

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH COUNTY

SUPREME JUDICIAL COURT
NO. SJC-13212

COMMONWEALTH,
Appellee

VS.

TIMOTHY M. RODERICK,
Appellant

ON APPEAL FROM JUDGMENT OF
THE PLYMOUTH COUNTY SUPERIOR COURT

BRIEF FOR THE COMMONWEALTH

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ISSUE PRESENTED

I. Whether GPS monitoring of the defendant was a reasonable condition of his probation in light of the goals of probation, the Commonwealth's reasons for imposing the condition and the defendant's circumstances?

STATEMENT OF THE CASE

On February 15, 2017, the defendant was arraigned in the Plymouth County Superior Court on indictments charging him with two counts of rape under G.L. c. 265, § 22(b), and three counts of indecent assault and battery on a person 14 years of age or older under G.L. c. 265, § 13H. (R3-10)¹. At arraignment, the defendant was ordered to stay away from and have no contact with the victim in the case. (R10).

The defendant was tried by a jury before the Honorable Locke, J., beginning on September 17, 2018.

¹ Citation to the defendant's brief will appear as "Def.Br.", the defendant's record appendix will appear as "R", the transcript of the first day of trial proceedings will appear as "I", the transcript of the second day of trial proceedings will appear as "II", the transcript of the third day of trial proceedings will appear as "III", the transcript of the hearing on the defendant's motion to vacate GPS monitoring as a condition of his probation will appear as "MOH", Volume I of the Commonwealth's record appendix will appear as "CR" and Volume II of the Commonwealth's record appendix will appear as "CR2-".

(R12). On September 18, 2018, Judge Locke granted the defendant's motion for required findings of not guilty as to the charges of indecent assault and battery.

(R13). The jury rendered verdicts of guilty as to both charges of rape on September 19, 2018. (R13).

Following recommendations by the parties, and the victim's impact statement, Judge Locke sentenced the defendant on September 19, 2018. (R13). With respect to the first count of rape, the defendant was sentenced to incarceration in state prison for four years to four years and a day. (R13). With respect to the second count of rape, the defendant was given three years of probation with conditions that he stay away from and have no contact with the victim, abide by exclusionary zones of at least a 1/2 mile away from the victim's residence and place of work, wear GPS, register as a sex offender and comply with all conditions of the Sex Offender Registry Board. (R13; CR2-3)². Judge Locke ordered the probationary period to begin upon the defendant's release from incarceration. (R13; CR2-3).

The defendant appealed from his convictions to

² The Commonwealth is filing herewith a motion to expand the record to include CR2-3.

the Appeals Court. His case entered the Appeals Court on March 18, 2019 and the Appeals Court affirmed his convictions on May 6, 2020. (R14; Appeals Court No. 2019-P-0402).

Thereafter, on June 2, 2021, the defendant filed a motion to vacate GPS monitoring as a condition of his probation. (R14). The Commonwealth filed an opposition to the defendant's motion, and Judge Locke held a hearing on the issue on June 14, 2021. (R14-15). That same day, Judge Locke reconsidered the condition of GPS monitoring "pursuant to Comm v. Feliz" and denied the defendant's motion with a provision that the defendant may move upon successful compliance to vacate the condition of GPS after eighteen months. (R15).

The defendant filed a notice of appeal from Judge Locke's denial of his motion to vacate the condition of GPS on July 6, 2021. (R15). The appeal entered the Appeals Court on October 14, 2021. (R15). Upon this Court's allowance of the defendant's application for direct appellate review, the defendant's appeal was transferred to this Court on November 23, 2021. (R15).

STATEMENT OF THE FACTS

The Evidence at Trial:

In 2016, Clara Bowler³ was homeless. (II,36). She lived in a tent in Connecticut, but travelled weekly between Connecticut and Massachusetts to see her children. (II,34-36).⁴ Beginning in May of 2016, she began staying with the defendant at his sister's house in Wareham when she was in Massachusetts. (II,36,41). She was friends with the defendant and she trusted him. (II,36). Ms. Bowler slept in the living room at the house and, because she tried to stay out of the sister's way, in the defendant's bedroom as well. (II,41). When in the defendant's bedroom, she slept in a chair or on the floor rather than in the defendant's bed because sleeping in his bed would have crossed the lines of their friendship. (II,41-42).

Because of her struggles with anxiety and panic attacks, Ms. Bowler was prescribed Klonopin at the time, which regulated her breathing, slowed her heart rate and made it easier for her to deal with her anxiety. (II,38-39). The defendant knew she was

³ A pseudonym. See G.L. c. 265, § 24C.

⁴ Ms. Bowler's children were in the care of her sister-in-law in Falmouth, Massachusetts and Ms. Bowler was taking steps to "get back with them". (II,34,56).

prescribed klonopin. (II,38).

During multiple conversations leading up to June of 2016, Ms. Bowler had made it clear to the defendant that she did not want their relationship to be anything more than a friendship. (II,39-41).⁵ According to Ms. Bowler, they never engaged in any type of sexual conduct and she never expressed to the defendant that she wanted to have sexual intercourse with him. (II,54).

As of June 2, 2016, Ms. Bowler had been staying with her friend Bob Williams at his home in Wareham for a couple of days. (II,43-44). She and Mr. Williams had pizza at Minerva's in Wareham and then walked to Stevie B's, which was a sports bar in Onset. (II,44). The defendant came upon Mr. Williams and Ms. Bowler during their walk and ended up joining them at the bar. (II,44-45). Despite having taken Klonopin that day, Ms. Bowler drank three beers at the bar. (II,45). After learning Mr. Williams had left the bar, Ms. Bowler went to the defendant's sister's house at the defendant's suggestion. (II,46).

Ms. Bowler did not remember the car ride from the

bar to the house. (II,49). Her recollection of being in the house that night was "vague". (II,49). She remembered carrying a green apple to the defendant's bedroom and putting on one of the defendant's shirts that she used as a nightshirt. (II,46-51). She could not recall whether she had to unbutton the shirt or just slipped it over her head to put it on. (II,47-48). She laid down alone on the defendant's bedroom floor and, as she fell asleep, the defendant was on the other side of the bedroom, sitting on his bed. (II,46-51).

Ms. Bowler found herself on the floor underneath a black comforter, and with half of the apple beside her, when she awoke the following morning. (II,48,51). The defendant was standing in the middle of the room. (II,51). Once he realized she had woken up, he told her "I just want to let you know that I had sex with your body last night." (II,51).

Ms. Bowler ran downstairs to the bathroom and, on her way, she felt and smelled "semen dripping out of [her vaginal]". (II,51-52). Then she called a friend, pulled her clothes from the washing machine, dressed

⁵ For example, the defendant asked Ms. Bowler "[s]o, are we going to fuck, or what?" and she answered

herself in those damp clothes, argued with the defendant and walked to Tobey Hospital. (II,52-53). At the hospital, genital swabs were taken from Ms. Bowler, which showed the presence of male sperm. (II,80).⁶ After she left the hospital, Ms. Bowler went to Mr. Williams' house. (II,53).

Later that morning, the defendant walked into the Wareham Police Station and told the police officer at the front desk that he wanted to speak with an officer regarding a report that would potentially be filed by his girlfriend. (II,25-27). He claimed Ms. Bowler was his girlfriend, and informed the officer that she would be coming in to say that he had raped her. (II,27-28). The defendant also provided the officer with a written statement and presented a photograph of a "mark" on his shoulder. (II,28-29; CR3). The defendant did not, however, expose his shoulder for observation by the officer and the officer did not see any injury to the defendant's body. (II,29-30,34). The defendant admitted that, if Ms. Bowler were to file a report, then the police would find DNA inside of her because she and the defendant had sexual

"[n]o, we're not." (II,53-54).

intercourse. (II,29-30). He asserted that Ms. Bowler had forgotten what had happened and that, when he refreshed her memory, she became angry. (II,30).

In his written statement, the defendant claimed:

Ok I have a problem with a girlfriend. Her name is [] I have been helping her and we have slept together on 4 diferrent times now. Last night she had a very bad night. She was very drunk we were kicked out of Steve E B's last night by 9:30. Steve asked me to get her out of there cus he was thinking she was going to mess with the guys bikes. I and he tried to get her to sit. She would not chill so I got her out of there...

Got her to the house and we in my opinion made love, but she did not remember it happening so I told her and she feels I rapped her. I would neverdo any thing like that to any woman! She was drunk but awake the bite on my left sholder is proff.

(CR3).

The defendant also called the same police station and spoke to a detective that day. (II,1,67-69).

According to the defendant during that phone call, he met Ms. Bowler in February of 2016 and let her stay with him at his sister's house towards the end of that month. (II,70). He informed the detective that he had sexual intercourse with her then. (II,70). Ms. Bowler moved out, but the defendant let her stay with

⁶ The sample of DNA was not suitable for further

him again in early or mid-May when she returned to the house intoxicated. (II,70). The defendant admitted that, on the first night Ms. Bowler stayed with him this time, he asked her whether he could lay down with her and that she told him she preferred he not do so. (II,73). The defendant explained that he rubbed her back until she passed out, and he claimed to the detective that he "didn't even cross the line", "didn't even put his hands down her pants" and "just laid her down." (II,73). The defendant also told the detective that on three other nights he "didn't even put his dick in her, but he masturbated her with his hand" by "touching her nipples, her vagina, and her butt hole." (II,74). When asked whether Ms. Bowler was aware of this, the defendant responded "[s]he had to have been because she was moaning." (II,74).

The defendant also admitted to seeing Ms. Bowler walking with Mr. Williams and driving them to Stevie B's on June 2, 2016. (II,71). He claimed that he stayed at the bar with them because Ms. Bowler was "very intoxicated" and he did not trust Mr. Williams. (II,71). Because he was concerned she would knock over motorcycles parked outside the bar or do

comparison. (II,80).

something else, he took her home. (II,71). On the way home, the defendant purchased nips and Ms. Bowler threw up in his motor vehicle. (II,71-72).

When they arrived at his home, the defendant cleaned Ms. Bowler up outside before he brought her inside the house. (II,70,72). He told the detective that he and Ms. Bowler showered together, went to bed together, had sexual intercourse and then, over coffee the following morning, he said to her "I fucked you twice last night". (II,72). When the detective asked why he had to tell her that if she was present for it and would have known that happened, the defendant responded that "[s]ometimes she's there and she isn't there." (II,73).

The defendant's sister testified, as a defense witness, that Ms. Bowler was drunk, but in a good mood and not falling down, when she and the defendant arrived at her house on June 2, 2016. (II,91-97).

Sentencing Hearing:

Following the jury's verdicts of guilty, Ms. Bowler provided an impact statement, in which she reiterated that she had repeatedly expressed to the defendant that she was not interested in being more than platonic friends. (III,41). She also informed

the trial judge that, because of the defendant's actions, she had trouble trusting even people she had known for years because if "a so called 'friend' could do that, what [are] complete strangers [] capable of"? (III,42). She questioned whether she was naïve and too trusting. (III,42).

In imposing probation as one of the defendant's sentences, the trial judge stated:

First, the defendant is to be subject to GPS monitoring that's required by statute for a sex offense conviction. The Probation Department is to establish exclusion zones within, why don't we say half a mile of the victim's then residence or place of employment. The defendant is ordered, as a condition of probation, to stay away from and have no contact direct or indirect with [Ms. Bowler], the named victim in this case. The defendant is also required by law and as a condition of his probation to register with and comply with all regulations of the state Sex Offender Registration Board.

(III,45).

Hearing on Defendant's Motion to Vacate GPS Monitoring as a Condition of his Probation:

At the hearing on the defendant's motion to vacate the order of GPS monitoring, the trial judge made a new, independent determination that GPS monitoring for eighteen (18) months was a reasonable condition of probation in the defendant's

circumstances. (MOH,7,8).⁷ At this time, because the judge understood that "statutory application o[f] the GPS requirement, without more, is unconstitutional as applied", he considered the evidence at trial, his earlier imposition of exclusion zones to be monitored by GPS and to enforce his other orders that the defendant stay away from and have no contact with Ms. Bowler, the Sex Offender Registry Board (SORB)'s conclusion that the defendant presented a moderate risk of re-offense and SORB's classification of him as a Level II Sex Offender. (MOH,7,9).

The judge reasoned the defendant's crimes involved penetration and the defendant's commission of those crimes while Ms. Bowler was unconscious presented a significant risk of harm to individuals. (MOH,7). The judge found the condition of GPS monitoring was necessary as a means to ensure the defendant's compliance with the exclusion zones already in effect and that the defendant not contact and stay away from Ms. Bowler's residence and

⁷ The judge stated that if the defendant successfully performed probation for eighteen months, with no violations of the stay away, no contact and exclusion zone orders, then the lower court would consider vacating the GPS condition upon motion of the defendant. (MOH,8).

workplace. (MOH,8).

In response to an inquiry by the judge, the Commonwealth represented that it did not know Ms. Bowler's current home address at that time. (MOH,6-7). Because of the uncertainty regarding Ms. Bowler's exact home address, the defendant requested permission to file a motion for reconsideration of the judge's imposition of GPS monitoring if a meaningful exclusion zone around Ms. Bowler's home address could not be established. (MOH,8-9). The judge ordered the Commonwealth to make efforts to obtain Ms. Bowler's home address and to report that address to the Probation Department. (MOH,9). The victim's home address was obtained and the exclusion zone of a 1/2 mile around that address was entered into the ELMO system by the time of the defendant's release from incarceration. (CR2-4; R18; MOH,3,9)⁸. The defendant did not file said motion for reconsideration.

