

**HOUSE . . . . . No. 3987**

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**The Commonwealth of Massachusetts**

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PRESENTED BY:

***Paul W. Mark, (BY REQUEST)***

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*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 clerk-magistrates.

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PETITION OF:

NAME:

DISTRICT/ADDRESS:

*Cara Veremko*

**HOUSE . . . . . No. 3987**

By Mr. Mark of Peru (by request), a petition (subject to Joint Rule 12) of Cara Veremko for legislation to establish an appeals process for decisions by clerk-magistrates. The Judiciary.

**The Commonwealth of Massachusetts**

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

An Act relative to appeals from 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 private  
5 party’s application for a criminal complaint, the private party has no constitutional or statutory  
6 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:- Upon the denial of such application, if by a private party, the clerk shall  
12 enter the specific reason for the denial of the application.

13           SECTION 3. Chapter 218 of the General Laws, as so appearing, is hereby further  
14 amended by inserting after section 35A the following section:

15           Section 35B. If a complaint is received by a district court, or by a justice, associate justice  
16 or special justice thereof, or by a clerk, assistant clerk, temporary clerk or temporary assistant  
17 clerk thereof under this chapter, from a private party, and the issuance of such complaint is  
18 denied, such private party shall be provided notice of such denial and be given the opportunity to  
19 be heard by the court regarding the denial. The justice or magistrate who denied the application  
20 shall be disqualified from presiding over any such hearing. The court, upon hearing and  
21 consideration of the evidence provided by the private party may grant the application for the  
22 issuance of a complaint.