

The Commonwealth of Massachusetts

**REPORT
OF THE
SPECIAL COMMISSION
RELATIVE TO THE REORGANIZATION
OR
CONSOLIDATION OF SHERIFFS' OFFICES
SUBMITTING ITS FINDINGS AND RECOMMENDATIONS**

(under the provisions of section 22 of Chapter 61 of the Acts of 2009,
as amended by section 27 of Chapter 36 of the Acts of 2013)

July 11, 2013



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POST AUDIT & OVERSIGHT

July 11, 2013

William F. Welch, Senate Clerk
Office of the Clerk of the Senate
State House, Room 335
Boston, MA 02133

To the Clerk of the Senate:

Attached please find a copy of the final report approved by the Sheriff's Commission (pursuant to Section 22 of Chapter 61 of the Acts of 2009, as amended by Section 27 of Chapter 36 of the Acts of 2013).

Sincerely,

Michael O. Moore
Chairman of the Sheriff's Commission

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Executive Summary

Section 22 of Chapter 61 of the Acts of 2009, *An Act Transferring County Sheriffs to the Commonwealth*, mandated the creation of a Special Commission to investigate and study many aspects of the Sheriffs' Offices¹ and make recommendations "relating to the reorganization, consolidation, operation, administration, regulation, governance and finances of the Sheriffs' Offices".²

More specifically, among the broad areas that the Commission was directed to consider were the possible consolidation, elimination or realignment of certain Sheriffs' Offices; the best management practices concerning administrative procedures, and the use of civil process funds as well as the placements and services for female detainees and prisoners.

In undertaking this wide encompassing directive, and based on the information collected, the Commission recognizes that the correctional mission of the Sheriffs' Offices differs from the mission of the Department of Corrections (the DOC). The populations they serve overlap, but are not exactly the same and the Sheriffs are more connected to the communities in which they operate than the DOC. In addition, because the Sheriffs are elected and historically operated as county departments, they have traditionally enjoyed a measure of autonomy in fashioning their programs and running their departments.

In making its recommendations, the Commission does not intend to change the mission of the Sheriffs' Offices or to eliminate the Sheriffs' autonomy. While the Commission's recommendations do include some that, we hope, will result in a greater uniformity in standards and procedures across Sheriffs' departments, the intent of the recommendations is not to reduce

¹ See Appendix A for a historical overview of the Office of the Sheriff.

² See Appendix B for full text of Section 22.

the Sheriffs role or input, rather it is to achieve goals that are important across state government and to ensure that the interests of staff, inmates, and the public are all well served. The overarching goals that the Commission is trying to achieve include: to increase transparency, to institute mechanisms for accountability and oversight, to identify and implement standards that reflect best practices, to promote efficiency, effectiveness and integrity in management and operations, to maximize use of limited taxpayer and staff resources, and to maintain public safety and security.

Commission Process

Beginning on February 9, 2011, the Commission³ held numerous meetings throughout 2011 and 2012. As part of its process and in order to fulfill the Commission's charge, the members surveyed the Sheriffs' Offices on various aspects of the Sheriffs' operations; heard presentations from several speakers⁴; invited the Sheriffs and other policymakers to attend Commission meetings; researched best practices throughout the corrections system; sought input from state agencies; and toured the Suffolk County House of Corrections, the Middlesex County Jail in Cambridge, the Middlesex County Cambridge Civil Process Office, and the Essex County Women in Transition Center.

Based on its analysis, the Commission presents the following recommendations. It is important to note that the Commission's recommendations were developed with the understanding that these recommendations can only be implemented subject to the availability of additional resources. In no way should these recommendations be understood as a commitment from the Legislature or the Administration to provide funding in order to implement them,

³ See Appendix C for a list of the Commission members.

⁴ See Appendix D for a list of presenters.

particularly given the continued fiscal reality faced by the Commonwealth. All recommendations will need to be considered among all other demands facing the state budget.

GOVERNANCE

Consolidation and Elimination

There are fourteen Sheriffs in the Commonwealth which are independently elected by the residents of the county where they serve. With the exception of the Nantucket County Sheriff's Office, which performs first responder law enforcement duties and operates a lock-up, all Sheriffs' Offices in Massachusetts operate a county jail and a county house of correction. County jails are maximum security facilities that hold pre-trial detainees. Persons charged with a crime, who have been arraigned and have had a bail imposed that they cannot post, are held in custody at a county jail until such time as they are released on their own recognizance, can post the bail or the case is resolved. Pre-trial detainees may be held for a few hours or for several years. Whenever an offender held on bail at a county jail has previously served time in state prison on unrelated charges, that offender can be transported to state prison to await trial. These are so-called "52As" named after the section of Chapter 276 of the Massachusetts General Laws that permits this practice. Sheriffs frequently transfer eligible offenders to the DOC to reduce jail overcrowding⁵.

County houses of correction hold inmates who have been sentenced to imprisonment following conviction for any misdemeanor that carries such a penalty and/or certain kinds of

⁵ For example, the Suffolk County Sheriff's Office is the 16th largest in the United States. In addition to approximately 875 pre-trial detainees held in its facilities, it averages an additional 250 pre-trial 52As or detainees awaiting trial in state prison facilities.

felonies. These felonies are known as “concurrent jurisdiction” felonies because they carry sentences of up to two and one-half years in the house of correction or five years in state prison. The maximum sentence that can be imposed to a county house of correction on any single count of a criminal complaint is two and one-half years⁶. House of correction inmates are sentenced almost exclusively from the Commonwealth’s District Courts. On rare occasions, an offender who is indicted and convicted in the Superior Court may receive a house of correction sentence. With the exception of those convicted of charges that carry a minimum mandatory term of imprisonment, inmates sentenced to the house of correction are eligible for parole upon completing half of the imposed term of incarceration.

Collectively, an average of 17,000 inmates and pre-trial detainees are held in Sheriffs’ facilities each year. Sheriffs are responsible for the transportation of inmates and pre-trial detainees to court, state prisons, other Sheriff’s facilities, hospitals, work sites and half-way houses throughout the Commonwealth. Although juveniles are not held in their facilities, six Sheriff’s Offices are also responsible for transporting juveniles to court and they are required to be transported separately from adult inmates and pretrial detainees. It is reported that Sheriffs’ Deputies make in excess of 200,000 transportation trips yearly.

Sheriff’s Offices operate within a paramilitary security structure. There is a clear chain of command: Sheriff, Superintendent, Assistant Superintendent, Assistant Deputy Superintendent, Captain, Lieutenant, Sergeant, Corporal and Officer. Operations within all facilities are governed by the Code of Massachusetts Regulations (CMRs), specifically those regulations that fall under 103 CMR 900.

⁶ An offender can be sentenced to consecutive terms of up to 2.5 years upon conviction of multiple charges.

From their creation in the 1600s to 1997, all Sheriffs' Offices were part of county government. When some county governments were abolished in 1997⁷, seven of the fourteen Sheriff's Offices were transferred from the county system to the state system⁸. Six of the remaining Sheriff's Offices – Barnstable, Bristol, Dukes, Norfolk, Plymouth and Suffolk – continued to operate within the infrastructure of county government. These Sheriffs' budgets were comprised of three main funding streams: an appropriation from the state, a Maintenance of Effort contribution (MOE) from the county and a statutorily mandated percentage of revenue derived from the collection of deeds excise taxes⁹. Oversight of the County Sheriffs' budgets was vested in the statutorily created County Government Finance Review Board (CGFRB). The state's appropriation to these Sheriffs was lumped into a "county pool" and distributed through the CGFRB. Sheriffs submitted yearly spending plans to the CGFRB in the same manner as the previously transferred Sheriffs submitted their yearly spending plans to the Secretary for Administration and Finance (A&F).

The funding mechanism for Sheriffs in non-abolished counties was historically problematic and became acutely so when, starting in late 2007, commercial and residential real estate sales began to drop, slowly at first and then precipitously by the end of 2008. Projections of the amount of deeds excise tax revenues Sheriffs could anticipate helping to fund their budgets were based on revenues from previous years. Due to shortfalls in local deeds revenues from levels assumed in the state's annual operating budget, it was typically the case that Sheriffs would need additional resources later in the fiscal year in order to operate their facilities and related services for a full year.

⁷ Chapter 34B of the Massachusetts General Laws.

⁸ The Franklin Sheriff's Department was the first to transition (July 1 1997), followed by Middlesex (July 11, 1997), Worcester and Hampden (July 1, 1998), Hampshire (January 1, 1999), Essex (July 1, 1999) and Berkshire (July 1, 2000).

⁹ The Nantucket County Sheriff's Office did not receive an appropriation from the state or an MOE contribution from the county. Its budget was derived solely from deeds excise taxes and civil process fees.

These funds were typically not annualized in the proceeding operating budget adopted each year by July. This pattern has created cyclical challenges for several Sheriffs' offices, which face the pressure of costs increases to operate their facilities and services with uncertainty in their funding levels. The problem reached critical mass when the nation's economy collapsed, the Commonwealth faced huge deficits and County Sheriffs' budgets saw additional reductions between 13% and 26% between FY08 and FY11.

Among other goals and in an effort to address this problem comprehensively, A&F filed legislation to transfer - without abolishing any of the remaining counties - all funding of the County Sheriffs' operations to the state represented by individual line-items. A primary goal of the transfer was to eliminate the structural deficit and provide the Sheriffs with a known funding amount at the beginning of the fiscal year.

As part of this transition, all functions, duties and responsibilities of the office of the Sheriff were transferred from the county to the Commonwealth along with all funds, property, records, equipment and inventory, except revenues from civil process and inmate telephone and commissary funds. Sheriffs retain administrative and operational control over the Office of the Sheriff, jails, houses of correction and any other occupied buildings controlled by the Sheriff. They also retain all common law powers and statutory powers, authority and responsibilities pursuant to the Massachusetts General Laws. In addition, Sheriffs are "employer[s]" as defined in section 1 of Chapter 150E of the General Laws and have power and authority as employer in all matters including, but not limited to, hiring, firing, promotion, discipline, work-related injuries and internal organization of the department.

As of January 1, 2012, all 14 Sheriffs' Offices are functioning as state agencies. By placing all the Sheriffs under the same state accounting system and transferring all the employees to the state's health care system, run by the Group Insurance Commission, and the state's

pension system, there was a considerable cost savings to the state as well as increased transparency and oversight over Sheriff-related expenses, revenue and personnel.

The Commission discussed recommending a structure similar to that of the District Attorney's Offices. Under this system, there are only 11 District Attorneys since the District Attorney for the Cape and the Islands represents Barnstable, Dukes and Nantucket Counties and the Northwestern District Attorney represents both Franklin and Hampshire Counties. The Commission noted that the work of a Sheriffs' Office and a District Attorney's Office are vastly different, both practically and in terms of statutory mandate. Sheriffs' Offices house, feed, clothe, educate, transport and provide medical and mental health care, substance abuse treatment and re-entry programs to tens of thousands of pre-trial detainees and sentenced inmates - all within the regulations and strict security confines of the multiple facilities they operate. As discussed in further detail elsewhere in this report, Sheriffs also provide mutual aid to other law enforcement, regional services to their cities and towns and community services that are either not transferrable or would suffer if consolidated.

While the Commission members recognize that there is always a need to look at efficiencies through consolidating services and how best to use limited resources, the Commission voted against ¹⁰consolidating any of the 14 Sheriff's Offices at this time.

Realignment

As elected officials with county wide jurisdiction, the Sheriffs are independent state officials who are not subject to the jurisdiction of the Executive Office of Public Safety and

¹⁰ See Appendix E for votes taken by the Commission.

Security (EOPSS) and are independent from the DOC. The Commission considered the efficacy of recommending alignment between the county jail and house of corrections system along with the state prison system under the guidance and direction of EOPSS. There was consensus among the Commission members that this would not be appropriate and the Sheriffs should retain autonomy over the day to day operations of their facilities. Sheriffs, like District Attorneys, Secretaries of States, the Auditor and the Treasurer, are elected officials and not part of the Executive Branch. However, in order to establish uniformity, continuity and accountability in the state's correctional system, all members supported a system whereby EOPSS and the Massachusetts Sheriffs' Association would work together to set the policies and guidelines for the DOC as well as the individual Sheriff's offices.

The Commission acknowledges that there is continual state oversight over the Sheriffs' operations in that all facilities are governed by the Code of Massachusetts Regulations (CMRs) and the jails and houses of correction are audited twice a year by the DOC to monitor compliance with certain aspects of the CMRs. Each fiscal year, all Sheriffs' Offices submit spending plans to the Governor's Office through A&F. These plans are required to be updated and resubmitted when there are changes to funding made by A&F or the Legislature. All Sheriffs' Offices that operate jails and houses of correction are audited, twice yearly by the DOC, to monitor compliance with between 47 and 49 separate CMR standards. Over the course of a 4-year cycle, Sheriffs' Offices are audited for compliance with 193 separate CMR standards. All Sheriffs' Office medical facilities are audited annually by the state Department of Public Health (DPH) and all medical departments within Sheriffs' Offices are accredited by the National Commission on Correctional Health Care (NCCHC) or the American Correctional

Association (ACA).¹¹ Sheriffs' Offices whose facilities hold federal detainees for Immigration and Customs Enforcement (ICE) are audited twice monthly by an on-site auditor and annually by a third-party auditor contracted by ICE. The on-site auditor is also audited annually by an ICE audit supervisor.

