SENATE DOCKET, NO. 515 FILED ON: 1/15/2015

SENATE . . . . . No. 1286

The Commonwealth of Massachusetts

PRESENTED BY:

Michael O. Moore

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 adoption of the accompanying bill:

An Act relative to sheriffs.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael O. Moore	*Second Worcester*
David T. Vieira	*3rd Barnstable*
Chris Walsh	*6th Middlesex*

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SENATE . . . . . No. 1286

By Mr. Moore, a petition (accompanied by bill, Senate, No. 1286) of Michael O. Moore, David T. Vieira and Chris Walsh for legislation relative to sheriffs. Public Safety and Homeland Security.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *2322* OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to sheriffs.

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. Chapter 6 of the General Laws is hereby amended by adding the following section:-

Section 218. There shall be a corrections advisory board, hereinafter called the board, to provide independent advice to the commonwealth's corrections providers, including the sheriffs, to: (i) improve coordination efforts between and among the sheriffs, the department of correction, the courts and community corrections programs; and (ii) identify and establish best practices in all aspects of corrections operations, including, but not limited to, accounting, human resources, care and custody of inmates, special inmate populations, civil process, community corrections, health and mental health care management, inmate rehabilitation and re-entry, capital, master and strategic planning, inmate tracking and transportation and procurement.

11 The board shall include the following members: the secretary of public safety and
12 security, the chair of the parole board, the commissioner of correction, the commissioner of
13 probation, the secretary of administration and finance, the president of the Massachusetts
14 Sheriffs Association, Inc., or their designees, each of whom shall serve ex-officio; 9 persons to
15 be appointed by the governor for a term of 3 years, 1 of whom shall have experience in the areas
16 of workforce development and ex-offender rehabilitation, 1 of whom shall have experience in the
17 area of reintegration and rehabilitation of female ex-offenders, 1 of whom shall have experience
18 in treating people with mental illness and substance abuse, 1 of whom shall have experience in
19 government accounting practices, 1 of whom shall have experience in human resources
20 management, 1 of whom shall have experience in independent auditing and 1 of whom shall be a
21 representative of organized labor; 2 persons to be appointed by the president of the
22 Massachusetts Sheriffs Association, Inc.; and 2 persons to be appointed by the chief justice of
23 the supreme judicial court. Upon the expiration of the term of an appointed member, the
24 member's successor shall be appointed in a like manner for a term of 3 years. Irregular
25 vacancies shall be filled by appointment to an unexpired term. Ten members shall constitute a
26 quorum and all appointees and ex-officio members shall be voting members. The board shall
27 annually elect a chair from among its members and shall be supported by the executive office for
28 administration and finance. Chapter 268A shall apply to all board members.

29 The chairperson shall hold meetings at least quarterly, 1 of which shall be an annual
30 meeting, and shall notify all board members and sheriffs of the time and place of all meetings.
31 Special meetings may be called at any time by a majority of the board members and shall be
32 called by the chairperson upon written application of 8 or more members. Members of the board

33 shall receive no compensation, but shall receive their expenses actually and necessarily incurred
34 in the discharge of their duties.

35 The sheriffs and any other interested parties shall have the opportunity to address the
36 board during its meetings and to provide written information to the board for its consideration.

37 The board shall make a report, at least 60 days before July 31 of every even-numbered
38 year and file a copy thereof with the governor, the clerks of the house and senate, the senate and
39 house committees on ways and means, the joint committee on public safety and homeland
40 security, the joint committee on the judiciary and the joint committee on state administration and
41 regulatory oversight.

42 SECTION 2. The first paragraph of section 3B of chapter 7 of the General Laws, as
43 appearing in the 2012 Official Edition, is hereby amended by adding the following words:- ;
44 provided, however, that the cost of meals for employees of the sheriff's departments shall be
45 subject to collective bargaining agreements.

