

NOTICE: While reasonable efforts have been made to assure the accuracy of the data herein, this is **NOT** the official version of Senate Journal. It is published to provide information in a timely manner, but has **NOT** been proofread against the events of the session for this day. All information obtained from this source should be checked against a proofed copy of the Senate Journal.

UNCORRECTED PROOF OF THE JOURNAL OF THE SENATE.



JOURNAL OF THE SENATE.

Thursday, June 19, 2003.

Met at twenty-two minutes past one o'clock P.M.

The President, members, guests and employees then recited the pledge of allegiance to the flag.

Distinguished Guests.

There being no objection, during consideration of the Orders of the Day, the Chair (Ms. Menard) introduced, seated in the Senate gallery, Gibson Forsythe and his father, David. Gibson, a student at Roxbury Latin, will be soon entering the ninth grade at the school. They were the guests of Senators Walsh and Joyce.

Communication.

A communication from the Secretary of State submitting a copy of the Registry of Deeds Technology Advisory Committee report (received Thursday, June 5, 2003),— **was placed on file.**

Reports.

A report of the Public Employee Retirement Administration Commission (under the provisions of Chapter 32 of the General Laws) submitting its annual report for 2002 (received Wednesday, June 11, 2003),— **was placed on file.**

A report of the Department of Public Health (under the provisions of Sections 5 and 20 of Chapter 111 of the General Laws) relative to inspection of the Massachusetts Treatment

Center in Bridgewater (received Monday, June 9, 2003),— **was read and sent to the House for its information.**

Reports of Committees.

By Mr. Hart, for the committee on Commerce and Labor, on petition, a Bill protecting disabled persons from financial exploitation (Senate, No. 62);

Read and, under Senate Rule 27, referred to the committees on Ways and Means.

By Mr. Hart, for the committee on Commerce and Labor, on petition, a Bill relative to the business corporations law (Senate, No. 39);

By the same Senator, for the same committee, on petition, a Bill relative to damages for securities law violations under the Massachusetts Consumer Protection Act (Senate, No. 91); and

By the same Senator, for the same committee, on petition, a Bill to amend the charter of the Sterling Camp Meeting Association (Senate, No. 1941);

Severally read and, under Senate Rule 26, referred to the committee on Steering and Policy.

By Mr. Hart, for the committee on Commerce and Labor, ought NOT to pass, on the petition (accompanied by bill, Senate, No. 56) of Cheryl A. Jacques and Gale D.

Candaras for legislation to increase enforcement and penalties for corporate fraud;

Referred, under Senate Rule 36, to the committee on Steering and Policy.

Committee Discharged.

Ms. Fargo, for the committee on Local Affairs, reported, asking to be discharged from further consideration

Of the petition (accompanied by bill, Senate, No. 1152) of Robert L. Hedlund, Paul J.P. Loscocco, Brian P. Lees, Bruce E. Tarr and other members of the General Court for legislation relative to local boards of zoning appeals and low and moderate income housing projects;

Of the petition (accompanied by bill, House, No. 794) of Michael J. Coppola and other members of the General Court relative to the comprehensive permits issued under municipal zoning laws and by-laws; and

Of the petition (accompanied by bill, House, No. 798) of Marie J. Parente relative to comprehensive zoning permits for moderate income housing in cities and towns;

And recommending that the same severally be referred to the committee on Housing and Urban Development.

Under Senate Rule 36, the reports were severally considered forthwith and accepted.

Severally sent to the House for concurrence.

PAPER FROM THE HOUSE.

Petitions were referred, in concurrence, as follows:

Petition (accompanied by bill, House, No. 3904) of Patricia A. Walrath and Pamela P. Resor (by vote of the town) that the town of Maynard be authorized to issue additional licenses for the sale of alcoholic beverages;

To the committee on Government Regulations.

Petition (accompanied by bill, House, No. 3903) of Colleen M. Garry (by vote of the town) that the fire department of the town of Dracut be placed under the civil service law;

To the committee on Public Service.

