

803 CMR: DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES

803 CMR 1.00: SEX OFFENDER REGISTRY BOARD, REGISTRATION, CLASSIFICATION AND DISSEMINATION

Section

- 1.01: Purpose
- 1.02: Regulations Do Not Limit Statutory Authority, Cancellation
- 1.03: Definitions
- 1.04: Classification Process
- 1.05: Registration
- 1.06: Duty to Register and Recommended Classification Level
- 1.07: Right to Submit Documentary Evidence During the Recommendation Process
- 1.08: Right to Request a Hearing to Challenge Recommendations
- 1.09: Representation at Classification Hearing
- 1.10: Scheduling of the Classification Hearing
- 1.11: Rescheduling the Classification Hearing
- 1.12: Failure of Sex Offender to Appear at the Classification Hearing
- 1.13: *Ex Parte* Communications
- 1.14: Classification Hearings
- 1.15: Subpoenas
- 1.16: Motions
- 1.17: Discovery Obligations and Witness Disclosures
- 1.18: Evidence
- 1.19: Duties and Powers of the Hearing Examiner
- 1.20: Hearing Examiner's Final Decision
- 1.21: Hearing Examiner's Decision as the Final Sex Offender Registry Board Decision
- 1.22: Administrative Record
- 1.23: Notification of the Final Decision
- 1.24: Judicial Review
- 1.25: Transmission of the Final Decision to Law Enforcement
- 1.26: Registration Requirements and Dissemination of Information
- 1.27: Sex Offender Internet Database Otherwise Known as the Public Website
- 1.28: Electronic Sex Offender Registry Portal (ESORI)
- 1.29: Community Notification
- 1.30: Motion for Relief from Registration Obligation Prior to Final Classification
- 1.31: Sex Offender's Request for Reclassification and/or Termination
- 1.32: Board's Reclassification of Sex Offender
- 1.33: Risk Factors
- 1.34: Information Sharing
- 1.35: Severability

1.01: Purpose

803 CMR 1.00 sets forth guidelines pertaining to the registration and classification of sex offenders, and the resulting dissemination of sex offender registry information in accordance with the law based on the sex offender's level of risk of re-offense and degree of dangerousness posed to the public. 803 CMR 1.00 additionally provides a process for the removal from the sex offender registry of those individuals not required to register. The Sex Offender Registry Board (the "Board") may from time to time and in its discretion develop, implement, and/or amend its policies, procedures, and protocols to this end. The Board will exercise sound judgment and apply its expertise when making any registration or classification determination as required in 803 CMR 1.00.

803 CMR 1.00 sets forth the registration and classification procedures and guidelines the Board uses to determine whether a convicted or adjudicated sex offender may be required to register as a sex offender and, if so, the sex offender's level of risk of re-offense and degree of dangerousness posed to the public.

1.02: Regulations Do Not Limit Statutory Authority, Cancellation

Nothing contained in 803 CMR 1.00 shall be interpreted to limit, contradict or override the

803 CMR: DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES

authority granted to the Sex Offender Registry Board or others pursuant to M.G.L. c. 6, §§ 178C through 178Q and any other applicable provisions of the Massachusetts General Laws. 803 CMR 1.00 cancels all previous Sex Offender Registry Board policy statements, rules or regulations to the extent they are inconsistent with 803 CMR 1.00. The recommended classification of any sex offender who has not been finally classified prior to the effective date of 803 CMR 1.00 shall remain valid. Likewise, the Final Classification of any sex offender issued prior to the effective date of 803 CMR 1.00 shall also be deemed to remain valid.

1.03: Definitions

All words and phrases not defined in 803 CMR 1.00 shall be defined by M.G.L. c. 6, § 178C. Unless otherwise indicated in a specific factor enumerated in 803 CMR 1.33, the use of the male gender in 803 CMR 1.00 shall be deemed to include the female or neutral gender. The use of the singular includes the plural and *vice versa* where the context so permits.

As used in 803 CMR 1.00, the following words and phrases shall have the following meanings:

Administrative Hearing. An adjudicatory proceeding before an impartial hearing examiner where the sex offender's current risk of re-offense and degree of dangerousness is determined.

Authorized Representative. An appointed or privately retained attorney, legal guardian or any other person authorized by the sex offender to represent him or her during the hearing process. For appointment of counsel, *see* 803 CMR 1.09. If the authorized representative is not an attorney, they shall submit to the Board a written authorization signed and dated by the sex offender at least ten business days prior to the scheduled hearing date. The written authorization shall state the relationship between the authorized representative and the sex offender.

Child Sexual Abuse Material (CSAM). Any visual depiction of sexually explicit conduct involving a minor, also known as child pornography.

Child Victim. A Victim of a sexual misconduct or sex offense younger than 16 years old unless otherwise defined within these regulations.

Civilly Committed. Sex offenders who are committed as a sexually dangerous person pursuant to G.L. c. 123A, § 1, et. seq. including being committed for a day to life pursuant to G.L. c. 123A, § 14, temporarily committed pending a probable cause hearing pursuant to G.L. c. 123A, § 12, or temporarily committed following a probable cause determination pursuant to G.L. c. 123A, § 13.

Classification File. The part of the sex offender's file maintained by the Board that contains the documentary evidence compiled by the Board to complete the recommendation process.

Classification Worksheet. A form developed and approved by the Board that reflects the recommendation process, shows the foundation for and indicates the Board's recommended registration and classification determination for each offender. The worksheet shall include a review of the factors enumerated in M.G.L. c. 6, § 178K(1)(a) through (l) and explained further in 803 CMR 1.33. The Board shall make a blank copy of the Classification Worksheet and related policies, procedures, protocols, and objective standards generally available and available upon request. The hearing examiner presiding over a classification hearing is not bound by the recommended classification or the means by which it was adduced.

Clear and Convincing Evidence. The standard applied at administrative hearings where the hearing examiner determines, based upon all of the evidence, there is a high degree of probability that the sex offender meets the standards specified for the duty to register and to be classified at a designated level. The Board shall bear the burden of proof at all administrative hearings.

Dangerousness. The severity and extent of harm the sex offender would present to the public in the event of sexual re-offense.

Documentary Evidence. Clear and legible records, data, reports, or letters submitted to the Board by

803 CMR: DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES

the sex offender or on behalf of the sex offender relative to their risk of re-offense and the degree of dangerousness the sex offender poses to the public and their duty to register.

Employment. Any work that is full-time or part-time for a period exceeding 14 days or for an aggregate period exceeding 30 days during any calendar year, whether compensated or uncompensated, self-employed or working for an entity. To work shall mean to perform employment or work defined in 803 CMR 1.00.

ESORI Portal. Electronic Sex Offender Registry (ESORI) Portal authorized under M.G.L. c. 6, § 178I which allows individual users and members of an organization to request information by written request regarding a finally classified Level 2 or Level 3 sex offender.

Expert Witness. A licensed medical doctor or mental health professional, excluding employees of the Sex Offender Registry Board, whose testimony and report offering an opinion as to a sex offender's risk of re-offense and degree of dangerousness were prepared expressly for reliance by a Party at a hearing conducted pursuant to 803 CMR 1.10 through 1.20. Reports prepared by licensed mental health professionals that contain an opinion as to a sex offender's risk of re-offense and degree of dangerousness that were prepared for any other purpose will not qualify as Expert Witness opinions for a hearing conducted pursuant to 803 CMR 1.10 through 1.20.

Factor(s). The descriptions and definitions as well as the principles and authorities enumerated in 803 CMR 1.33 which the Board uses in its classification determinations.

Final Classification. A sex offender shall be deemed finally classified when the presiding hearing examiner determines that they are a Level 1, Level 2 or Level 3 Offender, except where a sex offender has declined to request a hearing, in which case the recommended classification accomplished pursuant to 803 CMR 1.06 will become the Final Classification.

Full Board. At least four members of the Sex Offender Registry Board. The full board may establish policies and procedures to implement the provisions of M.G.L. c. 6, §§ 178C through 178Q and 803 CMR 1.00.

Hearing Examiner. An individual employed by the Sex Offender Registry Board, a single member of the Sex Offender Registry Board, a hearing panel, or the Chair's designee to conduct administrative hearings to determine by clear and convincing evidence a sex offender's duty to register and final classification level.

Incarcerated Offender. An offender serving a sentence at the Department of Correction (DOC) or a House of Correction (HOC) or committed to the Department of Youth Services (DYS) in a hardware secure placement.

Jurisdiction. The Board has jurisdiction over a person who resides, has secondary addresses, works or attends an institution of higher learning in the Commonwealth and who has been convicted of a sex offense or who has been adjudicated as a youthful offender or as a delinquent juvenile by reason of a sex offense or a person released from incarceration or parole or probation supervision or custody with the DYS for such a conviction or adjudication or a person who has been adjudicated a sexually dangerous person under M.G.L. c. 123A, § 14 as in force at the time of adjudication, or a person released from civil commitment pursuant to M.G.L. c. 123A, § 9, whichever last occurs, on or after August 1, 1981.

Juvenile. An individual younger than 18 years old at the time of committing a sex offense. If the sex offender is a juvenile, all written notifications from the Board shall also be mailed to:

- (a) the juvenile's legal guardian;
- (b) the Department of Children and Families (DCF) or the DYS if the juvenile is receiving services from, or subject to proceedings initiated by, one or more of these agencies; and
- (c) the juvenile's most recent attorney of record.

Level 1 Offender. The designation given to a sex offender when it has been determined their risk of re-offense is low and the degree of dangerousness posed to the public is not such that a public safety interest is served by public access to information pertaining to the offender.

803 CMR: DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES

Level 2 Offender. The designation given to a sex offender when it has been determined their risk of re-offense is moderate and the degree of dangerousness posed to the public is such that a public safety interest is served by public access to their sex offender registry information.

Level 3 Offender. The designation given to a sex offender when it has been determined their risk of re-offense is high and the degree of dangerousness posed to the public is such that a substantial public safety interest is served by public access to and active dissemination (community notification) of their sex offender registry information.

Party. The sex offender and the Sex Offender Registry Board. At the administrative hearing, the sex offender may represent himself or herself or have an authorized representative. For representation at the administrative hearing see 803 CMR 1.09. The Board may have a representative responsible for presenting evidence and argument regarding the offender at any hearing held under 803 CMR 1.00. The Sex Offender Registry Board shall be identified by its name and not by its individual representatives' names.

Public Website. The Sex Offender Registry Board's public facing website as authorized by M.G.L. c. 6, § 178D which is publicly accessible via the Sex Offender Registry Board's website and allows the public to search for finally classified Level 2 sex offenders after July 12, 2013 and Level 3 sex offenders by name, city/town, and/or geographical/neighborhood search.

Provisional Status. Designation to an incarcerated or civilly committed sex offender's classification level indicating that it is not yet finalized as the offender is not reasonably close to release.

Receipt. The delivery of mail. There shall be a rebuttable presumption that any notice or letter mailed by the Sex Offender Registry Board to the offender at the address(es) at which the sex offender is currently registered was received by the offender within three days of mailing.

Recommendation. The Board's recommended classification, also referred to as preliminary classification level, made pursuant to the policies, procedures, protocols, and objective standards set forth in M.G.L. c. 6, § 178K(1)(a) through (l) and explained in 803 CMR 1.33 to base its recommended classifications. The Board shall make its policies, procedures, protocols, and objective standards for the recommendation process generally available and available upon request.

School. Any public or private educational institution, including any secondary school, trade, vocational or professional institution, or a post-secondary institution of higher learning.

Second and Subsequent Adjudication or Conviction for Open and Gross Lewdness and Lascivious Behavior. The later of two or more separate adjudications or convictions pursuant to M.G.L. c. 272, § 16. An adjudication or conviction after an initial adjudication or conviction of open and gross lewdness and lascivious behavior will be considered second and subsequent. Two violations will suffice only if the adjudications or convictions for them are not simultaneous.

Secondary addresses. The addresses of all places where a sex offender lives, abides, lodges, or resides for a period of 14 or more days in the aggregate during any calendar year and which is not a sex offender's primary address; or a place where a sex offender routinely lives, abides, lodges, or resides for a period of four or more consecutive or nonconsecutive days in any month and which is not a sex offender's permanent address, including any out-of-state address. For the purposes of these regulations, where an offender lives includes secondary and primary addresses.

Sex Offender Number (SON). The unique identification number assigned to every sex offender by the Sex Offender Registry Board. The offender must include their SON on all written communications with the Sex Offender Registry Board.

Sex Offender Registry. The central computerized database of all sex offenders ever registered with the Board pursuant to M.G.L. c. 6, §§ 178C through 178Q.

Sex Offender Registry Board (Board or SORB). The administrative agency of the Commonwealth consisting of the members, as set forth in M.G.L. c. 6, § 178K, and its staff.

Sexual Misconduct. Allegations of illegal or nonconsensual sexual conduct that the Board has found credible and reliable.

Student. Any person who is enrolled on a full-time or part-time basis, in any school.

Victim of Record. A named victim in an enumerated sex offense for which the sex offender has been convicted, regardless of whether or not the sex offender has been relieved of registration.

1.04: Classification Process

(1) Preamble. Pursuant to M.G.L. c. 6, § 178K(1), the Board is required to publish guidelines for determining each sex offender's current level of risk of re-offense and degree of dangerousness posed to the public, or for relief from the obligation of registration. Pursuant to M.G.L. c. 6, § 178K(1) and (2), these guidelines shall provide for three levels of notification based on a sex offender's current risk of re-offense and degree of dangerousness. The offender's final classification level determines the amount of information that can be disseminated about the offender to the public through the notification procedures, pursuant to M.G.L. c. 6, §§ 178C through 178Q. The Board shall prioritize classification of sex offenders who have been convicted of a sex offense involving a child or convicted or adjudicated as a delinquent juvenile or as a youthful offender by reason of a sexually violent offense or of a sex offense of indecent assault and battery upon a mentally retarded person pursuant to section 13F of chapter 265, and who have not been sentenced to incarceration for at least 90 days, followed by offenders recently released from incarceration, then offenders currently on probation or parole or scheduled to be released from incarceration within six months pursuant to M.G.L. c. 6, § 178K(3). The Board recognizes that an assessment of a sex offender's level of risk of re-offense and degree of dangerousness posed to the public should be an accurate reflection of the sex offender's current status. Thus, for incarcerated or civilly committed sex offenders, the Board will finally classify an incarcerated or civilly committed sex offender within one year of the offender's reasonably anticipated release date.

(2) In the first stage, the Board makes a recommendation regarding each sex offender's duty to register and classification level pursuant to M.G.L. c. 6, § 178L. During the recommendation process, the sex offender is entitled to present documentary evidence for the Board to consider. The sex offender will be notified in writing of the Board's recommendation. The sex offender may either accept or reject the recommendation. The recommendation process is set forth at 803 CMR 1.06 through 1.08. If the sex offender accepts the Board's recommendation, then the recommended classification level shall become final and is not subject to judicial review, pursuant to M.G.L. c. 30A.

(3) If the sex offender rejects the Board's recommendation, the process moves into the second stage set forth at 803 CMR 1.09 through 1.21. The sex offender is provided with a *de novo* hearing at which all relevant evidence is evaluated by a hearing examiner to reach a final decision regarding the sex offender's duty to register and final classification level. The hearing examiner shall base their decision on the totality of all the relevant evidence introduced at the sex offender's individualized hearing. The final agency decision issued by the hearing examiner is subject to judicial review in the Superior Court, pursuant to M.G. L. c. 30A.

(4) Factors. M.G.L. c. 6, §§ 178K(2) and 178L(1), sets forth criteria to be considered by the Board in determining risk of re-offense and degree of dangerousness and authorize the Board to identify and utilize additional risk factors and criteria not specifically listed in the statute. Based on this statutory authority, the Board created 803 CMR 1.33 which describes and defines the factors that the Board shall consider in making all registration and classification decisions. In determining the final classification, the hearing examiner shall be guided by the definitions, explanations, principles, and authorities contained in the Factors set forth in 803 CMR 1.33 and shall not be bound by the Board's recommendation.

