COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

[REDACTED]

COMMONWEALTH OF MASSACHUSETTS,

PETITIONER-APPELLEE,

v.

L.C.,

RESPONDENT-APPELLANT.

On Reservation and Report of Questions by a Single Justice of the Supreme Judicial Court

REPLY BRIEF OF RESPONDENT-APPELLANT L.C.

[REDACTED]

Dated: April 21, 2015

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

The Commonwealth's brief ("Br.") focuses on the 1986 crime of conviction and attempts to portray the 16-year-old L.C. as an irremediable monster. In doing so, the Commonwealth: (i) ignores L.C.'s remarkable 25 consecutive year record of undisputable achievement, made all the more remarkable by the fact that it was accomplished before L.C. had a glimmer of hope that he would ever be parole eligible; (ii) misstates trial testimony and exaggerates L.C.'s role in the 1986 crime; (iii) misstates the relief sought by L.C., as well as the scope and potential import of the Superior Court's (Locke, J.) Order at issue; and (iv) belittles and all but disregards the recent breakthroughs in scientific and social science research that led this Court to "embrace the view that a constitutional distinction exists between juveniles and adults in relation to sentencing." *Commonwealth v. Okoro*, 26 N.E.3d 1092, 1099 (2015).

The Commonwealth asserts that L.C. is seeking a declaration that consecutive life sentences for juvenile homicide offenders are categorically impermissible and that his original sentence was unlawful. This is not true. The relief sought by

L.C., and the import of Judge [REDACTED]'s ruling, is farnarrower than the Commonwealth would have the Court believe. L.C.'s request and Judge [REDACTED]'s ruling are modest and purely procedural. Based on the retroactive applicability of *Diatchenko v. Dist. Atty. for Suffolk Dist.*, 466 Mass. 655, 666 (2013) ("*Diatchenko I*"), L.C. seeks, and Judge [REDACTED]'s ruling offers, nothing more than the exact sentencing hearing to which L.C. would be entitled if his crime were committed today——namely, a hearing at which his age and other age-related mitigating factors would be considered, through the lens provided by the recent breakthroughs in the science of adolescent brain development, to determine whether his two admittedly lawful life sentences should be concurrent or consecutive. The requested hearing, which Judge Locke has authorized,

is one that L.C. not only never received, but which he could not have received at the time of his sentencing in 1994. This hearing is consistent with, if not defended by, *Diatchenko*,:

> a State's harshest penalty [here, consecutive life sentences] ***must*** have an opportunity to advance, and the judge or jury a chance to assess, any mitigating factors....In particular, a sentencer ***must***

> have the ability to consider the mitigating qualities of youth.

466 Mass. at 660-61 (emphasis added). Remarkably, in the face of *Diatchenko I*'s plain language, to say nothing of its animating spirit, the Commonwealth asserts that the relief sought by L.C., and ordered by Judge [REDACTED], are "directly contrary to the Court's holding in *Diatchenko*." Br. at 20. This assertion is nothing short of ludicrous.

ARGUMENT

L.C. replies to the arguments presented in the Commonwealth's brief in sequence:

1. The Commonwealth Exaggerates and Misstates L.C.'s Role in the Underlying Crime.

There is no dispute that the murders of [REDACTED] were gruesome and horrible. But even if we view the trial evidence in the light most favorable to the Commonwealth, L.C.'s role in the murders was that of a 16 year old following the lead of his adult defendants. *See*, *e.g.*, JA.190-211. To be sure, L.C. bears responsibility for the killings, but for sentencing purposes, the role he played relative to his adult co-defendants, and the extent to which his age and immaturity factored into that role, are all-important. Here, the Commonwealth

misstates and mischaracterizes the trial testimony in an apparent effort to inflate and exaggerate L.C.'s true role. For instance, the Commonwealth states that R.S. testified that L.C. shot [REDACTED] and then "immediately pursued [REDACTED], and brought him down with gunfire." Br. at 7. But the actual transcript makes clear that R.S. testified that after shooting [REDACTED] once, L.C. fled. JA.209. At the 1994 trial, R.S. never testified to L.C. shooting both victims. Further, the Commonwealth presents eyewitness [REDACTED] as infallible, but neglects to mention that P.T., who [REDACTED] positively identified as a shooter, was acquitted. Tr. 5/86; *Commonwealth v. F.D.*, 427 Mass. 414, 415 n.3 (1998). And the Commonwealth asserts that L.C. planned the shootings, and then led his adult co-defendants out of the park where the murders took place. Br. at 10-11. But the actual testimony makes clear that L.C. played no role in planning the murders, and he "led" others out of the park only in the sense that he shot once, and then fled from the park, while the adult co-defendants lingered to carry out their plan. JA.204-09.

2. L.C. Is Not Challenging the Propriety of the Commonwealth's Interlocutory Appeal.

The Commonwealth argues that this Court should exercise jurisdiction and decide the Commonwealth's interlocutory appeal under G.L. c. 211, § 3. Br. at 13-17. L.C. agrees. Although L.C. questioned the use of c. 211, § 3 before the Single Justice, L.C. has raised no such challenge on this reservation and report to the full bench. Indeed, the Single Justice's reservation and report indicates a readiness on the Court's part to consider the merits of the Commonwealth's appeal. L.C. accepts that decision. His only concern is that the Commonwealth not be permitted to use the appeal, and then any later appeal of any resentencing that may occur, to further delay L.C.'s appearance before the parole board.[1]

[1] The parties only dispute when, not if, L.C. is entitled to parole eligibility. If L.C.'s consecutive life terms remain in place, he will be parole eligible in two years. If L.C., who has already served nearly 28 years, is resentenced to concurrent life terms, he will be parole eligible immediately. The difference between the Commonwealth or L.C. prevailing on this appeal, and then before Judge Locke on resentencing, is two years. With each passing day, the remaining two years is reduced. The Commonwealth should not be permitted to use seriatim appeals to "run out the clock," and deprive L.C. of the prompt parole eligibility to which he is entitled and which he has earned. In considering this interlocutory appeal, L.C. requests that the Court expressly limit the Commonwealth's ability to appeal any resentencing.

3. The Commonwealth Misconstrues the Relief L.C. Is Requesting.

The Commonwealth argues that art. 26 does not prohibit mandatory consecutive life sentences, and that L.C.'s current sentence, as already amended post-*Diatchenko I*, is lawful. Per the Commonwealth, "accepting [L.C.'s] argument requires implicitly determining that a sentence of 30 years before parole eligibility is unconstitutional and legally flawed." Br. at 24. But this is not L.C.'s argument. For current purposes, L.C. accepts that consecutive mandatory life sentences may be lawfully meted out to juvenile homicide offenders. The relief L.C. seeks is narrow and modest. It is nothing more than that before consecutive life sentences are imposed, he should, as a procedural matter, receive a hearing consistent with the dictates of *Diatchenko I* in which the trial court considers his age and the other "*Miller* factors" (as defined in n.8 of L.C.'s opening brief) through the prism provided by the recent developments in the science of adolescent brain development. The question before this Court is not the lawfulness of consecutive life sentences for juvenile homicide offenders. The question is the lawfulness of the procedure that results in any such consecutive sentences. More

specifically, the question is whether under *Diatchenko I*, before any such on and after sentence may be given to a juvenile homicide offender, like L.C., the trial court should hold a *Miller*-type hearing. The answer is an unequivocal YES. Any such hearing, as Judge [REDACTED]has ordered for L.C., is consistent with the logic and teachings of *Diatchenko I*, if not outright required by that landmark decision.

