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SEX OFFENDER REGISTRATION FOR JUVENILES: SUMMARY OF THE LAW

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On September 10, 1999, the sex offender registration and notification act was repealed and replaced by G.L. c.6, §178C-P. In the wake of a series of lawsuits regarding various provisions, the statute was subsequently amended in 2003 (adding §178Q) and again in 2004 and 2006. The revised statute requires **all individuals** who have been convicted of or adjudicated delinquent or youthful offender of certain sex offenses, as defined in §178C, to register with the Sex Offender Registry Board (“SORB”) by mail. When SORB gives someone a final classification of Level Two (moderate risk of re-offense) or Level Three (high risk of re-offense), the person must register in person at the police station.

1. **MAIL IN REGISTRATION: Anyone adjudicated delinquent or as a youthful offender for a sex offense (as defined in G.L. c.6, §178C) must provide SORB with:**
 - (a) **their home and work addresses; and**
 - (b) **the names and addresses of any institution of higher learning where they work, plan to work, attend or plan to attend; and**
 - (c) **any “secondary addresses” where the offender lives, abides, lodges or resides for either 14 or more days (in the aggregate) per calendar year OR 4 days per month (consecutive or non consecutive), including out of state address.**

While there is no public dissemination of mail-in registration information, the information is shared with local police.

2. **All offenders are entitled to an evidentiary hearing prior to any public dissemination of registration information.**
3. **All offenders on probation or parole for a sex offense are required to wear a GPS monitoring device pursuant to G.L. c. 127, §133D ½ and G.L. c. 265, §47**

During this past year, additional amendments were proposed to the Massachusetts Sex Offender Registration and Notification Act by Representative Karyn E. Polito (House Bill no. 1688). These amendments propose to delete G.L. c.6, §178E(e) and (f), the provisions which allow a court to relieve any juvenile who is not sentenced to immediate confinement and an extremely limited class of adult offenders, from the obligation to register. CPCS has submitted a letter regarding these proposed amendments to the Chairmen of the Joint Committee on the Judiciary outlining the ways that the deletion of these amendments would contravene public safety and disproportionately harm juveniles and will continue to monitor activity regarding this Bill.

In conjunction with G.L. c.6, §178C-Q, SORB promulgates regulations, 803 CMR 1.00 (found at www.state.ma.us/sorb). The most notable recent changes to the regulations regard the use of expert witnesses, relief from and termination of the obligation to register, and in the criteria used to classify offenders.

Expert Witnesses

According to SORB's regulations, an indigent offender is only entitled to seek funds for an expert witness if SORB intends to rely on "the testimony or report of an expert witness that has been prepared specifically for the purposes of the registration status and classification hearing." 803 CMR 1.09 (2). To date, SORB has never retained an expert to testify or prepare a report in conjunction with determining registration status or classification. In Doe No. 10216, 447 Mass. 779 (2006), the Supreme Judicial Court (SJC) held that expert testimony is not required in the classification process. The SJC also found that the hearing examiner's decision in that case was supported by substantial evidence. Additional issues do remain. The Court left open the possibility that a hearing examiner's decision in another case might not be supported by substantial evidence. The SJC did not address whether the denial of funds for an expert for an indigent client violates the client's right to equal protection under the law.

Changing Registration Status

On a more positive note, for those who were not successful or eligible to seek relief at the trial court level, SORB created a process for seeking outright relief from registration, termination of the registration obligation and reclassification. 803 CMR 1.37A,B and C. It is important to note that **SORB does not consider juvenile offenders to have been "convicted" of a sex offense**. If SORB intends a section to apply to a juvenile offender, the language of the provision specifically includes the phrase, "**adjudicated a delinquent or youthful offender.**"

Registration Obligations

Offenders who list a homeless shelter as their address must verify registration data every 45 days; previously, homeless offenders had to verify data every 90 days. G.L., c.6 §178F.

Agencies, including the Department of Correction, the Department of Youth Services, and all houses of correction with custody, that have custody of or responsibility for offenders now must submit information to SORB within five days of receiving the offender—it had been 90 days. In addition, the agency must, pursuant to G.L. c. 6, §178E(a), inform SORB of the offenders projected maximum release date and minimum possible released date. Agencies must keep SORB apprised of any transfers of persons within their custody. SORB must classify all offenders at least 10 days BEFORE the offenders' earliest possible release date.

