SENATE DOCKET, NO. 936 FILED ON: 1/17/2013

SENATE . . . . . No. 65

The Commonwealth of Massachusetts

PRESENTED BY:

James E. Timilty

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:

An Act relative to violent crime.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
James E. Timilty	*Bristol and Norfolk*

SENATE DOCKET, NO. 936 FILED ON: 1/17/2013

SENATE . . . . . No. 65

By Mr. Timilty, a petition (accompanied by bill, Senate, No. 65) of James E. Timilty for legislation relative to violent crime. Children, Families and Persons with Disabilities.

The Commonwealth of Massachusetts

An Act relative to violent crime.

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. Section 52 of Chapter 119 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended in line 13 by inserting after the word "committed," the following words:-"while under the age of seventeen, murder in violation of section one of chapter two hundred sixty-five; or"

SECTION 2. Section 54 of Chapter 119, as so appearing, is hereby amended in line 15 by inserting after the second paragraph the following new paragraph:-

"The commonwealth may proceed by complaint in juvenile court or in a juvenile session of a district court, as the case may be, or by indictment as provided by chapter two hundred and seventy-seven, if a person while under the age of seventeen is alleged to have committed an offense in violation of section one of chapter two hundred and sixty-five."

SECTION 3. Section 72B of Chapter 119, as so appearing, is hereby amended by inserting at the beginning thereof the following:-

"If a person is found guilty or adjudicated delinquent by reason of murder in the first degree committed before his fourteenth birthday under the provisions of section one of chapter two hundred and sixty-five, the person shall be sentenced to 20 years with possibility of parole after 15 years; or if found guilty or adjudicated delinquent by reason of murder in the second degree, the person shall be sentenced to 15 years with possibility of parole after 10 years in accordance with section fifty-eight of chapter one hundred nineteen."

SECTION 4. Chapter 265 of the General Laws, as so appearing, is hereby amended by striking out section 2 and inserting in its place the following:-

Section 2. (a) Except as provided in subsection (b), whoever is guilty of murder in the first degree shall be punished by imprisonment in the state prison for life, and such person shall

23 not be eligible for parole under section one hundred and thirty-three A of chapter one hundred
24 and twenty-seven.

25 (b) Any person who is guilty of murder in the first degree and who had not attained the
26 age of eighteen years at the time of the murder shall be punished by imprisonment in the state
27 prison for life and, notwithstanding any provision of section one hundred and thirty-three A of
28 chapter one hundred and twenty-seven to the contrary, may be designated by the court as eligible
29 for parole at the expiration of the minimum term fixed by the court under section twenty-four of
30 chapter two hundred and seventy-nine.

31 (c) Whoever is guilty of murder in the second degree shall be punished by imprisonment
32 in state prison for life.

33 (d) Any person whose sentence for murder is commuted by the governor and council
34 under the provisions of section one hundred and fifty-two of said chapter one hundred and
35 twenty-seven shall thereafter be subject to the provisions of law governing parole.

36 SECTION 5. Chapter 265 of the General Laws, as so appearing, is hereby amended by
37 inserting after section 15C the following 3 sections:-

38 Section 15D. (a) Whoever commits an assault and battery upon another by means of
39 discharging a firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun,

40 machine gun or assault weapon, as defined in section 121 of chapter 140, shall be

41 punished by imprisonment in the state prison for not more than 15 years or by

42 imprisonment in the house of correction for not more than 2½ years or by a fine of not

43 more than $10,000, or by both such fine and imprisonment.