4. Affirming Judge [REDACTED]'s Ruling Would Not Be a First Step Down a Slippery Slope.

The Commonwealth asserts that if the Court focuses on "the evolving social science that the human brain develops over time..., then there is no end in sight to the juvenile cases and sentences to which this principal of resentencing applies." Br. at 23. Nonsense! The operative word here is "resentencing." The juvenile homicide offender cohort of which L.C. is a part includes only eight individuals who received consecutive mandatory life sentences. Thus, a ruling here that affirms Judge [REDACTED]'s decision below would only directly apply to eight cases. To the extent an affirmative decision would have indirect applicability to non-homicide juvenile offenders who received consecutive sentences without an appropriate hearing, the number of additional cases is unknown, but

undoubtedly miniscule if not zero. After all, all juveniles other than those charged and convicted of first-degree murder are sentenced in the Juvenile Court system where almost all sentences are by definition limited, and may not (with limited exceptions for "youthful offenders") extend beyond the delinquent offenders' 18th or in some instances 21st birthdays. *See*, *e.g.*, G.L. c. 119, § 58. Even the relatively few "youthful offender" split sentences that extend juvenile incarceration beyond the age of 21 must, by law, consider age and other age-related mitigating factors. *Id.* In other words, the instances in which resentencing for non-homicide juvenile offenders who may have received consecutive sentences will be required is likely zero. This is hardly the dire slippery slope of which the Commonwealth warns.[2]

5. This Court Did Not Consider, and Indeed Could Not Have Considered, L.C.'s Age and Recent Science as Part of Its § 33E Review in 1998.

The Commonwealth maintains that L.C.'s consecutive sentences "have already withstood this

[2] Of course, as a prospective matter, the statutory law as well as this Court's decisions in *Diatchenko I*, *Brown*, and other cases make clear that age and age-related mitigating factors as well as the evolving science of human brain development must be taken into account in all instances where juvenile sentencing courts have the right to exercise discretion.

court's comprehensive review pursuant to G.L. c. 278, § 33E in 1998...[and] for the Superior Court to now conduct a new sentencing hearing presumes that this Court did not consider this defendant's youth in 1998 in discharging its solemn obligation under § 33E." Br. at 24, 27. But a careful review of the parties' direct appellate briefs as well as the Court's 1998 affirmance of L.C.'s 1994 conviction makes clear that the issue of whether the sentencing court had abused its discretion in giving L.C. consecutive sentences, or for that matter any issue related to L.C.'s consecutive sentences, was not raised and not expressly addressed in connection with L.C.'s direct appeal. *See, e.g., F.D.*, 427 Mass. 414; Brief of Defendant L.C., No. SJC-06985 (Oct. 1997); Brief for the Commonwealth, No. SJC-06985 (Jan. 1998).

In fact, the consideration L.C. now seeks, and that Judge [REDACTED] is prepared to afford him, with regard to whether his sentences should be concurrent or consecutive could not have been given in 1994. After all, as this Court observed in *Okoro*,

> until *Miller* was decided, we did not embrace the view that a constitutional distinction exists between juveniles and adults in relation to sentencing....It is significant that judicial recognition of this principle

> is so ***recent***. As noted in *Diatchenko I*, the determination that youth are constitutionally distinct from adults for sentencing purposes has strong roots in ***recent developments*** in the fields of science and social science.

26 N.E.3d at 1099 (emphasis added). In other words, the type of consideration L.C. now seeks, which must necessarily take the recent developments in science and social science into account, could not have been part of this Court's § 33E review in the 1990s, which was before those recent developments and long before the sea change in the law of juvenile sentencing that was wrought by *Diatchenko I* and *Brown*.

In fact, the § 33E cases cited by the Commonwealth make L.C.'s point. For instance, *Commonwealth v. Fuller*, 421 Mass. 400, 414 (1995) (cited in Br. at 25-26), which was decided at the same time that L.C.'s case was on direct appeal, declined to rule that "youth itself is a mitigation or that no one can be put beyond the possibility of eventual release." But *Fuller*, and all similar pre-*Diatchenko I* § 33E cases have effectively been overruled by *Diatchenko I* and the recent advances in science in which *Diatchenko I* has its strong roots. Today, in the post-*Diatchenko I* world, "youth is a mitigation," and

children like L.C. may not "be put beyond the possibility of eventual release."

6. L.C. Did Not Waive His Right To Have the Trial Court Properly Consider the Issue of Whether His Sentences Should Be Concurrent or Consecutive.

In 1986, L.C. was evaluated by psychologists, who then prepared and submitted reports to the Juvenile Court. *See*, *e.g.*, C.A.18-22. The Commonwealth argues that L.C. "has no right now to insist that a new sentencing hearing be held to force the Court to consider the reports which he chose not to present at his sentencing over two decades ago." Br. at 31. The Commonwealth maintains that the "failure" to present the reports in 1994 constituted a legal "waiver," and that, in any event, the sentencing judge in 1994 adequately considered L.C.'s age in determining that L.C. should receive consecutive sentences. *Id*. at 28-29. But the Commonwealth misconstrues L.C.'s argument, and is wrong on the facts and the law.

The psychological reports that were written in 1986 were prepared to help the Juvenile Court determine whether the then 16-year-old L.C. was amenable to rehabilitation within the juvenile justice system, *i.e.*, whether he was amenable to rehabilitation in DYS prior to his 18th birthday. *See*,

e.g., G.L. c. 119, § 61 (1985). In other words, the issue to which the reports were directed was entirely different from the issue of whether L.C., post-conviction eight years later, should have received concurrent or consecutive life sentences, let alone whether he should be parole eligible after 15 or 30 years. To the extent the psychological reports from 1986 would even be mentioned in the resentencing hearing, it would be in the context of testimony from one or more of the 1986 evaluators who would testify as to the purpose and limitations of the forensic testing that was performed on L.C. in 1986, and how little if any bearing those tests would have had on the concurrent versus consecutive issue before the trial court in 1994, let alone today.

Independent of the 1986 psychological reports, and the evidence of L.C.'s conduct between 1986 and 1994, L.C. maintains that the resentencing judge would and should consider L.C.'s post-1994 record of outstanding achievements, as well as scientific insights that were not available in 1994. As both a practical and legal matter, it is impossible to waive one’s right to present arguments that could not have been presented at the time of the purported “waiver.”

See, e.g., Commonwealth v. Amirault, 424 Mass. 618, 639 (1997) (waiver turns on whether the argument "has been sufficiently developed....Counsel need not be clairvoyant."); *DeJoinville v. Commonwealth*, 381 Mass. 246, 251 (1980). The scientific and legal developments at the base of L.C.'s claim had not been developed at the time of L.C.'s 1994 sentencing. Short of being clairvoyant, L.C. could not have advanced his current position in 1994. There was no waiver.