1.05: Registration

803 CMR: DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES

(1) A sex offender, as defined in M.G.L. c. 6, § 178C, shall register with the Sex Offender Registry Board, by mail, on a registration form provided by the Board. Additionally, the Board shall accept the registration form it receives from any nonresident person who has employment or is enrolled in school in the Commonwealth.

(2) Registration Form. The registration form shall require the sex offender to provide the following information:

- (a) name of the sex offender;
- (b) date of birth;
- (c) Social Security number (optional);
- (d) home address or intended home address;
- (e) secondary address or intended secondary address;
- (f) location for homeless offenders;
- (g) work address or intended work address;
- (h) name and address of any school at which the offender works, intends to work, is enrolled as a student, and/or intends to enroll as a student; and
- (i) signature of the sex offender, signed under the pains and penalties of perjury.

(3) The information obtained from the registration form shall be used by the Board to notify the sex offender of the offender's right to submit documentary evidence during the recommendation process, as set forth in 803 CMR 1.06 through 1.08, as well as to offer the sex offender the opportunity to request a hearing in accordance with the procedures established in 803 CMR 1.00. It is the sex offender's obligation to provide the Board with accurate information during the recommendation process.

(4) Sex Offenders in the Community.

(a) For sex offenders who are unclassified or finally classified as Level 1 and who have been released from all custody and supervision, the registration form must be completed, signed under the pains and penalties of perjury, and mailed to the Board within ten calendar days of release. In each subsequent year that a sex offender is unclassified or finally classified as Level 1, the Board shall mail the registration form and notification of the requirements of M.G.L. c. 6, §§ 178C through 178Q to the last known address of these sex offenders residing in the Commonwealth. The registration form must be completed by the offender and mailed to the Board within ten calendar days of receipt.

(b) For sex offenders who are unclassified or finally classified as Level 1 and who have been convicted or adjudicated for a sex offense but have not been sentenced to confinement for 90 days or more to be served immediately, the registration form must be completed by the sex offender and mailed to the Board within two calendar days of receiving notification by the court of the duty to register or within two calendar days of release from confinement, whichever is later.

(c) For sex offenders who have been finally classified as Level 2 or Level 3, the registration form must be completed in-person at the local police department in the city or town in which the sex offender lives, or if the sex offender does not live in the commonwealth, the municipality where the sex offender works or attends an institution of higher learning at least annually. The sex offender must register in-person at the local police department every time there is a change in home or work address. In each subsequent year that a sex offender is finally classified as Level 2 or Level 3, the Board shall mail the registration form and notification of the requirements of M.G.L. c. 6, §§ 178C through 178Q to the last known address of these sex offenders. The registration form must be completed by the offender in person at the police department in the municipality in which the sex offender lives, or if the sex offender does not live in the commonwealth, the municipality where the sex offender works or attends an institution of higher learning within ten calendar days of receipt of such notice.

(d) All sex offenders are required to register their change of addresses ten calendar days prior to the change of address.

(5) Sex Offenders Subject to Community Supervision. For sex offenders who are currently on probation or parole, the registration form must be completed by the offender and mailed to the Board within two calendar days of receiving notification of the duty to register.

(6) Incarcerated or Civilly Committed Sex Offenders. For sex offenders who are currently

incarcerated or civilly committed, the registration form must be completed by the sex offender and mailed to the Board not later than two calendar days before release from custody. No sex offender shall be released from custody unless such registration form has been filled out, signed, and mailed to the Board. A finally classified Level 2 or Level 3 sex offender shall appear in person at the local police department in the city or town in which the sex offender lives, or if the sex offender does not live in the commonwealth, the municipality where the sex offender works or attends an institution of higher learning within 2 days of release from custody if the pertinent address is different as that provided to the Board by the offender before their release.

(7) For sex offenders who have been finally classified, registration shall be in accordance with M.G.L. c. 6, §§ 178F through 178F½ and 803 CMR 1.05. Registration information shall be available to the public for those sex offenders finally classified as a Level 2 or a Level 3 Offender.

(8) Sex offenders are responsible for complying with all registration duties and obligations as set forth in M.G.L. c. 6, §§ 178C through 178Q. These registration duties and obligations shall be enforced to the extent permissible pursuant to the law.

(9) Upon receiving a sex offender's registration information or change in registration information, the Board shall transmit the registration information to:

- (a) police departments in municipalities where the sex offender lives and works, or where the sex offender intends to live and work upon release, and where the offense was committed;
- (b) police departments in municipalities, including campus police departments or other state recognized law enforcement agencies at a school, where the sex offender works and/or attends a school or where the sex offender intends to work and/or attend a school upon release; and
- (c) the Federal Bureau of Investigation.

Registration information received by the Board and disseminated to law enforcement pursuant to 803 CMR 1.05(9) shall not be disseminated to the public except in accordance with M.G.L. c. 6, §§ 178I, 178J and 178K.

1.06: Duty to Register and Recommended Classification Level

(1) Duty to Register. Pursuant to M.G.L. c. 6, §§ 178C, 178K(2) and 178L(1), the Board shall determine whether a sex offender has a duty to register and, if so, shall then prepare a recommended classification of the sex offender as a Level 1, Level 2, or Level 3 offender.

(2) No Duty to Register. If the Board determines that the sex offender does not have a duty to register, it shall notify the offender in writing. The Board shall promptly stop dissemination of the sex offender's registration and classification information.

(3) Recommended Classification. If the Board determines that the offender does have a duty to register, the Board shall prepare a recommended classification level based on the factors enumerated in M.G.L. c. 6, § 178K(1)(a) through (l) and further explained at 803 CMR 1.33. Pursuant to M.G.L. c. 6, § 178L(1), in preparing the recommended classification level, the Board shall consider any relevant materials, including documentary evidence submitted by the sex offender. A staff member of the Board shall complete the classification worksheet based on this information.

(4) Written Approval by Board Member. Pursuant to M.G.L. c. 6, § 178L(1), the classification worksheet shall be reviewed by one Board member, who shall enter written findings and determine the recommended classification level. The Board member who made the recommendation shall not be subject to a subpoena nor shall the Board member's mental process in reaching the recommended classification level be otherwise probed, as the recommendation may be appealed at a *de novo* hearing.

(5) Juvenile Recommendations.

- (a) If the sex offender was a juvenile at the time of the sex offense, the written findings and recommended classification level made pursuant to 803 CMR 1.06(4) shall be completed by

the Board member who is a licensed psychologist or psychiatrist with special expertise in the assessment and evaluation of juvenile sex offenders.

(b) To prepare a recommended classification for a juvenile or an adult whose only sex offense(s) was committed as a juvenile, the Board may meet with the juvenile sex offender. If the Board chooses to meet with the juvenile sex offender, the juvenile sex offender is permitted to be represented by their authorized representative. The Board shall not draw any adverse inferences from an offender's refusal or failure to meet with the Board.

(6) A Board member shall not preside at the classification hearing in a case where the Board member made written findings and determined the recommended classification level pursuant to 803 CMR 1.06(4), except in the case of a juvenile sex offender or an adult sex offender whose only sex offense(s) was committed as a juvenile. In these circumstances, the Board member who is a licensed psychologist or psychiatrist with expertise in juvenile sex offenders may complete the recommended classification pursuant to 803 CMR 1.06(5) and also preside at the classification hearing with the consent of the juvenile.

(7) The Board member who made the written findings and determined the recommended classification level pursuant to 803 CMR 1.06(4) shall not be prohibited from participating in any sexually violent predator recommendation made pursuant to M.G.L. c. 6, § 178K(2)(c), or any motion to terminate registration obligation pursuant to 803 CMR 1.30, or any request to reclassify and/or terminate pursuant to 803 CMR 1.31.

1.07: Right to Submit Documentary Evidence During the Recommendation Process

(1) Notification. Pursuant to M.G.L. c. 6, § 178L(1)(a), the Board shall notify the sex offender of the sex offender's right to submit documentary evidence relative to their duty to register, risk of re-offense, and degree of dangerousness posed to the public. Any documents submitted by the offender shall become part of their classification file. The offender shall submit any documentary evidence to the Board within 30 calendar days of receiving the Board's notification.

(2) Extending the Time to Respond. Pursuant to M.G.L. c. 6, § 178L(1)(a), the Board may extend the timeframe for a sex offender to submit documentary evidence. The sex offender shall send a written request to the Board seeking an extension. In evaluating the request, the Board may consider such claims as insufficient notification, the offender's inability to secure records or documents from a sex offender treatment provider, or other unforeseen circumstances.

1.08: Right to Request a Hearing to Challenge Recommendations

(1) Notification. Pursuant to M.G.L. c. 6, § 178L(1)(a), upon completion of the process set forth in 803 CMR 1.06 and 1.07, the Board shall notify the sex offender, in writing, of their duty to register, the recommended classification level, and their right to request a hearing to challenge the Board's recommendations.

(2) Request for a Classification Hearing. At the same time the Board provides the notification pursuant to 803 CMR 1.08(1), the Board shall also provide each sex offender with a form to either accept the recommended classification or to request a hearing. The completed form must be returned to the Board within 20 calendar days of receipt of the notice sent pursuant to 803 CMR 1.08(1). By requesting a hearing, the sex offender shall be deemed to have expressly rejected the Board's recommendation, and will have thereby agreed to be finally classified pursuant to 803 CMR 1.20 and 1.21. Pursuant to G.L. c. 6, § 178L(2), the chair may appoint a member, a panel of three Board members or a hearing examiner to conduct the hearing.

(3) Failure to Request a Classification Hearing. Pursuant to M.G.L. c. 6, § 178L(1)(a), the failure to timely request a hearing shall result in a waiver of the right to a hearing. The recommended registration and classification level shall become the final decision of the Sex Offender Registry Board and shall not be subject to judicial review pursuant to M.G.L. c. 30A. Notification of this final decision shall be accomplished in accordance with 803 CMR 1.23. In addition, law enforcement shall be notified in accordance with 803 CMR 1.25.

- (4) Sex Offender's Withdrawal of Request for Hearing. A sex offender who requested a hearing may withdraw their request by:
- (a) providing written notice to the Board any time prior to the date of their scheduled classification hearing; or
 - (b) stating their intent to withdraw on the record at the classification hearing prior to any testimony being presented. An offender may not thereafter withdraw their request for a hearing except upon approval by the presiding hearing examiner.

Any withdrawal by the sex offender will be deemed an acceptance of the Board's recommended classification and shall result in a waiver of the right to a hearing. The registration determination and the recommended classification level shall become the final classification of the Sex Offender Registry Board and shall not be subject to judicial review pursuant to M.G.L. c. 30A. Notification of the sex offender's final classification level shall be accomplished in accordance with 803 CMR 1.23. In addition, law enforcement shall be notified in accordance with 803 CMR 1.25.

- (5) Board's Withdrawal of Recommended Classification. At any time prior to the date of the scheduled classification hearing, the Board may withdraw its recommended classification of a sex offender upon the receipt of new information of a significant event that occurred after the initial recommended classification that may change the recommended classification level. A significant event includes, but is not limited to, such things as:
- a. the sex offender was charged with or convicted of a new sex offense;
 - b. the sex offender was charged with or convicted of a violent crime;
 - c. the sex offender violated the terms or conditions of community supervision;
 - d. the sex offender becomes the subject of a sexually dangerous person petition or has been adjudicated a sexually dangerous person, pursuant to M.G.L. c. 123A; or
 - e. any judicial determinations that may affect the nature of the offender's sex offense history.

If the Board withdraws its recommended classification, it must provide written notification to the sex offender that the recommended classification will be re-evaluated based on the new information. The Board shall follow the procedures set forth in 803 CMR 1.06 through 1.08.

1.09: Representation at Classification Hearing

- (1) Notification. Pursuant to M.G.L. c. 6, § 178L(1)(a), the Board shall notify the sex offender that at the classification hearing the sex offender has the right to represent themselves; the right to retain private counsel to represent the sex offender at their hearing; the right to have an authorized representative, other than an attorney, represent them at the hearing; and the right to have counsel appointed for them if they are found indigent, as determined by the Board pursuant to M.G.L. c. 211D.

- (2) Right to Counsel if Indigent. At the same time the Board provides notice pursuant to 803 CMR 1.09(1), the Board shall also provide the sex offender with the requisite forms to be completed if the sex offender claims to be indigent and requests the appointment of counsel. All forms must be completed and mailed to the Board within 20 calendar days of receipt.
- a. If the Board has determined that the sex offender is indigent and thus entitled to the appointment of counsel pursuant to M.G.L. c. 211D, the sex offender and Committee for Public Counsel Services shall be notified in writing that they have satisfied the requirements to have an attorney represent them at the hearing. The Board shall review indigency every six months to ensure the sex offender is still entitled to counsel.
 - b. If the Board has determined that the sex offender is not entitled to the appointment of counsel pursuant to M.G.L. c. 211D, the sex offender shall be notified in writing that the sex offender will not have an attorney appointed to represent them. The sex offender shall further be notified that they may retain private counsel; that they may have an authorized representative; or they may represent themselves at the hearing.

- (3) Juvenile Offenders. All sex offenders who are juveniles at the time of notification of the hearing shall be represented by counsel at the hearing. Any offender who is a juvenile at the time of the notification and who has not retained counsel is entitled to appointment of counsel.

- (4) Notice of Appearance. A written notice of appearance must be submitted to the Board at least ten calendar days prior to the scheduled hearing date. The notice must include the name, address, telephone number, Board of Bar Overseers number, if applicable, and signature of the

authorized representative, as well as the name and sex offender number of the offender the authorized representative will be representing. If the authorized representative is not an attorney, the authorized representative shall also submit a written authorization signed and dated by the sex offender.

(5) Self-representation. The sex offender may represent themselves at the hearing. The hearing examiner shall require the offender to sign a statement, or affirm under oath in the case of video-conference hearings, that the sex offender has been informed of their right to have representation and that they have knowingly and voluntarily waived that right. The sex offender representing themselves shall be placed under oath by the hearing examiner at the beginning of the hearing.

(6) Notice of Withdrawal. If an authorized representative is no longer representing the sex offender, the authorized representative must file a written notice of withdrawal with the Board. An authorized representative who is an attorney shall not be permitted to withdraw their appearance on the day of the scheduled hearing unless successor counsel is present and prepared to proceed with the hearing or the offender is prepared to proceed by representing themselves, or another authorized representative is present and prepared to proceed with the hearing.

(7) An authorized representative may not testify as a witness at the hearing.

(8) The Board may have a staff person or an attorney represent it at the hearing. These individuals shall have the status of a party.

1.10: Scheduling of the Classification Hearing

(1) In General. The Board shall arrange the date, time, and place of the classification hearing.

(2) Notification. Not less than 30 calendar days prior to the date of the classification hearing, the Board shall notify the sex offender or the sex offender's representative, if a notice of appearance has been filed pursuant to 803 CMR 1.09(4), of the date, time and place of the hearing. At such time, the sex offender or the sex offender's authorized representative shall also be provided with a copy of their classification file.

1.11: Rescheduling the Classification Hearing

(1) Rescheduling by the Board. The Board may change the date, time, or place of the classification hearing. The Board shall send written notification of any changes to the parties.

(2) Sex Offender's Request to Reschedule Prior to the Hearing Date.

- a. No later than three business days before a scheduled hearing, the offender may request, in writing, that their hearing be rescheduled. The written request must include an affidavit and supporting documentation explaining the reason(s) for the request to reschedule the hearing. A request to reschedule a hearing filed without a supporting affidavit or documentation will be denied.
- b. The Director of the Hearings Unit, or their designee, shall rule on all requests to reschedule hearings.
- c. In evaluating a sex offender's request to reschedule the hearing, the Board may consider such reasons as the following:
 1. The amount of advance notice the sex offender had of the hearing date;
 2. The reasons or circumstances provided in the affidavit;
 3. The sex offender or their authorized representative's ability to anticipate the circumstances which resulted in the request to reschedule the hearing;
 4. Delay by the sex offender in notifying the Board of their inability to attend the hearing; and
 5. The number of previous requests to reschedule the hearing and the reasons provided in those previous requests.
- d. A request to reschedule a hearing based on a scheduling conflict of the sex offender's attorney will not be granted unless the attorney provides an affidavit identifying the following: case name, court and docket number, and the date the court issued its order requiring the attorney to appear.

