

**COMMONWEALTH OF MASSACHUSETTS**

Middlesex, ss.

**Division of Administrative Law Appeals**

**Julio DeFigueiredo,**  
Petitioner

v.

Docket No. CR-21-0186  
Dated: May 31, 2024

**State Board of Retirement,**  
Respondent

**Appearance for Petitioner:**

Ryan Benharris, Esq.  
Deborah G. Kohl, P.C.  
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**Appearance for Respondent:**

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State Board of Retirement  
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Boston, MA 02108

**Administrative Magistrate:**

James P. Rooney

**Summary of Decision**

A correction officer for a Sheriff's office qualified for the 20/50 benefit made available by M.G.L. c. 32, § 28N because he worked for the Sheriff's office for more than twenty years. The last eight or nine years of his service count even though he spent considerable time during those years working with federal, state, and local authorities to make arrests for crimes occurring outside the jail, because he remained a correction officer during this period, and his involvement with other law enforcement agencies was because of information he developed when interviewing inmates.

**DECISION**

Julio DeFigueiredo applied to retire under the provisions of M.G.L. c. 32, § 28N, which provides that an individual who has worked for twenty years as a correction officer for a

Sheriff's office may retire with a benefit equal to one-half his regular compensation. Although Mr. DeFigueiredo had worked for more than twenty years for the Bristol County Sheriff's office, the State Board of Retirement determined that he was not eligible for this 20/50 benefit because he had not worked for twenty years as a correction officer. Mr. DeFigueiredo timely appealed.

I held a hearing on August 28, 2023. I marked the parties' joint prehearing memorandum as Pleading A and accepted into evidence all eleven exhibits offered by the parties, including the last six, which were contested. Mr. DeFigueiredo was the only witness. I recorded the hearing digitally. The parties filed closing briefs by September 28, 2023.

### **Findings of Fact**

Based on the exhibits and reasonable inferences drawn from them, I make the following findings of fact:

1. In 1999, Julio DeFigueiredo started his employment as a correction officer with the Bristol County Sheriff's office. He worked first at the Ash Street Jail performing tasks normally associated with correction officers. He made rounds in the jail, took inmates for medical treatment, searched cells, and responded to fights between inmates. (DeFigueiredo testimony.)
2. In 2003, Mr. DeFigueiredo was transferred to the Sheriff's Investigations Division. His job title remained correction officer. In this position, he investigated possible criminal activity by inmates and conducted internal affairs investigations of possible misconduct by correction officers. He interviewed inmates to learn who were gang members. Other inmates he interviewed were informants. Some of the criminal activity revealed in such interviews involved crimes both inside and outside the jail. If inside the jail, he would be responsible for arresting the inmate and bringing him to court. If outside, he might be involved in assisting other

government officials with serving arrest warrants on those involved. (DeFigueiredo testimony; E. 1.)

3. In 2008, Mr. DeFigueiredo joined the Special Investigations Unit. He continued focusing on inmate crimes, but was no longer responsible for internal affairs investigations. When he was investigating information from inmates concerning crimes outside the facility, he worked with many different law enforcement agencies: the Boston Police Department, the State Police, the Department of Correction, and the Middlesex and Suffolk District Attorney's Offices. For example, once when he was investigating drug smuggling into the jail, inmates told him of two persons from outside the jail who were doing the smuggling. He participated in their arrest. (DeFigueiredo testimony; Ex. 6.)

4. In 2011, Mr. DeFigueiredo was promoted to sergeant. He supervised other investigators and continued to conduct investigations himself. (DeFigueiredo testimony; Ex. 1.)

5. In 2012, he added a new governmental unit with whom he cooperated when he became a member of a Homeland Security task force. His work did not change overall when he became part of the task force. The federal government was particularly interested in information he obtained from inmates about drug or gang activity. The biggest case he worked on was an international money laundering scheme. He was able to provide information from knowledgeable inmates that led to the seizure of \$1 million in Worcester. (DeFigueiredo testimony.)