46 SECTION 3. Section 3 of said chapter 32, as so appearing, is hereby amended by
47 inserting, in line 310, after the words "county correctional facilities," the following:-

48 "and any deputy engaged in civil process enforcement activities that involve the acts of
49 arrest, eviction or seizure of property, who is regularly assigned to such enforcement duties for
50 more than 20 hours per week, and who is defined by section 3A of chapter 37 as a full-time
51 employee of the Sheriff."

52 SECTION 4. Section 2 of chapter 32A of the General Laws, as so appearing, is hereby
53 amended by inserting after the words " Suffolk county", in line 16, the following words:- , the
54 offices of the sheriffs.

55 SECTION 5. Chapter 37 of the General Laws is hereby amended by inserting after
56 section 3 the following 2 sections:-

57 Section 3A. (a) Each sheriff shall establish a civil process office within the sheriff's
58 department and shall assign deputies appointed pursuant to section 3 who, along with the sheriff,
59 shall serve and execute within their counties, including within the political boundaries of the
60 previously abolished county governments, and where the commonwealth is a party or interested,
61 all precepts lawfully issued to them and all other process required by law to be served by an
62 officer pursuant to section 11 of chapter 37. The civil process office established within the
63 sheriff's department shall be the exclusive entity performing sheriff's civil process duties under
64 section 11 of chapter 37. A deputy assigned to serve process may do so in cases in which a
65 county, city, town, parish, religious society, fire or other district is a party or interested, although
66 the deputy is an inhabitant or member thereof. The sheriff may also appoint employees to work
67 in the sheriff's civil process office. All deputies and employees of the process office shall serve
68 at the will and the pleasure of the sheriff. A deputy who ceases to be assigned to or to perform
69 civil process duties, either as an employee or as a contracted deputized process server, shall be
70 decommissioned as a deputy as provided by law and shall immediately return all equipment and
71 property issued to that person by the sheriffs' department.

72 (b) Deputies and other employees of the process office, who are salaried or hourly
73 employees and who devote 20 hours or more per week to assigned duties, shall be state

74 employees under chapters 32, 32A, 150E, 152, 258, 268A and 268B and shall be compensated in
75 accordance with this subsection and subsection (c).

76 (c) Subject to the following limitations, the sheriff shall have power and authority as
77 employer in all matters related to civil process deputies and employees including, but not limited
78 to, hiring, firing, promotion, discipline, work-related injuries and internal organization of the
79 department. No sheriff, deputy or employee shall serve process for anyone except the sheriff.
80 The sheriff or an assigned deputy or contracted deputized process server may serve process
81 outside regular business hours. Sheriffs and non-commission full-time deputies and employees
82 may receive only a salary or hourly wage and shall not receive a commission or any portion of
83 any fee for service of process, no matter when the service is performed. Except for appointed or
84 sworn deputy sheriffs contracted to serve civil process, sheriffs, deputy sheriffs and employees
85 who are part-time shall not be paid a commission or any portion of any fee for service of process
86 performed during hours for which the sheriff, deputy or employee is being compensated by
87 federal, state, county or municipal funds. The annual salary, cumulative hourly wage,
88 commissions or the cumulative portion of any fees for service of process of any individual
89 deputy, employee or contracted deputized process server shall not exceed the annual salary of the
90 sheriff.

91 (d) In addition to any other training and certification required by law, a deputy sheriff
92 who performs civil process duties, including, but not limited to, enforcement duties, shall be
93 sworn and shall complete a civil process officers certification program pursuant to a policy and
94 curriculum that shall be adopted and approved by the Massachusetts Sheriffs Association, Inc.
95 and the Massachusetts Deputy Sheriffs' Association. The civil process officers certification
96 program shall include training and orientation on all requirements of lawful service of process

97 and shall be conducted jointly by the Massachusetts Sheriffs Association, Inc. and the
98 Massachusetts Deputy Sheriffs' Association. Deputy sheriffs shall begin the civil process
99 officers certification program within 30 days after receiving appointment or being assigned civil
100 process duties and shall be re-certified annually after completing the program.

