

**SENATE . . . . . No. 714**

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**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.