SENATE DOCKET, NO. 471 FILED ON: 1/16/2013

SENATE . . . . . No. 797

The Commonwealth of Massachusetts

PRESENTED BY:

Karen E. Spilka

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act establishing age-appropriate accountability for children.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Karen E. Spilka	*Second Middlesex and Norfolk*
Paul R. Heroux	*2nd Bristol*
Carolyn C. Dykema	*8th Middlesex*

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By Ms. Spilka, a petition (accompanied by bill, Senate, No. 797) of Karen E. Spilka, Paul R. Heroux and Carolyn C. Dykema for legislation to establish age-appropriate accountability for children for crimes. The Judiciary.

The Commonwealth of Massachusetts

An Act establishing age-appropriate accountability for children.

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

SECTION 1. Section 72B of chapter 119 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out paragraphs 1, 2, and 3, and inserting in place thereof the following paragraphs:-

Notwithstanding the provisions of section 2 of chapter 265, if a person is found guilty of murder in the first degree committed on or after his fourteenth birthday and before his eighteenth birthday, the juvenile court department shall commit the person to imprisonment in the state prison for not more than 20 years or for life. The court shall fix the minimum term for any person committed to the state prison for life pursuant to this paragraph, which shall not be less than 10 years nor more than 20 years. Said person shall be eligible for parole under section one hundred and thirty-three A of chapter one hundred and twenty-seven when such person has served the minimum term as set by the court. Thereafter said person shall be subject to the provisions of law governing the granting of parole permits by the parole board.

Notwithstanding the provisions of section 2 of chapter 265, if a person is found guilty of murder in the second degree committed on or after his fourteenth birthday and before his eighteenth birthday, the juvenile court department shall commit the person to imprisonment in the state prison for not more than 15 years or for life. The court shall fix the minimum term for any person committed to the state prison for life pursuant to this paragraph, which shall not be less than 10 years nor more than 15 years. Said person shall be eligible for parole under section one hundred and thirty-three A of chapter one hundred and twenty-seven when such person has served the minimum term as set by the court. Thereafter said person shall be subject to the provisions of law governing the granting of parole permits by the parole board.

In determining whether to commit said person to imprisonment for a term of years, pursuant to this section, or life and the minimum term of incarceration for a life sentence, the

24 court shall consider and make findings on the record regarding age-related considerations
25 including: (1) the age at the time of the offense; (2) hallmark features of adolescence, including
26 immaturity, impetuosity, and the ability to appreciate risks and consequences; (3) family and
27 home environment prior to and at the time of the offense; (4) extent of said persons participation
28 in the offense; (5) the impact of familiar and peer pressures; (6) history of prior felony
29 convictions or adjudications; and (7) the potential for rehabilitation. A showing of age-related
30 diminished culpability or capacity for change shall foreclose the imposition of a life sentence.

31 If the court commits said person to the state prison for life, the court shall specify an
32 individualized program of rehabilitation, consistent with programming that the Department of
33 Correction provides, reasonably related to the offense and the defendant that, if complied with by
34 the defendant during the time period prescribed by the court, would indicate that release is not
35 incompatible with the welfare of society.

36 Any sentence imposed for offenses arising out of the same transaction and occurrence
37 shall run concurrent with the governing sentence.

38 SECTION 2. Paragraph 4 of said section 72B of said chapter 119, as so appearing, is
39 hereby amended by striking out the word, “seventeenth”, where it so appears in the first and
40 second instance, and inserting in place thereof the word:-

41 twenty-first

42 SECTION 3. Paragraph 5 of said section 72B of said chapter 119, as so appearing, is
43 hereby further amended by striking out the words, “superior court”, where it so appears, and
44 inserting in place thereof the words:-

45 juvenile court department

46 SECTION 4. Said Chapter 119 of the General Laws, as so appearing, is hereby amended
47 by inserting after section 72B the following section:-

48 Section 72C. A person who is found guilty of murder in the first degree committed on or
49 after his fourteenth birthday and before his eighteenth birthday, and has been committed to
50 imprisonment in a state prison for life, may move for resentencing in the juvenile court
51 department after having served 10 years of the sentence and at least once in each ensuing 5 year
52 period for subsequent resentencing of a life sentence to a substitute sentence of not more than 20
53 years. Any sentence imposed for offenses arising out of the same transaction and occurrence
54 shall run concurrent with the governing sentence.

55 The defendant shall file the motion for resentencing with the juvenile court department
56 and serve a copy of the motion on the office of district attorney of the district where the offense
57 was originally prosecuted. The motion shall include the defendant’s statement that the offense

58 occurred prior to the defendant's eighteenth birthday and that the defendant was committed to
59 imprisonment in a state prison for life.