Registration Information

Pursuant to G.L. c. 6, §178C-H, J and K, offenders must provide SORB with their home and

work addresses as well as the names and addresses of any institution of higher learning (post-secondary school) where they work, plan to work, attend, or plan to attend. Offenders must also provide “secondary addresses.” Secondary addresses include any place, in Massachusetts or out of state, where an offender lives, abides, lodges or resides for 14 or more days per year or 4 or more days per month. Days do not need to be consecutive.

Dissemination

Perhaps the most ominous amendment to the sex offender registration and notification act allows for the posting of registration data on the internet for those offenders who have received a level three classification. Registration data for all level 3 offenders, INCLUDING those who are juveniles or whose only sex offense was as a juvenile, must be posted on the internet. G.L.c. 6, §178D. Modifications to the regulations to accommodate internet dissemination are found at 803 CMR1.32 (3).

Federal Law

Finally, there were significant changes at the federal level regarding sex offender registration and notification in 2006. These changes will likely result in additional changes to the Massachusetts laws and regulations within the next few years. The “Adam Walsh Child Protect and Safety Act of 2006, 42 USC 16901, also known as the Sex Offender Registration and Notification Act (SORNA) enacted in July of 2006, created three tiers of sex offenders, based on the punishment associated with a particular sex offense. SORNA requires states to disseminate photographs of all sex offenders on the internet, but allows certain exemptions for those considered Tier I offenders (convicted of sex offenses punishable by imprisonment for one year or less, defined in 42 USC 16911), or information specifically excluded by the Attorney General. In addition, states can exempt specific types of information about offenders, such as employer name or name of educational institution attended. SORNA requires that states comply within three years from the date of enactment and one year from the date of software availability. At present, the Attorney General has taken the position that SORNA applies retroactively to all offenders, regardless of when they were convicted.

Under SORNA, a juvenile has been “convicted” of a relevant sex offense, only if the juvenile was at least 14 years of age at the time of the offense and the offense was either comparable to or more severe than aggravated sexual abuse, as described in section 2241 of title 18 of the United States Code, or was an attempt or conspiracy to commit such an offense. SORNA does not consider an offense involving consensual sexual conduct a sex offense if the offender or victim was at least 13 years old at the time of the offense and the offender was not more than 4 years older than the victim. For purposes of SORNA, an adjudication of delinquency or youthful offender is the equivalent of a conviction.

SORNA acknowledges that certain jurisdictions may not be able to implement certain provisions because to do so would place the jurisdiction in violation of its constitution as determined by a ruling of the jurisdiction’s highest court. In those circumstances, the Attorney General and the jurisdiction are required to make good faith efforts to accomplish “substantial

implementation of this title and to reconcile any conflicts between this title and the jurisdiction's constitution.”

Several of SORNA's provisions are inapposite to G.L. c.6, §178C-P, most notably those regarding classification, internet dissemination, and judicial relief from registration. It is unclear, should Massachusetts opt to enact SORNA, how those portions of G.L. c.6, §178C-P which are grounded in our state constitution will be reconciled with SORNA. Of special concern for juveniles is the question of whether retroactive implementation of SORNA will void prior orders of relief from registration.

At present, there are a number of states actively considering waiving the funding stream that accompanies the enactment of SORNA, largely due to the perceived cost of implementation. At least one state, Illinois, has passed a sex offender registration and notification act that is in conflict with provisions of SORNA. There is also a significant effort underway at the national level to educate lawmakers about juvenile sex offenders from organizations such as the Coalition for Juvenile Justice and that National Juvenile Justice Network. These entities hope to convince the Attorney General that SORNA should not be applied to juvenile offenders retroactively, or otherwise.

