

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

James E. Vallee

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to sex offenders.

PETITION OF:

NAME:

James E. Vallee

DISTRICT/ADDRESS:

10th Norfolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1751 OF .]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

AN ACT RELATIVE TO SEX OFFENDERS..

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

1 SECTION 1. Clause twenty-six of section 7 of chapter 4 of the General Laws, as appearing in the 2000
2 Official Edition, is hereby amended adding the following subclause: -

3 (m) the contents of the child sex abuse civil judgment and settlement database maintained by the attorney general
4 pursuant to section 11M of chapter 12.

5 SECTION 2. Section 171 of Chapter 6 of the Massachusetts General Laws as appearing in the 2002 Official Edition
6 is hereby amended by adding at the end thereof, the following:-

7 The board shall promulgate regulations requiring sexual offender registry information to be included on the criminal
8 offender record information.

9 SECTION 3. Section 178C of chapter 6 of the General Laws, as amended by chapter 77 of the acts of 2003, is
10 hereby amended by striking out after the word "part-time" the following words:- "for a period of time exceeding 14
11 days or for an aggregate period of time exceeding 30 days during any calendar year"

12 SECTION 4. Section 178C of chapter 6 of the General Laws, as most recently amended by chapter 77 of the acts of
13 2003, is hereby further amended by inserting after the definition of "Predatory" the following 2 definitions:-

14 "Primary address", the one legal address of the place where a sex offender lives, abides, lodges or resides for 14 or
15 more consecutive days in the commonwealth including the address a sex offender provides to the Registry of Motor
16 Vehicles, the Department of Revenue, the Department of Transitional Assistance, or any other state agency a sex
17 offender must legally provide an address to receive services, permits, licenses, or benefits.

18 "Secondary addresses", all the addresses of the places where a sex offender lives, abides, lodges, or resides for a
19 period of 14 or more days in the aggregate during any calendar year and which is not a sex offender's primary
20 address; or a place where a sex offender routinely lives, abides, lodges, or resides for a period of 4 or more
21 consecutive or nonconsecutive days in any month and which is not a sex offender's permanent address, including
22 any out-of-state address.

23 SECTION 5. Said section 178C of chapter 6, is hereby further amended by striking the following words "a person
24 who resides" from the definition of "sex offender" and inserting in place thereof the following:- a person who has a
25 primary address or secondary addresses.

26 SECTION 6. Section 178D of chapter 6, as most recently amended by section 5 of chapter 140 of the acts of 2003, is
27 hereby further amended by striking out in clause (a) of the first paragraph the words "home address" and inserting in
28 place thereof the following:- primary address, secondary addresses.

29 SECTION 7. Said section 178D of chapter 6 is further amended by striking out in clause (ii) of the second
30 paragraph the words "home address" and inserting in place thereof the following:- primary address and secondary
31 addresses.

32 SECTION 8. Section 178D of chapter 6, as appearing in the 2004 Official Edition, is hereby amended by striking
33 out in lines 30-31 the words "or level 2".

34 SECTION 9. Said section 178D of chapter 6, as appearing in the 2004 Official Edition, is hereby amended by
35 deleting the language after the word "offender" in line 43.

36 SECTION 10. Section 178D of chapter 6, as appearing in the 2002 Official Edition, is hereby amended by striking
37 out the following phrase:- " , to ensure the prompt and, complete removal of registration data for persons whose duty
38 to register has terminated or expired under sections 178G, 178L or 178M or any other law"

39 SECTION 11. Section 178D of chapter 6 of the General Laws, as appearing in the 2002 Official Edition, is
40 amended by striking out the following phrase:- " , the eligibility of sex offenders to be relieved of the obligation to
41 register, including but not limited to, regulations limiting motions under subsection (e) of section 178E, section
42 178G and relief from registration pursuant to paragraph (d) of subsection (2) of section 178K"

43 SECTION 12. Section 178E of said chapter 6, as most recently amended by chapter 140 of the acts of 2003, is
44 hereby further amended by striking out in paragraphs (a), (b), (c), (g), (h), (l), and (o) the words "home address or
45 intended home address" each time they appear and inserting in place thereof the following:- primary address and
46 secondary addresses or intended primary address and intended secondary addresses.

