HOUSE DOCKET, NO. 2109 FILED ON: 1/15/2015

HOUSE . . . . . No. 1185

The Commonwealth of Massachusetts

PRESENTED BY:

Garrett J. Bradley

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 competency for juveniles.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Garrett J. Bradley	*3rd Plymouth*

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HOUSE . . . . . No. 1185

By Mr. Bradley of Hingham, a petition (accompanied by bill, House, No. 1185) of Garrett J. Bradley relative to the competency of juveniles to stand trial. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1539* OF 2013-2014.]

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act relative to competency for juveniles.

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. Chapter 123 of the General Laws is hereby amended by inserting after section 15 the following section :-

Section 15A– Juvenile-Competency to Stand Trial-Fitness to Proceed

The provisions of this statute shall apply to any juvenile delinquency, youthful offender, or murder proceeding where the juvenile's adjudicative competence is raised as an issue by any party or sua sponte by the court at any time in the proceeding against the juvenile. Once an issue of the juvenile's adjudicative competence is raised, the proceeding shall be stayed until the court makes a determination regarding the competence of the juvenile pursuant to the following provisions.

A. Definitions:

11 The following words and phrases as used in this section shall have the following
12 meanings:

13 (1) "Competence" – a juvenile is competent to stand trial or tender a plea if s/he has
14 "sufficient present ability to consult with his/her lawyer with a reasonable degree of rational
15 understanding and has a rational as well as factual understanding of the proceedings against
16 him/her."

17 (2) "Juvenile" - any person who is at least seven years of age and under the age of
18 seventeen at the time of the alleged offense; any person charged with homicide who is under the
19 age of eighteen at the time of the alleged offense.

20 (3) "Young Juvenile" – any person twelve or younger at the time of arraignment on
21 the charge[s] before the court. All young juveniles are presumed to lack sufficient capacities to
22 understand the proceeding against them or to be able to assist in their own defense.

23 (4) "Foreseeable future" - the specified time period in which the child shall attain or
24 regain the capacities associated with competence to stand trial.

25 (5) "Burden of proof" – whenever the issue of competence is raised or incompetence
26 presumed, the Commonwealth shall bear the burden to prove by a preponderance of the evidence
27 that the juvenile is competent.

28 (6) "Qualified examiner" - a licensed psychiatrist or psychologist who is qualified by
29 training and experience in the clinical and forensic evaluation of children and adolescents.

30 B. Procedure:

31 At any stage in the proceeding, whenever a court of competent jurisdiction finds that a
32 reasonable basis exists for doubt about a juvenile's competence, or the Commonwealth objects to
33 the presumption that a young juvenile is incompetent, the court may:

34 (1) order an evaluation of the juvenile by a qualified examiner from the court clinic.

35 The evaluation shall be performed in the least restrictive setting and any juvenile
36 otherwise entitled to release or bail shall not be held in a place of detention solely for the
37 purposes of conducting the evaluation.

38 (2) if there is a request for a competency evaluation for a juvenile, fourteen or older,
39 charged with murder, the evaluation shall be conducted by a licensed psychiatrist or psychologist
40 who is qualified by training and experience in the clinical and forensic evaluation of children and
41 adolescents.

42 (3) The evaluation shall be conducted and a report completed and submitted to the court
43 no later than thirty days after the date it was ordered, unless the time for completion is extended
44 by the court for good cause. No statement or disclosure of the juvenile concerning the alleged
45 offense made during a competency evaluation may be included in the report or used against the
46 juvenile at trial, adjudication, disposition hearing, or any other court proceeding, as evidence or
47 as a basis for such evidence.

48

49 (4) The examiner's report shall be sealed and shall not be available to the parties unless:
50 (a) the judge determines that the report contains no information, or evidence which is based upon

51 statements of the juvenile in violation of the privilege against self-incrimination; or (b) the
52 juvenile files a motion requesting that the report be made available to the parties.

53 (5) The report shall include the juvenile's developmental history, any physical,
54 psychiatric and psychological tests relevant to the examiner's opinion regarding the issue of
55 competence; the examiner's opinion as to the juvenile's competence, including the bases and
56 reasons for the opinion; and the examiner's qualifications. The report shall address, with
57 specificity, the following: (i) the juvenile's capacity to understand the proceedings against
58 him/her; (ii) his/her ability to assist the attorney in the preparation of a defense; (iii) whether the
59 juvenile suffers from mental illness, mental disability, developmental delays, immaturity or other
60 causes that undermine his/her fitness to proceed; and (iv) if the examiner opines that the juvenile
61 is not competent to proceed, whether there is a substantial probability that the juvenile will attain
62 or regain competency within the foreseeable future.