ARGUMENT

- I. GPS MONITORING, IN THE DEFENDANT'S CIRCUMSTANCES, FURTHERS THE PROBATIONARY GOALS OF PROTECTION OF THE VICTIM AND PUBLIC AND REHABILITATION AND

⁸ In an accompanying motion, the Commonwealth seeks to expand the record to include the Massachusetts Probation Service Electronic Monitoring Zone form and Superior Court Department Order of Probation Conditions form.

INCAPACITATION OF THE DEFENDANT WHILE ALLOWING
THE DEFENDANT TO REHABILITATE OUTSIDE OF AN
INCARCERATED SETTING.

The defendant challenges the constitutionality of the GPS monitoring condition of his probation, which this Court reviews de novo. (Def.Br.13). See Commonwealth v. Feliz, 481 Mass. 689, 696 (2019) (citing Commonwealth v. McGhee, 472 Mass. 405, 412 (2015)).

In making an individualized determination that imposition of GPS monitoring under G.L. c. 265, § 47, was reasonable, the trial judge appropriately relied on the facts underlying the defendant's convictions. (MOH,7-8). See Commonwealth v. Lapointe, 435 Mass. 455, 459-460 (2001) (acknowledging "[t]he propriety of any given probation condition depends heavily on the facts of the case before the court"). Those facts involved the defendant's rape of a helpless victim who was a friend of his. Contrast Feliz, 481 Mass. at 690, 705 (non-contact sex offenses of possession and distribution of child pornography). Unlike in Feliz, Ms. Bowler was geographically proximate to the defendant and an exclusion zone of a 1/2 mile around her home address was entered into the ELMO system and capable of generating real-time alerts for real-time

monitoring by the time of the defendant's release from incarceration. (MOH,7; R13; II,51-52,80; CR2-4). See id. at 692, 705.

The Commonwealth met its burden of proving the reasonableness of GPS monitoring in the defendant's circumstances where the protection such monitoring afforded to the safety, security and well-being of Ms. Bowler and the rest of the public, as demonstrated by the facts underlying the defendant's convictions, outweighed the intrusion into the defendant's already diminished expectation of privacy as a probationer and Level II Sex Offender. (MOH,4-6). Feliz, 481 Mass. at 690-691, 696; Commonwealth v. Antobenedetto, 366 Mass. 51, 57 (1974). As applied to the defendant, GPS monitoring for eighteen months as a condition of his probation was constitutional. (MOH,3-9; R18-19). See Feliz, 481 Mass. at 690-691, 701, 705.

A. IMPOSITION OF GPS MONITORING TO ENSURE THE DEFENDANT'S COMPLIANCE WITH OTHER VALID CONDITIONS OF HIS PROBATION, WHICH INCLUDED ORDERS THAT HE STAY AWAY FROM MS. BOWLER, HAVE NO CONTACT WITH MS. BOWLER AND STAY OUT OF A DESIGNATED AREA AROUND MS. BOWLER'S HOME, WAS REASONABLY RELATED TO THE PROBATIONARY GOALS OF PROTECTION OF THE PUBLIC AND REHABILITATION OF THE DEFENDANT, AND THEREFORE CONSTITUTIONAL.

"The reasonableness of a search is assessed under the 'totality of circumstances, including the nature

and purpose of the search and the extent to which the search intrudes upon reasonable privacy expectations.’” Feliz, 481 Mass. at 699. The defendant, convicted of rape and on probation, has a diminished expectation of privacy. Id. at 700. In the context of GPS as a condition of probation, the probationary purposes for which such monitoring was imposed are relevant to the reasonableness assessment. Commonwealth v. Johnson, 481 Mass. 710, 719 (2019).

Having sentenced the defendant to probation for rape, a contact sex offense involving a victim (Ms. Bowler), protection of Ms. Bowler’s sense of safety, security and well-being as well as rehabilitation of the defendant were rightfully at the center of the judge’s consideration in fashioning appropriate probationary conditions. (MOH, 6, 7-8, 9). See Commonwealth v. Goodwin, 458 Mass. 11, 15 (2010). Accord Commonwealth v. Power, 420 Mass. 410, 414 (1995) (noting primary goals of probation are rehabilitation of defendant and protection of public). It goes without saying that protection of Ms. Bowler’s well-being, security and safety, and society’s well-being, security and safety in general, was a valid goal of probation.

The well-being, of a victim, who has been harmed by the defendant's crime(s), is a sentencing consideration separate and apart from the issue of whether the defendant will reoffend or recidivate, and protection of that societal goal should not depend on evidence that a defendant will reoffend or recidivate. See G.L. c. 258B, § 3 (providing victims with rights "to the greatest extent possible"). That a victim has the right to be heard through an impact statement at sentencing about the effect(s) of the crime(s) on her and as to the recommended sentence shows the importance of a victim's well-being in sentencing. G.L. c. 258B, § 3(p). Moreover, the protection from harm and threats of harm arising out of her cooperation with law enforcement and prosecution efforts, the copy of a court order setting forth conditions of probation and the notification by custodial authority whenever a defendant receives a release from custody, is moved from a secure to a less secure facility and escapes from custody that a victim is to receive emphasize the justice system's responsibility to keep victims safe. G.L. c. 258B, §§ 3(d), 3(q), 3(t).

Sexual assault involving penetration has been

shown to cause increased psychological harm to the victim. 803 CMR 1.33(19)(a). The judge's orders that the defendant stay away from, have no contact with and stay out of a 1/2 mile zone around the home of Ms. Bowler were rationally related to those goals of "encouraging the defendant's acceptance of responsibility for the crime and protecting the victim, as a member of the public, from further harm, whether emotional, physical, [etc.] at the hands of the defendant." Commonwealth v. Pereira, 93 Mass. App. Ct. 146, 153 (2018). Where retribution and punishment are valid goals of probation, a victim of a contact offense should not have to bear a risk that her attacker will violate an order to stay away from her or reoffend against her while the offender is allowed to rehabilitate outside of an incarcerated setting. See Commonwealth v. Cory, 454 Mass. 559, 567 (2009).

As a tool that enforces the valid stay away, no contact and exclusion zone conditions of the defendant's probation, GPS monitoring aids in the reestablishment and protection of Ms. Bowler's sense of safety, security and well-being. (III,41-42; MOH,6). See generally, Commonwealth v. McGonagle, 478

Mass. 675, 677-678 & n.3 (2018) (permitting consideration of victim impact statement for sentencing purposes). Further, this Court has recognized that rape victims should not be traumatized by having to testify in probation surrender hearings. Commonwealth v. Hartfield, 474 Mass. 474, 481 (2016); Commonwealth v. Durling, 407 Mass. 108, 117 n.4 (1990). The evidence of any violation of the GPS exclusion zone would be data produced by the Probation Department and not by having to call Ms. Bowler and re-traumatize her in court by again seeing and testifying against her rapist. Even though GPS monitoring affected the defendant's already diminished right to privacy, it is a valid condition because it was "'reasonably related' to the goals of sentencing and probation." See Commonwealth v. Eldred, 480 Mass. 90, 96 (2018). Accord Power, 420 Mass. at 414-415.

B. NOTWITHSTANDING THE ABOVE, THE EVIDENCE UNDERLYING THE DEFENDANT'S CONVICTIONS DEMONSTRATED THE RISK THAT HE WOULD VIOLATE THE STAY AWAY, NO CONTACT AND EXCLUSION ZONE CONDITIONS OF HIS PROBATION SUCH THAT GPS MONITORING WOULD SERVE ADDITIONAL GOALS OF INCAPACITATION AND DETERRENCE.

Additionally, the evidence at trial that the defendant decided to twice have sexual intercourse with Ms. Bowler, after she had repeatedly and clearly

informed him of her desire to remain only friends and while he knew she was unable to protect herself from him, demonstrated the defendant's risk of violating a condition of his probation. See State v. Kane, 204 Vt. 462, 474-477 (2017) (finding GPS condition reasonable where probationer had removed her son from legal guardian and transported him across state lines, and probation conditions required her to stay away from son's school and residence).

Incapacitation of a probationer is a permissible objective of criminal sentencing. Commonwealth v. Guzman, 469 Mass. 492, 499 (2014). GPS monitoring furthers the Commonwealth's interest in protecting the safety and well-being of Ms. Bowler by triggering a real-time alert of an entry by the defendant into the established exclusion zone such that violations by the defendant of the stay away and no contact orders could be prevented. (CR2-3, CR2-4). Contrast Feliz, 481 Mass. at 705. The facts of the defendant's underlying offenses, which were that he raped Ms. Bowler while she was asleep and alone, is all the more reason GPS monitoring and alerts upon entry into the 1/2 mile distance from her home are needed to ensure her safety and well-being. GPS monitoring is needed, for

example, to restore her sense of security when she goes to sleep at night.

Moreover, the defendant's decision to report his sexual penetration of Ms. Bowler to police, but claim it was consensual, evidenced a belief on the defendant's part that he could avoid punishment for acts he knew were wrong. That evidence suggested the deterrence which would come from the defendant knowing the Probation Department would discover an attempt by him to approach Ms. Bowler at or within 1/2 mile of her home furthered the Commonwealth's interest in both incapacitating and rehabilitating the defendant.

C. ALTHOUGH THE COMMONWEALTH NEED NOT SHOW A RISK OF RECIDIVATING FOR THE GPS CONDITION OF THE DEFENDANT'S PROBATION TO BE REASONABLE IN THE CIRCUMSTANCES OF THIS CASE, THE DEFENDANT'S MODERATE RISK OF REOFFENSE AND THE CONCOMITTANT DEGREE OF DANGER HE POSED PROVIDED ADDITIONAL SUPPORT FOR IMPOSITION OF SUCH MONITORING.

The defendant's risk of recidivating and, significantly, the danger he posed in the event of re-offense further supported the Commonwealth's particularized needs for GPS monitoring as a means to enforce the exclusion zone and stay away order established for the protection of Ms. Bowler and to deter the defendant from crimes he might otherwise be tempted to commit against the rest of the public.

(MOH, 4-6; R24). See Feliz, 481 Mass. at 708-709; Cory, 454 Mass. at 567 (including punishment and deterrence as probation goals). Not only is a victim aware of the harm imposed on her through a contact offense, but "failure to distinguish between contact and possession-only offenders ... may also go against studies that have frequently found possession-only offenders are less likely to recidivate than other sex offenders." United States v. Apodaca, 641 F.3d 1077, 1083 (9th Cir. 2011).

The Sex Offender Registry Board ("SORB")'s classification of the defendant as a Level II Sex Offender was a factor worthy of significant consideration in the trial judge's evaluation of whether the GPS condition was reasonable. (MOH, 7). That classification, which was based on an individualized assessment of the defendant, evidenced the defendant's moderate risk of re-offense. G.L. c. 6, § 178K; 803 CMR 1.01.

The Legislature has entrusted SORB with the responsibilities of promulgating guidelines for determining the level of risk of re-offense and the degree of dangerousness posed to the public by particular offenders, as well as applying those

guidelines to assess the risk level of those offenders. See G.L. c. 6, § 178K. SORB's classification of an individual necessarily includes that individual's risk of recidivism. See Doe v. Sex Offender Registry Board No. 23656, 483 Mass. 131, 136 (2019) (Doe No. 23656).

Furthermore, the factors relied on by the defendant to argue the judge erred in imposing GPS as a condition of probation, such as his age, his lack of probation violations, prior sexual offenses and other convictions and the absence of evidence of "a disorder indicating compulsion towards sexually deviant activity", were considered by that judge and also by SORB in its assessment of the defendant's moderate risk of re-offense. (Def.Br.22,26,28-29; R19-20). See Doe No. 23656, 483 Mass. at 134. See also G.L. c. 6, § 178K(1)(a)(i), (a)(ii), (a)(iv), (b)(iii), (f), (i); 803 CMR 1.33. The judge did not abandon his duty to make an individualized determination of reasonableness by considering the evidence underlying the convictions that resulted in the defendant's probation and SORB's classification of the defendant as presenting a moderate risk of reoffense. Cf. Commonwealth v. Evelyn, 485 Mass. 691, 706, 709 (2020)

(noting judges determine weight, reliability and credibility of evidence at suppression hearings); Commonwealth v. Almonor, 482 Mass. 35, 49-50 (2019) (considering the totality of circumstances, but tending to focus on only three factors). Indeed, it would be absurd to prevent a judge, who may be tasked with assessing a sex offender's risk of re-offense, from relying on a determination made by the state agency with the expertise in such evaluations.

Even if the trial judge did not specifically consider the underlying evidence of the defendant's extrafamilial relationship with Ms. Bowler or Ms. Bowler's clear and repeated expressions to the defendant that she wished to remain only friends, this Court may consider any ground apparent on the record that supports the result reached in the lower court. (II, 36, 39-42, 73; III, 41-42). See Commonwealth v. Levesque, 436 Mass. 443, 455 (2002). The extrafamilial relationship suggested the defendant posed a threat of reoffending. See 803 CMR 1.33(7)(a)(2) ("[h]aving victims outside the family relationship is empirically related to an increased risk of re-offense"). "The number of potential victims substantially increases when offenders choose

to sexually offend against extrafamilial victims".

Id.

In order to effectuate the goals of probation, which include protection of the public from the defendant's potential recidivism, a judge may impose a condition that "remove[s] the defendant from situations in which [the defendant] presents a danger ... and eliminate[s] the risk" of future recidivism.

