Supreme Judicial Court

FOR THE COMMONWEALTH OF MASSACHUSETTS
No. SJC-13110

KELLIE PEARSON and THE LAW OFFICES OF MARK BOOKER, Plaintiffs

v.

THOMAS M. HODGSON, in his official capacity as Sheriff of Bristol County, and SECURUS TECHNOLOGIES, INC., Defendants

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On Certification From The Federal District Court
For The District Of Massachusetts
C.A. No. 18-CV-11130-IT

BRIEF OF PLAINTIFFS KELLIE PEARSON AND THE LAW OFFICES OF MARK BOOKER

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STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

The certified question to this Court from the United States District Court for the District of Massachusetts is:

Did the Massachusetts Legislature, through the provisions of 2009 Mass. Legis. Serv. ch. 61 (S.B. 2119) §§ 12(a), 12(c), 15, or Mass. Gen. Laws ch. 127, § 3, taken separately or together, authorize the Bristol County Sheriff's Office to raise revenues for the Office of the Sheriff through inmate calling service contracts?

STATEMENT OF THE CASE

On May 2, 2018, Plaintiffs filed this putative class action in Suffolk Superior Court against Sheriff Thomas M. Hodgson (Hodgson), individually and in his official capacity as Sheriff of Bristol County, and Securus Technologies, Inc. (Securus). J.A. 39. Against Sheriff Hodgson, Plaintiffs seek a declaratory judgment that monthly site commissions and lump sum payments included in Securus' contract with the Bristol County Sheriff's Office are contrary to Massachusetts law and this Court's decision in *Souza v. Sheriff of Bristol County*, 455 Mass. 573 (2010) [hereinafter *Souza*] (Count I), and a declaratory judgment that the inflated inmate calling services (ICS) charges Plaintiffs paid are unlawful taxes or unlawful fees (Count II). Plaintiffs also sought monetary relief against Sheriff Hodgson, alleging that he engaged in *ultra vires* taxation for which he did not have statutory authority in violation of the Massachusetts Constitution (Count III), or, in the alternative, that

he extracted unlawful fees from Plaintiffs in violation of Mass. Gen. Laws ch. 126, § 29 (Count IV). J.A. 56–59. Plaintiffs further alleged that Securus committed the tort of conversion (Count V) and that it engaged in unfair and deceptive acts or practices in violation of Mass. Gen. Laws ch. 93A, § 2 and 940 Code Mass. Regs. § 3.16(2) (Count VI). J.A. 59–60. Securus removed the case to the United States District Court for the District of Massachusetts on May 30, 2018. J.A. 27.

On July 20, 2018, both Defendants moved to dismiss the case in its entirety for failure to state a claim. J.A. 68, 96. Plaintiffs did not object to dismissal of claims against Sheriff Hodgson in his individual capacity,[1] and conceded that any claims for injunctive relief on behalf of two of the named Plaintiffs were moot because they had been released from custody. J.A. 143, 196–97. The Federal District Court also dismissed the conversion claim against Securus, but allowed all remaining claims to proceed. J.A. 210. Relevant here, the Court held that Plaintiffs sufficiently alleged that Sheriff Hodgson exceeded his authority under Massachusetts law by requiring Securus, the provider of ICS, to make monthly commission and lump sum payments to the sheriff's office (Count I) and that those payments constituted improper collection of revenue in violation of Massachusetts law (Count II). J.A. 197–03.

[1] Plaintiffs also clarified during the hearing on the motions to dismiss that they only seek equitable relief against Sheriff Hodgson. J.A. 196.

On July 26, 2019, Plaintiffs moved for partial summary judgment on Count I of the complaint against Sheriff Hodgson. J.A. 646. Also in July 2019, Sheriff Hodgson and Securus moved for judgment on the pleadings on the counts remaining against them (Counts I, II, and VI), J.A. 274, 630, which Plaintiffs opposed, J.A. 640.

In advance of the hearing on these motions, the Federal District Court issued an order directing the parties to be prepared to address the relevance of Mass. Gen. Laws ch. 127, § 3, which the parties had not addressed in their briefs. J.A. 1154. During the hearing, which took place on June 11, 2020, Plaintiffs and Defendants both stated that they did not believe that the statute referred to by the Court was pertinent to the legal questions presented in the case. J.A. 1199–07. On June 22, 2020, the Federal District Court granted Defendants' Motions for Judgment on the Pleadings and denied Plaintiffs' Motions for Partial Summary Judgment. J.A. 1155.

On July 20, 2020, Plaintiffs filed a motion to alter or amend the Federal District Court's June 22, 2020 judgment in which it granted Defendants' motions for judgment on the pleadings. J.A. 1173. Plaintiffs sought relief from the judgment on the grounds that the Federal District Court misconstrued Mass. Gen. Laws ch. 127, § 3, as well as its relationship to the 2009 Session Law and the overall Massachusetts statutory framework concerning a sheriff's authority to demand payment from prisoners or their families to support jail services. In the alternative, because the

ultimate outcome of the case will be determined solely by resolving significant and complicated questions of Massachusetts law, Plaintiffs requested that the Federal District Court certify questions of law to this Court. J.A. 1173–74.

On March 31, 2021, the Federal District Court vacated its June 22, 2020, Memorandum and Order and Judgment on Defendants' motions for judgment on the pleadings. J.A. 1326. It also certified the question of Massachusetts law now before this Court. J.A. 1330.

STATEMENT OF FACTS

Thomas M. Hodgson is the Sheriff and head of the Bristol County Sheriff's Office (BCSO). J.A. 670. In May 2011, the BCSO issued a public solicitation to private vendors, requesting bids through a Request for Response to operate a Coinless Inmate and Public Telephone System at facilities under the BCSO's control. J.A. 670. In exchange for this exclusive contract, the BCSO required that all bidders include in their responses an offer to pay site "commissions" based on gross revenues collected from the calling service. J.A. 671–72 ("Proposers **must** submit their best offer for commission percentages and gross revenues, which be will [*sic*] presented as total dollars that will be payable, on a monthly basis . . . .") (emphasis in original).

On August 8, 2011, Sheriff Hodgson awarded Securus, a private telecommunications service and technology provider of ICS in Massachusetts and

the United States, the exclusive contract to provide ICS in all BCSO facilities. J.A. 672. Specifically, the contract provided that Securus would make monthly site commission payments to BCSO equal to 48 percent of the gross revenues from the ICS along with annual funding of $130,000 for two on-site administrators and annual funding of $75,000 for "Technology." J.A. 672.

The BCSO received in aggregate over $1 million in site commissions from Securus between August 2011 and June 2013. J.A. 673. These contractually required payments to the BCSO were collected by Securus and assessed from loved ones, attorneys, and other consumers who received calls from people incarcerated in BCSO facilities. *See* Brief of Defendant Thomas M. Hodgson (Hodgson Br.) 12 ("Inmate calls are paid for by the recipients of the calls."). Sheriff Hodgson collected and used these payments as a supplemental source of revenue for the BCSO. J.A. 40, 58; *see also* J.A. 671 ("The Proposer **shall** collect all revenue from the called party for collect calls placed by inmates. The Proposer **shall** provide a percentage of this revenue as a commission fee to the BCSO on a monthly basis." (emphasis in original)).

The timing and form of the arranged payments to the BCSO changed in October 2015 when Sheriff Hodgson and Securus amended their contract. J.A. 673. Pursuant to the amendment, Securus stopped paying the BCSO monthly site commissions on or about January 1, 2016. Instead, BCSO received payments from

Securus in a lump sum of $820,000. J.A. 673. As before, Securus passed the cost of these payments to the BCSO onto incarcerated individuals, their loved ones, and their attorneys in the form of grossly inflated phone call rates.

The Sheriff's Office had sole discretion to renew the exclusive contract with Securus for an additional four-year term. J.A. 673. Subsequently, the BCSO extended the contract for an additional four years, until June 30, 2020. J.A. 673.

Under the terms of the contract with Securus, Sheriff Hodgson used this scheme to raise revenue and fill BCSO's coffers, in violation of Massachusetts law. As a result of Sheriff Hodgson's conduct, people incarcerated in Bristol County who want to communicate by phone with family, friends, and legal representatives have only one option: they, and their loved ones and lawyers, must use the privatized system operated by Securus and incur the inflated charges to cover the cost of payments to the BCSO.

SUMMARY OF ARGUMENT

Sheriff Hodgson's authority to supplement the BCSO budget through financial assessments is subject to the limitations set by this Court in *Souza v. Sheriff of Bristol County*. Under *Souza*, the Sheriff must demonstrate that the General Court has specifically and expressly authorized him to receive payments for ICS. He has failed to do so. *See* pp. 18-21, *infra*.

None of the provisions of the uncodified 2009 Session Law, 2009 Mass. Legis. Serv. Ch. 61, which transferred certain county sheriffs' offices to the Commonwealth, authorizes Sheriff Hodgson to raise revenues for the BCSO through ICS contracts. Section 12(a) dealt only with the practical question of what should happen to funds that the sheriffs collected from telephone calls and other sources, allowing them to "remain" with the sheriffs instead of being turned over to the Commonwealth. It does not mean the General Court decided to authorize a significant expansion of the transferred sheriffs' authority to charge and collect fees. Yet under Sheriff Hodgson's interpretation of Section 12(a)'s vague reference to "telephone funds," he is now free to make people in custody pay the BCSO a fee for the privilege of using the telephone. *See* Section pp. 21-30, *infra*.

Section 15 of the 2009 Session Law also makes clear that the Session Law was carefully crafted to ensure no substantive change in the sheriffs' powers and authority. *See* pp. 31-33, *infra*. Just as Sheriff Hodgson's general power to control and manage the jail was insufficient to authorize the fees at issue in *Souza*, so too his procurement authority under Section 15 fails to give him power to demand payments from contractors to help pay for the correctional services he is required to provide to people in his custody. *See* pp. 34-37, *infra*.

The legislative history Sheriff Hodgson relies on shows that the debate focused only on whether certain revenue should remain with the Sheriff or be turned

over to the Commonwealth. Neither that language's absence from the 2008 version of Section 12(a) nor its presence in the enacted 2009 Session Law affected the Sheriff's underlying authority to collect telephone payments. *See* pp. 37-41, *infra*.

Section 12(a) does not apply to the sheriffs of the seven abolished counties. Under Sheriff Hodgson's reading of the 2009 Session Law, therefore, only the transferred sheriffs have authority to charge telephone commissions. It strains credulity to think that the General Court intended to authorize charges of such obvious public importance based on the arbitrary timing of their merger with the Commonwealth. *See* pp. 41-42, *infra*.

The audits of the BCSO performed in connection with the restructuring also do not demonstrate that telephone site commissions and other charges are lawful. The audits simply examined Sheriff Hodgson's compliance with the 2009 Session Law. They did not address whether Sheriff Hodgson had the requisite lawful authority to demand that Securus include site commissions in the contract. Indeed, this Court rejected a nearly identical argument when Sheriff Hodgson made it in *Souza*. *See* pp. 43-44, *infra*.

Sheriff Hodgson's interpretation of Section 12(c), which provides that sheriffs may retain the revenue from a new funding source they may develop, would sanction not only telephone payments but also the cost of care fees that this Court struck down

in *Souza*. Certainly, the General Court did not intend Section 12(c) to insulate a sheriff from challenges to the legality of any revenue-generating scheme he might choose to develop. *See* pp. 44-46, *infra*.

Like the 2009 Session Law, Section 3 of Mass. Gen. Laws ch. 127 fails to provide the Sheriff with the requisite authority to receive payments for ICS. As Sheriff Hodgson has consistently and correctly stated, Section 3 only applies to revenue generated by the sale of goods or services to incarcerated persons, and therefore has no bearing here because all the calls from the correctional facilities are collect calls, paid for by the recipient. *See* pp. 46-48, *infra*. Additionally, Section 3 only applies to "monies earned or received by any inmate and held by the correctional facility," but the revenue Securus pays Sheriff Hodgson does not come from a custodial account but from call recipients who pay the bill. *See* p. 48. Further, if Section 3 applied to phone revenue, the 2009 Session Law would have been unnecessary because Section 3 itself calls for revenue from sales to incarcerated persons to be expended by the superintendent for the "general welfare of all the inmates." *See* pp. 50-51, *infra*.

Plaintiffs' claims are properly raised in this litigation. Bills currently before the General Court that Sheriff Hodgson cites are aimed at giving free telephone calls to incarcerated persons in the future. Plaintiffs do not contend in this action that existing law requires free calls. Further, bills that were considered during the 2019–

2020 session that did address telephone charges do not speak to the proper interpretation of existing law governing telephone charges. Plaintiffs are entitled to seek answers in court to the question of whether Sheriff Hodgson has the express authority that *Souza* requires to raise revenues for the Office of the Sheriff through ICS contracts and a ruling on their contention that he does not. *See* pp. 51-53, *infra*.

ARGUMENT

I. Under *Souza v. Sheriff of Bristol County*, Sheriff Hodgson cannot impose financial assessments that have not been specifically and expressly authorized by the state legislature.

The Sheriff only has the powers and duties the General Court confers upon him. *Morey v. Martha's Vineyard Comm'n*, 409 Mass. 813, 818 (1991); *Telles v. Comm'r of Ins.*, 410 Mass. 560, 564–65 (1991). As the promulgation of rules without valid statutory authority implicates core notions of the separation of powers, the Sheriff cannot adopt a policy that conflicts with or exceeds the bounds of his statutory authority. *Morey*, 409 Mass. at 818; *Telles*, 410 Mass. at 564–65.

Under the statutory analysis outlined in *Souza v. Sheriff of Bristol County*, 455 Mass. 573 (2010), Sheriff Hodgson may not lawfully receive payments for ICS. In *Souza*, this Court explained that the Sheriff's authority to impose fees on incarcerated persons, including the challenged cost of care, medical care, haircut, and GED testing fees at issue there, is expressly defined by the General Court. That legislative grant of authority must be in the form of a statute which expressly and

specifically describes the nature and scope of the authorization. *Id*. at 580, 585–86. And it must be express; it cannot be implied. *Id*. at 586. If the General Court had "intended to authorize the sheriff to impose the challenged fees, it would have said so expressly" and so "in the absence of specific legislative authority for the challenged fees, they are invalid." *Id*.

In *Souza*, this Court examined the history and evolution of the sheriff's office, leading to the present-day system where the powers and duties of the sheriff are endowed exclusively by the General Court. *Id*. at 578–82. Those present-day powers include authority to charge certain fees, but those fees are certain, specific, and always contained within a statutory delegation of authority. This Court cited numerous examples of these specific grants of authority. For example, a sheriff may charge certain enumerated fees relative to serving civil and criminal process. Mass. Gen. Laws ch. 262, § 8. In connection with a sheriff's service of process function, the General Court permits a sheriff to "charge for each copy at [a certain prescribed] rate." Mass. Gen. Laws ch. 262, § 11. In supplementary process proceedings, a sheriff may charge certain fees for copies, travel, and, "[f]or each day's attendance at court on the examination of a defendant or debtor in his custody, . . . [a fee of] five dollars." Mass. Gen. Laws ch. 262, § 14. In addition, the sheriff is allowed a mileage allowance at a specified rate for the costs associated with transporting inmates to or from court, *see* Mass. Gen. Laws ch. 262, § 21, and is allowed "his

actual traveling expenses incurred in the performance of his official duties," Mass. Gen. Laws ch. 37, § 21; *see also Souza*, 455 Mass. at 584 (enumerating the fees that the General Court has expressly authorized sheriffs to charge people in his custody).[2]

Relying on these and other statutes, this Court held in *Souza* that a sheriff cannot, absent specific statutory authorization, require persons in his custody to make financial payments to help defray the costs of operating his correctional facilities. In light of the specificity with which the General Court has granted sheriffs the authority to impose fees upon incarcerated persons, it defies reason to suggest that the General Court otherwise gave the sheriffs free rein to impose and collect millions of dollars in commissions on incarcerated persons' means of communicating with their family, friends, and lawyers.

Nor may a sheriff simply contract with a private vendor to raise revenue from incarcerated persons or members of the public who communicate with them. As the Federal District Court explained when it denied the Sheriff's motion to dismiss:

> [A]lthough it is Securus, and not the Sheriff's Office, that is collecting telephone fees from the Inmate Calling Services call recipients, Plaintiffs['] challenge is to the Sheriff's Office's collection of revenue in the performance of the Sheriff's duties, *see* 103 Code Mass. Regs § 948.10—and not Securus's collection of the telephone fees that it does not pass back to the Sheriff. Allowing county correctional facilities to collect fees in excess of those

[2] In fact, an entire chapter of the Massachusetts General Laws is devoted to various "Fees of Certain Officers"—including two subsections that enumerate over twenty categories of fees that can be collected by "sheriffs, deputy sheriffs, and constables." *See* Mass. Gen. Laws ch. 262, §§ 8, 14. None of those categories of fees mention telephone communication fees.

> allowed by the legislature by hiring a third-party vendor to collect those fees runs afoul of *Souza*[.]

J.A. 199.

The General Court has expressly authorized sheriffs to charge specific fees and has restricted their use of inmate funds "in particular ways and only in circumscribed circumstances." *Souza*, 455 Mass. at 585. Sheriff Hodgson cannot make an end-run around *Souza* by rerouting invalid fees through Securus.

II. The 2009 Session Law transferring certain county sheriffs' offices to the Commonwealth does not authorize Sheriff Hodgson to require telephone site commissions and other charges for telephone calls.

Sheriff Hodgson claims that the uncodified 2009 Session Law that transferred funding and ultimate control of certain county correctional facilities from the sheriffs to the Commonwealth gives him the necessary authority to demand that Securus make payments to him as a condition of entering into a contract to provide ICS. *See* 2009 Mass. Legis. Serv. ch. 61 (S.B. 2119) ("An Act Transferring County Sheriffs to the Commonwealth") (2009 Session Law). Although Sheriff Hodgson acknowledges that *Souza* mandates that he must have express statutory authority to charge a fee for telephone services, he asserts that "here, the Legislature *has* expressly authorized the fees at issue" by enacting the 2009 Session Law. Sheriff Hodgson Br. 19.

Specifically, Sheriff Hodgson claims the legislative authorization to collect telephone payments comes from four provisions of the 2009 Session Law. *See*

Hodgson Br. 14–19. First, he cites Section 15, which includes the "procurement of supplies, services and equipment" as part of his "administrative and operational control over the office of the sheriff, the jail, and house of correction." Second, he points to Section 12(a), which, in relevant part, provides that "[n]otwithstanding any general or special law to the contrary . . . revenues of the office of sheriff in . . . Bristol . . . count[y] for civil process, inmate telephone and commissary funds shall remain with the office of sheriff." Third, he cites Section 12(c), which says: "Any sheriff who has developed a revenue source derived apart from the state treasury may retain that funding to address the needs of the citizens within that county." Fourth and finally, he cites Section 12(b), which requires sheriffs to "annually confer" with legislative ways and means committees regarding the "sheriffs' efforts to maximize and maintain" revenues.[3]

For each of the following reasons, the 2009 Session Law falls short of the express grant of statutory authority that this Court has ruled is required by *Souza* before a sheriff can impose phone charges.

[3] Section 12(b) is not one of the provisions listed in the question certified to this Court from the Federal District Court, *see* Statement of the Issue Presented for Review, *supra*.

A. Section 12(a) of the 2009 Session Law does not purport to authorize the transferred sheriffs to collect telephone site commissions.

