

It is not as Simple as 1, 2, 3:

A look inside the
SORB process
towards
adolescents


Monica Ferraro,
Ph.D.

and

Megan McLaughlin,
Esq.



Overview

- History of the Massachusetts Sex Offender Registry Board
 - When do Adolescents have to register?
 - Massachusetts SORB classification and appeal process
 - Regulatory Factors
 - Addressing misconceptions about SORB
- 

How many
of you have
ever used
SORB in your
personal
life?

To screen babysitters?

While use online dating apps?

As a landlord to screen tenants?

While looking for an
apartment/house?

Mission of the Sex Offender Registry Board

The mission of the Sex Offender Registry Board is to promote public safety through **educating and informing the public** in order to prevent further victimization. This is accomplished through registering and classifying convicted sex offenders by risk of re-offense and degree of danger and disseminating the identifying information of those offenders who live, work and/or attend institutions of higher learning in the communities of the Commonwealth of Massachusetts.

- www.mass.gov/sorb

Federal Sex Offender Legislation

- **1994: Jacob Wetterling Crimes Against Children and Sexually Violent Offender**

- Registration Act signed into law by President Clinton
 - required registration.

- **1996: Megan's Law** signed into Law by President Clinton

- Amended the Wetterling Act
 - included release of relevant information to protect the public.

Massachusetts Sex Offender Registry Board, G.L. c. 6 § 178C-Q

- Original Sex Offender Registry Law (SORL) passed in MA in **1996**
- A series of cases between 1997 and 1999 challenged the constitutionality of the 1996 version of the SORL.
 - **Doe 2** found that a provision permitting anyone to access an offender's information, absent a requirement that they be doing so to protect themselves or another, might impose punishment on someone convicted prior to the passage of the law.
 - **Doe 3** found that failure to provide an offender with a hearing prior to disseminating their information violated due process – the right to a full administrative hearing was solidified by **Doe 4**.

Massachusetts Sex Offender Registry Board, G.L. c. 6 § 178C-Q

- In **1999** the present SORL was passed to replace the original 1996 law.
 - Established the Board as it exists today.
 - Board is made up of a **Chairperson** and **6 Board members**
 - Agency itself organized into 6 units run by the **Chair** and our **Executive Director**:
 - Registration
 - Classification
 - Hearings (Board and Hearing Examiners)
 - Legal
 - Victim Services
 - Program Services

1999 Amended SORL

- If individual lives, has secondary addresses, is employed, or attends institution of higher learning in the Commonwealth, AND on or after August 1, 1981:
 - Was convicted of at least one of 30 enumerated crimes defined as “sex offenses;” OR
 - Was adjudicated as a youthful offender or as a delinquent juvenile by reason of at least one of the 30 qualifying “sex offenses;” OR
 - Has been adjudicated a “sexually dangerous person (“SDP”);” OR
 - (Released from incarceration, parole, probation, DYS commitment or SDP commitment)

Adam Walsh Act July 2006

- Sex Offender Registration and Notification Act (SORNA)
 - Established a comprehensive national system for the registration and notification of sex offenders.
 - Overseen by the SMART Office (Office of Sex Offender Sentencing, Monitoring, Apprehend, Registering and Tracking).
 - Establishes a Three-tier classification system for sex offender registration and notification. Classification is based on the seriousness of the underlying offense and the age of any child involved.
 - Requires states to substantially implement SORNA
- Massachusetts has not substantially implemented SORNA and may never be capable of full SORNA compliance.
 - Sex offenders in Massachusetts are afforded greater protections under the Commonwealth's constitution and court rulings.
 - The methodology employed by SORB is different than SORNA's crime-based preference for offender classification.
 - Massachusetts also provides offenders with a significant and comprehensive degree of individualized analysis and due process.

When Does an Adolescent Fall Under the Jurisdiction of SORB?

Definition of

Juvenile Sex Offender:

An individual younger than 18 years old at the time of committing their only sex offense(s).