Commonwealth v. Shipps, 97 Mass. App. Ct. 32, 38 (2020) (quoting Lapointe, 435 Mass. at 460). Here, the judge appropriately considered the evidence at trial that the defendant committed rape by penile penetration, that he did so while Ms. Bowler was unconscious and that he violated Ms. Bowler's sense of trust, security and safety in assessing the reasonableness of GPS monitoring because those factors were relevant to the degree of danger the defendant posed towards Ms. Bowler and the rest of the public. (MOH, 7; II, 36, 51-52, 80; III, 41-43; R13).

An offender who engages in sexual misconduct against an extravulnerable victim poses a greater danger to public safety. 803 CMR 1.33(18)(a). The definition of "extravulnerable" includes any condition or circumstance that renders a victim more susceptible

to sexual assault or unable to effectively defend herself. Id. The defendant's violation of Ms. Bowler's sense of trust, safety and security also evidenced his increased degree of dangerousness. See 803 CMR 1.33(7)(a)(2). Where a defendant poses some risk of re-offense, the degree of danger presented by that defendant if he were to reoffend should carry significant weight in the consideration of whether a condition of probation such as GPS monitoring is reasonable.

Even apart from the established exclusion zone, GPS monitoring still provides protection to the public by way of its deterrence and aid to the defendant's rehabilitation, where he knows the GPS device could provide evidence connecting him to the scene of a crime. See Feliz, 481 Mass. at 708. The extent to which a particular sentence will increase or diminish the risk of recidivism is a relevant consideration in sentencing. Commonwealth v. Plasse, 481 Mass. 199, 205 (2019).

II. SORB'S CLASSIFICATION OF THE DEFENDANT AS A LEVEL II SEX OFFENDER REDUCES HIS ALREADY DIMINISHED EXPECTATION OF PRIVACY AS A PROBATIONER, AND THUS THE DEGREE TO WHICH GPS MONITORING INTRUDES UPON HIS CONSTITUTIONAL RIGHT TO PRIVACY.

As a probationer, the defendant possessed a diminished expectation of privacy relative to the general population which reduced the degree to which the condition of GPS monitoring intruded upon his privacy. Feliz, 481 Mass. at 700. Also relevant to the degree to which GPS would intrude upon the defendant's expectation of privacy was the defendant's status as a Level II Sex Offender. See Feliz, 481 Mass. at 691 n.3, 706; G.L. c. 6, §§ 178K(2)(b), 178D; 803 CMR 1.26 & 1.27.

As a Level II Sex Offender, the defendant's name, age, sex, race, height, weight, eye and hair color, home address, any secondary address, work address, the offenses the defendant was convicted of and the date of his convictions, whether the defendant has been designated a sexually violent predator and a photograph of the defendant is publicly available and easily accessible by the public. See Doe No. 23656, 483 Mass. at 133-134; G.L. c. 6, §§ 178D, 178K(2)(b); 803 CMR 1.26(2), 1.27. The defendant's expectation of privacy was even more diminished than that of Feliz, whose registration data was not publicly available. See Feliz, 481 Mass. at 691 & n.3. See also Belleau v. Wall, 811 F.3d 929, 934-935 (7th Cir. 2016)

(reasoning the focus must be on the incremental effect on the privacy right). In Belleau, the Seventh Circuit found the effect of a GPS device on a sex offender's privacy was slight considering that offender's criminal records and home addresses were already publicly accessible. See Belleau, 811 F.3d at 935.

Weighing the protection to the public and aid in the rehabilitation of the defendant afforded by GPS monitoring against such monitoring's intrusion into the defendant's diminished expectation of privacy tilts the balance in favor of the reasonableness of GPS monitoring as a condition of the defendant's probation.

CONCLUSION

For the above stated reasons, the Commonwealth respectfully requests this Honorable Court to affirm the lower court's denial of the defendant's motion to vacate GPS monitoring as a condition of his probation.

Respectfully submitted,

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Dated: March 16, 2022

COMMONWEALTH'S ADDENDUM

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1 REDACTED

2
3 THE COURT: All right. Well, let me say this.
4 I'm not going to vacate the order, but I am going to
5 consider it -- or consider the issue in the context
6 of *Feliz*; that is, to make a new, independent
7 determination as to whether GPS is warranted.

8 *Feliz* makes clear that statutory application on
9 the GPS requirement, without more, is
10 unconstitutional as applied; and so I am going to
11 reconsider the issue in light of the evidence
12 presented at trial -- and I was the trial judge --
13 and the defendant's circumstances to include his
14 current registration level as a Level 2 sex offender,
15 as determined by the Sex Offender Registry Board,
16 which indicates that, at least in the judgment of the
17 Board, the defendant presents a moderate risk of re-
18 offense.

19 This is a case that involved sexual conduct and,
20 indeed, intercourse while the victim was in an
21 unconscious state which, standing alone, presents a
22 significant risk of harm to individuals.

23 Where the Court imposed a stay-away and no-
24 contact order, and ordered that exclusion zones be
25 developed around the victim's residence and work

1 place, GPS monitoring is necessary as a means of
2 ensuring that exclusion zones exist and are complied
3 with. That distinguishes this case from *Feliz*, where
4 there was no such stay-away or no-contact order,
5 coupled with an exclusion zone.

6 I find the GPS monitoring is reasonable as
7 applied to Mr. Roderick's probation, at least for the
8 first 18 months, and so I'm going to order GPS
9 monitoring consistent with the factors outlined in
10 *Feliz*, finding that it is a reasonably necessary
11 monitoring method to ensure that there be no contact,
12 and the defendant stays away from the alleged victim,
13 and her home and workplace.

14 If there are 18 months of successful performance
15 on probation, and no violations of the stay-away and
16 no-contact of the exclusion zones, then the Court
17 will consider vacating a GPS requirement after
18 18 months, upon motion by the defendant.

19 MR. CRANE: Your Honor?

20 THE COURT: Yes, sir.

21 MR. CRANE: May I make one additional point?

22 THE COURT: What is that, sir?

23 MR. CRANE: Just with respect to the exclusion
24 zone, I would ask that we be allowed, potentially, to
25 file a motion to reconsider if there cannot be

1 established an address for the victim in this case.
2 If there's no exclusion zone that could be input into
3 the system, then I think that --

4 THE COURT: Well, there's still a concern about
5 the defendant's contact with the alleged victim; so
6 let's deal with that another day if, indeed, there
7 can be no meaningful exclusion zones.

8 I will order the Commonwealth to continue to make
9 efforts to find the victim's whereabouts, such that
10 exclusion zones can be established by the Probation
11 Department. I think, at the time of sentencing, I
12 had indicated a half-mile radius around wherever the
13 victim may be residing --

14 MR. CRANE: Yes.

15 THE COURT: -- or working. So, Ms. Fowle, if you
16 or your office can make those inquiries --

17 MS. FOWLE: Certainly.

18 THE COURT: -- and communicate it to the
19 Probation Department, they can establish those zones.

20 All right, thank you.

21 MR. CRANE: Thank you, Your Honor.

22 MS. FOWLE: Thank you.

23 (Court adjourned at 4:18 p.m.)
24
25

stay away / Exclusion zone order. Defendant may have to vacate GPS after 18 months if there has been successful compliance.

COMMONWEALTH OF MASSACHUSETTS
TRIAL COURT OF THE COMMONWEALTH

[Signature]

Plymouth, ss.

Plymouth County Superior Court
No. 1683CR00424

COMMONWEALTH

v.

TIMOTHY RODERICK

FILED
COMMONWEALTH OF MASSACHUSETTS
SUPERIOR COURT DEPT. OF THE TRIAL COURT
PLYMOUTH COUNTY

JUN 2 2021

[Signature]
Clerk of Court

DEFENDANT'S MOTION TO VACATE GPS MONITORING
AS A CONDITION OF HIS PROBATION

The defendant, Timothy Roderick, moves pursuant to Mass. R. Crim. Pro. 30(a) to vacate GPS monitoring as a condition of his probation. After the defendant was convicted at trial, the trial judge mandatorily imposed this condition pursuant to G. L. c. 265, s. 47. However, in *Commonwealth v. Feliz*, 481 Mass. 689 (2019), the SJC ruled that the mandatory imposition of GPS monitoring as a condition of probation is unconstitutional.¹ The defendant asks this Court to vacate GPS monitoring as a condition of his probation in accordance with *Feliz*.

1. Procedural Background

The defendant was indicted on two counts of rape and three counts of indecent assault and battery.² The defendant went to

¹ The defendant has filed a documentary appendix in support of this motion. It will be cited by page number as (R. _). A copy of the *Feliz* decision is included in the appendix. (R. 1-23).

² A copy of the docket report is included in the appendix. (R. 24-31).

CC:AF
EC
6-15-21

6/14/21 After hearing, court reconsidered GPS condition pursuant to Commonwealth v. Feliz; after hearing, court imposes GPS requirement in light of facts of underlying case, defendant's Level II sex offender registration, and value of GPS in monitoring/enforcing no contact.

Typed Version of the Lower Court's
Handwritten Decision on the Defendant's Motion
to Vacate GPS Monitoring as a Condition of his
Probation

After hearing, COURT reconsiders GPS condition pursuant to Comm v Feliz; after hearing, Court imposes GPS requirement in light of facts of underlying case, defendant's Level II SORB registration, and value of GPS in monitoring/enforcing no contact/stay away/Exclusion zone order. Defendant may move to vacate GPS after 18 months if there has been successful compliance.

Massachusetts General Laws Annotated

Part III. Courts, Judicial Officers and Proceedings in Civil Cases (Ch. 211-262)

Title IV. Certain Writs and Proceedings in Special Cases (Ch. 246-258e)

Chapter 258B. Rights of Victims and Witnesses of Crime (Refs & Annos)

M.G.L.A. 258B § 3

§ 3. Rights afforded victims, witnesses or family members

Effective: July 1, 2012

Currentness

To provide victims a meaningful role in the criminal justice system, victims and witnesses of crime, or in the event the victim is deceased, the family members of the victim, shall be afforded the following basic and fundamental rights, to the greatest extent possible and subject to appropriation and to available resources, with priority for services to be provided to victims of crimes against the person and crimes where physical injury to a person results:

- (a) for victims, to be informed by the prosecutor about the victim's rights in the criminal process, including but not limited to the rights provided under this chapter. At the beginning of the criminal justice process, the prosecutor shall provide an explanation to the victim of how a case progresses through the criminal justice system, what the victim's role is in the process, what the system may expect from the victim, why the system requires this, and, if the victim requests, the prosecutor shall periodically apprise the victim of significant developments in the case;
- (b) for victims and family members, to be present at all court proceedings related to the offense committed against the victim, unless the victim or family member is to testify and the court determines that the person's testimony would be materially affected by hearing other testimony at trial and orders the person to be excluded from the courtroom during certain other testimony;
- (c) for victims and witnesses, to be notified by the prosecutor, in a timely manner, when a court proceeding to which they have been summoned will not go on as scheduled, provided that such changes are known in advance. In order to notify victims and witnesses, a form shall be provided to them by the prosecutor for the purpose of maintaining a current telephone number and address. The victim or witness shall thereafter maintain with the prosecutor a current telephone number and address;
- (d) for victims and witnesses, to be provided with information by the prosecutor as to the level of protection available and to receive protection from the local law enforcement agencies from harm and threats of harm arising out of their cooperation with law enforcement and prosecution efforts;
- (e) for victims, to be informed by the prosecutor of financial assistance and other social services available to victims, including information relative to applying for such assistance or services;
- (f) for victims and witnesses, to a prompt disposition of the case in which they are involved as a victim or a witness;

(g) for victims, to confer with the prosecutor before the commencement of the trial, before any hearing on motions by the defense to obtain psychiatric or other confidential records, and before the filing of a nolle prosequi or other act by the commonwealth terminating the prosecution or before the submission of the commonwealth's proposed sentence recommendation to the court. The prosecutor shall inform the court of the victim's position, if known, regarding the prosecutor's sentence recommendation. The right of the victim to confer with the prosecutor does not include the authority to direct the prosecution of the case;

(h) for victims and witnesses, to be informed of the right to request confidentiality in the criminal justice system. Upon the court's approval of such request, no law enforcement agency, prosecutor, defense counsel, or parole, probation or corrections official may disclose or state in open court, except among themselves, the residential address, telephone number, or place of employment or school of the victim, a victim's family member, or a witness, except as otherwise ordered by the court. The court may enter such other orders or conditions to maintain limited disclosure of the information as it deems appropriate to protect the privacy and safety of victims, victims' family members and witnesses;

(i) for victims, family members and witnesses to be provided, by the court as provided in section 17 of chapter 211B, with a secure waiting area or room which is separate from the waiting area of the defendant or the defendant's family, friends, attorneys or witnesses and separate from the district attorney's office; provided, however, that the court shall designate a waiting area at each courthouse; and provided further, that designation of those areas shall be made in accordance with the implementation plan developed by the task force.