As for the Commonwealth's assertion that the sentencing judge fully considered L.C.'s age in 1994 before meting out consecutive life sentences (Br. at 2), that assertion is belied by the record. As explained in L.C.'s opening brief at 10-11 and 34-35, although L.C.'s trial counsel made passing reference to L.C.'s age in presenting a 10 to 15 second argument for concurrent sentences, the trial judge did not even pay lip service to L.C.'s age, let alone any of the other *Miller* factors, in meting out consecutive sentences. Furthermore, the trial court did not and could not have considered the recent developments in the science of adolescent brain development or L.C.'s post-1994 conduct.

7. The Limitations of Rule 29 Do Not Apply to L.C.'s Proposed Resentencing.

The Commonwealth cites Mass. R. Crim. P. 29, and cases arising in the Rule 29 "revise and revoke" context, to support its argument that L.C. is not entitled to resentencing on his 1994 sentence, and not entitled to present his post-1994 record in any resentencing hearing he may obtain. Br. at 28-30. But this is not a revise and revoke case. Rather, it is a case in which this Court has already determined that a portion of L.C.'s sentence——namely, the portion that did not allow for parole eligibility——must be vacated. In this context, where "part of an 'integrated package' of sentences on multiple convictions" is vacated, "resentencing as to the entire sentencing scheme is appropriate." *Commonwealth v. Parrillo*, 468 Mass. 318, 321 (2014).

Simply put, the context in which L.C.'s request for further resentencing arises has nothing whatsoever to do with Rule 29. As this Court stated in *Commonwealth v. White*, 436 Mass. 340, 344 n.3 (2002), "[a]pplying [Rule 29's] prohibition against consideration of any postsentencing conduct of the defendant...to the situation presented here, makes little sense." Where, as here, a lengthy time has

passed between defendant's initial sentencing and the requested resentencing, "defendant's conduct during that time may be relevant in evaluating, for instance, his propensity for rehabilitation." *Id.*; *see also* cases cited in L.C.'s opening brief at 26-27, 32-34.

8. This Court's Ruling on L.C.'s Juvenile Transfer Is Irrelevant to the Issue Now Before the Court.

The Commonwealth quotes at length from this Court's 1992 affirmance of the Juvenile Court's 1986 transfer determination, and argues that the public interest in closure would be violated if that decision were revisited. Br. at 32-33. The Commonwealth maintains that "[t]o reopen the hearing now would violate the 'compelling interest in seeing the public protected from the early release of a dangerous and uncontrollable youth....'" *Id*. at 33 (quoting *Commonwealth v. Wayne W.*, 414 Mass. 218 (1993)).

But L.C. is not attempting to reopen his 1986 transfer hearing. Indeed, the results of that hearing, and this Court's 1992 decision affirming the propriety of the 1986 transfer of L.C.'s case to Superior Court, are irrelevant to the issue now before the Court——namely, the issue of whether L.C.'s 1994 sentencing, which this Court has already reopened, should be further reopened to permit consideration of

whether L.C.'s two life sentences should be concurrent or consecutive. The interest of the public in transferring "uncontrollable youth" to stand trial as adults and serve time in adult prison has nothing to do with whether those same youth, once convicted, should receive mandatory minimum 15 or 30 year sentences. Indeed, the view of youth articulated in *Wayne W.* and in many of the other mid-1990s cases on which the Commonwealth relies, all pre-date the landmark change in the law wrought by *Diatchenko I* and pre-date the scientific developments in which that change is rooted. Even if *Wayne W.* and other cases that talk of "uncontrollable youth" have not been strictly overruled, the view of children on which they are based has been completely undermined.

9. L.C. Is Not Seeking to Have the Superior Court Usurp the Role of the Parole Board.

The Commonwealth argues incorrectly that L.C. "unavoidably seeks to have the Superior Court act as the parole board," particularly as to the consideration of evidence concerning L.C.'s 25-year record of remarkable achievement. Br. at 34. While it is true that L.C.'s 25-year record of accomplishment would be considered by both the resentencing court and the parole board, there is always some overlap between

sentencing and parole evaluations. After all, both functions require an evaluation of the offender and his potential for citizenship and rehabilitation. That said, the resentencing hearing being urged by L.C. would not impinge upon the function of the parole board. The resentencing court would determine ***when***——after 15 (effectively 28) or 30 years——L.C. will become eligible for parole, while the parole board will determine ***whether*** he should be admitted to parole. L.C., the person, will be the subject matter of both determinations, but the determinations themselves are and shall be distinct from one another.

10. L.C. Should Be Resentenced Based on the Recent Developments in Adolescent Brain Science.

In its final argument, the Commonwealth attempts to turn the clock back to the days before *Diatchenko I*, when children were regarded as "dangerous and uncontrollable." Br. at 36-40. In making this argument, the Commonwealth belittles the recent science regarding adolescent brain development, and goes so far as to say it is not new at all. *Id*. Relying on *Okoro* and *Commonwealth v. Ray*, 467 Mass. 115 (2014), the Commonwealth asserts that this Court has limited the use of recent science at sentencing, and that in any event that science is not specific to

L.C., whose sentence was not unjust. *Id*. The Commonwealth is wrong on all fronts.

First, there is no question that the recent scientific studies concerning the adolescent brain are in fact "recent," and that those studies led directly to the landmark shift in the law of juvenile sentencing required by *Diatchenko I*. *See Okoro*, 26 N.E.3d at 1099-1100 & n.13. Much as the Commonwealth may not approve, juvenile homicide offenders are no longer viewed as "uncontrollable" or "irretrievably depraved." Indeed, this pre-*Diatchenko I* view has been rejected precisely because it is "at odds with the fact that 'the brain of a juvenile is not fully developed, either structurally or functionally.'" *Id*.

Second, neither *Ray* nor *Okoro* limit the use of the recent science in the manner claimed by the Commonwealth. Both cases left mandatory life sentences for juvenile homicide offenders undisturbed, and left for another day——"awaiting further developments" in science, *Okoro*, 26 N.E.3d at 1100——the question left open in *Brown*, namely whether discretion is constitutionally required in all instances of juvenile sentencing. *Id*. at 1098. Neither *Okoro* nor *Ray* speak to the situation present here where discretion already

exists, as it most surely does on the issue of whether L.C.'s two mandatory sentences should be concurrent or consecutive. Unlike *Okoro* and *Ray*, L.C. is not asking for individualized sentencing in all cases. Rather, he is only asking for it in homicide cases like this one where discretion is already authorized.

Third, *Okoro* explicitly rejects the exact argument advanced by the Commonwealth regarding the use that may be made of recent science. Specifically, *Okoro* [ruled:as increasingly sophisticated

> scientific knowledge of adolescent brain functioning has assisted in informing our understanding of what punishments may constitutionally be imposed on juvenile offenders, so, too, do we believe that this scientific knowledge could assist a jury to form an opinion as to a defendant's mental state at the time of his alleged crime.

Id. at 1105 n.24. Plainly, if science may be used to assist the jury in assessing defendant's mental state, it may be used to assist a judge in sentencing.