A Bill authorizing the transfer of an easement under the control of the Department of Environmental Management in the city of Lynn (House, No. 2018, — on petition), — **was read and, under Senate Rule 27, referred to the committee on Ways and Means.**

A Bill authorizing the town of Topsfield to grant to certain persons one day liquor licenses (House, No. 1480,— on petition) (Local approval received),— **was read and, under Senate Rule 26, placed in the Orders of the Day for the next session.**

Resolutions.

The following resolutions (having been filed with the Clerk) were severally considered forthwith and adopted, as follows:—

Resolutions (filed by Mr. Barrios) “honoring Jackie Jenkins-Scott”;

Resolutions (filed by Ms. Chandler) “commending Dr. John Gusha of Holden”;

Resolutions (filed by Ms. Jacques) “recognizing June 21, 2003 as ‘Ask Day’”;

Resolutions (filed by Mr. Joyce and Mrs. Sprague) “honoring Frank I. Sullivan of Sharon”;

Resolutions (filed by Mr. Pacheco) “recognizing the one hundredth jubilee celebration of Saint Anthony’s Church in Taunton”;

Resolutions (filed by Ms. Resor) “congratulating Patricia Fallon on receiving the Golden Fife Award”;

Resolutions (filed by Mr. Tisei) “commending Daniel F. Blanchard on his retirement from the Wakefield Public Schools”;

Resolutions (filed by Ms. Walsh) “congratulating Kevin T. Durant II on the occasion of his Court of Honor”; and

Resolutions (filed by Ms. Walsh) “congratulating Gregory M. Halloran on the occasion of his Court of Honor.”

Communication.

The Clerk read the following communication:

COMMONWEALTH OF MASSACHUSETTS
SENATE MAJORITY LEADER
STATE HOUSE, BOSTON 02133-1053

June 16, 2003.

Patrick F. Scanlan, *Clerk*
Massachusetts Senate
State House, Room 335
Boston, MA 02133

Dear Mr. Clerk,

I was absent from the Senate on Thursday, June 12, 2003 due to an out of state family medical emergency. Any roll call votes I missed on that date was a result of this fact.

Thank you for your attention to this matter.

Sincerely,
Frederick E. Berry,
Majority Leader.

On motion of Mr. Lees, the above communication was ordered printed in the Journal of the Senate.

PAPER FROM THE HOUSE.

A Bill relative to the health insurance of active and retired employees of the town of Plymouth (House, No. 3848,— on petition) (Local approval received), — was read. **There being no objection, the rules were suspended, on motion of Ms. Murray, and the bill was read a second time, ordered to a third reading, read a third time and passed to be engrossed, in concurrence.**

Orders of the Day.

The Orders of the Day were considered, as follows:

Ms. Menard in the Chair,— (having been appointed by the President, under authority conferred by Senate Rule 4 to perform the duties of the Chair), the House Bill authorizing the town of Topsfield to issue a license for the sale of wine and malt beverages to be drunk on the premises (House, No. 1482), — **was read a second time and, after remarks, was ordered to a third reading.**

The House Bill relative a certain license for the sale of wines and malt beverages in the Town of Milford (House, No. 3728),— **was read a second time and ordered to a third reading.**

The Senate Bill punishing the failure to report certain fires (Senate, No. 1281),— was read a third time.

The question on passing it to be engrossed was determined by a call of the yeas and nays, at twenty-eight minutes before two o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 39 — nays 0) [**Yeas and Nays No. 69**]:

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Baddour, Steven A.	Montigny, Mark C.
Barrios, Jarrett T.	Moore, Richard T.
Berry, Frederick E.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Chandler, Harriette L.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	O'Leary, Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Hedlund, Robert L.	Sprague, Jo Ann
Jacques, Cheryl A.	Tarr, Bruce E.
Joyce, Brian A.	Tisei, Richard R.
Knapik, Michael R.	Tolman, Steven A.
Lees, Brian P.	Tucker, Susan C.
Magnani, David P.	Walsh, Marian
McGee, Thomas M.	Wilkerson, Dianne —
Melconian, Linda J.	39.