Definition of True Juvenile:

An individual currently younger than 18 years old

- Adjudicated as a youthful offender or as a delinquent juvenile by reason of a sex offense **or**
- Adjudicated a sexually dangerous person under M.G.L. c. 123A, § 14 ,
- whichever last occurs, on or after August 1, 1981

And

- Live, work, or attend post secondary education in Massachusetts

When Does an Adolescent Fall Under the Jurisdiction of SORB?

What is A Sex Offense?

Only those enumerated Massachusetts offenses specifically designated by the legislature, or a "like violation" of another state, the United States or a military or Indian tribal authority

When Does an Adolescent Fall Under the Jurisdiction of SORB?

What is A Sex Offense?

Indecent assault & battery on a child under 14
Aggravated indecent assault & battery on a child under 14
Indecent assault & battery on a developmentally disabled person
Indecent assault & battery on a person age 14 or over
Rape
Rape of a child < 16 with force
Aggravated rape of a child under 16 with force
Rape and abuse of a child
Aggravated rape and abuse of a child
Assault with intent to rape
Assault of a child with intent to rape
Kidnapping of a child (conviction after 1999)
Enticing a child under the age of 16 for the purposes of committing a crime
Enticing a child under 18 via electronic communication to engage in prostitution, human trafficking, or commercial sexual activity

Trafficking of persons for sexual servitude
Trafficking of persons for sexual servitude upon a person under 18 years of age
A second or subsequent violation of human trafficking for sexual servitude
Enticing away a person for prostitution or sexual intercourse
Drugging persons for sexual intercourse
Inducing a minor into prostitution
Living off or sharing earnings of a minor prostitute
Incestuous marriage or intercourse
Disseminating to a minor material harmful to a minor
Posing or exhibiting a child in a state of nudity
Dissemination of visual material of a child in a state of nudity or sexual conduct
Possession of child pornography
Unnatural and lascivious acts with a child under 16
Engaging in sexual contact with an animal
Aggravated Rape
2nd Open and Gross lewdness and lascivious behavior
Attempt

When Does an Adolescent Fall Under the Jurisdiction of SORB?

What is not a Sex Offense?

- Indecent Exposure
- Common Night Walking
- Adult Prostitution
- Single Open and Gross conviction/conviction date
- Open and Gross Speech and Behaviors
- Peeping Tom
- Annoying a Person of the Opposite Sex
- Stalking
- Unnatural Acts with a Person over 16
- Secretly photographing or videotaping a person's intimate parts (a.k.a. upskirting)
- Any international offenses
- Certain federal offenses or state offenses that do not convert
- Conspiracy

Risk Classification Levels

- Level 1: risk of re-offense is low and the degree of dangerousness posed to the public is low, such that a public safety interest is not served by public availability of registration information.
- Level 2: risk of re-offense is moderate and the degree of dangerousness posed to the public is moderate, such that a public safety interest is served by public availability of registration information.
- Level 3: risk of re-offense is high and the degree of dangerousness posed to the public is high, such that a substantial public safety interest is served by public availability of registration information and active dissemination of registration information.



Initial
Registration
Unclassified

- Required to register if convicted or adjudicated of aforementioned sex offense or attempt to commit such offense, or like violation of the laws of another state or military, territorial or Indian tribal authority.
- By mail directly with the Board.



Registration Once Classified Level 1

Level 1- Low

- Level 1: risk of re-offense is low and the degree of dangerousness posed to the public is low, such that a public safety interest is not served by public availability of registration information.
- Continue to register with the Board by mail yearly (or monthly if homeless).
- No public dissemination; Information may only be given to:
 - The Department of Correction
 - Any House of Correction
 - 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 Police Departments, and the FBI



Registration
Once
Classified
Level 2 & 3


Level 2 – Moderate

- Level 2: risk of re-offense is moderate and the degree of dangerousness posed to the public is moderate, such that a public safety interest is served by public availability of registration information.

Level 3 - High

- Level 3: risk of re-offense is high and the degree of dangerousness posed to the public is high, such that a substantial public safety interest is served by public availability of registration information and **active dissemination** of registration information.

