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STATE AUDITOR'S REPORT ON CERTAIN
ACTIVITIES OF THE
SEX OFFENDER REGISTRY BOARD

OFFICIAL AUDIT
REPORT
JUNE 5, 2006

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Chapter 29 of the Acts of 1996 established the Sex Offender Registry Board (SORB) by inserting sections 178C through 178P, inclusive, to Chapter 6 of the Massachusetts General Laws (MGL). This legislation was enacted in accordance with the 1994 Federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 USC, Section 14071, which required states to implement a sex offender and crimes against children registry.

After a series of legal challenges and subsequent injunctions against the SORB, the Massachusetts Legislature enacted Chapter 74 of the Acts of 1999, An Act Improving the Sex Offender Registry and Establishing Civil Commitment and Community Parole Supervision for Life for Sex Offenders.” This Act amended Chapter 6 of the General Laws and responded to issues raised by the Massachusetts Supreme Judicial Court (SJC).

The SORB is an administrative agency within the Executive Office of Public Safety. The SORB works closely with local law enforcement agencies and the State Police to ensure the proper registration of sex offenders who live, work or attend an institution of higher education in Massachusetts. In addition to registration responsibilities, the SORB is the sole agency responsible for the classification of each registered sex offender.

The SORB classification of an offender determines if and how information pertaining to a sex offender may be released to the public. Currently, there are four classification levels for sex offenders under the SORB process. Level 0 is the SORB’s unofficial classification for sex offenders who are known to the SORB as sex offenders and either have not registered, or have registered but have not yet been classified. There are currently 3,837 persons classified as Level 0 offenders. Level 1 is the least onerous classification that the SORB can assign a convicted or adjudicated sex offender. The SORB assigns Level 1 when it determines that an offender presents a low risk to re-offend and a low risk of dangerousness to the public. There are currently 2,487 persons registered in SORB’s database with a Level 1 classification. Level 2 is the classification given by SORB to convicted or adjudicated sex offenders who SORB has determined present a moderate risk to re-offend and have a moderate risk of dangerousness. There are currently 5,119 persons registered in SORB’s database as Level 2 sex offenders. Level 3 is the classification given by SORB to convicted or adjudicated sex offenders who SORB has determined present a high risk to re-offend and a high risk of dangerousness. There are currently 1,463 Level 3 sex offenders registered in SORB’s database. In addition, there are 2,919 incarcerated individuals that the SORB will have to process upon their release. Sex Offenders classified as Level 2 or Level 3 are required to appear before the police department where the offender resides either annually or every 90-days, depending upon the person’s living status. In addition, Level 3 offenders are posted on the Internet.

AUDIT RESULTS

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1. SORB NOT COLLECTING OFFENDER REGISTRY FEE

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On July 1, 2005, the SORB stopped billing and collecting the \$75 sex offender registry fee required by Chapter 6, Section 178Q of the General Laws. The SORB believed that

because of a Governor's veto of the Sex Offender Registry Fees Retained Revenue Account and pending legislation to repeal the fee, they were no longer required to bill for or collect the fee. As a result of our review, the SORB, on November 16, 2005, mailed 3,439 letters informing offenders of the requirement to pay the fee. In response to the audit, the SORB indicated that it took immediate action by contacting nearly 3,500 sex offenders to obtain the fees missed for the five months that the fee was not collected. The SORB further indicated that all sex offenders required to pay the registration fee are now notified of the \$75 obligation by mail, in conjunction with the registration notices and the annual re-registration letters.

2. EXTERNAL FACTORS THAT AFFECT SORB'S PERFORMANCE **9**

Although originally established in 1996, because of several legal challenges to the law that were upheld by the Supreme Judicial Court (SJC) of Massachusetts, the Sex Offender Registry statute had to be reworked. Rewritten in 1999, this statute, was once again challenged. The SJC, after careful analysis of the 1999 statute, concluded that "the due process" clause had not been violated, and on June 28, 2001 vacated the preliminary injunction issued by the Superior Court, thereby allowing the SORB to conduct its business as intended when established in 1996.

a. Registering and Classifying Sex Offenders from the Board of Probation Database (15 Year Look-Back Requirement) **10**

Immediately upon approval of the 1999 statute, the SORB was once again presented with a series of problematic situations hindering its ability to function within its responsibility. First, the Act in defining a sex offender, required the SORB to review the data recorded for approximately 19,000 offenders (dated back to 1981) listed on the Board of Probation database. The process of locating these offenders, as well as registering and classifying them when appropriate, (along with registering and classifying current offenders), has been a unique and difficult challenge to the SORB. While attempting to locate these 19,000 offenders, the SORB determined that many of the offenses were committed during the 1960's and 1970's; that some offenders had pleaded to lesser offenses, and were therefore not required to register; and that many other offenders had died, moved out of state, were again incarcerated, or had been deported. As of October 2005, some 2,372 sex offenders on the database have never been located. The SORB responded to the audit, that once it was legally permitted to begin the registration and classification process, it immediately began to register more than 20 years of sex offenders, and to provide each the opportunity to have an evidentiary hearing for classification purposes.

b. Delays in Classification of Sex Offenders Due to Hearing Process and Limited Number of Hearing Sites **11**

Another stumbling block for the SORB has been with the hearing process itself. Many offenders, (now approximately 40%), request hearings on their classifications. This is done for a couple of reasons; first the hope of being reclassified to a lower sex offender classification, primarily a Level 3 to a Level 2, or secondly to delay the process of public dissemination of offender notification. The hearing process prohibits the public notification of a sex offender until the hearing process is completed.

Additional complications to the hearing process occur because there are a limited number of available sites for hearings due to lack of funding for locations, and that most

potential hosts do not want offenders in their area. Furthermore, hearings can be delayed because many of the offenders (approximately 35%) that request hearings need appointed counsel. Scheduling witnesses, weather, sickness, and the limited number of hearing officers also delays the hearing process. Complicated cases can take up to a year before final classifications. Presently, 964 cases are in the hearing stage. The SORB stated in its response to our audit that SORB hearings are time and labor intensive, but the law and the courts have required these evidentiary hearings to provide due process to offenders. The SORB holds hearings throughout the Commonwealth at various facilities to ensure statewide accessibility to the right for a hearing. The SORB does not have dedicated hearing space, and it relies on the generosity of law enforcement and criminal justice agencies to provide hearing rooms. The SORB is working with the Executive Office of Public Safety to locate additional hearing locations. Moreover, the SORB is in the final stage of negotiations to secure a hearing facility that is located less than one mile from the office headquarters.

c. Differing Definitions of Sex Offenders Between States

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Further problems in registering sex offenders result from the fact that although the federal government has established a general definition for sex offenders, each state is allowed to further define what a sex offender is to them. This presents unique problems for the SORB, in that what might be a sex offense requiring registration in one particular state does not necessarily require registration in another state. As a result, a potential offender could enter Massachusetts without any notification to Massachusetts or local authorities. The SORB responded to our audit that it recognizes the difficulties caused by both a lack of a uniform, national definition for sex offenders, and because each state has its own criminal code that criminalizes and categorizes behavior differently. The SORB further noted the lack of national standards relative to the processes for registration, classification and community notification. Finally, SORB stated that although it works closely with various jurisdictions, particularly neighboring states, each state has its own legislation that may comply with federal laws, but may be vastly different from state to state.

d. Penalties Not Always Enforced for Failure to Register

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Although the law stipulates specific penalties for offenders who fail to register, according to the SORB, the records show that of 2,766 arraignments for failure to register, 1,260 cases were dismissed, 606 resulted in convictions, 127 were not prosecuted, 23 were found not guilty, and 750 are still pending charges. Even when convicted, the courts do not impose the penalties in the statutes and most often only require the offender to register. According to the SORB, these same offenders again become in violation when they fail to re-register annually. The SORB stipulated in its response to our audit that it would continue to host and attend various meetings, trainings and conferences to educate and to assist its partners in the common goal of effective sex offender management.

