HOUSE DOCKET, NO. 3205 FILED ON: 1/21/2011

HOUSE . . . . . No. 2824

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas A. Golden, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to civil process reform.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Thomas A. Golden, Jr.	*16th Middlesex*
David B. Sullivan	*6th Bristol*
Christopher G. Fallon	*33rd Middlesex*
Frank I. Smizik	*15th Norfolk*

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HOUSE . . . . . No. 2824

By Mr. Golden of Lowell, a petition (accompanied by bill, House, No. 2824) of Thomas A. Golden, Jr. and others relative to reform of the civil process laws. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *3769* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to civil process reform.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Section one of chapter thirty-two of the General Laws, as appearing in the 1998 Official Edition, is amended by adding at the end of the definition "Employee", the following new text: — "as applied to persons whose regular compensation is paid from an account established by the sheriff's process office pursuant to Chapter 37, section 23 for the sheriff's process office, shall mean any person who is appointed by the sheriff as a deputy sheriff or employee of the sheriff's process office and who is engaged in duties which require that his time be devoted to the service of the sheriff's process office in each year during the ordinary working hours of regular and permanent employees, and who is regularly and permanently employed in such service and receives a salary, hourly wage or regular compensation for assigned civil process duties as determined by each Sheriff."

SECTION 2. Section three of Chapter thirty-two of the General Laws, as appearing in the 1998 Official Edition, is amended by inserting in the fifth paragraph of subparagraph (g) of subsection (2), after the words "county correction facilities," the following: — "and any deputy sheriff engaged in enforcement activities that involve the acts of arrest, eviction or seizure of property and who is defined by Section 4 of this Act as a full-time employee of the Sheriff."

SECTION 3. Section 3 of Chapter 32 of the 1998 Official Edition is amended by inserting in subparagraph (b) of subsection (5), the following: -- "any deputy sheriff or employee of the sheriff's process office, including any deputy sheriff or employee of the process office that has been transferred to the county or the Commonwealth, who is now a member or becomes a

20 member of a system applicable to any governmental unit shall be given credit in such system for
21 any service rendered by depositing in the annuity savings fund of such system such sums and
22 under such conditions as are set forth under said section."

23 SECTION 4. Section two of Chapter thirty-two B of the General Laws, as appearing in
24 the 1998 Official Edition, is amended by inserting in subsection (d), at the end of the definition
25 of "Employee", the following: —

26 "Deputy sheriffs and other persons appointed by the sheriff, who devote twenty (20) or
27 more hours per week to assigned duties, and who serve in the sheriff's process office, shall be
28 eligible for benefits under this chapter in the same manner, and to the same extent, any other
29 county or state employee".

30 Section two of Chapter 32A is amended by inserting in line 7 of subsection (b), after the
31 words "Worcester County", the following: — "including, a deputy sheriff or employee of the
32 sheriff's process office who is otherwise eligible under this subsection."

33 And further, in Section 2 of Chapter thirty-two B is amended by inserting in subsection
34 (d), at the end of the definition of "Employee", the following: --

35 "Deputy sheriffs and other persons appointed by the sheriff and who serve in the sheriff's
36 process office shall be eligible for benefits under this Chapter in the same manner, and to the
37 same extent, as any other state employee."

38 SECTION 5. Sections 48 to 56 of Chapter 35 of the 1998 Official Edition shall not apply
39 to deputies and employees of the sheriff's process office in any county.

40 SECTION 6. Paragraph 3 of section 17 of Chapter 37 of the 1998 Official Edition is
41 hereby repealed.

42 SECTION 7. Chapter thirty-seven of the General Laws, as appearing in the 1998 Official
43 Edition, is hereby amended by inserting after section 3 the following new section: —

44 Section 3A. Sheriff's Process Office.

45 (A) The sheriff shall establish a process office, and shall assign deputies appointed
46 pursuant to section three who, along with the sheriff, shall serve and execute within their
47 counties, including within the political boundaries of the previously abolished county
48 governments, and where the Commonwealth is a party or interested, all precepts lawfully issued
49 to them, and all other process required by law to be served by an officer. They may serve process
50 in cases wherein a county, city, town, parish, religious society, fire or other district is a party or
51 interested, although they are inhabitants or members thereof. The sheriff may also appoint
52 employees to work in the sheriff's process office. All deputies and employees of the process
53 office shall serve at the will and the pleasure of the sheriff.

54 (B) Deputies and other employees of the process office, who devote twenty (20) or more
55 hours per week to assigned duties, shall be county and/or state employees for the purposes of
56 Chapters thirty-two, thirty-two A, thirty-two B, one hundred fifty-two, two hundred fifty-eight,
57 two hundred sixty-eight A, and two hundred sixty-eight B, and shall be compensated in
58 accordance with this subsection and subsection (C) of this section.

