

# SENATE . . . . . No. 2495

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Senate, April 26, 2018 -- Text of amendment (14) (offered by Senator Brownsberger) to the Ways and Means amendment (Senate, No. 2481) to the House Bill making appropriations for the fiscal year 2018 to provide for supplementing certain existing appropriations and for certain other activities and projects

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## The Commonwealth of Massachusetts

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

1 by inserting at the end thereof the following new sections:-

2 SECTION XX. Chapter 6 of the General Laws, as amended by section 9 of chapter 69 of  
3 the acts of 2018, is hereby further amended by striking out section 184A and inserting in place  
4 thereof the following section:-

5 Section 184A. (a) There shall be a forensic science oversight board in the executive  
6 office of public safety and security. The board shall have oversight authority over all  
7 commonwealth facilities engaged in forensic services in criminal investigations, and shall  
8 provide enhanced, objective and independent oversight of the handling and analysis of forensic  
9 evidence used in criminal matters, including the integrity of such forensic analysis performed in  
10 state and municipal laboratories.

11 The board shall consist of: the undersecretary for forensic sciences or a designee, who  
12 shall serve as chair and shall be a non-voting member except in cases where an additional vote is  
13 required to break a tie vote; and 14 additional members who shall be appointed by the governor,  
14 1 of whom shall be a forensic scientist with practical experience in an accredited crime

15 laboratory, 1 of whom shall have senior level expertise in forensic laboratory management within  
16 an accredited crime laboratory, 1 of whom shall have expertise in cognitive bias, 1 of whom shall  
17 have expertise in statistics, 1 of whom shall be in academia in a research field involving forensic  
18 science, 1 of whom shall be an expert in forensic pathology, 1 of whom shall be a forensic  
19 scientist who shall have a specialty in the natural, physical or biological sciences, 1 of whom  
20 shall have expertise in quality assurance management within an accredited crime laboratory, 1 of  
21 whom shall be nominated by the Massachusetts District Attorneys Association, 1 of whom shall  
22 be nominated by the attorney general, 1 of whom shall be nominated by the committee for public  
23 counsel services, 1 of whom shall be nominated by the Massachusetts Association of Criminal  
24 Defense Lawyers, Inc., 1 of whom shall be nominated by the New England Innocence Project,  
25 Inc., and 1 of whom shall be nominated by the Massachusetts Chiefs of Police Association.

26 A member, other than the undersecretary for forensic sciences or a designee and those  
27 members nominated by the attorney general, the Massachusetts District Attorneys Association,  
28 the committee for public counsel services, Massachusetts Association of Criminal Defense  
29 Lawyers, Inc., New England Innocence Project, Inc., or Massachusetts Chiefs of Police  
30 Association shall not be employed by or affiliated with a commonwealth or municipal forensic  
31 laboratory throughout the term of membership. A members shall not be engaged in providing  
32 testimony in the area of forensic science in criminal or civil cases within the commonwealth.  
33 Members who are not state employees shall be considered special state employees for purposes  
34 of chapter 268A.

35 (b) All appointments to the board shall be for a term of 4 years, with the members  
36 initially appointed serving staggered terms. A vacancy, other than by expiration of term, shall be  
37 filled by the governor for the unexpired term. Staff for the board shall be provided by the

38 executive office of public safety and security. The board shall meet at times and places as is  
39 requested by 7 of its members and shall not meet less than quarterly. Members shall not  
40 designate a proxy to vote in their absence. Members of the board shall serve without  
41 compensation but shall be reimbursed for reasonable and necessary expenses incurred in the  
42 performance of their duties.

43 (c) Not more than 6 months following the appointment of its membership, the board  
44 shall conduct a comprehensive review of the operation and management of all publicly operated  
45 facilities in the commonwealth engaged in forensic services in criminal investigations. Such  
46 review shall include, but not be limited to, evaluating: (i) the capabilities of each such facility  
47 engaged in forensic services and such facility's ability to process evidence necessary to comply  
48 with the General Laws; (ii) the condition and accuracy of testing equipment; (iii) the handling,  
49 processing, testing and storage of evidence by such facilities; (iv) the professional qualifications  
50 and standards necessary to serve as the head of the facility; (v) the qualifications and  
51 management of laboratory personnel, and (vi) the proper entity to control the state police crime  
52 laboratory and whether it would be appropriate to transfer such control to another executive  
53 agency or to an independent executive director. The results of such review, together with any  
54 recommendations for regulatory or legislative actions, shall be reported to the clerks of the house  
55 and senate, the secretary of public safety and security, the joint committee on the judiciary, the  
56 joint committee on public safety and homeland security, the house and senate committee on  
57 ways and means, the colonel of the state police and the chief of police for any municipality  
58 operating such a facility.

