

HOUSE No. 4686

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 3, 2018.

The committee on the Judiciary to whom was referred the (accompanied by bill, House, No. 4553) of Mark J. Cusack relative to the examination of evidence rooms and evidentiary procedures, reports recommending that the accompanying bill (House, No. 4686) ought to pass.

For the committee,

CLAIRE D. CRONIN.

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

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

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

15 “Department”, the Massachusetts state police, the Massachusetts Bay Transportation
16 Authority police force, any police department in the commonwealth or any of its political
17 subdivisions; any law enforcement council, as defined in section 4J of chapter 40, created by
18 contract between or among cities and towns, pursuant to section 4A of said chapter 40; the
19 environmental police appointed pursuant to chapter 21A; and any entity employing 1 or more
20 special state police officers appointed pursuant to section 63 of chapter 22C.

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

23 “Evidence”, all items seized as a result of a police investigation that are physical,
24 biological, digital or any other materials that have been collected for their potential evidentiary
25 value during the investigation of a crime.

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

28 “Evidence and property room”, any area, including but not limited to, any room, vault,
29 locker, or other repository, located within the legal control and jurisdiction of a department that
30 contains any evidence or any property.

31 “Full audit”, a full review of all items of evidence and property from the particular
32 evidence and property room log book, whether in electronic format or hard copy, to ensure that
33 all evidence or property is located in the appropriate storage location in the particular evidence

34 and property room of each department. If evidence or property is stored off-site, the individual
35 conducting the full audit shall contact the particular off-site location and ensure, in writing, that
36 any item of evidence or property is at that particular location.

37 “Inspection”, a review of the evidence and property room and evidence and property
38 handling procedures including, but not limited to: (1) ensuring department adherence to all
39 security controls and evidence handling procedures; (2) verifying that the limited access control
40 system to the evidence and property room functions properly; (3) ensuring the existence and
41 accuracy of a list of department personnel authorized to access the evidence and property room
42 or handle evidence or property; (4) ensuring general cleanliness of the evidence and property
43 room; (5) ensuring manageable inventory levels within the evidence and property room; (6)
44 ensuring evidence and property custodians have acceptable levels of aptitude and training; (7)
45 inspecting all internal evidence and property room cameras, when applicable; and (8) ensuring
46 the evidence and property room logs are operational and current.

47 “Municipal executive officer”, the manager in a city or town with a manager form of
48 government; in other cities, the mayor; and in other towns, the board of selectmen.

49 “Property”, all items, other than evidence, in the custody of a department that are being
50 stored because they were: (i) lost; (ii) abandoned; (iii) taken from a person under arrest by an
51 employee of the department in their normal course of employment; or (iv) seized by the
52 department for their connection to a potential crime.

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

55 "Random-sampling audit", a review and analysis of randomly selected items of evidence
56 or property from the particular evidence and property room log book, whether in electronic
57 format or hard copy, to ensure that the selected evidence or property is located in the appropriate
58 storage location in the particular evidence and property room of each department. If evidence or
59 property is stored off-site, the individual conducting the random-sampling audit shall contact the
60 particular off-site location and ensure, in writing, that any randomly selected item of evidence or
61 property is at that particular location. A random-sampling audit shall review the lesser of 10
62 percent of the department's total number of items of evidence or property or 50 items of
63 evidence or property, provided, however, that any department with fewer than 100 items of
64 evidence or property shall review at least 10 items and any department with fewer than 10 items
65 of evidence or property shall review all items.

66 "Secretary", secretary of the executive office of public safety and security.

67 (b) A random-sampling audit shall be conducted no less than annually at the direction of
68 the chief executive officer.

69 The random-sampling audit shall be conducted by a department employee, provided that,
70 the employee shall:

71 (1) not be the evidence and property custodian;

72 (2) not have specific oversight or responsibilities for the evidence or property being
73 audited or the evidence and property room in which the items are stored; and

74 (3) not have conducted the required semi-annual inspections in paragraph (c).

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

77 A written report of the random-sampling audit shall be submitted to the chief executive
78 officer and the municipal executive officer within 30 days of completion.