(j) for victims and witnesses, to be informed by the court and the prosecutor of procedures to be followed in order to apply for and receive any witness fee to which they are entitled;

(k) for victims and witnesses, to be provided, where appropriate, with employer and creditor intercession services by the prosecutor to seek employer cooperation in minimizing employees' loss of pay and other benefits resulting from their participation in the criminal justice process, and to seek consideration from creditors if the victim is unable, temporarily, to continue payments;

(l) for victims or witnesses who have received a subpoena to testify, to be free from discharge or penalty or threat of discharge or penalty by his employer by reason of his attendance as a witness at a criminal proceeding. A victim or witness who notifies his employer of his subpoena to appear as a witness prior to his attendance, shall not on account of his absence from employment by reason of such witness service be subject to discharge or penalty by his employer. Any employer or agent of said employer who discharges or disciplines or continues to threaten to discharge or discipline a victim or witness because that victim or witness is subpoenaed to attend court for the purpose of giving testimony may be subject to the sanctions stated in section fourteen A of chapter two hundred and sixty-eight;

(m) for victims and witnesses, to be informed of the right to submit to or decline an interview by defense counsel or anyone acting on the defendant's behalf, except when responding to lawful process, and, if the victim or witness decides to submit to an interview, the right to impose reasonable conditions on the conduct of the interview;

(n) for victims, to confer with the probation officer prior to the filing of the full presentence report. If the victim is not available or declines to confer, the probation officer shall record that information in the report. If the probation officer is not able to confer with the victim or the victim declines to confer, the probation officer shall note in the full presentence report the reason why the probation officer did not make contact with the victim;

(o) for victims, to request that restitution be an element of the final disposition of a case and to obtain assistance from the prosecutor in the documentation of the victim's losses. If restitution is ordered as part of a case disposition, the victim has the right to receive from the probation department a copy of the schedule of restitution payments and the name and telephone number of the probation officer or other official who is responsible for supervising the defendant's payments. If the offender seeks to modify the restitution order, the offender's supervising probation officer shall provide notice to the victim and the victim shall have the right to be heard at any hearing relative to the proposed modification.

(p) for victims, to be heard through an oral and written victim impact statement at sentencing or the disposition of the case against the defendant about the effects of the crime on the victim and as to a recommended sentence, pursuant to section four B of chapter two hundred and seventy-nine, and to be heard at any other time deemed appropriate by the court. The victim also has a right to submit the victim impact statement to the parole board for inclusion in its records regarding the perpetrator of the crime;

(q) for victims, to be informed by the prosecutor of the final disposition of the case, including, where applicable, an explanation of the type of sentence imposed by the court and a copy of the court order setting forth the conditions of probation or other supervised or unsupervised release within thirty days of establishing the conditions, with the name and telephone number of the probation officer, if any, assigned to the defendant;

(r) for victims, to have any personal property that was stolen or taken for evidentiary purposes, except contraband, property subject to evidentiary analysis, and property the ownership of which is disputed, returned by the court, the prosecutor or law enforcement agencies within ten days of its taking or recovery if it is not needed for law enforcement or prosecution purposes or as expeditiously as possible when said property is no longer needed for law enforcement or prosecution purposes;

(s) for victims, to be informed by the parole board of information regarding the defendant's parole eligibility and status in the criminal justice system;

(t) for victims, to be informed in advance by the appropriate custodial authority whenever the defendant receives a temporary, provisional or final release from custody, whenever a defendant is moved from a secure facility to a less-secure facility, and whenever the defendant escapes from custody. The victim shall be informed by the prosecutor about notification rights and the certification process required to access the criminal offender record information files. Persons requesting such notice must provide the appropriate authority with current information as to their address and telephone number;

(u) for victims, to be informed that the victim may have a right to pursue a civil action for damages relating to the crime, regardless of whether the court has ordered the defendant to make restitution to the victim.

(v) for one family member of a victim of a homicide, which the matter before the court is related, to possess in the courtroom a photograph, that is not of itself of an inflammatory nature, of the deceased victim that is not larger than eight by ten inches; provided, however, that at no time may the photograph be exposed or in anyway displayed in the presence of any member of the jury, or the jury pool from which a jury is to be selected in a particular matter; provided, further, that nothing in this section shall preclude the admission into evidence of a photograph that the court deems relevant and material.

(w) Where the victim or witness is an employee of the department of youth services, no law enforcement agency, prosecutor, defense counsel or parole, probation or corrections official shall disclose or state the residential address, telephone number or

place of employment or school of the victim, a victim's family member or a witness, except as otherwise ordered by the court. The court may enter such other orders or conditions to maintain limited disclosure of the information as it deems appropriate to protect the privacy and safety of victims, victims' family members and witnesses.

There shall be conspicuously posted in all courthouses and police stations a summary of the rights afforded under this section. The victim and witness assistance board, pursuant to section 4, shall devise and provide posters to satisfy this requirement to court officials and police station personnel, and, upon request and at the discretion of the office and board, to any other institution or organization to post and maintain in space accessible to the general public. The board shall develop such posters in a variety of languages as determined by the Massachusetts office for victim assistance. Upon request, the board will respond, to the extent possible, to any requests for additional language translations of such posters.

Credits

Added by St.1983, c. 694, § 2. Amended by St.1986, c. 420; St.1989, c. 233, § 1; St.1995, c. 24, § 5; St.1996, c. 200, § 34; St.1998, c. 463, § 189; St.2010, c. 131, §§ 99, 100, eff. July 1, 2010; St.2012, c. 139, § 138, eff. July 1, 2012.

M.G.L.A. 258B § 3, MA ST 258B § 3

Current through Chapter 14 of the 2022 2nd Annual Session

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28a)

Chapter 6. The Governor, Lieutenant Governor and Council, Certain Officers Under the Governor and Council, and State Library (Refs & Annos)

This section has been updated. [Click here for the updated version.](#)

M.G.L.A. 6 § 178K

§ 178K. Sex offender registry board; member qualifications; guidelines to assess risk of reoffense; notification; information sharing system relevant for determination or reevaluation of sex offender's level designation

Effective: September 30, 2018 to December 10, 2020

(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 local law enforcement authorities and other appropriate agencies, to locate and verify the current addresses of sex offenders including, subject to appropriation, entering into contracts or interagency agreements for such purposes; and conduct hearings as provided in section 178L. The attorney general and the

chief counsel of the committee for public counsel services, or their designees, shall assist in the development of such guidelines. Factors relevant to the risk of reoffense shall include, but not be limited to, the following:

- (a) criminal history factors indicative of a high risk of reoffense and degree of dangerousness posed to the public, including:
 - (i) whether the sex offender has a mental abnormality;
 - (ii) whether the sex offender's conduct is characterized by repetitive and compulsive behavior;
 - (iii) whether the sex offender was an adult who committed a sex offense on a child;
 - (iv) the age of the sex offender at the time of the commission of the first sex offense;
 - (v) whether the sex offender has been adjudicated to be a sexually dangerous person pursuant to section 14 of chapter 123A or is a person released from civil commitment pursuant to section 9 of said chapter 123A; and
 - (vi) whether the sex offender served the maximum term of incarceration;
- (b) other criminal history factors to be considered in determining risk and degree of dangerousness, including:
 - (i) the relationship between the sex offender and the victim;
 - (ii) whether the offense involved the use of a weapon, violence or infliction of bodily injury;
 - (iii) the number, date and nature of prior offenses;
- (c) conditions of release that minimize risk of reoffense and degree of dangerousness posed to the public, including whether the sex offender is under probation or parole supervision, whether such sex offender is receiving counseling, therapy or treatment and whether such sex offender is residing in a home situation that provides guidance and supervision, including sex offender-specific treatment in a community-based residential program;
- (d) physical conditions that minimize risk of reoffense including, but not limited to, debilitating illness;
- (e) whether the sex offender was a juvenile when he committed the offense, his response 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 and the degree of dangerousness posed to the public is not such that a public safety interest is served by public availability, it shall give a level 1 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 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 shall not disseminate information to the general public identifying the sex offender where the board has classified the individual as a level 1 sex offender. The police and the board may, however, 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, the department of early education and care and the department of mental health, all city and town police departments and the Federal Bureau of Investigation.
 - (b) Where the board determines that the risk of reoffense is moderate and the degree of dangerousness posed to the public is such that a public safety interest is served by public availability of registration information, it shall give a level 2 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. The public shall have access to the information regarding a level 2 offender in accordance with the provisions of sections 178D, 178I and 178J. The sex offender shall be required to register and to verify registration information pursuant to section 178F ½.
 - (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 178F ½. 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, if available; 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.

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

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

(e) No sex offender classified as a level 3 offender shall knowingly and willingly establish living conditions within, move to, or transfer to any convalescent or nursing home, infirmary 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 ½ 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.

(4) 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, ¹

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.

(5) The sex offender registry board shall have access to any information that is determined to be relevant to the board's determination or reevaluation of a sex offender's level designation, as defined in subsection (4), through the system of procedures established in said subsection (4).

Credits

Added by St.1996, c. 239, § 1. Amended by St.1998, c. 463, § 6; St.1999, c. 74, § 2; St.2003, c. 77, §§ 19 to 22, eff. Sept. 30, 2003; St.2003, c. 140, § 13, eff. Nov. 26, 2003; St.2004, c. 149, § 13 (b), eff. July 1, 2004; St.2006, c. 139, §§ 29 to 31, eff. July 1, 2006; St.2006, c. 303, § 6, eff. Dec. 20, 2006; St.2008, c. 176, § 9, eff. July 8, 2008; St.2010, c. 256, § 43, eff. Nov. 4, 2010; St.2013, c. 38, §§ 9, 10, eff. July 1, 2013; St.2018, c. 202, § 6.

Footnotes

¹ So in enrolled bill.

M.G.L.A. 6 § 178K, MA ST 6 § 178K

Current through Chapter 14 of the 2022 2nd Annual Session

Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28a)

Chapter 6. The Governor, Lieutenant Governor and Council, Certain Officers Under the Governor and Council, and State Library (Refs & Annos)

M.G.L.A. 6 § 178K

§ 178K. Sex offender registry board; member qualifications; guidelines to assess risk of reoffense; notification; information sharing system relevant for determination or reevaluation of sex offender's level designation

Effective: December 11, 2020

Currentness

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) whether the sex offender was a juvenile when he committed the offense, his response 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 and the degree of dangerousness posed to the public is not such that a public safety interest is served by public availability, it shall give a level 1 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 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 shall not disseminate information to the general public identifying the sex offender where the board has classified the individual as a level 1 sex offender. The police and the board may, however, 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, the department of early education and care, the department of mental health, the department of developmental services, all city and town police departments and the Federal Bureau of Investigation.

(b) Where the board determines that the risk of reoffense is moderate and the degree of dangerousness posed to the public is such that a public safety interest is served by public availability of registration information, it shall give a level 2 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. The public shall have access to the information regarding a level 2 offender in accordance with the provisions of sections 178D, 178I and 178J. The sex offender shall be required to register and to verify registration information pursuant to section 178F ½.

(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 178F ½. 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, if available; 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.

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

- (d) The board may, upon making specific written findings that the circumstances of the offense in conjunction with the offender's criminal history do not indicate a risk of reoffense or a danger to the public and the reasons therefor, relieve such sex offender of any further obligation to register, shall remove such sex offender's registration information from the registry and shall so notify the police departments where said sex offender lives and works or if in custody intends to live and work upon release,

and where the offense was committed and the Federal Bureau of Investigation. In making such determination the board shall consider factors, including but not limited to, the presence or absence of any physical harm caused by the offense and whether the offense involved consensual conduct between adults. The burden of proof shall be on the offender to prove he comes within the provisions of this subsection. The provisions of this subsection shall not apply if a sex offender has been determined to be a sexually violent predator; has been convicted of two or more sex offenses defined as sex offenses pursuant to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 U.S.C. section 14071, committed on different occasions; or has been convicted of a sexually violent offense. The provisions of this subsection shall also not apply if a sex offender has been convicted of a sex offense involving a child or a sexually violent offense, and such offender has not already registered pursuant to this chapter for at least ten years, or if the sex offender is otherwise subject to lifetime or minimum registration requirements as determined by the board pursuant to section 178D.

(e) No sex offender classified as a level 3 offender shall knowingly and willingly establish living conditions within, move to, or transfer to any convalescent or nursing home, infirmary 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 ½ 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.

(4) 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, .¹

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.

(5) The sex offender registry board shall have access to any information that is determined to be relevant to the board's determination or reevaluation of a sex offender's level designation, as defined in subsection (4), through the system of procedures established in said subsection (4).

Credits

Added by St.1996, c. 239, § 1. Amended by St.1998, c. 463, § 6; St.1999, c. 74, § 2; St.2003, c. 77, §§ 19 to 22, eff. Sept. 30, 2003; St.2003, c. 140, § 13, eff. Nov. 26, 2003; St.2004, c. 149, § 13 (b), eff. July 1, 2004; St.2006, c. 139, §§ 29 to 31, eff. July 1, 2006; St.2006, c. 303, § 6, eff. Dec. 20, 2006; St.2008, c. 176, § 9, eff. July 8, 2008; St.2010, c. 256, § 43, eff. Nov. 4, 2010; St.2013, c. 38, §§ 9, 10, eff. July 1, 2013; St.2018, c. 202, § 6; St.2020, c. 227, § 6, eff. Dec. 11, 2020.

Footnotes

1 So in enrolled bill.

M.G.L.A. 6 § 178K, MA ST 6 § 178K

Current through Chapter 14 of the 2022 2nd Annual Session

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Massachusetts General Laws Annotated

Part I. Administration of the Government (Ch. 1-182)

Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28a)

Chapter 6. The Governor, Lieutenant Governor and Council, Certain Officers Under the Governor and Council, and State Library (Refs & Annos)

M.G.L.A. 6 § 178D

§ 178D. Sex offender registry

Effective: July 1, 2013

Currentness

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

- (a) the sex offender's name, aliases used, date and place of birth, sex, race, height, weight, eye and hair color, social security number, home address, any secondary addresses and work address and, if the sex offender works at or attends an institution of higher learning, the name and address of the institution;
- (b) a photograph and set of fingerprints;
- (c) a description of the offense for which the sex offender was convicted or adjudicated, the city or town where the offense occurred, the date of conviction or adjudication and the 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"; provided, however, that no registration data relating to a sex offender given a level 1 designation by the board under section 178K shall be published in the sex offender internet database but may be disseminated by the board as otherwise permitted by said sections 178C to 178P, inclusive; and provided further, that the board shall keep confidential and shall not publish in the sex offender internet database any information relating to requests for registration data under sections 178I and 178J:

- (i) the name of the sex offender;
- (ii) the offender's home address and any secondary addresses;
- (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;
- (vi) a photograph of the sex offender, if available;
- (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.

