

HOUSE No. 1435

The Commonwealth of Massachusetts

PRESENTED BY:

Kay Khan

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 passage of the accompanying bill:

An Act establishing age-appropriate accountability for children.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>

HOUSE No. 1435

By Ms. Khan of Newton, a petition (accompanied by bill, House, No. 1435) of Kay Khan and others relative to the penalty for the crime of murder in the first degree committed by persons fourteen to seventeen years of age. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act establishing age-appropriate accountability for children.

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 72B of chapter 119 of the General Laws, as appearing in the 2010
2 Official Edition, is hereby amended by striking out paragraphs 1, 2, and 3, and inserting in place
3 thereof the following paragraphs:-
4 Notwithstanding the provisions of section 2 of chapter 265, if a person is found guilty of
5 murder in the first degree committed on or after his fourteenth birthday and before his eighteenth
6 birthday, the juvenile court department shall commit the person to imprisonment in the state
7 prison for not more than 20 years or for life. The court shall fix the minimum term for any person
8 committed to the state prison for life pursuant to this paragraph, which shall not be less than 10
9 years nor more than 20 years. Said person shall be eligible for parole under section one hundred
10 and thirty-three A of chapter one hundred and twenty-seven when such person has served the
11 minimum term as set by the court. Thereafter said person shall be subject to the provisions of law
12 governing the granting of parole permits by the parole board.
13 Notwithstanding the provisions of section 2 of chapter 265, if a person is found guilty of
14 murder in the second degree committed on or after his fourteenth birthday and before his
15 eighteenth birthday, the juvenile court department shall commit the person to imprisonment in
16 the state prison for not more than 15 years or for life. The court shall fix the minimum term for
17 any person committed to the state prison for life pursuant to this paragraph, which shall not be
18 less than 10 years nor more than 15 years. Said person shall be eligible for parole under section
19 one hundred and thirty-three A of chapter one hundred and twenty-seven when such person has
20 served the minimum term as set by the court. Thereafter said person shall be subject to the
21 provisions of law governing the granting of parole permits by the parole board.
22 In determining whether to commit said person to imprisonment for a term of years, pursuant to

23 this section, or life and the minimum term of incarceration for a life sentence, the court shall
24 consider and make findings on the record regarding age-related considerations including: (1) the
25 age at the time of the offense; (2) hallmark features of adolescence, including immaturity,
26 impetuosity, and the ability to appreciate risks and consequences; (3) family and home
27 environment prior to and at the time of the offense; (4) extent of said persons participation in the
28 offense; (5) the impact of familiar and peer pressures; (6) history of prior felony convictions or
29 adjudications; and (7) the potential for rehabilitation. A showing of age-related diminished
30 culpability or capacity for change shall foreclose the imposition of a life sentence.

31 If the court commits said person to the state prison for life, the court shall specify an
32 individualized program of rehabilitation, consistent with programming that the Department of
33 Correction provides, reasonably related to the offense and the defendant that, if complied with by
34 the defendant during the time period prescribed by the court, would indicate that release is not
35 incompatible with the welfare of society.

36 Any sentence imposed for offenses arising out of the same transaction and occurrence shall run
37 concurrent with the governing sentence.

38

39 SECTION 2. Paragraph 4 of said section 72B of said chapter 119, as so appearing, is hereby
40 amended by striking out the word, “seventeenth”, where it so appears in the first and second
41 instance, and inserting in place thereof the word:-

42 twenty-first

43

44 SECTION 3. Paragraph 5 of said section 72B of said chapter 119, as so appearing, is hereby
45 further amended by striking out the words, “superior court”, where it so appears, and inserting in
46 place thereof the words:-

47 juvenile court department

48

49 SECTION 4. Said Chapter 119 of the General Laws, as so appearing, is hereby amended by
50 inserting after section 72B the following section:-

51 Section 72C. A person who is found guilty of murder in the first degree committed on or after
52 his fourteenth birthday and before his eighteenth birthday, and has been committed to
53 imprisonment in a state prison for life, may move for resentencing in the juvenile court
54 department after having served 10 years of the sentence and at least once in each ensuing 5 year
55 period for subsequent resentencing of a life sentence to a substitute sentence of not more than 20
56 years. Any sentence imposed for offenses arising out of the same transaction and occurrence
57 shall run concurrent with the governing sentence.

58 The defendant shall file the motion for resentencing with the juvenile court department and
59 serve a copy of the motion on the office of district attorney of the district where the offense was
60 originally prosecuted. The motion shall include the defendant’s statement that the offense
61 occurred prior to the defendant’s eighteenth birthday and that the defendant was committed to
62 imprisonment in a state prison for life.