NAYS — 0.

**The yeas and nays having been completed at twenty-three minutes before two o'clock P.M., the bill was passed to be engrossed.
Sent to the House for concurrence.**

The Senate Bill requiring the appointment of 2 call or volunteer firefighters on the Massachusetts Fire Training Council (Senate, No. 1291) (its title having been changed by the committee on Bills in the Third Reading),— was read a third time.

The question on passing it to be engrossed was determined by a call of the yeas and nays, at twenty-three minutes before two o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 39 — nays 0) [**Yeas and Nays No. 70**]:

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Baddour, Steven A.	Montigny, Mark C.
Barrios, Jarrett T.	Moore, Richard T.
Berry, Frederick E.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Chandler, Harriette L.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	O'Leary, Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Resor, Pamela
Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Hedlund, Robert L.	Sprague, Jo Ann
Jacques, Cheryl A.	Tarr, Bruce E.
Joyce, Brian A.	Tisei, Richard R.
Knapik, Michael R.	Tolman, Steven A.
Lees, Brian P.	Tucker, Susan C.
Magnani, David P.	Walsh, Marian
McGee, Thomas M.	Wilkerson, Dianne —
Melconian, Linda J.	39.

NAYS — 0.

The yeas and nays having been completed at twenty minutes before two o'clock P.M., the bill was passed to be engrossed.

Sent to the House for concurrence.

The Senate Bill requiring the appointment of a call or volunteer firefighter on the Massachusetts Fire Training Council (Senate, No. 1292) (its title having been changed by the committee on Bills in the Third Reading),— was read a third time.

After remarks, the question on passing it to be engrossed was determined by a call of the yeas and nays, at a quarter before two o'clock P.M., on motion of Mr. Lees, as follows, to wit (yeas 39 — nays 0) [**Yeas and Nays No. 71**]:

YEAS.

Antonioni, Robert A.	Menard, Joan M.
Baddour, Steven A.	Montigny, Mark C.
Barrios, Jarrett T.	Moore, Richard T.
Berry, Frederick E.	Morrissey, Michael W.
Brewer, Stephen M.	Murray, Therese
Chandler, Harriette L.	Nuciforo, Andrea F., Jr.
Creedon, Robert S., Jr.	O'Leary, Robert A.
Creem, Cynthia Stone	Pacheco, Marc R.
Fargo, Susan C.	Panagiotakos, Steven C.
Glodis, Guy W.	Resor, Pamela

Hart, John A., Jr.	Rosenberg, Stanley C.
Havern, Robert A.	Shannon, Charles E.
Hedlund, Robert L.	Sprague, Jo Ann
Jacques, Cheryl A.	Tarr, Bruce E.
Joyce, Brian A.	Tisei, Richard R.
Knapik, Michael R.	Tolman, Steven A.
Lees, Brian P.	Tucker, Susan C.
Magnani, David P.	Walsh, Marian
McGee, Thomas M.	Wilkerson, Dianne —
Melconian, Linda J.	39.

NAYS — 0.

**The yeas and nays having been completed at twelve minutes before two o'clock P.M., the bill was passed to be engrossed.
Sent to the House for concurrence.**

The Senate Bill relative to the production of wind energy along the coastline (Senate, No. 380, changed) (its title having been changed by the committee on Bills in the Third Reading,— was read a third time, the question being on passing it to be engrossed.

After debate, Mr. Lees moved that the bill be laid on the table; and, in accordance with the provisions of Senate Rule 24, the consideration of the motion to lay on the table was postponed, without question, until the next session.

The Senate Bill enhancing the state DNA data base (Senate, No. 187, changed),— was considered, the main question being on passing it to be engrossed.

The pending motion, previously moved by Mr. Creedon, that the matter be laid on the table,— was considered; and, after debate, the motion was *negatived*.

