

**HOUSE . . . . . No.**

---

**The Commonwealth of Massachusetts**

\_\_\_\_\_

PRESENTED BY:

**Thomas A. Golden, Jr.**

\_\_\_\_\_

*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

**An Act Relative to Civil Process Reform .**

\_\_\_\_\_

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Thomas A. Golden, Jr.	16th Middlesex

# The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

## AN ACT RELATIVE TO CIVIL PROCESS REFORM .

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1           **SECTION 1.** Section one of chapter thirty-two of the General Laws, as appearing in the 1998  
2 Official Edition, is amended by adding at the end of the definition “Employee”, the following new text:  
3 — “as applied to persons whose regular compensation is paid from an account established by the  
4 sheriff’s process office pursuant to Chapter 37, section 23 for the sheriff’s process office, shall mean any  
5 person who is appointed by the sheriff as a deputy sheriff or employee of the sheriff’s process office and  
6 who is engaged in duties which require that his time be devoted to the service of the sheriff’s process  
7 office in each year during the ordinary working hours of regular and permanent employees, and who is  
8 regularly and permanently employed in such service and receives a salary, hourly wage or regular  
9 compensation for assigned civil process duties as determined by each Sheriff.”

10           **SECTION 2.** Section three of Chapter thirty-two of the General Laws, as appearing in the 1998 Official  
11 Edition, is amended by inserting in the fifth paragraph of subparagraph (g) of subsection (2), after the  
12 words “county correction facilities,” the following: — “and any deputy sheriff engaged in enforcement  
13 activities that involve the acts of arrest, eviction or seizure of property and who is defined by Section 4  
14 of this Act as a full-time employee of the Sheriff.”

15           **SECTION 3.** Section 3 of Chapter 32 of the 1998 Official Edition is amended by inserting in subparagraph  
16 (b) of subsection (5), the following: -- “any deputy sheriff or employee of the sheriff’s process office,  
17 including any deputy sheriff or employee of the process office that has been transferred to the county or

18 the Commonwealth, who is now a member or becomes a member of a system applicable to any  
19 governmental unit shall be given credit in such system for any service rendered by depositing in the  
20 annuity savings fund of such system such sums and under such conditions as are set forth under said  
21 section.”

22 **SECTION 4.** Section two of Chapter thirty-two B of the General Laws, as appearing in the 1998 Official  
23 Edition, is amended by inserting in subsection (d), at the end of the definition of “Employee”, the  
24 following: —

25 “Deputy sheriffs and other persons appointed by the sheriff, who devote twenty (20) or more hours per  
26 week to assigned duties, and who serve in the sheriff’s process office, shall be eligible for benefits under  
27 this chapter in the same manner, and to the same extent, any other county or state employee”.

28 Section two of Chapter 32A is amended by inserting in line 7 of subsection (b), after the words  
29 “Worcester County”, the following: — “including, a deputy sheriff or employee of the sheriff’s process  
30 office who is otherwise eligible under this subsection.”

31 And further, in Section 2 of Chapter thirty-two B is amended by inserting in subsection (d), at the end of  
32 the definition of “Employee”, the following: --

33 “Deputy sheriffs and other persons appointed by the sheriff and who serve in the sheriff’s process office  
34 shall be eligible for benefits under this Chapter in the same manner, and to the same extent, as any  
35 other state employee.”

36 **SECTION 5.** Sections 48 to 56 of Chapter 35 of the 1998 Official Edition shall not apply to deputies and  
37 employees of the sheriff’s process office in any county.

38 **SECTION 6.** Paragraph 3 of section 17 of Chapter 37 of the 1998 Official Edition is hereby repealed.

39 **SECTION 7.** Chapter thirty-seven of the General Laws, as appearing in the 1998 Official Edition, is hereby  
40 amended by inserting after section 3 the following new section: —

41 Section 3A. Sheriff’s Process Office.

42

43 (A) The sheriff shall establish a process office, and shall assign deputies appointed pursuant to section  
44 three who, along with the sheriff, shall serve and execute within their counties, including within the

45 political boundaries of the previously abolished county governments, and where the Commonwealth is a  
46 party or interested, all precepts lawfully issued to them, and all other process required by law to be  
47 served by an officer. They may serve process in cases wherein a county, city, town, parish, religious  
48 society, fire or other district is a party or interested, although they are inhabitants or members thereof.  
49 The sheriff may also appoint employees to work in the sheriff's process office. All deputies and  
50 employees of the process office shall serve at the will and the pleasure of the sheriff.

