

HOUSE No. 1428

The Commonwealth of Massachusetts

PRESENTED BY:

Mary S. Keefe and Patricia D. Jehlen

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 adoption of the accompanying bill:

An Act regarding judicial investigations of law enforcement officer-involved deaths.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Byron Rushing</i>	<i>9th Suffolk</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>
<i>Evandro C. Carvalho</i>	<i>5th Suffolk</i>

HOUSE No. 1428

By Representative Keefe of Worcester and Senator Jehlen, a joint petition (accompanied by bill, House, No. 1428) of Mary S. Keefe and others relative to the process for the investigation of officer-involved deaths. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act regarding judicial investigations of law enforcement officer-involved deaths.

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 18³/₄ of chapter 6A of the General Laws, as appearing in the 2012
2 Official Edition, is hereby amended by inserting after paragraph (9) the following paragraph:-
3 “(10) to promulgate regulations and develop uniform protocols directing state police,
4 municipal police departments and all other law enforcement agencies in the commonwealth to
5 collect data concerning their officers’ and employees’ use of force, including any discharge of a
6 firearm as defined by section 121 of chapter 40 of the General laws and the firing of any portable
7 device or weapon from which an electric current, wave or beam may be directed as described in
8 section 131J of chapter 140 of the General Laws, and to report, as timely as possible, to the
9 office of the secretary information concerning each occurrence in which a law enforcement
10 officer discharges a firearm or fires a device or weapon and identifying characteristics, including
11 the race and gender, of the individuals who have been fired upon. Police and law enforcement
12 agencies shall file annual use-of-force reports covering the prior calendar year on or before

13 March 30 with the office of the secretary. Not later than 1 year after the effective date of this act,
14 the secretary shall transmit those reports and other related data to a university in the
15 commonwealth with experience in the analysis of such data, for annual preparation of an analysis
16 and report of its findings. The secretary shall transmit the university's annual report to the
17 department of the attorney general, the department of state police, the Massachusetts Chiefs of
18 Police Association, and the clerks of the house of representatives and the senate and shall post
19 the report on the website of the executive office of public safety and security.”

20 SECTION 2. Section 27 of chapter 12 of the General Laws, as so appearing, is hereby
21 amended by inserting after the words “control of such cases.” at line 8, the following:-

22 “, and the attorney general shall appear for the commonwealth and shall have control and
23 responsibility for all proceedings concerning officer-involved deaths under chapter 38 and other
24 laws.”

25 SECTION 3. Section 1 of chapter 38 of the General Laws, as so appearing, is hereby
26 amended by inserting after the word “six.”, at line 4, the following:-

27 ““Law enforcement officer” means a municipal or state police officer or other law
28 enforcement officer and shall include a special state police officer under section 127 of chapter
29 127 of the General Laws, a parole or state or county corrections officer, and an officer acting
30 with a joint terrorism task force, so-called, or with any joint federal-state or interstate law
31 enforcement program.”

32 and by inserting after the word “examiner.”, at line 5, the following:-

33 ““Officer-involved death” means a death where actions or omissions by a law
34 enforcement officer caused or contributed to the lethal injury, when the law enforcement officer
35 is on duty or while the law enforcement officer is off duty but performing activities that are
36 within the scope of his or her enforcement duties, within the commonwealth of Massachusetts or
37 at any other location.”

38 SECTION 4. Section 3 of chapter 38 of the General Laws, as so appearing, is hereby
39 amended by striking out the language from the word “suicide” in line 15 to the words “chapter
40 thirty A” in line 41 and inserting the following:-

41 “(3) officer-related death, regardless of the time interval between the incident and the
42 death, and regardless of whether the injury appears to have been the immediate cause of death, or
43 a contributory factor thereto;

44 (4) suicide, regardless of the time interval between the incident and death;

45 (5) death under suspicious or unusual circumstances;

46 (6) death following an unlawful abortion;

47 (7) death related to occupational illness or injury;

48 (8) death in custody, in any jail or correctional facility, or in any mental health or mental
49 retardation institution;

50 (9) death where suspicion of abuse of a child, family or household member, elder person
51 or disabled person exists;

