SENATE DOCKET, NO. 60 FILED ON: 1/10/2013

SENATE . . . . . No. 1112

The Commonwealth of Massachusetts

PRESENTED BY:

William N. Brownsberger

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 the establishment of independent forensic sciences laboratories and the oversight and accreditation of such laboratories.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
William N. Brownsberger	*Second Suffolk and Middlesex*
David M. Rogers	*24th Middlesex*

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SENATE . . . . . No. 1112

By Mr. Brownsberger, a petition (accompanied by bill, Senate, No. 1112) of William N. Brownsberger and David M. Rogers for legislation to establish and accredit independent forensic science laboratories. . Public Safety and Homeland Security.

The Commonwealth of Massachusetts

An Act relative to the establishment of independent forensic sciences laboratories and the oversight and accreditation of such laboratories.

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. Notwithstanding any general or special law to the contrary all forensic sciences laboratories providing analysis of drugs, DNA, or any other evidence to be used in any delinquency adjudication or criminal trial or conviction shall be independent and shall not be influenced in any way by any law enforcement authority or agency, or prosecutorial or defense authority or entity.

Oversight of any and all such forensic sciences laboratories shall be conducted by the Massachusetts Forensic Sciences Audit, Oversight, and Advisory Commission as established by section 184A of chapter 6. The oversight of any and all such forensic sciences laboratories by the Massachusetts Forensic Sciences Advisory Commission shall be to audit the work of all such laboratories to prevent the purposeful mishandling of evidence, encourage efforts to eliminate sources of human error in forensic examinations, ensure that the best forensic processes and procedures are utilized, and assure that proper accreditation is maintained.

All forensic sciences laboratories used for the examination and testing of evidence shall be accredited by an accrediting body that requires conformance to forensic specific requirements and which is a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement for Testing for the submission, identification, analysis, and storage of forensic analyses. All forensic sciences professionals employed by any such forensic sciences laboratories shall be required to obtain individual certification consistent with international and ISO standards. All such forensic science professionals shall have access to the certification process.

SECTION 2. There shall be the position of forensic sciences laboratory ombudsman in the executive office of public safety and security. The primary purpose of this position shall be

23 to work with defense counsel, prosecutorial agencies, criminal justice system stakeholders, law
24 enforcement, and the general public to ensure all processes, procedures, practices, and protocols
25 at forensic sciences laboratories are consistent with state and federal law, best forensic law
26 practices, and in the best interest of justice. The forensic sciences laboratory ombudsman shall
27 mediate complaints that involve a dispute between any forensic sciences laboratory and defense
28 counsel, prosecutorial agencies, law enforcement, or the general public. The forensic sciences
29 laboratory ombudsman shall ensure that all criminal justice stakeholders and the general public
30 are aware of the availability, responsibilities, and role of the forensic sciences laboratory
31 ombudsman and shall regularly attend meetings of the Massachusetts district attorneys
32 association, district and superior court judges, the committee for public counsel services, the
33 Massachusetts bar association, and other local and regional bar associations within the
34 commonwealth.

35 SECTION 3. Section 184A of chapter 6 of the General Laws, as appearing in the 2010
36 Official Edition, is hereby amended by striking said section and inserting in place thereof the
37 following new section:-

38 Section 184A. Massachusetts Forensic Sciences Audit, Oversight, and Advisory
39 Commission.

40 There shall be in the executive office of public safety and security a forensic sciences
41 audit, oversight, and advisory commission, hereinafter called the commission, which shall
42 review and audit the operations of forensic sciences laboratories within the commonwealth on a
43 quarterly basis. Upon such review and audit of a forensic sciences laboratory the commission
44 shall make recommendations to the director of such laboratory in order to improve the quality of
45 work by such laboratory and ensure that all appropriate protocols and procedures are being
46 followed. In addition, the commission shall make further recommendations, which shall include,
47 but shall not be limited to the following: a.) new scientific programs,
48 protocols, and methods of testing;

49 b.) plans for the implementation of new programs, sustaining existing programs, and the
50 elimination of programs that are no longer needed;

51 c.) protocols for testing and examination methods and guidelines for the presentation of
52 results in court;

53 d.) qualification standards for the various forensic scientists of the laboratory; and

54 e.) when necessary, a review process to use when there is a request that a laboratory retest
55 or reexamine evidence previously examined by the laboratory. Further, the commission shall
56 conduct a bi-annual investigation and submit a report of the results of such investigation to the
57 secretary of the executive office of public safety and security and the clerks of the senate and
58 house of representatives on the volume of forensic services required by each county, including

59 costs and length of time from submission for testing or procedures and return of results; the
60 capacity of the commonwealth's forensic services and funding requirements; the accreditation of
61 forensic facilities and training of personnel; and the need for additional facilities.

62 The commission is authorized to review analytical work, reports, and conclusions of
63 scientists employed by a laboratory. Records reviewed by the commission shall remain
64 confidential and continue to be considered records of a criminal investigation, which shall be
65 reviewed only in a closed session meeting of the commission, and each member of the
66 commission shall, prior to receiving any documents for review, sign a confidentiality agreement,
67 under the pains and penalties of perjury, stipulating that such member shall maintain
68 confidentiality of and not disclose the documents or the contents of such documents.

69 The commission shall consist of 16 members and shall include the undersecretary of
70 public safety for forensic sciences and 15 persons appointed by the governor as follows: a
71 forensic scientist or any other person with an advanced degree who has received substantial
72 education, training, or experience in the subject of laboratory standards or quality assurance
73 regulation and monitoring; the chief medical examiner of the commonwealth; a forensic scientist
74 with an advanced degree who has received substantial education, training, or experience in the
75 discipline of molecular biology; a forensic scientist with an advanced degree who has experience
76 in the discipline of population genetics; a scientist with an advanced degree who has experience
77 in the discipline of forensic chemistry; a scientist with an advanced degree who has experience in
78 the discipline of forensic biology; a forensic scientist or any other person with an advanced
79 degree who has received substantial education, training, or experience in the discipline of trace
80 evidence; a scientist with a doctoral degree who has experience in the discipline of forensic
81 toxicology and is certified by the American Board of Forensic Toxicologists; a member of the
82 International Association of Identification; a member of the Association of Firearms and
83 Toolmark Examiners; a member of the International Association for Chemical Testing; a director
84 of a private or federal forensic laboratory located in the commonwealth; a member of the
85 American Society of Crime Laboratory Directors; a member of the Academy of Forensic
86 Sciences; and a member of the American Statistical Association.

87 The chairman of the commission shall be elected from among the members appointed.
88 Staff shall be provided by the executive office of public safety and security.

89 The 15 members initially appointed by the governor shall serve the following terms as
90 determined by the governor: five members shall serve a term of two years; five members shall
91 serve a term of three years; and five members shall serve a term of four years. Thereafter, all
92 appointments shall be for a term of four years. A vacancy other than by expiration of term shall
93 be filled by the governor for the unexpired term.

94 The commission shall meet quarterly and at such other times and places as it determines.
95 Members shall not designate a proxy to vote in their absence.

96 Members of the commission shall be compensated for reasonable and necessary expenses
97 incurred in the performance of their duties. Members of the commission who are public officers
98 or employees shall not receive any compensation for serving on the commission, but may be
99 reimbursed for expenses incurred in the execution of their duties.