3. SORB INITIATIVES TO INCREASE SEX OFFENDER REGISTRATION COMPLIANCE AND ADDRESS VERIFICATION

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Several initiatives have been undertaken by SORB to increase compliance with sex offender registration. Legislation has been passed which now requires the Registry of Motor Vehicles (RMV), upon notification from the SORB that a sex offender is in

violation of registration, “shall suspend or prohibit issuance or renewal of a license, learner’s permit, right to operate a motor vehicle or certificate of motor vehicle registration by such sex offender.” Since the creation of this law, the RMV has issued a total of 1,304 suspensions, of which 1,097 of these sex offenders have subsequently registered.

The SORB has also implemented the Post Classification Address Audit of Registered Sex Offenders allowing police departments to monitor and record offender compliance with registration requirements allowing for Level 2 and Level 3 offenders by conducting random audits on the registered addresses within their jurisdiction. Although this voluntary program was initiated for the purpose of better monitoring and tracking of sex offenders, its results have been somewhat mixed, as 17 local police departments out of the 180 communities with Level 3 sex offenders are either not participating, or are only marginally participating in the audit program. Results from those 17 police departments indicate that only 18 of the 170 Level 3 sex offenders had addresses confirmed. Police departments have expressed a concern that these initiatives have created an unfunded mandate in their communities, and have had to take police officers off the street to pursue this activity. In its response to our audit, the SORB indicated it would continue to work with State and local law enforcement agencies to increase offender registration compliance, and to verify registration addresses. The SORB further indicated it would continue its partnerships with the RMV and the State Police VFAS to ensure optimal registration compliance and up-to-date registration information. Finally, the SORB will also continue to utilize third party private technology data firms that provide address leads and address verification services.

4. OTHER MATTERS – POLICE DEPARTMENTS’ COSTS RELATIVE TO THE ESTABLISHMENT OF THE SEX OFFENDER REGISTRY ACT

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Section 18 of Chapter 74 of the Acts and Resolves of 1999 provided that the Secretary of Public Safety would conduct a study relative to the costs to municipal and state police departments relative to the establishment of the sex offender registry. Although the EOPS study explored the fiscal policy implications of the Act and sought to responsibly identify and enumerate the costs necessary to equip police departments with the tools to implement this far reaching public safety legislation, the study did not attempt to set forth speculative, random, or fixed costs. The study concluded that upon further classification of sex offenders, actual, definitive costs relative to the establishment of the Registry Act may become apparent. Thus, a complete and accurate breakdown of the costs to municipal and state police departments relative to the establishment of the sex offender registry is not feasible at the present date.

The EOPS volunteered to supplement this study upon request from the Legislature. As of the date of our review, no such supplement has taken place.

In response to our audit, the SORB indicated that the Executive Office of Public Safety is currently working on a two-year grant awarded by the U.S. Department of Justice, Bureau of Justice Assistance. The program involves conducting an extensive assessment of the Commonwealth's current sex offender management policies, procedures and practices at both the state and local levels of government, including local law enforcement. The intent of the program is to initiate best practices and to create models that can be shared in other Massachusetts communities.

Based on the results of our review, we have made several recommendations that, if adopted, would improve SORB's oversight of the sex offender program. The recommendations are summarized as follows:

- Continue to bill and collect the sex offender registry fee.
- Work with the Executive Office of Public Safety to propose legislation which would reinstate the retained revenue account to help expedite the final classification of sex offenders.
- Consider implementing the sex offender registration process prior to offenders release from prison.
- Initiate contact with government officials with the intent of opening dialogue on a national basis to establish a more universal definition of a sex offender, thereby eliminating conflicts between state definitions.
- Continue to work with local law enforcement agencies on the importance of SORB's initiatives, the Post Classification Address Audit to increase sex offender's registration compliance, and to verify that sex offenders are actually living where they say they are.
- Request that the EOPS revisit the study of law enforcement costs necessary to support the Sex Offender Registry. Use the study to help in seeking aid for communities to create a more proactive environment to monitor registered offenders.
- Consult with the EOPS and the court system on the viability of using state facilities for hearings and consider filing legislation to assist in designating sites for hearings.
- Determine the underlying reasons for the large number of cases that are being dismissed by the judiciary and undertake to work with the judicial system to rectify the weakness.

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INTRODUCTION

Background

Chapter 29 of the Acts of 1996 established the Sex Offender Registry Board (SORB) by inserting sections 178C through 178P, inclusive, to Chapter 6 of the Massachusetts General Laws (MGL). This legislation was enacted in accordance with the 1994 Federal Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, 42 USC, Section 14071, which required states to implement a sex offender and crimes against children registry.

After a series of legal challenges and subsequent injunctions against the SORB, the legislature enacted Chapter 74 of the Acts of 1999, An Act Improving the Sex Offender Registry and Establishing Civil Commitment and Community Parole Supervision for Life for Sex Offenders.”

This Act amended Chapter 6 of the General Laws and responded to issues raised by the Massachusetts Supreme Judicial Court (SJC). More specifically, Section 1 of the Acts, stated:

Section 1: The general court hereby finds that: (1) the danger of recidivism posed by sex offenders, especially sexually violent offenders who commit predatory acts characterized by repetitive and compulsive behavior, to be grave and that the protection of the public from these sex offenders is of paramount interest to the government; (2) law enforcement agencies' efforts to protect their communities, conduct investigations and quickly apprehend sex offenders are impaired by the existing lack of information known about sex offenders who live within their jurisdictions and that the lack of information shared with the public may result in the failure of the criminal justice system to identify, investigate, apprehend and prosecute sex offenders; (3) the system of registering sex offenders is a proper exercise of the commonwealth's police powers of regulating present and ongoing conduct, which will provide law enforcement with additional information critical to preventing sexual victimization and to resolve incidents involving sexual abuse promptly; (4) in balancing offenders' rights with the interests of public security and safety, the release of information about sex offenders to law enforcement before the opportunity for an individual determination of the sex offender's risk of reoffense is necessary to protect the public safety; (5) registration by sex offenders is necessary in order to permit classification of such offenders on an individualized basis according to their risk of reoffense and degree of dangerousness; (6) the public interest in having current information on certain sex offenders in the hands of local law enforcement officials, including prior to such classification, far outweighs whatever liberty and privacy interests the registration requirements may implicate. Therefore, the commonwealth's policy, which will bring the state into compliance with federal requirements, is to assist local law enforcement agencies' efforts to protect their communities by requiring sex offenders to register and to authorize the release of necessary and relevant information about certain sex offenders to the public as provided in this Act.

Section 2 of the Act amended Chapter 6 of the MGL by striking out sections 178C to 178P, inclusive, and inserting in place thereof new sections 178C to 178P, inclusive.

Chapter 6, Section 178K of the MGL states, in part, as follows:

Section 178K: (1) There shall be, in the criminal history systems board, but not subject to its jurisdiction, a sex offender registry board which shall consist of seven members who shall be appointed by the governor for terms of six years, with the exception of the chairman, The board shall include one person with experience and knowledge in the field of criminal justice who shall act as chairman; at least two licensed psychologists or psychiatrists with special expertise in the assessment and evaluation of sex offenders and who have knowledge of the forensic mental health system; at least one licensed psychologist or psychiatrist with special expertise in the assessment and evaluation of sex offenders, including juvenile sex offenders and who has knowledge of the forensic mental health system; at least two persons who have at least five years of training and experience in probation, parole or corrections; and at least one person who has expertise or experience with victims of sexual abuse.

