

## The Commonwealth of Massachusetts

**PRESENTED BY:**

William N. Brownsberger

*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 updating criminal justice reform.

**PETITION OF:**

NAME:	DISTRICT/ADDRESS:	
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	
<i>Antonio F. D. Cabral</i>	<i>13th Bristol</i>	<i>1/31/2019</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>3/14/2019</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>3/14/2019</i>
<i>John H. Rogers</i>	<i>12th Norfolk</i>	<i>3/14/2019</i>

# SENATE . . . . . No. 1371

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By Mr. Brownsberger, a petition (accompanied by bill, Senate, No. 1371) of William N. Brownsberger and Antonio F. D. Cabral for legislation to update criminal justice reform. Public Safety and Homeland Security.

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## The Commonwealth of Massachusetts

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

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An Act updating criminal justice reform.

*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, as amended by section 9 of chapter 69 of  
2 the acts of 2018, is hereby further amended by striking out section 184A and inserting in place  
3 thereof the following section:-

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

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

13       1 of whom shall be a forensic scientist with practical experience in an accredited crime  
14      laboratory, 1 of whom shall have senior level expertise in forensic laboratory management within  
15      an accredited crime laboratory, 1 of whom shall have expertise in cognitive bias, 1 of whom shall  
16      have expertise in statistics, 1 of whom shall be in academia in a research field involving forensic  
17      science, 1 of whom shall be an expert in forensic pathology, 1 of whom shall be a forensic  
18      scientist who shall have a specialty in the natural, physical or biological sciences, 1 of whom  
19      shall have expertise in quality assurance management within an accredited crime laboratory, 1 of  
20      whom shall be nominated by the Massachusetts District Attorneys Association, 1 of whom shall  
21      be nominated by the attorney general, 1 of whom shall be nominated by the committee for public  
22      counsel services, 1 of whom shall be nominated by the Massachusetts Association of Criminal  
23      Defense Lawyers, Inc., 1 of whom shall be nominated by the New England Innocence Project,  
24      Inc., and 1 of whom shall be nominated by the Massachusetts Chiefs of Police Association.

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

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

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

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

58                   (d) The board shall upon vote by 7 of its members initiate an investigation into any  
59 forensic science, technique or analysis used in a criminal matter upon: (i) application by a person  
60 alleging that a forensic technique in common use is not scientifically valid; or (ii) a  
61 determination that an investigation of a forensic analysis would advance the integrity and  
62 reliability of forensic science in the commonwealth.

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

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

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

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

80                         (h) The board shall review any budget request of the undersecretary for forensic sciences,  
81 including any recommendations for the allocation of resources and expansion of services, and  
82 may provide its own recommendations to the secretary of the executive office of public safety  
83 and security.

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

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

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

98                         SECTION 2. Section 32H½ of chapter 94C of the General Laws, as inserted by chapter  
99 72 of the acts of 2018, is hereby amended by striking out subsection (a) and inserting in place  
100 thereof the following subsection:-

101                     (a) As used in this section, the words “ineligible offender” shall have the following  
102 meaning: any person sentenced to a mandatory minimum term of imprisonment in the state  
103 prison upon conviction for: (1) violating sections 32, 32F or 32K, or subsections (c), (c $\frac{1}{2}$ ) or  
104 (c $\frac{3}{4}$ ) of section 32E; (2) violating this chapter, upon a finding of any 1 of the following  
105 aggravating circumstances: (i) the person used violence or threats of violence or possessed a  
106 firearm, rifle, shotgun, machine gun or a weapon described in paragraph (b) of section 10 of  
107 chapter 269, or induced another participant to do so, during the commission of the offense; (ii)  
108 the person engaged in a course of conduct whereby he directed the activities of another who  
109 committed any felony in violation of chapter 94C; or (iii) the offense was committed during the  
110 commission or attempted commission of a violation of section 32F or section 32K of chapter  
111 94C.

112                     SECTION 3. Section 52 of chapter 119 of the General Laws, as amended by section 72 of  
113 chapter 69 of the acts of 2018, is hereby further amended by striking out the definition of  
114 “Delinquent child” and inserting in place thereof the following definition:-

115                     “Delinquent child”, a child between 12 and 18 years of age who commits any offense  
116 against a law of the commonwealth; provided, however, that a child shall not be adjudged a  
117 delinquent child for an offense that is a civil infraction, a violation of any municipal ordinance or  
118 town by-law or a first offense of a misdemeanor for which the punishment is a fine,  
119 imprisonment in a jail or house of correction for not more than 6 months or both such fine and  
120 imprisonment.

121            SECTION 4. Section 87 of said chapter 119, as inserted by section 80 of said chapter 69,  
122    is hereby amended by striking out subsection (a) and inserting in place thereof the following  
123    subsection:-

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

131            SECTION 5. Section 39 of said chapter 127, as inserted by section 93 of said chapter 69,  
132    is hereby amended in subsection (b) by inserting after the words "access to a radio or television if  
133    confinement exceeds 30 days" the words "provided, however, that such access may be  
134    diminished for the enforcement of discipline for a period not to exceed 15 days in a state  
135    correctional facility or 10 days in a county correctional facility for any given offense or where  
136    inconsistent with the security of the unit".

137            SECTION 6. Section 39F of said chapter 127, as so inserted, is hereby amended in the  
138    second paragraph by inserting after the words "and other re-entry planning services" the words  
139    "as are".

140            SECTION 7. Section 119A of said chapter 127, as inserted by section 97 of chapter 69 of  
141    the acts of 2018, is hereby amended by adding the following subsection:-

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

145                   SECTION 8. Section 20 of chapter 233 of the General Laws, as amended by section 111  
146 of said chapter 69, is hereby further amended by striking the words " legal guardian or other  
147 person who has the right to act in loco parentis for the child; " and replacing them with the words  
148 " or legal guardian;".

149                   SECTION 9. Chapter 276 of the General Laws is hereby amended by striking out  
150 sections 100P and 100Q, as inserted by section 195 of said chapter 69, and inserting in place  
151 thereof the following 2 sections:-

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

155                   Section 100Q. Unless otherwise provided by law, no person shall make records sealed  
156 pursuant to section 100A, or 100B available for inspection in any form by any person. No person  
157 shall make records expunged pursuant to section 100F, section 100G, section 100H or section  
158 100K available for inspection in any form by any person.