HOUSE DOCKET, NO. 2885 FILED ON: 2/18/2021

# HOUSE . . . . . No. 3453

## The Commonwealth of Massachusetts

PRESENTED BY:

***Nika C. Elugardo***

*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 eliminate debt-based incarceration and suspensions.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|---|---|---|
| *Nika C. Elugardo* | *15th Suffolk* | *2/18/2021* |
| *Kay Khan* | *11th Middlesex* | *2/23/2021* |
| *Patricia A. Duffy* | *5th Hampden* | *2/24/2021* |
| *Lindsay N. Sabadosa* | *1st Hampshire* | *2/24/2021* |
| *Joanne M. Comerford* | *Hampshire, Franklin and Worcester* | *2/24/2021* |
| *Jack Patrick Lewis* | *7th Middlesex* | *2/24/2021* |
| *Peter Capano* | *11th Essex* | *2/24/2021* |
| *Danillo A. Sena* | *37th Middlesex* | *2/24/2021* |
| *Mindy Domb* | *3rd Hampshire* | *2/24/2021* |
| *Orlando Ramos* | *9th Hampden* | *2/24/2021* |
| *Jason M. Lewis* | *Fifth Middlesex* | *2/24/2021* |
| *Christina A. Minicucci* | *14th Essex* | *2/24/2021* |
| *David M. Rogers* | *24th Middlesex* | *2/24/2021* |
| *Frank A. Moran* | *17th Essex* | *2/24/2021* |
| *Sarah K. Peake* | *4th Barnstable* | *2/24/2021* |
| *Maria Duaime Robinson* | *6th Middlesex* | *2/24/2021* |
| *Rebecca L. Rausch* | *Norfolk, Bristol and Middlesex* | *2/24/2021* |
| *Steven C. Owens* | *29th Middlesex* | *2/24/2021* |

| | | |
|---|---|---|
| *Tricia Farley-Bouvier* | *3rd Berkshire* | *2/24/2021* |
| *Brendan P. Crighton* | *Third Essex* | *2/25/2021* |
| *Dylan A. Fernandes* | *Barnstable, Dukes and Nantucket* | *2/25/2021* |
| *Tram T. Nguyen* | *18th Essex* | *2/25/2021* |
| *Adrian C. Madaro* | *1st Suffolk* | *2/26/2021* |
| *Carlos González* | *10th Hampden* | *2/26/2021* |
| *Mary S. Keefe* | *15th Worcester* | *2/26/2021* |
| *Christine P. Barber* | *34th Middlesex* | *2/26/2021* |
| *Chynah Tyler* | *7th Suffolk* | *2/26/2021* |
| *Michael J. Barrett* | *Third Middlesex* | *2/26/2021* |
| *Vanna Howard* | *17th Middlesex* | *2/26/2021* |
| *Erika Uyterhoeven* | *27th Middlesex* | *2/26/2021* |
| *David Henry Argosky LeBoeuf* | *17th Worcester* | *2/26/2021* |
| *James B. Eldridge* | *Middlesex and Worcester* | *2/26/2021* |
| *Sean Garballey* | *23rd Middlesex* | *2/26/2021* |
| *Michelle M. DuBois* | *10th Plymouth* | *2/26/2021* |
| *Michelle L. Ciccolo* | *15th Middlesex* | *2/26/2021* |
| *Tami L. Gouveia* | *14th Middlesex* | *3/3/2021* |
| *Liz Miranda* | *5th Suffolk* | *3/19/2021* |
| *Julian Cyr* | *Cape and Islands* | *3/22/2021* |
| *Kate Lipper-Garabedian* | *32nd Middlesex* | *3/25/2021* |
| *Ruth B. Balser* | *12th Middlesex* | *4/2/2021* |
| *Sal N. DiDomenico* | *Middlesex and Suffolk* | *5/3/2021* |
| *Natalie M. Blais* | *1st Franklin* | *5/27/2021* |
| *Natalie M. Higgins* | *4th Worcester* | *9/3/2021* |
| *Marcos A. Devers* | *16th Essex* | *9/10/2021* |
| *Mike Connolly* | *26th Middlesex* | *12/3/2021* |
| *Carmine Lawrence Gentile* | *13th Middlesex* | *1/17/2022* |

HOUSE DOCKET, NO. 2885 FILED ON: 2/18/2021

# HOUSE . . . . . No. 3453

By Ms. Elugardo of Boston, a petition (accompanied by bill, House, No. 3453) of Nika C. Elugardo and others relative to debt-based incarceration and suspensions of certain motor vehicle and parking violations. Transportation.

## The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court**
**(2021-2022)**

An Act to eliminate debt-based incarceration and suspensions.