Mr. Nuciforo, Ms. Creem and Mr. Creedon moved that the bill be amended by striking out section 1 and inserting in place thereof the following section:—

“SECTION 1. Section 3 of Chapter 22E of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following:— Any person who is convicted of an offense under the provisions of section 1, 13, 13B, 13C, 13F, 13G, 13H, 13K, 14, 15, 15A, 15B, 16, 17, 18, 18A, 18B, 18C, 21, 21A, 22, 22A, 23, 24, 24B, 25, 26, 28, 29, 37, 39, 43, or 44 of chapter 265, section 1, 2, 5, 5A, 14, 15, 16, 17, 18, 101, 102, 102A, 102A½, 102C, or 112 of chapter 266, section 12F, 14, or 14A of chapter 269, or section 2, 3, 4A, 4B, 16, 17, 29, 29A, 29B, 35, 35A, 53A, 77 or 77A of chapter 272 or of an attempt or a conspiracy to commit any of the aforementioned offenses shall submit a DNA sample which shall be collected by a person authorized pursuant to section 4, to the department within 90 days of such conviction, in accordance with regulations or procedures established by the director.”

Pending the question on the adoption of the amendment, Mr. Nuciforo moved that the pending amendment (Nuciforo-Creem-Creedon) be further amended by striking out the text and inserting in place thereof the following text:— “amend the bill (Senate No. 187) by striking out Seciton 1 and inserting in place thereof the following section:—

“SECTION 1. Section 3 of chapter 22E of the General Laws, as appearing in the 2000 Official Edition, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:— Any person who is convicted of an offense under the provison of section 32, 32A, 32B, 32E, 32F, 32J, 32K, 33, 37 or 40 of chapter 94c or subsection (b) of said section 32I; section 128, 129, 130 or 131I of chapter 140; section 1, 13, 13B, 13C, 13F, 13G, 13H, 13J, 13K, 14, 15, 15A, 15B, 16, 17, 18, 18A, 18B, 18C, 19, 21, 21A, 22, 22A, 23, 24, 24B, 25, 26, 26B, 28, 29, 37, 39, 43 or 44 of chapter 265, section 1, 2, 5, 5A, 14, 15, 16, 17, 18, 101, 102, 102A, 102A½, 102C, or 112 of chapter 266½, section 13B of chapter 268; section 10, 10A, 10C, 10D, 10E, 10F, 10G, 11B, 12F, 13J, 14, 14A, of chapter 269, or section 2, 3, 4A, 4B, 13, 16, 17, 29, 29A, 29B, 35, 35A, 53A, 77 or 77A of chapter 272 or convicted of a second or subsequent violation of possession of heroin under section 34 of chapter 94C, a second or subsequent violation of section 128B or 129 of said chapter 140 or of an attempt or a conspiracy to commit any of the aforementioned offenses shall submit a DNA sample which shall be collected by a person authorized pursuant to section 4, to the department within 90 days of such conviction, in accordance with regulations or procedures established by the director.”

After debate, the amendment was *rejected*.

Ms. Creem moved that the bill be amended by adding the following new sections:

“SECTION 113. The general court hereby finds and declares that forensic and scientific techniques are often used to analyze evidence or biological material obtained during the investigation of a crime, and, as these techniques become more accurate, use thereof may conclusively establish a person’s guilt or innocence, or otherwise provide significant probative evidence.

It is further found that as these techniques have improved, they have allowed analyses of earlier obtained evidence or biological materials and that in some circumstances, modern techniques can be used to demonstrate that a conviction that predates the development of such techniques was based on incorrect factual findings, and these forensic and scientific techniques provide a more reliable basis for establishing a factually correct verdict than the evidence available at the time of the original conviction.

It is further found that in recent years, there have been a significant number of exonerations based on the results of newly developed forensic and scientific techniques.

Therefore, the purpose of this chapter is to remedy the injustice of wrongful convictions of factually innocent persons by allowing access to analyses of biological material with newer forensic and scientific techniques.

SECTION 14. The General Laws are hereby amended by inserting after chapter 278 the following chapter:—

Chapter 278A.
Post Conviction Access to Forensic and Scientific Analysis.

