

[Senate, December 30, 1991 — Substituted by amendment by the Senate (Keating) as a new text of the engrossed Bill relative to criminal sentences of juveniles charged with murder, see Senate, No. 1689, amended.]

The Commonwealth of Massachusetts

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

1 SECTION 1. Chapter 119 of the General Laws is hereby
2 amended by striking out section 60, as appearing in the 1990
3 Official Edition, inserting in place thereof the following
4 section: —

5 Section 60. An adjudication of any child as a delinquent child
6 under sections fifty-two to fifty-nine, inclusive, or any disposition
7 thereunder of any child so adjudicated, or any evidence given in
8 any case arising against any child under said sections, or any
9 records in cases arising against any child under said shall not be
10 received in evidence or used against such child for any purpose
11 in any proceedings in any court except in subsequent delinquency
12 or criminal proceedings in determining bail and in imposing
13 sentence in any criminal proceeding against the same person; nor
14 shall such adjudication or disposition or evidence operate to
15 disqualify a child in any future examination, appointment, or
16 application for public service under the government either of the
17 commonwealth or of any political subdivision thereof; provided,
18 however, that adjudication of delinquency by reason of the child
19 having committed an offense against the commonwealth may be
20 used for impeachment purposes in subsequent delinquency or
21 criminal proceedings in the same manner and to the same extent
22 as prior criminal convictions.

1 SECTION 2. Section 61 of said chapter 119, as so appearing,
2 is hereby amended by striking out the second paragraph and
3 inserting in place thereof the following paragraph: —

4 The court shall hold a transfer hearing whenever the
5 commonwealth so requests. The court shall order a transfer

6 hearing in every case in which the offense alleged is murder in
7 the first or second degree, manslaughter, or a violation of sections
8 eighteen, twenty-two, twenty-two A, or twenty-six of chapter two
9 hundred and sixty-five, or section fourteen of chapter two
10 hundred and sixty-six.

1 SECTION 3. Said section 61 of said chapter 119, as so
2 appearing, is hereby further amended by striking out the third and
3 fourth paragraphs and inserting in place thereof the following two
4 paragraphs: —

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 court following the date
15 of the complaint; provided, however, that a failure to hold such
16 probable cause portion of the hearing within said fifteen days shall
17 not prohibit such hearing from being held at a later time as
18 determined by the court. If probable cause is found, the court shall
19 then determine whether the child presents a danger to the public,
20 and whether the child is amenable to rehabilitation within the
21 juvenile justice system. In making such determination the court
22 shall consider, but 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 or 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.

39 If the offense alleged is murder in the first or second degree,
40 the commonwealth may proceed by filing a complaint in juvenile
41 court or in a juvenile session of a district court, as the case may
42 be, or by filing an indictment in such court. In such proceedings
43 initiated by the filing of a complaint, a probable cause hearing
44 shall be held within the time set forth in this section, unless the
45 commonwealth shall have proceeded by indictment prior to such
46 hearing. If the commonwealth has proceeded by indictment, no
47 probable cause hearing shall be held, and a transfer hearing shall
48 be held as provided by this section. In all cases brought pursuant
49 to the provisions of this paragraph, the child shall have the right
50 to an indictment proceeding under section four of chapter two
51 hundred and sixty-three, unless such child, upon advice of
52 counsel, duly waives indictment.

1 SECTION 4. The fourth 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 three
4 sentences: — If the court fails to make such findings the court
5 shall state its reasons in writing and the commonwealth may
6 appeal the decision of the court under the provisions of section
7 twenty-eight E of chapter two hundred and seventy-eight. Any
8 such appeal shall be taken within ten days after the court's failure
9 to make said findings and further proceedings shall be stayed
10 pending the entry of an order of the appellate court. If the time
11 for the commonwealth to appeal expires, or if such appeal is
12 denied then the court shall proceed on the delinquency complaint.

1 SECTION 5. 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 words: — manslaughter, or any violation
4 of section eighteen, twenty-two, twenty-two A or twenty-six of

5 chapter two hundred and sixty-five, or section fourteen of chapter
6 two hundred and sixty-six,.

1 SECTION 6. 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 three
4 sentences: — If the court fails to make such findings the court
5 shall state its reasons in writing and the commonwealth may
6 appeal the decision of the court under the provisions of section
7 twenty-eight E of chapter two hundred and seventy-eight. Any
8 such appeal shall be taken within ten days after the courts failure
9 to make such findings and further proceedings shall be stayed
10 pending the entry of an order of the appellate court. If the time
11 for the commonwealth to appeal expires, or if such appeal is
12 denied then the court shall proceed on the delinquency complaint.