47 SECTION 13. Said section 178E subsection (a), as amended by Chapter 77 of the Acts of 2003 and as further
48 amended by Chapter 140 of the Acts of 2003, is hereby further amended by striking out said subsection and
49 inserting in place thereof the following text:

50 "(a) Within five days of receiving upon sentence any sex offender required to register pursuant to sections 178C to
51 17Q, inclusive, who shall serve an actual sentence of more than one year of incarceration, the agency which has
52 custody of the sex offender, including the department of correction, the department of youth services and each of the
53 houses of correction, shall transmit to the board said sex offender's registration data, which for purposes of this
54 paragraph shall include identifying factors, anticipated future residence, offense history, documentation of any
55 treatment received for a mental abnormality, the official version of any sex offenses, the mittimus, and any prior

56 incarceration history. The custodial agency shall also provide to the board within five days of assuming custody the
57 projected maximum release date and the earliest possible release date for the sex offender. All custodial agencies
58 shall comply with the transmission of said data identified in this section within five days of receiving custody of the
59 sex offender. All custodial agencies shall inform the board immediately of any transfers of sex offenders so that
60 there may be contact with the offender throughout the classification process. The board shall promptly transmit the
61 registration data to the police departments in the municipalities where the sex offender intends to live and work and
62 where the offense was committed and to the Federal Bureau of Investigation. The sex offender shall be informed by,
63 and shall acknowledge in writing to, the agency which has custody of the sex offender of the duty to register in the
64 commonwealth and in any state where he resides, is employed, carries on a vocation or is a student, to verify
65 registration information, to give notice of change of address or intended change of address within the
66 commonwealth or in another state and the penalties for failure to do so and for giving false registration information,
67 and of his right to submit to the board, according to section 178L, documentary evidence relative to his risk of
68 reoffense, the degree of dangerousness posed to the public and of his duty to register under this section. If such sex
69 offender is a juvenile at the time of such notification, notification shall also be mailed to such sex offender's legal
70 guardian or agency having custody of the juvenile in the absence of a legal guardian and his most recent attorney of
71 record. The agency shall transmit such acknowledgment to the board within ten days of receipt of such
72 acknowledgment. Not later than ten days before his release from custody, a sex offender shall register by mailing to
73 the board on a form approved by the board and signed under the pains and penalties of perjury, the sex offender's
74 name, date of birth, home address or intended home address, work address or intended work address and, if the sex
75 offender is or intends to become a part-time or full-time employee of an institution of higher learning, the name and
76 address of the institution, and, if the sex offender is or intends to become a part-time or full-time student of an
77 institution of higher learning, the name and address of the institution. No sex offender shall be released from
78 custody unless such registration has been filled out, signed and mailed to the board."

79 SECTION 14. Section 178E, as appearing in the 2002 Official Edition, is amended by striking out subsections (e)
80 and (f).

81 SECTION 15. Said section 178E of chapter 6 is further amended by striking out in paragraph (h) the words "who
82 intends to move to a different city or town within the commonwealth" and inserting in place thereof the following:–
83 who intends to change his primary address or change or establish a secondary address in a different city or town
84 within the commonwealth.

85 SECTION 16. Said section 178E of chapter 6 is further amended by striking out in paragraph (h) the words "his
86 address within a city or town shall notify the board in writing not later than ten days prior to establishing such new
87 residence" and inserting in place thereof the following:– his primary address and/or secondary addresses within a
88 city or town shall notify the board in writing not later than ten days prior to establishing such new primary address
89 and/or secondary addresses.

90 SECTION 17. Said section 178E of chapter 6 is further amended by striking out in paragraph (q) the words "home
91 address" and inserting in place thereof the following:– primary address and secondary addresses.

92 SECTION 18. Section 178F of said chapter 6, as most recently amended by chapter 77 of the acts of 2003, is hereby
93 further amended by striking out in the first paragraph the words "home address or intended home address" and
94 inserting in place thereof the following:– primary address and secondary addresses or intended primary address and
95 intended secondary addresses.

96 SECTION 19. Said section 178F of chapter 6 is further amended by striking out the second sentence in the first
97 paragraph and inserting in place thereof the following:– A sex offender who lists homeless shelters as his primary

98 address or secondary addresses shall verify registration data every 90 days with the board by mailing to the board on
99 a form approved by the board and signed under the pains and penalties of perjury the sex offender's name, date of
100 birth, primary address, secondary addresses and work address.

101 SECTION 20. Said section 178F of chapter 6 is further amended by striking out the following words in the first
102 paragraph "the board shall mail a nonforwardable verification form to the last reported address of such sex offender"
103 and inserting in place thereof the following:– the board shall mail a nonforwardable verification form to the last
104 reported primary address of such sex offender.

105 SECTION 21. Section 178F½ of said chapter 6, as most recently amended by chapter 140 of the acts of 2003, is
106 hereby further amended by striking out the first sentence of the first paragraph and inserting in place thereof the
107 following:– "A sex offender finally classified by the board as a level 2 or a level 3 sex offender who is required to
108 register pursuant to sections 178C to 178P, inclusive, shall appear in person annually at the local police department
109 in the city or town in which such sex offender has his primary address, or if such sex offender does not have a
110 primary address in the commonwealth, in the city or town in which such sex offender has a secondary address,
111 works, or attends an institution of higher learning to verify that the registration data on file remains true and
112 accurate."