Section 1. As used in this chapter, the following words shall have the following meanings, unless the context clearly requires otherwise:

“Analysis” the process by which a forensic or scientific technique is applied to evidence or biological material to identify the perpetrator of a crime.

“Conviction” any verdict or finding of guilty, a plea of guilty, or a plea of nolo contendere, entered by the trial court.

“Criminal offender databases”, the DNA Database, compiled pursuant to chapter 22E; the sex offender registry, compiled pursuant to sections 178C to 178N, 178C inclusive of chapter 6; and the criminal offender record information system, compiled pursuant to sections 168-178A, inclusive, of said chapter 6.

“Factually innocent”, a person convicted of a criminal offense who did not commit that offense.

“Governmental entity” any official body of the commonwealth, or of any county, city, or town within the commonwealth.

“Inventory” a detailed listing, including a particularized description of each listed item.

“Moving party” shall mean a person who files a motion pursuant to this chapter.

“Post conviction”, any time after which a conviction has been entered.

“Prosecuting attorney”, the district attorney for the district in which the moving party was convicted, or the attorney general.

“Replicate analysis”, shall mean the duplication of an analysis performed on a particular item of evidence or biological material.

“Underlying case”, the trial court proceedings that resulted in the conviction of the moving party.

“Victim”, any natural person who suffered direct or threatened physical, emotional, or financial harm as the result of the commission or attempted commission of the crime that is the subject of the underlying case, and shall also include the parent, guardian, legal representative, or administrator or executor of the estate of such person if that person is a minor, incompetent, or deceased.

“Victim and witness assistance board”, the entity established by section 4 of chapter 258B.

Section 2. Any person who has been convicted of a criminal offense in a court of the commonwealth, and is in custody or whose liberty is restrained as the result of that conviction, and asserts that he is factually innocent of that criminal offense, may file a motion pursuant to this chapter.

Section 3. (a) A person seeking relief pursuant to this chapter shall file a motion in the court in which the conviction was entered, using the same caption and docket number as identified the underlying case.

(b) The motion shall include the following information, and when relevant, shall include specific references to the record in the underlying case, or to affidavits that are filed in support of the motion that are signed by a person with personal knowledge of the factual basis of the motion:

- (1) The name and a description of the requested forensic or scientific analysis; and
- (2) Information demonstrating that the requested analysis is admissible as evidence in courts of the commonwealth; and
- (3) A description of the evidence or biological material on which the analysis may be conducted, including its location if known; and
- (4) Information demonstrating that the evidence or biological material was obtained in relation to the underlying case; and
- (5) Information demonstrating that the analysis has the potential to result in evidence that is material to the moving party's identification as the perpetrator of the crime in the underlying case; and
- (6) Information demonstrating that the evidence or biological material has not been subjected to the requested analysis because:
 1. The requested analysis had not yet been developed at the time of the conviction;
 2. The results of the requested analysis were not admissible in courts of the commonwealth at the time of the conviction;
 3. The moving party and his attorney were not aware of and did not have reason to be aware of the existence of the evidence or biological material at the time of the underlying case and conviction;
 4. The moving party's attorney in the underlying case was aware at the time of the conviction of the existence of the evidence or biological material, the results of the requested analysis were admissible as evidence in courts of the commonwealth, and a reasonably effective attorney would have sought the analysis; or
 5. The evidence or biological material was otherwise unavailable at the time of the conviction.

(c) The moving party shall file with the motion copies of all reports, documents, memoranda, and notes from forensic or scientific analysis that has been conducted on any evidence or biological material that was obtained in relation to the underlying case. The moving party shall include these reports with the motion regardless of whether the moving party has previously provided them to the prosecuting attorney, whether they were offered or admitted as evidence in the underlying case, or whether they would have been admissible as evidence in the underlying case.

(d) The moving party shall provide copies of those portions of the transcripts of the trial, if applicable, during which the results of forensic or scientific analysis was offered as evidence by either the moving party or prosecuting attorney.

