

HOUSE No. 4553

The Commonwealth of Massachusetts

PRESENTED BY:

Mark J. Cusack

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 the examination of evidence rooms and evidentiary procedures.

PETITION OF:

NAME:

Mark J. Cusack

DISTRICT/ADDRESS:

5th Norfolk

HOUSE No. 4553

By Mr. Cusack of Braintree, a petition (subject to Joint Rule 12) of Mark J. Cusack relative to the examination of evidence rooms and evidentiary procedures. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act relative to the examination of evidence rooms and evidentiary procedures.

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. Section 47A of chapter 94C of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by adding the following paragraph:-

3 The department of state police shall not limit the quantity or frequency of the destruction
4 of controlled substances for any police department.

5 SECTION 2. Chapter 276 of the General Law is hereby amended by adding the following
6 section:-

7 Section 104

8 (1) As used in this section, the following words shall, unless the context clearly requires
9 otherwise, have the following meanings:

10 “Auditing entity”, a person, or an employee or department of the commonwealth who is
11 highly experienced and trained in evidence collection, storage and auditing, who is designated by
12 the secretary to perform audits of a department’s evidence or property room.

13 “Chief executive officer”, the chief executive officer or person in charge of each
14 department.

15 “Department”, a municipal police department, state police department, educational
16 facility police department, environmental police department or transit police department within
17 the commonwealth.

18 “District attorney”, the district attorney or designee who has jurisdiction for prosecutions
19 where a department is located.

20 “Evidence”, all items seized as a result of a police investigation that are physical,
21 biological, digital or any other material that have been collected for its potential evidentiary
22 value during the investigation of a crime.

23 “Evidence custodian”, a person appointed by the chief executive officer or designee for
24 the custody and operations of the department’s evidence or property room.

25 “Evidence room” or “ property room”, the area located within the legal control and
26 jurisdiction of a department that contains any physical, biological, digital or any other material
27 that has been collected for its potential evidentiary value during the investigation of a crime and
28 any property being stored related to a potential crime.

29 “High risk items”, evidence or property that is particularly susceptible to being lost,
30 stolen or misplaced by a person or the department, including, but not limited to, firearms, drugs
31 and moneys.

32 “Inspection”, a periodic review of the evidence and property room.

33 “Property”, any item in the possession of a department without evidentiary value that has
34 been: (i) stolen, (ii) lost, (iii) abandoned or (iv) taken from a person under arrest by an employee
35 of the department in their normal course of employment.

36 “Purge”, the disposal, destruction or release of evidence or property at a singular time by
37 a department.

38 "Random-sampling audit", a review and analysis of randomly selected items of evidence
39 from the particular evidence or property room log book, whether in electronic format or hard
40 copy, to ensure that the selected evidence is located in the appropriate storage location in the
41 particular property room of each department whether stored in a secure envelope, box, or other
42 container or has otherwise been sent directly to an off-site facility pursuant to a duly executed
43 department chain of custody form to conduct a comprehensive analysis on certain items of
44 evidence including but not limited to submissions of drugs, firearms, and other items for DNA
45 and fingerprint testing. If evidence is stored off-site the individual conducting the audit shall
46 contact the particular crime lab and ensure that randomly selected item of evidence is at that
47 particular location.

48 “Secretary”, secretary of the executive office of public safety and security.

49 (2) All departments that are in possession of any evidence or property shall ensure that:

50 (a) A random-sampling audit shall be conducted no less than annually at the direction of
51 the chief executive officer.

52 The random-sampling audit shall be conducted by a department employee, provided that,
53 the employee shall not:

54 (1) be the evidence custodian;

55 (2) have specific oversight or responsibilities of the evidence or property being audited
56 or the evidence and property room in which the items are stored; or

57 (3) have conducted the required semi-annual inspections in paragraph (b).

58 If a department has an internal affairs division, a member of the internal affairs division
59 shall perform the random-sampling audit.

60 A random-sampling audit shall review the lesser of 10 high risk items or 10per cent of the
61 department's total evidence, provided that no more than 10 items of evidence from separate
62 criminal cases in each stand-alone evidence room, vault, locker or other depository of evidence
63 of the department shall be included in a random-sampling audit.

64 A written report of the random-sampling audit shall be submitted directly to the chief
65 executive officer within 30 days of completion.

66 (b) A semi-annual inspection of the evidence or property room shall be conducted by the
67 designated supervisor or the unit commander of the evidence or property room. This inspection
68 shall include, but not limited to, the following: (1) adherence to all security controls; (2) limited
69 access control system to evidence or property room; (3) an updated list of access by each
70 department; (4) general cleanliness of the storage area; (5) ensuring manageable inventory levels

71 within the evidence or property room; (6) ensuring levels of acceptable aptitude and training of
72 evidence custodians and property control officers; (7) offering specialized training when
73 appropriate; (8) inspection of all internal evidence or property room cameras when applicable;
74 and (9) ensuring the electronic data-base and written logs are operational and current.