L2 and L3 offenders register yearly at the department where they primarily reside, or where they work or go to school if they do not live in Massachusetts; homeless offenders register monthly.



How does the public access offender information ?

1. Public Website
 1. Level 3 offenders
 2. Level 2 offenders classified on or after July 12, 2013
2. ESORI portal
 1. All level 3 and Level 2 offenders
3. Police Departments
 1. All level 3 and Level 2 offenders

Why might information for someone who has been convicted of a sex offense not be available?

- Classified as a Level 1
- Unclassified
- Incarcerated
- Moved out of state
- Court order

Classification Process

Administrative (civil) process

Process is governed by

G.L. c. 6, § 178 C – Q and 803 CMR 1.00-1.35

Classification Types

Initial Classification

Offender initiated Reclassification

Board initiated Reclassification

Preliminary Classification

- SORB notifies Juvenile of his duty to register.
- Juvenile enters the system as “unclassified.”
- Juvenile is given 30 days to submit information on his behalf.

Preliminary Classification

Interagency Collaboration (required by statute)

- Classification Specialists make every effort to obtain information from various agencies across all 50 states and U.S. territories:
- Court Dockets
- Police and Investigative Reports
- DOC/HOC/DYS
- DMH
- DCF
- Parole Board/Officers
- Probation Dept/ Officers
- Victim Impact Statements
- **Any information about other sexual misconduct**

Preliminary Classification



- Assembled file is assigned to Juvenile Designated SORB Board Member.
- Juvenile Designated Board member reviews file and makes classification determination based on available data and an application of the regulatory factors.

Preliminary Classification

Juvenile Offender is sent notification of the recommended preliminary classification level; includes a form to return to SORB within 20 days.

Three resulting scenarios:

- 1) Accept the Level
- 2) Non-response
- 3) Request a Hearing

The Process of Scheduling Hearings

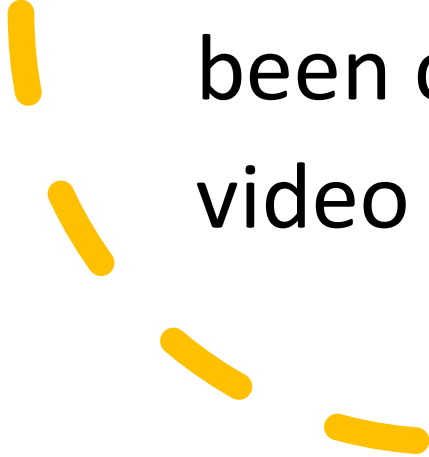
When the Juvenile requests a hearing to challenge the preliminary level:

- Juveniles must have representation
- Once representation is assigned, the hearings unit schedules a date for hearing to present evidence, witnesses and argument
- Parties include: HE, Board attorney, Juvenile, Juvenile's attorney, expert witness, character witnesses, interpreter
- NOT open to the public
- Special accommodations



The Process of Scheduling Hearings

Hearings can last anywhere from 20 minutes to hours or be bifurcated over the course of multiple days.



However, since the onset of the Pandemic we have been conducting all hearings exclusively over WebEx video conferencing.

DE NOVO Hearing

- Evidentiary Hearing
- Board submits preliminary packet and any new/updated information (e.g., CORI, police reports, court dockets related to criminal history, DYS & DCF records, DOC classification summaries, Victim Impact statements)
- Burden is on the Board
- Petitioner may submit letters of support from family/ friends, documentation related to treatment progress, certificates of program completion, psychological reports and evaluations, etc.
- Petitioners may testify and call witnesses


Final Classification Decision

Hearing Examiner takes all submitted evidence and writes a detailed, legal decision


- Rulings on motions and objections
- Credibility determinations
- Specific and detailed findings of fact
- Rulings of law on disputed legal issues
- Analysis of applicable regulatory factors
- 3 Separate findings, conclusions:
 - Risk of re-offense
 - Degree of dangerousness posed to the public
 - Internet dissemination
- At an initial hearing, the HE may maintain, decrease or increase the recommended classification level

Clear and Convincing Standard

We conclude that due process requires that a sex offender's risk level be proved by *clear and convincing evidence*. The risk classifications that SORB must make now have consequences for those who are classified that are far greater than was the case when we decided Doe No 972. The preponderance standard no longer adequately protects against the possibility that those consequences might be visited upon individuals who do not pose the requisite degree of risk and dangerousness. Doe 380316 v. Sex Offender Registry Board, 473 Mass. 297 (2015).