While the Commission voted against recommending that the jails and houses of corrections be merged with the state prison system under the EOPSS/Executive Branch Management Structure, it continued to discuss ways in which to improve the coordination and communication between all sectors of the criminal justice system. To this end, the Commission recommends¹² establishing a Corrections Advisory Board with the aim of improving coordination across the criminal justice system and establishing best practices in all aspects of corrections. The Advisory Board is strictly advisory in nature, and has no regulatory or enforcement powers. Its role, as its name suggests, is to recommend improvements based on its ongoing review of the corrections system. The Board would report its proposals to the Administration and the Legislature biannually before the end of each two-year legislative session so that if legislation is needed to implement any of the Board's recommendations, it may be considered. The Advisory Board would be made up of representatives from the full continuum of the corrections system and its stakeholders, including EOPSS, the Parole Board, the DOC, the Probation Department, the Sheriffs as well as experts in the areas of government accounting practices and auditing, ex-offender rehabilitation, reintegration, mental health, and substance abuse.

¹¹ The Dukes County Sheriff's Office does not have an on-site infirmary. All medical services are provided off-site by accredited facilities.

¹² See Appendix E for votes taken by the Commission.

Evidence-Based Risk and Needs Assessments

The Commission recognizes the importance of effective re-entry programs in reducing recidivism. There are numerous evidence-based risk and needs assessment (RNA) instruments available to criminal justice agencies that work both to predict an offender's risk for reoffending and to match the appropriate supervision and treatment to the offender's risk level. The DOC uses a fairly complex RNA tool; one that reflects the specific challenges they face in housing more dangerous populations for significantly longer periods of time. At this time, there is not one RNA assessment tool utilized uniformly by all the Sheriffs, but all Sheriff's Offices utilize RNA tools. As a practical matter, Sheriffs' Offices and the DOC routinely move pre-trial detainees and inmates between facilities pursuant to writs of habeas corpus, for safety and security and to alleviate overcrowding with no apparent conflict. That fact notwithstanding and in light of ongoing collaborations between the DOC and Sheriff's Offices regarding "step-downs" of pre-release the DOC inmates to county correctional facilities, a uniform risk-needs assessment tool is desirable.

In 2011, another Special Commission¹³ was created by Outside Section 189 of Chapter 68 of the Acts of 2011 to study the Commonwealth's criminal justice system (the Criminal Justice Commission) in its entirety. The membership of this Criminal Justice Commission includes representatives from all sectors of the state's criminal justice system as well as members of several bar associations, and individuals with experience working with offenders and legislators. The charge of the Criminal Justice Commission is to examine areas such as the prisoner classification systems; sentencing guidelines; the probation and parole system; the operations of the Sheriffs' Offices; cost-effective health care; recidivism and overcrowding; and reintegration. The Criminal Justice Commission's report will include recommendations for

¹³ See Appendix F for full text of Outside Section 189 of Chapter 68 of the Acts of 2011.

legislation “to reduce recidivism, improve overall public safety outcomes, provide alternatives for drug addicted and mentally ill defendants, increase communication and cooperation among public safety entities, reduce overcrowding of facilities, increase reliance upon evidence-based criminal justice methods, improve the collection and reporting of data on adults and juveniles, contain correction costs and otherwise increase efficiencies within the state’s public safety entities”.

Since the Criminal Justice Commission is charged with examining the full continuum of the criminal justice system and is tasked to come up with recommendations to benefit the entire system, the Sheriff’s Commission, which shares members with the Criminal Justice Commission, opted not to make any specific recommendations on this issue.

Jail Management Systems

While it is not by choice, there is currently no uniform jail management system utilized by all of the Sheriff’s Offices. The Sheriffs have sought a single system for many years, but a lack of funding and difficulties encountered in the development of SIRS have prevented this from happening. Sheriffs who wanted or needed updated jail management systems either sought an appropriate product through the competitive bid process or attempted to update and customize the product they already had. Currently, three Sheriffs use SIRS (Sheriffs Information Reporting System), six use IMATS (Inmate Management and Tracking System), one uses “Lock and Track” and the remaining Sheriffs use an internal customized jail management system. As a practical matter, these systems do not conflict with one another and there have been no reported inmate tracking or information-sharing problems between the Sheriff’s Offices.

For the past 2 years, the MSA Subcommittee on Jail Management Systems - headed by Dukes County Sheriff Michael McCormack and staffed with IT representatives from each Sheriff's Office - have been working with EOPSS' Undersecretary of Forensic Science and Technology Curt Wood. They assessed the needs of each Sheriff's Office in an effort to gather business and functional requirements for a comprehensive Sheriff's inmate information management system. A solicitation to procure a Sheriff's Inmate Management System (SIMS) was conducted and a contract with a vendor to deliver the new system is pending. It is expected the development project will begin early 2013. The Sheriffs have also implemented a program developed by the Western Massachusetts Sheriffs that is now being used by all Sheriffs' Offices and the DOC which allows for the sharing of inmate data at all of the Massachusetts correctional facilities. The system, called MIDNet, will complement and enhance the system developed with EOPSS in that it will allow these agencies work more cooperatively and allow other public safety partners like police departments, District Attorneys and the Department of Probation access to information as long as they are properly authorized.

Having reviewed the Corrections Master Plan (CMP) released in January of 2012, the Commission discussed the need for continuity in the Commonwealth's correctional system. The Commission recommends¹⁴ that the applicable agencies of the Commonwealth continue implementation of the Integrated Criminal Justice Information System (ICJIS) and include in the ICJIS the following: finger print-based records available to correctional, parole, and community corrections; telemedicine applications; electronic medical records of prisoners; the infrastructure with which to conduct video arraignments and video visitations; inmate kiosks where inmates can manage their inmate accounts, maintain their inmate plan, choose visitation times; other services that would reduce staff's time; and including a transportation database.

¹⁴ See Appendix E for votes taken by the Commission.

The Commission also recognizes the challenges in correctional facilities to track inmates when they move from one part of the facility to another and how moving from a manual paper system to an electronic tracking system could help to ensure the safety of both staff and inmates. The Commission requests that the Executive Office of Public Safety (EOPSS) determine the feasibility and cost of adding an inmate tracking module to the Inmate Management System (IMS), which would allow staff at prisons and houses of correction to electronically monitor movement of prisoners within institutions in real time. EOPSS is specifically requested to consider and compare the advantages and disadvantages of using radio-frequency identification (RFID), bar codes and scanners, or biometric identification of prisoners with the tracking module.

Re-Entry and the Office of Community Corrections

In addition to offering a full range of educational, substance abuse treatment, parenting, community service and arts-focused programs, the Sheriff reported to the Commission that they focus heavily on re-entry - the 6-8 month period just prior to an inmate's scheduled release - as a way to reduce recidivism and increase public safety. It is clear from both the Sheriffs and the DOC that good re-entry programs are vital. They also agree that re-entry begins at intake with the average length of stay at county facilities at less than a year¹⁵. Starting at the jail intake process, the Sheriffs focus on providing pre-trial detainees and inmates with immediate access to programs that will help with their re-integration into the community, and on connecting inmates to community-based organizations that will continue to work with the inmate upon their release.

¹⁵ House of correction inmates are eligible for parole upon completing half of their sentences.

The Office of Community Corrections is a division of the Probation Department. It was established by statute in 1996 as a part of a larger Commonwealth effort to address sentencing issues and prison overcrowding. The OCC serves probationers, parolees and inmates in pre-release through a system of intermediate sentencing sanctions ranging from Global Positioning System (GPS), electronic monitoring to drug testing to day reporting and services that include job training, substance abuse treatment and high school equivalency programs. It is specifically designed to provide “intensive supervision for chronic substance abusers with significant criminal histories”.

Eight Sheriffs’ Offices¹⁶ currently contract with the Office of Community Corrections, while the remaining Sheriffs have created their own or adopted other programs. Sheriff’s Offices offer a wide range of re-entry programs, many of them content-tailored to specific populations and the risk they present to re-offend. There are a number of factors that determine how a re-entry program will be configured and what specific services it will provide. The size of inmate population and how it breaks down demographically are important. Program partners who can provide effective, sustainable, local services are critical to the Sheriffs’ efforts to reduce recidivism by providing a more stable transition from incarceration to community.

The Sheriffs’ Offices reported that over the last decade they have cultivated innumerable relationships with not-for-profit human and social service providers in each of their counties and have collaborated with them to develop programs and secure funding for them through state and federal grants. Sheriff’s Offices can work exclusively with the Office of Community Corrections to provide re-entry services or they can create or adopt re-entry programs on their own or both. Eight Sheriffs’ Offices currently have Inter-agency Service Agreements (ISAs) with the Office of Community Corrections to provide some or all of their re-entry programming. The existence

¹⁶ Dukes, Essex, Franklin, Hampden, Hampshire, Middlesex, Norfolk and Worcester.

or absence of such agreements does not prevent the Sheriffs from creating and implementing their own re-entry programs, particularly ones that target populations not served by OCC, such as female and high risk offenders. Currently, four Sheriffs' Offices have gender-specific re-entry programs for female offenders¹⁷. Four Sheriffs' Offices have programs that target high risk offenders¹⁸ and five Sheriffs' Offices offer vocational training, certificate programs and job readiness¹⁹.

With this in mind, the Commission discussed ways to avoid duplication in the system by having all partners in the criminal justice system collaborate. To explore this option further, Ronald Corbett, Jr., the Acting Commissioner of Probation, came before the Commission to share his experiences with the Office of Community Corrections (OCC) since his appointment on January 21, 2011. Since the model for OCC²⁰ was put in place over 10 years ago, the Acting Commissioner discussed ways that the Probation Department is re-examining the model for relevancy and effectiveness so that necessary adjustments may be made in order to realize the full potential of the centers. He also shared his goal of working to link OCC facilities with all the correctional partners. In order to continue to build stronger partnerships, the Acting Commissioner reported that the Probation Department's relationship with the DOC and the Sheriffs continues to be a great focus of attention and new experiments are being explored to strengthen the re-entry coordination at both the state and county level.

For example, the Acting Commissioner explained that the Department was conducting surveys on needed changes that would increase the level of participation in OCC and interest by

¹⁷ Bristol, Essex, Hampden and Suffolk

¹⁸ Hampden, Norfolk, Plymouth and Suffolk

¹⁹ Bristol, Essex, Middlesex, Norfolk and Suffolk

²⁰ There are currently 21 OCC centers operating across the Commonwealth, with one center in Worcester County which is a juvenile center.

the courts and other partners. With over 85,000 people under supervision, he felt that there are plenty of supervision responsibilities that OCC centers can do. Since OCC programs are highly structured, the centers can play an important role not only stepping down inmates, but also in jail diversion and reducing overcrowding. Since the Acting Commissioner came before the Commission, due to a variety of focused efforts, the decline in enrollments in OCC centers has been reversed and there has been a 17% increase in referrals to the centers.

The Acting Commissioner also felt that there should be a more systematic approach to re-entry due to the number of inmates terminating their sentences with “from and after” terms of probations post incarceration. Since more judges are giving sentences that have jail time in addition to probation time, there is a need to re-engineer the system to be able to respond to these cases, especially because it causes inmates to often have dual supervision of both parole and probation. This often causes unintended consequences, such as conflicting schedules that prevent the person being supervised from meeting their obligations concerning employment, job training or child care. He felt that a greater number of inmates coming out of prisons and jails could be referred to OCC, so the system should be re-examined to determine how best to coordinate release planning with OCC in mind.

In order to further the Acting Commissioner’s goal, the Commission recommends²¹ strengthening the OCC legislative language²² by mandating that OCC work with the Sheriffs, the DOC and the parole board on better program coordination in order to develop a broad based re-entry system for the full continuum of the Commonwealth’s criminal justice system.

²¹ See Appendix E for votes taken by the Commission.

²² M.G.L. Section 2 of Chapter 211F.

Human Resources Management

The Commission reviewed information from the Sheriffs regarding their staff recruitment, hiring, firing, promotion, training, and pay practices. The Commission also invited representatives from the Commonwealth's Human Resources Division (HRD), which provides human resources support to the executive agencies, and other state agencies, to give information to the Commission on its practices and expertise. HRD has experience working with the DOC, State Police, and other public safety personnel.

The Sheriff's Office operate independently of each other with regard to human resources issues. Because they are elected officials, the Sheriffs historically have retained autonomy in their hiring practices, although HRD will consult with individual Sheriffs regarding economic terms and related items, which are generally consistent with Executive branch bargaining units. The Sheriffs' Offices are not part of the civil service system and they do not have identical programs or practices in the area of human resources. While all Sheriffs do maintain and use specific hiring standards that included a written application and exam, in-person interviews, fitness and background checks²³, they reported using a variety of hiring qualifications,

²³ Sheriffs uniformly impose the following 10 criteria for hiring:

1. a written application;
2. a written examination;
3. a fitness test that meets state and national standards
4. a minimum of a high school diploma or GED;
5. an in-person interview;
6. a background check;
7. a criminal record check;
8. United States citizenship;
9. possession of a valid driver's license; and
10. completion of a certified officer training academy.

