

SENATE No. 913

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 to ensure right to counsel in eviction proceedings.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	
<i>William N. Brownsberger</i>	<i>Second Suffolk and Middlesex</i>	<i>1/29/2019</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>	<i>1/29/2019</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>	<i>1/29/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>1/30/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>1/30/2019</i>
<i>Brendan P. Crighton</i>	<i>Third Essex</i>	<i>1/31/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>1/31/2019</i>
<i>David Henry Argosky LeBoeuf</i>	<i>17th Worcester</i>	<i>1/31/2019</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>	<i>1/31/2019</i>
<i>Diana DiZoglio</i>	<i>First Essex</i>	<i>1/31/2019</i>
<i>Joanne M. Comerford</i>	<i>Hampshire, Franklin and Worcester</i>	<i>1/31/2019</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>1/31/2019</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>1/31/2019</i>
<i>Rebecca L. Rausch</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>2/1/2019</i>
<i>Sean Garballey</i>	<i>23rd Middlesex</i>	<i>2/1/2019</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>2/1/2019</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>	<i>2/1/2019</i>

SENATE No. 913

By Mr. DiDomenico, a petition (accompanied by bill, Senate, No. 913) of Sal N. DiDomenico, William N. Brownsberger, Mike Connolly, Jennifer E. Benson and other members of the General Court for legislation to promote homelessness prevention in Massachusetts. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 831 OF 2017-2018.]

The Commonwealth of Massachusetts

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

An Act to ensure right to counsel in eviction proceedings.

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

3 Section 2B. In an action under this chapter by a lessor of land or tenements used for
4 residential purposes to recover possession of said land or tenements, the occupant of said land or
5 tenements shall have a right to counsel upon issuance of a notice to quit, or, if no notice to quit is
6 required by law, upon service of a summons and complaint for summary process. The occupant
7 shall be informed of said right to counsel by the lessor by way of a form or document approved
8 by the chief justice of the supreme judicial court, which shall be included with or attached to the
9 notice to quit, or, if no notice to quit is required by law, the summons and complaint for
10 summary process. If the occupant is not able to retain counsel because the occupant is indigent,

11 counsel shall be appointed pursuant to section 5 of chapter 211D upon the occupant's request for
12 counsel and a determination that the occupant is indigent. The term "occupant" shall mean any
13 person who inhabits or is entitled to inhabit a dwelling unit by a written or oral lease agreement
14 or deed either express or implied for use and occupancy of said dwelling unit. An individual
15 shall be deemed indigent under this section if the individual is (i) receiving public assistance
16 under: (1) aid to families with dependent children pursuant to chapter 118; (2) the program of
17 emergency aid for elderly and disabled residents of the Commonwealth pursuant to section 1 of
18 chapter 117A; (3) a veterans' benefits program; (4) Title XVI of the social security act; (5) food
19 stamps; (6) refugee resettlement benefits; or (7) Medicaid, pursuant to 42 U.S.C. section 1396, et
20 seq.; (ii) earning an income, after taxes, that is 200 percent or less of the current poverty
21 guideline established annually by the United States Department of Health and Human Services;
22 or (iii) unable to pay the fees and costs of the covered proceeding in which the occupant is
23 involved or is unable to do so without depriving themselves or their dependents of the necessities
24 of life, including food, shelter and clothing. The committee shall promulgate rules and
25 regulations, standards, and procedures consistent with this section for the determination that an
26 individual is indigent and unable to obtain counsel.

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

29 Section 19½. In an action under section 19 of this chapter by a lessor or owner of a
30 building or tenement used for residential purposes to make void the lease or other title under
31 which an occupant holds possession and to recover possession of said building or tenements, the
32 occupant holding possession shall have a right to counsel and shall be informed of said right
33 upon a form approved by the chief justice of the supreme judicial court. Said form shall be

34 included with or attached to a summons and complaint, or other notice to appear before a court,
35 from the lessor or owner. If the occupant is not able to retain counsel because the occupant is
36 indigent, counsel shall be appointed pursuant to section 5 of chapter 211D upon the occupant's
37 request for counsel and a determination that the occupant is indigent. The term "occupant" shall
38 mean any person who inhabits or is entitled to inhabit a dwelling unit by a written or oral lease
39 agreement or deed either express or implied for use and occupancy of said dwelling unit. An
40 individual shall be deemed indigent under this section if the individual is (i) receiving public
41 assistance under: (1) aid to families with dependent children pursuant to chapter 118; (2) the
42 program of emergency aid for elderly and disabled residents of the Commonwealth pursuant to
43 section 1 of chapter 117A; (3) a veterans' benefits programs; (4) Title XVI of the social security
44 act; (5) food stamps; (6) refugee resettlement benefits; or (7) Medicaid, pursuant to 42 U.S.C.
45 section 1396,et seq.; (ii) earning an income, after taxes, that is 200 percent or less of the current
46 poverty guideline established annually by the United States Department of Health and Human
47 Services; or (iii) unable to pay the fees and costs of the covered proceeding in which the
48 occupant is involved or is unable to do so without depriving themselves or their dependents of
49 the necessities of life, including food, shelter and clothing. The committee shall promulgate rules
50 and regulations, standards, and procedures consistent with this section for the determination that
51 an individual is indigent and unable to obtain counsel.

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

54 Section 17. The committee shall establish, supervise and maintain a system for the
55 appointment of counsel for the provision of legal services for indigents subject to summary
56 process or similar proceedings and resulting appeals under chapter 239 and section 19 of chapter

57 139 as provided by section 2B of chapter 239 and section 19½ of chapter 139. Legal aid
58 organizations that provide representation to indigent individuals and families are eligible for
59 appointment and may be designated as counsel within the meaning of this section.

60 SECTION 4. (a) There shall be a public task force to develop an implementation plan to
61 effectuate a right to counsel in eviction proceedings pursuant to Chapter 239 and Chapter 139.
62 The task force shall consist of the chair of the committee for public counsel services or the
63 chair's designee, the Director of Administration and Operations of the committee for public
64 counsel services, the Deputy Chief Counsel of the Private Counsel Division of the committee for
65 public counsel services, the Chief Justice of the Trial Court or the Chief Justice's designee, the
66 Chief Justice of the Housing Court or the Chief Justice's designee, a representative of the
67 Massachusetts Access to Justice Commission, and three representatives from legal aid
68 organizations specializing in housing and eviction cases selected by the Massachusetts Legal
69 Assistance Corporation.

70 (b) The task force shall provide recommendations to implement and evaluate a statewide
71 program to effectuate the right to counsel provided for in section 1 and section 2 of this Act. The
72 task force shall, at a minimum, investigate the following topics:

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

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

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

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

83 (v) the collection and sharing of current eviction data among the housing court, the
84 district court, the superior court, and other agencies, departments, and political subdivisions of
85 the Commonwealth, including municipalities; and,

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

91 (c) The Task Force's plan shall be submitted as a report to the General Court's Joint
92 Committee on Housing not later than one year after the effective date of this act. The Task Force
93 shall disband upon submission of the report described in this paragraph (c).

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

98 SECTION 6. The right to counsel in eviction proceedings as established by section 1 and
99 section 2 of this Act shall take effect and be fully implemented on the second anniversary of the
100 date the Task Force's report is submitted pursuant to section 4(c) of this Act.

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