

HOUSE No. 1539

The Commonwealth of Massachusetts

PRESENTED BY:

Eugene L. O'Flaherty

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 relative to competency for juveniles.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Eugene L. O'Flaherty

2nd Suffolk

Thomas J. Calter

12th Plymouth

HOUSE No. 1539

By Mr. O'Flaherty of Chelsea, a petition (accompanied by bill, House, No. 1539) of Eugene L. O'Flaherty and Thomas J. Calter relative to competency of juveniles to stand trial. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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 :-
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4 Section 15A– Juvenile-Competency to Stand Trial-Fitness to Proceed
5
6 The provisions of this statute shall apply to any juvenile delinquency, youthful offender, or
7 murder proceeding where the juvenile’s adjudicative competence is raised as an issue by any
8 party or sua sponte by the court at any time in the proceeding against the juvenile. Once an issue
9 of the juvenile’s adjudicative competence is raised, the proceeding shall be stayed until the court
10 makes a determination regarding the competence of the juvenile pursuant to the following
11 provisions.
12
13 A. Definitions:
14 The following words and phrases as used in this section shall have the following meanings:
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16 “(1) Competence” – a juvenile is competent to stand trial or tender a plea if s/he has
17 “sufficient present ability to consult with his/her lawyer with a reasonable degree of rational
18 understanding and has a rational as well as factual understanding of the proceedings against
19 him/her.”
20
21 “(2) “Juvenile” - any person who is at least seven years of age and under the age of seventeen
22 at the time of the alleged offense; any person charged with homicide who is under the age of
23 eighteen at the time of the alleged offense.

24

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

28

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

31

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

35

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

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39

40 B. Procedure:

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

45

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

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

50

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

55

56

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

63

64 (4) The examiner's report shall be sealed and shall not be available to the parties unless: (a) the
65 judge determines that the report contains no information, or evidence which is based upon
66 statements of the juvenile in violation of the privilege against self-incrimination; or (b) the
67 juvenile files a motion requesting that the report be made available to the parties.

68

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

79

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

84

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

93

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

98

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

103

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

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109 C. Procedure when the juvenile is found incompetent:

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

118

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

127

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

132

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

136

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

144

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

148

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

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