

SENATE No. 1865, Appendix I

Report of the Special Commission Relative to the Reorganization or Consolidation of Sheriffs' Offices (under the provisions of section 22 of Chapter 61 of the Acts of 2009, as amended by section 27 of Chapter 36 of the Acts of 2013) (Senate, No. 1865) so much as relates to reform sheriff civil process operations.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to reform sheriff civil process operations.

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

1 SECTION 1. Section 1 of chapter 32 of the General Laws, as appearing in the 2010 Official
2 Edition, is hereby amended by inserting, in line 259, at the end of the definition "Employee", the
3 following text:-

4 "Employee", as applied to persons whose regular compensation is paid from an account
5 established by the sheriff's civil process office pursuant to section 22 of Chapter 37 of this act for
6 the sheriff's civil process office and shall mean any person who is appointed by the sheriff as a
7 deputy sheriff or employee of the sheriff's civil process office who is engaged in duties which
8 require that his time be devoted to the service of the sheriff's civil process office in each year
9 during the ordinary working hours of regular and permanent employees, and who is regularly and
10 permanently employed in such service and receives a salary, hourly wage or regular
11 compensation for assigned civil process duties as determined by each Sheriff.

12 SECTION 2. Section 3 of said chapter 32 , as so appearing , is hereby amended by inserting,
13 in line 300, after the words “county correction facilities,” the following: - “and any deputy
14 engaged in civil process enforcement activities that involve the acts of arrest, eviction or seizure
15 of property, who is regularly assigned to such enforcement duties for more than 20 hours per
16 week, and who is defined by section 3A of chapter 37 as a full-time employee of the Sheriff.”

17 SECTION 3. Section 3 of said chapter 32, as so appearing, is hereby amended by inserting
18 after subparagraph (a) the following paragraph: --

19 (b) any deputy sheriff or employee of the sheriff’s civil process office, including any
20 deputy sheriff or employee of the process office that has been transferred to the Commonwealth,
21 who is now a member or becomes a member of a system applicable to any governmental unit
22 shall be given credit in such system for any service rendered by depositing in the annuity savings
23 fund of such system such sums and under such conditions as are set forth under said section,
24 provided that said member was eligible for membership in a retirement system based on his or
25 her civil process duties for the period for which creditable service is being granted.

26 SECTION 3. Section 2 of chapter 32A, as so appearing, is amended by inserting, in line 15,
27 after the words “cooperative extension service of Suffolk county,” the following: - “the offices of
28 the sheriffs,”

29 SECTION 4. Chapter 37 is hereby amended by inserting after section 3 the following
30 sections: —

31 Section 3A. Sheriff’s Civil Process Office.

32 (A) Each sheriff shall establish a civil process office within the sheriff's department and shall
33 assign deputies appointed pursuant to section 3 who, along with the sheriff, shall serve and
34 execute within their counties, including within the political boundaries of the previously
35 abolished county governments, and where the Commonwealth is a party or interested, all precepts
36 lawfully issued to them, and all other process required by law to be served by an officer pursuant
37 to section 11 of chapter 37. The civil process office established within the sheriff's department shall
38 be the exclusive entity performing sheriff's civil process duties under section 11 of chapter 37. A
39 deputy assigned to serve process may do so in cases in which a county, city, town, parish, religious
40 society, fire or other district is a party or interested, although he is an inhabitant or member
41 thereof. The sheriff may also appoint employees to work in the sheriff's civil process office. All
42 deputies and employees of the process office shall serve at the will and the pleasure of the sheriff.
43 Any deputy who ceases to be assigned to or to perform civil process duties, either as an
44 employee or as a contracted deputized process server, shall be decommissioned as a deputy as
45 provided by law and shall immediately return all equipment and property issued to him by the
46 sheriffs' department.

47 (B) Deputies and other employees of the process office, who are salaried or hourly
48 employees and who devote 20 or more hours per week to assigned duties, shall be state
49 employees for the purposes of Chapters 32, 32A, 150E, 152, 258, 268A, and 268B, and shall be
50 compensated in accordance with this subsection and subsection (C) of this section.

51 (C) Subject to the following limitations, the sheriff shall have power and authority as
52 employer in all matters related to civil process deputies and employees including, but not limited
53 to, hiring, firing, promotion, discipline, work-related injuries and internal organization of the
54 department:-

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

56 2. The sheriff or an assigned deputy, or contracted deputized process server may serve
57 process outside regular business hours.

58 3. Sheriffs and non-commission full-time deputies and employees may receive only a
59 salary or hourly wage, and shall at no time receive a commission, or any portion of any fee, for
60 service of process no matter when the service is performed.

