

**HOUSE . . . . . No. 1428**

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**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**

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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.

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**The Commonwealth of Massachusetts**

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**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 18<sup>3</sup>/<sub>4</sub> 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.