Fourth, the specific, individualized ways in which the recent science will inform L.C.'s resentencing are beyond the scope of this appeal. They will be demonstrated at the hearing for which L.C. is now seeking authorization. As for the purported lack of injustice in L.C.'s consecutive life sentences,

L.C. is not claiming here that consecutive sentences, or any 30-year sentence, is necessarily and categorically unjust. Rather, he maintains and believes he will be able to show at a resentencing hearing that consecutive sentences were not warranted for him. The injustice here is not with consecutive sentences, but in the process through which those sentences were originally meted out——namely, a process that did not consider, and could not have considered, L.C.'s age and the other *Miller* factors as informed by recent science.

CONCLUSION

For all of the foregoing reasons, and for the reasons set forth in L.C.'s opening brief, Judge [REDACTED]'s Order should be affirmed, and the case should be remanded to the Superior Court for resentencing limited to the issue of whether L.C.'s two mandatory life sentences should be concurrent or consecutive. L.C. also requests that on remand the Court make clear that the resentencing judge should consider all the *Miller* factors and L.C.'s pre- and post-1994 conduct, all as informed by recent science.

Respectfully submitted,

L.C.

By his

attorneys at

[REDACTED]

Dated: April 21, 2015

CERTIFICATE OF COMPLIANCE

Pursuant to Mass. R. App. P. 16(k), I, [REDACTED], hereby certify that the foregoing brief complies with the rules of court that pertain to the filing of briefs, including but not limited to: Mass. R. App. P. 16(a)(6); Mass. R. App. P. 16(e) (references to the record); Mass. R. App. P. 16(f); Mass. R. App. P. 16(h) (length of briefs); Mass. R. App. P. 18 (appendix to the briefs); and Mass. R. App. P. 20 (form of briefs, appendices, and other papers).

CERTIFICATE OF SERVICE

I, [REDACTED], hereby certify that two copies of this reply brief have been served by First Class Mail on April 21, 2015 upon counsel for the Commonwealth, Assistant District [REDACTED]. I further certify that one copy of the reply brief has been served upon ADA [REDACTED] by email on April 21, 2015.

ADDENDUM

Massachusetts General Laws Annotated
Part I. Administration of the Government (Ch. 1-182)
Title XVII. Public Welfare (Ch. 115-123b)
Chapter 119. Protection and Care of Children, and Proceedings Against Them (Refs & Annos)

M.G.L.A. 119 § 58

§ 58. Adjudication as delinquent child or youthful offender

Effective: September 18, 2013

Currentness

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 or age 20 in the case of a child whose case is disposed of after he has attained his nineteenth birthday; provided further, that a complaint alleging a child to be a delinquent child by reason of having violated the provisions of section 13B, 13B ½, 13B ¾, section 22A, 22B, 22C, 23, 23A, section 23B or section 50 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 or age 20 in the case of a child whose case is disposed of after he has attained his nineteenth 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 therefor, 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 eighteenth 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 eighteenth 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 or his nineteenth birthday in the case of a child whose case is disposed of after he has attained 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.

Credits

Amended by St.1941, c. 264, § 1; St.1948, c. 310, § 4; St.1948, c. 385; St.1969, c. 838, § 15; St.1969, c. 859, § 10; St.1972, c. 731, § 10; St.1973, c. 925, § 42; St.1973, c. 1073, §§ 13 to 15; St.1976, c. 533; St.1978, c. 478, § 58; St.1986, c. 557, § 116; St.1990, c. 267, §§ 1, 2; St.1992, c. 379, § 20; St.1992, c. 398, § 1; St.1993, c. 110, § 159; St.1995, c. 278, § 1; St.1996, c. 200, § 5; St.1998, c. 194, § 177; St.2010, c. 267, §§ 17 to 19, eff. Nov. 5, 2010; St.2011, c. 178, § 16, eff. Feb. 19, 2012; St.2013, c. 84, §§ 9 to 11, eff. Sept. 18, 2013.

Notes of Decisions (22)

M.G.L.A. 119 § 58, MA ST 119 § 58
Current through Chapter 12 of the 2015 1st Annual Session

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MASSACHUSETTS GENERAL LAWS ANNOTATED
PART I. ADMINISTRATION OF THE GOVERNMENT
TITLE XVII. PUBLIC WELFARE
CHAPTER 119. PROTECTION AND CARE OF CHILDREN, AND PROCEEDINGS AGAINST THEM DELINQUENT CHILDREN

(Information regarding effective dates, repeals, etc., affecting above preliminary material is provided subsequently in this document.)

§ 61. Trial of certain juveniles as adults; dismissal of juvenile complaint; transfer hearing; issuance of criminal complaint

If it is alleged in a complaint made under sections fifty-two to sixty-three, inclusive, that a child (a) who had previously been committed to the department of youth services as a delinquent child has committed an offense against a law of the commonwealth which, if he were an adult, would be punishable by imprisonment in the state prison; or (b) has committed an offense involving the infliction or threat of serious bodily harm, and in either case if such alleged offense was committed while the child was between his fourteenth and seventeenth birthdays, and if the court enters a written finding based upon clear and convincing evidence that the child presents a significant danger to the public as demonstrated by the nature of the offense charged and the child's past record of delinquent behavior, if any, and is not amenable to rehabilitation as a juvenile, the court may, after a transfer hearing held in accordance with such rules of court as shall be adopted for such purpose, dismiss the complaint.

At said transfer hearing, which shall be held before any hearing on the merits of the charges alleged, the court shall find whether probable cause exists to believe that the child has committed the offense or violation as charged. If the court so finds, the court shall then consider, but shall not be limited to, evidence of the following factors: (a) the seriousness of the alleged offense; (b) the child's family, school and social history, including his court and juvenile delinquency record, if any; (c) adequate protection of the public; (d) the nature of any past treatment efforts for the child; and (e) the likelihood of rehabilitation of the child.

If the court determines that the child should be treated as a delinquent child, the court shall forthwith, on motion by or on behalf of the child, continue the proceedings until such further time as the court shall determine; provided, however, that when the child is alleged in a complaint to have violated the provisions of section one of chapter two hundred and sixty-five, the court shall make written findings upon which the determination was made to treat such child as a delinquent.

If the court orders that the delinquency complaint against a child be dismissed it shall cause to be issued a criminal complaint. The case shall thereafter proceed according to the usual course of criminal proceedings and in accordance with the provisions of section thirty of chapter two hundred and eighteen and section eighteen of chapter two hundred and seventy-eight. When such a complaint is issued, section 68 shall apply to any person committed under this section for failure to recognize pending final disposition in the superior court.

Unless the child by counsel shall waive this provision, the judge who conducts the transfer hearing shall not conduct any subsequent proceeding arising out of the facts alleged in the delinquency complaint.

Amended by St.1948, c. 310, § 7; St.1964, c. 308, § 2; St.1975, c. 840, § 1; St.1977, c. 829, § 11; St.1985, c. 744.

CHAPTER 119. PROTECTION AND CARE OF CHILDREN, AND PROCEEDINGS AGAINST THEM

St.1954, c. 646, § 1, struck out sections 1-51 of c. 119 of the General Laws (Ter.Ed.), as amended, and added new sections 1-39 in place thereof.

