SENATE DOCKET, NO. 694 FILED ON: 1/18/2017

SENATE . . . . . No. 831

The Commonwealth of Massachusetts

PRESENTED BY:

Sal N. DiDomenico

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 promoting homelessness prevention in Massachusetts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Sal N. DiDomenico	*Middlesex and Suffolk*	
Chynah Tyler	*7th Suffolk*	
Daniel Cullinane	*12th Suffolk*	
Russell E. Holmes	*6th Suffolk*	
Elizabeth A. Malia	*11th Suffolk*	
Daniel J. Ryan	*2nd Suffolk*	
Byron Rushing	*9th Suffolk*	
José F. Tosado	*9th Hampden*	*1/23/2017*
Joseph W. McGonagle, Jr.	*28th Middlesex*	*1/30/2017*
Kay Khan	*11th Middlesex*	*1/31/2017*
Jack Lewis	*7th Middlesex*	*1/31/2017*
James B. Eldridge	*Middlesex and Worcester*	*1/31/2017*
Mike Connolly	*26th Middlesex*	*1/31/2017*
Paul R. Heroux	*2nd Bristol*	*2/2/2017*
Marjorie C. Decker	*25th Middlesex*	*2/2/2017*
Thomas M. McGee	*Third Essex*	*2/2/2017*
Denise Provost	*27th Middlesex*	*2/3/2017*
James J. O'Day	*14th Worcester*	*2/3/2017*

Julian Cyr	*Cape and Islands*	*2/3/2017*
Joseph A. Boncore	*First Suffolk and Middlesex*	*4/10/2017*

SENATE DOCKET, NO. 694 FILED ON: 1/18/2017

SENATE . . . . . No. 831

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 831) of Sal N. DiDomenico, Chynah Tyler, Daniel Cullinane, Russell E. Holmes and other members of the General Court for legislation to promote homelessness prevention in Massachusetts. The Judiciary.

The Commonwealth of Massachusetts

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

An Act promoting homelessness prevention in Massachusetts.

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 239 of the General Laws is hereby amended by inserting after section 2A the following section:-

Section 2B. In an action under this chapter by a lessor of land or tenements used for residential purposes to recover possession of said land or tenements, the occupant shall have a right to counsel upon issuance of a notice to quit. The occupant and shall be informed of said right to counsel by way of a form or document approved by the chief justice of the supreme judicial court, which shall be included with or attached to the notice to quit from the lessor. If the occupant is not able to retain counsel because he or she is indigent, counsel shall be appointed pursuant to section 5 of chapter 211D upon his or her request for counsel and a determination that the occupant is indigent. The term “occupant” shall mean any person who inhabits or is entitled to inhabit a dwelling unit by rental agreement either express or implied for use and occupancy of said dwelling unit. An individual shall be deemed indigent under this

section if he or she is (i) receiving public assistance under: (1) aid to families with dependent children pursuant to chapter 118; (2) the program of emergency aid for elderly and disabled residents of the commonwealth pursuant to section 1 of chapter 117A; (3) a veterans' benefits programs; (4) Title XVI of the social security act; (5) food stamps; (6) refugee resettlement benefits; or (7) Medicaid, pursuant to 42 U.S.C. section 1396,et seq.; (ii) earning an income, after taxes, that is 200 percent or less of the current poverty threshold established annually by the Community Services Administration pursuant to section 625 of the Economic Opportunity Act, as amended; or (iii) unable to pay the fees and costs of the covered proceeding in which he or she is involved or is unable to do so without depriving himself, herself or his dependents of the necessities of life, including food, shelter and clothing. The committee shall promulgate rules and regulations, standards, and procedures consistent with this section for the determination that an individual is indigent and unable to obtain counsel.

