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# The Commonwealth of Massachusetts

AUDITOR OF THE COMMONWEALTH

DIVISION OF LOCAL MANDATES

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January 5, 2015

Ms. Jodi Ross  
Town Manager  
Town of Westford  
55 Main Street  
Westford, MA 01886

**RE: Bailing Provisions Under the Domestic Violence Act, Chapter 260 of the Acts of 2014**

Dear Town Manager Ross:

Domestic violence is pervasive -- the U.S. Department of Justice found that nearly 25 percent of women and 7.6 percent of men questioned in the National Violence Against Women Survey reported that "they were raped and/or physically assaulted by a current or former spouse, cohabiting partner, or date at some time in their lifetime."<sup>1</sup> Moreover, according to Jane Doe, Inc., there were 192 domestic violence-related homicides in Massachusetts from 2003 through 2009.<sup>2</sup> It is under these circumstances that Massachusetts sought to protect victims of domestic violence through the implementation of new statutory changes.

This letter is in response to your request on behalf of the Town of Westford to the State Auditor's Division of Local Mandates (DLM) regarding changes in bailing requirements under Sections 28, 31, and 32 of Chapter 260 of the Acts of 2014 (the Domestic Violence Act). You indicated that those changes, which deny bail to a person who is arrested for certain acts of violence or abuse sooner than six hours after arrest, impose a cost upon the Westford Police Department. You stated that the new bail provisions will require a police officer to remain at the station to attend to the detained individual rather than returning to patrol, which will impact the supervision levels and overtime budget of the Police Department. You estimate that the annual costs for holding individuals overnight is approximately \$5,266, based on a two year average of 29 domestic violence arrests, of which 80% occur at night. In preparation for this response, DLM staff met with you, Assistant Town Manager John Mangiaratti, Finance Director Daniel J. O'Donnell, and Chief of Police Thomas M. McEnaney. DLM also spoke with Deputy General Counsel Sarah W. Ellis of the Massachusetts District Court Administrative Office and

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<sup>1</sup> U.S. Department of Justice, Office of Justice Programs, NCJ 181867, *Extent, Nature, and Consequences of Intimate Partner Violence* iii (2000), available at <https://www.ncjrs.gov/pdffiles1/nij/181867.pdf>.

<sup>2</sup> Jane Doe, Inc., *Facts & Stats 2010*, available at [http://www.janedoe.org/site/assets/docs/DVAM\\_2010\\_Facts\\_Stats.pdf](http://www.janedoe.org/site/assets/docs/DVAM_2010_Facts_Stats.pdf).

Donna Taylor Mooers, Executive Director of the Massachusetts Police Accreditation Commission, Inc. (MPAC).

Although we understand that changes to the bailing provisions can impose a cost upon municipalities, DLM concludes that the Local Mandate Law does not apply to the additional costs associated with the six-hour holding period for persons arrested for violating the enumerated orders pertaining to protection from abuse in the Domestic Violence Act. Municipalities have a pre-1981 duty to hold persons for whom bail has not been granted or set; thus, the costs fall outside the scope of the Local Mandate Law.

### **Application of the Local Mandate Law to Sections 28, 31, and 32 of Chapter 260 of the Acts of 2014**

In general terms, the Local Mandate Law provides that any post-1980 state law, rule, or regulation that imposes additional costs upon any city or town must either be fully funded by the Commonwealth or subject to local acceptance. Pursuant to the Local Mandate Law, any community aggrieved by an unfunded state mandate may petition the Superior Court for an exemption from complying with the mandate until the Commonwealth provides sufficient funding. Prior to taking this step, a city or town may request an opinion from DLM as to whether the Local Mandate Law applies in a given case, and, if so, the compliance cost of any unfunded mandate. Pursuant to the Local Mandate Law, DLM's cost determination is *prima facie* evidence of the amount of funding necessary to sustain the local mandate. See M.G.L. c. 29, § 27C (e). Alternatively, a community may seek legislative relief.

To determine whether the anticipated local cost impact of a state law, rule, or regulation is subject to the Local Mandate Law, we apply the framework for analysis developed by the Supreme Judicial Court in *City of Worcester v. the Governor*, 416 Mass. 751 (1994). Of particular relevance to your petition, the challenged law must take effect on or after January 1, 1981, the challenged law must be a new law changing an existing law, and the challenged law must result in a direct service or cost obligation that is imposed by the Commonwealth, not merely an incidental local administration expense. *Id.* at 754-755. Moreover, the Legislature, in enacting the challenged law, must not have expressly overridden the Local Mandate Law. *Town of Lexington v. Commissioner of Education*, 393 Mass. 693, 698 (1985); *School Committee of Lexington v. Commissioner of Education*, 397 Mass. 593, 595 (1986).

Applying this analysis to the issue that you raised, DLM has determined that the six-hour holding period for persons arrested for violating the enumerated orders pertaining to protection from abuse in the Domestic Violence Act does not trigger the anti-mandate provisions of the Local Mandate Law.

Sections 28, 31, and 32 of the Domestic Violence Act amend M.G.L. c. 276, §§ 42A, 57, and 58 by adding three new paragraphs to those sections. St. 2014, c. 260, §§ 28 and 31-32. The provisions at issue in this determination prohibit persons 18 years or older who violate several different orders pertaining to protection from abuse from getting bail sooner than six hours after arrest, except by order of a judge in open court.<sup>3</sup> *Id.* Consequently, a person arrested after the close of business of the court for a violation of the enumerated orders in the Domestic Violence Act must be held by the local police departments for six hours or until the court is next in session, whichever comes sooner.