803 CMR: DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES

- e. A request to reschedule a hearing based on the unavailability of a witness will not be granted unless the witness's absence was unforeseeable and the offender or their authorized representative demonstrates that the testimony is necessary for a fair hearing. Except as provided for in 803 CMR 1.17, the hearing examiner may grant leave to allow the witness, within a reasonable time, to submit written documents in *lieu* of live testimony.

(3) Incarcerated and Civilly Committed Sex Offenders. In addition to the reasons provided in 803 CMR 1.11(2) in evaluating the sex offender's request to reschedule hearing, the Board shall also consider the following:

- a. The sex offender's anticipated release date;
- b. Whether the sex offender has sought parole and status of their parole hearing;
- c. Whether the sex offender has filed a petition for discharge pursuant to M.G. L. c. 123A, § 9 and status of that petition; or
- d. Any other information relevant to the sex offender's anticipated release.

(4) Allowance of the Request to Reschedule the Hearing. If the Board approves the request to reschedule the hearing, the sex offender shall be notified in writing of the new date, time, and location of the hearing. The Board may provide this notice less than 30 calendar days before the rescheduled hearing date.

(5) Denial of the Request to Reschedule the Hearing. In denying the sex offender's request to reschedule, the Board shall provide, in writing, its reason for denying the motion. The hearing will go forward as scheduled pursuant to 803 CMR. 1.10.

1.12: Failure of Sex Offender to Appear at the Classification Hearing

(1) Voluntary Waiver. Failure of the sex offender to appear at the scheduled hearing without good cause shown will be deemed a voluntary waiver of their attendance at the hearing. The hearing shall proceed as scheduled, without the offender present. The hearing examiner shall make a final classification decision, pursuant to 803 CMR 1.20.

(2) Good Cause to Reschedule Hearing. If the sex offender fails to appear at the scheduled hearing, the sex offender shall have ten calendar days following the close of the hearing to file a request to reschedule the hearing for good cause. The written request must include an affidavit and supporting documentation explaining the reason(s) for the request to reschedule the hearing. A request to reschedule a hearing filed without a supporting affidavit or documentation will be denied. To determine good cause, the presiding hearing examiner may consider such things as:

- a. The amount of advance notice the sex offender had of the hearing date;
- b. The reasons or circumstances that resulted in the sex offender's inability to appear at the hearing; and
- c. The timing of the sex offender's notification to the Board that they were unable to appear at the scheduled hearing.

(3) If the hearing examiner determines that the offender has provided good cause for failing to appear at the scheduled hearing, the Board shall reschedule the hearing to the earliest possible date. The sex offender shall be notified in writing of the new date, time, and location of the hearing. The Board may provide this notice less than 30 calendar days before the rescheduled hearing date.

(4) If the hearing examiner does not find that the sex offender had good cause for failing to appear at the hearing, the hearing examiner shall make a final classification decision pursuant to 803 CMR 1.20 and include, as part of the final decision, an order with their reasoning for denying the request to reschedule the hearing.

1.13: Ex Parte Communications

(1) General Provisions.

- a. No party to a classification proceeding before the Board shall submit to the hearing examiner or any employee of the agency who is or may reasonably be expected to be involved in the final decision making process any information, evidence, argument or advice, whether written or oral, regarding any matter at issue, unless such submission is offered openly during the course of the hearing or in writing after the hearing, if allowed pursuant

803 CMR: DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES

to 803 CMR 1.18. A copy of any written submissions shall be offered immediately to all parties.

- b. 803 CMR 1.13(1) will apply from the time the sex offender requests a hearing to challenge their recommended classification under 803 CMR 1.08 until the final classification is issued pursuant to 803 CMR 1.20.

(2) Exceptions.

- a. 803 CMR 1.13(1) does not apply to the process set forth in 803 CMR 1.06(5) for juvenile sex offenders and adult sex offenders whose only sex offense(s) was committed as a juvenile.
- b. 803 CMR 1.13(1) does not apply to consultation among Board employees concerning the internal administrative functions or procedures of the Board.

1.14: Classification Hearings

(1) Scope of the Classification Hearing. The hearing shall be a *de novo* review of the evidence and be limited to determining, by clear and convincing evidence, the sex offender's duty to register and, if applicable, the sex offender's final classification level. The Board shall bear the burden of proof.

(2) Closed to Public. Hearings held by the Board are not open to the public. For purposes of 803 CMR 1.14(2), correctional staff required by the facility to be present at the hearing shall not be considered members of the public.

(3) The hearing may be conducted *via* video conference.

(4) Conduct of the Hearing. The hearing examiner shall govern the conduct of every phase of the hearing, including, but not limited to, the interpretation and construction of 803 CMR 1.00 and the conduct of all parties. All parties, authorized representatives, witnesses and other persons present shall conduct themselves in a professional manner consistent with the standards of decorum commonly observed in the courts of the Commonwealth. If a party's conduct interferes with the orderly presentation of the evidence, the hearing examiner may take any appropriate action, including, but not limited to, continuing the hearing in the absence of the offending participant and rendering a decision based on the evidence admitted.

(5) Order of Presentation. Unless otherwise determined by the hearing examiner, the Board proceeds first at all stages in the hearing, except that the Board proceeds last with its closing argument.

(6) Swearing in of Witnesses. A witness's testimony shall be under oath or affirmation, administered by the hearing examiner.

1.15: Subpoenas

(1) Any party to the classification hearing shall have the right to subpoena witnesses and documents in accordance with M.G.L. c. 30A, § 12.

(2) Petition to Modify or Vacate Subpoena. Pursuant to M.G.L. c. 30A, § 12(3) and (4), a subpoena may be modified or vacated by the presiding hearing examiner at the request of the subpoenaed witness. If a witness petitions the Board to modify or vacate a subpoena, the presiding hearing examiner shall promptly notify the parties. In acting upon such a request, the presiding hearing examiner may grant a petition, in whole or in part, after considering whether:

- a. the testimony or evidence sought is relevant or reasonably related to the classification hearing;
- b. the subpoena adequately describes the evidence required;
- c. compliance with the subpoena poses an unreasonable burden on the witness; or
- d. the testimony or documents requested fall within a constitutional or statutory privilege.

(3) Failure to Comply with Subpoena. Pursuant to M.G.L. c. 30A, § 12(5), if a witness fails to comply with a subpoena issued in the name of the Board that has not been revoked or modified pursuant to 803 CMR 1.15(2), the Board or the party who requested the subpoena be issued may apply to the Superior Court for an order directing the witness to comply.

(4) Timing to Request Subpoena from the Board. A subpoena request must be made in writing and directed to the presiding hearing examiner. The written request must set forth the name, address and date of birth of the witness and additionally, the substance of the witness's expected testimony. All subpoena requests must be filed no later than 21 business days prior to the hearing date.

1.16: Motions

(1) General Provisions. All motions, unless made during the classification hearing, shall be in writing. All motions and rulings will be included in the administrative record of the hearing. The hearing examiner shall have the discretion to rule on any motion at the time it is made or to reserve ruling until a later time, including as part of the final decision issued pursuant to 803 CMR 1.20. Motions to reschedule hearings are addressed exclusively in 803 CMR 1.11.

(2) Written Motions.

- a. Grounds and Affidavit. All written motions shall state the specific grounds for the motion and shall set forth the action or order that is sought. Affidavits and other documents in support of the motion must be attached to the motion upon filing.
- b. Oral Argument. The hearing examiner may hear oral argument on motions at the hearing.
- c. Timely Filing. Parties shall file all written motions no later than ten calendar days prior to the scheduled hearing date.
- d. Service and Notice. A copy of any motion, including all supporting affidavits and documents, must be served on the other party at the same time the originals are filed with the Board's Hearings Unit.
- e. Opposition to Motion. Oppositions to any motion may be submitted in writing or argued orally at the hearing.
- f. Record. All written motions and rulings will be included in the administrative record of the hearing.

(3) Oral Motions. If a motion is made orally at the hearing, the hearing examiner may request that the motion and any opposition be reduced to writing.

(4) Motion for Expert Funds. An offender who has been deemed indigent pursuant to 803 CMR 1.09 may file a written motion for expert funds at least ten calendar days before the scheduled hearing.

- a. The written motion for expert funds must:
 1. identify a condition or circumstance special to the sex offender and explain how that condition is connected to the sex offender's risk of re-offense or level of dangerousness;
 2. identify the particular type of Expert Witness who would provide testimony to assist the hearing examiner in their understanding and analysis; and
 3. include supporting documentation or affidavits verifying the specific condition or circumstance that the offender suffers from.

Any motion that fails to meet the criteria in 803 CMR 1.16(4) may be denied prior to the hearing.

- b. Motions for funds for the purpose of an expert to provide a general opinion on the sex offender's risk to reoffend and degree of dangerousness will be deemed insufficient and denied prior to the hearing.
- c. When a motion for expert funds is allowed, the presiding hearing examiner shall issue an order requiring the sex offender to provide an affidavit from the proposed Expert Witness. At minimum, the affidavit must include the following:
 1. identification of the expert's area of expertise, including a copy of the expert's *curriculum vitae*;
 2. summary of the anticipated opinion and testimony of the Expert Witness paying particular attention to the condition or circumstance identified by the sex offender in the motion for expert funds with an explanation as to how that condition or circumstance correlates to the sex offender's risk to reoffend or degree of dangerousness; and
 3. the Expert Witness's hourly fee and estimated number of hours that the Expert Witness expects will be required to conduct an evaluation, prepare a written report to be admitted as evidence at the hearing, and testify at the hearing.

803 CMR: DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES

- d. As part of the order allowing the motion for expert funds, the hearing examiner shall include deadlines for:
 1. the sex offender to submit to the Board the Expert Witness's affidavit and a copy of the expert's written report that will be submitted as evidence at the hearing; and
 2. scheduling the hearing for the expert testimony.
- e. If the sex offender fails to comply with the hearing examiner's order, the hearing examiner may withdraw the order and deny the motion for expert funds.

(5) Motion to Reopen the Record. At any time after the close of evidence and prior to the issuance of the final decision pursuant to 803 CMR 1.20, a party may move to reopen the record to submit new evidence.

- a. For purposes of this motion, new evidence consists of newly discovered evidence which, by due diligence, could not have been discovered prior to the close of the evidence at the hearing by the party seeking to offer it.
- b. The moving party shall include a copy of the newly discovered evidence and provide the reason(s) explaining why the evidence was not discovered prior to the close of evidence at the hearing and how the evidence is relevant to the hearing examiner's analysis.
- c. The non-moving party shall have ten calendar days to oppose the motion.
- d. The presiding hearing examiner may rule on this motion as part of the written final classification decision.

(6) Motion for Reconsideration. After the final decision has been issued pursuant to 803 CMR 1.20 and before the expiration of the time for filing a complaint for judicial review pursuant to M.G.L. c. 30A, a party may move for reconsideration. The motion must clearly identify at least one of the following criteria:

- a. a clerical or mechanical error in the final decision;
- b. a significant factor that the hearing examiner overlooked or misapplied in making the final classification level; or
- c. a material change in the sex offender's circumstances that was not foreseeable at the time of the hearing.

A properly filed motion for reconsideration shall be deemed a motion for rehearing pursuant to M.G.L. c. 30A, § 14(1) for the purposes of tolling the time to file a complaint for judicial review. The filing of this motion will not alter the final classification level or stay dissemination of registration information.

1.17: Discovery Obligations and Witness Disclosures

(1) Board's Discovery Obligations.

- a. At the same time the Board notifies the sex offender of the arrangements for their classification hearing pursuant to 803 CMR 1.10, the Board shall also provide the sex offender with a copy of all evidence contained in the classification file that was considered by the board member in making the preliminary recommendation. Administrative documents pertaining to registration and other administrative correspondence are not considered evidence for classification purposes but will be provided upon request.
- b. No later than ten calendar days before the scheduled hearing, the Board shall send to the sex offender, or the sex offender's authorized representative, a copy of any additional documents the Board intends to introduce into evidence at the classification hearing.
- c. A Board employee shall redact data from Board's discovery documents that are deemed to be privileged, confidential, investigatory, intelligence information, or information that identifies a victim. Such redacted data shall not: be introduced into evidence; be communicated to the hearing examiner; or become part of the record.

(2) Sex Offender's Discovery Obligations. No later than ten calendar days before the scheduled hearing, the offender shall provide copies of all documents the sex offender intends to introduce as evidence at the classification hearing to the Board.

(3) Witnesses. No later than ten calendar days before the scheduled hearing, each party shall provide the Board's Hearings Unit with a complete witness list. A witness list is not complete unless it includes all of the following information for each witness: the name, address, date of birth, and relationship to the offender (e.g., family member, therapist, Expert Witness, etc.). The hearing examiner may exclude the testimony of any witness not properly identified on the witness list. The failure to provide sufficient information may result in a

witness being denied entry into correctional facilities.

(4) The hearing examiner may permit a party to supplement or amend a witness list no later than five calendar days prior to the scheduled hearing date only if the moving party provides good cause for the additional time.

(5) Expert Witnesses.

- a. If a party intends to rely on the opinion of an Expert Witness at the classification hearing, a report or a written substantive summary of the Expert Witness's anticipated testimony must be provided to the other party at least ten calendar days prior to the scheduled hearing date. This report or summary must include the name of each Expert Witness who is anticipated to testify, the subject matter of such testimony, and the substance of the facts and opinions of the anticipated testimony. The party intending to rely on an Expert Witness shall provide any documents regarding the sex offender the Expert Witness relied upon in reaching their opinion. Any literature an Expert Witness relied upon in reaching their opinion should be produced if requested by the parties. The party shall also provide the *curriculum vitae* of the Expert Witness.
- b. Failure to comply with 803 CMR 1.17(5)(a) will result in the exclusion of an Expert Witness's report and testimony from evidence.
- c. At the classification hearing, a party shall be permitted to introduce into evidence an Expert Witness's written report, including the Expert Witness's opinion as to the offender's risk of re-offense and/or dangerousness, only if the author of the report is called to testify at the hearing and is otherwise qualified as an expert in the area that they are being called to testify. The failure to call the Expert Witness to testify at the hearing will result in the exclusion of any opinion as to the sex offender's risk of re-offense or degree of dangerousness within the Expert Witness's report.
- d. Board's Intention to Rely on Expert Witness at Hearing. Pursuant to M.G.L. c. 6, § 178L, in any case where the Board intends to rely on the testimony or report of an Expert Witness, as defined in 803 CMR 1.03, the Board shall notify the sex offender or the sex offender's authorized representative of this intention. In the event that the Board intends to rely on an Expert Witness and the sex offender has been found to be indigent, the Board shall notify the offender or the sex offender's authorized representative that they may apply for and the Board may grant the payment of fees for an Expert Witness.

1.18: Evidence

(1) General. Pursuant to M.G.L. c. 30A, § 11(2), the rules of evidence observed by courts shall not apply to classification hearings, but the rules of privilege recognized by law shall be observed. Evidence may be admitted and given probative effect only if it is the kind of evidence on which reasonable persons are accustomed to rely on in the conduct of serious affairs. The hearing examiner may exclude irrelevant, unreliable, and repetitive evidence.

(2) Presentation at Hearing. Evidence will not be considered unless it is presented at the hearing or accepted by the hearing examiner in conjunction with a motion to reopen the record under 803 CMR 1.16(5). The hearing examiner may, upon request of a party for good cause shown, hold the record open to receive additional evidence for a specified period of time after the hearing. When additional evidence is admitted post-hearing, the other party must be granted a specific period of time to review the evidence and submit a written response.

(3) Oral Testimony. Each witness shall testify under oath or affirmation. Each witness shall be available for direct examination and cross-examination.

(4) Stipulations. The parties may, by written stipulation filed with the hearing examiner at any stage of the proceeding or by oral stipulation made at the hearing, agree as to the truth of any fact pertinent to the proceedings.

