88 offense history and documentation of any treatment received for a mental abnormality to be
89 transmitted to the board within five days of sentencing. The board shall promptly transmit the
90 registration data for level 1, 2 and 3 offenders to the police departments in the municipalities
91 where such sex offender intends to live and work and where the offense was committed and to

the Federal Bureau of Investigation for internet dissemination on the Dru Sjodin National Sex Offender Registry. A sex offender shall, within two days of receiving such notice or of release from confinement, whichever is later, register by mailing to the board on a form approved by the board and signed under the pains and penalties of perjury, the sex offender's name, date of birth, home address or intended home address, any secondary addresses or intended secondary addresses, work address or intended work address and, if the sex offender is or intends to become a part-time or full-time employee of an institution of higher learning, the name and address of the institution, and, if the sex offender is or intends to become a part-time or full-time student of an institution of higher learning, the name and address of the institution.

Section 178I

Any person who is 18 years of age or older and who states that he is requesting sex offender registry information for his own protection or for the protection of a child under the age of 18 or another person for whom the requesting person has responsibility, care or custody shall receive at no cost from the board a report to the extent available pursuant to sections 178C to 178P, inclusive, which indicates whether an individual identified by name, date of birth or sufficient personal identifying characteristics is a sex offender with an obligation to register pursuant to this chapter, the offenses for which he was convicted or adjudicated and the dates of such convictions or adjudications. Any records of inquiry shall be kept confidential, except that the records may be disseminated to assist or defend in a criminal prosecution.

Information on level 1, 2 and 3 offenders shall be made available.

All reports to persons making inquiries shall include a warning regarding the criminal penalties for use of sex offender registry information to commit a crime or to engage in illegal discrimination or harassment of an offender and the punishment for threatening to commit a crime under section 4 of chapter 275.

The board shall not release information identifying the victim by name, address or relation to the offender.

Section 178J

Section 178J. (a) A person who requests sex offender registry information shall:

(1) be 18 years of age or older;

(2) appear in person at a city or town police station and present proper identification;

(3) require sex offender registry information for his own protection or for the protection of a child under the age of 18 or another person for whom such inquirer has responsibility, care or custody, and so state; and

Such records of inquiries shall include a warning regarding the criminal penalties for use of sex offender registry information to commit a crime or to engage in illegal discrimination or harassment of an offender and the punishment for threatening to commit a crime under the provisions of section 4 of chapter 275. Such records of inquiries shall state as follows: "I understand that the sex offender registry information disclosed to me is intended for my own protection or for the protection of a child under the age of 18 or another person for whom I have responsibility, care or custody."

(b) The person making the inquiry may either:

(1) identify a specific individual by name or provide personal identifying information sufficient to allow the police to identify the subject of the inquiry; or

(2) inquire whether any sex offenders live, work or attend an institution of higher learning within the same city or town at a specific address including, but not limited to, a residential address, a business address, school, after-school program, child care center, playground, recreational area or other identified address and inquire in another city or town whether any sex offenders live, work or attend an institution of higher learning within that city or town, upon a reasonable showing that the sex offender registry information is requested for his own protection or for the protection of a child under the age of 18 or another person for whom the inquirer has responsibility, care or custody; or

(3) inquire whether any sex offenders live, work or attend an institution of higher learning on a specific street within the city or town in which such inquiry is made.

(c) If the search of the sex offender registry results in the identification of a sex offender required to register pursuant to this chapter who has been finally classified by the board under section 178K, the police shall disseminate to the person making the inquiry:

(1) the name of the sex offender;

(2) the home address and any secondary address if located in the areas described in clause (2) or (3) of subsection (b);

(3) the work address if located in the areas described in said clause (2) or (3) of said subsection (b);

(4) the offense for which he was convicted or adjudicated and the dates of such conviction or adjudication;

(5) the sex offender's age, sex, race, height, weight, eye and hair color; and

(6) a photograph of the sex offender;

(7) the name and address of the institution of higher learning where the sex offender works or is enrolled as a student, if located in the areas described in clause (2) or (3) of subsection (b).

The police shall not release information identifying the victim by name, address or the victim's relation to the offender.