In addition to the above, some Sheriffs also:

1. require or prefer candidates to have an Associates' Degree and/or military experience;
2. administer psychological/personality testing;
3. have a minimum age of 19 instead of 21; and
4. require a pre-employment drug test

preferences, and testing instruments for the same or similar positions.. For example, baseline educational qualifications for new hire correctional officers differs among the Sheriff's Offices, some require college education and others do not. Some recognize military service as a significant preference, others do not²⁴. In addition, not all Sheriffs conduct psychological tests on recruits and among those that do, the testing instruments that offices use vary. Similarly, there is not uniformity among the 14 offices regarding recruitment methods, job posting, promotion standards, or training requirements. Finally, because of understandable differences in cost of living based on geography and historical differences in collective bargaining agreements and budgetary appropriations, there is not pay parity across offices for individuals who are performing the same or similar functions. The Commission noted that there is also significant disparity in pay, education incentive bonuses and so-called longevity payments between corrections officers who work in Sheriffs' Offices and those who work for the DOC.

According to HRD representatives, HRD has established screening processes that go beyond a written test, for certain agencies and job titles, including the State Police and the DOC. These testing and screening processes establish an initial pool of candidates for the agency, either regionally or statewide. Once the pool is established, HRD ceases its involvement. The hiring agency continues the process by interviewing candidates, implementing additional performance, ethical, or other assessments as necessary, and conducting background checks. All testing systems are developed in consultation with the hiring agency to ensure that

²⁴ In writing and in their appearances before the Commission, the Sheriffs explained that not all Sheriffs' Offices could afford to require psychological/personality testing due to the expense of hiring an outside consultant to administer it. While all Sheriffs state or follow a preference for college degrees or military service, some Sheriffs do not require it because they would miss the opportunity to hire good candidates who simply cannot afford to go to college or have chosen not to enlist in the military.

qualifications and assessments are appropriate for the positions being filled and to ensure that the test or screening process incorporates specific skill needs or preferences. Systems can be developed for use at both the initial hiring stage and at promotion, with different screening tools used at each stage. For example, for a promotion assessment, candidates could be evaluated on their assessment and resolution of scenarios to give insight into their supervisory or management style. Consultants would be used to develop scenarios in coordination with the hiring agency. So far, agency feedback to HRD on these systems has been positive.

HRD identified a number of potential benefits from using structured HR screening tools. The first of these benefits is that the hiring process is transparent and that decisions are based on principles of merit. Another identified benefit is that the screening tools can be defended in court. During development of the tool, HRD assumes that there may be challenges to the test by applicants and therefore uses modern validated exam science that can be defended by experts in the field. Another benefit is that testing centers can be mobile and so that tests can be held at a high school or similar facility at locations across the state. In addition, if there are similar jobs across the Sheriff's Offices that are routinely filled, there could be value, in both quality and efficiency, to identifying and implementing best practices in this area.

The Commission also reviewed information showing that there were upwards of 800 job titles/classifications at the Sheriff's Offices. In contrast, the DOC has approximately 130 job titles/classifications and is managed by HRD. Although it was apparent that some of the differences between the job titles or classifications were simply matters of administrative error in spelling or other minor differences, it was difficult for the Commission to determine whether there were distinctions between very similar titles that justified differences in grade or pay. The Commission also did not request information on the justifications, including legitimate cost of living justifications based on geography or collective bargaining agreements, for pay differentials

among employees across Sheriff's Offices or between Sheriff's Offices and the DOC for the same or similar positions.

While the Commission did not hear reports of specific problems with the Sheriffs' hiring practices, and HRD has not assessed current practices, Commission members expressed that there was a pressing need to identify and implement best practices in human resources management. That sense of urgency came from the Commission's obligation to try to ensure transparency, implementation of best practices, a level of uniformity around job titles/clarification, pay parity for similar positions across Sheriff's Departments. Commission members also expressed concerns about potential challenges to hiring, firing and promotion decisions given the variety of procedures that the Sheriffs currently employ.

Given the Commission's overarching goals of increasing transparency, accountability and oversight, maintaining efficiency, effectiveness and integrity, and maximizing resources and public and staff safety, the Commission recommended additional work in the area of human resources management. The Commission specifically recommends²⁵ that the Massachusetts HRD conduct, in consultation with the Sheriffs and the Massachusetts Sheriffs Association (MSA), a comprehensive assessment of current Sheriff offices human resources policies and practices, including but not limited to, standardizing job titles and classification, job posting, minimum testing requirements and other employment practices that will lead to statewide standards for classification, recruitment, promotion, compensation and professional standards for all fourteen Sheriffs' offices.²⁶

To accomplish this goal, the Commission recommends that the House and Senate Committees on Ways and Means increase line items 1750-0100 and 8910-7100 to reflect this

²⁵ See Appendix E for votes taken by the Commission.

²⁶ The Commission does not insist that the assessment review of all the practices of all 14 Sheriffs but recommends that the review include a sufficiently representative sample with a variety of practices and procedure.

policy directive based on an estimate of costs from HRD. Finally, the Commission recommends that HRD issue a report of its assessment within one year of the appropriation of funds under recommendation, and that HRD send its report to the Chairs of the Joint Committee on State Administration and Regulatory Oversight, the Chairs of House and Senate Ways and Means, the House and Senate Clerks, the Chairs of the Joint Committee on Public Safety, and the Secretaries of A&F and EOPSS.

The Commission recognizes that the recommended assessment will take significant time, effort and financial resources, and that some issues, such as pay disparity, may be particularly difficult to resolve. However, given its mandate, the Commission believes that it is essential to review these human resources management issues.

With regard to training and staff development, the Sheriffs are subject to state regulation, which can be found at 103 C.M.R 915.00. The regulations require each Sheriff to develop and implement guidelines for training and staff development. The Massachusetts Sheriffs' Association also convenes an Education and Training Committee (MSAETC) to coordinate training efforts for the Sheriffs' Offices. The mission of MSAETC is to support the Sheriffs by fostering a collaborative effort from all counties to unify training standards for all disciplines. MSAETC utilizes accredited training resources. MSAETC also is committed to providing education and training equitably to all Sheriffs' Offices regardless of their geographic location or size. Some Sheriffs operate their own training academies while others must rely on the training curriculum and facilities of other agencies or departments. Despite strong work in this area, Commission members did raise concerns about the uniformity of training across the Commonwealth and what that meant both for employees, inmates, and taxpayers. There was a particular concern about Deputy Sheriff training because some Deputies carry firearms and

perform law enforcement duties as part of their routine work, while others do so only intermittently.

A review of this issue yielded the following information. Sheriffs deputize large numbers of outside law enforcement personnel – state, local and federal – throughout the Commonwealth. Only the State Police have jurisdiction to make arrests anywhere in the Commonwealth except federal land. All other federal and local police, including college and university police must be granted jurisdiction to conduct investigations and make arrests outside of their designated boundaries. Sheriffs also deputize their own officers for corrections-related work, such as transportation of inmates and supervision of inmate work crews; and law enforcement work, like joint first responder initiatives, task forces and traffic details. They also deputize all civil process servers. Certain civil process servers work in civil process enforcement where they are involved in front-line law enforcement such as accompanying utility company representatives to residential and commercial properties for shut-offs, handling evictions for properly bonded landlords and making *capias* arrests. Sheriffs require that all Deputy Sheriffs engaged in the performance of law enforcement duties complete the Intermittent Reserve Police Academy Training or its equivalent if the same is offered in their own academies by certified training instructors.

In 2008, the Massachusetts Legislature created the Special Commission on Massachusetts Police Training (SCMPT). The SCMPT was charged with examining the feasibility of creating a statewide law enforcement training program to coordinate municipal law enforcement training, as well as the feasibility of creating more efficient law enforcement facilities, staffing instruction, and preparedness. The SCMPT was also tasked with studying and making recommendations relative to the training provided to law enforcement officers in handling incidents involving persons with mental illness. The SCMPT included representatives from law

enforcement agencies that were not municipal entities, such as campus and environmental police, and a representative of the Massachusetts Sheriffs. The SCMPT did an extensive review of training programs for law enforcement, not just municipal law enforcement, and identified specific strengths and weaknesses in the systems.

In July 2010, the SCMPT issued a report with a recommendation that the Commonwealth develop, implement, support, and adequately fund a statewide Peace Officers Standards and Training (POST) system. The Commission endorses the findings and recommendations of the SCMPT in this area and voted to recommend²⁷ that Massachusetts Deputy Sheriffs who perform police work be included and mandated to participate in any POST system created as a result of the SCMPT's report.

Civil Process

From the earliest times and as codified in Section 11 of Chapter 37 of the Massachusetts General Laws²⁸, Sheriffs have been required to serve and enforce civil process. Service of process is defined as “delivery of a writ, summons or other legal process or notice.” There are two kinds of civil deputies. Enforcement deputies have arrest and other powers that include, but are not limited to, the execution of capiases, orders of eviction and other actions in equity. They are usually paid either on an hourly or salaried basis. Enforcement situations can be volatile, so these deputies are generally uniformed, carry firearms and are required by the Sheriffs' Offices to complete Reserve Intermittent Academy training or its equivalent. Non-enforcement deputies, who serve subpoenas and civil complaints and other legal notices that comprise the bulk of civil

²⁷ See Appendix E for votes taken by the Commission.

²⁸ The statute is silent as to how civil process operations should be configured.

process work, generally are paid on a per diem or “per piece” basis rather than on an hourly or salaried basis.

Over time, ten of the fourteen Sheriffs’ Offices have absorbed civil process operations into their budgets. The remaining four Sheriffs’ Offices run their civil operations differently, and with the exception of the Chief Civil Deputy in Suffolk County, none of the employees are state employees. In Suffolk County, civil process work is performed through an unincorporated business entity²⁹ while in Hampden County, it is performed through a “political subdivision” of the Sheriff’s Office. In both counties, all Civil Process Division expenses are paid from civil process fees; the entity is the employer and withholds payments for taxes, Social Security, and Medicare, but not federal unemployment taxes because it is an entity of state government. These employees do not pay into any municipal, county or state pension fund. Though these employees are not technically state employees, both the employees and the Sheriffs consider these workers to be employees of the Sheriff’s Office because the Sheriff’s Department runs the entity³⁰. In Barnstable, civil process work is performed through an independent for-profit operation. The Sheriff appoints the Civil Deputies, but all salary and operational costs are covered by the Civil Process Office. The Sheriff does not provide any funding to the Civil Process Division nor does the Civil Process Office contribute any funding to the Barnstable County Sheriff’s Office. Civil Process office employees are paid by the Civil Process operation and do not pay into any state, county or municipal pension fund. All Civil Process employee benefits are paid by the Civil Process Office. Any profit from the Civil Process Office is put back into the operation of the Civil Process Office. In Worcester County, civil process work is

²⁹ The unincorporated business entity is run by the Sheriff’s Office and the day to day operations are overseen by a state employee, who is a salaried deputy.

³⁰ For purposes of civil liability for actions of deputies and administrative staff, these employees are also considered employees of the Suffolk and Hampden County Sheriff’s Offices, because they operate the offices to accomplish their mandated obligations to serve process. It is unclear whether contract or other liability of the entity also rests with the Sheriffs’ offices.

performed through independent non-profits where the individuals who perform these duties are employees of the non-profit which withholds taxes, Social Security, and Medicare. These employees do not pay into any municipal, county or state pension fund or derive any benefit there from. These employees and the Sheriffs do not consider these workers to be employees of the Sheriff and are not treated as such because the Sheriff does not run the operation. In large counties like Bristol, Essex and Middlesex, there are multiple civil process office locations.

State law sets the fee that the process server is authorized to collect depending on the type of process being served.³¹ In 2003, the Legislature amended this law through Chapter 369 of the Acts of 2003 by increasing the fees and mandating that twenty-five percent of the increased fees go to the state treasury. This requirement applies regardless of whether the Civil Process Division is operated by the Sheriff or another business entity. Since the statute was amended, Sheriffs' Offices have contributed over \$16,965,139.53 dollars to the General Fund. Sheriffs' Offices that do collect civil process fees, deposit these funds in local bank accounts that are not part of the state accounting system. The funds are not reported on the Massachusetts Management and Accounting and Reporting System (MMARS) but are generally segregated from other funds. While these accounts are not subject to the control or oversight of the Comptroller's office, they are subject to internal controls, including audits performed by the Auditor's Office and independent audits from outside entities. The Sheriffs provided reports to the Commission on the balances in their civil process accounts. The amounts ranged from a deficit to a substantial surplus. However, these balances reflected only a snapshot of the accounts at the time the information was requested and were not a true reflection of the status of the year's end.

³¹ Massachusetts General Laws, chapter 262, section 8(a) establishes the fees of Sheriffs, Deputy Sheriffs and constables for civil process, including, for example, \$20 for service of an original summons, trustee process, or subpoena; \$30 for service of an original summons and complaint for divorce; \$10 for the service of a writ of replevin for seizure of property; \$10 for serving a venire or notice to jurors for attendance upon any court; and \$20 for summoning witnesses.