1.19: Duties and Powers of the Hearing Examiner

(1) The duties of a presiding hearing examiner shall include, but are not limited to, the following:

- a. to maintain a list of the names and addresses of all individuals who are in attendance at the hearing;

803 CMR: DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES

- b. to administer the oath or affirmation to each witness prior to their testimony;
- c. to assist all witnesses in making a full and free statement of the facts in order to bring out all the information necessary to decide the issues involved;
- d. to ensure orderly presentation of the evidence;
- e. to ensure that all parties have a full opportunity to present their claims at the scheduled hearing;
- f. to receive, rule on, exclude, or limit evidence;
- g. to receive and rule on all motions; and
- h. to assess the reliability of the exhibits introduced into evidence and credibility of witnesses; draw all reasonable inferences therefrom; and render a fair, independent and impartial decision based on the issues and evidence presented and in accordance with the law.

(2) The powers of the presiding hearing examiner shall include, but are not limited to, the following:

- a. to limit attendance or assign seating, or both, at the hearing in consideration of security, space availability, privacy and confidentiality;
- b. to request that parties produce additional evidence;
- c. to examine witnesses;
- d. to rule on any motions or requests made during the hearing;
- e. to regulate the presentation of evidence and the participation of the parties for the purposes of ensuring an adequate and comprehensive record of the hearing;
- f. to change the date, time or place of the hearing on their own motion or at the request of any Party, upon due notice to all parties;
- g. to continue a hearing that is in progress. All parties shall be notified of the date, time and place of the continued hearing;
- h. to request that parties submit post-hearing briefs and/or proposed findings; and
- i. to take notice of any fact which may be judicially noticed by courts, as well as general, technical or scientific facts within the Board's specialized knowledge, pursuant to M.G.L. c. 30A, § 11(5).

1.20: Hearing Examiner's Final Decision

(1) Written Decision. Pursuant to M.G.L. c. 30A, § 11(7) and (8), after the classification hearing the hearing examiner shall issue a final written decision containing the following:

- a. statement of the issues involved in the hearing;
- b. summary and analysis of the evidence, including credibility and reliability determinations, as needed;
- c. specific findings of fact on all relevant disputed factual matters;
- d. rulings of law on all relevant disputed legal issues;
- e. conclusions drawn from the findings of fact and rulings of law which form the basis of the final registration determination and classification level including but not limited to the specific findings of the sex offender's risk of re-offense, level of dangerousness and efficacy of internet dissemination; and
- f. final registration determination and classification level.

For purposes of judicial review, pursuant to M.G.L. c. 30A and M.G.L. c. 6, § 178M, the hearing examiner's final written decision shall be considered the final agency action.

(2) The hearing examiner may maintain, decrease, or increase the Board's recommended classification level in reaching their final decision. The hearing examiner shall consider the relevant and credible evidence and reasonable inferences derived therefrom to determine:

- a. the offender's risk of re-offense;
- b. the offender's dangerousness as a function of the severity and extent of harm the offender would present to the public in the event of re-offense; and
- c. in consideration of the foregoing, whether and to what degree public access to the offender's personal and sex offender information, pursuant to M.G.L. c. 6, § 178K, is in the interest of public safety.

(3) Relief from Registration. In a manner consistent with M.G.L. c. 6, § 178K(2)(d) and 803 CMR 1.30, the hearing examiner may find that the offender has no obligation to register as a sex offender. The hearing examiner shall make written findings providing reasons for relieving the sex offender from their duty to register.

(4) Unavailable Hearing Examiner. If the hearing examiner becomes unavailable before completing their decision, the Chair or the Chair's designee shall appoint a successor to assume the case and render the decision. If the presentation of evidence has been completed and the record is closed, the successor shall decide the case on the basis of the record, unless testimony was taken. In those cases, the hearing shall be reconvened before the successor examiner for taking of the testimony again except where the offender explicitly agrees for the successor examiner to decide on the basis of the record. If the evidence portion of the hearing has not been completed when the successor is assigned, the successor may either proceed with the hearing where it left off or require the presentation of evidence from the beginning. If the successor proceeds with the hearing where it left off, the Board shall provide the successor and the parties with a copy of the transcript, or completed portions thereof, without cost.

1.21: Hearing Examiner's Decision as the Final Sex Offender Registry Board Decision

(1) In general. The hearing examiner's decision shall be the final Sex Offender Registry Board decision, except as expressly provided in 803 CMR 1.16(5) and (6) and 1.21.

(2) Inherent Authority. Judicial review, pursuant to M.G.L. c. 30A, § 14, is not available to the Board to correct errors in a hearing examiner's decision. Where a motion to reconsider cannot be filed with the Board pursuant to 803 CMR 1.16(6), to prevent or mitigate a miscarriage of justice, the Board has the inherent authority to reconsider a decision or reopen a proceeding. This section should be used sparingly and only when one of the following grounds are presented:

- a. the decision is based upon an error of law;
- b. the decision is not in conformity with procedural due process standards;
- c. the decision is unsupported by substantial evidence;
- d. the decision is the result of arbitrary or capricious conduct;
- e. the decision is the result of an abuse of discretion;
- f. the decision is not in conformity with the law; or
- g. the decision would otherwise be a miscarriage of justice.

Either party may seek review of a Board's decision. To seek review of a Board's decision, a party shall inform the Board's General Counsel in writing. The Board, in consultation with the General Counsel, shall determine whether the grounds have been met. If the Board determines the grounds have been met, the Board may exercise its inherent authority. The Board shall not exercise its inherent authority for harmless errors. If the Board exercises its inherent authority, it will vacate the decision and unclassify the sex offender. The Board's General Counsel will notify the parties in writing. If the Board's decision is under judicial review pursuant to M.G.L. c. 30A, § 14 or M.G.L. c. 231, §113, the party initiating review under this section shall seek a stay in the appropriate court. The parties may file additional evidentiary motions with the hearing examiner. The hearing examiner will amend their decision or hold further proceedings as necessary to correct the errors. Once the amended decision issues, it will become the final decision of the Board and subject to judicial review.

(3) Provisional. A sex offender who is incarcerated or civilly committed at the time of their classification, but who is not reasonably close to release, shall be placed in provisional status. The Board shall determine when a sex offender is reasonably close to release but in no circumstances shall it be more than one year before the anticipated release date. A sex offender who was finally classified while incarcerated or civilly committed at a time reasonably close to release, whose release date changes such that the sex offender is no longer reasonably close to release, shall be placed in provisional status. Provisional status may also apply to an incarcerated or civilly committed offender who did not request a hearing and has a final classification pursuant to 803 C.M.R. 1.08(2).

A sex offender whose classification has been deemed provisional has a right to update the record before their classification is finalized. A sex offender must make a request to update the record with sufficient notice to the Board such that the sex offender's classification may be finalized prior to their release pursuant to G.L. c. 6 § 178E(a) and, in any event, no later than six months before the offender's anticipated release date. Though it is the sex offender's obligation to request an update of the record, the Board will notify sex offenders who are in provisional status prior to finalizing their classifications.

803 CMR: DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES

Failure of the sex offender to either request to update the record, or submit materials to the board, by the deadline set by the Board will be deemed to have waived their right to update the record and the provisional classification shall be finalized.

The Board may update the record of any sex offender in provisional status no later than six months before the offender's anticipated release. In updating the record, the Board shall comply with all discovery rules pertaining to classification hearings including but not limited to providing a copy of any new discovery to the sex offender.

A classification may be deemed provisional at the time of the administrative hearing, or at some later time should circumstances regarding the offender's release from custody change. An incarcerated or civilly committed sex offender may request that a classification be deemed provisional at any time if their circumstances warrant. The Board may also make an incarcerated or civilly committed offender's classification provisional at any time should circumstances warrant.

This provision does not apply, in whole or in part, to an offender who was finally classified and then released into the community before their present incarceration or civil commitment. Such an offender is not entitled to provisional status but instead may seek reclassification or termination under 803 CMR 1.31.

1.22: Administrative Record

(1) General Principles. Pursuant to M.G.L. c. 30A, § 11(4), all pleadings and documents marked for identification, testimony, and evidence offered and accepted into evidence by the hearing examiner shall become part of the administrative record. For purposes of judicial review, the record shall include the hearing examiner's final decision issued pursuant to 803 CMR 1.20.

(2) Excluded Evidence. Any evidence offered at the hearing, but not accepted by the hearing examiner will be marked for identification purposes only and be included in the record.

(3) Transcript of Hearing.

a. All evidence and testimony at the hearing will be recorded electronically, digitally, stenographically, or by any other recording device deemed necessary or appropriate by the Board, in its discretion. The Board shall incur the cost of recording. Pursuant to M.G.L. c. 30A, § 11(6), transcripts will be made and supplied to the sex offender or their authorized representative, upon written request, at the offender's expense, and in accordance with any procedures the Board may establish. Upon written request, a sex offender who has been determined to be indigent for the classification hearing shall receive a transcript at no cost.

b. Corrections to the transcript are permitted at the discretion of the hearing examiner. The hearing examiner may accept corrections by agreement of the parties, or if the parties cannot agree, the hearing examiner may accept recommended corrections from each party to determine what corrections, if any, are necessary.

(4) The administrative record is not available to the public.

1.23: Notification of the Final Decision

(1) Notification of the final decision made pursuant to 803 CMR 1.20 will be sent to the sex offender and the sex offender's authorized representative as soon as practicable via electronic mail. Should no electronic mail address be available, it shall be mailed. The sex offender or their authorized representative may request in writing, at the time of the administrative hearing, that the final decision made pursuant to 803 CMR 1.20 be sent to them via first-class mail or facsimile.

(2) Relief from Registration. If the final decision is to relieve the sex offender from their obligation to register as set forth in M.G.L. c. 6, § 178K and 803 CMR 1.20(3), the Board shall promptly stop dissemination of the sex offender's registration and classification information.

(3) Duty to Register and Final Classification Level. If the final decision requires the sex

offender to register and a final classification level is assigned, pursuant to M.G.L. c. 6, §§ 178K and 178L, the notification shall also inform the sex offender of their registration obligations as set forth in M.G.L. c. 6, §§ 178F or 178F½, and 178Q.

1.24: Judicial Review

- (1) Notification. The written notifications of the final decision sent pursuant to 803 CMR 1.23 must inform the sex offender or their authorized representative of their right to seek judicial review of the final decision, pursuant to M.G.L. c. 30A and M.G.L. c. 6, § 178M.
- (2) Pursuant to M.G.L. c. 30A, § 14, the sex offender has the right to pursue judicial review within 30 calendar days from the date of receipt of the final Sex Offender Registry Board decision.
- (3) Pursuant to M.G.L. c. 6, § 178M and M.G.L. c. 30A, § 14, the filing of a complaint for judicial review will not alter the final classification level or stay the sex offender's registration requirements or the dissemination of registration information.

1.25: Transmission of the Final Decision to Law Enforcement

- (1) General Principles. Pursuant to M.G.L. c. 6, § 178K(2)(a) through (c), the Board shall transmit all final registration and classification information to law enforcement.
- (2) No Duty to Register. If the Board's final decision is to relieve or terminate a sex offender's duty to register, the Board shall promptly stop dissemination of the sex offender's registration and classification information and notify:
 - (a) police departments in municipalities where such sex offender lives and works, or where the sex offender intends to live and work upon release and where the offense was committed;
 - (b) police departments in municipalities, including campus police departments or other state recognized law enforcement agencies at any school, where the sex offender works and/or attends an Institution of Higher Learning or where the sex offender intends to work and/or attend an Institution of Higher Learning upon release; and
 - (c) the Federal Bureau of Investigation.
- (3) Duty to Register and Final Classification. If the Board's final decision is that the sex offender has a duty to register and a final classification level is assigned, the Board shall, within three business days of reaching the decision, transmit the final registration and classification information to:
 - (a) police departments in municipalities where such sex offender lives and works, or where the sex offender intends to live and work upon release and where the offense was committed;
 - (b) police departments in municipalities, including campus police departments or other state recognized law enforcement agencies at an Institution of Higher Learning, where the sex offender works and/or attends an Institution of Higher Learning or where the sex offender intends to work and/or attend an Institution of Higher Learning upon release; and
 - (c) the Federal Bureau of Investigation.

1.26: Registration Requirements and Dissemination of Information

- (1) A sex offender who has not been finally classified or is finally classified as a Level 1 sex offender shall register annually in accordance with the requirements in M.G.L. c. 6, §§ 178E, 178F and 178Q. The general public shall not have access to this sex offender information pursuant to M.G.L. c. 6, §§ 178D, 178I, 178J and 178K(2)(a).
- (2) A sex offender who is finally classified as a Level 2 or Level 3 sex offender shall register in accordance with the requirements in M.G.L. c. 6, §§ 178E, 178F½ and 178Q. The public shall have access to this sex offender information, pursuant to M.G.L. c. 6, §§ 178D, 178I, 178J and 178K(2)(b) and (c).
- (3) A Level 3 sex offender designated as a sexually violent predator, pursuant to M.G.L. c. 6, § 178K(1)(c) shall register in accordance with the requirements in M.G.L. c. 6, §§ 178E, 178F½

and 178Q. The public shall have access to this sex offender information pursuant to M.G.L. c. 6, §§ 178D, 178I, 178J and 178K(2)(b) and (c).

(4) Dissemination of Information to Victims. Upon the request of a victim who has enrolled with the Board's Victim Services Unit, the Board may inform that victim of the sex offender's final registration and classification determination, the addresses of where the sex offender lives, works, and/or attends an institution of higher learning regardless of the classification level and registration status of the sex offender or whether the sex offender is incarcerated or civilly committed.

(5) Updating Information. Pursuant to M.G.L. c. 6, § 178D, the Board is required to keep the registry up-to-date and accurate. Pursuant to M.G.L. c. 6, §§ 178E, 178F and 178F^{1/2}, the sex offender is required to verify that their registration data is current and accurate. Upon verifying registration data or giving notice of a change of address or intended change of address, the sex offender shall provide independent written verification of the address at which they are registered or, if changing address, will be registered. For purposes of 803 CMR 1.26(5), independent written verification shall include:

Any two types of the following five types of unaltered original documents bearing the name of the sex offender and their present or intended address:

- (a) Lease agreement or mortgage statement;
- (b) rent receipt or mortgage receipt;
- (c) utility bill;
- (d) bank or credit card statement;
- (e) passport, driver's license or official photo identification issued by the Registry of Motor Vehicles; and
- (f) any other current written document the Sex Offender Registry Board deems sufficient.

With the exception of a passport, driver's license or official photo identification issued by the Registry of Motor Vehicles, all other documentation must be dated within 45 days of presentation to the Sex Offender Registry Board or the police department.

(6) Sex Offender Registration Fee.

- (a) Pursuant to M.G.L. c. 6, § 178Q, the sex offender shall pay an annual sex offender registration fee to the Board.
- (b) Waiver. The sex offender may request that the Board waive payment of the sex offender registry fee. The request must be made on a form approved by the Board and submitted to the Board at the time the sex offender submits their registration form to the Board. The Board may waive the fee if it determines that payment would constitute an undue hardship on the offender or the offender's family due to limited income, employment status, or any other relevant factor. The Board shall use the indigency standards developed pursuant to M.G.L. c. 211D to determine whether the payment of the fee constitutes an undue hardship on the offender. If the Board determines that payment of the fee is not an undue hardship, the Board shall notify the offender informing the offender that they must pay the fee within ten days of receiving the notice. If the Board determines that payment of the fee is an undue hardship, it shall waive the fee for the offender for one year. The offender may renew their request for a waiver when payment of their next annual fee is due.

1.27: Sex Offender Internet Database Otherwise Known as the Public Website

(1) The information contained in the Public Website pursuant to M.G.L. c. 6 §§ 178D and 178K(2), will be created and updated on a regular basis from the Sex Offender Registry, but must be kept physically separate from the Sex Offender Registry.

(2) The information contained in the Public Website must not include information:

- (a) pertaining to unclassified or Level 1 sex offenders and any Level 2 sex offender finally classified prior to July 12, 2013;
- (b) pertaining to finally classified incarcerated or civilly committed sex offenders until seven calendar days prior to the sex offender's reasonably

- anticipated release date;
- (c) identifying victims' names, addresses or relation to Level 2 and Level 3 sex offenders; and
- (d) relating to requests for registration data under sections M.G.L. c. 6, §§ 178I and 178J.

