

By Mr. Lewis, a petition of Arthur Joseph Lewis, Jr., for legislation to further regulate juvenile delinquent proceedings and authorizing sentencing of juveniles to secure facilities. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT TO FURTHER REGULATE JUVENILE DELINQUENT PROCEEDINGS AND
AUTHORIZING SENTENCING OF JUVENILES TO SECURE FACILITIES.

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 61, as appearing in the 1984 Official Edition, and
3 inserting in place thereof the following section: —

4 Notwithstanding any provision to the contrary in this chapter,
5 if it is alleged in a complaint made under sections fifty-two to sixty-
6 three, inclusive, that a child who has attained the age of ten but
7 not the age of fourteen at the time the delinquent act was alleged
8 to have occurred, and said act as set forth in said complaint was
9 any of the following:

10 (1) Arson causing death; (2) assault with intent to rob, being
11 armed; (3) assault with intent to commit murder, maim or
12 disfigure another; (4) murder; (5) manslaughter; (6) kidnapping;
13 (7) mayhem; (8) indecent assault and battery; (9) burglary of dwell-
14 ing house in the nighttime; and if the court enters a written finding
15 based upon clear and convincing evidence that child presents a
16 significant danger to the public as demonstrated by the nature of
17 the offense charged and the child's past record of delinquent
18 behavior, if any, the court may, after a transfer hearing held in
19 accordance with such rules of court as shall be adopted for such
20 purpose, dismiss the complaint.

21 At said transfer hearing, which shall be held before any hearing
22 on the merits of the charges alleged, the court shall find whether
23 probable cause exists to believe that the child has committed the

24 offense or violation as charged. If the court so finds, the court
25 shall then consider, but shall not be limited to, evidence of the
26 following factors: (a) the seriousness of the alleged offense; (b)
27 the child's family, school and social history, including his court
28 and juvenile delinquency record, if any; (c) adequate protection
29 of the public; (d) the nature of any past treatment efforts for the
30 child; and (e) the likelihood of rehabilitation of the child.

31 If the court orders that the delinquency complaint against a
32 child be dismissed it shall cause to be issued a criminal complaint.
33 The case shall thereafter proceed according to the usual course
34 of criminal proceedings and in accordance with the provisions of
35 section thirty of chapter two hundred and eighteen and section
36 eighteen of chapter two hundred and eighteen and section eighteen
37 of chapter two hundred and seventy-eight. When such a complaint
38 is issued, section sixty-eight shall apply to any person committed
39 under this section for failure to recognize pending final disposition
40 in the superior court.

41 Unless the child by counsel shall waive this provision, the judge
42 who conducts the transfer hearing shall not conduct any subse-
43 quent proceeding arising out of the facts alleged in the delinquency
44 complaint.

45 If a child has attained the age of fourteen but not the age of
46 seventeen and is alleged to have committed an act specified in the
47 previous paragraph, said child shall be subject to criminal
48 proceedings as in cases commenced against adults, and no transfer
49 hearing shall be necessary.

50 If it is alleged in a complaint made under sections fifty-two to
51 sixty-three, inclusive, that a child (a) who had previously been
52 committed to the department of youth services as a delinquent
53 child has committed an offense against a law of the common-
54 wealth, other than those offenses specified in the first paragraph,
55 but which offense, if he were an adult, would be punishable by
56 imprisonment in the state prison; or (b) has committed an offense
57 involving the infliction of threat of serious bodily harm, and in
58 either case if such alleged offense was committed while the child
59 was between his fourteenth and seventeenth birthday, and if the
60 court enters a written finding based upon clear and convincing
61 evidence that the child presents a significant danger to the public,
62 the court may after a transfer hearing, as described above, dismiss

63 the complaint under this section and convicted shall, if sentenced
64 to imprisonment, be confined in a secure facility until he reaches
65 the age of twenty-one, and shall then be transferred to a suitable
66 correctional institution to serve the balance of his sentence, if any.

