

HOUSE No. 1439

The Commonwealth of Massachusetts

PRESENTED BY:

Russell E. Holmes

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 reforming juvenile offender law.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>1/18/2019</i>
<i>Bud L. Williams</i>	<i>11th Hampden</i>	<i>1/23/2019</i>
<i>José F. Tosado</i>	<i>9th Hampden</i>	<i>1/30/2019</i>

HOUSE No. 1439

By Mr. Holmes of Boston, a petition (accompanied by bill, House, No. 1439) of Russell E. Holmes, Bud L. Williams and José F. Tosado relative to the juvenile offender law. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act reforming juvenile offender law.

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. Section 52 of chapter 119 of the General Laws, as appearing in the 2016
2 Official Edition, is hereby amended by striking out, in lines 5 and 15, the figure “18” and
3 inserting in place thereof, in each instance, the following figure:- 19.

4 SECTION 2. Said chapter 119, as so appearing, is hereby further amended by striking out
5 section 72B and inserting in place thereof the following section:-

6 Section 72B. If a person is found guilty of murder in the first degree committed on or
7 after his sixteenth birthday and before his nineteenth birthday under the provisions of section 1
8 of chapter 265, the superior court shall commit the person to such punishment as is provided by
9 law for the offense. Said person shall be afforded a meaningful opportunity to obtain release on
10 parole based on demonstrated maturity and rehabilitation and in accordance with the provisions
11 of law governing the granting of parole permits by the parole board.

12 If a person is found guilty of murder in the second degree committed on or after his
13 sixteenth birthday and before his nineteenth birthday under the provisions of section 1 of chapter
14 265, the superior court shall commit the person to such punishment as is provided by law. Said
15 person shall be eligible for parole under section 133A of chapter 127 when such person has
16 served 15 years of said confinement. Said person shall be afforded a meaningful opportunity to
17 obtain release on parole based on demonstrated maturity and rehabilitation and in accordance
18 with the provisions of law governing the granting of parole permits by the parole board.

19 If a person is alleged to have committed murder in the first or second degree under the
20 provisions of section 1 of chapter 265 after having attained the age of 14 but before attaining the
21 age of 16, the superior court shall forthwith transfer the proceeding to the juvenile court where
22 the minor shall be subject to the provisions of section 58 of chapter 119.

23 The superior court shall not suspend the commitment of a person found guilty of murder
24 in the first or second degree, nor shall the provisions of section 129C or 129D of chapter 127
25 apply to such commitment. In all cases where a person is alleged to have violated section 1 of
26 chapter 265, the person shall have the right to an indictment proceeding under section 4 of
27 chapter 263.

28 A person who is found guilty of murder and is sentenced to a state prison but who has not
29 yet reached his eighteenth birthday shall be held in a youthful offender unit separate from the
30 general population of adult prisoners; provided, however, that such person shall be classified at a
31 facility other than the reception and diagnostic center at the Massachusetts Correctional
32 Institution, Concord, and shall not be held at the Massachusetts Correctional Institution, Cedar
33 Junction, prior to his eighteenth birthday.

34 The department of correction shall not limit access to programming and treatment
35 including, but not limited to, education, substance abuse, anger management and vocational
36 training for youthful offenders, as defined in section 52, solely because of their crimes or the
37 duration of their incarcerations. If the youthful offender qualifies for placement in a minimum
38 security correctional facility based on objective measures determined by the department, the
39 placement shall not be categorically barred based on a life sentence. The placement shall be
40 barred for a qualifying youthful offender only if the prisoner meets 1 or more of the following
41 objective criteria: (i) more than 5 years to his or her earliest release date; (ii) outstanding legal
42 issues; (iii) possible civil commitment; (iv) pending immigration detainer or deportation; (v)
43 pending disciplinary report; (vi) investigative hold; or (vii) documented on-going STG
44 involvement.

45 If a defendant is not found guilty of murder in the first or second degree, but is found
46 guilty of a lesser included offense or a criminal offense properly joined under Massachusetts
47 Rules of Criminal Procedure 9(a)(1), then the superior court shall make its disposition in
48 accordance with section 58.

49 Any person who has attained the age of 14 but has not yet attained the age of 16 who is
50 alleged to have committed murder, as described in section 2 of chapter 265, shall be prosecuted
51 as a youthful offender pursuant to section 58 and subject to the penalties outlined therein.

