

Selected Statutes - Youthful Offender Cases¹

C. 119 § 52 Definitions

"Punishment as is provided by law", any sentence which may be imposed upon an adult by a justice of the district court or superior court.

"Youthful offender", a person who is subject to an adult or juvenile sentence for having committed, while between the ages of fourteen and seventeen, an offense against a law of the commonwealth which, if he were an adult, would be punishable by imprisonment in the state prison, and (a) has previously been committed to the department of youth services, or (b) has committed an offense which involves the infliction or threat of serious bodily harm in violation of law, or (c) has committed a violation of paragraph (a), (c) or (d) of section ten or section ten E of chapter two hundred and sixty-nine; provided that, nothing in this clause shall allow for less than the imposition of the mandatory commitment periods provided in section fifty-eight of chapter one hundred and nineteen.

C. 119 § 53 Provisions to Be Liberally Construed; Proceedings Not to Be Deemed Criminal

Sections fifty-two to sixty-three, inclusive, shall be 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.

C. 119 § 54 Proceedings

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 is alleged to have committed an offense against a law of the commonwealth while between the ages of fourteen and seventeen which, if he were an adult, would be punishable by imprisonment in the state prison, and the person has previously been committed to the department of youth services, or the offense involves the infliction or threat of serious bodily harm in violation of law or the person has committed a violation of paragraph (a), (c) or (d) of section ten or section ten E of chapter two hundred and sixty-nine. The court shall proceed on the complaint or the indictment, as the case may be, in accordance with sections fifty-five to seventy-two, inclusive. Complaints and indictments brought against persons for such offenses, and for other criminal offenses properly joined under Massachusetts Rules of Criminal Procedure 9 (a) (1), shall be brought in accordance with the usual course and manner of criminal proceedings.

¹ Juvenile Defense Network, 2/07

C. 119 § 55B Juvenile Court; Pleas by Youthful Offenders.

A child who is before the juvenile court on a delinquency complaint or an indictment within the court's jurisdiction shall plead not delinquent, or that he should not be adjudged as a youthful offender, as the case may be. Such plea shall be submitted by the child and acted upon by the court; provided, however, that a child with whom the commonwealth cannot reach agreement for a recommended disposition shall be allowed to tender a plea together with a request for a specific disposition. Such request may include any disposition or dispositional terms within the court's jurisdiction, including, unless otherwise prohibited by law, a disposition request that a finding not be entered, but rather the case be continued without a finding to a specific date thereupon to be dismissed, such continuance conditioned upon compliance with specific terms and conditions or that the child be placed on probation pursuant to the provisions of section 57; provided, however, that a complaint alleging a child to be a delinquent child by reason of having violated the provisions of section 13B, section 22A or section 23 of chapter 265 shall not be placed on file or continued without a finding. If a plea, with an agreed upon recommendation or with a disposition request by the child, is tendered, the court shall inform the child that it will not impose a disposition that exceeds the terms of the agreed upon recommendation or the disposition request by the child, whichever is applicable, without giving the child the right to withdraw the plea.

Notwithstanding the foregoing requirements, if a child attempts to enter a plea or statement consisting of an admission of facts sufficient for a finding of delinquency or adjudication as a youthful offender, or some similar statement, such admission shall be deemed a tender of plea for purposes of the procedures set forth in this section.

Any pretrial motion filed in a delinquency case or case in which the commonwealth has proceeded by indictment pending in the juvenile court and decided before entry of the child's decision on waiver of the right to jury trial shall not be refiled or reheard thereafter, except in the discretion of the court as substantial justice requires. Any such pretrial motion not filed or filed but not decided prior to entry of the child's decision on waiver of the right to jury trial may be filed thereafter but not later than twenty-one days after entry of said decision on waiver of the right to jury trial, except for good cause shown.

