

HOUSE No. 1768

The Commonwealth of Massachusetts

PRESENTED BY:

Christopher M. Markey

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:	DATE ADDED:
<i>Christopher M. Markey</i>	<i>9th Bristol</i>	<i>2/19/2021</i>

HOUSE No. 1768

By Mr. Markey of Dartmouth, a petition (accompanied by bill, House, No. 1768) of Christopher M. Markey relative to competency for juveniles in certain court proceedings. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

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:

1 SECTION 1. Chapter 123 of the General Laws is hereby amended by inserting after
2 section 15 the following section :-

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

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

10 A. Definitions:

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

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

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

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

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

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

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

B. Procedure:

At any stage in the proceeding, whenever a court of competent jurisdiction finds that a reasonable basis exists for doubt about a juvenile’s competence, or the Commonwealth objects to 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

competence; the examiner's opinion as to the juvenile's competence, including the bases and reasons for the opinion; and the examiner's qualifications. The report shall address, with specificity, the following: (i) the juvenile's capacity to understand the proceedings against him/her; (ii) his/her ability to assist the attorney in the preparation of a defense; (iii) whether the juvenile suffers from mental illness, mental disability, developmental delays, immaturity or other causes that undermine his/her fitness to proceed; and (iv) if the examiner opines that the juvenile is not competent to proceed, whether there is a substantial probability that the juvenile will attain or regain competency within the foreseeable future.

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

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

(8) If the court finds by a preponderance of the evidence that the juvenile is competent to stand trial, the case shall continue according to the usual course of proceedings. However, at any

time before trial or during the trial, any party to the case may request a hearing on whether the juvenile is competent to stand trial.

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

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

C. Procedure when the juvenile is found incompetent:

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

(2) If the juvenile is subject to pretrial detention pursuant to G.L.c. 276, §§58 or 58A and the court determines that the juvenile is incompetent, but there is a substantial probability that the juvenile will attain or regain competence within the applicable time limit, the court shall continue the matter and order update evaluations of the juvenile by an examiner no later than 90 days from the date of the finding of incompetence during the period of oversight. If the

examiner continues to opine that the juvenile will attain or regain competence in the applicable time limit, the juvenile's continued detention must be justified by evidence that the juvenile has made progress toward achieving competency.

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

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

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

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

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.