

**\*\*\*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 RECLASSIFICATION

I. INTRODUCTION

Petitioner moves for reclassification pursuant to 803 C.M.R. 1.37C, and requests that the Full Board re-examine his classification as a Level 3 (*or 2*) sex offender. He meets the requirements for a reduced classification set out in the Board's regulations, because it has been over three years since his final classification, he is not incarcerated or facing pending charges, he has remained at liberty for more than five continuous years, and there is evidence through new and updated information that demonstrates a reduced risk of reoffense and a reduced degree of dangerousness.

II. BURDEN OF PROOF

The Sex Offender Registry Board bears the burden of establishing that the Petitioner 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 1.37(2) (d) & (e). 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 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 has reduced his risk of reoffending and the degree of danger he poses to the community by 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 at low risk to reoffend. 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 contributes to a low risk of reoffense.

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 his risk of reoffense is low or negligible**

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 at a reduced risk of reoffense. *See Exhibit N, physician letter stating reasons for reduced risk.*

4. **Recent psychological and/or psychiatric records indicate that the Petitioner is at low risk for reoffense**

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 at a low risk for reoffense 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. **A Recent updated victim impact statement supports Petitioner's low risk of reoffending**

Petitioner has acknowledged his crimes and expressed great remorse for the harm he caused to his victim(s). See Exhibit S.

7. **Additional new information supports lowering Petitioner's classification risk**

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 has been offense-free in the community in excess of \_\_\_\_\_ years. Petitioner has been offense free in the community for 5 to 10 years. Petitioner has been free in the community for over ten years. 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)."

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, R. A. & Lee, A., *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); Hanson, R.K., *Does Static-99 Predict Recidivism Among Older Offenders?*, Sex Abuse, 18: 343-355 (2006) (Older offenders had lower sexual recidivism rates than would be expected based on their static-99 risk categories); Thornton, D., *Age & Sexual Recidivism: A Variable Connection*, Sexual Abuse: A Journal of Research & Treatment, 18(2): 123-135 (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: Follow-up Data on 4, 673 Sexual Offenders*, Journal of Interpersonal Violence, Vol. 17, No. 10, 1046-1062 (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 lowering classification risk – completion of probation, hardship suffered as result of classification, acceptance in community, and any others.*

#### IV. ARGUMENT

The Petitioner meets the requirements for reclassification at this time, and has proved by a preponderance that his risk and degree has been reduced through new and updated information pursuant to 1.37C(2)(e)(1) – (7).

*Summary of new factors that support lower risk classification.*

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’s risk of reoffense is low.

V. CONCLUSION

Petitioner meets the requirements for reclassification at this time, and has established with new and updated information that his risk and degree of dangerousness have been reduced, pursuant to 1.37C (2) (e) (1) – (7). It is nearly *four* years since the determination by the hearing examiner that he was at high risk to reoffend. 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 August of 2002, the hearing examiner made a decision when Petitioner had been out of

prison for some months only. 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 at a reduced risk of recidivism and he requests that his Classification Level be lowered by the Board to a Level One, which more appropriately reflects his present circumstances.

Respectfully Submitted,

Petitioner)

\_\_\_\_\_  
Petitioner (Signature \_\_\_\_\_ of  
Name (printed) \_\_\_\_\_  
Address \_\_\_\_\_  
SORB No. \_\_\_\_\_