



Committee for Public Counsel Services Youth Advocacy Division

GUIDE TO JUVENILE COURT JURISDICTION AND DISPOSITIONS

Part I of this guide outlines Juvenile Court jurisdiction relative to delinquency and youthful offender proceedings. Part II outlines available dispositions in delinquency and youthful offender proceedings. As of September 18, 2013, 17 year olds are included in the jurisdiction of the juvenile court by Chapter 84 of the Acts of 2013 "An Act Expanding Juvenile Jurisdiction."

Juvenile Court Proceedings Are Not Criminal C. 119, § 53

This provision of Chapter 119 mandates that §§ 52-63: "[B]e liberally construed so that the care, custody and discipline of the children brought before the court shall approximate as nearly as possible that which they should receive from their parents, and that, as far as practicable, they shall be treated, not as criminals, but as children in need of aid, encouragement and guidance. Proceedings against children under said sections shall not be deemed criminal proceedings."

Juvenile Court Jurisdiction C. 119, § 54¹

- Children between the ages of 7 and 18,
- Who are alleged to have violated any city ordinance or town by-law or who commit any offense against a law of the Commonwealth. C. 119, § 52.

The Juvenile Court also has jurisdiction over individuals charged with:

- Contributing to the delinquency of a minor – C. 119, § 63; and
- Aiding and abetting/harboring or concealing a child - C. 119, § 63A.

The Juvenile Court **does not** have jurisdiction over youth between the ages of 14 and 18 charged with first or second degree murder. C. 119, § 74.

Youthful Offender Eligibility C. 119, § 54

A child between the ages of 14 and 18, charged with a felony, and:

- Who was previously committed to DYS; or
- Who is charged with a violation of c. 269 § 10 (a),(c), (d) or §10E (gun cases); or
- Who is charged with a felony which involves the "infliction or threat of serious bodily harm."

To determine whether a charge involved the "infliction or threat of serious bodily harm" the court looks to the facts of each case and not to the elements of the charge. *Commonwealth v. Clint C.*, 430 Mass. 219 (1999); *Commonwealth v. Quincy Q.*, 434 Mass. 859 (2001); *Commonwealth v. Hoshi H.*, 72 Mass. App. Ct. 18 (2008).

¹If the juvenile is under 12 the "court shall first issue a summons and in all other cases, unless the court has reason to believe that he will not appear upon summons or if such a child has been summoned and did not appear then court may issue a warrant. C. 119, § 54. In either case, a copy of summons or warrant must be delivered to the child's parent, legal guardian, or with whom the child resides. C. 119, § 55.

Youthful Offender Considerations

- The Commonwealth must present probable cause to the grand jury on the youthful offender elements and must prove these elements beyond a reasonable doubt at trial. *Commonwealth v. Quincy Q.*, 434 Mass. 859, 865 (2001).
- The Commonwealth may not directly indict a juvenile as a Youthful Offender if he is apprehended after age 19 for an offense that he is alleged to have committed prior to age 18. In these circumstances, a delinquency complaint must first issue and the juvenile is then entitled to a two-part transfer hearing under C. 119, § 72A. *Commonwealth v. Nanny*, 462 Mass. 798 (2012).
- Complaints and indictments, if properly joined under Mass. R. Crim. Pro. R. 9(a)(1), may be tried together. *Commonwealth v. Ulysses H.*, 52 Mass. App. Ct. 497 (2001). C. 119, § 54.
- Codefendant cases in which one or more of the codefendants is charged as youthful offender and one or more of the codefendants is charged in superior court may be tried together if the joinder is approved by the Chief Justice of the Trial Court. The procedure for this joinder is set out in G.L. c. 211B, § 9.

Continuing Jurisdiction C. 119, § 72(a)

If a child who is alleged to have committed an offense prior to age 18 is “not apprehended before age 19, the court shall deal with such child in the same manner as if he has not attained his eighteenth birthday, and all provisions and rights applicable to a child under eighteen shall apply to such child.”²

Jurisdiction **continues** after age 18 pending the final adjudication of the case which includes: “all remands and retrials following appeals from their cases, or during continuances or probation [subject to the limitations set forth in C. 119, §58], or after their cases have been placed on file, or for any other proceeding arising out of their cases.”

