HOUSE DOCKET, NO. 2401 FILED ON: 1/19/2017

HOUSE . . . . . No. 2318

The Commonwealth of Massachusetts

PRESENTED BY:

James J. Lyons, Jr.

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 the collection of outstanding delinquent legal fees.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
James J. Lyons, Jr.	*18th Essex*	*1/19/2017*

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HOUSE . . . . . No. 2318

By Mr. Lyons of Andover, a petition (accompanied by bill, House, No. 2318) of James J. Lyons, Jr., relative to the collection of outstanding delinquent legal fees. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1470* OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

An Act relative to the collection of outstanding delinquent legal fees.

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. Chapter 211D of the General Laws is hereby amended by striking section 2A in its entirety, and inserting in place thereof the following:—

Section 2A. (a) A person claiming indigency under section 2 shall execute a waiver authorizing the court's chief probation officer, or the officer's designee, to obtain the person's wage, tax and asset information from the department of revenue, department of transitional assistance and the registry of motor vehicles that the court may find useful in verifying the person's claim of indigency. The waiver shall authorize the chief probation officer, or the officer's designee, to conduct any further reassessment required by this section.

(b) It shall be the responsibility of the chief probation officer assigned to each court to ensure that a person claiming to be indigent meets the definition of indigency under section 2. A

person seeking the appointment of counsel shall be interviewed by the chief probation officer or the officer's designee prior to the appointment of counsel. The person conducting the interview shall explain to the person seeking appointment of counsel: (1) the definition of indigency; (2) the process used to verify the person's information with other state agencies; and (3) the penalties for misrepresenting financial information in applying for the appointment of counsel, including possible civil penalties and criminal prosecution. The officer or the officer's designee conducting the interview shall prepare a written indigency intake report that shall record the results of the interview and state a recommendation on whether or not the person seeking appointment of counsel is indigent. The person seeking appointment of counsel and the officer or the officer's designee conducting the interview shall sign the indigency intake report. In signing the report, the person seeking appointment of counsel shall certify under the pains and penalties of perjury that the information contained therein is true and that the person has not concealed any information relevant to the person's financial status. The intake report shall clearly and conspicuously state in bold type directly above the signature area that penalties for misrepresentation include fines and criminal prosecution. All statements contained in the report shall be deemed material statements. The completed report shall be presented to a judge who may adopt or reject the recommendations in the report, either in whole or in part.

(c) Appointment of counsel by a court shall, at all times, be subject to verification of indigency by the chief probation officer assigned to each court. The chief probation officer or the officer's designee shall, within 7 business days of appointment of counsel, complete a final report of the financial circumstances of the person for whom counsel was appointed containing wage, tax and asset information. In preparing the final report, the chief probation officer or the officer's

designee shall access, through electronic sharing of information pursuant to a memorandum of understanding, wage, tax and asset information in the possession of the department of revenue and the department of transitional assistance, and any other information relevant to the verification of indigency in the possession of the registry of motor vehicles. These departments shall provide this information to the chief probation officer or the officer's designee upon request, within 3 business days from the date of request. The chief probation officer shall sign the final report, certifying that the person for whom counsel was appointed either continues to meet or no longer meets the definition of indigency. Thereafter, the report shall be filed with the case papers and shall be presented to the judge presiding at the person's next court appearance; provided, however, that if a person for whom counsel was appointed is found to not meet the definition of indigency, a court appearance shall be scheduled as soon as feasible prior to the person's next court appearance if the next court appearance is more than 2 weeks from the date the final report is completed. If, upon receipt of the report, a judge finds that the person for whom counsel was appointed no longer meets the definition of indigency, the judge shall revoke the appointment of counsel and allow such person a reasonable continuance to obtain new counsel.

Not later than 6 months after the appointment of counsel, and every 6 months thereafter, the chief probation officer or the officer's designee shall conduct a further reassessment of the financial circumstances of the person for whom counsel was appointed to ensure that the person continues to meet the definition of indigency. The chief probation officer or the officer's designee shall prepare, sign and file a written report certifying that the person either continues to meet, or no longer meets, the definition of indigency.

Upon request of the department of children and families, the commissioner of probation shall provide to the department a copy of a person's indigency intake form, final assessment of financial circumstances, and any report certifying that the person either continues to meet or no longer meets the definition of indigency prepared by the chief probation officer in accordance with this section. The department shall only use these forms, assessments and reports for the purpose of completing eligibility determinations under Title IV-E of the Social Security Act. The commissioner of probation and the commissioner of children and families shall jointly determine the process by which the department of children and families shall obtain and maintain these forms, assessments and reports. The department of children and families shall not disseminate, and shall prohibit dissemination of, such information for any purpose other than those set forth in this paragraph.

