HOUSE DOCKET, NO. 1269 FILED ON: 1/18/2017

HOUSE . . . . . No. 1316

The Commonwealth of Massachusetts

PRESENTED BY:

David T. Vieira

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:	DATE ADDED:
David T. Vieira	*3rd Barnstable*	*1/18/2017*

HOUSE DOCKET, NO. 1269 FILED ON: 1/18/2017

HOUSE . . . . . No. 1316

By Mr. Vieira of Falmouth, a petition (accompanied by bill, House, No. 1316) of David T. Vieira for legislation to establish a board of administrations of sheriffs. Public Safety and Homeland Security.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *2190* OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

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 216. There shall be a corrections advisory board, hereinafter called the board, to provide independent advice to the commonwealth's corrections providers, including the sheriffs, for the purpose of (1) improving coordination efforts between and among the sheriffs, the department of corrections, the courts and community corrections programs, and (2) indentifying and establishing 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.

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

The chairman shall hold meetings at least quarterly, one of which shall be an annual meeting, and shall notify all board members and sheriffs of the time and place of all meetings. Special meetings may be called at any time by a majority of the board members and shall be

called by the chairman upon written application of eight or more members. Members of the board shall receive no compensation, but shall receive their expenses actually and necessarily incurred in the discharge of their duties.

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

The board shall make a report, on or before 60 days of the end of each two-year legislative session, and file a copy thereof with the governor, the clerks of the house of representatives and of the senate, senate and house committees on ways and means, the joint committees on public safety, judiciary, and state administration and regulatory oversight.

SECTION 2. Section 3B of chapter 7 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by inserting at the end of the first paragraph the following words:- ; provided, however, that the cost of meals for employees of the sheriff's departments shall be subject to collective bargaining agreements.

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

""Employee", as applied to persons whose regular compensation is paid from an account established by the sheriff's civil process office pursuant to section 22 of chapter 37 of this act for the sheriff's civil process office and shall mean any person who is appointed by the sheriff as a deputy sheriff or employee of the sheriff's civil process office who is engaged in duties which require that his time be devoted to the service of the sheriff's civil 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 4. Section 3 of said chapter 32 , as so appearing , is hereby amended by inserting, in line 300, after the words "county correction facilities," the following:-

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

SECTION 5. Section 3 of said chapter 32, as so appearing, is hereby amended by inserting after subparagraph (a) the following paragraph:-

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

SECTION 6. Section 2 of chapter 32A, as so appearing, is amended by inserting, in line 15, after the words "cooperative extension service of Suffolk county," the following:-

"the offices of the sheriffs,"

SECTION 7. Chapter 37 is hereby amended by inserting after section 3 the following sections:-

Section 3A. Sheriff's Civil Process Office.

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

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

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

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

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

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

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

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

(D) In addition to any other training and certification required by law, any deputy sheriff who perform civil process duties, including but not limited to enforcement duties, shall be sworn and shall complete a civil process officers certification program, pursuant to a policy and

curriculum that shall be adopted and approved by the Massachusetts Sheriffs Association and the Massachusetts Deputy Sheriffs Association. The civil process officers certification program shall include training and orientation on all requirements of lawful service of process and shall be conducted jointly by the Massachusetts Sheriffs Association and the Massachusetts Deputy Sheriffs Association. Deputy sheriffs shall begin the civil process officers certification program within 30 days after receiving appointment or being assigned civil process duties, and shall be re-certified annually after completing the program.

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

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

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

Except as otherwise provided in this chapter, all fees derived from service of process shall be used solely for the operation of the sheriff's civil process office. All tangible and

intangible property shall belong to the state and shall be under the sole possession and control of the sheriff.

SECTION 8. Chapter 37 is further amended by striking out section 11 and inserting in place thereof the following section:-

Section 11. Recording of Process.