63 □Upon motion by the defendant, the juvenile court department shall hold a hearing to consider
64 whether to resentence the defendant to a substitute sentence of not more than 20 years. The
65 defendant shall have the right to be present at the hearing, he shall be afforded reasonable
66 opportunity to prepare and present evidence, and he shall have the right to call and examine
67 experts. In determining whether to resentence the defendant to a substitute sentence of not more
68 than 20 years, the court shall consider and make findings on the record regarding demonstrated
69 rehabilitation and age-related considerations including: (1) mitigating circumstances relevant to
70 the defendant at the time of the offense; (2) evidence of cognitive and emotional development
71 since the time of the offence; (3) the frequency, nature and regularity of the defendant's
72 disciplinary history while incarcerated; (4) history of the defendants participation in
73 programming and activities, and access to said programming and activities, to further his
74 rehabilitation; and (5) other factors demonstrating rehabilitation.

75 □The defendant shall have the right to have counsel appointed if deemed to be indigent as
76 determined by the standards under chapter 211D. The Department of Correction shall provide
77 notice of the right to counsel to the defendant and the Committee for Public Counsel Services no
78 less than 120 days prior to the defendant becoming eligible for resentencing.

79 □If the defendant is resented to a substitute sentence of not more than 20 years, time served
80 on the original sentence shall be deemed to have been served on the substitute sentence.

81 □Upon the denial of resentencing, the court shall specify an individualized program of
82 rehabilitation, consistent with programming that the Department of Correction provides,
83 reasonably related to the offense and the defendant that, if complied with by the defendant during
84 a time period prescribed by the court, would indicate that release is not incompatible with the
85 welfare of society.

86 □SECTION 5. Said Chapter 119 of the General Laws, as so appearing, is hereby amended by
87 inserting after section 72B the following section:-

88 □Section 72D. A person who is found guilty of murder in the second degree committed on or
89 after his fourteenth birthday and before his eighteenth birthday, and has been committed to
90 imprisonment in a state prison for life, may move for resentencing in the juvenile court
91 department after having served 10 years of the sentence and at least once in each ensuing 5 year
92 period for subsequent resentencing of a life sentence to a substitute sentence of not more than 15
93 years. Any sentence imposed for offenses arising out of the same transaction and occurrence
94 shall run concurrent with the governing sentence.

95 □The defendant shall file the motion for resentencing with the juvenile court department and
96 serve a copy of the motion on the office of district attorney of the district where the offense was
97 originally prosecuted. The motion shall include the defendant's statement that the offense
98 occurred prior to the defendant's eighteenth birthday and that the defendant was committed to
99 imprisonment in a state prison for life.

100 □Upon motion by the defendant, the juvenile court department shall hold a hearing to consider
101 whether to resentence the defendant to a substitute sentence of not more than 15 years. The
102 defendant shall have the right to be present at the hearing, he shall be afforded reasonable

103 opportunity to prepare and present evidence, and he shall have the right to call and examine
104 experts. In determining whether to resentence the defendant to a substitute sentence of not more
105 than 15 years, the court shall consider and make findings on the record regarding demonstrated
106 rehabilitation and age-related considerations including: (1) mitigating circumstances relevant to
107 the defendant at the time of the offense; (2) evidence of cognitive and emotional development
108 since the time of the offence; (3) the frequency, nature and regularity of the defendant's
109 disciplinary history while incarcerated; (4) history of the defendant participation in programming
110 and activities, and access to said programming and activities, to further his rehabilitation; and (5)
111 other factors demonstrating rehabilitation.

112 The defendant shall have the right to have counsel appointed if deemed to be indigent as
113 determined by the standards under chapter 211D. The Department of Correction shall provide
114 notice of the right to counsel to the defendant and the Committee for Public Counsel Services no
115 less than 120 days prior to the defendant becoming eligible for resentencing.

116 If the defendant is resented to a substitute sentence of not more than 15 years, time served
117 on the original sentence shall be deemed to have been served on the substitute sentence.

118 Upon the denial of resentencing, the court shall specify an individualized program of
119 rehabilitation, consistent with programming that the Department of Correction provides,
120 reasonably related to the offense and the defendant that, if complied with by the defendant during
121 a time period prescribed by the court, would indicate that release is not incompatible with the
122 welfare of society.

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124 SECTION 6. Section 74 of chapter 119, as so appearing, is hereby amended by striking out
125 paragraph 2.

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127 SECTION 7. Said chapter 119, as so appearing, is hereby further amended by inserting after
128 section 85 the following section:-

129 Section 86. Notwithstanding any general or special law to the contrary, the provisions of
130 sections 52 through 85 shall apply to a person who is charged with murder occurring on or after
131 his fourteenth birthday and before his eighteenth birthday.

