HOUSE DOCKET, NO. 4315 FILED ON: 3/15/2012

# HOUSE . . . . . No. 4050

The Commonwealth of Massachusetts

PRESENTED BY:

***David Paul Linsky and Benjamin Swan***

*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 Indigent Defense Counsel.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|---|---|
| *David Paul Linsky* | *5th Middlesex* |
| *Benjamin Swan* | *11th Hampden* |
| *Jennifer E. Benson* | *37th Middlesex* |
| *Jonathan Hecht* | *29th Middlesex* |
| *Sheila C. Harrington* | *1st Middlesex* |
| *Kevin J. Kuros* | *8th Worcester* |

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# HOUSE . . . . . No. 4050

By Messrs. Linsky of Natick and Swan, a petition (subject to Joint Rule 12) of David Paul Linsky, Benjamin Swan and others relative to indigent defense counsel. The Judiciary.

## The Commonwealth of Massachusetts

An Act Relative to Indigent Defense Counsel.

*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. Subsection (c) of section 2A of chapter 211D of the General Laws, as appearing in section 112 of chapter 68 of the acts of 2011, is hereby amended by inserting after the words " chief probation officer" in the fifth sentence the following words: - or his designee.

SECTION 2. Said subsection (c) of said section 2A of said chapter 211D, as so appearing, is hereby further amended by striking out, in the ninth sentence, the words "and every 6 months thereafter".

SECTION 3. Said chapter 211D of General Laws, as so appearing, is hereby further amended by striking out section 2B and inserting in place thereof the following section:-

Section 2B. Notwithstanding any other provision of law, a criminal defendant charged with a misdemeanor or a violation of a municipal ordinance or bylaw, on motion of the Commonwealth, on motion of the defendant, or by the court sua sponte, shall not be appointed counsel if the judge, at arraignment, informs such defendant on the record that, if the defendant is convicted of such offense, his sentence will not include any period of incarceration. For good cause, that judge or another judge of the same court may later revoke such determination on the record and appoint counsel, and on the request such counsel shall be entitled to a continuance to conduct any necessary discovery and to prepare adequately for trial. Any such determination or revocation by a judge shall be endorsed upon the docket of the case.

A criminal defendant charged only with violations of: sections 10, 11, 23, the crimes of operating a motor vehicle negligently or recklessly so as to endanger, leaving the scene of an accident, causing property damage, under section 24 (2)(a), 25, or 34J of chapter 90; sections 34 or 35 of chapter 94C; section 75 of chapter 130; section 34C of chapter 138; section 12 of chapter 140; section 39 of chapter 148; section 218 of chapter 160; section 30 (1), if said property is valued at less than two hundred and fifty dollars, section 30A, clauses (b), (i) and (k) of section 37B, sections 60, if said property is valued at less than two hundred and fifty dollars,

25 sections 87, sections 120, 126A, or 127 of chapter 266, or sections 12, clauses (a) and (b) of
26 sections 53, or clause (a) of sections 53A of chapter 272 shall not be appointed counsel unless
27 said offense requires a mandatory period of incarceration or the Commonwealth notifies the
28 court in writing that it will recommend to the court that the defendant's sentence, if convicted,
29 will include a period of incarceration. Such notice may be filed at any time prior to trial and the
30 court may then appoint counsel, and on the request such counsel shall be entitled to a
31 continuance to conduct any necessary discovery and to prepare adequately for trial.

32 SECTION 3. Notwithstanding any general or special law to the contrary, there shall be a
33 committee comprised of the following: 1) the chief counsel of the committee on public counsel
34 services, or his designee; 2) the commissioner of probation, or his designee; 3) the chief justice
35 of the supreme judicial court, or his designee; 4) the chief justice for administration and
36 management, or his designee; 5) the chief justice of the juvenile court, or his/designee. Said
37 committee shall establish a new definition of "indigency" for the purposes of verifying asset
38 information of those individuals for whom counsel shall be appointed by the court. Said
39 committee shall report its findings, together with recommendations for legislation, if any, to the
40 clerks of the house and senate no later than January 1, 2013.

41 SECTION 4. Notwithstanding any general or special law to the contrary, there shall be a
42 committee comprised of the commissioner of probation, or his designee, the secretary of
43 administration and finance ,or his designee, the chair of the house post audit and oversight
44 committee, or his designee, the chief counsel of the committee for public counsel services, or his
45 designee, the chief justice of the supreme judicial court, or his designee, the chairs of the house
46 and senate committees on the judiciary, or their designees. Said committee shall study which
47 state agency would be best equipped to perform the indigency verification functions as mandated
48 in M.G.L. Chapter 211D. Said committee shall report its findings, together with
49 recommendations for legislation, if any, to the clerks of the house and senate no later than
50 January 1, 2013.