

HOUSE No. 04382

The Commonwealth of Massachusetts

HOUSE, August 09, 2012

The committee on the Judiciary to whom was referred the petition (accompanied by bill, House, No. 2824) of Thomas A. Golden, Jr. and others relative to reform of the civil process laws, reports recommending that the accompanying bill (House, No. 4382) ought to pass.

For the committee,

EUGENE L. O'FLAHERTY.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

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 Official
2 Edition, is hereby amended by inserting, in line 259, at the end of the definition “Employee”, the
3 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 9 of this act for the sheriff’s
6 civil process office and shall mean any person who is appointed by the sheriff as a deputy sheriff
7 or employee of the sheriff’s civil process office who is engaged in duties which require that his
8 time be devoted to the service of the sheriff’s civil process office in each year during the
9 ordinary working hours of regular and permanent employees, and who is regularly and
10 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 inserting, in
13 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 arrest,
15 eviction or seizure of property and who is defined by Section 4 of this Act as a full-time
16 employee of the Sheriff.”

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

19 (b) any deputy sheriff or employee of the sheriff’s civil process office, including any deputy
20 sheriff or employee of the process office that has been transferred to the Commonwealth, who is
21 now a member or becomes a member of a system applicable to any governmental unit shall be
22 given credit in such system for any service rendered by depositing in the annuity savings fund of
23 such system such sums and under such conditions as are set forth under said section.

24 SECTION 4. Section 2 of chapter 32B, as so appearing, is amended by inserting, at the end of
25 subsection (d), in line 67, the following text: -

26 “Deputy sheriffs and other persons appointed by the sheriff, who are salaried or hourly
27 employees, who devote 20 or more hours per week to assigned duties, and who serve in the
28 sheriff’s civil process office, shall be eligible for benefits under this chapter in the same manner,
29 and to the same extent, any other state employee”.

30 SECTION 5. Chapter 37 is hereby amended by inserting after section 3 the following sections:

31 —

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

33 (A) Each sheriff shall establish a civil process office within the sheriff’s department and shall
34 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. A deputy assigned to serve process may do so in cases in
39 which a county, city, town, parish, religious society, fire or other district is a party or interested,
40 although he is an inhabitant or member thereof. The sheriff may also appoint employees to work
41 in the sheriff's civil process office. All deputies and employees of the process office shall serve
42 at the will and the pleasure of the sheriff. Any deputy who ceases to be assigned to or to
43 perform civil process duties, either as an employee or as a contracted deputized process server,
44 shall be decommissioned as a deputy as provided by law and shall immediately return all
45 equipment and property issued to him by the sheriffs' department.

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

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

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

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

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

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

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

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

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

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

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

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

91 SECTION 6. Chapter 37 is further amended by striking out section 11 and inserting in place
92 thereof the following section:-

93 Section 11. Recording of Process.

94 (A) The Massachusetts Sheriffs Association, shall establish a system by which all process fees
95 are reported and recorded and shall develop and adopt policies and procedures, to be approved
96 by the Auditor, the Comptroller and the Office of Administration and Finance which shall be
97 referenced in an internal control plan kept by each sheriff's office. Information about each

98 request for process to be served that is received by the sheriff's civil process office shall be
99 reported and recorded in the system within 30 days of when the information becomes available,
100 and shall include but not be limited to the following information for each piece of process to be
101 served: --

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

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

104 (c) the type of process;

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

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

107 (f) the fee charged;

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

109 (h) the date of fee collected;

110 (i) the date service was made;

111 (j) the manner of service;

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

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

115 (B) A summary of the information contained in subsection (A) of this section shall be compiled

116 and reported in writing to the State Auditor by the sheriff annually no later than September 30th.

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

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

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

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

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

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

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

133 SECTION 7. Section 14 of chapter 37, as appearing in the 2010 Official Edition , is hereby
134 amended by striking out, in lines 1 and 2, the words "They may execute precepts in their hands
135 at the time of their removal from office; and,".

136 SECTION 8. Chapter 37 is further amended by inserting after section 14 the following new
137 section: -

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

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

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

145 — Section 23. Fees from Process Office.

