SENATE DOCKET, NO. 830 FILED ON: 1/17/2013

SENATE . . . . . No. 1155

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:
Michael O. Moore	*Second Worcester*
Peter V. Kocot	*1st Hampshire*
David T. Vieira	*3rd Barnstable*
Richard J. Ross	*Norfolk, Bristol and Middlesex*

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By Mr. Michael O. Moore, a petition (accompanied by bill, Senate, No. 1155) of Michael O. Moore, Peter V. Kocot, David T. Vieira and Richard J. Ross for legislation relative to adding a sheriffs board of administrations. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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:

SECTION 1. Chapter 6 of the General Laws is hereby amended by adding the following section:-

Section 216. There shall be a corrections advisory board, hereinafter called the board, to provide independent advice to the commonwealth's corrections providers, including the sheriffs, for the purpose of (1) improving coordination efforts between and among the sheriffs, the department of corrections, the courts and community corrections programs, and (2) indentifying and establishing best practices in all aspects of corrections operations, including but not limited to, accounting, human resources, care and custody of inmates, special inmate populations, civil process, community corrections, health and mental health care management, inmate rehabilitation and re-entry, capital, master and strategic planning, inmate tracking and transportation, and procurement.

The board shall consist of the following persons: the secretary of public safety and security, the chair of the parole board, the commissioner of correction, the commissioner of probation, the secretary of administration and finance, the president of the Massachusetts Sheriffs' Association, or their designees, each of whom shall serve ex-officio, 9 persons to be appointed by the governor for a term of three years, 1 of whom shall have experience in the areas of workforce development and ex-offender rehabilitation, 1 of whom shall have experience in the area of reintegration and rehabilitation of female ex-offenders, 1 of whom shall have experience in treating people with mental illness and substance abuse, 1 of whom shall have experience in government accounting practices, 1 of whom shall have experience in human resources management, 1 of whom shall have experience in independent auditing, 1 of whom shall be a

22 representative of organized labor, 2 persons to be appointed by the president of the
23 Massachusetts Sheriffs' Association, and 2 persons to be appointed by the chief justice of the
24 supreme judicial court. Upon the expiration of the term of any appointed member, the member's
25 successor shall be appointed in a like manner for a term of 3 years. Irregular vacancies shall be
26 filled by appointment to an unexpired term. Ten members shall constitute a quorum and all
27 appointees and ex-officio members shall be voting members. The board shall annually elect a
28 chair from among its members and shall be supported by the executive office of administration
29 and finance. The provisions of chapter 268A shall apply to all board members.

30 The chairman shall hold meetings at least quarterly, one of which shall be an annual
31 meeting, and shall notify all board members and sheriffs of the time and place of all meetings.
32 Special meetings may be called at any time by a majority of the board members and shall be
33 called by the chairman upon written application of eight or more members. Members of the
34 board shall receive no compensation, but shall receive their expenses actually and necessarily
35 incurred in the discharge of their duties.

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

38 The board shall make a report, on or before 60 days of the end of each two-year
39 legislative session, and file a copy thereof with the governor, the clerks of the house of
40 representatives and of the senate, senate and house committees on ways and means, the joint
41 committees on public safety, judiciary, and state administration and regulatory oversight.

42 SECTION 2. Section 3B of chapter 7 of the General Laws, as appearing in the 2010
43 Official Edition, is hereby amended by inserting at the end of the first paragraph the following
44 words:- ; provided, however, that the cost of meals for employees of the sheriff's departments
45 shall be subject to collective bargaining agreements.

46 SECTION 3. Section 1 of chapter 32 of the General Laws, as so appearing, is hereby
47 amended by inserting, in line 259, at the end of the definition "Employee", the following text:-

48 ""Employee", as applied to persons whose regular compensation is paid from an account
49 established by the sheriff's civil process office pursuant to section 22 of chapter 37 of this act for
50 the sheriff's civil process office and shall mean any person who is appointed by the sheriff as a
51 deputy sheriff or employee of the sheriff's civil process office who is engaged in duties which
52 require that his time be devoted to the service of the sheriff's civil process office in each year
53 during the ordinary working hours of regular and permanent employees, and who is regularly
54 and permanently employed in such service and receives a salary, hourly wage or regular
55 compensation for assigned civil process duties as determined by each Sheriff."

56 SECTION 4. Section 3 of said chapter 32 , as so appearing , is hereby amended by
57 inserting, in line 300, after the words "county correction facilities," the following:-

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

62 SECTION 5. Section 3 of said chapter 32, as so appearing, is hereby amended by
63 inserting after subparagraph (a) the following paragraph:-

64 (b) any deputy sheriff or employee of the sheriff’s civil process office, including any
65 deputy sheriff or employee of the process office that has been transferred to the Commonwealth,
66 who is now a member or becomes a member of a system applicable to any governmental unit
67 shall be given credit in such system for any service rendered by depositing in the annuity savings
68 fund of such system such sums and under such conditions as are set forth under said section,
69 provided that said member was eligible for membership in a retirement system based on his or
70 her civil process duties for the period for which creditable service is being granted.