The chairman shall be appointed by and serve at the pleasure of the governor and shall be the executive and administrative head of the sex offender registry board, shall have the authority and responsibility for directing assignments of members of said board and shall be the appointing and removing authority for members of said board's staff.

The SORB is an administrative agency within the Executive Office of Public Safety. The SORB works closely with local law enforcement agencies and the State Police to ensure the proper registration of sex offenders who live, work or attend an institution of higher education in Massachusetts. In addition to registration responsibilities, the SORB is the sole agency responsible for the classification of each registered sex offender.

The SORB Annual Report for 2003 states its mission as:

The Sex Offender Registry Board is a criminal justice agency within the Executive Office of Public Safety that is responsible for registering, classifying and providing community notification on certain convicted sex offenders who live, work or attend an institution of higher learning in the Commonwealth of Massachusetts.

It states its vision as:

The SORB must educate the public about sex offenders by providing community notification on dangerous offenders that pose a high risk to recidivate. The SORB must utilize a multidisciplinary approach to ensure safe and proper sex offender management in the community. The SORB must collaborate with leaders in law enforcement, criminal justice, victim services, sex offender treatment, local government and concerned citizens to develop proper sex offender management strategies.

The SORB classification of an offender determines if and how the sex offender's information may be released to the public. Currently, there are four classification levels for any sex offender under the SORB process. Level 0 is the SORB's unofficial classification for sex offenders known to the SORB who either have not registered or have registered but have not yet been classified. There are

currently 3,837 persons classified as Level 0 offenders. Level 1 is the least onerous classification that the SORB can assign a convicted or adjudicated sex offender. The SORB assigns Level 1 when it determines that an offender presents a low risk to re-offend and a low risk of dangerousness to the public. There are currently 2,487 persons registered in SORB's database with a Level 1 classification. Level 2 is the classification given by SORB to convicted or adjudicated sex offenders who SORB has determined present a moderate risk to re-offend and have a moderate risk of dangerousness. There are currently 5,119 persons registered in SORB's database as Level 2 sex offenders. Level 3 is the classification given by SORB to convicted or adjudicated sex offenders who SORB has determined present a high risk to re-offend and a high risk of dangerousness. There are currently 1,463 Level 3 sex offenders registered in SORB's database. In addition, there are 2,919 incarcerated individuals that the SORB will have to process upon their release. Sex Offenders classified as Level 2 or Level 3 are required to appear before the police department where the offender resides, either annually or every 90-days, depending upon the person's living status. In addition, Level 3 offenders are posted on the Internet.

MGL, Chapter 6, Section 178D requires the SORB to disseminate Level 3 sex offender information as stated:

... the board shall make the sex offender information contained in the sex offender registry, delineated below in subsections (i) to (viii), inclusive, available for inspection by the general public in the form of a comprehensive database published on the internet, known as the "sex offender internet database"; provided, however, that no registration data relating to a sex offender given a Level 1 or Level 2 designation.

Chapter 6, Section 178D also states, in part, as follows:

The sex offender registry board, known as the board, in cooperation with the criminal history systems board, shall establish and maintain a central computerized registry of all sex offenders required to register pursuant to sections 178C to 178P, inclusive, known as the sex offender registry.

The SORB maintains two databases. Both databases are housed at the Criminal History Systems Board (CHSB) on the Criminal Justice Information System (CJIS). The CHSB maintains a dedicated server for the SORB. The first database is the Sex Offender Register (SOR), which is accessed by the SORB and all 351 police departments within the Commonwealth. The second database is the Sex Offender Internet Database, as required by Chapter 6, Section 178D (e). This database is created from information contained on the SOR database, but only includes information allowed by statute to be disseminated on the Internet. A duplicate Sex Offender Internet Database is

maintained on a third party website. The SORB contracts with this third party because the database on CJIS is not capable of handling the volume of requests on the database. Both databases are updated from the same Batch program and are identical.

As of November 1, 2005, there were 15,825 sex offenders on the SORB database. Of these, 7,858 were registered and classified; 1,465 were registered and in process of being classified; 3,574 were incarcerated; and 2,928 were in violation.

Evolution of the Sex Offender Registry Board

Although initially established in 1996, the SORB did not begin the process of registration and classification until June 2001. The board did not conduct its first hearing requested by a sex offender to review a classification until August of 2002. These delays occurred because after the Massachusetts General Court adopted the sex offender registration statute in 1996, it almost immediately was challenged by a series of complaints:

1. Doe v. Attorney Gen. (Doe No.1) 425 Mass. 210, 680 N.E. 2d [92] (1997)
2. Doe v. Attorney Gen. (Doe No. 2) 425 Mass. 217, 680 N.E. 2d 97 (1997)
3. Doe v. Attorney Gen. (Doe No. 3) 426 Mass. 136, 686 N.E. 2d [1007] (1997)
4. Doe, Sex Offender Registry Board No. 972 v. Sex Offender Registry Board (Doe No. 4), 428 Mass 90, 697 N. E. 512 (1998)
5. Doe v. Attorney Gen. (Doe No. 5) 430 Mass. 155, 715 N. E. 2d 37 (1999) (See Appendix I for summaries of the Court decisions.)

Some of the more important court decisions were:

- The SJC ruled to affirm a lower court issuance of a preliminary injunction preventing release of sex offender information and noted that the disclosure of the plaintiff's sex offender registry information pursuant to Section 178 (I) imposes punishment in a constitutional sense.
- First, the court determined that a sex offender's constitutional rights required that an evidentiary hearing should be held before the sex offender registry board. Second, it held that "the appropriateness of an offender's risk classification must be proved by a preponderance of the evidence, and that the board must make specific, written, detailed, and individualized findings to support the appropriateness of each offender's risk classification."
- The court in its opinion determined that "[t]he burden of registration, combined with public dissemination provisions applicable to all registrants, triggers liberty and privacy interests ..."

Following this latest SJC opinion, the Massachusetts General Court repealed the 1996 statute and enacted the current 1999 statute, apparently in an effort to comply with the concerns raised by the SJC in the foregoing rulings. Similar to the 1996 statute, the current law was almost immediately challenged.

In *Roe v. Attorney Gen.* 434 Mass. 418, 750 N.E. 2d 897 (2001), the judge enjoined the defendants SORB from requiring the plaintiffs to comply with the registration provisions of the 1999 statute without first affording them an individualized evidentiary hearing as to their present dangerousness. The defendants appealed, and the SJC granted the application for direct appellate review. The SJC, after careful analysis of the 1999 statute, concluded the mail-in registration and police notification did not violate the due process clause, and on June 28, 2001 vacated the preliminary injunction issued by the Superior Court.

There were three additional major changes made to Chapter 6 of the MGL. Chapter 77 of the Acts of 2003, signed into law September 30, 2003, incorporated “The Campus Sex Crimes Prevention Act of 2000,” the federal statute which required the registration of all offenders who either work or attend an institution of higher learning in Massachusetts, and also mandated the registration for conviction of the newly enacted crime of enticing a child.

Chapter 140, Section 5 of the Acts of 2003, which took effect November 26, 2003, amended Chapter 6, Section 178D by providing for the posting of Level 3 sex offenders on the internet. This legislation resulted from a preliminary injunction enjoining the posting to the internet issued in April, 2003 following the announcement that posting was to begin on May 15, 2003. In addition, this legislation closed a loophole in the statute by mandating incarcerated individuals register two days **prior** to their release. Previously, the law mandated registration two days **after** release.

Finally, Chapter 26, Section 12, of the Acts of 2003, added Section 178Q, Sex Offender Registry Fee, to Chapter 6. This section required the SORB to collect a \$75 fee upon the final classification of a sex offender and each year upon re-registration.

Not until all of these court challenges were decided and Chapter 6 of the MGL was amended was SORB able to conduct its business as intended when established in 1996.