(3) Pursuant to M.G.L. c. 6, § 178N, the Public Website, shall include a warning explaining the criminal penalties for use of sex offender registry information to commit a crime or to engage in illegal discrimination or harassment of a sex offender and the punishment for threatening to commit a crime under M.G.L. c. 275, § 4.

(4) The Board shall develop and implement policies, procedures, and protocols to update and maintain the Public Website in order to:

- (a) validate the accuracy, integrity, and security of information contained in the Public Website;
- (b) ensure the prompt and complete removal from the Public Website of registration data for sex offenders whose duty to register has terminated or expired under M.G.L. c. 6, §§ 178G, 178L, or 178M or any other law or order of any Court; and
- (c) protect against the inaccurate, improper, or inadvertent publication of registration information on the Internet.

1.28 Electronic Sex Offender Registry Portal (ESORI)

(1) Pursuant to M.G.L. c. 6 §178I, the Board shall maintain the Electronic Sex Offender Registry Portal (ESORI) and make information available on finally classified sex offenders upon written request by any person who is 18 years of age or older and who states that they are requesting sex offender registry information for their own protection or for the protection of a child younger than 18 years old or another person for whom the requesting person has responsibility, care or custody.

(2) In response to an ESORI request, the Board may only provide information on sex offenders who have been finally classified by the Board as a Level 2 or Level 3 sex offender, the sex offenses for which the offender was convicted or adjudicated and the dates of such convictions or adjudications.

(3) Information regarding an incarcerated or civilly committed offender will be provided upon request when the incarcerated or civilly committed sex offender is finally classified as a Level 2 or Level 3 sex offender and is reasonably anticipated to be released from custody within one year of the date of the request.

(4) All reports to persons making inquiries shall include a warning regarding the criminal penalties for use of sex offender registry information to commit a crime or to engage in illegal discrimination or harassment of an offender and the punishment for threatening to commit a crime under M.G.L. c. 275, § 4.

1.29: Community Notification

(1) Pursuant to M.G.L. c. 6, § 178K(2)(c), the police department shall actively notify organizations and individual members of the public in the community that are likely to encounter a finally classified Level 3 sex offender or a sexually violent predator through a community notification plan. The community notification plan shall require notification by the police department to all schools in the community. The chief of the police department may notify day care centers, youth programs, recreational programs, organizations providing elder services, and other organizations as deemed necessary to protect the public safety.

(2) The method of community notification may include, but is not limited to:

- (a) publication of the information in local newspapers;
- (b) public announcement *via* local cable television; and
- (c) posting the information in the local town or city hall, libraries, and similar publicly accessible areas, as determined by the chief of police.

803 CMR: DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES

(3) As part of a community notification plan, the chief of the police department may put the registration information for Level 3 sex offenders who live, work, or attend school in the community on the police department's website. The police department's website must comply with M.G.L. c. 6, § 178D and 803 CMR 1.27 and must be regularly updated with information from the Sex Offender Registry. The chief shall develop and implement policies, procedures, and protocols such as those described in 803 CMR 1.27 for the department's website. The chief may include, on the department's website, a link to the Sex Offender Internet Database or Public Website as described in 803 CMR 1.27.

(4) Police departments shall, at least once annually, actively disseminate Level 3 sex offender information. If a Level 3 offender has been designated a sexually violent predator, community notification shall occur every 90 calendar days. Community notification shall also occur each time a Level 3 sex offender changes their home address, secondary address, or work address, or enrolls as a student. Pursuant to M.G.L. c. 6, § 178K(c)(2), the Board and police may require or facilitate additional active dissemination if deemed necessary to protect the public.

1.30: Motion for Relief from Registration Obligation Prior to Final Classification

(1) General Principles. Pursuant to M.G.L. c. 6, § 178K(2)(d), a sex offender may submit to the Board a written motion seeking relief from a registration obligation. The Board shall bear the burden of proof in proving the offender qualifies as a sex offender and poses a risk of re-offense and a degree of dangerousness.

(2) Filing. A motion for relief from registration may be in the form of a letter or petition and must be filed with the Board:

- (a) prior to or upon submitting the registration form pursuant to 803 CMR 1.05;
- (b) upon submitting documentary evidence pursuant to 803 CMR 1.06 and 1.07;
or
- (c) at least ten calendar days before the date of a scheduled classification hearing, pursuant to 803 CMR 1.10.

(3) Any motion for relief from registration filed after the Board makes a final decision pursuant to 803 CMR 1.20 will be treated as a motion for reclassification and/or termination pursuant to 803 CMR 1.31.

(4) Motions Filed During Recommendation Process.

- (a) If the Board allows the motion for relief from registration during the recommendation process pursuant to 803 CMR 1.06 through 1.08, the Board shall make specific findings and provide written notification to the sex offender. The Board shall promptly stop dissemination of the sex offender's registration and classification information.
- (b) If the Board notifies the sex offender that the offender has a duty to register pursuant to 803 CMR 1.08, the motion for relief shall be deemed denied. The sex offender may file a new motion for relief prior to the hearing, pursuant to 803 CMR 1.30(2)(c), to be decided as part of the classification process, pursuant to 803 CMR 1.30(5).

(5) Motions Filed During Classification Process.

- (a) If the Board denies the sex offender's motion for relief during the recommendation process and the offender has requested a hearing, or if the sex offender has applied for relief pursuant to 803 CMR 1.30(2)(c) the classification hearing shall proceed.
- (b) At the hearing, the Board shall have the burden of proof in proving the offender qualifies as a sex offender and poses a risk of re-offense and a degree of dangerousness.
- (c) If the Hearing Examiner allows the motion for relief from registration after the classification hearing, the Hearing Examiner shall make specific findings and provide written notification to the sex offender, pursuant to M.G.L. c. 6, § 178K(2)(d) and 803 CMR 1.20. The Board shall promptly stop dissemination of the sex offender's registration and classification information.

1.31: Sex Offender's Request for Reclassification and/or Termination

(1) General Principles. The Board recognizes a sex offender's risk of re-offense, or degree of dangerousness, may decrease over time. Pursuant to M.G.L. c. 6, § 178G, a sex offender whose registration and classification determination has become final pursuant to M.G.L. c. 6, § 178L(2) and 803 CMR 1.08 and 1.20, may file a written motion with the Board for reclassification and/or termination of their obligation to register. Once the sex offender satisfies their burden of production demonstrating some change in their circumstances bearing on their risk of re-offense and/or dangerousness, the Board then has the burden of persuasion to prove, by clear and convincing evidence, the continued appropriateness of the sex offender's duty to register and existing classification level.

The sex offender whose only sex offense was the result of an adjudication as a youthful offender or as a delinquent juvenile may file motion to terminate no sooner than three years after their final classification.

(2) Requirements for sex offender's Request for Reclassification and/or Termination. The sex offender shall include in the motion their full name, date of birth, address, sex offender number (SON), name and address of legal representative (if applicable), and name and address of legal guardian (if applicable) and grounds for seeking reclassification and/or termination including, but not limited to, a signed letter or signed affidavit providing an overview of their behavior and lifestyle during the three years prior to the filing of their motion for reclassification and/or termination.

- (a) In support of their motion, the sex offender may also attach supporting documentation, including, but not limited to, current and historical evidence pertaining to the applicable risk-mitigating factors, such as:
 1. substance-free lifestyle in the community (Factor 9);
 2. successful completion of community supervision (Factor 28);
 3. offense-free lifestyle in the community (Factor 29);
 4. physical condition (Factor 31);
 5. participation or completion of sex offender treatment (Factor 32);
 6. stability of current environment and support systems (Factors 33 and 34);
 7. psychological or psychiatric profiles indicating risk of re-offense (Factor 35); and
 8. any other additional information that may be relevant to their motion for reclassification (Factor 37).
- (b) The Board may summarily deny, without a hearing, a sex offenders' motion for reclassification and/or termination if:
 1. the sex offender is incarcerated or civilly committed at the time of the motion;
 2. the sex offender has pending criminal charges at the time of the motion;
 3. the offender has not remained offense-free for more than three continuous years immediately prior to the filing of their motion for reclassification and/or termination; or
 4. the sex offender's last classification decision is currently under Judicial Review pursuant to M.G.L. c. 30A, § 14 or on appeal, or on review by the Board as a result of an order by a court of the Commonwealth or a federal court.

The Board shall notify the sex offender, in writing, the substantive reasons for summarily denying the motion for reclassification and/or termination. The denial of a motion for reclassification and/or termination under 803 CMR 1.31(2)(c) is not subject to Judicial Review. 803 CMR 1.31(2)(b) does not apply to sex offenders whose only sex offense was a result of an adjudication as a youthful offender or as a delinquent juvenile.

- (c) By filing a motion for reclassification and/or termination, the offender authorizes the Board to obtain any information accessible under M.G.L. c. 6, §§ 178E and 178K(3) to assist in its review of the offender's motion.
- (d) Motions for termination filed before a sex offender's registration and classification determination has become final will be treated as motion for relief from registration pursuant to 803 CMR 1.30.

(3) Material Change in Medical Circumstances. If the sex offender experiences a material change in medical circumstances, the sex offender may file a motion for reclassification and/or

termination sooner than three years after the date of their last classification. In addition to complying with 803 CMR 1.31(2)(a)-(d), the sex offender shall also include a treating medical provider's signed written statement regarding their stated medical condition. The medical provider's signed written statement, at a minimum, shall identify and include the following information:

- (a) the type of medical condition;
- (b) the onset or date of diagnosis of the medical condition;
- (c) a detailed description of the limitations the medical condition has caused; and
- (d) a summary of the offender's treatment and prognosis.

(4) During the reclassification and/or termination process, the Board shall follow the same procedures as used in the classification process as set forth in M.G.L. c. 6, §§ 178C through 178Q and 803 CMR 1.06 through 1.24.

(5) Frequency of Motion for Reclassification and/or Termination. The sex offender may apply for reclassification and/or termination no sooner than three years from the date of their last classification decision. For purposes of calculating eligibility, the last classification decision where the parties had the opportunity to present evidence in a hearing shall control. If a sex offender was offered a hearing but declined the hearing, this still constitutes an opportunity for a hearing and controls eligibility. Updating the record with document submissions without an opportunity for a hearing will not affect the calculation of the last classification decision date. Subsequent motions for reclassification and/or termination shall be based on additional information not available during prior classifications, reclassification, or termination hearings.

1.32: Board's Reclassification of Sex Offender

(1) General Principles. Pursuant to M.G.L. c. 6, § 178L(3), the Board may reclassify any finally classified sex offender upon receipt of information that indicates the offender may present an increased risk of re-offense or degree of dangerousness.

(2) Reclassification may be based on, but is not limited to, information indicating the sex offender has:

- (a) Been investigated for or charged with committing a new sex offense;
- (b) Been convicted of a new sex offense;
- (c) Been adjudicated a sexually dangerous person, pursuant to M.G.L. c. 123A;
- (d) Been terminated from a sex offender treatment program;
- (e) Violated the terms or conditions of community supervision;
- (f) Been incarcerated or civilly committed for more than 60 consecutive days at any time following final classification by the Board;
- (g) Failed to comply with the provisions of M.G.L. c. 6, §§ 178C through 178Q; or
- (h) Demonstrated a lack of stability in the community.

(3) If a majority of the Full Board determines that the offender may present an increased risk of re-offense or increased degree of dangerousness, it shall authorize a review of the offender's current classification level and shall notify the offender.

(4) During the reclassification process, the Board shall follow the same procedures as used in the classification process as set forth in M.G.L. c. 6, §§ 178C through 178Q and 803 CMR 1.06 through 1.24.

1.33: Risk Factors

The strongest predictors of sexual recidivism for all sex offenders are variables related to antisocial orientation and sexual deviance. (*Cortoni, 2010; Prescott 2006; Hanson and Morton-Bourgon, 2004*)

Pursuant to M.G.L. c. 6, §§ 178K(1)(a) through (l) and 178L, the Board shall use the following factors to determine a sex offender's level of risk of re-offense and degree of dangerousness posed to the public.

These factors may be present to varying degrees in any individual case. The final classification level is not based on a cumulative analysis of the applicable factors, but rather a qualitative

analysis of the individual sex offender's history and personal circumstances as a whole based on these factors. This approach is necessary where sexual recidivism science continues to evolve, cannot address all aspects of each unique sex offender, and where experts may often conflict. Some factors apply to adult male sex offenders, adult female sex offenders and juvenile sex offenders in different ways. These differences are reflected in each factor. Juvenile female sex offenders are classified using juvenile factors. (*Lussier et al., 2024; Caldwell, 2016; Van der Put, 2013; Frey, 2010; Hunter et al., 2006; Kubik et al. 2002; Matthews et al., 1997*)

The Board recognizes that adult female sex offenders generally have lower recidivism base rates than adult male sex offenders. (*Cortoni, 2018; Cortoni et al., 2010*) The Board shall consider this lower recidivism rate, along with the other relevant regulatory factors, in determining an adult female sex offender's level of risk of re-offense and degree of dangerousness posed to the public.

HIGH-RISK FACTORS:

Pursuant to M.G. L. c. 6, §178K(1)(a)(i) through (vi), the presence of Factors 1 through 6, is indicative of a high risk of re-offense and degree of dangerousness. The absence of Factors 1 through 6 does not reduce an offender's risk of re-offense or degree of dangerousness as determined by other factors.

(1) Factor 1: Mental Abnormality.

- (a) Adult Male. The presence of a statutorily defined mental abnormality specifically related to sexual deviance is significantly associated with a high risk of re-offense and degree of dangerousness.

The Board shall consider documentation from a licensed mental health professional that indicates that the offender has been diagnosed with a paraphilia related to sexual fantasies, urges, and behaviors. (*Mann et al., 2010; Hanson and Morton-Bourgon, 2005; Hanson and Morton-Bourgon, 2004; Doren, 2002*)

- (b) Adult Female. Factor 1 applies to adult female sex offenders in the same manner. (*Rousseau and Cortoni, 2010; Ford and Cortoni, 2008; Hart et al., 2003*)
- (c) Juvenile. Factor 1 applies to juvenile sex offenders in the same manner. (*Prescott, 2006; Worling and Langstrom, 2006; Worling and Curwen, 2001*)

(2) Factor 2: Repetitive and Compulsive Behavior.

- (a) Adult Male. Sex Offenders who have engaged in repetitive and compulsive behavior present a high risk of re-offense and degree of dangerousness.

The Board may consider Factor 2 when the sex offender committed a sex offense after first having been:

1. discovered and confronted (by someone other than the victim) for a sexual misconduct prior to the sex offense; or
2. investigated by an authority for sexual misconduct.

Increased weight shall be given when the sex offender engages in a sex offense or sexual misconduct after having been charged with or convicted of a sex offense. (*Harris and Hanson, 2004; Harris et al., 2003*)

- (b) Adult Female. Factor 2 applies to female sex offenders in the same manner. (*Cortoni, et al., 2010; Vandiver and Kercher, 2004*)

- (c) Juvenile. Factor 2 applies to juvenile sex offenders who continue to commit sex offenses or sexual misconduct after having been detected for prior sexual misconduct. Detection includes being cautioned, warned, disciplined, criminally charged, or otherwise sanctioned by an adult authority (*e.g.* police, parent, or teacher).

A juvenile sex offender engaging in sexual misconduct after being charged with or convicted of a prior sex offense presents an even higher risk of re-offense and degree of dangerousness.

803 CMR 1.33(2)(c) includes adults whose only sex offense(s) were committed as a juvenile. (*Rich, 2017; ATSA, 2012; Epperson et al., 2009; Powers-Sawyer and Miner, 2009; Curwen and Costin, 2007; Worling and Langstrom, 2006; Nisbet, et al., 2004; Prentky and Righthand, 2003; Worling and Langstrom, 2003; Worling and Curwen, 2001*)

(3) Factor 3: Adult Sex Offender with a Child Victim.

- (a) Adult Male. Adult sex offenders who have targeted children pose a high risk of re-offense and degree of dangerousness. The Board shall consider any victim younger than 16 years old as a child victim.