63 (6) Upon an order for a competency evaluation, all proceedings shall be stayed and the
64 period of delay until the juvenile is determined legally competent shall constitute an exclusion
65 from the speedy trial provisions of Article 11 of the Massachusetts Declaration of Rights and the
66 Sixth Amendment to the Constitution of the United States.

67 (7) The court shall promptly schedule a competence hearing no later than seven days after
68 receipt of the qualified examiner's report. If the attorneys of record stipulate to the findings of
69 the examiner, and if the court concurs, a finding as to the juvenile's competence to stand trial
70 shall be entered into the record. If either party or the court wishes to proceed to an evidentiary
71 hearing, the court shall promptly conduct the same no later than fourteen days after the filing of
72 the report. The Commonwealth shall bear the burden to prove by a preponderance of the

73 evidence that the juvenile is competent. Upon completion of the evidentiary hearing, the court
74 shall make a finding on the issue of competence.

75 (8) If the court finds by a preponderance of the evidence that the juvenile is competent to
76 stand trial, the case shall continue according to the usual course of proceedings. However, at any
77 time before trial or during the trial, any party to the case may request a hearing on whether the
78 juvenile is competent to stand trial.

79 (9) If the court finds by a preponderance of the evidence that the juvenile is not
80 competent to stand trial, the court shall make findings as to whether there is substantial
81 probability that the juvenile will attain or regain competence in the foreseeable future and the
82 findings shall be entered into the record.

83 (10) If the court finds the juvenile is not competent, proceedings shall be stayed until
84 such time as the juvenile becomes competent to stand trial, unless the case is dismissed pursuant
85 to subsection C (5).

86 C. Procedure when the juvenile is found incompetent:

87 (1) If the court determines that the juvenile is not competent, but there is a substantial
88 probability that the juvenile will attain or regain competence within the applicable time limit, the
89 court shall continue the matter and order update evaluations of the juvenile by an examiner no
90 later than every six months from the date of the finding of incompetence during the period of
91 oversight. If the examiner opines that the juvenile will attain or regain competence in the
92 applicable time limit, the opinion must be supported by explicit documentation that the juvenile
93 is making progress toward achieving competency.

94 (2) If the juvenile is subject to pretrial detention pursuant to G.L.c. 276, §§58 or 58A and
95 the court determines that the juvenile is incompetent, but there is a substantial probability that the
96 juvenile will attain or regain competence within the applicable time limit, the court shall
97 continue the matter and order update evaluations of the juvenile by an examiner no later than 90
98 days from the date of the finding of incompetence during the period of oversight. If the
99 examiner continues to opine that the juvenile will attain or regain competence in the applicable
100 time limit, the juvenile's continued detention must be justified by evidence that the juvenile has
101 made progress toward achieving competency.

102 (3) If, at any time, there is adequate information to document that the juvenile is not
103 making progress toward achieving competence or shall not attain or regain competence in the
104 applicable time limit, the matter shall be promptly brought before the Court and the Court shall
105 order the incompetent juvenile's immediate release from detention.

106 (4) If the court finds the juvenile incompetent, and there is not a substantial probability
107 that the child will attain or regain competence in the applicable time limit, the court may dismiss
108 the charges against such child in the interests of justice at any time.

109 (5) The court shall dismiss the charges against an incompetent juvenile no later than 6
110 months after the finding of incompetence if the alleged act is a misdemeanor or a violation of
111 any city ordinance or town by-law. The court shall dismiss the charges against an incompetent
112 juvenile no later than 18 months if the alleged charge is a felony. The court shall dismiss the
113 charges against an incompetent juvenile no later than when s/he turns age twenty-one when the
114 charge is murder, unless the juvenile is under age 14 at the time of the offense, than the case
115 shall be dismissed when the juvenile turns 18.

116 (6) Upon dismissal of the charges against the juvenile, the Commonwealth may seek civil
117 commitment of the juvenile pursuant to G.L.c. 123, §§8, 16 if appropriate. A child who is
118 incompetent due to developmental immaturity shall not be hospitalized.

119

120 (7) If counsel for a juvenile who has been found to be incompetent to stand trial believes
121 that s/he can establish a defense of not guilty to the charges pending against the juvenile other
122 than the defense of not guilty by reason of mental illness or mental defect, s/he may request an
123 opportunity to offer a defense thereto on the merits before the court which has jurisdiction. The
124 court may require counsel for the juvenile to support the request by affidavit or other evidence. If
125 the court in its discretion grants such a request, the evidence of the juvenile and of the
126 commonwealth shall be heard by the court sitting without a jury. If after hearing such petition,
127 the court finds a lack of substantial evidence to support an adjudication, the court shall dismiss
128 the charge(s) or find them defective or insufficient.