Sheriff Hodgson relies primarily on the language in Section 12(a), which provides that "revenues of the office of sheriff . . . for civil process, inmate telephone and commissary funds shall remain with the office of the sheriff." The plain language of Section 12(a) does not purport to authorize sheriffs to demand financial payments for telephone services; it merely says that any such funds that the sheriffs may have must "remain" with them. But just because Section 12(a) authorized sheriffs to keep incoming telephone revenue does not mean the General Court was deciding, or even thinking about, whether sheriffs had the authority to collect that money in the first place. Indeed, the subject of the relevant provision in Section 12(a) is not the Sheriff, but rather the category of existing monies that may remain in his possession.

So why did the General Court acknowledge the possible existence of telephone funds and provide instructions for their disposition if it did not sanction their collection? In its effort to merge the sheriffs' offices into state control, the General Court faced a practical problem: What should happen to the transferred sheriffs' different liabilities and assets, including funds that had been collected from many different sources? Should the sheriffs be allowed to keep this money or should they transfer it to the state treasurer?

When the General Court abolished other counties in 1997, it required the sheriffs of those counties to turn over all funds to the Commonwealth's general fund. Mass. Gen. Laws ch. 34B, §§ 5, 9. In passing the 2009 Session Law, however, the General Court made a different choice. It allowed the transferred sheriffs to keep certain specified funds instead of remitting them to the state. Without Section 12(a), the sheriffs would have had to transfer telephone revenue to the county treasurer. *See* Mass. Gen. Laws ch. 37, § 22 ("Each sheriff shall keep an account of all fees and money received by virtue of his office, and, except as otherwise provided, shall annually . . . pay him the same."). The county treasurer, in turn, would be required by Section 11 of the 2009 Session Law to turn the money over to the state treasurer. 2009 Session Law § 11; *see also* 2009 Session Law § 6 ("All assets of the office of a transferred sheriff . . . shall become assets of the commonwealth, except as otherwise provided in this act."). But just as Mass. Gen. Laws ch. 37, § 22, does not give Sheriff Hodgson free rein to charge fees simply because it acknowledges that he collects them, so too Section 12(a) of the 2009 Session Law does not permit him to require telephone payments simply because it addresses the possibility that he might be doing so.

Significantly, there is no evidence the General Court even knew the source of the telephone money. Section 12(a) is vague and general; thus, "telephone funds" could encompass things like a user fee charged directly to people in the Sheriff's

custody for telephone access, as well as payments made by companies like Securus. Indeed, under Sheriff Hodgson's interpretation of Section 12(a), he would now be free, despite *Souza*, to make people in his custody pay a five-dollar fee for the privilege of using the telephone.

It is extremely unlikely that the General Court intended Section 12(a) to give Sheriff Hodgson blanket authorization to generate telephone revenue no matter what method he might choose to do so. This reinforces the conclusion that Section 12(a) dealt only with what should happen to any telephone funds that might exist, as opposed to making any kind of statement about the lawfulness of their collection, an issue that simply was not presented at the time.[4]

Critically, *Souza* places the burden on Sheriff Hodgson to demonstrate that the authority to charge fees has been "expressly authorized" by the General Court, not merely tacitly implied or inferred from the context. Here, Section 12(a) provides nothing more than specific accounting instructions for how to deal with funds that the sheriffs may collect from telephone calls and other specified sources. Whether or not these funds have been lawfully collected was not at issue. Because they existed, they had to be accounted for to accomplish the effective implementation of

[4] The Federal District Court apparently misunderstood that Plaintiffs were arguing that Section 12(a) authorized the transferred sheriffs to keep only the money that was in their possession at the time of the transfer to the Commonwealth. J.A. 1167.

the county transfer. But this falls far short of demonstrating an intention to authorize a significant expansion of the transferred sheriffs' authority to charge and collect fees.[5]

Even if the General Court assumed in 2009 that the sheriffs could lawfully collect telephone revenue, that does not mean that it had actually given them such authority, or was doing so in 2009. *See Tennessee Valley Auth. v. Hill*, 437 U.S. 153 (1978) (holding that continued appropriations for a dam construction project halted by the passage of the Endangered Species Act did not indicate Congress intended to repeal the Act's application to the dam project because "when voting on appropriations measures, legislators are entitled to operate under the assumption that the funds will be devoted to purposes which are lawful and not for any purpose forbidden").

Section 12(a)'s reference to telephone funds stands in marked contrast to the statutes discussed in *Souza*, about which this Court stated that "[h]ad the Legislature

[5] Specific accounting instructions are found throughout the 2009 Session law. For example, Section 8 transfers to the Commonwealth "all rights, title and interest in real and personal property" that are "controlled by the office of a transferred sheriff"—but then lists several exceptions, including "the land and buildings shown as Parcel C on a Plan of Land in Braintree, Mass, dated October 2, 1998, prepared by County of Norfolk Engineering Dept., 649 High Street, Dedham, filed at the Norfolk County registry of deeds in plan book 454, page 128." Section 19 provides instructions for the group insurance eligibility of "the surviving spouses of retired employees" of the office of a transferred sheriff. Had the General Court *not* provided such comprehensive accounting instructions, the transfer law could not achieve its limited purpose.

intended to authorize the sheriff to impose the challenged fees, it would have said so expressly as it had done with other fees, such as fees for service of process, and as it had done by authorizing particular deductions from inmate funds." *Souza*, 455 Mass. at 586; *see also* J.A. 201.[6] These grants of authority are strikingly different from the language in the 2009 Session Law: They confer authority to *impose* a financial charge, rather than simply to *retain* such funds in the face of a government restructuring. The requisite authority must be expressly granted to county sheriffs, rather than made by vague implication. *Souza*, 455 Mass. at 480. Indeed, every fee-authorizing statute that this Court recognized in *Souza* shared these common features (both absent from the 2009 Session Law): Each one includes language expressly *authorizing* the sheriff to *impose* the given charge.[7] By contrast, in *Souza*, the Court

[6] Sheriffs' authority to impose fees for service of process is expressly granted by the Chapter of the General Laws that enumerates the "fees of certain officers." Mass. Gen. Laws ch. 262, § 8(a) of that Chapter provides that "[t]he fees of sheriffs, deputy sheriffs and constables shall" include fees "for the service of civil process." This Court specifically noted that the cost of care fees—like fees on telephone use—were absent from the list of permissible fees. *See Souza*, 455 Mass. at 584 (citing Mass. Gen. Laws ch. 262 §§ 8, 11, 14, 21). As a second example of statutory language authorizing county sheriffs to impose charges, this Court cited Mass. Gen. Laws ch. 127, § 86F, which expressly provides that a "sheriff shall deduct from [prisoners'] earnings" amounts for six enumerated purposes. *Id.* at 584–85

[7] *See Souza*, 455 Mass. at 583 ("Concerning inmate funds, the Legislature has specifically authorized sheriffs to deduct victim and witness assessments from the noninterest portion of IMAs . . . ." (citing Mass. Gen. Laws ch. 127, § 3 ("[T]he superintendents and keepers of jails, houses of correction . . . shall, upon receipt of an outstanding victim and witness assessment, transmit to the court any part or all of the monies earned or received by any inmate and held by the correctional facility, except monies derived from interest earned upon said deposits and revenues

held that statutes that directly referred to haircut and medical fees were still insufficient to give Sheriff Hodgson the necessary authority to impose them.

Legislative authorization "to charge certain fees and to use inmate funds in particular ways and only in circumscribed circumstances" implies a lack of authorization to charge other fees. *Souza*, 455 Mass. at 585; *cf*. *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) ("Congress . . . does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions—it does not, one might say, hide elephants in mouseholes."). Even though *Souza* acknowledged sheriffs' "broad authority to have control and custody of county correctional institutions," *Souza*, 455 Mass. at 585 (citing Mass. Gen. Laws ch. 126, § 16), it decisively rejected Sheriff Hodgson's claim that his broad executive authority includes the power to levy any specific fee.

It is also highly improbable that the General Court would have given any sheriff unfettered authority to collect unlimited and unconditional telephone commissions when it carefully regulates all other types of fees that sheriffs are authorized to impose. For example, although sheriffs can charge a fee for haircuts, the controlling statute makes the Department of Correction (DOC) Commissioner (and not the sheriffs) responsible for setting the amount of the fee. *See Souza*, 455

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generated by the sale or purchase of goods or services to persons in correctional facilities, to satisfy the victim witness assessment ordered by a court . . ."))).

Mass. at 583. Similarly, only the DOC commissioner has authority to charge medical co-payments, and the statute describes in detail the kinds of services where co-payments are and are not allowed. *Id.* at 584. The General Court even meticulously regulates the small administrative fee that prisoners can be charged to maintain their accounts, allowing only the DOC Commissioner (and not the sheriffs) to charge the fee. Mass. Gen. Laws ch. 124, § 1(u).

If the General Court had intended to permit telephone commissions, it is highly likely it would have placed at least some limits and conditions on the sheriffs' authority. The absence of any attempt to regulate commissions or other telephone charges is further evidence that the 2009 Session Law's reference to telephone funds reflects nothing more than the General Court's decision that such revenue should remain with the sheriffs instead of going to the Commonwealth.

As *Souza* explained, the General Court knows how to confer authority to sheriffs when it wishes to do so. It would make little sense for it to give correctional officials explicit authorization to charge prisoners for relatively trivial services, such as a haircut or the management of an inmate account, but acquiesce only implicitly to their authority to collect millions of dollars in telephone commissions and other payments that significantly increase the cost of communications between prisoners and the outside world. It would make even less sense for the General Court to make such a broad and momentous policy decision in an uncodified session law that was

motivated primarily by the state's desire to assert greater control over sheriffs' budgets.[8] Indeed, Sheriff Hodgson himself did not even argue that the 2009 Session Law supported his position until after the Federal District Court denied his motion to dismiss. *See* J.A. 1157 (noting Defendants' motions for judgment on the pleadings cite legislation from 2009 not previously before the Federal District Court).

Finally, there is no merit to Sheriff Hodgson's claim that telephone charges are permitted because no statute specifically prohibits them. *See* Hodgson Br. 31–32. This reasoning has it exactly backwards. A sheriff's general authority to operate the jail or enter into contracts is not enough. *Souza* requires that telephone charges be expressly authorized by statute.

[8] This Court has defined a special law as "legislation addressed to a particular situation, that does not establish a rule of future conduct with any substantial degree of generality, and may provide ad hoc benefits of some kind for an individual or a number of them." *Comm'r of Pub. Health v. Bessie M. Burke Mem'l Hosp.*, 366 Mass. 734, 740 (1975). This Court has also held that the same standards of construction apply to both codified and uncodified laws. *See Chin v. Merriot*, 470 Mass. 527, 532 (2015). Nonetheless, in *Chin*, the Court observed that uncodified provisions "express the Legislature's view on some aspect of its operation; they are not the source of substantive provisions of the law." *Id.* at 533. However, the Court later qualified that comment: "we did not intend to suggest in *Chin* that uncodified provisions cannot or by definition do not serve as a source of substantive law." *Commonwealth v. Laltaprasad*, 475 Mass. 692, 700 (2016). Still, one might expect that if the Legislature intended to enact a significant substantive law, it would be codified in the General Laws so as to be readily available to the public.

B. The 2009 Session Law was carefully crafted to make sure there was no substantive change in the Sheriff's powers, duties, and responsibilities.

Section 15 of the 2009 Session law was carefully drafted to ensure there was no substantive change in the powers and authority of the sheriffs even though they were becoming agencies of the Commonwealth. Section 15 provides that the sheriff "shall retain administrative and operational control" over the jail and the house of correction. It does not mention telephone charges, and does not purport to enlarge the powers of the transferred sheriffs. In fact, Section 15 goes on to say that the "sheriff and sheriff's office shall retain and operate under all established common law power and authority consistent with chapters 126 and 127 of the General Laws and any other relevant General Laws." In other words, Section 15 makes it clear that nothing about the powers of the transferred sheriffs was changed by the 2009 Session Law. It neither expanded nor contracted Sheriff Hodgson's powers and authority. He remained subject to exactly the same statutory and common law rights, duties, and responsibilities as before.[9]

[9] Indeed, the 2009 Session Law expressly states that it does not change any person's legal rights. *See* § 13(f) ("An existing right or remedy of any character shall not be lost or affected by this act."). This clause supports the view that the purpose of the law was to give instructions about what to do with the funds the sheriffs may receive, not to change anyone's legal rights with respect to that money. For example, if incarcerated persons had a claim that the Sheriff had taken commissary funds improperly, the fact that Section 12(a) tells the Sheriff he can keep commissary revenue doesn't mean the improper taking is immune from challenge. Further, Section17(d) provides that all suits or other proceedings brought against a

Accordingly, just as the Sheriff's general authority under Mass. Gen. Laws ch. 126, § 16, to control and manage his facilities was insufficient to authorize the fees at issue in *Souza*, the general authority he retains under Section 15 fails to confer the right to impose telephone charges.

Indeed, it is notable that other provisions in the 2009 Session Law that do speak to sheriffs' authority—rather than providing instructions regarding affected budget categories—specifically reference the source of the implicated authority. For example, Section 10 includes a provision instructing the state treasurer to "assess the city of Boston and remit to the State-Boston retirement system an amount equal to the minimum obligation of Suffolk county." By itself, this might seem to be an authorization of new authority. But the statutory text specifically notes that this is done "[p]ursuant to section 20 of chapter 59 of the General Laws," which provides among other things that the "state treasurer . . . shall make payments to cities and towns" in installments after adjusting for amounts owed to the state. This sort of structure—cross-references to sections of the General Laws that actually confer the implicated authority—is common throughout the law, where such authority exists.[10]

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sheriff "shall continue unabated and remain in force notwithstanding passage of this act." This suggests that if the present litigation had been pending when the 2009 Session Law passed, all of the Sheriff's arguments would be unavailing.

[10] Section 2 similarly establishes a deeds excise fund for the transferred sheriffs and establishes that a given percentage of the taxes collected shall be transmitted to this fund. But this provision does not authorize the revenues: those taxes are assessed pursuant to a different provision in the General Law, which the

Sheriff Hodgson has failed to point to any other statutory provision that might satisfy the clear standards established by this Court to justify telephone payments. And he previously represented to the Federal District Court that no alternative specific statutory authority exists. There, Sheriff Hodgson asserted that a DOC regulation embodied "the only provision of any Massachusetts law or regulation directly relating to site commissions." J.A. 183. But as even Sheriff Hodgson acknowledged, this regulation only "covered state institutions," *id.*, and by its terms does not apply to county facilities. For that reason, the Federal District Court correctly concluded that the DOC regulation does not supply the requisite authority for Sheriff Hodgson to enter into a contract for ICS with Securus that mandated telephone site commissions. *See* J.A. 208 ("[E]ven where Massachusetts has allowed the Department of Corrections to collect site commissions, no such law expressly allows county sheriffs to do the same.").[11]

Session Law then amends. Section 4 also references legislative authority already conferred by the General Court, in transferring the operation and management of county jail and house of correction and "any other statutorily authorized functions of that office" to the Commonwealth.

[11] In his briefing before this Court, Sheriff Hodgson no longer relies on the DOC regulation to argue that he has the authority to receive payments for ICS.

C. The Sheriff's authority to enter into contracts for the procurement of services does not give him authority to demand payments from Securus as a condition of the contract for telephone services.

Although his argument on this score is somewhat murky, Sheriff Hodgson's position appears to be that the 2009 Session Law merely affirmed his already existing authority to require telephone payments from vendors such as Securus. Unable to point to any statutory provision expressly allowing telephone charges, Sheriff Hodgson suggests it derives from his general authority, under the Massachusetts General Laws and the common law, to manage and control county jails, including his general procurement authority. *See* Hodgson Br. 16. The problem for Sheriff Hodgson is that this is precisely the same argument rejected in *Souza*, where this Court held that a sheriff's general administrative and operational authority over the jail and house of correction does not permit him to impose any financial charges that have not been specifically and expressly authorized by the General Court.

Nevertheless, Sheriff Hodgson argues that the provision in Section 15 of the 2009 Session Law giving him power over "procurement of supplies, services and equipment," supports his position that he can require Securus to make payments to him as a condition of the telephone contract. Contrary to Sheriff Hodgson's argument, Section 15 merely allows the sheriffs to continue performing procurement functions after the transfer of the counties to the Commonwealth. Pursuant to Mass.

Gen. Laws ch. 7, § 4A(a), procurement would otherwise have become the responsibility of the state operational services division.

Section 15 mirrors Mass. Gen. Laws ch. 34B, § 12, which contains identical language describing the powers and authority of sheriffs in the abolished counties. Without Section 15, sheriffs of the transferred counties would have lost the power to enter into any type of contract for services to the jail. But Section 15 does not mention telephone charges, and, as explained in Section II.B., *supra*, the text of Section 15 itself states that the sheriffs' powers and authorities were not changed in any way by the 2009 Session Law.

Nothing in Section 15, or in Mass. Gen. Laws ch. 34B, § 12, says anything that would give the sheriffs the right to use their procurement power to demand payments from contractors to help pay for the correctional services that they are obligated to provide to people in their custody. There is also no merit to Sheriff Hodgson's suggestion that demanding payments from Securus is justified because one of the goals of the competitive bidding process is to achieve "best value." Hodgson Br. 10. "Best value" cannot be achieved by violating the law. Under Sheriff Hodgson's interpretation of his procurement authority, he could require a medical vendor to charge a co-payment fee to people in his custody and then funnel the money back to him, even though *Souza* specifically held that co-payments are not authorized by statute. *Souza*, 455 Mass. at 587–89.

Accordingly, just as the Sheriff's general authority under Mass. Gen. Laws ch.126, § 16, to control and manage his facilities was insufficient to authorize the fees at issue in *Souza*, so too the retention of general procurement authority under Section 15 fails to confer the right to impose telephone charges. A sheriff cannot "retain" powers that were never granted in the first place.

It would also be unreasonable to conclude that the General Court wanted sheriffs to be able to collect payments from contractors when only the state operational services division is statutorily authorized to do so. *See* Mass. Gen. Laws ch. 7, § 4A(a) ("The operational services division may charge and collect from statewide contractors a statewide contract administrative fee, to be established by the executive office for administration and finance; provided, however, that such fee shall not exceed 1 per cent of the total value of a contract awarded to a statewide contractor."). This is yet another example of the principle that where the General Court wishes to authorize fees, it says so expressly. Notably, Mass. Gen. Laws ch. 7, § 4A(a) authorizes only a small administrative fee, not the exorbitant payments that Sheriff Hodgson demands from Securus that significantly increase the cost of phone calls for friends and family of prisoners. Furthermore, sheriffs cannot even charge the 1 per cent administrative fee because Section 4A(a) grants that power exclusively to Secretary of Administration and Finance; nothing in the 2009 Session Law or chapter 34B extends a similar right to the sheriffs.

Sheriff Hodgson's argument that the 2009 Session Law impliedly ratified an expansive interpretation of the sheriffs' procurement authority runs afoul of the principle that amendments by implication, like repeals by implication, are particularly disfavored. *See United States v. Welden*, 377 U.S. 95, n.12 (1964). "Absent an affirmative legislative expression of intent to alter the earlier statute, a court should only rely on the later statute to alter the earlier one "when the earlier and later statutes are irreconcilable," which here they are not. *St. Martin Evangelical Lutheran Church v. S.D.*, 451 U.S. 772, 788 (1981).