The Auditor's office stressed that, as a result of its regular transfer audits, its greatest concern was about the status of civil process operations. The Auditor recommended that there be a division within each Sheriff's Office devoted to civil process operations and suggested that it could create financial and legal liabilities to do otherwise. To the extent that it is more efficient and cost effective for civil process functions to be outsourced, the operation should be procured through a fair and open bidding process. While the Auditor did not suggest any mismanagement, it believes these divisions should be managed by state employees and funding and fees should be accounted for like other state agencies. The Auditor anticipates cost savings over time with such a reform since there will be no Social Security, independent auditing, and bookkeeping costs. There was consensus that implementation of the Auditor's suggestions would require increased funding, at least initially.

Reform and standardization of the civil process system has been a priority for the Massachusetts Sheriffs Association, through its Civil Process Subcommittee. For this reason, in every session since at least 1998, the Sheriffs have filed a bill intended to reform the Civil Process system – *An Act relative to civil process reform*.³² This bill reflects the Sheriffs' desire for consistency and clarity as well as their frustration with longstanding rules and regulations that conflict with one another.

Considering all the information it gathered and the Commission members' concerns, the Commission makes a number of recommendations related to reform of civil process. The Commission further determined that it would both update and redraft *An Act relative to civil process reform*³³ and, to the extent appropriate, the draft would incorporate the recommendations. It should be noted that in writing this redraft, the Commission consulted the

³² In the 2011-2012 session, *An Act relative to civil process reform*, House Bill 2824.

³³ See Appendix I for a copy of the redrafted bill.

MSA, Auditor, Comptroller, PERAC, and GIC. Although it was a product of much discussion with these organizations and incorporates some of their suggestions, the Commission suggests that it be further reviewed to ensure that there are not unforeseen conflicts with existing Massachusetts General Laws and that official comment be obtained from these and other relevant agencies as part of the normal legislative process.

The Commission's revisions to *An Act relative to civil process reform* focus on bringing all civil process functions under state control and oversight. The bill directs the Sheriffs to eliminate independent outside entities and to perform civil process duties through a division run through each office. This restriction, however, should not preclude a civil process division from putting a service contract out to bid under a fair and transparent procurement process under state law and should not eliminate the Sheriffs' ability to pay process servers by commission. The Commission intends for employees who are transferred or hired into any civil process division affected by the bill to have access to any pension and creditable service rights allowable under law for previous civil process work.

The bill also focuses on increasing accountability and transparency in the collection, recording, and expenditure of civil process fees so that all accounts and accounting practices related to civil process comply with state finance law and state practices. For clarity, the bill also explicitly restricts expenditures of the revenues received from the Civil Process division to spending on activities that the Sheriffs are statutorily authorized to perform. In addition, the Commission also recommends that each Sheriff's Office develop policies and procedures related to civil process accounts that are approved by A&F and the Comptroller as recommended by the State Auditor's Office or other relevant entity. These policies and procedures should be referenced in each Sheriff's Office Internal Control Plan (ICP).

Finally, in order to ensure that the Legislature has appropriate information regarding civil process revenues and expenditures, the Commission also recommends that, if revenues collected through a particular Sheriff's civil process account will not be sufficient to cover the cost of its civil process operation, that the Sheriff notify House and Senate Ways and Means and A&F 30 days prior to a projected deficiency.

Health Care

The costs for all inmate and pre-trial detainee medical and mental health care are borne by the Sheriffs' budgets, even if that inmate or pre-trial detainee has private or public health insurance coverage. This population presents with extensive medical and mental health problems that stem largely from substance abuse/addiction, psychological and physical trauma, high-risk behavior while not in custody and a lack of medical attention to these issues over lengthy periods of time. Chronic illnesses requiring daily medication, like diabetes, hypertension, hepatitis and asthma and addiction-driven problems that require visits to specialists and in-patient hospitalization like arthritis and kidney disease are widespread.

The Sheriffs reported that county jails essentially function as emergency rooms every day as detainees are brought in from courthouses throughout the state to be booked into Sheriffs' facilities. Many are in active detoxification from alcohol and various drug addictions while many others are in active mental health decompensation from stress, trauma, recent cessation of medication or other factors. They present a significant risk of self-harm or harm to others; their medication and other needs must be triaged quickly and managed effectively regardless of the overall volume of detainees for intake. Sheriffs' medical staffs are the primary care providers for the majority of those incarcerated because all Sheriff's Offices are required to perform a medical and mental health care intake on everyone in their custody. The most consistent medical records

in existence for many inmates and pre-trial detainees are kept by the medical care providers in jails and houses of correction.

The Sheriffs estimate that approximately 42% of the inmates in their care suffer from some form of mental illness, however mild³⁴. Approximately 26% of those have severe mental health issues that require psychotropic medication³⁵. It was noted that the cost to provide appropriate treatment and psychotropic medications for these inmates is very high, ranging from hundreds of thousands of dollars per year in Berkshire, Norfolk and Plymouth counties, to close to a million in Hampden County to over a million in Suffolk County.

While two Sheriff's Offices utilize a medical vender secured through the state's bidding process to provide inmate and pre-trial detainee health care, the other Sheriff's Offices use a hybrid model where staff physicians, nurses and medical assistants are employees of the Sheriff's Offices, while vendors are used for specialized medical services, such as dental. The Sheriffs felt that most cost reductions can come from the way contracts with the health care provider are written. Sheriffs also try to address as many health care issues as possible within their infirmaries due to the high cost of transporting inmates to hospitals where two correctional officers must travel with and remain with the inmate throughout the duration of his or her stay for security. For example, where budgets allow or contract specifications require, Sheriffs have secured x-ray and dialysis machines in order to provide treatment on-site.

The Commission recognizes that inmate health care costs are not easily reduced since the state has a constitutional obligation³⁶ to meet the medical standard of care³⁶. The Commission also recognizes that one or two very ill inmates create significant unanticipated costs for the

34 These approximate percentages are based on information collected from respective risk assessments/classification tools and specific mental health assessments, diagnoses and pharmacy needs.

35 The estimated numbers include inmates and pre-trial detainees with both dual diagnoses (addiction and some form of mental illness, including organic brain disorders resulting from addiction) and mental illness only diagnosis.

36 The U.S. Supreme Court recognized a prisoner's Eighth Amendment right to adequate medical care in 1976 in the case of *Estelle v. Gamble*.

Sheriffs. In addition, if the Sheriffs do not timely address an inmate's medical or mental health issues, the cost to the taxpayers will increase if more costly treatments and surgeries are required at a later date or lawsuits are filed.

While there not has been an effort by all of the Sheriffs to contract with one health care vendor, several Sheriffs do share the same vendor. When asked about the possibility of all 14 Sheriffs contracting with one vendor, the Sheriffs from the outer counties expressed concerns about the staffing and other challenges that might arise if one vendor was responsible for placing providers in all 14 Sheriffs' Offices. It was the consensus amongst the Sheriffs that it was unlikely that one vendor could supply adequate medical care to all the Sheriffs across the state.

In order to explore other options to reduce state inmate health care costs, the Commission discussed ways to seek federal Medicaid reimbursements for inmate health care services. It is understood that under most circumstances, Section 1905(a)(A) of the Social Security Act prohibits the federal government from reimbursing states for inmate health care costs³⁷. This Medicaid coverage policy does not render otherwise eligible inmates ineligible for Medicaid upon incarceration, but simply specifies the cost of medical services provided within a state correctional facility is not eligible for reimbursement. In contrast, federal reimbursement is available for an inmate's health care expenses if a Medicaid eligible inmate is an inpatient of a medical institution. The Commission recommends that the Executive Office of Health and Human Services (EOHHS) and the Legislature pursue a Medicaid waiver amendment and related changes in state and federal law and regulation to permit federal reimbursement of inmate health costs, including, but not limited to mental health care and drug and alcohol dependency treatment.

³⁷ Letter from Department of Health and Human Services to State Medicaid Directors dated April 10, 1998. Subject: Medicaid Coverage for Inmates of Public institutions.

Currently, the Sheriffs' Offices do not have a uniform policy to require hospitals or other medical services providers to bill Medicaid for eligible inmate health care costs for those inmates who require hospitalization within the first 30 days of their incarcerations nor do they routinely seek such reimbursement. In order to secure the maximum amount of federal reimbursement available to the state, the Commission recommends that the Sheriffs work with the hospitals and other medical service providers to ensure that MassHealth is billed for any Medicaid eligible inmate health expenses for when the inmates is treated as an inpatient in a medical institution. While this would result in a savings to the state, it should be noted that this change would shift the costs from the Sheriffs' budgets to another state agency, MassHealth, which would be able to share the total expense with the federal government. While this would represent a savings to the Sheriffs, the MassHealth budget would increase. It would be important to fully develop an accounting process that accurately monitors and reports the amount of incremental health care spending annually at MassHealth related to this cost shift."

Since there is uncertainty amongst the Sheriffs as to when Medicaid reimbursement is available and when it is not, the Commission recommends that a clarification is needed from the Office of Medicaid to ensure that the maximum amount of federal reimbursement is sought. For example, some Sheriff's Offices bill MassHealth for the first 30 days of a pre-trial inmate's incarceration while other Offices do not. Many inmates are already enrolled in or are eligible to enroll in MassHealth before being incarcerated. The Commission recognizes the importance of maintaining a continuum of post-release care which requires the need to ensure that inmates are on MassHealth upon release. Therefore, the Commission also recommends that guidance be sought from the EOHHS to establish how the Sheriffs can best work with MassHealth on maintaining eligibility for inmates and ensuring that inmate's cases are placed on "suspension status" during their incarceration so that coverage can automatically resume upon their release.

After receiving such guidance, the Commission recommends that the Sheriffs develop uniform policies and procedures to maximize the Commonwealth's reimbursement for eligible services to the maximum extent possible.

The Sheriffs noted that for inmates with psychiatric issues, a successful re-entry involves ensuring post-release access to appropriate community-based treatment services and medications. As previously noted, the costs associated with mental health services are significant. With this in mind, the Commission recommends seeking guidance from CMS on how best the Sheriffs can work with MassHealth on determining possible eligibility for reimbursement for services for inmates diagnosed with mental health disabilities. Lastly, the Commission recommends that the Sheriffs work with EOHHS and DPH to develop a comprehensive and mandatory mental health and drug and alcohol dependency testing protocol for all incoming inmates to determine the range of services necessary to treat each inmate.

State Office of Pharmacy Services (SOPS)

SOPS provides pharmacy services for many of the state's public health care institutions, including hospitals, prisons, development centers, and long-term care centers. Since the program services inpatient facilities, SOPS can negotiate directly with drug manufacturers with the goal of providing the lowest reasonable cost for medications.

The Fiscal Year 2010 Budget (Chapter 27 of the Acts of 2009) included language in the Sheriffs' Department's line items to require that all the Sheriff's Department's pharmacy services must be provided through SOPS³⁸. From the information provided to the Commission

³⁸ The language mandating the use of SOP by the Sheriffs was vetoed by the Governor, but overridden by the Legislature.

by the individual Sheriff's Offices, after the transition to SOPS, some Sheriffs did see a savings after the transition, while others saw cost increases or only marginal savings.

In September of 2009, the Governor disapproved line-item language requiring the Sheriffs to use SOPS that was included in the legislation funding the seven Sheriffs that were transferred from county government to the state system³⁹. In his message, the Governor stated: "Based on the experience of the Sheriffs themselves, most of whom have strenuously objected to this requirement, the mandated use of the State Office of Pharmacy Services (SOPS) may increase rather than reduce costs at a time when they can least afford it within their appropriations. Although SOPS should be considered an option, the Sheriffs, in their judgment, should be free to select the most efficient and cost effective pharmacy service to meet their individual department's needs."⁴⁰

All but three of the Sheriff's Offices that operate jails and houses of correction have transitioned to SOPS. The Dukes County Sheriff's Office has not transitioned because SOPS cannot provide pharmacy services to Martha's Vineyard in a timely and cost effective manner. The Suffolk County and Worcester County Sheriff's Offices have not transitioned to SOPS because SOPS has been unable to show that they can provide medication just as efficiently as their current systems, but at less cost. Both estimate their post-transition cost increases will be between the Bristol and Essex County figures. Of the Sheriff's Offices which have transitioned their pharmacy services, some report significant cost increases, while others report significant savings.

³⁹ An Act Relative to Sheriffs, S.B. 2121, 187th Gen. Ct., Reg. Sess. (Mass. 2009).

⁴⁰ Message from His Excellency the Governor returning pursuant to Section 5 of Article LXIII of the Amendments to the Constitution with his disapproval of certain language in certain items contained in the engrossed bill relative to Sheriffs, S.B. 2164, 187th Gen. Ct., Reg. Sess. (Mass. 2009), filed September 29, 2009.