Sex offenders who have targeted prepubescent children, generally younger than 13 years old, are more likely to have a deviant sexual interest. These sex offenders pose an even higher risk of re-offense and degree of dangerousness and are given greater weight.

If the age difference between the sex offender and the victim was five years or less and there was credible evidence of a consensual, though statutorily criminal, sexual act, the Board shall give this factor limited weight.

(*Mann et al., 2010; Levenson et al., 2008; Hanson et al. 2007; Hanson & Morton-Bourgon, 2005*)

- (b) Adult Female. Factor 3 applies to adult female sex offenders in the same manner. (*Freeman and Sandler, 2008*)
- (c) Juvenile. Factor 3 does not apply to juvenile sex offenders. Factor 27 addresses juvenile sex offenders who target child victims, including adults whose only sex offense(s) or sexual misconduct were committed as a juvenile.

(4) Factor 4: Age at First Offense.

- (a) Adult Male. Age at first offense is an important variable related to risk of re-offense and degree of sexual deviance. Sex offenders who manifested an early onset and persistence of deviant sexual interests or behaviors are at a high risk of re-offense and degree of dangerousness.

Factor 4 applies to sex offenders convicted as adults who committed their first detected sex offense(s) or sexual misconduct as a juvenile and continued to commit sex offense(s) or sexual misconduct at the age of 21.

803 CMR 1.33(4)(a) includes adults whose only sex offense(s) were committed as juveniles.

(*Skelton and Vess, 2008; Hanson and Harris, 2000*)

- (b) Adult Female. Factor 4 applies to adult female sex offenders in the same manner. (*Freeman and Sandler, 2008*)
- (c) Juvenile. Factor 4 applies to juvenile sex offenders who committed their first sex offense(s) or sexual misconduct when they were younger than 13 years old, were detected, and then continued to engage in sex offense(s) or sexual misconduct at 14 years of age or older.

(*Prentky, et al., 2010; Prescott, 2006*)

(5) Factor 5: Adjudicated Sexually Dangerous Person or Released from Civil Commitment.

- (a) Adult Male. Pursuant to M.G.L. c. 6, § 178K(1)(a)(v), the Board views any sex offender who has been adjudicated as a sexually dangerous person, pursuant to M.G.L. c. 123A or the equivalent in another state, whether he has been released or not, to present a high risk of re-offense and degree of dangerousness.

Because of the statutory differences between the criteria and legal process for civilly committing sexually dangerous persons and classifying sex offenders living in the community, the Board uses criteria to determine a sex offender's risk of reoffending and degree of dangerousness that are different from those used by the courts in a sexually dangerous person proceeding.

(*Knight & Thornton, 2007; Prentky & Lee, 2007; Prentky, Knight & Lee, 1997*)

- (b) Adult Female. Factor 5 applies adult female sex offenders in the same manner.
- (c) Juvenile. Factor 5 applies to juvenile sex offenders in the same manner.

(6) Factor 6: Maximum Term of Incarceration.

- (a) Adult Male. Pursuant to M.G.L. c. 6, § 178K(1)(a)(vi), the Board considers sex offenders who declined early release, specifically to avoid community supervision or due to his own concerns of re-offending, as presenting a high risk of re-offense and degree of dangerousness.

803 CMR 1.33(6)(a) includes adults whose only sex offense(s) were committed as a juvenile, but who were incarcerated for other offenses as an adult.

- (b) Adult Female. Factor 6 applies to adult female sex offenders in the same manner.
- (c) Juvenile. Factor 6 does not apply to juvenile sex offenders except as noted above.

RISK-ELEVATING FACTORS:

(7) Factor 7: Relationship between Sex Offender and Victim.

The relationship between an offender and the victim at the time of the sex offense or sexual misconduct is an important variable in determining risk of re-offense and degree of dangerousness. Hearing examiners should be guided by the Static-99R's coding rules regarding victim-offender relationship where it is not explicitly defined below. Where the offender was mistaken or unaware of a familial relationship, the offender's actual knowledge should control the determination of the relationship type. (*Phenix, 2016*).

Although there are three distinct relationships, research shows there is a high percentage of crossover offending among the three relationship types. This should be considered when looking at an offender's risk of re-offense, degree of dangerousness and whether public safety requires dissemination of the offender's information. (*Simons, 2017; Kleban, et. al., 2013; Heil, et. al., 2003*)

(a) Definitions

(1) Intrafamilial Relationships

- a. Any persons whose marriage to the offender would be prohibited pursuant to M.G.L., c. 207, §§ 1 through 3;
- b. Any person whose relationship to the offender would prohibit marriage pursuant to M.G.L., c. 207, §§ 1 through 3 if they were the opposite sex, but who are of the same sex, i.e. father and son or mother and daughter;
- c. Legally married spouses;
- d. Adoptive children, first cousins, brothers- and sisters-in-law; and
- e. Any persons who are family member substitutes (e.g., foster, step-relatives, or any other type of familial household live-in relationship) who lived in the same household with the offender for two or more years prior to the offending behavior.

A divorce or separation between spouses or separation between live-in partners may impact the nature of the offender and victim's relationship. An ex-spouse or ex-live-in partner remains intrafamilial to the offender forever. However, when considering the relationship between the offender and the family members of an ex-spouse or ex-live-in partner, the hearing examiner should be guided by the length of time the offender was in the family role, the length of the separation and the nature of the current relationship prior to the start of offending.

Offenders who only targeted intrafamilial victims may be at a lower risk to reoffend as compared to offenders who targeted unrelated victims. Having an intrafamilial victim is not a risk mitigating, nor risk elevating, factor. It is included for definitional purposes only.

(2) Extrafamilial Relationships

- a. Any person who has a recognizable non-intrafamilial relationship with the offender, such as a friend, co-worker, or acquaintance whom they have known for over 24 hours prior to the onset of the offending behavior; and
- b. Any persons who are family member substitutes (e.g. foster, step-relatives, or any other type of familial household live-in relationship) who lived in the same household with the offender for less than two years prior to the offending behavior.

(3) Stranger Relationships

A victim is considered a stranger if the victim did not know the offender (or vice versa) 24 hours before the offense. For victims contacted over the internet, the offense must occur less than 24 hours after the initial communication. In internet crimes or some in person crimes, if the offender was known to the Victim but disguised themselves such that the victim did not know who the sex offender was, their relationship would be considered that of strangers if they engaged in crimes under such pretense.

If either knew the other for more than 24 hours, their relationship would be extrafamilial. Knowing someone includes any memorable interaction such as a passing hello or interacting as a store clerk. Knowing someone without ever interacting would render the victim a stranger.

- (b) Position of Trust: The Board gives special consideration to offenders who committed a sex offense while in a position of trust as established by their profession or role with the victim. These offenders present an increased degree of dangerousness because they violate the victim's and the public's sense of trust, safety and security. Position of trust only applies to extrafamilial and stranger relationships.
- (c) Adult Male. Having victims outside the family relationship is empirically related to an increased risk of re-offense. The number of potential victims substantially increases when offenders choose to sexually offend against extrafamilial victims. Offenders who offended while in a position of trust have an increased degree of dangerousness.

Offenders who have sexually offended against a stranger victim have a higher risk of re-offense and present a greater degree of dangerousness to the safety and welfare of the public than offenders who targeted victims known to them. (*Stroebel, et. al., 2012; Knight and Thornton, 2007; Harris et al., 2003; Hanson and Harris, 2000; Hanson and Bussiere, 1998*)

- (d) Adult Female. Factor 7 applies to adult female sex offenders in the same manner. (*Vandiver, et. al., 2018; Poels, 2007; Williams and Nicholaichuk, 2001*)
- (e) Juvenile. Juvenile sex offenders who offend while in a position of trust have an increased degree of dangerousness. Juvenile sex offenders who have sexually offended against a stranger victim have an increased risk of re-offense and present a greater degree of dangerousness to the safety and welfare of the public than offenders who target victims known to them.

803 CMR 1.33(7)(e) includes adults whose only sex offense(s) were committed as a juvenile. (*Rich, 2017; Miccio-Fonseca and Rasmusen, 2009; Powers-Sawyer and Miner, 2009; Hendriks and Bijlevild, 2008; McCann and Lussier, 2008; Gerhold, et al., 2007; Worling and Langstrom, 2006; Heilbrun, et al., 2005; Worling and Curwen, 2001;*)

(8) Factor 8: Weapon, Violence, or Infliction of Bodily Injury.

- (a) Adult Male. Sex offenses or sexual misconduct are inherently violent, but not necessarily in a physical sense. Sex offenders who used or threatened to use violence or weapons, or caused bodily injury during the commission of their sex offense(s) or sexual misconduct present an increased risk of re-offense and degree of dangerousness. These behaviors may be indicative of sexual arousal to violence or an antisocial orientation.

Any force or threat of force beyond that necessary to commit the sexual offense(s) or sexual misconduct shall constitute violence. Any object used to injure, incapacitate, penetrate, force, or threaten the victim during the sex offense(s) or sexual misconduct shall be considered a weapon. Any injury, including but not limited to strangulation, bruises, abrasions, and cuts, or any injury requiring medical attention other than for investigative purposes that is sustained by the victim during the sexual offense(s) or sexual misconduct shall be deemed bodily injury. (*Mokres et al., 2012; Mann et al., 2010; Knight and Thornton, 2007; Harris et al., 2003; Epperson et al., 1999; Boer et al., 1997*)

- (b) Adult Female. Factor 8 applies to adult female sex offenders in the same manner. (*Poels, 2007*)
- (c) Juvenile. Factor 8 applies to juvenile sex offenders in the same manner. (*Rich, 2017; ATSA, 2012; McCann and Lussier, 2008; Curwen and Costin, 2007; Worling and Langstrom, 2006; Prentky and Righthand, 2003; Worling and Curwen, 2001*)

(9) Factor 9: Alcohol and Substance Abuse.

- (a) Adult Male. Drugs and alcohol are behavioral disinhibitors. Substance abuse may increase an offender's risk of re-offense. Factor 9 applies when the sex offender has a history of substance abuse, demonstrates active substance abuse, or when the offender's substance use was a contributing factor in the sexual misconduct. The Board shall consider the sex offender's alcohol and substance use history, treatment history, abstinence, and relapse when determining the weight given to Factor 9.

803 CMR 1.33(9)(a) includes adults whose only sex offense(s) were committed as a juvenile, unless the substance use was time-limited experimentation during adolescence.

(*Abracen et al., 2017; Hamdi and Knight, 2012; Looman and Abracen, 2011; Bonta and Andrews, 2007; Hanson et al., 2007; Douglas and Skeem, 2005; Hanson and Harris, 2000*)

- (b) Adult Female. Factor 9 applies to adult female sex offenders in the same manner. (*Vandiver, et. al., 2018; Cortoni, 2010; Ford, 2010; Rousseau and Cortoni, 2010; Sandler and Freeman, 2009; Giguere and Bumby, 2007; Hanson et al., 2007; Vandiver and Kercher, 2004; Hart et al., 2003*)
- (c) Juvenile. Factor 9 applies to juvenile sex offenders in the same manner. (*Rich, 2017; Heilbrun, et al., 2005*)

(10) Factor 10: Contact with Criminal Justice System.

- (a) Adult Male. Individuals are expected to comply with the law. The Board shall consider the sex offender's disregard for rules, laws, and the violation of the rights of others. Lawlessness and antisocial behavior are indicative of an increased risk of re-offense and degree of dangerousness.

The sex offender's pattern of criminal behavior weighs heavily in Factor 10's application. The Board shall consider, but is not limited to:

1. the number and type of criminal charges;
2. the number and type of criminal dispositions;
3. the number of abuse prevention or harassment prevention orders; and
4. the dates of criminal conduct.

When classifying adults whose only sex offense(s) were committed as a juvenile, the Board shall consider their entire criminal history.

(*Boutwell, et al., 2013; Thorton, 2013, Duwe and Freske, 2012; Hanson and Bourgon, 2005; Harris et al., 2003; Hanson and Bussière, 1998*)

- (b) Adult Female. Factor 10 applies to adult female sex offenders in the same manner. (*Vandiver, et. al., 2018; Cortoni, 2010; Sandler and Freeman, 2009, 2007; Hanson et al., 2007; Vandiver, 2006; Vandiver and Kercher, 2004; Hart et al., 2003*)
- (c) Juvenile. Juvenile sex offenders with a history of multiple charges or adjudications, including non-sexual crimes, present an increased risk of re-offense and degree of dangerousness. The Board shall consider, but is not limited to, the number and severity of criminal charges, abuse prevention orders, harassment prevention orders, dispositions, and the dates of the

criminal conduct.

(*Epperson et al., 2015; Boutwell et al., 2013; Carpentier et al., 2011; Epperson et al., 2009; Zimring et al., 2009; McCann & Lussier, 2008; Gerhold et al. 2007; Zimring et al., 2007; Nisbet et al., 2004; Prentky and Righthand, 2003*)

(11) Factor 11: Violence Unrelated to Sexual Assaults.

- (a) Adult Male. Sex offenders who have acted violently with no regard for the safety of others present an increased risk of re-offense and degree of dangerousness. The Board shall consider the severity and frequency of violence towards other persons or animals. (*Hanson & Bourgon, 2005; Harris et al., 2003*)
- (b) Adult Female. Factor 11 applies to adult female sex offenders in the same manner. (*Poels, 2007; Cortoni and Hanson, 2005*)
- (c) Juvenile. Factor 11 applies to juvenile sex offenders in the same manner. (*Rich, 2017; Worling et al., 2012; Knight et al., 2009; Curwen and Costin, 2007; Prentky and Righthand, 2003; Worling and Curwen, 2001*)

(12) Factor 12: Behavior While Incarcerated or Civilly Committed.

- (a) Adult Male. Sex offenders are expected to comply with institutional rules. Poor behavior while incarcerated or civilly committed is indicative of antisocial behavior. Sex offenders who unsatisfactorily adjusted to the rigors of confinement by violating rules in a highly structured environment present an increased risk of re-offense. The type and nature of violations may also increase the offender's degree of dangerousness. Unsatisfactory adjustment is evidenced by violations of the rules. The Board may consider, but is not limited to:
 1. the number of behavioral reports or disciplinary reports received;
 2. the seriousness of the violation; and
 3. the length of time between a sex offender's last report and release.
 803 CMR 1.33(12)(a) includes adults whose only sex offense(s) were committed as a juvenile and who also have a history of adult incarcerations or commitment. (*Epperson et al., 2003; Doren, 2002*)
- (b) Adult Female. Factor 12 applies to adult female sex offenders in the same manner.
- (c) Juvenile. Factor 12 only applies to juvenile offenders who are committed to DYS in a hardware secure placement.

(13) Factor 13: Non-compliance with Community Supervision.

- (a) Adult Male. Sex offenders are expected to comply with terms of any community supervision, including pre-trial conditions of release. Non-compliance with community supervision rules is indicative of antisocial behavior. Sex offenders who have unsatisfactorily adjusted to community supervision's external controls present an increased risk of re-offense. The type and nature of violations may also increase the offender's degree of dangerousness when those controls are removed.

Unsatisfactory adjustment is evidenced by violations of the rules of the supervising agency or the conditions of release.

The Board may consider, but is not limited to:

1. the number of violations during the period of supervision;
2. the seriousness of the violation reported in the violation notice, report, or sanction; and
3. the length of time that has elapsed between the sex offender's last violation notice or report and their release from supervision.

The Board shall consider the sex offender who engaged in sexual misconduct while on community supervision to pose a greater risk of re-offense and a greater degree of dangerousness to the public.

When classifying adults whose only sex offense(s) were committed as a juvenile, the Board shall consider the sex offender's entire history of community supervision.

(*Mann et al., 2010; Knight and Thornton, 2007; Hanson and Harris, 2000*)

- (b) Adult Female. Factor 13 applies to adult female sex offenders in the same

manner. (*Freeman and Sandler, 2008; Hanson et al., 2007; Stuart and Brice-Baker, 2004; Hart et al., 2003*)

- (c) Juvenile. Juvenile sex offenders are considered under community supervision when they are supervised in the community by probation, DYS, or when they are in a residential treatment program or a DYS detention center or program that is not hardware secured.