Section 178 K

Section 178K. (1) There shall be, in the executive office of public safety and security, a sex offender registry board which shall consist of seven members who shall be appointed by the governor for terms of six years, with the exception of the chairman, and who shall devote their full time during business hours to their official duties. The board shall include one person with experience and knowledge in the field of criminal justice who shall act as chairman; at least two licensed psychologists or psychiatrists with special expertise in the assessment and evaluation of sex offenders and who have knowledge of the forensic mental health system; at least one licensed psychologist or psychiatrist with special expertise in the assessment and evaluation of sex offenders, including juvenile sex offenders and who has knowledge of the forensic mental health system; at least two persons who have at least five years of training and experience in probation, parole or corrections; and at least one person who has expertise or experience with victims of sexual abuse. Members shall be compensated at a reasonable rate subject to approval of the secretary of administration and finance.

The chairman shall be appointed by and serve at the pleasure of the governor and shall be the executive and administrative head of the sex offender registry board, shall have the authority and responsibility for directing assignments of members of said board and shall be the appointing and removing authority for members of said board's staff. In the case of the absence or disability of the chairman, the governor may designate one of the members to act as chairman during such absence or disability. The chairman shall, subject to appropriation, establish such staff positions and employ such administrative, research, technical, legal, clerical and other personnel and consultants as may be necessary to perform the duties of said board. Such staff positions shall not be subject to section 9A of chapter 30 or chapter 31.

The governor shall fill any vacancy for the unexpired term. As long as there are four sitting members, a vacancy shall not impair the right of the remaining members to exercise the powers of the board.

The sex offender registry board shall promulgate guidelines for determining the level of risk of reoffense and the degree of dangerousness posed to the public or for relief from the obligation to register and shall provide for three levels of notification depending on such risk of reoffense and the degree of dangerousness posed to the public; apply the guidelines to assess the risk level of particular offenders; develop guidelines for use by city and town police departments in disseminating sex offender registry information; devise a plan, in cooperation with state and

194 local law enforcement authorities and other appropriate agencies, to locate and verify the current
195 addresses of sex offenders including, subject to appropriation, entering into contracts or
196 interagency agreements for such purposes; and conduct hearings as provided in section 178L.
197 The attorney general and the chief counsel of the committee for public counsel services, or their
198 designees, shall assist in the development of such guidelines. Factors relevant to the risk of
199 reoffense shall include, but not be limited to, the following:

200 (a) criminal history factors indicative of a high risk of reoffense and degree of
201 dangerousness posed to the public, including:

202 (i) whether the sex offender has a mental abnormality;

203 (ii) whether the sex offender's conduct is characterized by repetitive and compulsive
204 behavior;

205 (iii) whether the sex offender was an adult who committed a sex offense on a child;

206 (iv) the age of the sex offender at the time of the commission of the first sex offense;

207 (v) whether the sex offender has been adjudicated to be a sexually dangerous person
208 pursuant to section 14 of chapter 123A or is a person released from civil commitment pursuant to
209 section 9 of said chapter 123A; and

210 (vi) whether the sex offender served the maximum term of incarceration;

211 (b) other criminal history factors to be considered in determining risk and degree of
212 dangerousness, including:

213 (i) the relationship between the sex offender and the victim;

214 (ii) whether the offense involved the use of a weapon, violence or infliction of bodily
215 injury;

216 (iii) the number, date and nature of prior offenses;

217 (c) conditions of release that minimize risk of reoffense and degree of dangerousness
218 posed to the public, including whether the sex offender is under probation or parole supervision,
219 whether such sex offender is receiving counseling, therapy or treatment and whether such sex
220 offender is residing in a home situation that provides guidance and supervision, including sex
221 offender-specific treatment in a community-based residential program;

222 (d) physical conditions that minimize risk of reoffense including, but not limited to,
223 debilitating illness;

224 (e) whether the sex offender was a juvenile when he committed the offense, his response
225 to treatment and subsequent criminal history;

(f) whether psychological or psychiatric profiles indicate a risk of recidivism;

(g) the sex offender's history of alcohol or substance abuse;

(h) the sex offender's participation in sex offender treatment and counseling while incarcerated or while on probation or parole and his response to such treatment or counseling;

(i) recent behavior, including behavior while incarcerated or while supervised on probation or parole;

(j) recent threats against persons or expressions of intent to commit additional offenses;

(k) review of any victim impact statement; and

(l) review of any materials submitted by the sex offender, his attorney or others on behalf of such offender.