Applicable Offenses

Anyone adjudicated delinquent or youthful offender of the following sex offenses (or a like violation in another state), **unless specifically relieved of the obligation to register by the trial court**, is required to register by mail with SORB and will be offered a hearing by SORB prior to any public dissemination.

c. 265 § 13B	Indecent assault and battery on a child under 14
c. 265 § 13F	Indecent assault and battery on a mentally retarded person
c. 265 § 13H	Indecent assault and battery on a person 14 or over
c. 265 § 22	Rape
c. 265 § 22A	Rape of a child under 16 with force
c. 265 § 23	Rape and abuse of a child under 16
c. 265 § 24	Assault with intent to commit rape
c. 265 §24B	Assault of a child under 16 with intent to commit rape
c. 265 § 26	Kidnapping of a child under the age of 16
c. 272 § 2	Enticing away a person for prostitution or sexual intercourse
c. 272 § 3	Drugging persons for sexual intercourse
c. 272 § 4A	Inducing a minor into prostitution
c. 272 § 4B	Living off or sharing earnings of a minor prostitute
c. 272 § 16	2nd and sub. adjudication or conviction for open & gross lewdness & lascivious behavior (excluding a first or single adjudication as a delinquent juvenile before August 1, 1992)

c. 272 § 17	Incestuous marriage or intercourse
c. 272 § 28	Disseminating to a minor matter harmful to a minor
c. 272 § 29A	Posing or exhibiting a child in a state of nudity
c. 272 § 29B	Dissemination of visual material of a child in a state of nudity or sexual conduct
c. 272 § 29C	Possession of child pornography
c. 272 § 35A	Unnatural and lascivious acts with a child under 16
c.274, §6	Attempt to commit any of the above

When The Sentencing Court Can Relieve an Offender of Registration Obligation

Under G.L. c. 6, §178E(f), juveniles adjudicated delinquent or youthful offender **who are not sentenced to immediate confinement** are entitled to a determination of whether the court may relieve him or her from the obligation to register. The issue is whether the circumstances of the sex offense in conjunction with the juvenile's criminal history indicate that he or she does not pose a risk of re offense or danger to the public. This determination is made within fourteen days of sentencing.

G.L. c. 6, §178E(f) does not specify whether counsel needs to move for relief; however, in the recent case of Commonwealth v. Ronald R. (SJC09901), the Supreme Judicial Court held that a juvenile bears the burden of proving that he does not pose a risk of reoffense or danger to the public. Should the juvenile be aggrieved by a court's failure to relieve him of his obligation to register, the only avenue for relief is a petition pursuant to Gl. L. c. 211, §3. The Court concluded, that "although a defendant may request written findings and legal conclusions or an evidentiary hearing, the decision whether to grant the request rests soundly in the judge's discretion." It is **strongly recommended** that attorneys request written findings whenever a sentencing judge denies a request for relief from registration.

Pursuant to §178E(e), the judge may relieve a juvenile of the obligation to register even if the juvenile has been sentenced to a period of confinement; however, the judge may only exercise this discretion upon receipt of a written motion of the Commonwealth.

NOTE: A juvenile is **ineligible** for relief under these provisions **only** if s/he has been determined to be a sexually violent predator or is otherwise subject to minimum or lifetime registration requirements pursuant to §178D. Newer attorneys (and judges) are frequently confused by the language in these sections and assume that the word "convicted" encompasses adjudication as a delinquent or youthful offender. At least for now, that assumption is incorrect and SORB attorneys will readily confirm that **SORB does not consider juvenile offenders to have been "convicted" of a sex offense; rather any time SORB intends a section to apply to a juvenile offender, the language of the provision specifically includes the phrase, "adjudicated a delinquent or youthful offender."** It is always a good idea to contact a SORB attorney prior to filing your motion for relief; that way you can document your conversation in your affidavit.

If you have a client who is relieved of the obligation to register by the trial court pursuant to G.L.c. 6, §178E(e) or (f), you must fax a copy of the order endorsed by the court to SORB (978-740-6464) as soon as possible AND make sure that your client has a copy to carry on with him or her for the foreseeable future.