C. 119 § 58 Adjudication; Proceedings after Adjudication; Payment for Support of Child.

At the hearing of a complaint against a child the court shall hear the testimony of any witnesses who appear and take such evidence relative to the case as shall be produced. If the allegations against a child are proved beyond a reasonable doubt, he may be adjudged a delinquent child, or in lieu thereof, the court may continue the case without a finding and, with the consent of the child and at least one of the child's parents or guardians, place said child on probation; provided, however, that any such probation may be imposed until such child reaches age eighteen or age nineteen in the case of a

child whose case is disposed of after he has attained his eighteenth birthday; provided further, that a complaint alleging a child to be a delinquent child by reason of having violated the provisions of section 13B, section 22A or section 23 of chapter 265 shall not be placed on file or continued without a finding. Said probation may include a requirement, subject to agreement by the child and at least one of the child's parents or guardians, that the child do work or participate in activities of a type and for a period of time deemed appropriate by the court.

If a child is adjudicated a delinquent child on a complaint, the court may place the case on file or may place the child in the care of a probation officer for such time and on such conditions as it deems appropriate or may commit him to the custody of the department of youth services, but the probationary or commitment period shall not be for a period longer than until such child attains the age of eighteen, or nineteen in the case of a child whose case is disposed of after he has attained his eighteenth birthday.

If a child is adjudicated a youthful offender on an indictment, the court may sentence him to such punishment as is provided by law for the offense. The court shall make a written finding, stating its reasons therefore, that the present and long-term public safety would be best protected by:

(a) a sentence provided by law; or

(b) a combination sentence which shall be a commitment to the department of youth services until he reaches the age of twenty-one, and an adult sentence to a house of correction or to the state prison as is provided by law for the offense. 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. Any juvenile receiving a combination sentence shall be under the sole custody and control of the department of youth services unless or until discharged by the department or until the age of twenty-one, whichever occurs first, and thereafter under the supervision of the juvenile court probation department until the age of twenty-one and thereafter by the adult probation department; provided, however, that in no event shall the aggregate sentence imposed on the combination sentence exceed the maximum adult sentence provided by law; or

(c) a commitment to the department of youth services until he reaches the age of twenty-one.

In making such determination the court shall conduct a sentencing recommendation hearing to determine the sentence by which the present and long-term public safety would be best protected. At such hearing, the court shall consider, but not be limited to, 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; and the likelihood of avoiding future criminal conduct. In addition, the court may consider any other factors it deems relevant to disposition. 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.

A youthful offender who is sentenced as is provided by law either to a state prison or to a house of correction but who has not yet reached his seventeenth birthday shall be held in a youthful offender unit separate from the general population of adult prisoners; provided, however, that such youthful offender shall be classified at a facility other than the reception and diagnostic center at the Massachusetts Correctional Institution, Concord, and shall not be held at the Massachusetts Correctional Institution, Cedar Junction, prior to his seventeenth birthday.

If it is alleged in the complaint upon which the child is so adjudged that a penal law of the commonwealth, a city ordinance or a town by-law has been violated, the court may commit such child to the custody of the commissioner of youth services and authorize him to place such child in the charge of any person, and, if at any time thereafter the child proves unmanageable, to transfer such child to that facility which in the opinion of said commissioner, after study, will best serve the needs of the child. The department of youth services shall provide for the maintenance, in whole or part, of any child so placed in the charge of any person.

Notwithstanding any other provisions of this chapter, a person adjudicated a delinquent child by reason of a violation of paragraph (a), (c) or (d) of section ten or section ten E of chapter two hundred and sixty-nine, shall be committed to the custody of the commissioner of youth services who shall place such child in the custody of a facility supported by the commonwealth for the care, custody and training of such delinquent children for a period of at least one hundred and eighty days or until such child attains his eighteenth birthday, whichever first occurs, provided, however, that said period of time shall not be reduced or suspended.

Upon the second or subsequent violation of said paragraph (a), (c) or (d) of said section ten or ten E of said chapter two hundred and sixty-nine, the commissioner of youth services shall place such child in the custody of a facility supported by the commonwealth for the care, custody and training of such delinquent child for not less than one year; provided, however, that said period of time shall not be reduced or suspended.

