

Commission Membership

- Co-Chair William N. Brownsberger, Senate Chair of the Joint Committee on the Judiciary
- Co-Chair Paul Brodeur, State Representative
- Joan B. Lovely, State Senator
- Evandro Carvalho, State Representative
- Deputy Assistant Secretary Robyn Kennedy
- Robert Kinscherff, PhD, JD, William James College, and joint Senior Fellow in Law and Applied Neuroscience (Harvard Law School and Massachusetts General Hospital).
- Larni Levy, Esq., Committee for Public Counsel Services
- Edward J. Dolan, Commissioner, Massachusetts Probation Service
- Nancy Connolly, Psy.D., Program Director, Mentally Ill/Problematic Sexual Behavior, Program of the Department of Mental Health
- Raymond Knight, Ph.D., Gryzmish Professor of Human Relations, Department of Psychology, Brandeis University
- Laurie L. Guidry, Psy.D., President, Center for Integrative Psychological Services, Inc., and President, Massachusetts Association for the Treatment of Sexual Abusers
- Daniel J. Bennett, Secretary of Public Safety and Security
- Maureen Gallagher, Director of Policy, Jane Doe, Inc.
- Kevin Hayden, Chairperson, Sex Offender Registry Board
- District Attorney Marian Ryan, Massachusetts District Attorneys Association

Introduction

I. The Commission's Charge

In the wake of a criminal case involving John Burbine¹, of Wakefield, Massachusetts, the General Court considered legislation to reform certain policies and practices related to the registration and classification by the Sex Offender Registry Board (SORB) of persons convicted of sex offenses in the Commonwealth (or convicted of like offenses in other jurisdictions). As a result, the legislature included within the FY 2014 budget several outside sections reforming the statutes governing the SORB. *See* Acts of 2013, Chapter 38, §§ 7-13, 208. Governor Patrick returned sections 8 and 13 with suggested amendments, which the legislature adopted. *See* Acts of 2013, Chapter 63. As a result, the law now provides for improved communication among agencies with information relevant to sex offender classification²; allows non-conviction investigations and information to be considered by SORB in making classification and reclassification proceedings; requires posting data of individual level 2 offenders on the internet³; enhances registration requirements for level 2

¹ Originally convicted of indecent assault against a child, Burbine was charged with raping and sexually abusing 13 children between 2010 and 2012. Burbine and his wife had been running an unlicensed day care center at the time of his arrest. Burbine was originally classified as a level 2 offender, but the classification was later reduced to level 1. A review of the Burbine matter indicated that Burbine had been investigated by the Department of Children and Families (then DSS) in 2005 and 2009 on suspicion of sexually abusing young boys. At the time, SORB could only consider new criminal convictions when making reclassification decisions.

² Section 10 provides: "The sex offender registry board, in cooperation with the executive office of public safety and security, and with the consultation of the offices of the district attorneys, the department of probation, the department of children and families and the Massachusetts Chiefs of Police Association Incorporated, shall establish and maintain a system of procedures for the ongoing sharing of information that may be relevant to the board's determination or reevaluation of a sex offender's level designation among the board, the offices of the district attorneys and any department, agency or office of the commonwealth that reports, investigates or otherwise has access to potentially relevant information, including, but not limited to, the department of youth services, the department of children and families, the department of mental health, the department of developmental services, the department of correction, the department of probation, the department of early education and care, the department of public health and the office of the child advocate, .

The board shall promulgate any rules or regulations necessary to establish, update and maintain this system including, but not limited to, the frequency of updates, measures to ensure the comprehensiveness, clarity and effectiveness of information, and metrics to determine what information may be relevant. When sharing information through this system, all members shall have discretion to delay sharing information where it is reasonably believed that disclosure would compromise or impede an investigation or prosecution or would cause harm to a victim." It is not clear that the formal system and related rules and regulations have been developed as of the writing of this report.

³ The Massachusetts Supreme Judicial Court has ruled that only individuals classified as level 2 on or after July 13, 2013 shall have their information posted on the internet.

offenders; and requires police officers, district attorneys, and agents and employees of the Executive Office of Health and Human Services to give SORB notice upon receiving information that a sex offender is at risk to reoffend.

The Special Commission to Reduce the Recidivism of Sex Offenders was created in outside section 208 of the FY14 state budget (Chapter 38 of the Acts of 2013). The legislation included direction as to the Commission's charge, membership, and reporting requirements. The complete legislative language can be found below:

There shall be a special commission established pursuant to section 2A of chapter 4 of the General Laws to investigate and study the most reliable protocols for assessing and managing the risk of recidivism of sex offenders. The commission shall develop the Massachusetts authorized risk assessment protocols for sexual offenders including, but not limited to, any special assessment protocols for juveniles, female offenders and persons with developmental, intellectual, psychiatric or other disabilities. The commission shall assess the effectiveness and necessity of sections 178C to 178P, inclusive, of chapter 6 of the General Laws and the guidelines promulgated by the sex offender registry board, pursuant to section 178K of said chapter 6, as those sections relate to: (i) determining a sex offender's risk of re-offense; (ii) degree of dangerousness posed to the public; and (iii) the general public's access to information based upon the offender's risk of re-offense and the degree of dangerousness.