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HISTORICAL NOTE

1987 Pocket Part Historical Note

1975 Amendment. St.1975, c. 840, § 1, approved Dec. 24, 1975, and by § 3 made effective upon its passage, rewrote the section to include subject matter previously contained in former section 75 of this chapter.

1977 Amendment. St.1977, c. 829, § 11, an emergency act, approved Dec. 20, 1977, correctively substituted "section thirty" for "section forty" in the second sentence of the fourth paragraph.

1985 Amendment. St.1985, c. 744, approved Jan. 3, 1986, added the proviso in the third paragraph.

Related Laws:

St.1986, c. 537, § 5, approved Nov. 18, 1986, provides:

"Notwithstanding the provisions of the fourth paragraph of section sixty-one of said chapter one hundred and nineteen, in Essex and Hampden counties, if the court orders that the delinquency complaint against a child be dismissed it shall cause to be issued a criminal complaint. The case shall thereafter proceed according to the usual course of criminal proceedings and in accordance with the provisions of section thirty of chapter two hundred and eighteen of the General Laws. When such complaint is issued, section sixty-eight of said chapter one hundred and nineteen shall apply to any person committed under this section for failure to recognize pending final disposition in the superior court."

For provisions relating to pleas and to suspension or expiration of St.1986, c. 537, see the Historical Note under c. 90, § 24.

1969 Main Volume Historical Note

Main Volume Text

§ 61. Disposition of complaint alleging commission of criminal offense by child between 14 and 17 years of age

If it be alleged in a complaint made under sections fifty-two to sixty-three, inclusive, that a child has committed an offense against a law of the commonwealth, or has violated a city ordinance or town by-law, and if such alleged offense or violation was committed while the child was between his fourteenth and seventeenth birthday, and if the court is of the opinion that the interests of the public require that he should be tried for said offense or violation, instead of being dealt with as a delinquent child, the court may, after a hearing on said complaint, order it dismissed.

Amended by St.1948, c. 310, § 7; St.1964, c. 308, § 2.

Main Volume Historical Notes

St.1906, c. 413, §§ 11.

This section was made applicable only to children "between fourteen and seventeen years of age" by the 1948 amendment.

The 1964 amendment deleted the words "between fourteen and seventeen years of age" preceding "has committed"; deleted the words "his welfare, and" preceding "the interests of the public"; and inserted the words "and if such alleged offense or violation was committed while the child was between his fourteenth and seventeenth birthday."

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For the effect of 1964 amendment, see Historical Note under § 56 of this chapter.

Complaint against child where proceedings have been begun and dismissed as required by this section, see § 75 of this chapter.

Criminal proceedings against children, conditions as to commencing, see § 74 of this chapter.

CODE OF MASSACHUSETTS REGULATIONS

1987 Pocket Part Code of Massachusetts Regulations

Regulations governing the department of youth services, definitions, see 109 CMR 2.02.

LAW REVIEW COMMENTARIES

1987 Pocket Part Law Review Commentaries

Double jeopardy cases involving juvenile transfer proceedings. (1978) 12 Suffolk U.L.Rev. 414.

Jury trials in juvenile proceedings: Supreme Court, 1970 term. (1971) 85 Harvard L.Rev. 113.

Juveniles in court: A system in flux. Lawrence D. Shubow and Jeremy A. Stahlin (1977) 61 Mass.L.Q. 193.

Problems of In re Gault. (1968) 2 Suffolk U.L.Rev. 81.

1969 Main Volume Law Review Commentaries

Criminality in children. Gino Carlo Speranza (1903) 15 Green Bag 516.

Double jeopardy. John D. O'Reilly, Jr., 10 Annual Survey of Mass.Law, Boston College, p. 105 (1963).

Juvenile delinquency. Sanford J. Fox, 7 Annual Survey of Mass.Law, Boston College, p. 111 (1960).

Juvenile delinquency in Massachusetts. (Spring 1967) 2 Portia Law Journal, No. 2, p. 243.

Proceedings against delinquent. Sanford J. Fox, 6 Annual Survey of Mass.Law, Boston College, p. 102 (1959).

LIBRARY REFERENCES

1969 Main Volume Library References

Infants ⇦ 16.9.
C.J.S. Infants § 99.

NOTES OF DECISIONS

In general 1
Discretion 8
Double jeopardy 3
Factors considered 7
Findings 12
Infliction or threat of harm 4
Introduction of evidence 10
Jurisdiction 2
Juvenile record 11
Order or decree 9
Presumptions and burden of proof 9.5
Record of proceedings 5

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Review 14
Transfer hearing 13
Validity 1/2

1/2 . Validity

This section was not unconstitutionally vague. Stokes v. Com. (1975) 336 N.E.2d 735, 368 Mass. 754.

This section is not unconstitutionally vague. Com. v. White (No. 1) (1974) 311 N.E.2d 543, 365 Mass. 301, certiorari denied 95 S.Ct. 785, 419 U.S. 1111, 42 L.Ed.2d 808.

This section authorizing district court judge to dismiss a juvenile complaint "if the court is of the opinion that the interests of the public require that * * * [the juvenile] should be tried for said offense or violation" is not unconstitutionally vague and overbroad. In re Juvenile (1974) 306 N.E.2d 822, 364 Mass. 531.

1. In general

Trying defendant in adult court after transfer from juvenile court did not amount to ex post facto transformation of noncriminal conduct into criminal conduct. Stokes v. Com. (1975) 336 N.E.2d 735, 368 Mass. 754.

Juvenile was not denied constitutional rights by fact that he was not provided with specific formal notice that, at a particular hearing, the issue of, dismissal would be considered or by the fact that he was not provided with a statement of reasons for juvenile court's waiver of jurisdiction. Com. v. Franklin (1974) 318 N.E.2d 469, 366 Mass. 284.

Before criminal proceedings may be begun against a child between 14 and 17 years of age, juvenile proceedings against him must be begun and dismissed. Com. v. White (No. 1) (1974) 311 N.E.2d 543, 1974 365 Mass. 301, certiorari denied 95 S.Ct. 785, 419 U.S. 1111, 42 L.Ed.2d 808.

Where juvenile complaints had been dismissed and it was ordered that defendant be proceeded against as an adult, and where judge's finding that the interest of the public required that defendant be tried for the offense was not supported by statement in writing of the reasons or considerations therefor, as prescribed by rule, proper administration of criminal justice required that defendant be afforded an opportunity in the juvenile court to establish that he should be treated as a child rather than as an adult. Com. v. Juvenile (1973) 296 N.E.2d 194, 363 Mass. 640.

The 1948 amendment of this chapter, which prior to such amendment had made inevitably criminal in character a charge of second degree murder by a child between the ages of 14 and 17, is not to be applied retroactively. Nassar v. Com. (1961) 171 N.E.2d 157, 341 Mass. 584.

Where defendant under age of fourteen years entered plea of guilty in Superior Court to murder in second degree, he could not be permitted to retry in District Court issues involved in Superior Court proceedings, and District Court could not go behind determination of facts constituting delinquency implicit in plea of guilty in Superior Court. Metcalf v. Com. (1959) 156 N.E.2d 649, 338 Mass. 648.