113 SECTION 22. Said section 178F½ of chapter 6 is further amended by striking out the fourth sentence in the first
114 paragraph and inserting in place thereof the following:– Such sex offender who lists a homeless shelter as his
115 primary address shall appear in person at such local police department every 90 days to verify that the registration
116 data on file remains true and accurate.

117 SECTION 23. Said section 178F½ of chapter 6 is further amended by striking out the following words in the first
118 paragraph "the board shall mail a nonforwardable verification form to the last reported address of such sex offender"
119 and inserting in place thereof the following:– the board shall mail a nonforwardable verification form to the last
120 reported primary address of such sex offender.

121 SECTION 24. Said section 178F½ of chapter 6 is further amended by striking out the ninth sentence of the first
122 paragraph and inserting in place thereof the following:– Such sex offender shall, within five days of receipt, sign the
123 verification form under the penalties of perjury and register in person at the police department in the municipality in
124 which such sex offender has his primary address, or if such sex offender does not have a primary address in the
125 commonwealth, in the city or town in which such sex offender has a secondary address, works or attends an
126 institution of higher learning.

127 SECTION 25. Said section 178F½ of chapter 6 is further amended by striking out the last sentence of the first
128 paragraph and inserting in place thereof the following:– A sex offender finally classified as a level 2 or level 3
129 offender shall also comply with the provisions of paragraphs (g) to (j) and (o) to (q), inclusive, of section 178E, but
130 the offender shall give the required notice in person at the police department in the city or town where such sex
131 offender has his primary address, or if such sex offender does not have a primary address in the commonwealth, in
132 the city or town in which such sex offender has a secondary address, works or attends an institution of higher
133 learning.

134 SECTION 26. Section 178G of chapter 6 of the General Laws, as appearing in the 2002 official edition, is hereby
135 amended by striking out all from the word "The" in line 1 through the word "others." in line 19, inclusive.

136 SECTION 27. Section 178H of said chapter 6, as so appearing, is hereby amended by inserting at the end of
137 paragraph (a) the following sentence:- “This includes any previous convictions by a court of the commonwealth or
138 any other jurisdiction because of a like violation.”

139 SECTION 28. Section 178H of said chapter 6, as so appearing, is hereby amended by striking out, in line 7, the
140 words “six months” and inserting in place thereof the following words:— one year.

141 SECTION 29. Section 178H of chapter 6 of the General Laws, as appearing in the 2002 Official Edition, is hereby
142 amended by inserting after paragraph 2 the following paragraph:-

143 (3) A sex offender required to register pursuant to this chapter who has been convicted for a violation under
144 this section and has been classified as a level 3 sex offender by the sex offender registry board pursuant to
145 sections 178C to 178P, inclusive, of chapter 6, shall, in addition to the term of imprisonment authorized by
146 this section, be punished by a term of community parole supervision for life to be served under the
147 jurisdiction of the parole board, as set forth in section 133C of chapter 127. The sentence of community
148 parole supervision for life shall commence immediately upon the expiration of the term of imprisonment
149 imposed upon such person by the court or upon such person’s release from probation supervision or upon
150 discharge from commitment to the treatment center pursuant to section 9 of chapter 123A, whichever first
151 occurs.

152 SECTION 30. Section 178J of chapter 6, as most recently amended by chapter 77 of the acts of 2003, is hereby
153 further amended by striking out the clause (2) of subsection (c) and inserting in place thereof the following:- (2) the
154 primary address and/or secondary addresses if located in the areas described in clause (2) or (3) of subsection (b).

155 SECTION 31. Section 178K(1) of chapter 6 of the Massachusetts General Laws, as appearing in the 2002 Official
156 Edition, is hereby amended by striking out in line 35 the phrase “or for relief from the obligation to register”.

157 SECTION 32. Section 178(K)(2) of chapter 6 of the Massachusetts General Laws, as appearing in the 2002 official
158 edition, is hereby amended by striking out in lines 96-97 the phrase: “or for relief from the obligation to register”

159 SECTION 33. Paragraph (b) of subsection (2) of section 178K of chapter 6 of the General Laws, as most recently
160 amended by section 20 of chapter 77 of the acts of 2003, is hereby further amended by inserting after the first
161 sentence the following 2 sentences:-- If an offender designated as a level 2 offender was convicted of a sex offense
162 involving a child, such offender shall be given a level 2(a) designation and shall be subject to the level 3 community
163 notification plan. If an offender designated as a level 2 offender committed any offense other than a sex offense
164 involving a child, such offender shall be given a level 2(b) designation and shall be subject to the requirements of a
165 level 2 offender.

166 SECTION 34. Section 178K of chapter 6, as appearing in the 2004 Official Edition, is hereby amended by inserting
167 after the word “of” the first time it appears in line 143 the following:- “level 2 and”.