(2) The guidelines shall provide for three levels of notification depending on the degree of risk of reoffense and the degree of dangerousness posed to the public by the sex offender or for relief from the obligation to register:

(a) Where the board determines that the risk of reoffense is low the board shall transmit the registration data and designation to the police departments in the municipalities where such sex offender lives and works and attends an institution of higher learning or, if in custody, intends to live and work and attend an institution of higher learning upon release and where the offense was committed and to the Federal Bureau of Investigation. The police and the board may release such information identifying such sex offender to the department of correction, any county correctional facility, the department of youth services, the department of children and families, the parole board, the department of probation and the department of mental health, all city and town police departments and the Federal Bureau of Investigation. The public shall have access to the information regarding a level 1 offender in accordance with sections 178D, 178I and 178J.

(b) Where the board determines that the risk of reoffense is moderate the board shall transmit the registration data and designation to the police departments in the municipalities where the sex offender lives, has a secondary address and works and attends an institution of higher learning or, if in custody, intends to live and work and attend an institution of higher learning upon release and where the offense was committed and to the Federal Bureau of Investigation. The public shall have access to the information regarding a level 2 offender in accordance with sections 178D, 178I and 178J.

The sex offender shall be required to register and to verify registration information pursuant to section 178F1/2.

(c) Where the board determines that the risk of reoffense is high and the degree of dangerousness posed to the public is such that a substantial public safety interest is served by active dissemination, it shall give a level 3 designation to the sex offender. In such case, the board shall transmit the registration data and designation to the police departments in the municipalities where the sex offender lives, has a secondary address and works and attends an institution of higher learning or, if in custody, intends to live and work and attend an institution of higher learning upon release and where the offense was committed and to the Federal Bureau of Investigation. A level 3 community notification plan shall require the police department to notify organizations in the community which are likely to encounter such sex offender and individual members of the public who are likely to encounter such sex offender. The sex offender shall be required to register and to verify registration information pursuant to sections 178F1/2. Neighboring police districts shall share sex offender registration information of level 3 offenders and may inform the residents of their municipality of a sex offender they are likely to encounter who resides in an adjacent city or town. The police or the board shall actively disseminate in such time and manner as such police department or board deems reasonably necessary the following information:

- (i) the name of the sex offender;
- (ii) the offender's home address and any secondary address;
- (iii) the offender's work address;
- (iv) the offense for which the offender was convicted or adjudicated and the date of the conviction or adjudication;
- (v) the sex offender's age, sex, race, height, weight, eye and hair color; and
- (vi) a photograph of the sex offender, provided that such active dissemination may include publication of such information on the internet by the police department at such time and in such manner as the police or the board deem reasonably necessary; and provided further, that the police or the board shall not release information identifying the victim by name, address or relation to the sex offender. All notices to the community shall include a warning regarding the criminal penalties for use of sex offender registry information to commit a crime or to engage in illegal discrimination or harassment of an offender and the punishment for threatening to commit a crime under section 4 of chapter 275.
- (vii) the name and address of the institution of higher learning that the sex offender is attending.

The public shall have access to the information regarding a level 3 offender in accordance with sections 178D, 178I and 178J.

293 If the board, in finally giving an offender a level 3 classification, also concludes that such
294 sex offender should be designated a sexually violent predator, the board shall transmit a report to
295 the sentencing court explaining the board's reasons for so recommending, including specific
296 identification of the sexually violent offense committed by such sex offender and the mental
297 abnormality from which he suffers. The report shall not be subject to judicial review under
298 section 178M. Upon receipt from the board of a report recommending that a sex offender be
299 designated a sexually violent predator, the sentencing court, after giving such sex offender an
300 opportunity to be heard and informing the sex offender of his right to have counsel appointed, if
301 he is deemed to be indigent in accordance with section 2 of chapter 211D, shall determine, by a
302 preponderance of the evidence, whether such sex offender is a sexually violent predator. An
303 attorney employed or retained by the board may make an appearance, subject to section 3 of
304 chapter 12, to defend the board's recommendation. The board shall be notified of the
305 determination. A determination that a sex offender should not be designated a sexually violent
306 predator shall not invalidate such sex offender's classification. Where the sentencing court
307 determines that such sex offender is a sexually violent predator, dissemination of the sexually
308 violent predator's registration data shall be in accordance with a level 3 community notification
309 plan; provided, however, that such dissemination shall include such sex offender's designation as
310 a sexually violent predator.

