



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. Proceedings under C. 119, § 72A are set forth in the Quick Reference Guide to §72A Transfer Hearings. This guide is current through Section 72 of Chapter 69 of the Acts of 2018, An Act Relative to Criminal Justice Reform.

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.”

Definition of Delinquent Child c. 119, § 52

“Delinquent child”, a child between 12 and 18 years of age who commits any offense against a law of the commonwealth; provided, however, that such offense **shall not include** a civil infraction, a violation of any municipal ordinance or town by-law or a first offense of a misdemeanor for which the punishment is a fine, imprisonment in a jail or house of correction for not more than 6 months or both such fine and imprisonment. “

Juvenile Court Jurisdiction c. 119, § 54

- Children between the ages of 12 and 18, *prior to July 13, 2018, age of jurisdiction was between ages 7 and 18.*

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). See *N.M. v. Commonwealth*, 478 Mass. 89 (2017)

Youth Advocacy Division

44 Bromfield Street, Boston, MA 02108

617-910-5809

www.publiccounsel.net/ya/

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 they are apprehended after age 19 for an offense that was alleged to have been 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)., *Commonwealth v Mogelinski (I)* 466 Mass. 627 (2013) , *Commonwealth v Mogelinski (II)*, 473 Mass. 164 (2015)
- 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) (b)

If a child who is alleged to have committed an offense prior to age 18 and is not apprehended until between such child's 18th and 19th birthday, "the court shall deal with such child in the same manner as if [they] has not attained [their] eighteenth birthday, and all provisions and rights applicable to a child under eighteen shall apply to such child."

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 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.
- **Judicial Diversion** - Pre-Arraignment c. 119, § 54A. See § 54A (g) for ineligible offenses (youthful offender indictment, penalty greater than 5 years incarceration, crime that cannot be cwof's or placed on file , and all offenses that cannot be treated as a civil infraction under c. 277, § 70C, except for assault, assault and battery, picketing a court, and disruption of court proceedings)
- **Pre-trial Probation** - C. 276, § 87. Commonwealth must consent. *Commonwealth v. Tim T.*, 437 Mass. 592(2002), *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)

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

DISPOSITIONS - Delinquency Adjudications (cont'd)

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 cannot 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 their 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, can challenge that evidence as well as present evidence relevant to their ability to pay and the judge must consider the ability to pay when restitution is initially set. The "ability to pay determination should be made only after the judge has determined the appropriate length of the probationary period ..." *Commonwealth v. Henry*, 475 Mass. 117, 124 (2016).
- 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 delinquency or youthful offender adjudications. *Commonwealth v. Samuel S.*, 476 Mass. 497, (2017)(youthful offender), *Commonwealth v. Hanson H.*, 464 Mass. 807 (2013)(delinquency).
- If a juvenile is placed on probation before age 18, they **do not pay a probation supervision fee.** c. 276, § 87A.

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 1-17 VIII (e) Violation of Probation Proceedings.

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. C.. 279 § 2.

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 CWO 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 they will receive a civil penalty of \$100, must forfeit the marijuana, and their 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 them as a delinquent child. See also, C. 119, § 58B (punishments and fines where juvenile charged with motor vehicle offenses in delinquency proceedings).

Notice of Arrest - c. 119, § 67

If a child is arrested when court is not in session “the officer in charge shall immediately notify at least 1 of the child’s parents, or, if there is no parent, the guardian or custodian with whom the child resides or if the child is in the custody and care of the department, the (DCF). Pending such notice, such child shall be detained.” The child ages 14-18 “shall be released unless the arresting officer request in writing that the child be detained” and the court “directs in the warrant that the child shall be held in safekeeping ...” Children ages of 14 -18 can only be detained in a police station or town lockup that has been approved DYS and cannot be held in a jailor HOC. . If the child is in the care and custody of DCF, DCF must be immediately notified and social worker “shall make arrangements for the child’s release as soon as practicable if it has been determined that the child will not be detained.”

If you have any questions about this guide contact: Wendy Wolf, Director of Training, wwolf@publiccounsel.net