101 (e) All full-time deputy sheriffs and employees of the sheriff's civil process office,
102 including those deputy sheriffs and employees of the sheriff's civil process office who have been
103 transferred to the commonwealth, and who completed a 1 year probationary period of full time
104 employment, shall be granted under this subsection, without impairment, full benefits for
105 vacation and sick time earned from their original commencement of employment in the sheriff's
106 civil process office not to exceed those of other state employees.

107 Section 3B. No sheriff, deputy or employee, nor any other individual or entity shall have
108 or acquire any legal right to the tangible or intangible property of the civil process office, nor any
109 revenue derived from fees collected from the service of process or any proceeds from the sale of
110 the property within the process office, other than compensation as determined pursuant to this
111 chapter.

112 Except as otherwise provided in this chapter, all fees derived from service of process
113 shall be used solely for the operation of the sheriff's civil process office. All tangible and
114 intangible property shall belong to the state and shall be under the sole possession and control of
115 the sheriff.

116 SECTION 6. Said chapter 37 of the General Laws is hereby further amended by striking
117 out section 11, as appearing in the 2012 Official Edition, and inserting in place thereof the
118 following section:-

119 Section 11. (a) The Massachusetts Sheriffs Association, Inc. shall establish a system by
120 which all process fees are reported and recorded and shall develop and adopt policies and
121 procedures to be approved by the comptroller and the secretary of administration and finance
122 which shall be referenced in an internal control plan kept by each sheriff's office. Information
123 about each request for process to be served that is received by the sheriff's civil process office
124 shall be reported and recorded in the system within 30 days of when the information becomes
125 available and shall include, but not be limited to, the following information for each piece of
126 process to be served: (i) the title of the action, including court name and docket number; (ii) the
127 date the process was issued or required to be served; (iii) the type of process; (iv) the name and
128 address of the person requesting that process be served; (v) the name and address of the person
129 or location upon which service is to be made; (vi) the fee charged; (vii) the date of billing to
130 collect the fee; (viii) the date of fee collected; (ix) the date service was made; (x) the manner of
131 service; (xi) the amount of commission paid, if any; and (xii) the name of the person performing
132 service and, if different, the name of the person or entity to whom the commission was paid.

133 (b) A summary of the information contained in subsection (a) shall be compiled and
134 reported in writing to the comptroller and the secretary of administration and finance by the
135 sheriff annually not later than September 30.

136 (c) Administrative costs associated with the recording of information prescribed under
137 subsection (a) and prepared under subsection (b), including expenditures for personnel or the
138 purchase of equipment required to perform the recording of information, may be paid from the
139 civil process account or any other account established for the operation of the sheriff's office.

140 (d) In addition to the requirements in subsection (a), annual reports filed pursuant to
141 subsection (b) shall include, but not be limited to, completed, itemized schedules of the
142 following information: (i) assets, including cash, deposits, accounts receivable and the value of
143 the property and equipment; (ii) liabilities, including accounts payable, client escrow deposits,
144 capital lease obligations and all other debts; (iii) income derived from the service of process and
145 otherwise; (iv) expenses paid, including payroll, commissions and all other expenses; and (v) any
146 surplus from the sheriff's civil process account that has been transferred to an account as
147 authorized by law.

148 SECTION 7. Section 14 of said chapter 37, as so appearing, is hereby amended by
149 striking out, in lines 1 and 2, the words "They may execute precepts in their hands at the time of
150 their removal from office; and, upon" and inserting in place thereof the following word:- Upon.

151 SECTION 8. Said chapter 37 of the General Laws is hereby further amended by
152 inserting after section 14 the following section:-

153 Section 14A. Upon the removal of a deputy sheriff by the sheriff, the removed deputy
154 shall immediately return to the sheriff's civil process office all process and other documents
155 received or in the deputy sheriff's possession, along with any fees collected. If a deputy or
156 former deputy fails to comply with this section, the sheriff shall institute legal proceedings to
157 enforce this section or any other section in this chapter.