311 (d) The board may, upon making specific written findings that the circumstances of the
312 offense in conjunction with the offender's criminal history do not indicate a risk of reoffense or a
313 danger to the public and the reasons therefor, relieve such sex offender of any further obligation
314 to register, shall remove such sex offender's registration information from the registry and shall
315 so notify the police departments where said sex offender lives and works or if in custody intends
316 to live and work upon release, and where the offense was committed and the Federal Bureau of
317 Investigation. In making such determination the board shall consider factors, including but not
318 limited to, the presence or absence of any physical harm caused by the offense and whether the
319 offense involved consensual conduct between adults. The burden of proof shall be on the
320 offender to prove he comes within the provisions of this subsection. The provisions of this
321 subsection shall not apply if a sex offender has been determined to be a sexually violent predator;
322 has been convicted of two or more sex offenses defined as sex offenses pursuant to the Jacob
323 Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C.
324 section 14071, committed on different occasions; or has been convicted of a sexually violent
325 offense. The provisions of this subsection shall also not apply if a sex offender has been
326 convicted of a sex offense involving a child or a sexually violent offense, and such offender has
327 not already registered pursuant to this chapter for at least ten years, or if the sex offender is
328 otherwise subject to lifetime or minimum registration requirements as determined by the board
329 pursuant to section 178D.

330 (e) No sex offender classified as a level 3 offender shall knowingly and willingly
331 establish living conditions within, move to, or transfer to any convalescent or nursing home,

infirmaries maintained in a town, rest home, charitable home for the aged or intermediate care facility for the mentally retarded which meets the requirements of the department of public health under section 71 of chapter 111. Any sex offender who violates this paragraph shall, for a first conviction, be punished by imprisonment for not more than 30 days in a jail or house of correction; for a second conviction, be punished by imprisonment for not more than 2 1/2 years in a jail or house of correction nor more than 5 years in a state prison or by a fine of not more than \$1,000, or by both such fine and imprisonment; and for a third and subsequent conviction, be punished by imprisonment in a state prison for not less than 5 years; provided, however, that the sentence imposed for such third or subsequent conviction shall not be reduced to less than 5 years, nor suspended, nor shall any person sentenced herein be eligible for probation, parole, work release or furlough, or receive any deduction from his sentence for good conduct until he shall have served 5 years. Prosecutions commenced hereunder shall neither be continued without a finding nor placed on file.

(3) The sex offender registry board shall make a determination regarding the level of risk of reoffense and the degree of dangerousness posed to the public of each sex offender listed in said sex offender registry and shall give immediate priority to those offenders who have been convicted of a sex offense involving a child or convicted or adjudicated as a delinquent juvenile or as a youthful offender by reason of a sexually violent offense or of a sex offense of indecent assault and battery upon a mentally retarded person pursuant to section 13F of chapter 265, and who have not been sentenced to incarceration for at least 90 days, followed, in order of priority, by those sex offenders who (1) have been released from incarceration within the past 12 months, (2) are currently on parole or probation supervision, and (3) are scheduled to be released from incarceration within six months. All agencies shall cooperate in providing files to the sex offender registry board and any information the sex offender registry board deems useful in providing notice under sections 178C to 178P, inclusive, and in assessing the risk of reoffense and the degree of dangerousness posed to the public by the sex offender. All agencies from which registration data, including data within the control of providers under contract to such agencies, is requested by the sex offender registry board shall make such data available to said board immediately upon request. Failure to comply in good faith with such a request within 30 days shall be punishable by a fine of not more than \$1,000 per day.

Section 178M

Section 178M. An offender may seek judicial review, in accordance with section 14 of chapter 30A, of the board's final classification and registration requirements. An attorney employed or retained by the board may make an appearance, subject to section 3 of chapter 12, to defend the board's decision. The court shall reach its final decision within 30 days of such sex offender's petition for review. Sex offender information will remain public during the judicial review.