

SENATE No. 714

The Commonwealth of Massachusetts

PRESENTED BY:

Cynthia S. Creem

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 adoption of the accompanying bill:

An Act relative to juvenile life without parole sentences.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Cynthia S. Creem</i>	<i>First Middlesex and Norfolk</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Harriette L. Chandler</i>	<i>First Worcester</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Daniel A. Wolf</i>	<i>Cape and Islands</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>

SENATE No. 714

By Ms. Creem, a petition (accompanied by bill, Senate, No. 714) of Cynthia S. Creem, Elizabeth A. Malia, Harriette L. Chandler, Louis L. Kafka and other members of the General Court for legislation relative to juvenile life without parole sentences. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to juvenile life without parole sentences.

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. Legislative Findings

2 The general court hereby finds and determines that:

3 (1) In *Miller v. Alabama* (2012), the Supreme Court of the United States recognized that
4 features distinguishing juveniles from adults put them at a significant disadvantage in criminal
5 proceedings and current sentencing laws disregard the possibility of rehabilitation, even when
6 circumstances most suggest it;

7 (2) Current sentencing laws for juveniles preclude consideration of the child’s
8 chronological age and its hallmark features, as demonstrated by scientific research – among
9 them, immaturity, impetuosity, and a failure to appreciate risks and consequences; they neglect
10 the circumstances of the offense, including the extent of the offender’s participation and the
11 individual nature of the offender’s background and circumstances; they ignore that, if not for
12 incompetencies associated with youth, the child might have been charged with, and convicted of,
13 a lesser offense; and

14 (3) Given children’s diminished culpability and heightened capacity for change,
15 appropriate occasions for sentencing juveniles to the harshest possible penalty must be, as the
16 Miller Court concluded, uncommon;

17 (4) The purpose of this act, therefore, is to acknowledge that children are fundamentally
18 different from adults, and to ensure they are held accountable in an age-appropriate way by
19 requiring that these differences, and how they advise against irrevocably imprisoning a child

20 until their death, be taken into account at sentencing, in addition to the particular circumstances
21 of the defendant.

22 SECTION 2. Section 167 of chapter 6 of the General Laws, as appearing in the 2008
23 Official Edition, is hereby amended by striking out, in lines 21, 23 and 24 the word “seventeen”
24 and inserting in place thereof the following word:- eighteen

25 SECTION 3. Section 4 of chapter 27 of the General Laws, as appearing in the 2004
26 Official Edition, is hereby amended by striking out, in line 2, the word “seven” and inserting in
27 place thereof the following word:— nine

28 SECTION 4. Said section 4 of chapter 27 of the General Laws, as so appearing, is hereby
29 further amended by adding, at the end of the second paragraph thereof, the following:--

30 Notwithstanding the above, the board shall include, at all times, at least one person with
31 not less than ten years of experience and training in adolescent development and psychology.
32 Said person shall be selected by either the panel or the governor from a list of proposed
33 nominees provided by the following organizations: the Massachusetts chapter of the American
34 Academy of Pediatrics; the New England Council of Child and Adolescent Psychiatry, Inc.; the
35 Massachusetts Psychological Association, Inc.; the MA Psychiatric Society, and the Committee
36 for Public Counsel Services.

37 SECTION 5. Section 20 of chapter 31 of the General Laws, as appearing in the 2008
38 Official Edition, is hereby amended by striking out in line 10 the word “seventeen” and inserting
39 in place thereof the following word:- eighteen

40 SECTION 6. Section 24 of chapter 37 of the General Laws, as appearing in the 2008
41 Official Edition, is hereby amended by striking out in paragraph (d) the word “seventeen” and
42 inserting in place thereof the following word:- eighteen

43 SECTION 7. Section 32H of chapter 94C, as most recently amended by section 71 of
44 Chapter 256 of the Acts of 2010, is hereby further amended by striking out in the last sentence
45 the number “17” and inserting in place thereof the following number:- 18

46 SECTION 8. Section 32M of chapter 94C of the General Laws, as appearing in the 2008
47 Official Edition, is hereby amended by striking out in line 6 the word “seventeen” and inserting
48 in place thereof the following word:- eighteen

49 SECTION 9. Section 36 of said chapter 94C, as so appearing, is hereby amended by
50 striking out, in line 6 the word “seventeenth” and inserting in place thereof the following word:-
51 eighteenth

52 SECTION 10. Section 52 of said chapter 119, as so appearing, is hereby amended by
53 striking out in line 5 in the definition of “Delinquent child” the word “seventeen” and inserting in
54 place thereof the following word:- eighteen

