HOUSE DOCKET, NO. 2916 FILED ON: 1/18/2013

HOUSE . . . . . No. 1480

The Commonwealth of Massachusetts

PRESENTED BY:

James J. Lyons, Jr. and Marc T. Lombardo

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 relative to the collection of outstanding delinquent legal fees.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James J. Lyons, Jr.	*18th Essex*
Marc T. Lombardo	*22nd Middlesex*
Nicholas A. Boldyga	*3rd Hampden*
Kevin J. Kuros	*8th Worcester*
Keiko M. Orrall	*12th Bristol*
Geoff Diehl	*7th Plymouth*

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By Messrs. Lyons of Andover and Lombardo of Billerica, a petition (accompanied by bill, House, No. 1480) of James J. Lyons, Jr., Marc T. Lombardo and others relative to the collection of outstanding delinquent legal fees. The Judiciary.

The Commonwealth of Massachusetts

An Act relative to the collection of outstanding delinquent legal fees.

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. Chapter 211D of the General Laws is hereby amended by striking section 2A in its entirety, and inserting in place thereof the following:—

Section 2A. (a) A person claiming indigency under section 2 shall execute a waiver authorizing the court's chief probation officer, or the officer's designee, to obtain the person's wage, tax and asset information from the department of revenue, department of transitional assistance and the registry of motor vehicles that the court may find useful in verifying the person's claim of indigency. The waiver shall authorize the chief probation officer, or the officer's designee, to conduct any further reassessment required by this section.

(b) It shall be the responsibility of the chief probation officer assigned to each court to ensure that a person claiming to be indigent meets the definition of indigency under section 2. A person seeking the appointment of counsel shall be interviewed by the chief probation officer or the officer's designee prior to the appointment of counsel. The person conducting the interview shall explain to the person seeking appointment of counsel: (1) the definition of indigency; (2) the process used to verify the person's information with other state agencies; and (3) the penalties for misrepresenting financial information in applying for the appointment of counsel, including possible civil penalties and criminal prosecution. The officer or the officer's designee conducting the interview shall prepare a written indigency intake report that shall record the results of the interview and state a recommendation on whether or not the person seeking appointment of counsel is indigent. The person seeking appointment of counsel and the officer or the officer's designee conducting the interview shall sign the indigency intake report. In signing the report, the person seeking appointment of counsel shall certify under the pains and penalties of perjury that the information contained therein is true and that the person has not concealed any information relevant to the person's financial status. The intake report shall clearly and conspicuously state in bold type directly above the signature area that penalties for

25 misrepresentation include fines and criminal prosecution. All statements contained in the report
26 shall be deemed material statements. The completed report shall be presented to a judge who
27 may adopt or reject the recommendations in the report, either in whole or in part.

28

29 (c) Appointment of counsel by a court shall, at all times, be subject to verification of
30 indigency by the chief probation officer assigned to each court. The chief probation officer or the
31 officer's designee shall, within 7 business days of appointment of counsel, complete a final report
32 of the financial circumstances of the person for whom counsel was appointed containing wage,
33 tax and asset information. In preparing the final report, the chief probation officer or the officer's
34 designee shall access, through electronic sharing of information pursuant to a memorandum of
35 understanding, wage, tax and asset information in the possession of the department of revenue
36 and the department of transitional assistance, and any other information relevant to the
37 verification of indigency in the possession of the registry of motor vehicles. These departments
38 shall provide this information to the chief probation officer or the officer's designee upon
39 request, within 3 business days from the date of request. The chief probation officer shall sign
40 the final report, certifying that the person for whom counsel was appointed either continues to
41 meet or no longer meets the definition of indigency. Thereafter, the report shall be filed with the
42 case papers and shall be presented to the judge presiding at the person's next court appearance;
43 provided, however, that if a person for whom counsel was appointed is found to not meet the
44 definition of indigency, a court appearance shall be scheduled as soon as feasible prior to the
45 person's next court appearance if the next court appearance is more than 2 weeks from the date
46 the final report is completed. If, upon receipt of the report, a judge finds that the person for
47 whom counsel was appointed no longer meets the definition of indigency, the judge shall revoke
48 the appointment of counsel and allow such person a reasonable continuance to obtain new
49 counsel.

50

51 Not later than 6 months after the appointment of counsel, and every 6 months thereafter,
52 the chief probation officer or the officer's designee shall conduct a further reassessment of the
53 financial circumstances of the person for whom counsel was appointed to ensure that the person
54 continues to meet the definition of indigency. The chief probation officer or the officer's
55 designee shall prepare, sign and file a written report certifying that the person either continues to
56 meet, or no longer meets, the definition of indigency.

57 Upon request of the department of children and families, the commissioner of probation
58 shall provide to the department a copy of a person's indigency intake form, final assessment of
59 financial circumstances, and any report certifying that the person either continues to meet or no
60 longer meets the definition of indigency prepared by the chief probation officer in accordance
61 with this section. The department shall only use these forms, assessments and reports for the

62 purpose of completing eligibility determinations under Title IV-E of the Social Security Act. The
63 commissioner of probation and the commissioner of children and families shall jointly determine
64 the process by which the department of children and families shall obtain and maintain these
65 forms, assessments and reports. The department of children and families shall not disseminate,
66 and shall prohibit dissemination of, such information for any purpose other than those set forth in
67 this paragraph.