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

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

Credits

Added by St.1996, c. 239, § 1. Amended by St.1999, c. 74, § 2; St.2003, c. 77, § 4, eff. Sept. 30, 2003; St.2003, c. 140, § 5, eff. Nov. 26, 2003; St.2006., c. 139, §§ 7, 8, eff. July 1, 2006; St.2010, c. 256, § 39, eff. Nov. 4, 2010; St.2013, c. 38, § 7, eff. July 1, 2013.

M.G.L.A. 6 § 178D, MA ST 6 § 178D

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Code of Massachusetts Regulations

Title 803: Department of Criminal Justice Information Services

Chapter 1.00: Sex Offender Registry Board: Registration, Classification and Dissemination (Refs & Annos)

803 CMR 1.01

1.01: Purpose

Currentness

803 CMR 1.00 sets forth guidelines pertaining to the registration and classification of sex offenders, and the resulting dissemination of sex offender registry information in accordance with the law based on the offender's level of risk of reoffense and degree of dangerousness posed to the public. 803 CMR 1.00 additionally provides a process for the removal from the sex offender registry of those individuals not required to register. The Sex Offender Registry Board (the "Board") may from time to time and in its discretion develop, implement, and/or amend its policies, procedures, and protocols to this end. The Board will exercise sound judgment and apply its expertise when making any registration or classification determination as required in 803 CMR 1.00.

803 CMR 1.00 sets forth the registration and classification procedures and guidelines the Board uses to determine whether a convicted or adjudicated sex offender may be required to register as a sex offender and, if so, the offender's level of risk of reoffense and degree of dangerousness posed to the public.

The Massachusetts Administrative Code titles are current through Register No. 1463, dated February 18, 2022. Some sections may be more current; see credits for details.

Mass. Regs. Code tit. 803, § 1.01, 803 MA ADC 1.01

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Code of Massachusetts Regulations

Title 803: Department of Criminal Justice Information Services

Chapter 1.00: Sex Offender Registry Board: Registration, Classification and Dissemination (Refs & Annos)

803 CMR 1.33

1.33: Risk Factors

Currentness

Pursuant to M.G.L. c. 6, §§ 178K(1)(a) through (1) and 178L, the Board shall use the following factors to determine each sex offender's level of risk of reoffense and degree of dangerousness posed to the public in reaching a final classification decision.

Research supports that the strongest predictors of sexual recidivism for all sex offenders are variables related to antisocial orientation and sexual deviance. (*Cortoni, 2010; Hanson and Morton-Bourgon, 2004; Prescott 2006*)

These factors may be present to varying degrees in any individual case. The final classification level is not based on a cumulative analysis of the applicable factors, but rather a qualitative analysis of the individual sex offender's history and personal circumstances. Factors that are not specifically referenced in a final classification decision are deemed inapplicable.

Some factors apply to adult male offenders, adult female offenders and juvenile offenders in different ways. These differences are reflected in each factor. Juvenile females are classified using juvenile factors. (*Frey, 2010; Hunter et al., 2006; Kubick et al. 2002; Matthews et al., 1997; Van deer Put, 2013*)

The Board recognizes that adult female sex offenders generally have lower recidivism rates than adult male sex offenders. (*Cortoni et al., 2010*). The Board shall apply mitigating weight to this lower recidivism rate, along with the other relevant regulatory factors, in determining the final classification level.

HIGH-RISK FACTORS:

Pursuant to M.G. L. c. 6, §178K(1)(a)(i) through (vi), the presence of Factors 1 through 6, is indicative of a high risk of reoffense and degree of dangerousness. The absence of Factors 1 through 6 does not reduce an offender's risk of reoffense or lower his degree of dangerousness.

(1) Factor 1: Mental Abnormality.

(a) Adult Male. The presence of a statutorily defined mental abnormality specifically related to sexual deviance is significantly associated with an increased risk of reoffense.

The Board shall consider documentation from a licensed mental health professional that indicates that the offender has been diagnosed with a paraphilic disorder related to sexual fantasies, urges, and behaviors.

In the case of pedophilic disorder, this would only be applicable to offenders who are 16 years of age or older at the time of diagnosis. (*Doren, 2002; Hanson and Morton-Bourgon, 2004; Hanson and Morton-Bourgon, 2005; and Mann et al. 2010*)

(b) Adult Female. Factor 1 applies in the same manner to female offenders. (*Ford and Cortoni, 2008; Hart et al, 2003; Rousseau and Cortoni, 2010*)

(c) Juvenile. Factor 1 applies in the same manner to juvenile offenders. (*Prescott, 2006; Worling and Curwen, 2001; Worling and Langstrom, 2006*)

(2) Factor 2: Repetitive and Compulsive Behavior.

(a) Adult Male. Repetitive and compulsive behavior is associated with a high risk of reoffense. Factor 2 is applied when a sex offender engages in two or more separate episodes of sexual misconduct. To be considered separate episodes there must be time or opportunity, between the episodes, for the offender to reflect on the wrongfulness of his conduct

The Board may give increased weight to offenders who have been discovered and confronted (by someone other than the victim) or investigated by an authority for sexual misconduct and, nonetheless, commit a subsequent act of sexual misconduct. The most weight shall be given to an offender who engages in sexual misconduct after having been charged with or convicted of a sex offense. (*Harris et al., 2003; Harris and Hanson, 2004*)

(b) Adult Female. Factor 2 applies in the same manner to female offenders. (*Cortoni, et al., 2010; Vandiver and Kercher, 2004*)

(c) Juvenile. Factor 2 applies only to juvenile offenders who continue to commit sex offenses after they have been detected for prior sexual misconduct. Detection includes: being cautioned, warned, disciplined, criminally charged, or otherwise sanctioned by an adult authority (e.g. police, parent, or teacher).

An offender who engages in sexual misconduct after having been charged with or convicted of a prior sex offense presents an even higher risk to reoffend.

803 CMR 1.33(2)(c) includes adults whose only sex offense(s) were committed as a juvenile. (*ATSA, 2012; Curwen and Costin, 2007; Epperson et al, 2009; Nisbet, et al, 2004; Powers-Sawyer and Miner, 2009; Prentky and Righthand, 2003; Stetson School, 2012; Worling and Curwen, 2001; Worling and Langstrom, 2003 and 2006*)

(3) Factor 3: Adult Offender with a Child Victim.

(a) Adult Male. Adult offenders who target children pose a heightened risk to public safety because children normally lack the physical and mental strength to resist an offender. In addition, children can be lured into dangerous situations more easily than most adults. For purposes of factor 3, the Board shall consider any victim younger than 16 years old as a "child victim".

Offenders who target prepubescent children, generally younger than 13 years old, are more likely to have a deviant sexual interest and, therefore, pose an even higher risk of reoffense and degree of dangerousness and are given greater weight

If the difference in age between the offender and the victim is five years or less and there is evidence of a consensual, although statutorily criminal, sexual act, the Board shall give limited weight to factor 3. (*Hanson & Bourgon, 2005; Hanson et al. 2007, Levinson et al., 2008; Mann et al., 2010*)

(b) Adult Female. Factor 3 will apply in the same manner to adult female offenders.

(c) Juvenile. Factor 3 does not apply to juvenile offenders. Factor 27 addresses juvenile offenders who target child victims, including adults whose only sex offense(s) were committed as a juvenile.

(4) Factor 4: Age at First Offense.

(a) Adult Male. Age at first offense is an important variable related to risk of reoffense and degree of sexual deviance. Offenders who manifest an early onset and persistence of deviant sexual interests or behaviors are at a higher risk to reoffend sexually.

Factor 4 applies to offenders convicted as adults who committed their first detected sexual misconduct as a juvenile and continued to engage in sexual misconduct after the age of 21. (*Hanson and Harris, 2000; Skelton and Vess, 2008*)

(b) Adult Female. Factor 4 will apply in the same manner to adult female offenders.

(c) Juvenile. Factor 4 applies to juvenile offenders who committed their first act of sexual misconduct when they were younger than 13 years old, were detected, and then continued to engage in sexual misconduct after 14 years of age or older.

803 CMR 1.33(4)(c) includes adults whose only sex offense(s) were committed as juveniles. (*Prentky, et al., 2010; Prescott, 2006*)

(5) Factor 5: Adjudicated Sexually Dangerous Person or Released from Civil Commitment.

(a) Adult Male. Pursuant to M.G.L. c. 6, § 178K(1)(a)(v), the Board views any offender who has been adjudicated as a sexually dangerous person, pursuant to M.G.L. c. 123 A or the equivalent in another state, whether he has been released or not, to present a substantial risk to reoffend and degree of dangerousness.

Because of the statutory differences between the criteria and legal process for civilly committing sexually dangerous persons and classifying sex offenders living in the community, the Board uses criteria to determine an offender's risk of reoffending and degree of dangerousness that are different from those used by the courts in a sexually dangerous person proceeding.

(b) Adult Female. Factor 5 applies in the same manner to adult female offenders.

(c) Juvenile. Factor 5 applies in the same manner to juvenile offenders.

(6) Factor 6: Maximum Term of Incarceration.

(a) Adult Male. Pursuant to M.G.L. c. 6, § 178K(1)(a)(vi), the Board considers the offender who declines early release, specifically to avoid community supervision or due to his own concerns of reoffending, to present an increased risk of reoffense and degree of dangerousness.

803 CMR 1.33(6)(a) includes adults whose only sex offense(s) were committed as a juvenile, but who were incarcerated for other offenses as an adult

(b) Adult Female. Factor 6 applies in the same manner to adult female offenders.

(c) Juvenile. Factor 6 does not apply to juvenile offenders.

RISK-ELEVATING FACTORS:

(7) Factor 7: Relationship between Offender and Victim. The relationship between an offender and the victim is an important variable in determining risk of reoffense and degree of dangerousness.

(a) Adult Male. For purposes of Factor 7, the following relationship categories are relevant:

1. Intrafamilial Victim includes the following:

- a. Any persons whose marriage to the offender would be prohibited pursuant to M.G.L., c. 207, §§ 1 through 3;
- b. Legally married spouses;
- c. Adoptive children, first cousins, brothers- and sisters-in-law; and
- d. Any persons who are family member substitutes (*e.g.*, foster, step-relatives, or any other type of familial household “live-in” relationship) who lived in the same household with the offender for two or more years prior to the offending behavior.

Offenders who only target intrafamilial victims may be at a lower risk to reoffend as compared to offenders who target unrelated victims. However, having an intrafamilial victim is not a risk mitigating, nor a risk elevating, factor. It is included for definitional purposes only.

2. Extrafamilial Victim includes the following:

- a. Any person who has a recognizable non-intrafamilial relationship with the offender, such as a friend, co-worker, or acquaintance; and

- b. Any persons who are family member substitutes (*e.g.* foster, step-relatives, or any other type of familial household “live-in” relationship) who lived in the same household with the offender for less than two years prior to the offending behavior.

Having victims outside the family relationship is empirically related to an increased risk of reoffense. The number of potential victims substantially increases when offenders choose to sexually offend against extrafamilial victims.

Position of Trust. The Board gives special consideration to offenders who commit a sex offense while in a position of trust as established by their profession or role with the victim. These offenders present an increased degree of dangerousness because they violate the victim's and the public's sense of trust, safety, and security.

3. Stranger Victim includes the following:

- a. Any person who has known the offender for less than 24 hours prior to the offense;
- b. Any person who has had no memorable interaction with the offender prior to the offense;
- c. There are cases where the offender and victim relationship is established via electronic communications. To consider an adult victim a stranger, the contact sex offense would have to occur within 24 hours of the initial contact. To consider a child victim a stranger, the offender would have to transmit sexually explicit materials or make sexually explicit comments within 24 hours of first electronic contact.

Sex offenders who have sexually offended against a stranger victim have a higher risk of reoffense than offenders who target victims known to them. (*Hanson and Bussiere, 1998; Hanson and Harris, 2000; Harris et al, 2003; Knight and Thornton, 2007*)

(b) Adult Female. Factor 7 applies in the same manner to adult female offenders. (*Poels, 2007; Williams and Nicholaichuk, 2001*)

(c) Juvenile. Factor 7 applies in the following manner for juvenile offenders:

1. Intrafamilial Victim includes the following:

- a. Any persons whose marriage to the offender would be prohibited pursuant to M.G.L., c. 207, §§ 1 through 3;
- b. Any other siblings or cousins, whether biological, step or adoptive; and
- c. Any persons who are family member substitutes (*e.g.*, foster, or any other type of familial household “live-in” relationship) and who lived in the same household with the offender for more than one year prior to the offending behavior.

Offenders who only target intrafamilial victims may be at a lower risk to reoffend as compared to offenders who target unrelated victims. However, having an intrafamilial victim is not a risk mitigating, nor a risk elevating, factor. It is included for definitional purposes only.

2. Extrafamilial Victim includes the following:

- a. Any person who has a relationship with the offender, but is not related, such as: friends, schoolmates, co-workers, neighbors, family friends; and
- b. Any persons who are family member substitutes (*e.g.* foster or any other type of familial household "live-in" relationship) and who lived in the same household with the offender for less than one year prior to the offending behavior.

Juvenile offenders who target extrafamilial victims pose an increased danger to the community.