It should be noted that SOPS charges an administrative fee for using its services that is assessed to the Sheriff's Offices as a "chargeback." This fee is considerable and reduces the net savings to the Sheriffs for using SOPS. Moreover, the Sheriff's Offices purchase their medication using the same state contract as SOPS. Because SOPS services exclusively inpatient facilities, it is able to obtain lower prices on certain medications since they are allowed to negotiate directly with drug manufacturers and act as a mailing house for the facilities they serve. The Commission sees no reason why the Sheriff's Offices, which actually do operate infirmaries, could not jointly file for the same status to achieve the same discounts as SOPS.

The Commission recognizes that there may be savings achieved by some Sheriffs by participating in SOPS. However, the Commission recommends⁴¹, as the Governor did, that participation in SOPS should not be mandatory and that the Sheriffs' Office be allowed to select the pharmacy service that best fit the medical needs of their populations using an open and transparent bidding process.

Female Detainees and Inmates

Female Offenders present with unique challenges and face institutional barriers that distinguish them from their male counterparts. They experience "higher rates of mental health disorders than their male counterparts, histories of physical abuse, psychological stress associated with separation from children, and higher risk than their male counterparts for experiencing co-occurring mental illness and substance use disorders, the needs of women offenders are extensive."⁴²

⁴¹ See Appendix E for votes taken by the Commission.

⁴² Massachusetts Division of Capital Assess Management, Corrections Master Plan, Final Report, December 2011, Page 77.

Currently, MCI-Framingham is the only DOC facility in the state that houses females who are awaiting trial and have been sentenced. The facility holds more than half of the approximately 1,322 women⁴³ incarcerated in the Commonwealth. This population includes those awaiting trial, those held on the detainers pending probation surrender, pre-trial detainees, civil commitments, federal detainees, as well as county, fugitives from justice, and state sentenced offenders. In recent years, the population of incarcerated women has grown and the use of MCI-Framingham as a multi-jurisdictional facility has resulted in significant overcrowding. The Awaiting Trial Units at MCI-Framingham, which houses both pre-trial and civilly committed females, are historically the most overcrowded in the DOC, operating at over 300% of design/rated capacity.⁴⁴

There are currently 6 Sheriffs that have the ability to house sentenced female offenders⁴⁵ and provide effective re-entry programs for them. One unique model established in Essex County – The Women in Transition (W.I.T.) pre-release program in Salisbury -- offers a way for county-sentenced female offenders to still benefit from re-entry programs closer to their communities. While sentenced county female offenders are initially placed at MCI-Framingham, eligible non-violent inmates are reclassified and may serve out their sentence at W.I.T. The program houses up to 24 female inmates in-house and another 26, who are electronically supervised, reside in a sober residential housing community. In an effort to assist them in obtaining the necessary skills and resources they will need to successfully transition back to their communities, program components include individual and group counseling, education and/or vocational training, work release and community service.

⁴³ Massachusetts Division of Capital Asset Management, Corrections Master Plan, Final Report, December 2011.

⁴⁴ Based on data included in Quarterly Report on the Status of Prison Overcrowding, 2011 and 2012, submitted by DOC to be in Compliance with Chapter 799 Section 21 of the Acts of 1985.

⁴⁵ Barnstable, Berkshire, Bristol, Hampden and Nantucket (Note: Females from Nantucket County who are sentenced to serve a term of imprisonment in a House of Correction are transported to Barnstable County Correctional Facility in Bourne) house females at the house of corrections. Franklin County houses pre-trial females.

The Commission recognizes that the lack of local facilities for placement of female detainees and inmates is a long standing problem across the state's criminal justice system. There have been several reports and studies⁴⁶ that have focused solely on the female offender population and consistently, the major recommendation has been to return county female inmates to serve their time in their county of residence. Because an estimated 65% of the female offender population are mothers with minor children, locating female inmates and detainees closer to home, provides an opportunity for better parenting and places less of a strain on family relationships. In addition, there is a higher likelihood of successful re-entry and reduced recidivism with increased access to employment opportunities and work release programs, as well as connections to appropriate housing, counseling and treatment options in their community.

The Commission recognized that the construction of a stand-alone facility in 7 counties is cost prohibitive and not a practical use of limited funding. Over two years ago, the Sheriffs began discussions with the DOC about creating regional facilities for female offenders and a "step-down" system whereby even state prison inmates might spend their pre-release months in Sheriffs' facilities participating in their re-entry programs. In Suffolk County, the Sheriff's Office, Division of Capital Asset Management and Maintenance (DCAMM) and a contracted architectural firm worked closely together for over 18 months on a feasibility study for a model program facility that would house sentenced women from Suffolk, Norfolk and Middlesex counties as well as state prison inmates in pre-release.

These ideas have been incorporated into the Corrections Master Plan (CMP) as a current avenue to address the over-crowding at MCI-Framingham and to bring woman closer to their families and communities. At the March 24, 2011 Commission meeting, DCAMM presented a

⁴⁶ Most notably, the Commonwealth of Massachusetts Governor's Commission on Corrections Reform, Major Recommendation #13, Dedicated External Female Offender Review, August 1, 2005.

brief overview of the CMP, which was released after a comprehensive multi-year process involving the DOC, the Sheriffs, A&F, DCAMM and EOPSS. The CMP envisions the DOC and Sheriffs' facilities as distinct components of a single system that can work together to reduce overcrowding and recidivism; maximize existing resources; and create a more integrated, efficient and cost-effective system.

As the incarcerated women population has grown, some Sheriff departments could not provide the segregated facilities required to house relatively small numbers of women in each county. As a result, many county-sentenced and pretrial women were sent to MCI-Framingham where combined populations could take advantage of special programs. In fact, Section 16 of Chapter 125 of the Massachusetts General Laws includes provisions to house the county-sentenced and pretrial women in Framingham. While this solved several problems when implemented, the population has now grown and outpaced MCI Framingham's capacity, compromising its mission to rehabilitate serious offenders. To demonstrate this point, only 37.5% of the women currently held in Framingham have DOC sentences or are the legitimate responsibility of the DOC.

An excellent example of this taking shape is the agreement entered into by EOPSS, A&F and the Hampden County Sheriff's Office to expand the Western Massachusetts Regional Women's Correctional Center (WMRWCC). That agreement provided for the expansion of the WMRWCC providing it with an additional 126 beds, which will be used to house both sentenced and pretrial women who are sentenced to the Worcester, Hampshire or Franklin County Houses of Correction and who would otherwise be held in DOC custody at either MCI Framingham or Southern Middlesex Correctional Center. This regional center allows women prisoners to take advantage of an extraordinary compilation of gender specific programming and resources while being held closer to their communities. Transportation costs also may be reduced.

Using the Hampden County structure as a model, the Commission recommends that the various Sheriff's Offices, together and individually, and the DOC, the MSA, and the individual Sheriff's Offices work together to establish regional women's correctional centers that will provide opportunities for female prisoners to participate in effective re-entry and appropriate mental health and substance abuse programs. Further, in light of the specific treatment and family needs of many non-violent female offenders, the Commission recommends⁴⁷ that the criminal courts make themselves aware of the availability of the range of alternatives to incarceration and to utilize those alternatives where appropriate.

Multi-Jurisdictional Facilities

Sheriffs and their Deputies have been providing regional public safety services to their cities and towns for decades. Six of the 14 Sheriff's Offices provide regional 911 intake or emergency dispatch services or both. The Bristol County Sheriff's Office provides a "C-Med" service that links ambulances in the field with hospitals. The Worcester County Sheriff's Office provides reverse 911 services to enrolled cities and towns. Eleven of the 14 Sheriff's Offices provide regional law enforcement services and mutual aid to their local police departments. The Nantucket Sheriff's Office performs first responder duties alongside the Nantucket Police Department and operates a lock-up for pre-arraignment detainees. This mutual aid is also rendered to state and federal law enforcement and includes Sheriffs' Gang Units, Drug Units, mobile crime scene services, mobile command units, regional law enforcement councils, elder protection services (TRIADs), K-9 teams for narcotics detection, lost persons and apprehension of fleeing suspects and assistance in other active crime investigations. The Barnstable and

⁴⁷ See Appendix E for votes taken by the Commission.

Plymouth Sheriff's Offices operate their own Bureaus of Criminal Investigations (BCIs.) These regional services save the Commonwealth's cities and towns millions of dollars a year and are actually a form of local aid provided by the Sheriffs that they otherwise would not receive.

Finding that "regionalization can achieve efficiencies by eliminating duplicative services, creating program sizes that can operate more cost-effectively, and creating flexibility in the system to handle fluctuations in the incarcerated population"⁴⁸, the CMP recommends regionalization in the correctional system by proposing 4 regions based on geography. The proposed facilities will be utilized by multiple Sheriffs and the DOC. The Commission discussed the governance issues that will arise in implementing the CMP. To this end, the Commission recommends that the MSA establish a Multi-Jurisdictional Facility Subcommittee to address management and governance practices of new and existing multi-jurisdictional facilities. In addition, the Commission recommends that the Administration establish a working group that consists of representatives from EOPSS, DCAMM, A&F, the DOC and the MSA to facilitate development of management and governance practices for new and existing multi-jurisdictional facilities.

Recommendations from the Office of the State Auditor

After the transfer of the remaining Sheriff's Offices to the state system was completed, the Office of the State Auditor (OSA) was required to conduct a transition audit of these Sheriff's Offices, which included Barnstable, Bristol, Norfolk, Plymouth, Suffolk, Nantucket,

⁴⁸ Ibid., p. 7.

and Dukes Counties. This audit report⁴⁹ included several recommendations for the Commission to consider.

Meals for Employees of the Sheriff's Offices

Under current state law⁵⁰, state employees are prohibited from receiving free meals at state expense. During the audits, it was noted some Sheriff's Offices had informal policies and or longstanding provisions in collective bargaining agreements that allowed employees to receive meal benefits. The reasons for these policies include ensuring adequate post coverage on all shifts, foreclosing opportunities to introduce contraband into facilities and ensuring adequate staffing in the event of an emergency, especially where remote facility locations would require staff to travel some distance to find an eatery. The Auditor's Office agreed that it may be beneficial to offer free meals to employees at the facility and recommended that the statute be amended to include an exception so long as the Sheriffs adopt uniform policies and clarify meal pricing. The Commission understands, from a public safety and collective bargaining standpoint, that it may be appropriate to have employees on site for meals and recommends⁵¹ that the General Laws be amended to exempt Sheriffs' Offices from Section 3 of Chapter 7 of the Massachusetts General Laws.

Telephone Commissions

Prior audits disclosed that Sheriffs' Office received commissions on inmate telephone services and that these funds were deposited into commissary, canteen, or inmates benefit accounts. Since it was unclear where the funds should be deposited due to the conflicting state

⁴⁹ Independent State Auditor's Report on the January 2, 2010 Transfer of County Sheriff's Offices to the Commonwealth in Accordance with Chapter 61 of the Acts of 2009.

⁵⁰ Massachusetts General Law, Chapter 7, Section 3B

⁵¹ See Appendix E for votes taken by the Commission.

statutes, as a comparison, the Auditor's Office looked to DOC policies and procedures⁵² concerning telephone commissions. It was determined that the DOC returns all telephone commission to the General Fund of the Commonwealth, except for revenues for international collect calls which are remitted to the inmate benefit fund. Since telephone commissions are a revenue source of the Commonwealth, the Auditor's Office recommended that there be a consistent policy for the use and deposit of telephone commissions across the state correctional system that all state agencies should follow.

In considering the Auditor's recommendation for consistency with regard to the telephone commission, the Sheriffs stated that this revenue helps to sustain the Sheriffs' budgets. Recognizing that telephone commissions are an important revenue source for the Sheriffs, the Commission does recommend having all telephone commissions be remitted into the General Fund of the Commonwealth, but makes recommendations regarding accounting practices for these types of retained revenues.

Accounts

The Auditor's Office noted that the Sheriffs' Offices maintained several types of accounts including inmate canteen, inmate accounts, fines, commissary, work detail, civil process, federal grants, witness fees, substance abuse and immigrant detainee accounts. After the transfer to the Commonwealth, the Sheriffs' Offices were responsible for placing information on these accounts in MMARS (Massachusetts Management Accounting and Reporting System). The Auditor's office noted in the April audit that some of the Sheriff's Offices accounts were still being maintained "off line" and not recorded and reported in MMARS. The Sheriffs noted that the fact that the accounts were not being kept on the MMARS system does

⁵² 103 Code of Massachusetts Regulations 482.07(6)

not mean the funds were unaccounted for. Sheriffs continued to report these accounts to A&F as they always had, which is how the state knew they existed in the first place.

To ensure transparency, the Commission recommends⁵³ that all revenues from the Sheriffs' Offices be deposited in some fund approved by the State Treasurer, with a preference for use of local banks, and that these revenues be allocated to a retained revenue account so that the funds will be accounted for, reported and recorded on MMARS.

Procurement

Level II Departments, including Executive Branch and Non-Executive Branch Departments, are required to conduct competitive procurements consistent with state laws⁵⁴, regulations, policies and procedures. All Sheriffs' Offices have adopted a uniform procurement policy⁵⁵, which was reviewed and accepted by the Office of the Comptroller and the Operational Services Division. The policy sets up a purchasing process, but allows flexibility to allow for purchasing items outside the system when it makes the best fiscal or operational sense, particularly when it is an incidental purchase or if there is an emergency need.