The commission shall consist of: 2 members of the senate, 1 of whom shall serve as co-chair; 2 members of the house of representatives, 1 of whom shall serve as co-chair; the chairman of the sex offender registry board or a designee; the commissioner of probation or a designee; the commissioner of mental health or a designee; the secretary of public safety and security or a designee; the secretary of health and human services or a designee; and 6 persons to be appointed by the governor, 3 of whom shall have expertise in the assessment, treatment and risk management of adult sex offenders and familiarity with the research on recidivism of sex offenders, 1 of whom shall have experience in the assessment, treatment, and risk management of juvenile sex offenders and familiarity with the research on recidivism of juvenile sex offenders, 1 of whom shall be a representative of the Massachusetts District Attorneys Association, and 1 of whom shall be a representative of the committee for public counsel services. The commission shall convene not later than 60 days after the effective date of this act.

The board shall submit a report, detailing the results of its investigation and study, any recommended legislative or regulatory action and a timeline for implementation to the governor, the president of the senate, the speaker of the house of representatives and the clerks of the house of representatives and senate not later than 180 days after the effective date of this act.

The Commission's membership was not fully appointed by the time of the reporting deadline established by the session law. The Commission did approve language to alter the Commission's charge, reporting deadline, and membership, but as of the filing of this report it has not been approved by the legislature.

With regard to the charge, the Commission concluded that it was unable as currently constituted to fulfill the piece of the charge requiring the Commission to "develop the Massachusetts authorized risk assessment protocols for sexual offenders including, but not limited to, any special assessment protocols for juveniles, female offenders and persons with developmental, intellectual, psychiatric or other disabilities." The development of risk assessment protocols is a highly technical project involving large-scale data collection and complex statistical analysis. Only a few members of the Commission had the kind of expertise necessary to undertake such a project. The Commission was not funded by the legislature, and the expert members of the Commission indicated that the development of authorized risk assessment protocols could cost in the millions of dollars. Additionally, for juveniles, there is no good scientific basis for predicting recidivism and

models currently in use in other parts of the country do not account for adults with disabilities. The Commission did engage in extensive discussions relative to the “most reliable protocols for assessing and managing the risk of recidivism of sex offenders,” but a strong difference of opinion emerged among members of the Commission, which is reflected in the separate statements relative to actuarial risk assessment tools appearing toward the end of this report. The Commission did also review the Sex Offender Registry Board’s legislative mandate to level offenders based on their risk of re-offense and degree of dangerousness posed to the public, as well as the public purpose served (and the collateral consequences posed) by the general public’s access to information regarding sex offenders.

II. The Commission’s Process

The Commission convened for the first time on September 16, 2014. It proceeded to meet through May 2016 for a total of 17 meetings, concluding May 9, 2016, first inviting experts, institutions, and agencies in the field to present to the Commission on an area within their expertise, and later developing statements and recommendations. The Commission strove to develop an open process for its meetings and materials, including all agendas, minutes, and materials relevant to the Commission’s work on a website developed for the Commission and interested parties: commissiononsexoffenderrecidivism.com.

The Commission heard presentations relative to supervision of sex offenders by a Parole officer and the Massachusetts Probation Service, the Sex Offender Registry Board, assessments of sex offenders’ risk levels, civil commitment, juvenile sex offenders, sex offender treatment, the Middlesex District Attorney’s Office’s work relative to sexually dangerous persons, the Committee for Public Counsel Services’ and community partners’ identification of collateral consequences of conviction and registration, and sexual violence prevention. Each presenter provided a summary of his or her presentation. These summaries appear, unedited, in the Commission’s report, immediately following this introduction. In this section, a statement provided by the Executive Office of Health and Human Services also appears, which was presented as part of a conversation of the Commission when it considered (but ultimately decided against) including a statement on interagency cooperation as part of its recommendations. These statements and any recommendations contained therein only reflect the views of that presenter; the Commissioners may or may not concur in these statements and recommendations.

The Commission developed a set of statements or recommendations relative to sentencing, collateral consequences, and prevention, which some, but not all Commissioners have joined. Additional statements relative to actuarial risk assessment tools, special populations and data collection, drafted separately by the Sex Offender Registry Board and Commissioners Guidry, Kinscherff, Knight, and Levy, which some Commissioners have chosen to join. These statements and recommendations appear in Part IV of this report. The Commission considered but ultimately chose not to adopt a set of recommendations regarding interagency cooperation.

Each Commissioner was given the opportunity to submit or join a brief final statement. These statements appear at the end of the report.