59 (C) The sheriff shall determine the hours and duties of each deputy and employee of the
60 process office, and shall determine the salary, hourly wage, or commission received by each
61 deputy and employee of the process office, subject to the following limitations: —

62 No sheriff, deputy or employee shall serve process for anyone except the Sheriff.

63 No sheriff, deputy or employee shall be paid a commission or any portion of any fee, for
64 service of process during hours for which the sheriff, deputy or employee is being compensated
65 by federal, state, county or municipal funds;

66 No sheriff, deputy or employee who receives a salary or hourly wage from the process
67 office account shall also receive a commission or any portion of any fee for service of process;

68 Full-time deputies and employees may receive only a salary or hourly wage, and shall at
69 no time receive a commission, or any portion of any fee, for service of process;

70 The annual salary, cumulative hourly wage, commissions, or the cumulative portion of
71 any fees for service of process, of any individual deputy or employee shall not exceed the annual
72 salary of the sheriff; and

73 (D) Deputy sheriffs shall be sworn and shall complete a peace officers certification
74 program, pursuant to a policy adopted by the Massachusetts Sheriffs' Association through its
75 education and training committee, within one year after receiving appointment, and shall be re-
76 certified on a yearly basis. Sworn deputy Sheriffs assigned to the full-time service of process on
77 behalf of a Sheriff shall also be required to complete a training and orientation program on all
78 requirements of lawful service of process as that program is constituted and conducted jointly by
79 the Massachusetts Sheriffs' Association and the Massachusetts Deputy Sheriffs' Association.

80 (E) All full time deputy sheriffs and employees of the sheriff's process office, including
81 those deputy sheriffs and employees of the sheriff 's process office who have been transferred to
82 the county or the Commonwealth, and who have gone beyond a one year probationary period of
83 full time employment, will be granted under this subsection, without impairment, full benefits for
84 vacation and sick time earned from their original commencement of employment in the sheriff's
85 process office, but not to exceed those of regular state employees.

86 SECTION 8. Chapter thirty-seven of the General Laws, as appearing in the 1998 Official
87 Edition, is hereby amended by inserting after section 3 the following new section: —

88 Section 3B. Property Rights of Sheriffs, Deputy Sheriff and Employees.

89 No sheriff, deputy or employee, nor any other individual, shall have or acquire any legal
90 right whatsoever to the tangible or intangible property of the process office, nor any revenue
91 derived from fees collected from the service of process of any proceeds from the sale of the
92 property within the process office, other than compensation as determined under this chapter. All
93 fees derived from service of process shall, except as otherwise provided in this chapter, be used
94 solely for the operations of the process office, and all tangible and intangible property shall
95 belong to the county or state and shall be under the sole possession and control of the sheriff.

96 SECTION 9. Section eleven of Chapter thirty-seven of the General Laws, as appearing in
97 the 1998 Official Edition, is hereby amended by striking out said section in its entirety and
98 inserting in place thereof the following new text: —

99 Section 11. Recording of Process.

100 All process received for service by the sheriff's process office shall, whenever such
101 information becomes available be recorded onto a system established by the sheriff, which shall
102 include but not be limited to the following information, to the extent available, for each piece of
103 process to be served: --

104 (a) the title of the action, including court name and docket number;

105 (b) the date the process was issued or required to be served;

106 (c) the type of process;

107 (d) the name and address of the person requesting that process be served;

108 (e) the name and address of the person or location upon which service is to be made;

109 (f) the fee charged;

110 (g) the date of billing to collect the fee;

111 (h) the date of fee collected;

112 (i) the date service was made;

113 (j) the manner of service; and

114 (k) the name of the person performing service.

115 (B) A summary of the information contained in subsection (A) of this section shall be
116 compiled by the sheriff on a yearly basis, and made available to the State Auditor for a yearly

117 audit of the sheriff's process office. Said audit, by the State Auditor, shall be forwarded as part of
118 the annual report to be filed in accordance with Section 8A of Chapter 262.

119 (C) Administrative costs associated with the recording of information prescribed under
120 subsection (A) of this section, and prepared under subsection (B) of this section, including
121 expenditures for personnel or the purchase of equipment required to perform the recording of
122 information, may be paid from the process account or any other account established for the
123 operation of the sheriff's office.