55 SECTION 11. Said section 52 of said chapter 119, as so appearing, is hereby further
56 amended by striking out in line 14 in the definition of “Youthful offender,” the word “seventeen”
57 and inserting in place thereof the following word:- eighteen

58 SECTION 12. Section 54 of said chapter 119, as so appearing, is hereby amended by
59 striking out in lines 2 and 20 the word “seventeen” and inserting in place thereof the following
60 word:- eighteen

61 SECTION 13. The second sentence of the first paragraph of section 58 of said chapter
62 119, as so appearing, is hereby amended by inserting in lines 9 and 10 after the words “or age
63 nineteen in the case of a child whose case is disposed of after he has attained his eighteenth
64 birthday” the following:-

65 or age twenty in the case of a child whose case is disposed of after he has attained his
66 nineteenth birthday.

67 SECTION 14. The second paragraph of said section 58 of said chapter 119 , as so
68 appearing, is hereby further amended by inserting after the words “or nineteen in the case of a
69 child whose case is disposed of after he has attained his eighteenth birthday” the following:-

70 , or age twenty in the case of a child whose case is disposed of after he has attained his
71 nineteenth birthday.

72 SECTION 15. Said section 58 of said chapter 119, as so appearing, is hereby further
73 amended by striking out in line 67 the word “seventeenth” and inserting in place thereof the
74 following word:- eighteenth

75 SECTION 16. Said section 58 of said chapter 119, as so appearing, is hereby further
76 amended by inserting in line 89 after the words “child attains his eighteenth birthday” the
77 following:-

78 or his nineteenth birthday in the case of a child whose case is disposed of after he has
79 attained his eighteenth birthday

80 SECTION 17. The second paragraph of section 60A of said chapter 119, as so appearing,
81 is hereby amended by striking out the word “seventeenth” and inserting in place thereof the
82 following word:- eighteenth

83 SECTION 18. Said paragraph of said section of said chapter is hereby further amended
84 by striking out the word, “seventeen” where it so appears and inserting in place thereof the
85 following word:- eighteen

86 SECTION 19. In clause (i) of paragraph 1 of section 63A of said chapter 119, as so
87 appearing, is hereby amended by striking out the words “seventeen, or under the age of 18 and in
88 state custody,” and inserting in place thereof the follow word:- eighteen

89 SECTION 20. Section 65 of said chapter 119, as so appearing is hereby amended by
90 striking out in line 2 the word “seventeenth” and inserting in place thereof the following word:-
91 eighteenth

92 SECTION 21. Section 66 of said chapter 119, as so appearing, is hereby amended by
93 striking out in lines 2 to 3, inclusive, and in line 5 the word “seventeen” and inserting in place
94 thereof the following word:- eighteen

95 SECTION 22. Section 67 of said chapter 119, as so appearing, is hereby amended by
96 striking out in lines 2, 19, 20, 35 and 45 the word “seventeen” and inserting in place thereof the
97 following word:- eighteen

98 SECTION 23. Section 68 of said Chapter 119, as so appearing, is hereby amended by
99 striking out in lines 2, 31 and 46 the word “seventeen” and inserting in place thereof the
100 following word:- eighteen

101 SECTION 24. Section 68A of said chapter 119, as so appearing, is hereby amended by
102 striking out in line 1 the word “seventeen” and inserting in place thereof the following word:-
103 eighteen

104 SECTION 25. Section 70 of said chapter 119, as so appearing, is hereby amended by
105 striking out in line 2 the word “seventeen” and inserting in place thereof the following word:-
106 eighteen

107 SECTION 26. Section 72 of said chapter 119, as so appearing, is hereby amended by
108 striking out in line 8 the word “nineteenth” and inserting in place thereof the following word:-
109 twentieth

110 SECTION 27. Said section 72 of said chapter 119, as so appearing, is hereby further
111 amended by striking out, in lines 9 to 12, inclusive, the words “seventeenth birthday, and is not
112 apprehended until between his seventeenth and eighteenth birthday, the court shall deal with
113 such child in the same manner as if he has not attained his seventeenth birthday” and inserting in
114 place thereof the following:-

115 eighteenth birthday, and is not apprehended before his nineteenth birthday, the court shall
116 deal with such child in the same manner as if he has not attained his eighteenth birthday

117 SECTION 28. Section 72A of said chapter 119, as so appearing , is hereby amended by
118 striking out in lines 2 to 3, inclusive, the words “seventeenth birthday, and is not apprehended
119 until after his eighteenth birthday,” and inserting in place thereof the following:-