The information submitted by the individual Sheriff's Offices indicated that most Sheriffs purchase items such as food, paper products, cleaning supplies, inmate clothing, linens, in bulk in order to take advantage of volume discounts whenever possible. A vast majority of the Sheriffs noted that they purchase items through state contracts whenever the price is shown to be cost effective.

⁵³ See Appendix E for votes taken by the Commission.

⁵⁴ M.G.L. Ch. 30, Sec. 51, M.G.L. Ch. 30, Sec. 52 and M.G.L. Ch. 7, Sec. 22, M.G.L. Ch. 7A and Ch. 29

⁵⁵ Policy Governing the Procurement of Commodities and/or Services, dated November 19, 2010

To further encourage efficiencies and cost savings, the Commission recommends that the MSA and A&F establish a detailed uniform reporting of Sheriffs' Office funds expended in the procurement of food, vehicles, fuel, mattresses, linens, inmate uniforms, and cleaning supplies for the fiscal year following the issuance of this Commission report. After the data is received, the Commission further recommends that A&F analyze it to determine the efficacy of creating a centralized purchasing program and the feasibility of joining bulk purchasing initiatives in cities, counties or other entities such as the "Boston Buying Power" program.

Recommendations

The Commission urges the adoption of these recommended policies in order to further the goals of increased transparency, oversight, and efficiency as well as the maximization of limited taxpayer and staff resources.

In summary, the Commission recommends that the following actions be taken:

- Encourage the applicable agencies of the Commonwealth to continue implementation of the Integrated Criminal Justice Information System (ICJIS) and include in the ICJIS the following: finger print-based records available to correctional, parole, and community corrections; telemedicine applications; electronic medical records of prisoners; the infrastructure with which to conduct video arraignments and video visitations; inmate kiosks where inmates can manage their inmate accounts, maintain their inmate plan, choose visitation times; other services that would reduce staff's time; and including a transportation database.
- Request that EOPSS determine the feasibility and cost of adding an inmate tracking module to the Inmate Management System (IMS), which would allow staff at prisons and houses of correction to electronically monitor movement of prisoners within institutions in real time.
- Provide funding for the Massachusetts HRD to conduct, in consultation with the Sheriffs and the MSA, a comprehensive assessment of and issue a report on the current Sheriff

Offices human resources policies and practices, including but not limited to, standardizing job title and classification, job posting, minimum testing requirements and other employment practices that will lead to statewide standards for classification, recruitment, promotion, compensation and professional standards for all fourteen Sheriffs' offices.

- Request that the Commonwealth's EOHHS seek guidance and clarification from the Federal Department of Health and Human Services - Centers for Medicare & Medicaid Services (CMS) on Medicaid reimbursement for inmates to ensure that the maximum amount of federal reimbursement is sought.
- Encourage the MSA to establish a multi-jurisdictional subcommittee to address management and governance practices of new and existing multi-jurisdictional facilities.
- Encourage the Administration to establish a working group that consists of EOPSS, DCAMM, A&F, the DOC and representation from the MSA subcommittee to facilitate development of management and governance practices for new and existing multi-jurisdictional facilities.
- Support the various Sheriff's Offices and the DOC in the development of effective management of female prisoners by working together to establish regional women's correctional centers and to coordinate and enhance opportunities for female prisoners to participate in local pre-release and post-release/stabilization (re-entry) and appropriate mental health and substance abuse programs.
- Educate the criminal courts on the range of alternatives to incarceration and encourage the utilization of those alternatives where appropriate.
- Encourage the Auditor, in coordination with the Commonwealth's EOHHS and the MSA, to perform a performance audit on the mental health screening processes currently in place for all jails and houses of correction, the types of services offered and used prior to persons being transitioned to these facilities, the range of services in these facilities and comparisons with national and clinical best practices.

In addition, the Commission recommends the following legislative actions be taken:

- File the redrafted civil process bill in order to reform and standardize the civil process system.
- File legislation to strengthen the OCC legislative language to promote better program coordination by allowing, for example, pre-trial diversion.
- File legislation to allow Sheriffs to offer meals to employees at the jails.
- File legislation to establish a Corrections Advisory Board with the aim of improving coordination across the criminal justice system and establishing best practices in all aspects of corrections operations.
- File legislation to include and mandate that Massachusetts Deputy Sheriffs who perform police work participate in any POST system created as a result of the SCMPPT's report.
- Oppose any budget language that requires mandatory participation in SOPS.

While the charge of the Commission is to make recommendations concerning the Sheriffs' Offices, with a \$1.2 billion budget in Fiscal Year 2012 for the Commonwealth's correctional system, including the Sheriffs, the DOC, Parole and the Probation Department, there is an urgent need to ensure that all state agencies involved in the correctional system, as well as outside partners, work cooperatively. The Commission members look forward to working with the Sheriffs, the Legislature, state agencies and community-based partners to implement these changes concerning the Sheriffs' Offices, but also to promote changes to form a more seamless and unified criminal justice system.

Appendix A: Historical Overview of the Office of Sheriff

The Office of Sheriff⁵⁶ is one of the oldest known to law and from the earliest times he has been the Chief Officer for the preservation of the Peace within his county.”⁵⁷ Although there is evidence that the first “Shire Reeve” served in 890 A.D., the Office of Sheriff was formally regulated in England during the 13th century. Twenty-seven of the Magna Carta’s 63 clauses directly concern Sheriffs or their Offices. Collectively, these clauses formalized and cemented the Sheriff’s role in England’s governance⁵⁸

Both the executive nature of the position and many of its duties and responsibilities were subsequently exported to America by the colonists. Chief among these were the duty to keep the peace, make arrests, operate jails and serve process.⁵⁹ In addition to the unique power of *posse comitatus*, or deputation⁶⁰, Sheriffs throughout the United States retain these powers today.

Prior to 1651, Sheriffs were appointed by the Governors of their states. That year, county commissioners in Virginia’s Northampton County interpreted a recently passed law as giving citizens the power to elect their Sheriffs.⁶¹ Commensurate with the colonies’ insistence on self-governance and especially following the American Revolution, the law was consistently interpreted or created to call for the election of Sheriffs.

⁵⁶ “The Office of Sheriff” is the proper way to refer to the duties responsibilities of the Sheriff and the Sheriff’s Deputies. See, Shrievalty Association of England Millennial Celebration of the Office of High Sheriff (1992); See also, Black’s Law Dictionary (distinguishing the inherent powers and duty to exercise public trust of an Office from a Department, which is a branch or division of governmental administration.)

⁵⁷ 3 OP. Atty. Gen. 488 (1912) responding to the question whether “The Sheriff of Essex County could be required to establish patrols and police guards in the city of Lawrence to take the place of and perform the duties of regular city police, the latter being unable to preserve the peace.”

⁵⁸ The Sheriff: The Man and His Office, Irene Gladwin, Gollancz (1974). See also, The Law of Sheriffs and Constables, Jafee, Samuel H., Boston 1935.

⁵⁹ The American Sheriff, by David R. Struckhoff, Justice Research Institute (1994)

⁶⁰ See M.G.L. Ch. 37, sec. 3.

⁶¹ Ibid.

Currently, 47 of the 50 states have Sheriffs. Of those, 46 states elect their Sheriffs. Of the 3,063 Sheriffs currently in office all, but one, are elected by the citizens of the jurisdictions they serve.⁶² Historically and still today, Sheriffs are unique in law enforcement because they are the only officials that are elected. Sheriffs' Offices account for 31% of all law enforcement personnel and 24% of all sworn law enforcement personnel in the United States.⁶³

In Massachusetts, the Office of Sheriff was established before the Commonwealth's Constitution was drafted. Its pre-existence is acknowledged by reference generally in Article 8 and more specifically Article 19, which called for the election of Sheriffs and was ratified in 1855.⁶⁴ Until 1855, Sheriffs were appointed by the Governor and could only be removed for "mal-administration" by impeachment in both Houses of the Legislature.⁶⁵

⁶² Ibid. See also, Bureau of Justice Statistics Census of State and Local Law Enforcement, United States Department of Justice Office of Justice Programs (2008) and The National Sheriffs' Association.

Alaska, Hawaii and Connecticut do not have Sheriffs. Rhode Island has an Executive High Sheriff, who heads a statewide law enforcement agency under the Department of Administration.

⁶³ Bureau of Justice Statistics Census of State and Local Law Enforcement Agencies, United States Department of Justice Office of Justice Programs (2008)

⁶⁴ See Constitution of the Commonwealth of Massachusetts (1780), Articles of Amendment.

⁶⁵ Digest of Laws Relating to the Offices and Duties of Sheriff, Coroner and Constable, Backus, Joseph, Esq., New York (1812), citing St. M.I. 154, March 12, 1804. (Sheriffs could also be removed by the Governor or Governor's Council for "non-payment of executions issued against his goods and chattels" if a creditor complained to them directly.)

Appendix B: Section 22 of Chapter 61 of the Acts of 2009

Notwithstanding any general or special law to the contrary, there shall be a special commission to consist of 9 members: 1 of whom shall be a member of the Massachusetts Sheriffs Association; 2 of whom shall be appointed by the speaker of the house of representatives; 1 of whom shall be appointed by the minority leader of the house of representatives; 2 of whom shall be appointed by the president of the senate; 1 of whom shall be appointed by the minority leader of the senate; and 2 of whom shall be appointed by the governor for the purpose of making an investigation and study relative to the reorganization or consolidation of sheriffs' offices, to make formal recommendations regarding such reorganization or consolidation and to recommend legislation, if any, to effectuate such recommendations relating to the reorganization, consolidation, operation, administration, regulation, governance and finances of sheriffs' offices.

The chairman of the commission shall be selected by its members. Section 2A of chapter 4 of the General Laws shall not apply to the commission. So long as a member of the commission discloses, in writing, to the state ethics commission any financial interest as described in sections 6, 7 or 23 of chapter 268A of the General Laws which may affect the member's work on the commission, the member shall not be deemed to have violated said sections 6, 7 or 23 of said chapter 268A. Five members of the commission shall constitute a quorum and a majority of all members present and voting shall be required for any action voted by the commission including, but not limited to, voting on formal recommendations or recommended legislation.

The commission, as part of its review, analysis and study and in making such recommendations regarding the reorganization, consolidation, operation, administration, regulation, governance and finances of sheriffs' offices, shall focus on and consider the following issues, proposals and impacts:

- (1) the possible consolidation, elimination or realignment of certain sheriffs' offices and the potential cost savings and other efficiencies that may be achieved by eliminating, consolidating and realigning certain sheriffs' offices to achieve pay parity;
- (2) any constitutional, statutory or regulatory changes or amendments that may be required in order to effectuate any such consolidation or reorganization;
- (3) the reallocation of duties and responsibilities of sheriffs' offices as a consequence of any such consolidation or reorganization;

(4) the best management practices including, but not limited to, administrative procedures, payroll systems, software updates, Sheriff's ability to negotiate cost effective contracts and the current use of civil process funds, including the amount of civil process funds collected by each county sheriff and the actual disposition of said funds currently, and, in the event of consolidation, realignment, elimination or reorganization, the collection and use of civil process fees in the future;

(5) the consideration of any other issues, studies, proposals or impacts that, in the judgment of the commission, may be relevant, pertinent or material to the study, analysis and review of the commission; and

(6) The need for appropriate placements and services for female detainees and prisoners, including pre-release services, job placement services, family connection services, and re-entry opportunities; provided, however, the review shall consider the need and present adequacy of placement of female prisoners and detainees in each country; and provided further, that all departments, divisions, commissions, public bodies, authorities, boards, bureaus or agencies of the commonwealth shall cooperate with the commission for the purpose of providing information or professional expertise and skill relevant to the responsibilities of the commission subject to considerations of privilege or the public records law.

The commission shall submit a copy of a final report of its findings resulting from its study, review, analysis and consideration, including legislative recommendations, if any, to the governor, president of the senate, speaker of the house of representatives, the chairs of the house and senate committees on ways and means and the chairs of the joint committee on state administration and regulatory oversight and the clerks of the senate and house of representatives not later than December 31, 2010.

Appendix C: Members of the Sheriff's Commission

Michael O. Moore (Chairman), State Senator for Second Worcester District

Andrea Cabral, Suffolk County Sheriff

Kenneth J. Donnelly, State Senator for Fourth Middlesex District

(Senator Donnelly was appointed in May of 2011 as a replacement for Senator Brian Joyce.)

Michael Esmond, Budget Director, Executive Office for Administration and Finance

(Michael Esmond was appointed in July of 2011 as a replacement for Palak Shah, who moved out of state.)