168 SECTION 35. Section 178K of chapter 6, as most recently amended by section 13 of chapter 149 of the acts of
169 2004, is hereby further amended by striking out the paragraph (ii) of clause (c) of subsection (2) and inserting in
170 place thereof the following:- (ii) the offender's primary address and secondary addresses.

171 SECTION 36. Section 178K of chapter 6, as appearing in the 2004 Official Edition, is hereby amended by inserting
172 after the word “a” in line 168 the words “level 2 and”.

173 SECTION 37. Section 178(K)(2) of chapter 6 of the Massachusetts General Laws, as appearing in the 2002 official
174 edition, is hereby amended by striking out subsection (d) in its entirety.

175 SECTION 38. Section 178L(1)(a) of chapter 6 of the Massachusetts General Laws, as appearing in the 2002 official
176 edition, is hereby amended by striking subsection (a) and inserting in place thereof the following text:

177 “(a) Within ten days of receipt from the department of correction, the department of youth services and each of the
178 houses of correction all of the information obtained pursuant to section 178E(a) that pertains to an individual who
179 shall serve an actual sentence of more than one year of incarceration, the board shall notify the sex offender of his
180 right to submit to the board documentary evidence relative to his risk of reoffense and the degree of dangerousness
181 posed to the public and his duty to register according to the provisions of section 178E. If the sex offender is a
182 juvenile at the time of such notification, notification shall also be mailed to the sex offender's legal guardian or
183 agency having custody of the juvenile in the absence of a legal guardian and his most recent attorney of record. Such
184 sex offender may submit such evidence to the board within 30 days of receiving such notice from the board. Upon a
185 reasonable showing, the board may extend the time in which such sex offender may submit such documentary
186 evidence. Upon reviewing such evidence, the board shall promptly notify the sex offender of the board's
187 recommended sex offender classification, his duty to register, if any, his right to petition the board to request an
188 evidentiary hearing to challenge such classification and duty, his right to retain counsel to represent him at such
189 hearing and his right to have counsel appointed for him if he is found to be indigent as determined by the board
190 using the standards under chapter 211D; provided, however, that such indigent offender may also apply for and the
191 board may grant payment of fees for an expert witness in any case where the board in its classification proceeding
192 intends to rely on the testimony or report of an expert witness prepared specifically for the purposes of the
193 classification proceeding. Such sex offender shall petition the board for such hearing within 20 days of receiving
194 such notice. The board shall conduct such hearing in a reasonable time according to the provisions of subsection (2).
195 A secured hearing facility shall be provided by the custodial agency. The board shall issue its final classification
196 decision prior to the offender's release from custody. The failure timely to petition the board for such hearing shall
197 result in a waiver of such right and the registration requirements, if any, and the board's recommended classification
198 shall become final.”

199 SECTION 39. . Chapter 6, Section 178(L)(1) of the Massachusetts General Laws, as appearing in the 2002 official
200 edition, is hereby amended in subsection (c) by striking out in lines 54 and 55 the phrase:– “and his duty to register,
201 if any, according to section 178E”

202 SECTION 40. Section 178(L) of chapter 6 of the Massachusetts General Laws, as appearing in the 2002 Official
203 Edition, is hereby amended by adding the following section after section 2:

204 “(3) Sex Offenders recommended to be a level 1 pursuant to section 178L(1) shall be exempt from the opportunity
205 to request a hearing, as this is the minimum classification permissible by operation of law. Level 1
206 recommendations shall be final classification determinations, and not subject to judicial review pursuant to section
207 178M.”

208 SECTION 41. Section 178Q of chapter 6, as established by Chapter 26 of the Acts of 2003, is hereby amended by
209 striking the following sentence:–

210 “A sex offender's duty to pay the fee established by this section shall only terminate upon the termination of said
211 offender's duty to register as a sex offender as set forth in section 178G.”

212 SECTION 42. Said chapter 6 is hereby amended by adding the following section:–

213 Section 178R. (a) No sex offender designated as a level 2(a) or level 3 offender convicted of a sex offense
214 involving a child shall knowingly establish a home address or intended home address or any other living
215 accommodation within 1000 feet of the property on which any public or private school, licensed day care center, or
216 any other child care facility is located. Nor shall any level 2(a) or level 3 sex offender knowingly establish a home
217 address or intended home address or any other living accommodation within 1000 feet of the property on which the
218 offender's former victim or victims, or said victim's immediate family members reside, nor shall such offender
219 knowingly and willfully come within 100 feet of any of the offender's former victims. Violations of this paragraph
220 shall be punished in accordance with a violation of the conditions of probation or parole.