120 eighteenth birthday, and is not apprehended until after his nineteenth birthday,

121 SECTION 29. Paragraphs 1 and 2 of Section 72B of chapter 119 of the General Laws, as
122 appearing in the 2010 Official Edition, are hereby amended by striking out said paragraphs and
123 inserting in place thereof the following new paragraphs:

124 Notwithstanding the provisions of section two of chapter two hundred and sixty-five, if a
125 person is found guilty of murder in the first degree committed on or after his fourteenth birthday
126 and before his eighteenth birthday, the juvenile court shall commit the person to imprisonment in
127 a state prison for life and, except as provided in section 72D of this chapter, shall fix a minimum
128 term which shall be not less than 15 years nor more than 25 years. In making the determination
129 as to when said person shall be eligible for parole, the court shall consider aggravating factors as
130 described in section 72D of this chapter. Said person shall be eligible for parole under section
131 one hundred and thirty-three A of chapter one hundred and twenty-seven when such person has
132 served said minimum term of confinement, except as provided in section 72D of this chapter.
133 Thereafter said person shall be subject to the provisions of law governing the granting of parole
134 permits by the parole board.

135 Notwithstanding the provisions of section two of chapter two hundred and sixty-five, if a
136 person is found guilty of murder in the second degree committed on or after his fourteenth
137 birthday and before his eighteenth birthday, the juvenile court shall commit the person to
138 imprisonment in a state prison for life. Said person shall be eligible for parole under section one
139 hundred and thirty-three A of chapter one hundred and twenty-seven when such person has
140 served twelve and a half years of said confinement. Thereafter said person shall be subject to the
141 provisions of law governing the granting of parole permits by the parole board.

142 SECTION 30. Said section 72B of chapter 119 of the General Laws, as appearing in the
143 2010 Official Edition, is hereby further amended by striking out the word “superior” in lines 15
144 and 34, and inserting in place thereof, in each instance, the following word:- juvenile

145 SECTION 31. Said Section 72B is hereby further amended by striking out in line 24 the
146 word “seventeenth” and inserting in place thereof the following word:- eighteenth

147 SECTION 32. Said section 72B is hereby further amended by striking out paragraph 4
148 and inserting in place thereof the following new paragraph:

149 A person who is found guilty of murder in the first or second degree committed on or
150 after his fourteenth birthday and before his eighteenth birthday and is sentenced to a state prison
151 but who has not yet reached his twenty-first birthday shall remain in the custody of the
152 department of youth services until his twenty-first birthday.

153 SECTION 33. Said chapter 119 of the General Laws, as so appearing, is hereby amended
154 by inserting after section 72B the following two sections:

155 Section 72C. If a defendant is charged with murder in the first degree committed on or
156 after his fourteenth birthday and before his eighteenth birthday, the Commonwealth shall provide
157 notice to the defendant not later than 60 days after receipt of indictments for the charged offenses
158 that, upon conviction, it intends to request the imposition of life imprisonment without the
159 possibility of parole.

160 If the Commonwealth asserts its intent to request the imposition of life imprisonment
161 without the possibility of parole against the defendant and the jury returns a verdict of guilty of
162 murder in the first degree under a theory of deliberate premeditation or with extreme atrocity or
163 cruelty, then the court may consider the sentence of life imprisonment without the possibility of
164 parole upon a finding that:

165 (1) the offense involved in the infliction of torture or extreme physical, psychological, or
166 sexual abuse;

167 (2) at least one victim was under the age of 12; or

168 (3) the defendant has caused the death of multiple victims.

169 During such hearing, the defendant shall have a right to elect sentencing by the jury
170 impanelled to try the defendant or a jury impanelled for sentencing, or the defendant may waive
171 the right to sentencing by jury, by signing a written waiver. Except when the defendant has
172 waived the right to a jury, the jury shall advise the court regarding the appropriateness of a
173 sentence of life imprisonment without the possibility of parole. The court shall submit to the jury
174 special questions concerning the defendant's culpability and capacity for rehabilitation. The
175 Court shall not impose a sentence of life without parole unless the jury unanimously finds the
176 Commonwealth has proven beyond a reasonable doubt that:

177 (1) the defendant killed or had the intent to kill the victim;

178 (2) the defendant exhibited the level of maturity and sense of responsibility typical of a
179 reasonable adult at the time of the offense;

180 (3) the defendant was not unduly vulnerable to negative influences from family and
181 peers, at the time of the offense;

182 (4) the defendant was not the victim of extreme physical, psychological, or sexual abuse
183 at home or in the community;

184 (5) the actions of the defendant are evidence of irretrievably depraved character and
185 irreparable corruption as demonstrated by an entrenched pattern of unlawful, violent behavior;

186 (6) a sentence of life without parole is in the interest of justice and necessary for the
187 safety and security of the public and that no lesser sentence will satisfy these interests.

