

**HOUSE . . . . . No. 1512**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***James M. Murphy***

*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 assuring availability for trial of certain defendants.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>James M. Murphy</i>	<i>4th Norfolk</i>	
<i>John H. Rogers</i>	<i>12th Norfolk</i>	
<i>Bruce J. Ayers</i>	<i>1st Norfolk</i>	
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>	

**HOUSE . . . . . No. 1512**

By Mr. Murphy of Weymouth, a petition (accompanied by bill, House, No. 1512) of James M. Murphy and others for legislation to order defendants held until they can be brought to trial if they are in danger of deportation. The Judiciary.

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Thirteen**

An Act relative to assuring availability for trial of certain defendants.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 Following Chapter 276 Section 58B would be inserted a new section, Chapter 276  
2 Section 58C, reading as follows:

3 A justice of the superior court or a justice or a clerk or assistant clerk of the district court,  
4 a bail commissioner or master in chancery, in accordance with the applicable provisions of  
5 section fifty-seven, may, for any defendant charged with or indicted upon an offense that is  
6 punishable by imprisonment in the state prison or with threatening to commit any offense that is  
7 punishable by imprisonment in the state prison and who is the subject of a valid federal  
8 immigration detainer, and for whom admission to bail would likely result in the transfer of  
9 custody from state to federal authorities for deportation proceedings, can consider whether  
10 involuntary deportation is likely to render such defendant unavailable for trial and may, at the  
11 request of the district attorney or attorney general prosecuting the matter, and upon proof by the  
12 moving party that there exists a valid federal immigration detainer, hold such defendant in state  
13 custody without bail. Such an order shall include written findings of fact and a written statement  
14 of the reason for the detention. An order to remain in state custody under this subsection shall  
15 direct that the defendant be committed to custody or confinement facility separate, to the extent  
16 practicable, from persons awaiting or serving sentence or being held in custody pending appeal.

17 Within 90 days after the issuance of such order that the defendant remain in state custody,  
18 the Commonwealth shall document the status of the federal detainer and provide a status report  
19 on the case. Should such a federal immigration detainer be withdrawn, vacated or otherwise  
20 invalidated by federal authorities, said defendant would be entitled to revisit the state custody  
21 ruling under this section at the next sitting of the court with jurisdiction over the criminal matter.

22           A person detained under this subsection shall be brought to trial as soon as reasonably  
23 possible, but in absence of a showing of good cause, the person so held shall not be detained for  
24 a period exceeding ninety days excluding any period of delay as defined in Massachusetts Rules  
25 of Criminal Procedure Rule 36 (b)(2).

26