

## Sex Offender Registry Board's Summary of Its Presentation to the Special Commission to Reduce Sex Offender Recidivism

The presentation of the Sex Offender Registry Board (SORB) provided an overview of its statutory and regulatory mandate and function. The Sex Offender Registry Law (SORL) was first established in the Commonwealth in 1996. Massachusetts was the last state in the U.S. to enact and implement a SORL as required by federal law, the Sex Offender Registry Notification Act (SORNA). To date, Massachusetts still has not yet substantially implemented SORNA. Massachusetts may never be capable of full SORNA compliance because the methodology we employ is so different than SORNA's crime-based preference for offender classification, coupled with limitations based on the Commonwealth's Constitution and related Court rulings. Massachusetts is one of only a few states to provide offenders such a significant and comprehensive degree of individualized analysis and due process. SORB operates under the Executive Office of Public Safety and Security.

### **SORB's Registration and Classification Process**

SORB's primary function is the ongoing management of the registration and classification of approximately 11,500 sex offenders who reside, work, or attend an institution of higher learning across the Commonwealth. SORB must conduct an individualized and comprehensive assessment of an offender's "risk of reoffense and degree of dangerousness to the safety of the public." Offenders in Massachusetts are classified into three levels that determine the extent to which their identities and other limited information are disseminated. By statute:

- Level 1 offenders present a low risk of reoffense and the degree of dangerousness such that a public safety interest is not served by the public's access to any registration information.
- Level 2 offenders present a moderate risk of reoffense and the degree of dangerousness such that a public safety interest is served by public availability of limited registration information.
- Level 3 offenders present a high risk of reoffense and the degree of dangerousness such that a substantial public safety interest is served by public availability of, and active dissemination of, limited registration information.

At the time of our presentation to the Commission in March of 2015 there were 2,653 Level 1 offenders, 6,079 Level 2 offenders and 2,600 Level 3 offenders registered in the Commonwealth. Currently, in November of 2015, there are 2,726 Level 1 offenders, 6,120 Level 2 offenders and 2,642 Level 3 offenders registered in the Commonwealth.

SORB coordinates efforts between various public agencies across all 50 states and U.S. territories in order to compile a complete record of relevant information for all registered offenders to determine their classification level. One of seven governor-appointed board members from multi-disciplinary backgrounds then reviews the record, and based on the application of 24 regulatory factors, arrives at a preliminary classification. The factors are based on a balance of statutory requirements, research regarding sex offender recidivism, and the expertise of the Board. SORB's regulations, promulgated in 2001, are currently being revised.

Any offender who disagrees with the preliminary classification may request a *de novo* administrative hearing. A hearing examiner, with no prior involvement in the case, presides and then arrives at his or her own classification determination. These hearings are conducted at courthouses, correctional institutions, state hospitals, and local police and sheriff's departments across the Commonwealth. The hearings range from document-only proceedings that last less than one hour to hearings with testimony from multiple expert and character witnesses that can last for several days. The offenders are provided legal counsel if indigent, may elect to privately retain counsel, or may choose to represent themselves. The hearings are

also closed to the public. A SORB attorney and the Petitioner both argue their cases and present evidence at the hearing. The presiding hearing examiner will often receive considerably more evidence from both parties than was available at the time of the preliminary classification. After the hearing, the examiner details his or her findings in a written report, determining SORB's final classification by applying the pertinent regulatory factors to the circumstances of the case.

It is important to note that this registration and classification process was designed as a quasi-legal qualitative, not quantitative, analysis, and was not intended to be limited to a clinical assessment of sexual recidivism risk alone. The offender has the right to appeal SORB's final classification to the Superior Court, which often occurs. The Court then makes findings as to whether the hearing examiner arrived at a legally-sound decision substantiated by evidence. Offenders also have the right to have their Superior Court decisions reviewed by the Massachusetts Appeals Court. In 2014, SORB conducted more than 430 classification hearings. Last year, of 40 unpublished Appeals Court rulings, SORB classifications were affirmed in court decisions 32 times, with four classifications vacated and four remanded for further Board action.