158 SECTION 9. Said chapter 37 of the General Laws is hereby further amended by striking
159 out section 22, as appearing in the 2012 Official Edition, and inserting in place thereof the
160 following section:-

161 Section 22. Each sheriff shall keep an account of all fees and money received from any
162 source by virtue of the sheriff's office on the state's accounting system as prescribed by the
163 comptroller.

164 SECTION 10. Said chapter 37 of the General Laws is hereby further amended by
165 inserting after section 22 the following section:-

166 Section 22A. (a) Notwithstanding section 22 or chapter 35, all fees and other revenues
167 collected by the process office shall be revenue of the commonwealth as defined by chapter 29.
168 All fees and revenues shall be deposited in bank accounts and accounted for on the books and
169 records of the commonwealth in accordance with policies and procedures of the state treasurer
170 and comptroller. The civil process accounts shall be kept separate from other accounts, shall
171 continue without further appropriation and shall be used only for the operation of the process
172 office or for activities that the sheriffs are statutorily authorized to perform. Expenditures shall
173 be authorized by the sheriff in accordance with state guidelines without further appropriation.
174 Any balance in the account at the close of the fiscal year shall be retained in the account and
175 made available in the subsequent fiscal year.

176 (b) Payroll and all other bills of the civil process office shall be paid from the process
177 account; provided, however, that after all civil process revenue has been expended for payroll
178 and other bills of the civil process office, a sheriff may use funding from a fiscal year budgetary
179 appropriation to pay payroll and all other civil process expenses.

180 (c) Notwithstanding subsection (a), contributions from paychecks issued to deputy
181 sheriffs and employees of the sheriff's civil process office who are members in service of the
182 state retirement system, shall be deducted and forwarded to the state treasurer. The amounts

183 deducted shall be determined in accordance with chapter 32 and any other rules and regulations
184 promulgated thereunder.

185 (d) Notwithstanding subsection (a), premiums from paychecks of deputy sheriffs and
186 employees of the sheriff's civil process office who are insured under chapter 32A shall be
187 deducted and forwarded to the state treasurer. The amounts deducted shall be determined in
188 accordance with chapter 32A and any other rules and regulations promulgated thereunder.

189 (e) Annually, not later than 75 days after the close of the fiscal year, the sheriff shall
190 render a sworn statement of account to the state treasurer, the secretary of administration and
191 finance and the house and senate committees on ways and means.

192 (f) Notwithstanding subsection (a), no funds held in a civil process account shall be used
193 for payment of liability expenses incurred by the sheriff's civil process office pursuant to chapter
194 258 or for payments to employees pursuant to chapter 152. Any judgment, settlement or
195 attorney's fees incurred as a result of litigation concerning the process office shall be paid in
196 accordance with chapter 258 in the same manner as any other claim, judgment, settlement or
197 attorney's fees paid by the sheriff's office.

198 (g) In the event revenues collected from civil process fees are deemed insufficient to
199 cover the costs of operating of the process office, the sheriff shall notify the house and senate
200 committees on ways and means and the secretary of administration and finance in writing of the
201 projected deficiency and the reasons for such deficiency not later than 30 days in advance of the
202 projected deficiency.

203 SECTION 11. Chapter 126 is hereby amended by inserting after section 18A the
204 following section:-

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

206 Whenever a deputy sheriff or other employee of a sheriff's civil process office who, due
207 to no fault of his own, while in the performance of duty, receives bodily injury from an act of
208 violence by a person connected with the proceeding for which service of process was attempted
209 or served, and who is incapacitated for duty because of the injury sustained, shall be paid, in
210 addition to benefits paid under chapter 152, the difference between the weekly cash benefits to
211 which he is entitled under chapter 152 and his regular salary. Any absence from work due to the
212 injury shall not be charged against the employee's available sick leave credits, even if the
213 absence is for less than 8 calendar days. This section does not apply to injuries sustained during
214 work for which a deputy or employee is being paid commission.