Peter V. Kocot, State Representative for First Hampshire District

(Representative Kocot was appointed in March of 2011 as a replacement for Representative Steven Walsh)

Sandra McCroom, Undersecretary of Criminal Justice, Executive Office of Public Safety and Security

Harold P. Naughton, Jr., State Representative for Twelfth Worcester District

(Representative Naughton was appointed in May of 2011 as a replacement for Representative Michael Costello. The representative was deployed to Afghanistan at the end of October and, therefore, was unable to attend subsequent meetings)

Richard J. Ross, State Senator for Bristol and Middlesex District

David T. Vieira, State Representatives for Third Barnstable District

Appendix D: List of Presenters

Martin J. Benison, Comptroller of the Commonwealth and **Kathy Sheppard**, Deputy Comptroller

Ronald Corbett, Jr., Commissioner of Probation

Paul Dietl, Chief Human Resources Officer and **George Bibilos**, HRD/Deputy Director, Organizational Development Group

Kay Khan, State Representative from Eleventh Middlesex District

Elizabeth Minnis and **Selena Goldberg**, Division of Capital Asset Management and Maintenance

John Parsons, Deputy Auditor for Audit Operations, and **Howard Olsher**, Director of State Audits, Office of the State Auditor

Appendix E: Votes Taken by Commission

CONSOLIDATION

- (1) Does the Commission recommend consolidating some of the counties and eliminating some of the Sheriff's Offices?

Vote: 2 Yes (Senator Michael Moore and Senator Kenneth Donnelly); 4 No (Senator Richard Ross, Representative Peter Kocot, Representative David Vieira, Sheriff Andrea Cabral); 1 Abstain (Undersecretary Sandra McCroom)

- (2) Does the Commission recommend eliminating the Duke and Nantucket Sheriffs and consolidating these areas with the Barnstable County Sheriff, which is currently the model for the District Attorney that represents the Cape and the Islands?

Vote to amend recommendation (2) by also consolidating Franklin and Hampshire county if Duke and Nantucket are considered for consolidation: 2 Yes (Senator Michael Moore, Representative David Vieira); 4 No (Senator Richard Ross, Representative Peter Kocot, Sheriff Andrea Cabral, Senator Kenneth Donnelly); 1 Abstain (Undersecretary Sandra McCroom)

Vote on recommendation (2): 0 Yes; 6 No (Senator Michael Moore, Representative David Vieira, Senator Richard Ross, Representative Peter Kocot, Sheriff Andrea Cabral, Senator Kenneth Donnelly); 1 Abstain (Undersecretary Sandra McCroom)

REALIGNMENT

- (1) Does the Commission recommend establishing a county jail and house of corrections system under the Secretary of the Executive Office of Public Safety and Security?

Vote: 3 Yes (Senator Kenneth Donnelly, Senator Michael Moore, Senator Richard Ross); 3 No (Sheriff Andrea Cabral, Representative Peter Kocot, Representative David Vieira); 1 Abstain (Undersecretary Sandra McCroom)

CIVIL PROCESS

- (1) Does the Commission recommend: (a) eliminating all independent outside entities in order to bring all civil process functions as a division of the Sheriff's offices; (b) with the approval and oversight of the Office of Administration and Finance and House and Senate Ways and Means, establishing a retained revenue account or some other appropriate mechanism that is in compliance with applicable laws, rules and regulations for all civil process fees to be deposited; (c) requiring that all civil process fees are reported and recorded in MMARS and have policies and procedures, once developed and approved by the Auditor and the Office of Administration and Finance, referenced in the Internal Control Plan (ICP) for each Sheriff's Office; (d) prohibiting salaries for individuals conducting civil process functions to be expended from individual Sheriff's line items, but have all staff be paid out of the civil service account; (e) establishing a process with the approval of the Auditor's office to provide for open bid contracting of civil process servers and services; (f) requiring that if revenues collected through the civil process account will not be sufficient to cover costs, the House and Senate Ways and Means and A & F will be notified 30 days prior to a projected deficiency; (g) directing the Office of Administration and Finance and House and Senate Ways and Means to establish a surplus revenue percentage for the Sheriffs to retain each fiscal year from the revenues received from the operation of the Civil Process division; and (h) the adoption of expenditure restrictions for the revenues received from the operation of the Civil Process division.

Vote to update the pending civil process legislation so that it reflects the proposed recommendations, with the exception of proposal (d), with a final vote to be taken on the final redrafted legislation when it is complete: 6 Yes (Senator Michael Moore, Senator Kenneth Donnelly, Senator Richard Ross, Representative Peter Kocot, Representative David Vieira, Sheriff Andrea Cabral); 0 No; 1 Abstain (Undersecretary Sandra McCroom)

Vote on redrafted civil process legislation: 6 Yes (Senator Michael Moore, Senator Kenneth Donnelly, Representative Peter Kocot, Representative David Vieira, Budget Director Michael Esmond, Undersecretary Sandra McCroom)

HEALTH CARE AND MENTAL HEALTH CONTRACTS

- (1) Does the Commission recommend, as the Governor did, repealing the mandatory use of SOPS to allow Sheriffs to use an open and transparent bidding process to select the pharmacy service that meets their needs?

Vote: 4 Yes (Senator Michael Moore, Senator Kenneth Donnelly, Representative David Vieira, Sheriff Andrea Cabral); 0 No; 1 Abstain (Undersecretary Sandra McCroom)

- (1) Does the Commission recommend requiring hospitals or other medical service providers to bill MassHealth for any Medicaid eligible inmate's health care expenses for when he/she is an inpatient in the medical institution?

- (2) Does the Commission recommend seeking guidance from the Commonwealth's Executive Office of Health and Human Services from the Federal Department of Health and Human Services - Centers for Medicare & Medicaid Services (CMS) on (a) when Medicaid reimbursement for a newly incarcerated inmate is technically suspended so that Sheriffs can bill up to this cut off date; (b) if inmates on house arrest may receive Medicaid reimbursement and (c) on how best the Sheriffs can work with MassHealth on determining eligibility for inmates and on ensuring that inmate's cases are placed on suspension status during their incarceration and report such guidance to sheriffs?

- (3) Does the Commission recommend seeking guidance through the Commonwealth's Executive Office of Health and Human Services from the Federal Department of Health and Human Services - Centers for Medicare & Medicaid Services (CMS) on how best the Sheriffs can work with MassHealth on determining eligibility for reimbursement of services for inmates diagnosed Mental Health disabilities and report such guidance to sheriffs?

Vote on questions (1), (2) and (3): 5 Yes (Senator Michael Moore, Senator Kenneth Donnelly, Representative David Vieira, Sheriff Andrea Cabral, Undersecretary Sandra McCroom); 0 No; 0 Abstain

HIRING, PROMOTIONS AND PAY DISPARITIES

- (1) Does the Commission recommend the motion offered by Representative Kocot and Michael Esmond, Senator Donnelly to adopt the following amended recommendations?:
 - (a) The Special Commission directs the Massachusetts HRD office to conduct, in consultation with the Sheriffs and Massachusetts Sheriffs Association (MSA), a

comprehensive assessment for all Sheriff's offices human resources policies and practices, including but not limited to, standardizing job title and classification, job posting, minimum testing requirements and other employment practices that will lead to statewide standards for classification, recruitment, promotion, compensation and professional standards for all fourteen sheriffs' offices.

- (b) That HRD issue a report of its assessment by April 30, 2013. A copy of the HRD assessment report shall be sent to the Chairs of the Joint Committee on State Administration and Regulatory Oversight, the Chairs of House and Senate Ways and Means, the House and Senate Clerks, the Chairs of the Joint Committee on Public Safety, and the Secretaries of Administration and Finance, and Public Safety and Security. The report shall be directed to the Joint Committee on State Administration and Regulatory Oversight for legislative action.
- (c) The Special Commission recommends to the House and Senate Committees on Ways and Means that line items 1750-0100 and 8910-7100 be increased to reflect this policy directive,
- (d) Moved that the final report of said Commission recommend that the Commonwealth should pursue federal reimbursement for medical services for those housed by or served through the programs of the fourteen Sheriffs and shall further recommend these proposals to other special commissions and committees that are reviewing the criminal justice system, provided that any effort will take into account both costs and savings to the Commonwealth and develop a methodology to appropriately allocate them.

Vote on paragraphs (a) through (c): 4 Yes (Undersecretary McCroom, Representative David Vieira, Senator Kenneth Donnelly, Senator Michael Moore), 1 no (Sheriff Andrea Cabral)

Vote on paragraph (d): 5 Yes (Undersecretary McCroom, Representative David Vieira, Senator Kenneth Donnelly, Senator Michael Moore, Sheriff Andrea Cabral)

ADVISORY BOARD

- (1) Does the Commission recommend the establishment of a corrections advisory board to provide independent advice to the Commonwealth's corrections providers, including the Sheriffs, for the purpose of improving coordination efforts between and among the Sheriffs, the Department of Corrections, the courts and community corrections programs and indentifying and establishing best practices.

Vote: 5 Yes (Senator Michael Moore, Senator Kenneth Donnelly, Representative Kocot, Representative David Vieira, Sheriff Andrea Cabral); 0 No; 2 Abstained (Undersecretary McCroom, Budget Director Michael Esmond)

TRAINING

- (1) Does the Commission endorse the findings and recommendations of the SCMPT in this area and recommend that Massachusetts Deputy Sheriffs who perform police work be included and mandated to participate in any POST system created as a result of the SCMPT's report.

Vote: Yes (Undersecretary McCroom, Budget Director Esmond, Senator Moore, Senator Donnelly, Representative Kocot, Representative Vieira, and Sheriff Cabral).

RISK ASSESSMENT AND JAIL MANAGEMENT SYSTEMS

- (1) Does the Commission recommend that the applicable agencies of the Commonwealth continue implementation of Massachusetts Integrated Criminal Justice Information System (ICJIS) and include in ICJIS the following: finger print-based records available to correctional, parole, and community corrections; telemedicine applications; electronic medical records of prisoners; the infrastructure with which to conduct video arraignments and video visitations; inmate kiosks where inmates can manage their inmate accounts, maintain their inmate plan, choose visitation times; other services that would reduce staff's time; and including a transportation database.

Vote: 7 Yes (Senator Michael Moore, Senator Kenneth Donnelly, Representative Peter Kocot, Representative David Vieira, Sheriff Andrea Cabral, Undersecretary Sandra McCroom, Senator Richard Ross); 0 No

RE-ENTRY AND THE OFFICE OF COMMUNITY CORRECTIONS

- (1) Does the Commission recommend strengthening the OCC legislative language by mandating that OCC work with the Sheriffs, the DOC and the parole board on program coordination in order to develop a broad based re-entry system for the full continuum of the Commonwealth's criminal justice system?

Vote: 7 Yes (Senator Michael Moore, Senator Kenneth Donnelly, Senator Richard Ross, Representative Peter Kocot, Representative David Vieira, Sheriff Andrea Cabral, Undersecretary Sandra McCroom); 0 No; 0 Abstain

FEMALE DETAINEES AND PRISONERS

- (1) Does the Special Commission recommend that the various Sheriff's Offices, together and individually, and the Department of Correction cooperate in the development of effective management of female prisoners by working together to establish Regional Women's Correctional Centers and to coordinate and enhance opportunities for female prisoners to participate in local pre-release and post-release/stabilization (re-entry) and appropriate mental health and substance abuse programs? Further, in light of specific treatment and family needs of many non-violent female offenders, the Special Commission recommends that the criminal courts make themselves aware of the availability of the range of alternatives to incarceration and to utilize those alternatives where appropriate.

Vote: 7 Yes (Senator Michael Moore, Senator Kenneth Donnelly, Senator Richard Ross, Representative Peter Kocot, Representative David Vieira, Sheriff Andrea Cabral, Undersecretary Sandra McCroom).

REGIONAL PUBLIC SAFETY SERVICES

- (1) Does the Commission recommend allowing the Sheriffs to maintain current regional services?

Vote: 5 Yes (Senator Michael Moore, Senator Kenneth Donnelly, Representative David Vieira, Sheriff Andrea Cabral, Senator Richard Ross); 1 Abstain (Undersecretary Sandra McCroom)

FISCAL MANAGEMENT WITH AUDITOR'S RECOMMENDATIONS:

- (1) Does the Commission recommend requiring that all telephone commissions go to the General Fund as the DOC does?

Vote: 6 No (Senator Michael Moore, Senator Kenneth Donnelly, Senator Richard Ross, Representative Peter Kocot, Representative David Vieira, Sheriff Andrea Cabral); 0 Yes; 1 Abstain (Undersecretary Sandra McCroom)

- (2) Does the Commission recommend that all revenues be deposited in some fund approved by the State Treasurer or in a retained revenue account, with a preference for use of local banks, so that the funds will be accounted for, reported and recorded on MMARS?

Vote with amendment to have a preference for approved accounts with local banks: 5 Yes (Senator Michael Moore, Senator Kenneth Donnelly, Senator Richard Ross, Representative Peter Kocot, Representative David Vieira); 1 No (Sheriff Andrea Cabral); 1 Abstain (Undersecretary Sandra McCroom)

- (3) Does the Commission recommend amending the current law to allow for meals recognizing the public safety need to have employees stay on site?