60 Upon motion by the defendant, the juvenile court department shall hold a hearing to
61 consider whether to resentence the defendant to a substitute sentence of not more than 20 years.
62 The defendant shall have the right to be present at the hearing, he shall be afforded reasonable
63 opportunity to prepare and present evidence, and he shall have the right to call and examine
64 experts. In determining whether to resentence the defendant to a substitute sentence of not more
65 than 20 years, the court shall consider and make findings on the record regarding demonstrated
66 rehabilitation and age-related considerations including: (1) mitigating circumstances relevant to
67 the defendant at the time of the offense; (2) evidence of cognitive and emotional development
68 since the time of the offence; (3) the frequency, nature and regularity of the defendant's
69 disciplinary history while incarcerated; (4) history of the defendants participation in
70 programming and activities, and access to said programming and activities, to further his
71 rehabilitation; and (5) other factors demonstrating rehabilitation.

72 The defendant shall have the right to have counsel appointed if deemed to be indigent as
73 determined by the standards under chapter 211D. The Department of Correction shall provide
74 notice of the right to counsel to the defendant and the Committee for Public Counsel Services no
75 less than 120 days prior to the defendant becoming eligible for resentencing.

76 If the defendant is resentenced to a substitute sentence of not more than 20 years, time
77 served on the original sentence shall be deemed to have been served on the substitute sentence.

78 Upon the denial of resentencing, the court shall specify an individualized program of
79 rehabilitation, consistent with programming that the Department of Correction provides,
80 reasonably related to the offense and the defendant that, if complied with by the defendant during
81 a time period prescribed by the court, would indicate that release is not incompatible with the
82 welfare of society.

83 SECTION 5. Said Chapter 119 of the General Laws, as so appearing, is hereby amended
84 by inserting after section 72B the following section:-

85 Section 72D. A person who is found guilty of murder in the second degree committed on
86 or after his fourteenth birthday and before his eighteenth birthday, and has been committed to
87 imprisonment in a state prison for life, may move for resentencing in the juvenile court
88 department after having served 10 years of the sentence and at least once in each ensuing 5 year
89 period for subsequent resentencing of a life sentence to a substitute sentence of not more than 15
90 years. Any sentence imposed for offenses arising out of the same transaction and occurrence
91 shall run concurrent with the governing sentence.

92 The defendant shall file the motion for resentencing with the juvenile court department
93 and serve a copy of the motion on the office of district attorney of the district where the offense

94 was originally prosecuted. The motion shall include the defendant's statement that the offense
95 occurred prior to the defendant's eighteenth birthday and that the defendant was committed to
96 imprisonment in a state prison for life.

97 Upon motion by the defendant, the juvenile court department shall hold a hearing to
98 consider whether to resentence the defendant to a substitute sentence of not more than 15 years.
99 The defendant shall have the right to be present at the hearing, he shall be afforded reasonable
100 opportunity to prepare and present evidence, and he shall have the right to call and examine
101 experts. In determining whether to resentence the defendant to a substitute sentence of not more
102 than 15 years, the court shall consider and make findings on the record regarding demonstrated
103 rehabilitation and age-related considerations including: (1) mitigating circumstances relevant to
104 the defendant at the time of the offense; (2) evidence of cognitive and emotional development
105 since the time of the offence; (3) the frequency, nature and regularity of the defendant's
106 disciplinary history while incarcerated; (4) history of the defendant participation in programming
107 and activities, and access to said programming and activities, to further his rehabilitation; and (5)
108 other factors demonstrating rehabilitation.

109 The defendant shall have the right to have counsel appointed if deemed to be indigent as
110 determined by the standards under chapter 211D. The Department of Correction shall provide
111 notice of the right to counsel to the defendant and the Committee for Public Counsel Services no
112 less than 120 days prior to the defendant becoming eligible for resentencing.

113 If the defendant is resentenced to a substitute sentence of not more than 15 years, time
114 served on the original sentence shall be deemed to have been served on the substitute sentence.

115 Upon the denial of resentencing, the court shall specify an individualized program of
116 rehabilitation, consistent with programming that the Department of Correction provides,
117 reasonably related to the offense and the defendant that, if complied with by the defendant during
118 a time period prescribed by the court, would indicate that release is not incompatible with the
119 welfare of society.

120 SECTION 6. Section 74 of chapter 119, as so appearing, is hereby amended by striking
121 out paragraph 2.

122 SECTION 7. Said chapter 119, as so appearing, is hereby further amended by inserting
123 after section 85 the following section:-

124 Section 86. Notwithstanding any general or special law to the contrary, the provisions of
125 sections 52 through 85 shall apply to a person who is charged with murder occurring on or after
126 his fourteenth birthday and before his eighteenth birthday.