52 (10) death due to poison or acute or chronic use of drugs or alcohol;

- 53 (11) skeletal remains;
- 54 (12) death associated with diagnostic or therapeutic procedures;
- 55 (13) sudden death when the decedent was in apparent good health;
- 56 (14) death within twenty-four hours of admission to a hospital or nursing home;
- 57 (15) death in any public or private conveyance;
- 58 (16) fetal death, as defined by section two hundred and two of chapter one hundred and
59 eleven, where the period of gestation has been twenty weeks or more, or where fetal weight is
60 three hundred and fifty grams or more;
- 61 (17) death of children under the age of 18 years from any cause;
- 62 (18) any person found dead;
- 63 (19) death in any emergency treatment facility, medical walk-in center, child care center,
64 or under foster care; or
- 65 (20) deaths occurring under such other circumstances as the chief medical examiner shall
66 prescribe in regulations promulgated pursuant to the provisions of chapter thirty A. ”

67 SECTION 5. Chapter 38 of the General Laws is hereby further amended by striking out
68 section 4, as appearing in the 2012 Official Edition, and inserting in place thereof the following
69 section:-

70 “Section 4. Upon notification of a death in the circumstances enumerated in section three,
71 the chief medical examiner or his designee shall carefully inquire into the cause and

72 circumstances of the death. If, as a result of such inquiry, the chief medical examiner or such
73 designee is of the opinion that the death was due to violence or other unnatural means or to
74 natural causes that require further investigation, or was an officer-involved death, he shall take
75 jurisdiction. The body of the deceased shall not be moved, and the scene where the body is
76 located shall not be disturbed, until either the medical examiner or the district attorney or his
77 representative, and, in the case of an officer-involved death, both the medical examiner and the
78 district attorney or representatives from both their offices, either arrives at the scene or gives
79 directions as to what shall be done at the scene. In such cases of unnatural or suspicious death or
80 an officer-involved death where the district attorney's office is to be notified, the medical
81 examiner shall not disturb the body or the scene without consultation and agreement with the
82 district attorney or his representative; and, likewise, the district attorney and law enforcement
83 officers shall not disturb the body or the scene without consultation and agreement with the
84 medical examiner or his representative. Such on-site and other directions, consultations and
85 agreements in these regards shall be set out in writing which may be in electronic form and shall
86 be made available for public review.

87 The medical examiner shall be responsible for making arrangements for transport of the
88 body. The district attorney or his law enforcement representative shall direct and control the
89 investigation of the death and shall coordinate the investigation with the office of the chief
90 medical examiner and the police department within whose jurisdiction the death occurred;
91 provided that the district attorney's office which has under investigation any officer-involved
92 death shall provide full assistance and cooperation with regard to judicial proceedings under
93 section 8 of this chapter. Either the medical examiner or the district attorney in the jurisdiction
94 where death occurred may order an autopsy. The medical examiner shall conduct an autopsy in

95 all cases of officer-involved deaths and shall authorize and cooperate with the conduct of an
96 independent autopsy, upon request by the deceased's executor, family member or holder of a
97 power of attorney. Cases requiring autopsy shall be subject to the jurisdiction of the office of the
98 medical examiner for such purpose. As part of his investigation, the chief medical examiner or
99 his designee may, in his discretion, notwithstanding any other provision of law, cause the body to
100 be tested by the department of public health for the presence of any virus, disease, infection, or
101 syndrome which might pose a public health risk.

102 If the medical examiner is unable, for stated written reasons, to respond and take charge
103 of the body of the deceased in an expeditious manner, the chief of police of the city or town
104 wherein the body lies, or his representative, may, after conferring with the appropriate district
105 attorney, move the body to another safe and secure location until a medical examiner is able to
106 respond. Written notice concerning the location of the body, reasons for moving the body and
107 procedures for obtaining information and access to the body shall be provided in writing, which
108 may be an electronic communication, to the deceased's family members, executor, or holder of a
109 power of attorney. Before moving the body, the police shall document, in writing, all facts
110 relevant to the appearance, condition and position of the body and every fact and circumstance
111 tending to show the cause and circumstances of death, and that full documentation shall be
112 transmitted to the office of the medical examiner.