6. A position description for a sergeant in the Special Investigation Unit stated that a sergeant was responsible for a variety of tasks in one way or another related to corrections including:

5. Regular ongoing day to day contact with inmates relative to care and custody issues involving inmate or ICE detainees treatment or lack thereof or complaints filed by inmates regarding the performance or conduct of correction officers or complaints arising from the conduct of other inmates. Responsible to investigate complaints filed.  
...
10. Personally investigate matters involving reported sexual contact between inmates or between inmates and staff.
11. Investigate inmate escapes/or apprehend escaped inmates.
12. Collect and preserve evidence when required to do so.
13. File criminal complaints when required to do so.
14. Has care and custody of all inmates, prisoners, and detainees during investigations per M.G.L. c. 126 section 16. And is responsible for the safety and security of all inmates and prisoners.  
...
16. Responsible for disciplining all inmates and prisoners in the county correctional facility who violate the laws of the Commonwealth or Departmental rules and regulations.  
...
21. Observe and respond to inmate behavioral patterns in order to avert and stop violent behavior, suicide, riot, escape or other crisis.
22. Resolves conflicts between or among inmates.

(Ex. 7.) When interviewed by the State Board, Mr. DeFigueiredo said he had an expertise in gang-related measures, and hence:

[H]e works closely with the classification department to classify inmates and determine placement taking into account gang affiliations and rivalries. He also does rounds in the facilities including the jail in Dartmouth, the Women's Center and the Immigration detention center; he is not assigned to go to a specific facility on specific days; he said he visits the facilities on an as needed basis and that he has daily interaction with inmates to gather intelligence.

(Ex. 8.)

7. Throughout his career, Mr. DeFigueiredo's basic salary was paid by the Bristol County Sheriff. If he worked overtime on a federal case, his overtime was ultimately paid by the federal government, after the Sheriff sought reimbursement. When he became an investigator, his office was in the Sheriff's Dartmouth facility, which contained a jail and administrative offices. When he was working with Homeland Security, he typically worked three days in Dartmouth and the other two days elsewhere. Throughout his career as an investigator, he spent at least half his time speaking to inmates in order to obtain information. (DeFigueiredo testimony; Exs. 10 and 11.)

8. In 2021, Mr. DeFigueiredo applied for superannuation retirement and sought retirement under M.G.L. c. 32, § 28N. (Ex. 1 and 5.)

9. The State Board denied his request to retire under the 20/50 classification. (Ex. 3.) Mr. DeFigueiredo timely appealed. (Ex. 4.)

### **Discussion**

Mr. DeFigueiredo seeks to retire under a provision specific to persons employed by a sheriff's office as a correction or jail officer. It states that:

any correction or jail officer employed by county sheriffs' offices who has performed services in said office for not less than twenty years shall, at his own request, be retired by said retirement board. Upon retirement under the provisions of this section a member shall receive a retirement allowance . . . [that] shall be equal to one-half of the annual average rate of his regular compensation during the twelve-month period of his creditable service immediately preceding the date his retirement allowance becomes effective.

M.G.L. c. 32, § 28N.

There is no dispute that Mr. DeFigueiredo began his service with the Bristol County Sheriff's Office as a correction officer. There is also no dispute that he worked for more than

twenty years at the Sheriff's office. The only issue was whether he accumulated 20 years as a correction officer.

Section 28N focuses on the job title of persons eligible for the 20/50 benefit, not on the specific duties of persons holding the position of correction or jail officer. What little caselaw there is also focuses on the job title of the individuals seeking the 20/50 benefit. It establishes that someone who works more than 20 years at a sheriff's office, but does not spend at least 20 years working as a correction officer is not eligible for the 20/50 benefit. Thus, periods of time a correction officer spent on workers' compensation did not count toward the necessary twenty years. *Espinola v. Bristol County Retirement Bd.*, CR-08-644 (DALA July 24, 2009). Nor does time spent as a property and canteen clerk at a sheriff's officer count even though the employee sometimes supervised inmates in the canteen. *Moran v. State Bd. of Retirement*, CR-19-0242 (DALA March 4, 2022). Similarly, someone who started work as an Assistant Criminal Identification Officer at the Barnstable County Sheriff's Office and worked his way up to Assistant Director of Public Safety did not qualify for Section 28N treatment, even though some of his time was spent taking mug shot photos of prisoners, fingerprinting them, transporting prisoners to the hospital, supervising inmate cleaning crews, and investigating crime scenes out on the street, because in none of his positions was he a correction or jail officer. *Robbins v. Barnstable County Retirement Bd.*, CR-95-980 (CRAB May 20, 1998).