*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. Section 2A of chapter 60A, as appearing in the 2018 Official Edition, is hereby amended in the second paragraph after the word "renew", in lines 31-32, by striking out the words "the license to operate a motor vehicle of the registered owner of said vehicle or".

SECTION 2. Section 47B of chapter 62C is hereby repealed.

SECTION 3. Section 20A of chapter 90, as appearing in the 2018 Official Edition, is hereby amended by striking out at the end of the third paragraph the words:-

"Failure to obey this notice within twenty-one days after the date of violation may result in the non-renewal of the license to drive and the certificate of registration of the registered owner."

SECTION 4. Said section 20A, of said chapter 90, as so appearing, is hereby further amended by striking out the seventh and eighth paragraphs.

SECTION 5. Said section 20A, of said chapter 90, as so appearing, is hereby further amended in the eleventh paragraph after the words “violation by mail,”, in line 183, by inserting the words:-

and the procedure to request a noncriminal hearing to determine an assessment reduction or waiver based on financial hardship

SECTION 6. Said section 20A, of said chapter 90, as so appearing, is hereby further amended by inserting at the end the following paragraphs:-

Any person notified to appear before the parking clerk, as provided herein, may appear before such parking clerk or his designee and request a noncriminal hearing to determine an assessment reduction based on hardship, either personally or through an agent duly authorized in writing or by mailing to such parking clerk a signed request. The parking clerk shall notify the clerk-magistrate of the district court for the judicial district in which the parking violation occurred of such request for a noncriminal hearing, in such manner as the chief justice of the district court department and the parking clerk shall jointly determine. The assessment shall be reduced or waived if the magistrate or justice determines that the assessment will cause substantial financial hardship to the violator or the family or dependents thereof.

If the violator is a recipient of any needs-based public assistance or meets the definition of “indigency” under section 2 of chapter 211D, or earns no more than 400% of the U.S. Department of Housing and Urban Development (HUD) very low income limit, all fees, including but not limited to administrative and late fees, shall be waived and the remaining assessment shall be reduced according to the schedule set forth in subsection (A)(4) of section 3 of chapter 90C of the General Laws.

SECTION 7. Section 22 of said chapter 90, as so appearing, is hereby amended by striking out paragraph (h).

SECTION 8. Section 22G of said chapter 90, as so appearing, is hereby repealed.

SECTION 9. Section 23 of said chapter 90, as so appearing, is hereby amended by striking the first paragraph and inserting in place thereof the following paragraphs:-

Any person convicted of operating a motor vehicle after his license to operate has been suspended or revoked, or after notice of the suspension or revocation of his right to operate a motor vehicle without a license has been issued by the registrar and received by such person or by his agent or employer, and prior to the restoration of such license or right to operate or to the issuance to him of a new license to operate, and any person convicted of operating or causing or permitting any other person to operate a motor vehicle after the certificate of registration for such vehicle has been suspended or revoked and prior to the restoration of such registration or to the issuance of a new certificate of registration for such vehicle , or whoever exhibits to an officer authorized to make arrests, when requested by said officer to show his license, a license issued to another person with intent to conceal his identity, shall, except as provided by section twenty-eight of chapter two hundred and sixty-six, be punished by a fine of not more than five hundred dollars, and any person who attaches or permits to be attached to a motor vehicle or trailer a number plate assigned to another motor vehicle or trailer, or who obscures or permits to be obscured the figures on any number plate attached to any motor vehicle or trailer, or who fails to display on a motor vehicle or trailer the number plate and the register number duly issued therefor, with intent to conceal the identity of such motor vehicle or trailer, shall be punished by a fine of not more than one hundred dollars. Any person convicted of operating a motor vehicle

after his license to operate has been revoked by reason of his having been found to be an habitual traffic offender, as provided in section twenty-two F, or after notice of such revocation of his right to operate a motor vehicle without a license has been issued by the registrar and received by such person or by his agent or employer, and prior to the restoration of such license or right to operate or the issuance to him of a new license to operate shall be punished by a fine of not less than five hundred nor more than five thousand dollars or by imprisonment for not more than two years, or both. In no case shall a person be prosecuted for operating after suspension or revocation of a license upon a failure to pay an administrative reinstatement fee.