Audit Scope, Objectives, and Methodology

In accordance with Chapter 11, Section 12 of the General Laws, the Office of the State Auditor (OSA) conducted an audit of the Sex Offender Registry Board (SORB) from inception through November 30, 2005. Our audit was conducted in accordance with applicable generally accepted government auditing standards. The purpose of our review was to determine whether the SORB is efficiently and effectively managing its funds and activities; evaluate the adequacy of internal controls over financial and management activities; determine whether the SORB is complying with applicable laws and regulations; evaluate procedures SORB has in place to ensure the receipt and recording of all relevant information about sex offenders; evaluate the level of accuracy of information contained in the files and on the Sex Offender Registry; determine the level of information sharing with other state and federal agencies, determine if the information is consistent, accurate, and up-to-date; and determine whether there is adequate, defined and implemented protocol for sharing information with other state's sex registry boards and the National Sex Offender Registry.

Our audit procedures consisted of the following:

- Reviewed applicable laws, regulations, internal control plan, organization chart, and policy and procedures to determine whether the SORB is efficiently and effectively managing its funds and activities.
- Interviewed SORB management personnel and key employees to establish the level of compliance with stated policies, procedures, and stated goals.
- Obtained and reviewed SORB files for completeness, accuracy of information, comparison with information on the database, documentation of the timeliness of the classification process, and compared information with that posted on the Internet.
- Evaluated procedures SORB has in place to ensure the receipt and recording of all relevant information about sex offenders.
- Reviewed and determined the level of information sharing with other state agencies and the federal government, and determined if the information is consistent, accurate, and up-to-date.
- Obtained and reviewed information and results of SORB initiatives to increase compliance of sex offender registrations and the accuracy of information received about the location of sex offenders.

Our audit disclosed that, except as noted in the Audit Results section of this report, the SORB was in compliance with all applicable laws, regulations, policies and procedures, and was performing its duties in a satisfactory manner.

AUDIT RESULTS

1. SORB NOT COLLECTING OFFENDER REGISTRY FEE

According to Chapter 6, Section 178Q of the Massachusetts General Laws, the Sex Offender Registry Board is required to collect an annual registration fee from each offender, as follows:

The sex offender registry board shall assess upon every sex offender a sex offender registration fee of \$75, herein after referred to as a sex offender registry fee. Said offender shall pay said sex offender registry fee upon his initial registration as a sex offender and annually thereafter on the anniversary of said registration.... A sex offender's duty to pay the fee established by this section shall only terminate upon the termination of said offender's duty to register as a sex offender as set forth in section 178G.

Section 178Q further states:

The sex offender registry board may waive payment of said offender registry fee if it determines that such payment would constitute an undue hardship on said person or his family due to limited income, payment status, or any other relevant factor. Any such waiver so granted shall be in effect only during the period of time that said person is determined to be unable to pay the sex offender registry fee.

Additionally, Section 178Q states:

Said sex offender registry fee shall be collected by the sex offender registry board and shall be transmitted to the treasurer for deposit into the General Fund.

On July 1, 2005, the SORB stopped billing and collecting the \$75 sex offender registry fee. According to the SORB's Chairman, the SORB was advised by Administration personnel not to collect the fee due to several reasons. The primary reason given was the Governor's veto of the Sex Offender Registry Fees Retained Revenue Account No. 8000-0225. This account would have allowed SORB to expend an amount not to exceed \$750,000 from revenues collected from sex offender registration fees for the purpose of expediting the final classification of sex offenders and reducing the current case backlog. It was further provided that \$200,000 shall be expended for interagency service agreements between SORB and the various district attorneys in order to defray the costs incurred by the district attorneys from proceedings relative to the civil commitment of sexually dangerous persons, including, but not limited to, probable cause hearings and trials initiated pursuant to Sections 12 to 15, inclusive, of Chapter 123A of the General Laws. Based upon this veto, personnel within the SORB incorrectly believed the billing and collecting of the sex registry fee was eliminated. Finally, the SORB was told that the

Governor filed legislation, House Bill 4235, to repeal the sex offender registry fee, because he believed it to be a disincentive for sex offenders to register.

When informed by the OSA that the requirement to bill and collect the fee was still in effect, the SORB sought advice from Administration personnel. In a November 10, 2005 email from a Fiscal Policy Analyst within the Executive Office for Administration and Finance to the Director of the Department of Correction's Consolidated Fiscal Unit, the Analyst stated:

The bill to waive the fee is HD4620, [sic House Bill 4235], and it has not gone before committee yet, therefore it is my understanding that even though there is no longer a RR account at SORB you should still be collecting the fee, until which time HD4620 has passed.

The SORB subsequently mailed 3,439 letters dated November 16, 2005 to offenders informing them of the continued need to pay the \$75 fee, per Chapter 6, Section 178Q. A Sex Offender Registration Fee Invoice with instructions accompanied this mailing and the SORB will begin enclosing invoices with the December re-registration letters.

Recommendation

The SORB should continue to bill and collect the sex offender registry fee in accordance with Chapter 6, Section 178Q. The SORB, in concert with the Executive Office of Public Safety, should work to reinstate the retained revenue account, if appropriate, to help expedite the final classification of sex offenders.

Auditee's Response

Upon first indication that the SORB should collect the \$75 registration fee, the SORB immediately took corrective action by contacting nearly 3,500 sex offenders to obtain the fees missed for the five months that the fee was not collected. All sex offenders required to pay the registration fee are now notified of the \$75 obligation by mail in conjunction with the registration notices and the annual re-registration letters.

2. EXTERNAL FACTORS THAT AFFECT SORB'S PERFORMANCE

In its July 2005 publication, *Government Service Efforts and Accomplishments, Performance Reports: A Guide to Understanding*, the Government Accounting Standards Board (GASB) defined explanatory factors in a performance audit report as: a variety of information about the environment and other factors that might affect an organization's performance. They can be

factors substantially outside the control of the entity, or factors over which the entity has some control.

Our review of the SORB disclosed several explanatory factors that affected the SORB in the implementation of its statutory mandate, as follows:

a. Registering and Classifying Sex Offenders from the Board of Probation Database (15 Year Look-Back Requirement)

Chapter 6, Section 178C of the MGL defines a “sex offender” as:

a person who resides, 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 department of youth services for such a conviction or adjudication or a person who has been adjudicated a sexually dangerous person under section 14 of chapter 123A, as in force at the time of adjudication, or a person released from civil commitment pursuant to section 9 of said chapter 123A, whichever last occurs, on or after August 1, 1981.

According to SORB officials, the initial Sex Offender Registry, which was defined as the “collected information and data pursuant to sections 178C to 178P, inclusive,” was comprised from the Board of Probation (BOP) database and numbered about 19,000 offenders. In its initial attempts to contact and register sex offenders, the SORB did not receive a response from many of the sex offenders in their database. In subsequent attempts to contact the offenders, the SORB determined that many of the sex offenses were committed in the 1960’s and 1970’s, and many of the offenders did not even know of their requirement to register. In addition, some of the offenders were found to have pleaded to a lesser crime and were not required to register. After the SORB made numerous attempts to locate offenders, the Violent Fugitive Arrest Squad (VFAS) of the state police began trying to find these offenders in November 2003. The VFAS found that many of the offenders in the sex offender registry had moved out of state, had died, were again incarcerated, or had been deported. By October 5, 2005, the VFAS had located 3,785 of these offenders, but there were still 2,372 sex offenders from the original database that had not been located.