- Any youth whose case falls within §72(a) cannot be committed to DYS past age 20 in delinquency cases or age 21 in Youthful Offender cases.

DISPOSITIONS – Prior to Trial – Pre or Post Arraignment – No Admission or Plea

- **Dismissal** - Can be with court costs and/or community service or other condition.
- **Filed without a change of plea**
- **General continuance** – *Some* courts will continue the case, with no probationary conditions, with an end date for dismissal.
- **Diversions** - If available in your jurisdiction.
- **Pre-trial Probation** – C. 276, § 87. Commonwealth must consent. *Commonwealth v. Cheney*, 440 Mass. 568 (2004).

DISPOSITIONS - Delinquency Adjudications

Continuance Without a Finding – Except for the following C. 265 charges (C. 119, § 58):

§ 13B	(indecent A&B child under 14)	§ 22C	(rape of a child prior YO)
§ 13B1/2	(indecent A&B child under 14, agg. factors)	§ 23	(rape and abuse of child under 16)
§ 13B3/4	(indecent A&B child under 14 – Prior YO)	§ 23A	(rape and abuse of a child – agg. factors)
§ 22A	(rape of a child)	§ 23B	(rape and abuse of a child – prior YO)
§ 22B	(rape of a child, agg. factors)	§ 50	(human trafficking – sexual servitude)

²Prior to the 2013 amendment, this provision read: “If a child commits an offense prior to his seventeenth birthday, and is not apprehended until between his seventeenth and eighteenth birthday, the court shall deal with such child in the same manner as if he has not attained his seventeenth birthday, and all provisions and rights applicable to a child under seventeen shall apply to such child.” The 2013 amendment does not just substitute 18 for 17, it changes the meaning of the statute which is in direct conflict with C. 119, § 72A. As of this writing the conflict remains.

DISPOSITIONS - Delinquency Adjudications (cont'd)

A juvenile court judge **may give a juvenile a CWF after a jury or jury waived trial.** *Commonwealth v. Magnus M.*, 461 Mass. 459 (2012).

Delinquent Filed - Youth must consent and upon certain conditions the case can be reopened and a sentence imposed. See *Commonwealth v. Simmons*, 448 Mass. 687 (2007). (Charges that can't be cwof'd cannot be filed).

Probation (§§ 58, 72) – Probation cannot extend beyond:

- Age 18 if case is disposed of before age 18;
- Age 19 if case is disposed of between ages 18 and 19; and
- Age 20 if case is disposed of between ages 19 and 20.

Probation Considerations:

- The juvenile court can order the juvenile to pay restitution as part of his probation. The juvenile is entitled to a hearing on the question of the proper amount of restitution. *Commonwealth v. Nawn*, 394 Mass. 1, 7-8, (1985); C. 119, § 62. At the hearing, it is the Commonwealth's burden to prove the amount of the victim's losses by a preponderance of the evidence. The juvenile, in turn, has the opportunity to challenge that evidence as well as present evidence relevant to his ability to pay. See *Commonwealth v. Avram A.*, 83 Mass. App. 208 (2013).
- The *mandatory* provision of C. 265, § 47 requiring persons placed on probation for sex offenses to wear **GPS** as a term of probation does not apply to juvenile delinquency adjudications. *Commonwealth v. Hanson H.*, 464 Mass. 807 (2013).

DYS Suspended Sentence (A violation of a suspended sentence does not necessarily mean a child will be committed to DYS. DYS commitment is only mandated when probation is revoked. See Juvenile Court Standing Order 1-07 VIII (e.))

Commitment to DYS (§§ 58, 72):

- Age 18 if case is disposed of before age 18;
- Age 19 if case is disposed of between ages 18 and 19; and
- Age 20 if case is disposed of between ages 19 and 20.