59 (d) The board shall upon vote by 7 of its members initiate an investigation into any  
60 forensic science, technique or analysis used in a criminal matter upon: (i) application by a person

61 alleging that a forensic technique in common use is not scientifically valid; or (ii) a  
62 determination that an investigation of a forensic analysis would advance the integrity and  
63 reliability of forensic science in the commonwealth.

64 The board shall report the results of an investigation by the board, with any resulting  
65 recommendations, to the executive office of public safety and security, the joint committee on  
66 public safety and homeland security, the joint committee on the judiciary, the supreme judicial  
67 court, the Massachusetts District Attorneys Association, the attorney general, the committee for  
68 public counsel services, the Massachusetts Association of Criminal Defense Lawyers, Inc. and  
69 the New England Innocence Project, Inc.

70 (e) The board shall develop, implement and periodically review a system for forensic  
71 laboratories to report professional negligence or misconduct and any such facility shall be  
72 required to report to the board any instance of professional negligence and misconduct.

73 (f) The board shall actively engage stakeholders in the criminal justice system in forensic  
74 development initiatives and shall recommend ways to improve education and training in forensic  
75 science and the law, and identify measures to improve the quality of forensic analysis performed  
76 in laboratories.

77 (g) The board shall develop, implement and periodically review a system to evaluate  
78 laboratory accreditation, including securing and maintaining such accreditation for non-  
79 accredited laboratories, and shall ensure that every facility is actively accredited and in  
80 compliance with standards promulgated by the International Organization of Standardization.

81 (h) The board shall review any budget request of the undersecretary for forensic  
82 sciences, including any recommendations for the allocation of resources and expansion of

83 services, and may provide its own recommendations to the secretary of the executive office of  
84 public safety and security.

85 (i) The board shall review protocols to ensure proper chain of custody of evidence.

86 (j) The board shall receive and review quarterly reports from the undersecretary for  
87 forensic sciences that shall include such information as the board requests, and which shall, at a  
88 minimum, include: (1) the volume of forensic services of each facility as well as the volume for  
89 each employee within such facility; (2) the volume of forensic services requests for each county;  
90 (3) the length of time from submission for testing and the return of results from such facilities;  
91 and (4) the accreditation status of each facility; and (5) any facility employee records,  
92 qualifications, or incident reports that could affect the integrity or results of forensic analysis  
93 performed at each facility.

94 At the direction of the board, the undersecretary for forensic sciences shall advise the  
95 board on issues as the board shall request. The undersecretary shall make recommendations for  
96 the allocation of resources and expansion of services, and on an annual basis, submit budget  
97 recommendations to the secretary of the executive office of public safety and security and the  
98 board.

99 SECTION XX. Subsection (d) of section 24G of chapter 90 of the General Laws, as  
100 inserted by section 37 of said chapter 69, is hereby amended by striking out the first sentence and  
101 inserting in place thereof the following sentence:- When a motor vehicle is the instrument of the  
102 offense, the registrar shall revoke the license or right to operate of a person convicted of a  
103 violation of subsection (a), (b) or (c), or punished under section 13 of chapter 265, for a period of  
104 15 years after the date of conviction for a first offense.

105 SECTION XX. Section 32H½ of chapter 94C of the General Laws, as inserted by  
106 chapter 72 of the acts of 2018, is hereby amended by striking out subsection (a) and inserting in  
107 place thereof the following subsection:-

108 (a) As used in this section, the words “ineligible offender” shall have the following  
109 meaning: any person sentenced to a mandatory minimum term of imprisonment in the state  
110 prison upon conviction for: (1) violating sections 32, 32F or 32K, or subsections (c), (c½) or  
111 (c¾) of section 32E; (2) violating this chapter, upon a finding of any 1 of the following  
112 aggravating circumstances: (i) the person used violence or threats of violence or possessed a  
113 firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of  
114 chapter 269, or induced another participant to do so, during the commission of the offense; (ii)  
115 the person engaged in a course of conduct whereby he directed the activities of another who  
116 committed any felony in violation of chapter 94C; or (iii) the offense was committed during the  
117 commission or attempted commission of a violation of section 32F or section 32K of chapter  
118 94C.