124 (D) Annual reports filed pursuant to subsection (B) of this section shall include but not be
125 limited to complete, itemized schedules of the following information pertaining to the service of
126 process: --

127 assets, including cash, deposits, accounts receivable, and the value of the property

128 and equipment;

129 (b) liabilities, including accounts payable, client escrow deposits, capital lease
130 obligations, and all other debts;

131 (c) income derived from the service of process and otherwise;

132 (d) expenses paid, including payroll and all other expenses; and

133 (e) with regard to the sheriff's report, any surplus from the sheriff's process account
134 which has been transferred to an account established for any legal purpose or other statutory
135 functions of the sheriff.

136 SECTION 10. Section fourteen of Chapter thirty-seven of the General Laws, as appearing
137 in the 1998 Official Edition, is hereby amended by striking out said section and inserting in place
138 thereof the following new text: —

139 Section 14. Service of Writs and Precepts after removal.

140 Upon the removal of a deputy sheriff by the sheriff, the removed deputy shall
141 immediately at the time of removal return to the sheriff's process office all process and other
142 documents received or in his possession, along with any fees collected. If there is any failure of a
143 deputy or former deputy to comply with the terms of this section, the sheriff shall institute legal
144 proceedings to enforce the terms of this section or any other section herein.

145 SECTION 11. Chapter 37 of the 1998 Official Edition of the Massachusetts General
146 Laws, is hereby amended by inserting after Section 22 the following new Section: —

147 Section 23. Fees from Process Office.

148 (A) Notwithstanding the provisions of Section 22 of this chapter or the provisions of
149 Chapter 35, all fees and other revenues collected by the process office shall be deposited in an
150 account established by the process office. The account shall be kept separate from any county,
151 state or federal funds, and shall be used only for the operation of the process office. Expenditures
152 shall be authorized by the sheriff, in accordance with the state guidelines, without the approval of
153 any county commissioners, board or other appropriating authority.

154 (B) Payroll and all other bills of the process office except administrative costs paid by the
155 sheriff's line item pursuant to subsection (D) of section 8 herein, shall be paid from the process
156 account. However, after all civil process revenue has been expended for payroll and other bills of
157 the civil process office, a sheriff may use funding from a Fiscal Year budgetary appropriation or
158 a County Government Finance Review Board approved spending plan to pay payroll and all
159 other civil process expenses.

160 (C) Notwithstanding the provisions of subsection (A), contributions from paychecks
161 issued to deputy sheriffs and employees of the sheriff's process office who are members in
162 service of the state or county retirement system, shall be deducted and forwarded to the state or
163 county treasurer. The amounts deducted shall be determined in accordance with the provisions of
164 Chapter 32 and any other rules and regulations promulgated there under.

165 (D) Notwithstanding the provisions of subsection (A), premiums from paychecks of
166 deputy sheriffs and employees of the sheriff's process office who are insured under Chapter 32A
167 or 32B shall be deducted and forwarded to the state or county treasurer. The amounts deducted
168 shall be determined in accordance with the provisions of those chapters and any other rules and
169 regulations promulgated there under.

170 (E) Annually, on or before the 75th day after the close of the fiscal year, any excess
171 revenue shall be carried over for process operations or transferred from the process account to an
172 account established to fund statutory functions of the sheriff and annually on or before the 75th
173 day after the close of the fiscal year, the sheriff shall render a sworn account thereof, to the state
174 or county treasurer and in accordance with section 8A of Chapter 262.

175 (F) Notwithstanding the provisions of subsection (A), the process office may maintain an
176 account or accounts in a duly authorized financial institution, including funds for payment by the
177 process office of fees and expenses in connection with service of process and for holding of
178 funds paid over to the office as may be reasonably necessary in the ordinary course of business.

179 (G) Notwithstanding the provisions of subsection (A), no monies held in any process
180 account shall be used for payment of liability expenses incurred by the sheriff's process office
181 pursuant to Chapter 258, nor for payments to employees pursuant to Chapter 152. Any judgment,
182 settlement or attorneys fees incurred as a result of litigation concerning the process office shall
183 be paid in accordance with the provisions of Chapter 258, in the same manner as any other claim,
184 judgment, settlement or attorneys fees paid by the sheriff's office.

185 SECTION 12. Chapter 126 of the 1998 Official Edition is hereby amended by inserting
186 after Section 18A the following new section: —

187 Section 18B. Injuries to Deputy Sheriffs and Employees of Sheriff's Process Office.

188 A deputy sheriff or other employee of a sheriff's process office who, while in the
189 performance of duty, receives bodily injuries resulting from acts of violence of defendants or
190 others who are in any way connected with the proceeding for which service of process was
191 attempted, shall be paid, in addition to the benefits of said Chapter 152, the difference between
192 the weekly cash benefits to which he is entitled under said Chapter 152 and his regular salary,
193 without such absence being charged against available sick leave credits, even if such absence
194 may be for less than eight calendar days duration.