Under special procedures for hearing of juvenile offenses, determination to be made is not that of criminal guilt but of delinquency. Id.

Determination of age, for purpose of this section is to be made as of time of commission of offense rather than some subsequent time, such as time of apprehension, indictment or trial. Id.

Section 83 of this chapter applies only to such cases as reach Superior Court after dismissal of delinquency complaint pursuant to this section. Id.

It is unlikely that criminal proceedings could be instituted against person discharged from mental institution after dismissal of the delinquency proceeding under this section where person discharged was mentally ill at the time of commission of alleged crime. Op.Atty.Gen. June 27, 1963, p. 181.

2. Jurisdiction

Fact that there is jurisdiction to transfer a juvenile for adult treatment for a specific offense does not render nugatory the additional requirement that the judge must weigh, among other things, the seriousness of the particular offense in determining whether transfer should be ordered. Com. v. A Juvenile (1980) 409 N.E.2d 197, 10 Mass.App. 385, affirmed 420 N.E.2d 312, 383 Mass. 877.

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District court has jurisdiction to bind over a child for an offense whether it be a felony or only a misdemeanor, so long as the offense involves the infliction or threat of serious bodily harm. Id.

Proceedings against children between the ages of 7 and 17 years are governed by this chapter and jurisdiction in first instance lies exclusively in juvenile session. Joyner v. Com. (1970) 260 N.E.2d 664, 358 Mass. 60.

Under indictment charging crime punishable by death, Superior Court, at outset, had jurisdiction to hear case, even though defendant was under fourteen years of age, and its jurisdiction was exclusive. Metcalf v. Com. (1959) 156 N.E.2d 649, 338 Mass. 648.

Even though indictment charged murder in first degree, acceptance of defendant's plea of guilty to murder in second degree defined his offense as a noncapital one; and defendant being then under fourteen years of age, Superior Court's jurisdiction terminated and resort was required to be had to appropriate court having jurisdiction over delinquent children for further proceedings in conformity with statute. Id.

3. Double jeopardy

United States Supreme Court decision to effect that double jeopardy bars prosecution of a juvenile as an adult for alleged crimes arising out of the same incident for which juvenile has been previously adjudicated delinquent in a juvenile court was inapplicable to case in which juvenile complaint against defendant was dismissed prior to date of such decision but in which his guilty plea to second-degree murder was entered after such date. Com. v. Clark (1980) 400 N.E.2d 251, 379 Mass. 623.

Defendant's trial in superior court which followed juvenile proceedings was not barred on the principle of double jeopardy, where such juvenile proceedings were conducted prior to date of Breed v. Jones decision of United States Supreme Court holding that trial in adult court following juvenile court adjudicatory hearing results in double jeopardy. Com. v. Schebergen (1976) 356 N.E.2d 268, 4 Mass.App. 846.

Where municipal court hearing which resulted in dismissal of juvenile delinquency complaints and transfer of juvenile to adult court for prosecution for murder could not have resulted in adjudication of delinquency, trying defendant in adult court after such transfer did not place him twice in jeopardy. Stokes v. Com. (1975) 336 N.E.2d 735, 368 Mass. 754.

United States Supreme Court decision in Breed v. Jones, which held that prosecution of juvenile in adult court after adjudicatory proceeding in juvenile court violated double jeopardy clause, was not to be applied retroactively. Id.

Juvenile over age of 14 and under age of 17 was not placed in jeopardy on charge of second-degree murder for which he pleaded guilty and for which he was sentenced where court at time, because of his age, lacked jurisdiction to entertain proceedings against him and he had, accordingly, never been tried for the offence, and no bar by former conviction could prevent subsequent prosecution. Com. v. Chase (1964) 202 N.E.2d 300, 348 Mass. 100.

4. Infliction or threat of harm

Word "threat" as used in this section authorizing the binding over of a juvenile for adult criminal proceedings where he is charged with an offense involving the infliction or "threat of serious bodily harm" does not require an intent to do harm but, rather, transfer is authorized where an offense involves a danger (threat) of serious bodily harm. Com. v. A Juvenile (1980) 409 N.E.2d 197, 10 Mass.App. 385, affirmed 420 N.E.2d 312, 383 Mass. 877.

Offense of operating a motor vehicle negligently so that the lives or safety of the public might be endangered is an offense involving infliction or "threat of serious bodily harm" for purpose of this section authorizing transfer of a juvenile for adult criminal treatment. Id.

Interpreting word "threat," as used in this section governing transfer of a juvenile charged with an offense involving infliction or threat of serious bodily harm, as authorizing transfer when an offense involves the danger of serious bodily harm does not constitute an unforeseen departure from precedent so as to constitute a violation of due process. Id.

5. Record of proceedings

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Where juvenile proceedings against child were begun and dismissed and the Boston Juvenile Court made required finding that "the public interest" or "the public good" required that defendant be treated as an adult; and where defendant was afforded full opportunity to be heard and a statement of reasons in Superior Court, no constitutional rights of defendant were violated by failure of the Juvenile Court to make a record of the juvenile hearing or to file a written statement of findings and reasons for dismissing the juvenile complaint. Com. v. White (No. 1) (1974) 311 N.E.2d 543, 365 Mass. 301, 95 S.Ct. 785, 419 U.S. 1111, 42 L.Ed.2d 808.

7. Factors considered

Attaching substantial significance to seriousness of juvenile's offense, which bore on both danger to public and juvenile's prospects for rehabilitation, was proper, and with consideration of all other enumerated factors as well as Commonwealth's previous foster care efforts, supported decision that juvenile should be tried as adult on first-degree murder charges. Com. v. Costello (1984) 467 N.E.2d 811, 392 Mass. 393.

Although judge has authority to transfer delinquency action to adult court once it is determined that criteria of this section are met, in making his determination whether to transfer juvenile, judge should give consideration to particular facts of the case; absence of any showing that juvenile's acts were done with intention to cause harm would militate against a transfer and distinction between authority to transfer and appropriateness of a given transfer should be carefully observed. Com. v. A Juvenile (1981) 420 N.E.2d 312, 383 Mass. 877.

In proceeding to transfer juvenile to adult proceedings, there is no specific requirement that judge weigh factors enumerated in this section in certain manner or achieve some predesigned balance; any factor which bears on protection of public and amenability of child to treatment as juvenile may be considered. Two Juveniles v. Com. (1980) 412 N.E.2d 344, 381 Mass. 736.

Judge who makes findings, in order to transfer juvenile to adult proceedings, that child presents significant danger to public and is not amenable to rehabilitation as juvenile, must also make subsidiary findings indicating basis for conclusions concerning the two findings required by this section; these subsidiary findings may show consideration of five enumerated findings and factors identified in court guidelines, although any single factor will rarely, if ever, be controlling. Id.

For purposes of determining whether juvenile should be transferred for prosecution as an adult, a consideration of his prior record, his family and school history, his psychological and emotional development and the nature of any past rehabilitative efforts is relevant in evaluating his amenability to treatment as a juvenile. Juvenile v. Com. (1976) 347 N.E.2d 677, 370 Mass. 272.

