

HOUSE No. 3501

The Commonwealth of Massachusetts

PRESENTED BY:

Shaunna L. O'Connell and Geoff Diehl

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

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

An Act relative to the Sex Offender Registry Board.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Shaunna L. O'Connell</i>	<i>3rd Bristol</i>
<i>Geoff Diehl</i>	<i>7th Plymouth</i>
<i>Nicholas A. Boldyga</i>	<i>3rd Hampden</i>
<i>Kate D. Campanale</i>	<i>17th Worcester</i>
<i>William Crocker</i>	<i>2nd Barnstable</i>
<i>David F. DeCoste</i>	<i>5th Plymouth</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Marc T. Lombardo</i>	<i>22nd Middlesex</i>
<i>Brian Murray</i>	<i>10th Worcester</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>

HOUSE No. 3501

By Representatives O'Connell of Taunton and Diehl of Whitman, a petition (accompanied by bill, House, No. 3501) of Shaunna L. O'Connell and others relative to sex offenders. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to the Sex Offender Registry Board.

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

1 SECTION 1. Chapter 6 of the General Laws is hereby amended by striking out section
2 178L, as appearing in the 2014 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 178L. (1) Upon review of any information useful in assessing the risk of
5 reoffense and the degree of dangerousness posed to the public by the sex offender, including
6 materials described in the board guidelines and any materials submitted by the sex offender, the
7 board shall prepare a recommended classification of each offender. Such recommendation may
8 be made by board staff members upon written approval by one board member; provided,
9 however, that if the sex offender was a juvenile at the time of the offense, written approval must
10 be given by a board member who is a licensed psychologist or psychiatrist with special expertise
11 in the assessment and evaluation of juvenile sex offenders.

12 (a) Not less than 60 days prior to the release or parole of a sex offender from custody or
13 incarceration, the board shall notify the sex offender of the offender's right to submit to the
14 board documentary evidence relative to the offender's risk of reoffense and the degree of
15 dangerousness posed to the public and the offender's duty to register according to the provisions
16 of section 178E. If the sex offender is a juvenile at the time of such notification, notification shall
17 also be mailed to the sex offender's legal guardian or agency having custody of the juvenile in
18 the absence of a legal guardian and the offender's most recent attorney of record. Such sex
19 offender may submit such evidence to the board within 30 days of receiving such notice from the
20 board. Upon a reasonable showing, the board may extend the time in which such sex offender
21 may submit such documentary evidence. Upon reviewing such evidence, the board shall
22 promptly notify the sex offender of the board's recommended sex offender classification, the
23 offender's duty to register, if any, the offender's right to petition the board to request an
24 evidentiary hearing to challenge such classification and duty and the offender's right to retain
25 counsel to represent him at such hearing. Such sex offender shall petition the board for such
26 hearing within 20 days of receiving such notice. The board shall conduct such hearing in a
27 reasonable time according to the provisions of subsection (2). The failure timely to petition the
28 board for such hearing shall result in a waiver of such right and the registration requirements, if
29 any, and the board's recommended classification shall become final.

30 (b) The district attorney for the county where such sex offender was prosecuted may,
31 within 10 days of a conviction or adjudication of a sexually violent offense, file a motion with
32 the board to make an expedited recommended classification upon a showing that such sex
33 offender poses a grave risk of imminent reoffense. If the petition is granted, the board shall make
34 such recommendation within ten days of the expiration of the time to submit documentary

35 evidence. If the petition is not granted, the board shall make such recommended classification as
36 otherwise provided in this section.

37 (c) In the case of any sex offender not in custody, upon receiving registration data from
38 the agency, the police department at which the sex offender registered, the sentencing court or by
39 any other means, the board shall promptly notify the sex offender of the offender's right to
40 submit to the board documentary evidence relative to the offender's risk of reoffense and the
41 degree of dangerousness posed to the public and the offender's duty to register, if any, according
42 to section 178E. If such sex offender is a juvenile at the time of such notification, notification
43 shall also be mailed to such sex offender's legal guardian or agency having custody of the
44 juvenile in the absence of a legal guardian and the offender's most recent attorney of record.
45 Such sex offender may submit such evidence to the board within 30 days of receiving such
46 notice from the board. Upon a reasonable showing, the board may extend the time in which a sex
47 offender may submit such documentary evidence. Upon reviewing such evidence, the board shall
48 promptly notify such sex offender of the board's recommended sex offender classification, the
49 offender's duty to register, if any, and the offender's right to petition the board to request an
50 evidentiary hearing to challenge such classification and duty, and the offender's right to retain
51 counsel to represent him at such hearing. Such sex offender shall petition the board for such
52 hearing within 20 days of receiving such notice. The board shall conduct such hearing in a
53 reasonable time according to the provisions of subsection (2). The failure timely to petition the
54 board for such hearing shall result in a waiver of such right and the registration requirements, if
55 any, and the board's recommended classification shall become final.

56 (2) If an offender requests a hearing in accordance with subsection (1), the chair may
57 appoint a member, a panel of three board members or a hearing officer to conduct the hearing,

58 according to the standard rules of adjudicatory procedure or other rules which the board may
59 promulgate, and to determine by clear and convincing evidence such sex offender's duty to
60 register and final classification. If the sex offender does not so request a hearing, the
61 recommended classification and determination of duty to register shall become the board's final
62 classification and determination and shall not be subject to judicial review.

63 (3) The board may, on its own initiative or upon written request by a police department or
64 district attorney, seek to reclassify any registered and finally classified sex offender in the event
65 that new information, which is relevant to a determination of a risk of re-offense or degree of
66 dangerousness, is received. The board shall promulgate regulations defining such new
67 information and establishing the procedures relative to a reclassification hearing held for this
68 purpose; provided that (i) the hearing is conducted according to the standard rules of
69 adjudicatory procedure or other rules which the board may promulgate, (ii) the hearing is
70 conducted in a reasonable time, and (iii) the sex offender is provided prompt notice of the
71 hearing, which includes: the new information that led the board to seek reclassification of the
72 offender, the offender's right to challenge the reclassification, the offender's right to submit to the
73 board documentary evidence relative to the offender's risk of reoffense and the degree of
74 dangerousness posed to the public, and the offender's right to retain counsel for the hearing. The
75 failure of the offender to attend the hearing may result in a waiver of the offender's rights and the
76 board's recommended reclassification becoming final.

77 For all offenders who are juveniles at the time of such notification, the notification shall
78 also be mailed to the sex offender's legal guardian or agency having custody of the juvenile in
79 the absence of a legal guardian and the offender's most recent attorney of record.

80 SECTION 2. Chapter 6 of the General Laws is hereby amended by striking out section
81 178M, as so appearing, and inserting in place thereof the following section:-

82 Section 178M. An offender may seek judicial review, in accordance with section 14 of
83 chapter 30A, of the board's final classification, reclassification and registration requirements. An
84 attorney employed or retained by the board may make an appearance, subject to section 3 of
85 chapter 12, to defend the board's decision. The court shall reach its final decision within 60 days
86 of such sex offender's petition for review. The filing of an action under this section shall not stay
87 the effect of the board's final classification, and the board's final classification shall be enforced
88 while such action is pending.

89 SECTION 3. Section 16 of chapter 211D of the General Laws is hereby repealed.