

**SENATE . . . . . No. 1432**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Michael O. Moore***

*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 sheriffs.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Michael O. Moore</i>	<i>Second Worcester</i>	
<i>David T. Vieira</i>	<i>3rd Barnstable</i>	<i>2/1/2019</i>

**SENATE . . . . . No. 1432**

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By Mr. Moore, a petition (accompanied by bill, Senate, No. 1432) of Michael O. Moore and David T. Vieira for legislation relative to sheriffs. Public Safety and Homeland Security.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE SENATE, NO. 1343 OF 2017-2018.]

**The Commonwealth of Massachusetts**

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

An Act relative to sheriffs.

*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 adding the following  
2 section:-

3 Section 218. There shall be a corrections advisory board, hereinafter called the board, to  
4 provide independent advice to the commonwealth’s corrections providers, including the sheriffs,  
5 to: (i) improve coordination efforts between and among the sheriffs, the department of  
6 correction, the courts and community corrections programs; and (ii) identify and establish best  
7 practices in all aspects of corrections operations, including, but not limited to, accounting, human  
8 resources, care and custody of inmates, special inmate populations, civil process, community  
9 corrections, health and mental health care management, inmate rehabilitation and re-entry,  
10 capital, master and strategic planning, inmate tracking and transportation and procurement.

11           The board shall include the following members: the secretary of public safety and  
12 security, the chair of the parole board, the commissioner of correction, the commissioner of  
13 probation, the secretary of administration and finance, the president of the Massachusetts  
14 Sheriffs Association, Inc., or their designees, each of whom shall serve ex-officio; 9 persons to  
15 be appointed by the governor for a term of 3 years, 1 of whom shall have experience in the areas  
16 of workforce development and ex-offender rehabilitation, 1 of whom shall have experience in the  
17 area of reintegration and rehabilitation of female ex-offenders, 1 of whom shall have experience  
18 in treating people with mental illness and substance abuse, 1 of whom shall have experience in  
19 government accounting practices, 1 of whom shall have experience in human resources  
20 management, 1 of whom shall have experience in independent auditing and 1 of whom shall be a  
21 representative of organized labor; 2 persons to be appointed by the president of the  
22 Massachusetts Sheriffs Association, Inc.; and 2 persons to be appointed by the chief justice of  
23 the supreme judicial court. Upon the expiration of the term of an appointed member, the  
24 member's successor shall be appointed in a like manner for a term of 3 years. Irregular vacancies  
25 shall be filled by appointment to an unexpired term. Ten members shall constitute a quorum and  
26 all appointees and ex-officio members shall be voting members. The board shall annually elect a  
27 chair from among its members and shall be supported by the executive office for administration  
28 and finance. Chapter 268A shall apply to all board members.

29           The chairperson shall hold meetings at least quarterly, 1 of which shall be an annual  
30 meeting, and shall notify all board members and sheriffs of the time and place of all meetings.  
31 Special meetings may be called at any time by a majority of the board members and shall be  
32 called by the chairperson upon written application of 8 or more members. Members of the board

33 shall receive no compensation, but shall receive their expenses actually and necessarily incurred  
34 in the discharge of their duties.

35 The sheriffs and any other interested parties shall have the opportunity to address the  
36 board during its meetings and to provide written information to the board for its consideration.

37 The board shall make a report, at least 60 days before July 31 of every even-numbered  
38 year and file a copy thereof with the governor, the clerks of the house and senate, the senate and  
39 house committees on ways and means, the joint committee on public safety and homeland  
40 security, the joint committee on the judiciary and the joint committee on state administration and  
41 regulatory oversight.

42 SECTION 2. Section 3B of Chapter 7 of the General Laws, as appearing in the 2016  
43 Official Edition, is hereby amended by inserting after the words “employees thereof” in line 12,  
44 the following words:- ; provided, however, that the cost of meals for employees of the sheriff’s  
45 departments shall be subject to collective bargaining agreements.