146 (A) Notwithstanding the provisions of section 22 of this chapter or the provisions of chapter 35,
147 with the approval and oversight of the office of administration and finance and house and senate
148 ways and means, each sheriff shall establish a civil process retained revenue account or some
149 other appropriate account that complies standard government accounting practices and with
150 applicable laws, rules and regulations. The civil process account shall be separate from any
151 other account and shall be used for the operation of the process office..

152 (B) Payroll and all other bills of the civil process office, except administrative costs pursuant to
153 subsection (C) of section 6 of this act shall be paid from the process account. However, after all
154 civil process revenue has been expended for payroll and other bills of the civil process office, a
155 sheriff may use funding from a fiscal year budgetary appropriation to pay payroll and all other
156 civil process expenses.

157 (C) Notwithstanding the provisions of subsection (A), contributions from paychecks issued to
158 deputy sheriffs and employees of the sheriff's civil process office who are members in service of
159 the state retirement system, shall be deducted and forwarded to the state treasurer. The amounts

160 deducted shall be determined in accordance with the provisions of Chapter 32 and any other
161 rules and regulations promulgated there under.

162 (D) Notwithstanding the provisions of subsection (A), premiums from paychecks of deputy
163 sheriffs and employees of the sheriff's civil process office who are insured under Chapter 32A or
164 32B shall be deducted and forwarded to the state treasurer. The amounts deducted shall be
165 determined in accordance with the provisions of those chapters and any other rules and
166 regulations promulgated there under.

167 (E) Annually, on or before the 75th day after the close of the fiscal year, any excess revenue
168 held in the civil process account shall be carried over for process operations or transferred from
169 the process account to an account that has been approved by the office of administration and
170 finance, the office of the comptroller, and the auditor and has been established to fund statutory
171 functions of the sheriff. Annually, on or before the 75th day after the close of the fiscal year, the
172 sheriff shall render a sworn statement of account to the state treasurer, to the office of
173 administration and finance and the house and senate committees on ways and means.

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

180 (G) If the sheriff projects that revenues collected from civil process fees will not be sufficient to
181 cover costs, then 30 days in advance of the projected deficiency, the sheriff shall notify the house

182 and senate committees on ways and means and the office of administration and finance in
183 writing of the projected deficiency and the reasons for it.

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

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

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

196 All amounts payable under this section shall be paid at the same times and in the same manner
197 as, and for all purposes shall be deemed to be the deputy or employee's regular compensation.

198 If a person or entity is liable for monetary damages for an injury of a deputy sheriff or other
199 employee of a sheriff's civil process for which he is compensated under this section, the deputy,
200 employee, or sheriff's department that is paying compensation under this section, may proceed to
201 enforce the liability of such person or entity in any court of competent jurisdiction. Any sum
202 recovered shall be for the benefit of the sheriff's department that is paying such compensation,
203 unless the sum is greater than the compensation paid to the injured person, in which case the

204 excess shall be retained by or paid to the injured person. For the purposes of this section,
205 “excess” shall mean the amount by which the total sum received as damages for the injury,
206 exclusive of interest and costs, exceeds the amount paid under this section as compensation to
207 the injured person. The party bringing the action shall be entitled to any costs recovered by him.
208 Any interest received in the action shall be apportioned between the sheriff’s department and the
209 injured person in proportion to the amounts received by them respectively, inclusive of interest
210 and costs. The expense of any attorney’s fees shall be divided between the sheriff’s department
211 and the injured person in proportion to the amounts received by them respectively.

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

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

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

223 Each deputy sheriff shall annually, on or before 30 days after the close of the fiscal year, file
224 with the sheriff and with the state treasurer an account signed by him under the penalties of
225 perjury of all fees and money received by him under the provisions of section 8 for the service of

226 civil process. If 2 or more deputy sheriffs share such fees and money between them they may
227 file a joint account, provided that each shall sign the account under the penalties of perjury.

228 On a schedule determined by the sheriff, but at least quarterly, each deputy sheriff who serves
229 process shall file a written report to the sheriff of all the process they have served. The written
230 report shall be in a form approved by the sheriff and shall contain all the information contained
231 in section 7 of this act. The written report shall be made under the pains and penalties of perjury.

232 SECTION12. The provisions of this act shall take effect July 1, 2012.