D. The legislative history of the 2009 Session Law does not support Sheriff Hodgson's claim that he has authority to charge telephone site commissions.

Much of the Parties' disagreement about the 2009 Session Law concerns the central question of whether the General Court addressed the transferred sheriffs' ongoing authority to *collect*, as opposed to *retain*, site commissions. Sheriff Hodgson states that the 2009 Session Law provided the seven transferred sheriffs with authority both to collect and retain revenue from inmate telephone charges. Hodgson Br. 27. Section 12(a), however, says only that "inmate telephone . . . funds shall remain with the office of sheriff." It says nothing about sheriffs' authority to charge telephone commissions. At most, it shows the General Court may have assumed that the funds have been lawfully collected.

Nonetheless, Hodgson makes much of the fact that the Section 12(a), which permits "telephone . . . funds" to "remain" with the office of the sheriff, did not appear in an earlier version of the session law that was proposed in 2008 but did not pass. Plaintiffs' consistent position is that *neither* version of the legislation affected sheriffs' legislative authority to collect site commissions. Had the General Court enacted the 2008 version that did not include the language about telephone funds, it would simply have required sheriffs to treat such funds like all other financial assets and turn them over to the Commonwealth. *See* J.A. 767 ("Notwithstanding any general or special law to the contrary, and except for all counties the governments of which have been abolished by Chapter 34B or other law, all revenues received with respect to programs, functions or activities of the office of the sheriff shall be paid to the state treasurer."). If the 2008 version of the law had passed, and telephone funds had to be turned over to the Commonwealth, it would signify no more about the underlying authority to collect telephone payments than does the 2009 decision to allow the sheriffs to keep them.

The context surrounding the passage of the 2009 Session Law also undermines Hodgson's interpretation of the legislative history. Some of the sheriffs, particularly Hodgson, were resisting state takeover of their finances because they were concerned that state control of their budget would give state officials too much power over county corrections. *See* Bruce Mohl, *The Maverick*, 70 Commonwealth

Magazine (Winter 2009), *available at* https://commonwealthmagazine.org/politics/the-maverick/. For example, Sheriff Hodgson complained that one state official told him directly: "If we are going to give you the money, we want more control." *Id.* In order to maintain their independence, the sheriffs were motivated to keep as much money as possible under their own control to give them greater flexibility over how to spend it. *See id.*

Because the legislative history shows that the debate focused only on whether revenues should remain with the sheriffs or be turned over to the Commonwealth, it provides no support for Sheriff Hodgson's claim that the 2009 Session Law expressly authorizes him to impose and collect telephone charges. Under either scenario, a decision had to be made about what to do with the telephone funds.

Sheriff Hodgson asks the Court to draw a different conclusion about the General Court's intention. He argues that the addition of Section 12 is significant not because of what the statutory text says it does—allowing telephone funds to "remain" with the sheriffs—but because it should somehow be read to represent a decision to retain rather than eliminate an already existing authority to require Securus to pay such funds. But if this authority already existed before the 2009 Session Law was enacted, then it would also be possessed by the sheriffs of the abolished counties. After all, they operate under the same General Laws delegating to them operational and management control of their correctional facilities.

Significantly, however, Section 12(a) expressly states that it does not apply to the sheriffs of abolished counties. Sheriff Hodgson's reading of the 2009 Session Law, therefore, only makes sense if Section 12(a) is interpreted to mean what it says: transferred sheriffs can keep telephone funds instead of turning them over to the state. It cannot be interpreted to provide authority to collect such funds in the first place. By logical necessity, therefore, Sheriff Hodgson must fall back on his argument that his right to impose telephone charges derives from his general power over the procurement process set forth in Section 15. The following therefore must be true: If the collection of telephone payments was not authorized by the General Court prior to the enactment of the 2009 Session Law, phone charges did not become legal as a result of its passage. And, as explained above in Section II.C., the procurement language in Section 15 does not come close to satisfying the *Souza* requirement that a sheriff cannot impose financial charges without express statutory authority.

Finally, to the extent that the 2009 Session Law is ambiguous, as the Federal District Court concluded, *see* J.A. 1165–66, it fails to satisfy the requirement of *Souza* that the statutory authority to impose charges on phone calls must be clear, specific, and express. Indeed, Sheriff Hodgson's suggestion that the 2009 statutory text may be ambiguous represents yet another concession that he has failed to meet

his burden under *Souza*, to establish that the 2009 Session Law gives him the requisite authority to demand payment for telephone services.

E. Section 12(a) is inapplicable to the sheriffs of the seven abolished counties, and it would make no sense to authorize telephone fees in some counties but not in others solely because of the timing of their merger with the Commonwealth.

Sheriff Hodgson's alternative claim that the 2009 Session Law is sufficient by itself to justify telephone charges is also flawed because it compels the strange conclusion that only the seven sheriffs' offices whose takeover by the Commonwealth was accomplished by the 2009 Session Law are authorized to charge telephone commissions. Section 12(a), which allows the transferred sheriffs to retain telephone funds, expressly states that it does not apply to sheriffs of the previously abolished county governments. Notably, the legislation that abolished the other seven county governments did not include language allowing the sheriffs to retain funds they may have collected, and made no mention of telephone revenue. *See* Mass. Gen. Laws ch. 34B, §§ 1, 12.

If the General Court had intended to authorize sheriffs to collect telephone commissions, it would be illogical to limit that authority to just those sheriffs whose takeover by the Commonwealth was affected by the 2009 Session Law. It would be entirely arbitrary to permit only some sheriffs to impose charges of such obvious

public importance as telephone commissions.[12] By contrast, allowing some sheriffs to retain revenue that other sheriffs must return to the General Fund was perfectly reasonable considering that the main practical difference between the 2009 Session Law and ch. 34B is that the transferred sheriffs are allowed to keep funds that the abolished sheriffs must turn over to the state. Both laws state explicitly that they are not changing the sheriffs' powers and authorities, and neither law purports to authorize sheriffs to generate telephone revenue.

Furthermore, given the General Court's careful management of all other fees that it has authorized sheriffs to charge incarcerated persons and others, if it had intended to give transferred sheriffs the authority to collect, as opposed to retain, telephone revenue, it would have written a statute that says so expressly. It would not have used ambiguous language in an uncodified session law to make such a momentous policy decision. *See Plourde v. Police Department of Lawrence*, 85 Mass. App. Ct. 178, 187 (2014) ("[I]t strains credulity to suggest that a special act designed to ensure Lawrence's fiscal health would mandate such bureaucratic inefficiency . . . .").

[12] The Federal District Court, in its now-vacated decision granting judgment on the pleadings, rationalized this outcome on grounds that the differential treatment "presumably, arose from negotiations between these seven sheriffs' offices and the Legislature." J.A. 1168. But nothing in the legislative history of the 2009 Session Law suggests that there was any discussion, let alone negotiation, of the sheriffs' authority to collect telephone revenue in the first place.

F. In *Souza*, this Court rejected Sheriff Hodgson's claim that audits of the BCSO demonstrate that telephone site commissions are lawful.

Sheriff Hodgson relies on several audits of the Bristol County Sheriff's Office performed in connection with the restructuring to assert that the contract between the BSCO and Securus is lawful. He notes that a 2019 Report issued by the state Auditor "included no findings that the inmate telephone contract with Securus exceeded the BCSO's contracting authority or that the revenue was handled improperly." Hodgson Br. 30. The Audit Report states, however, that it simply "reviewed the contract files to determine whether each contract was awarded in accordance with BCSO policies and procedures." J.A. 805. Given this narrow mission, it is not surprising that the auditor did not address whether Sheriff Hodgson had the requisite statutory authority to demand that Securus include site commissions in the contract.

Similarly, the stated purpose of the 2010 Audit Sheriff Hodgson relies on was to: (1) "Determine whether all duties, functions, and responsibilities of the Sheriffs' Offices were transferred in accordance with Chapter 61 of the Acts of 2009" and (2) "Determine whether Sheriff's Offices' assets, liabilities, and debt were transferred in accordance with Chapter 61 of the Acts of 2009." J.A. 542–43. It simply examined Sheriff Hodgson's compliance with the 2009 Session Law; consideration of whether

Sheriff Hodgson was legally entitled to collect telephone funds from Securus was far beyond the scope of the audit.

Significantly, Sheriff Hodgson's argument here matches one of the arguments he made in *Souza* nearly verbatim. *See Souza*, 455 Mass. at 831 ("The sheriff contends that, by auditing the program . . . and by finding the program to be in 'compliance' with the regulations, the commissioner 'approved' and 'adopt[ed]' . . . the challenged fees therein . . . . This argument ignores the confines of the regulation and the purposes of the commissioner's inspections or audits."). It was not enough, this Court concluded, to show that the fee program was known to state officials. "Neither the regulations nor the statutory provisions authorizing inspections provide an authorization to impose the challenged fees." *Id.*

G. If Section 12(c) of the 2009 Session Law authorized telephone fees, then it would have also sanctioned the cost of care program that *Souza* struck down.

The 2009 Session Law cannot be interpreted to authorize the collection of telephone charges for an additional reason: It provided accounting instructions that apply equally to the cost of care fees that were struck down in *Souza*. Specifically, Section 12(c) provides that "[a]ny sheriff who has developed a revenue source derived apart from the state treasury may retain that funding to address the needs of

the citizens within that county."[13] Sheriff Hodgson introduced the cost of care fees in July 2002.[14] As a source of revenue "developed" by a sheriff "apart from the state treasury," these funds would appear to be covered by Section 12(c), and Sheriff Hodgson would therefore be allowed to "retain that funding." Contrary to Sheriff Hodgson's interpretation, Section 12(c) does not give him *carte blanche* to develop new sources of revenue that might otherwise be unlawful. As *Souza* demonstrates, Section 12(c) does not insulate Sheriff Hodgson from liability if he develops a revenue source in violation of applicable laws. And as Section 15 makes clear, Sheriff Hodgson remains obligated to follow all the same laws governing his power and authority that were in effect before the 2009 Session Law went into effect.

If Sheriff Hodgson were correct that merely by acknowledging the existence of certain funds, the General Court intended to give the sheriffs retroactive authority to collect that money, then the 2009 Session Law would protect not just telephone charges, but also the cost of care fees that *Souza* later declared unlawful, as well as

[13] Section 12(a) provides similar instructions for telephone funds, stating that they "shall remain with the office of sheriff." Since there is no constructive difference between "funds shall remain" and "retain that funding," the 2009 Session Law has the same legal effect on both revenue sources.

[14] Although the Superior Court declared them to be unlawful and enjoined further collection, Sheriff Hodgson appealed that ruling and continued to hold the fees he had collected until after this Court decided *Souza*. The 2009 Session Law passed August 6, 2009 and took effect on January 1, 2010, shortly before the *Souza* decision was released. Thus, there is no basis for any suggestion that the 2009 Session Law superseded *Souza*.

any new types of fees Sheriff Hodgson might choose to establish in the future. Implicit in Section 12(c) is a requirement that there must be a lawful basis for any revenue source a sheriff may develop.[15] Certainly, the General Court did not intend the 2009 Session Law to insulate a sheriff from challenges to the legality of any revenue-generating scheme he might dream up.[16]

III. Sheriff Hodgson correctly concedes that Section 3 of Mass. Gen. Laws ch. 127 has no bearing on this case.

Section 3 of Mass. Gen. Laws ch. 127 provides, in pertinent part, that "[a]ny monies derived from interest earned upon the deposit of such money and revenue generated by the sale or purchase of goods or services to persons in the correctional facilities may be expended for the general welfare of all inmates at the discretion of the superintendent."[17] At oral argument before the Federal District Court, *see*

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[15] Sheriff Hodgson's reliance on Section 12(b), which requires him to confer annually with legislative ways and means committees about efforts to maximize and maintain revenue sources, suffers from the same failure to recognize that there must be appropriate lawful authority for the revenue source.

[16] The Federal District Court concluded there is no conflict between Section 12(c) and *Souza* because that section does not apply to revenue generated from people in custody but to "other (legal) sources of revenue funding the needs of the county's citizens generally." J.A. 1169. If that is correct, it is another reason to reject Sheriff Hodgson's interpretation of Section 12(c).

[17] In full, Section 3 provides:

They shall keep a record of all money or other property found in possession of prisoners committed to such institutions, and shall be responsible to the commonwealth for the safe keeping and delivery of said property to said prisoners or their order on their discharge or at any time before. The superintendents of correctional institutions of the commonwealth and the superintendents and keepers

J.A. 1199, as well as his brief before this Court, *see* Hodgson Br. 35, Sheriff Hodgson correctly acknowledges that Section 3 does not apply here because the revenue to the BCSO from ICS is not generated by the sale of goods or services to incarcerated persons. Hodgson Br. 35. Plaintiffs agree with Sheriff Hodgson on that point and for the further reasons stated below.

A. Section 3 by its express terms only applies to revenue from the sale of goods and services to incarcerated persons.

It is undisputed that telephone calls made by persons in Bristol County correctional facilities, which are all outgoing calls, are paid for exclusively by the recipients of those calls. *See* J.A. 1176, 1200; *see also* Hodgson Br. 35–37. That telephone revenue is therefore outside the scope of Section 3. Indeed, when Section 3 was passed in 1994, and until sometime after 2008, DOC regulations required that all inmate calls be collect. *See* 103 Code Mass. Regs. § 482.07(3)(a) (1994 and 2008) ("All inmate calls shall be one-way collect calls only, utilizing an automated

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of jails, houses of correction and of all other penal or reformatory institutions shall, upon receipt of an outstanding victim and witness assessment, transmit to the court any part or all of the monies earned or received by any inmate and held by the correctional facility, except monies derived from interest earned upon said deposits and revenues generated by the sale or purchase of goods or services to persons in correctional facilities, to satisfy the victim witness assessment ordered by a court pursuant to section eight of chapter two hundred and fifty-eight B. Any monies derived from interest earned upon the deposit of such money and revenue generated by the sale or purchase of goods or services to persons in the correctional facilities may be expended for the general welfare of all the inmates at the discretion of the superintendent.

operator."); J.A. 1215, 1220. Thus, when it enacted Section 3, the General Court could not have considered telephone calls to be a service sold to prisoners.

Even if incarcerated persons did pay the phone bills, which they do not, Securus pays the money at issue here to Sheriff Hodgson as a condition of the contract. Incarcerated persons are not parties to the contract with Securus and get no benefit from the provisions requiring payments to the Sheriff; in fact, they are harmed by them. Nothing in Section 3 authorizes sheriffs to demand that a phone company generate revenue to help them pay for facility operations by charging its customers more than the cost of the calls to the company.

B. Section 3 by its express terms only applies to "monies earned or received by any inmate and held by the correctional facility."

Section 3 regulates money that is in an incarcerated person's custodial account. It makes the superintendent essentially a trustee over an incarcerated person's money, directing that, with limited exceptions, she must deliver it back to him upon his release or at some earlier time. By its plain terms, the only funds that the superintendent can spend on the general welfare under Section 3 must (1) be from monies earned or received by an incarcerated person and (2) held in his custodial prison account. The revenue Securus pays the Sheriff fails both tests. Because the call recipients paid the bills, the money was never earned or received by the incarcerated person, and it was never at any point held in his custodial account. Section 3 therefore has no bearing here.

C. The application of Section 3 to telephone calls would conflict with this Court's interpretation of that statute in *Souza*.

At issue in *Souza* were fees for a variety of different "services" provided to incarcerated persons, including the whole gamut of services encompassed by the cost-of-care fees at the heart of that case. Nonetheless, this Court specifically cited Section 3 to support its conclusion that: "[h]ad the Legislature intended to authorize the sheriff to impose the challenged fees, it would have said so expressly as it had done with other fees." *Id.* at 833. With respect to Section 3, the Court pointed out that it specifically allowed the superintendent to take money from the custodial account only for victim witness assessments. Thus, the general reference in Section 3 to "goods and services" no more allows the Sheriff to demand payments for inmate phone calls than it allowed him to charge the cost-of-care fees that this Court struck down in *Souza*.

Furthermore, if the general language in Section 3 meant sheriffs could charge for services without explicit authority, there would have been no need for the General Court to enact statutes expressly authorizing charges for haircut fees, medical copayments, or account administration fees. *See* Mass. Gen. Laws ch. 124, § 1(r), (s), (u).

The Federal District Court reconciled its now-vacated decision granting judgment on the pleadings with *Souza* by pointing out that Section 12(a) of the 2009 Session Law only mentions telephone and commissary revenue, and not the cost-of-

care or any other fee challenged in *Souza*. J.A. 1166. But the Federal District Court's conclusion that the broad reference to "the sale or purchase of goods and services" in Section 3 really means "the sale or purchase of goods [at the commissary] or [telephone] services to persons in the correctional facilities," J.A. 1166 (language in brackets added by Federal District Court); reads into the statute words that are not there. *See Dartt v. Browning-Ferris Indus.*, 427 Mass. 1, 9 (1998) ("[W]e will not add to a statute a word that the Legislature had the option to, but chose not to, include.").

D. If Section 3 applied to phone revenue, there would have been no need for the 2009 Session Law to give sheriffs authority to retain telephone revenue because Section 3 itself would have already authorized them to spend it on "the general welfare of all the inmates."

Section 3 does not provide superintendents authority to charge incarcerated persons for any particular service, as is required by *Souza*, 455 Mass. at 586–87. Instead, it merely provides instructions for what must be done with revenue that the General Court has given sheriffs the express right to collect from incarcerated persons, directing them to spend it on "the general welfare of all inmates." Thus, if Section 3 applied to telephone revenue, sheriffs, as well as the DOC, would have already been authorized to spend it on the general welfare of all the inmates instead of placing it in the General Fund, (as is required by Mass. Gen. Laws ch. 29, § 2, unless some other law provides otherwise). In that case, there would have been no

need for the 2009 Session Law because Section 3 itself would authorize retention of such revenue.

IV. Plaintiffs' claims are properly raised in this litigation.

In an attempt to argue that the Court is not the proper forum to resolve the specific questions of statutory interpretation arising in this case, Sheriff Hodgson points to three bills currently being considered by the General Court that address calling services provided to incarcerated persons. *See* Hodgson Br. 40. But those bills are aimed at making a major change to Massachusetts law: All of the bills would require sheriffs to provide free telephone calls to individuals in their custody and to individuals receiving those calls. *See* J.A. 1344, 1346, 1348. Plaintiffs do not contend in this litigation that existing law requires such an outcome.

Seeking to buttress his contention that telephone charges are not unlawful, Sheriff Hodgson also points to bills considered during the 2019–2020 session, *see* J.A. 616, 620, that would have abolished commissions and placed other requirements and limitations on telephone services for incarcerated people. Passage of these bills clearly would have been a death knell to any claim that he has the authority to demand payments from Securus for telephone services. *See* Hodgson Br. 28–29. However, it is well-established that "often the Legislature may amend a statute simply to clarify its meaning," *Cook v. Patient Edu, LLC*, 465 Mass. 548, 554 (2013) (quoting *Boyle v. Weiss*, 461 Mass. 525 (2012)), or to "terminate or avoid

adverse contentions or litigations," *Wong Yang Sung v. McGrath*, 339 U.S. 33, 46 (1950). And even the General Court's rejection of a proposed amendment that would make a statute accord with an interpretation advanced by one of the parties has no bearing on the proper interpretation of that statute. *See Aids Support Group of Cape Cod, Inc. v. Town of Barnstable*, 477 Mass. 296, 305 (2017) (rejecting argument that unsuccessful efforts to amend law at issue shed light on Legislature's intent when it enacted controlling law); *Cook*, 465 Mass. at 555 n.14 ("We do not draw conclusions concerning the intent of the Legislature based on the failure to enact a subsequent amendment."); *Massachusetts Comm'n Against Discrimination v. Liberty Mut. Ins. Co.*, 371 Mass. 186, 193–94 (1976) ("[T]he views of a subsequent [Legislature] form a hazardous basis for inferring the intent of an earlier one." (quoting *United States v. Price*, 362 U.S. 304, 313 (1960) (alterations in original))).

