

CHAPTER 22: DISCHARGE FROM DYS


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DISCHARGE FROM DYS

Discharge

Discharge is the irrevocable termination of a youth from the custody of the Department of Youth Services. Typically, DYS committed youth are discharged from DYS when the youth reaches age 18 (or age 21 if the youth is adjudicated a youthful offender),¹ as originally determined by the judge presiding over the delinquency proceeding.² Since Massachusetts has indeterminate sentencing in Juvenile Court, if a judge sentences a juvenile to a commitment to DYS, then the commitment must last until age 18 (unless DYS decides to discharge early or extend commitment as described below) Once committed to DYS, DYS determines when the youth is released to the community from a secure or residential placement.

Once a youth is discharged from DYS, he is no longer involved with the DYS system. Discharge from DYS is different than release from DYS custody. Youth who are released from DYS custody are still subject to DYS control while they reside in the community. By contrast, youth who are discharged from DYS are free of all DYS control.

 **Tip for families:** After your child is discharged from DYS custody, he no longer is subject to a grant of conditional liberty or DYS supervision, but he still must make sure to follow the law.

Early discharge

At any point in a youth's commitment, DYS may, with notice to the court, discharge a youth from DYS control early.³ This is known as "discretionary discharge." After such a discharge, the youth is no longer committed to DYS. Before pursuing such a discharge, DYS must be satisfied that discharge is consistent with the protection of the public.


The DYS Regional Director may recommend a youth for consideration for a discretionary discharge if the youth meets any of the following criteria:

- After a minimum of one crime free year has passed since the date of last commitment by the court provided 1) that this period includes a minimum of six continuous crime free months following release from secure treatment, group care, or any other residential placements, or 2) six continuous crime free months at home, or in a transitional living program, unless the mandatory discharge age has been reached;

- The youth becomes legally married; or
- There are exceptional circumstances in the case which present compelling reasons for a discretionary discharge. Such circumstances must be fully documented in the request.⁴

A letter requesting a discretionary discharge from DYS must be submitted to the DYS Regional Director by the tenth of the month in which the discharge is being sought.⁵ If approved by the DYS Commissioner, the discharge will become effective as of the last Monday of the month in which the request was made.⁶ The youth and the Clerk Magistrate of the committing court will be notified in writing of the approved discharge by the DYS Commissioner's Office.⁷


For youth with certain offenses, DYS must take further notification steps.⁸

 **Tip for families:** DYS does occasionally exercise the early discharge option when warranted. Parents or guardians can discuss this option with their child's caseworker directly. You also may want to discuss this option with a lawyer or outside advocate.

Extension of commitment

A commitment to DYS typically ends when a youth reaches age 18 (or age 21 if the youth is adjudicated a youthful offender). Until recently, DYS, in some cases, would rely on a state statute to seek an extension of commitment until age 21.⁹ The statute stated that, when DYS believed that discharge of a youth would pose a physical danger to the public, DYS could apply to the committing court for approval of an order of extended control until age 21.¹⁰

In February 2009, the Massachusetts Supreme Judicial Court, in *Kenniston v. Department of Youth Services*, ruled that the extension of commitment process, as outlined in the statute, did not provide youth with substantive due process and was therefore unconstitutional.¹¹ The result is that DYS may no longer rely on this statute to pursue an extension of commitment beyond age 18. It is possible that DYS will ask the state legislature to revise the statute to include constitutional protections so that DYS may once again pursue extensions of commitment in the future.

 **Tip for families:** Youth for whom DYS was seeking an extension of commitment prior to February 2009 and youth currently on an extension of commitment should consult with their delinquency attorneys as to the proper course of action at this time.

