

By Mr. McIntyre of New Bedford, petition of Joseph B. McIntyre and another relative to the transfer of juveniles to the adult court system. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT RELATING TO THE TRANSFER OF JUVENILES TO ADULT COURT.

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. Amends Massachusetts General Laws chap-
2 ter 119, section 72, by striking said section and replacing it with
3 the following:—

4 Juvenile courts or juvenile sessions of any court shall continue
5 to have jurisdiction 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 determina-
8 tion of their appeals, or during continuances or probation, or after
9 their cases have been placed on file; and if a child commits an
10 offense prior to his seventeenth birthday, and is not apprehended
11 until between his seventeenth and eighteenth birthdays, the court
12 shall deal with such child in the same manner as if he had not
13 attained his seventeenth birthday, and all provisions and rights
14 applicable to a child under seventeen shall apply to such child.

15 Juvenile courts or juvenile sessions of any court shall continue
16 to have jurisdiction over persons who attain their eighteenth birth-
17 day pending the determinations allowed under section sixty-one of
18 this chapter, or pending adjudication of their cases, or pending
19 hearing and determination of their appeals, or during continuances
20 or probation, or after their cases have been placed on file. Nothing
21 herein shall authorize the commitment of a person to the depart-
22 ment of youth services after he has attained his nineteenth birth-
23 day, or give any juvenile court, or juvenile session of any court,
24 any power or authority over a person after he has attained his
25 nineteenth birthday.

1 SECTION 2. Amends M.G.L. chapter 120, section 10, by
2 deleting from the first paragraph of subsection (a) the last sen-
3 tence beginning on line 12.

1 SECTION 3. Amends M.G.L. chapter 218, section 27, by
2 deleting after the word "section", in line 6, the word "seventy-
3 two" and replacing it with the word:— fifty-eight D.

1 SECTION 4. Amends M.G.L. chapter 119, section 58, by
2 deleting the first sentence of the second paragraph of said section
3 and replacing it with the following sentence:— If a child is
4 adjudicated a delinquent child, the court may place the case on
5 file or may place the child in the care of a probation officer for
6 such time and on such conditions as it deems appropriate or may
7 commit him to the custody of the department of youth services,
8 but the probationary or commitment period shall not be for a peri-
9 od longer than until such child attains the age of eighteen, or age
10 nineteen in the case of a child whose case is disposed of after he
11 has attained his eighteenth birthday; provided, however, that a
12 child adjudicated delinquent by reason of having violated section
13 one of chapter two hundred and sixty-five shall be committed in
14 accordance with the provisions of section fifty-eight C.

1 SECTION 5. Amends M.G.L. chapter 119 by adding a new
2 section:—

3 Section 58C. Adjudication as a Delinquent Child By Reason
4 of Murder.

5 A child who is fourteen years or older and is adjudicated delin-
6 quent by reason of having violated section one of chapter two
7 hundred and sixty-five, shall be committed to a maximum con-
8 finement of twenty years and, except as provided for in section
9 fifty-eight D for a period of not less than fifteen years if the adju-
10 dication is for murder in the first degree. If the adjudication is for
11 murder in the second degree, such child shall be committed for a
12 maximum confinement of fifteen years but, except as provided for
13 in section fifty-eight D for a period not less than ten years.

14 Such confinement shall be to the custody of the department of
15 youth services in a secure facility until a maximum age of twenty-
16 one years. Within ninety days of said child's twenty-first birthday

17 a hearing shall be held in the committing court pursuant to section
18 fifty-eight D of this chapter, to determine whether the child should
19 be released on probation for the remaining portion of his sentence,
20 or transferred to the department of correction to be incarcerated
21 for the remaining mandatory minimum portion of his sentence.
22 Notwithstanding any other provisions of this section, if said
23 adjudication is for manslaughter, said child shall be committed to
24 the custody of the department of youth services until he reaches
25 twenty-one years of age.

1 SECTION 6. Amends M.G.L. chapter 119 by adding a new
2 section:—

3 Section 58D. Release Hearing for Child Adjudicated Delin-
4 quent by Reason of Murder.

5 (a) Any child adjudicated delinquent by reason of violation of
6 section one of chapter two hundred and sixty-five shall be entitled
7 to a release hearing before the committing court upon reaching the
8 age of twenty-one. Upon notice by the department of youth serv-
9 ices pursuant to section sixteen A of chapter one hundred and
10 twenty, the court shall set a time and place for such hearing. The
11 child shall remain in the custody of the department of youth
12 services during the pendency of the release hearing provided for
13 herein.