In short, proposed legislative reforms do not speak to the question of whether Sheriff Hodgson currently has the express authority, as *Souza* requires, to raise revenues for the BCSO through ICS contracts. And they do not close the courthouse doors to Plaintiffs' claims. Plaintiffs are entitled to challenge Sheriff Hodgson's *ultra vires* actions and to seek answers to questions of statutory interpretation in court.[18]

[18] Securus argues that Plaintiffs' Chapter 93A claim underscores the unfairness of Plaintiffs' attempt to effect legislative change by means of judicial fiat. Brief of Defendant Securus Technologies, Inc. 5–9. Whether or not Plaintiffs' have

As discussed above, neither Sections 12(a), 12(b), 12(c), or 15 of the 2009 Session Law, nor Section 3 of Mass. Gen. Laws ch. 127, taken separately or together, provide Sheriff Hodgson with the required authorization to raise revenues for the BCSO through ICS contracts. Accordingly, if Sheriff Hodgson wishes to obtain the necessary express authority, it is he, not Plaintiffs, who needs to approach the General Court to change the existing law.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court find that the General Court has not authorized the Bristol County Sheriff's Office to raise revenues for the Office of the Sheriff through inmate calling service contracts.

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a valid Chapter 93A claim against Securus is an issue that the Federal District Court properly will decide after the specific question it certified to this Court is answered. Therefore, Securus' argument is premature and has no bearing on this Court's specific determination of whether the BCSO currently has the required authority under the statutes identified in the certified question to raise revenues through ICS contracts.

Dated: August 6, 2021

Respectfully submitted,

By: /s/ James R Pingeon

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ADDENDUM

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KELLIE PEARSON, ROGER BURRELL, BRIAN GIVENS, and THE LAW OFFICES OF MARK BOOKER, on behalf of themselves and those similarly situated,	*	
Plaintiffs,	*	
v.	*	Civil Action No. 18-cv-11130-IT
THOMAS M. HODGSON, individually and his official capacity as Sheriff of Bristol County, and SECURUS TECHNOLOGIES, INC.,	*	
Defendants.	*	

MEMORANDUM & ORDER VACATING JUDGMENT
AND GRANTING REQUEST TO CERTIFY QUESTION TO THE
MASSACHUSETTS SUPREME JUDICIAL COURT

March 31, 2021

TALWANI, D.J.

Plaintiffs to this action sought declaratory relief stating that Thomas Hodgson, the Sheriff of Bristol County, Massachusetts ("Sheriff Hodgson" or "Sheriff"), violated Massachusetts law when he procured an inmate calling system to raise revenues for the office of the Sheriff. Plaintiffs also alleged that the vendor of the inmate calling system, Securus Technologies Inc. ("Securus"), engaged in unfair and deceptive practices in violation of Massachusetts' consumer protection laws, Mass. Gen. Laws ch. 93A. In a Memorandum and Order [#114], the court granted Defendants' motions for judgment on the pleadings. In so ruling, the court found that two different provisions of Massachusetts law—an uncodified section of a 2009 Session Law and Mass. Gen Laws. Ch. 127, § 3—provided the necessary legislative authority for the inmate

calling system used by Sheriff Hodgson. Importantly, the court found that neither statute was necessarily plain on its face and instead the court read the two provisions together to find that the Legislature knew that county sheriffs were using inmate calling systems to generate revenues and approved this practice. See Mem. & Order 14 [#114]. Accordingly, the court entered judgment in favor of Defendants. See Judgment [#115].

However, the court's finding that one of those two statutes, Mass. Gen. Laws ch. 127, § 3, was critical for interpreting the meaning of the 2009 Session Law was not an argument advanced by either party. Indeed, no party cited to, or relied upon, that statute in their briefs. And, at oral argument, despite the court's inquiry, see Elec. Order [#111], neither side agreed that the statute was relevant to the question presented. Nevertheless, the court's Memorandum and Order [#114] concluded that the statute was critical for understanding the broader statutory scheme and for contextualizing the 2009 Session Law.

Now before the court is Plaintiffs' Motion to Alter or Amend the Judgment and Certify the Question of Law to the Massachusetts Supreme Judicial Court [#118]. Plaintiffs argue that the court's analysis of ch. 127, § 3 ("the statute") was factually and legally flawed. Namely, Plaintiffs contend, inter alia, that (1) the statute only applies to the revenues generated from goods and services sold *to inmates* whereas the inmate calling system at question did not charge inmates, but instead charged those receiving the calls; (2) the statute is inapplicable to the commission-based contract between the Sheriff and Securus; (3) the court interpreted the statute in a manner inconsistent with the Supreme Judicial Court's interpretation of the same provision; (4) the court failed to interpret the statute in the context of other provisions contained in the enacting statute; (5) the statute did not intrinsically provide the sheriffs with any authority to sell goods and services to inmates; (6) the court's interpretation of the statute was in conflict with the

2009 Session Law; (7) the court's interpretation of the statute was inconsistent with the Massachusetts Department of Correction's interpretation of the same statute; and (8) the statute should be read only to apply to the sale of goods and services by prisoners to other prisoners. Pls.' Mot. Amend Judgment 4–16 [#118].

Defendants do not wrestle with the merits of Plaintiffs' arguments, but contend instead that the court addressed and rejected these points in its Memorandum and Order [#114] and must first conclude that the June 2020 Memorandum and Order constitutes a "manifest error of law"[1] before granting reconsideration. Hodgson Opp'n 3 [#119] (citing Marie v. Allied Home Mortg. Corp., 402 F.3d 1, 7 (1st Cir. 2005)); see also Securus Opp'n [#120]. However, the court's authority to set aside a judgment under Rule 59(e) is not as constrained as Defendants contend. Relief under Rule 59(e) constitutes "an extraordinary remedy which should be used sparingly," Palmer v. Champion Mortg., 465 F.3d 24, 30 (1st Cir. 2006) (quoting 11 Charles Alan Wright et al., Federal Practice and Procedure § 2810.1 (2d ed. 1995)), but "[s]ince specific grounds for a motion to amend or alter are not listed in the rule, the district court enjoys considerable discretion in granting or denying the motion." 11 Charles Alan Wright et al., Federal Practice and Procedure § 2810.1 (3d ed.). Indeed, in Venegas-Hernandez v. Sonolux Recs., the First Circuit recognized, and held, that, absent new evidence, trial judges are not strictly constrained to setting aside a judgment only where there has been a manifest error of law. 370 F.3d 183, 195 (1st Cir. 2004). In that case, the First Circuit upheld the district court's decision to grant a Rule 59(e) motion where "the peculiar context" of that case resulted in an initial ruling in which "the

[1] A manifest error is an "error that is plain and indisputable, and that amounts to a complete disregard of the controlling law or the credible evidence in the record." Manifest Error, Black's Law Dictionary (11th ed. 2019). See also Venegas-Hernandez v. Sonolux Recs., 370 F.3d 183, 195 (1st Cir. 2004) (citing Black's Law Dictionary for the definition of "manifest error of law" in the context of a Rule 59(e) motion).

issue was never fairly presented" to the court. Id. Consistent with the First Circuit's ruling in Venegas-Hernandez, courts within and without this district have explicitly recognized that a Rule 59(e) motion is proper "where the Court has made a decision outside the adversarial issues presented to the Court by the parties." Rivera v. Melendez, 291 F.R.D. 21, 23 (D.P.R. 2013) (quoting Dugdale, Inc. v. Alcatel–Lucent USA, Inc., et al., 2011 WL 3298504 (S.D. Ind., August 11, 2011)); see also Above the Belt, Inc. v. Mel Bohannan Roofing, Inc., 99 F.R.D. 99, 101 (E.D. Va. 1983) (same); Intermec Techs. Corp. v. Palm Inc., 830 F. Supp. 2d 1, 4 (D. Del. 2011) (same). This basis for Rule 59(e) relief makes good sense as it ensures that parties have an opportunity to be heard, while still "balanc[ing] the need for finality with the need for justice." Venegas-Hernandez, 370 F.3d at 190.

Here, the court reached a decision outside the adversarial issues presented by the parties. The court relied extensively on ch. 127, § 3, despite no party having briefed the proper construction and relevance of that statute. Now that Plaintiffs have articulated their contrary argument, the court concludes that these issues should be analyzed and addressed with the benefit of the adversarial process for justice to be done. Accordingly, the court sets aside the June 22, 2020 Memorandum and Order [#114] and Judgment [#115].[2]

[2] Plaintiff's Rule 59(e) motion was filed five minutes after 6:00 p.m. on the 28th day following the entry of judgment. Sheriff Hodgson asserts that the motion is therefore untimely and may not be considered. See Hodgson Opp'n 11 [#119]. Sheriff Hodgson is correct that under Fed. R. Civ. P. 6(a)(2), the court may not extend the 28-day deadline for motions brought under Rule 59(e). See also Banister v. Davis, 140 S. Ct. 1698, 1700 (2020) ("Federal Rule of Civil Procedure 59(e) allows a litigant to file a motion to alter or amend a district court's judgment within 28 days from the entry of judgment, with no possibility of an extension"). Sheriff Hodgson is also correct that this district's Local Rule 5.4(d) requires electronic submissions to be filed by 6:00 p.m. But under Fed. R. Civ. P. 6(a)(4)(A), the last day for filing is midnight in the court's time zone "[u]nless a different time is set by a statute, local rule or court order" (emphasis added), and under Local Rule 5.4(a) the 6:00 p.m. deadline applies "[u]nless . . . otherwise ordered by the court." Accordingly, the court is authorized to extend the 6:00 p.m. filing deadline up until midnight on the 28th day. In light of the specific circumstances present here, the court orders the

The court next turns to Plaintiffs' request that the court certify the determinative question of law presented by Defendants' Motions for Judgment on the Pleadings [#61], [#65] and Plaintiffs' Motion for Partial Summary Judgment on Count I [#70] to the Massachusetts Supreme Judicial Court ("SJC"). Plaintiffs argue that the requirements for certification under the SJC's rules are met and that other considerations militate strongly in favor of certification. The court agrees.

This court may certify questions to the SJC where there are questions of law that: (1) "may be determinative of the cause then pending in the certifying court," and (2) are not subject to "controlling precedent" from the decisions of the SJC. SJC Rule 1:03(2). Both elements are met here.

As to the first element, the question of law presented—whether the Sheriff may collect revenue using inmate calling services—is the central question presented by this case. Although Securus argues that resolution of this issue is not necessary for its defense because Securus has an additional argument as to why the ch. 93A claim fails, Securus does not dispute that the issue is central to Plaintiffs' claims as to Sheriff Hodgson and that a resolution adverse to Plaintiffs would also resolve all claims against Securus. See Mem. & Order 16 [#114] (discussing how Plaintiffs did not challenge Securus' practices on grounds that would stand alone from Plaintiffs' claim that the Sheriff was acting outside of his legislative authority). Indeed, Securus' lead argument in its Memorandum in Support of Motion for Judgment on the Pleadings [#66] is the alleged legality of the Sheriff's collection of revenue from inmate calling services.

6:00 p.m. deadline provided by Local Rule 5.4(d) set aside, nunc pro tunc, and finds Plaintiffs' motion to have been timely filed.

As to the second element, the court finds that there is no "controlling precedent" from decisions of the SJC. The First Circuit has interpreted the "no controlling precedent" element to "to prevent certification in cases when 'the course the state court would take is reasonably clear.'" Shaulis v. Nordstrom, Inc., 865 F.3d 1, 6 n.3 (1st Cir. 2017) (quoting Easthampton Sav. Bank v. City of Springfield, 736 F.3d 46, 50 (1st Cir. 2013)). Although Plaintiffs have argued throughout that this case is controlled by Souza v. Sheriff of Bristol County, 455 Mass. 573 (2010), the court and the parties have struggled with this question throughout the course of this litigation.

In addition, the court finds that the specific question presented by this case not only meets the requirements for certification, but also *should be* certified considering the overwhelming local interest and the principles of federalism at play. The dispositive motions focused on an uncodified session law enacted in connection with the transfer of county sheriffs to the Commonwealth, a law of such local interest that counsel for neither party had even noted the existence of the law in connection with Defendants' motions to dismiss.

Furthermore, Plaintiffs filed this action in state court and asserted only state claims. See Compl. [#1-1]. Defendants asserted that this court held jurisdiction to this action under the Class Action Fairness Act ("CAFA") since the action was pleaded as a class action with an amount in controversy greater than $5,000,000, while also meeting CAFA's minimal diversity requirement because Securus was a citizen of a different State than at least one member of the class of plaintiffs. See Notice of Removal [#1] (citing 28 U.S.C. § 1332(d)(2)). Given the nature of the claims here, and the local nature of the dispute, the federal interests in this action, even in light of CAFA, are minimal. In contrast, the state interests are substantial. At bottom, this is a case about the powers that have or have not been delegated to the county sheriffs by the state Legislature.

As the First Circuit wrote in Globe Newspaper Co. v. Beacon Hill Architectural Comm'n, where cases involve the authority of state actors under state law, the dispute becomes "a matter of peculiarly state and local concern." 40 F.3d 18, 24 (1st Cir. 1994). As was true there and is equally true here "[w]here possible, state courts should rule in the first instance on the scope of local governmental authority." Id.

Defendants argue finally that certification is improper since Plaintiffs only sought certification after receiving an adverse ruling. See Hodgson Opp'n 10 [#119]; Securus Opp'n 5 [#120]. Defendants are correct that, as a general matter, "[t]he practice of requesting certification after an adverse judgment has been entered should be discouraged." Securus Opp'n 5 [#120] (quoting Bos. Car Co. v. Acura Auto. Div., Am. Honda Motor Co., 971 F.2d 811, 817 n.3 (1st Cir. 1992) (quoting Perkins v. Clark Equipment Co., 823 F.2d 207, 210 (8th Cir. 1987))). However, the court has concluded that the adverse ruling and judgment must be set aside independent of the certification question, and therefore this concern is no longer present.

For the reasons set forth above, the court will, by separate order, certify the following question of Massachusetts law to the SJC:

> Did the Massachusetts Legislature, through the provisions of 2009 Mass. Legis. Serv. Ch. 61 (S.B. 2119) §§ 12(a), 12(c), 15, or M. G. L. ch. 127, § 3, taken separately or together, authorize the Bristol County Sheriff's Office to raise revenues for the Office of the Sheriff through inmate calling service contracts?

IT IS SO ORDERED.

Date: March 31, 2021

/s/ Indira Talwani
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

KELLIE PEARSON, ROGER BURRELL, BRIAN GIVENS, and THE LAW OFFICES OF MARK BOOKER, on behalf of themselves and those similarly situated,	*	
Plaintiffs,	*	
v.	*	Civil Action No. 18-cv-11130-IT
THOMAS M. HODGSON, individually and in his official capacity as Sheriff of Bristol County, and SECURUS TECHNOLOGIES, INC.,	*	
Defendants.	*	

ORDER CERTIFYING QUESTION TO
MASSACHUSETTS SUPREME JUDICIAL COURT
April 8, 2021

TALWANI, D.J.

For the reasons set forth in the court's March 31, 2021 Memorandum and Order [#122], the following question of Massachusetts law is HEREBY CERTIFIED to the Massachusetts Supreme Judicial Court pursuant to S.J.C. Rule 1:03:

> Did the Massachusetts Legislature, through the provisions of 2009 Mass. Legis. Serv. Ch. 61 (S.B. 2119) §§ 12(a), 12(c), 15, or M. G. L. ch. 127, § 3, taken separately or together, authorize the Bristol County Sheriff's Office to raise revenues for the Office of the Sheriff through inmate calling service contracts?

Mem. & Order 7 [#122].

The controversy in which the question arose is Plaintiffs' challenge to the Bristol County Sheriff's Office's use of inmate calling services to generate revenue. Complaint [#1-1].[1] The

[1] The action was filed as a putative class action in the Suffolk Superior Court but was removed to this court pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d)(2).

parties agreed for the purposes of Defendants Thomas M. Hodgson ("Sheriff Hodgson") and Securus Technologies, Inc.'s ("Securus") Motions for Judgment on the Pleadings [#61], [#65], and Plaintiffs' Motion for Partial Summary Judgment [#70], that there was no material factual dispute relevant to the dispositive issue. Taking Plaintiffs' well-pled allegations as true, the relevant factual background is as follows:

> In May 2011, Sheriff Hodgson solicited bids for an inmate calling service at several of Bristol County's correctional facilities through a Request for Responses ("RFR"). Compl. ¶ 28 [#1-1]; Hodgson Answer ¶ 28 [#50]. The RFR required each bidder to include in its bid "commissions" that the bidder would pay to the Sheriff based on gross revenues that the bidder received from operating the inmate calling service, including both "collect and direct dial (debit) modes." RFR §§ 5.1.20–5.1.21 [#62-2].
>
> On August 8, 2011, the Sheriff awarded Securus a five-year contract to serve as the vendor for the Bristol County Correctional Facilities' inmate calling service. The contract provided that the Sheriff would receive annual funding for two on-site administrator positions at $65,000 each, a $75,000 annual technology fee, and "commission" in the amount of 48% of Securus's gross revenues from the inmate calling service. Compl. ¶¶ 31, 34 [#1-1]. Between August 2011 and June 2013, Securus paid the Sheriff an aggregate of $1,172,748.76. Id. ¶ 35.
>
> On October 21, 2015, the Sheriff and Securus entered into a new contract for a four-year term. The new contract discontinued commissions paid to the Sheriff based on revenue but continued to fund the on-site administrator positions and annual technology fee. Furthermore, the new contract provided that these amounts would be paid by Securus through a one-time upfront payment of $820,000 instead of $205,000 annually over the course of the four-year contract. Id. ¶¶ 41–44.[2]

The court previously granted Sheriff Hodgson's and Securus's Motions for Judgment on the Pleadings [#61], [#65], and denied Plaintiffs' Motion for Partial Summary Judgment on

[2] In the Complaint, Plaintiffs alleged that this lump sum payment was a roundabout way of continuing to pay the Sheriff commissions. See Compl. ¶ 46 [#1-1]. Plaintiffs retracted this allegation during the oral argument on the cross-motions and agreed that the 2015 contract no longer had the Sheriff continuing to collect commissions either in form, or in substance. Nevertheless, Plaintiffs continue to assert that the 2015 contract remains problematic since the Sheriff's policy of charging *any* amount of money for phone calls is unlawful absent Legislative authority. See Mem. & Order 6 n.2 [#114].

Count I [#70], finding that the Massachusetts Legislature had authorized Sheriff Hodgson to use inmate calling services to generate revenue. See Mem. & Order [#114]. The court subsequently vacated this ruling, however, and determined that the question of law presented by the parties' cross motions should be certified to the Massachusetts Supreme Judicial Court for adjudication. See Mem. & Order [#122].

