

SENATE No. 1432

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

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.

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

The Commonwealth of Massachusetts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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