8. Discretion

Legislative intent is that noncriminal treatment of a juvenile is to be favored and that transfers for trial as an adult should be ordered only when warranted by exceptional circumstances; but judge has considerable discretion, within the statutory framework, to determine, whether child should be treated as an adult and may consider any factor which bears on the protection of the public and amenability of child to treatment as a juvenile. Juvenile v. Com. (1976) 347 N.E.2d 677, 370 Mass. 272.

This section does not permit so much judicial discretion as to constitute delegation of legislative power to judiciary. Stokes v. Com. (1975) 336 N.E.2d 735, 368 Mass. 754.

9. Order or decree

Transfer order which complies with court guidelines for transfer of juvenile for trial as adult and which meets clear and convincing test of this section is not fatally deficient if it omits factors judge finds ambiguous, unpersuasive or nonexistent, though better practice may be for judge to make detailed written findings concerning each enumerated factor. Two Juveniles v. Com. (1980) 412 N.E.2d 344, 381 Mass. 736.

9.5. Presumptions and burden of proof

Standard of proof in a proceeding to transfer a juvenile for adult treatment is a "clear and convincing" evidence standard, and the judge is required to make written findings that the child presents a significant danger to the public and is not

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amenable to rehabilitation and trial court must consider factors enumerated in this section. Com. v. A Juvenile (1980) 409 N.E.2d 197, 1980 Mass.App.Adv.Sh. 1565, affirmed 420 N.E.2d 312, 383 Mass. 877.

10. Introduction of evidence

In determining whether to try juvenile as adult, Commonwealth was not required to produce expert psychiatric testimony to prove that juvenile was not amenable to rehabilitation. Com. v. Costello (1984) 467 N.E.2d 811, 392 Mass. 393.

Though content of information such as Department of Youth Services records and reasons for school discipline must be analyzed with care to determine its trustworthiness in a proceeding held to determine whether juvenile should be transferred for prosecution as adult, a blanket prohibition of admission of such information is not required. Com. v. Watson (1983) 447 N.E.2d 1182, 388 Mass. 536, appeal after remand 471 N.E.2d 88, 393 Mass. 297.

In proceeding wherein a defendant, who was 16 at time of murder, was transferred for prosecution as adult, admission of defendant's entire file at Department of Youth Services and permitting assistant school principal to testify to circumstances under which defendant was suspended from school on three occasions was within judge's discretion. Id.

In proceeding wherein a defendant, who was 16 at time of murder, was transferred for prosecution as adult, admission of opinion of acting director of a region of Department of Youth Services that defendant was not a fit subject for the DYS was within judge's discretion, particularly in view of director's 27 years' experience in the system. Id.

In determining admissibility of evidence in proceeding involving determination whether juvenile should be transferred for prosecution as adult, the test is "fundamental fairness" and not the application of rules of evidence concerning the admission of hearsay. Id.

Admission of evidence after both parties had closed their cases in juvenile proceeding is within discretion of trial judge. Com. v. Clark (1980) 400 N.E.2d 251, 379 Mass. 623.

11. Juvenile record

Reliance solely on a child's past record of delinquency to show that he cannot be rehabilitated stands on the same shaky footing as reliance solely on the nature of the offense; permitting such a basis for transfer would restrict, without legislative sanction, the juvenile system to persons who do not have lengthy records of delinquent behavior and would allow transfer without taking into account other significant factors required by this section. Com. v. A Juvenile (1980) 409 N.E.2d 197, 10 Mass.App. 385, affirmed 42 N.E.2d 312, 383 Mass. 877.

Where juvenile's counsel did not bring judge's attention to juvenile's prior record to aid judge in determining whether juvenile delinquency complaint should be dismissed and juvenile transferred to adult court for prosecution, court had no obligation to consider record on his own and, under circumstances where juvenile was charged with murder in first degree and breaking and entering, any error in failing to consider juvenile's record was harmless. Stokes v. Com. (1975) 336 N.E.2d 735, 368 Mass. 754.

12. Findings

This section does not require that court state reasons for decision to waive juvenile jurisdiction and to refer juvenile for treatment as an adult. Stokes v. Fair (C.A.1978) 581 F.2d 287, certiorari denied 99 S.Ct. 858, 439 U.S. 1078, 59 L.Ed.2d 47.

Protections afforded by requirement in this section of two written findings based on clear and convincing evidence, and court's guidelines, in transfer of juvenile to adult proceedings, ensured that juveniles were adequately informed of basis upon which court ordered transfer and provided record which enabled reviewing court to evaluate the transfer proceedings, thus providing all the formal mechanisms to which juveniles were entitled in order to protect their due process rights. Two Juveniles v. Com. (1980) 412 N.E.2d 344, 381 Mass. 736.

Uniform Form DCM-12 i. e., finding and order after transfer hearing, is to be used as a helpful aid and reminder in making subsidiary findings in a proceeding to bind a juvenile over for adult

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treatment and is not to be used as a substitute for such findings. Com. v. A Juvenile (1980) 409 N.E.2d 197, 1980 Mass.App.Adv.Sh. 1565, affirmed 420 N.E.2d 312, 383 Mass. 877.

Subsidiary findings are of vital significance in a proceeding to transfer a juvenile for adult treatment, both to ensure the utmost judicial care in making the transfer decision and to permit meaningful review. Id.

Serious deficiency in subsidiary findings should count as faulty step in process of transfer of juvenile from juvenile court proceedings. A Juvenile v. Com. (1980) 405 N.E.2d 143, 380 Mass. 552.

13. Transfer hearing

Because the decision to transfer a juvenile for adult treatment is "critically important," extra measures of evidentiary protection for transfer proceedings have been provided by legislature and by court rule. Com. v. A Juvenile (1980) 409 N.E.2d 197, 10 Mass.App. 385, affirmed 420 N.E.2d 312, 383 Mass. 877.

Where a second juvenile transfer hearing is held for the purpose of considering additional evidence, it is appropriate for the judge to consider whether any prejudice might attach to the juvenile because of the lapse of time between the two hearings; such an inquiry is particularly necessary when the judge evaluates the transfer issues in light of the juvenile's age. Juvenile v. Com. (1978) 374 N.E.2d 1351, 375 Mass. 104.

Though additional probable cause hearings may be held, particularly if additional evidence is to be offered, successive probable cause hearings may not be held when the holding of such additional hearings is shown to constitute harassment. Juvenile v. Com. (1978) 374 N.E.2d 1351, 375 Mass. 104.

When additional evidence concerning probable cause has become available, there is no reason not to allow a second juvenile transfer hearing on the same charges after a finding of no probable cause at the first hearing. Id.

Holding of an evidentiary or probable cause hearing on merits of juvenile complaint was not constitutionally required before decision to transfer juvenile to adult court can be made, but it is preferable for there to be a determination of probable cause at transfer hearing. A Juvenile v. Com. (1976) 347 N.E.2d 677, 370 Mass. 272.

Juvenile court judge should state in advance that purpose of transfer hearing is to determine if probable cause exists and to decide if juvenile should be transferred and not to conduct an adjudicatory hearing on merits of the complaint. Juvenile v. Com. (1976) 347 N.E.2d 677, 370 Mass. 272.