Assent of ward

For some committed youth, DYS may seek an “assent of ward,” a voluntary extension of DYS supervision beyond the youth’s eighteenth birthday.¹² This option may be offered to a youth that is aging out of the system and is in need of continued services, but does not meet the criteria for an extension of commitment.¹³

An assent of ward for an initial three month period must be approved in writing by the DYS Regional Director.¹⁴ The agreement may be reviewed for an extension of the agreement after the three month period.¹⁵ The youth or DYS may terminate the agreement at any time.¹⁶ If a youth violates the terms and conditions of the agreement, it is immediately terminated.¹⁷ DYS must hold an administrative meeting thirty days prior to the youth turning age eighteen in order to discuss the assent of ward.¹⁸ A youth’s DYS supervision cannot be voluntarily extended beyond age 21.¹⁹

Risk of recidivism

In 2003, 32 percent of individuals who had been discharged from DYS commitment within the previous year were convicted of another crime in that year, and still other youth had cases pending in adult criminal court.²⁰

DYS, youth and families need to work together to prevent the youth from committing another crime. Individuals who had been committed to DYS because of a weapons offense were more likely than any other group to be convicted of another crime within one year of discharge from DYS.²¹ Also, the younger a youth was when he was first committed to DYS custody, the more likely he is to get in trouble with the law after he is discharged from DYS.²² Many individuals who had been committed to DYS get in trouble again because they have mental health problems that continue when they are returned to the community where they may not be receiving treatment or services.

Since a DYS-involved youth is often released to the community when he is age seventeen or older, future crimes will not be tried in juvenile court. If a youth commits another crime at age seventeen or older, he will be charged as an adult, and the criminal justice system for adults is harsher and offers fewer services. DYS, the youth, and the youth’s family must cooperate to prevent this outcome.

Endnotes

- 1 The prosecutor decides if a youth is to be indicted as a youthful offender.
- 2 Mass. Gen. L. ch. 120, § 16; 109 CMR 9.05(1)(c); *see also* Mass. Gen. L. ch. 119, § 58. Discharge may also occur upon: revocation of such commitment by a court of competent jurisdiction; the expiration of an Assent of Ward agreement for a voluntary extension of commitment or a court ordered extension of commitment under Mass. Gen. L. ch. 120, § 17; commitment of the juvenile to another state agency or to adult probation provided that no special conditions relating to DYS involvement have been decreed by a court or agreed to by DYS and the receiving agency; or enlistment of the youth in the U.S. Armed Forces. DYS, Case Management Reference Guide (Aug. 2006) at 52.
- 3 Mass. Gen. L. ch. 120, § 6(e).
- 4 DYS, Case Management Reference Guide (Aug. 2006) at 53.
- 5 DYS, Case Management Reference Guide (Aug. 2006) at 53.
- 6 DYS, Case Management Reference Guide (Aug. 2006) at 53.
- 7 DYS, Case Management Reference Guide (Aug. 2006) at 53.
- 8 Mass. Gen. L. ch. 120, § 6(e); Mass. Gen. L. ch. 120, § 12.
- 9 Mass. Gen. L. ch. 120, §§ 16-19.
- 10 Mass. Gen. L. ch. 120, §§ 16-19.
- 11 2009 WL 294527, SJC-10270 (Feb. 10, 2009).
- 12 DYS, Case Management Reference Guide (Aug. 2006) at 51.
- 13 DYS, Case Management Reference Guide (Aug. 2006) at 51.
- 14 DYS, Case Management Reference Guide (Aug. 2006) at 52.
- 15 DYS, Case Management Reference Guide (Aug. 2006) at 52.
- 16 DYS, Case Management Reference Guide (Aug. 2006) at 52.
- 17 DYS, Case Management Reference Guide (Aug. 2006) at 52.
- 18 DYS, Case Management Reference Guide (Aug. 2006) at 52.
- 19 DYS, Case Management Reference Guide (Aug. 2006) at 52.
- 20 Correspondence from Jane E. Tewksbury, Department of Youth Services to MHLAC (Dec. 27, 2007).
- 21 Mass. Exec. Office of Public Safety, Programs Division, Mass. Juvenile Justice Data and Information (2004) at 174, available at <http://www.mass.gov/eops> (under Publications and Reports) at 175.
- 22 Mass. Exec. Office of Public Safety, Programs Division, Mass. Juvenile Justice Data and Information (2004) at 174, available at <http://www.mass.gov/eops> (under Publications and Reports) at 175.