SECTION 10. Said section 23, of said section 90, as so appearing, is hereby further amended by striking the second paragraph and inserting in place thereof the following paragraph:-

Notwithstanding the preceding paragraph or any other general or special law to the contrary, whoever has been found responsible for or convicted of, or against whom a finding of delinquency or a finding of sufficient facts to support a conviction has been rendered on, a complaint charging a violation of operating a motor vehicle after his license to operate has been suspended or revoked, or after notice of the suspension or revocation of his right to operate a motor vehicle without a license has been issued by the registrar and received by such person or by his agent or employer, and prior to the restoration of such license or right to operate or to the issuance to him of a new license to operate shall be punished by a fine of not more than $500. This paragraph shall not apply to any person who is charged with operating a motor vehicle after his license to operate has been suspended or revoked pursuant to a violation of paragraph (a) of subdivision (1) of section 24, or section 24D, 24E, 24G, 24L or 24N, of this chapter, subsection (a) of section 8 or section 8A or 8B of chapter 90B, section 8, 9 or 11 of chapter 90F or after

notice of such suspension or revocation of his right to operate a motor vehicle without a license has been issued and received by such person or by his agent or employer, and prior to the restoration of such license or right to operate or the issuance to him of a new license or right to operate because of any such violation.

SECTION 11. Said section 23, of said section 90, as so appearing, is hereby further amended by striking out the sixth paragraph.

SECTION 12. Said section 23, of said section 90, as so appearing, is hereby further amended by striking out the seventh paragraph.

SECTION 13. Section 26A of said chapter 90, as so appearing, is hereby amended by striking out the last sentence of paragraph (a).

SECTION 14. Section 27 of said chapter 90, as so appearing, is hereby amended by inserting at the end the following paragraphs:

In any case where a violator owes an assessment, such violator may request a waiver or reduction of the assessment. The assessment shall be reduced or waived if the magistrate or justice determines that the assessment will cause substantial financial hardship to the violator or the family or dependents thereof.

If the violator is a recipient of any needs-based public assistance or meets the definition of "indigency" under section 2 of chapter 211D, or earns no more than 400% of the U.S. Department of Housing and Urban Development (HUD) very low income limit, all fees, including but not limited to administrative and late fees, shall be waived and the remaining

assessment shall be reduced according to the schedule set forth in subsection (A)(4) of section 3 of chapter 90C of the General Laws.

SECTION 15. Section 33 of said chapter 90, as so appearing, is hereby amended by striking out paragraph thirty-six.

SECTION 16. Section 34J of said chapter 90, as so appearing, is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

Any person who is convicted of, or who enters a plea of guilty to a violation of this section shall be liable to the plan organized pursuant to section one hundred and thirteen H of chapter one hundred and seventy-five in the amount of the greater of five hundred dollars or one year's premium for compulsory motor vehicle insurance for the highest rated territory and class or risk in effect at the time of the commission of the offense. Said liability shall be in addition to all other liabilities imposed on the person so convicted or so pleading whether civil or criminal. The said plan shall apply any sums collected hereunder, to defray its costs of collection and to defray in whole or in part its expenses for preventing fraud and arson. Furthermore, any person who is convicted of, or enters a plea of guilty to a violation of this section shall have his or her motor vehicle registration suspended upon the registrar's receipt of notification from the clerk of any court which enters any conviction hereunder or which accepts such plea of guilty until said person provides the registrar with proof of a motor vehicle liability policy in accordance with the provisions of this chapter. The clerk of any court which enters any conviction hereunder or which accepts such plea shall promptly notify the registrar of motor vehicles and the Commonwealth Auto Reinsurers pursuant to section one hundred and thirteen of chapter one hundred and seventy-five or any successor thereto of such entry of acceptance of such plea.

SECTION 17. Section 3 of chapter 90C, as appearing in the 2018 Official Edition, is hereby amended by inserting in the second paragraph after the words “contest responsibility for the infraction,”, in lines 11-12, the following words:-

or request an assessment reduction or waiver based on financial hardship

SECTION 18. Said section 3 of said chapter 90C , as so appearing, is hereby further amended by striking out the first paragraph of (A)(4) and inserting in place thereof the following paragraph:

(4) A violator may request an assessment reduction or waiver or contest responsibility for the infraction by making a signed request for a noncriminal hearing on the citation and mailing such citation, together with a $25 court filing fee, to the registrar at the address indicated on the citation within 20 days of the citation. The court filing fee shall be waived if the violator is requesting an assessment reduction. Notwithstanding any general or special law to the contrary, the registrar, in cooperation with the state comptroller, upon receipt of the $25 court filing fee, shall immediately cause the court filing fee to be transferred to the trial court department to be held as retained revenue; provided, however, that the registrar may retain from the court filing fees an amount not greater than $200,000 for fiscal year 2011 for information technology associated with the implementation of this section; and provided, further that the registrar may retain an amount not greater than $100,000 annually for personnel costs associated with the processing of those filing fees.

SECTION 19. Said section 3 of said chapter 90C, as so appearing, is hereby further amended by inserting at the end of the second paragraph of (A)(4) after the sentence “The registrar’s determination of such issue shall be final” the following sentence:-

This paragraph shall not apply to a violator requesting an assessment reduction or waiver.

