

HOUSE No. 3266

The Commonwealth of Massachusetts

PRESENTED BY:

Mark J. Cusack

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 the examination of evidence rooms and evidentiary procedures.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Mark J. Cusack</i>	<i>5th Norfolk</i>	<i>1/18/2019</i>
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>	<i>2/1/2019</i>
<i>John Barrett, III</i>	<i>1st Berkshire</i>	<i>1/31/2019</i>
<i>Michael J. Finn</i>	<i>6th Hampden</i>	<i>1/30/2019</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>	<i>1/31/2019</i>
<i>Carlos González</i>	<i>10th Hampden</i>	<i>1/30/2019</i>
<i>Richard M. Haggerty</i>	<i>30th Middlesex</i>	<i>1/31/2019</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>	<i>1/29/2019</i>
<i>Patrick Joseph Kearney</i>	<i>4th Plymouth</i>	<i>1/31/2019</i>
<i>John F. Keenan</i>	<i>Norfolk and Plymouth</i>	<i>1/31/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>1/31/2019</i>
<i>James M. Murphy</i>	<i>4th Norfolk</i>	<i>1/30/2019</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>2/1/2019</i>
<i>Jeffrey N. Roy</i>	<i>10th Norfolk</i>	<i>2/1/2019</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>1/30/2019</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>1/31/2019</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>1/30/2019</i>

HOUSE No. 3266

By Mr. Cusack of Braintree, a petition (accompanied by bill, House, No. 3266) of Mark J. Cusack and others relative to the examination of evidence rooms and evidentiary procedures. The Judiciary.

The Commonwealth of Massachusetts

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

An Act relative to the examination of evidence rooms and evidentiary procedures.

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 276 of the General Law is hereby amended by adding the following
2 section:-

3 Section 104. (a) As used in this section, the following words shall, unless the context
4 clearly requires otherwise, have the following meanings:

5 “Auditing entity”, a person, or an employee or department of the commonwealth, who is
6 experienced and trained in evidence collection, storage and auditing, who is deemed qualified by
7 the secretary to perform audits of a department’s evidence, property, and evidence and property
8 room.

9 “Chief executive officer”, the chief executive officer or person in charge of each
10 department.

11 “Department”, the Massachusetts state police, the Massachusetts Bay Transportation
12 Authority police force, any police department in the commonwealth or any of its political
13 subdivisions; any law enforcement council, as defined in section 4J of chapter 40, created by
14 contract between or among cities and towns, pursuant to section 4A of said chapter 40; the
15 environmental police appointed pursuant to chapter 21A; and any entity employing 1 or more
16 special state police officers appointed pursuant to section 63 of chapter 22C.

17 “District attorney”, the district attorney or designee who has jurisdiction for prosecutions
18 where a department is located.

19 “Evidence”, all items seized as a result of a police investigation that are physical,
20 biological, digital or any other materials that have been collected for their potential evidentiary
21 value during the investigation of a crime.

22 “Evidence and property custodian”, a person appointed by the chief executive officer or
23 designee for the custody and operations of the department’s evidence and property room.

24 “Evidence and property room”, any area, including but not limited to, any room, vault,
25 locker, or other repository, located within the legal control and jurisdiction of a department that
26 contains any evidence or any property.

27 “Full audit”, a full review of all items of evidence and property from the particular
28 evidence and property room log book, whether in electronic format or hard copy, to ensure that
29 all evidence or property is located in the appropriate storage location in the particular evidence
30 and property room of each department. If evidence or property is stored off-site, the individual
31 conducting the full audit shall contact the particular off-site location and ensure, in writing, that
32 any item of evidence or property is at that particular location.

