

HOUSE No. 2292

The Commonwealth of Massachusetts

PRESENTED BY:

Russell E. Holmes

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 to reform civil service exams.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>1/11/2019</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>1/23/2019</i>
<i>Chynah Tyler</i>	<i>7th Suffolk</i>	<i>2/1/2019</i>

HOUSE No. 2292

By Mr. Holmes of Boston, a petition (accompanied by bill, House, No. 2292) of Russell E. Holmes, Bud L. Williams and Chynah Tyler for legislation to further regulate civil service exams. Public Service.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3521 OF 2017-2018.]

The Commonwealth of Massachusetts

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

An Act to reform civil service exams.

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. The General Court hereby makes the following findings:

2 (1) Decades of litigation regarding adverse impact of government hiring policies for
3 peace officers has helped to reduce barriers to diversity and provided a guide for efforts of
4 government agencies to reflect the diversity of the communities they serve.

5 (2) Expert review from protracted litigation has shown written cognitive examinations for
6 public safety positions to be unreliable indicators to distinguish eligible job candidates – by as
7 much as an 8 point difference between candidates.

8 (2) The civil service examination laws and processes for law enforcement officer
9 appointment and promotion need reform:

10 (a) To ensure that the state and local public safety organizational culture is guided by
11 community policing, procedural justice and cultural inclusivity;

12 (b) To engage stakeholders, both from within and outside law enforcement agencies to
13 play a role in creating a workforce that reflects the diversity of the community; and

14 (c) To reinforce that the commonwealth is willing to re-evaluate employment criteria,
15 standards, reduce adverse impacts of top down scoring, including: using pass/fail written
16 cognitive exams in conjunction with other experiential or non-cognitive examinations; using
17 banding of test scores to ameliorate adverse impacts of such scoring; creating benchmarks to
18 ensure that they are tailored to the skills needed to perform job functions; using biodata or life
19 experience in testing and consequently attract, select and retain the most qualified and desirable
20 sworn officers.

21 SECTION 2. Chapter 7 of the General Laws is hereby amended by adding the following
22 section:-

23 Section 63. (a) The executive office for administration and finance shall include an office
24 of diversity and equal opportunity, hereinafter referred to as ODEO, which shall be headed by a
25 director who shall be selected by and serve at the pleasure of the governor. The director shall
26 have the authority to:

27 (i) Establish guidelines for agency affirmative action and diversity plans for all state
28 agencies;

29 (ii) Review all such plans and either approve, return for amendment, or reject them;

30 (iii) Establish periodic reporting requirements for agencies concerning the
31 implementation of their plans and all actions taken to ensure compliance with this section and
32 applicable state and federal laws;

33 (iv) Provide assistance to agencies in achieving compliance with their plans and with
34 applicable federal and state laws;

35 (v) Monitor and assess the status of agency compliance and investigate instances of non-
36 compliance; and

37 (vi) Where appropriate, determine and impose remedial courses of action, including the
38 potential imposition of a freeze on all personnel requisitions and appointment forms submitted
39 by any non-compliant agency to the chief human resources officer.

40 (b) Each head of a state agency shall appoint a diversity director. Each agency shall
41 appoint a diversity officer. Diversity directors and officers shall have a direct reporting
42 relationship to their secretary or agency head. The directors and officers shall also report to the
43 director of ODEO; provided however that the director of the office of affirmative action for the
44 department of state police shall report to the secretary of public safety pursuant to section 23 of
45 chapter 23C. Diversity directors and officers shall coordinate their agency's compliance with the
46 requirements of this section and applicable federal and state laws.

47 (c) All state agencies shall develop and implement affirmative action and diversity plans
48 to identify and eliminate discriminatory barriers in the workplace; remedy the effects of past
49 discriminatory practices; identify, recruit, hire, develop, promote, and retain employees who are
50 members of under-represented groups; and ensure diversity and equal opportunity in all facets,
51 terms, and conditions of state employment. Such plans shall set forth specific goals and

52 timetables for achievement, shall comply with all applicable state and federal laws, and shall be
53 updated, at a minimum, every 2 years.

