

SENATE No. 1129

The Commonwealth of Massachusetts

PRESENTED BY:

Kenneth J. Donnelly

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 passage of the accompanying bill:

An Act to reform sheriff civil process operations.

PETITION OF:

NAME:

Kenneth J. Donnelly

DISTRICT/ADDRESS:

Fourth Middlesex

SENATE No. 1129

By Mr. Donnelly, a petition (accompanied by bill, Senate, No. 1129) of Kenneth J. Donnelly for legislation to to reform sheriff civil process operations. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act to reform sheriff civil process operations.

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 1 of chapter 32 of the General Laws, as appearing in the 2010
2 Official Edition, is hereby amended by inserting, in line 259, at the end of the definition
3 “Employee”, the following text:-

4 ““Employee”, as applied to persons whose regular compensation is paid from an account
5 established by the sheriff’s civil process office pursuant to section 22 of Chapter 37 of this act
6 for the sheriff’s civil process office and shall mean any person who is appointed by the sheriff as
7 a deputy sheriff or employee of the sheriff’s civil process office who is engaged in duties which
8 require that his time be devoted to the service of the sheriff’s civil process office in each year
9 during the ordinary working hours of regular and permanent employees, and who is regularly
10 and permanently employed in such service and receives a salary, hourly wage or regular
11 compensation for assigned civil process duties as determined by each Sheriff.”

12 SECTION 2. Section 3 of said chapter 32 , as so appearing , is hereby amended by
13 inserting, in line 300, after the words “county correction facilities,” the following: -

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

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

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

27 SECTION 3. Section 2 of chapter 32A, as so appearing, is amended by inserting, in line
28 15, after the words "cooperative extension service of Suffolk county," the following: -

29 "the offices of the sheriffs,"

30 SECTION 4. Chapter 37 is hereby amended by inserting after section 3 the following
31 sections:-

32 Section 3A. Sheriff's Civil Process Office.

33 (A) Each sheriff shall establish a civil process office within the sheriff's department and
34 shall assign deputies appointed pursuant to section 3 who, along with the sheriff, shall serve and
35 execute within their counties, including within the political boundaries of the previously
36 abolished county governments, and where the Commonwealth is a party or interested, all
37 precepts lawfully issued to them, and all other process required by law to be served by an officer
38 pursuant to section 11 of chapter 37. The civil process office established within the sheriff's
39 department shall be the exclusive entity performing sheriff's civil process duties under section 11
40 of chapter 37. A deputy assigned to serve process may do so in cases in which a county, city,
41 town, parish, religious society, fire or other district is a party or interested, although he is an
42 inhabitant or member thereof. The sheriff may also appoint employees to work in the sheriff's
43 civil process office. All deputies and employees of the process office shall serve at the will and
44 the pleasure of the sheriff. Any deputy who ceases to be assigned to or to perform civil process
45 duties, either as an employee or as a contracted deputized process server, shall be
46 decommissioned as a deputy as provided by law and shall immediately return all equipment and
47 property issued to him by the sheriffs' department.

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

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

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

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

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

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

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

70 (D) In addition to any other training and certification required by law, any deputy sheriff
71 who perform civil process duties, including but not limited to enforcement duties, shall be sworn
72 and shall complete a civil process officers certification program, pursuant to a policy and
73 curriculum that shall be adopted and approved by the Massachusetts Sheriffs Association and
74 the Massachusetts Deputy Sheriffs Association. The civil process officers certification program
75 shall include training and orientation on all requirements of lawful service of process and shall
76 be conducted jointly by the Massachusetts Sheriffs Association and the Massachusetts Deputy
77 Sheriffs Association. Deputy sheriffs shall begin the civil process officers certification program
78 within 30 days after receiving appointment or being assigned civil process duties, and shall be re-
79 certified annually after completing the program.