(e) The moving party shall identify all court proceedings that are currently pending and that relate to the underlying case, including the name of the court, docket number, and status of each such proceeding. The moving party shall also certify that each party to those proceedings has been notified of the proceedings under this chapter.

(f) If the moving party is unable to include for filing with the motion any of the items or information described in (b), (c), and (d), the moving party shall include a description of efforts made to obtain such items and information.

(e) A person who pleaded guilty or nolo contendere in the underlying case may file a motion under this chapter. A judge shall not find that identity was not or could not have been a material issue in the underlying case because of the plea. A person who is alleged to have, or admits to having, made a statement that is or could be incriminating may file a motion under this chapter. A judge shall not find that identity was not or should not have been a material issue in the underlying case because the moving party made, or is alleged to have made, an incriminating statement.

(f) The court may deny, without prejudice, any motion which fails to include all the information required by this section.

Section 4. (a) The moving party shall file the motion with the court which adjudicated the underlying case and shall serve a copy of the motion on the prosecuting attorney.

(b) The prosecuting attorney shall have 60 days to file a response with the court and shall simultaneously serve the response on the moving party. The prosecuting attorney may request one 30 day extension in which to file the response, which the court shall allow only for good cause shown.

(c) The prosecuting attorney's response shall include:

(1) An inventory of all evidence or biological material that was obtained in relation to the underlying case, regardless of whether it was introduced at trial or would be admissible;

(2) The current location of all evidence or biological material that was obtained in relation to the underlying case; and

(3) A detailed chain of custody for the evidence or biological material that is the subject of the motion.

(d) The response shall also include copies of all reports, documents, memoranda, and notes from forensic or scientific analysis that has been conducted on any evidence or biological material that was obtained in relation to the underlying case. The prosecuting attorney shall include these documents with the response regardless of whether the prosecuting attorney has earlier provided them to the moving party or defense counsel, or whether such documents were offered or admitted as evidence in the underlying case, or whether such documents would have been admissible.

(e) The response shall also include any specific legal or factual objections that the prosecuting attorney has to the requested analysis.

(f) The response may include evidence or other information relating to the guilt of the moving party.

Section 5. The judge, in his discretion, may assign or appoint counsel to represent a moving party in the preparation and presentation of motions filed under this chapter.

Section 6. (a) The court shall order a hearing on the motion if it conforms with the requirements of section 3.

(b) The judge who conducted the trial or accepted the moving party's plea of guilty or nolo contendere in the underlying case shall conduct the hearing if possible.

(c) The moving party may file a motion requesting that he be present at the hearing on the motion. If the judge allows such a motion, the judge shall order the commonwealth to produce the moving party at the hearing.

Section 7. (a) The judge shall state findings of fact and conclusions of law on the record, or shall make written findings of fact and conclusions of law, that support the decision to allow or deny a motion brought under this chapter.

(b) The judge shall allow the motion if each of the following has been demonstrated by a preponderance of the evidence:

(1) that the evidence or biological material exists;

(2) that the evidence or biological material has been subject to a chain of custody that is sufficient to establish that it has not been substituted, tampered with, replaced, or altered in any material respect;

(3) that the evidence or biological material has not been subjected to the requested analysis;

(4) that the requested analysis has the potential to result in evidence that is material to the moving party's identification as the perpetrator of the crime in the underlying case;

- (5) that the purpose of the motion is not the obstruction of justice or delay;
 - (6) that the results of the particular type of analysis being requested have been found to be admissible in courts of the commonwealth; and
 - (7) that, if the results of the requested analysis are favorable to the moving party, justice may not have been done in the underlying case.
- (c) The judge may order the production of information and materials in whatever form, from the commonwealth or any person or entity, by subpoena or other legal process.

Section 8. (a) In allowing a motion under this chapter, a judge may impose reasonable conditions on the analysis designed to protect the interests of the commonwealth in the integrity of the evidence or biological material and the analysis.