The 15-year look-back requirement also resulted in a backlog of cases waiting to be classified. Our review of the SORB files revealed that the time between when the sex offender is first registered and when the classification process begins was taking up to a year. For example, an

offender who registered on April 23, 2004, did not have his classification process initiated until March 31, 2005. However, by the completion of our fieldwork, the SORB had eliminated the backlog and was initiating the classification process within a few days. Our review of the number of offenders registered and waiting for the classification process to begin showed that on February 28, 2005, there were 539 cases pending, by October 31, 2005, the backlog had decreased to 34 cases pending, and by November 30, 2005, there were none.

Auditee's Response

The SORB was legally permitted to begin the registration and classification process in 2001, effectively making the look-back period more than 20 years. The SORB began to register more than 20 years of sex offenders immediately, and to provide each the opportunity to have an evidentiary hearing for classification purposes. Sex offenders now begin the classification process within 24 hours of registration. There is no backlog at the SORB.

b. Delays in Classification of Sex Offenders Due to Hearing Process and Limited Number of Hearing Sites

Another stumbling block for the SORB has been with the hearing process itself. Many offenders, (approximately 40%), request hearings on their classifications. This may be done for a couple of reasons; first, the hope of being reclassified to a lower sex offender classification, primarily from a Level 3 to a Level 2; or second, to delay notifying the public of an offender. The hearing process prohibits notifying the public about a sex offender until after the hearing process has been completed.

Our review of a sex offender file showed that a Level 3 sex offender was classified on February 10, 2005 and requested a hearing on February 23, 2005. The hearing was held October 20, 2005 and became final November 4, 2005, or nine months after the initial request for a hearing. This Level 3 sex offender was in the community for 14 months, from the time of his release from incarceration in September 2004 to final classification in November 2005, without community notification. During our review, we met with SORB officials to review and discuss the hearing process. The SORB officials stated that many factors affect the amount of time required to complete the hearing process, however, the main factor was the effects of court rulings concerning evidentiary hearings before final classification. SORB management stated the hearing process is long and detailed.

There are currently six board members, two contract-hearing examiners, and the Assistant Director of Hearings to conduct hearings, a reduction of three hearing examiners since 2002. The process of preparing for a hearing is similar to court hearings. The SORB is bound by due process and a preponderance of evidence. If a sex offender files an appeal in the courts, the hearings must survive Superior Court review. The first hearing was held in August of 2002, and about 50 hearings were heard that year. The number of hearings in 2003 increased to about 300, while about 1,000 hearings were heard during 2005. Each of the nine hearing officers handles 15 - 18 per month. Sex offenders requesting a hearing in December 2005 were being scheduled for April and May. There are a limited amount of available sites for the hearings, because there is no funding for locations and most sites don't want offenders in the area. In addition, 35% of offenders requesting a hearing need appointed counsel, and this can add up to four or five months to the process. According to Sex Registry officials, this happens because few lawyers want to take these cases, due to the reimbursement amount and the fact that few lawyers want to represent sex offenders. In addition to problems with locations, hearings can be delayed because of the same problems experienced by courts; scheduling witnesses and lawyers, weather, sickness, etc. Complicated cases can take up to a year before a final classification. Presently, 964 cases are in the hearing stage.

Recommendation

The SORB should consult with the Executive Office of Public Safety and court system officials on the viability of using state facilities for hearings and consider filing legislation to assist in designating sites for hearings.

Auditee's Response

The SORB hearings are time and labor intensive, but the law and the courts have required these evidentiary hearings to provide due process to offenders. The SORB holds hearings throughout the Commonwealth at various facilities to ensure statewide accessibility to the right for a hearing. The SORB does not have dedicated hearing space, and it relies on the generosity of law enforcement and criminal justice agencies to provide hearing rooms. The SORB is working with the Executive Office of Public Safety to locate additional hearing locations. Moreover, the SORB is in the final stage of negotiations to secure a hearing facility that is located less than one mile from the office headquarters.

c. Differing Definitions of Sex Offenders Between States

Our review disclosed that each state is governed by its own laws, and that a registered sex offender required to register in one state may not have to register in another. For example, one of the sex offenders reviewed by the SORB after arriving at Camp Edwards from New Orleans was convicted of prostitution, a sex offense requiring registration in New Orleans, but not in Massachusetts. In another case, Massachusetts registers juvenile sex offenders, while Vermont does not. This means that a convicted juvenile sex offender from Vermont can move into or go to school in Massachusetts without Massachusetts being notified by Vermont of his offense. Therefore, a sex offender moving into or attending college in Massachusetts, although required to register in Massachusetts, can go unregistered without the knowledge of the SORB and local law enforcement.

Another example would be a registered sex offender leaving Massachusetts to go to a state that the offender would not be considered an offender. Although the law requires Massachusetts to notify the state that the offender is moving into, because he/she would not be considered an offender in the new state, no registration takes place. If the person then decides to move back to Massachusetts, there is no requirement of the other state to notify Massachusetts, because he/she is not considered an offender in the state he/she is leaving. The burden of registering falls solely on the offender. There is no way for Massachusetts (SORB or local law enforcement officials) to know that this offender has moved back.

Recommendation

The SORB should initiate contact with government officials with the intent of opening dialogue on a national basis to establish a more universal definition of a sex offender, thereby eliminating conflicts between state definitions.

Auditee's Response

The SORB recognizes the difficulties caused by the lack of a uniform, national definition of sex offender. Each state has its own criminal code that criminalizes and categorizes behavior differently – a misdemeanor in one state may be a felony in another, and the elements of crimes are not consistent. The SORB further recognizes that there is a lack of national standards relative to processes for registration, classification and community notification. The SORB works closely with various jurisdictions, particularly neighboring states. Each state, however, has its own legislation that may comply with federal law, but it is vastly different from state to state.

d. Penalties Not Always Enforced for Failure to Register

Penalties for the failure of a sex offender to register are as follows:

Chapter 6, Section 178H states:

(a) A sex offender required to register pursuant to this chapter who knowingly: (i) fails to register; (ii) fails to verify registration information; (iii) fails to provide notice of a change of address; or (iv) who knowingly provides false information shall be punished in accordance with this section.

(1) A first conviction under this subsection shall be punished by imprisonment for not less than six months and not more than two and one-half years in a house of correction nor more than five years in a state prison or by a fine of not more than \$1,000 or by both such fine and imprisonment.

(2) A second and subsequent conviction under this subsection shall be punished by imprisonment in the state prison for not less than five years.

(b) Violations of this section may be prosecuted and punished in any county where the offender knowingly: (i) fails to register; (ii) fails to verify registration information; (iii) fails to provide notice of a change of address; or (iv) knowingly provides false information.

Although Chapter 6, Section 178H specifically details penalties for failure to register, our review noted that the courts are not enforcing the state statutes that specify the consequences for failing to register. According to SORB, records show that of 2,766 arraignments for failure to register, 1,260 cases were dismissed, 606 resulted in convictions, 127 were not prosecuted, 23 were found not guilty, and 750 are still pending charges. Even when convicted, the courts do not impose the penalties in the statutes and most often only require the offender to register. In many cases, these same offenders again become in violation when they fail to re-register annually or move without notifying the SORB as required.

Registration and re-registration of individuals who have been convicted or adjudicated as sex offenders under the law is one of the principal elements to the SORB's mission. In order for the system to be successful, the SORB needs the co-operation of the local police departments to apprehend and the judicial system to prosecute to the fullest extent that the law permits those individuals who fail to register and/or have repeatedly failed to maintain their registration with the SORB. Due to the large number of cases that have been dismissed without any court imposed sanctions, other than to have the sex offender register with SORB, there is less and less

incentive for law enforcement to expend their resources to apprehend sex offenders who are in violation of the registration requirements under the law.

Recommendation

SORB should determine the underlying reasons for the large number of cases that are being dismissed by the judiciary and undertake to work with the judicial system to rectify this weakness. Convicted or adjudicated sex offenders who fail to register, and particularly those individuals who repeatedly fail to register, must be made aware through judicial sanctions that there are legal consequences for their actions in not complying with the law.