52 SECTION 3. Subsection (f) of section 15 of chapter 123 of the General Laws is hereby
53 repealed.

54 SECTION 4. Said chapter 123, as appearing in the 2018 Official Edition, is hereby
55 further amended by inserting after section 15 the following section:-

56 Section 15A. (a) The provisions of this section shall apply to any juvenile delinquency,
57 youthful offender, or murder proceeding where the juvenile’s adjudicative competence is raised
58 as an issue by any party or sua sponte by the court at any time in the proceeding against the
59 juvenile. Once an issue of the juvenile’s adjudicative competence is raised, the proceeding shall
60 be stayed until the court makes a determination regarding the competence of the juvenile
61 pursuant to the following provisions.

62 (b) As used in this section, the following words and phrases shall have the following
63 meanings:

64 “Juvenile”, any person who is under the age of 19 at the time of arraignment on the
65 charge before the court.

66 “Competence”, a legally competent youth means the person has sufficient present ability
67 to consult with his lawyer with a reasonable degree of rational understanding and has a rational
68 as well as factual understanding of the proceedings against him.

69 “Rebuttable presumption”, a presumption that all children under the age of 13 are not
70 legally competent. The commonwealth may overcome the presumption by proving by a
71 preponderance of the evidence that the child is competent.

72 “Causes of incompetence”, may include: cognitive disability such as mental retardation,
73 learning disability or other neurological disease or defect; psychiatric disease or disability;
74 physical disease or disability; developmental disability such as autism, pervasive developmental
75 disorder or other similar condition; developmental immaturity or young age; any other relevant
76 condition or circumstance contributing to any current impairment in the juvenile’s competence to
77 proceed.

78 “Burden of proof”, whenever the issue of competence is raised, the commonwealth shall
79 bear the burden to prove by a preponderance of the evidence that the juvenile is competent.

80 “Qualified examiner”, a psychiatrist or psychologist who is qualified by training and
81 experience in the clinical and forensic evaluation of juveniles.

82 (c) Whenever a court of competent jurisdiction finds that a reasonable basis exists for
83 doubt about a youth’s competence, the court shall order an evaluation of the youth by 1 or more
84 qualified examiners. The court shall direct that the examiner be provided any information or
85 materials likely to be relevant to the evaluation and determination of the issue of competence
86 including, but not limited to, charging documents, arrest of incident reports, juvenile criminal
87 history information, prior mental health evaluations, special education evaluations and individual
88 education plans.

89 The evaluation shall be performed in the least restrictive environment and any juvenile
90 otherwise entitled to release or bail shall not be held in a place of detention solely for the
91 purposes of conducting the evaluation.

92 Upon an order for an evaluation, all proceedings shall be stayed and the period of delay
93 until the youth is determined legally competent shall constitute an exclusion from any speedy
94 trial provision.

95 Upon completion of the evaluation, the examiner shall promptly and in no event
96 exceeding 14 days after receipt of all required information, submit a report in writing to the court
97 and the attorneys of record concerning the youth’s competence. If the court appointed evaluator
98 reports that the youth lacks the capacities associated with competence, the report shall address,
99 with specificity, the following: (i) the youth’s capacity to understand the proceedings against

100 him or her; (ii) his or her ability to assist the attorney in the preparation of a defense; (iii) the
101 causes of incompetence; (iv) the likelihood that he or she shall attain competency in the
102 foreseeable future; and (v) a description of suggested services, supports or other interventions to
103 assist the youth in the attainment or restoration of competency. No statement or disclosure of the
104 youth concerning the alleged offense made during a evaluation shall be included in the report or
105 used against the youth at trial, adjudication or disposition hearings as evidence or as a basis for
106 such evidence.

107 Upon receipt of the report, the court shall promptly schedule a hearing on the issue of
108 competence. If the attorneys of record stipulate to the findings of the qualified examiner and
109 jointly waive the hearing, and if the court concurs, a finding as to the youth's competence to
110 stand trial shall be entered into the record. If either party or the court wishes to proceed to a
111 hearing, the court shall promptly conduct an evidentiary hearing on the matter no later than
112 fourteen days after the filing of the report. The commonwealth shall bear the burden of proving
113 by a preponderance of the evidence that the youth is competent. Upon completion of the
114 hearing, the court shall make a determination on the issue of competence. If the court finds the
115 youth incompetent, the court shall make findings as to whether there is substantial probability
116 that the youth will attain competence in the foreseeable future and the findings shall be entered
117 into the record.

