HOUSE DOCKET, NO. 3015 FILED ON: 1/16/2015

HOUSE . . . . . No. 1227

The Commonwealth of Massachusetts

PRESENTED BY:

Evandro C. Carvalho

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 maintaining the integrity of the judicial system.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Evandro C. Carvalho	*5th Suffolk*	*1/16/2015*
Ruth B. Balser	*12th Middlesex*	*1/26/2015*
Tackey Chan	*2nd Norfolk*	*1/29/2015*
Sonia Chang-Diaz	*Second Suffolk*	*1/30/2015*
Marjorie C. Decker	*25th Middlesex*	*1/26/2015*
Viriato M. deMacedo	*Plymouth and Barnstable*	*2/4/2015*
Marcos A. Devers	*16th Essex*	*2/1/2015*
James B. Eldridge	*Middlesex and Worcester*	*1/27/2015*
Tricia Farley-Bouvier	*3rd Berkshire*	*1/21/2015*
Linda Dorcena Forry	*First Suffolk*	*1/30/2015*
Gloria L. Fox	*7th Suffolk*	*2/2/2015*
Denise C. Garlick	*13th Norfolk*	*2/2/2015*
Carmine L. Gentile	*13th Middlesex*	*2/2/2015*
Carlos Gonzalez	*10th Hampden*	*2/2/2015*
Paul R. Heroux	*2nd Bristol*	*1/22/2015*
Russell E. Holmes	*6th Suffolk*	*2/3/2015*
Mary S. Keefe	*15th Worcester*	*1/29/2015*
Jason M. Lewis	*Fifth Middlesex*	*1/27/2015*

Jay D. Livingstone	*8th Suffolk*	*1/23/2015*
Elizabeth A. Malia	*11th Suffolk*	*1/30/2015*
Frank A. Moran	*17th Essex*	*1/29/2015*
Michael J. Moran	*18th Suffolk*	*2/2/2015*
Denise Provost	*27th Middlesex*	*1/23/2015*
Byron Rushing	*9th Suffolk*	*1/30/2015*
Jeffrey Sánchez	*15th Suffolk*	*2/4/2015*
Tom Sannicandro	*7th Middlesex*	*2/4/2015*
Frank I. Smizik	*15th Norfolk*	*2/4/2015*
Ellen Story	*3rd Hampshire*	*1/23/2015*
Benjamin Swan	*11th Hampden*	*1/22/2015*
Aaron Vega	*5th Hampden*	*1/29/2015*

HOUSE DOCKET, NO. 3015 FILED ON: 1/16/2015

HOUSE . . . . . No. 1227

By Mr. Carvalho of Boston, a petition (accompanied by bill, House, No. 1227) of Evandro C. Carvalho and others relative to the process for the investigation of officer-involved deaths. The Judiciary.

The Commonwealth of Massachusetts

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

An Act relative to maintaining the integrity of the judicial system.

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 12 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by inserting after Section 26, the following section:

Section 26A.

Whenever used in sections 26A to 26B, inclusive, of Chapter 12 of the General Laws, unless the context shall otherwise require, the following words or terms shall have the following meanings:

"Applicable cases" shall be defined as cases of death involving one or more current members of law enforcement.

"Member of law enforcement" shall be defined as any member of a municipal police force provided for by section 97 of Chapter 41 of the General Laws or any member of the state police force provided for by section Chapter 22C of the General Laws.

"Officer-involved death" shall be defined as the death of any individual which directly resulted from the use of lethal or non-lethal force by any member of law enforcement.

SECTION 2. Chapter 12 of the General Laws, as so appearing, is hereby amended by inserting after Section 26A, the following section:

Section 26B.

(a) Preliminary Investigation

The Attorney General shall conduct a preliminary investigation whenever they receive information sufficient to constitute grounds to investigate an officer-involved death. The Attorney General's preliminary investigation shall: 1) determine whether an officer-involved death has occurred, 2) determine which member or members of law enforcement were involved in the officer-involved death, and 3) make a recommendation on whether further investigation is warranted, with respect to each individual member of law enforcement involved. If the Attorney General recommends that further investigation is warranted, they shall also recommend a scope of prosecutorial jurisdiction for any special prosecutor that might be appointed pursuant to subsection (b) of this section in relation to this incident.