Vote: 6 Yes (Senator Michael Moore, Senator Kenneth Donnelly, Senator Richard Ross, Representative Peter Kocot, Representative David Vieira, Sheriff Andrea Cabral); 0 No; 1 Abstain (Undersecretary Sandra McCroom)

FINAL VOTE ON THE REPORT

Vote: 7 Yes (Senator Michael Moore, Senator Kenneth Donnelly, Representative Peter Kocot, Representative David Vieira, Sheriff Andrea Cabral, Undersecretary Sandra McCroom and Budget Director Michael Esmond)

Appendix F: Section 189 of Chapter 68 of the Acts of 2011

There shall be a special commission to study the commonwealth's criminal justice system, to consist of: the secretary of public safety and security, who shall serve as the chair; the attorney general or a designee; the chief justice of the supreme judicial court or a designee; the president of the Massachusetts Sheriffs Association or a designee; the president of the Massachusetts District Attorneys Association or a designee; the chief counsel of the committee for public counsel services or a designee; a representative from the Massachusetts Bar Association; a representative from the Boston Bar Association; a representative from the Massachusetts Association of Criminal Defense Lawyers; 3 members of the house of representatives, 1 of whom shall be appointed by the minority leader; 3 members of the senate, 1 of whom shall be appointed by the minority leader; and 3 persons to be appointed by the governor, 1 of whom shall have experience in mental health and substance abuse and addiction treatment, 1 of whom shall have experience in providing services or supervision for offenders, and 1 of whom shall have experience in juvenile justice.

In reviewing the commonwealth's criminal justice system, the commission shall examine a variety of areas including, but not limited to: the prisoner classification systems, mandatory minimum sentences, sentencing guidelines, the provision of cost-effective corrections' healthcare, the probation system, the parole system, the operations of the sheriffs' offices, overcrowding in prisons and houses of correction, recidivism rates, the treatment of juveniles within the criminal justice system, the role that mental health and substance abuse issues play, and best practices for reintegrating prisoners into the community.

The commission shall investigate the feasibility of developing an application for technical assistance from nationally recognized criminal justice reform programs with a data driven approach in order to develop bipartisan legislation that would reduce corrections spending and utilize the savings to reduce crime, strengthen public safety and fund other budget priorities; provided, however, that the commission shall give priority in applying for technical assistance to that which comes at no cost to the commonwealth.

The commission shall have access to information related to both adults and juveniles including, but not limited to, crime, arrest, conviction, jail, prison and probation and parole supervision data provided by state and local agencies. As necessary, the commission shall: (i) meet with other affected stakeholders; (ii) partner with nongovernmental organizations that have expertise that can benefit the commission; and (iii) create advisory subgroups that include affected stakeholders as necessary.

The commission shall convene its first official meeting on or before September 1, 2011. The commission shall submit to the house and senate committees on ways and means, the joint committee on the judiciary, the joint committee on public safety and homeland security and the

secretary of administration and finance quarterly reports that include the dates of its meetings, meeting participants not named to the commission and whether it has identified, applied for or been selected for any federal or other funds.

The commission shall issue a report on or before March 31, 2012, which shall include recommendations for legislation to reduce recidivism, improve overall public safety outcomes, provide alternatives for drug addicted and mentally ill defendants, increase communication and cooperation among public safety entities, reduce overcrowding of facilities, increase reliance upon evidence-based criminal justice methods, improve the collection and reporting of data on adults and juveniles, contain correction costs and otherwise increase efficiencies within the state's public safety entities.

Appendix G: List of Resources and Submitted Materials

Budget and Financing

Administration and Finance, Payroll data and state accounting codes for Sheriffs Offices.

Massachusetts Sheriffs' Association, Massachusetts Sheriff's Budget Appropriations FY 09 – FY 12.

Massachusetts Sheriffs' Association, Letter for Senate Ways and Means (April 7, 2011).

Civil Process

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Appendix H: Language Approved by the Commission

Advisory Board

The Special Commission recommends that there shall be a corrections advisory board, hereinafter called the board, to provide independent advice to the commonwealth's corrections providers, including the sheriffs, for the purpose of (1) improving coordination efforts between and among the sheriffs, the department of corrections, the courts and community corrections programs, and (2) indentifying and establishing best practices in all aspects of corrections operations, including but not limited to, accounting, human resources, care and custody of inmates, special inmate populations, civil process, community corrections, health and mental health care management, inmate rehabilitation and re-entry, capital, master and strategic planning, inmate tracking and transportation, and procurement.

The board shall consist of the following persons: the secretary of public safety and security, the chair of the parole board, the commissioner of correction, the commissioner of probation, the secretary of administration and finance, the president of the Massachusetts Sheriffs' Association, or their designees, each of whom shall serve ex-officio, 9 persons to be appointed by the governor for a term of three years, 1 of whom shall have experience in the areas of workforce development and ex-offender rehabilitation, 1 of whom shall have experience in the area of reintegration and rehabilitation of female ex-offenders, 1 of whom shall have experience in treating people with mental illness and substance abuse, 1 of whom shall have experience in government accounting practices, 1 of whom shall have experience in human resources management, 1 of whom shall have experience in independent auditing, 1 of whom shall be a representative of organized labor, 2 persons to be appointed by the president of the Massachusetts Sheriffs' Association, and 2 persons to be appointed by the chief justice of the supreme judicial court. Upon the expiration of the term of any appointed member, the member's successor shall be appointed in a like manner for a term of 3 years. Irregular vacancies shall be filled by appointment to an unexpired term. Ten members shall constitute a quorum and all appointees and ex-officio members shall be voting members. The board shall annually elect a chair from among its members and shall be supported by the executive office of administration and finance. The provisions of chapter 268A shall apply to all board members.

The chairman shall hold meetings at least quarterly, one of which shall be an annual meeting, and shall notify all board members and sheriffs of the time and place of all meetings. Special meetings may be called at any time by a majority of the board members and shall be called by the chairman upon written application of eight or more members. Members of the board shall receive no compensation, but shall receive their expenses actually and necessarily incurred in the discharge of their duties.

The sheriffs and any other interested parties shall have the opportunity to address the board during its meetings and to provide written information to the board for its consideration.

The board shall make a report, on or before 60 days of the end of each two-year legislative session, and file a copy thereof with the governor, the clerks of the house of representatives and of the senate, senate and house committees on ways and means, the joint committees on public safety, judiciary, and state administration and regulatory oversight.

Female Prisoners

The Special Commission recommends that the various Sheriff's Offices, together and individually, and the Department of Correction cooperate in the development of effective management of female prisoners by working together to establish Regional Women's Correctional Centers and to coordinate and enhance opportunities for female prisoners to participate in local pre-release and post-release/stabilization (re-entry) and appropriate mental health and substance abuse programs. Further, in light of specific treatment and family needs of many non-violent female offenders, the Special Commission recommends that the criminal courts make themselves aware of the availability of the range of alternatives to incarceration and to utilize those alternatives where appropriate.

Inmate Tracking

The Special Commission requests that the Executive Office of Public Safety (EOPSS) and determine the feasibility and cost of adding an inmate tracking module to the Inmate Management System (IMS), which would allow staff at prisons and houses of correction to electronically monitor movement of prisoners within institutions in real time. EOPSS is specifically requested to consider and compare the advantages and disadvantages of using radio-frequency identification (RFID), bar codes and scanners, or biometric identification of prisoners with the tracking module.

Mental Health Services

The Special Commission directs the Auditor, in coordination with Executive Office of Health and Human Services and the Massachusetts Sheriffs Association (MSA), to perform a performance audit on the mental health screening processes currently in place for all jails and houses of correction, the types of services offered and used prior to persons being transitioned to

these facilities, the range of services in these facilities and comparisons with national and clinical best practices. The Auditor shall provide the findings of said performance audit, including estimate costs for attaining national and best practice levels of services, to the MSA and the House and Senate Committees on Ways and Means no later than October 1, 2013.

Multi-Jurisdictional Facilities

The Special Commission recommends that the Massachusetts Sheriffs' Association (MSA) establish a multi-jurisdictional subcommittee to address management and governance practices of new and existing multi-jurisdictional facilities.

The Special Commissions recommends that the administration establish a working group that consists of EOPSS, DCAMM, ANF, the DOC and representation from the MSA subcommittee to facilitate development of management and governance practices for new and existing multi-jurisdictional facilities.

Office Management Policies and Practices

- (1) The Special Commission directs the Massachusetts HRD office to conduct, in consultation with the Sheriffs and Massachusetts Sheriffs Association (MSA), a comprehensive assessment for all sheriff's offices management policies and practices, including but not limited to, standardizing job title and classification, job posting, minimum testing requirements and other employment practices that will lead to statewide standards for classification, recruitment, promotion, compensation and professional standards for all fourteen sheriffs' offices.
- (2) That HRD issue a report of its assessment by April 30, 2013 and that implementation of the standards shall begin no later than September 1, 2013. A copy of the HRD assessment report shall be sent to the Chairs Joint Committee on State Administration and Regulatory Oversight, the Chairs of House and Senate Ways and Means, the House and Senate Clerks, the Chairs of the Joint Committee on Public Safety, and the Secretaries of Administration and Finance, and Public Safety and Security.
- (3) The Special Commission recommends to the House and Senate Committees on Ways and Means that line item 1750-0100 be increased to reflect this policy directive,
- (4) Moved that the final report of said commission recommend that the Commonwealth should pursue federal reimbursement for medical services for those housed by or served through the programs of the fourteen sheriffs and shall further recommend these proposals to other special commissions and committees that are reviewing the criminal

justice system, provided that any effort will take into account both costs and savings to the Commonwealth and develop a methodology to appropriately allocate them.

Risk Assessments and Jail Management Systems

The Special Commission recommends that the applicable agencies of the Commonwealth continue implementation of ICJIS and include in ICJIS the following: finger print-based records available to correctional, parole, and community corrections; telemedicine applications; electronic medical records of prisoners; the infrastructure with which to conduct video arraignments and video visitations; inmate kiosks where inmates can manage their inmate accounts, maintain their inmate plan, choose visitation times; other services that would reduce staff's time; and including a transportation database.

Appendix I: Redrafted Civil Process Legislation

An Act to reform sheriff civil process operations.

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

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

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

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

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

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

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

"the offices of the sheriffs,"

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

Section 3A. Sheriff's Civil Process Office.

(A) Each sheriff shall establish a civil process office within the sheriff's department and shall assign deputies appointed pursuant to section 3 who, along with the sheriff, shall serve and execute within their counties, including within the political boundaries of the previously abolished county governments, and where the Commonwealth is a party or interested, all precepts lawfully issued to them, and all other process required by law to be served by an officer pursuant to section 11 of chapter 37. The civil process office established within the sheriff's department shall be the exclusive entity performing sheriff's civil process duties under section 11 of chapter 37. A deputy assigned to serve process may do so in cases in which a county, city, town, parish, religious society, fire or other district is a party or interested, although he is an inhabitant or member thereof. The sheriff may also appoint employees to work in the sheriff's civil process office. All

deputies and employees of the process office shall serve at the will and the pleasure of the sheriff. Any deputy who ceases to be assigned to or to perform civil process duties, either as an employee or as a contracted deputized process server, shall be decommissioned as a deputy as provided by law and shall immediately return all equipment and property issued to him by the sheriffs' department.

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

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

1. No sheriff, deputy or employee shall serve process for anyone except the Sheriff.
2. The sheriff or an assigned deputy, or contracted deputized process server may serve process outside regular business hours.
3. Sheriffs and non-commission full-time deputies and employees may receive only a salary or hourly wage, and shall at no time receive a commission, or any portion of any fee, for service of process no matter when the service is performed.
4. Except for contracted deputized process servers, sheriffs, deputy sheriffs and employees who are part-time shall not be paid a commission or any portion of any fee, for service of process performed during hours for which the sheriff, deputy or employee is being

compensated by federal, state, county-or municipal funds;

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

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

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

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

No sheriff, deputy or employee, nor any other individual or entity shall have or acquire any legal right whatsoever to the tangible or intangible property of the civil process office, nor any

revenue derived from fees collected from the service of process of any proceeds from the sale of the property within the process office, other than compensation as determined under this chapter.

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

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

Section 11. Recording of Process.

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

- (a) the title of the action, including court name and docket number;
- (b) the date the process was issued or required to be served;
- (c) the type of process;
- (d) the name and address of the person requesting that process be served;
- (e) the name and address of the person or location upon which service is to be made;

(f) the fee charged;

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

(h) the date of fee collected;

(i) the date service was made;

(j) the manner of service;

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

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

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

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

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

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

- (b) liabilities, including accounts payable, client escrow deposits, capital lease obligations, and all other debts;
- (c) income derived from the service of process and otherwise;
- (d) expenses paid, including payroll, commissions, and all other expenses; and
- (e) any surplus from the sheriff's civil process account that has been transferred to an account as authorized by law.

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

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

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

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

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

Section 22. Accounting of fees; disposition of funds.

Each sheriff shall keep an account of all fees and money received from any source by virtue of

his office on the state's accounting system as prescribed by the state comptroller.

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

Section 23. Fees from Process Office.

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

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

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

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

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

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

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

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

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

Whenever a deputy sheriff or other employee of a sheriff's civil process office who, due

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

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

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

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

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

Section 8A. Annual accounts of deputy sheriffs and constables

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

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

On a schedule determined by the sheriff, but at least quarterly, each deputy sheriff who serves process shall file a written report to the sheriff of all the process they have served. The

written report shall be in a form approved by the sheriff and shall contain all the information contained in section 11 of chapter 37. The written report shall be made under the pains and penalties of perjury.

SECTION12. The provisions of this act shall take effect January 1, 2013.