Requirements of Pre-hearing Registration

1. Offenders on **probation or parole** must register within two days of being informed by the supervising agency of the obligation to register. See §178E(b); 803 CMR 1.04 (6).
2. Offenders **in custody** must register two days BEFORE release. See §178E(a), (c); 803 CMR 1.04 (7).
3. All other offenders residing or working in the Commonwealth are required to register within 10 days of the effective date of §178E(l). If an offender **is a juvenile at the time s/he receives notice** of his/her obligation to register, the SORB must also send the registration form to:
 - (a) His/her legal guardian;
 - (b) The Department of Social Services or Department of Youth Services if the juvenile is receiving services from or subject to proceedings initiated by, one or more of these agencies; and
 - (c) His/her most recent attorney of record

See §178E(b); 803 1.04 (5).

4. When an offender is adjudicated delinquent or youthful offender either after trial, or after a plea, and is not sentenced to immediate confinement for 90 days or more, the sentencing court must notify the offender of his/her duties under the law. The court must then obtain written acknowledgment of these duties from the offender. When the **offender is still a juvenile** at the time of sentencing, his/her legal guardian **AND attorney of record** must also acknowledge receipt of this information in writing. The offender then must register by mail within two days of the receipt of this information. Failure by the sentencing court to comply with these requirements is not grounds to vacate or invalidate a plea. See §178E(c), (d).
5. Offenders must verify their addresses annually. This now includes providing the names and addresses of any institutions of higher learning that an offender plans to work at or attend and “secondary addresses.” See §178F. SORB will require annual verification during the month of the offender's birth.
6. Homeless offenders must verify registration every 45 days. See §178F.
7. Offenders who intend to change a work or home address or plan to attend an

institution of higher learning must inform SORB in writing ten days prior to the move. See §178E(h) and (j).

8. Offenders who intend to move, work or attend an institution of higher learning outside of the Commonwealth must inform SORB in writing ten days prior to the move. See §178E(i).
9. Offenders who move into the commonwealth from another jurisdiction, must, WITHIN 2 days of moving into the commonwealth, register by mail. See §178E(g). However, pursuant to §178E(q), a nonresident who is enrolled (full-time or part-time) in any public or private education institution in the Commonwealth, including a secondary school, trade or professional institution, must only register with SORB if s/he is required to register as a sex offender in his/her home state.
10. Registration forms may be obtained from the CPCS website, www.state.ma.us/cpcs/sorb, SORB's website, www.state.ma.us/sorb, or by contacting SORB at its administrative offices in Salem (P.O. Box 4547, Salem, MA 01970) at 978-740-6400.

What Happens Next?

1. SORB sends a letter to the offender informing him/her of the right to submit evidence regarding dangerousness and risk of re-offense. This is called a **“thirty day” letter**. An incarcerated offender should receive such notice at least 60 days prior to his/her wrap-up date or parole date. The offender then has 30 days to submit such evidence or to request an extension. See §178L.
2. There is no specified time requirement for SORB to send a “thirty day letter” to offenders residing within the community, or for SORB to make a classification determination upon the expiration of the thirty day window; however, it should be noted that, pursuant to §178L (b), the commonwealth may, within 10 days of a conviction or adjudication for a sexually violent offense, file a motion with SORB to request an expedited classification, in which case SORB shall, if it grants the petition, issue a classification recommendation within 10 days of the expiration of the thirty day window.
3. If the offender is still a juvenile, SORB must also send the “thirty day” letter to:
 - a. His/her legal guardian;
 - b. The Department of Social Services or Department of Youth Services if the juvenile is receiving services from or subject to proceedings initiated by, one or more of these agencies; and
 - c. His/her most recent attorney of record.

How does an Offender respond to a 30 Day Letter?

Decisions on what, if anything, to send SORB must be made on a case by case basis. According to the scientific literature, certain factors are particularly relevant to an offender's risk of re-offense. Some of these factors include:

- Employment (the longer the better) (include whether the offender is retired, homemaker, full-time student or disabled and unable to work);
- Involvement in or completion of a treatment program (drug, alcohol, counseling, sex offender therapy, etc.);
- A history of living with a spouse or partner for 2 or more years
- Acceptance of responsibility for acts
- Age over forty (and the offense occurred when offender was younger)
- Stability of lifestyle suggesting a lack of impulsivity (i.e., good parole/probation record, stable living conditions, employment, avoiding children in or near home [if person has history of molesting children], etc.)