46 SECTION 3. Section 3 of said Chapter 32, as appearing in the 2016 Official Edition, is  
47 hereby amended by inserting after the words “county correctional facilities,” in lines 270 to 271,  
48 the following words:-

49 and any deputy engaged in civil process enforcement activities that involve the acts of  
50 arrest, eviction or seizure of property, who is regularly assigned to such enforcement duties for  
51 more than 20 hours per week, and who is defined by section 3A of chapter 37 as a full-time  
52 employee of the Sheriff.

53 SECTION 4. Section 2 of Chapter 32A of the General Laws, as appearing in the 2016  
54 Official Edition, is hereby amended by inserting after the words “ Suffolk county”, in line 17, the  
55 following words:- , the offices of the sheriffs.

56 SECTION 5. Chapter 37 of the General Laws is hereby amended by inserting after  
57 section 3 the following 2 sections:-

58 Section 3A. (a) Each sheriff shall establish a civil process office within the sheriff’s  
59 department and shall assign deputies appointed pursuant to section 3 who, along with the sheriff,  
60 shall serve and execute within their counties, including within the political boundaries of the  
61 previously abolished county governments, and where the commonwealth is a party or interested,  
62 all precepts lawfully issued to them and all other process required by law to be served by an  
63 officer pursuant to section 11 of chapter 37. The civil process office established within the  
64 sheriff’s department shall be the exclusive entity performing sheriff’s civil process duties under  
65 section 11 of chapter 37. A deputy assigned to serve process may do so in cases in which a  
66 county, city, town, parish, religious society, fire or other district is a party or interested, although  
67 the deputy is an inhabitant or member thereof. The sheriff may also appoint employees to work  
68 in the sheriff’s civil process office. All deputies and employees of the process office shall serve  
69 at the will and the pleasure of the sheriff. A deputy who ceases to be assigned to or to perform  
70 civil process duties, either as an employee or as a contracted deputized process server, shall be  
71 decommissioned as a deputy as provided by law and shall immediately return all equipment and  
72 property issued to that person by the sheriffs’ department.

73 (b) Deputies and other employees of the process office, who are salaried or hourly  
74 employees and who devote 20 hours or more per week to assigned duties, shall be state

75 employees under Chapters 32, 32A, 150E, 152, 258, 268A and 268B and shall be compensated  
76 in accordance with this subsection and subsection (c).

77 (c) Subject to the following limitations, the sheriff shall have power and authority as  
78 employer in all matters related to civil process deputies and employees including, but not limited  
79 to, hiring, firing, promotion, discipline, work-related injuries and internal organization of the  
80 department. No sheriff, deputy or employee shall serve process for anyone except the sheriff.  
81 The sheriff or an assigned deputy or contracted deputized process server may serve process  
82 outside regular business hours. Sheriffs and non-commission full-time deputies and employees  
83 may receive only a salary or hourly wage and shall not receive a commission or any portion of  
84 any fee for service of process, no matter when the service is performed. Except for appointed or  
85 sworn deputy sheriffs contracted to serve civil process, sheriffs, deputy sheriffs and employees  
86 who are part-time shall not be paid a commission or any portion of any fee for service of process  
87 performed during hours for which the sheriff, deputy or employee is being compensated by  
88 federal, state, county or municipal funds. The annual salary, cumulative hourly wage,  
89 commissions or the cumulative portion of any fees for service of process of any individual  
90 deputy, employee or contracted deputized process server shall not exceed the annual salary of the  
91 sheriff.

92 (d) In addition to any other training and certification required by law, a deputy sheriff  
93 who performs civil process duties, including, but not limited to, enforcement duties, shall be  
94 sworn and shall complete a civil process officers certification program pursuant to a policy and  
95 curriculum that shall be adopted and approved by the Massachusetts Sheriffs Association, Inc.  
96 and the Massachusetts Deputy Sheriffs' Association. The civil process officers certification  
97 program shall include training and orientation on all requirements of lawful service of process

98 and shall be conducted jointly by the Massachusetts Sheriffs Association, Inc. and the  
99 Massachusetts Deputy Sheriffs' Association. Deputy sheriffs shall begin the civil process  
100 officers certification program within 30 days after receiving appointment or being assigned civil  
101 process duties and shall be re-certified annually after completing the program.