SECTION 20. Said section 3 of said chapter 90C, as so appearing, is hereby further amended by inserting at in the eighth paragraph of (A)(4) after the words “imposed assessment”, in line 1010, the following words:-

or the violator requests an assessment reduction or waiver.

SECTION 21. Said section 3 of said chapter 90C , as so appearing, is hereby further amended by inserting at the end of (A)(4) the following paragraphs:-

In any case where a violator owes an assessment, such violator may request a noncriminal hearing to determine a reduction or waiver of the assessment. In any such hearing, the magistrate or justice shall reduce or waive the assessment if the assessment will cause substantial financial hardship to the violator or the family or dependents thereof.

If the violator is a recipient of any needs-based public assistance or meets the definition of “indigency” under section 2 of chapter 211D, or earns no more than 400% of the U.S. Department of Housing and Urban Development (HUD) very low income limit, all fees, including but not limited to administrative and late fees, shall be waived and the remaining assessment shall be reduced according to the following schedule:

(a) If the violator is currently in receipt of any needs-based public assistance or benefit or meets the definition of “indigency” under section 2 of chapter 211D, the remaining assessment shall be reduced to no more than 1% of said violator’s monthly income or $5, whichever is lower.

(b) If the violator earns 101-200% of the HUD very low income limit, the remaining assessment shall be reduced by 75%.

(c) If the violator earns 201-300% of the HUD very low income limit, the remaining assessment shall be reduced by 50%.

(d) If the violator earns 301-400% of the HUD very low income limit, the remaining assessment shall be reduced by 25%.

If the violator earns over 400% of the HUD very low income limit and the magistrate or justice finds that imposing the original assessment would cause financial hardship to the violator or the family or dependents thereof, all fees, including but not limited to administrative and late fees, shall be waived or reduced and the remaining assessment may be reduced by an amount determined by the magistrate or justice.

In determining the violator's earnings, the magistrate or justice shall calculate the violator's current total monthly income, including wages and excluding any child support or Supplemental Security Income (SSI), and determine the number of persons in the family. In making these determinations, the magistrate or justice shall use the information provided by the violator.

SECTION 22. Said section 3 of said chapter 90C, as so appearing, is hereby further amended in (A)(6)(a)(ii) after the words "unless and until the violator", in line 129, the following words:-

appears for a noncriminal hearing before a magistrate or justice or

SECTION 23. Said section 3 of said chapter 90C, as so appearing, is hereby further amended in (A)(6)(a)(ii) by striking out subsection (i) and (ii) and inserting in place thereof the following paragraphs:

(AA) in the case of an operator violation, any license to operate a motor vehicle issued to such violator by the registrar will not be renewed upon or after the expiration date of such license; or

(BB) in the case of an owner violation, any registration of a motor vehicle issued to such violator by the registrar will not be renewed upon or after the expiration date of such registration.

Unless such notice is sooner cancelled by the registrar, in the case of an operator violation, such violator's operators license, learners permit or right to operate, or in the case of an owner violation any registration of a motor vehicle issued to such violator by the registrar, shall be renewed by the registrar upon payment of the scheduled or imposed assessments for such civil motor vehicle infractions, plus any late fees or other administrative fees which the registrar is required or authorized by law or regulation to impose, unless such fees are waived in whole or in part by the registrar or a magistrate or justice.

The registrar shall waive all late fees and administrative fees, including reinstatement fees, for any violator who is a recipient of any needs-based public assistance or meets the definition of “indigency” under section 2 of chapter 211D, or earns no more than 400% of the U.S. Department of Housing and Urban Development (HUD) very low income limit.

SECTION 24. Said section 3 of said chapter 90C , as so appearing, is hereby further amended by striking out paragraph (A)(6)(b).

SECTION 25. Said section 3 of chapter 90C is hereby further amended by striking out the paragraph after (B)(3)(c) and inserting in place thereof the following paragraph:-

Upon receipt of such notice, the registrar shall send a notice to the violator's mail address or last known address notifying the violator that said violator may not renew, apply for or receive any operators license, learners permit, certificate of registration or title, number plate, sticker, decal or other item issued by the registrar unless and until the violator presents the registrar with a certificate of the clerk-magistrate of the court that the matter has been fully disposed of in accordance with law or, in the case of a matter still pending before the court, that the violator is attending to the matter to the satisfaction of the court. The court shall not unreasonably withhold such certificate. The registrar shall cancel such revocation, and so notify the court, if satisfied that it resulted through error of the registrar or the court.

SECTION 26. Section 2A of chapter 211D, as appearing in the 2018 Official Edition, is hereby amended by striking out paragraph (h) and inserting in place thereof the following paragraph:-

(h) The clerk of the court shall, within 60 days of appointment of counsel, report to the department of revenue and the department of transitional assistance 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 s