Auditee's Response

The SORB will continue to host and attend various meetings, trainings and conferences to educate and to assist our partners in the common goal of effective sex offender management.

3. SORB INITIATIVES TO INCREASE SEX OFFENDER REGISTRATION COMPLIANCE AND ADDRESS VERIFICATION

Our audit noted that SORB has undertaken several initiatives to increase compliance with sex offender registration and requirements. To increase the accuracy of the database, Chapter 26, Section 227 of the Acts of 2003 has been enacted which added Section 22(J) to Chapter 90 of the MGL. This law requires that the Registry of Motor Vehicles (RMV), upon notification from the SORB that a sex offender is in violation of registration, “shall suspend or prohibit issuance or renewal of a license, learner’s permit, right to operate a motor vehicle or certificate of motor vehicle registration held by such sex offender.” Since the creation of this law, the RMV has issued some 1,304 suspensions, which in turn has resulted in 1,097 suspensions being lifted following the subsequent sex offender registrations.

In addition, in August 2004, at the direction of the Secretary of the Executive Office of Public Safety, the SORB consulted with several police departments to develop and implement a program statewide that would encourage police departments to adopt a more proactive approach to tracking and managing the sex offenders known to be living, working, or attending institutions of higher learning within the jurisdiction of their department. The SORB implemented the Post Classification Address Audit of Registered Sex Offenders program allowing police departments to monitor and record offender compliance with registration requirements for Level 3 offenders by conducting random audits on the registered addresses

within their jurisdiction. In July 2005, the SORB expanded the program by requesting that each police department verify each address, (based upon a current address listing of Level 2 and Level 3 sex offenders as registered by that department, or the department in which the offender resides, as well as a form to record the results of an address audit), as recorded in the official SOR database, for each Level 2 or Level 3 offender in their jurisdiction.

Although this program was initiated for the purpose of better monitoring and tracking of sex offenders, its results have been somewhat mixed, as 17 local police departments out of the 180 communities with Level 3 sex offenders are either not participating, or are only marginally participating, in the audit program. Results from those 17 police departments indicate that only 18 of the 170 Level 3 sex offenders had addresses confirmed. A further indication of some reluctance by local police departments can be summarized by the following comment made by a superintendent of a large Massachusetts city:

My biggest concern is that this has really turned into an unfunded mandate for us. I have assigned a full-time officer and a part-time clerical person working on that job, and we don't see any way out of that. It's taking an officer off the street.

Recommendation

SORB should continue to work with local law enforcement agencies on the importance of its initiatives, and the Post Classification Address Audit, which will increase compliance for sex offender registration. Additionally, the cost factor to do so should be further reviewed, as is discussed in the following result.

Auditee's Response

The SORB will continue to work with State and local law enforcement agencies to increase offender registration compliance, and to verify the veracity of registration addresses. The SORB will continue its partnerships with the RMV and the State Police VFAS to ensure optimal registration compliance and up-to-date registration information. The SORB also will continue to utilize third party private technology data firms that provide address leads and address verification services.

4. OTHER MATTERS – POLICE DEPARTMENTS' COSTS RELATIVE TO THE ESTABLISHMENT OF THE SEX OFFENDER REGISTRY ACT

Section 18 of Chapter 74 of the Acts and Resolves of 1999, "An Act Improving the Sex Offenders Registry and Establishing Civil Commitment and Community Parole for Life for Sex Offender," enacted as an emergency law on September 10, 1999, provides:

The Secretary of Public Safety shall conduct a study relative to the costs to municipal and state police departments relative to the establishment of the sex offender registry. Such study shall include, but not be limited to, the costs of hiring additional personnel, training, technology system upgrades and dissemination of information to the public. The Secretary shall file the results of such study with the house and senate committees on ways and means not later than February 1, 2000.

To determine police departments' costs relative to the establishment of the Act, the Executive Office of Public Safety (EOPS) utilized a number of sources. Specifically, EOPS met with a number of small focus groups consisting of police chiefs (or their representatives) from small, medium and large cities and towns from geographically diverse areas throughout the Commonwealth. Through these meetings, EOPS was able to identify varied establishment costs facing police departments in light of the Act. These costs were identified through discussions about requirements of the Act, and through costs identified from the application of the previous Massachusetts sex offender registry law. EOPS received additional financial and logistical information from cities and towns who were unable to participate in the focus groups.

In addition, in August of 1999, the National Criminal Justice Association, supported by the United States Department of Justice, Bureau of Justice Assistance, released a report entitled *Sex Offender Registration and Notification Costs Survey Results*. This report studied establishment costs relative to various states' sex offender registry laws, and helped to further identify costs relative to the implementation of the Act. EOPS also received significant input from the Sex Offender Registry Board.

As a result, EOPS studied the costs to municipal and state police departments relative to the establishment of the Act, to the extent feasible at that time. It is critical to note that the bulk of these costs stem from the personnel-hours necessary to disseminate information regarding Level 3 offenders (community notification) and the personnel-hours necessary to answer public inquiries concerning Level 2 and 3 offenders (citizen requests). These personnel-hours can only be calculated by first determining the number of sex offenders who will be classified as Level 1, Level 2, or Level 3 offenders in each jurisdiction.

a. Training Costs

An estimated range of SORB training costs for small departments (population under 10,000) medium departments (population over 10,000, under 50,000) and large departments (population over 50,000) appears as follows:

Department Size	SORB Training Costs Per Department
Small	\$125 - \$400
Medium	\$300 - \$700
Large	\$500 - \$1,344

As indicated above, these numbers represent “initial” training costs. Most small and medium departments, particularly those with low sex-offender populations, will not require extensive, additional training time. Some medium and larger departments, however, will need to train additional personnel. In short, for many departments the proper implementation of the Act will require added personnel-hour costs beyond the SORB training costs listed above. Again, these costs will vary by department size, sex offender population, and each department’s method of implementing the Act.

b. Dissemination of Information to the Public

The bulk of costs to police departments relative to the establishment of the sex offender registry will stem from disseminating information to the public. The Act requires police departments to disseminate information to the public in two ways. First, police are required to provide information concerning Level 2 and Level 3 offenders to citizens who inquire at the police department as to registered sex offenders living or working in their jurisdiction (“citizens requests”), General Laws, Chapter 6, Section 178J. Second, for all Level 3 offenders working or residing in their jurisdiction, police must implement a “community notification plan” to notify organizations in the community which are likely to encounter such sex offenders, and to notify individual members of the public who are likely to encounter such sex offenders (“community notification”), General Laws, Chapter 6, Section 178K.

Since citizens’ requests apply solely to sex offenders classified as Level 2 and 3, and community notification applies solely to sex offenders classified as Level 3, the breakdown of dissemination costs is inextricably intertwined with the SORB’s classification process. Also, dissemination costs are dependent upon a variety of factors. Initially, police departments are given wide discretion under the Act as to how to implement their community notification plans. Therefore, police department policy decisions on how to disseminate information will widen the range of costs per jurisdiction. Furthermore, the costs of community notification are mainly predicated upon the population of the jurisdiction and the number of sex offenders working or residing in

the jurisdiction. A view of proposed community notification ideas from some small, medium, and large jurisdictions demonstrate a number of different costs relative to dissemination.

c. Technology System Upgrades

Most police departments have access to the state Sex Offender Registry through the Criminal Justice Information System (CJIS). The Criminal History Systems Board will provide CJIS terminals to police departments who request, but do not already have, such equipment. The initial programming costs associated with accessing sex offender information through CJIS will fall strictly to the SORB.

