SENATE DOCKET, NO. 2948 FILED ON: 1/14/2022

SENATE . . . . . No.

The Commonwealth of Massachusetts

PRESENTED BY:

James B. Eldridge

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 independent civilian oversight of correctional facilities.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
James B. Eldridge	*Middlesex and Worcester*	
Michael J. Barrett	*Third Middlesex*	*1/20/2022*
Patricia D. Jehlen	*Second Middlesex*	*2/7/2022*

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SENATE . . . . . No.

By Mr. Eldridge, a petition (accompanied by bill) (subject to Joint Rule 12) of James B. Eldridge for legislation relative to independent civilian oversight of correctional facilities. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

An Act relative to independent civilian oversight of correctional facilities.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to forthwith provide independent civilian oversight of correctional facilities, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Chapter 127 is hereby amended by striking out section 38E, as appearing in the 2020 Official Edition, and inserting in place thereof the following section:-

Section 38E. (a) There shall be a Civilian Oversight of Correctional Facilities Commission consisting of 5 members: 2 of whom shall be retired justices appointed by the governor; 1 of whom shall be a retired correctional officer appointed by the governor; 1 of whom shall be a person who was previously incarcerated appointed by the governor; and 1 of whom shall be the executive director of Prisoners' Legal Service, Inc. or their designee.

(b) Except for the retired correctional officer commissioner, all commissioners shall be civilians and no commissioner shall have been previously employed as a law enforcement officer, a retired law enforcement officer, a correctional officer, a retired correctional officer or

an employee or contractor of the department. The commission shall include people of color and women, at least in such proportion as these groups exist in the commonwealth's population as periodically determined by the state secretary as the commonwealth's chief census officer. The members of the commission shall represent diverse geographic areas of the commonwealth, including urban, rural and suburban areas. The commissioners shall take an oath to faithfully and impartially execute their duties as commissioners.

(c) Each commissioner shall be a resident of the commonwealth within 90 days of appointment and, while serving on the commission, shall not: (i) hold, or be a candidate for, federal, state or local elected office; (ii) hold an appointed office in a federal, state, or local government; or (iii) serve as an official in a political party. The members of the commission shall be compensated for work performed for the commission at such rate as the secretary of administration and finance shall determine.

(d) Each commissioner shall serve for a term of 5 years or until a successor is appointed and shall be eligible for reappointment; provided, however, that no commissioner shall serve more than 10 years. The governor may petition the superior court to remove a commissioner if the commissioner: (i) is guilty of malfeasance in office; (ii) substantially neglects the duties of a commissioner; (iii) is unable to discharge the powers and duties of the commissioner's office; or (iv) commits gross misconduct in the course of performing their duties.

(e) Three commissioners shall constitute a quorum and the affirmative vote of a majority of commissioners present and voting shall be required for an action of the commission. The commission shall meet monthly and at other times as it shall deem necessary or upon the written request of 2 commissioners; provided, however, that notice of all meetings shall be given to each

commissioner, posted on the commission's website and to other persons who request such notice. The commission shall adopt regulations establishing procedures, which may include electronic communications, by which a request to receive notice shall be made and the method by which timely notice may be given.

(f) The commission shall annually elect 1 of the commissioners to serve as secretary and 1 of the commissioners to serve as treasurer. The secretary shall keep a record of the proceedings of the commission and shall be the custodian and keeper of the records of all books, documents and papers filed by the commission and of its minute book. The secretary shall cause copies to be made of all minutes and other records and documents of the commission and shall certify that such copies are true copies, and all persons dealing with the commission may rely upon such certification.

(g) The commission shall appoint an executive director, who shall not be a member of the commission. The executive director shall serve at the pleasure of the commission, shall receive such salary as may be determined by the commission, and shall devote full time and attention to the duties of the office. The executive director shall be a person with skill and experience in management, shall be the executive and administrative head of the commission and shall be responsible for administering and enforcing the provisions of law relative to the commission. The executive director may, subject to the approval of the commission, employ other employees, consultants, agents and advisors, including counsel, investigators and hearing officers, and shall attend meetings of the commission. In the case of an absence or vacancy in the office of the executive director or in the case of disability as determined by the commission, the commission may designate an acting executive director to serve as executive director until the vacancy is filled or the absence or disability ceases. The acting executive director shall have all of the

powers and duties of the executive director and shall have similar qualifications as the executive director.

(h) Any vacancy occurring on the commission shall be filled within 90 days by the original appointing authority. A person appointed to fill a vacancy occurring other than by expiration of a term of office shall be appointed for the unexpired term of the member they succeed and shall be eligible for re-appointment.

(i) The commission shall have all powers necessary or convenient to carry out and effectuate its purposes, including, but not limited to, the power to:

(1) act as the primary civil enforcement agency for grievances brought against the department of correction, county correctional facilities and their officers, employees or contractors;

(2) order the department of correction or county correctional facilities to redress problems;

(3) receive complaints from any source and preserve all complaints and reports filed with the commission for the appropriate period of time;

(4) conduct audits and investigations of correctional facilities at any time;

(5) appoint hearing officers, counsel, investigators and other employees to be hired by the executive director;

(6) establish and amend a plan of organization that it considers expedient;

(7) execute all instruments necessary or convenient for accomplishing the purposes of this section;

(8) enter into agreements or other transactions with a person, including, but not limited to, a public entity or other governmental instrumentality or authority in connection with its powers and duties under this chapter;

(9) appear on its own behalf before boards, commissions, departments or other agencies of municipal, state or federal government;

(10) apply for and accept subventions, grants, loans, advances and contributions of money, property, labor or other things of value from any source, to be held, used and applied for its purposes;

(11) provide and pay for advisory services and technical assistance as may be necessary in its judgment to carry out this section and fix the compensation of persons providing such services or assistance;

(12) prepare, publish and distribute, with or without charge as the commission may determine, such studies, reports, bulletins and other materials as the commission considers appropriate;

(13 gather facts and information applicable to the commission's obligations for: (i) a violation of this chapter or any regulation adopted by the commission; or (ii) a willful violation of an order of the commission;

(14) demand access to and inspect, examine, photocopy and audit all papers, books and records of any correctional facility;

(15) levy and collect assessments, fees and fines and impose penalties and sanctions for a violation of this chapter or any regulations promulgated by the commission;

(16) conduct adjudicatory proceedings in accordance with chapter 30A;

(17) refer cases for criminal prosecution to the appropriate federal, state or local authorities;

(18) issue subpoenas and compel the attendance of witnesses at any place within the commonwealth, administer oaths and require testimony under oath before the commission in the course of an investigation or hearing conducted under this chapter;

(19) maintain an official internet website for the commission;

(20) adopt, amend or repeal regulations in accordance with chapter 30A for the implementation, administration and enforcement of this chapter, including, but not limited to, regulations: (1) to specify maximum time limits for written replies to grievances with reasons for such replies at each decision; (2) priority processing of grievances that are of an emergency nature, including matters in which delay would subject the petitioner to substantial risk of personal injury or other damages; (3) safeguards to avoid reprisals against any petitioner or participant in the resolution of a grievance.

(j) Grievances may be brought by incarcerated persons arising out of or resulting from a condition of or occurrence during confinement, whether or not said grievance is presented in the form of petition for a writ of habeas corpus. A petition for a writ of habeas corpus seeking only release from unlawful imprisonment or restraint and no other relief shall not be subject to the provisions of this section. All applicable statute of limitations and presentment periods shall be

tolled from the date of the filing of a grievance pursuant to this section until the final administrative resolution of the grievance.