

## **SELECTED YOUTHFUL OFFENDER CASES**

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### **Age**

Commonwealth v. Ulysses H., 52 Mass. App. Ct. (2001) – the offense must be committed prior to the child's seventeenth birthday in order to qualify as an indictable offense under the youthful offender statute.

Commonwealth v. Quincy Q., 434 Mass 859 (2001) - age is an element that must be presented to the GJ and at trial, unless stipulated to. See also Commonwealth v. Hampton, 64 Mass. App. Ct. 27 (2005)

### **Indictment on a Misdemeanor**

Commonwealth v. Ulysses H., 52 Mass. App. Ct. (2001) - a juvenile cannot be indicted for a misdemeanor. In cases where the misdemeanor and felony arise out of the same criminal conduct, the complaint and indictment can be joined for trial before a jury of 12.

Commonwealth v. Lamont L., 438 Mass. 842 (2003) - juvenile was indicted as a youthful offender on an assault and battery charge and assault and battery by means of a dangerous weapon. After trial he was adjudicated a youthful offender on two charges of assault and battery, one being the lesser included offense of the A&B d/w. As to the adjudication of the indictment in which the juvenile was original charged with assault and battery, the appeals court reversed the judgment, set aside the verdict and remanded the case to juvenile court with an order dismissing the indictment. The Commonwealth moved for further appellate review. It was improper for the Commonwealth to indict on an assault and battery, however, the juvenile was not prejudiced and the SJC ordered that a delinquency finding be entered. The SJC reasoned that the jury did find that the juvenile had committed an offense, so the indictment did not have to be dismissed. If the juvenile had filed a motion to dismiss the assault and battery indictment, it would have been dismissed and the complaint joined for trial with the youthful offender indictment.

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<sup>1</sup> Updated 2/07

## **“No Bill”**

Commonwealth v. Dale D., 431 Mass. 757 (2000) - Commonwealth may proceed against a juvenile by a delinquency complaint after the grand jury fails to indict.

## **Sentencing**

Commonwealth v. Lucret, 58 Mass. App. Ct. 624 (2003) - juvenile received a combination sentence of commitment to DYS until age 21 with a 2 year house of correction sentence, on and after, to be suspended for 2 years. This sentence was imposed on 3 youthful offender indictments, to run concurrently. The juvenile was subsequently found in violation of probation and the original sentence was imposed; 2 years in the house of correction to be served after completion of the DYS commitment to age 21. The juvenile appealed the imposition of the sentence and argued that the house of correction sentence should have commenced at the time he was found in violation of probation. He further argued that the statute regarding a combination sentence is ambiguous since it does not specify whether the suspended portion is to be served concurrently or consecutively when there is a violation.

In upholding the sentence, the court reasoned that it was the legislature’s intent to give judges discretion in sentencing, and the suspended portion could have been imposed concurrently or consecutively. Additionally, when a combination sentence is imposed the adult sentence must be suspended pending successful completion of the DYS commitment.

## **Threat of Serious Bodily Harm**

Commonwealth v. Quincy Q., 434 Mass 859 (2001) - juvenile was adjudicated a youthful offender on the charge of indecent assault and battery under 14; he was found not guilty on two youthful offender indictments of forcible rape and one indictment of indecent assault and battery under the age of 14. At the time of the offenses the juvenile was between the ages of 15 and 16, the complaining witness was between the ages of 3 and 5. Prior to trial, the defendant filed a motion to dismiss on the indecent assault and battery charge on the ground that no evidence was presented to the grand jury as to “the infliction or threat of serious bodily harm.” The SJC held that the juvenile’s motion to dismiss should have been allowed. The Commonwealth must present sufficient evidence to the grand jury that the requirements of G.L. ch.119 §54 have been met. While the infliction or threat of serious bodily harm was not an element of the crime charged, if the Commonwealth proceeds under this prong of the youthful offender statute, evidence constituting this element must be presented to the grand jury. In Quincy Q., there was evidence that the defendant touched the complaining witness’s vagina and buttock and had her touch his penis. The juvenile told the

complaining witness not to tell anyone about these incidents. The court compared this case with Clint C. and found that the touching in Clint C. was more invasive, and while the age differences were similar, the touching in this case did not involve a threat of serious bodily harm, and the penetration in this case went to the rape charge in which the juvenile was found not guilty. Since the youthful offender statute calls for increased sentencing, at a trial the Commonwealth must prove beyond a reasonable doubt the requirements of ch. 119 §54. (See, Apprendi v. New Jersey, 530 U.S. 466, facts that increase the penalty of a crime must be presented to the jury and proved beyond a reasonable doubt.)