51

52 (B) Deputies and other employees of the process office, who devote twenty (20) or more hours per  
53 week to assigned duties, shall be county and/or state employees for the purposes of Chapters thirty-  
54 two, thirty-two A, thirty-two B, one hundred fifty-two, two hundred fifty-eight, two hundred sixty-eight  
55 A, and two hundred sixty-eight B, and shall be compensated in accordance with this subsection and  
56 subsection (C) of this section.

57

58 (C) The sheriff shall determine the hours and duties of each deputy and employee of the process office,  
59 and shall determine the salary, hourly wage, or commission received by each deputy and employee of  
60 the process office, subject to the following limitations: —

61

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

63

64 No sheriff, deputy or employee shall be paid a commission or any portion of any fee, for service of  
65 process during hours for which the sheriff, deputy or employee is being compensated by federal, state,  
66 county or municipal funds;

67

68 No sheriff, deputy or employee who receives a salary or hourly wage from the process office account  
69 shall also receive a commission or any portion of any fee for service of process;

70

71 Full-time deputies and employees may receive only a salary or hourly wage, and shall at no time receive  
72 a commission, or any portion of any fee, for service of process;

73

74 The annual salary, cumulative hourly wage, commissions, or the cumulative portion of any fees for  
75 service of process, of any individual deputy or employee shall not exceed the annual salary of the  
76 sheriff; and

77

78 (D) Deputy sheriffs shall be sworn and shall complete a peace officers certification program, pursuant to  
79 a policy adopted by the Massachusetts Sheriffs' Association through its education and training  
80 committee, within one year after receiving appointment, and shall be re-certified on a yearly basis.  
81 Sworn deputy Sheriffs assigned to the full-time service of process on behalf of a Sheriff shall also be  
82 required to complete a training and orientation program on all requirements of lawful service of process  
83 as that program is constituted and conducted jointly by the Massachusetts Sheriffs' Association and the  
84 Massachusetts Deputy Sheriffs' Association.

85

86 (E) All full time deputy sheriffs and employees of the sheriff's process office, including those deputy  
87 sheriffs and employees of the sheriff's process office who have been transferred to the county or the  
88 Commonwealth, and who have gone beyond a one year probationary period of full time employment,  
89 will be granted under this subsection, without impairment, full benefits for vacation and sick time  
90 earned from their original commencement of employment in the sheriff's process office, but not to  
91 exceed those of regular state employees.

92

93 **SECTION 8.** Chapter thirty-seven of the General Laws, as appearing in the 1998 Official Edition, is hereby  
94 amended by inserting after section 3 the following new section: —

95

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

97 No sheriff, deputy or employee, nor any other individual, shall have or acquire any legal right  
98 whatsoever to the tangible or intangible property of the process office, nor any revenue derived from  
99 fees collected from the service of process of any proceeds from the sale of the property within the  
100 process office, other than compensation as determined under this chapter. All fees derived from service  
101 of process shall, except as otherwise provided in this chapter, be used solely for the operations of the  
102 process office, and all tangible and intangible property shall belong to the county or state and shall be  
103 under the sole possession and control of the sheriff.

104

105

106 **SECTION 9.** Section eleven of Chapter thirty-seven of the General Laws, as appearing in the 1998 Official  
107 Edition, is hereby amended by striking out said section in its entirety and inserting in place thereof the  
108 following new text: —

109 Section 11. Recording of Process.

110 (A) All process received for service by the sheriff's process office shall, whenever such  
111 information becomes available be recorded onto a system established by the sheriff,  
112 which shall include but not be limited to the following information, to the extent  
113 available, for each piece of process to be served: --

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

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

116 (c) the type of process;

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

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

119 (f) the fee charged;

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

121 (h) the date of fee collected;

- 122 (i) the date service was made;
- 123 (j) the manner of service; and
- 124 (k) the name of the person performing service.

125

126 (B) A summary of the information contained in subsection (A) of this section shall be compiled by  
127 the sheriff on a yearly basis, and made available to the State Auditor for a yearly audit of the  
128 sheriff's process office. Said audit, by the State Auditor, shall be forwarded as part of the annual  
129 report to be filed in accordance with Section 8A of Chapter 262.