44 (b) Whoever commits an assault and battery upon another by means of

45 discharging a firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun, machine

46 gun or assault weapon, as defined in section 121 of chapter 140, after 1 or more prior

47 convictions under subsection (a), section 15D or a law of another jurisdiction that

48 necessarily includes the elements of subsection (a) or section 15E, shall be punished by

49 imprisonment in the state prison for not less than 10 years nor more than 20 years. The

50 sentence imposed shall not be reduced to less than a term of 10 years imprisonment, nor
51 suspended, nor shall a person sentenced under this subsection be eligible for probation,

52 parole, work release or furlough or receive any deduction from the sentence for good

53 conduct, until having served 10 years of the sentence; provided, however, that the
54 commissioner of correction may, on the recommendation of the warden, superintendent
55 or other person in charge of a correctional institution, grant to an offender committed
56 under this subsection a temporary release in the custody of an officer of such institution
57 for the following purposes only: to attend the funeral of a relative; to visit a critically ill
58 relative; or to obtain emergency medical or psychiatric services unavailable at such
59 institution.
60 (c) Prosecutions commenced under this section shall not be suspended, continued
61 without a finding or placed on file. A sentence imposed under this section shall begin
62 from and after the expiration of any sentence imposed under paragraphs (a), (c), (d), (h),
63 (m) or (n) of section 10 of chapter 269 arising out of the same incident.
64 Section 15E. (a) Whoever commits an assault upon another by intentionally
65 brandishing a firearm, large capacity weapon, rifle, shotgun, sawed-off shotgun, machine
66 gun or assault weapon, as defined in section 121 of chapter 140, shall be punished by
67 imprisonment in the state prison for not more than 10 years or by imprisonment in the
68 house of correction for not more than 2½ years or by a fine of not more than $5,000, or
69 by both such fine and imprisonment. For the purposes of this subsection, "brandishing"
70 shall mean exhibiting or exposing in an ostentatious, shameless or aggressive manner.
71 (b) Any person convicted of violating subsection (a) after 1 or more prior
72 convictions under subsection (a), section 15D, or a law of another jurisdiction that
73 necessarily includes the elements of subsection (a) or section 15D, shall be punished by
74 imprisonment in the state prison for not less than 2 years nor more than 15 years. The
75 sentence imposed shall not be reduced to less than a term of 2 years imprisonment, nor
76 suspended, nor shall a person sentenced under this subsection be eligible for probation,
77 parole, work release or furlough or receive any deduction from the sentence for good
78 conduct, until having served 2 years of the sentence; provided, however, that the

79 commissioner of correction may, on the recommendation of the warden, superintendent
80 or other person in charge of a correctional institution, grant to an offender committed
81 under this subsection a temporary release in the custody of an officer of such institution
82 for the following purposes only: to attend the funeral of a relative; to visit a critically ill
83 relative; or to obtain emergency medical or psychiatric service unavailable at said
84 institution.
85 (c) Prosecutions commenced under this section shall not be suspended, continued
86 without a finding or placed on file. A sentence imposed under this section shall begin
87 from and after the expiration of any sentence imposed under paragraphs (a), (c), (d), (h),
88 (m) or (n) of section 10 of chapter 269 arising out of the same incident.
89 Section 15F. Any person who, with the intent that another commit murder,
90 solicits, counsels, advises or otherwise entices another to commit murder shall be
91 punished by imprisonment in the state prison for not more than 20 years, or by
92 imprisonment in the house of correction for not more than 2½ years and a fine of not
93 more than $1,000.
94 SECTION 6. Chapter 279 of the General Laws, as so appearing, is hereby amended by
95 striking out Section 24 and inserting in its place the following: -
96 Section 24. If a convict is sentenced to the state prison, except as a habitual criminal, the
97 court shall not fix the term of imprisonment, but shall fix a maximum and a minimum term for
98 which he may be imprisoned. The maximum term shall not be longer then the longest term fixed
99 by law for the punishment of the crime of which he has been convicted, and the minimum term
100 shall be a term set by the court, except that, where an alternative sentence to a house of
101 correction is permitted for the offense, a minimum state prison term may not be less than one
102 year. In the case of a sentence to life imprisonment, except in the case of a sentence for murder
103 in the first degree, and in the case of multiple life sentences arising out of separate and distinct
104 incidents that occurred at different times, where the second offense occurred subsequent to the
105 first conviction, the court shall fix a minimum term which shall not be less than 15 years nor
106 more than 25 years. In the case of a sentence for murder in the first degree imposed upon a
107 person who has been designated pursuant to subsection (b) of section two of chapter two hundred

108 and sixty-five as eligible for parole, the court shall fix a minimum term which shall not be less
109 than 35 years.