1 SECTION 6A. Said chapter 119 is hereby amended by striking
2 out section 72, as so apperaing, and inserting in place thereof the
3 following section: —

4 Section 72. Courts shall continue to have jurisdiction in their
5 juvenile sessions over children who attain their seventeenth
6 birthday pending a hearing under section sixty-one of this chapter,
7 or adjudication of their cases, or pending hearing and
8 determination of their appeals, or during continuances or
9 probation, or after their cases have been placed on file; and if a
10 child commits an offense prior to his seventeenth birthday, and
11 is not apprehended until between his seventeenth and eighteenth
12 birthdays, the court shall deal with such child in the same manner
13 as if he had not attained his seventeenth birthday, and all
14 provisions and rights applicable to a child under seventeen shall
15 apply to such child; provided, however, that if said child is charged
16 with a violation of murder in the first or second degree,
17 manslaughter, or any violation of section twenty-two, twenty-
18 two A, or twenty-six of chapter two hundred and sixty-five and
19 is not apprehended until after his eighteenth birthday the court
20 shall immediately conduct a hearing under the provisions of
21 section sixty-one of this chapter.

22 Courts shall continue to have jurisdiction in their juvenile
23 sessions over persons who attain their eighteenth birthday pending

24 the determinations allowed under section sixty-one of this
25 chapter, or pending adjudication of their cases, or pending hearing
26 and determination of their appeals, or during continuances or
27 probation, or after their cases have been placed on file. Nothing
28 herein shall authorize the commitment or a person to the
29 department of youth services after he has attained his nineteenth
30 birthday, or give any court in its juvenile session any power or
31 authority over a person after he has attained his nineteenth
32 birthday.

33 If a child is adjudicated a delinquent by reason of having
34 violated section one of chapter two hundred and sixty-five shall
35 if the adjudication is for murder in the first degree such child shall
36 be committed to a maximum confinement of twenty years. Such
37 confinement shall be to the custody of the department of youth
38 services in a secure facility until a maximum age of twenty-one
39 years and thereafter shall be to the custody of the department of
40 correction for the remaining portion of that commitment but in
41 no case shall the confinement be for less than fifteen years and
42 said child shall not be eligible for parole under section one
43 hundred and thirty-three A of chapter one hundred and twenty-
44 seven until said child has served fifteen years of said confinement.
45 Thereafter said child shall be subject to the provisions of law
46 governing the granting of parole permits by the parole board. If
47 said child is adjudicated a delinquent by reason of having violated
48 section one of chapter two hundred and sixty-five and if that
49 adjudication is for murder in the second degree such child shall
50 be committed to a maximum confinement of fifteen years. Such
51 confinement shall be to the custody of the department of youth
52 services in a secure facility until a maximum age of twenty-one
53 years and thereafter to the custody of the department of correction
54 for the remaining portion of that sentence, but in no case shall
55 the confinement be for less than ten years and said child shall not
56 be eligible for parole under section one hundred and thirty-
57 three A of chapter one hundred and twenty-seven until said child
58 has served ten years of said confinement. Thereafter said child
59 shall be subject to the provisions of law governing the granting
60 of parole permits by the parole board. Notwithstanding any other
61 provisions of this section, if said adjudication is for manslaughter

62 said child shall be committed to the custody of the department
63 of youth services until he reaches twenty-one years of age.

1 SECTION 6B. The first paragraph of subsection (a) of
2 section 10 of chapter 120 of the General Laws, as so appearing,
3 is hereby amended by adding the following sentence: — In cases
4 where a person has been adjudicated a delinquent for a violation
5 of section one of chapter two hundred and sixty-five, the
6 commissioner of youth services may, with the commissioner of
7 correction, transfer the custody of said child to the department
8 of correction, provided that such person has reached his
9 eighteenth birthday.

1 SECTION 6C. Section 27 of chapter 218 of the General Laws,
2 as so appearing, is hereby amended by inserting after the word
3 “prison”, in line 3, the words: — ; provided, however, that the
4 juvenile court or the juvenile session of a district court shall have
5 the power to commit a child adjudicated a delinquent by reason
6 of having violated section one of chapter two hundred and sixty-
7 five and sentenced in accordance with the provisions of section
8 seventy-two of chapter one hundred and nineteen.

1 SECTION 6D. Section 4 of chapter 263 of the General Laws,
2 as so appearing, is hereby amended by adding the following
3 paragraph: —
4 A juvenile charged in juvenile court or in a juvenile session of
5 a district court with delinquency by violation of section one of
6 chapter two hundred and sixty-five, shall also have the right to
7 be proceeded against by indictment.

1 SECTION 7. Section 28E of chapter 278 of the General Laws,
2 as so appearing, is hereby amended by inserting after the word
3 “cases”, in line 3, the words: — and in all delinquency cases.

1 SECTION 8. Said section 28E of said chapter 278, as so
2 appearing, is hereby further amended by inserting after the word
3 “evidence”, in line 5, the words: — , or (3) denying a motion to
4 transfer pursuant to section sixty-one of chapter one hundred and
5 nineteen.