132

133 SECTION 8. Section 48 of chapter 127 of the General Laws, as appearing in the 2010 Official
134 Edition, is hereby amended by inserting after the first paragraph the following paragraph:-

135 The commissioner shall ensure that any person committed to the custody of the department
136 who has a court mandated individualized program of rehabilitation, pursuant to section 72C of
137 chapter 119, has meaningful, substantial, and consistent access to: educational; vocational; and
138 treatment programs including, but not limited to, substance abuse and mental health
139 programming, and other appropriate programming as determined by the commissioner.

140

141 SECTION 9. Section 133A of said chapter 127, as most recently amended by Chapter 192 of
142 the Acts of 2012, is hereby further amended by striking out the first paragraph and inserting in

143 place thereof the following paragraph:-

144 Notwithstanding the provisions of section 2 of chapter 265, every prisoner who is serving a
145 sentence for life in a correctional institution of the commonwealth, except prisoners confined to
146 the hospital at the Massachusetts Correctional Institution, Bridgewater, except prisoners serving
147 a life sentence for murder in the first degree who committed such offense on or after their
148 eighteenth birthday, and except prisoners serving more than one life sentence arising out of
149 separate and distinct incidents that occurred at different times, where the second offense occurred
150 subsequent to the first conviction, shall be eligible for parole at the expiration of the minimum
151 term fixed by the court under section 24 of chapter 279. The parole board shall, within 60 days
152 before the expiration of such minimum term, conduct a public hearing before the full
153 membership unless a member of the board is determined to be unavailable as provided in this
154 section. Notwithstanding the previous sentence, the board may postpone a hearing until 30 days
155 before the expiration of such minimum term, if the interests of justice so require and upon
156 publishing written findings of the necessity for such postponement. For the purposes of this
157 section, the term unavailable shall mean that a board member has a conflict of interest to the
158 extent that he cannot render a fair and impartial decision or that the appearance of a board
159 member would be unduly burdensome because of illness, incapacitation, or other circumstance.
160 Whether a member is unavailable for the purposes of this section shall be determined by the
161 chair. Board members shall appear unless said chair determines them to be unavailable. Under no
162 circumstances shall a parole hearing proceed pursuant to this section unless a majority of the
163 board is present at the public hearing. Unless a board member is unavailable due to a conflict of
164 interest, any board member who was not present at the public hearing shall review the record of
165 the public hearing and shall vote in the matter.

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167 SECTION 10. Paragraph 3 of section 133A of chapter 127, as most recently amended, is
168 hereby further amended by striking out the word, 'After,' and inserting in place thereof the
169 following words:-

170 Except for prisoners who are serving a life sentence for a murder who committed such offense
171 prior to their eighteenth birthday, after

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173 SECTION 11. Said section 133A of said chapter 127, as most recently amended, is hereby
174 further amended by inserting after the third paragraph the following paragraphs:-

175 If the prisoner is serving a life sentence for murder committed before his eighteenth birthday,
176 the parole board may, by a majority vote of its members, grant to such prisoner a parole permit to
177 be at liberty upon such terms and conditions as it may prescribe for the unexpired term of his
178 sentence. The parole board shall consider and make findings on the record regarding
179 demonstrated rehabilitation and age-related considerations including: (1) evidence of cognitive
180 and emotional development since the time of the offense; (2) the frequency, nature and regularity
181 of the defendant's disciplinary history while incarcerated; (3) history of the defendants
182 participation in programming and activities, and access to said programming and activities, to

183 further his rehabilitation; and (4) other factors demonstrating rehabilitation. If such prisoner has
184 completed his most recent individualized program of rehabilitation, pursuant to section 72C of
185 chapter 119, the parole board shall grant a parole permit unless, by a vote of two-thirds of its
186 members, the parole board determines that he is likely to cause injury to persons. If such permit
187 is not granted, the parole board shall, at least once in each ensuing five-year period thereafter,
188 consider carefully and thoroughly the merits of each such case on the question of releasing such
189 prisoner on parole, and may, by a vote of a majority of its members, grant such parole permit.

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191 If the prisoner is serving a life sentence for murder committed before his eighteenth birthday,
192 he shall have the right to have counsel appointed if deemed to be indigent as determined by the
193 standards under chapter 211D. Said board shall at least 90 days before such hearing notify the
194 prisoner of this right.

195 SECTION 12. Section 133C of said chapter 127, as so appearing, is hereby amended by
196 inserting after the words, “except prisoners serving a life sentence for murder in the first degree”,
197 and before the words, “and prisoners”, the following:-

198 who committed such offense on or after their eighteenth birthday

199 SECTION 13. The third sentence of section 24 of chapter 279, as most recently amended by
200 Chapter 192 of the Acts of 2012, is hereby further amended by inserting after the word “degree”
201 the following words:-

202 , except in the case of a prisoner serving a life sentence for murder who committed such
203 offense prior to their eighteenth birthday

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205 SECTION 14. This act shall take effect upon its passage.

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