33 “Inspection”, a review of the evidence and property room and evidence and property
34 handling procedures including, but not limited to: (1) ensuring department adherence to all
35 security controls and evidence handling procedures; (2) verifying that the limited access control
36 system to the evidence and property room functions properly; (3) ensuring the existence and
37 accuracy of a list of department personnel authorized to access the evidence and property room
38 or handle evidence or property; (4) ensuring general cleanliness of the evidence and property
39 room; (5) ensuring manageable inventory levels within the evidence and property room; (6)
40 ensuring evidence and property custodians have acceptable levels of aptitude and training; (7)
41 inspecting all internal evidence and property room cameras, when applicable; and (8) ensuring
42 the evidence and property room logs are operational and current.

43 “Municipal executive officer”, the manager in a city or town with a manager form of
44 government; in other cities, the mayor; and in other towns, the board of selectmen.

45 “Property”, all items, other than evidence, in the custody of a department that are being
46 stored because they were: (i) lost; (ii) abandoned; (iii) taken from a person under arrest by an
47 employee of the department in their normal course of employment; or (iv) seized by the
48 department for their connection to a potential crime.

49 "Purge", the disposal, destruction or release of evidence or property at a singular time by
50 a department.

51 "Random-sampling audit", a review and analysis of randomly selected items of evidence
52 or property from the particular evidence and property room log book, whether in electronic
53 format or hard copy, to ensure that the selected evidence or property is located in the appropriate
54 storage location in the particular evidence and property room of each department. If evidence or

55 property is stored off-site, the individual conducting the random-sampling audit shall contact the
56 particular off-site location and ensure, in writing, that any randomly selected item of evidence or
57 property is at that particular location. A random-sampling audit shall review the lesser of 10
58 percent of the department's total number of items of evidence or property or 50 items of
59 evidence or property, provided, however, that any department with fewer than 100 items of
60 evidence or property shall review at least 10 items and any department with fewer than 10 items
61 of evidence or property shall review all items.

62 "Secretary", secretary of the executive office of public safety and security.

63 (b) A random-sampling audit shall be conducted no less than annually at the direction of
64 the chief executive officer.

65 The random-sampling audit shall be conducted by a department employee, provided that,
66 the employee shall:

67 (1) not be the evidence and property custodian;

68 (2) not have specific oversight or responsibilities for the evidence or property being
69 audited or the evidence and property room in which the items are stored; and

70 (3) not have conducted the required semi-annual inspections in paragraph (c).

71 If a department has an internal affairs division, a member of the internal affairs division
72 shall perform the random-sampling audit.

73 A written report of the random-sampling audit shall be submitted to the chief executive
74 officer and the municipal executive officer within 30 days of completion.

75 (c) A semi-annual inspection of the evidence and property room shall be conducted by
76 the designated supervisor or the unit commander of the evidence and property room.

77 A written report of an inspection shall be submitted to the chief executive officer and the
78 municipal executive officer within 30 days of completion.

79 (d) All written reports required by subsections (b) and (c) of this section shall be
80 submitted to the secretary not later than January 30 of each year.

81 A department which fails to submit all reports to the secretary on or before January 30 of
82 each year, shall be issued a written warning by the secretary, provided, however that the
83 department shall be allowed an additional 60 days to submit the reports.

84 After 60 days, if the department fails to file the reports or refuses to comply, the
85 department shall undergo a full audit of all the evidence and property stored and in the
86 possession of the department as well as all evidence and property rooms under the legal control
87 and jurisdiction of the department. The full audit shall be completed by a neutral auditing entity
88 not affiliated with the department chosen by the chief executive officer from a list of qualified
89 auditing entities provided by the secretary. The cost of the full audit shall be borne by the
90 department. The chief executive officer and department shall have 30 days from the secretary's
91 notice to select an auditing entity from the list provided.

92 A written report of the full audit shall be submitted to the secretary, the chief executive
93 officer and the municipal executive officer within 30 days of completion.

94 (e) Once every 5 years a full audit of the evidence and property held by a department
95 shall be completed by an employee of the department at the direction of the chief executive
96 officer; provided, however the employee shall:

97 (1) not be the evidence and property custodian; and

98 (2) not have specific oversight or responsibilities for the evidence or property being
99 audited or the evidence and property room in which these items are being stored.