A juvenile sex offender who unsatisfactorily adjusted to community supervision's external controls may pose a significant risk of re-offense. The type and nature of violations may also increase the offender's degree of dangerousness when those controls are removed. Unsatisfactory adjustment is evidenced by a pattern of violations of rules and regulations of the supervising agency or program. In determining a juvenile sex offender's potential risk of re-offense and degree of dangerousness, the Board may consider, but is not limited to:

1. the number of disciplinary issues or rule violations;
2. their seriousness; and
3. the length of time that has elapsed since the juvenile sex offender's last disciplinary issue or violation.

While not sufficient by itself to invoke Factor 13, a juvenile sex offender's history of suspension and expulsion from school may be considered in assessing a pattern of behavior while in a supervised setting.

The Board shall consider juvenile sex offenders who engaged in sexual misconduct while under community supervision as posing an increased risk of re-offense and degree of dangerousness. (*Epperson et al., 2015; Epperson et al., 2009; Prentky and Righthand, 2003*)

(14) Factor 14: Recent Threats.

- (a) Adult Male. Sex offenders who have expressed threats or an intent to sexually assault another person present an increased risk of re-offense and degree of dangerousness.

803 CMR 1.33(14)(a) includes adults whose only sex offense(s) were committed as a juvenile.

(*Hanson et al., 2007; Harris et al., 2003; Hanson and Harris, 2000*)

- (b) Adult Female. Factor 14 applies to adult female sex offenders in the same manner.
- (c) Juvenile. Factor 14 applies to juvenile sex offenders in the same manner.

(15) Factor 15: Hostility Towards Women.

- (a) Adult Male. Sex offenders who have exhibited hostile attitudes and behavior towards women present an increased risk of re-offense and degree of dangerousness and is indicative of antisocial behavior. The Board shall consider, but is not limited to, whether the sex offender has:

1. displayed a pervasive pattern of conflicts with women;
2. displayed physical aggression and/or violence toward women;
3. used derogatory and demeaning language towards women; or
4. had multiple abuse prevention orders or harassment prevention orders by different women at different times.

803 CMR 1.33(15)(a) includes adults whose only sex offense(s) were committed as a juvenile and who have displayed a pattern of hostility toward women as an adult.

(*Mann et al., 2010; Hanson et al., 2007; Allan et al. 2007*)

- (b) Adult Female. Factor 15 does not apply to adult female sex offenders.
- (c) Juvenile. Factor 15 does not apply to juvenile sex offenders except as noted above.

(16) Factor 16: Public Place.

- (a) Adult Male. Sex offense or sexual misconduct committed in areas where detection is likely reflects the sex offender's lack of impulse control and is indicative of an increased risk of re-offense.

Less weight may be applied where the sex offender made a clear and concerted effort to conceal the sex offense(s) or sexual misconduct from others.

Public place includes any area maintained for, or used by, the public, any place open to the scrutiny of others, or where the sex offender had no expectation of privacy. (*Epperson et al., 2000*)

- (b) Adult Female. Factor 16 applies to adult female sex offenders in the same manner.
- (c) Juvenile. Factor 16 applies to juvenile sex offenders in the same manner. (*Epperson et al., 2015; Langstrom, 2002*)

(17) Factor 17: Male Sex Offender against Male Victim.

- (a) Adult Male. A sex offense or sexual misconduct committed against a male victim is indicative of an increased risk of re-offense. Factor 17 applies when the sex offender committed the sex offense or sexual misconduct against a non-consenting male or a male child younger than 16 years old. (*Knight and Thornton, 2007; Harris and Hanson, 2004; Hanson et al., 2003; Harris et al., 2003*)
- (b) Adult Female. Factor 17 does not apply to adult female sex offenders.
- (c) Juvenile. Factor 17 may apply only to juvenile sex offenders who were 13 years of age or older at the time of the sex offense or sexual misconduct.

There are two circumstances when juvenile sex offenders who have male victims present a higher risk of re-offense. Factor 17 only applies:

1. when the male victim was younger than 13 years old and was at least five years younger than the sex offender at the time of the sex offense or sexual misconduct; or
2. if there was penetration and physical force in the sexual assault, regardless of the age of the victim.

803 CMR 1.33(17)(c) includes adults whose only sex offense(s) were committed as a juvenile. (*McCann and Lussier, 2008; Prescott, 2006; Prentky and Righthand, 2003; Worling and Curwen, 2001*).

(18) Factor 18: Extravulnerable Victim.

- (a) Adult Male. Sex offenders who committed a sex offense or sexual misconduct against an extravulnerable victim present an increased degree of dangerousness. Extra-vulnerable includes, but is not limited to, any condition or circumstance that:
 1. rendered a victim more susceptible to sexual assault;
 2. rendered a victim unable to effectively defend themselves; or
 3. compromised a victim's ability to effectively report sexual abuse or provide testimony in court.

The Board shall consider victims who were younger than eight years old or older than 60 years old at the time of the sex offense or sexual misconduct to be extra-vulnerable by virtue of their age. (*Levenson, et al., 2008; McGrath, 1991*)

- (b) Adult Female. Factor 18 applies to adult female sex offenders in the same manner.
- (c) Juvenile. Factor 18 applies to juvenile sex offenders in the same manner.

(19) Factor 19: Level of Physical Contact.

- (a) Adult Male. Sexual offenses or sexual misconduct that involved penetration, especially penile penetration, causes victims increased psychological harm and increases the sex offender's degree of dangerousness.

Limited weight shall be given when an adult sex offender offended against a child victim if,

1. the age difference between the sex offender and the victim was five years or less; and
2. there was evidence of a consensual, but statutorily criminal sexual act.

(*Lesserman et al., 1997*)

- (b) Adult Female. Factor 19 applies to adult female sex offenders in the same manner.
- (c) Juvenile. Factor 19 applies to juvenile sex offenders in the same manner. However, in determining the weight applied, the Board should also consider:
 1. the age difference between the sex offender and the victim;
 2. whether there was credible evidence of an ongoing dating type

relationship;

3. whether there was credible evidence of a consensual, but statutorily criminal sexual act; and
4. whether there was force or coercion.

803 CMR 1.33(19)(c) includes adults whose only sex offense(s) were committed as a juvenile. (*Rich, 2017*)

(20) Factor 20: Diverse Sexual Behavior.

- (a) Adult Male. Diverse sexual behavior may reflect sexual preoccupation, elevated sex drive, or sexual deviance. Sex offenders who engaged in different types of sexual behaviors, in separate episodes, present an increased risk of re-offense. The Board shall consider the number, types, and frequency of a sex offender's diverse sexual behaviors in the weight applied to this factor.

Diverse sexual behaviors include, but are not limited to: voyeurism, exhibitionism, possession of pornography, contact sexual assaults, stealing of a person's belongings for sexual arousal, frottage, stalking, photographing or videotaping a partially nude or nude person or the intimate parts of a person without their consent, engaging in explicit electronic communications, hiring persons for sex, frequenting strip clubs, and engaging in sexual harassment. (*Babchishin, et al., 2015; Thorton, 2013; Mann et al., 2010; Hanson et al., 2007; Harris et al., 2003; Hanson and Harris, 2000*)

- (b) Adult Female. Factor 20 applies to adult female sex offenders in the same manner. (*Hart et al., 2003*)
- (c) Juvenile. Factor 20 applies to juvenile sex offenders in the same manner. (*Curwen and Costin, 2007; Prentky and Righthand, 2003; Worling and Curwen, 2001*)

(21) Factor 21: Diverse Victim Type.

- (a) Adult Male. Sex offenders whose sex offense or sexual misconduct traversed victim types, such as multiple ages, gender, or relationship categories present an increased risk of re-offense. (*Stephens, et al., 2018; Stephens, et al., 2017; Kleban et al., 2013; Heil et al., 2003; Hanson and Harris 2000*)
- (b) Adult Female. Factor 21 applies to adult female sex offenders in the same manner.
- (c) Juvenile. Factor 21 applies to juvenile sex offenders in the same manner. (*Rich, 2017; Epperson et al., 2015; Epperson et al., 2009; Curwen and Costin, 2007; Parks and Bard, 2006; Worling and Curwen, 2001*)

(22) Factor 22: Number of Victims.

- (a) Adult Male. Sex offenders who committed a sex offense or sexual misconduct against two or more victims present an increased risk of re-offense. (*Stephens et al. 2018; Stephens et al. 2017; Hanson Bussiere 1998*)
- (b) Adult Female. Factor 22 applies to adult female sex offenders in the same manner.
- (c) Juvenile. Factor 22 applies to juvenile sex offenders in the same manner. (*Rich, 2017; Epperson et al., 2015; Epperson et al., 2009; Miccio-Fonseca, 2009; Powers-Sawyer and Miner, 2009; Gerhold et al., 2007; Worling and Langstrom, 2006; Prentky and Righthand, 2003; Worling and Curwen, 2001*)

(23) Factor 23: Victim Access.

- (a) Adult Male. A sex offender's risk of re-offense increases when he has frequent and easy access to potential victims similar to his past victims. The Board may consider, but is not limited to:
 1. whether the sex offender has regular and ongoing opportunities for interaction with potential victims through such things as coaching, teaching, or volunteering;
 2. whether the sex offender has regular and ongoing opportunities for interaction with potential victims through his living, employment, or relationship settings; or
 3. whether the sex offender appears to be intentionally seeking circumstances similar to those in which he accessed past victims..

For sex offenders targeting stranger victims, Factor 23 applies when the sex offender's conduct suggests an intentional seeking out of circumstances like his prior sex offense(s) or sexual misconduct.

803 CMR 1.33(23)(a) includes adults whose only sex offense(s) were committed as juveniles.

(*Hanson et al., 2007; Hanson and Harris, 2000*)

- (b) Adult Female. Factor 23 applies to adult female sex offenders in the same manner.
- (c) Juvenile. Risk of re-offense and degree of dangerousness increases when juvenile sex offenders have frequent, unsupervised access to similar potential victims or appear to be intentionally seeking circumstances that allow such access. (*Spice, et al., 2013; Carpentier and Proulx, 2011; Worling and Langstrom, 2006*)

(24) Factor 24: Less than Satisfactory Participation in Sex Offender Treatment.

- (a) Adult Male. Sex offenders who refused to participate in, dropped out of, or were terminated by their treatment provider from sex offender treatment present an increased risk of re-offense and degree of dangerousness.

Where the treatment offered is nonconfidential, this factor only applies where evidence exists that the sex offender's refusal was for a reason unrelated to the nonconfidentiality.

The Board shall consider the sex offender who, during his most recent opportunity to participate in a sex offender treatment program while in custody, or when required by community supervision, refused to participate in a sex offender treatment program or dropped out or was involuntarily terminated to present an increased risk of re-offense and degree of dangerousness.

(*Lösel and Schmucker, 2005; Hanson et al., 2002; Hanson and Harris, 2000*)

- (b) Adult Female. Factor 24 applies to adult female sex offenders in the same manner.
- (c) Juvenile. Factor 24 applies to juvenile sex offenders in the same manner. (*Epperson et al., 2009; Powers-Sawyer and Miner, 2009; Vitacco et al., 2009; Curwen and Costin, 2007; Gerhold, et al., 2007; Worling and Langstrom, 2006; Worling and Curwen, 2001*)

(25) Factor 25: Prostitution of Children by Female Sex Offenders.

- (a) Adult Male. Factor 25 does not apply to male sex offenders.
- (b) Adult Female. Female sex offenders convicted of sex offenses or who committed sexual misconduct related to promoting the prostitution of a child present an increased risk of re-offense. For purposes of Factor 25, a child victim is a person under the age of eighteen. (*Cortoni et al., 2015; Sandler and Freeman, 2009*)
- (c) Juvenile. Factor 25 does not apply to juvenile sex offenders.

(26) Factor 26: Female Sex Offenders Having a History of Abusing Children.

- (a) Adult Male. Factor 26 does not apply to male sex offenders.
- (b) Adult Female. Female sex offenders who have a history of engaging in any type of non-sexual child abuse present an increased risk of re-offense. Female sex offenders who have a history of engaging in physical child abuse present an increased degree of dangerousness. The Board shall consider evidence of prior child abuse, including but not limited to:
 1. the number and nature of investigations;
 2. the number of charges; and
 3. the number of convictions.

For purposes of Factor 26, a child victim is a person under the age of eighteen years old. (*Wijkman and Bijleveld, 2013; Cortoni and Gannon, 2011; Sandler and Freeman, 2009*)

- (c) Juvenile. Factor 26 does not apply to juvenile sex offenders.

(27) Factor 27: Juvenile Sex Offenders' Age of Victim.

- (a) Adult Male. Factor 27 does not apply to male sex offenders.
- (b) Adult Female. Factor 27 does not apply to female sex offenders.
- (c) Juvenile. Factor 27 only applies to juvenile sex offenders who were 13 years of age or older at the time of the sex offense or sexual misconduct.
 1. Child Victims. Juvenile sex offenders who targeted younger child

victims outside of their peer age group present an increased risk of re-offense and degree of dangerousness. For purposes of Factor 27, the Board shall consider child victim as younger than 13 years old and at least five years younger than the offender at the time of the offense.

2. Adult Victims. Juvenile sex offenders who targeted adult victims present an increased risk of re-offense and degree of dangerousness. For purposes of Factor 27, the Board shall consider adult victim as 18 years of age or older and at least five years older than the offender at the time of offense.

803 CMR 1.33(27)(c) includes adults whose only sex offense(s) were committed as a juvenile. (*Rich, 2017; ATSA, 2012; McCann and Lussier, 2008; Worling and Langstrom, 2006; Nisbet, et al, 2004; Worling and Curwen, 2001*)

RISK-MITIGATING FACTORS:

(28) Factor 28: Community Supervision.

- (a) Adult Male. Community supervision of sex offenders released into the community increases public safety. A sex offender's risk of re-offense and degree of dangerousness are reduced while serving any form of community supervision. Factor 28 also applies to sex offenders who are incarcerated or civilly committed at the time of the classification hearing and will be under community supervision upon release. Factor 28 may be given less weight if there is a history of probation violations.

For purposes of Factor 28, community supervision does not include pretrial release conditions.

803 CMR 1.33(28)(a) includes adults whose only sex offense(s) were committed as a juvenile. (*deVries Robbé and Vogel, 2013; English et al., 1995*)

- (b) Adult Female. Factor 28 applies to female sex offenders in the same manner.
- (c) Juvenile. Community supervision reduces a juvenile sex offender's risk of re-offense and degree of dangerousness. For purposes of Factor 28, juvenile sex offenders are considered under community supervision when they are supervised in the community by probation, DYS, or when they are in a residential treatment program or a DYS detention center or program that is not hardware secure. (*Rich, 2017*)

(29) Factor 29: Offense-Free Time in the Community.

Risk of re-offense decreases the longer the sex offender has access to the community without committing a new sex offense or sexual misconduct. Offense-free time in the community begins on the date of the sex offender's most recent release from custody for a sex offense. For sex offenders who are not committed, the offense-free time in the community begins on the most recent date of conviction or adjudication of a sex offense.

Factor 29 may be given less mitigating weight where:

1. the sex offender committed sexual misconduct for which they were not charged or convicted during their time in the community;
2. the sex offender is removed from the community for some portion of time since last committing a sex offense or sexual misconduct for any reason, including but not limited to probation revocation, violation of terms of supervision or release, or any incarceration. Under these circumstances, the decrease in mitigation, if any, should be commensurate with the amount of time removed from the community; or
3. the sex offender demonstrated ongoing criminal activity, especially where such activity involves non-sexual violence.

- (a) Adult Male. Risk of re-offense decreases for most sex offenders after living

offense-free in the community for five to ten years. Risk of re-offense decreases substantially for most sex offenders after living offense-free in the community for ten or more years.