221 (b) No sex offender designated as a level 2(a) or level 3 offender convicted of a sex offense involving a child shall
222 knowingly accept employment within 1000 feet of the property on which any public or private school, licensed day
223 care center or any other child care facility is located. No sex offender designated as a level 2(a) or level 3 sex
224 offender shall knowingly accept employment within 1000 feet of the property on which the offender's former victim
225 or victims, or the victim's immediate family members reside. Violations of the provisions of this paragraph shall be
226 punished in accordance with a violation of the conditions of probation or parole.

227 (c) No sex offender designated as a level 2(a) or level 3 offender convicted of a sex offense involving a child shall
228 establish living conditions within, be placed in, or be transferred to any state-owned, operated or funded housing or
229 any facility contracted with the state within 1 ½ miles of the property on which any public or private school,
230 licensed day care center, or any other child care facility is located, or any residence occupied by at least one minor.

231 SECTION 43 Section 7 of Chapter 188 of the Acts of 1992 is hereby amended by adding at the end of the second
232 sentence, the following words:- "And sex offender criminal offender record information pursuant to Chapter 6 of the
233 General Laws."

234 SECTION 44. The Sex Offender Registry Board shall establish an annual public service campaign, subject to
235 appropriation, to raise awareness about the sex offender registry and to encourage citizens to utilize the state's
236 internet based information services and to visit their local police departments to identify sex offenders in their cities
237 or towns.

238 SECTION 45. Chapter 12 of the General Laws is hereby amended by inserting after section 11L, as appearing in
239 the 2000 Official Edition, the following section:-

240 Section 11M. The attorney general shall maintain a computer database of all civil judgments and settlements of
241 cases involving allegations of sexual abuse of a person aged 17 or under, which judgments and settlements have
242 been forwarded to him by the chief justice for administration and management of the trial court department pursuant
243 to clause (xxxx) of section 9 of chapter 211B. Contents of the database shall not be subject to subpoena and shall
244 not be considered public records pursuant to clause twenty-sixth of section 7 of chapter 4. If the database identifies
245 2 or more settlements or judgments against a defendant or a combination of 2 or more thereof involving the same
246 defendant, the attorney general shall conduct a criminal investigation of such defendant. As a result of the
247 investigation, the attorney general may initiate criminal proceedings against the defendant or refer the matter to the
248 appropriate district attorney or district attorneys for prosecution.

249 SECTION 46. Chapter 27 of the Massachusetts General Laws as appearing in the 2002 Official Edition is hereby
250 amended by adding the following new section 4A after section 4:—

251 Section 4A. The Parole Board shall establish in each region an intensive parole sex offenders program.
252 Such programs shall be established subject to appropriation, and shall be modeled upon the current
253 program operated by the parole board in Middlesex County, and shall include unannounced visits,

254 counseling, electronic monitoring, random drug testing, polygraph testing and other aspects of intensive
255 supervision.

256 SECTION 47. The third paragraph of section 9 of chapter 211B of the General Laws, as so appearing, is hereby
257 amended by adding the following clause:-

258 (xxxx) the responsibility to report to the attorney general any civil judgment against a defendant or any civil
259 settlement of cases involving allegations of sexual abuse of a person aged 17 or under, which abuse would constitute
260 a violation of section 13B, 22A, 23, 24B of chapter 265 or section 4A, 4B, 28, 29A, 29B, 35A of chapter 272 or any
261 attempt to commit a violation of any of the aforementioned sections or a like violation of the laws of another state,
262 the United States or a military, territorial or Indian tribal authority. The report shall contain only identifying data of
263 the defendant, including name, address, date of birth and social security number, the date or dates of incidents giving
264 rise to the action and the date of judgment or settlement.

265 SECTION 48. Section 4 of chapter 211D of the General Laws, as appearing in the 2002 Official Edition, is hereby
266 amended by striking out the first sentence.

267 SECTION 49. Section 5 of said chapter 211D, as so appearing, is hereby amended by striking the first sentence and
268 inserting in place thereof the foregoing sentence:— Said committee shall establish, supervise and maintain a system
269 for the appointment or assignment of counsel at any stage of a proceeding, criminal in nature, provided, however,
270 that the laws of the commonwealth or the rules of the supreme judicial court require that a person in such proceeding
271 be represented by counsel; and, provided further, that such person is unable to obtain counsel by reason of his
272 indigency.

273 SECTION 50. Section 6 of said chapter 211D, as so appearing, is hereby amended by inserting after the word
274 “necessary”, in line 58, the following words:— as long as it does not conflict with the law.

275 SECTION 51. Section 9 of said chapter 211D, as so appearing, is hereby amended by striking out, in line 5, the
276 words “whenever possible”.

277 SECTION 52. Said section 9 of said chapter 211D, as so appearing, is hereby amended by striking out clause (d).

278 SECTION 53. Section 13 of said chapter 211D, as so appearing, is hereby amended by inserting after the word
279 “committee” in line 4, the following words:— ; provided, however, that the duties do not conflict with the law.