14. Review

Where pretrial motion is addressed to the point, it is not only proper but obligatory for superior court judges to consider whether there has been material failing in prescribed steps leading to issuance of order of transfer of juvenile from juvenile court proceedings; such scrutiny is in order for procedure at juvenile court level that may be offensive to the Constitution and likewise applies to material error short of the constitutional, and such defense can also be searched out by Supreme Judicial Court after trial and conviction on the criminal complaint, which may require reference back to juvenile court for further proceedings. A Juvenile v. Com. (1980) 405 N.E.2d 143, 380 Mass. 552.

Judges of the superior court do not sit as appellate tribunals to review de novo soundness of decisions made by juvenile court judges to dismiss particular delinquency complaints; however, after transfer of plea or finding of guilty, it is open to judge of the superior court, in his discretion, in lieu of judgment of conviction and sentence, to adjudicate defendant a delinquent child if at that time he is under 18 years of age. Id.

Defendant, by answering plea of guilty to second-degree murder after dismissal of juvenile complaint, did not waive his right to raise issues on appeal in regard to whether there had been violations of double jeopardy and whether he had been denied procedural due process in the juvenile delinquency proceeding. Com. v. Clark (1980) 400 N.E.2d 251, 379 Mass. 623.

In view of fact that decision to transfer juvenile was not subject to appeal and that no appeal could be taken from allowance of motion to dismiss juvenile's request for a transfer hearing and since the juvenile court was not authorized to report cases,

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there was no other remedy available to juvenile who sought to avoid a second transfer hearing on the same charges after the first transfer hearing terminated in a finding of no probable cause and, therefore, it was appropriate that Supreme Judicial Court entertain the juvenile's claim under c. 211, § 3 giving the Court discretionary power to correct and prevent errors and abuses in courts of inferior jurisdiction when no other remedy is expressly provided. Juvenile v. Com. (1978) 374 N.E.2d 1351, 375 Mass. 104.

M. G. L. A. 119 § 61

MA ST 119 § 61

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Massachusetts General Laws Annotated
Part III. Courts, Judicial Officers and Proceedings in Civil Cases (Ch. 211-262)
Title I. Courts and Judicial Officers (Ch. 211-222)
Chapter 211. The Supreme Judicial Court (Refs & Annos)

M.G.L.A. 211 § 3

§ 3. Superintendence of inferior courts; power to issue writs and process

Effective: July 1, 2012

Currentness

The supreme judicial court shall have general superintendence of all courts of inferior jurisdiction to correct and prevent errors and abuses therein if no other remedy is expressly provided; and it may issue all writs and processes to such courts and to corporations and individuals which may be necessary to the furtherance of justice and to the regular execution of the laws.

In addition to the foregoing, the justices of the supreme judicial court shall also have general superintendence of the administration of all courts of inferior jurisdiction, including, without limitation, the prompt hearing and disposition of matters pending therein, and the functions set forth in section 3C; and it may issue such writs, summonses and other processes and such orders, directions and rules as may be necessary or desirable for the furtherance of justice, the regular execution of the laws, the improvement of the administration of such courts, and the securing of their proper and efficient administration; provided, however, that general superintendence shall not include the authority to supersede any general or special law unless the supreme judicial court, acting under its original or appellate jurisdiction finds such law to be unconstitutional in any case or controversy. Nothing herein contained shall affect existing law governing the selection of officers of the courts, or limit the existing authority of the officers thereof to appoint administrative personnel.

Credits

Amended by St.1956, c. 707, § 1; St.1973, c. 1114, § 44; St.1992, c. 379, § 61; St.2011, c. 93, § 46, eff. July 1, 2012.

Notes of Decisions (803)

M.G.L.A. 211 § 3, MA ST 211 § 3
Current through Chapter 12 of the 2015 1st Annual Session

End of Document

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Massachusetts General Laws Annotated
Part IV. Crimes, Punishments and Proceedings in Criminal Cases (Ch. 263-280)
Title II. Proceedings in Criminal Cases (Ch. 275-280)
Chapter 278. Trials and Proceedings Before Judgment (Refs & Annos)

M.G.L.A. 278 § 33E

§ 33E. Capital cases; review by supreme judicial court

Effective: August 2, 2012

Currentness

In a capital case as hereinafter defined the entry in the supreme judicial court shall transfer to that court the whole case for its consideration of the law and the evidence. Upon such consideration the court may, if satisfied that the verdict was against the law or the weight of the evidence, or because of newly discovered evidence, or for any other reason that justice may require (a) order a new trial or (b) direct the entry of a verdict of a lesser degree of guilt, and remand the case to the superior court for the imposition of sentence. For the purpose of such review a capital case shall mean: (i) a case in which the defendant was tried on an indictment for murder in the first degree and was convicted of murder in the first degree; or (ii) the third conviction of a habitual offender under subsection (b) of section 25 of chapter 279. After the entry of the appeal in a capital case and until the filing of the rescript by the supreme judicial court motions for a new trial shall be presented to that court and shall be dealt with by the full court, which may itself hear and determine such motions or remit the same to the trial judge for hearing and determination. If any motion is filed in the superior court after rescript, no appeal shall lie from the decision of that court upon such motion unless the appeal is allowed by a single justice of the supreme judicial court on the ground that it presents a new and substantial question which ought to be determined by the full court.

Credits

Amended by St.1939, c. 341; St.1962, c. 453; St.1974, c. 457; St.1979, c. 346, § 2; St.2012, c. 192, §§ 43, 44, eff. Aug. 2, 2012.

Notes of Decisions (1168)

M.G.L.A. 278 § 33E, MA ST 278 § 33E
Current through Chapter 12 of the 2015 1st Annual Session

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Massachusetts General Laws Annotated
Massachusetts Rules of Criminal Procedure (Refs & Annos)

Massachusetts Rules of Criminal Procedure (Mass.R.Crim.P.), Rule 29

Rule 29. Revision or Revocation of Sentence

Currentness

(Applicable to District Court and Superior Court)

(a) Revision or Revocation. The trial judge upon his own motion or the written motion of a defendant filed within sixty days after the imposition of a sentence, within sixty days after receipt by the trial court of a rescript issued upon affirmance of the judgment or dismissal of the appeal, or within sixty days after entry of any order or judgment of an appellate court denying review of, or having the effect of upholding, a judgment of conviction, may, upon such terms and conditions as he shall order, revise or revoke such sentence if it appears that justice may not have been done.

(b) Affidavits. If a defendant files a motion pursuant to this rule, he shall file and serve and the prosecutor may file and serve affidavits in support of their respective positions. The judge may rule on a motion filed pursuant to this rule on the basis of facts alleged in the affidavits without further hearing.

(c) Notice. The defendant shall serve the prosecutor with a copy of any motion and affidavit filed pursuant to this rule. If the judge orders that a hearing be held on the motion, the court shall give the parties reasonable notice of the time set for the hearing.

(d) Place of Hearing. A motion filed pursuant to this rule may be heard by the trial judge wherever he is then sitting.

Rules Crim. Proc., Rule 29, MA ST RCRP Rule 29
Current with amendments received through January 15, 2015.

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