130

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

136

137 (D) Annual reports filed pursuant to subsection (B) of this section shall include but not be limited to  
138 complete, itemized schedules of the following information pertaining to the service of process: --

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

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

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

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

145 (e) with regard to the sheriff's report, any surplus from the sheriff's process account which has been  
146 transferred to an account established for any legal purpose or other statutory functions of the  
147 sheriff.

148

149

150 **SECTION 10.** Section fourteen of Chapter thirty-seven of the General Laws, as appearing in the 1998  
151 Official Edition, is hereby amended by striking out said section and inserting in place thereof the  
152 following new text: —

153

154 Section 14. Service of Writs and Precepts after removal.

155 Upon the removal of a deputy sheriff by the sheriff, the removed deputy shall immediately at the time  
156 of removal return to the sheriff's process office all process and other documents received or in his  
157 possession, along with any fees collected. If there is any failure of a deputy or former deputy to comply  
158 with the terms of this section, the sheriff shall institute legal proceedings to enforce the terms of this  
159 section or any other section herein.

160

161

162

163

164

165 **SECTION 11.** Chapter 37 of the 1998 Official Edition of the Massachusetts General Laws, is hereby  
166 amended by inserting after Section 22 the following new Section: —

167

168 Section 23. Fees from Process Office.

169 (A) Notwithstanding the provisions of Section 22 of this chapter or the provisions of Chapter 35, all fees  
170 and other revenues collected by the process office shall be deposited in an account established by the  
171 process office. The account shall be kept separate from any county, state or federal funds, and shall be  
172 used only for the operation of the process office. Expenditures shall be authorized by the sheriff, in



173 accordance with the state guidelines, without the approval of any county commissioners, board or other  
174 appropriating authority.

175

176 (B) Payroll and all other bills of the process office except administrative costs paid by the sheriff's line  
177 item pursuant to subsection (D) of section 8 herein, shall be paid from the process account. However,  
178 after all civil process revenue has been expended for payroll and other bills of the civil process office, a  
179 sheriff may use funding from a Fiscal Year budgetary appropriation or a County Government Finance  
180 Review Board approved spending plan to pay payroll and all other civil process expenses.

181

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

187

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

193

194 (E) Annually, on or before the 75<sup>th</sup> day after the close of the fiscal year, any excess revenue shall be  
195 carried over for process operations or transferred from the process account to an account established to  
196 fund statutory functions of the sheriff and annually on or before the 75th day after the close of the fiscal  
197 year, the sheriff shall render a sworn account thereof, to the state or county treasurer and in  
198 accordance with section 8A of Chapter 262.

199

200 (F) Notwithstanding the provisions of subsection (A), the process office may maintain an account or  
201 accounts in a duly authorized financial institution, including funds for payment by the process office of  
202 fees and expenses in connection with service of process and for holding of funds paid over to the office  
203 as may be reasonably necessary in the ordinary course of business.

204

205 (G) Notwithstanding the provisions of subsection (A), no monies held in any process account shall be  
206 used for payment of liability expenses incurred by the sheriff's process office pursuant to Chapter 258,  
207 nor for payments to employees pursuant to Chapter 152. Any judgment, settlement or attorneys fees  
208 incurred as a result of litigation concerning the process office shall be paid in accordance with the  
209 provisions of Chapter 258, in the same manner as any other claim, judgment, settlement or attorneys  
210 fees paid by the sheriff's office.

211

212

213 **SECTION 12.** Chapter 126 of the 1998 Official Edition is hereby amended by inserting after Section 18A  
214 the following new section: —

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

216 A deputy sheriff or other employee of a sheriff's process office who, while in the performance of duty,  
217 receives bodily injuries resulting from acts of violence of defendants or others who are in any way  
218 connected with the proceeding for which service of process was attempted, shall be paid, in addition to  
219 the benefits of said Chapter 152, the difference between the weekly cash benefits to which he is entitled  
220 under said Chapter 152 and his regular salary, without such absence being charged against available sick  
221 leave credits, even if such absence may be for less than eight calendar days duration.

222

223

224 **SECTION 13.** The provisions of this act shall take effect July 1, 2009.

225

226

227

228

229