In accordance with S.J.C. Rule 1:03, § 4, the Clerk of this court is directed to forward to the Massachusetts Supreme Judicial Court, under the official seal of this court, a copy of this certification order, a copy of the docket, and copies of the documents listed in Appendix A.

The court welcomes any additional observations about relevant Massachusetts law that the Supreme Judicial Court may wish to offer. This case is STAYED pending a response to the certified question.

IT IS SO ORDERED.

Date: April 8, 2021

/s/ Indira Talwani
United States District Judge

Appendix A: Documents to be Forwarded to Massachusetts Supreme Judicial Court

- Notice of Removal [#1]
- Complaint [#1-1]
- State Court Record [#14]
- Sheriff Hodgson's Motion to Dismiss [#26] and Memorandum in Support [#27]
- Securus's Motion to Dismiss [#28] and Memorandum in Support [#29] (attachment excluded)
- Plaintiffs' Memorandum in Opposition [#34] to Sheriff Hodgson's Motion to Dismiss
- Plaintiffs' Memorandum in Opposition [#35] to Securus's Motion to Dismiss
- Securus's Reply [#40] to Plaintiffs' Opposition
- Sheriff Hodgson's Reply [#41] to Plaintiffs' Opposition
- Transcript of October 23, 2018 Motion Hearing [#43]
- December 20, 2018 Memorandum and Order [#45]
- Securus's Answer [#49]
- Sheriff Hodgson's Answer [#50]
- Sheriff Hodgson's Motion for Judgment on the Pleadings [#61], Memorandum in Support [#62], and attached exhibits [#62-1] – [#62-9]
- Securus' Motion for Judgment on the Pleadings [#65] and Memorandum in Support [#66]
- Plaintiffs' Consolidated Memorandum in Opposition [#69] to Defendants' Motions for Judgment on the Pleadings
- Plaintiffs' Motion for Partial Summary Judgment [#70], Memorandum in Support [#71], and Statement of Facts [#72]
- Sheriff Hodgson's Opposition to Motion for Partial Summary Judgment [#79] and Counter Statement of Material Facts [#80] and attached exhibits [#80-1] – [#80-6]
- Sheriff Hodgson's Reply [#81] on Motion for Judgment on the Pleadings
- Securus's Reply [#82] on Motion for Judgment on the Pleadings
- Plaintiffs' Reply [#84] on Motion for Partial Summary Judgment
- Transcript of June 11, 2020 Motion Hearing [#116]
- June 22, 2020 Memorandum and Order [#114], since vacated by March 31, 2021 Memorandum and Order [#122]
- June 22, 2020 Judgment [#115], since vacated by March 31, 2021 Memorandum and Order [#122]
- Plaintiffs' Motion to Alter or Amend Judgment [#118]
- Sheriff Hodgson's Opposition [#119]
- Securus's Opposition [#120]
- March 31, 2021 Memorandum and Order [#122]

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title II. Executive and Administrative Officers of the Commonwealth (Ch. 6-28a)
Chapter 7. Executive Office for Administration and Finance (Refs & Annos)

M.G.L.A. 7 § 4A

§ 4A. Departments and divisions

Effective: July 31, 2017
Currentness

The executive office for administration and finance shall include a division of capital asset management and maintenance, which shall be headed by a commissioner as provided in section 2 of chapter 7C, and a department of revenue as provided in chapter 14. The executive office for administration and finance shall include the human resources division and the operational services division. The divisions, the offices and the department shall develop policies and standards to govern the conduct of the secretariats, departments, agencies, boards and commissions of the commonwealth in each of these areas and shall provide expertise and centralized processing to those secretariats, departments, agencies, boards and commissions and any other entities of state government.

(a) The operational services division shall be headed by a state purchasing agent who shall also serve as assistant secretary for operational services. He shall be appointed by the secretary with the approval of the governor. The state purchasing agent shall give bond to the state treasurer in a sum fixed by the governor for the faithful performance of his duties and for the rendering of a proper account of all money entrusted to him for the use of the commonwealth. The purchasing agent may establish within the division such bureaus and other units as are deemed necessary from time to time by the commissioner of administration for the purpose of carrying out the functions of the division. Such functions shall include, but not be limited to, the management of the acquisition of all goods, supplies, equipment and services, excepting the acquisition of such goods, supplies, equipment and services as otherwise provided for in any general or special law or in any administrative rule or regulation promulgated by the secretary, the provision of assistance and advice for such acquisitions, the administration of the state and federal surplus property programs, the administration of the collective purchasing program for the political subdivisions of the commonwealth, the administration and management of reproduction facilities, the management of state acquired vehicles including the use and maintenance thereof and such other functions as the purchasing agent, with the approval of the secretary, may from time to time deem necessary for the efficient and economical administration of the work of said division. The operational services division may charge and collect from statewide contractors a statewide contract administrative fee, to be established by the executive office for administration and finance; provided, however, that such fee shall not exceed 1 per cent of the total value of a contract awarded to a statewide contractor.

(b) The human resources division shall he headed by a personnel administrator who shall also serve as assistant secretary for human resources. He shall be appointed by the secretary with the approval of the governor. Such personnel administrator shall be a person familiar with the principles and experienced in the methods and practices of personnel administration. The personnel administrator shall serve for a term of four years, which term shall end on June thirtieth of the first year of the term of the governor, except that he may be removed by the secretary, with the prior approval of the governor. A person so appointed shall serve until the qualification of his successor; provided, however, that in the case of a person appointed to fill a vacancy occurring during the prescribed term by reason of death, resignation or otherwise, the term of the successor in said office shall end on the next succeeding June thirtieth of the first year of the term of the governor. Within the human resources division shall

also be the state office of affirmative action, the office of employee relations, the office of dispute resolution and the office of workers' compensation administration.

<[There are no paragraphs (c) and (d).]>

(e) The executive office for administration and finance shall promote and improve accountability and transparency throughout the executive department by operating a searchable website as required by section 14C, monitoring and reviewing federal grant applications made on behalf of the commonwealth, coordinating efforts to maximize federal revenue opportunities and providing oversight of compliance with federal reporting requirements. In promoting accountability and transparency, the office may also: (i) establish and maintain a central intake unit for reports of fraud, waste and abuse; (ii) establish and maintain an economic forecasting and analysis unit to coordinate all spending and revenue forecasting by state agencies and coordinate with the caseload and economic forecasting office established in section 4R; (iii) reduce and simplify paperwork of state agencies and departments through the adoption of uniform forms or corresponding short federal forms; (iv) implement and streamline electronic paperwork options to better facilitate public interaction with state agencies; and (v) collaborate with state agencies, authorities and other entities to carry out this subsection.

Except in the case of agencies named in section four G, the secretary may also from time to time establish within the executive office for administration and finance such other bureaus, sections and other administrative units not otherwise established by law as may be necessary for the efficient and economical administration of the work of said office and, when necessary for such purpose, he may abolish any bureau, section or other unit or he may merge any two or more of them. He shall prepare and keep current a general statement of the organization of said office and of the assignment of functions to its various administrative units, officials and employees. Such statement shall be known as the Description of Organization of said office and shall be kept on file in said office. A copy shall be kept on file in the office of the governor.

In the event a new governmental mandate effective on or after July 1, 2004 is imposed upon a contractor providing a social service program, as defined in section 274 of chapter 110 of the acts of 1993, to a governmental unit, as defined in said section 274 of said chapter 110, and compliance with such governmental mandate has or will have a material adverse financial impact on the contractor, except a contractor for goods or services related to special education as defined in section 1 of chapter 71B, the governmental unit shall negotiate a contract amendment with the contractor to increase the maximum obligation amount or unit price to offset the material adverse financial impact of the new governmental mandate; provided, that the contractor furnishes substantial evidence to the governmental unit of such material adverse financial impact along with a request to renegotiate based on a new governmental mandate.

For the purposes of this section, a “new governmental mandate” shall mean a statutory requirement, administrative rule, regulation, assessment, executive order, judicial order or other governmental requirement that was not in effect when the contract was originally entered into and directly or indirectly imposes an obligation upon the contractor to take any action or to refrain from taking any action in order to fulfill its contractual duties.

For the purposes of this section, a “material adverse financial impact” shall mean: (1) an increase in the reasonable costs to the contractor in performing the contract of the lesser of: (i) 3 per cent of the maximum obligation amount or unit price of the contract; or (ii) $5,000, in the aggregate as a result of all such mandates in effect during the contract year; or (2) an action that affects the core purpose and primary intent of the contract.

Any contractor aggrieved by a decision of a governmental unit denying or failing to negotiate a contract amendment to remedy a material adverse impact of a new governmental mandate pursuant to this section may appeal such adverse decision to the division of administrative law appeals in accordance with the section 4H for a hearing and decision de novo on all issues. A contractor's request for contract amendment shall, for purposes of appeal, be deemed to have been denied if a determination is

not received within 30 days of the governmental unit's receipt of the request. A contractor or governmental unit may appeal an adverse decision of the division of administrative law appeals to the superior court, Suffolk division, pursuant to chapter 30A.

Credits

Added by St.1962, c. 757, § 4. Amended by St.1963, c. 801, § 12; St.1967, c. 844, § 6; St.1969, c. 704, § 5; St.1969, c. 766, § 10; St.1971, c. 116, § 10; St.1972, c. 300, § 9; St.1972, c. 644; St.1973, c. 426, § 10; St.1973, c. 720, § 1; St.1973, c. 1131; St.1974, c. 422, § 10; St.1974, c. 835, §§ 4, 5; St.1977, c. 234, §§ 28 to 30; St.1977, c. 872, §§ 22 to 24; St.1978, c. 514, §§ 1, 1A, 1B; St.1980, c. 579, §§ 1 to 3; St.1981, c. 699, § 14; St.1981, c. 767, § 1; St.1982, c. 630, § 1; St.1986, c. 217, § 3; St.1986, c. 488, § 1; St.1989, c. 240, § 118; St.1989, c. 731, §§ 1, 2; St.1990, c. 481, §§ 2, 3; St.1992, c. 286, § 8; St.1994, c. 60, § 24; St.1996, c. 151, § 35; St.1996, c. 365, § 1; St.1997, c. 19, § 3; St.1997, c. 43, § 11; St.1998, c. 194, §§ 12, 13; St.2004, c. 149, § 20, eff. July 1, 2004; St.2009, c. 27, § 6, eff. July 1, 2009; St.2010, c. 56, § 8, eff. May 1, 2010; St.2010, c. 56, § 10, eff. July 1, 2010; St.2011, c. 68, §§ 9 to 12, eff. July 1, 2011; St.2012, c. 118, § 5, eff. June 19, 2012; St.2012, c. 165, §§ 35 to 37, eff. Jan. 1, 2013; St.2014, c. 165, §§ 19, 20, eff. July 1, 2014; St.2015, c. 46, §§ 23, 24, eff. July 1, 2015; St.2017, c. 64, § 7, eff. July 31, 2017.

Notes of Decisions (4)

M.G.L.A. 7 § 4A, MA ST 7 § 4A
Current through Chapter 19 of the 2021 1st Annual Session

End of Document

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title III. Laws Relating to State Officers(Ch. 29-30b)
Chapter 29. State Finance (Refs & Annos)

M.G.L.A. 29 § 2

§ 2. General Fund; deposit of revenue

Effective: January 1, 2013
Currentness

There shall be a General Fund of the commonwealth, into which all revenue payable to the commonwealth shall be paid, except revenue required by law to be paid into a fund other than the General Fund and revenue for or on account of sinking funds, trust funds or trust deposits, which funds shall be maintained and the revenue applied in accordance with law or the purposes of the fund.

All such revenue shall be deposited in and credited to the General Fund or other state funds during the fiscal year in which it is received. In the event that a question arises as to the correct year to credit the receipt of revenues, the comptroller shall make a determination as to the correct fiscal year and the determination of the comptroller shall be conclusive. Every source of state revenue shall be classified according to a schedule of revenue accounts promulgated by the comptroller. The commonwealth's receipt of such revenue shall be documented under rules and regulations promulgated by the comptroller.

Credits
Added by St.2012, c. 165, § 112, Jan. 1, 2013.

Notes of Decisions (5)

M.G.L.A. 29 § 2, MA ST 29 § 2
Current through Chapter 19 of the 2021 1st Annual Session

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Part I. Administration of the Government (Ch. 1-182)
Title VI. Counties and County Officers (Ch. 34-38)
Chapter 34B. Abolition of County Government (Refs & Annos)

M.G.L.A. 34B § 1

§ 1. Transfer date for abolished counties

Currentness

The government of each of the following counties, in this chapter called an "abolished county" is hereby abolished as of the following date, in this chapter called the "transfer date", or on such earlier date 30 days after the commissioner of revenue certifies in writing that the county has failed to make a required payment on an outstanding bond or note: (a) Middlesex county, as of July 11, 1997; (b) Hampden and Worcester counties, as of July 1, 1998; (c) Hampshire county, as of January 1, 1999; provided, however, that all functions, duties and responsibilities for the operation and management of the jail, house of correction and registry of deeds of Hampshire county and all duties and responsibilities for operation and management of property occupied primarily by the sheriff, registry of deeds and the trial courts in Hampshire county are hereby transferred to the commonwealth, effective September 1, 1998, subject to the provisions of this chapter; (d) Essex county as of July 1, 1999; and (e) Berkshire county on July 1, 2000, but all functions, duties and responsibilities for the operation and management of the registries of deeds of Suffolk and Berkshire counties and all duties and responsibilities for the operation and management of property occupied primarily by the registries of deeds in Berkshire and Suffolk counties are hereby transferred to the commonwealth, effective on July 1, 1999, subject to the provisions of this chapter.

Credits
Added by St.1999, c. 127, § 53.

M.G.L.A. 34B § 1, MA ST 34B § 1
Current through Chapter 19 of the 2021 1st Annual Session

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Title VI. Counties and County Officers (Ch. 34-38)
Chapter 34B. Abolition of County Government (Refs & Annos)

M.G.L.A. 34B § 5

§ 5. Liabilities, debts and assets of abolished counties

Currentness

All valid liabilities and debts of an abolished county which are in force immediately before the transfer date shall be obligations of the commonwealth as of the transfer date, except as may be otherwise provided in this chapter. All assets, including revenue received pursuant to chapter 64D and such other revenue said county receives as of immediately before the transfer date shall become assets and revenue of the commonwealth, except as otherwise provided in this chapter.

All valid liabilities and debts of the Suffolk and Berkshire counties' registries of deeds which are in force immediately before July 1, 1999 shall be obligations of the commonwealth on July 1, 1999 except as may be otherwise provided in this chapter. All assets of said registries, including revenue received pursuant to paragraph (2) of section 12 of chapter 64D, and such other revenues received as of immediately before July 1, 1999, shall become assets and revenues of the commonwealth except as otherwise provided in this chapter.

The registries of deeds in Berkshire county shall, until the transfer date of Berkshire county pursuant to section 1, forward to the county commissioners in Berkshire county the deeds revenues that are necessary for the continued operation of Berkshire county government as certified by the county government finance review board; provided, however, that the secretary of administration and finance shall first certify that the commonwealth shall collect and retain sufficient revenue during fiscal year 2000 to fully fund the operations of said registries of deeds.

Credits
Added by St.1999, c. 127, § 53.

M.G.L.A. 34B § 5, MA ST 34B § 5
Current through Chapter 19 of the 2021 1st Annual Session

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Title VI. Counties and County Officers (Ch. 34-38)
Chapter 34B. Abolition of County Government (Refs & Annos)

M.G.L.A. 34B § 9

§ 9. Treasurers of abolished counties

Currentness

The treasurer of an abolished county shall cooperate with the secretary of administration and finance in effecting the orderly transfer of assets, liabilities, personnel, functions, duties and responsibilities from an abolished county or from the Suffolk and Berkshire registries of deeds to the commonwealth. For the duration of his term, said treasurer shall continue to occupy at no cost the office space occupied by the office of the county treasurer immediately before the transfer date.

Credits
Added by St.1999, c. 127, § 53.

M.G.L.A. 34B § 9, MA ST 34B § 9
Current through Chapter 19 of the 2021 1st Annual Session

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Title VI. Counties and County Officers (Ch. 34-38)
Chapter 34B. Abolition of County Government (Refs & Annos)

M.G.L.A. 34B § 12

§ 12. Sheriffs of abolished counties

Currentness

Notwithstanding the provisions of any general or special law to the contrary, the sheriff of an abolished county, including Franklin county, in office immediately before the transfer date, and, in Hampshire county, on September 1, 1998 shall become an employee of the commonwealth with salary to be paid by the commonwealth. The sheriff shall remain an elected official under the provisions of section 159 of chapter 54. Said sheriff shall operate pursuant to the provisions of chapter 37. Such sheriff shall retain administrative and operational control over the office of the sheriff, the jail, and the house of correction as of the transfer date. Said administrative and operational control shall include, but not be limited to, the procurement of supplies, services and equipment.

Credits
Added by St.1999, c. 127, § 53.

M.G.L.A. 34B § 12, MA ST 34B § 12
Current through Chapter 19 of the 2021 1st Annual Session

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Part I. Administration of the Government (Ch. 1-182)
Title VI. Counties and County Officers (Ch. 34-38)
Chapter 37. Sheriffs (Refs & Annos)

M.G.L.A. 37 § 21

§ 21. Traveling expenses

Currentness

The sheriff of Nantucket county shall be entitled to receive from the county his actual traveling expenses incurred in the transportation of prisoners to and from jails and other penal institutions; and the sheriff of each other county, except Suffolk, shall be entitled to receive from the county his actual traveling expenses incurred in the performance of his official duties, exclusive of expenses incurred in the transportation of persons pursuant to section twenty-four.

Credits
Amended by St.1943, c. 159, § 1; St.1983, c. 721, § 1.

M.G.L.A. 37 § 21, MA ST 37 § 21
Current through Chapter 19 of the 2021 1st Annual Session

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Chapter 37. Sheriffs (Refs & Annos)

M.G.L.A. 37 § 22

§ 22. Accounting of fees; disposition of funds

Currentness

Each sheriff shall keep an account of all fees and money received by virtue of his office, and, except as otherwise provided, shall annually, on or before June fifteenth, render to the county treasurer a sworn account thereof and, except as provided in section seventeen, pay him the same.

Credits
Amended by St.1932, c. 180, § 5; St.1969, c. 849, § 22.