119 SECTION XX. Section 52 of chapter 119 of the General Laws, as amended by section  
120 72 of chapter 69 of the acts of 2018, is hereby further amended by striking out the definition of  
121 “Delinquent child” and inserting in place thereof the following definition:-

122 “Delinquent child”, a child between 12 and 18 years of age who commits any offense  
123 against a law of the commonwealth; provided, however, that a child shall not be adjudged a  
124 delinquent child for an offense that is a civil infraction, a violation of any municipal ordinance or  
125 town by-law or a first offense of a misdemeanor for which the punishment is a fine,

126 imprisonment in a jail or house of correction for not more than 6 months or both such fine and  
127 imprisonment.

128 SECTION XX. Section 87 of said chapter 119, as inserted by section 80 of said chapter  
129 69, is hereby amended by striking out subsection (a) and inserting in place thereof the following  
130 subsection:-

131 (a) The department of youth services and the department of correction shall not place in a  
132 secure detention facility or secure correctional facility any juvenile who has: (1) been charged  
133 with or who has committed an offense that would not be criminal if committed by an adult,  
134 except juveniles who are held in accordance with the interstate compact on juveniles, as enacted  
135 by the commonwealth; (2) not been alleged or adjudicated to be a delinquent child or youthful  
136 offender; or (3) been alleged to be dependent on the court, neglected or abused if that allegation  
137 is the sole basis for the placement.

138 SECTION XX. Section 39 of said chapter 127, as inserted by section 93 of said chapter  
139 69, is hereby amended in subsection (b) by inserting after the words "access to a radio or  
140 television if confinement exceeds 30 days" the words "provided, however, that such access may  
141 be diminished for the enforcement of discipline for a period not to exceed 15 days in a state  
142 correctional facility or 10 days in a county correctional facility for any given offense or where  
143 inconsistent with the security of the unit".

144 SECTION XX. Section 39F of said chapter 127, as so inserted, is hereby amended in the  
145 second paragraph by inserting after the words "and other re-entry planning services" the words  
146 "as are".

147 SECTION XX. Section 97 of said chapter 127, as appearing in the 2016 Official Edition,  
148 is hereby amended by striking out, in line 6, the words “the state prison” and replacing them with  
149 the words “Massachusetts Correctional Institution, Cedar Junction”.

150 SECTION XX. Section 119A of said chapter 127, as inserted by section 97 of chapter 69  
151 of the acts of 2018, is hereby amended by adding the following subsection:-

152 (j) Physicians, employers of physicians, and public employees shall not be liable in a civil  
153 proceeding for any act or omission pursuant to the provisions of this section if acting in good  
154 faith.

155 SECTION XX. Section 20 of chapter 233 of the General Laws, as amended by section  
156 111 of said chapter 69, is hereby further amended by striking the words " legal guardian or other  
157 person who has the right to act in loco parentis for the child; " and replacing them with the words  
158 " or legal guardian;".

159 SECTION XX. Chapter 276 of the General Laws is hereby amended by striking out  
160 sections 100P and 100Q, as inserted by section 195 of said chapter 69, and inserting in place  
161 thereof the following 2 sections:-

162 Section 100P. The court shall, upon a written finding of good cause, exclude the general  
163 public from any judicial proceeding where the court will be hearing a petition for an  
164 expungement admitting only such persons as may have a direct interest in the case.

165 Section 100Q. Unless otherwise provided by law, no person shall make records sealed  
166 pursuant to section 100A, or 100B available for inspection in any form by any person. No person



167 shall make records expunged pursuant to section 100F, section 100G, section 100H or section  
168 100K available for inspection in any form by any person.

169 SECTION XX. Section 70C of chapter 277 of the General Laws, as amended by sections  
170 203 through 205 of said chapter 69, is hereby further amended by striking out the second  
171 sentence and inserting in place thereof the following sentence:- The provisions of this section  
172 shall not apply to the offenses in sections 22F, 24, 24D, 24G, 24L, and 24N of chapter 90,  
173 sections 8, 8A, and 8B of chapter 90B, sections 34, 36, 39, 51A, 51E, 51F, 55, 63 and 63A of  
174 chapter 119, chapter 119A, chapter 209, chapter 209A, chapter 265, section 25 of chapter 266,  
175 sections 1, 2, 3, 6, 6A, 6B, 8B, 13, 13A, 13B, 13C, 14, 14B, 15, 15A, 16, 17, 18, 19, 20, 23, 28,  
176 31 and 36 of chapter 268, chapter 268A, sections 10, 10A, 10C, 10D, 10E, 11B, 11C, 11E, 12,  
177 12A, 12B, 12D and 12E of chapter 269 and sections 1, 2, 3, 4, 4A, 4B, 6, 7, 8, 12, 13, 16, 28,  
178 29A and 29B of chapter 272.