79 (c) A semi-annual inspection of the evidence and property room shall be conducted by
80 the designated supervisor or the unit commander of the evidence and property room.

81 A written report of an inspection shall be submitted to the chief executive officer and the
82 municipal executive officer within 30 days of completion.

83 (d) All written reports required by subsections (b) and (c) of this section shall be
84 submitted to the secretary not later than January 30 of each year.

85 A department which fails to submit all reports to the secretary on or before January 30 of
86 each year, shall be issued a written warning by the secretary, provided, however that the
87 department shall be allowed an additional 60 days to submit the reports.

88 After 60 days, if the department fails to file the reports or refuses to comply, the
89 department shall undergo a full audit of all the evidence and property stored and in the
90 possession of the department as well as all evidence and property rooms under the legal control
91 and jurisdiction of the department. The full audit shall be completed by a neutral auditing entity
92 not affiliated with the department chosen by the chief executive officer from a list of qualified
93 auditing entities provided by the secretary. The cost of the full audit shall be borne by the
94 department. The chief executive officer and department shall have 30 days from the secretary's
95 notice to select an auditing entity from the list provided.

96 A written report of the full audit shall be submitted to the secretary, the chief executive
97 officer and the municipal executive officer within 30 days of completion.

98 (e) Once every 5 years a full audit of the evidence and property held by a department
99 shall be completed by an employee of the department at the direction of the chief executive
100 officer; provided, however the employee shall:

101 (1) not be the evidence and property custodian; and

102 (2) not have specific oversight or responsibilities for the evidence or property being
103 audited or the evidence and property room in which these items are being stored.

104 A written report of the full audit shall be submitted to the secretary, the chief executive
105 officer and the municipal executive officer within 30 days of completion.

106 If a department fails to conduct the required full audit or submit the full audit report in
107 accordance with this subsection, the department shall undergo a full audit of all the evidence and
108 property stored and in the possession of the department as well as all evidence and property
109 rooms under the legal control and jurisdiction of the department. The full audit shall be
110 completed by a neutral auditing entity not affiliated with the department chosen by the chief
111 executive officer from a list of qualified auditing entities provided by the secretary. The cost of
112 the full audit shall be borne by the department. The chief executive officer and department shall
113 have 30 days from the secretary's notice to select an auditing entity from the list provided.

114 A written report of the full audit shall be submitted to the secretary, the chief executive
115 officer and the municipal executive officer within 30 days of completion.

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

121 (f) All moneys seized by a department as evidence or within the course of an
122 investigation, shall be deposited into an interest bearing account held by the department, except
123 if the moneys physically hold evidentiary value as determined by the department or the district
124 attorney. The moneys shall be kept in the account until otherwise instructed by the court. All
125 moneys deposited shall be recorded, including but not limited to, the time, date, account number,
126 denomination of the moneys, person depositing the moneys, institution where the account is
127 held, case number associated with the moneys and origin of the moneys. A written report of all
128 moneys held by the department shall be submitted annually to the secretary, the chief executive
129 officer, the municipal executive officer and the district attorney on or before January 30 of each
130 year.

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

135 A department which completes a purge of the evidence or property under the
136 department's control shall keep records, including, but not limited to: time, date, type of
137 evidence, method of disposal, case number, description, name of employee and reason for

138 disposal. Upon completion of a purge, all records shall be delivered to the secretary, the chief
139 executive officer, the municipal executive officer and the district attorney.

140 (2) A department may dispose of items held as evidence by destruction, return to owner,
141 sale at auction or other lawful disposition pursuant to a court order or after certifying to the
142 district attorney that the disposition is in compliance with section 47A of chapter 94C, section 3
143 of chapter 276, or chapter 278A.

144 Records of the disposal of controlled substances pursuant to section 47A of chapter 94C
145 shall be kept by the department. All records shall be submitted annually to the chief executive
146 officer, the secretary, the municipal executive office and the district attorney on or before
147 January 30.

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

157 SECTION 4. A department within the commonwealth, as defined by subsection (a) of
158 section 104 of chapter 276, shall complete a full audit pursuant to subsection (e) of section 104
159 of chapter 276 of the General Laws within 1 year of the effective date of this act.