Unfortunately, these factors do not apply to most juveniles or young adults facing classification by SORB, and in fact work to their detriment. When advising a young offender about what to submit, one must be careful and creative. Information about an educational program is only helpful if the offender is actually attending school and has not been suspended or expelled. SORB will likely verify information from probation or DYS regarding the offender's school performance. Similarly, information about the offender's home life may be compared to DSS records and/or probation information.

A decision to send SORB a letter from a therapist or a therapist's treatment records should also be given careful consideration. The offender must balance the potential benefit of providing information which may lower his/her classification level against the risk of disclosing otherwise confidential information which could be used against him/her. For example, if an offender participates in therapy but continues to deny responsibility for his/her actions, his/her treatment records could cause more harm than good. Any confidential information sent to SORB should be accompanied by a caveat that the provision of such materials does not constitute a waiver of the offender's privilege as protected by G.L. c.112, §135A, B (social worker); c.233, §20B (psychiatrist & psychotherapist); and any other privilege that may apply. However, be aware that providing treatment information may open the door for SORB to investigate further.

Offenders are encouraged to seek advice of counsel when responding to a 30 day letter. CPCS is not authorized by statute to appoint counsel for indigent offenders at this stage of the process, unless the person is a **juvenile**. (For adult offenders, counsel will be appointed only when an offender has exercised his/her right to a hearing and has been found to be indigent by SORB.)

For juvenile offenders, an attorney who receives a "thirty day" letter and agrees to accept an appointment will be eligible for compensation for work done at that stage. Counsel who is

unwilling to accept an appointment on these matters should notify CPCS as soon as they receive a 30 day letter pertaining to a juvenile so that counsel may be appointed.

Classification of Offenders

Following the expiration of the thirty-day window, SORB determines whether or not the offender has a duty to register based on the following criteria:

- a. whether the offender's criminal history contains at least one conviction or adjudication for a sex offense as defined in 178C;
- b. whether the offense was sexual in nature;
- c. whether the offender currently lives or works in the Commonwealth; and
- d. whether the offender currently poses a danger.

If SORB determines that the offender does not meet the criteria above, they will notify the offender that s/he does not have to register and will remove the offender's information from the registry. See 803 CMR 1.06 (4).

If SORB determines that the offender does meet the above criteria, SORB will then prepare a recommended classification based on the Classification Worksheet. See 803 CMR 1.06(5). For offenders who are juveniles, or whose only offense was committed as a juvenile, the member of SORB who is a licensed psychologist or psychiatrist with special expertise in the assessment and evaluation of juvenile offenders, must sign off on any classification recommendation. See 803 CMR 1.06(7). At the time of publication, however, there was no longer a member of SORB with special expertise regarding juvenile offenders.

If the offender is a juvenile, or his/her only sex offense was as a juvenile, SORB may request a meeting during this classification period with the offender and his/her Authorized Representative. SORB has the discretion to decide if such a meeting will occur; an offender cannot request a meeting. No inference is to be drawn against an offender who chooses not to meet with SORB prior to classification. See 803 CMR 1.06(7).

Upon completion of the Classification Worksheet, SORB notifies the offender by mail of his/her initial classification level. Included in this notice is a request for hearing form and indigency determination form. If the offender is still a juvenile, this notice will be sent to:

- a. His/her legal guardian;
- b. The Department of Social Services or Department of Youth Services if the juvenile is receiving services from or subject to proceedings initiated by, one or more of these agencies; and
- c. His/her most recent attorney of record

What are the Possible Classification Levels?

See §178K(2). See also §178I, J.

- Level 1: Low risk of re-offense.
Registration by mail with SORB.
No dissemination to the public.

- Level 2: Moderate risk of re-offense.
Registration in person at the local police station.
Some dissemination to the public.

- Level 3: High risk of re-offense.
Registration in person at the local police station.
Extensive public dissemination, including internet dissemination.
Offender may not “knowingly and willingly live in, 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 for the mentally retarded.”