The Attorney General shall make such determinations not later than 90 days after the preliminary investigation has commenced. Upon the completion of the Attorney General's preliminary investigation, the findings shall be sent to the Governor. The Attorney General may request a single 60-day extension to complete their initial preliminary investigation by a written request to the Governor.

If the Attorney General's preliminary investigation determines that an officer-involved death has not occurred, they shall release to the public findings from their investigation that demonstrate that either, 1) no member of law enforcement exercised lethal or non-lethal use of force upon the deceased individual, or 2) that the death of the deceased individual could not have directly resulted from the lethal or non-lethal use of force by a member of law enforcement.

In conducting a preliminary investigation under this section, the Attorney General shall have no authority to convene grand juries, plea bargain, grant immunity, or issue subpoenas. During a preliminary investigation conducted pursuant to this section, the Attorney General shall be considered a district attorney for the purpose of chapter 38.

If additional information related to a specific officer-involved death is received by the Attorney General after a preliminary investigation into that incident has concluded, and that information is sufficient to constitute grounds to re-investigate the incident, the Attorney General may conduct an additional preliminary investigation into the matter. If the Attorney General conducts an additional preliminary investigation into the matter, they may send the Governor amended findings of their preliminary investigation within 90-days.

(b) Appointment of a special prosecutor

Whenever the Governor receives from the Attorney General the findings of a preliminary investigation into an officer-involved death which recommends a further investigation is warranted, the Governor will appoint a special prosecutor to conduct a full investigation of that officer-involved death. If the Governor receives from the Attorney General the findings of a preliminary investigation into an officer-involved death which determines that no further

investigation is warranted, the Governor may appoint a special prosecutor, at his or her discretion, to conduct a full investigation of that officer-involved death.

The Governor shall appoint a special prosecutor for no longer than 2 years, and shall submit a budget and request for an appropriation of funds to the clerk of the house and senate who shall forward the report to the speaker of the house, the president of the senate, the chair of the house committee on ways and means, and the chair of the senate committee on ways and means.

The Governor shall submit to the Attorney General a scope of prosecutorial jurisdiction for a special prosecutor appointed pursuant to this subsection. This scope of prosecutorial jurisdiction shall be approved at a hearing before a judge in the superior court, in which attorneys for any members of law enforcement who were determined to be involved in the officer-involved death in question may appear and be heard.

When selecting a special prosecutor, the Governor shall consider the perceived independence, the credibility, and competence of their appointee.

(c) Requests for additional time or resources

Any special prosecutor appointed pursuant to subsection (b) of Section 26B of chapter 12 of the General Laws may request an extension of their term by a written request to the Governor.

Any special prosecutor appointed pursuant to subsection (b) of Section 26B of chapter 12 of the General Laws may request additional resources or funds by a written request, the submission of a supplemental budget, and an explanation of their need for additional funds to the Governor.

(d) Investigation

In investigating and prosecuting applicable cases within their prosecutorial jurisdiction, a special prosecutor shall have all the powers and duties of a District Attorney; provided that a special prosecutor shall not have the power to empanel grand juries.

(e) Bringing charges against a member of law enforcement

A special prosecutor may bring charges against a member of law enforcement that are within the scope of their prosecutorial jurisdiction only after presenting evidence on behalf of the Commonwealth at a hearing before a judge in the superior court, in order to determine whether probable cause exists for the State to bring criminal charges against the member of law enforcement.

A hearing held pursuant to this subsection shall be conducted as a probable cause hearing pursuant to the Massachusetts Rules of Criminal Procedure; provided that the court shall remain open to the public, except as determined appropriate by the presiding judge.

(f) Prosecution of charges against a member of law enforcement

Special prosecutors appointed pursuant to subsection (b) of section 26B of Chapter 12 of the General laws shall appear for the commonwealth in superior court for all applicable cases within their prosecutorial jurisdiction in which the commonwealth is a party or interested, and in the hearing, in the supreme judicial court, of all questions of law arising in the cases of which they respectively have charge.