54 (d) Through the diversity directors and officers, and in compliance with the reporting
55 guidelines and requirements established by ODEO, all state agencies shall submit periodic
56 reports to the director of ODEO concerning the status and implementation of their affirmative
57 action and diversity plans.

58 (e) Pursuant to guidelines established by ODEO, all agency heads, managers, supervisors
59 and employees shall attend mandatory annual diversity training. For future hires, such training
60 shall be part of the standardized orientation provided to new employees.

61 (f) ODEO shall promulgate guidelines establishing a complaint resolution process for
62 individuals who allege non-compliance by state agencies with applicable federal and state laws
63 prohibiting discrimination. In instances where this process does not resolve the complaint, the
64 director of ODEO may refer to the Massachusetts commission against discrimination or any
65 information concerning conduct that the director believes may constitute a violation of the law.

66 (g) The Massachusetts commission against discrimination shall initiate investigations
67 and, where necessary; file complaints against those agencies and persons whom it has reason to
68 believe are in violation of the laws of the commonwealth or the United States.

69 (h) In performing their responsibilities under this section, ODEO and the Massachusetts
70 commission against discrimination shall have the full cooperation of all state agencies, including
71 compliance with all requests for information.

72 (i) The diversity and equal opportunity advisory council, hereinafter the “advisory
73 council”, is hereby established to advise the ODEO concerning policies, practices, and specific
74 actions that the commonwealth should implement to ensure that the objectives of this section are
75 accomplished.

76 The advisory council shall consist of 15 persons, including a chair, each of whom shall be
77 appointed by the governor. All members shall serve without compensation at the pleasure of the
78 governor in a solely advisory capacity. The advisory council's work shall include, but need not
79 be limited to, making written recommendations to ODEO concerning actions, policies, and
80 practices that the commonwealth should implement to ensure that the objectives of this section
81 are accomplished.

82 The advisory council shall meet at such times and places as determined by the chair and
83 shall submit an initial report containing its written recommendations to the governor no later than
84 60 days following the appointment of the council's 15 members. Thereafter, the advisory council
85 shall meet at least semi-annually and submit supplemental reports to the governor no less than
86 once per year.

87 (j) Nothing in this section shall be construed to preclude or otherwise limit the
88 continuation or implementation of any lawful affirmative action programs or other programs that
89 support the objectives of this section.

90 SECTION 3. Chapter 22 of the General Laws is hereby amended by adding the following
91 section:-

92 Section 23. (a) There shall be within the department of public safety, a peace officer
93 exam review advisory board, hereinafter referred to as the exam advisory board, for the

94 recruitment, examination, appointment, promotion and retention of state and municipal police
95 officers. The exam advisory board shall make recommendations and implement in conjunction
96 with the human resources division and the division of state police the creation and administration
97 of strategies for proactive recruitment, examination, hiring, and retention of peace officers
98 throughout the commonwealth. The exam advisory board shall consist of 15 members: 1 of
99 whom shall be a designee of the governor, 1 of whom shall be a designee of the municipal police
100 training committee; 1 of whom shall be a designee of the Boston branch of the National
101 Association for the Advancement of Colored People, 1 of whom shall be a designee of the
102 Massachusetts Association of Minority Law Enforcement Officers, Inc; 1 of whom shall be
103 Massachusetts Association of Women in Law Enforcement; 1 of whom shall be an expert in the
104 area of applied industrial and organizational psychology to be designated by the governor; 1 of
105 whom shall be a designee from the Massachusetts Police Association; 1 of whom shall be a
106 designee of the Massachusetts Minority State Police Association; 1 of whom shall be a designee
107 of the Benevolent Asian Jade Society of New England; 1 of whom shall be a designee of the
108 Massachusetts Latino Police Officers Association; 1 of whom shall be a designee of the Gay
109 Officers Action League; 1 of whom shall be a designee of the State Police Association of
110 Massachusetts; 1 of whom shall be a designee of One Blue of the State Police; 1 of whom shall
111 be a designee of the Massachusetts Chief of Police Association; and 1 of whom shall be a
112 designee of the Boston Police Union.