215 All amounts payable under this section shall be paid at the same times and in the same
216 manner as, and for all purposes shall be deemed to be the deputy or employee's regular
217 compensation. If a person or entity is liable for monetary damages for an injury of a deputy
218 sheriff or other employee of a sheriff's civil process for which he is compensated under this
219 section, the deputy, employee, or sheriff's department that is paying compensation under this
220 section, may proceed to enforce the liability of such person or entity in any court of competent
221 jurisdiction. Any sum recovered shall be for the benefit of the sheriff's department that is paying
222 such compensation, unless the sum is greater than the compensation paid to the injured person, in
223 which case the excess shall be retained by or paid to the injured person. For the purposes of this
224 section, "excess" shall mean the amount by which the total sum received as damages for the
225 injury, exclusive of interest and costs, exceeds the amount paid under this section as
226 compensation to the injured person. The party bringing the action shall be entitled to any costs
227 recovered by him. Any interest received in the action shall be apportioned between the sheriff's

228 department and the injured person in proportion to the amounts received by them respectively,
229 inclusive of interest and costs. The expense of any attorney's fees shall be divided between the
230 sheriff's department and the injured person in proportion to the amounts received by them
231 respectively.

232 Any person or entity, who injures a deputy sheriff or other employee of a sheriff's civil
233 process office who is compensated under this section for the injury, shall be liable in tort to the
234 sheriff's department that is paying the injured person, for all costs, in excess of the amount of
235 compensation paid, that are incurred by the sheriff's department to replace the injured person.

236 SECTION 12. Chapter 262 is hereby amended by striking out section 8A, as appearing in
237 the 2012 Official Edition, and inserting in place thereof the following section:-

238 Section 8A. Each constable shall annually, not later than April 15, file with the municipal
239 treasurer an account signed under the pains and penalties of perjury of all fees and money
240 received by the constable under section 8 for the service of civil process. If 2 or more constables
241 share such fees and money, such constables may file a joint account; provided, however, that
242 each constable signs the account under the pains and penalties of perjury.

243 Each deputy sheriff shall annually, not later than 30 days after the close of the fiscal year,
244 file with the sheriff and the state treasurer an account signed under the pains and penalties of
245 perjury of all fees and money received by the deputy sheriff under section 8 for the service of
246 civil process. If 2 or more deputy sheriffs share such fees and money, such deputy sheriffs may
247 file a joint account; provided, however, that each deputy sheriff shall sign the account under the
248 pains and penalties of perjury.

249 On a schedule determined by the sheriff, but at least quarterly, each deputy sheriff who
250 serves process shall file a written report to the sheriff, made under the pains and penalties of
251 perjury and in a form prescribed by the sheriff, detailing information relative to the service of
252 civil process in their respective jurisdictions pursuant to section 11 of chapter 37.

253 SECTION 13. Subject to appropriation, the human resources division shall conduct, in
254 consultation with the sheriffs and Massachusetts Sheriffs Association, Inc., a comprehensive
255 assessment that will lead to statewide standards for classification, recruitment, promotion,
256 compensation and professional standards for all sheriffs' offices. The assessment shall include,
257 but is not limited to, standardizing job titles and classification, job postings, minimum testing
258 requirements and other employment practices. The human resources division shall issue a report
259 of its assessment by April 30, 2016 and require that implementation of the standards shall begin
260 not later than September 1, 2016. A copy of the human resources division's assessment report
261 shall be sent to the chairs of the joint committee on state administration and regulatory oversight,
262 the chairs of house and senate ways and means, the clerks of the house and senate, the chairs of
263 the joint committee on public safety and homeland security, the secretary of administration and
264 finance and the secretary of public safety and security.