118 If the court is satisfied that the youth is competent to stand trial, the case shall continue
119 according to the usual course of proceedings.

120 If the court finds the youth incompetent, the case shall be stayed until such time as the
121 juvenile becomes competent to stand trial, unless the case is dismissed.

122 (d) If the court determines that the youth is incompetent, but there is a substantial
123 probability that he or she will attain or be restored to competence in the foreseeable future, the
124 court shall stay the proceedings and order the youth to receive services designed to achieve
125 competence based on the recommendations made by the qualified examiner in the competency
126 evaluation. The court shall order the services be provided in the least restrictive setting and the
127 court shall review the youth's progress toward competence every 180 days. No statement or
128 disclosure of the youth concerning the alleged offense made during the receipt of services shall
129 be included in any report or used against the youth at trial, adjudication or disposition hearings as
130 evidence or as a basis for such evidence.

131 (e) If the youth was charged with a misdemeanor, and still has not achieved competence
132 at the end of 180 days, the court shall dismiss the case with prejudice and, if appropriate, be
133 deemed to have accepted an application pursuant to section 39E of chapter 119 or initiate civil
134 commitment proceedings pursuant to chapter 123.

135 (f) If the youth was charged with a felony, and still has not achieved competence at the
136 end of 2 years following the finding of incompetence, and there is no substantial evidence that
137 the youth will attain competence within a year, the court shall dismiss the case with prejudice
138 and shall initiate civil commitment proceedings if appropriate.

139 (g) If the youth is charged with murder, the court may retain jurisdiction for up to 5 years
140 or until the juvenile reaches the age of 21. The court may order update examinations of the youth
141 by a qualified examiner every 6 months during the period of oversight. If at the end of this time
142 period, the youth has not attained competence, the court shall dismiss the case with prejudice and
143 shall initiate civil commitment proceedings if appropriate.

144 (h) If the court determines that the youth is incompetent and will not attain or be restored
145 to competence in the foreseeable future, the court shall: (i) in a case where the most serious
146 charge is a misdemeanor dismiss the case with prejudice and, if appropriate, be deemed to have
147 accepted an application pursuant to section 39E of chapter 119 or initiate civil commitment
148 proceedings pursuant to chapter 123; (ii) where the most serious charge is a felony, dismiss the
149 case with prejudice unless the court makes specific findings of good cause to retain jurisdiction.
150 However, in no case shall the court's jurisdiction extend beyond the juvenile's twenty-first
151 birthday. If appropriate, the court shall initiate civil commitment proceedings pursuant to chapter
152 123.

153 SECTION 5. Chapter 127 of the General Laws is hereby amended by striking out section
154 130 and inserting in place thereof the following section:-

155 Section 130. A parole permit shall be granted at a prisoner's first parole eligibility and at
156 any subsequent review hearing, unless the board determines by clear and convincing evidence
157 that, if the prisoner is released with appropriate conditions and community supervision, the
158 prisoner will not live and remain at liberty without violating the law. If the prisoner was
159 convicted of murder in the first or second degree for a crime committed while under the age of
160 19, the board shall give substantial weight to the prisoner's diminished culpability at the time of
161 the crime and his subsequent demonstrated maturity and rehabilitation.

162 The parole board shall make this determination based on the findings of validated risk
163 assessment tools, the prisoner's participation in available work opportunities, educational
164 opportunities and treatment programs, and the prisoner's demonstrated good behavior. The
165 board shall consider whether risk reduction programs, made available through collaboration with

166 criminal justice agencies, and other aspects of the prisoner's parole plan would minimize the
167 probability of the prisoner's offending once released.

168 The board shall issue its written decision no later than 90 days from the date of the
169 hearing. Any record of decision denying parole shall specify in detail, and not in conclusory
170 terms, the reasons why denial was appropriate in light of the findings of the validated risk
171 assessment tool, and shall identify the particular tasks the applicant must complete prior to the
172 next parole hearing in order to gain parole. Any minority or dissenting opinions shall be
173 included in the record of decision. If such permit is not granted, a subsequent review shall occur
174 no later than 5 years from the date of the hearing if the prisoner was over age 19 at the time of
175 the crime, and no later than 3 years from the date of the hearing if the prisoner was under age 18
176 at the time of the crime.