280 SECTION 54. Section 14 of said chapter 211D, as so appearing, is hereby amended by striking out the first
281 sentence and inserting in place thereof the following sentence:— The public counsel division, except in cases of
282 conflict of interest, shall represent indigent defendants.

283 SECTION 55. Section 16 of said chapter 211D, as so appearing, is hereby amended by adding the following two
284 sentences:— Counsel shall not participate in any other proceeding, unless said proceeding originates from the
285 indigent defendant’s case. Counsel shall not solicit plaintiffs, in particular in actions where the commonwealth is a
286 defendant.

287 SECTION 56. Section 1 of chapter 258B of the General Laws, as appearing in the 2002 Official Edition, is hereby
288 amended by inserting, after the word “delinquency”, in line 10, the following words:- or conviction as a youthful
289 offender

290

291 SECTION 57. Said section 1 of said chapter 258B, as so appearing, is hereby further amended by striking, in lines
292 12-14, the words “or found delinquent or against whom a finding of sufficient facts for conviction or finding of
293 delinquency is made” and inserting, in place thereof, the following words:- adjudicated as a delinquent or convicted
294 as a youthful offender, or against whom a finding of sufficient facts is made

295

296 SECTION 58. Said section 1 of said chapter 258B, as so appearing, is hereby further amended by inserting, after
297 the word “prosecution”, in line 41, the following words:- or family member or guardian if such person is a minor,
298 incompetent or deceased,

299

300 SECTION 59. Section 3 of said chapter 258B, as appearing in the 2002 Official Edition, is hereby amended by
301 inserting, after the word “resources”, in line 5, the following words:- except in regard to subsection (i) of this section
302 as it applies to newly constructed or substantially renovated courthouses

303

304 SECTION 60. Subsection (b) of said section 3 of said chapter 258B, as so appearing, is hereby amended by
305 inserting, in line 16, after the word “all”, the following words:- adult and juvenile

306

307 SECTION 61. Subsection (d) of said section 3 of said chapter 258B, as so appearing, is hereby amended by striking,
308 in lines 31-34, the words “protection from local law enforcement agencies from harm and threats of harm arising out
309 of their cooperation with law enforcement and prosecution efforts” and inserting, in place thereof, the following
310 words:- assistance in developing safety plans and appropriate referrals

311

312 SECTION 62. Said section 3 of said chapter 258B, as so appearing, is hereby amended by striking out subsection (i)
313 in its entirety and replacing it with the following new subsection:-

314

315 (i) for victims, family members, and witnesses, to be provided, by the prosecutor, in any courthouse that is
316 either newly constructed or substantially renovated, if the construction or renovation was performed under a
317 building permit issued six months after passage of this act, with a secure waiting area or room which is separate
318 from the waiting area of the defendant or the defendant’s family, friends, attorneys or witnesses, and separate from
319 any district attorney’s office, during court proceedings. The court shall designate a waiting area at each courthouse
320 and develop any reasonable safeguards to minimize contact between victims and the defendant, or the defendant’s
321 family, friends, attorneys or witnesses.

322

323 SECTION 63. Subsection (m) of said section 3 of said chapter 258B, as so appearing, is hereby amended by
324 inserting, at the end thereof, the following:- ; provided further, defense counsel may not seek to interview a victim or
325 witness under the age of majority without the permission of an adult family member, parent or guardian other than
326 the defendant

327

328 SECTION 64. Subsection (p) of said section 3 of said chapter 258B, as so appearing, is hereby amended by
329 striking, in line 111, the word “at” and inserting, in place thereof, the following words:- before sentence or
330 disposition is imposed

331

332 SECTION 65. Said subsection (p) of said section 3 of said chapter 258B, as so appearing, is hereby further
333 amended by inserting after the word “defendant”, in line 112, the following words:- , even if there is admission to
334 sufficient facts, the sentence is mandatory, or there is an agreed upon plea,

335

336 SECTION 66. Said subsection (p) of said chapter 3 of said chapter 258B, as so appearing, is hereby further
337 amended by inserting, at the end thereof, the following:- ; provided further, upon showing by the prosecutor that a
338 personal appearance by the victim will cause an unreasonable hardship on the victim, the court shall permit the
339 victim to exercise the right to be heard by submitting a statement through audio tape or videotape to be heard or
340 viewed before sentence or disposition is imposed

341

342 SECTION 67. Said section 3 of said chapter 258B, as so appearing, is hereby amended by striking out subsection (t)
343 in its entirety and replacing it with the following new subsection:-