While many communities have indicated that no technology system upgrades are required, others have expressed a desire to upgrade their system to properly implement the Act. Estimated costs to communities for technology upgrades ranged from \$2,000 to in excess of \$10,000 for additional terminals which can accommodate a large volume of citizen requests and/or computers with advanced hardware and software packages.

d. Additional Costs

Additional costs to police departments relative to the establishment of the sex offender registry identified by the focus group included registration verification costs, personnel hours needed to provide information to the SORB, and investigation costs.

Although the EOPS study explored the fiscal policy implications of the Act and sought to responsibly identify and enumerate the types of costs necessary to equip police departments with the tools to implement this far-reaching public safety legislation, the study did not attempt to set forth speculative, random, or fixed costs. The study concluded that upon further classification of sex offenders, actual, definitive costs relative to the establishment of the Registry Act may become apparent. Until then, a complete and accurate breakdown of the costs to municipal and state police departments relative to the establishment of the sex offender registry is not feasible at the present date.

The EOPS volunteered to supplement this study upon request from the Legislature. As of the date of our review, no such supplement has taken place.

Recommendation

The Sex Offender Registry Board should request that the Executive Office of Public Safety once again visit the topic of studying law enforcement costs relative to continued establishment and maintenance of the Sex Offender Registry. This study should be used to help in seeking aid for communities to create and foster a more proactive environment to monitor registered offenders.

Auditee's Response

The Executive Office of Public Safety is currently working on a two-year grant awarded by the U.S. Department of Justice, Bureau of Justice Assistance. The program involves conducting an extensive assessment of the Commonwealth's current sex offender management policies, procedures and practices at both the state and local levels of government, including local law enforcement. This program includes a study of three pilot sites: Boston, Attleboro and North Quabbin (Athol, Erving, New Salem, Orange, Petersham, Phillipston, Royalston, Warwick and Wendell), and local law enforcement will provide input as to all aspects of sex offender management in the community, including matters that pertain to the implementation of the sex offender registry law. The intent of the program is to initiate best practices and to create models that can be shared in other Massachusetts communities.

APPENDIX I**Massachusetts Supreme Judicial Court Rulings
Affecting the SORB****Doe v. Attorney General (Doe No. 1) 425 Mass. 210,680 N.E. 2d [92] (1997)**

Argued March 4, 1997
Decided June 12, 1997

The Massachusetts Supreme Judicial Court (SJC) in Doe No. 1 opined that the 1996 Act permitted the disclosure of certain juvenile records, despite the confidentiality afforded such records under the delinquency statute.

Doe v. Attorney General (Doe No. 2) 425 Mass. 217, 680 N.E. 2d 97 (1997)

Argued March 4, 1997
Decided June 12, 1997

The SJC ruled in Doe No. 2 that the disclosure of the plaintiff's sex offender information imposes punishment in violation of the constitutional prohibitions against double jeopardy and ex post facto laws. The defendants argued that there is no evidence that the plaintiff would be harmed by any Section 178(I) disclosure. The SJC noted, however, that the possibility existed that a person with no remedial motive could obtain sex offender registry information and reveal it to the plaintiff's detriment. The potential harm to the plaintiff in his employment or in his community or both from the use of such information for other than personal protection is substantial.

The SJC ruled to affirm the lower court's issuance of a preliminary injunction preventing release of such information.

Doe v. Attorney General (Doe No. 3) 426 Mass. 136, 686 N.E. 2d [1007] (1997)

Argued September 5, 1997
Decided November 17, 1997

The SJC held in Doe No. 3 that a Level 1 offender had a constitutionally protected liberty and privacy interest implicated by the registration scheme that resulted in the public disclosure of information about him. The plaintiff contends that the Act's automatic classification of him as a

Level 1 sex offender deprives him of procedural due process in violation of the State and Federal Constitutions. The court concluded that the process due entitled the plaintiff with an opportunity for a hearing to determine whether he must register, and if so, whether his sex offender information should be available to the public on request. The SJC held that a person's liberty and privacy interest entitled him or her to an evidentiary hearing before sex offender information concerning him or her may be disclosed.

The SJC ruled that an injunction was warranted in order to enjoin the defendant from requiring the plaintiff's to register under the sex offender act and from distributing or releasing any information concerning the plaintiff pursuant to that Act, in the absence of a determination following a hearing concerning the plaintiff's threat, if any, to other.

Doe, Sex Offender Registry Board No. 972 v. Sex Offender Registry Board (Doe No. 4) 428
Mass. 90, 697 N.E. 512 (1998)

Argued February 2, 1998

Decided July 24, 1998

In Doe No. 3 the Massachusetts Superior Court had earlier ruled that individuals classified as Level 3 offenders have constitutionally protected liberty and privacy interests sufficient to require evidentiary hearings before a final classification and before they may be required to register and their registration information may be disseminated to the public. The Superior Court also ruled that the sex offender registry board has the burden of proving that any risk classification is appropriate by a preponderance of the evidence, and that Section 178M of the Act unconstitutionally placed the burden of proof on offenders. The SJC concurred with the lower court and opined that a sex offender's constitutional rights require that an evidentiary hearing should be held before the sex offender registry board, and also held the appropriateness of an offender's risk classification must be proven by the preponderance of the evidence, and that the board must make specific written detailed and individualized findings to support the appropriateness of each offender's classification.

The SJC vacated the sex offender registry board's ruling in Doe No. 4 and remanded the case back to the sex offender registry board for an classification hearing consistent with the SJC findings and that the sex offender registry board bears the burden to show the risk of reoffense

by the preponderance of evidence, and with specific written findings of fact as to each individual offender to support its classification.

Doe v. Attorney General (Doe No. 5) 430 Mass. 155, 715 N.E. 2d 37 (1999)

Argued May 7, 1999
Decided August 11, 1999

In Doe No. 5, the SJC considered whether a hearing is required as a condition of registration for persons convicted of one or more of the enumerated sex offenses. The SJC in its opinion in Doe No. 5 determined that **“the burden of registration, combined with public dissemination provisions applicable to all registrants triggers liberty and privacy interests...”**[emphasis added.]

Consistent with some of other rulings cited above by the SJC the court ordered that a judgment shall be entered in the Superior Court declaring that the registration requirements and notification provisions of General Laws, Section 178C-178O are unconstitutional in the absence of either an individualized hearing to determine whether he is a present threat to children because of the likelihood that he will re-offend. However, by way of dicta, the SJC suggested that the board could, consistent with due process, promulgate narrowly tailored regulations to identify categories of offenders who pose a grave danger and high risk to re-offend, and that individual pre-registration hearings might not be necessary for those categories of offenders.

Following the SJC’s opinion in Doe No. 5, the Massachusetts General Court repealed the 1996 Act and enacted the current statute, apparently in an effort to comply with the concerns raised by the SJC in the foregoing cases.

The Massachusetts Sex Offender Registry Act of 1999

In September of 1999, the Massachusetts General Court repealed the 1996 Act and replaced it with Chapter 74 of the Acts and Resolves of 1999 entitled *An Act Improving the Sex Offender Registry and Establishing Civil Commitment and Community Parole Supervision for Life for Sex Offenders* (1999 Act). Some of the major changes in the 1999 Act include: (i) the Sex Offender Registry Board (Board) can relieve the sex offender of the obligation to register, if the Board determines that there is no risk of re-offense or danger to the public; (ii) sex offender information for Level 1 offenders is no longer accessible to the general public through the citizen inquiry provision;

(iii) sex offenders may mail-in registration forms to the Board instead of in person at local police offices; (iv) Level 1 sex offenders may re-register annually by mail; and (v) procedural safeguards concerning classification decisions have been enhanced and the appeal of the Board's decision is pursuant to Massachusetts General Laws, Chapter 30A.

Similar to the 1996 Act, the 1999 Act was also challenged.