- (b) The prosecuting attorney and the moving party shall agree on a laboratory to conduct the analysis.
- (c) If the prosecuting attorney and the moving party are unable to agree on a laboratory, the judge shall designate a laboratory that is accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board and has the capability to perform the requested analysis.
- (d) The laboratory shall be provided with a copy of all of the filings relating to the motion, including all of the judge's orders. The laboratory shall also be provided with a copy of this chapter in its entirety.
- (e) The laboratory shall only communicate with the prosecuting attorney and the moving party simultaneously and in writing.
- (f) Neither the prosecuting attorney nor the moving party shall communicate with the laboratory without simultaneously communicating with the other party.
- (g) The laboratory shall endeavor to retain and maintain the integrity of a sufficient portion of the evidence or biological material for replicate analysis. If, after initial examination of the evidence or biological material, but before the actual analysis, the laboratory determines that there is insufficient material for replicate analysis, it shall simultaneously notify in writing the prosecuting attorney, the moving party, and the judge. In the event that there is insufficient material to perform replicate analysis, upon request of either party, the judge shall make such orders to ensure that representatives of the moving party and the prosecuting attorney have the opportunity to observe the analysis. Such analysis shall be subject to the rules and practices of the laboratory.
- (h) The moving party shall cooperate with the laboratory. At the laboratory's request and upon court order, the moving party shall provide biological samples to the laboratory. If the moving party unreasonably fails to cooperate with the laboratory, the judge may deny the motion with prejudice.

Section 9. Upon allowance of a motion under this chapter, analysis shall take place as soon as practicable.

Section 10. The costs of the analysis shall be borne:

- (a) by the moving party if the moving party is not indigent and has sufficient means to make such payment;
- (b) by the commonwealth; or
- (c) by both the moving party and the commonwealth, in shares as the court deems equitable.

Section 11. (a) A motion may be filed under this chapter even if an appeal of the conviction or other post-conviction proceedings in the underlying case are pending.

(b) A judge shall consider a motion filed pursuant to this chapter even if there is an appeal or other post-conviction proceedings pending.

(c) If the judge allows a motion filed pursuant to this chapter, the court in which the appeal or post-conviction proceedings are pending shall be notified if different from the court in which the motion was filed. When a court receives notice under this section, it shall stay any appeal or post-conviction proceedings pending the final outcome of proceedings pursuant to this chapter.

(d) Proceedings pursuant to this chapter shall not stay or otherwise interfere with a term of incarceration, parole, probation, or other sentence imposed.

Section 12. (a) The results of the analysis shall be simultaneously disclosed to the moving party, the prosecuting attorney, and the judge.

(b) At the request of any party, or on its own initiative, the judge shall order production of the underlying laboratory data, documents, and notes.

Section 13. (a) If the analysis confirms that the factual findings for the verdict or judgment in the underlying case were correct, and that the moving party was properly convicted and sentenced, the court shall deny the motion with prejudice. The court may also order:

- (1) The prosecuting attorney to provide copies of the report of the analysis to the superintendent of the department of correction and the chairperson of the parole board;
- (2) The prosecuting attorney to provide copies of the report of the analysis to relevant criminal offender databases; and
- (3) The moving party to assume the cost of the analysis.

(b) If the analysis neither confirms nor contradicts the factual findings for the verdict or judgment in the underlying case, the court shall:

(1) Order any additional analysis requested if the court concludes that the requirements of § are met, or

(2) If no additional analysis is requested that would meet the requirements of § deny the motion with prejudice if either:

A. No additional analysis is requested, or

B. Additional analysis is requested but the requirements of § are not met.

(c) If the analysis demonstrates that the factual findings for the verdict or judgment in the underlying case were incorrect, and that the moving party was not properly convicted or sentenced, notwithstanding any rule or law that would bar a new trial, the court shall:

(1) On motion of the prosecuting attorney and good cause shown, order replicate analysis of the evidence or biological material and a stay of further proceedings pending the result of the replicate analysis, with the cost of such replicate testing to be borne by the prosecuting attorney;

(2) Order the release of the moving party from custody;

(3.) On motion of the moving party, order a new trial; or

(4) Order any other relief that serves the interest of justice.