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<sup>3</sup> The enumerated orders are issued pursuant to M.G.L. c. 208, §§ 18 or 34B, M.G.L. c. 209, § 32, M.G.L. c. 209A, §§ 3, 4, or 5, M.G.L. c. 209C, §§ 15 or 20, any act that would constitute abuse as defined in M.G.L. c. 209A, § 1, or a violation of M.G.L. c. 265, §§ 13M or 15D. St. 2014, c. 260, §§ 28, 31-32.

Sections 28, 31, and 32 of the Domestic Violence Act make changes to M.G.L. c. 276, §§ 42A, 57, and 58 that are more than a mere clarification of the law. Prior to the enactment of the Domestic Violence Act, persons who were held for violations of the above-mentioned-orders could be immediately released on bail unless they fell into an exception in Section 57. Thus, the changes made by the Domestic Violence Act impose new restrictions on bailing requirements for persons charged with a violation of the enumerated orders in the Domestic Violence Act.

While Sections 28, 31, and 32 of the Domestic Violence Act impose new restrictions on bailing requirements for persons charged with a violation of the enumerated orders in the Domestic Violence Act, municipalities have a pre-1981 duty to maintain lockup facilities for persons for whom bail has not been set or granted. As far back as 1862, towns like Westford have been required to maintain a lockup facility to hold persons arrested without a warrant or persons charged with a bailable offense for whom bail has not been set or granted.<sup>4</sup> Moreover, Westford is required to have an officer or other lockup personnel physically or visibly check each occupied cell within its lockup facility as often as required by “a reasonable standard of care of detainees.” M.G.L. c. 40, § 36B.<sup>5</sup> Municipalities like Westford, therefore, have a pre-1981 duty to maintain lockup facilities for persons for whom bail has not been set or granted. St. 1862, c. 216, § 16. Because Westford has a pre-1981 duty to maintain a lockup facility to hold persons pending arraignment and persons for whom bail has not been granted, the cost associated with the changes to the Domestic Violence Bill fall outside the scope of the Local Mandate Law.

## Conclusion

The Domestic Violence Act makes changes to various statutes pertaining to domestic violence in an attempt to provide better protection for victims of abuse. The Domestic Violence Act provides police departments with additional tools to help tackle this widespread problem. However, those statutory changes do not come without an expense to local police departments.

DLM concludes that the Local Mandate Law does not apply to the additional costs associated with the six-hour holding period for persons arrested for violating the enumerated orders pertaining to protection from abuse in the Domestic Violence Act. Municipalities have a pre-1981 duty to maintain lockup facilities to hold persons for whom bail has not been granted or set; thus, the costs fall outside the scope of the Local Mandate Law.

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<sup>4</sup> M.G.L. c. 40, § 34 requires municipalities with 5,000 or more residents to maintain a lockup facility for persons who are arrested without a warrant or have not received bail. Westford has a population of 21,951, and thus, falls within the provisions of M.G.L. c. 40, § 34. U.S. Census, *Profile of General Population and Housing Characteristics: 2010*, available at [http://factfinder2.census.gov/bkmk/table/1.0/en/DEC/10\\_DP/DPDP1/0600000US2501776135](http://factfinder2.census.gov/bkmk/table/1.0/en/DEC/10_DP/DPDP1/0600000US2501776135).

<sup>5</sup> The Westford Police Department’s policy regarding detention of detainees requires that the officer-in-charge ensure that a physical check of each detainee occurs at least every thirty minutes. Westford Police Department, Policy No. 3.04, *Detaining Detainees*, (2014). Westford based this policy on the MPAC assessment standards. Donna Taylor Mooers, Executive Director of MPAC, indicated that MPAC based its assessment standards on the Commission on Accreditation of Law Enforcement Agencies’ recommendations. The Commission on the Accreditation of Law Enforcement Agencies is a credentialing authority created in 1979 through the joint efforts of law enforcement’s major executive associations, including the International Association of Chiefs of Police, the National Organization of Black Law Enforcement Executives, the National Sheriffs’ Association, and the Police Executive Research Forum. Commission on Accreditation of Law Enforcement Agencies, Inc., *About Us*, available at <http://www.calea.org/content/commission>.

This opinion does not prejudice the right of any city or town to seek independent review of the matter in Superior Court in accordance with Section 27C (e) of Chapter 29. Although we are sympathetic to the fiscal constraints facing all cities and towns, DLM must apply the Local Mandate Law consistently to each issue, as interpreted by the courts. We thank you for bringing this matter to our attention, and encourage you to contact DLM with further concerns on this or other matters impacting your district.

Sincerely,

A handwritten signature in black ink that reads "Vincent P. McCarthy". The signature is written in a cursive, slightly slanted style.

Vincent P. McCarthy, Director  
Division of Local Mandates

cc: Thomas McEnaney, Chief of Police, Westford Police Department  
Sarah W. Ellis, Deputy General Counsel, Massachusetts District Court Administrative Office  
Elisabeth Ryan, Deputy General Counsel, Executive Office of Public Safety and Security  
Donna Taylor Mooers, Executive Director, Massachusetts Police Accreditation Commission, Inc.