71 SECTION 6. Section 2 of chapter 32A, as so appearing, is amended by inserting, in line
72 15, after the words “cooperative extension service of Suffolk county,” the following:-

73 “the offices of the sheriffs,”

74 SECTION 7. Chapter 37 is hereby amended by inserting after section 3 the following
75 sections:-

76 Section 3A. Sheriff’s Civil Process Office.

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

92 (B) Deputies and other employees of the process office, who are salaried or hourly
93 employees and who devote 20 or more hours per week to assigned duties, shall be state
94 employees for the purposes of chapters 32, 32A, 150E, 152, 258, 268A, and 268B, and shall be
95 compensated in accordance with this subsection and subsection (C) of this section.

96 (C) Subject to the following limitations, the sheriff shall have power and authority as
97 employer in all matters related to civil process deputies and employees including, but not limited
98 to, hiring, firing, promotion, discipline, work-related injuries and internal organization of the
99 department:-

100 1. No sheriff, deputy or employee shall serve process for anyone except the
101 Sheriff.

102 2. The sheriff or an assigned deputy, or contracted deputized process server may
103 serve process outside regular business hours.

104 3. Sheriffs and non-commission full-time deputies and employees may receive
105 only a salary or hourly wage, and shall at no time receive a commission, or any portion of any
106 fee, for service of process no matter when the service is performed.

107 4. Except for contracted deputized process servers, sheriffs, deputy sheriffs and
108 employees who are part-time shall not be paid a commission or any portion of any fee, for
109 service of process performed during hours for which the sheriff, deputy or employee is being
110 compensated by federal, state, county or municipal funds;

111 5. The annual salary, cumulative hourly wage, commissions, or the cumulative
112 portion of any fees for service of process, of any individual deputy, employee, or contracted
113 deputized process server shall not exceed the annual salary of the sheriff; and

114 (D) In addition to any other training and certification required by law, any deputy sheriff
115 who perform civil process duties, including but not limited to enforcement duties, shall be sworn
116 and shall complete a civil process officers certification program, pursuant to a policy and
117 curriculum that shall be adopted and approved by the Massachusetts Sheriffs Association and the
118 Massachusetts Deputy Sheriffs Association. The civil process officers certification program
119 shall include training and orientation on all requirements of lawful service of process and shall
120 be conducted jointly by the Massachusetts Sheriffs Association and the Massachusetts Deputy
121 Sheriffs Association. Deputy sheriffs shall begin the civil process officers certification program
122 within 30 days after receiving appointment or being assigned civil process duties, and shall be re-
123 certified annually after completing the program.

124 (E) All full time deputy sheriffs and employees of the sheriff's civil process office,
125 including those deputy sheriffs and employees of the sheriff's civil process office who have been
126 transferred to the commonwealth, and who completed a one year probationary period of full time

127 employment, will be granted under this subsection, without impairment, full benefits for vacation
128 and sick time earned from their original commencement of employment in the sheriff's civil
129 process office, but not to exceed those of regular state employees.

130 Section 3B. Property Rights of Sheriffs, Deputy Sheriff and Employees.

131 No sheriff, deputy or employee, nor any other individual or entity shall have or acquire
132 any legal right whatsoever to the tangible or intangible property of the civil process office, nor
133 any revenue derived from fees collected from the service of process of any proceeds from the
134 sale of the property within the process office, other than compensation as determined under this
135 chapter.

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

140 SECTION 8. Chapter 37 is further amended by striking out section 11 and inserting in
141 place thereof the following section:-

142 Section 11. Recording of Process.

143 (A) The Massachusetts Sheriffs Association, shall establish a system by which all process
144 fees are reported and recorded and shall develop and adopt policies and procedures, to be
145 approved by the comptroller and the office of administration and finance which shall be
146 referenced in an internal control plan kept by each sheriff's office. Information about each
147 request for process to be served that is received by the sheriff's civil process office shall be
148 reported and recorded in the system within 30 days of when the information becomes available,
149 and shall include but not be limited to the following information for each piece of process to be
150 served: --

151 (a) the title of the action, including court name and docket number;

152 (b) the date the process was issued or required to be served;

153 (c) the type of process;

154 (d) the name and address of the person requesting that process be served;

155 (e) the name and address of the person or location upon which service is to be
156 made;

157 (f) the fee charged;

158 (g) the date of billing to collect the fee;

159 (h) the date of fee collected;

160 (i) the date service was made;

161 (j) the manner of service;

162 (k) the amount of commission paid, if any ; and

163 (l) the name of the person performing service, and if different, the name of the
164 person or entity to whom the commission was paid.