DISPOSITIONS - Youthful Offender C. 119, § 58

Commitment to DYS to age 21— A commitment can be suspended. (While no case addresses this issue, in order for a sentence to be mandatory the statute must say that it cannot be suspended; this statute does not include such language.)

Any sentence provided by law

- "Punishment as provided by law" is defined as "any sentence which may be imposed upon an adult by a justice of the district court or superior court" C. 119, § 52.
- There is authority that a judge can impose a CWF on a YO case unless "the statutory language for the charged offense expressly forbids it." *Commonwealth v. Powell*, 453 Mass. 320 (2009).

Combination Sentence - DYS commitment to age 21 with an adult suspended sentence (HOC or State Prison). "The adult sentence shall be suspended pending successful completion of a term of probation, which shall include, but not be limited to, the successful completion of the aforementioned commitment to the department of youth services."

- The probationary period on the suspended sentence may extend beyond age 21.
- The sentencing judge may order that in the event that a violation occurs and probation is revoked the adult sentence can be imposed consecutively or concurrently. *Commonwealth v. Lucret*, 58 Mass. App. Ct. 624 (2003).
- The aggregate combination sentence may not exceed the maximum adult sentence provided by law. *Id.* at 630.
- A YO sentenced to the HOC or state prison who has not reached 18 shall be housed in a separate unit from the general population. C. 119, § 58.

Pre-Sentence Investigation In Youthful Offender Cases

C. 119, § 58 provides that “no such sentence shall be imposed until a pre-sentence investigation report has been filed by the probation department and made available to the parties no less than seven days prior to sentencing.”

Youthful Offender Sentencing Hearings – C. 119, § 58

A Youthful Offender is entitled to a sentencing hearing where the court shall consider the following factors:

- The nature, circumstances and seriousness of the offense
- Victim impact statement
- A report by a probation officer concerning the history of the youthful offender
- The youthful offender's court and delinquency records
- The success or lack of success of any past treatment or delinquency dispositions regarding the youthful offender
- The nature of services available through the juvenile justice system
- The youthful offender's age and maturity
- The likelihood of avoiding future criminal conduct
- Any other factors it deems relevant to disposition

The Court must make **written findings** stating the reasons that the sentence imposed would best serve present and long-term public safety.

Mandatory Minimums C. 119, § 58—Guns (C. 269, § 10 (a), (c), (e), or § 10 E)

First offense – Commitment to DYS. The youth must be held in custody at DYS for at least 180 days or until age 18, or age 19 if case disposed of after child turns 18, whichever occurs first. The period of time shall not be reduced or suspended.

Second or subsequent – Commitment to DYS. The youth must be held in custody at DYS for not less than one year. The time period shall not be reduced or suspended.

Possession of One Once or Less of Marijuana - Civil Offense – C. 94C § 32L-32M

- If the juvenile is under age 18 he will receive a civil penalty of \$100, must forfeit the marijuana, and his parents will be notified. The juvenile must complete a drug awareness program, which includes 10 hours of community service, within one year of the offense.
- If the juvenile fails to complete the drug awareness program and community service within one year of the offense, the civil penalty can be increased to \$1000, and the juvenile and parent can be jointly and severally liable.
- If the juvenile is under age 18 at time of the offense, failure to complete the drug awareness program “may be a basis for delinquency proceedings.”

Motor Vehicle Offenses – C. 119, § 74

A criminal complaint alleging a motor vehicle offense (not a civil infraction) may issue against a youth between the ages of 16 and 18 without first proceeding against him as a delinquent child. See also, C. 119, § 58B (punishments and fines where juvenile charged with motor vehicle offenses in delinquency proceedings).

This guide also applies to juvenile sessions of the District Court. C. 119, § 54. Proceedings under C. 119, § 72A are set forth in the Quick Reference Guide to §72A Transfer Hearings. This Guide does not address the Juvenile Court's jurisdiction in Children Requiring Assistance cases or Care and Protection cases. If you have any questions that are not addressed by this guide please contact us:

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