

By Mr. Haley of Weymouth, petition of Paul R. Haley for legislation to provide for the prosecution of violent juvenile offenders in the criminal courts of the Commonwealth. Criminal Justice.

The Commonwealth of Massachusetts

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

AN ACT TO FURTHER PROTECT THE PUBLIC SAFETY BY PROSECUTING VIOLENT JUVENILE OFFENDERS IN THE CRIMINAL COURTS OF THE COMMONWEALTH.

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 of the General Laws is
2 hereby amended by striking the section and inserting in place
3 thereof the following section:—

4 Section 61. The Commonwealth may request a transfer hearing
5 whenever it is alleged in a complaint that a child, who is fourteen
6 years old or older, has committed an offense against a law of the
7 Commonwealth, which, if he were an adult, would be punishable
8 by imprisonment in the state prison, and that the offense has
9 allegedly been committed by a child who had previously been
10 committed to the Department of Youth Services, or involves the
11 threat or infliction of serious bodily harm.

12 The court shall hold a transfer hearing whenever the Common-
13 wealth so requests. At said transfer hearing, which shall be held
14 before any hearing on the merits of the charges alleged, the court
15 shall first determine whether probable cause exists to believe that
16 the child has committed the offense or violation charged. If prob-
17 able cause is found, the court shall then determine whether the
18 child presents a danger to the public and whether the child is
19 amenable to rehabilitation within the juvenile justice system. In
20 making such a determination the court shall consider, but shall not
21 be limited to, evidence of the nature, circumstances, and serious-
22 ness of the alleged offense; the child's court and delinquency

23 record; the child's age and maturity; the family, school, and social
24 history of the child; the success or lack of success of any past
25 treatment efforts of the child; the nature of the services available
26 through the juvenile justice system; the adequate protection of the
27 public; and the likelihood of rehabilitation of the child.

28 If, at the conclusion of the hearing, the court enters a written
29 finding based upon clear and convincing evidence that the child
30 presents a significant danger to the public and that the child is not
31 amenable to rehabilitation within the juvenile justice system, the
32 court shall dismiss the delinquency complaint and cause a criminal
33 complaint to be issued. The case shall thereafter proceed
34 according to the usual course of criminal proceedings and in
35 accordance with the provisions of section thirty of chapter two
36 hundred and eighteen and section eighteen of section two hundred
37 and seventy-eight. If the court fails to make such findings the
38 court shall state its reasons in writing and the Commonwealth may
39 appeal the decision of the court under the provisions of section
40 twenty-eight E of chapter two hundred and seventy-eight. Any
41 such appeal shall be taken within ten days after the court's failure
42 to make said findings and further proceedings shall be stayed
43 pending the entry of an order of the appellate court. If the time for
44 the Commonwealth to appeal expires, or if such appeal is denied,
45 then the court shall proceed on the delinquency complaint.

46 Whenever a criminal complaint is issued in accordance with
47 this section, the provisions of section sixty-eight shall apply to
48 any person, under the age of eighteen, who is committed for fail-
49 ure to recognize pending final disposition in the district or super-
50 ior court. Unless the child waives the provisions of this paragraph,
51 the judge who conducted the transfer hearing shall not conduct
52 any subsequent criminal delinquency proceeding arising out of the
53 facts alleged in the delinquency complaint.

1 SECTION 2. Section 67 of Chapter 119 of the General Laws,
2 as set forth in the 1992 Official Edition, is hereby amended by
3 inserting, in line 18, after the phrase "provided, that," the follow-
4 ing:— if the child is charged with an offense set forth in section
5 seventy-four herein, or.

1 SECTION 3. Section 68 of Chapter 119 of the General Laws,
2 as appearing in the 1992 Official Edition, is hereby amended by
3 striking the words “or (b) is charged with murder in the first or
4 second degree,” as set forth in line 16, and by adding a new para-
5 graph to the end of the section as follows:—

6 Notwithstanding the provisions of this section or section 67,
7 bail and other conditions of release for individuals between the
8 ages of fourteen and seventeen charged with offenses designated
9 in section seventy-four, shall be set by the district or superior
10 court in the same manner as bail or conditions of release would be
11 set for individuals age seventeen and older charged with such
12 offenses, provided that such individuals who are unable to furnish
13 bail or meet the conditions of release, may in the discretion of the
14 court either be detained in a jail or committed to the care of
15 the department of youth services pending trial, and may recom-
16 mend that the child be held by the Department of Youth Services
17 in a secure detention facility.

1 SECTION 4. Section 74 of Chapter 119 of the General Laws is
2 hereby amended by striking the section and inserting in place
3 thereof the following section:—

4 Section 74. Notwithstanding any other provision of this
5 chapter, the juvenile court shall not have jurisdiction over a
6 person between the ages of fourteen and seventeen who is charged
7 with committing any of the following offenses against the laws of
8 the Commonwealth; murder in the first or second degree; man-
9 slaughter, armed assault with intent to murder in violation of
10 section 18 of chapter 265; kidnapping in violation of section 26
11 of chapter 265; rape and abuse of child in violation of section 23
12 of chapter 265; rape in violation of section 22 of chapter 265; and
13 armed burglary in violation of section 14 of chapter 266.
14 Complaints and indictments brought against such persons between
15 the ages of fourteen and seventeen for such offenses and for other
16 criminal offenses arising out of the same incident, episode or
17 course of events, shall be brought in accord with the usual manner
18 and course of criminal proceedings.

19 Except as herein provided, no criminal proceeding shall be
20 begun against any person who prior to his seventeenth birthday
21 commits an offense against the law of the Commonwealth or who

22 violates any city ordinance or town by-law, unless proceedings
23 against him as a delinquent child have begun and been dismissed
24 as required by section sixty-one or seventy-two A; provided,
25 however, that a criminal complaint alleging violation of any city
26 ordinance or town by-law regulating the operation of motor
27 vehicles, which is not capable of being judicially heard and deter-
28 mined as a civil motor vehicle infraction pursuant to the provi-
29 sions of chapter ninety C may issue against a child between six-
30 teen and seventeen years of age without first proceeding against
him as a delinquent child.

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2 SECTION 5. Section 83 of chapter 119 of the General Laws,
3 as set forth in the 1992 Official Edition, is hereby amended by
4 striking the first sentence thereof and inserting the following:—

5 Section 83. The indictment or complaint against any person
6 transferred under section sixty-one or brought directly in the dis-
7 trict or superior court under section seventy-four, shall be tried
8 before the superior court in the same manner as any criminal
9 proceeding, and upon conviction such person may be sentenced to
10 such punishment as is provided by law for the offense, or placed
11 on probation, with or without a suspended sentence for such
period of time and under such conditions as the court may order.