

*****THIS IS A SAMPLE MEMORANDUM DESIGNED TO GUIDE YOU IN CREATING A MEMORANDUM THAT HIGHLIGHTS INFORMATION IMPORTANT TO YOUR CASE. REVISE IT TO CONFORM TO THE FACTS OF YOUR CASE.*****

COMMONWEALTH OF MASSACHUSETTS
SEX OFFENDER REGISTRY BOARD

SORB Case No. _____

(Name)
(SORB Number)
Petitioner

v.

SEX OFFENDER REGISTRY BOARD,
Respondent

MEMORANDUM IN SUPPORT OF PETITIONER'S
MOTION FOR TERMINATION OF REGISTRATION

I. INTRODUCTION

Petitioner moves for termination of his obligation to register pursuant to 803 C.M.R. 1.37B, and requests that the Full Board terminate his obligation to register as a Level 1, 2 or 3 sex offender. He meets the requirements for the termination of his obligation to register as set out in the Board's regulations because it has been over ten years since his conviction, adjudication or release from all custody or supervision, whichever occurs last, and he has not committed a sex offense within that time period. He has not been convicted of two or more Wetterling offenses on different occasions, a sexually violent offense, or a sex offense involving a child (*or he has already been registered for at least 10 years based on his sex offense involving a child*). He has not been determined to be a sexually violent predator, is not currently incarcerated, or subject to pending criminal charges. In addition, there is new evidence since his

original registration and classification that demonstrates that he is not likely to pose a danger to the safety of others.

II. BURDEN OF PROOF

The Sex Offender Registry Board bears the burden of establishing that the Peitioner poses a danger to the public and is at risk of reoffending. Doe v. Sex Offender Registry Board (Doe 4), 428 Mass. 90, 103-104 (1998); Doe v. Attorney General (Doe 5), 430 Mass. 155, 164-166 (1999). The Board may not shift this burden to the Petitioner simply by saying so in its regulations at 803 CMR 1.37B. The purported shifting of the burden from the Board to Petitioner by way of regulation violates the Petitioner's rights pursuant to Article 12 of the Massachusetts Declaration of Rights.

III. STATEMENT OF FACTS

BACKGROUND

On (date), Petitioner was convicted of the following offenses: (list).

Explanation of sentence served and probation/parole. Description of good behavior on probation/parole, treatment during probation/parole, other favorable activities while on probation/parole.

CLASSIFICATION HEARING EVIDENCE AND DECISION

After a hearing on _____, the SORB classified Petitioner as a level 1, 2 or 3 sex offender on _____. Description/Explanation of Hearing Examiner's Decision-example follows.

[The Hearing Examiner relied almost exclusively on the nature of Petitioner's offenses in determining that he was at high risk to reoffend. The only other two factors relied upon were Petitioner's status of having been in the community for less than five years and his past history

of substance abuse. Petitioner's substance abuse ended when he was arrested for his offenses and is now in his remote past. He has successfully participated in treatment for substance abuse and continues to attend AA and NA on a regular basis. His sobriety is undisputed.

Petitioner's very serious crimes were committed more than fifteen years ago, when he was ____ years old. He is now ____ years old, gainfully employed, fully compliant with sex offender treatment, and enjoying strong family and community support. His crimes do not render him forever dangerous.]

NEW AND UPDATED EVIDENCE

1. **Petitioner is not likely to pose a danger to the safety of others due to his completion of sex offender treatment or successful engagement in sex offender treatment and his response to sex offender treatment**

Petitioner has completed sex offender treatment or continued sex offender treatment and has continued to make consistent progress. In a recent summary of treatment, Petitioner's therapist (*psychologist, psychiatrist*) finds that Petitioner is not likely to pose a danger to the safety of others. See Exhibit A.

In support of this conclusion, Petitioner's therapist states that:

Significant factors that indicate continued stability and substantially diminished risk have been his ability to maintain over an extended period of time an intimate relationship, steady employment, abstinence from substances, management of stress and emotions, adult focused activities, and a healthy, respectful and assertive style of communication.