100 A written report of the full audit shall be submitted to the secretary, the chief executive
101 officer and the municipal executive officer within 30 days of completion.

102 If a department fails to conduct the required full audit or submit the full audit report in
103 accordance with this subsection, the department shall undergo a full audit of all the evidence and
104 property stored and in the possession of the department as well as all evidence and property
105 rooms under the legal control and jurisdiction of the department. The full audit shall be
106 completed by a neutral auditing entity not affiliated with the department chosen by the chief
107 executive officer from a list of qualified auditing entities provided by the secretary. The cost of
108 the full audit shall be borne by the department. The chief executive officer and department shall
109 have 30 days from the secretary's notice to select an auditing entity from the list provided.

110 A written report of the full audit shall be submitted to the secretary, the chief executive
111 officer and the municipal executive officer within 30 days of completion.

112 Upon the transfer, resignation or replacement of the chief executive officer, the chief
113 executive officer currently in charge shall order a full audit of the evidence and property held by
114 a department. This full audit shall reset the 5 year timeline of the mandatory full audit and the 5

115 year timeline shall begin after the completion of the full audit conducted pursuant to this
116 paragraph.

117 (f) All moneys seized by a department as evidence or within the course of an
118 investigation, shall be deposited into an interest bearing account held by the department, except
119 if the moneys physically hold evidentiary value as determined by the department or the district
120 attorney. The moneys shall be kept in the account until otherwise instructed by the court. All
121 moneys deposited shall be recorded, including but not limited to, the time, date, account number,
122 denomination of the moneys, person depositing the moneys, institution where the account is
123 held, case number associated with the moneys and origin of the moneys. A written report of all
124 moneys held by the department shall be submitted annually to the secretary, the chief executive
125 officer, the municipal executive officer and the district attorney on or before January 30 of each
126 year.

127 (g) (1) Any evidence or property that is disposed of, returned, auctioned or no longer in
128 custody of the department shall be recorded. The records shall be made available to any
129 governmental entity that needs to view the records for legal, official or other public safety or
130 health reasons.

131 A department which completes a purge of the evidence or property under the
132 department's control shall keep records, including, but not limited to: time, date, type of
133 evidence, method of disposal, case number, description, name of employee and reason for
134 disposal. Upon completion of a purge, all records shall be delivered to the secretary, the chief
135 executive officer, the municipal executive officer and the district attorney.

136 (2) A department may dispose of items held as evidence by destruction, return to owner,
137 sale at auction or other lawful disposition pursuant to a court order or after certifying to the
138 district attorney that the disposition is in compliance with section 47A of chapter 94C, section 3
139 of chapter 276, or chapter 278A.

140 Records of the disposal of controlled substances pursuant to section 47A of chapter 94C
141 shall be kept by the department. All records shall be submitted annually to the chief executive
142 officer, the secretary, the municipal executive office and the district attorney on or before
143 January 30.

144 SECTION 2. The department of environmental protection shall conduct a study and
145 investigation of the licensing of incinerators in the commonwealth. The study shall investigate at
146 a minimum: (i) the possibility of mandating the disposal of controlled substances as criteria to
147 obtaining a license , (ii) methods to improve the disposal of controlled substances through safe
148 and legal means within the commonwealth to prevent the theft and over stock of controlled
149 substances, and (iii) potential mandates for departments directed towards frequency and usage of
150 incinerators for purposes of the disposal of controlled substances. The department shall submit a
151 report of its findings to the joint committee on environment, natural resources and agriculture,
152 the joint committee on consumer protection and licensure, the joint committee on the judiciary,
153 and the joint committee on public safety and homeland security on or before July 1, 2019.

154 SECTION 3. A department within the commonwealth, as defined by subsection (a) of
155 section 104 of chapter 276, shall complete a full audit pursuant to subsection (e) of section 104
156 of chapter 276 of the General Laws within 1 year of the effective date of this act.