80 (E) All full time deputy sheriffs and employees of the sheriff's civil process office,
81 including those deputy sheriffs and employees of the sheriff's civil process office who have been
82 transferred to the commonwealth, and who completed a one year probationary period of full time
83 employment, will be granted under this subsection, without impairment, full benefits for vacation
84 and sick time earned from their original commencement of employment in the sheriff's civil
85 process office, but not to exceed those of regular state employees.

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

87 No sheriff, deputy or employee, nor any other individual or entity shall have or acquire
88 any legal right whatsoever to the tangible or intangible property of the civil process office, nor
89 any revenue derived from fees collected from the service of process of any proceeds from the

90 sale of the property within the process office, other than compensation as determined under this
91 chapter.

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

96 SECTION 5. Chapter 37 is further amended by striking out section 11 and inserting in
97 place thereof the following section:-

98 Section 11. Recording of Process.

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

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

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

109 (c) the type of process;

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

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

113 (f) the fee charged;

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

115 (h) the date of fee collected;

116 (i) the date service was made;

117 (j) the manner of service;

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

119 (I) the name of the person performing service, and if different, the name of the
120 person or entity to whom the commission was paid.

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

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

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

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

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

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

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

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

140 SECTION 6. Section 14 of chapter 37, as appearing in the 2010 Official Edition , is
141 hereby amended by striking out, in lines 1 and 2, the words "They may execute precepts in their
142 hands at the time of their removal from office; and,".

143 SECTION 7. Chapter 37 is further amended by inserting after section 14 the following
144 new section: -

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

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

151 SECTION 8. Chapter 37 is further amended by striking section 22 in its entirety and
152 inserting in place thereof the following section: -

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

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

156 SECTION 9. Chapter 37 is further amended by inserting after section 22 the following
157 section: —

158 Section 23. Fees from Process Office.

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

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

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

178 (D) Notwithstanding the provisions of subsection (A), premiums from paychecks of
179 deputy sheriffs and employees of the sheriff's civil process office who are insured under Chapter
180 32A shall be deducted and forwarded to the state treasurer. The amounts deducted shall be
181 determined in accordance with the provisions of those chapters and any other rules and
182 regulations promulgated there under.

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

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

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

196 SECTION 10. Chapter 126 is hereby amended by inserting after section 18A the
197 following section: —

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

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

208 All amounts payable under this section shall be paid at the same times and in the same
209 manner as, and for all purposes shall be deemed to be the deputy or employee's regular
210 compensation. If a person or entity is liable for monetary damages for an injury of a deputy
211 sheriff or other employee of a sheriff's civil process for which he is compensated under this
212 section, the deputy, employee, or sheriff's department that is paying compensation under this
213 section, may proceed to enforce the liability of such person or entity in any court of competent
214 jurisdiction. Any sum recovered shall be for the benefit of the sheriff's department that is paying
215 such compensation, unless the sum is greater than the compensation paid to the injured person, in
216 which case the excess shall be retained by or paid to the injured person. For the purposes of this
217 section, "excess" shall mean the amount by which the total sum received as damages for the
218 injury, exclusive of interest and costs, exceeds the amount paid under this section as
219 compensation to the injured person. The party bringing the action shall be entitled to any costs
220 recovered by him. Any interest received in the action shall be apportioned between the sheriff's
221 department and the injured person in proportion to the amounts received by them respectively,
222 inclusive of interest and costs. The expense of any attorney's fees shall be divided between the

223 sheriff's department and the injured person in proportion to the amounts received by them
224 respectively.

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

229 SECTION 11. Said chapter 262, as so appearing, is hereby amended by striking out
230 section 8A and inserting in place thereof the following section;-

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

232 Each constable shall annually, on or before the 15th day of April, file with the county
233 treasurer an account signed by him under the penalties of perjury of all fees and money received
234 by him under the provisions of section 8 for the service of civil process. If 2 or more constables
235 share such fees and money between themselves, they may file a joint account provided that each
236 signs the account under the penalties of perjury.

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

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

247 SECTION12. The provisions of this act shall take effect January 1, 2014