

HOUSE No. 2068

The Commonwealth of Massachusetts

PRESENTED BY:

Carmine Lawrence Gentile

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 establishing an independent review board for police conduct.

PETITION OF:

NAME:

Carmine Lawrence Gentile

DISTRICT/ADDRESS:

13th Middlesex

HOUSE No. 2068

By Mr. Gentile of Sudbury, a petition (accompanied by bill, House, No. 2068) of Carmine Lawrence Gentile relative to establishing an independent review board for police conduct. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to establishing an independent review board for police conduct.

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. Chapter 6 of the General Laws is hereby amended by inserting after section
2 178Q the following 2 sections:-

3 Section 176R. (a) There is hereby established an Independent Police Conduct Review
4 Board, hereinafter referred to as the board. The board shall be placed in the executive office of
5 public safety and security but shall not be subject to the supervision or control of said office, or
6 of any board, bureau, department or other center of the commonwealth, except as specifically
7 provided in this section and section 176S. In accordance with section 176T, the board shall
8 investigate and adjudicate all instances in which a member of a law enforcement agency located
9 within the commonwealth discharges a firearm and another person is shot, regardless of whether
10 or not that person is killed or suffers serious bodily injury.

11 (b) The board shall consist of the following 7 members: the president of the
12 Massachusetts Coalition of Police, or his/her designee; one person appointed by the

13 Superintendent of the Massachusetts State Police; one person appointed by the Secretary of the
14 Commonwealth, one person appointed by the State Auditor; one person appointed by the
15 Governor, who shall be a retired judge of the trial court; one person appointed by the Attorney
16 General, who shall have experience prosecuting criminal cases in the Commonwealth; and one
17 person appointed by the Chief Counsel of the Committee for Public Counsel Services, who shall
18 have experience representing defendants in criminal cases in the Commonwealth. The
19 Governor's appointee shall serve as chair.

20 The board shall hold all such meetings and hearings as are necessary to accomplish its
21 duties under this section. Three members shall constitute a quorum. Board member shall serve
22 for terms of 5 years and may be removed for misconduct under the same terms and procedures
23 by which members of the civil service commission may be removed. If any board member is
24 unwilling or unable to serve, that member shall be replaced within 30 days.

25 Board members shall be compensated for their service at a rate to be determined by the
26 attorney general, which shall not be less than the hourly rate paid to committee for public
27 counsel services attorneys in cases in which they defend an individual against first degree murder
28 charges; provided, that no board member who is also an employee of the commonwealth shall be
29 compensated for his or her service. Board members shall be compensated for the time spent
30 attending board meetings and the time spent in preparation for meetings.

31 (c) The board shall employ an executive director, at least 2 staff attorneys, and such
32 investigators and support staff as are reasonably necessary to accomplish its duties. All
33 employees of the board shall be selected by the chair of the board and shall serve at the pleasure
34 of the chair. Such positions shall be exempt from civil service laws.

35 The board may also investigate and adjudicate allegations of misconduct by a member of
36 a law enforcement agency other than instances in which a person was shot by a member of a law
37 enforcement agency. The board shall appoint hearing officers to review such allegations of
38 misconduct. Any hearing officer so appointed shall be a member of the Massachusetts bar and
39 shall be compensated at the same rate as compensated members of the board.

40 Section 176S. (a) A law enforcement agency shall report any instance in which a member
41 of that law enforcement agency discharges a firearm and another person is shot, regardless of
42 whether or not that person is killed or suffers serious bodily injury, to the Independent Police
43 Conduct Review Board within 24 hours of the shooting. The Independent Police Conduct
44 Review Board, hereinafter the board, shall assign each reported incident a case number and an
45 initial hearing date within 48 hours of receiving the report.

46 The board shall have the authority to issue subpoenas to obtain all documents, materials
47 and witnesses relevant to a particular case and shall instruct a sheriff or constable to serve the
48 same. A subpoena may be issued by the chair or by any 2 board members acting concurrently.