SECTION 2. Chapter 139 of the General Laws is hereby amended by inserting after section 19 the following section:-

Section 19½. In an action under section 19 of this chapter by a lessor of land or tenements used for residential purposes to make void the lease or other title under which an occupant holds possession and to recover possession of said land or tenements, the occupant shall have a right to counsel and shall be informed of said right upon a form approved by the chief justice of the supreme judicial court. Said form shall be included with or attached to a summons and complaint, or other notice to appear before a court, from the lessor. If the occupant is not able to retain counsel because he or she is indigent, counsel shall be appointed pursuant to section 5 of chapter 211D upon his or her request for counsel and a determination that the occupant is indigent. The term "occupant" shall mean any person who inhabits or is

entitled to inhabit a dwelling unit by rental agreement either express or implied for use and occupancy of said dwelling unit. An individual shall be deemed indigent under this section if he or she is (i) receiving public assistance under: (1) aid to families with dependent children pursuant to chapter 118; (2) the program of emergency aid for elderly and disabled residents of the commonwealth pursuant to section 1 of chapter 117A; (3) a veterans' benefits programs; (4) Title XVI of the social security act; (5) food stamps; (6) refugee resettlement benefits; or (7) Medicaid, pursuant to 42 U.S.C. section 1396,et seq.; (ii) earning an income, after taxes, that is 200 percent or less of the current poverty threshold established annually by the Community Services Administration pursuant to section 625 of the Economic Opportunity Act, as amended; or (iii) unable to pay the fees and costs of the covered proceeding in which he or she is involved or is unable to do so without depriving himself, herself or his dependents of the necessities of life, including food, shelter and clothing. The committee shall promulgate rules and regulations, standards, and procedures consistent with this section for the determination that an individual is indigent and unable to obtain counsel.

SECTION 3. Chapter 211D of the General Laws is hereby further amended by inserting after section 16 the following section:-

Section 17. The committee, by and through its homelessness prevention and evictions unit, shall establish, supervise and maintain a system for the appointment of counsel for the provision of legal services for indigents subject to eviction proceedings and resulting appeals under chapter 239 and section 19 of chapter 139 as provided by section 2B of chapter 239 and section 19½ of chapter 139. Legal aid organizations that provide representation to indigent individuals and families are eligible for appointment and may be designated as counsel within the meaning of this section.

SECTION 4. (a) There shall be a public task force to develop an implementation plan to effectuate a right to counsel in eviction proceedings pursuant to chapter 239 and chapter 139. The task force shall consist of the chair of the committee for public counsel services or the chair's designee, the Director of Administration and Operations of the committee for public counsel services, the Deputy Chief Counsel of the Private Counsel Division of the committee for public counsel services, the Undersecretary of the department of housing and community development or the Undersecretary's designee, the Chief Justice of the Trial Court or the Chief Justice's designee, the Chief Justice of the Housing Court or the Chief Justice's designee, a representative of the Massachusetts Access to Justice Commission appointed by the governor, and three representatives from legal aid organizations specializing in housing and eviction cases selected by the Massachusetts Legal Assistance Corporation.

(b) The task force shall devise a plan to research, implement, and evaluate a statewide program to effectuate the right to counsel provided for in section 1 and section 2 of this Act. The plan shall set forth findings and recommendations regarding the following:

(i) rules and regulations to administer a right to counsel in housing and eviction cases, including proper notification to an occupant of his or her right to counsel, procedures to request counsel, investigation and determination of indigency, procedures for the assignment of counsel, and enforcement;

(ii) recruitment of private counsel, legal aid organizations, and law firms performing pro bono services to be assigned as counsel;

(iii) required changes to existing state law and court rules in order to fully implement a right to counsel;

(iv) the cost of implementation and maintenance of a right to counsel in housing and eviction cases;

(v) the collection and sharing of current eviction data among the housing court, the district court, the superior court, and other government agencies; and,

(vi) legal training and the establishment of standards of conduct and competence for appointed counsel in housing and eviction cases, which shall include recommendations for housing assistance training to attorneys that help attorneys identify housing counseling resources for individuals involved in eviction proceedings under chapter 239 or section 19 of chapter 139 who could benefit from those resources.

(c) The Task Force's plan shall be submitted as a report to the General Court's Joint Committee on Housing not later than one year after the effective date of this act.

SECTION 5. The committee for public counsel services shall promulgate rules and regulations in order to implement the right to counsel in housing and eviction cases pursuant to this act and consistent with the findings and recommendations of the Task Force's report, as provided for in section 4, no later than one calendar year from the completion of the report.

SECTION 6. The right to counsel in eviction proceedings as established by section 1 and section 2 of this Act shall take effect and be fully implemented within two calendar years from the date of passage of this Act.

SECTION 7. The provisions of this Act, unless otherwise expressly provided, shall take effect upon passage.