61 4. Except for contracted deputized process servers, sheriffs, deputy sheriffs and
62 employees who are part-time shall not be paid a commission or any portion of any fee, for service
63 of process performed during hours for which the sheriff, deputy or employee is being
64 compensated by federal, state, county-or municipal funds;

65 5. The annual salary, cumulative hourly wage, commissions, or the cumulative portion of
66 any fees for service of process, of any individual deputy, employee, or contracted deputized
67 process server shall not exceed the annual salary of the sheriff; and

68 (D) In addition to any other training and certification required by law, any deputy sheriff
69 who perform civil process duties, including but not limited to enforcement duties, shall be sworn and
70 shall complete a civil process officers certification program, pursuant to a policy and curriculum
71 that shall be adopted and approved by the Massachusetts Sheriffs Association and the
72 Massachusetts Deputy Sheriffs Association. The civil process officers certification program shall
73 include training and orientation on all requirements of lawful service of process and shall be
74 conducted jointly by the Massachusetts Sheriffs Association and the Massachusetts Deputy
75 Sheriffs Association. Deputy sheriffs shall begin the civil process officers certification program
76 within 30 days after receiving appointment or being assigned civil process duties, and shall be re-

77 certified annually after completing the program.

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

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

85 No sheriff, deputy or employee, nor any other individual or entity shall have or acquire any
86 legal right whatsoever to the tangible or intangible property of the civil process office, nor any
87 revenue derived from fees collected from the service of process of any proceeds from the sale of
88 the property within the process office, other than compensation as determined under this chapter.

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

92 SECTION 5. Chapter 37 is further amended by striking out section 11 and inserting in
93 place thereof the following section:-

94 Section 11. Recording of Process.

95 (A) The Massachusetts Sheriffs Association, shall establish a system by which all process
96 fees are reported and recorded and shall develop and adopt policies and procedures, to be
97 approved by the comptroller and the office of administration and finance which shall be

98 referenced in an internal control plan kept by each sheriff's office. Information about each
99 request for process to be served that is received by the sheriff's civil process office shall be
100 reported and recorded in the system within 30 days of when the information becomes available,
101 and shall include but not be limited to the following information for each piece of process to be
102 served: --

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

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

105 (c) the type of process;

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

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

108 (f) the fee charged;

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

110 (h) the date of fee collected;

111 (i) the date service was made;

112 (j) the manner of service;

113 (k) the amount of commission paid, if any ; and

114 (l) the name of the person performing service, and if different, the name of the person or
115 entity to whom the commission was paid.

116 (B) A summary of the information contained in subsection (A) of this section shall be

117 compiled and reported in writing to the comptroller and the office of administration and finance
118 by the sheriff annually no later than September 30th.

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 civil process account or any other account established for the
123 operation of the sheriff's office.

124 (D) In addition to the requirements of subsection (A) of this section, annual reports filed
125 pursuant to subsection (B) of this section shall include, but not be limited to, completed, itemized
126 schedules of the following information pertaining to the service of process:

127 (a) assets, including cash, deposits, accounts receivable, and the value of the property and
128 equipment;

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

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

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

133 (e) any surplus from the sheriff's civil process account that has been transferred to an
134 account as authorized by law.

135 SECTION 6. Section 14 of chapter 37, as appearing in the 2010 Official Edition , is hereby
136 amended by striking out, in lines 1 and 2, the words "They may execute precepts in their hands at
137 the time of their removal from office; and,".

138 SECTION 7. Chapter 37 is further amended by inserting after section 14 the following new
139 section: -

140 Section 14 A. Return of Writs and Precepts after removal.

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

146 SECTION 8. Chapter 37 is further amended by striking section 22 in its entirety and
147 inserting in place thereof the following section: -

148 Section 22. Accounting of fees; disposition of funds.

149 Each sheriff shall keep an account of all fees and money received from any source by virtue of
150 his office on the state's accounting system as prescribed by the state comptroller.