M.G.L.A. 37 § 22, MA ST 37 § 22
Current through Chapter 19 of the 2021 1st Annual Session

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Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVIII. Prisons, Imprisonment, Paroles and Pardons (Ch. 124-127)
Chapter 124. Powers and Duties of the Department of Correction (Refs & Annos)

M.G.L.A. 124 § 1

§ 1. Powers and duties of commissioner of correction

Effective: January 13, 2019
Currentness

In addition to exercising the powers and performing the duties which are otherwise given him by law, the commissioner of correction, in this chapter called the commissioner, shall:

(a) designate, establish, maintain, and administer such state correctional facilities as he deems necessary, and may discontinue the use of such state correctional facilities as he deems appropriate for such action; provided that no state or county correctional facility named in paragraph (n) of section one of chapter 125 shall be discontinued without specific authorization and approval of the General Court;

(b) maintain security, safety and order at all state correctional facilities, utilize the resources of the department to prevent escapes from any such facility, take all necessary precautions to prevent the occurrence or spread of any disorder, riot or insurrection at any such facility, including but not limited to the development, planning, and coordination of emergency riot procedures with the colonel of state police, and take suitable measures for the restoration of order;

(c) establish and enforce standards for all state correctional facilities;

(d) establish standards for all county correctional facilities and secure compliance with such standards, if necessary, through the enforcement provisions of section one B of chapter one hundred and twenty-seven;

(e) establish, maintain and administer programs of rehabilitation, including but not limited to education, training and employment, of persons committed to the custody of the department, designed as far as practicable to prepare and assist each such person to assume the responsibilities and exercise the rights of a citizen of the commonwealth;

(f) establish a system of classification of persons committed to the custody of the department for the purpose of developing a rehabilitation program for each such person;

(g) determine at the time of commitment, and from time to time thereafter, the custody requirements and, after consultation with the parole board, program needs of each person committed to the custody of the department and assign or transfer such persons to appropriate facilities and programs;

(h) establish training programs for employees of the department and, by agreement, other corrections personnel;

(i) investigate grievances and inquire into alleged misconduct within state correctional facilities;

(j) maintain adequate records of persons committed to the custody of the department;

(k) establish and maintain programs of research, statistics and planning, and conduct studies relating to correctional programs and responsibilities of the department;

(*l*) utilize, as far as practicable, the services and resources of specialized community agencies and other local community groups in the rehabilitation of offenders, development of programs, recruitment of volunteers and dissemination of information regarding the work and needs of the department;

(m) make and enter any contracts and agreements necessary or incidental to the performance of the duties and execution of the powers of the department, including but not limited to contracts to render services to committed offenders, and to provide for training or education for correctional officers and staff;

(n) seek to develop civic interest in the work of the department and educate the public and advise the general court as to the needs and goals of the corrections process;

(*o*) expend annually in the exercise of his powers, performance of his duties, and for the necessary operations of the department such sums as may be appropriated therefor by the general court;

(p) report annually to the secretary of health and human services, the governor and the general court;

(q) make and promulgate necessary rules and regulations incident to the exercise of his powers and the performance of his duties including but not limited to rules and regulations regarding nutrition, sanitation, safety, discipline, recreation, religious services, communication and visiting privileges, classification, education, training, employment, care, and custody for all persons committed to correctional facilities.

(r) adopt policies and procedures, in consultation with the county sheriffs, establishing reasonable fees for haircuts that are provided to inmates at any county or state correctional facility. Except as otherwise provided, the commissioner or a county sheriff may charge each inmate a reasonable fee for any haircut provided. The commissioner of correction may deduct such fee from the inmate's account as provided for in section 48A of chapter 127.

(s) adopt policies and procedures establishing reasonable medical and health service fees for the medical services that are provided to inmates at any state jail or correctional facility. Except as otherwise provided, the commissioner may charge each inmate a reasonable fee for any medical and mental health services provided, including prescriptions, medication, or prosthetic devices. The fee shall be deducted from the inmate's account as provided for in section 48A of chapter 127. The commissioner shall exempt the following inmates from payment of medical and health services fees: medical visits initiated by the medical or mental health staff, consultants, or contract personnel of the department, prisoners determined to be terminally ill, pregnant,

or otherwise hospitalized for more than 30 days successively during the term of incarceration and juvenile inmates and inmates who are undergoing follow-up medical treatment for chronic diseases. Notwithstanding any other provision of this section, an inmate shall not be refused medical treatment for financial reasons. The commissioner shall also establish criteria for reasonable deductions from moneys credited to the inmate's account as provided for in section 48A of chapter 127 to repay the cost of medical treatment for injuries that were self-inflicted or inflicted by the inmate on others.

(t) in accordance with clause (s), the commissioner shall as part of the rules and regulations on payments for medical services, require the department of corrections or the county correctional facility to ascertain whether any inmate seeking medical services has health insurance coverage and if said inmate does have health insurance coverage, said health insurance plan shall be billed for any services provided.

(u) adopt policies and procedures establishing reasonable fees for maintenance and administration of inmate accounts maintained at any state correctional facility. The commissioner may charge each inmate reasonable fees for the maintenance and administration of inmate accounts and may deduct such fees from each inmate's accounts.

Credits

Amended by St.1939, c. 451, § 38; St.1941, c. 344, § 4; St.1955, c. 770, § 7; St.1956, c. 731, § 4; St.1972, c. 777, § 5; St.1973, c. 430, § 9; St.1996, c. 151, § 283; St.1998, c. 161, § 475; St.1999, c. 127, § 132; St.2000, c. 159, § 228; St. 2003, c. 26, § 367, eff. July 1, 2003; St.2018, c. 72, § 4, eff. Jan. 13, 2019.

Notes of Decisions (32)

M.G.L.A. 124 § 1, MA ST 124 § 1
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Title XVIII. Prisons, Imprisonment, Paroles and Pardons (Ch. 124-127)
Chapter 126. Jails, Houses of Correction and Reformation, and County Industrial Farms (Refs & Annos)

M.G.L.A. 126 § 16

§ 16. Custody and control of jails and houses of correction; jailer; assistants; bond

Currentness

The sheriff shall have custody and control of the jails in his county, and, except in Suffolk county, of the houses of correction therein, and of all prisoners committed thereto, and shall keep the same himself or by his deputy as jailer, superintendent or keeper, and shall be responsible for them. The jailer, superintendent or keeper shall appoint subordinate assistants, employees and officers and shall be responsible for them. In Suffolk county the penal institutions commissioner shall appoint a superintendent of the house of correction, who shall hold office at the pleasure of said commissioner. A sheriff, who acts as jailer, superintendent or keeper, or a jailer, superintendent or keeper appointed by the sheriff, before entering upon the performance of his duties as such, and thereafter, at intervals of not more than one year, so long as he continues so to act or to hold such office, as the case may be, shall give to the state treasurer a bond, with such sureties as the superior court shall order and approve, conditioned faithfully to perform his duties.

Credits
Amended by St.1937, c. 219, § 6; St.1979, c. 485, § 8.

Notes of Decisions (3)

M.G.L.A. 126 § 16, MA ST 126 § 16
Current through Chapter 19 of the 2021 1st Annual Session

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Title XVIII. Prisons, Imprisonment, Paroles and Pardons (Ch. 124-127)
Chapter 127. Officers and Inmates of Penal and Reformatory Institutions. Paroles and Pardons (Refs & Annos)

M.G.L.A. 127 § 3

§ 3. Money and property of prisoners; records; custody and return; transmission to court; interest on deposits

Currentness

They shall keep a record of all money or other property found in possession of prisoners committed to such institutions, and shall be responsible to the commonwealth for the safe keeping and delivery of said property to said prisoners or their order on their discharge or at any time before. The superintendents of correctional institutions of the commonwealth and the superintendents and keepers of jails, houses of correction and of all other penal or reformatory institutions shall, upon receipt of an outstanding victim and witness assessment, transmit to the court any part or all of the monies earned or received by any inmate and held by the correctional facility, except monies derived from interest earned upon said deposits and revenues generated by the sale or purchase of goods or services to persons in correctional facilities, to satisfy the victim witness assessment ordered by a court pursuant to section eight of chapter two hundred and fifty-eight B. Any monies derived from interest earned upon the deposit of such money and revenue generated by the sale or purchase of goods or services to persons in the correctional facilities may be expended for the general welfare of all the inmates at the discretion of the superintendent.

Credits
Amended by St.1962, c. 569; St.1994, c. 60, § 125; St.1996, c. 450, § 171.

Notes of Decisions (5)

M.G.L.A. 127 § 3, MA ST 127 § 3
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Chapter 127. Officers and Inmates of Penal and Reformatory Institutions. Paroles and Pardons (Refs & Annos)

M.G.L.A. 127 § 86F

§ 86F. Work release programs

Effective: January 14, 2011
Currentness

The sheriff of any county, except the sheriff of Suffolk county, may establish a work release program under which persons sentenced to the house of correction, except sex offenders, may be granted the privilege of leaving actual confinement during necessary and reasonable hours for the purpose of working at gainful employment within the commonwealth. Such program may also include, under appropriate conditions, release for the purpose of seeking such employment and obtaining educational training in connection therewith. Any such inmate may apply to the sheriff for permission to participate in such program. The application shall include a statement by the inmate that he agrees to abide by all terms and conditions of the particular plan selected for him by the sheriff, and shall state the name and address of the proposed employer and all such other information as the sheriff may require. The sheriff may approve, disapprove, or defer action on such application. If the sheriff approves the application, he shall select a work release plan for the inmate which shall contain such terms and conditions as may be necessary and proper; such plan shall be signed by the inmate, the sheriff and the employer, prior to participation in the program by the inmate. At any time after approval has been granted it may be revoked at will by the sheriff.

An inmate and his employer shall agree to deliver his total earnings, minus tax and similar deductions, to the sheriff. At no time shall any inmate personally receive any monies, checks or the like from his employer. The sheriff shall deduct from the earnings delivered to him the following:--

First, an amount necessary to satisfy the victim and witness assessment ordered by a court pursuant to section eight of chapter two hundred and fifty-eight B; second, an amount determined by the sheriff for substantial reimbursement to the county for providing food, lodging and clothing for such inmate; third, the actual and necessary food, travel and other expenses of such inmate when released for employment under the program; fourth, the amount ordered by any court for support of such inmate's spouse or children; fifth, the amount arrived at with public welfare departments; sixth, sums voluntarily agreed to for family allotments and for personal necessities while confined. Any balance shall be credited to the account of the inmate and shall be paid to him upon his final release.

No inmate shall be deemed to be an employee of the county under chapter one hundred and fifty-two while participating in a work release program.

The sheriff shall appoint a work release supervisor, whose duties shall consist of participant screening, employer interviewing, collection of monies, keeping of records, procurement of positions and similar duties assigned by the sheriff.

All such inmates shall, while so employed by the day, be fed, housed and supervised in a separate place or part of the house of correction, and segregated from all other inmates not so employed. Any inmate participating in such work release program and permitted to leave his place of confinement for the purpose of working in gainful employment, as herein provided, who leaves his place of employment without permission of his employer and with the intention of not returning to his place of confinement,

or who having been ordered by the sheriff or the work release supervisor to return to his place of confinement neglects or refuses to do so, shall be held to have escaped from such house of correction, and shall be arrested and returned to such house of correction, and, upon conviction of such escape, shall be sentenced for a term not to exceed one year or the term for which he was originally sentenced, whichever is the lesser.

The expense of the arrest and return of any such inmate shall be paid in the same manner as the expense of the arrest and return of an inmate who escapes from a house of correction.

Nothing in this act shall be construed to affect eligibility for release or parole.

Credits

Added by St.1967, c. 821, § 1. Amended by St.1971, c. 26; St.1994, c. 60, § 127; St.2010, c. 454, § 49, eff. Jan. 14, 2011.

Notes of Decisions (6)

M.G.L.A. 127 § 86F, MA ST 127 § 86F
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Title VI. Costs and Fees (Ch. 261-262)
Chapter 262. Fees of Certain Officers (Refs & Annos)

M.G.L.A. 262 § 8

§ 8. Sheriffs, deputy sheriffs and constables; enumeration of fees

Effective: July 1, 2003
Currentness

The fees of sheriffs, deputy sheriffs and constables shall be as follows:

(a) for the service of civil process:

(1) for service of an original summons, trustee process, subpoena or scire facias, either by reading it or by leaving a copy thereof, $20 for each defendant upon whom service is made, except as otherwise provided herein;

(2) for service of an original summons and complaint for divorce or for any other service required to be served in hand, $30 for each defendant upon whom service is made;

(3) for attestation of each copy of a writ, precept or process, except as otherwise provided herein, $5.

(4) if the officer by the direction of the plaintiff or his attorney makes a special service of a writ or precept, either by attaching personal property or arresting the body, he shall be entitled to $2 for each defendant upon whom the writ is so served, and $8 additional for custody of the body arrested, and at the same rate for each day during which he has such custody; provided, however; that if the officer employs an assistant in the arrest of the body, he shall be entitled to $5 a day for such assistant;

(5) for the custody of personal property attached, replevied or taken on execution, not more than $50 for each day of not more than 8 hours for the keeper while he is in charge, and not more than $20 a day for the officer for a period not longer than 10 days; but the officer may be allowed a greater compensation for himself or his keeper, or compensation for a longer period, by the consent of the plaintiff, or by order of the court upon a hearing; provided, however, that the officer shall also be entitled to expenses for packing, labor, teaming, storage and taking and preparing a schedule of property attached, replevied or taken on execution, if he certifies that such expenses were necessary and reasonable;

(6) for an attachment on mesne process of land or of any leasehold estate, $20 for each defendant against whom an attachment is made, 32 cents a mile each way for travel from the place of service to the registry and his fee for the copy deposited in the registry of deeds or land court, together with the recording fees actually paid;

(7) for a special attachment of real estate, $10 additional for each person against whom an attachment is made;

(8) for the service of a writ of replevin: for seizure of property, $10 for each defendant; securing and swearing appraisers, $4, and the actual amount paid to appraisers, as hereinafter provided; examining and approving sureties, $5; delivery of property replevied, $5; for each service, $5 for each copy, at the rate hereinbefore provided for copies of writs, precepts or other processes;

(9) for a levy on real estate:

(i) for preparing and serving notice of sale, a fee not to exceed $50, plus travel;

(ii) For posting notices of sale, $20, plus travel;

(iii) the necessary expenses of advertising;

(iv) for the sale of land or of any leasehold estate, $20;

(v) for preparing, executing and acknowledging deed, $25; and

(vi) for travel, 32 cents a mile each way from the place where he receives the execution to the office of the register of deeds, and his fee for the copy;

(10) for a sale of personal property on mesne process or on execution the following:

(i) for service of a copy of notice to appoint appraisers, $8 for each person upon whom service is made;

(ii) the necessary expenses of taking and preparing a schedule of property proposed to be sold;

(iii) for attendance upon and swearing appraisers, $10;

(iv) the amount actually paid to appraisers as hereinafter provided;

(v) for preparing and posting notice of a proposed sale, $10, plus travel;

(vi) the necessary expenses of keeper, labor and advertising;

(vii) For custody of property, $10 a day;

(viii) for services as auctioneer, or for services of an auctioneer in selling property, a fair and reasonable amount;

(ix) if the sale is made on execution, poundage may be charged as hereinafter provided;

(x) the fair compensation for the services of an appraiser shall not be more than $30 for each day's service, but the officer may be allowed a greater compensation for the appraisers by an order of the court;

(xi) for each adjournment of sale of real or personal property, $10;

(11) for taking bail and furnishing and writing the bail bond, $2, which shall be paid by the defendant and taxed in his bill of costs if he prevails;

(12) for serving an execution in a personal action by copy and demand on debtor or on trustee, $10 and travel, if the execution is not collected in whole or in part; for serving an execution in a personal action, and collecting damages or costs on an execution, warrant of distress or other like process, for an amount not exceeding $100, 10 cents for every $1; all above $100 and not exceeding $500, 5 cents for every $1; and all above $500, 2 cents for every $1; but such percentage shall be allowed only upon the amount actually collected. A levy of the execution upon his body shall be considered, so far as the fees of the officer are material, a full satisfaction of the execution if the debtor has recognized with surety or sureties as required by law;

(13) for serving a writ of seisin or possession in a real action, $15 for each parcel;

(14) for serving an execution upon a judgment for partition or for assignment of dower or curtesy, $2 per day;

(15) for serving a writ of capias, a writ of habeas corpus, a writ of ne exeat or other process of civil arrest in a civil proceeding, $50, plus, upon consent of the plaintiff or upon order of the court, a greater compensation which may include the services of an assistant if necessary, plus travel;

(16) for serving a venire or notice to jurors for attendance upon any court, civil or criminal, $10 for each person upon whom service is made;

(17) for summoning witnesses, $20 for each person upon whom service is made and $2 for each copy served, together with the fee paid to the witness;

(18) for dispersing treasurer's process warrants and proclamations of all kinds, $4 each;

(19) for travel in the service of original writs, executions, warrants, summonses, subpoenas, notices and other processes, 32 cents a mile each way, to be computed from the place of service to the court or place of return; and if the same precept, or process is served upon more than 1 person, the travel shall be computed from the most remote place of service, with such further travel as was necessary in serving it; if the distance from the place of service to the place of return exceeds 20 but does not

exceed 50 miles, 32 cents a mile 1 way only shall be allowed for all travel exceeding 20 miles and, if it exceeds 50 miles, only 6 cents a mile 1 way shall be allowed for all travel exceeding that distance;

(20) for travel in the service of venires and notices to jurors, 32 cents a mile for the distance actually traveled;

(21) for posting warrants, for notifying town meetings or for other purposes, $5 for each copy posted together with 32 cents a mile for the distance actually traveled;

(b) for the service of criminal process:

(1) for serving a warrant of capias in a criminal proceeding, $50, plus, upon consent of the plaintiff or upon order of the court, a greater compensation which may include the services of an assistant if necessary, plus travel, and of a summons upon the defendant, $20, for each person upon whom the same is served;

(2) for a copy of a mittimus, warrant or other precept required by law in criminal cases, $5;

(3) for service of a witness, summons or subpoena in criminal cases, $20 plus travel in the amount of 32 cents a mile each way for a distance of not more than 20 miles, and for any excess over 20 miles, 7 cents a mile each way, and no more. The distance shall be computed from the most remote place of service to the place of return, but upon a subpoena the court shall reduce the fee for travel to a reasonable amount for the service performed if the travel charged has not been actually performed by the officer who made the service; and

(4) for service of an order of notice under chapter 273A, $20.

Credits
Amended by St.1947, c. 135; St.1954, c. 556, § 6; St.1964, c. 594, § 1; St.1973, c. 195, §§ 1 to 4; St.1973, c. 372; St.1980, c. 321; St.1982, c. 513, §§ 1 to 6; St.1985, c. 680, § 2; St.1990, c. 282; St.2003, c. 26, § 503, eff. July 1, 2003.

Notes of Decisions (24)

M.G.L.A. 262 § 8, MA ST 262 § 8
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Title VI. Costs and Fees (Ch. 261-262)
Chapter 262. Fees of Certain Officers (Refs & Annos)

M.G.L.A. 262 § 11

§ 11. Leaving copy of writ

Currentness

Where the officer is by law directed to give or leave a copy of any process, he may charge for each copy at the rate prescribed by section fifteen, except as otherwise provided.

M.G.L.A. 262 § 11, MA ST 262 § 11
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Title VI. Costs and Fees (Ch. 261-262)
Chapter 262. Fees of Certain Officers (Refs & Annos)

M.G.L.A. 262 § 14

§ 14. Arrest on mesne process and supplementary proceedings

Currentness

The fees of sheriffs, deputy sheriffs and constables in proceedings under the provisions of chapter two hundred and twenty-four shall be as follows:

For the service of the summons, or any other process, the fee for which is not otherwise provided by this section, for copies and for travel in serving the same, the same fees as for serving an original summons in an action at law.

For the commitment of a defendant or debtor under the provisions of said chapter two hundred and twenty-four, one dollar for each commitment, and one dollar for each copy left with the jailer.

For each day's attendance at court on the examination of a defendant or debtor in his custody, or in the service of a writ of habeas corpus under section twenty-two of said chapter, including the fee for custody, five dollars.

The necessary expense of a conveyance to and from the jail in the service of such a process.

