

HOUSE No. 968

The Commonwealth of Massachusetts

PRESENTED BY:

Chynah Tyler

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 promoting homelessness prevention in Massachusetts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Chynah Tyler</i>	<i>7th Suffolk</i>
<i>Mike Connolly</i>	<i>26th Middlesex</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Carlos González</i>	<i>10th Hampden</i>
<i>Paul R. Heroux</i>	<i>2nd Bristol</i>
<i>Natalie Higgins</i>	<i>4th Worcester</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Jack Lewis</i>	<i>7th Middlesex</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>
<i>Bud Williams</i>	<i>11th Hampden</i>

HOUSE No. 968

By Ms. Tyler of Boston, a petition (accompanied by bill, House, No. 968) of Chynah Tyler and others relative to court actions by lessors of land or tenements used for residential purposes and the right to counsel in housing and eviction cases. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninetieth General Court
(2017-2018)**

An Act promoting homelessness prevention in Massachusetts.

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 shall have a
5 right to counsel upon issuance of a notice to quit. The occupant and shall be informed of said
6 right to counsel by way of a form or document approved by the chief justice of the supreme
7 judicial court, which shall be included with or attached to the notice to quit from the lessor. If
8 the occupant is not able to retain counsel because he or she is indigent, counsel shall be
9 appointed pursuant to section 5 of chapter 211D upon his or her request for counsel and a
10 determination that the occupant is indigent. The term “occupant” shall mean any person who
11 inhabits or is entitled to inhabit a dwelling unit by rental agreement either express or implied for
12 use and occupancy of said dwelling unit. An individual shall be deemed indigent under this

13 section if he or she is (i) receiving public assistance under: (1) aid to families with dependent
14 children pursuant to chapter 118; (2) the program of emergency aid for elderly and disabled
15 residents of the commonwealth pursuant to section 1 of chapter 117A; (3) a veterans' benefits
16 programs; (4) Title XVI of the social security act; (5) food stamps; (6) refugee resettlement
17 benefits; or (7) Medicaid, pursuant to 42 U.S.C. section 1396,et seq.; (ii) earning an income, after
18 taxes, that is 200 percent or less of the current poverty threshold established annually by the
19 Community Services Administration pursuant to section 625 of the Economic Opportunity Act,
20 as amended; or (iii) unable to pay the fees and costs of the covered proceeding in which he or she
21 is involved or is unable to do so without depriving himself, herself or his dependents of the
22 necessities of life, including food, shelter and clothing. The committee shall promulgate rules
23 and regulations, standards, and procedures consistent with this section for the determination that
24 an individual is indigent and unable to obtain counsel.

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

27 Section 19½. In an action under section 19 of this chapter by a lessor of land or
28 tenements used for residential purposes to make void the lease or other title under which an
29 occupant holds possession and to recover possession of said land or tenements, the occupant
30 shall have a right to counsel and shall be informed of said right upon a form approved by the
31 chief justice of the supreme judicial court. Said form shall be included with or attached to a
32 summons and complaint, or other notice to appear before a court, from the lessor. If the
33 occupant is not able to retain counsel because he or she is indigent, counsel shall be appointed
34 pursuant to section 5 of chapter 211D upon his or her request for counsel and a determination
35 that the occupant is indigent. The term "occupant" shall mean any person who inhabits or is

36 entitled to inhabit a dwelling unit by rental agreement either express or implied for use and
37 occupancy of said dwelling unit. An individual shall be deemed indigent under this section if he
38 or she is (i) receiving public assistance under: (1) aid to families with dependent children
39 pursuant to chapter 118; (2) the program of emergency aid for elderly and disabled residents of
40 the commonwealth pursuant to section 1 of chapter 117A; (3) a veterans' benefits programs; (4)
41 Title XVI of the social security act; (5) food stamps; (6) refugee resettlement benefits; or (7)
42 Medicaid, pursuant to 42 U.S.C. section 1396, et seq.; (ii) earning an income, after taxes, that is
43 200 percent or less of the current poverty threshold established annually by the Community
44 Services Administration pursuant to section 625 of the Economic Opportunity Act, as amended;
45 or (iii) unable to pay the fees and costs of the covered proceeding in which he or she is involved
46 or is unable to do so without depriving himself, herself or his dependents of the necessities of
47 life, including food, shelter and clothing. The committee shall promulgate rules and regulations,
48 standards, and procedures consistent with this section for the determination that an individual is
49 indigent and unable to obtain counsel.

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

52 Section 17. The committee, by and through its homelessness prevention and evictions
53 unit, shall establish, supervise and maintain a system for the appointment of counsel for the
54 provision of legal services for indigents subject to eviction proceedings and resulting appeals
55 under chapter 239 and section 19 of chapter 139 as provided by section 2B of chapter 239 and
56 section 19½ of chapter 139. Legal aid organizations that provide representation to indigent
57 individuals and families are eligible for appointment and may be designated as counsel within
58 the meaning of this section.

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

70 (b) The task force shall devise a plan to research, 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 plan shall set forth findings and recommendations regarding the following:

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

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

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

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

96 SECTION 6. The right to counsel in eviction proceedings as established by section 1 and
97 section 2 of this Act shall take effect and be fully implemented within two calendar years from
98 the date of passage of this Act.

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