

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Michael S. Day

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 improve access to justice during the COVID-19 state of emergency.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Michael S. Day</i>	<i>31st Middlesex</i>	<i>12/28/2020</i>

HOUSE No.

[Pin Slip]

The Commonwealth of Massachusetts

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

An Act to improve access to justice during the COVID-19 state of emergency.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to ease congestion in the Massachusetts District Court systems, promote judicial efficiency and protect civil rights during the Governor’s COVID-19 emergency declaration, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety and convenience.

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 26A of Chapter 218 of the General Laws is hereby amended by inserting the
2 following at the end of the section:

3
4 Whoever is found guilty of a crime of a misdemeanor or felony under Sections 23, 24, or
5 24(2)(a) of Ch. 90 exclusive of subsections listed in section b below; Sections 33(b), 34 or 40 of
6 Ch. 94C; Sections 16, 16A, 20, 28(a), 30A, 30(1), 34, 37, 37B, 37E(b), 76 or 120 of Ch. 266;
7 Sections 1 or 5 of Ch. 267; Section 32B of Ch. 268; Section 53(a), 53A(a), or 53(b) of Ch. 272;
8 Section 6 of Ch. 274; or Section 2 of Ch. 275; before a justice in a district court or in the
9 municipal court of the city of Boston, having filed the written waiver of trial by jury in the first
10 instance provided by section 26A of chapter 218, may appeal the finding of guilty or the

11 sentence imposed thereon to a jury-of-six session in accordance with section 27A of chapter 218,
12 and at the time of such finding of guilty or sentencing shall be notified of his right to take such
13 appeal.

14 The case shall be entered in the district court of competent jurisdiction on the return day
15 next after the appeal is taken, and the appellant shall be released on personal recognizance or
16 committed, in accordance with the procedures set forth in section 58 of chapter 276, until he
17 recognizes to the commonwealth, in such sum and with such surety or sureties as the court
18 requires, with condition to appear at said jury session on said return day and at any subsequent
19 time to which the case may be continued, if not previously surrendered and discharged, and so
20 from time to time until the final sentence, order or decree, and not depart without leave, and in
21 the meantime to keep the peace and be of good behavior. If the appellant is not released on
22 personal recognizance and is committed for failure to recognize, the superior court shall
23 thereupon have jurisdiction of the case only for the purpose of revising the amount of bail
24 required as aforesaid. The appellant shall not be required to advance any fees upon claiming his
25 appeal or in prosecuting the same.

26 Notwithstanding any other provision of law, a defendant after a finding of guilty in a
27 jury-waived trial held in a district court, or the municipal court of the city of Boston, may appeal
28 therefrom and shall thereafter be entitled to a trial de novo with a jury-of-six in accordance with
29 the previous paragraph of this section.

30 b) Provided, however, that the right to a trial de novo shall not be available for persons
31 criminally charged in violation of Section 24(1)(a)(1) of Chapter 90 if the defendant has been
32 previously convicted or assigned to an alcohol or controlled substance education, treatment or

33 rehabilitation program by a court of the commonwealth or any other jurisdiction because of a
34 like offense 4 times or more preceding the date of the commission of the offense for which the
35 defendant has been charged; and sections 24 (2) (A 1/2) (1); 24 (2) (a1/2)(2); 24 A; 24 G; 24 L;
36 and 24 V of chapter 90.

37 c) Persons charged in violation of sections 10, 25 and 34 of chapter 90 carrying only
38 penalties of a fine and with civil motor vehicle infractions shall not be entitled to a trial de novo
39 unless accompanied by a qualifying charge.

40 d) Nothing contained herein shall permit or authorize remote or virtual bench trials.

41 e) The District Attorney shall have the right to object to cases eligible to be heard under
42 this system, and to have the Court reschedule such case, upon a showing that a necessary witness
43 is unable to participate due to exposure to, infection from, or increased health risks from
44 potential exposure to the COVID-19 norovirus due to pre-existing conditions.

45 f) Section 1 shall expire 1 year after the effective date of this act; provided, however, that
46 the governor may postpone such expiration in increments of not more than 90 days in the interest
47 of justice. “