

**HOUSE . . . . . No. 3381**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Paul W. Mark, (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 relative to appeals from the clerk-magistrates.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Cara Veremko</i>		<i>1/15/2019</i>

**HOUSE . . . . . No. 3381**

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By Mr. Mark of Peru (by request), a petition (accompanied by bill, House, No. 3381) of Cara Veremko relative to appeals from clerk-magistrates. The Judiciary.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-First General Court  
(2019-2020)**  
\_\_\_\_\_

An Act relative to appeals from the clerk-magistrates.

*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. Article V of Part 1 of the constitution of the commonwealth states that  
2 magistrates of the commonwealth are the substitutes and the agents of the people of the  
3 commonwealth and are at all times accountable to them.

4           The supreme judicial court has consistently held that if a clerk-magistrate denies a  
5 private party’s application for a criminal complaint, the private party has no constitutional or  
6 statutory right to challenge that decision.

7           The purpose of this act is to provide a private party complainant with a statutory  
8 right to challenge a clerk-magistrate’s denial of an application for the issuance of a criminal  
9 complaint.

10           SECTION 2. The second paragraph of section 35 of chapter 218 of the General  
11 Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the first

12 sentence the following sentence:- Upon the denial of such application, if by a private party, the  
13 clerk shall enter the specific reason for the denial of the application.

14 SECTION 3. Chapter 218 of the General Laws, as so appearing, is hereby further  
15 amended by inserting after section 35A the following section:

16 Section 35B. If a complaint is received by a district court, or by a justice,  
17 associate justice or special justice thereof, or by a clerk, assistant clerk, temporary clerk or  
18 temporary assistant clerk thereof under this chapter, from a private party, and the issuance of  
19 such complaint is denied, such private party shall be provided notice of such denial and be given  
20 the opportunity to be heard by the court regarding the denial. The justice or magistrate who  
21 denied the application shall be disqualified from presiding over any such hearing. The court,  
22 upon hearing and consideration of the evidence provided by the private party may grant the  
23 application for the issuance of a complaint.