

HOUSE No. 4946

By Representative Cabral of New Bedford and Senator Montigny, joint petition (accompanied by bill, House, No. 4946) of Antonio F. D. Cabral and others for legislation to regulate the release and parole of sex offenders and increasing the penalties for certain violations by such sex offenders. The Judiciary.

The Commonwealth of Massachusetts

PETITION OF:

Antonio F. D. Cabral	Denis E. Guyer
Mark C. Montigny	Lewis G. Evangelidis
Stephen R. Canessa	James E. Vallee
John F. Quinn	Joyce A. Spiliotis
Bradley H. Jones, Jr.	Anthony J. Verga
John J. Binienda	Paul K. Frost
Karyn E. Polito	Geraldo Alicea
John P. Fresolo	Walter F. Timilty
William Lantigua	Robert S. Hargraves
Louis L. Kafka	Stephen L. DiNatale
Kathi-Anne Reinstein	Karen E. Spilka
Christine E. Canavan	Mark R. Pacheco

In the Year Two Thousand and Eight.

AN ACT TO PROTECT CHILDREN BY CLOSING SEX OFFENDER REGISTRY LOOPHOLES AND INCREASING PENALTIES.

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. Section 178L of chapter 6 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby amended by
3 replacing section 1(a) with the following:—
4 Not less than 180 days prior to the release or parole of a sex
5 offender from custody or incarceration, the board shall notify the sex
6 offender of his right to submit to the board documentary evidence
7 relative to his risk of reoffense and the degree of dangerousness
8 posed to the public and his duty to register according to the provi-
9 sions of section 178E. If the sex offender is a juvenile at the time of
10 such notification, notification shall also be mailed to the sex

11 offender's legal guardian and his most recent attorney of record.
12 Such sex offender may submit such evidence to the board within 21
13 days of receiving such notice from the board. Upon a reasonable
14 showing, the board may extend the time in which such sex offender
15 may submit such documentary evidence by no more than 30 days.
16 Upon reviewing such evidence, the board shall notify the sex
17 offender within 30 days of the board's recommended sex offender
18 classification, his duty to register, if any, his right to petition the
19 board to request an evidentiary hearing to challenge such classifica-
20 tion and duty, his right to retain counsel to represent him at such
21 hearing and his right to have counsel appointed for him if he is
22 found to be indigent as determined by the board using the standards
23 under chapter 211D; provided, however, that such indigent offender
24 may also apply for and the board may grant payment of fees for an
25 expert witness in any case where the board in its classification pro-
26 ceeding intends to rely on the testimony or report of an expert wit-
27 ness prepared specifically for the purposes of the classification
28 proceeding. If the offender is found to be indigent as determined by
29 the board using the standards under chapter 211D, counsel shall be
30 appointed within 10 days. Such sex offender shall petition the board
31 for such hearing within 14 days of receiving such notice. The board
32 shall conduct such hearing within 60 days. The failure timely to
33 petition the board for such hearing shall result in a waiver of such
34 right and the registration requirements, if any, and the board's rec-
35 ommended classification shall become final.

1 SECTION 2. Section 178L of chapter 6 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby amended by
3 replacing section 1(c) with the following:—

4 In the case of any sex offender not in custody, upon receiving reg-
5 istration data from the agency, the police department at which the
6 sex offender registered, the sentencing court or by any other means,
7 the board shall promptly notify the sex offender of his right to
8 submit to the board documentary evidence relative to his risk of
9 reoffense and the degree of dangerousness posed to the public and
10 his duty to register, if any, according to the provisions of
11 section 178E. If such sex offender is a juvenile at the time of such
12 notification, notification shall also be mailed to the sex offender's
13 legal guardian and his most recent attorney of record. Such sex

14 offender may submit such evidence to the board within 21 days of
15 receiving such notice from the board. Upon a reasonable showing,
16 the board may extend the time in which such sex offender may
17 submit such documentary evidence. Upon reviewing such evidence,
18 the board shall notify the sex offender within 30 days of the board's
19 recommended sex offender classification, his duty to register, if any,
20 his right to petition the board to request an evidentiary hearing to
21 challenge such classification and duty, his right to retain counsel to
22 represent him at such hearing and his right to have counsel
23 appointed for him if he is found to be indigent as determined by the
24 board using the standards under chapter 211D; provided, however,
25 that such indigent offender may also apply for and the board may
26 grant payment of fees for an expert witness in any case where the
27 board in its classification proceeding intends to rely on the testimony
28 or report of an expert witness prepared specifically for the purposes
29 of the classification proceeding. Such sex offender shall petition the
30 board for such hearing within 14 days of receiving such notice. The
31 board shall conduct such hearing within 60 days. The failure timely
32 to petition the board for such hearing shall result in a waiver of such
33 right and the registration requirements, if any, and the board's rec-
34 ommended classification shall become final.

1 SECTION 3. Section 13B of chapter 265 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby amended by adding
3 the following:—

4 For the first offense, the convicted will be subject to probation for
5 a term of no less than five years upon release or parole from jail or
6 house of correction, and for the second or subsequent offense be
7 subject to probation for a term of no less than ten years upon release
8 or parole from jail or house of correction; provided, however, that a
9 prosecution commenced under the provisions of this section shall
10 not be placed on file or continued without a finding.

1 SECTION 4. Section 13H of chapter 265 of the General Laws, as
2 appearing in the 2006 official edition, is hereby amended by adding
3 the following:—

4 For the first offense, the convicted will be subject to probation for
5 a term of no less than five years upon release or parole from jail or
6 house of correction, and for the second or subsequent offense be

7 subject to probation for a term of no less than ten years upon release
8 or parole from jail or house of correction; provided, however, that a
9 prosecution commenced under the provisions of this section shall
10 not be placed on file or continued without a finding.