He makes specific reference to Petitioner's commitment to his relapse prevention plan.

(Discussion of relapse prevention plan – or create relapse prevention plan.) See Exhibit B – Relapse Prevention Plan.

2. **Increase in Stability of Lifestyle**

Petitioner's stable lifestyle and support from family and/or friends supports a finding that

he does not pose a danger to the safety of others.

Petitioner now resides at/ with *(description of stable living situation)*. Petitioner has resided at this address for the past ____ years. *(Letter from landlord/bank)*

Petitioner is currently employed at _____. He has been consistently and successfully employed since _____. See Exhibit C (letter from employer).

Petitioner is currently attending school, classes. He has successfully completed 2 semesters at _____. See Exhibit D (letters from teachers, transcripts, certificates).

Petitioner has made impressive and important contributions to his community through his work at the Church and its affiliated Community Day Center. His Motion for Reclassification is supported by numerous letters about his work at the Community Day Center. See Exhibits E-G.

Exhibits H through M are letters from family, friends, employer, neighbors, landlord, bank, church members and Petitioner's wife/girlfriend. The words in these letters attest to the hard-earned support and stability Petitioner enjoys in his life. (Summary of letters of support and stable home situation).

He is considered a good tenant, employee, neighbor, brother, son, father and friend. The sheer number of letters in his support speaks to his positive role in his family and his community.

3. **Petitioner's physical condition is such that he is not likely to pose a danger to public safety**

Petitioner suffers from *(medical condition)*. Medical records and reports from his physician are attached to this memorandum as Exhibits N-O. As a result of his physical condition, the Petitioner is not likely to pose a danger to public safety. *See Exhibit N, physician letter stating reasons for lack of danger.*

4. **Recent psychological and/or psychiatric records indicate that the Petitioner does not pose any danger to public safety**

Petitioner has engaged in weekly therapy with Dr. X since _____. Petitioner has no psychiatric symptoms *or is under medication and/or treatment for symptoms*. Dr. X indicates that the Petitioner is now successfully treated and does not present a danger to the safety of others because (*explanation*). *See Exhibit P (psychiatrist, therapist or psychologist letters and reports)*.

5. **Petitioner has successfully abstained from the abuse of alcohol and/or drugs while at liberty**

Prior alcohol and/or drug abuse may have played a role in Petitioner's previous crimes. Since (date), the Petitioner has successfully abstained from the abuse of alcohol and/or drugs. The Petitioner has regularly attended Alcohol Anonymous or Narcotics Anonymous meetings. See Exhibit Q (evidence of regular attendance or letters of support). Petitioner's therapist indicates that he has been substance-free. See Exhibit R (letter from therapist).

6. **Additional new information supports terminating Petitioner's classification and registration obligations**

Petitioner was released from incarceration on _____. His record indicates that he has not been charged or convicted of any new offenses since that time.

Petitioner's underlying offenses did not involve any physical harm or contact. See G.L.c. 6, section 178K(2)(d) (in making a determination whether an individual is required to register, the board shall consider factors such as "presence or absence of any physical harm caused by the offense and whether the offense involved consensual conduct between adults.")

Moreover, the petitioner has lived entirely offense free in the community for 15 years since his release from probation. See 803 CMR 1.40(9) (a) "Studies have shown that the

likelihood of recidivating decreases for most offenders after the first five to ten years following release from incarceration and becomes substantially lower after 10 years in the community (Epperson et al., 2000; Hanson & Thornton, 2000; Prentky et al, 1997).”