113 (b) The exam advisory board shall review all current examinations for appointment and
114 promotion of peace officers in the commonwealth. Upon completing such review, the exam
115 advisory board shall review and implement in conjunction with the human resources division and
116 the division of state police best practices to determine the knowledge, skills, abilities and

117 personal characteristics for the examination, appointment, promotion and retention of state and
118 municipal police officers throughout the commonwealth. These shall include:

119 (i) The development of appointment and promotional examination announcements and
120 recruitment strategies that promote and celebrate diversity within the police departments
121 throughout the commonwealth;

122 (ii) Creation of a job analysis and validity report, which identifies important work
123 behaviors required for successful job performance as a peace officer and their relative
124 importance;

125 (iii) The establishment and funding of permanent assessment centers and the creation of
126 validation materials, which support assessment centers and performance based activities;

127 (iv) Transparent promotion policies for all officers to apply for sergeant or lieutenant
128 positions if they meet minimum requirements of service and education levels;

129 (v) Pairing adverse background check information with additional context from the
130 applicant for appointment;

131 (vi) The creation of formal mentoring programs, internships and explorer groups;

132 (vii) Cash incentives for referrals of prospective applicants and stipend for English
133 classes to improve language skills, including retention incentive payments for bilingual officers;

134 (viii) Involvement with community groups, members and stakeholders with hiring and
135 promotion of officers; and

136 (ix) Recommending and implementing a reduced and standardized fee for all
137 examinations.

138 SECTION 4. Section 10 of chapter 22C of the General Laws, as appearing in the 2014
139 Official Edition, is hereby amended by inserting after the word “thereof”, in line 7, the following
140 words:- ; provided, however, that all such appointments or vacancies in said department shall be
141 posted in accordance with section 65A of said chapter 31.

142 SECTION 5. The second paragraph of said section 10 of said chapter 22C, as so
143 appearing, is hereby amended by striking out the first sentence and inserting in place thereof the
144 following sentence:- No person shall be eligible to take an examination for original appointment
145 to the position as an officer of the state police if he or she will not have reached his or her
146 twenty-first birthday on or before the date of such examination.

147 SECTION 6. The third paragraph of said section 10 of said chapter 22C, as so appearing,
148 is hereby amended by adding the following 2 sentences:- No person shall be enlisted for the first
149 time as an officer of the state police unless such person is a citizen the commonwealth at the time
150 of filing application for competitive examination for initial enlistment. Any person who receives
151 an appointment for initial enlistment to the state police shall have been a resident of the
152 commonwealth for 5 years prior to such appointment.

153 SECTION 7. Section 11 of said chapter 22C, as so appearing, is hereby amended by
154 inserting after the word “list”, in line 15, the following words:- ; provided, further that candidates
155 who score within an 8 point band, starting from the highest observed score from aggregate
156 testing used for original appointment shall be considered by the colonel functionally equivalent
157 for appointment for initial enlistment and equally qualified to successfully perform the job as any

158 other candidate in that score band. The colonel may appoint any candidate of the highest
159 available 8 point band and may not appoint from the next highest 8 point band until the pool
160 from the highest available band is depleted.

161 SECTION 8. The first paragraph of section 23 of said chapter 22C, as so appearing, is
162 hereby amended by inserting after the first sentence the following sentence:- The office shall
163 consist of no less than 2 persons: 1 affirmative action officer and 1 attorney, both of whom shall
164 be versed in state and federal law regarding nondiscrimination, equal opportunity, affirmative
165 action and human resource management and neither of whom shall be a sworn member of the
166 state police.