M.G.L.A. 262 § 14, MA ST 262 § 14
Current through Chapter 19 of the 2021 1st Annual Session

End of Document

Massachusetts General Laws Annotated
Part III. Courts, Judicial Officers and Proceedings in Civil Cases (Ch. 211-262)
Title VI. Costs and Fees (Ch. 261-262)
Chapter 262. Fees of Certain Officers (Refs & Annos)

M.G.L.A. 262 § 21

§ 21. Criminal cases; allowance of expenses

Currentness

In the service of precepts in criminal cases, the officer shall be allowed the actual, reasonable and necessary expenses incurred in going or returning with the prisoner, and if he necessarily uses his own conveyance, he shall be allowed therefor twenty cents a mile for the distance traveled with the prisoner, except that in the service of such precepts of the district court of Chelsea, if he necessarily uses his own conveyance, he shall be allowed, if the distance traveled is less than ten miles, thirty cents a mile for the distance traveled, both ways; and if he uses the conveyance of another person, he shall be allowed the amount actually expended by him therefor; but no allowance for the use of a conveyance shall be made unless the officer certifies that it was necessary for him to use a conveyance and that he actually used it for the distance, and, if the conveyance of another was used, that he paid therefor the amount, stated in his certificate. If, in the service of a mittimus, the journey from the town where the prisoner is held to the town where he is to be committed can be made by railroad, no allowance shall be made for the use of any other conveyance, unless the court from which the mittimus is issued by general or special order has authorized the use thereof.

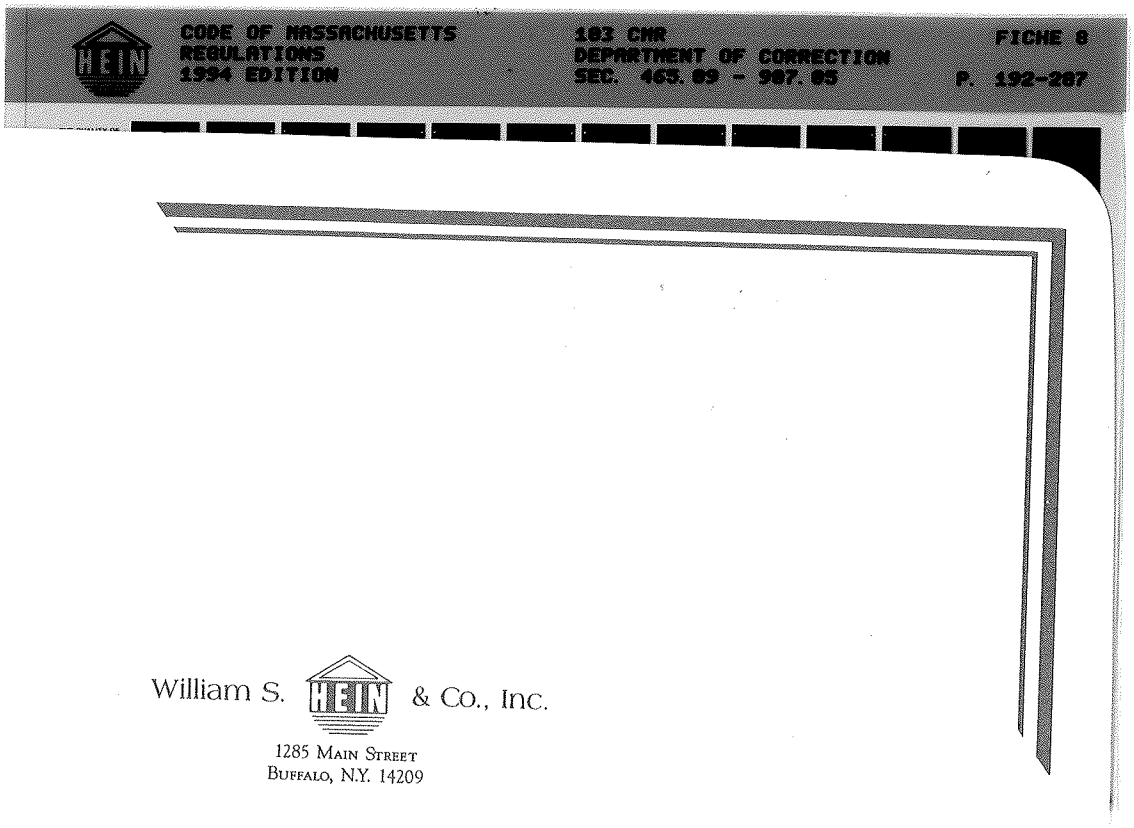
Credits
Amended by St.1959, c. 581; St.1976, c. 460.

Notes of Decisions (6)

M.G.L.A. 262 § 21, MA ST 262 § 21
Current through Chapter 19 of the 2021 1st Annual Session

End of Document

John Adams Courthouse
One Pemberton Square, Suite 4100
Boston, MA 02108-1792
Tel: 617.226.1510 Fax: 617.523.2458 Email: copycenter@socialaw.com
Web: www.socialaw.com


CODE OF MASSACHUSETTS
REGULATIONS
1994 EDITION
103 CMR
DEPARTMENT OF CORRECTION
SEC. 465.09 - 907.05
FICHE 8
P. 192-287
William S. HEIN & Co., Inc.
1285 Main Street
Buffalo, N.Y. 14209

103 CMR 482.000: TELEPHONE ACCESS AND USE

Section

482.01: Purpose

The purpose of 103 CMR 482.00 is to establish Department procedures regarding access to, use of and the monitoring and/or recording of inmate telephones. 103 CMR 482.00 is not intended to confer any procedural or substantive rights or any private cause of action not otherwise granted by state or federal law.

482.02: Statutory Authorization

103 CMR 482.000 is issued pursuant to M.G.L. c. 124, § 1(b), (c) and (q) and c. 272, § 99.

482.03: Cancellation

103 CMR 482.000 cancels all previous Departmental and institutional policy statements, bulletins, directives, orders, notices, rules and regulations regarding telephone access and use which are inconsistent with 103 CMR 482.000.

482.04: Applicability

103 CMR 482.000 is applicable to all inmates in all Department institutions and facilities.

482.05: Access to Regulations

103 CMR 482.000 shall be maintained in the central policy file of the Department and shall be accessible to all Department employees. A copy of 103 CMR 482.00 shall also be maintained in each Superintendent's central policy file and at each inmate library.

482.06: Definitions

(1) Call Detail - Information concerning a telephone number called, including, but not limited to, the PIN of the caller, the number called, the duration of the call, the detection of three way switching, the date and time of the call.

(2) Commissioner - The chief executive officer of the Department of Correction.

(3) Department - Department of Correction.

(4) Inmate Telephones - Telephones designated for the exclusive use of inmates.

(5) PIN Number - An authorized personal identification number assigned to each inmate for use with inmate telephones.

482.06: continued

(6) Special Status Inmates - Inmates in disciplinary isolation, administrative segregation, protective custody, a departmental disciplinary unit, department segregation unit or inmates on awaiting action status.

(7) Superintendent - The chief administrative officer of a correctional institution.

(8) Telephone Monitoring - The monitoring and/or recording of the telephone conversations of an inmate.

482.07: Institution Procedures for Inmate Telephone Access and Use

(1) General - Each superintendent shall develop procedures to insure that inmates have access to telephones. Access should be regulated in such a manner as to provide for the orderly and safe use of telephones by inmates.

(2) Inmate Telephone Use - Each superintendent shall make arrangements to have an adequate number of inmate telephones available for inmate use. Except for installation charges, the institution shall not be liable for telephone charges resulting from the improper use of inmate telephones. Institution business telephones should not be used for inmate telephone contact except in unusual situations and then only with the permission of the superintendent or his designee. Outgoing telephone calls only will be allowed, subject to the conditions authorized by 103 CMR 482.00.

(3) Inmate Telephone Restrictions.

(a) All inmate calls shall be one-way collect calls only, utilizing an automated operator.
(b) Direct dialed calls, three way or conference calling and calls to 411, 800, 900, 550, 976 or other multiple long distance carriers are prohibited.
(c) Inmates may be allowed a total of 15 telephone numbers authorized for use in conjunction with the inmates PIN. Five of these numbers shall be reserved for attorney telephone numbers.
(d) All inmate telephone calls, except calls to pre-authorized attorney telephone numbers are subject to telephone monitoring.
(e) All inmate telephone calls are subject to duration limits, or other restrictions such as authorized calling hours as determined by procedures developed by the Superintendent of each facility.
(f) All inmate telephone calls require positive call acceptance by the called party prior to the call being connected. The telephone system shall use a pre-recorded name to announce who the call is from.
(g) All inmate telephone calls shall contain a pre-recorded announcement identifying that the collect call is originating from an inmate at a Massachusetts Department of Correction (institution) and indicate that the call is subject to being recorded and that any attempt to access a three party line or conference call will cause the system to immediately disconnect the call.
(h) An inmate's telephone privileges, except for attorney telephone calls may be suspended or curtailed either pending disciplinary action, administrative action or as part of a disciplinary sanction.

(4) Suspension of Inmate Telephone Use - Inmate telephone use may be suspended by the Superintendent or his designee when, in the Superintendent's opinion, inmate telephone use presents a threat to the institution's security. Telephone calls to courts and attorneys shall not be suspended.

482.08: Inmate Telephone Use for Court or Attorney Contact

Telephone calls to pre-authorized attorney numbers shall not be suspended or curtailed except in an institutional emergency. Telephone calls to pre-authorized attorney numbers shall not be subject to telephone monitoring or recording.

482.09: Telephone Access and Use for Special Status Inmates

(1) Disciplinary Isolation - Inmates confined in disciplinary isolation or placed in disciplinary awaiting action status shall not have access to a telephone, except to directly contact a court or an attorney, unless authorized by the superintendent or his designee.

(2) Administrative Segregation and Administrative Segregation Awaiting Action Status - Institution policy shall provide for the manner and extent of telephone access for inmates confined in administrative segregation and administrative segregation awaiting action status.

(3) Protective Custody and Protective Custody Awaiting Action Status - Institution policy shall provide for the manner and extent of telephone access for inmates confined in protective custody or protective custody awaiting action status.

(4) Special Status - Special status inmates may be permitted to make emergency telephone calls (calls not covered by 103 CMR 482.08) upon the approval of the superintendent.

(5) Department Disciplinary Unit or Departmental Segregation Unit - Inmates housed in these special housing units shall have telephone privileges as authorized by the Superintendent.

482.10: Telephone Monitoring

(1) Inmate acceptance of a PIN and use of inmate telephones shall be deemed as consent to the conditions and restrictions placed upon inmate telephone calls, including call monitoring, recording and call detail.

(2) Procedures for the authorization and changing of inmate pre-authorized telephone numbers shall be developed to occur no less that on a quarterly basis during the first full week of the months of January, April, July, and October and as outlined in institutional procedures authorized by the Superintendent of the facility.

(3) Access to a particular telephone number, including pre-authorized numbers may be blocked at the discretion of the Superintendent.

482.11: Responsible Staff

The Superintendent of each institution shall be responsible for developing institutional procedures, in addition to implementing and monitoring 103 CMR 482.000.

482.12: Annual Review Date

103 CMR 482.000 shall be reviewed at least annually from the effective date by the Commissioner or his designee. The party or parties conducting the review shall develop a memorandum to the Commissioner with a copy to the central policy file indicating revisions, additions, or deletions which shall be included for the Commissioner's written approval.

482.13: Severability Clause

If any article, section, subsection, sentence, clause or phrase of 103 CMR 482.000 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Commissioner or otherwise inoperative, such decision shall not affect the validity of any other article, section, subsection, sentence, clause or phrase of 103 CMR 482.000.

482.14: Effective Date

103 CMR 482.000 is effective upon publication in the Massachusetts Register.

REGULATORY AUTHORITY

103 CMR 482.000: M.G.L. c. 124, § 1(b), (c) and (g); c. 272, § 9.

Massachusetts Administrative Code - 2008

103 CMR 482.07
CODE OF MASSACHUSETTS REGULATIONS
TITLE 103: DEPARTMENT OF CORRECTION
CHAPTER 482.00: TELEPHONE ACCESS AND USE

Current through January 9, 2009, Register #1121

482.07: Institution Procedures for Inmate Telephone Access and Use

(1) General - Each superintendent shall develop procedures to insure that inmates have access to telephones. Access should be regulated in such a manner as to provide for the orderly and safe use of telephones by inmates.

(2) Inmate Telephone Use - Each superintendent shall make arrangements to have an adequate number of inmate telephones available for inmate use. Except for installation charges, the institution shall not be liable for telephone charges resulting from the improper use of inmate telephones. Institution business telephones should not be used for inmate telephone contact except in unusual situations and then only with the permission of the superintendent or his designee. Outgoing telephone calls only will be allowed, subject to the conditions authorized by **103 CMR 482**.00.

(3) Inmate Telephone Restrictions.

(a) All inmate calls shall be one-way collect calls only, utilizing an automated operator.

(b) Direct dialed calls, three way or conference calling and calls to 411, 800, 900, 550, 976 or other multiple long distance carriers are prohibited.

(c) Inmates may be allowed a total of 15 telephone numbers authorized for use in conjunction with the inmates PIN. Five of these numbers shall be reserved for attorney telephone numbers.

(d) All inmate telephone calls, except calls to pre-authorized attorney telephone numbers are subject to telephone monitoring.

(e) All inmate telephone calls are subject to duration limits, or other restrictions such as authorized calling hours as determined by procedures developed by the Superintendent of each facility.

(f) All inmate telephone calls require positive call acceptance by the called party prior to the call being connected. The telephone system shall use a pre-recorded name to announce who the call is from.

(g) All inmate telephone calls shall contain a pre-recorded announcement identifying that the collect call is originating from an inmate at a Massachusetts Department of Correction (institution) and indicate that the call is subject to being recorded and that any attempt to access a three party line or conference call will cause the system to immediately disconnect the call.

(h) An inmate's telephone privileges, except for attorney telephone calls may be suspended or curtailed either pending disciplinary action, administrative action or as part of a disciplinary sanction.

103 CMR 482.07, 103 CMR 482.07

(4) Suspension of Inmate Telephone Use - Inmate telephone use may be suspended by the Superintendent or his designee when, in the Superintendent's opinion, inmate telephone use presents a threat to the institution's security. Telephone calls to courts and attorneys shall not be suspended.

<General Materials (GM) - References, Annotations, or Tables>

End of Document

Acts (2009)

Chapter 61

AN ACT TRANSFERRING COUNTY SHERIFFS TO THE COMMONWEALTH.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is to transfer forthwith county sheriffs to the commonwealth, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience

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

SECTION 1. Section 17 of chapter 37 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out the second and third paragraphs and inserting in place thereof the following paragraph:-

The sheriffs of the counties of Barnstable, Bristol, Norfolk, Plymouth and Suffolk and of the former counties of Berkshire, Essex, Franklin, Hampden, Hampshire, Middlesex and Worcester shall each receive a salary of $123,209. The sheriff of the county of Dukes shall receive a salary of $97,271. The sheriff of the county of Nantucket shall receive a salary of $71,332.

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SECTION 2. Chapter 64D of the General Laws is hereby amended by striking out sections 11 to 13, inclusive, as so appearing, and inserting in place thereof the following 2 sections:-

Section 11. Except for Barnstable and Suffolk counties, there shall be established upon the books of each county of a transferred sheriff, the government of which county has not been abolished by chapter 34B or other law, a fund, maintained separate and apart from all other funds and accounts of each county, to be known as the Deeds Excise Fund.

Notwithstanding any general or special law to the contrary, except for Barnstable and Suffolk counties, on the first day of each month, 10.625 per cent of the taxes collected in the county of a transferred sheriff under this chapter shall be transmitted to the Deeds Excise Fund for each county; provided, however, that in any county in which its minimum obligation, established by the secretary of administration and finance in 2009, is insufficient in any given fiscal year to satisfy the unfunded county pension liabilities and other benefit liabilities of retired employees of the sheriff’s office as determined by the secretary of administration and finance in consultation with appropriate county officials and county treasurers, beginning in fiscal year 2011, the county shall retain 13.625 per cent of the taxes collected in such county and transferred to the Deeds Excise Fund to satisfy the unfunded county pension liabilities and other benefit liabilities of retired employees of the sheriff’s office until the minimum obligation is sufficient or until such county has paid such unfunded pension liability in full; and provided further, that once such liabilities are satisfied, the following month and each month thereafter, 10.625 per

cent of such taxes collected shall be retained by such county; provided, however, that an additional 30.552 per cent of said taxes collected in Nantucket county shall be transmitted to the Deeds Excise Fund on the first day of each month for said county through June 1, 2029; and provided further that if in a fiscal year the dollar amount that equals 30.552 per cent of said taxes collected in Nantucket county exceeds $250,000, the amount in excess shall be transmitted to the General Fund. The remaining percentage of taxes collected under this chapter, including all taxes collected under this chapter in Barnstable and Suffolk counties and all counties the government of which has been abolished by chapter 34B or other law, but not including the additional excise authorized in section 2 of chapter 163 of the acts of 1988, shall be transmitted to and retained by the General Fund in accordance with section 10.

Section 12. (a) Notwithstanding any general or special law to the contrary, of the amounts deposited in the Deeds Excise Fund for each county from revenues collected pursuant to this chapter: (1) not more than 60 per cent of the deposits shall be disbursed and expended for meeting the costs of the operation and maintenance of the county; and (2) not less than 40 per cent shall be disbursed and expended for the automation, modernization and operation of the registries of deeds.

(b) Notwithstanding any general or special law to the contrary, with respect to funds appropriated for the purposes designated in clause (2) of subsection (a) and which are not dedicated to the Deeds Excise Fund in each county under section 11, the county budget shall provide a continuing amount of expenditure of not less than 102.5 per cent of

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the amount expended for that purpose in the preceding fiscal year.

SECTION 3. Notwithstanding any general or special law to the contrary, the offices of the Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth, and Suffolk county sheriffs are hereby transferred to the commonwealth as provided in this act.

SECTION 4. Notwithstanding any general or special law to the contrary, all functions, duties and responsibilities of the office of a transferred sheriff pursuant to this act including, but not limited to, the operation and management of the county jail and house of correction and any other statutorily authorized functions of that office, are hereby transferred from the county to the commonwealth.

SECTION 5. Notwithstanding any general or special law to the contrary, the government of Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth and Suffolk counties, except the office of county sheriff, shall retain all existing authority, functions and activities for all purposes including, but not limited to, the purposes established in chapters 34, 34A, 35 and 36 of the General Laws or as otherwise authorized by this act. This act shall not affect the existing county boundaries.

SECTION 6. Notwithstanding any general or special law to the contrary, all valid liabilities and debts of the office of a transferred sheriff, which are in force on the effective date of this act, shall be obligations of the commonwealth as of that date, except as may be otherwise provided in this act. All assets of the office of a transferred

sheriff on the effective date of this act shall become assets of the commonwealth, except as otherwise provided in this act.

SECTION 7. (a) Notwithstanding any general or special law to the contrary, all rights, title and interest in real and personal property, including those real properties improved upon through construction overseen by the division of capital asset management and maintenance and paid with commonwealth funds and which are controlled by the office of a transferred sheriff on the effective date of this act including, without limitation, all correctional facilities and other buildings and improvements, the land on which they are situated and any fixtures, wind turbines, antennae, communication towers and associated structures and other communication devices located thereon or appurtenant thereto shall be transferred to the commonwealth, except as otherwise provided in this act. This transfer of all buildings, lands, facilities, fixtures and improvements shall be subject to chapter 7 of the General Laws and the jurisdiction of the commissioner of capital asset management and maintenance as provided therein, except as otherwise provided in this act. The commonwealth shall take all necessary steps to ensure continued access, availability and service to any assets transferred to the commonwealth under this subsection to a local or regional organization that currently uses such assets.

