

SENATE No. 911

The Commonwealth of Massachusetts

PRESENTED BY:

Bruce E. Tarr, (BY REQUEST)

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 to promote accountability and public confidence in the Massachusetts judicial system.

PETITION OF:

NAME:

Marie Winfield

DISTRICT/ADDRESS:

17 Redspring Road Andover, MA 01810

SENATE No. 911

By Mr. Tarr (by request), a petition (accompanied by bill, Senate, No. 911) of Marie Winfield for legislation to promote accountability and public confidence in the Massachusetts judicial system. The Judiciary.

The Commonwealth of Massachusetts

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

An Act to promote accountability and public confidence in the Massachusetts judicial system.

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. This Act may be cited as the “Judicial Ombudsman Act.”

2 SECTION 2. The Massachusetts General Laws, as appearing in the 2014 Official Edition,
3 are hereby amended by inserting after chapter 211F the following new chapter:

4 “Chapter 211G. Judicial Ombudsman.

5 Section 1. There shall be a Judicial Ombudsman. The Ombudsman shall be appointed by
6 the governor. The Ombudsman shall not be a member of the bar; however, the Ombudsman shall
7 be assisted by a member of the bar who shall serve as legal counsel to the Ombudsman. The
8 Ombudsman shall serve a term not to exceed three years, and shall be ineligible for re-
9 appointment. The Ombudsman may appoint employees or appointees necessary to perform the
10 duties of the office. For the purposes of this Act, unless otherwise noted, the word
11 “Ombudsman” shall be interpreted to include any staff member of the Ombudsman’s office.

12 Section 2. As part of the Ombudsman’s oath of office, the Ombudsman shall swear to
13 faithfully and impartially exercise the powers and perform the duties of the office, and to not
14 divulge any information received as a consequence of the duties of the office. The Ombudsman
15 shall maintain confidentiality in respect of all matters arising from the performance of his duties
16 under this Act. An investigation under this Act shall be conducted in private unless the
17 Ombudsman considers that there are special circumstances in which public knowledge is
18 essential in order to further the investigation. In such instances, the ombudsman shall be
19 empowered to hold public hearings at the conclusion of which findings may be made public. The
20 Ombudsman or a person holding an office or appointment under the Ombudsman shall not give
21 or be compelled to give evidence in a court or in proceedings of a judicial nature in respect of
22 anything coming to his or her knowledge in the exercise of duties under this Act, except

23 a) where the Ombudsman is accused of divulging confidential information in
24 violation of Section 2, and must divulge information necessary to refute such accusation,
25 wherein the Ombudsman may only reveal such information as is absolutely necessary to refute
26 such accusation; or

27 b) with respect to a trial of a person for perjury.

28 Section 3. The Ombudsman, on a complaint or on the Ombudsman’s own initiative, may
29 investigate

30 a) a decision, an order or recommendation made,

31 b) an act done or committed (which shall include the use of excessive force or abuse
32 of power), or

33 c) a procedure used (which shall include procedures that do not appropriately
34 account for mental status, or health issues, or inappropriately apply mental health statutes) by an
35 authority, official or law enforcement personnel that aggrieves or may aggrieve a person. For the
36 purposes of this Act, “authority” shall mean any state or local employee, official or law
37 enforcement personnel whose job is concerned with the facilitation of the judicial system. Such
38 employees may include, but are not limited to, clerks, bailiffs, parole officers, probation officers,
39 and police officers, but shall not include judges. To the extent that an investigation by the
40 Ombudsman discovers evidence of improper conduct by a judge, the Ombudsman shall
41 immediately refer such evidence to the Commission on Judicial Conduct. The Ombudsman’s
42 duty of confidentiality shall not be interpreted to limit or constrain such referral.

43 Section 4. Any person defined as an authority under Section Three of this Act shall have
44 a duty of compliance with the Ombudsman. Any authority shall comply with any request for an
45 interview or document production except where the request for information or interview is
46 manifestly unreasonable.