344

345 (t) for victims and witnesses, to be informed by the prosecutor about notification rights and the certification
346 process required to access the criminal offender record information files pursuant to sections 172(c) and 178A of
347 chapter 6. Individuals certified by the criminal history systems board, or, in the case of a juvenile defendant,
348 certified by the department of youth services, will be informed by the appropriate custodial authority if the offender
349 escapes from custody, receive advance notification when the offender receives a temporary, provisional or final
350 release from custody or is transferred from a secure facility to a less-secure facility. Certified individuals shall
351 provide the criminal history systems board, or the department of youth services in the case of a juvenile defendant,
352 with current contact information;

353

354 SECTION 68. Said section 3 of said chapter 258B, as so appearing, is hereby further amended by inserting, at the
355 end thereof, the following new subsections:-

356

357 (w) for child victims and witnesses, notwithstanding any law to the contrary, to have parents, a counselor,
358 friend or other person having a supportive relationship with the child, in addition to the victim witness advocate,
359 remain in the courtroom during the child’s testimony unless, in written findings made and entered, the court finds
360 that the defendant’s constitutional right to a fair trial will be prejudiced;

361

362 (x) for child victims and witnesses, for prosecutors to familiarize the victim and witness with the courtroom
363 setting, court personnel, and rules of the court, to the extent practicable under the circumstances. This right may be
364 applied to victims and witnesses with physical, mental, developmental or other disabilities;

365

366 (y) for victims and witnesses, to have a summary of the rights afforded under this section conspicuously
367 posted in any courthouse and in any police station. The victim and witness assistance board, pursuant to section 4 of
368 this chapter, shall devise and provide posters to satisfy this requirement to any court and any police station, and,
369 upon request and at the discretion of the office and board, to any other institution or organization. The board shall
370 develop the posters in a variety of languages as determined by the Massachusetts office for victim assistance. Upon
371 request, the board will respond, to the extent possible, to any requests for additional language translations of the
372 posters;

373

374 (z) for victims, to confer with the prosecution prior to the acceptance of a plea of guilty or admission to
375 sufficient facts. Before the judge accepts a plea of guilty, an admission to sufficient facts, a disposition, or an
376 agreed-upon sentence recommendation, the judge shall ask the prosecutor if the victim has been consulted regarding
377 plea discussions, whether or not the victim agrees or disagrees with the plea discussions and agreement, if the victim
378 was notified of the court date and is present, and if the victim would like to assert their right to offer a victim impact
379 statement;

380

381 (aa) for victims, to be notified by the prosecutor that they have the right to provide the sex offender registry
382 board with a written impact statement for inclusion in the convicted sex offender's classification determination
383 pursuant to section 178K(1)(k) of chapter 6. Upon the specific request of the victim to the sex offender registry
384 board, the board shall inform the victim of the sex offender's (i) registration and classification status and (ii) the
385 addresses of where the sex offender lives, works, and attends an institution of higher learning regardless of the
386 classification level and registration status of the offender;

387

388 (bb) for victims and witnesses, to be informed by the court at the daily commencement of the regular
389 criminal docket at which accused persons are arraigned, that a summary of their rights is posted within the
390 courthouse;

391

392 SECTION 69. Section 8 of said chapter 258B, as so appearing, is hereby amended by striking out, in lines 4 and 5,
393 the words, ". The court shall impose an assessment of \$50" and inserting, in place thereof, the following word:- ,
394 and

395

396 SECTION 70. Said section 8 of said chapter 258B, as so appearing, is hereby further amended by striking out, in
397 lines 21-31, the words "In the discretion of the court or the clerk magistrate in the case of a civil motor vehicle
398 infraction that has not been heard by or brought before a justice, a civil motor vehicle assessment imposed pursuant
399 to this section which would cause the person against whom the assessment is imposed severe financial hardship,
400 may be reduced or waived. An assessment other than for a civil motor vehicle infraction imposed pursuant to this
401 section may be reduced or waived only upon a written finding of fact that such payment would cause the person

402 against whom the assessment is imposed severe financial hardship. Such a finding shall be made independently of a
403 finding of indigency for purposes of appointing counsel” and inserting, in place thereof, the following sentence:-
404 Any assessment made pursuant to this section shall not be subject to waiver by any court for any reason

405 SECTION 71. Chapter 260 of the General Laws is hereby amended by striking out section 4C, as appearing in the
406 2002 Official Edition.

407 SECTION 72. Section 26C of chapter 265 of the General Laws, as appearing in the 2002 Official Edition, is hereby
408 amended in subdivision (a) by striking in line two the word “lure” and inserting in place thereof the following:-
409 groom, lure,

410

411 SECTION 73. Section 26C of chapter 265 of the General Laws, as appearing in the 2002 Official Edition, is hereby
412 amended by inserting after subdivision (b) the following subdivision:-

413 (c) Any one who entices a child under 16, or a person believed to be under 16, electronically via telephone,
414 cell phone, electronic mail, internet chat room or “instant messenger” with any comment, solicitation, request,
415 suggestion, proposal, image, or other communication verbal or otherwise which is obscene, lewd, lascivious, filthy,
416 or indecent, where sexual grooming, sexual abuse or sexual exploitation was intended, shall be punished by
417 imprisonment in the state prison for not more than 5 years, or in the house of correction for not more than 21/2
418 years, or by a fine of not more than \$5,000, or by both imprisonment and fine.