Roe v. Attorney General 434 Mass. 418, 750 N.E. 2d 897 (2001)

Argued September 11, 2000 and March 8, 2001

Decided June 28, 2001

In October 1999, the plaintiff filed in action in Superior Court alleging that the due process clause of Article 12 and the fourteenth amendment to the United States Constitution entitled them to individualized hearings to determine whether they pose an immediate threat to children or other vulnerable persons before they can be required to register as a sex offender. The Plaintiffs further contended that providing law enforcement agencies with a sex offender's registration data, prior to any hearing to determine the offender's current risk to re-offend, similarly violates their constitutional rights of due process.

The plaintiffs sought injunctive relief, and the Superior Court judge ruled that the 1999 Act's requirement of registration without a prior hearing impinged on the protected liberty interest triggering the procedural protections of the due process clause. The judge concluded that, for all offenders convicted before December 1999, due process required a pre-registration hearing to determine the risk posed by the offender. The judge enjoined the sex offender registry board from requiring the plaintiffs to comply with the registration requirements under the 1999 Act without first affording them an individualized evidentiary hearing as to their present dangerousness. The Board appealed, and the SJC granted the application for direct appellate review.

After careful review and through analysis of the facts presented by this case, the SJC concluded that the mail-in registration and the police notification did not violate the due process clause. Accordingly, the SJC vacated the preliminary injunction issued by the Superior Court with its June 28, 2001 decision.

As a result of the SJC's opinion in *Roe v. Attorney General*, the Board was able to commence the registration, classification and notification provisions of the 1999 Act.

In addition to the cases cited above, there are two other cases worth noting that affected the Board and its legislative mandates. The first case referred to as **Coe v. Sex Offender Registry Board, 442 Mass. 250, 817 N.E. 2d 913** {Argued June 30, 2004, Decided August 3, 2004} dealt with the issue of posting the plaintiff's sex offender registration information on any Internet website. The lawsuit was prompted by Governor Romney's announcement on April 2, 2003, that beginning on May 15, 2003, the Board would post Level 3 sex offender registration information on the internet website maintained by the Board. A Superior Court judge allowed the plaintiff's application for a preliminary injunction enjoining the Board from posting offender specific registration information on the internet. The judge had concluded that the plaintiffs had demonstrated a likelihood of success on the merits because the 1999 Act had not authorized Internet posting or Internet dissemination of sex offender registration information.

Subsequently, in June 2003, Governor Romney filed proposed Internet legislation that was enacted as emergency legislation and took effect on November 26, 2003. As a result of the Internet legislation, the SJC affirmed the use of the Internet for the dissemination of information about Level 3 offenders and vacated the preliminary injunction issued by the Superior Court.

Similar to the issue presented by Coe, the SJC confirmed in **Soe v. Chief of Police Waltham and the Sex Offender Registry Board 442 Mass. 1047, 818 N.E. 2d 159 (2004)** [Argued November 23, 2004, Decided February 10, 2005] that local police may post information about Level 3 sex offenders on their respective police department websites. The court concluded that 803 Code of Massachusetts Regulations Section 1.33(2), which authorizes police departments to post such information on their website, did not violate any constitutional rights for Level 3 sex offenders.

APPENDIX II

Sex Offender Registry Board Benchmark Report Chart Data for October 2005 Benchmark

	November 30, 2004	December 31, 2004	January 31, 2005	February 28, 2005	March 31, 2005	April 30, 2005	May 31, 2005	June 30, 2005	July 31, 2005	August 31, 2005	September 30, 2005	October 31, 2005
Sex Offenders												
In Violation	5,062	5,020	4,928	4,811	4,823	4,802	4,761	4,481	3,359	3,135	3,044	2,928
Incarcerated	2,953	2,896	3,016	3,047	3,168	3,254	3,333	3,386	3,511	3,513	3,537	3,574
Registered, Classified	6,588	6,732	6,857	6,967	7,092	7,163	7,185	7,274	7,455	7,697	7,774	7,858
Registered, Unclassified	<u>1,777</u>	<u>1,711</u>	<u>1,724</u>	<u>1,723</u>	<u>1,758</u>	<u>1,718</u>	<u>1,711</u>	<u>1,643</u>	<u>1,656</u>	<u>1,544</u>	<u>1,581</u>	<u>1,465</u>
Total	<u>16,380</u>	<u>16,359</u>	<u>16,525</u>	<u>16,548</u>	<u>16,841</u>	<u>16,937</u>	<u>16,990</u>	<u>16,784</u>	<u>15,981</u>	<u>15,889</u>	<u>15,936</u>	<u>15,825</u>
Classifications												
Number Classified During Month	<u>121</u>	<u>197</u>	<u>156</u>	<u>152</u>	<u>162</u>	<u>150</u>	<u>108</u>	<u>158</u>	<u>178</u>	<u>161</u>	<u>177</u>	<u>209</u>
Registered, Unclassified												
Pending Assignment	-	-	-	539	601	427	292	40	34	41	28	34
In Preliminary Stage	-	-	-	216	262	367	534	664	491	393	474	467
In Hearing Stage	-	-	-	<u>968</u>	<u>895</u>	<u>924</u>	<u>885</u>	<u>939</u>	<u>1,131</u>	<u>1,110</u>	<u>1,079</u>	<u>964</u>
Total	-	-	-	<u>1,723</u>	<u>1,758</u>	<u>1,718</u>	<u>1,711</u>	<u>1,643</u>	<u>1,656</u>	<u>1,544</u>	<u>1,581</u>	<u>1,465</u>
Chart Data												
Level 0 Violators	-	-	-	4,175	4,197	4,193	4,145	3,902	2,880	2,618	2,500	2,372
Level 1 Violators	-	-	-	133	126	114	126	145	71	76	86	88
Level 2 Violators	-	-	-	339	343	343	349	325	281	302	309	319
Level 3 Violators	-	-	-	<u>164</u>	<u>157</u>	<u>152</u>	<u>141</u>	<u>109</u>	<u>127</u>	<u>139</u>	<u>149</u>	<u>149</u>
Total Violators	-	-	-	4,811	4,823	4,802	4,761	4,481	3,359	3,135	3,044	2,928
Incarcerated	-	-	-	3,047	3,168	3,254	3,333	3,386	3,511	3,513	3,537	3,574
Registered	-	-	-	<u>8,690</u>	<u>8,850</u>	<u>8,881</u>	<u>8,896</u>	<u>8,917</u>	<u>9,111</u>	<u>9,241</u>	<u>9,355</u>	<u>9,323</u>
Total	-	-	-	<u>16,548</u>	<u>16,841</u>	<u>16,937</u>	<u>16,990</u>	<u>16,784</u>	<u>15,981</u>	<u>15,889</u>	<u>15,936</u>	<u>15,825</u>

APPENDIX II (CONTINUED)

Sex Offender Registry Board Benchmark Report Chart Data for October 2005 Benchmark

	During October 2005	Cumulative November 2003 - March 2005	Cumulative November 2003 - June 2005	Cumulative November 2003 - July 2005	Cumulative November 2003 - August 2005	Cumulative November 2003 - October 2005	Percentage
Violent Fugitive Arrest Squad (VFAS) Apprehensions							
Arrests	8	313	391	400	403	422	11.2%
Registered	34	1,492	1,682	1,707	1,744	1,809	47.7%
Located – Jail	7	289	339	341	347	355	9.4%
Located – Dead	16	349	454	465	503	534	14.1%
Located – Other	4	90	101	101	106	116	3.1%
Located – Out of State	6	445	510	518	535	549	14.5%
Total VFAS Cases	<u>75</u>	<u>2,978</u>	<u>3,477</u>	<u>3,532</u>	<u>3,638</u>	<u>3,785</u>	<u>100%</u>

Note: Data obtained from SORB.