47 Section 5. In the event that an investigation by the Ombudsman uncovers evidence of
48 improper or illegal conduct on the part of any authority, the Ombudsman shall refer the evidence
49 to the appropriate governing authority. Improper conduct by a probation officer shall be referred
50 to the Commissioner of Probation. Improper conduct by a clerk shall be referred to the
51 appropriate Clerk of Courts. In the event that the ombudsman discovers criminal action by a
52 correctional officer, police officer, or attorney, the ombudsman shall refer the findings and
53 evidence of such criminal action to the appropriate prosecutor.

54 Section 6. The Ombudsman shall not be empowered to investigate a decision, act, or
55 omission in respect of which there is under an enactment a right of appeal or objection or a right
56 to apply for a review on the merits of the case to a court, until after that right of appeal, objection
57 or application has been exercised or until after the time limit for the exercise of that right has
58 expired. The Ombudsman may investigate conduct occurring before the commencement of this
59 Act.

60 Section 7. A complaint under this Act may be made by a person or group of persons. A
61 complaint must be in writing. If a communication written by or on behalf of a person confined in
62 a correctional institution or to a hospital or facility operated by or under the direction of an
63 authority, or by a person in the custody of another person for any reason, is addressed to the
64 Ombudsman the person in charge of the institution, hospital or facility in which the writer is
65 confined or the person having custody of the writer must immediately, mail or forward the
66 communication, unopened, to the Ombudsman. A communication from the Ombudsman to a
67 person confined or in custody as described in this section shall be forwarded to that person in a
68 similar manner.

69 Section 8. The Ombudsman may refuse to investigate or cease investigating a complaint
70 if, in the opinion of the Ombudsman, any of the following apply:

71 (a) the complainant or person aggrieved knew or ought to have known of the decision,
72 recommendation, act or omission to which the complaint refers more than one year before the
73 complaint was received by the Ombudsman;

74 (b) the subject matter of the complaint primarily affects a person other than the
75 complainant and the complainant does not have sufficient personal interest in it;

76 (c) the law or existing administrative procedure provides a remedy adequate in the
77 circumstances for the person aggrieved, and, if the person aggrieved has not availed himself or
78 herself of the remedy, there is no reasonable justification for the failure to do so;

79 (d) the complaint is frivolous, vexatious, not made in good faith or concerns a trivial
80 matter;

81 (e) having regard to all the circumstances, further investigation is not necessary in order
82 to consider the complaint;

83 (f) in the circumstances, investigation would not benefit the complainant or person
84 aggrieved;

85 (g) the complainant has abandoned the complaint

86 (i) by failing to advise the Ombudsman of a current address or telephone number at
87 which the Ombudsman can contact him or her, or

88 (ii) by failing to respond after a reasonable number of attempts by the Ombudsman to
89 contact him or her in writing or verbally;

90 (h) the complaint is withdrawn by the complainant by written notice to the Ombudsman.

91 Section 9. Proceedings of the Ombudsman shall not be challenged, reviewed or called
92 into question by a court, and shall be reviewable only by the legislature.

93 Section 10. Proceedings do not lie against the Ombudsman or against a person acting
94 under the authority of the Ombudsman for anything done in good faith, reported or said in the
95 course of the exercise or purported exercise of duties under this Act.

96 Section 11. The Ombudsman shall report at least annually, but as often as the
97 Ombudsman believes is in the public interest, on the affairs of the Ombudsman's office to the
98 Secretary of Administration and Finance, the House and Senate Clerks, the Chief Justice of the
99 Supreme Judicial Court, the Chief Justice for Administration and Management of the Trial
100 Court, and the Chief Justice of the Appeals Court.

101 Section 12. The Ombudsman shall be empowered to hold public educational forums in
102 the Commonwealth to inform citizens of their rights and the rules of court, and shall also
103 disseminate this information through print and electronic means. In addition, the Ombudsman
104 shall be empowered to gather data and statistics to be included in regular reports to the
105 legislature, along with recommendations for bringing continuing improvements to the state's
106 justice system.