



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT

STATE HOUSE • ROOM 271
BOSTON, MASSACHUSETTS 02133
TEL: (617) 725-4030 • FAX: (617) 727-8290

DEVAL L. PATRICK
GOVERNOR

ATTACHMENT C

July 12, 2013

To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution, I am returning to you for amendment Sections 8 and 13 of House Bill No. 3538, "An Act Making Appropriations for the Fiscal Year 2014 for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements."

Preventing sex offenses and protecting public safety are vital goals. Ensuring that the Sex Offender Registry Board ("Board") and local officials are aware of information concerning the whereabouts of sex offenders and the risk they may reoffend serves those goals. If amended, Sections 8 and 13 could accomplish these goals efficiently and effectively. As proposed, however, each section would yield collateral consequences that do not strengthen the Commonwealth's sex offender registration system, and instead undermine its effectiveness.

For example, Section 8, as written, would expend public safety resources to penalize a registrant who has provided accurate and comprehensive information to the Board. Those resources are better spent on registrants who have sought to deceive the Board and the public it protects. As drafted, Section 13 would impose a blanket requirement on state and local officials to report information to the Board. This requirement, without clarification, could place those

officials in conflict with federal privacy laws. The more precise tailoring of Sections 8 and 13 set forth below could avoid these consequences and better accomplish the goals that we share.

Section 8

Section 8 seeks to ensure that, upon release from confinement, sex offenders cannot tell the Sex Offender Registry Board (the “Board”) that they will live in one location and then proceed to reside in another. I support the purpose of this section.

As written, however, Section 8 fails to distinguish between those registrants who have provided the Board with an accurate home address and those who have not – and therefore exposes registrants who are living precisely where they said they would to a six-month minimum sentence of imprisonment.

I believe Section 8 could more precisely target the deception it seeks to remedy. And with such precision, it could target the offender who, before his release, affirms that he will live at one address, but who establishes residence at another. If Section 8 is tailored to these circumstances, the offender who affirms the wrong address on purpose and then does not register in person at his new address would be subject to a mandatory five-year sentence of imprisonment — on the basis of one conviction for failing to provide a proper address and a second for failing to register at his actual address. Under a revised Section 8, if the offender registers at one address before his release, but, through no act of deception, ultimately resides at another, the proper police department will be so informed by the required in-person registration.

By the amendment proposed below, Section 8 will specifically and actively protect the public from offenders who change residences immediately upon release from custody — an important goal that is imperfectly served by the current proposal and current law.

For these reasons, I recommend that Section 8 be amended by striking out the text and inserting in place thereof the following text:-

SECTION 8. Section 178F1/2 of said chapter 6, as appearing in the 2012 Official Edition, is hereby amended by striking out the first

sentence and inserting in place thereof the following 3 sentences:- An incarcerated sex offender finally classified by the board as a level 2 or level 3 sex offender who is required to register under sections 178C to 178P, inclusive, shall appear in person within 2 days of release from the custody of an agency, including the department of correction, the department of youth services or any of the houses of correction, at the local police department in the city or town in which the sex offender lives, or if the sex offender does not reside in the commonwealth, in the city or town in the commonwealth in which the sex offender has a secondary address, works or attends an institution of higher learning, to register; but no such obligation to register in person shall arise where the pertinent address is the same as that provided to the board by the offender before his release under subsection (a) of section 178E. The sex offender shall be informed by, and shall acknowledge in writing to, the agency that has custody of the sex offender of the duty to comply with this section. A sex offender who is finally classified by the board as a level 2 or level 3 offender and who is required to register under said sections 178C to 178P, inclusive, shall appear in person annually at the local police department in the city or town in which the sex offender lives or, if the sex offender does not reside in the commonwealth, in the city or town in the commonwealth in which the sex offender has a secondary address, works or attends an institution of higher learning, to verify that the registration data on file remains true and accurate.

Section 13

Section 13 also seeks to achieve a purpose that I firmly support, namely the provision of information to the Board concerning the likelihood that a registrant might reoffend. Here, too, an amendment would more effectively serve that purpose.

Section 13 dovetails with Section 10, which permits the Board to “have access to any information” in the possession of pertinent departments that it deems relevant to classification. As to a subset of that information and a subset of individuals in possession of it, Section 13 creates a requirement that certain information must be reported to the Board.

Mandatory reporting can be a valuable tool, as it has been in the context of teachers and physicians who must report evidence of child

abuse to the Department of Children and Families. To ensure that value here, two related concerns must be addressed. First, as written, Section 13 requires information sharing, but it neither specifies what information must be shared nor under what circumstances it must be shared. This ambiguity undermines the goal of Section 13 and is particularly problematic for the Executive Office of Health and Human Services ("EOHHS") which is permitted by certain federal law to share certain information only when expressly so directed by state law. If the section is enacted as written, EOHHS will face an ongoing challenge to meet its obligations under Section 13, on one hand, and federal privacy law, on the other.

Second, certain individuals who would be required under the proposed language to report information to the Board should be instructed as to the specific type of information for which they should be looking. To this end, Section 13 should be amended to better use the Board's expertise by directing the Board to develop regulations creating greater specificity and clarity around these directives.

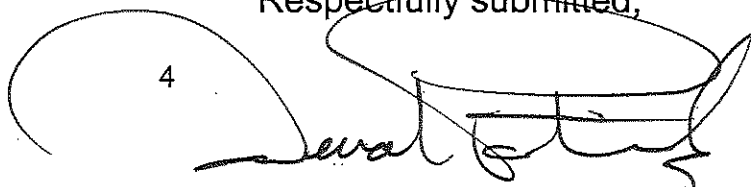
For these reasons, I recommend that Section 13 be amended by striking out the text and inserting in place thereof the following text:-

SECTION 13. Section 178P of said chapter 6, as so appearing, is hereby amended by adding the following paragraph:-

Whenever a police officer, district attorney or agent, employee or representative of the executive office of health and human services has information indicating that a sex offender is at risk to reoffend, the police department, district attorney or, to the extent permitted by federal law, the executive office of health and human services agent, employee or representative shall forward that information to the board; but a police department or district attorney shall not forward information to the board that the police department or district attorney believes will compromise an ongoing investigation. The board, after consulting the executive office of health and human services, shall adopt regulations to provide specific guidance concerning the type and location of information that might indicate that a sex offender is at risk to reoffend and the circumstances that require disclosure.

Respectfully submitted,

4

A large, stylized handwritten signature in black ink, appearing to read "Serafini", is written over the page number and extends across the bottom of the page.