113 In carrying out the duties prescribed by this section, the chief medical examiner or his
114 designee shall be entitled to review and receive copies of medical records, hospital records, or
115 information which he deems relevant to establishing the cause and manner of death. No person
116 or hospital shall be subject to liability of any nature for providing such records or information in
117 good faith at the request of the office. The chief medical examiner shall notify the local district

118 attorney of the death of a child immediately following receipt of a report that such a death
119 occurred.”

120 SECTION 6. Chapter 38 of the General Laws is hereby further amended by striking out
121 section 8, as appearing in the 2012 Official Edition, and inserting in place thereof the following
122 section:-

123 “Section 8. The chief medical examiner or his designee may request the attorney general
124 or the district attorney to direct that an inquest be held; such request shall be made in writing and
125 shall be a public record. The attorney general or district attorney may, regardless of whether or
126 not action has been taken by the office of the chief medical examiner, require an inquest to be
127 held in case of any death. In all cases of officer-involved deaths, there shall be an inquest. The
128 medical examiner, the attorney general and the district attorney shall provide timely written
129 notice, which may be an electronic communication, to the office of the chief justice of the trial
130 court department concerning all officer-involved deaths. Such notices to the trial court shall be
131 public records. The trial court division which has jurisdiction over the matter shall hold an
132 inquest.

133 The court shall give seasonable notice of the time and place of the inquest to the
134 department of telecommunications and energy, in any case of death by accident upon a public
135 conveyance regulated by said department, and to the registry of motor vehicles in any case of
136 death in which any motor vehicle is involved. Such notice shall also be given to any parent,
137 spouse, or other member of the deceased’s immediate family or to the deceased’s legal
138 representative or legal guardian.

139 The district attorney and investigating law enforcement officers shall provide full
140 assistance and cooperation to the court, including providing testimony, records and investigatory
141 materials, according to any court request or directive. Any person who has been identified by the
142 attorney general or the district attorney, as the case may be, as the target or a possible target of an
143 investigation in connection with the death of the deceased shall have the right to be present
144 during the holding of such inquest and be represented by counsel, and may request leave of the
145 court to present or examine witnesses, and shall at the completion of the court's report of said
146 inquest have the right to examine said report; provided, however, that no indictment shall be
147 dismissed nor shall any evidence be suppressed for violation of the provisions of this paragraph.
148 All other persons not required by law or requested or directed by the court to attend may be
149 excluded from the inquest; provided, however, that the parents, guardian or next of kin of the
150 person whose death is the subject of the inquest shall be deemed to be interested persons who
151 shall have the right to be present during the holding of such inquest and be represented by
152 counsel, and may request leave of the court to present or examine witnesses, and shall at the
153 completion of the court's report of said inquest have the right to examine said report. The court
154 may order, as it deems appropriate, that witnesses to be examined during the inquest be
155 sequestered.”

156 SECTION 7. Chapter 38 of the General Laws is hereby further amended by striking out
157 section 10, as appearing in the 2012 Official Edition, and inserting in place thereof the following
158 section:-

159 “Section 10. The court shall report in writing when, where, and by what means the
160 person met his death, the person's name, if known, and all material circumstances attending the
161 death, and the name, if known, of any person or persons whose actions, omissions or negligence

162 appear to have contributed thereto. The court shall file its report and a transcript of the inquest
163 proceedings in the superior court for the county in which the inquest is held. In all inquests not
164 pertaining to an officer-involved death, said transcript shall be impounded until the district
165 attorney files a certificate with the superior court indicating that he will not present the case to a
166 grand jury, or files notice with the superior court that the grand jury has returned a true bill or a
167 no bill after presentment by the district attorney. In any inquest pertaining to an officer-involved
168 death, the transcript shall be impounded until the attorney general files a certificate with the
169 superior court indicating that the attorney general will not present the case to a grand jury, or
170 files notice with the superior court that the grand jury has returned a true bill or a no bill after
171 presentment by the district attorney.”

172 SECTION 8. On the effective date of this act, Section 2 of Chapter 170 of the Acts of
173 2004 shall be repealed.