Section 14. (a) If a motion is filed under this chapter, the prosecuting attorney may notify the victim of the crime in the underlying case pursuant to chapter 258B.

(b) The prosecuting attorney shall promptly notify the victim and the victim and witness assistance board if a judge allows the motion.

(c) The prosecuting attorney shall promptly notify the victim and the victim and witness assistance board of the result of the analysis.

Section 15. The right to file a motion pursuant to this chapter shall not be waived. This prohibition of any waiver includes, but is not limited to, any stated or unstated waiver that is or is alleged to be part of any agreement or understanding related to any plea of guilty or of nolo contendere or to any sentencing or appellate proceeding or to any correctional placement or conditions.

Section 16. (a) Any governmental entity that is in possession of evidence or biological material that is collected for its potential evidentiary value during the investigation of a crime, the prosecution of which results in a conviction, shall retain such evidence and biological material for the period of time that any person remains in the custody of the commonwealth in connection with that crime, without regard to whether the evidence or

biological material was introduced at trial. Each governmental entity shall retain all such evidence and biological material in a manner that is reasonably designed to preserve the evidence and biological material and to prevent its destruction or deterioration.

(b) The attorney general and the secretary of public safety shall promulgate regulations governing the retention and preservation of evidence and biological material by any governmental entity, which regulations shall include standards for maintaining the integrity of the materials over time, the designation of officials at each governmental entity with custodial responsibility, and requirements of contemporaneously recorded documentation of individuals having and obtaining custody of any evidence of biological material.

Section 17. (a) Governmental officials and employees acting in good faith shall not be liable in a civil or criminal proceeding for any act or pursuant to the provisions of this chapter.

(b) If a governmental entity responsible for the preservation of evidence or biological material engages in willful or wanton misconduct or gross negligence which results in the deterioration or destruction of evidence or biological material so that a laboratory is unable to perform adequate or proper analysis, that entity shall be subject to proceedings for contempt.

(c) Nothing in this chapter shall create any cause of action for damages against the commonwealth or any of its subdivisions or officers, employees, agents, or subdivisions, except as provided in this section.

Section 18. An order allowing a motion filed under this chapter is not a final and appealable order. An order denying a motion filed under this chapter is a final and appealable order. Any appeal from such an order shall be claimed by filing a notice of appeal within 30 days of the court's entry of the written order upon the docket.

After remarks, the amendment was *rejected*.

**The bill was then passed to be engrossed.
Sent to the House for concurrence.**

Matters Taken Out of the Notice Section of the Calendar.

There being no objection, the following matters were taken out of the Notice Section of the Calendar and considered as follows:

The Senate Bill designating a certain trail in Mansfield as the World War II veterans trail (Senate, No. 1897),— **was read a second time and ordered to a third reading.**

The Senate Bill relative to designating a certain square and two highways in the town of Webster (Senate, No. 1889, amended) (its title having been changed by the committee on Bills in the Third Reading),— **was read a third time and passed to be engrossed.
Sent to the House for concurrence.**

PAPER FROM THE HOUSE.

Engrossed Bill.

An engrossed Bill authorizing the town of Middleborough to issue an additional license for the sale of all alcoholic beverages not to be drunk on the premises (see House, No. 3723) (which originated in the House), **having been certified by the Senate Clerk to be rightly and truly prepared for final passage, was passed to be enacted and was signed by the Acting President and laid before the Governor for his approbation.**

Order Adopted.

On motion of Ms. Jacques,—

Ordered, That when the Senate adjourns today, it adjourn to meet again tomorrow at one o'clock P.M., in a full formal session; and that the Clerk be directed to dispense with the printing of the calendar.

On motion of Mr. Lees, at twenty-six minutes past three o'clock P.m., the Senate adjourned to meet on the following day at one o'clock P.M., in a full formal session without a calendar.