Definition of Clear and Convincing Standard



“[T]he facts asserted are *highly probably true*, that the probability that they are true or exist is substantially greater than the probability that they are false. . . .” Commonwealth v. Russell, 70 Mass. 464, at 472 (2015).

Final Classification Decision

- Final agency decision
- Victims and law enforcement are notified; public given access based on statutory requirements; and sex offender registers according to statutory requirements
- Offender and attorney receive a copy of decision; notified of his right to appeal to the Superior Court (G.L. c. 30A § 14)
- Offender can petition to have level reviewed every three years; if Board receives new information that impacts risk and degree of danger, SORB can initiate a reclassification

Offender Initiated Reclassification

- After being initially classified an offender may petition the SORB (no sooner than 3 years from his last classification), to be reclassified to a lower level and or relieved of their obligation to register.
- During this review period the SORB will notify the Police Department (SOR/Officer) where the juvenile resides.
- The SORB gathers any available new information including criminal history (CORI/CARI), in addition to any documents the juvenile wishes the SORB to consider.

Board Initiated Reclassification

- There are times when a classified offender's behavior will warrant the SORB to revisit the offender's case to make sure he is properly classified.
- Local Police Departments may notify the SORB that they are investigating the juvenile for a new sex offense, for non-sexual violence, violations of a restraining order, repeated calls to the offender's residence for criminal activity or have other concerning information. DCF or other agencies may also identify new information that affects an offender's risk and danger.
- First, a majority of the Board must review and vote that an upward reclassification should be considered.
- If the Board approves review, the process is then similar to an Initial Classification with the Board notifying the Juvenile and collecting any new relevant documents, reports, etc.
- The file is then forwarded to the Juvenile Designated Board member for a preliminary reclassification. If the Board member increases the offender's risk level, the offender is notified and given the same due process he is afforded in the initial classification process.
- If the Board member does NOT increase the offender's risk level, the offender is notified and that concludes the reclassification process.

Sentencing Court's ability to relieve an offender from registration

M.G.L. c. 178E(f)

- (f) In the case of a sex offender who has been convicted of a sex offense or adjudicated as a youthful offender or as a delinquent juvenile by reason of a sex offense, on or after December 12, 1999, and who has **not been sentenced to immediate confinement**, the court shall, within 14 days of sentencing, determine whether the circumstances of the offense in conjunction with the offender's criminal history indicate that the sex offender does not pose a risk of re-offense or a danger to the public. If the court so determines, the court shall relieve such sex offender of the obligation to register under sections 178C to 178P, inclusive.
- Limitations on relief primarily apply to adult offenders, and in practice none apply to juveniles. In reality, any juvenile is eligible for relief at the time of sentencing.

Regulatory Factors, 803 C.M.R. 1.33

- 38 factors total; several containing subsections – drawn from research
- Delineated by statute and regulation (SDP, victim impact, relationship to victim, treatment participation, etc.).
- Qualitative vs. quantitative analysis: the Board Members weigh the applicable factors and the particular circumstances of the individual offender's history and personal situation and comes to a decision.

- 1) Risk of Re-offense

- 2) Dangerousness as a function of the severity and extent of harm the offender would likely present to the public in the event of re-offense.

- 3) Whether and to what degree public access to the offender's personal and sex offender information is in the interest of public safety.