165 (B) A summary of the information contained in subsection (A) of this section shall be
166 compiled and reported in writing to the comptroller and the office of administration and finance
167 by the sheriff annually no later than September 30th.

168 (C) Administrative costs associated with the recording of information prescribed under
169 subsection (A) of this section, and prepared under subsection (B) of this section, including
170 expenditures for personnel or the purchase of equipment required to perform the recording of
171 information, may be paid from the civil process account or any other account established for the
172 operation of the sheriff's office.

173 (D) In addition to the requirements of subsection (A) of this section, annual reports filed
174 pursuant to subsection (B) of this section shall include, but not be limited to, completed, itemized
175 schedules of the following information pertaining to the service of process:

176 (a) assets, including cash, deposits, accounts receivable, and the value of the
177 property and equipment;

178 (b) liabilities, including accounts payable, client escrow deposits, capital lease
179 obligations, and all other debts;

180 (c) income derived from the service of process and otherwise;

181 (d) expenses paid, including payroll, commissions, and all other expenses; and

182 (e) any surplus from the sheriff's civil process account that has been transferred to
183 an account as authorized by law.

184 SECTION 9. Section 14 of chapter 37, as so appearing, is hereby amended by striking
185 out, in lines 1 and 2, the words "They may execute precepts in their hands at the time of their
186 removal from office; and,".

187 SECTION 10. Chapter 37 is further amended by inserting after section 14 the following
188 new section:-

189 Section 14 A. Return of Writs and Precepts after removal.

190 Upon the removal of a deputy sheriff by the sheriff, the removed deputy shall
191 immediately return to the sheriff's civil process office all process and other documents received
192 or in his possession, along with any fees collected. If a deputy or former deputy fails to comply
193 with the terms of this section, the sheriff shall institute legal proceedings to enforce the terms of
194 this section or any other section herein.

195 SECTION 11. Chapter 37 is further amended by striking out section 22 in its entirety and
196 inserting in place thereof the following section:-

197 Section 22. Accounting of fees; disposition of funds.

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

200 SECTION 12. Chapter 37 is further amended by inserting after section 22 the following
201 section:-

202 Section 23. Fees from Process Office.

203 (A) Notwithstanding the provisions of section 22 of this chapter or the provisions of
204 chapter 35, all fees and other revenues collected by the process office shall be revenue of the
205 Commonwealth as defined by chapter 29. All fees and revenues shall be deposited in bank
206 accounts and accounted for on the books and records of the Commonwealth in accordance with
207 policies and procedures of the state treasurer and comptroller. The civil process accounts shall be
208 kept separate from any other account, shall continue without further appropriation, and shall be
209 used only for the operation of the process office or for activities that the sheriffs are statutorily
210 authorized to perform. Expenditures shall be authorized by the sheriff in accordance with state
211 guidelines without further appropriation. Any balance in the account at the close of the fiscal
212 year shall be retained in the account and made available in the subsequent fiscal year

213 (B) Payroll and all other bills of the civil process office shall be paid from the process
214 account. However, after all civil process revenue has been expended for payroll and other bills of
215 the civil process office, a sheriff may use funding from a fiscal year budgetary appropriation to
216 pay payroll and all other civil process expenses.

217 (C) Notwithstanding the provisions of subsection (A), contributions from paychecks
218 issued to deputy sheriffs and employees of the sheriff's civil process office who are members in
219 service of the state retirement system, shall be deducted and forwarded to the state treasurer. The
220 amounts deducted shall be determined in accordance with the provisions of chapter 32 and any
221 other rules and regulations promulgated there under.

222 (D) Notwithstanding the provisions of subsection (A), premiums from paychecks of
223 deputy sheriffs and employees of the sheriff's civil process office who are insured under chapter
224 32A shall be deducted and forwarded to the state treasurer. The amounts deducted shall be

225 determined in accordance with the provisions of those chapters and any other rules and
226 regulations promulgated there under.

227 (E) Annually, on or before the 75th day after the close of the fiscal year, the sheriff shall
228 render a sworn statement of account to the state treasurer, to the office of administration and
229 finance and the house and senate committees on ways and means.

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

236 (G) If the sheriff projects that revenues collected from civil process fees will not be
237 sufficient to cover costs, then 30 days in advance of the projected deficiency, the sheriff shall
238 notify the house and senate committees on ways and means and the office of administration and
239 finance in writing of the projected deficiency and the reasons for it.

