

SENATE No. 1042

The Commonwealth of Massachusetts

PRESENTED BY:

Paul W. Mark

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:

Paul W. Mark

DISTRICT/ADDRESS:

*Berkshire, Hampden, Franklin and
Hampshire*

SENATE No. 1042

By Mr. Mark, a petition (accompanied by bill, Senate, No. 1042) of Paul W. Mark for legislation relative to appeals from the decisions of clerk-magistrates. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE [Refile Branch], NO. OF 2021-2022.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

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 right to
8 challenge a clerk-magistrate’s denial of an application for the issuance of a criminal complaint.

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

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