127 SECTION 8. Section 48 of chapter 127 of the General Laws, as appearing in the 2010
128 Official Edition, is hereby amended by inserting after the first paragraph the following
129 paragraph:-

130 The commissioner shall ensure that any person committed to the custody of the
131 department who has a court mandated individualized program of rehabilitation, pursuant to
132 section 72C of chapter 119, has meaningful, substantial, and consistent access to: educational;
133 vocational; and treatment programs including, but not limited to, substance abuse and mental
134 health programming, and other appropriate programming as determined by the commissioner.

135 SECTION 9. Section 133A of said chapter 127, as most recently amended by Chapter
136 192 of the Acts of 2012, is hereby further amended by striking out the first paragraph and
137 inserting in place thereof the following paragraph:-

138 Notwithstanding the provisions of section 2 of chapter 265, every prisoner who is serving
139 a sentence for life in a correctional institution of the commonwealth, except prisoners confined to
140 the hospital at the Massachusetts Correctional Institution, Bridgewater, except prisoners serving
141 a life sentence for murder in the first degree who committed such offense on or after their
142 eighteenth birthday, and except prisoners serving more than one life sentence arising out of
143 separate and distinct incidents that occurred at different times, where the second offense occurred
144 subsequent to the first conviction, shall be eligible for parole at the expiration of the minimum
145 term fixed by the court under section 24 of chapter 279. The parole board shall, within 60 days
146 before the expiration of such minimum term, conduct a public hearing before the full
147 membership unless a member of the board is determined to be unavailable as provided in this
148 section. Notwithstanding the previous sentence, the board may postpone a hearing until 30 days
149 before the expiration of such minimum term, if the interests of justice so require and upon
150 publishing written findings of the necessity for such postponement. For the purposes of this
151 section, the term unavailable shall mean that a board member has a conflict of interest to the
152 extent that he cannot render a fair and impartial decision or that the appearance of a board
153 member would be unduly burdensome because of illness, incapacitation, or other circumstance.
154 Whether a member is unavailable for the purposes of this section shall be determined by the
155 chair. Board members shall appear unless said chair determines them to be unavailable. Under no
156 circumstances shall a parole hearing proceed pursuant to this section unless a majority of the
157 board is present at the public hearing. Unless a board member is unavailable due to a conflict of
158 interest, any board member who was not present at the public hearing shall review the record of
159 the public hearing and shall vote in the matter.

160 SECTION 10. Paragraph 3 of section 133A of chapter 127, as most recently amended, is
161 hereby further amended by striking out the word, ‘After,’ and inserting in place thereof the
162 following words:-

163 Except for prisoners who are serving a life sentence for a murder who committed such
164 offense prior to their eighteenth birthday, after

165 SECTION 11. Said section 133A of said chapter 127, as most recently amended, is
166 hereby further amended by inserting after the third paragraph the following paragraphs:-

167 If the prisoner is serving a life sentence for murder committed before his eighteenth
168 birthday, the parole board may, by a majority vote of its members, grant to such prisoner a parole
169 permit to be at liberty upon such terms and conditions as it may prescribe for the unexpired term
170 of his sentence. The parole board shall consider and make findings on the record regarding
171 demonstrated rehabilitation and age-related considerations including: (1) evidence of cognitive
172 and emotional development since the time of the offense; (2) the frequency, nature and regularity
173 of the defendant's disciplinary history while incarcerated; (3) history of the defendants
174 participation in programming and activities, and access to said programming and activities, to
175 further his rehabilitation; and (4) other factors demonstrating rehabilitation. If such prisoner has
176 completed his most recent individualized program of rehabilitation, pursuant to section 72C of
177 chapter 119, the parole board shall grant a parole permit unless, by a vote of two-thirds of its
178 members, the parole board determines that he is likely to cause injury to persons. If such permit
179 is not granted, the parole board shall, at least once in each ensuing five year period thereafter,
180 consider carefully and thoroughly the merits of each such case on the question of releasing such
181 prisoner on parole, and may, by a vote of a majority of its members, grant such parole permit.

182 If the prisoner is serving a life sentence for murder committed before his eighteenth
183 birthday, he shall have the right to have counsel appointed if deemed to be indigent as
184 determined by the standards under chapter 211D. Said board shall at least 90 days before such
185 hearing notify the prisoner of this right.

186 SECTION 12. Section 133C of said chapter 127, as so appearing, is hereby amended by
187 inserting after the words, "except prisoners serving a life sentence for murder in the first degree",
188 and before the words, "and prisoners", the following:-

189 who committed such offense on or after their eighteenth birthday

190 SECTION 13. The third sentence of section 24 of chapter 279, as most recently amended
191 by Chapter 192 of the Acts of 2012, is hereby further amended by inserting after the word
192 "degree" the following words:-

193 , except in the case of a prisoner serving a life sentence for murder who committed such
194 offense prior to their eighteenth birthday

195 SECTION 14. This act shall take effect upon its passage.