There exists no evidence that the petitioner currently poses any risk of harm to the public. The circumstances of the offenses in conjunction with the offender’s criminal history do not indicate a risk or reoffense or danger to the public. G.L.c. 6, section 178K(2)(d); See Doe No. 1211 v. Sex offender Registry Board, 447 Mass. 750 (2006) (Statute may be constitutionally vulnerable as it applies to person who poses no risk at all); Doe v. Attorney General, 430 Mass. 155, 164-165 (1999) (“Because we can envision situations...where the risk of reoffense by one convicted may be **minimal** and the **present** danger of that person ... not significant, the general legislative category does not adequately specify offenders by risk so as to warrant automatic registration of every person convicted...”)(emphasis added)

Petitioner is currently _____ years old. Studies have shown that recidivism rates steadily decline with age and are significantly lower for persons aged fifty or older. Prentky & Lee, *Effect of Age at Release on Long Term Sexual Re-Offense Rates in Civilly Committed Sexual Offenders*, Sex Abuse 19:43-59(2007); Fazel, Sjostedt, Langstrom & Grann, *Risk Factors for Criminal Recidivism in Older Sexual Offenders*, Sexual Abuse: A Journal of Research and Treatment, Vol. 18, No. 2 (April 2006); Barbaree, Blanchard & Langton, *The Development of Sexual Aggression Through the Lifespan*, Ann.N.Y. Acad.Sci. 989:59-71(2003); R. Karl Hanson, *Recidivism and Age*, Journal of Interpersonal Violence, Vol. 17, No. 10 (October 2002). See *Doe No. 151564 v. SORB*, 456 Mass. 612, 621-623 (2010) (It was arbitrary and capricious for the board to classify Doe without considering evidence that recidivism risk decreases with age); *Doe 17723 v. SORB*, 2011 Mass. App. Unpub. LEXIS 460 (April 11, 2011) (1.23 decision) (Hearing

Examiner's decision not to consider Doe's age as a mitigating factor in his classification was based on substantial error).

Discussion of other factors that may support no risk of public danger – completion of probation, hardship suffered as result of classification, acceptance in community, and any others.

IV. ARGUMENT

The Petitioner meets the requirements for termination of his obligation to register at this time, and has proved by clear and convincing evidence that he is not likely to pose a danger to the safety of others. The new and updated information provided pursuant to 1.37B clearly indicates that he is not likely to pose a danger to the safety of others.

Summary of new factors that support termination of obligation to register.

Moreover, the primary concerns noted by the Hearing Examiner in his earlier decision have been constructively and positively addressed as follows: *(address issues raised by Hearing Examiner in decision if possible - the following are some examples)*

1) The Hearing Examiner was concerned that the Petitioner had been free in the community for “only a short period of time, less than five years.” Petitioner has now been offense-free in the community for over ____ years since his release, as opposed to the period the Hearing Examiner was initially concerned with.

3) The Hearing Examiner was concerned that, even though Petitioner had successfully completed parole, along with sex offender treatment, without a single violation, he did not enter into voluntary therapy after the termination of his parole. The Petitioner is now in voluntary therapy, and, as noted above, sexual offending constitutes a significant portion of the focus of this therapy. Thus, this concern should be moderated by such ongoing therapeutic relationship.

Moreover, in combination with all other factors indicating increased stability, it can be reasonably and safely inferred that Petitioner is not likely to pose a danger to public safety.

V. CONCLUSION

Petitioner meets the requirements for termination of his obligation to register at this time, and has established with new and updated information that he is not likely to pose a danger to the safety of others, pursuant to 1.37B. It is nearly *four* years since the determination by the hearing examiner that he was required to register as a level 1, 2, or 3 sex offender. During those *four* years he has demonstrated that he has learned to make the right decisions. *In the face of pressure from the community he has responded honestly and openly about his past, offering to open up his counseling and probation records in an effort to satisfy those with concerns about him. Without any court mandate he attends sex offender counseling and AA and NA.*

In the years since then, the Petitioner has built a life that gives every assurance that he will not reoffend. He is sober. He continues to work hard to understand the issues that triggered his offenses. His good works have yielded him tremendous community and family support.

For all the foregoing reasons, Petitioner is now not likely to pose a danger to the safety of others. As a result, he requests that his obligation to register as a sex offender be terminated.

Respectfully Submitted,

Petitioner)

Petitioner (Signature _____ of
Name (printed) _____
Address _____
SORB No. _____