188 A sentence of life without the possibility of parole shall not be imposed unless the jury
189 has made written findings that each of the above factors was proven beyond a reasonable doubt.
190 After the jury has made its findings, if the court is not convinced, beyond a reasonable doubt,
191 that no lesser sentence will satisfy the interests of justice and the safety and security of the
192 community, it shall impose a lesser sentence.

193 Any defendant sentenced to life without parole under the provisions of this section shall
194 be eligible, after a period of incarceration of at least 10 years, to petition the sentencing court for
195 a resentencing hearing. The court shall in such cases conduct a resentencing hearing within 180
196 days of the defendant’s petition. If possible, the judge who sentenced the defendant shall
197 conduct the resentencing hearing. A defendant shall be entitled to counsel at such resentencing
198 hearing. The judge may decide to resentence the defendant to a term of life with parole eligibility
199 after at least 15 years, or may decide to deny the defendant’s request for resentencing and leave
200 in place the sentence of life without parole. In either case, the judge shall enter written findings
201 in support of the decision. A defendant whose resentencing request is denied may, after a period
202 of incarceration of at least 15 years, again petition the sentencing court for a resentencing
203 hearing, which shall in all respects be conducted in the same manner as described in this
204 paragraph. The court shall notify all victims of any such resentencing hearing, at which any
205 victim shall have the right to submit a victim impact statement.

206 Section 72D. As soon as practicable after the indictment of a defendant for murder in the
207 first degree committed on or after his fourteenth birthday and before his eighteenth birthday,
208 there shall be an independent, comprehensive psychological and neuro-testing evaluation
209 conducted by a professional who is qualified in accordance with minimal qualifications as
210 determined by the department of mental health. Nothing in this section shall prevent either the
211 defendant or the prosecutor from pursuing a similar evaluation, nor from presenting evidence,
212 either at trial or at a sentencing hearing, on such evaluation. All such evaluations, as well as any
213 reports, records, and other information and materials used in their production, may be sealed by
214 order of the court. All such evaluations shall be inadmissible at any future trial.

215 SECTION 34. Section 74 of said chapter 119, as so appearing, is hereby amended by
216 striking out in line 3 the word “seventeenth” and inserting in place thereof the following word:-
217 eighteenth

218 SECTION 35. Said section 74 of said chapter 119, as so appearing, is hereby further
219 amended by striking out in lines 10 and 14 the word “seventeen” and inserting in place thereof
220 the following word:- eighteen

221 SECTION 36. Section 84 of said chapter 119, as so appearing, is hereby amended by
222 striking out in line 11 the words “seventeen (or eighteen)” and inserting in place thereof the
223 following:- eighteen (or nineteen)

224 SECTION 37. Section 15 of chapter 120 of the General Laws, as appearing in the 2008
225 Official Edition, is hereby amended by striking out in lines 3 and 4 the word “seventeen” and
226 inserting in place thereof the following word:- eighteen

227 SECTION 38. Section 21 of said chapter 120, as so appearing, is hereby amended by
228 striking out in line 17 the word “seventeen” and inserting in place thereof the following word:-
229 eighteen

230 SECTION 38A. Section 130 of chapter 127, as so appearing, is hereby amended by
231 inserting, at the end thereof, the following paragraph:-

232 In the case of a prisoner at least one of whose offenses was committed prior to the
233 prisoner’s eighteenth birthday, the prisoner shall be entitled to counsel at any parole hearing, and
234 to present testimony from experts in the psychological, social, and mental development of
235 adolescents, and the particular circumstances of juvenile offenders. At any such hearing, the
236 board shall, in addition to the above, consider the prisoner’s age at the time of the offense and
237 review psychological evaluations, if any, of the prisoner proximate to the time of the offense.