Commonwealth v. Clint C., 430 Mass. 219 (1999) – a juvenile court judge allowed the juvenile’s motion to dismiss an indictment for rape of a child because the facts of the case did not involve “the threat or infliction of serious bodily harm.” The SJC reversed. The court stated that “absent an error of law, a judge may not dismiss an indictment brought under G.L. ch. 119 § 54.” Id. at 224. However, the court went on to look at the facts of the case and found that the invasive nature of the penetration constituted “the threat of serious bodily injury” and the juveniles position of authority (he was the complaining witness’s uncle and babysitter), the age difference (15 and 6), and the vulnerability of the complaining witnesses, supported a youthful offender indictment.

### **Delinquency/Youthful Offender Convictions used as Predicate for Enhanced Penalty**

Commonwealth v. Foreman, 63 Mass. App. Ct. 801 (2005) - the appeals court held that the defendant's prior delinquency adjudication for armed robbery qualified for adult sentencing enhancement as an armed career criminal G.L. ch 269 sec. 10G(a). In *Foreman* the defendant was indicted (as an adult) for possession of a firearm, ch. 269 10(a), and armed career criminal. The Court rejected the defendant's argument that a delinquency adjudication does not qualify as a "conviction" since G.L. ch 119 sec. 53 states "[p]roceedings against children...shall not be deemed criminal . . ."

The Court followed its holding in Commonwealth v. Furr, that ch. 269 sec.10G incorporates the definition of "violent crime" as defined in ch. 140 sec. 121, "any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or possession of a deadly weapon that would be punishable by imprisonment for such term if committed by an adult, that: (i) has as an element the use, attempted use or threatened use of physical force or a deadly weapon against the person of another; (ii) is burglary, extortion, arson or kidnapping; (iii) involves the use of explosives; or (iv) otherwise involves conduct that presents a serious risk of physical injury to another." Since delinquent acts are included in this definition, the court found that the legislature intended such adjudications, as specified in ch. 140 sec. 121, to qualify as a prior "convictions" under the armed career criminal statute.

Commonwealth v. Furr, 58 Mass. App. Ct. 155 (2003) - prior youthful offender adjudications for armed carjacking, armed robbery, and assault and battery can be used for enhanced penalties under G.L. ch. 269 sec. 10G, armed career criminal. Here the juvenile defendant was indicted as a Youthful Offender for armed career criminal. Court considered the intent of the legislature to increase penalties for youth violate the firearm laws.

Commonwealth v. Connor C., 432 Mass. 635 (2000) - prior delinquency adjudication for possession of firearm is considered a conviction for charge of repeat offender on a second and subsequent gun charge. The youthful offender statute is silent as to whether the legislature intended the word "conviction" as it is used G.L. ch. 269 § 10 (d) to apply to prior delinquency adjudications. However, the court reasoned that the 1996 changes in the juvenile code, namely the enactment of the youthful offender law "reflect a legislative determination that a purely rehabilitative approach directed to all children who engage in any unlawful conduct, no matter how egregious, is no longer desirable." Id. at 642. The court further stated that "[t]he Legislature included within the statutory definition of "youthful offender" children who violate only one identified criminal statute, G. L. c. 269, § 10. The specific reference to G. L. c. 269, § 10 (d), in the definition of "youthful offender," G. L. c. 119 § 52, and in the procedures concerning the treatment of a "youthful offender," G. L. c. 119, § 54, strongly suggests that the Legislature intended to authorize the Commonwealth to indict children who repeatedly violate the gun laws, i.e., G. L. c. 269, § 10 (d)." Id. at 643. Additionally, the court held that if a prior "adjudication" does not satisfy the "conviction" requirement of G. L. ch. 269, § 10 (d), then the Commonwealth could never indict a child for a second or subsequent firearms offense, and the legislature did not intend such a result. Furthermore, G.L. ch. 119 § 58 provides for enhanced penalties for delinquency adjudications of second and subsequent firearm offense. The court noted that its decision was to be narrowly construed, in that a prior adjudication under G. L. c. 269, § 10 (a), (c), or (d), is a "conviction" as the term is used in c. 269 § 10 (d).