

**HOUSE . . . . . No. 1459**

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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 further regulating the appointment of certain guardians.**

PETITION OF:

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

**HOUSE . . . . . No. 1459**

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By Mr. Linsky of Natick, a petition (accompanied by bill, House, No. 1459) of David Paul Linsky relative to further regulating the appointment of certain guardians by the Probate Court. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1464 OF 2013-2014.]

**The Commonwealth of Massachusetts**

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

An Act further regulating the appointment of certain guardians.

*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. Section 5-305 of chapter 190B of the General Laws, as appearing in the  
2   2010 Official Edition, is hereby amended by striking out subsections (c) and (d) and inserting in  
3   place thereof the following subsection:-

4           (c) Except as provided in subsection (b), the following, if suitable, are entitled to the  
5   presumption that they are the proper person for appointment as guardian of an incapacitated  
6   person by the court in the order listed; provided, however, that such presumption may be  
7   rebutted by the introduction of competent evidence:

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9           (1)     the spouse of the incapacitated person or a person nominated by will of a  
10 deceased spouse or by other writing signed by the spouse and attested to by at least 2 witnesses;

11           (2)     the parent or parents of the incapacitated person, or a person nominated pursuant  
12 to section 5-301; and

13           (3)     any person the court deems appropriate.

14           A spouse, parent or parents wishing to designate a third party to serve as guardian of such  
15 person may freely elect to do so without prejudice. In such instances, the party so designated  
16 shall be presumed to be the proper person to be appointed by the court. Such presumption may be  
17 rebutted by the introduction of competent evidence.