HOUSE DOCKET, NO. 2133 FILED ON: 1/17/2013

HOUSE . . . . . No. 1489

The Commonwealth of Massachusetts

PRESENTED BY:

Brian R. Mannal

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act ensuring an open files policy.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Brian R. Mannal	*2nd Barnstable*
Timothy R. Madden	*Barnstable, Dukes and Nantucket*

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By Mr. Mannal of Barnstable, a petition (accompanied by bill, House, No. 1489) of Brian R. Mannal and Timothy R. Madden that files under the control of the Commonwealth and law enforcement agencies be open to defense counsels . The Judiciary.

The Commonwealth of Massachusetts

An Act ensuring an open files policy.

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. Notwithstanding any general or special law to the contrary the policy relative files under the control and in the possession of the commonwealth and law enforcement shall be that all such files shall be open to defense counsel in their entirety. The procedure shall be as follows:

(a) Upon motion of the defendant, the court shall order the commonwealth to

(1) Make available to the defendant the complete files of all law enforcement and prosecutorial agencies involved in the investigation of the offenses committed or the prosecution of the defendant.

i. The term "file" shall include the defendant's statements, the codefendants' statements, witness statements, investigating officers' notes, results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant. When any matter or evidence is submitted for testing or examination, in addition to any test or examination results, all other data, calculations, or writings of any kind shall be made available to the defendant, including, but not limited to, preliminary test or screening results and bench notes.

ii. The term "prosecutorial agency" includes any public or private entity that obtains information on behalf of a law enforcement agency or prosecutor in connection with the investigation of the crimes committed or the prosecution of the defendant.

iii. Oral statements shall be in written or recorded form, except that oral statements made by a witness to a district attorney outside the presence of a law enforcement officer or investigatorial assistant shall not be required to be in written or recorded form unless there is

22 significantly new or different information in the oral statement from a prior statement made by
23 the witness.

24 iv. The defendant shall have the right to inspect and copy or photograph any materials
25 contained therein and, under appropriate safeguards, to inspect, examine, and test any physical
26 evidence or sample contained therein.

27 (2) Give notice to the defendant of any expert witnesses that the commonwealth
28 reasonably expects to call as a witness at trial. Each such witness shall prepare, and the
29 commonwealth shall furnish to the defendant, a report of the results of any examinations or tests
30 conducted by the expert. The commonwealth shall also furnish to the defendant the expert's
31 curriculum vitae, the expert's opinion, and the underlying basis for that opinion. The
32 commonwealth shall give the notice and furnish the materials required by this subsection within
33 a reasonable time prior to trial, as specified by the court.

34 (3) Give the defendant, at the beginning of jury selection, a written list of the names of all
35 other witnesses whom the commonwealth reasonably expects to call during the trial. Names of
36 witnesses shall not be subject to disclosure if the commonwealth certifies in writing and under
37 seal to the court that to do so may subject the witnesses or others to physical or substantial
38 economic harm or coercion, or that there is other particularized, compelling need not to disclose.
39 If there are witnesses that the commonwealth did not reasonably expect to call at the time of the
40 provision of the witness list, and as a result are not listed, the court upon a good faith showing
41 shall allow the witnesses to be called. Further in the interest of justice, the court may in its
42 discretion permit any undisclosed witness to testify.

43 (b) If the commonwealth voluntarily provides disclosure, the disclosure shall be to the
44 same extent as required by subsection (a) of this section.

45 (c) Upon request by the commonwealth, law enforcement or other prosecutorial agency
46 shall make available to the commonwealth a complete copy of all files related to the
47 investigation of the offenses committed or the prosecution of the defendant for compliance with
48 this section and any disclosure. All public and private entities that obtain such information shall
49 ensure that all material listed in paragraph (1) of subsection (a) of this section is fully disclosed
50 to the appropriate district attorney for disclosure to the defendant.

51 (d) Any person who willfully omits or misrepresents evidence or information required to
52 be disclosed pursuant to paragraph (1) of subsection (a) of this section, or required to be
53 provided to the commonwealth pursuant to subsection (c) of this section, shall be punished by
54 imprisonment in a jail or house of correction for not less than 1 nor more than 2 years. Any
55 person who willfully omits or misrepresents evidence or information required to be disclosed
56 pursuant to any other provision of this section shall be punished by imprisonment in a jail or
57 house of correction for not less than 6 months nor more than 1 year.