102 (e) All full-time deputy sheriffs and employees of the sheriff's civil process office,  
103 including those deputy sheriffs and employees of the sheriff's civil process office who have been  
104 transferred to the commonwealth, and who completed a 1 year probationary period of full time  
105 employment, shall be granted under this subsection, without impairment, full benefits for  
106 vacation and sick time earned from their original commencement of employment in the sheriff's  
107 civil process office not to exceed those of other state employees.

108 Section 3B. No sheriff, deputy or employee, nor any other individual or entity shall have  
109 or acquire any legal right to the tangible or intangible property of the civil process office, nor any  
110 revenue derived from fees collected from the service of process or any proceeds from the sale of  
111 the property within the process office, other than compensation as determined pursuant to this  
112 chapter.

113 Except as otherwise provided in this chapter, all fees derived from service of process  
114 shall be used solely for the operation of the sheriff's civil process office. All tangible and  
115 intangible property shall belong to the state and shall be under the sole possession and control of  
116 the sheriff.

117 SECTION 6. Said Chapter 37 of the General Laws is hereby further amended by striking  
118 out Section 11, as appearing in the 2016 Official Edition, and inserting in place thereof the  
119 following section:-

120           Section 11. (a) The Massachusetts Sheriffs Association, Inc. shall establish a system by  
121 which all process fees are reported and recorded and shall develop and adopt policies and  
122 procedures to be approved by the comptroller and the secretary of administration and finance  
123 which shall be referenced in an internal control plan kept by each sheriff's office. Information  
124 about each request for process to be served that is received by the sheriff's civil process office  
125 shall be reported and recorded in the system within 30 days of when the information becomes  
126 available and shall include, but not be limited to, the following information for each piece of  
127 process to be served: (i) the title of the action, including court name and docket number; (ii) the  
128 date the process was issued or required to be served; (iii) the type of process; (iv) the name and  
129 address of the person requesting that process be served; (v) the name and address of the person  
130 or location upon which service is to be made; (vi) the fee charged; (vii) the date of billing to  
131 collect the fee; (viii) the date of fee collected; (ix) the date service was made; (x) the manner of  
132 service; (xi) the amount of commission paid, if any; and (xii) the name of the person performing  
133 service and, if different, the name of the person or entity to whom the commission was paid.

134           (b) A summary of the information contained in subsection (a) shall be compiled and  
135 reported in writing to the comptroller and the secretary of administration and finance by the  
136 sheriff annually not later than September 30.

137           (c) Administrative costs associated with the recording of information prescribed under  
138 subsection (a) and prepared under subsection (b), including expenditures for personnel or the  
139 purchase of equipment required to perform the recording of information, may be paid from the  
140 civil process account or any other account established for the operation of the sheriff's office.

141 (d) In addition to the requirements in subsection (a), annual reports filed pursuant to  
142 subsection (b) shall include, but not be limited to, completed, itemized schedules of the  
143 following information: (i) assets, including cash, deposits, accounts receivable and the value of  
144 the property and equipment; (ii) liabilities, including accounts payable, client escrow deposits,  
145 capital lease obligations and all other debts; (iii) income derived from the service of process and  
146 otherwise; (iv) expenses paid, including payroll, commissions and all other expenses; and (v) any  
147 surplus from the sheriff's civil process account that has been transferred to an account as  
148 authorized by law.

149 SECTION 7. Section 14 of said Chapter 37, as so appearing, is hereby amended by  
150 striking out, in lines 1 and 2, the words "They may execute precepts in their hands at the time of  
151 their removal from office; and, upon" and inserting in place thereof the following word:- Upon.

152 SECTION 8. Said Chapter 37 of the General Laws is hereby further amended by  
153 inserting after Section 14 the following section:-

154 Section 14A. Upon the removal of a deputy sheriff by the sheriff, the removed deputy  
155 shall immediately return to the sheriff's civil process office all process and other documents  
156 received or in the deputy sheriff's possession, along with any fees collected. If a deputy or  
157 former deputy fails to comply with this section, the sheriff shall institute legal proceedings to  
158 enforce this section or any other section in this chapter.