(*SAARNA: User's Manual for the Lifetime and Residual Risk Calculator, 2021; Thorton, et al., 2021; Hanson, et al., 2018; Hanson et al., 2014; Harris & Hanson, 2004*)

- (b) Adult Female. Factor 29 applies to female sex offenders in the same manner.
- (c) Juvenile. Adolescence is a time of rapid social, sexual, physical, cognitive, and emotional developmental changes. Thus, increased mitigating weight should be given to juvenile sex offenders demonstrating offense-free time in the community. Risk of re-offense decreases for most juvenile sexual offenders after living in the community offense-free for three years. Risk of re-offense decreases substantially for most juvenile sex offenders after living offense-free in the community ten or more years.

Offense-free time in the community begins on the most recent date the juvenile sex offender is released from DYS hardware secure detention facility for a sex offense. For juvenile sex offenders who are not committed to a hardware secure DYS detention facility, offense-free time in the community begins on the most recent date of adjudication for a sex offense.

803 CMR 1.33(29)(c) includes adults whose only sex offense(s) were committed as a juvenile.

(*Prentky et al., 2010; Worling, et al., 2010; Worling and Langstrom, 2006*)

(30) Factor 30: Advanced Age.

- (a) Adult Male. Risk of re-offense incrementally decreases as the sex offender gets older, especially as the sex offender moves into his later years. While advanced age alone does not outweigh other risk-elevating factors present, advancing age has a mitigating effect on risk of re-offense.

Factor 30 does not apply uniformly to all sex offenders. Although risk of re-offense gradually decreases when the sex offender is in his 40s, the Board considers advanced age to have a significant mitigating effect when the offender is 50 years of age or older or, for those with a child victim, when the offender is 60 years of age or older. For Factor 30, the Board will consider the offender's age at the time of the classification.

Factor 30 should be given reduced weight when the sex offender continues to demonstrate general criminality or inappropriate sexual behavior.

803 CMR 1.33(30)(a) includes adults whose only sex offense(s) were committed as a juvenile.

(*Nicholaichuk et al., 2014; Lussier and Healy, 2009; Barbaree and Blanchard, 2008; Skelton and Vess, 2008; Prentky and Lee, 2007; Hanson, 2006; Fazel et al., 2006; Thornton, 2006; Hanson, 2002*)

- (b) Adult Female. Factor 30 applies to adult female sex offenders in the same manner.
- (c) Juvenile. Factor 30 applies in the same manner to juvenile sex offenders except that the Board shall consider child victim as younger than 13 years old and at least five years younger than the offender at the time of the offense.

(31) Factor 31: Physical Condition.

- (a) Adult Male. Pursuant to M.G.L. c. 6, § 178K(1)(d), the Board shall consider the sex offender who, due to a physical condition, including a debilitating illness that has been documented by a treating medical provider, presents a decreased risk of re-offense or degree of dangerousness. At minimum, the medical documentation should:
 1. identify the sex offender's physical condition;
 2. identify the onset or date of diagnosis of the sex offender's physical condition;
 3. provide a detailed description of the sex offender's limitations connected to the physical condition; and
 4. provide a summary of the sex offender's treatment and prognosis relative to the physical condition.
- (b) Adult Female. Factor 31 applies to adult female sex offenders in the same

manner.

- (c) Juvenile. Factor 31 applies to juvenile sex offenders in the same manner.

(32) Factor 32: Sex Offender Treatment.

The Board may consider credible documentation verifying the sex offender's sex offender treatment participation or completion. This documentation should, at minimum, include: the sex offender treatment provider's name and license number; the sex offender treatment provider's description of the treatment program's milieu, methodology, goals, and objectives; and a record of the sex offender's attendance, level of participation, and degree of progress.

The risk-mitigating weight applied to Factor 32 varies in degrees based on the following:

1. Treatment Completion. In general, the sex offender who successfully completed a sex offender treatment program presents at a lower risk of re-offense than those who have not. Participation in sex offender treatment through the end of a term of incarceration or community supervision is not considered treatment completion unless there is documentation that the sex offender met all the goals of the sex offender treatment program.
2. Current Treatment Participation. The Legislature has identified current participation in sex offender treatment as a risk mitigating factor. The sex offender who voluntarily participates in sex offender treatment in the community, not solely as a condition of supervised release, and the sex offender who continues to participate in sex offender treatment after their sex offender treatment providers have determined that they have completed the sex offender treatment program, may receive increased mitigating weight.
3. Past Treatment Participation. The Board shall consider the sex offender's past participation in sex offender treatment. The sex offender who participated in sex offender treatment while incarcerated or civilly committed or under community supervision, but did not complete the sex offender treatment program, may receive less mitigating weight.
4. Denial. One of the primary goals of successful sex offender treatment is accepting responsibility for engaging in harmful sexual offending behavior. While some sex offenders who deny committing their sex offense can benefit from sex offender treatment, any ongoing lack of responsibility or minimization for their behaviors may diminish the mitigating weight assigned.

(Gannon, et al., 2019; Schumucker & Losel, 2015; Olver et al., 2013; Ware & Mann, 2012; Levenson, 2011; Hanson et al., 2009; Lösel and Schmucker, 2005; Marques et al., 2005; Saleh and Guidry, 2003)

- (a) Adult Male. The Board has determined that participation in or successful completion of sex offense-specific treatment, specifically in programs utilizing a cognitive-behavioral modality, such as Relapse Prevention, Risk-Needs-Responsivity, or Good Lives, reduces the sex offender's risk of re-offense. The Board may also consider pharmacological treatment for paraphilic disorders as reducing the sex offender's risk of re-offense. The Board should also consider the duration of treatment, and a sex offender's attendance and engagement when assessing the amount of mitigating weight applicable.
- (b) Adult Female. Many female sex offenders have treatment needs that may not be addressed in traditional sex offender treatment programs created for male sex offenders. The Board shall give mitigating weight to participation in, or successful completion of, a treatment program utilizing a cognitive-behavioral modality such as Relapse Prevention, Risk-Needs-Responsivity, and Good Lives or for general psychological therapy. The Board shall consider the degree of participation in treatment and denial in the same manner as adult males. *(Blanchette and Taylor, 2010; Ford, 2010; Blanchette and Brown, 2006)*

- (c) Juvenile. Juvenile sex offenders may have broader treatment needs than their adult counterparts. Because juvenile sex offenders are still maturing and developing, they may be more amenable to treatment.

The Board has determined that participation in any psychological therapy addressing various areas of a sex offender's life, such as family, school, emotional, and social domains, or sex offense specific treatment is risk-mitigating. The mitigating weight assigned increases with the sex offender's level of participation, progress in treatment, family involvement, level of accountability, focus on sex offending behavior, or whether the sex offender completed a treatment program.

When classifying adults whose only sex offense(s) were committed as a juvenile, the Board shall consider their past participation in treatment as a juvenile and participation in sex offender treatment as an adult.

(*Kim, Benekos & Merlo, 2016; ATSA, 2012; Worling et al., 2010; Borduin et al., 2009; Reitzel and Carbonell, 2006*)

(33) Factor 33: Social Support Systems.

- (a) Adult Male. The sex offender who currently has a positive social support network presents a decreased risk of re-offense.

Greater mitigating weight shall be given where credible evidence indicates the sex offender's support network is aware of the sex offender's sex offense history and provides active support.

803 CMR 1.33(33)(a) includes adults whose only sex offense(s) were committed as a juvenile. (*de Vries Robbé et al., 2015; de Vries Robbé and Vogel, 2013; Tabachnick and Klein, 2011*)

- (b) Adult Female. Factor 33 applies to adult female sex offenders in the same manner. (*Gannon and Rose, 2008*)

- (c) Juvenile. The juvenile sex offender who currently has a positive social support network presents a decreased risk of re-offense. Factor 33 is applied when there is credible evidence of stable relationships with family, stable and therapeutically supportive family, pro-social friends and acquaintances, or positive engagement with social services, teachers or other adults.

Greater mitigating weight shall be given where credible evidence indicates the sex offender's support network is aware of the sex offender's sex offense history and provides active support. (*Prentky et al., 2010; Bremer, 2006; Prentky and Righthand, 2003; Worling and Curwen, 2001*)

(34) Factor 34: Stability in Home Environment and in the Community.

- (a) Adult Male. Pursuant to M.G.L. c. 6, § 178K(1)(l), the Board shall consider, and give mitigating weight to the sex offender demonstrating stability in their home environment and in the community. The Board may consider, but is not limited to, evidence of the sex offender's:

1. active participation in mental health and/or substance abuse treatment;
2. recent behavior and lifestyle;
3. residential stability;
4. sustained sobriety;
5. continuing education;
6. employment stability, type of employment; and
7. non-work related activities.

(*de Vries Robbé et al., 2015; de Vries Robbé and Vogel, 2013; Tabachnick and Klein, 2011*)

- (b) Adult Female. Factor 34 applies to adult female sex offenders in the same manner. (*Gannon and Rose, 2008*)

- (c) Juvenile. Factor 34 applies to juvenile sex offenders in the same manner. (*Bremer, 2006; Prentky et al., 2010*)

ADDITIONAL FACTORS:

(35) Factor 35: Psychological or Psychiatric Profiles Indicating Risk to Reoffend.

- (a) Adult Male. The Board shall consider evaluative reports, including but not

limited to, documentary reports generated during sexually dangerous person proceedings, risk assessment reports completed for sentencing, probation or treatment planning, empirically based risk assessment instruments, or a licensed mental health professional's testimony discussing psychological and psychiatric issues, including major mental illness, as they relate to the sex offender's risk of re-offense.

The ultimate risk opinion of the evaluator, if any, will be excluded from consideration unless the evaluator testifies as an expert witness at the classification hearing.

(*Looman & Abracen, 2013; Kafka, 2012; Fazel et. al. 2007; Hanson and Harris, 2000; Hanson and Bussière, 1998*)

- (b) Adult Female. Factor 35 applies to adult female sex offenders in the same manner.

(*Gannon, et al., 2014; Cortoni, 2010; Rousseau and Cortoni, 2010; Vandiver and Kercher, 2004; Hart et al., 2003*)

- (c) Juvenile. Factor 35 applies to juvenile sex offenders in the same manner. (*Kafka, 2012*).

(36) Factor 36: Online Only Offending Behavior.

Factor 36 applies to sex offenders whose sex offense(s) and sexual misconduct solely involved online or remote electronic communication and interaction. Sex offenders who actually traveled to meet the victim, are not online only offenders.

Sex offenders who limited their sexual offense(s) and sexual misconduct to online offending may present a lower risk of re-offense and degree of dangerousness than sex offenders committing contact offenses. However, the presence of antisocial factors may increase the risk of re-offense and degree of dangerousness. Other regulatory factors must be considered when assessing the online sex offender's risk of re-offense and degree of dangerousness in conjunction with this factor.

- (a) Adult Male. The Board categorizes online offending behavior in the following ways:

1. Child Sexual Abuse Material (CSAM) otherwise known as Child Pornography.

Sex offenders who possessed or passively shared CSAM through peer-to-peer networks generally present a lower risk of re-offense and degree of dangerousness than sex offenders who commit contact offenses.

Sex offenders in this category demonstrating evidence of sexual deviance may present an increased risk to commit contact sex offenses and therefore increased degree of dangerousness to the public. Sexual deviance indicators include, but are not limited to evidence of: actively trading CSAM or participating in online discussions about sex with children; actively searching for images of prepubescent children; collecting larger amounts of prepubescent CSAM relative to postpubescent CSAM or adult pornography; collecting larger amounts of CSAM relative to adult pornography; and primarily focusing on CSAM depicting boys or a higher boy to girl ratio in a collection. (*Steel, et al., 2021; Stephens, et al., 2017; Seto, 2015; Seto & Eke, 2015; Babchishin et al., 2015; Babchishin et. al., 2011; Eke et al., 2011; Seto et al., 2011; Kim, 2004*)

2. Online Communicating. Sex offenders who engaged in sexually explicit communications with, or sent pornographic photographs or videos, to minors or persons they believed to be minors by any electronic means present an increased degree of dangerousness among online only sex offenders. This subsection is applicable where:
- a. the sex offender made no attempt to lure the minor into meeting them; and
 - b. the sex offender made no attempt to manipulate the minor into anything beyond perceiving (seeing or listening to) the sexually offensive material. This subsection does not apply where an offender actively engaged in sexual behavior with a minor through electronic means, or encouraged a minor to take and/or share pornographic materials of themselves.

(*Meridian et al., 2018; Seto, 2015; Babchishin et al., 2015*)

3. Solicitation Offending. Sex offenders who communicated online with minors or persons they believed to be minors by any electronic means to receive pornographic material of the victim or to discuss meeting in-person to engage in sexual misconduct present the greatest degree of dangerousness among online sex offenders. Such offenders present an increased risk of re-offense and degree of dangerousness compared to other online only sex offenders.

This subsection does not apply where an offender actually traveled or made arrangements for the victim to travel for the purpose of meeting in-person. Such offenders are more akin to contact offenders and are best considered outside of this factor in assessing risk of re-offense and degree of dangerousness. (*Meridian et al., 2018; Seto, 2015; Babchishin et al., 2015; Seto et al., 2012; Babchishin et al., 2011; Briggs et al, 2011; Eke et al., 2011; Seto et al., 2011; Seto & Eke, 2005*)

- (b) Adult Female. Factor 36 applies to adult female sex offenders in the same manner.

- (c) Juvenile. Factor 36 applies to juvenile sex offenders in the same manner.

Juvenile sex offenders whose online sex offenses and sexual misconduct only targeted similarly aged peers may present a lower risk of re-offense and degree of dangerousness than adult sex offenders who target juveniles as they are less likely to be sexually deviant. (*Saleh et al., 2014*)

(37) Factor 37: Other Useful Information.

- (a) Adult Male. Pursuant to M.G.L. c. 6, § 178L(1), the Board shall consider any information that it deems useful in determining risk of re-offense and degree of dangerousness posed by any sex offender.

- (b) Adult Female. Factor 37 applies to adult female sex offenders in the same manner.

- (c) Juvenile. Factor 37 applies to juvenile sex offenders in the same manner.

(38) Factor 38: Victim Impact Statement.

- (a) Adult Male. The Board recognizes the substantial impact sex offenses have on victims. Pursuant to M.G.L. c. 6, § 178K(1)(k), the Board shall consider any written statement authored by the victim, the parent or guardian of a minor victim or a deceased victim, or the guardian of an adult victim of a sex offense that resulted in a conviction or adjudication as it relates to the sex offender's degree of dangerousness.

- (b) Adult Female. Factor 38 applies to adult female sex offenders in the same manner.

- (c) Juveniles. Factor 38 applies to juvenile sex offenders in the same manner.

1.34: Information Sharing

- (1) Pursuant to M.G.L. c. 6, § 178K(4) any agency as defined by M.G.L. c. 6, § 178C, shall provide to the Board, within 15 business days of request, any information that is relevant to the Board's classification and/or reclassification of a sex offender's level. Such information includes but is not limited to:
- (a) Any information associated with a conviction for a sex offense, including but not limited to, any narratives describing the offending behavior, victim statements and all investigative reports;
- (b) Any documentation demonstrating the offender has been investigated for or charged with committing a new sex offense;
- (c) Any documentation demonstrating the offender has been non-compliant with community supervision along with any reports generated as a result of non-compliance;
- (d) Any documentation demonstrating the offender has been non-compliant with required programing;
- (e) Any evaluation, risk assessment or discharge summary;
- (f) Any documentation demonstrating the offender has received any disciplinary reports for non-compliance with institutional rules and regulations;

803 CMR: DEPARTMENT OF CRIMINAL JUSTICE INFORMATION SERVICES

- (g) Any restraining or harassment orders that have been issued;
- (h) Any new arrest or report generated as a result of violent or assaultive behavior; and
- (i) Any new arrest or report involving drugs or alcohol.

(2) Upon receipt and review of the information that has been provided to the Board, if the Board determines that additional information is necessary such agencies shall comply with the Board's request for additional information within ten business days.

1.35: Severability

If any regulation or section, sub-section, sentence, phrase or portion thereof is found to be invalid by a court of competent jurisdiction for any reason, said portion shall be deemed a separate, distinct, and independent provision, and the validity of the other regulations shall not be affected.

REGULATORY AUTHORITY

803 CMR 1.00: M.G.L. c. 6, §§ 178C through 178Q.