

HOUSE No. 3480

The Commonwealth of Massachusetts

PRESENTED BY:

Carmine L. Gentile

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 relative to establishing an independent review board for police shootings.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>
<i>Linda Dorcena Forry</i>	<i>First Suffolk</i>
<i>Benjamin Swan</i>	<i>11th Hampden</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>
<i>Jose F. Tosado</i>	<i>9th Hampden</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>
<i>Christine P. Barber</i>	<i>34th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>

HOUSE No. 3480

By Mr. Gentile of Sudbury, a petition (accompanied by bill, House, No. 3480) of Carmine L. Gentile and others for legislation to establish an independent police conduct review board. Public Safety and Homeland Security.

The Commonwealth of Massachusetts

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

An Act relative to establishing an independent review board for police shootings.

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. Chapter 6 of the General Laws is hereby amended by inserting after section
2 178Q the following 2 sections:-

3 Section 176R. (a) There is hereby established an Independent Police Conduct Review
4 Board, hereinafter referred to as the board. The board shall be placed in the executive office of
5 public safety and security but shall not be subject to the supervision or control of said office, or
6 of any board, bureau, department or other center of the commonwealth, except as specifically
7 provided in this section and section 176S. In accordance with section 176T, the board shall
8 investigate and adjudicate all instances in which a member of a law enforcement agency located
9 within the commonwealth discharges a firearm and another person is shot, regardless of whether
10 or not that person is killed or suffers serious bodily injury.

11 (b) The board shall consist of the following 7 members: the president of the
12 Massachusetts Coalition of Police Officers, or a designee; the president of the American Civil

13 Liberties Union of Massachusetts, or a designee; the president of the NAACP of Massachusetts,
14 or a designee; the President of the board of directors of Neighbor to Neighbor Massachusetts
15 Education Fund, Inc., or a designee; 1 person to be nominated by the governor, who shall be a
16 retired judge of the trial court, provided that the governor shall consult with the chief justice of
17 the trial court prior to making such nomination; 1 person to be nominated by the attorney
18 general, who shall have experience prosecuting criminal cases in the commonwealth; and 1
19 person to be nominated by the chief counsel of the committee for public counsel services, who
20 shall have experience representing defendants in criminal cases in the commonwealth. The
21 governor's appointee shall serve as chair.

22 The board shall hold all such meetings and hearings as are necessary to accomplish its
23 duties under this section. Three members shall constitute a quorum. Board member shall serve
24 for terms of 5 years and may be removed for misconduct under the same terms and procedures
25 by which members of the civil service commission may be removed. If any board member is
26 unwilling or unable to serve, that member shall be replaced within 30 days.

27 Board members shall be compensated for their service at a rate to be determined by the
28 attorney general, which shall not be less than the hourly rate paid to committee for public
29 counsel services attorneys in cases in which they defend an individual against first degree murder
30 charges; provided, that no board member who is also an employee of the commonwealth shall be
31 compensated for his or her service. Board members shall be compensated for the time spent
32 attending board meetings and the time spent in preparation for meetings.

33 (c) The board shall employ an executive director, at least 2 staff attorneys, and such
34 investigators and support staff as are reasonably necessary to accomplish its duties. All

35 employees of the board shall be selected by the chair of the board and shall serve at the pleasure
36 of the chair. Such positions shall be exempt from civil service laws.

37 The board may also investigate and adjudicate allegations of misconduct by a member of
38 a law enforcement agency other than instances in which a person was shot by a member of a law
39 enforcement agency. The board shall appoint hearing officers to review such allegations of
40 misconduct. Any hearing officer so appointed shall be a member of the Massachusetts bar and
41 shall be compensated at the same rate as compensated members of the board.

42 Section 176S. (a) A law enforcement agency shall report any instance in which a member
43 of that law enforcement agency discharges a firearm and another person is shot, regardless of
44 whether or not that person is killed or suffers serious bodily injury, to the Independent Police
45 Conduct Review Board within 24 hours of the shooting. The Independent Police Conduct
46 Review Board, hereinafter the board, shall assign each reported incident a case number and an
47 initial hearing date within 48 hours of receiving the report.

48 The board shall have the authority to issue subpoenas to obtain all documents, materials
49 and witnesses relevant to a particular case and shall instruct a sheriff or constable to serve the
50 same. A subpoena may be issued by the chair or by any 2 board members acting concurrently.