SORB recognizes that an offender's risk of reoffense and degree of dangerousness may change over time. SORB's regulations assure that the registration and classification process is fluid, and that the classification status of registered offenders is kept accurate and up-to-date. Offenders may periodically petition to have their classification status reduced due to new circumstances, including unforeseen, debilitating medical conditions. In addition, when new information is received that indicates that the offender may pose a higher risk and degree of dangerousness to the public, his or her classification status may be increased. Reclassifications are subject to an administrative hearing similar to that described above, including a written decision subject to appellate review. Certain offenders terminate from their obligation to register at statutorily delineated time frames.

The governing statute, regulations, and expertise of the Board also account for unique circumstances between cases. For example, there are multiple caveats and exceptions to registering and classifying juvenile sex offenders. Juveniles may be relieved of their registry obligations by the Trial Court before classification. All juvenile cases are preliminarily decided by the board member designated to have expertise with juvenile sex offenders. The duty to register terminates after 20 years, regardless of offense, for all offenders who committed their only sex offenses as juveniles. Similarly, juvenile sex offenders are not subject to the same time constraints regarding relief from their obligation to register as are adult offenders, and certain regulatory factors apply differently or do not apply at all to juvenile offenders.

### **Other SORB Operations and Functions**

The SORB serves and performs numerous other functions across the Commonwealth related to its registry. First, SORB maintains a database aggregating timely updated information to 350 police agencies, state criminal justice supervisory agencies, the FBI and the U.S. Marshals Service on a 24/7 basis. Second, it provides more than 10,000 address and name checks monthly for all licensed child care facilities, as well as tens of thousands of SORI (Sex Offender Registry Information) checks monthly to schools, youth organizations, day care centers, and other human services agencies in both Massachusetts and out of state. SORB also maintains more than 9,380 victims and their parents on file, who use provided information in their safety planning, who submit Victim Impact statements to aid in the classification process, and whom are apprised as cases move through our system. Lastly, SORB maintains a website to provide citizens daily updated information on active registered sex offenders as the law provides. SORB also provides regular trainings to human service agencies and law enforcement, and attends community meetings hosted within cities and towns across the Commonwealth.

SORB does not arrest, sentence, incarcerate, or impose probation or parole supervisory conditions or restrictions on offenders. SORB does not control where registered offenders live or work, or with whom

they interact. We neither develop nor enforce any local jurisdictional ordinances or by-laws seeking to regulate sex offenders.

## **Conclusion**

In abiding with the Sex Offender Registry Law, SORB strives to balance the rights of the individual registered offenders with legitimate concerns regarding public safety. SORB is often misunderstood and misrepresented as an Agency whose sole mission is to reduce recidivism. In fact, SORB is designed as informative tool for the general public, law enforcement and crime victims, to reduce the opportunity for further victimization through the dissemination of limited, pertinent information about offenders.

The Supreme Judicial Court has repeatedly upheld our classification methodology. While in recent years the SJC has commented on the need for SORB to update its risk factors, it has never suggested a wholesale overhaul to the system and process by which classification is performed. *See, e.g., Doe v. Sex Offender Registry Board, No. 3844, 447 Mass. 768, 777 (2006)* (“Although there may be other possible methodologies used to determine the risk of reoffense by offenders and the use of such alternatives may not pose additional fiscal or administrative burdens, the Legislature mandated the Board to designate and implement a specific, detailed methodology to be used in deciding offender classifications in this jurisdiction pursuant to G.L. c. 6, ss. 178C-178O . . . The regulations ensure adequate procedural safeguards and do not violate constitutional due process. Thus, because both the initial and final classification conformed to the regulations and guidelines properly promulgated by the board pursuant to G. L. c. 6, § 178K, presumptive or quantitative analysis in the decision-making process to identify the appropriate classification was not required.”).

Recently, SORB’s regulatory factors have been comprehensively updated to reflect accurately the current state of scientific knowledge on sex offender recidivism. SORB’s revised regulations are currently in the promulgation process. Modifying the SORB classification process to become a more clinical assessment that utilizes minimally applicable tools that only moderately predict recidivism, and do not account for the high number of sex crimes that go unreported, would undercut SORB’s critical mission to promote public safety.