238 SECTION 39. Paragraph one of section 133A of chapter 127 of the General Laws, as
239 appearing in the 2010 Official Edition, is hereby amended by striking out said paragraph and
240 inserting in place thereof the following new paragraph:

241 Section 133A. Notwithstanding the provisions of section two of chapter two hundred and
242 sixty-five, every prisoner who is serving a sentence for life in a correctional institution of the
243 commonwealth, except prisoners confined to the hospital at the Massachusetts Correctional
244 Institution, Bridgewater, and except prisoners serving a life sentence for murder in the first
245 degree who committed such offense on or after their eighteenth birthday, shall be eligible for
246 parole, and the parole board shall, within sixty days before the expiration of fifteen years of such
247 sentence, conduct a public hearing before the full membership unless a member of the board is
248 determined to be unavailable as provided in this section. For the purposes of this section, the
249 term unavailable shall mean that a board member has a conflict of interest to the extent that he
250 cannot render a fair and impartial decision or that the appearance of a board member would be
251 unduly burdensome because of illness, incapacitation, or other circumstance. Whether a member
252 is unavailable for the purposes of this section shall be determined by the chair. Board members
253 shall appear unless said chair determines them to be unavailable. Under no circumstances shall a
254 parole hearing proceed pursuant to this section unless a majority of the board is present at the
255 public hearing. Unless a board member is unavailable due to a conflict of interest, any board
256 member who was not present at the public hearing shall review the record of the public hearing
257 and shall vote in the matter.

258 SECTION 40. Section 133C of said chapter 127, as so appearing, is hereby amended by
259 inserting after the words, “except prisoners serving a life sentence for murder in the first degree”

260 and before the words, “and prisoners” the following:- who committed such offense on or after
261 their eighteenth birthday,

262 SECTION 41. Section 13 of chapter 250 of the General Laws, as appearing in the 2008
263 Official Edition, is hereby amended by striking out in line 3 the word “seventeen” and inserting
264 in place thereof the following word:- eighteen

265 SECTION 42. Section 89A of chapter 276 of the General Laws, as appearing in the 2008
266 Official Edition, is hereby amended by striking out in line 3 the word “seventeen” and inserting
267 in place thereof the following word:- eighteen

268 SECTION 43. Section 2 of chapter 276A of the General Laws, as appearing in the 2008
269 Official Edition, is hereby amended by striking out in lines 6 and 10 the word “seventeen” in and
270 inserting in place thereof the following word:- eighteen

271 SECTION 44. Section 6B of chapter 280 of the General Laws, as appearing in the 2008
272 Official Edition, is hereby amended by striking out in line 3 the word “seventeen” and inserting
273 in place thereof the following word:- eighteen

274 SECTION 45. No later than 180 days after the effective date of this act, the department of
275 youth services shall, in consultation with the department of corrections, promulgate regulations
276 regarding the housing of offenders convicted of murder in the first or second degree committed
277 before the offender’s eighteenth birthday, in accordance with section 72B of chapter 119 of the
278 General Laws. Such regulations may include a requirement that such offenders who have
279 reached their eighteenth birthday be segregated from others.

280 SECTION 46. No later than 180 days after the effective date of this act, the department of
281 mental health shall, in consultation with the certified juvenile court clinicians training committee,
282 promulgate regulations which provide minimum qualifications for the certification of experts in
283 the field of comprehensive psychological and neuro-testing evaluation of juvenile offenders, in
284 accordance with section 72D of chapter 119 of the General Laws.]

285 SECTION 47. Notwithstanding any general or special law to the contrary, each member
286 appointed to the parole board shall, within 90 days of said appointment, receive training in
287 understanding the psychological, social, and mental development of adolescents, and the
288 particular circumstances of juvenile offenders.

289 The department of correction, in consultation with the administrative office of the trial
290 court, shall, within 180 days of the effective date of this act, develop such training materials.

291 SECTION 48. Notwithstanding any general or special law to the contrary, each judge
292 appointed to the juvenile court shall, within 90 days of said appointment, receive training in
293 understanding the psychological, social, and mental development of adolescents, and the
294 particular circumstances of juvenile offenders.

295 The administrative office of the trial court, in consultation with the department of
296 correction, shall, within 180 days of the effective date of this act, develop such training
297 materials.

298 SECTION 49. Notwithstanding the provisions of section two of chapter two hundred and
299 sixty-five or section 133A of chapter 127 of the General Laws, or any other general or special
300 law to the contrary, a person serving a life sentence for murder in the first degree as of the
301 effective date of this act who committed such offense before his eighteenth birthday shall be
302 eligible for parole under section one hundred and thirty-three A of chapter one hundred and
303 twenty-seven when such person has served fifteen years of said confinement.

304 SECTION 50. Nothing in this act shall be construed to diminish, or otherwise alter, any
305 right afforded under chapter 258B of the General Laws.