

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:	
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	
<i>Michael J. Barrett</i>	<i>Third Middlesex</i>	<i>1/20/2022</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>2/7/2022</i>

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:

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

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

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

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

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

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

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

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

37 (f) The commission shall annually elect 1 of the commissioners to serve as secretary and
38 1 of the commissioners to serve as treasurer. The secretary shall keep a record of the proceedings
39 of the commission and shall be the custodian and keeper of the records of all books, documents
40 and papers filed by the commission and of its minute book. The secretary shall cause copies to be
41 made of all minutes and other records and documents of the commission and shall certify that
42 such copies are true copies, and all persons dealing with the commission may rely upon such
43 certification.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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