51 (b) Hearings of the board shall be conducted in accordance with the rules and procedures
52 set out in chapter 30A; provided, however, that they shall be open to the public and shall be
53 available for news broadcast or webcast. A board appointed staff attorney shall present all claims
54 against an employee of a law enforcement agency involved in a shooting. An attorney
55 representing a private party shot by a member of a law enforcement agency or otherwise alleging
56 that the employee of a law enforcement agency has acted inappropriately may, at the discretion

57 of the chair of the board, present claims. An employee of a law enforcement agency against
58 whom claims are presented shall have the right to legal counsel.

59 The board shall determine whether, based on all the evidence presented, a member of a
60 law enforcement agency involved in an incident in which a person was shot, engaged in
61 misconduct or otherwise acted inappropriately. The burden of proving misconduct or
62 inappropriate action shall be on the party alleging such behavior and shall be proven by a
63 preponderance of the evidence. Notwithstanding any general or special law to the contrary, the
64 board shall make findings of fact and rulings of law regarding any alleged misconduct or
65 inappropriate action, which shall be final and binding for the purposes of any union grievances or
66 disciplinary action pursuant to chapter 31. The authority of the board shall not be impaired by
67 any collective bargaining agreement or other contract.

68 A hearing officer appointed pursuant to the second paragraph of subsection (c) of section
69 176R shall make findings of fact and may recommend rulings of law, which shall be submitted
70 to the full board for review and final disposition.

71 (c) A ruling by the board that a member of a law enforcement agency acted unlawfully,
72 engaged in misconduct, or otherwise acted inappropriately in an instance in which the member of
73 a law enforcement agency discharged his or her firearm and another person was shot shall result
74 in the following: (1) termination of employment and a ban on employment with any law
75 enforcement agency in the commonwealth for a period of no less than 10 years; and (2)
76 revocation of any license to carry a firearm, which shall not be renewable for a period of no less
77 than 10 years.

78 A ruling by the board that a member of a law enforcement agency engaged in misconduct
79 or acted inappropriately other than in an instance in which a person was shot by a member of a
80 law enforcement agency shall result in discipline of the member. Such discipline shall not be
81 less severe than a public reprimand and shall not be more severe than termination of
82 employment.

83 The board may publically recommend that a member of law enforcement agency subject
84 to an adverse ruling under this subsection be criminally prosecuted.

85 (d) Upon the application of the attorney general, a United States attorney, or a district
86 attorney, the board may stay any proceeding pending completion of a criminal investigation
87 stemming from the same incident. A decision to stay or not stay a proceeding shall be
88 reviewable by a judge of the superior court; provided that the judge may only overturn a decision
89 upon a finding of an abuse of discretion by the board.

90 (e) A ruling by the board that a member of a law enforcement agency engaged in
91 misconduct or other inappropriate action shall be subject to judicial review as provided in section
92 14 of chapter 30A.

93 Nothing contained in this shall preclude or impact a criminal prosecution.

94 Nothing contained in this section shall impair or impact the rights of any person to pursue
95 civil litigation to obtain compensatory or punitive damages or provide any qualified immunity. A
96 proceeding pursuant to this section shall not impact or impair the rights of any person seeking
97 compensation pursuant to chapter 258; provided, that any proceeding under this section shall toll
98 any required notice period or statute of limitations under said chapter 258 for the duration of the
99 proceeding.

100 (f) Notwithstanding any general or special law to the contrary, a person presenting claims
101 or evidence before the board shall be entitled to the protections of section 59H of chapter 231.

102 (g) A member of a law enforcement agency subject to an adverse ruling under this
103 section shall be entitled to indemnity as available pursuant to all of chapter 258 except section 13
104 of said chapter 258. Notwithstanding any general or special law to the contrary, if a sum awarded
105 by the board to compensate an estate for wrongful death or to compensate an injured person for
106 past and future medical costs, lost earning capacity, scarring, deformities, loss of limbs or body
107 parts, loss of function, loss of vision or of hearing or other physical or emotional losses exceeds
108 \$1,000,000, indemnity shall be limited to be 150 per cent of the sum awarded; provided, that this
109 limit shall not apply to an award for pain and suffering or punitive damages. Any award in
110 excess of this limit shall be solely the responsibility of the member of a law enforcement agency
111 subject to the adverse ruling.