

By Mr. Keating, petition (accompanied by bill, Senate, No. 154) of William R. Keating, Paul D. Harold, Francis G. Mara, Kevin G. Honan, John F. Cox and other members of the House of Representatives for legislation relative to criminal sentences of juveniles charged with murder. Criminal Justice.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT RELATIVE TO CRIMINAL SENTENCING OF A JUVENILE CHARGED WITH MURDER.

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. Section 61 of chapter 119, as appearing in the
2 1990 Official Edition, is hereby amended by striking out the
3 second paragraph and inserting in place thereof the following
4 paragraph:

5 The court shall hold a transfer hearing whenever the
6 commonwealth so requests. The court shall order a transfer
7 hearing in every case in which the offense alleged is murder in
8 the first or second degree, manslaughter, or a violation of sections
9 eighteen, twenty-two, twenty-two A, or twenty-six of chapter two
10 hundred and sixty-five, or section fourteen of chapter two
11 hundred and sixty-six.

1 SECTION 1A. Said section 16 of said chapter 119, as so
2 appearing, is hereby amended by striking out the third and fourth
3 paragraphs and inserting in place thereof the following
4 paragraph:

5 At said transfer hearing, which shall be held before any hearing
6 on the merits of the charges alleged, the court shall first determine
7 whether probable cause exists to believe that the child has
8 committed the offense or violation charged. If the offense alleged

9 is murder in the first or second degree, manslaughter, or a
10 violation of sections eighteen, twenty-two, twenty-two A, or
11 twenty-six of chapter two hundred and sixty-five, or section
12 fourteen of chapter two hundred and sixty-six, the probable cause
13 portion of said transfer hearing shall be held within fifteen days
14 of the child's first appearance before the following the date of the
15 complaint; provided, however, that a failure to hold such probable
16 cause portion of the hearing within said fifteen days shall not
17 prohibit such hearing from being held at a later time as determined
18 by the court. If probable cause is found, the court shall then
19 determine whether the child presents a danger to the public, and
20 whether the child is amenable to rehabilitation within the juvenile
21 justice system. In making such determination the court shall
22 consider, butr shall not be limited to, evidence of the nature,
23 circumstances, and seriousness of the alleged offense; the child's
24 court and delinquency record; the child's age and maturity, the
25 family school and social history of the child, the success of lack
26 of success of any past treatment efforts of the child; the nature
27 of services available through the juvenile justice system; the
28 adequate protection of the public; and the likelihood of
29 rehabilitation of the child.

30 If the offense alleged is murder in the first or second degree,
31 manslaughter, or a violation of sections eighteen, twenty-two,
32 twenty-two A, or twenty-six of chapter two hundred and sixty-
33 five, or section fourteen of chapter two hundred and sixty-six, this
34 portion of the transfer hearing shall be held within thirty days of
35 the probable cause portion, provided, however, that a failure to
36 hold such portion of the transfer hearing within said thirty days
37 shall not prohibit such hearing from being held at a later time
38 as determined by the court.

1 SECTION 2. The fifth paragraph of said section 61 of said
2 chapter 119, as so appearing, is hereby amended by striking out
3 the last sentence and inserting in place thereof the following
4 sentence: If the court fails to make such findings the court shall
5 state its reasons in writing and the provisions of section twenty-
6 eight E of chapter two hundred and seventy-eight. Any such
7 appeal shall be taken within two days after the court's failure to
8 make said findings and further proceedings shall be stayed

9 pending the entry of an order of the appellate court. If the time
10 for the commonwealth to appeal expires, or if such appeal is
11 denied then the court shall proceed on the delinquency complaint.

1 SECTION 3. Said section 61 of said chapter 119, as so
2 appearing, is hereby further amended by inserting after the word
3 “degree”, in line 41, the following words: — manslaughter, or any
4 violation of section eighteen, twenty-two, twenty-two A, or
5 twenty-six of chapter two hundred and sixty-five, or section
6 fourteen of chapter two hundred and sixty-six,

1 SECTION 4. The sixth paragraph of said section 61 of said
2 chapter 119, as so appearing, is hereby further amended by
3 striking out the last sentence and inserting in place thereof the
4 following sentence: — If the court fails to make such findings the
5 court shall state its reasons in writing and the commonwealth may
6 appeal shall be taken within ten days after the court’s failure to
7 make such findings and further proceedings shall be stayed
8 pending the entry of an order of the appellate court. If the time
9 for the commonwealth to appeal expires, or if such appeal is
10 denied then the court shall proceed on the delinquency complaint.

1 SECTION 5. Section 28E of said chapter 278, as so appearing,
2 is hereby further amended by inserting after the word “evidence”,
3 in line 5, the following words: — , or (3) denying a motion to
4 transfer pursuant to section sixty-one of chapter on hundred and
5 nineteen.