The court may make an order for payment by the child's parents or guardian from the child's property, or by any other person responsible for the care and support of said child, to the institution, department, division, organization or person furnishing care and support at times to be stated in an order by the court of sums not exceeding the cost of said support after ability to pay has been determined by the court; provided, however, that no order for the payment of money shall be entered until the person by whom payments are to be made shall have been summoned before the court and given an

opportunity to be heard. The court may from time to time, upon petition by, or notice to the person ordered to pay such sums of money, revise or alter such order or make a new order, as the circumstances may require.

The court may commit such delinquent child to the department of youth services, but it shall not commit such child to any institution supported by the commonwealth for the custody, care and training of delinquent children or juvenile offenders.

Except in cases in which the child has attained the age of majority, whenever a court of competent jurisdiction adjudicates a child as delinquent and commits the child to the department of youth services, the court, in order to comply with the requirements contained in the federal Adoption Assistance and Child Welfare Act of 1980 and any amendments thereto, shall receive evidence in order to determine whether continuation of the child in his home is contrary to his best interest, and whether reasonable efforts were made prior to the commitment of the child to the department, to prevent or eliminate the need for removal from his home; or whether an emergency situation existed making such efforts impossible. No such determination shall be made unless the parent or guardian of the delinquent shall have been summoned before the court and, if present, given an opportunity to be heard. The court, in its discretion, may make its determinations concerning said best interest and reasonable efforts in written form, but in the absence of a written determination to the contrary, it shall be presumed that the court did find that continuation of the child in his home was contrary to his best interest and that reasonable efforts to prevent or eliminate the need for removal of the child from his home did occur. Nothing in this section shall diminish the department's responsibility to prevent delinquent acts and to protect the public safety.

C. 211B § 9 Powers and Duties of Chief Justice for Administration and Management.

The chief justice for administration and management in addition to his judicial duties and subject to the superintendence power of the supreme judicial court as provided in section three of chapter two hundred and eleven, shall have general superintendence of the administration of the trial court, including, without limitation, the improvement of the administration of such courts and the securing of their proper and efficient administration.

The chief justice for administration and management shall be the administrative head of the trial court of the commonwealth. The chief justice for administration and management shall periodically prepare and submit to the chief justice of the supreme judicial court an estimate, in detail, for the ordinary maintenance of the entire trial court, and all revenue therefrom, as provided in clause (5) of the first paragraph of section three of chapter twenty-nine. Said estimate shall include judicial salaries and the salaries of all officers and employees within the trial court and shall include estimates of all sums which the commonwealth is obligated to pay under the provisions of chapter twenty-nine A.

In order to achieve the ends stated in this section, the chief justice for administration and management shall be responsible for the management of court personnel, facilities, administration, security, and court business and shall have the authority necessary to carry out these responsibilities including, but not limited to, the following:-

(xix) the power, where there are pending in different departments of the trial court cases involving the same party or the same issue, and where a request for consolidation is made to the chief administrative justice to consolidate such cases for hearing by one justice, and to assign said justice to sit as a justice of other departments and exercise the powers of justices of other departments, in order to dispose of such cases with efficient use of judicial resources;

C. 263 § 4 Prosecution of Crimes

No person shall be held to answer in any court for an alleged crime, except upon an indictment by a grand jury or upon a complaint before a district court, the housing court of the city of Boston, the western division of the housing court department, the northeastern division of the housing court department, the southeastern division of the housing court department, the housing court of the county of Worcester or in proceedings before a court-martial.

A defendant charged with an offense punishable by imprisonment in state prison shall have the right to be proceeded against by indictment except when the offense charged is within the concurrent jurisdiction of the district and superior courts and the district court retains jurisdiction.

No juvenile shall be sentenced to any punishment as is provided by law for the offense by a juvenile court or a juvenile session of a district court, as the case may be, unless he has been proceeded against by indictment or has waived indictment pursuant to section four A of chapter two hundred and sixty-three, except as otherwise provided in section seventy-two A of chapter one hundred and nineteen. The clerk of the superior court in which an indictment of such juvenile is returned shall promptly remit the indictment to the clerk of the juvenile court or the juvenile session of the district court, as the case may be, in which such indictment is to be tried.