

By Mr. Finneran of Boston, petition of Thomas M. Finneran relative to the trial of certain juveniles as adults. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT RELATING TO THE TRIAL OF CERTAIN JUVENILES AS ADULTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 119 of the General Laws is hereby amended by striking
2 out section sixty-one, as amended by St. 1977, chapter 829, Section
3 11, and inserting in place the following section: —

4 *Section 61.* (a) If it is alleged in a complaint made under sec-
5 tions fifty-two to sixty-three, inclusive, that a child, while between
6 his fourteenth and seventeenth birthdays, has committed an of-
7 fense under sections one, seventeen, eighteen A, or twenty-two of
8 chapter 265 or sections fourteen or fifteen of chapter 266 or has
9 attempted to commit the same the court shall dismiss the delin-
10 quency complaint against the child and shall cause to be issued a
11 criminal complaint unless after a transfer hearing in accordance
12 with such rules of court as may be adopted for such purpose, the
13 court enters a written finding based upon clear and convincing
14 evidence that the child is amenable to rehabilitation as a juvenile
15 and that treatment of the child as a juvenile will not endanger the
16 safety and welfare of the public.

17 At said transfer hearing, which shall be held before any hearing
18 on the merits of the charges alleged, the court shall find whether
19 probable cause exists to believe that the child has committed the
20 offense or violation as charged. If the court so finds, the court shall
21 then consider, but shall not be limited to, evidence of the following
22 factors: (a) the seriousness of the alleged offense; (b) the child's
23 family, school and social history, including his court and juvenile
24 delinquency record, if any; (c) adequate protection of the public,
25 (d) the nature of any past treatment efforts for the child, and (e) the
26 likelihood of rehabilitation of the child.

27 It shall be the child's burden to establish an adequate basis for
28 treatment as a juvenile.

29 (b) If it is alleged in a complaint made under sections fifty-two
30 and sixty-three, inclusive, that a child (a) who had previously been
31 committed to the department of youth services as a delinquent
32 child has committed an offense against a law of the commonwealth
33 which, if he were an adult, would be punished by imprisonment in
34 the state prison; or (b) has committed an offense involving the
35 infliction or threat of serious bodily harm, and in either case if such
36 alleged offense was committed while the child was between his
37 fourteenth and seventeenth birthdays, and if the court enters a
38 written finding based upon clear and convincing evidence that the
39 child presents a significant danger to the public as demonstrated by
40 the nature of the offense charged and the child's past record of
41 delinquent behavior, if any, and is not amenable to rehabilitation
42 as a juvenile, the court may, after a transfer hearing held in accord-
43 ance with such rules of court as shall be adopted for such purpose,
44 dismiss the complaint.

45 At said transfer hearing, which shall be held before any hearing
46 on the merits of the charges alleged, the court shall find whether
47 probable cause exists to believe that the child has committed the
48 offense or violation as charged. If the court so finds, the court shall
49 then consider, but shall not be limited to, evidence of the following
50 factors; (a) the seriousness of the alleged offense; (b) the child's
51 family, school and social history, including his court and juvenile
52 delinquency record, if any; (c) adequate protection of the public,
53 (d) the nature of any past treatment efforts for the child, and (e) the
54 likelihood of rehabilitation of the child.

55 (c) In a case under subsection (a) or (b) if the court determines
56 that the child should be treated as a delinquent child, the court shall
57 forthwith, on motion by or on behalf of the child, continue the
58 proceedings until such further time as the court shall determine.

59 If the court orders that the delinquency complaint against a child
60 be dismissed it shall cause to be issued a criminal complaint. The
61 case shall thereafter proceed according to the usual course of
62 criminal proceedings and in accordance with the provisions of
63 section thirty of chapter two hundred and eighteen and section
64 eighteen of chapter two hundred and seventy-eight. When such a

65 complaint is issued, section 68 shall apply to any person committed
66 under this section for failure to recognize pending final disposition
67 in the superior court.

68 Unless the child by counsel shall waive this provision, the judge
69 who conducts the transfer hearing shall not conduct any subse-
70 quent proceeding arising out of the facts alleged in the delinquency
71 complaint.