419 SECTION 74. Chapter 272 of the General Laws is hereby amended by striking out Section 53A, as appearing in the
420 2002 Official Edition, and inserting in place thereof the following section:—

421 Section 53A. (a) Whoever engages, agrees to engage, or offers to engage in sexual conduct with another person in
422 return for a fee paid or to be paid by another or to a third person, or whoever pays, agrees to pay, or offers to pay any
423 person to engage in sexual conduct with that person or with another, shall be punished by imprisonment in jail for
424 not more than one year or by a fine of not more than 500 dollars or by both such imprisonment and fine, whether
425 such sexual conduct occurs or not.

426 (b) Whoever pays, agrees to pay, or offers to pay any person with the intent to engage in sexual conduct with a child
427 under the age of eighteen, or whoever is paid, agrees to pay, or agrees that a third person be paid in return for aiding
428 a person who intends to engage in sexual conduct with a child under the age of eighteen, shall be punished by
429 imprisonment in the state prison for not more than ten years or in jail for not more than two and one half years,
430 whether such sexual conduct occurs or not.

431 SECTION 75. Section 100A of chapter 276 of the General Laws, as so appearing, is hereby amended by inserting
432 after the word “court,” in line 69, the following words:- a victim seeking information on a sex offense, as defined
433 in section 178C of chapter 6, committed against the victim when the victim was a minor and the offender an adult.

434 SECTION 76. Section 63 of chapter 277 of the General Laws, as so appearing, is hereby amended by inserting after
435 the word “five”, in line 5, the following words:- may be found at any time.

436 SECTION 77. Said section 63 of said chapter 277, as so appearing, is hereby further amended by striking out, in
437 lines 19 and 20, the words “, twenty-two, twenty-two A, twenty-three, twenty-four B”.

438 SECTION 78. Notwithstanding any special or general law to the contrary, nursing home and assisted living
439 facilities administrators shall conduct background checks of all potential residents to promote a safe living
440 environment and for the protection of all current residents.

441 SECTION 79. Be it resolved that all staff who work with individuals served by the Department of Mental
442 Retardation are required to have national criminal background checks. Criminal background verification will be
443 determined by cross-referencing fingerprints with the National Instant Criminal Background Check System (NICS).
444 The Department of Mental Retardation will work cooperatively with the Disabled Persons Protection Commission
445 (DPPC) and The Massachusetts State Police to implement national background checks.

446

447 Staff will be subject to said criminal background checks when seeking employment with those agencies that
448 provide services such as, but not limited to the following: residential, day and transportation. It shall be the
449 responsibility of the Commonwealth to ensure that said criminal background checks are processed for review prior
450 to such a time that an individual begins unsupervised work with any person served by the Department of Mental
451 Retardation.

452

453 Any employer who recklessly hires, retains or supervises an employee whom the employer knows or should
454 know will interact with individuals served by DMR and poses a probable risk of harm to an adult with mental
455 retardation and by such hiring, retention or supervision permits the employee to criminally harm an adult with
456 mental retardation. These incidents of harm include but are not limited to the following criminal acts: sexually
457 exploit, commit sexual assault, kidnap, stalk, or commit an assault and battery on an adult with mental retardation
458 that causes bodily injury. Knowingly hiring dangerous individuals shall be punishable by a fine of not less than
459 \$1000 nor more than \$10,000 or by imprisonment for not less than one year nor more than ten years.

460

461 SECTION 80. Notwithstanding any special or general law to the contrary, a notification advisory council shall be
462 established. Said council shall consist of 13 persons who, by experience or training, have a personal interest or
463 professional expertise in law enforcement, crime prevention, victim advocacy, criminology, psychology, parole,
464 education or community relations. The members of said council shall be appointed in the following manner: 3 shall
465 be appointed by the Governor, of whom no more than two shall be of the same political party; 3 shall be appointed
466 by the Senate President, of whom no more than 2 shall be of the same political party; and 4 shall be appointed by the
467 Speaker of the House of Representatives, of whom no more than 3 shall be of the same political party. The
468 remaining 3 spots shall consist of 2 victim's advocates and 1 member of the Sex Offender Registry Board. Any
469 vacancies occurring in the membership shall be filled in the same manner as the original appointments.

470

471 One year after the effective date of this act, the Attorney General and the council shall conduct a
472 comprehensive review of the guidelines to determine whether any changes or revisions should be promulgated.
473 Upon completion of that review and the submission of any recommendations thereon, that council shall expire.

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475