75 A written report of an inspection shall be submitted directly to the chief executive officer
76 within 30 days of completion.

77 (c) All written reports in subsection (a) and (b) shall be submitted to the secretary and the
78 governing body of the department's municipality on or before January 30 annually.

79 A department which fails to submit all reports on or before January 30, shall be issued a
80 written warning by the secretary, provided, however that the department shall be allowed an
81 additional 60 days to submit the reports.

82 After 60 days, if the department fails to file the reports or refuses to comply, the secretary
83 shall direct a complete and full external audit of all the evidence stored and in possession of the
84 department as well as all evidence or property rooms charged by the department. At a minimum,
85 the: (1) audit shall be completed by a neutral and detached auditing entity not directly affiliated
86 with the department; (2) secretary shall provide the department with an established list of
87 qualified auditing entities; and (3) cost of the audit shall be borne to the department in failure of
88 compliance. The chief executive officer and department shall have 30 days from the secretary's
89 notice to select an auditing entity from the list provided.

90 (d) Once every 5 years a full audit of the evidence and property held by a department
91 shall be completed by an employee of the department at the direction of the chief executive
92 officer; provided, however the employee shall not:

93 (1) be the evidence custodian; or

94 (2) have specific oversight or responsibilities of the evidence or property being audited or
95 the evidence or property room in which these items are being stored.

96 A written report of any full audit shall be submitted directly to the chief executive officer,
97 the governing body of the department's municipality and the secretary on or before January 30
98 following the year the full audit was completed.

99 If a department fails to submit the full audit report by said January 30, the secretary shall
100 direct a complete and full external audit of all the evidence stored and in possession of the
101 department and all evidence or property rooms charged by the department. At a minimum, the:
102 (1) audit shall be completed by a neutral and detached auditing entity not directly affiliated with
103 the department; (2) secretary shall provide the department with an established list of qualified
104 auditing entities; and (3) cost of the audit shall be borne to the department in failure of
105 compliance. The chief executive officer and department shall have 30 days from the secretary's
106 notice to select an auditing entity.

107 Upon the transfer, resignation or replacement of the chief executive officer, the chief
108 executive officer currently in charge, shall order a full audit of the evidence and property held by
109 a department. This full audit shall reset the 5 year timeline of the mandatory full audit and the 5
110 year timeline shall begin after the completion of the full audit conducted pursuant to this
111 paragraph.

112 (e) All moneys seized by a department as evidence or within the course of an
113 investigation, shall be deposited into an interest bearing account held by the department, except
114 if the moneys physically hold evidentiary value as determined by the department or the district

115 attorney. The moneys shall be kept in the account until otherwise instructed by the court. All
116 moneys deposited shall be recorded, including but not limited to, the time, date, account number,
117 denomination of the moneys, person depositing the moneys, institution where the account is
118 held, case number associated with the moneys and origin of the moneys. A written report of all
119 moneys held by the department shall be submitted annually to the chief executive officer, the
120 secretary, the governing body of the department's municipality and the district attorney on or
121 before January 30.

122 (f) (1) Any evidence or property that is disposed of, returned, auctioned or no longer in
123 custody of the department shall be recorded. The records shall be made available to any
124 governmental entity that needs to view the records for legal, official or other public safety or
125 health reasons.

126 A department which completes a purge of the evidence or property under the
127 department's control shall keep records, including, but not limited to: time, date, type of
128 evidence, method of disposal, case number, description, name of employee and reason for
129 disposal. Upon completion of a purge, all records shall be delivered to the chief executive
130 officer, the secretary, the governing body of the department's municipality and the district
131 attorney.

132 (2) A department may dispose of items held as evidence by destruction, return to owner,
133 sale at auction or other lawful disposition pursuant to a court order or after certifying to the
134 district attorney that the disposition is in compliance with section 3; section 47A of chapter 94C;
135 or chapter 278A.

136 Records of the disposal of controlled substances pursuant to section 47A of chapter 94C
137 shall be kept by the department. All records shall be submitted annually to the chief executive
138 officer, the secretary, the governing body of the department's municipality and the district
139 attorney on or before January 30.

140 SECTION 3. The department of environmental protection shall conduct a study and
141 investigation of the licensing of incinerators in the commonwealth. The study shall investigate at
142 a minimum: (i) the possibility of mandating the disposal of controlled substances as criteria to
143 obtaining a license and (ii) methods to improve the disposal of controlled substances through
144 safe and legal means within the commonwealth to prevent the theft and over stock of controlled
145 substances. The department shall submit a report of its findings to the joint committee on
146 environment, natural resources and agriculture, the joint committee on consumer protection and
147 licensure, and the joint committee on public safety and homeland security on or before July 1,
148 2019.

149 SECTION 4. A municipal police department, state police department, educational facility
150 department, environmental police department or transit police department within the
151 commonwealth shall have 1 year to complete a full audit pursuant to paragraph (d) of subsection
152 (2) of section 104 of chapter 276 of the General Laws.