151 SECTION 9. Chapter 37 is further amended by inserting after section 22 the following
152 section: —

153 Section 23. Fees from Process Office.

154 (A) Notwithstanding the provisions of section 22 of this chapter or the provisions of
155 chapter 35, all fees and other revenues collected by the process office shall be revenue of the
156 Commonwealth as defined by chapter 29. All fees and revenues shall be deposited in bank
157 accounts and accounted for on the books and records of the Commonwealth in accordance with
158 policies and procedures of the state treasurer and comptroller. The civil process accounts shall be

159 kept separate from any other account, shall continue without further appropriation, and shall be
160 used only for the operation of the process office or for activities that the sheriffs are statutorily
161 authorized to perform. . Expenditures shall be authorized by the sheriff in accordance with state
162 guidelines without further appropriation. Any balance in the account at the close of the fiscal
163 year shall be retained in the account and made available in the subsequent fiscal year

164 (B) Payroll and all other bills of the civil process office shall be paid from the process
165 account. However, after all civil process revenue has been expended for payroll and other bills of
166 the civil process office, a sheriff may use funding from a fiscal year budgetary appropriation to
167 pay payroll and all other civil process expenses.

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

173 (D) Notwithstanding the provisions of subsection (A), premiums from paychecks of
174 deputy sheriffs and employees of the sheriff's civil process office who are insured under Chapter
175 32A shall be deducted and forwarded to the state treasurer. The amounts deducted shall be
176 determined in accordance with the provisions of those chapters and any other rules and
177 regulations promulgated there under.

178 (E) Annually, on or before the 75th day after the close of the fiscal year, the sheriff shall
179 render a sworn statement of account to the state treasurer, to the office of administration and
180 finance and the house and senate committees on ways and means.

181 (F) Notwithstanding the provisions of subsection (A), no funds held in any civil process
182 account shall be used either for payment of liability expenses incurred by the sheriff's civil
183 process office pursuant to chapter 258, or for payments to employees pursuant to chapter 152.
184 Any judgment, settlement or attorney's fees incurred as a result of litigation concerning the
185 process office shall be paid in accordance with chapter 258, in the same manner as any other
186 claim, judgment, settlement, or attorney's fees paid by the sheriff's office.

187 (G) If the sheriff projects that revenues collected from civil process fees will not be
188 sufficient to cover costs, then 30 days in advance of the projected deficiency, the sheriff shall
189 notify the house and senate committees on ways and means and the office of administration and
190 finance in writing of the projected deficiency and the reasons for it.

191 SECTION 10. Chapter 126 is hereby amended by inserting after section 18A the
192 following section: —

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

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

203 All amounts payable under this section shall be paid at the same times and in the same
204 manner as, and for all purposes shall be deemed to be the deputy or employee's regular
205 compensation. If a person or entity is liable for monetary damages for an injury of a deputy
206 sheriff or other employee of a sheriff's civil process for which he is compensated under this section,
207 the deputy, employee, or sheriff's department that is paying compensation under this section,
208 may proceed to enforce the liability of such person or entity in any court of competent
209 jurisdiction. Any sum recovered shall be for the benefit of the sheriff's department that is paying
210 such compensation, unless the sum is greater than the compensation paid to the injured person, in
211 which case the excess shall be retained by or paid to the injured person. For the purposes of this
212 section, "excess" shall mean the amount by which the total sum received as damages for the
213 injury, exclusive of interest and costs, exceeds the amount paid under this section as
214 compensation to the injured person. The party bringing the action shall be entitled to any costs
215 recovered by him. Any interest received in the action shall be apportioned between the sheriff's
216 department and the injured person in proportion to the amounts received by them respectively,
217 inclusive of interest and costs. The expense of any attorney's fees shall be divided between the
218 sheriff's department and the injured person in proportion to the amounts received by them
219 respectively.

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

224 SECTION 11. Said chapter 262, as so appearing, is hereby amended by striking out
225 section 8A and inserting in place thereof the following section;-

226 Section 8A. Annual accounts of deputy sheriffs and constables

227 Each constable shall annually, on or before the 15th day of April, file with the county
228 treasurer an account signed by him under the penalties of perjury of all fees and money received
229 by him under the provisions of section 8 for the service of civil process. If 2 or more constables
230 share such fees and money between themselves, they may file a joint account provided that each
231 signs the account under the penalties of perjury.

232 Each deputy sheriff shall annually, on or before 30 days after the close of the fiscal year,
233 file with the sheriff and with the state treasurer an account signed by him under the penalties of
234 perjury of all fees and money received by him under the provisions of section 8 for the service of
235 civil process. If 2 or more deputy sheriffs share such fees and money between them they may
236 file a joint account, provided that each shall sign the account under the penalties of perjury.

237 On a schedule determined by the sheriff, but at least quarterly, each deputy sheriff who
238 serves process shall file a written report to the sheriff of all the process they have served. The
239 written report shall be in a form approved by the sheriff and shall contain all the information
240 contained in section 11 of chapter 37. The written report shall be made under the pains and
241 penalties of perjury.

242 SECTION12. The provisions of this act shall take effect January 1, 2013.