1 SECTION 5. Section 22 of chapter 265 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby amended by adding
3 the following:—

4 For the first offense, the convicted will be subject to probation for
5 a term of no less than five years upon release or parole from jail or
6 house of correction, and for the second or subsequent offense be
7 subject to probation for a term of no less than ten years upon release
8 or parole from jail or house of correction; provided, however, that a
9 prosecution commenced under the provisions of this section shall
10 not be placed on file or continued without a finding.

1 SECTION 6. Section 22A of chapter 265 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby amended by
3 striking out the entire section and replacing it with the following:—

4 Whoever has sexual intercourse or unnatural sexual intercourse
5 with a child under sixteen, and compels said child to submit by force
6 and against his will or compels said child to submit by threat of
7 bodily injury, shall be punished in the state prison for life or for any
8 term of years not less than twenty years and to probation for a term
9 of no less than ten years upon release or parole from jail or house of
10 correction; and whoever over the age of eighteen commits a second
11 or subsequent such offense shall be sentenced to the state prison for
12 life or for any term not less than thirty years and to probation for a
13 term of no less than twenty years upon release or parole from jail or
14 house of correction; provided, however, that a prosecution com-
15 menced under the provisions of this section shall not be placed on
16 file or continued without finding. The provisions of section 87 of
17 chapter 276 relating to the power of the court to place certain
18 offenders on probation shall not apply to any person charged with a
19 violation of this section.

20 Whoever commits any offense described in this section while
21 armed with a firearm, rifle, shotgun, machine gun or assault weapon
22 shall be sentenced to the state prison for life or for any term of years,
23 but not less than twenty-five years and to probation for a term of no

24 less than ten years upon release or parole from jail or house of cor-
25 rection. Whoever over the age of 18 commits a second or subse-
26 quent such offense shall be sentenced to the state prison for life or
27 for any term of years, but not less than thirty-five years.

1 SECTION 7. Section 23 of chapter 265 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby amended by adding
3 the following:—

4 For the first offense, the convicted will be subject to probation for
5 a term of no less than five years upon release or parole from jail or
6 house of correction, and for the second or subsequent offense be
7 subject to probation for a term of no less than ten years upon release
8 or parole from jail or house of correction; provided, however, that a
9 prosecution commenced under the provisions of this section shall
10 not be placed on file or continued without a finding.

1 SECTION 8. Section 24 of chapter 265 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby amended by adding
3 the following:—

4 For the first offense, the convicted will be subject to probation for
5 a term of no less than five years upon release or parole from jail or
6 house of correction, and for the second or subsequent offense be
7 subject to probation for a term of no less than ten years upon release
8 or parole from jail or house of correction; provided, however, that a
9 prosecution commenced under the provisions of this section shall
10 not be placed on file or continued without a finding.

1 SECTION 9. Section 24B of chapter 265 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby amended by adding
3 the following:—

4 For the first offense, the convicted will be subject to probation for
5 a term of no less than five years upon release or parole from jail or
6 house of correction, and for the second or subsequent offense be
7 subject to probation for a term of no less than ten years upon release
8 or parole from jail or house of correction; provided, however, that a
9 prosecution commenced under the provisions of this section shall
10 not be placed on file or continued without a finding.

1 SECTION 10. Section 27 of chapter 265 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby amended by adding
3 the following:—

4 For the first offense, the convicted will be subject to probation for
5 a term of no less than five years upon release or parole from jail or
6 house of correction, and for the second or subsequent offense be
7 subject to probation for a term of no less than ten years upon release
8 or parole from jail or house of correction; provided, however, that a
9 prosecution commenced under the provisions of this section shall
10 not be placed on file or continued without a finding.

1 SECTION 11. Section 47 of chapter 265 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby amended by
3 replacing the second sentence with the following:—

4 The commissioner of probation, in addition to any other condi-
5 tions, shall establish defined geographic inclusion zones and exclu-
6 sion zones to minimize the probationer's contact with children. The
7 defined exclusion zones shall include, but not be limited to, play-
8 grounds, libraries, schools, day care centers, the parking area and
9 land surrounding any of the aforementioned facilities, and any other
10 locale deemed worthy by a probation officer to minimize the proba-
11 tioner's contact with children.

1 SECTION 12. Section 4A of chapter 272 of the General Laws, as
2 appearing in the 2006 Official Edition, is hereby amended by adding
3 the following:—

4 For the first offense, the convicted will be subject to probation for
5 a term of no less than five years upon release or parole from jail or
6 house of correction, and for the second or subsequent offense be
7 subject to probation for a term of no less than ten years upon release
8 or parole from jail or house of correction; provided, however, that a
9 prosecution commenced under the provisions of this section shall
10 not be placed on file or continued without a finding.

1 SECTION 13. Section 35A of chapter 272 of the General Laws,
2 as appearing in the 2006 Official Edition, is hereby amended by
3 adding the following:—

4 For the first offense, the convicted will be subject to probation for
5 a term of no less than five years upon release or parole from jail or

6 house of correction, and for the second or subsequent offense be
7 subject to probation for a term of no less than ten years upon release
8 or parole from jail or house of correction; provided, however, that a
9 prosecution commenced under the provisions of this section shall
10 not be placed on file or continued without a finding.

1 SECTION 14. The provisions of this bill shall be deemed to be
2 retroactive to the fullest extent permitted under the Constitution of
3 the United States and the Declaration of Rights of the Common-
4 wealth of Massachusetts.

1 SECTION 15. The provisions of this bill shall become effective
2 upon passage.

1 SECTION 16. Each section of this Act shall be separable and
2 shall continue in effect if any provision hereof is deemed to be
3 unconstitutional or otherwise ineffective.