Challenging Registration and/or Classification

Pursuant to M.G.L. c. 6, §178K(2)(d) and 803 CMR 1.37A, an offender may submit a written Motion for Relief from Registration Obligation. This request may take the form of a letter, or petition, and may be submitted: (a) prior to or upon registration, (b) with a response to a “thirty day” letter, or (3) at least ten business days before a scheduled hearing. **This Motion does not replace a hearing and cannot be substituted for a request for a hearing.** A Motion for Relief from Registration will be summarily denied pursuant to 803 CMR 1.37A(2) if the offender:

- a. has been determined by the sentencing court to be a sexually violent predator;
- b. has been **convicted** of two or more Wetterling Offenses committed on different occasions;
- c. has been **convicted** of a sexually violent offense; and
- d. has been **convicted** of a sex offense involving a child, whose offense was sexual in nature, and who has not already registered pursuant to M.G.L. c. 6, §178E, as enacted on September 10, 1999, for at least 10 years.

REMEMBER a person who was adjudicated delinquent or youthful offender of a sex offense is not considered by SORB to have been “convicted” of a crime, and as such his Motion will NOT be summarily denied, unless he has been determined to be a sexually violent predator.

Pursuant to M.G.L. c. 6, §178L(1)(a), hearing must be requested (by mailing such request to SORB) within twenty (20) days of receipt of the initial classification level. Failure to request a hearing within this time period will result in waiver of the right to a hearing. See §178L(1)(a).

An offender who requests a hearing and later withdraws that request suffers no prejudice.

SORB's regulations provide that a request for a hearing may be withdrawn at any time before the hearing, or on the record at the hearing before any testimony is presented. The regulations preclude an offender from withdrawing his/her request after the hearing has begun without approval from the Hearing Examiner. See 803 CMR 1.07(3). Withdrawal of the request for hearing constitutes waiver and results in the initial classification becoming final. See 803 CMR 1.07(3).

If an offender files a Motion for Relief from Registration prior to a hearing date, and the motion is either denied or not acted upon, the hearing shall proceed pursuant to 803 CMR 1.09-1.26, **BUT**, the offender shall have the burden of proving by a preponderance of the evidence that s/he is eligible for relief. See 803 CMR 1.37A(4). This burden shifting should be challenged because it directly contradicts the holding in Doe v. SORB, 403m. 155, 166 (1999) (board has burden to show risk of re-offense by preponderance of evidence).

Counsel will be appointed for indigent offenders who complete and return the indigency determination form to SORB. Non-indigent offenders are entitled to retain their own attorneys. An offender may also be represented by a non-attorney third party. See 803 CMR 1.14(2). All offenders who are **still juveniles** at the time of notification of the hearing *shall* be represented by counsel at the hearing and are entitled to appointed counsel. See 803 CMR 1.14(3). CPCS compensates attorneys for representation commencing at the “30 day” letter stage for juvenile offenders only.

How are Registration Hearings Conducted? See §178L.

- Administrative hearings will be conducted in various locations across the state. For juveniles, or persons whose only offense was as a juvenile, the hearing is supposed to be conducted by the SORB member who is a licensed psychologist or psychiatrist with expertise in juvenile sex offenders. As noted above, there is no one on SORB currently who possesses such expertise.
- SORB must make two determinations: (1) whether the individual must register because s/he poses a present threat of grave harm to children or other vulnerable persons and, if so, (2) whether s/he should be assigned a risk level classification of 1, 2, or 3. See e.g., Doe v. Attorney General (Doe 3), 426 Mass. 136, 137 (1997); Doe 5, 430 Mass. 155, 165 (1999).
- SORB has the burden of proof by a preponderance of the evidence. See Doe 5, 430 Mass. at 166; Doe 4, 428 Mass. 90 (1998).
- The offender may wish to present expert testimony regarding his/her risk of recidivism. To do so, the indigent offender must apply for funds from SORB. SORB's authority to grant funds is limited by statute to “...any case where SORB, in its classification proceeding, intends to rely on the testimony or report of an expert witness prepared specifically for the purposes of the classification proceeding.” G.L. c.6, §178L(a); 803

CMR 1.09(2). To date, SORB has never relied upon the testimony or report of an expert. This provision is objectionable as it denies indigent offenders a defense they would have had if they had the financial means to hire an expert. See Comm v. Lockley, (381 Mass 156, 160 (1980)).