Position of Trust: The Board gives special consideration to offenders who commit a sex offense while in a position of trust as established by their jobs. These offenders may present an increased level of dangerousness because they violate the victim's and the public's sense of trust, safety, and security.

3. Stranger Victim includes the following:

- a. Any person who has known the offender for less than 24 hours prior to the offense;
- b. Any person who has had no memorable interaction with the offender prior to the offense;
- c. There are cases where the offender and victim relationship is established within electronic communications. If the offender transmits sexually explicit materials or makes sexually explicit communication within 24 hours of first electronic contact, this counts as a stranger relationship, even if the actual offense occurred on a later date.

Juvenile offenders who have sexually offended against a stranger victim have an increased risk of reoffense and present a greater degree of dangerousness to the safety and welfare of the public than offenders who target victims known to them.

803 CMR 1.33(7)(c) includes adults whose only sex offense(s) were committed as a juvenile. (*Gerhold, et al., 2007; Heilbrun, et al., 2005; Hendriks and Bijleveld, 2008; McCann and Lussier, 2008; Miccio-Fonseca and Rasmussen, 2009; Powers-Sawyer and Miner, 2009; Stetson School, 2012; Worling and Curwen, 2001; Worling and Langstrom, 2006*)

(8) Factor 8: Weapon, Violence or Infliction of Bodily Injury.

(a) Adult Male. All sex offenses are inherently violent, but not necessarily in a physical sense. Offenders who use or threaten to use violence or weapons or cause bodily injury during the commission of a sexual assault are more likely to reoffend and present an increased degree of dangerousness. These behaviors may be indicative of sexual arousal to violence or an antisocial orientation.

Any force or threat of force beyond that necessary to commit the sexual offense shall constitute violence. Any object used to injure, incapacitate, penetrate, force, or threaten the victim during the course of the sexual assault shall be considered a weapon. Any injury, including but not limited to bruises, abrasions, and cuts, or any injury requiring medical attention other than for

investigative purposes that is sustained by the victim during a sexual offense shall be deemed bodily injury. (*Boer et al., 1997; Epperson et al., 1998; Harris et al., 2003; Knight and Thornton, 2007; Mann et al., 2010; Mokres et al., 2012*)

(b) Adult Female. Factor 8 applies in the same manner to adult female offenders. (*Poels, 2007*)

(c) Juvenile. Factor 8 applies in the same manner to juvenile offenders. (*ATSA, 2012; Curwen and Costin, 2007; McCann and Lussier, 2008; Prentky and Righthand, 2003; Stetson School, 2012; Worling and Curwen, 2001; Worling and Langstrom, 2006*)

(9) Factor 9: Alcohol and Substance Abuse.

(a) Adult Male. Drugs and alcohol are behavioral disinhibitors. Substance abuse may increase an offender's risk of reoffense. Factor 9 applies when the sex offender has a history of substance abuse, demonstrates active substance abuse, or when the offender's substance use was a contributing factor in the sexual misconduct. An offender's history of drug and alcohol use and history of treatment, abstinence and relapse should be considered in determining the weight given to factor 9.

803 CMR 1.33(9)(a) includes adults whose only sex offense(s) were committed as a juvenile, unless the substance misuse was time-limited experimentation during adolescence. (*Bonta and Andrews, 2007; Douglas and Skeem, 2005; Hanson and Harris, 2000; Hanson et al., 2007*)

(b) Adult Female. Factor 9 applies in the same manner to adult female offenders. (*Cortoni, 2010; Ford, 2010; Giguere and Bumby, 2007; Hanson et al., 2007; Hart et al., 2003; Rousseau and Cortoni, 2010; Sandler and Freeman, 2009; Vandiver and Kercher, 2004*).

(c) Juvenile. Factor 9 applies in the same manner to juvenile offenders. (*Heilbrun, et al., 2005; Stetson School, 2012*)

(10) Factor 10: Contact with Criminal Justice System.

(a) Adult Male. Individuals are expected to comply with the law. Lawlessness and antisocial behavior correlate with risk of reoffense and degree of dangerousness. For the purposes of factor 10, the Board shall consider evidence of a persistent disregard for rules, laws, and the violation of the rights of others.

Ongoing criminal behavior weighs heavily in the application of factor 10. Analysis under factor 10 shall include the consideration of the number and type of criminal charges, dispositions on the charges, dates of the criminal conduct, and number of abuse prevention or harassment prevention orders.

When classifying adults whose only sex offense(s) were committed as a juvenile, the Board shall consider their entire criminal history. (*Duwe and Freske, 2012; Hanson and Bussiere, 1998; Hanson and Bourgon, 2005; and Harris et al., 2003*)

(b) Adult Female. Factor 10 applies in the same manner to adult female offenders. (*Cortoni, 2010; Hanson et al., 2007; Hart et al., 2003; Sandler and Freeman, 2007, 2009; Vandiver and Kercher, 2004; Vandiver, 2006*)

(c) Juvenile. Juveniles with a history of multiple charges or adjudications, including non-sexual crimes, are at increased risk of reoffense. Analysis under factor 10 shall include consideration of the number and severity of criminal charges, abuse prevention orders, harassment prevention orders, and Child Requiring Assistance proceedings, dispositions on the charges, and dates of the criminal conduct. (*Carpentier et al., 2011; Epperson et al., 2009; Gerhold et al. 2007; McCann & Lussier, 2008; Nisbet et al., 2004; Prentky and Righthand, 2003; Zimring et al., 2007; Zimring et al., 2009*).

(11) Factor 11: Violence Unrelated to Sexual Assaults.

(a) Adult Male. An offender is more likely to reoffend and present a greater danger if he has previously demonstrated that he can act violently and with no regard to the safety of others. Analysis under factor 11 shall include the consideration of the severity and frequency of violence towards other persons or animals. (*Harris et al., 2003; Hanson & Bourgon, 2005*)

(b) Adult Female. Factor 11 applies in the same manner to adult female offenders. (*Hanson and Cortoni, 2005; Poels, 2007*)

(c) Juvenile. Factor 11 applies in the same manner to juvenile offenders. (*Curwen and Costin, 2007; Knight et al., 2009; Prentky and Righthand, 2003; Stetson School, 2012; Worling and Curwen, 2001; and Worling et al., 2012*)

(12) Factor 12: Behavior While Incarcerated or Civilly Committed.

(a) Adult Male. Offenders are expected to comply with the rules of the institutional setting. Poor behavior while incarcerated or civilly committed is an indicator of antisocial behavior. An offender who unsatisfactorily adjusts to the rigors of confinement by violating rules in a highly structured environment presents an increased degree of dangerousness. Unsatisfactory adjustment is evidenced by violations of the rules. In determining the potential risk of reoffense and dangerousness of an offender, the Board may consider such elements as:

1. the number of poor behavioral reports or disciplinary reports the offender received while confined;
2. the seriousness of the violation; and
3. the length of time that has elapsed between the offender's last report and his release.

803 CMR 1.33(12)(a) includes adults whose only sex offense(s) were committed as a juvenile and who also have a history of adult incarcerations or commitment. (*Doren, 2002; and Epperson et al., 2003*)

(b) Adult Female. Factor 12 applies in the same manner to adult female offenders.

(c) Juvenile. Factor 12 does not apply to juvenile offenders. Factor 13 addresses juvenile offenders in custody.

(13) Factor 13: Non-compliance with Community Supervision.

(a) Adult Male. Offenders are expected to comply with the terms of community supervision. Non-compliance with the rules of community supervision is an indicator of antisocial behavior. An offender who unsatisfactorily adjusts to the external controls inherent to community supervision poses a significant risk when those controls are removed. Unsatisfactory adjustment is evidenced by violations of the rules of the supervising agency or the conditions of release. In determining the potential risk and dangerousness of an offender, the Board may consider such elements as:

1. the number of violations the offender received during his period of supervision;
2. the seriousness of the violation reported in the violation notice or report; and
3. the length of time that has elapsed between the offender's last violation notice or report and his release from supervision.

The Board shall consider the offender who engages in sexual misconduct while on community supervision to pose a greater risk of reoffense and a greater degree of danger to the public.

When classifying adults whose only sex offense(s) were committed as a juvenile, the Board shall consider the offender's entire history of community supervision. (*Hanson and Harris, 2000; Knight and Thornton, 2007; Mann et al., 2010*).

(b) Adult Female. Factor 13 applies in the same manner to adult female offenders. (*Hanson et al., 2007; Hart et al., 2003; Stuart and Brice-Baker, 2004*)

(c) Juvenile. For purposes of factor 13, juvenile offenders are considered to be under "community supervision" when they are supervised in the community by probation or the Department of Youth Services (DYS), or when they are in a residential treatment program or a DYS detention center or program.

A juvenile who unsatisfactorily adjusts to the external controls inherent to supervision may pose a significant risk when those controls are removed. Unsatisfactory adjustment is evidenced by a pattern of violations of rules and regulations of the supervising agency or program. In determining the potential risk and dangerousness of an offender, the Board may consider such elements as:

1. the number of disciplinary issues or rule violations;
2. their seriousness; and
3. the length of time that has elapsed since the offender's last disciplinary issue or violation.

While not sufficient by itself to invoke factor 13, a juvenile's history of suspension and expulsion from school may be considered in assessing a pattern of behavior while in a supervised setting.

The Board shall consider juvenile offenders who engage in sexual misconduct while under community supervision to pose a heightened risk of reoffense and a greater degree of danger to the public. (*Epperson et al., 2009; Prentky and Righthand, 2003*)

(14) Factor 14: Recent Threats.

(a) Adult Male. The Board shall consider the offender who expresses threats or intent to sexually assault another person to be at an increased risk of reoffense and degree of dangerousness.

803 CMR 1.33(14)(a) includes adults whose only sex offense(s) were committed as a juvenile. (*Hanson and Harris, 2000; Hanson et al., 2007; Harris et al., 2003*)

(b) Adult Female. Factor 14 applies in the same manner to adult female offenders.

(c) Juvenile. Factor 14 applies in the same manner to juvenile offenders.

(15) Factor 15: Hostility Towards Women.

(a) Adult Male. Hostile attitudes and behavior towards women are predictive of sexual reoffense and increased dangerousness. Factor 15 is applied when an offender has a pervasive pattern of conflicts with women, physical aggression toward women, and using derogatory and demeaning language towards women, or has multiple abuse prevention orders or harassment prevention orders taken out by different women at different times.

803 CMR 1.33(15)(a) includes adults whose only sex offense(s) were committed as a juvenile and who evidence a recent pattern of hostility toward women (*Allan et al. 2000; Hanson et al., 2007; Mann et al, 2010*)

(b) Adult Female. Factor 15 does not apply to adult female offenders.

(c) Juvenile. Factor 15 does not apply to juvenile offenders.

(16) Factor 16: Public Place.

(a) Adult Male. The commission of a sex offense or engaging in sexual misconduct in a place where detection is likely reflects the offender's lack of impulse control. The Board may apply less weight to factor 16 if there is evidence that the offender made a clear and concerted effort to conceal his offending behavior from others. For purposes of factor 16, a "public place" includes any area maintained for or used by the public and any place that is open to the scrutiny of others or where there is no expectation of privacy. (*Epperson et al., 2000*)

(b) Adult Female. Factor 16 applies in the same manner to adult female offenders.

(c) Juvenile. Factor 16 applies in the same manner to juvenile offenders. (*Langstrom, 2001*)

(17) Factor 17: Male Offender against Male Victim.

(a) Adult Male. Male offenders who have engaged in sexual misconduct against a male victim reoffend at a higher rate. Factor 17 applies when a male offender commits any sexual misconduct against a non-consenting male or a male child younger than 16 years old. (*Hanson et al, 2003; Harris et al., 2003; Harris and Hanson, 2004; Knight and Thornton, 2007*)

(b) Adult Female. Factor 17 does not apply to adult female offenders.

(c) Juvenile. Factor 17 applies only to juvenile offenders who were 13 years of age or older at the time of the sexual misconduct.

There are two circumstances when juvenile sex offenders who have male victims are at a higher risk to reoffend. Factor 17 only applies:

1. when the male victim is younger than 13 years old and is at least five years younger than the offender at the time of the sexual misconduct; or

2. if there is penetration and physical force in the sexual assault, regardless of the age of the victim.

803 CMR 1.33(17)(c) includes adults whose only sex offense(s) were committed as a juvenile. (*McCann and Lussier, 2008; Prescott, 2006; Prentky and Righthand 2003; Worling and Curwen, 2001*).

(18) Factor 18: Extravulnerable Victim.

(a) Adult Male. Offenders who engage in sexual misconduct against an extravulnerable victim pose a greater danger to public safety. For purposes of factor 18 "extravulnerable" includes any condition or circumstance that:

1. renders a victim more susceptible to sexual assault or unable to effectively defend himself or herself; or

2. compromises his or her ability to effectively report the abuse or provide testimony in court.

The Board considers victims who are younger than eight years old or 60 years of age or older to be extravulnerable by virtue of their age. (*Levinson, et al, 2001; McGrath, 1991*)

(b) Adult Female. Factor 18 applies in the same manner to adult female offenders.

(c) Juvenile. Factor 18 applies in the same manner to juvenile offenders.

(19) Factor 19: Level of Physical Contact.

(a) Adult Male. Sexual assault involving penetration has been shown to cause increased psychological harm to the victim. The offender who engages in penetration, especially penile penetration, as part of the sexual assault poses an increased

degree of dangerousness. In the case of an adult with a child victim, if the difference in age between the offender and the victim is five years or less and there is evidence of a consensual, although statutorily criminal sexual act, the Board shall give limited weight to factor 19. (*Lesserman et al., 1997*)

(b) Adult Female. Factor 19 applies in the same manner to adult female offenders.