14 (b) The court shall notify the following of the time and place of
15 the hearing:

16 (i) the person whose liberty is involved and if he or she is not
17 sui juris;

18 (ii) his parent or guardian (if such person can be reached and if
19 not, the court shall appoint a person to act in the place of the
20 parent and guardian);

21 (iii) the office of the prosecuting attorney that represented the
22 commonwealth in the juvenile delinquency proceeding;

23 (iv) a member of the victim's family;

24 (v) any other person who has filed a written request with the
25 court to be notified of a release hearing with respect to the child to
26 be transferred or released on probation.

27 Except for the child to be transferred or released under supervi-
28 sion of probation and the prosecuting attorney, the failure to notify
29 a person listed above shall not affect the validity of a release hear-

30 ing or a release determination if the record in the case reflects that
31 a reasonable effort was made by the court to notify those persons.

32 (c) At any release hearing, the child to be transferred or
33 released on probation shall be afforded an opportunity to appear in
34 court with the aid of counsel and of process to compel attendance
35 of witnesses and the production of evidence. When he is unable to
36 provide his own counsel, the court shall appoint counsel to repre-
37 sent him.

38 (d) At a release hearing, the court may consider, in addition to
39 the testimony of witnesses and other relevant evidence, written
40 reports and records from the department of youth services, and the
41 record from the juvenile transfer hearing.

42 (e) A release hearing shall be open to the public.

43 (f) A release hearing must be recorded pursuant to rule two
44 hundred and eleven of the special rules of the district court.

45 (g) The burden of proof shall be on the child to prove by clear
46 and convincing evidence that he does not present a significant
47 danger to the public and has taken advantage of the rehabilitative
48 services provided to him by the department of youth services.

49 (h) In making a determination under this section, the court shall
50 consider, but shall not be limited to, evidence of the nature, cir-
51 cumstances, and seriousness of the offense for which the child
52 was committed, the maturity of the child, the success or lack of
53 success of any treatment efforts of the child, the adequate pro-
54 tection of the public, the degree of rehabilitation of the child, and
55 the recommendations of the department of youth services and the
56 prosecuting attorney.

57 (i) If, at the conclusion of the hearing, the court enters a written
58 finding based on clear and a convincing evidence, that the child
59 does not present a significant danger to the public and has taken
60 advantage of the rehabilitative services provided to him by the
61 department of youth services, the court shall suspend the remain-
62 ing portion of the child's sentence and release him on probation
63 under such terms and conditions as the court deems appropriate.
64 In such instances, the committing court shall issue an order trans-
65 mitting the case for supervision by the Superior Court probation
66 department in the county in which the underlying offense was
67 committed.

68 (j) If the court fails to make such findings, the court shall state
69 its reasons in writing and the child shall be transferred to the cus-
70 tody of the department of corrections for the remaining portion of
71 the commitment, provided for in section fifty-eight C. Said child
72 shall not be eligible for parole under section one hundred and
73 thirty-three A of chapter one hundred and twenty-seven until said
74 child has served a total of fifteen years in the department of youth
75 services and the department of corrections, if the adjudication was
76 for murder in the first degree, or a total of ten years of confine-
77 ment in the department of youth services and the department of
78 corrections if the adjudication was for murder in the second
79 degree. Thereafter said child shall be subject to the provisions of
80 law governing the granting of parole permits by the parole board.
81 The provisions of section one hundred and twenty-nine, one
82 hundred and twenty-nine C or one hundred and twenty-nine D of
83 chapter one hundred and twenty-seven shall not apply to such
84 confinement.

1 SECTION 7. Amends M.G.L. chapter 120 by adding a new
2 section:—

3 Section 16A. Release of a Child Adjudicated Delinquent By
4 Reason of Murder.

5 The department shall notify the committing court within
6 ninety (90) days of the twenty-first birthday of such child, and
7 request that the court sets a time and place for a release hearing
8 pursuant to section fifty-eight D of chapter one hundred and nine-
9 teen. The department shall assist the court in making a determina-
10 tion of whether such child presents a significant danger to the
11 public and has taken advantage of the rehabilitative services pro-
12 vided by the department by providing the court with written
13 reports and records relating to such child, and with a recommen-
14 dation under section fifty-eight D of chapter one hundred and
15 nineteen. A recommendation shall be accompanied by a written
16 statement of facts upon which the department bases its opinion
17 that the child should or should not be released on probation for the
18 remaining portion of his sentence.