Factors that **Do Not** Apply to Juvenile Offenders

Factor 3: Adult Offender with Child Victim	<i>Separate factor addresses Juvenile offenders with non-peer aged victims</i>
Factor 6: Maximum Term of Incarceration	Decline early release to avoid community supervision or due to own fears of reoffending
Factor 12: Behavior While Incarcerated	Poor adjustment, Disciplinary violations
Factor 15: Hostility Toward Woman	Pervasive pattern of conflict with women, physical aggression toward women, civil restraining/abuse prevention orders
Factor 25: Prostitution of Children	<i>Applies to women</i>
Factor 26: History of Abusing Children	<i>Applies to women</i>
Factor 30: Advanced Age	<i>Juveniles are terminated before they reach the threshold</i>

Additional Points about Classifying Juveniles

- While a Juvenile would only have to register based on commission of one of the registerable offenses, information from other reliable and credible sexual misconduct will also be considered during the process.
- Factors including High Risk versus Risk-Elevating are defined by Statute not by the SORB.
- Juveniles are treated differently than adults unless (and then until) they commit a sex offense as an adult.
- 803 CMR 1.06 (7) allows for the Juvenile designee-board member to more pro-actively seek out information from juvenile offenders as compared to adult offenders.
- "Romeo & Juliet" cases and Emerging Adults – Factors consider adults who offend against a peer aged child, where there is evidence of a consensual, although statutorily criminal act, differently.

Factor 1: Mental Abnormality	<ul style="list-style-type: none">• Specifically related to sexual deviance• Documentation of diagnosis by licensed mental health professional
Factor 2: Repetitive and Compulsive Behavior	Continue to engage in sexual misconduct after detection and confrontation
Factor 4: Age at First Offense	Applies to juveniles who were detected for committed first sex offense before the age of 13 and continued to engaged in sexual misconduct after the age of 14
Factor 5: Adjudicated SDP or Released from Civil Commitment	

High Risk Factors

Risk-Elevating Factors

Factor 7: Relationship between Offender and Victim	<ul style="list-style-type: none">• Intrafamilial, Extrafamilial, Stranger• Position of Trust
Factor 8: Weapon, Violence, or Infliction of Bodily Injury	<ul style="list-style-type: none">• During the course of the sexual assault
Factor 9: Alcohol and Substance Abuse	<ul style="list-style-type: none">• History of use• Active use• Use contributed to offense
Factor 10: Criminal History	<ul style="list-style-type: none">• Number, Severity, Dispositions and Dates• Abuse prevention and harassment orders• CRA proceedings
Factor 11: Violence Unrelated to Sexual Assaults	<ul style="list-style-type: none">• Number, Severity, Dispositions, and Dates of offenses

<p>Factor 13: Non-compliance with Community Supervision</p>	<ul style="list-style-type: none"> • Supervision by probation in the community • Supervision by DYS in the community and in programs
<p>Factor 14: Recent Threats</p>	<ul style="list-style-type: none"> • Threats or indications of intent to sexually assault someone.
<p>Factor 16: Public Place</p>	<ul style="list-style-type: none"> • An area maintained for or used by the public • Any place open to the scrutiny of others where there is not an expectation of privacy
<p>Factor 17: Male Offender against Male Victim (only applies to juvenile offenders aged 13 or older at time of conduct)</p>	<ul style="list-style-type: none"> • Applies when male victim is younger than 13 and at least 5 years younger than the offender at the time of the sexual misconduct • Applies if there is penetration and physical force in the assault, regardless of the age of the victim.

Risk-Elevating Factors continued

Risk-Elevating Factors continued

FACTOR 19: LEVEL OF PHYSICAL CONTACT	ANY CONDITION THAT: <ul style="list-style-type: none">• RENDERS A VICTIM MORE SUSCEPTIBLE TO SEXUAL ASSAULT OR UNABLE TO EFFECTIVELY DEFEND THEMSELVES.• COMPROMISES THE VICTIM'S ABILITY TO EFFECTIVELY REPORT THE ABUSE OR PROVIDE TESTIMONY IN COURT.
Factor 19: Level of Physical Contact	<ul style="list-style-type: none">• Penetration• Was harm caused
Factor 20: Diverse Sexual Behavior	<ul style="list-style-type: none">• Different types of inappropriate sexual behaviors, in multiple incidents
Factor 21: Diverse Victim Type	<ul style="list-style-type: none">• Age• Gender• Relationship Category