(c) Juvenile. Factor 19 applies in the same manner to juvenile offenders. However, when determining the weight to apply to factor 19, the Board should consider: age difference between offender and victim; whether there is evidence of an ongoing dating type relationship; whether the victim consented; and whether there was force or coercion.

803 CMR 1.33(19)(c) includes adults whose only sex offense(s) were committed as a juvenile. (*Stetson School, 2012*)

(20) Factor 20: Diverse Sexual Behavior.

(a) Adult Male. Diverse sexual behavior may reflect sexual preoccupation, elevated sex drive, or sexual deviance. Offenders who have a history of engaging in different types of inappropriate sexual behaviors, in separate episodes, are at an increased risk to reoffend. Diverse sexual behaviors include, but are not limited to: voyeurism, exhibitionism, possession of pornography, contact sexual assaults, stealing of a person's belongings for sexual arousal, frottage, stalking, photographing or videotaping a partially nude or nude person or the intimate parts of a person without their consent, and engaging in sexual harassment. In determining the weight applied to factor 20, the Board shall consider the number, types, and frequency of the diverse sexual behaviors. (*Hanson and Harris, 2000; Hanson et al., 2007; Harris et al., 2003; and Mann et al., 2010*)

(b) Adult Female. Factor 20 applies in the same manner to adult female offenders. (*Hart et al., 2003*)

(c) Juvenile. Factor 20 applies in the same manner to juvenile offenders. (*Curwen and Costin, 2007; Prentky and Righthand 2003; Worling and Curwen, 2001*)

(21) Factor 21: Diverse Victim Type.

(a) Adult Male. Offenders whose acts of sexual misconduct traverse victim types, such as multiple ages, gender, or relationship categories, present a greater risk of reoffense and danger to public safety because they have a broader victim pool. (*Hanson and Harris 2000; Heil et al., 2003; Kleban et al., 2012*)

(b) Adult Female. Factor 21 applies in the same manner to adult female offenders.

(c) Juvenile. Factor 21 applies in the same manner to juvenile offenders. (*Curwen and Costin, 2007; Epperson et al., 2009; Stetson School, 2012; Worling and Curwen, 2001; Parks and Bard, 2006*)

(22) Factor 22: Number of Victims.

(a) Adult Male. Offenders who have committed acts of sexual misconduct against two or more victims present an increased risk of reoffense and degree of dangerousness.

(b) Adult Female. Factor 22 applies in the same manner to adult female offenders.

(c) Juvenile. Factor 22 applies in the same manner to juvenile offenders. (*Epperson et al., 2009; Gerhold et al., 2007; Miccio-Fonseca, 2009; Prentky and Righthand, 2003; Powers-Sawyer and Miner, 2009; Stetson School, 2012; Worling and Curwen, 2001; Worling and Langstrom, 2006*)

(23) Factor 23: Victim Access.

(a) Adult Male. An offender's risk of reoffense increases when he has frequent and easy access to potential victims from his preferred victim pool.

The Board may consider such things as:

1. whether the offender has regular and ongoing opportunities for interaction with potential victims through such things as coaching, teaching, or volunteering, or through his living, employment, or relationship settings; or
2. whether the offender appears to be intentionally seeking circumstances that put him in contact with his preferred victims.

For offenders who target stranger victims, factor 23 applies when the offender's conduct suggests an intentional seeking out of circumstances similar to his prior offending behavior.

803 CMR 1.33(23)(a) includes adults whose only sex offense(s) were committed as juveniles. (*Hanson and Harris, 2000; Hanson et al., 2007*)

(b) Adult Female. Factor 23 applies in the same manner to adult female offenders.

(c) Juvenile. The risk of reoffense increases when juveniles have frequent, unsupervised access to potential victims from their preferred victim pool or appear to be intentionally seeking circumstances that allow such access. (*Carpentier and Proulx, 2011; Spice, et al., 2013; Worling and Langstrom, 2006*)

(24) Factor 24: Less than Satisfactory Participation in Sex Offender Treatment

(a) Adult Male. Offenders who refuse to participate in, dropped out of, or are terminated by their treatment provider from sex offender treatment present an increased risk of reoffense.

The Board shall consider the offender who, during his most recent opportunity to participate in treatment while in custody or when required by community supervision, refused to participate in a sex offender treatment program or dropped out or was

involuntarily terminated to be at an increased risk of reoffense and degree of dangerousness. (*Hanson and Harris, 2000; Hanson et al., 2002; Losel and Schmucker, 2005*)

(b) Adult Female. Factor 24 applies in the same manner to adult female offenders.

(c) Juvenile. Factor 24 applies in the same manner to juvenile offenders. (*Curwen and Costin, 2007; Epperson et al., 2009; Gerhold, et al., 2007; Powers-Sawyer and Miner, 2009; Vitacco et al., 2009; Worling and Curwen, 2001; Worling and Langstrom, 2006*)

(25) Factor 25: Prostitution of Children.

(a) Adult Male. Factor 25 does not apply to male offenders.

(b) Adult Female. Female offenders convicted of offenses related to either promoting or patronizing prostitution of a child have an increased risk of reoffense. (*Sandler and Freeman, 2009*)

(c) Juvenile. Factor 25 does not apply to juvenile offenders.

(26) Factor 26: History of Abusing Children.

(a) Adult Male. Factor 26 does not apply to male offenders.

(b) Adult Female. Female offenders with a history of engaging in any type of non-sexual child abuse have an increased risk of reoffense. The Board shall consider evidence of prior child abuse, including charges, investigations, and convictions. (*Cortoni and Gannon, 2011; Sandler and Freeman, 2009; Wijkman and Bijleveld, 2013*)

(c) Juvenile. Factor 26 does not apply to juvenile offenders.

(27) Factor 27: Age of Victim.

(a) Adult Male. Factor 27 does not apply to male offenders. d

(b) Adult Female. Factor 27 does not apply to female offenders.

(c) Juvenile. Factor 27 only applies to juvenile offenders who were 13 years of age or older at the time of the sex offense.

1. Child Victims. Juvenile offenders who target younger child victims outside of their peer age group present an increased risk of reoffense and degree of dangerousness. For purposes of factor 27, the Board shall consider "child victim" as younger than 13 years old and at least five years younger than the offender at the time of the offense.

2. Adult Victims. Juvenile offenders who target adult victims present an increased risk of reoffense and degree of dangerousness. For purposes of factor 27, the Board shall consider "adult victim" as 18 years of age or older and at least five years older than the offender at the time of offense.

803 CMR 1.33(27)(c) includes adults whose only sex offense(s) were committed as a juvenile. (*ATSA, 2012; McCann and Lussier, 2008; Nisbet, et al, 2004; Stetson School, 2012; Worling and Curwen, 2001; Worling and Langstrom, 2006*)

RISK-MITIGATING FACTORS:

(28) Factor 28: Supervision by Probation or Parole.

(a) Adult Male. Supervision of sex offenders released into the community increases public safety. An offender's risk of reoffense and degree of dangerousness are reduced while he is serving a term of community supervision. Factor 28 also applies to offenders who are incarcerated at the time of the classification hearing and will be under community supervision upon release. Factor 28 may be given less weight if there is a history of probation violations.

803 CMR 1.33(28)(a) includes adults whose only sex offense(s) were committed as a juvenile. (*English et al., 1995; Vries Robbe and Vogel, 2013*)

(b) Adult Female. Factor 28 applies in the same manner to female offenders.

(c) Juvenile. Community supervision reduces a juvenile sex offender's risk of reoffense and degree of dangerousness. For purposes of factor 28, juvenile offenders are under "community supervision" when they are serving a probation sentence or are being monitored by DYS while in the community. (*Stetson School, 2012*)

(29) Factor 29: Offense-Free Time in the Community.

(a) Adult Male. The likelihood of sexual recidivism decreases the longer the sex offender has had access to the community without committing any new sex offense or non-sexual violent offense. The risk of reoffense decreases for most offenders after living in the community offense-free for five to ten years. The risk of reoffense lowers substantially after ten years of offense-free time in the community.

For purposes of factor 29, the offense-free time begins on the date of an offender's most recent release from custody for a sex offense or non-sexual violent offense. In the case of an offender who was not committed, the offense-free time begins on the most recent date of conviction or adjudication of a sex offense or non-sexual violent offense.

803 CMR 1.33(29)(a) includes adults whose only sex offense(s) were committed as a juvenile. (*Hanson et al., 2013; Harris & Hanson, 2004*)

(b) Adult Female. Factor 29 applies in the same manner to female offenders.

(c) Juvenile. Adolescence is a time of rapid social, sexual, physical, cognitive, and emotional developmental changes. The likelihood of recidivism decreases for most juvenile sexual offenders after living in the community offense-free for three years. The risk of re-offense continues to lower over time and by ten years of offense-free time the risk of reoffense has substantially decreased.

For purposes of factor 29, the offense-free time begins on the most recent date the juvenile offender is released from DYS detention for a sex offense or non-sexual violent offense. In the case of an offender who is not in detention, the offense-free time begins on the most recent date of adjudication in the juvenile court for a sex offense or non-sexual violent offense. (*Prentky et al., 2010; Worling and Langstrom, 2006; Worling, et al., 2010*)

(30) Factor 30: Advanced Age.

(a) Adult Male. Recidivism rates incrementally decline as sex offenders get older, especially as offenders move into their later years. While advanced age alone does not outweigh other risk-elevating factors present in an individual offender, advancing age has a mitigating effect on risk of reoffense.

Factor 30 does not apply uniformly to all sex offenders. Although risk of reoffense gradually declines when an offender is in his forties, the Board considers advanced age to have a significant mitigating effect when the offender is 50 years of age or older or, for those with child victims, when the offender is 60 years of age or older. For purposes of factor 30, the Board will consider the offender's age at the time of the classification hearing.

Factor 30 should be given less weight when an offender continues to demonstrate an active sex drive or general criminality.

803 CMR 1.33(30)(a) includes adults whose only sex offense(s) were committed as a juvenile. (*Barbaree and Blanchard, 2008; Hanson, 2002; Hanson, 2006; Fazel et al., 2006; Lussier and Healy, 2009; Nicholaichuk et al., 2014; Prentky and Lee, 2007; Skelton and Vess, 2008; Thornton, 2006*)

(b) Adult Female. Factor 30 applies in the same manner to adult female offenders.

(c) Juvenile. Factor 30 does not apply to juvenile offenders.

(31) Factor 31: Physical Condition.

(a) Adult Male. Pursuant to M.G.L. c. 6, § 178K(1)(d), the Board shall give consideration to the offender who has a physical condition that is documented by a treating medical provider. Factor 31 seeks to identify those offenders who have a decreased risk of reoffense or degree of dangerousness due to a physical condition, including a debilitating illness. At minimum, the medical documentation must:

1. Identify the physical condition;

2. Indicate the onset or date of diagnosis of the physical condition;
3. Provide a detailed description of the offender's limitations connected to the physical condition; and
4. Provide a summary of the offender's treatment and prognosis relative to the physical condition.

(b) Adult Female. Factor 31 applies in the same manner to adult female offenders.

(c) Juvenile. Factor 31 applies in the same manner to juvenile offenders.

(32) Factor 32: Sex Offender Treatment. In order for factor 32 to apply, it shall be the responsibility of the offender to provide documentation from a treatment provider verifying his treatment participation or completion. This documentation must, at minimum, include: the name and license number of the offender's treatment provider; the treatment provider's description of the treatment program's milieu, methodology, goals, and objectives; and a record of the offender's attendance, level of participation, and degree of progress.

(a) Adult Male. The Board has determined that participation in or successful completion of sex offense-specific treatment, specifically in a program utilizing a cognitive-behavioral modality, such as Relapse Prevention, Risk-Needs-Responsivity, or Good Lives, is a risk-reducing factor. The Board may also consider pharmacological treatment for paraphilic disorders as risk reducing.

The risk-mitigating weight applied to factor 32 varies in degrees based on the following:

1. Completion of Treatment. In general, offenders who have successfully completed a treatment program have lower rates of reoffense than those who have not. Participation in treatment through the end of a term of incarceration or community supervision is not considered "completion of treatment" unless there is documentation that the offender met all the goals of the program.
2. Currently Participating in Treatment. The Legislature has identified current participation in treatment as a risk mitigating factor. Offenders who voluntarily participate in treatment in the community, not solely as a condition of supervised release, and offenders who continue to participate in treatment after their treatment providers have determined that they have completed the program, may receive more weight under factor 32.
3. Past Participation in Treatment. The Board shall consider an offender's past participation in treatment. Offenders who participated in treatment while incarcerated or under community supervision, but did not complete the sex offender treatment program, may receive less weight under factor 32.
4. Denial. One of the primary goals of successful sex offender treatment is accepting responsibility for engaging in harmful sexual offending behavior. While some individuals who deny committing their sex offense can benefit from treatment, their lack of responsibility or degree of minimization for their behaviors may diminish the weight assigned to factor 32.

When classifying adults whose only sex offense(s) were committed as a juvenile, the Board shall consider their past participation in treatment as a juvenile and participation in sex offender treatment as an adult. (*Hanson et al., 2009; Levenson, 2011; Losel and Schmucker, 2005; Marques, 2005; Olver et al., 2013; Saleh and Guidry, 2003*)

(b) Adult Female. Many female sex offenders have treatment needs that may not be addressed in traditional treatment programs created for male sex offenders. The Board shall give mitigating weight to participation in or successful completion in a program utilizing a cognitive-behavioral modality such as Relapse Prevention, Risk-Needs-Responsivity, and Good Lives or general psychological therapy. The Board shall consider the degree of participation in treatment and denial in the same manner as adult males. (*Blanchette and Brown, 2006; Blanchette and Taylor, 2010; Ford, 2010*)

(c) Juvenile. Juvenile offenders may have broader treatment needs than their adult counterparts. Because juveniles are still maturing and developing, they may be more amenable to treatment.