While Mr. DeFigueiredo started as a correction officer working in a jail and later moved to the Sheriff's Investigations, then Special Investigations unit, and was promoted to sergeant, he was always a correction officer. The State Board does not appear to dispute this, but asserts that

during the latter part of his career his job involved responsibilities so different than what one might typically think of as correction officer duties that those years should not count.

The Board does not dispute that when Mr. DeFigueiredo began his career working at the Ash Street jail he was doing correction officer work when he made rounds in the jail, took prisoners for medical treatment, searched cells, and responded to fights between inmates. It even agrees that he was still acting as a correction officer when he joined the Investigations Unit. There, he investigated possible criminal activity by inmates and conducted internal affairs investigation of possible misconduct by correction officers. To some extent, his job was still inward focused on the jail in the sense that he investigated whether anything untoward was going on there. But, as Mr. DeFigueiredo testified, what he found could lead to criminal investigations of persons outside the jail, and he was involved in such investigations.

The Board sees a distinction when Mr. DeFigueiredo started working in the Special Investigations Unit and had his overtime paid by the federal government. It focuses on the fact that he spent long periods of time outside the jail environment working with other law enforcement agencies, particularly Homeland Security. There is no evidence, however, that he ceased to hold the title of a correction officer during the eight or nine years he worked in Special Investigations. The job description of a sergeant in this unit reflects many of what would traditionally have been considered typical correction officer duties, such as handling inmate complaints, maintaining care and custody of inmates during an investigation, observing inmate behavior patterns, and disciplining inmates. He may have spent a good deal of time working with federal, state, and local law enforcement agencies, but the reason he did this was that he had

developed productive leads from his questioning of inmates. Thus, his work with outside agencies was intrinsically tied to his investigative abilities in the jail.

There is testimony about whether Mr. DeFigueiredo had “care and custody” of inmates when he worked in Special Investigations. He testified that he spent more than half his time engaged in direct contact with inmates and had care and custody of those inmates. There is no evidence to the contrary. It is not clear, however, that this is relevant so long as he was considered a correction officer. It is noteworthy that, when the legislature provided a similar benefit to those working in state correctional facilities, it described those eligible as employees “whose major responsibilities include the care and custody of prisoners.” M.G.L. c. 32, § 28M. It did not use this language when providing a 20/50 benefit to Sheriff’s office correction officers. As previously noted, Section 28N mentions only the job title “correction officer” not the job duties of that position.

The Appeals Court mentioned care and custody in a decision involving an assistant deputy superintendent of a county correctional facility. It did so because the particular sheriff’s office had three types of employees: sheriff’s deputies, correction officers, and civilian employees. Care and custody of inmates mattered because it was important that this assistant deputy supervised correction officers, not sheriff’s deputies or civilian employees. Once having made this determination, the Appeals Court easily concluded that the years spent as an assistant deputy superintendent counted towards eligibility for the 20/50 benefit because “§ 28N applies on its face to ‘any’ correction or jail officer employed by a county sheriff’s office.” *Hollum v. Contributory Retirement Appeal Bd.*, 53 Mass. App. Ct. 220, 226 (2001). The evidence here



shows that Sgt. DeFigueiredo's work focused exclusively on the corrections aspects of the Bristol County Sheriff's office.

It may well be that when the legislature adopted Section 28N in 1994, correction officers employed by sheriff's offices did not work with other law enforcement agencies to investigate crimes taking place outside the jail run by the sheriff, but Mr. DeFigueiredo's testimony makes clear that some correction officers do that now. I do not read Section 28N as confining eligibility for the 20/50 benefit to those correction officers who work exclusively in the jail. The innovative way in which Mr. DeFigueiredo was deployed does not preclude him from eligibility for the 20/50 benefit.

Consequently, because Mr. DeFigueiredo has proven that he was a correction officer throughout his career at the Bristol County Sheriff's Office and that he worked more than twenty years as a correction officer, he is entitled to the 20/50 benefit. I therefore reverse the decision of the State Board of Retirement.

DIVISION OF ADMINISTRATIVE LAW APPEALS

***James P. Rooney***

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James P. Rooney  
First Administrative Magistrate

Dated: May 31, 2024