(d) If a criminal defendant is charged with a second or further offense while continuing to be represented by court-appointed counsel for a previously charged offense, the court in its discretion shall determine whether any further determination of indigency, other than the bi-annual reassessments required by the defendant's representation for the first offense, need be undertaken. Upon completion of a reassessment, the chief probation officer shall prepare a written report of the officer's findings. The chief probation officer shall sign the report, certifying that the defendant either continues to meet or no longer meets the definition of indigency. The report shall be filed with the case papers and shall be presented to the judge presiding at the defendant's next court appearance. If, upon receipt of the report, a judge finds that the defendant no longer meets the definition of indigency, the judge shall revoke the appointment of counsel and allow the defendant a reasonable continuance to obtain new counsel.

(e) If the court finds that a person has materially misrepresented or omitted information concerning the person's property or assets for purposes of determining indigency and that the person does not meet the definition of indigency, the court shall immediately terminate any assignment or appointment of counsel made under this chapter and shall assess a fine of not less than $1,000 against the person. A person assessed such fine who fails or neglects to pay the fine within 30 days shall be punished by imprisonment in the house of correction for not more than 90 days. The chief probation officer shall refer each matter arising under this subsection to the district attorney for the appropriate county.

(f) A person provided counsel under this chapter shall be assessed a counsel fee of $150 to be paid within 90 days of the date of appointment. The court may only grant a waiver to a person who has made a written request to the chief probation officer for such waiver. The court shall hold a hearing to determine the person’s inability to pay the counsel fee. The facts the judge uses to support findings shall include the person’s inability to pay such $150 within 180 days. If a waiver is granted pursuant to this subsection the judge shall include written findings of fact and a written statement of the reasons for waiver. If, upon the biannual reassessment of the person's indigency, the court concludes that the person is able to pay the $150 counsel fee of which the person obtained a waiver, the court shall revoke the waiver and reimpose the $150 counsel fee. The fee shall be in addition to any reduced fee required pursuant to section 2.

(g) The court may authorize a person for whom counsel was appointed to perform community service in lieu of payment of the counsel fee. A person seeking to work off a counsel

fee in community service shall perform 10 hours of community service, in a community service program administered by the administrative office of the trial court, for each $100 owed in legal counsel fees, which may be prorated. Notwithstanding any general or special law to the contrary, a court proceeding shall not be terminated and the person shall not be discharged if the person owes any portion of the legal counsel fee imposed by this section. The clerk shall not release any bail posted on such court proceeding until the legal counsel fee is satisfied in accordance with this chapter. Community service shall be verified by the chief probation officer or the officer's designee through a report to the court which shall include the nature of the community service, the recipient organization of the community service, the number of hours and identification of the source of verification. The chief probation officer or the officer's designee shall file a copy of the verification report with the clerk of the court. Community service shall be completed within 60 days of the authorization, unless an extension under the provisions of subsection (h ½) is granted.

(h) The clerk of the court shall, within 60 days of appointment of counsel, report to the department of revenue, the department of transitional assistance and the registry of motor vehicles the amount of any legal counsel fee owed by the person for whom counsel was appointed under this chapter. The department of revenue shall intercept payment of such fee from tax refunds due to persons who owe all or a portion of such fee. The registry of motor vehicles shall not issue or renew a person's driver's license or motor vehicle registration for any vehicle subsequently purchased by such person until it receives notification from the clerk of the court that the fee has been collected or worked off in community service. If payment of the counsel fee has not been made within 90 days, and there has been no extension granted by the

court, the registry of motor vehicles shall suspend a person's driver's license until it receives notification from the clerk of the court that the fee has been collected or worked off in community service.

(h ½) The court may only grant an extension of the time to pay or complete community service to a person who has made a written request to the chief probation officer for such extension. The court shall hold a hearing to determine the person's necessity for such extension. If an extension is granted pursuant to this subsection the judge shall include written findings of fact and a written statement of the reasons for the extension. Extensions may not exceed 30 days and no more than two extensions may be granted. If the judge fails to make a written finding, and the payment period has expired, the clerk of the court shall make the notifications required by subsection (h).

(i) The office of the commissioner of probation shall submit quarterly reports to the house and senate committees on ways and means that shall include, but not be limited to: (a) the number of individuals claiming indigency who are determined to be indigent; (b) the number of individuals claiming indigency who are determined not to be indigent; (c) the number of individuals found to have misrepresented wage, tax or asset information; (d) the number of individuals found to no longer qualify for appointment of counsel upon any re-assessment of indigency required by this section; (e) the total number of times an indigent misrepresentation fine was collected and the aggregate amount of indigent misrepresentation fines collected; (f) the total number of times indigent counsel fees were collected and waived and the aggregate amount of indigent counsel fees collected and waived; (g) the average indigent counsel fee that each

court division collects; (h) the total number of times an indigent but able to contribute fee was collected and waived and the aggregate amount of indigent but able to contribute fees collected and waived; (i) the highest and lowest indigent but able to contribute fee collected in each court division; (j) the number of cases in which community service in lieu of indigent counsel fees was performed; and (k) other pertinent information to ascertain the effectiveness of indigency verification procedures.

The information within such reports shall be delineated by court division, and delineated further by month.”.