167 SECTION 9. Said section 23 of said chapter 22C, as so appearing, is hereby further
168 amended by inserting after the word “department”, in line 7, the following words:- including but
169 not limited to recruitment, promotion and retention.

170 SECTION 10. Said section 23 of said chapter 22C, as so appearing, is hereby further
171 amended by striking out the word “may”, in line 9, and inserting in place thereof the following
172 word:- shall.

173 SECTION 11. Section 24 of said chapter 22C, as so appearing, is hereby amended by
174 inserting after the word “colonel”, in line 13, the following words:- ; provided, however, that
175 reinstatement for uniformed members shall be subject to the affirmative action plan as provided
176 for in section 23.

177 SECTION 12. Section 26 of said chapter 22C, as so appearing, is hereby amended by
178 inserting after the word “promotion”, in lines 28 and 29, the following words:- ; provided,
179 however that members who score within an 8 point band starting from the highest observed score

180 from aggregate testing used for promotion shall be considered by the colonel functionally
181 equivalent for promotion and equally qualified to successfully perform the job as any other
182 member in that score band. The colonel may appoint any member of the highest available 8 point
183 band and may not appoint from the next highest 8 point band until the pool from the highest
184 available band is depleted.

185 SECTION 13. The fifth paragraph of said section 26 of said chapter 22C, as so appearing,
186 is hereby amended by striking out the last sentence.

187 SECTION 14. Section 27 of said chapter 22C, as so appearing, is hereby amended by
188 striking out, in line 3, the words “major or captain” and inserting in place thereof the words:-
189 lieutenant or above.

190 SECTION 15. Said section 27 of said chapter 22C, as so appearing, is hereby further
191 amended by striking out, in line 5, the word “captain” and inserting in place thereof the words:-
192 lieutenant or above.

193 SECTION 16. Said section 27 of said chapter 22C, as so appearing, is hereby further
194 amended by adding the following paragraph:-

195 Any vacancy that occurs in this section shall be posted in accordance with section 65A of
196 said chapter 31.

197 SECTION 17. Section 5 of chapter 31 of the General Laws, as appearing in the 2014
198 Official Edition, is hereby amended by inserting after the word “commonwealth”, in line 55, the
199 following words:- ; provided, however that for original appointment or promotion of a police
200 officer, MBTA officer or state police officer, the administrator shall not delegate the duties of a

201 competitive examination for original appointment or promotion of a police officer.
202 Notwithstanding sections 59 or 65 of this chapter, or any other law to the contrary, the
203 commissioner, in conjunction with the peace officer exam review board established in section 23
204 of chapter 22, shall oversee the design, validation and administration of all such examinations.

205 SECTION 18. Section 58 of said chapter 31, as so appearing, is hereby amended by
206 striking out the third paragraph and inserting in place thereof the following paragraph:-

207 An applicant for examination for original appointment to the police force or fire force of
208 a city or town shall be a citizen of the commonwealth at the time of filing application for such
209 examination and any person who receives an appointment to the police force or fire force of a
210 city or town shall have been a resident of the commonwealth for 5 years prior to such
211 appointment; provided, however that this requirement shall not apply if such person is a resident
212 in such city or town at the time of filing an application and is or was serving in active military
213 duty. The administrator, when certifying names to the appointing authority for the police force or
214 the fire force of said city or town, shall place the name of the person who has so resided or is or
215 was in active military duty ahead of the name of the person who has not so resided.

216 SECTION 19. Section 59 of said chapter 31, as so appearing, is hereby amended by
217 inserting after the word “list”, in line 52, the following words:- ; provided, however that
218 candidates for original appointments for a regular police force who score within a 8 point band
219 starting from the highest observed score from aggregate testing used for original appointment
220 shall be considered by the appointing authority functionally equivalent for promotion and equally
221 qualified to successfully perform the job as any other candidate in that score band. The
222 appointing authority may appoint any candidate of the highest available 8 point band and may

223 not appoint from the next highest 8 point band until the pool from the highest available band is
224 depleted.

