

**HOUSE . . . . . No. 1451**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*David Paul Linsky*

*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 adoption of the accompanying bill:

An Act relative to indigent defense counsel.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>David Paul Linsky</i>	<i>5th Middlesex</i>	<i>1/13/2015</i>

**HOUSE . . . . . No. 1451**

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By Mr. Linsky of Natick, a petition (accompanied by bill, House, No. 1451) of David Paul Linsky relative to indigent defense counsel. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1467 OF 2013-2014.]

**The Commonwealth of Massachusetts**

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**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
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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:*

1           SECTION 1. Said subsection (c) of said section 2A of said chapter 211D, as so  
2 appearing, is hereby further amended by striking out, in the ninth sentence, the words “and  
3 every 6 months thereafter”.

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

6           Section 2B. Notwithstanding any other provision of law, a criminal defendant charged  
7 with a misdemeanor or a violation of a municipal ordinance or bylaw, on motion of the  
8 Commonwealth, on motion of the defendant, or by the court sua sponte, shall not be appointed  
9 counsel if the judge, at arraignment, informs such defendant on the record that, if the defendant  
10 is convicted of such offense, his sentence will not include any period of incarceration. For good

11 cause, that judge or another judge of the same court may later revoke such determination on the  
12 record and appoint counsel, and on the request such counsel shall be entitled to a continuance to  
13 conduct any necessary discovery and to prepare adequately for trial. Any such determination or  
14 revocation by a judge shall be endorsed upon the docket of the case.

15 A criminal defendant charged only with violations of: sections 10, 11, 23, the crimes of  
16 operating a motor vehicle negligently or recklessly so as to endanger, leaving the scene of an  
17 accident, causing property damage, under section 24 (2)(a), 25, or 34J of chapter 90; sections 34  
18 or 35 of chapter 94C; section 75 of chapter 130; section 34C of chapter 138; section 12 of  
19 chapter 140; section 39 of chapter 148; section 218 of chapter 160; section 30 (1), if said  
20 property is valued at less than two hundred and fifty dollars, section 30A, clauses (b), (i) and (k)  
21 of section 37B, sections 60, if said property is valued at less than two hundred and fifty dollars,  
22 sections 87, sections 120, 126A, or 127 of chapter 266, or sections 12, clauses (a) and (b) of  
23 sections 53, or clause (a) of sections 53A of chapter 272 shall not be appointed counsel unless  
24 said offense requires a mandatory period of incarceration or the Commonwealth notifies the  
25 court in writing that it will recommend to the court that the defendant's sentence, if convicted,  
26 will include a period of incarceration. Such notice may be filed at any time prior to trial and the  
27 court may then appoint counsel, and on the request such counsel shall be entitled to a  
28 continuance to conduct any necessary discovery and to prepare adequately for trial.

29 SECTION 3. Notwithstanding any general or special law to the contrary, there shall be a  
30 committee comprised of the following: 1) the chief counsel of the committee on public counsel  
31 services, or his designee; 2) the commissioner of probation, or his designee; 3) the chief justice  
32 of the supreme judicial court, or his designee; 4) the chief justice for administration and  
33 management, or his designee; 5) the chief justice of the juvenile court, or his/designee. Said

34 committee shall establish a new definition of “indigency” for the purposes of verifying asset  
35 information of those individuals for whom counsel shall be appointed by the court. Said  
36 committee shall report its findings, together with recommendations for legislation, if any, to the  
37 clerks of the house and senate no later than January 1, 2014.

38 SECTION 4. Notwithstanding any general or special law to the contrary, there shall be a  
39 committee comprised of the commissioner of probation, or his designee, the secretary of  
40 administration and finance ,or his designee, the chair of the house post audit and oversight  
41 committee, or his designee, the chief counsel of the committee for public counsel services, or his  
42 designee, the chief justice of the supreme judicial court, or his designee, the chairs of the house  
43 and senate committees on the judiciary, or their designees. Said committee shall study which  
44 state agency would be best equipped to perform the indigency verification functions as mandated  
45 in M.G.L. Chapter 211D. Said committee shall report its findings, together with  
46 recommendations for legislation, if any, to the clerks of the house and senate no later than  
47 January 1, 2014.