The Board has determined that participation in any psychological therapy that addresses various areas of the offender's life, including family, school, emotional, and social domains, or sex offense specific treatment is a risk-reducing factor. The amount of weight assigned to factor 32 increases with the offender's progress and level of participation, family involvement, level of accountability, amount of focus on sex offending behavior, or whether the offender completed a treatment program. (*ATSA, 2012; Borduin et al., 2009; Reitzel and Carbonell, 2006; Worling et al., 2010*)

(33) Factor 33: Home Situation and Support Systems.

(a) Adult Male. Factor 33 is applied to an offender who is currently residing in a positive and supportive environment. The likelihood of reoffense is reduced when an offender is supported by family, friends, and acquaintances.

The Board shall give greater mitigating consideration to evidence of a support network that is aware of the offender's sex offense history and provides guidance, supervision, and support of rehabilitation.

803 CMR 1.33(33)(a) includes adults whose only sex offense(s) were committed as a juvenile. (*Tabachnick and Klein, 2011; de Vries Robbe and Vogel, 2013; de Vries Robbe et al., 2014*)

(b) Adult Female. Factor 33 applies in the same manner to adult female offenders. (*Gannon and Rose, 2008*)

(c) Juvenile. A juvenile who is currently residing in a positive and supportive environment is less likely to reoffend. Factor 33 is applied when there is evidence of stable relationships with family, stable and therapeutically supportive family, pro-social friends and acquaintances, or positive engagement with social services, teachers or other adults.

The Board shall give greater mitigating consideration to evidence of a positive support network that is aware of the offender's sex offense history and provides guidance, supervision, and support of rehabilitation. (*Bremer, 2006; Prentky and Righthand, 2003; Prentky et al., 2010; Worling and Curwen, 2001*)

(34) Factor 34: Materials Submitted by the Sex Offender Regarding Stability in the Community.

(a) Adult Male. Pursuant to M.G.L. c. 6, § 178K(1)(1), the Board shall give mitigating consideration to materials submitted by the offender that demonstrate stability in the community. The Board shall consider evidence that directly addresses the offender's recent behavior and lifestyle including, but not limited to: his residential stability, sustained sobriety, education or employment stability, type of employment, and non-work related activities. (*Tabachnick and Klein, 2011; de Vries Robbe and Vogel, 2013; de Vries Robbe et al., 2014*)

(b) Adult Female. Factor 34 applies in the same manner to adult female offenders. (*Gannon and Rose, 2008*)

(c) Juvenile. Factor 34 applies in the same manner to juvenile offenders. (*Bremer, 2006; Prentky et al., 2010*)

ADDITIONAL FACTORS:

(35) Factor 35: Psychological or Psychiatric Profiles Indicating Risk to Reoffend.

(a) Adult Male. The Board shall consider evaluative reports, empirically-based risk assessment instruments, or testimony from a licensed mental health professional that discuss psychological and psychiatric issues, including major mental illness, as they relate to the offender's risk of reoffense.

The Board may give appropriate evidentiary weight to documentary reports and risk assessment, but the ultimate risk opinion, if any, will be excluded from consideration unless the mental health professional testifies as an expert witness at the classification hearing. (*Abracen and Looman, 2012; Fazel et. al. 2007; Hanson and Bussiere, 1998; Hanson and Harris, 2000; Kafka, 2012*)

(b) Adult Female. Factor 35 applies in the same manner to adult female offenders. (*Cortoni, 2010; Gannon, et al., 2014; Hart et al., 2003; Rousseau and Cortoni, 2010; Vandiver and Kercher, 2004*)

(c) Juvenile. Factor 35 applies in the same manner to juvenile offenders. (*Kafka, 2012*).

(36) Factor 36: Online Offending Behavior.

(a) Adult Male. The presence of other regulatory factors must also be considered in assessing the risk of reoffense and degree of dangerousness posed by online offenders. The Board categorizes online offending behavior in the following ways:

1. Child Pornography. Sex offenders who limit their offending to possessing child pornography, in the absence of other factors, generally pose a lower risk of reoffense and degree of dangerousness than sex offenders who commit contact offenses.

Evidence of sexual deviance may demonstrate an increase in risk to commit contact sex offenses. Useful indicators of sexual deviance include, but are not limited to: evidence of actively searching for images of prepubescent children; collecting larger amounts of prepubescent pornography relative to adolescent or adult pornography; collecting larger amounts of child pornography relative to adult pornography; sorting and organizing files versus random downloading; and primarily focusing on child pornography depicting boys or a higher boy to girl ratio in a collection. (*Kim, 2004; Seto et al., 2011; Seto & Eke, 2015*)

2. Online Communicating. Sex offenders who engage in sexually explicit communications or exchange pornographic photos with minors or persons they believe to be minors by any electronic means present a danger to the public.

These offenders generally pose a higher degree of dangerousness than those who limit their offending behavior to child pornography as described in 803 CMR 1.33(36)(a)1.

3. Solicitation Offending. Sex offenders who communicate with minors or persons they believe to be minors by any electronic means for the purpose of enticing or meeting in-person to engage in sexual misconduct present the greatest danger among online offenders. (*Seto & Eke, 2005; Babchishin et al., 2011; Briggs et al., 2011; Seto et al., 2011; Eke et al., 2011*)

(b) Adult Female. Factor 36 applies in the same manner to adult female offenders.

(c) Juvenile. The categories of online offending apply to juveniles in the same manner as adults.

Juveniles whose online offending targets similarly aged peers may present a lower degree of risk and dangerousness than adults who target juveniles. (*Saleh et al., 2014*)

(37) Factor 37: Other Information Related to the Nature of the Sexual Behavior.

(a) Adult Male. Pursuant to M.G.L. c. 6, § 178L(1), the Board shall consider any information that it deems useful in determining risk of reoffense and degree of dangerousness posed by any offender.

(b) Adult Female. Factor 37 applies in the same manner to adult female offenders.

(c) Juvenile. Factor 37 applies in the same manner to juvenile offenders.

(38) Factor 38: Victim Impact Statement.

(a) Adult Male. The Board recognizes the substantial impact sex offenses have on victims. Pursuant to M.G.L. c. 6, § 178K(l)(k), the Board shall consider any written statement authored by the victim, the parent or guardian of a minor victim or a deceased victim, or the guardian of an adult victim of a sex offense that resulted in a conviction or adjudication.

(b) Adult Female. Factor 38 applies in the same manner to adult female offenders.

(c) Juveniles. Factor 38 applies in the same manner to juvenile offenders.

The Massachusetts Administrative Code titles are current through Register No. 1463, dated February 18, 2022. Some sections may be more current; see credits for details.

Mass. Regs. Code tit. 803, § 1.33, 803 MA ADC 1.33

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Code of Massachusetts Regulations

Title 803: Department of Criminal Justice Information Services

Chapter 1.00: Sex Offender Registry Board: Registration, Classification and Dissemination (Refs & Annos)

803 CMR 1.26

1.26: Registration Requirements and Dissemination of Information

Currentness

(1) A sex offender who has not been finally classified or is finally classified as a Level 1 sex offender shall register annually in accordance with the requirements in M.G.L. c. 6, §§ 178E, 178F and 178Q. The general public shall not have access to this sex offender information, pursuant to M.G.L. c. 6, §§ 178D, 178I, 178J and 178K(2)(a).

(2) A sex offender who is finally classified as a Level 2 or Level 3 sex offender shall register in accordance with the requirements in M.G.L. c. 6, §§ 178E, 178F1/2 and 178Q. The public shall have access to this sex offender information, pursuant to M.G.L. c. 6, §§ 178D, 178I 178J and 178K(2)(b) and (c).

(3) A Level 3 sex offender designated as a sexually violent predator, pursuant to M.G.L. c. 6, § 178K(1)(c) shall register in accordance with the requirements in M.G.L. c. 6, §§ 178E, 178F1/2 and 178Q. The public shall have access to this sex offender information, pursuant to M.G.L. c. 6, §§ 178D, 178I, 178J and 178K(2)(b) and (c),

(4) Dissemination of Information to Victims. Upon the request of a victim who has enrolled with the Board's Victim Services Unit, the Board may inform that victim of the sex offender's final registration and classification determination.

(5) Updating Information. Pursuant to M.G.L. c. 6, § 178D, the Board is required to keep the registry up-to-date and accurate. Pursuant to M.G.L. c. 6, §§ 178E, 178F and 178F1/2, the sex offender is required to verify that his or her registration data is current and accurate. Upon verifying registration data or giving notice of a change of address or intended change of address, the sex offender shall provide independent written verification of the address at which he or she is registered or, if changing address, will be registered. For purposes of 803 CMR 1.26(5), independent written verification shall include:

Any two types of the following five types of unaltered original documents bearing the name of the sex offender and his or her present address:

(a) rent or mortgage receipt;

(b) utility bill;

(c) bank or credit card statement;

(d) passport, driver's license or official photo identification issued by the Registry of Motor Vehicles; and

(e) any other current written document the Sex Offender Registry Board deems sufficient.

With the exception of a passport, driver's license or official photo identification issued by the Registry of Motor Vehicles, all other documentation must be dated within 45 days of presentation to the Sex Offender Registry Board or the police department

(6) Sex Offender Registration Fee.

(a) Pursuant to M.G.L. c. 6, § 178Q, the sex offender shall pay an annual sex offender registration fee to the Board.

(b) Waiver. The sex offender may request that the Board waive payment of the sex offender registry fee. The request must be made on a form approved by the Board and submitted to the Board at the time the sex offender submits his or her registration form to the Board. The Board may waive the fee if it determines that payment would constitute an undue hardship on the offender or his or her family due to limited income, employment status, or any other relevant factor. The Board shall use the indigency standards developed pursuant to M.G.L. c. 211D to determine whether the payment of the fee constitutes an undue hardship on the offender. If the Board determines that payment of the fee is not an undue hardship, the Board shall notify the offender informing the offender that he or she must pay the fee within ten days of receiving the notice. If the Board determines that payment of the fee is an undue hardship, it shall waive the fee for the offender for one year. The offender may renew his or her request for a waiver when payment of his next annual fee is due.

The Massachusetts Administrative Code titles are current through Register No. 1463, dated February 18, 2022. Some sections may be more current; see credits for details.

Mass. Regs. Code tit. 803, § 1.26, 803 MA ADC 1.26

Code of Massachusetts Regulations

Title 803: Department of Criminal Justice Information Services

Chapter 1.00: Sex Offender Registry Board: Registration, Classification and Dissemination (Refs & Annos)

803 CMR 1.27

1.27: Sex Offender Internet Database

Currentness

(1) The information contained in the Sex Offender Internet Database, or website, pursuant to M.G.L. c. 6 §§ 178D and 178K(2), will be created and updated on a regular basis from the Sex Offender Registry, but must be kept physically separate from the Sex Offender Registry.

(2) The information contained in the Sex Offender Internet Database must not include the following information:

(a) pertaining to unclassified or Level 1 sex offenders and any Level 2 sex offender finally classified prior to July 12, 2013;

(b) identifying victims' names, addresses or relation to Level 2 and Level 3 sex offenders; and

(c) relating to requests for registration data under sections M.G.L. c. 6, §§ 178I and 178J.

(3) Pursuant to M.G.L. c. 6, § 178N, the Sex Offender Internet Database shall include a warning explaining the criminal penalties for use of sex offender registry information to commit a crime or to engage in illegal discrimination or harassment of a sex offender and the punishment for threatening to commit a crime under M.G.L. c. 275, § 4.

(4) The Board shall develop and implement policies, procedures, and protocols to update and maintain the Sex Offender Internet Database in order to:

(a) validate the accuracy, integrity, and security of information contained in the Sex Offender Internet Database;

(b) ensure the prompt and complete removal from the Sex Offender Internet Database of registration data for sex offenders whose duty to register has terminated or expired under M.G.L. c. 6, §§ 178G, 178L, or 178M or any other law or order of any Court; and

(c) protect against the inaccurate, improper, or inadvertent publication of registration information on the Internet.

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Mass. Regs. Code tit. 803, § 1.27, 803 MA ADC 1.27

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CERTIFICATE PURSUANT TO MASS. R. APP. P. 16(k)

I, Johanna Black, do hereby certify that the Commonwealth's brief in the case of Commonwealth v. Timothy M. Roderick, SJC-13212, complies with Mass. R. App. P. 16(k). This brief complies with the length limit of Mass. R. App. P. 20 because it is in the monospaced, twelve point font of Courier New, which equates to ten or fewer characters per inch, and is no more than twenty-eight (28) non-excluded pages.

Johanna Black

Johanna Black
Assistant District Attorney
For the Plymouth District

Date: March 16, 2022

CERTIFICATE OF SERVICE

I, Johanna Black, hereby certify under the penalties of perjury that I have this date, March 16, 2022, made service of the Commonwealth's brief RE: Commonwealth v. Timothy M. Roderick, SJC-13212, on counsel for the defendant by the Electronic Filing Service Provider's electronic file and serve function to Edward Crane, Esq., Attyedwardcrane@gmail.com, 218 Adams Street, P.O. Box 220165, Dorchester, MA 02122.

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