225 SECTION 20. Said section 59 of said chapter 31, as so appearing, is hereby further
226 amended by inserting after the word “rules”, in line 57, the following words:- ; provided,
227 however that members of a regular police force who score within a 8 point band starting from the
228 highest observed score from aggregate testing used for promotion shall be considered by the
229 appointing authority functionally equivalent for promotion and equally qualified to successfully
230 perform the job as any other member in that score band. The appointing authority may appoint
231 any member of the highest available 8 point band and may not appoint from the next highest 8
232 point band until the pool from the highest available band is depleted.

233 SECTION 21. The second paragraph of section 64 of said chapter 31, as so appearing, is
234 hereby amended by striking out the first sentence and inserting in place thereof the following
235 sentence:- No person shall be eligible to take an examination for original appointment to the
236 position of police officer in the Massachusetts bay transportation authority police force if he or
237 she will not have reached his or her twenty-first birthday on or before the date of such
238 examination.

239 SECTION 22. Section 64 of said chapter 31, as so appearing, is hereby further amended
240 by adding the following paragraph:-

241 No person shall be eligible for appointment as a police officer in the Massachusetts bay
242 transportation authority police force unless such person is a citizen the commonwealth at the
243 time of filing application for such examination for original appointment. Any person who

244 receives an appointment to said police force shall have been a resident of the commonwealth for
245 5 years prior to such appointment.

246 SECTION 23. Section 65 of said chapter 31, as so appearing, is hereby amended by
247 inserting after the word “examination”, in line 3, the following words:- ; provided, however that
248 candidates for original appointments for such police force who score within a 8 point band
249 starting from the highest observed score from aggregate testing used for original appointment
250 shall be considered by the appointing authority functionally equivalent for promotion and equally
251 qualified to successfully perform the job as any other candidate in that score band. The
252 appointing authority may appoint any candidate of the highest available 8 point band and may
253 not appoint from the next highest 8 point band until the pool from the highest available band is
254 depleted; and provided, further, that all hiring’s, promotional appointments or vacancies in the
255 police force shall be posted in accordance with section 65A of said chapter 31.

256 SECTION 24. Said section 65 of said chapter 31, as so appearing, is hereby further
257 amended by inserting after the word “rules”, in line 31, the following words:- ; provided,
258 however that members of a regular police force who score within a 8 point band starting from the
259 highest observed score from aggregate testing used for promotion shall be considered by the
260 appointing authority functionally equivalent for promotion and equally qualified to successfully
261 perform the job as any other member in that score band. The appointing authority may appoint
262 any member of the highest available 8 point band and may not appoint from the next highest 8
263 point band until the pool from the highest available band is depleted.

264 SECTION 25. Said chapter 31, as so appearing, is hereby amended by inserting after
265 section 65 the following section:-

266 Section 65A. Whenever a vacancy, job opening or promotion, or anticipated job opening
267 or promotion occurs for the original position of police officer or promotional appointment to any
268 position in any municipal police force, the Massachusetts bay transportation authority or the
269 department of state police, the appointing authority shall, in addition to any other requirement of
270 law or regulation for the posting of job opening notices, post a notice, which notice states that a
271 job opening or promotional appointment opening has occurred and describes the duties to be
272 performed by a person employed in that position. Such notice shall be provided to the
273 department forthwith and the department shall immediately post the notice on a designated
274 webpage accessible to the general public.

275 SECTION 26. Section 3 of chapter 31A of the General Laws, as appearing in the 2014
276 Official Edition, is hereby amended by inserting after the word "thirty-one", in line 12, the
277 following words:- ; provided, however, that all hiring's, promotions or vacancies in any public
278 safety position shall be posted in accordance with section 65A of said chapter 31.