159 SECTION 9. Said Chapter 37 of the General Laws is hereby further amended by striking  
160 out Section 22, as appearing in the 2016 Official Edition, and inserting in place thereof the  
161 following section:-

162 Section 22. Each sheriff shall keep an account of all fees and money received from any  
163 source by virtue of the sheriff's office on the state's accounting system as prescribed by the  
164 comptroller.

165 SECTION 10. Said Chapter 37 of the General Laws is hereby further amended by  
166 inserting after Section 22 the following section:-

167 Section 22A. (a) Notwithstanding Section 22 or Chapter 35, all fees and other revenues  
168 collected by the process office shall be revenue of the commonwealth as defined by Chapter 29.  
169 All fees and revenues shall be deposited in bank accounts and accounted for on the books and  
170 records of the commonwealth in accordance with policies and procedures of the state treasurer  
171 and comptroller. The civil process accounts shall be kept separate from other accounts, shall  
172 continue without further appropriation and shall be used only for the operation of the process  
173 office or for activities that the sheriffs are statutorily authorized to perform. Expenditures shall  
174 be authorized by the sheriff in accordance with state guidelines without further appropriation.  
175 Any balance in the account at the close of the fiscal year shall be retained in the account and  
176 made available in the subsequent fiscal year.

177 (b) Payroll and all other bills of the civil process office shall be paid from the process  
178 account; provided, however, that after all civil process revenue has been expended for payroll  
179 and other bills of the civil process office, a sheriff may use funding from a fiscal year budgetary  
180 appropriation to pay payroll and all other civil process expenses.

181 (c) Notwithstanding subsection (a), contributions from paychecks issued to deputy  
182 sheriffs and employees of the sheriff's civil process office who are members in service of the  
183 state retirement system, shall be deducted and forwarded to the state treasurer. The amounts

184 deducted shall be determined in accordance with chapter 32 and any other rules and regulations  
185 promulgated thereunder.

186 (d) Notwithstanding subsection (a), premiums from paychecks of deputy sheriffs and  
187 employees of the sheriff's civil process office who are insured under Chapter 32A shall be  
188 deducted and forwarded to the state treasurer. The amounts deducted shall be determined in  
189 accordance with Chapter 32A and any other rules and regulations promulgated thereunder.

190 (e) Annually, not later than 75 days after the close of the fiscal year, the sheriff shall  
191 render a sworn statement of account to the state treasurer, the secretary of administration and  
192 finance and the house and senate committees on ways and means.

193 (f) Notwithstanding subsection (a), no funds held in a civil process account shall be used  
194 for payment of liability expenses incurred by the sheriff's civil process office pursuant to  
195 Chapter 258 or for payments to employees pursuant to Chapter 152. Any judgment, settlement or  
196 attorney's fees incurred as a result of litigation concerning the process office shall be paid in  
197 accordance with chapter 258 in the same manner as any other claim, judgment, settlement or  
198 attorney's fees paid by the sheriff's office.

199 (g) In the event revenues collected from civil process fees are deemed insufficient to  
200 cover the costs of operating of the process office, the sheriff shall notify the house and senate  
201 committees on ways and means and the secretary of administration and finance in writing of the  
202 projected deficiency and the reasons for such deficiency not later than 30 days in advance of the  
203 projected deficiency.

204 SECTION 11. Chapter 126 is hereby amended by inserting after Section 18A the  
205 following section:-

206 Section 18B. Injuries to Deputy Sheriffs and Employees of Sheriff's Civil Process Office.

207 Whenever a deputy sheriff or other employee of a sheriff's civil process office who, due  
208 to no fault of his own, while in the performance of duty, receives bodily injury from an act of  
209 violence by a person connected with the proceeding for which service of process was attempted  
210 or served, and who is incapacitated for duty because of the injury sustained, shall be paid, in  
211 addition to benefits paid under Chapter 152, the difference between the weekly cash benefits to  
212 which he is entitled under Chapter 152 and his regular salary. Any absence from work due to the  
213 injury shall not be charged against the employee's available sick leave credits, even if the  
214 absence is for less than 8 calendar days. This section does not apply to injuries sustained during  
215 work for which a deputy or employee is being paid commission.