(A) The Massachusetts Sheriffs Association, shall establish a system by which all process fees are reported and recorded and shall develop and adopt policies and procedures, to be approved by the comptroller and the office of administration and finance which shall be referenced in an internal control plan kept by each sheriff's office. Information about each request for process to be served that is received by the sheriff's civil process office shall be reported and recorded in the system within 30 days of when the information becomes available, and shall include but not be limited to the following information for each piece of process to be served: --

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

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

(c) the type of process;

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

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

(f) the fee charged;

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

(h) the date of fee collected;

(i) the date service was made;

(j) the manner of service;

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

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

(B) A summary of the information contained in subsection (A) of this section shall be compiled and reported in writing to the comptroller and the office of administration and finance by the sheriff annually no later than September 30th.

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

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

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

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

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

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

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

SECTION 9. Section 14 of chapter 37, as so appearing, is hereby amended by striking out, in lines 1 and 2, the words "They may execute precepts in their hands at the time of their removal from office; and,".

SECTION 10. Chapter 37 is further amended by inserting after section 14 the following new section:-

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

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

SECTION 11. Chapter 37 is further amended by striking out section 22 in its entirety and inserting in place thereof the following section:-

Section 22. Accounting of fees; disposition of funds.

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

SECTION 12. Chapter 37 is further amended by inserting after section 22 the following section:-

Section 23. Fees from Process Office.

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

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

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

amounts deducted shall be determined in accordance with the provisions of chapter 32 and any other rules and regulations promulgated there under.

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

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

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

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

SECTION 13. Chapter 126 is hereby amended by inserting after section 18A the following section:-

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

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

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

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

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

SECTION 14. Subsection (c) of section 3 of chapter 211F of the General Laws, as so appearing, is hereby amended by inserting, in line 9, after the words "condition of" the following words:- pre-trial diversion or.

SECTION 15. Said chapter 262, as so appearing, is hereby amended by striking out section 8A and inserting in place thereof the following section;-

Section 8A. Annual accounts of deputy sheriffs and constables

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

Each deputy sheriff shall annually, on or before 30 days after the close of the fiscal year, file with the sheriff and with the state treasurer an account signed by him under the penalties of

perjury of all fees and money received by him under the provisions of section 8 for the service of civil process. If 2 or more deputy sheriffs share such fees and money between them they may file a joint account, provided that each shall sign the account under the penalties of perjury.

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

SECTION 16. Subject to appropriation, the human resources division shall conduct, in consultation with the sheriffs and Massachusetts Sheriffs Association, a comprehensive assessment for all sheriff's offices management policies and practices, including but not limited to, standardizing job title and classification, job posting, minimum testing requirements and other employment practices that will lead to statewide standards for classification, recruitment, promotion, compensation and professional standards for all fourteen sheriffs' offices. That human resources division shall issue a report of its assessment by April 30, 2015 and that implementation of the standards shall begin no later than September 1, 2015. A copy of the human resources division's assessment report shall be sent to the chairs joint committee on state administration and regulatory oversight, the chairs of house and senate ways and means, the house and senate clerks, the chairs of the joint committee on public safety, the secretary of administration and finance and the secretary of public safety and security.

SECTION 17. The office of the state auditor, in coordination with the executive office of health and human services and the Massachusetts Sheriffs' Association, shall perform a

performance audit on the mental health screening processes currently in place for all jails and houses of correction, the types of services offered and used prior to persons being transitioned to these facilities, the range of services in these facilities and comparisons with national and clinical best practices. The auditor shall provide the findings of said performance audit, including estimate costs for attaining national and best practice levels of services, to the Massachusetts Sheriffs' Association and the house and senate committees on ways and means no later than October 1, 2015.

SECTION 18. The executive office of public safety and security shall determine the feasibility and cost of adding an inmate tracking module to the Inmate Management System, which would allow staff at prisons and houses of correction to electronically monitor movement of prisoners within institutions in real time. The executive office of public safety and security is specifically requested to consider and compare the advantages and disadvantages of using radio-frequency identification, bar codes and scanners, or biometric identification of prisoners with the tracking module.

SECTION 19. Notwithstanding any general or special law to the contrary, the secretary of health and human services, in consultation with the division of medical assistance and the secretary of public safety and security, shall, within 3 months of the effective date of this act, apply to the federal center for medicare and medicaid services for a waiver to allow for federal reimbursement of inmate health costs, including, but not limited to mental health care and drug and alcohol dependency treatment.