279 SECTION 27. Chapter 147 of the General Laws is hereby amended by striking out
280 section 21A and inserting in place thereof the following section:-

281 Section 21A. (a) Notwithstanding any general or special law to the contrary, the person or
282 officer authorized to appoint police officers, hereinafter referred to as the appointing authority, in
283 a city or town, for the Massachusetts bay transportation authority police department or for the
284 department of the state police may appoint as a police cadet, for a period of full time "on the job"
285 training, any citizen resident in the commonwealth who is not less than 18 nor more than 25
286 years of age who meets the physical qualifications required of applicants for appointment to such
287 police force, and who is determined by the appointing authority to be of good moral character.

288 (b) Such appointment shall not be subject to the civil service law or rules; nor shall a
289 police cadet be entitled to any benefits of such law or rules. Such appointments may be
290 terminated by the appointing authority at any time, and shall be terminated whenever a cadet
291 fails to maintain a passing grade in any course of study the appointing authority determines the
292 cadet should undertake, and when the cadet reaches the age of 25. A police cadet shall receive
293 such compensation and such leave with pay as the appointing authority shall determine.

294 (c) A police cadet shall maintain and file records, operate office machines, answer
295 telephones, receive complaints, enter and index official documents, prepare routine reports,
296 prepare and tabulate facts and figures for statistical purposes, and have similar duties of an
297 administrative rather than an enforcement type. The cadet shall not carry arms, nor shall the
298 cadet have the power of arrest other than that of an ordinary citizen. The cadet shall be
299 considered an employee of the appointing authority for the purposes of workers compensation. A
300 police cadet shall not be subject to or entitled to the benefits of any retirement or pension law nor
301 shall any deduction be made from the cadet's compensation for the purpose thereof; but a police
302 cadet who during the period of the cadet's "on the job" training passes a competitive examination
303 for appointment to such police force, and is appointed a permanent full-time police officer shall
304 have his or her police cadet service considered as "creditable service" for the purposes of
305 retirement, provided the cadet and the appointing authority pay into the annuity savings of any
306 such retirement plan such amount as the retirement board determines equal to that which would
307 have been paid had the cadet been a member of said retirement system during the period of his or
308 her training as a police cadet.

309 (d) Notwithstanding chapter 31, any person who has completed not less than 2 years of
310 service as a police cadet under the provisions of this section may, subject to the program

311 established by the appointing authority and approved by the personnel administrator of the state
312 division of personnel administration and the Massachusetts criminal justice training committee,
313 be appointed to fill a vacancy in a position in the lowest grade in such police force without
314 certification from an eligible list prepared under chapter 31; provided, however, that such person
315 either is on a police entrance eligible list prepared under said chapter or passes a qualifying
316 examination to be given by said personnel administrator. Such program shall include provisions
317 for recruitment of applicants for appointment as police cadets and for appointment from an
318 eligible list prepared after a competitive examination. Appointments from such a list may, at the
319 discretion of the appointing authority, be made on a selective basis.

320 (e) Not more than 12 or 33 1/3 per cent, whichever is greater, of the total number of
321 appointments to such police force in any calendar year, shall be made under the provisions of
322 this section. The appointing authority shall report in writing forthwith to the personnel
323 administrator in said division of the personnel administration any appointment made under this
324 section.

325 SECTION 28. This act shall apply to all current examinations used for original
326 appointment, original enlistment or promotion for any police officer position subject to any
327 general or special law or the provisions of this act.

328 SECTION 29. Sections 7, 12, 19, 20, 23 and 24 are hereby repealed.

329 SECTION 30. Section 29 shall take effect upon the implementation of the exam review
330 advisory board's recommendation for examination for original appointment, initial enlistment or
331 promotion of any peace officer in the commonwealth governed by this act.