216 All amounts payable under this section shall be paid at the same times and in the same  
217 manner as, and for all purposes shall be deemed to be the deputy or employee's regular  
218 compensation. If a person or entity is liable for monetary damages for an injury of a deputy  
219 sheriff or other employee of a sheriff's civil process for which he is compensated under this  
220 section, the deputy, employee, or sheriff's department that is paying compensation under this  
221 section, may proceed to enforce the liability of such person or entity in any court of competent  
222 jurisdiction. Any sum recovered shall be for the benefit of the sheriff's department that is paying  
223 such compensation, unless the sum is greater than the compensation paid to the injured person, in  
224 which case the excess shall be retained by or paid to the injured person. For the purposes of this  
225 section, "excess" shall mean the amount by which the total sum received as damages for the  
226 injury, exclusive of interest and costs, exceeds the amount paid under this section as  
227 compensation to the injured person. The party bringing the action shall be entitled to any costs  
228 recovered by him. Any interest received in the action shall be apportioned between the sheriff's

229 department and the injured person in proportion to the amounts received by them respectively,  
230 inclusive of interest and costs. The expense of any attorney's fees shall be divided between the  
231 sheriff's department and the injured person in proportion to the amounts received by them  
232 respectively.

233 Any person or entity, who injures a deputy sheriff or other employee of a sheriff's civil  
234 process office who is compensated under this section for the injury, shall be liable in tort to the  
235 sheriff's department that is paying the injured person, for all costs, in excess of the amount of  
236 compensation paid, that are incurred by the sheriff's department to replace the injured person.

237 SECTION 12. Chapter 262 is hereby amended by striking out Section 8A, as appearing in  
238 the 2016 Official Edition, and inserting in place thereof the following section:-

239 Section 8A. Each constable shall annually, not later than April 15, file with the municipal  
240 treasurer an account signed under the pains and penalties of perjury of all fees and money  
241 received by the constable under section 8 for the service of civil process. If 2 or more constables  
242 share such fees and money, such constables may file a joint account; provided, however, that  
243 each constable signs the account under the pains and penalties of perjury.

244 Each deputy sheriff shall annually, not later than 30 days after the close of the fiscal year,  
245 file with the sheriff and the state treasurer an account signed under the pains and penalties of  
246 perjury of all fees and money received by the deputy sheriff under Section 8 for the service of  
247 civil process. If 2 or more deputy sheriffs share such fees and money, such deputy sheriffs may  
248 file a joint account; provided, however, that each deputy sheriff shall sign the account under the  
249 pains and penalties of perjury.

250           On a schedule determined by the sheriff, but at least quarterly, each deputy sheriff who  
251 serves process shall file a written report to the sheriff, made under the pains and penalties of  
252 perjury and in a form prescribed by the sheriff, detailing information relative to the service of  
253 civil process in their respective jurisdictions pursuant to Section 11 of Chapter 37.

254           SECTION 13. Subject to appropriation, the human resources division shall conduct, in  
255 consultation with the sheriffs and Massachusetts Sheriffs Association, Inc., a comprehensive  
256 assessment that will lead to statewide standards for classification, recruitment, promotion,  
257 compensation and professional standards for all sheriffs' offices. The assessment shall include,  
258 but is not limited to, standardizing job titles and classification, job postings, minimum testing  
259 requirements and other employment practices. The human resources division shall issue a report  
260 of its assessment by April 30, 2021 and require that implementation of the standards shall begin  
261 not later than September 1, 2021. A copy of the human resources division's assessment report  
262 shall be sent to the chairs of the joint committee on state administration and regulatory oversight,  
263 the chairs of house and senate ways and means, the clerks of the house and senate, the chairs of  
264 the joint committee on public safety and homeland security, the secretary of administration and  
265 finance and the secretary of public safety and security.