49 (b) Hearings of the board shall be conducted in accordance with the rules and procedures
50 set out in chapter 30A; provided, however, that they shall be open to the public and shall be
51 available for news broadcast or webcast. A board appointed staff attorney shall present all claims
52 against an employee of a law enforcement agency involved in a shooting. An attorney
53 representing a private party shot by a member of a law enforcement agency or otherwise alleging
54 that the employee of a law enforcement agency has acted inappropriately may, at the discretion
55 of the chair of the board, present claims. An employee of a law enforcement agency against
56 whom claims are presented shall have the right to legal counsel.

57 The board shall determine whether, based on all the evidence presented, a member of a
58 law enforcement agency involved in an incident in which a person was shot, engaged in
59 misconduct or otherwise acted inappropriately. The burden of proving misconduct or
60 inappropriate action shall be on the party alleging such behavior and shall be proven by a
61 preponderance of the evidence. Notwithstanding any general or special law to the contrary, the
62 board shall make findings of fact and rulings of law regarding any alleged misconduct or
63 inappropriate action, which shall be final and binding for the purposes of any union grievances or
64 disciplinary action pursuant to chapter 31. The authority of the board shall not be impaired by
65 any collective bargaining agreement or other contract.

66 A hearing officer appointed pursuant to the second paragraph of subsection (c) of section
67 176R shall make findings of fact and may recommend rulings of law, which shall be submitted
68 to the full board for review and final disposition.

69 (c) A ruling by the board that a member of a law enforcement agency acted unlawfully,
70 engaged in misconduct, or otherwise acted inappropriately in an instance in which the member of
71 a law enforcement agency discharged his or her firearm and another person was shot shall result
72 in the following: (1) termination of employment and a ban on employment with any law
73 enforcement agency in the commonwealth for a period of no less than 10 years; and (2)
74 revocation of any license to carry a firearm, which shall not be renewable for a period of no less
75 than 10 years.

76 A ruling by the board that a member of a law enforcement agency engaged in misconduct
77 or acted inappropriately other than in an instance in which a person was shot by a member of a
78 law enforcement agency shall result in discipline of the member. Such discipline shall not be

79 less severe than a public reprimand and shall not be more severe than termination of
80 employment.

81 The board may publicly recommend that a member of law enforcement agency subject to
82 an adverse ruling under this subsection be criminally prosecuted.

83 (d) Upon the application of the attorney general, a United States attorney, or a district
84 attorney, the board may stay any proceeding pending completion of a criminal investigation
85 stemming from the same incident. A decision to stay or not stay a proceeding shall be
86 reviewable by a judge of the superior court; provided that the judge may only overturn a decision
87 upon a finding of an abuse of discretion by the board.

88 (e) A ruling by the board that a member of a law enforcement agency engaged in
89 misconduct or other inappropriate action shall be subject to judicial review as provided in section
90 14 of chapter 30A.

91 Nothing contained in this shall preclude or impact a criminal prosecution.

92 Nothing contained in this section shall impair or impact the rights of any person to pursue
93 civil litigation to obtain compensatory or punitive damages or provide any qualified immunity. A
94 proceeding pursuant to this section shall not impact or impair the rights of any person seeking
95 compensation pursuant to chapter 258; provided, that any proceeding under this section shall toll
96 any required notice period or statute of limitations under said chapter 258 for the duration of the
97 proceeding.

98 (f) Notwithstanding any general or special law to the contrary, a person presenting claims
99 or evidence before the board shall be entitled to the protections of section 59H of chapter 231.

100 (g) A member of a law enforcement agency subject to an adverse ruling under this
101 section shall be entitled to indemnity as available pursuant to all of chapter 258 except section 13
102 of said chapter 258. Notwithstanding any general or special law to the contrary, if a sum awarded
103 by the board to compensate an estate for wrongful death or to compensate an injured person for
104 past and future medical costs, lost earning capacity, scarring, deformities, loss of limbs or body
105 parts, loss of function, loss of vision or of hearing or other physical or emotional losses exceeds
106 \$1,000,000, indemnity shall be limited to be 150 per cent of the sum awarded; provided, that this
107 limit shall not apply to an award for pain and suffering or punitive damages. Any award in
108 excess of this limit shall be solely the responsibility of the member of a law enforcement agency
109 subject to the adverse ruling.