(b) Notwithstanding any general or special law to the contrary, if a transferred sheriff occupies part of a building or structure owned by a county, the county shall lease that part of the building or structure to the commonwealth under reasonable terms determined by the commissioner of capital asset management and maintenance.

(c) Notwithstanding any general or special law to the contrary, the transfer under this section shall be effective and shall bind all persons, with or without notice, without any further action or documentation. Without derogating from the foregoing, the commissioner of capital asset management and maintenance may, from time to time, execute and record and file for registration with any registry of deeds or the land court, a certificate confirming the commonwealth's ownership of any interest in real property formerly controlled by the office of a transferred sheriff pursuant to this section.

(d) This section shall not apply to the land and buildings shown as Parcel C on a Plan of Land in Braintree, Mass, dated October 2, 1997, prepared by County of Norfolk Engineering Dept., 649 High Street, Dedham, filed at the Norfolk county registry of deeds in plan book 454, page 128.

(e) Notwithstanding any provision of this section or sections 40E to 40I, inclusive, of chapter 7 of the General Laws to the contrary, in the event that the Dukes County jail and house of correction located at 149 Main Street in the town of Edgartown ceases to be used for public safety purposes and the commissioner of capital asset management and maintenance intends to sell said property, Dukes County shall hold the right of first refusal to purchase said property for nominal consideration, and shall hold such first refusal option for the first 60 days after receipt of the commissioner’s notice of intent to sell said property, and upon the non-acceptance by Dukes County of any such offer, said property shall then be offered for sale by the commissioner

pursuant to the provisions of said sections 40E to 40I, inclusive, of said chapter 7.

(f) This section shall not apply to the former Barnstable county house of correction located at the Barnstable County Complex on state highway route 6A in the town of Barnstable.

(g) This section shall only apply to that portion of the land on which the Plymouth county correctional facility, Plymouth county sheriff's garage and Plymouth county sheriff's offices are situated, including all parking areas, access roads and walkways and any other areas necessary to the use of such buildings, but excluding any open areas, the exact boundaries of which shall be determined by a land survey and plan by the commissioner of capital asset management and maintenance. Such land is part of the premises located at 24 Long Pond road in the town of Plymouth, consisting of 32.747 acres and described in Exhibit A to the lease agreement between Plymouth county and the Plymouth county sheriff which is recorded in the Plymouth county registry of deeds at book 10978, pages 233 and 234. These premises shall continue to be subject to the access easement described in said Exhibit A in said registry of deeds at book 10978, page 232.

SECTION 8. Notwithstanding any general or special law to the contrary, once the commonwealth has refinanced any outstanding bonds of the Plymouth County Correctional Facility Corporation, said corporation shall be dissolved and its assets shall be transferred to the commonwealth; provided, however, that prior to said dissolution, the

commonwealth shall transfer from the reserve fund created pursuant to the trust agreement executed on February 16, 1999 between the Plymouth County Correctional Facility Corporation and the State Street Bank and Trust Company to the county any balance remaining in the reserve fund to which the county is entitled pursuant to section 3.5 of said trust agreement. The criminal detention facility constructed pursuant to chapter 425 of the acts of 1991 shall be transferred to the commonwealth. The revenue held by the corporation in the Repair and Replacement and Capital Improvement Accounts shall be transferred to the Plymouth sheriff's Facility Maintenance Trust Account. The Plymouth sheriff shall make expenditures from this account only for the maintenance, repair and replacement of the sheriff's facilities subject to approval by the commissioner of capital asset management and maintenance.

SECTION 9. Notwithstanding any general or special law to the contrary, all leases and contracts of the office of a transferred sheriff which are in force on the effective date of this act shall be obligations of the commonwealth and the commonwealth may exercise all rights and enjoy all interests conferred upon the county by those leases and contracts except as may be otherwise provided in this act.

SECTION 10. Notwithstanding any general or special law to the contrary, beginning in fiscal year 2010 and thereafter until terminated, Barnstable, Bristol, Dukes, Nantucket, Norfolk, and Plymouth counties shall appropriate and pay to their respective county retirement boards, and any other entities due payments, amounts equal to the minimum obligations to fund from their own revenues in fiscal year

2009 the operations of the office of the sheriff for the purpose of covering the unfunded county pension liabilities and other benefit liabilities of the retired sheriff's office employees that remain in the county retirement systems, as determined by the actuary of the public employee retirement administration commission. Pursuant to section 20 of chapter 59 of the General Laws, the state treasurer shall assess the city of Boston and remit to the State-Boston retirement system an amount equal to the minimum obligation of Suffolk county to fund from its own revenues in fiscal year 2009 the operations of the office of the sheriff. The secretary of administration and finance shall establish a plan for county governments to pay off these unfunded county pension liabilities and shall establish an amortization schedule to accomplish this task. These payments shall remain in effect for the duration of that amortization schedule, which shall not exceed the funding schedule established by the respective county retirement board. If the unfunded pension liability of retirees exceeds any county's minimum obligation to fund operations from its own revenues as set forth in this section, the retirement system for such county may extend its pension funding schedule to the extent necessary to eliminate that excess unfunded pension liability. In the case of any such county, when the county has paid such unfunded pension liabilities in full, or the county has completed the amortization schedule as established under this section, whichever occurs first, the county's obligation to make payments of its minimum obligations to fund its sheriff's office operations, as determined under this section, shall terminate.

SECTION 11. Notwithstanding any general or special law to the

contrary, any funds including, but not limited to, county correctional funds and other sources of income and revenue, to the credit of the office of a transferred sheriff on June 30, 2009, shall be paid to the state treasurer, but the county treasurer may pay appropriate fiscal year 2009 sheriff's department obligations after June 30, 2009. Payment of obligations to be charged to the sheriff's fiscal year 2009 budget as approved by the county government finance review board shall be within that budget or shall be approved by the secretary of administration and finance.

SECTION 12. (a) Notwithstanding any general or special law to the contrary and except for all counties the governments of which have been abolished by chapter 34B of the General Laws or other law, revenues of the office of sheriff in Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth and Suffolk counties for civil process, inmate telephone and commissary funds shall remain with the office of sheriff.

(b) Notwithstanding any general or special law to the contrary, in order to encourage innovation and enterprise, each sheriff's office shall annually confer with the house and senate committees on ways and means regarding that sheriff's efforts to maximize and maintain grants, dedicated revenue accounts, revolving accounts, fee for service accounts and fees and payments from the federal, state and local governments and other such accounts and regarding which revenues shall remain with the sheriff's office.

(c) Any sheriff who has developed a revenue source derived apart

from the state treasury may retain that funding to address the needs of the citizens within that county.

(d) Any unencumbered carry-forward deeds excise or other funds to the credit of the sheriff on June 30, 2009 shall be paid to the state treasurer.

(e) Notwithstanding any general or special law or county charter to the contrary, regional services and contracts for such services including, but not limited to, regional communications centers and law enforcement support, shall continue until expired, terminated or revoked under the terms of the agreement or contract for such services.

SECTION 13. (a) Notwithstanding any general or special law to the contrary, all employees of the office of a transferred sheriff, including those who, on the effective date of this act, hold permanent appointment in positions classified under chapter 31 of the General Laws or those who have tenure in their positions by reason of section 9A of chapter 30 of the General Laws or do not hold such tenure, are hereby transferred to that transferred sheriff as employees of the commonwealth, without interruption of service within the meaning of said section 9A of said chapter 30 or said chapter 31 and without reduction in compensation or salary grade.

(b) Notwithstanding any general or special law to the contrary, employees of the office of a transferred sheriff shall continue to retain their right to collectively bargain pursuant to chapter 150E of the

General Laws and shall be considered sheriff's office employees for the purposes of said chapter 150E.

(c) Notwithstanding any general or special law to the contrary, all petitions, requests, investigations and other proceedings duly brought before the office of a transferred sheriff or duly begun by that sheriff and pending on the effective date of this act, shall continue unabated and remain in force, but shall be assumed and completed by the office of a transferred sheriff.

(d) Notwithstanding any general or special law to the contrary, all orders, rules and regulations duly made and all approvals duly granted by a transferred sheriff which are in force on the effective date of this act shall continue in force and shall thereafter be enforced until superseded, revised, rescinded or canceled in accordance with law by that sheriff.

(e) Notwithstanding any general or special law to the contrary, all books, papers, records, documents and equipment which on the effective date of this act are in the custody of a transferred sheriff shall be transferred to that sheriff.

(f) Notwithstanding any general or special law to the contrary, all duly existing contracts, leases and obligations of a transferred sheriff shall continue in effect. An existing right or remedy of any character shall not be lost or affected by this act.

SECTION 14. The rights of all employees of each office of a

transferred sheriff shall continue to be governed by the terms of collective bargaining agreements, as applicable. If a collective bargaining agreement has expired on the transfer date, the terms and conditions of such agreement shall remain in effect until a successor agreement is ratified and funded. Notwithstanding the provisions of chapter 150E of the General Laws or any other general or special law or regulation to the contrary, employees of the office of a transferred sheriff, without a collective bargaining agreement in effect on the transfer date, shall not be transferred to the state retirement system until November 1, 2010 or until a successor agreement is ratified and funded whichever occurs first.

SECTION 15. Notwithstanding any general or special law to the contrary, a transferred sheriff in office on the effective date of this act shall become an employee of the commonwealth with salary to be paid by the commonwealth. The sheriff shall remain an elected official for the purposes of section 159 of chapter 54 of the General Laws. The sheriff shall operate pursuant to chapter 37 of the General Laws. The sheriff shall retain administrative and operational control over the office of the sheriff, the jail, the house of correction and any other occupied buildings controlled by a transferred sheriff upon the effective date of this act. The sheriff and sheriff's office shall retain and operate under all established common law power and authority consistent with chapters 126 and 127 of the General Laws and any other relevant General Laws.

SECTION 16. Notwithstanding any general or special law to the contrary, a transferred sheriff shall be considered an "employer" as

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defined in section 1 of chapter 150E of the General Laws for the purposes of said chapter 150E. The sheriff shall also 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.

SECTION 17. (a) Notwithstanding any general or special law or rule or regulation to the contrary, the sheriff, special sheriff, deputies, jailers, superintendents, deputy superintendents, assistant deputy superintendants, keepers, officers, assistants and other employees of the office of a transferred sheriff, employed on the effective date of this act in the discharge of their responsibilities set forth in section 24 of chapter 37 of the General Laws and section 16 of chapter 126 of the General Laws shall be transferred to the commonwealth with no impairment of employment rights held on the effective date of this act, without interruption of service, without impairment of seniority, retirement or other rights of employees, without reduction in compensation or salary grade and without change in union representation. Any collective bargaining agreement in effect on the effective date of this act shall continue in effect and the terms and conditions of employment therein shall continue as if the employees had not been so transferred. Nothing in this section shall confer upon any employee any right not held on the effective date of this act or prohibit any reduction of salary, grade, transfer, reassignment, suspension, discharge, layoff or abolition of position not prohibited before the effective date of this act. Such employees shall not be considered new employees for salary, wage, tax, health insurance, Medicare or any other federal or state purposes, but shall retain their

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existing start and hiring date, seniority and any other relevant employment status through the transfer.

(b) Notwithstanding any general or special law to the contrary, all demands, notices, citations, writs and precepts given by a sheriff, special sheriff, deputy, jailer, superintendent, deputy superintendent, assistant deputy superintendent, keeper, officer, assistant or other employee of the office of a transferred sheriff, as the case may be, on or before the effective date of this act shall be valid and effective for all purposes unless otherwise revoked, suspended, rescinded, canceled or terminated.

(c) Notwithstanding any general or special law to the contrary, any enforcement activity imposed by a sheriff or special sheriff or by any deputies, jailers, superintendents, deputy superintendents, assistant deputy superintendents, keepers, officers, assistants or other employees of the office of a transferred sheriff before the effective date of this act shall be valid, effective and continuing in force according to the terms thereof for all purposes unless superseded, revised, rescinded or canceled.

(d) Notwithstanding any general or special law to the contrary, all petitions, hearings appeals, suits and other proceedings duly brought against and all petitions, hearings, appeals, suits, prosecutions and other legal proceedings begun by a sheriff, special sheriff, deputy, jailer, superintendent, deputy superintendent, assistant deputy superintendent, keeper, officer, assistant or the employee of the office of a transferred sheriff, as the case may be, which are pending on the

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effective date of this act, shall continue unabated and remain in force notwithstanding the passage of this act.

(e) Notwithstanding any general or special law to the contrary, all records maintained by a sheriff or special sheriff or by any deputies, jailers, superintendents, deputy superintendents, assistant deputy superintendents, keepers, officers, assistants and other employees of the office of a transferred sheriff on the effective date of this act shall continue to enjoy the same status in a court or administrative proceeding, whether pending on that date or commenced thereafter, as they would have enjoyed in the absence of the passage of this act.

SECTION 18. Notwithstanding any general or special law to the contrary, all officers and employees of the office of a transferred sheriff transferred to the service of the commonwealth shall be transferred with no impairment of seniority, retirement or other rights of employees, without reduction in compensation or salary grade and without change in union representation, except as otherwise provided in this act. Any collective bargaining agreement in effect for transferred employees on the effective date of this act shall continue as if the employees had not been so transferred until the expiration date of the collective bargaining agreement. Nothing in this section shall confer upon any employee any right not held on the effective date of this act prohibit any reduction of salary, grade, transfer, reassignment, suspension, discharge, layoff or abolition of position not prohibited before that date.

SECTION 19. (a) Notwithstanding any general or special law to the

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contrary, employees or retired employees of the office of a transferred sheriff and the surviving spouses of retired employees of the office of a transferred sheriff who are eligible for group insurance coverage as provided in chapter 32B of the General Laws or who are insured under said chapter 32B, shall have that eligibility and coverage transferred to the group insurance commission and those employees shall cease to be eligible or insured under said chapter 32B; provided, however, that, notwithstanding the provisions of chapter 150E of the General Laws or any other law or regulation to the contrary, employees, retired employees and the surviving spouses of retired employees of the office of a transferred sheriff without a collective bargaining agreement in effect shall not be transferred to the group insurance commission until November 1, 2010 or until a successor collective bargaining agreement is ratified and funded whichever occurs first. These employees shall not be considered to be new employees. The group insurance commission shall provide uninterrupted coverage for group life and accidental death and dismemberment insurance and group general or blanket insurance providing hospital, surgical, medical, dental and other health insurance benefits to the extent authorized under chapter 32A of the General Laws. Employees who were covered by a collective bargaining agreement on the effective date of this act shall continue to receive the group insurance benefits required by their respective collective bargaining agreements until a successor agreement is ratified and funded.

(b) Notwithstanding any general or special law to the contrary, the human resources division of the executive office for administration and finance shall assume the obligations of the office of a transferred

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sheriff to employees who become state employees and who are covered under a health and welfare trust fund agreement established under section 15 of chapter 32B of the General Laws pursuant to a collective bargaining agreement until the expiration date of the collective bargaining agreement.

(c) Notwithstanding any general or special law to the contrary, the group insurance commission shall evaluate, in consultation with appropriate county officials and county treasurers, the value of any monies in a claims trust fund established pursuant to section 3A of said chapter 32B that would otherwise have been reserved for claims made by employees of a transferred sheriff. Any monies therein shall be transferred to the group insurance commission on the effective date of this act; provided, however, that no monies shall be transferred if such transfer violates an agreement entered into by a governmental subdivision with an insurance provider pursuant to said chapter 32B.

SECTION 20. Notwithstanding chapter 32 of the General Laws or any other general or special law to the contrary, the retirement system in the county of a transferred sheriff shall continue pursuant to this section and shall be managed by the retirement board as provided in this section. Employees of a transferred sheriff who retired on or before the effective date of this act shall be members of the county retirement system, which shall pay the cost of benefits annually to such retired county employees and their survivors. The annuity savings funds of the employees of transferred sheriffs who become state employees pursuant to this act shall be transferred from that county retirement system to the state retirement system, which shall

thereafter be responsible for those employees, subject to the laws applicable to employees whose transfer from 1 governmental unit to another results in the transfer from 1 retirement system to another, except for paragraph (c) of subdivision (8) of section 3 of said chapter 32. The value of the annuity savings funds shall be determined based on valuations on the effective date of the transfer. All other provisions governing the retirement systems of the counties of Barnstable, Bristol, Dukes, Nantucket, Norfolk, Plymouth and Suffolk shall remain in effect.

SECTION 21. Notwithstanding any general or special law to the contrary, county commissioners, county sheriffs, county treasurers, county retirement systems, the State-Boston retirement system and all executive branch agencies and officers shall cooperate with the secretary of administration and finance in effecting the orderly transfer of the county sheriffs to the commonwealth. The secretary may establish working groups as considered appropriate to assist in the implementation of the transfer.

SECTION 22. 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

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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

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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.

SECTION 23. Not less than 90 days after the effective date of this act, a sheriff transferred under this act shall provide to the secretary of administration and finance a detailed inventory of all property in the sheriff's possession which shall include, but not be limited to, vehicles, weapons, office supplies and other equipment.

SECTION 24. Notwithstanding section 7 of chapter 268A of the General Laws a state employee from the office of a transferred sheriff may have a financial interest in a contract made by a state agency, if such financial interest exists on the effective date of this act.

SECTION 25. Notwithstanding any general or special law to the contrary, the department of the state auditor shall conduct an independent audit of the total assets, liabilities and potential litigation of each sheriff's office transferred under this act; provided, however, that any audit undertaken under this section shall include an audit of any accounts, programs, activities, functions and inventory of all property of a sheriff's office. The state auditor shall file a report with

the secretary of administration and finance and the chairs of the house and senate committees on ways and means not later than April 30, 2010 which shall include, but not be limited to: (i) a summary of the findings under each audit; and (ii) the cost of each audit.

SECTION 26. Section 19 shall take effect on February 1, 2010. Section 21 shall take effect upon its passage. The remainder of this act shall take effect on January 1, 2010.

Approved August 6, 2009.

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 16(k) of the Massachusetts Rules of Appellate Procedure, I hereby certify that the foregoing document brief complies with the rules of the Court that pertain to the filing of briefs, including:

Mass. R.A.P. 16(a)(13) (addendum);

Mass. R.A.P. 16(2) (references to the record);

Mass. R.A.P. 18 (appendix to the briefs, appendices, and other documents); and

Mass. R.A.P. 21 (redaction).

I further certify that the foregoing brief complies with the applicable length limitation in Massachusetts Rule of Appellate Procedure 20 and the briefing schedule allowed by the Court on May 14, 2021 (permitting Plaintiffs to file a brief of no more than 75 pages) because it was prepared using Microsoft Word 2020 in Times New Roman 14-point font, a proportionally spaced typeface, with 1-inch margins, and contains 44 non-excluded pages and 11,577 words.

Dated: August 6, 2021

Respectfully submitted,

By: /s/ James R Pingeon

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CERTIFICATE OF SERVICE

Pursuant to Massachusetts Rule of Appellate Procedure 13(d), I the undersigned, certify under the penalties of perjury, that a copy of the foregoing document has been served electronically on all parties or their representatives in this action as listed below on this sixth day of August, 2021:

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