68 (d) If a criminal defendant is charged with a second or further offense while continuing
69 to be represented by court-appointed counsel for a previously charged offense, the court in its
70 discretion shall determine whether any further determination of indigency, other than the bi-
71 annual reassessments required by the defendant's representation for the first offense, need be
72 undertaken. Upon completion of a reassessment, the chief probation officer shall prepare a
73 written report of the officer's findings. The chief probation officer shall sign the report, certifying
74 that the defendant either continues to meet or no longer meets the definition of indigency. The
75 report shall be filed with the case papers and shall be presented to the judge presiding at the
76 defendant's next court appearance. If, upon receipt of the report, a judge finds that the defendant
77 no longer meets the definition of indigency, the judge shall revoke the appointment of counsel
78 and allow the defendant a reasonable continuance to obtain new counsel.

79

80 (e) If the court finds that a person has materially misrepresented or omitted information
81 concerning the person's property or assets for purposes of determining indigency and that the
82 person does not meet the definition of indigency, the court shall immediately terminate any
83 assignment or appointment of counsel made under this chapter and shall assess a fine of not less
84 than $1,000 against the person. A person assessed such fine who fails or neglects to pay the fine
85 within 30 days shall be punished by imprisonment in the house of correction for not more than
86 90 days. The chief probation officer shall refer each matter arising under this subsection to the
87 district attorney for the appropriate county.

88

89 (f) A person provided counsel under this chapter shall be assessed a counsel fee of $150
90 to be paid within 90 days of the date of appointment. The court may only grant a waiver to a
91 person who has made a written request to the chief probation officer for such waiver. The court
92 shall hold a hearing to determine the person’s inability to pay the counsel fee. The facts the
93 judge uses to support findings shall include the person’s inability to pay such $150 within 180
94 days. If a waiver is granted pursuant to this subsection the judge shall include written findings of
95 fact and a written statement of the reasons for waiver. If, upon the biannual reassessment of the
96 person's indigency, the court concludes that the person is able to pay the $150 counsel fee of
97 which the person obtained a waiver, the court shall revoke the waiver and reimpose the $150
98 counsel fee. The fee shall be in addition to any reduced fee required pursuant to section 2.

100 (g) The court may authorize a person for whom counsel was appointed to perform
101 community service in lieu of payment of the counsel fee. A person seeking to work off a counsel
102 fee in community service shall perform 10 hours of community service, in a community service
103 program administered by the administrative office of the trial court, for each $100 owed in legal
104 counsel fees, which may be prorated. Notwithstanding any general or special law to the contrary,
105 a court proceeding shall not be terminated and the person shall not be discharged if the person
106 owes any portion of the legal counsel fee imposed by this section. The clerk shall not release any
107 bail posted on such court proceeding until the legal counsel fee is satisfied in accordance with
108 this chapter. Community service shall be verified by the chief probation officer or the officer's
109 designee through a report to the court which shall include the nature of the community service,
110 the recipient organization of the community service, the number of hours and identification of
111 the source of verification. The chief probation officer or the officer's designee shall file a copy of
112 the verification report with the clerk of the court. Community service shall be completed within
113 60 days of the authorization, unless an extension under the provisions of subsection (h ½) is
114 granted.

115

116 (h) The clerk of the court shall, within 60 days of appointment of counsel, report to the
117 department of revenue, the department of transitional assistance and the registry of motor
118 vehicles the amount of any legal counsel fee owed by the person for whom counsel was
119 appointed under this chapter. The department of revenue shall intercept payment of such fee
120 from tax refunds due to persons who owe all or a portion of such fee. The registry of motor
121 vehicles shall not issue or renew a person's driver's license or motor vehicle registration for any
122 vehicle subsequently purchased by such person until it receives notification from the clerk of the
123 court that the fee has been collected or worked off in community service. If payment of the
124 counsel fee has not been made within 90 days, and there has been no extension granted by the
125 court, the registry of motor vehicles shall suspend a person's driver's license until it receives
126 notification from the clerk of the court that the fee has been collected or worked off in
127 community service.

128 (h ½) The court may only grant an extension of the time to pay or complete community
129 service to a person who has made a written request to the chief probation officer for such
130 extension. The court shall hold a hearing to determine the person's necessity for such extension.
131 If an extension is granted pursuant to this subsection the judge shall include written findings of
132 fact and a written statement of the reasons for the extension. Extensions may not exceed 30 days
133 and no more than two extensions may be granted. If the judge fails to make a written finding,
134 and the payment period has expired, the clerk of the court shall make the notifications required
135 by subsection (h).

136

137 (i) The office of the commissioner of probation shall submit quarterly reports to the house
138 and senate committees on ways and means that shall include, but not be limited to: (a) the
139 number of individuals claiming indigency who are determined to be indigent; (b) the number of
140 individuals claiming indigency who are determined not to be indigent; (c) the number of
141 individuals found to have misrepresented wage, tax or asset information; (d) the number of
142 individuals found to no longer qualify for appointment of counsel upon any re-assessment of
143 indigency required by this section; (e) the total number of times an indigent misrepresentation
144 fine was collected and the aggregate amount of indigent misrepresentation fines collected; (f) the
145 total number of times indigent counsel fees were collected and waived and the aggregate amount
146 of indigent counsel fees collected and waived; (g) the average indigent counsel fee that each
147 court division collects; (h) the total number of times an indigent but able to contribute fee was
148 collected and waived and the aggregate amount of indigent but able to contribute fees collected
149 and waived; (i) the highest and lowest indigent but able to contribute fee collected in each court
150 division; (j) the number of cases in which community service in lieu of indigent counsel fees was
151 performed; and (k) other pertinent information to ascertain the effectiveness of indigency
152 verification procedures.

153

154 The information within such reports shall be delineated by court division, and delineated
155 further by month.”.