- A party shall **only be permitted to introduce an Expert Witness's written report**, including the expert's opinions regarding dangerousness or risk of re offense **if the expert testifies at the hearing.** 803 CMR 1.18.
- Pursuant to G.L. c.30A, §14 (Administrative Procedures Act), a person can appeal SORB's determination to the Superior Court. See §178M.
- If SORB concludes that a level 3 offender is sexually violent and suffers from a mental defect, it may recommend that the offender be deemed a sexually violent predator (SVP). This provision applies to both adult and juvenile offenders. A hearing is then conducted in the sentencing court to determine if the offender should be designated a SVP. Counsel is appointed. If the court determines that the person is a SVP, then the person must register in person at the police station every 45 days. See §178F ½ .

What Happens if a Person Who is Required to Register Fails to Register?

- The Commonwealth can prosecute someone for the following crimes: (1) knowingly failing to register; (2) failing to verify registration information; (3) failing to provide notice of a change of address; or (4) for providing false information. See §178H.
 - The Commonwealth has the burden to prove that the offender had notice of his/her obligation to register.
 - A conviction for failure to register can result in:
 - first offense*: 6 months to 2 ½ years in the house of correction or 5 years in state prison and/or fine; or
 - second and subsequent offense*: not less than five years in state prison.
- Any person **convicted** (**NOTE**, no mention of a person **adjudicated delinquent or youthful offender**) under this section who is a level 2 or level 3 offender shall in addition to imprisonment, be punished by lifetime community parole supervision.

For How Long Must One Register? See §178G.

- For adults convicted of a single sex offense, that is not a sexually violent offense as defined in §178C, and **most juveniles**: 20 years from date of conviction/adjudication or release from custody or supervision, whichever last occurs.
- For (a) **adults convicted** of two or more sex offenses (as defined in 42 U.S.C. §14071) committed on different occasions, a sexually violent offense, or (b) **adults and juveniles** determined to be **sexually violent predators** or otherwise subject to lifetime registration

requirements pursuant to §178D: the duty to register shall never be terminated.

- Termination from registration: After ten years from the date of conviction or release from custody or supervision (whichever occurs last), an offender may apply to SORB for termination of the registration requirement. The offender must prove by clear and convincing evidence that s/he has committed no new sex offenses and is not likely to pose a danger to the safety of others. This burden shifting provision violates the offenders' constitutional rights pursuant to Doe 5, 430 Mass. 155,166 (board has burden of proof by preponderance of evidence); Doe 4, 428 Mass. 90 (1998). Pursuant to 803 CMR 1.37B(1), SORB will only consider new and updated information that was not available at the time of the original registration and classification. Juvenile offenders who have been determined to be SVP are ineligible. Adults who were convicted of two or more Wetterling Offenses or a sexually violent offense are ineligible. Adults convicted of a sex offense involving a child are ineligible unless they have already registered for at least ten years. See 803 CMR 1.37B(3).
- Request for Reclassification by an offender: After three years from the date of final classification, an offender may file a written motion with SORB to re-examine his/her classification level. The burden is on the offender and consideration is limited to new and updated information. 803 CMR 1.37C(2) sets forth the specific showing that the offender must make for SORB to consider his/her motion.
- Request for Reclassification by SORB: SORB, on its own initiative, may seek to reclassify any registered and finally classified sex offender upon receipt of any information that indicates that the offender may present an increased risk to re-offend or degree of dangerousness. 803 CMR 1.37C(3), sets forth the factors that SORB may base their action on. If SORB does seek to reclassify an offender, they must notify him/her that his/her classification level is being re-evaluated. The re-evaluation follows the same protocol as the original classification. An offender is entitled to reject the recommended reclassification level and request a hearing following the same procedures as provided for an initial hearing in 803 CMR 1.08-1.25.
- A person deemed a sexually violent predator may not file a motion in the sentencing court to relieve him/her of the sexually violent predator designation See G.L. c. 6, §178G.