Risk-Elevating Factors continued

Factor 22: Number of Victims	
Factor 23: Victim Access	<ul style="list-style-type: none">• Does juvenile have frequent unsupervised access to potential victims from their preferred victim pool• Does juvenile intentionally appear to be seeking opportunities that allow access
Factor 24: Less than Satisfactory Participation in Sex Offender Treatment	<ul style="list-style-type: none">• Refused to participate• Dropped out of treatment• Was terminated from treatment
Factor 27: Age of Victim (applies to juveniles aged 13 or older at time of sex offense)	<ul style="list-style-type: none">• Child Victim: Younger than 13 and at least 5 years younger than the offender at time of offense.• Adult Victim: 18 years of age or older and at least 5 years older than the offender at the time of the offense.

Mitigating Factors

Factor 28: Supervision by Probation or Parole	<ul style="list-style-type: none">• Supervision by probation in the community• DYS commitment in the community
Factor 29: Offense-Free time in the Community	<ul style="list-style-type: none">• Begins on date of release from DYS program for sex-offense or non-sexual violence.• If no DYS commitment/placement, begins on date of most recent date of adjudication in juvenile court for a sex offense or non-sexual violent offense.
Factor 31: Physical Condition	Documented physical condition that reduces risk for re-offense or degree of dangerousness.
Factor 32: Sex Offender Treatment	Participation in therapy that addresses areas including: Family, school, emotional, and social domains, or sex offense specific treatment.

Mitigating Factors continued

Factor 33: Home Situation and Support Systems

Evidence of:

- Stable relationships with family.
- Stable and therapeutically supportive family, pro-social friends and acquaintances.
- Positive engagement with social services, teachers or other adults

Factor 34: Material Submitted Regarding Stability in the Community

Recent behavior and lifestyle including:

- Residential stability
- Sustained sobriety
- Education or employment stability
- Type of employment
- Non-work related activities.

Additional Factors

Factor 35: Psychological or Psychiatric Profiles Indicating Risk to Reoffend	<ul style="list-style-type: none">• Cannot consider ultimate opinion unless expert testifies
Factor 36: Online Offending Behavior	<ul style="list-style-type: none">• Child Pornography• Online communication – engage in sexually explicit communication or exchange pornographic pictures with minors• Solicitation Offending
Factor 37: Other Information Related to the Nature of the Sexual Behavior	<ul style="list-style-type: none">• Includes more current research• Anything not covered by other factors that can be reasonably tied to risk or danger
Factor 38: Victim Impact Statement	<ul style="list-style-type: none">• Relevant to danger

Which regulatory factors might be particularly impacted by race, power and privilege?

How might you recognize the impact in decision making?



Misconceptions About the Sex Offender Registry Law

1. Registry is a tool to reduce recidivism

Truth: Tool for victims and public to reduce opportunity for victimization, and information for LE

2. SORL is an Offender monitoring law

Truth: Community Notification Law

3. Classification is a clinical process

Truth: Classification is an adversarial, legal process

4. SORB has authority to impose conditions or restrictions on offenders

Truth: SORB has no legal role in the care, custody, treatment, supervision, or management of sex offenders.

5. Registration alone affects housing and employment

Truth: While registration can certainly have an impact as the information is more easily available, relief does not remove the conviction or adjudication from someone's record.

6. SORB created the SORL

Truth: SORB implements the SORL as directed by law.

What can you do?

Join MASOC

- Policy Committee
- Capacity Committee

Fill out paperwork for the SORB with as much information and detail and examples around the specific factors as possible:

- Form 10 - Clinicians working with offenders
- Letters for Support from employees, friends, family, and any community support persons.
- Emails from probation officers
- Reports from law enforcement



THANK YOU

Monica Ferraro

Monica.H.Ferraro2@mass.gov

Megan McLaughlin

Megan.R.McLaughlin@mass.gov