240 SECTION 13. Chapter 126 is hereby amended by inserting after section 18A the
241 following section:-

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

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

252 All amounts payable under this section shall be paid at the same times and in the same
253 manner as, and for all purposes shall be deemed to be the deputy or employee's regular
254 compensation. If a person or entity is liable for monetary damages for an injury of a deputy
255 sheriff or other employee of a sheriff's civil process for which he is compensated under this
256 section, the deputy, employee, or sheriff's department that is paying compensation under this
257 section, may proceed to enforce the liability of such person or entity in any court of competent
258 jurisdiction. Any sum recovered shall be for the benefit of the sheriff's department that is paying
259 such compensation, unless the sum is greater than the compensation paid to the injured person, in
260 which case the excess shall be retained by or paid to the injured person. For the purposes of this

261 section, “excess” shall mean the amount by which the total sum received as damages for the
262 injury, exclusive of interest and costs, exceeds the amount paid under this section as
263 compensation to the injured person. The party bringing the action shall be entitled to any costs
264 recovered by him. Any interest received in the action shall be apportioned between the sheriff’s
265 department and the injured person in proportion to the amounts received by them respectively,
266 inclusive of interest and costs. The expense of any attorney’s fees shall be divided between the
267 sheriff’s department and the injured person in proportion to the amounts received by them
268 respectively.

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

273 SECTION 14. Subsection (c) of section 3 of chapter 211F of the General Laws, as so
274 appearing, is hereby amended by inserting, in line 9, after the words “condition of” the following
275 words:- pre-trial diversion or.

276 SECTION 15. Said chapter 262, as so appearing, is hereby amended by striking out
277 section 8A and inserting in place thereof the following section;-

278 Section 8A. Annual accounts of deputy sheriffs and constables

279 Each constable shall annually, on or before the 15th day of April, file with the municipal
280 treasurer an account signed by him under the penalties of perjury of all fees and money received
281 by him under the provisions of section 8 for the service of civil process. If 2 or more constables
282 share such fees and money between themselves, they may file a joint account provided that each
283 sings the account under the penalties of perjury.

284 Each deputy sheriff shall annually, on or before 30 days after the close of the fiscal year,
285 file with the sheriff and with the state treasurer an account signed by him under the penalties of
286 perjury of all fees and money received by him under the provisions of section 8 for the service of
287 civil process. If 2 or more deputy sheriffs share such fees and money between them they may
288 file a joint account, provided that each shall sign the account under the penalties of perjury.

289 On a schedule determined by the sheriff, but at least quarterly, each deputy sheriff who
290 serves process shall file a written report to the sheriff of all the process they have served. The
291 written report shall be in a form approved by the sheriff and shall contain all the information
292 contained in section 11 of chapter 37. The written report shall be made under the pains and
293 penalties of perjury.

294 SECTION 16. Subject to appropriation, the human resources division shall conduct, in
295 consultation with the sheriffs and Massachusetts Sheriffs Association, a comprehensive

296 assessment for all sheriff's offices management policies and practices, including but not limited
297 to, standardizing job title and classification, job posting, minimum testing requirements and other
298 employment practices that will lead to statewide standards for classification, recruitment,
299 promotion, compensation and professional standards for all fourteen sheriffs' offices. That
300 human resources division shall issue a report of its assessment by April 30, 2013 and that
301 implementation of the standards shall begin no later than September 1, 2013. A copy of the
302 human resources division's assessment report shall be sent to the chairs joint committee on state
303 administration and regulatory oversight, the chairs of house and senate ways and means, the
304 house and senate clerks, the chairs of the joint committee on public safety, the secretary of
305 administration and finance and the secretary of public safety and security.

306 SECTION 17. The office of the state auditor, in coordination with the executive office
307 of health and human services and the Massachusetts Sheriffs' Association, shall perform a
308 performance audit on the mental health screening processes currently in place for all jails and
309 houses of correction, the types of services offered and used prior to persons being transitioned to
310 these facilities, the range of services in these facilities and comparisons with national and clinical
311 best practices. The auditor shall provide the findings of said performance audit, including
312 estimate costs for attaining national and best practice levels of services, to the Massachusetts
313 Sheriffs' Association and the house and senate committees on ways and means no later than
314 October 1, 2013.

315 SECTION 18. The executive office of public safety and security shall determine the
316 feasibility and cost of adding an inmate tracking module to the Inmate Management System,
317 which would allow staff at prisons and houses of correction to electronically monitor movement
318 of prisoners within institutions in real time. The executive office of public safety and security is
319 specifically requested to consider and compare the advantages and disadvantages of using radio-
320 frequency identification, bar codes and scanners, or biometric identification of prisoners with the
321 tracking module.

322 SECTION 19. Notwithstanding any general or special law to the contrary, the secretary
323 of health and human services, in consultation with the division of medical assistance and the
324 secretary of public safety and security, shall, within 3 months of the effective date of this act,
325 apply to the federal center for medicare and medicaid services for a waiver to allow for federal
326 reimbursement of inmate health costs, including, but not limited to mental health care and drug
327 and alcohol dependency treatment.